

**POWER PURCHASE AGREEMENT**

Between

The City of Mesa  
(as “Buyer”)

and

Ameresco, Inc.  
(as “Seller”)

Dated as of \_\_\_\_\_, 2017

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## POWER PURCHASE AGREEMENT

### PREAMBLE

This Power Purchase Agreement together with the exhibits referenced herein ("Agreement") is entered into as of the Execution Date, by and between Ameresco, Inc. a Delaware Corporation ("Seller"), and the City of Mesa, an Arizona Municipal Corporation ("Buyer").

### RECITALS

1. WHEREAS, Buyer owns and operates a municipal utility governed by and through its Council which has all powers necessary and appropriate to a municipal corporation to establish, purchase and operate public works to furnish its customers with electrical power. Under this authority, Buyer is engaged in the business of delivering electricity to its customers in Mesa, Arizona and buying electricity with the intention of routinely taking physical delivery.
2. WHEREAS, Buyer issued a Request for Qualifications for Solar Services (RFQ), numbered RFQ-2016011, and Seller was selected as a qualified contractor in that RFQ in accordance with Buyer's procurement rules.
3. WHEREAS, Buyer is the owner of the Premises and the Project Site, and desires to make a portion of such property available to Seller for the construction, operation and maintenance of a solar powered electric generating project.
4. WHEREAS, Buyer further wishes for the Project to create a premier performance and event space that is aesthetically pleasing, where Shade is an essential element of creating such space, and where Project will facilitate Event Features which will be used to enhance the performance and event space.
5. WHEREAS, Seller desires to develop, finance, design, construct, own and operate a solar powered electric generating project located on Project Site, and sell to Buyer the Project Output.
6. WHEREAS, Seller has agreed with Strategic Solar Energy LLC, the owner of the intellectual property and technology rights associated with the Power Parasol, to license use of the Power Parasol in the Project, which will allow for Shade as part of the Project.
7. WHEREAS, Buyer wishes to purchase the Output of the Project to meet Buyer's needs at a known price and timing and intends to resell Output and/or such related energy to its customers.
8. Whereas, the Parties intend for Buyer to obtain and retain all Environmental Attributes of the Project, and Seller to obtain and retain all Tax Attributes of the Project.

**NOW, THEREFORE**, in consideration of the recitals above and the following promises, the covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

## GENERAL TERMS AND CONDITIONS

### Section I – Definitions; Rules of Interpretation

The following initially capitalized terms, whenever used in this Agreement, have the meanings set forth below unless the context of their use otherwise clearly indicates or they are otherwise specifically defined in other sections of this Agreement.

**Additional Event Features:** Event Features or other improvements to the Project to enhance or alter the aesthetic qualities or utility of the Project for Buyer's use not included in the initial design and construction and added or proposed to be added at some time after the Commercial Operation Date.

**Agreement:** This Power Purchase Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.

**Applicable Law:** Any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, or guideline issued by a Governmental Authority that is applicable to a Party to this Agreement or the transaction described herein. Applicable Law also includes an approval, consent or requirement of any Governmental Authority having jurisdiction over such Party or its property, enforceable at law or in equity.

**Business Day:** A day other than Saturday, Sunday, or other day on which commercial banks in Arizona are authorized or required by law to be closed. For the purposes of this Agreement, Friday also shall not be a business day, unless or until Buyer in its governmental capacity resumes Friday business operations.

**Buyer:** The City of Mesa, an Arizona municipal corporation, and all successors and assigns.

**Change in Law:** After the date of this Agreement, an Applicable Law is amended, modified, nullified, suspended, repealed, found unconstitutional or unlawful, or changed or affected in any material respect by any Applicable Law. Change in Law does not include changes in federal or state income tax laws or changes in state, county or other local ad-valorem or other real or personal property tax laws. Change in Law includes material changes in the interpretation of an Applicable Law.

**Commercial Operation Date:** The date, which shall be specified by Seller to Buyer pursuant to Section 2(c), when the Project is physically complete and has successfully completed all performance tests and satisfies the interconnection requirements of the Local Electric Utility.

**Confidential Information:** Information of a confidential or proprietary nature specifically marked as confidential. Such information shall include, but not be limited to, any documentation, records, listing, notes, data, computer disks, files or records, memoranda, designs, financial models, accounts, reference materials, trade-secrets, prices, strategic partners, marketing plans, strategic or other plans, financial analyses, customer names or lists, project opportunities and the like, provided however that Confidential Information does not include information which (i) was in the possession of the receiving

Party before receipt from the disclosing Party; (ii) is or becomes publicly available other than as a result of unauthorized disclosure by the receiving Party; (iii) is received by the receiving Party from a third party not known by the receiving Party with the exercise of reasonable diligence to be under an obligation of confidentiality respecting the information; or (iv) is independently developed by the receiving Party without reference to information provided by the disclosing Party.

**Contract Year:** The 365 days (or 366 days in a leap year) that proceed each successive anniversary of the Commercial Operations Date.

**Credit Rating:** With respect to any entity, (a) the rating then assigned to such entity's unsecured senior long-term debt obligations (not supported by third party credit enhancements) or (b) if such entity does not have a rating for its unsecured senior long-term debt obligations, then the rating assigned to such entity as an issuer rating by S&P and/or Moody's. If the entity is rated by both S&P and Moody's and such ratings are not equivalent, the lower of the two ratings shall determine the Credit Rating. If the entity is rated by either S&P or Moody's, but not both, then the available rating shall determine the Credit Rating.

**Dispute:** A controversy or claim arising out of or relating to this Agreement.

**EA Agency:** Any local, state or federal entity, or any other person, that has responsibility for or jurisdiction over a program involving transferability of Environmental Attributes, including, without limitation, the Clean Air Markets Division of the United States Environmental Protection Agency (together with any successor agency, the "EPA"), Arizona Corporation Commission, Arizona Department of Environmental Quality, the Western Electricity Coordinating Council (and the Western Renewable Energy Generation Information System) and any successor commission(s) or agency(ies) thereto.

**Early Termination Amount:** An amount determined in accordance with Exhibit B, as of the applicable anniversary date set forth thereon.

**Energy Scheduling Agent:** The entity that acts on behalf of Buyer to purchase and sell energy across its transmission balancing authority in order to match Buyer's local distribution area electrical load to its electrical resources. Buyer's Energy Scheduling Agent is listed in Exhibit I.

**Environmental Attributes:** Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, certificates, products, or valuations attributed to the Project and its displacement of conventional energy generation, or any other entitlement pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time, but excluding, for the avoidance of doubt, any Tax Attributes.

**Event Features:** Those lighting, electronics, conduit, bracketry, and other features detailed in Exhibit J that are not strictly related to the support or production of Output and are included in the initial design and construction of the Project and will generally be incorporated at the time of the Commercial Operation Date, or which have been scheduled as of the Commercial Operation Date to be incorporated at some future date. If Additional Event Features have been added to the Project, then Event Features shall include Additional Event Features, where applicable in this Agreement.

**Excess Output:** Output in any Contract Year that exceeds the Maximum Production Limit stated in Exhibit E.

**Execution Date:** The date as defined in Section 2(b).

**Fair Market Value:** The price that would be paid in an arm's length, free market transaction, in cash, between an informed, willing seller and an informed willing buyer (who is neither a lessee in possession nor a used equipment or scrap dealer), neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age and then existing performance of the Project and advances in solar technology, provided that installed equipment shall be valued on an installed basis.

**Financing Party:** Persons providing construction or permanent financing to Seller in connection with installation of the Project.

**Force Majeure Event:** An event or circumstance which prevents one party from performing its obligations, which event or circumstance was not anticipated as of the date the transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the claiming Party, and which, by the exercise of due diligence, the claiming Party is unable to overcome or avoid or cause to be avoided. So long as the requirements of the preceding sentence are met, a Force Majeure event may include, but shall not be limited to, flood, drought, earthquake, storm, fire, lightning, epidemic, war, terrorism or riot; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. Notwithstanding the foregoing, Force Majeure shall not be based on (a) Seller's delay or inability to obtain financing, or other economic hardship of any kind or (b) a loss or failure of materials or equipment for the Project.

**Generation Attributes:** Those attributes of the Output related to the generation and transmission of electrical power and energy including Scheduling Services, Reactive Services, Regulation Services, Energy Imbalance Services, Operating Reserves Services, and Generator Imbalance Services all as defined or used by the Western Area Power Administration, or any successor in interest thereto.

**Governmental Authority:** Any federal, state, municipal, county, regional or local government, administrative, judicial or regulatory entity operating under any Applicable Laws, and including any department, commission, bureau, board, administrative agency, or regulatory body of any government; or any corporation or other entity owned or controlled by any of the foregoing.

**Guaranteed Commercial Operation Date:** The date listed in Exhibit M.

**Hazardous Materials:** All hazardous or toxic substances, wastes or other pollutants, including petroleum, petroleum hydrocarbons or petroleum products, petroleum by-products, radioactive materials, asbestos or asbestos-containing materials, gasoline, diesel fuel, pesticides, radon, urea formaldehyde, lead or lead-containing materials, polychlorinated biphenyls; and any other chemicals, materials, substances or wastes in any amount or concentration which are now included in the definition of "hazardous substances," "hazardous materials," "hazardous wastes," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollutants," "regulated substances," "solid wastes," or "contaminants" or words of similar import, under any Applicable Law.

**Indemnified Person:** The person who asserts a right to indemnification under Section 15.

**Indemnifying Party:** The Party who has the indemnification obligation under Section 15 to the Indemnified Person.

**Initial Period:** Has the meaning provided in Section 2.

**Installed Module Capacity:** The sum of the nameplate ratings (DC) of all Project solar modules on the Commercial Operation Date.

**Installed Inverter Capacity:** The sum of the nameplate ratings (AC) of all Project inverters on the Commercial Operation Date.

**Installer:** The person designated by Seller to install the Project on the Project Site. If the Installer is Seller, then Seller and Installer may be used interchangeably wherever applicable.

**Interval Data Recorder:** A digital device for the metering of electric power and energy with the ability to (i) create a live signal to encode that data with a refresh rate no greater than 15 minutes and (ii) create and store a digital log of the data for a period no less than one year.

**Interconnection Agreement:** The agreement and associated documents (or any successor agreement and associated documentation) by and among Seller and Buyer governing the terms and conditions of Seller's interconnection with the Buyer's local electric distribution system, including any description of the plan for interconnection of the Project.

**Land Registry:** The office where real estate records for the Premises and the Project Site are customarily filed, in the case of this Agreement, the Maricopa County Recorder's Office.

**Liens:** Has the meaning provided in Section 8(g).

**Local Electric Utility:** The local electric distribution system owner and operator which under the laws of the State of Arizona is responsible for providing electric distribution and interconnection services to Buyer at the Premises and the Project Site. For the purposes of this Agreement, Buyer is the Local Electric Utility.

**Losses:** Any and all third-party losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs, and expenses (including all attorney's fees and other reasonable costs and expenses incurred in defending any such claims or matters or in asserting or enforcing any indemnity obligation).

**Major System Maintenance:** The removal of Project equipment from service availability for inspection, maintenance and/or general overhaul of one or more major equipment groups. To qualify as Major System Maintenance, the work must be of the type that is (i) necessary to reliably maintain the operation or aesthetics of the Project, and (ii) causes any of the following:

- (1) the expected generation level of the Project to be reduced by at least ten percent (10%) at the peak production of that day of the Installed Inverter Capacity; or
- (2) the loss of 10 or more parking spaces at the Premises; or
- (3) the loss of any parking spaces at the Premises during a Planned Event on the Premises



- (4) the reduction of the Shade of the system more than 5% of the Shade specified in Exhibit E for a period longer than a day; or
- (5) disrupts the use of Event Features for any period of time.

**Operations Period:** Has the meaning provided in Section 2.

**Output:** The capacity, electrical energy (including real power and reactive power), Environmental Attributes, Generation Attributes, reserve requirements (if any), and any and all other reliability or power attributes which are or can be produced by or associated with the Project.

**Overproduction Output:** Output in any Contract Year that (i) exceeds the Upper Production Limit stated in Exhibit E but (ii) does not exceed the Maximum Production Limit.

**Parking and Solar Shade Structure:** The parts of the Project used to support the photovoltaic panels and associated equipment and create Shade over portions of the Project Site and the Premises.

**Party:** Either Buyer or Seller, as the context shall indicate, and "Parties" means both Buyer and Seller.

**Performance Assurance.** Collateral in the form of either cash, Letter(s) of Credit, performance bond, or other similar forms of commercially reasonable security acceptable to the Party who in accordance with the provisions of this Agreement requests such Performance Assurance.

**Planned Event.** An event at the Premises with an expected attendance of more than 500 persons.

**Point of Delivery:** Identified in Exhibit E.

**Premises:** The real properties owned by Buyer and located at \_\_\_\_ on which the Mesa Arts Center is located and which includes the Project Site as described in Exhibit D.

**Project:** An improvement which includes the Parking and Solar Shade Structure with Shade elements and an integrated system for the generation of electric power and energy from solar insolation consisting of the photovoltaic panels and associated equipment meeting the Installed Capacity Requirements to be installed, owned, operated and maintained by Buyer on the Project Site in accordance with this Agreement.

**Project Site:** The portions of the Premises covered by the Site License as described in Exhibit C attached hereto and on which the Project will be located.

**Relocation Event:** The relocation of the Project, starting at the shutdown of the Project pursuant to such relocation, and ending at the commercial operation of the Project when such relocated Project is reinstalled and operational at a new location.

**Renewable Energy Certificate (REC):** A certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, created by an applicable program or certification authority indicating generation of a particular quantity of energy (a product commonly associated with the generation of one (1) megawatt-hour (MWh)) from an eligible renewable energy source by an eligible renewable energy project. The Parties acknowledge that the Western Renewable Energy Generation Information System (WREGIS) issues and tracks renewable energy certificates (RECs) for generation of renewable-source electricity in the geographic area covered by the Western Electricity Coordinating Council

(WECC). WREGIS also facilitates REC transfers, enables permanent retirement of RECs, assists regulators with the implementation of their renewable energy programs, and brings transparency to REC markets.

**Seller:** Ameresco Inc, a Delaware corporation, and all successors and assigns.

**Shade:** The service provided by the Project of blocking a designed proportion of the sun's insolation from passing through to the underlying parking surface as specified in Exhibit E.

**Site License Agreement:** The license agreement covering the Project Site attached as Exhibit \_\_\_\_.

**Tax Attributes:** The investment tax credits (including any grants or payments in lieu thereof), production tax credits, and any tax deductions, accelerated depreciation or other benefits under the Internal Revenue Code or applicable federal, state, or local law available as a result of the ownership and operation of the Project.

**Test Energy:** Output (to the extent available) generated by the Project and delivered to the Point of Delivery prior to the Commercial Operation Date.

**Term:** Shall have the meaning provided in Section 2.

## Section II – Term

(a) Term. This Agreement shall consist of an Initial Period and an Operations Period. As used herein, "Term" shall mean all of the Initial Period and the Operations Period, unless the Seller or Buyer terminates the Agreement prior to the end of the Initial Period pursuant to the terms of this Agreement.

(b) Initial Period. The Initial Period shall not commence until five (5) business days after the date on which all of the following conditions have been fully satisfied, which shall be deemed the Execution Date:

- i. The transactions set forth in this Agreement have been approved by Buyer's City Council; and
- ii. Seller has fully executed this Agreement and provided both this Agreement and the Conditions Precedent Documentation listed in Exhibit L; and
- iii. This Agreement has been signed by Buyer's representative(s) as authorized by Buyer's City Council.

(c) Operations Period. If applicable, the Operations Period will commence on the Commercial Operation Date, and will terminate at 11:59 p.m. on the last day of the month in which the twenty-fifth anniversary of the Commercial Operation Date occurs. The Operations Period shall not commence until the Commercial Operations Date, which shall occur when all of the following conditions have been satisfied:

- i. Seller delivers to Buyer the Certification of Commercial Operation in the form set forth in Exhibit K, duly executed by Seller and its Licensed Professional Engineer;
- ii. Buyer shall have received and accepted the Performance Assurance in accordance with the relevant provisions of this Agreement;
- iii. Seller demonstrates satisfaction of all Seller's other obligations under this Agreement that commence prior to or as of the Operations Period, included taking all necessary steps to allow the RECs to be transferred to Buyer and tracked in WREGIS; and
- iv. The Project is successfully interconnected to Buyer's Local Electric Utility consistent with the Interconnection Agreement attached as Exhibit I.

### Section III – Access Rights

(a) Project Access Rights. Beginning on the Execution Date, Buyer grants to Seller and to Seller's agents, employees, Installers and other contractors a non-exclusive license for the Project for access to, on, over, under and across the Project Site and incidentally on portions of the Premises in the form attached as Exhibit G (the "Project Site License") for the purposes of (a) installing, constructing, operating, owning, maintaining, accessing, removing and replacing the Project; (b) performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement; and (c) installing, using and maintaining electric lines and equipment, including inverters and meters, necessary to interconnect the Project to Buyer's electric distribution system or that otherwise may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance or repair of the Project. Purchaser agrees that Seller may record the License attached hereto as Exhibit G in the Land Registry.

(b) Remote Monitoring. Seller will communicate data from the revenue grade performance monitoring system to an internet portal or equivalent that can be accessed by Buyer. Seller will be responsible for connecting monitoring equipment for the Project to the internet so that it is possible for Seller and Buyer to remotely monitor the Project.

### Section IV – Planning, and Construction of the Project

(a) Site Assessment and Planning. Seller, at no cost to buyer, shall be responsible for site assessment and planning of Project. During the Initial Period, Seller shall have the right, at its own expense, to assess the suitability of the Premises for the Project and shall act diligently in conducting such assessment. The assessment shall include the right to inspect the physical condition of the surfaces on which the Project will be located; perform any geotechnical work, to apply for any building permits or other governmental authorizations necessary for the construction of the Project; undergo any other real estate due diligence; to apply to any other

governmental agencies or other persons for any available grants or incentives, or other determinations necessary for the construction of or receipt of revenues from the Project; or to make any other investigation or determination necessary for the financing, construction, operation or maintenance of the Project. Seller, shall use commercially reasonable efforts to obtain, at its sole cost and expense any zoning, land use and building permits (including zoning and permits from Buyer in its governmental capacity) required to construct, install and operate the Project.

(b) Notice of Intent to Proceed. Seller shall not commence construction and installation of the Project until it has completed all Site Assessment and Planning as set forth in Section IV(a), confirmed that it will obtain all applicable Tax Credits, received approval of this Agreement by Seller's Financing Parties in a form which can be and is provided to Buyer, received all necessary zoning, land use and any building or other permits or approvals including Buyer's engineering review and approval, which is not to be unreasonably withheld, provided Buyer proof of insurance, finalized design and component selection, and provided Buyer with notice of satisfaction of all such Conditions and of its intent to proceed (the "Notice of Intent to Proceed") which shall include the documentation detailed in this section and a Seller warranty that Seller has, through its own due diligence, independently had a full and fair opportunity to review the Project Site and the Premises (including physical configuration) and any impacts involving the uses occurring therein and thereon, and has determined that same will not affect the levels of Insolation, cause any malfunction in the operation of the System, or otherwise adversely or unexpectedly affect the System nor shall it result in the expenditure by Seller of unanticipated costs for maintenance or otherwise. Seller shall give the Notice of Intent to Proceed to Buyer and Buyer shall have ten (10) business days to verify that such conditions have been satisfied, at which time Buyer will issue a Notice to Proceed or identify any deficiencies. Upon receipt of the Notice to Proceed, Seller may commence with construction and installation of the System. If Buyer determines that such conditions have not been met, Seller shall submit to Buyer a new Notice of Intent to Proceed once any identified issues have been corrected.

(c) Termination of Development Activities during Initial Period.

By Seller: At any time prior to provision to Buyer of the Notice of Intent to Proceed Seller shall have the right to cease development of the Project, for any reason, in its sole discretion. If Seller gives Buyer notice of such early termination, this Agreement shall terminate effective as of the delivery of such notice without any further liability of the Parties to each other, provided that (i) Seller shall remove any equipment or materials which Seller has placed or installed on the Project Site, the Premises or other property of Buyer; (ii) Seller shall restore any portions of the Premises disturbed by Seller to its pre-existing condition; and (iii) the confidentiality provisions of Section 14, and the indemnity obligations under Section 15 hereof shall continue to apply notwithstanding the termination of this Agreement.

By Buyer: If Buyer does not receive the Notice of Intent to Proceed and all accompanying documentation at least ten (10) days prior to the Guaranteed Construction Start Date, Buyer may cancel this Agreement by providing notice of Early Termination thereof to Seller. If Buyer gives Seller notice of such early termination, this Agreement shall terminate effective as of the delivery of such notice without any further liability of the Parties to each

other, provided that (i) Seller shall remove any equipment or materials which Seller has placed or installed on the Project Site, the Premises or other property of Buyer; (ii) Seller shall restore any portions of the Premises disturbed by Seller to its pre-existing condition; and (iii) the confidentiality provisions of Section 14, and the indemnity obligations under Section 15 hereof shall continue to apply notwithstanding the termination of this Agreement.

(d) Construction. Seller, at no cost to Buyer, shall be responsible for the installation and construction of the Project in a good and workmanlike manner in accordance with all Applicable Laws and with the specifications set forth in Exhibit E.

(e) Construction Timing of Project and delay payments. Seller must adhere to the construction schedule and milestones listed in Exhibit M. Failure to comply with the construction schedule and milestones shall subject Seller to the Performance Guarantee Payments listed in Exhibit M. No less than ten (10) days prior to the first of each month, Seller will provide Buyer with a proposal of the hours during such month when construction may occur on the Premises. Buyer shall have five days to review and comment on the proposed schedule, which comments will be incorporated by Seller. The schedule will be subject to further reasonable changes during the month by either Party by providing five (5) Business Days' notice. Construction of the Project and successful interconnection must occur on or before the Guaranteed Commercial Operation Date. Any delay in construction of the Project and successful interconnection which arises as a result of changes made to the schedule by Buyer as provided herein, or other unanticipated delays caused by Buyer or any other contractor of Buyer shall result in a day-for-day extension of the Guaranteed Commercial Operation Date.

(f) Equipment Storage. Within a reasonable time following Seller's request, Buyer will provide a designated area on the Project Site or Premises or a Buyer-owned property within ¼ mile of the Project Site, if available, for storage of construction equipment, tools, materials and other supplies. Buyer agrees that its normal security measures, practices, and policies which apply to its own Premises shall also apply to the Project Site. However, Buyer shall not be liable for theft or damage to such stored equipment, tools, materials and other supplies.

(g) Modification. Prior to commencement of construction, Seller has the right to make reasonable modifications to the design of the Project, including the selection of the components in the Project, as Seller may determine, provided, however, that such changes shall not result in the Project exceeding the Installed Capacities, building footprint, location and height set forth in Exhibits D and E. In all cases, Project Site development shall comply with all Applicable Laws, and Seller shall cooperate with Buyer's planners, designers, architects, and engineers in the construction and installation of the Project.

(h) OSHA and Blue Stake Compliance. Each Party shall ensure that all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws or codes are adhered to in that Parties performance under this Agreement. Seller will contact Blue Stake (1-800-blue-stake) prior to performing any underground excavation.

(i) Contractors. Seller must use licensed contractors to perform the work of installing and maintaining the Project. Seller intends to use Installer to perform such work, but may use other contractors, for all or a portion of such work, subject to the reasonable approval of Buyer. Seller

must advise Buyer of the Installer prior to commencement of the work on the Project Site. Seller is responsible for the conduct of Installer and its subcontractors, and Buyer shall have no contractual relationship with Installer or its subcontractors in connection with the work on the Project. Seller must ensure that Installer maintains insurance applicable to the Installer's activities that satisfy the requirements in Exhibit F. All contractors shall be subject to background checks and Seller shall notify Buyer of its intent to use a contractor prior to such contractor's entry on the Premises. Seller shall be responsible for directing the work of any approved contractors and for any compensation due to any approved contractors. Seller shall ensure that all Seller contractors comply with this Agreement and shall be responsible for such compliance. Seller shall require any or all contractors to sign an agreement requiring compliance with this Agreement. Buyer assumes no responsibility whatsoever concerning compensation or any other responsibility or liability to contractors.

(j) Status Reports. Seller must give Buyer bi-weekly (every second week) updates or as reasonably requested by Buyer, which must include:

- (i) the progress of installation of the Project
- (ii) any delays in installation of the Project and whether those delays are anticipated to impact the expected construction timeline
- (iii) notification of when testing of the Project will commence.

(k) Hazardous Materials during Project Construction. Upon encountering any Hazardous Materials during the Initial Period, Seller and Installer will immediately stop work in the affected area and duly notify Buyer and, if required by Applicable Law, any Governmental Authority with jurisdiction over the Project Site. Upon receiving notice of the presence of suspected Hazardous Materials at the Project Site, Buyer may opt to remediate the Project Site so that the Project may be installed on the Project Site, or determine that it is not economically justifiable or is otherwise impractical to remediate the Project Site, in which case Buyer and Seller may agree upon a different location for the Project whereupon such replacement location shall be the Project Site for purposes of this Agreement and the Premises and the Project Site shall be updated as demonstrated with revised Exhibits. Seller shall be obligated to resume work at the affected area(s) of the Project Site only after Buyer notifies Seller and Installer that Buyer has complied with all Applicable Laws, and Seller obtains a qualified independent expert that provides written certification that (i) remediation has been accomplished as required by Applicable Law and (ii) all necessary approvals have been obtained from any Governmental Authority having jurisdiction. Buyer shall reimburse Seller for all additional costs reasonably and actually incurred by Seller or Installer in the installation of the Project resulting from the presence of and/or the remediation of Hazardous Materials, including demobilization and remobilization expenses. Notwithstanding the preceding provisions, Buyer is not responsible for any Hazardous Materials introduced to or dispersed at the Premises or any equipment storage area by Seller or Installer, nor is Buyer required to remediate an affected area if such remediation is deemed to be economically unjustifiable or otherwise impractical. If Hazardous Materials are encountered during the Initial Period and Buyer determines that environmental remediation is economically unjustifiable and there are no reasonably suitable alternative locations for the Project, then this Agreement shall terminate and Buyer shall reimburse Seller

for its actually incurred costs to such date of termination (not to exceed fifty thousand dollars \$50,000). Seller is not responsible for any Hazardous Materials encountered at the Premises and/or the Project Site except to the extent introduced by Seller or encountered by Seller and dispersed without providing Notice to Buyer as required in this Section. Buyer hereby represents that to the actual knowledge of Buyer as of the Effective date with respect to Hazardous Materials: (1) Buyer is and has been, in compliance with all Applicable Laws relating to Hazardous Materials ("Environmental Laws"); (2) neither the Premises nor the Project Site is currently in violation of Environmental Laws; (3) the Project is not located on any property where Hazardous Materials or other contamination has been released into the soil or groundwater in violation of Environmental Laws. In addition, Buyer hereby represents that Buyer has not received written notice from any governmental authority or of any actual or potential violation of or liability under any Environmental Laws with respect to the Premises or the Project Site and such violation(s) or liability(ies) has (have) not been cured prior to the Execution Date. To the extent permitted by law, Buyer shall indemnify, defend and hold harmless Seller and any lender of Seller for any Losses which result from Buyer's receipt, handling, use, storage, transportation, generation, discharge, release and/or disposal of Hazardous Materials in violation of Environmental Laws or other applicable law in or on the Premises or the Project Site, including Hazardous Materials existing in or on the Premises or the Project Site prior to Seller's installation of the Project (except to the extent encountered by Seller and dispersed without providing Notice to Buyer in accordance with this Section).

(l) Testing and Interconnection and Certification of Commercial Operation and Occurrence of Commercial Operations Date. When Seller has completed installation and construction of the Project, Seller shall provide written notice to Buyer, and the parties shall coordinate the initiation of testing whereby the performance of the Project will be demonstrated. The Project must demonstrate performance consistent with the Local Electric Utility's interconnection specifications on Exhibit I in all respects to pass. Buyer shall have the right to have its representatives present during the testing process. Seller must enter into and abide by the terms and conditions of an Interconnection Agreement attached in Exhibit I. Upon successful completion of testing of the Project, interconnection shall be in accordance with the provisions of the Interconnection Agreement. Upon successful interconnection of the Project in accordance with the Interconnection Agreement, Seller shall complete Exhibit K, the Certification of Commercial Operation and deliver it to Buyer in accordance with Section 2 of this Agreement at which time Buyer will have five (5) business days to sign and return a copy to Seller.

(m) Documentation. No later than sixty (60) days following the Commercial Operation Date, Seller shall provide Buyer with all as-built drawings and other documentation required to create a complete record of the design and build of the Project and its specifications in Exhibit E.

## Section V – Sale and Purchase of Electricity.

(a) Sale of Electricity. Throughout the Operations Period, subject to the terms and conditions of this Agreement, Seller shall sell exclusively to Buyer and Buyer shall purchase from

Seller the Output produced by the Project. Buyer shall not be responsible to pay Seller for Test Energy.

(b) Delivery of Electricity. The Point of Delivery of the electric energy shall be as indicated in Exhibit E. The electric energy from the Project shall be delivered from Seller to Buyer at the specifications set forth in Exhibit I.

(c) Expected Output and Limits on Obligation to Purchase. Subject to the limitations set forth in this Agreement, the Project, as installed by Seller and under the application, installation, use and service conditions for which it was designed, will collectively (but intermittently), within each Contract Year, produce Output equal to or above the Minimum Production Limit, as specified in Column 2 of Exhibit E to this Agreement. Seller agrees that Buyer has no obligation to purchase Output from the Project that exceeds the Maximum Production Limits specified in Column 2 of Exhibit E to this Agreement, nor shall Seller shall have any right to sell such excess Output to any third parties. The Parties agree that Seller is not a utility or public service company and does not assume any obligations of a utility or public service company to supply Buyer.

EXCEPT AS EXPRESSLY DISCUSSED IN THIS SECTION AND SECTION 16, THE PROJECT AND THE SOLAR ENERGY PROVIDED TO BUYER WILL BE AS IS, WHERE IS, AND ALL OTHER WARRANTIES, IMPLIED OR EXPRESS, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY SELLER. BUYER, AS THE LOCAL ELECTRIC UTILITY, IS RESPONSIBLE FOR INSTALLATION AND OPERATION OF ANY EQUIPMENT ON BUYER'S SIDE OF THE POINT OF DELIVERY NECESSARY FOR ACCEPTANCE AND USE OF THE SOLAR ENERGY.

(d) Metering. Seller, at its sole expense, shall install one revenue quality meter at the Project to measure the output of the Project at the Point of Delivery. Seller, at its sole expense, shall install an Interval Data Recorder (IDR) with industry standard telemetry at the Project with the ability to measure the Output of the Project in minimum intervals no greater than 15 minutes, and provide that real-time telemetry data and those other data specified in Exhibit E to Buyer and Buyer's Energy Scheduling Agent. Seller shall own operate and maintain all Project metering and monitoring equipment at Seller's sole expense and in accordance with applicable industry standards. In addition, Seller shall provide a secure internet portal for monitoring the real-time Output of the Project by Buyer and its Energy Scheduling Agent. If Buyer subsequently changes its Energy Scheduling Agent, enters a different electric transmission balancing authority or otherwise alters the metering data telemetry requirements, Buyer shall be responsible for the costs of modifying metering data telemetry to accommodate those changes. Buyer shall have the right, but not the obligation to install electric meter(s) to verify the accuracy of Seller's meter(s), provided the referenced equipment does not interfere with Seller's metering equipment. Buyer's meter shall take precedence in events of dispute of accuracy.

(e) Title and Risk of Loss. As between the Parties, Seller shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Output purchased by Buyer prior to the Point of Delivery, and Buyer shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Output purchased by Buyer at and from the Point of Delivery. Title to and risk of loss as to all Output purchased by Buyer shall pass



from Seller to Buyer at the Point of Delivery. Seller warrants that it shall deliver all Output to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto created by any person other than Buyer. Title and Risk of Loss as to the Project, including the Parking and Solar Shade Structure, shall reside at all times with Seller.

(f) Meter Testing. Seller shall conduct tests of the meters in accordance with industry standards and not less than once in any one-year period. Seller shall inform Buyer of such testing so that Buyer can witness testing. Buyer shall pay for any independent testing of the meter(s) in excess of such minimum testing schedule that Buyer deems necessary, except if, after such testing, the meter is shown to be in error in Seller's favor by more than 2%, Seller shall pay for the cost of such test and shall make corresponding adjustments to the records of the amount of electrical energy provided by the Project delivered based on the period that is half-way in between the date of such testing and the last testing date of the meter. If there is an error of less than or equal to 2% no billing adjustments will be made. Buyer and Seller will attempt to determine, in good faith, the duration of the applicable period of the metering error, which shall in no instance exceed one year. In the event there is an error of greater than 2%, Seller shall adjust the next invoice to be provided to Buyer under Section 6 hereof, to either charge the Buyer additional amounts for energy produced over the stated meter amount during the applicable period at the applicable rate, or provide Buyer a credit against future billing for energy produced under the stated meter amount during the applicable period, provided, however, that any deficiencies or credits not theretofore applied or satisfied at the expiration or earlier termination of the Operations Period shall be settled in cash. All adjustments remain subject to the Production Limits set forth in Exhibit E.

(g) Inverter and Ancillary Equipment Power. No equipment other than the inverter(s) for the Project, IDR equipment, and telemetry equipment may be powered by the Project or receive power from the Local Electric Utility through the meter. Energy that flows from Buyer's Local Electric Utility to the equipment for the Project will not offset the Output.

(h) Seller Output Guarantee. At the end of each Contract Year, Seller shall compensate Buyer for any negative difference in any Contract Year between the actual Output produced and the Minimum Production Limit at the end of the Contract Year. Such compensation shall be equal to the absolute value of that difference multiplied by the greater of (i) any positive difference between Buyer's actual cost to replace Output (inclusive of Environmental Attributes) and the Energy Purchase Rate specified in column 2 of Exhibit A; or (ii) one cent per kilowatt hour (\$0.01/kWh).

## Section VI – Payment and Billing

(a) Rates. Buyer shall pay Seller the Rates set forth in Exhibit A attached hereto for the Project Output. Buyer shall have no obligation to make Rate payments to Seller prior to the Commercial Operation Date.

(b) Billing. Buyer shall pay for the Project Output monthly in arrears. After the end of each calendar month, Seller shall provide Buyer with an invoice setting forth the Output quantities produced by the Project in such month, the applicable Rates for such Output quantities, and the total amount due, which shall be the product of the quantities and the applicable Rates, and subject to the Upper Production Limit.

(c) Invoice Delivery. Invoices shall be in writing, provided to Buyer on or before the tenth (10<sup>th</sup>) day of each month and shall be either (i) delivered by hand; (ii) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid; (iii) delivered by a recognized overnight or personal delivery service; (iv) transmitted by facsimile (such transmission to be effective on the day of receipt if received prior to 5:00 pm local time on a Business Day or in any other case as of the next Business Day following the day of transmittal); or (v) transmitted by email if receipt of such transmission by email is specifically acknowledged by the recipient (automatic responses not being sufficient for acknowledgement), addressed as follows:

City of Mesa Energy Resources Department  
P.O. Box 1466  
Mesa, AZ 85211-1466  
Attention: Energy Resources Coordinator  
Email: DSWBilling@mesaaz.gov

(d) Payment. Buyer shall pay each invoice within thirty (30) days of receipt. Payments shall be made by electronic funds transfer to an account designated by Seller in the invoice or in a written notice delivered to Buyer. Any amounts not paid when due, including any amounts properly disputed and later determined to be owing, shall accrue interest on the unpaid amount at the rate equal to the lesser of (i) 1% per month, compounded monthly or (ii) the highest rate allowed under applicable law.

(e) Disputed Invoices. If Buyer objects to all or a portion of an invoice, Buyer shall, on or before the date payment of the invoice is due, (i) pay the undisputed portion of the invoice, and (ii) provide an itemized statement of its objections setting forth in reasonable detail the basis for its objections. If Buyer does not object prior to the date payment of any invoice is due, Buyer shall be obligated to pay the full amount of such invoices but Buyer may subsequently object to such invoice and, if such objection proves to be correct, receive a refund of the disputed amount; provided, however, that Buyer may not object to any invoice more than eighteen (18) months after the date on which such invoice is rendered. The right to dispute or object to an invoice, shall, subject to the time limitation provided in this Section 6(e), survive the expiration or termination of this Agreement.

(f) Commercial Operation Date Payment. Within ten (10) days of the occurrence of the Commercial Operation Date, Buyer will make a Commercial Operation Date Payment in the amount of fifty thousand dollars (\$50,000) to Seller. The Commercial Operation Date Payment shall be reduced by any Performance Guarantee Payments owed by Seller to Buyer. Buyer shall have no obligation to make any payment to Seller prior to the Commercial Operation Date.

(g) The Commercial Operation Date Payment and payment of the Rates shall be the total compensation owed and payable by Buyer to Seller under this Agreement, for all Output delivered or tendered to Buyer during the Operations Period, and for use of the Parking and Solar Shade Structure.

## Section VII – Interconnection, Tax Attributes and RECS

(a) Interconnection. Seller shall be responsible for performing all studies, paying all fees, obtaining all necessary approvals and executing all necessary agreement to arrange for the interconnection of the Project to those specifications in Exhibit I and the Interconnection Agreement. Buyer is responsible for installation and operation of any equipment on its side of the point of delivery necessary for acceptance and distribution of the Project Output.

(b) Ownership of Tax Attributes. Seller (and/or Financing Party) shall be the owner of any Tax Attributes that may arise as a result of the operation of the Project and shall be entitled to transfer such Tax Attributes to any person. Buyer shall provide reasonable assistance to Seller in preparing all documents necessary for Seller to receive such Tax Attributes, and if Buyer is deemed to be the owner of any such Tax Attributes, Buyer shall assign the same (or the proceeds thereof) to Seller. If Buyer receives any payments in respect of such Tax Attributes, it shall promptly pay them over to Seller.

(c) Environmental Attributes. During the Term, the Parties agree that Buyer shall be the owner of all right, title and interest in and to the Environmental Attributes associated with the Output of the Project, if any, whether now existing or subsequently generated or acquired (other than by direct purchase from a third party) by Seller, or that hereafter come into existence during the Term, as a component of the Output purchased by Buyer from Seller hereunder. Seller agrees to transfer and make such Environmental Attributes available to Buyer immediately to the fullest extent allowed by applicable Law upon Seller's production or acquisition of the Environmental Attributes. Seller agrees to convey and hereby conveys all such Environmental Attributes to Buyer as included in the delivery of the Output from the Project. Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of the Environmental Attributes to any Person other than Buyer. Seller represents and warrants that Seller has not assigned or conveyed the rights to all Environmental Attributes from the Project to any other person. To the extent that a Change in Law occurs after the Execution Date that causes this representation and warranty to be false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such Change in Law and takes all actions as determined by Buyer in its reasonable discretion to implement any change or improvement to the Project to maintain such certification or qualification. Buyer shall be entitled to transfer such Environmental Attributes to any person. Buyer shall provide reasonable assistance to Seller in preparing all documents necessary for Seller to receive and transfer such Environmental Attributes including registration of the Environmental Attributes through EA Agency(s).

(d) Documentation of Environmental Attributes. Seller shall document the production of Environmental Attributes under this Agreement by delivering with each invoice to Buyer such attestations or other documents as may be required by Exhibit H. Seller agrees to promptly and

cooperatively update or modify Exhibit H, as necessary, to ensure that Buyer receives full and complete title to, and the ability to record with any EA Agency as its own, all of the Environmental Attributes purchased hereunder. At Buyer's request, the Parties, each at their own expense, shall execute all such documents and instruments in order to transfer the Environmental Attributes specified in this Agreement, to Buyer or its designees, as Buyer may reasonably request. In the event of the promulgation of a scheme involving Environmental Attributes administered by an EA Agency, upon notification by an EA Agency that any transfers contemplated by this Agreement shall not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfer can be recorded. Each Party shall promptly give the other Party copies of all documents it submits to the EA Agency to effectuate any transfers.

(e) Capacity & Ancillary Services. Buyer shall be entitled to receive any payments for Generation Services, electric capacity services or ancillary services that may become available as a result of the construction or operation of the Project. Buyer and Seller shall reasonably coordinate in preparing all documents necessary for Buyer to receive such payments, and if Seller is deemed to be the owner or provider of such capacity or services, Seller shall assign the same to Buyer. If Seller receives any payments in respect of capacity or such services it shall promptly pay them over to Buyer.

(f) Resale of Electricity. The Parties agree and acknowledge that Buyer is an electric utility and that the electricity purchased by Buyer from Seller under this Agreement is for the purposes of both its own internal use and for resale in the Local Electric Utility.

(g) Seller Is Not A Utility. Neither Party shall assert that Seller is an electric utility or public service company or similar entity that has a duty to provide service, is subject to rate regulation, or is otherwise subject to regulation by any governmental authority as a result of Seller's obligations or performance under this Agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all 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 shall have the right to terminate this Agreement without further liability of either Party, and Seller shall remove the System in accordance with this Agreement.

## Section VIII – Permits, Ownership, Operation and Maintenance of Project, Liens, Mortgages

(a) Permits. Seller shall pay for and obtain all approvals from governmental entities, including Buyer acting in its governmental capacity, necessary for the construction and operation of the Project, including, but not limited to, land use permits, building permits, demolition and waste disposal permits and approval.

(b) System Ownership. Except as provided in Section 9, Seller or Financing Party shall be the legal and beneficial owner of the Project. The Parties agree that the Project is personal

property and shall not attach to or be deemed a part of, or fixture to, the Project Site or the Premises. The Project shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Buyer covenants that it will place all persons having an interest in the real property comprising the Project Site on notice of the ownership of the Project and the legal status or classification of the Project as personal property. Buyer and/or Seller shall make any necessary filings to disclaim the Project as a fixture in the appropriate Land Registry to place all interested parties on notice of the ownership of the Project by Seller.

(c) Standard of Operation. Seller, at its sole expense, shall design, obtain permits, install, operate, and maintain the Project so as to keep it in good condition and repair, in compliance with all Applicable Laws and in accordance with the generally accepted practices of the electric industry, in general, and the solar generation industry, in particular. Seller shall maintain Project in excellent aesthetic condition in a manner consistent with the uses of the Premises by Buyer as a premier event space and Arts and Events Center, including repairing any vandalism or other damage or defacement to promptly restore the Project. Such work shall be at Seller's sole expense. Except for emergency situations or unplanned outages, Seller shall to the extent commercially practicable coordinate all work on the Project with Buyer, and shall otherwise cause the work to be performed between the hours of 7:00 am and 7:00 pm, Monday through Saturday, in a manner that minimizes interference with Buyer and Buyer's employees, visitors, tenants and licensees and their customers. Seller must, and must cause its contractors to, keep the Project Site reasonably clear of debris, waste material and rubbish, and to comply with reasonable safety procedures established by Buyer for conduct of business on the Project Site. Seller shall exercise all rights under this Agreement so as not to damage the Premises or any Buyer property that may at any time be located thereon.

(d) Site Security. During the Operations Period, Buyer will provide security for the Project to the extent of its normal security procedures, practices, and policies that apply to all Buyer Premises. Buyer will advise Seller immediately upon observing any damage to the Project. Upon request by Seller, such as Seller receiving data indicating irregularities or interruptions in the operation of the Project, Buyer shall, as quickly as reasonably practicable, send a person to observe the condition of the Project and report back to Seller on such observations.

(e) Major System Maintenance.

i. Seller may shut down the Project at any time in order to perform required emergency repairs to the Project that threaten life, property or the environment.

ii. By January 1<sup>st</sup> of each year of the Term, Seller shall provide Buyer with an annual projection of scheduled Major System Maintenance for the following calendar year.

iii. Should Seller make any changes to Seller's projected schedule of Major System Maintenance, it shall notify Buyer of such changes at least fourteen (14) calendar days in advance of any newly scheduled or rescheduled Planned Outage. Seller shall provide an estimate of (i) the reduction in Output resulting from the Planned Outage, (ii) the reduction of Shade, (iii) any potential that the Major System Maintenance will render the Event Features unusable, and (iv) the duration of the Planned Outage.

iv. If an unexpected condition, component failure, system damage, or other condition is occurring that is causing any of the conditions precedent to a Major System Maintenance event to occur, Seller and Buyer shall coordinate to schedule a time to correct those conditions as soon as is commercially feasible for Buyer.

v. Seller, to the extent commercially feasible, shall avoid shutdowns during peak periods of electric generation except as may be required in accordance with prudent solar industry safety practices in the event of equipment malfunction. Wherever used in this Agreement, industry standards and practices are not limited to the optimum practice or method to the exclusion of others, but rather refer to generally accepted and reasonable practices and methods.

vi. Seller shall minimize to the greatest extent commercially feasible the interruption of use of parking spaces at the Premises during the performance of any maintenance work. To that end, Seller agrees to pay Buyer the amount of ten dollars (\$10.00) per day for each parking space which is unavailable during any Planned Event at the Premises.

vii. Seller shall not perform maintenance on the system which causes a reduction of more than 5% of the Shade specified in Exhibit E for a period longer than fifteen (15) consecutive days or more than thirty (30) days in any Contract Year.

viii. Seller shall not perform Major System Maintenance on the system which renders the Event Features unusable except for those instances in Section 8(e)i without obtaining Buyer's express written consent in advance.

(f) Refurbishment of Project. During the Operations Period, Seller may refurbish the solar generation components of the Project, alter solar generation components of the Project, replace solar generation components of the Project, add additional solar modules or inverters, or replace solar modules or inverters with more powerful solar modules or inverters, in order to increase the Project estimated peak AC capability up to the lower of (i) capacity amount allowed in the Interconnection Agreement or (ii) the Installed Inverter Capacity allowed in Exhibit E, provided, however, that Seller may not replace any equipment with equipment that does not aesthetically match the existing equipment in the Buyer's sole discretion, and Buyer shall have the right, in its sole and absolute discretion, to accept or decline to permit any such refurbishment that may increase the capacity of the Project beyond the Installed Module Capacity listed in Exhibit E. In no instance shall Seller cause a refurbishment which would permanently cause a reduction of the Shade of the system more than 5% of the Shade specified in Exhibit E.

(g) Liens. To the extent permitted by Applicable Law, each Party shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien, (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature, including claims by governmental authorities for taxes (collectively referred to as "Liens" and each, individually, a "Lien") on or with respect to the interests of the other in the Project Site, the Premises, and the Project. Seller shall, to the extent allowed under Applicable Law, have Installer and its subcontractors execute lien waivers with respect to any mechanic's or

materialman's lien against Buyer. If permitted under Applicable Law, Buyer will post notices of non-responsibility to notify Installer and others that Buyer is not responsible for work performed on the Project. Each Party shall promptly notify the other of the imposition of a Lien on the property interests of the other Party, and shall promptly discharge such lien, provided however, that a Party may seek to contest the amount or validity of any Lien affecting the property of the other Party, provided it timely complies with all procedures for contesting such Lien, posts any bond or other security necessary under such procedures, and if such procedures do not require the posting of security, the Party establishes for the benefit of the other Party a deposit, letter of credit, or other security acceptable to the other Party to indemnify the other Party against any Loss which could reasonably be expected to arise if such Lien is not removed or discharged.

(h) Non-Disturbance Agreements. Buyer hereby consents to the filing of a disclaimer of the Project as a fixture of the Premises in the Land Registry. Such consents, or acceptable notices thereof, may be recorded by Seller, at Seller's expense, in the appropriate Land Registry. Buyer may in the future mortgage, pledge, and grant security interests in all or a portion of the Premises and the improvements thereon, provided the mortgagee or other grantee of the encumbrance acknowledges this Agreement, the Project, the Project License granted hereunder, and the priority of Seller's (and/or Financing Party's) rights in the Project and the Project License.

(i) Event Features and Additional Event Features. In the event that Buyer purchases the Event Features and Additional Event Features from Seller by either providing complete payment for Event Features and/or Additional Event Features up front or by paying off Event Features and Additional Event Features early, Seller grants Buyer license to allow Event Features and Additional Event Features to be installed and remain installed and operating on the Project.

(j) Intellectual and Other Proprietary Property. Seller warrants that it has worked with all third parties required to ensure that all patents, licensing, agreements and intellectual property rights have been properly honored, considered and/or arranged to ensure that the Project can be constructed in the manner contemplated without infringing upon another firm's claim to patent, technology, or intellectual property, including but not limited to any such claims associated with Shade and Strategic Solar Energy LLC's Power Parasol. Seller hereby agrees to indemnify, defend and hold Buyer harmless from any claims of infringement of any intellectual and other proprietary rights, including but not limited to patents, trademarks, trade secrets, or other intellectual property rights of any third party. Notwithstanding the foregoing, Seller shall not be liable for, and the aforementioned indemnity obligations set forth in this Section VIII(j) shall not apply to, any intellectual property claim to the extent based on or relating to (1) the Buyer's use of any additional product, service or device at, to, or in connection with the Project or the Project Site (other than the Event Features) without the knowledge of Seller, if such infringement claim would have been avoided by the use of the Project without such other product, service or device; and (2) use of the Project other than as expressly authorized pursuant to this Agreement.

(k) Maintenance of Exterior Surfaces. Seller shall provide the specifications for all the exterior coating materials that will be applied to the Project along with the expected lifetime of

each such exterior coating material. At Buyer's request (not more than bi-annually), Seller will, at no additional cost to Buyer, provide quotations from three separate vendors for the timely refinishing of those exterior surfaces of the Project identified by Buyer. Buyer may either (i) select a vendor to refinish such exterior surfaces at which time Seller will cause the vendor to refinish such exterior surfaces at Buyer's expense or (ii) Buyer may reject those quotations and seek its own vendor using Buyer's procurement methods and Buyer shall cause its own vendor to refinish such exterior surfaces at Buyer's expense in coordination with and approval by Seller.

(l) Routine and Minor Maintenance. Parties agree that the Premises are an important and premier event space and that the Project will be an integral part of that event space by providing Shade and serving as the supporting structure for many Event Features. Parties acknowledge that, as such, there will be periods when access to the Project may be limited. The Parties will work in good faith and to the greatest extent commercially feasible to coordinate access to the Project so as not to interfere with the parking, Shade, Event Features, operations and Planned Events on the Premises. For instances of maintenance that are not considered Major System Maintenance or maintenance to address emergency situations, Seller will provide Buyer with two Business Days' notice of such maintenance.

## Section IX – Purchase Options; Removal at End of Term

(a) Early Purchase Options. On the sixth (6th), tenth (10th), fifteenth (15th), and twentieth (20<sup>th</sup>) anniversary of the Commercial Operation Date, provided no Buyer Event of Default is occurring, the Buyer shall have the option to purchase the Project from Seller at the greater of (i) the Early Termination Amount set forth in Exhibit B, or (ii) the then Fair Market Value as determined by a third-party appraiser. If Buyer desires to exercise this option, it shall no later than ninety (90) days prior to the applicable anniversary date notify Seller of its election to exercise the option. Within ninety-one (91) days of its receipt of such notice, Seller shall give Buyer the appraisal of the Fair Market Value of the Project at the end of the Contract Year as determined by a third-party appraiser, or provide notice that the Early Termination Amount is greater than the Fair Market Value. Thereafter, Buyer shall have 30 days to provide notice to exercise or decline Early Purchase Option. Buyer shall pay the purchase price to Seller by electronic transfer in immediately available funds to an account designated by Seller or on any other payment schedule as mutually agreed upon by the Parties at that time.

(b) End of Term Purchase Option. Buyer shall have the right to purchase the Project from Seller at the expiration of the Operations Period at the greater of: (i) the End of Term Purchase Amount of \$128,948, or (ii) the then Fair Market Value of the Project. No earlier than twelve months prior to the expiration of such Operations Period and no later than nine (9) months prior to the expiration of the Operations Period, Buyer shall notify Seller of its desire to exercise the Purchase Option. Within ninety-one (91) days of its receipt of such notice, Seller shall give Buyer the appraisal of the Fair Market Value of the Project at the end of the Term as determined by a third-party appraiser, or that the End of Term Purchase Amount is greater than the Fair Market Value. Thereafter, Buyer shall have until the end of the Operations Period to exercise or decline the End of Term Purchase Option by providing payment of the applicable amount to Seller.



(c) Transfer of Ownership. Upon Buyer's notice that it elects to exercise the option set forth in either Section 9(a) or 9(b) above, Seller shall prepare and deliver to Buyer a set of records on the operation and maintenance history of the Project, including a summary of known defects and all applicable design drawings, operation and maintenance manuals/procedures, material specification sheets, operations and maintenance manual and any other records pertaining to the Project's construction, design, operation and maintenance. Upon payment of the purchase price, Seller shall deliver, or cause to be delivered, to Buyer a bill of sale conveying the Project to Buyer. Such bill of sale shall not contain any warranties other than a warranty against any defects in title arising through Seller. Seller shall use all reasonable efforts to transfer any remaining manufacturer's warranties on the Project, or portions thereof, to Buyer.

(d) Operation & Maintenance After Sale. Prior to the effective date of Buyer's purchase of the Project under Section 9(a) or 9(b), Buyer and Seller shall discuss entering into an operation and maintenance agreement under which Seller shall perform all or a portion of the operation and maintenance requirements of the Project following Buyer's purchase of the Project. However, neither Party shall be under an obligation to enter into such an agreement.

(e) Decommissioning. If Buyer does not exercise the option set forth in Section 9(b) above, then Seller, within one hundred eighty (180) days after the expiration or earlier termination of the Operations Period, at its sole cost and expense, shall decommission and remove the Project from the Project Site and the Premises, and otherwise substantially restore the Project Site and Premises to its original condition. Seller shall coordinate with Buyer to ensure that once decommissioning work begins, Seller causes no period longer than ten (10) business days where decommissioning work is not performed without Buyer's prior written consent. Seller shall not be obligated, however, to remove any below grade structures, including foundations and conduits. Buyer grants Seller and its representatives reasonable vehicular and pedestrian access across the Premises and to the Project Site for purposes of decommissioning the Project. In exercising such access and performing the decommissioning, Seller shall to the greatest extent commercially feasible minimize any disruption to activities occurring on the Premises. Buyer will provide Seller adequate storage space on the Project Site, Premises or other Buyer-owned property within ¼ mile of the Project Site for materials and tools used during decommissioning. Seller shall be responsible for providing shelter and security for stored items during decommissioning and removal. Buyer further agrees that its normal security measures, practices, and policies which apply to its own Premises shall also apply to the Project. During decommissioning, Seller will comply with all Applicable Laws.

## Section X – Shutdowns, Relocation; Closure or Sale of Site

(a) Buyer Requested Shutdown. Buyer from time to time may request Seller to temporarily stop operation of the Project for a period no longer than thirty (30) days and for a total of no more than thirty (30) days in any given Contract Year, such request to be reasonably related to Buyer's activities in maintaining and improving the Project Site. During any such shutdown period (but not including periods of Force Majeure), Buyer will pay Seller an amount equal to the sum of (i) payments that Buyer would have made to Seller hereunder for electric energy that

would have been produced by the Project during the period of the shutdown; and (ii) revenues from Tax Attributes that Seller would have received with respect to electric energy that would have been produced by the Project. Determination of the amount of energy that would have been produced during the period of the shutdown shall be based, during the first Contract Year, on estimated levels of production and, after the first Contract Year, based on the actual operation of the Project during the same period in the previous Contract Year, unless Seller and Buyer mutually agree to an alternative methodology.

(b) Seller Safety Shutdown. In addition to the right of Seller to shut down the Project for maintenance as provided in Section 8, Seller may shutdown the Project if Seller, in the exercise of reasonable judgment, believes Site conditions or activities of persons on a Site, which are not under the control of Seller, whether or not under the control of Buyer, may interfere with the safe operation of the Project. Seller shall give Buyer notice of a shutdown immediately upon becoming aware of the potential for such conditions or activities. Seller and Buyer shall cooperate and coordinate their respective efforts to restore Site conditions so as to not interfere with the safe operation of the Project and to reduce, to the greatest extent commercially feasible, the duration of the shutdown and any impacts on the Premises.

(c) Project Relocation. Buyer may request to move the Project to another site owned by Buyer, but any such relocation shall be subject to the approval of Seller and Financing Party, not to be unreasonably withheld. In connection with such relocation, Buyer shall execute an amendment to this Agreement reflecting the new location of the Project but otherwise continuing all the terms and conditions of this Agreement for the remaining Term. Buyer shall also provide any consents or releases required by Seller in connection with the new location. Buyer shall pay all costs associated with the removal and relocation of the Project, including installation and testing costs and interconnection costs. In addition, during the Relocation Event, Buyer will pay Seller an amount equal to the sum of (i) payments that Buyer would have made to Seller hereunder for electric energy that would have been produced by the Project following the Relocation Event; and (ii) revenues from Tax Attributes that Seller would have received with respect to electric energy that would have been produced by the Project following the Relocation Event. Determination of the amount of energy that would have been produced following the Relocation Event shall be based, during the first Contract Year, on the estimated levels of production and, after the first Contract Year, based on actual operation of the Project in the same period in the previous Contract Year, unless Seller and Buyer mutually agree to an alternative methodology.

(d) Sale of Project Site. In the event Buyer transfers (by sale, lease, or otherwise) all or a portion of its interest in the Project Site, Buyer shall remain liable to Seller for the performance of the obligations of Buyer hereunder notwithstanding such transfer.

(e) Interconnection Agreement. If the Project is found to be in violation of the Interconnection Agreement as caused by or related to any unexcused action or inaction of Seller, Buyer will disconnect the Project and such violation of the Interconnection Agreement shall be deemed a Failure to Operate under Section 19(a)(3) for that period in which it occurs.

(f) If Buyer exercises its right to request a shut down or relocation of the Project as provided in this Article X or elsewhere in the Agreement, and such relocation or shutdown

results in a reduction in Output, such that the Minimum Production Limit is not met in the Contract Year(s) affected by such relocation or shut down, the Output of the Project shall be estimated by Seller for the period during which the Project is not in operation due to such shutdown or relocation and such estimated Output shall be added to actual Output for the affected Contract Year(s) for the purpose of determining whether the Minimum Production Limit has been satisfied in such Contract Year(s).

## Section XI – Taxes

- (a) Income Taxes. Seller shall be responsible for any and all income taxes associated with payments from Buyer to Seller for electric energy from the Project. Seller (and/or Financing Party), as owner of the Project, shall be entitled to all Tax Attributes with respect to the Project.
- (b) Sales Taxes. Buyer shall be responsible for all applicable taxes, fees, and charges, including sales, use, and gross receipts taxes, imposed or authorized by any Governmental Authority on the sale of electric energy by Seller to Buyer. Buyer shall timely report, make filings for, and pay any and all such taxes assessed directly against it and shall reimburse Seller for any such taxes assessed against and paid by Seller.
- (c) Property Taxes. Seller shall be responsible for all ad valorem or other real or personal property taxes levied against the Project (or Project Site or Premises as a result of the existence of the Project) up to the amount of \$5,000 in the first Contract Year and escalating at 2% every Contract Year thereafter (Property Tax Amount Payable by Seller). If Buyer is assessed any taxes related to the existence of the Project on the Premises, Buyer shall immediately notify Seller. Buyer and Seller shall cooperate in contesting any such assessment on Buyer; provided, however, that Buyer shall pay such taxes to avoid any penalties or interest on such taxes, subject to reimbursement by Seller for Seller's share thereof as provided herein. If after resolution of the matter, such tax is imposed upon Buyer related to the improvement of real property by the existence of the Project on the Premises, Seller shall reimburse Buyer for such tax in amounts up to the then current Property Tax Amount Payable by Seller. In the event property taxes are assessed in amounts greater than the then current Property Tax Amount Payable by Seller, Seller shall pay (or reimburse Buyer for) the then current Property Tax Amount Payable by Seller, and then any additional amounts shall be split and paid equally by both Parties. Any property tax amounts owed by Buyer shall be paid directly from Buyer to the governmental agency who assessed such property tax.
- (d) Tax Contests. Each Party has the right to contest taxes in accordance with Applicable Law. Each Party shall use all reasonable efforts to cooperate with the other in any such contests of tax assessments or payments. In no event shall either Party postpone during the pendency of an appeal of a tax assessment the payment of taxes otherwise due except to the extent such postponement in payment has been bonded or otherwise secured in accordance with Applicable Law.

(e) Payment of Delinquent Taxes. In the event either Party fails to pay any taxes that may become a lien upon the other Party's property, such Party may pay such amounts and in such event shall be entitled to recover such paid amount from the other Party, together with interest thereon at the rate of one percent (1%) per month, compounded monthly.

(f) Reimbursement Deadline. Any reimbursement of taxes owing pursuant to this Section 11 shall be paid within thirty (30) days of receiving an invoice therefor from the Party who paid the taxes.

## Section XII – Insurance and Risk of Loss

(a) Liability and Insurance. Seller shall be responsible for all liability arising out of or relating to the Project and its ownership, operation and maintenance. Upon the Effective Date, Seller shall pay for and maintain insurance policies having the coverage set out in Exhibit F in full force and effect throughout the Term, covering its ownership, operation and maintenance of the Project. Buyer retains the right, from time to time, but not more frequently than semi-annually, to change the amount of the Insurance Requirements if and to the extent it changes its insurance requirements generally, and will provide not less than ninety (90) days' notice to Seller of any amendment to the Insurance Requirements.

(i) Coverage. During the Term of this Agreement Seller will comply with the scope and coverage of the Insurance Requirements as described on Exhibit F attached hereto. Seller shall deliver to Buyer evidence that Seller has obtained and continues to hold the policies of insurance required under Exhibit F, including evidence of the payment of premiums for such coverage prior to issuance of the Notice of Intent to Proceed, and within a reasonable time following renewal. Seller shall cause renewals of expiring policies to be delivered to Buyer within forty-five (45) days following such renewal; provided, that Seller shall provide certificates of insurance evidencing such renewal within fifteen (15) days following such renewal. To the extent commercially available, Seller's insurance shall include Completed Operations and Contractual Liability coverage and shall specifically refer to this Agreement and specifically cover the liability assumed by Seller under this Agreement. All such policies shall be written to provide that they may not be canceled, lapse, expire, or be materially altered except with thirty (30) days (ten (10) days with respect to non-payment of premium) prior written notice to Buyer. Seller may self-insure deductible amounts under the policies in amounts not greater than those set out in Exhibit F. Seller may not self-insure any amounts other than the specified and allowable deductibles. Prior to the commencement of construction of the Project, Seller shall likewise cause any maintenance or other contractor of Seller performing work on the Project Site to obtain and to maintain, throughout the time it performs such work, insurance as set out in Exhibit F with limits appropriate to the sublet work and potential perils, and shall provide proof thereof to Buyer within three business days of any request for proof of coverage.

(ii) Certain Insurance Provisions and Requirements. Seller's insurance policy shall be written on an occurrence basis and shall include the Buyer City of Mesa as an additional

insured and loss payee for all property damage coverage. A cross liability clause shall be made part of the policy. Seller's insurer shall waive all rights of subrogation against Buyer. Seller's insurance shall provide primary coverage in all cases, except as expressly provided in Section XII(d) regarding property damage coverage for a Project Loss arising out of a Project Site Event, in which case Buyer's insurance (or self-insurance as applicable) will be primary.

(iii) Insurance Carrier Ratings. All insurance maintained hereunder shall be maintained with companies rated no less than A- as to Policy Holder's Rating in the current edition of Best's Insurance Guide (or with an association of companies each of the members of which are so rated).

(iv) Aesthetic Damage. In addition to the coverages set forth in Exhibit F, Seller shall insure the Project against vandalism or other damage that would affect the aesthetics of the Project so that any aesthetic damage to the Project will be promptly repaired.

(b) Project Loss. Seller shall bear the risk of any damage, destruction, or other physical loss to the Project ("Project Loss") as follows:

(i) Partial Loss. In the event of any Project Loss that results in less than total damage, destruction or loss of the Project, this Agreement will remain in full force and effect and Seller will, at Seller's sole cost and expense, subject to the provisions below, repair or replace the Project as quickly as practicable. Seller shall thereafter be entitled to any insurance proceeds for the partial Project Loss as loss payee under applicable policies, and to pursue any third-party recoveries (consistent with applicable insurance as required under this Section). Notwithstanding the preceding, if a partial Project Loss to more than fifty percent (50%) of the Project occurs during the last five (5) years of the Term, Seller shall not be required to restore the Project, but may instead terminate this Agreement, and neither Seller nor Buyer shall have any further obligations to the other under this Agreement, except that Seller shall be responsible for removal of the System under Section 9, and Buyer shall be responsible for amounts accrued but unpaid for Output actually delivered prior to the Partial Loss of the Project.

(ii) Total Loss. In the event of any Project Loss that, in the reasonable judgment of Seller, results in total damage, destruction or loss of the Project, Seller shall, within sixty (60) Business Days following the occurrence of such Project Loss, notify Buyer whether Seller is willing, notwithstanding such Project Loss, to repair or replace the Project. If Seller notifies Buyer in writing that Seller is not willing to repair or replace the Project following a total loss, this Agreement will terminate automatically upon the effectiveness of such notice without further liability of either party, except that Seller shall within a reasonable time remove the Project from the Premises in accordance with Section IX. Seller shall thereafter be entitled to any insurance proceeds for the total Project Loss as loss payee under applicable policies, and to pursue any third-party recoveries (consistent with applicable insurance as required under this Section). If Seller notifies Buyer that Seller is willing to repair or replace the Project following a total loss, the following shall occur, (A) this Agreement will remain in full force and effect, (B) Seller will repair or replace the Project as quickly as practicable.

(c) Buyer Negligence. Buyer shall, to the extent Buyer's negligent acts or omissions contribute to a Partial Project Loss, be responsible for lost revenues for sales of Output based upon the estimated energy production capacity of the Project in the relevant Contract Year until Seller is able to restore the Project. In the event of any Total Project Loss caused predominantly by Buyer's negligent acts or omissions, Buyer shall reimburse Seller the difference in the event that the amount of all available insurance proceeds and third-party recoveries does not equal or exceed the applicable Early Termination Amount as of the date of the Project Loss.

(d) Project Site Event Loss. Notwithstanding the other provisions of this Section, Buyer agrees that it shall bear the risk of any Project Loss to the extent arising out of or relating to a Project Site Event. For any partial Project Loss covered under this Section XII(C), Buyer shall be responsible lost revenues for sales of Output based upon the estimated energy production capacity of the Project in the relevant Contract Year until Seller is able to restore the Project. For any total Project Loss under this Section, Buyer shall be responsible for payment of the Early Termination Amount as of the date of the Project Loss. In either case, Buyer shall be entitled to any third-party recoveries and insurance proceeds covering a Project Site Event Loss.

## Section XIII – Cooperation; Access to Light; Site Improvements

(a) Cooperation. The Parties acknowledge that the performance of each Party's obligations under this Agreement will frequently require the assistance and cooperation of the other Party. Each Party therefore agrees, in addition to those provisions in this Agreement specifically providing for assistance from one Party to the other, that it will at all times during the Term cooperate with the other Party and provide all reasonable assistance to the other Party to help the other Party perform its obligations hereunder.

(b) Access to Light. Buyer, its agents and/or representative, shall not in its ownership and operation of the Premises restrict access to direct light to the Project that, when modeled using software that is (i) generally accepted by the solar industry and (ii) commercially available, causes a reduction in the annual energy output of more than two percent (2%) of the global horizontal irradiance onto the power generating surfaces of the Project for a period that exceeds five (5) days of any Contract Year. This provision shall not apply to any obstruction discoverable during the Seller's Initial Period inspection. Additionally, Seller warrants that those features in Exhibit D and Exhibit E which Buyer feels cannot be altered or removed and which may have an effect of obstructing solar insolation have been accounted for in the rate and Output calculations inherent to this Agreement.

(c) Site Improvements. The Parties agree that certain Event Features and Additional Event Features may be added to the Project in accordance with the provisions of Exhibit E. The Parties acknowledge that any Additional Event Features must not cause any interference in the Project's access to solar insolation. If Buyer is considering Additional Event Features to enhance or alter the aesthetic qualities or utility of the Project for Buyer's use, Seller will at no additional cost to Buyer, but in no more than two (2) instances during the Operations Period, confirm

whether the proposed Additional Event Features can be supported by the Project from an engineering perspective and therefore not void or otherwise compromise any warranties on the Project. Buyer and Seller will coordinate to ensure that any Event Features are constructed in a way that will not void or otherwise compromise any warranties on the Project.

## Section XIV – Press Releases and Confidentiality

(a) Press Releases. The Parties acknowledge that they each desire to publicize information about this Agreement and the Project. The Parties therefore agree that each may release certain information from time to time, indefinitely, about entering into this Agreement, the size and location of the Project, and the identity of the other Party, after first obtaining the prior written consent of the other Party. Either Party may rescind its consent to the continued and future release of such information by providing written notice of such rescission to the other. Buyer has the exclusive right to claim the reductions in emissions of pollution and greenhouse gases resulting from the generation of such electric energy and Buyer is entitled to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing except as otherwise expressly provided in this Agreement and has exclusive right to claim all Environmental Attributes from the Project. Seller shall not report to any Person or entity that the Environmental Attributes granted hereunder to Buyer belong to anyone other than Buyer. However, information about the Project other than that described above may constitute Confidential Information, subject to the limitations of Buyer as a municipal corporation in the state of Arizona under the Arizona Public Records Law, as set forth below.

(b) Limits on Disclosure of Confidential Information. Each Party agrees that, (i) without the consent of the other Party, it shall not disclose any Confidential Information received from the other Party to any other person and (ii) it shall use any Confidential Information received from the other Party only for the purpose of fulfilling its obligations under this Agreement. Notwithstanding the foregoing, the Parties may, and shall, disclose any information required to be disclosed under rules, regulations and contracts implementing the Tax Attributes required to be disclosed by any Governmental Authority under Applicable Law. In the event that the Receiving Party receives a request for Confidential Information (whether by court order, administrative order, statute, regulation or other official order by any government or any agency or department thereof) the Receiving Party shall, to the extent practicable (i) provide the Disclosing Party with prompt written notice of any such request or requirement so that the Disclosing Party may at its cost and expense seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement; and (ii) reasonably cooperate with the Disclosing Party to obtain such protective order or other remedy. In the event such protective order or other remedy is not obtained or the Disclosing Party waives compliance with the relevant provisions of this Agreement, the Receiving Party agrees to (a) furnish only that portion of the Confidential Information for which the Disclosing Party has waived compliance with the relevant provisions of this Agreement, or which the Receiving Party is legally required to disclose, (b) upon the Disclosing Party's request and expense, use its commercially reasonable efforts to obtain assurances that confidential treatment will be



accorded to such information, and (c) give the Disclosing Party such prior written notice of the Confidential Information to be disclosed as is reasonably practicable.

(c) Permissible Disclosures. Seller acknowledges that this Agreement is a public record under the Arizona Public Records Law. Seller may provide this Agreement, and any correspondence, notices and other information related to this Agreement to any person who has provided or who is interested in providing construction or permanent financing, or any refinancing thereof, to Seller in connection with the Project.

(d) Enforcement of Confidentiality Provisions. Each Party acknowledges that it may be impossible to measure the damages which may result from a breach of this Section 14 and agrees that the provisions of this Section 14 may be required to be specifically performed and each Party shall have the right to obtain preliminary and permanent injunctive relief to secure specific performance of the terms of this Section 14. The provisions of this Section 14 shall survive until three years after the effective date of any termination of this Agreement.

(e) Public Records. Notwithstanding anything in this Agreement to the contrary, Seller acknowledges that Buyer is a municipal corporation and political subdivision of the State of Arizona, subject to Arizona's Public Records Laws (A.R.S. § 39-121 et. seq.) and that any documents related to this Agreement may be subject to disclosure pursuant to State law in response to a public records request or to subpoena or other judicial process.

## Section XV – Indemnification

(a) Seller Indemnification. Seller shall indemnify, defend and hold Buyer and its officials, officers, employees, agents, and volunteers ("Buyer's Indemnified Parties"), harmless from and against: (i) all Losses incurred by the Buyer Indemnified Parties from any claim for or arising out of any injury to or death of any Person or loss or damage to property to the extent arising out of Seller's (or its Installers', contractors', or subcontractors') negligent acts or omissions or willful misconduct; (ii) penalties, damages or charges imposed by a governmental authority on Buyer Indemnified Parties and resulting from a Seller violation of Applicable Law; or (iii) any failure to properly handle or dispose of any Hazardous Materials brought onto the Premises by Seller or by any of Seller's employees, agents, volunteers, and invitees, including but not limited to Seller's Installer and contractors. Such duty to indemnify with respect to any injuries or death to persons or damage to property arising from the generation of electricity from the Project shall not extend to incidents occurring on Buyer's side of the Point of Delivery except to the extent caused by the negligent acts or omissions or willful misconduct of Seller. Such duty to indemnify shall not apply to any action or claim, whether in tort (including negligence and strict liability), contract or otherwise for any loss, injury, or costs resulting from interruptions in service. To the extent Seller declines to defend Buyer against any action seeking to impose upon both or either liability for any claims, and Seller is later judged by a court of competent jurisdiction in a non-appealable decision to have been obligated to defend Buyer, then, Seller shall pay to Buyer all additional court costs, investigation costs, and reasonable attorneys' fees incurred by Buyer in effecting such defense in addition to any other sums that Seller may be obligated to pay by reason of the entry of a judgment against Buyer in such litigation. Seller waives its right of



recourse as to Buyer's Indemnified Parties to the extent indemnification applies, and Seller shall require its insurer(s) to waive its/their rights of subrogation to the extent such action is required to render such waiver by Seller effective. Buyer will give Seller prompt notice of any Claims for which indemnification is or will be sought under this Section and will cooperate and assist seller in the defense of the Claims.

(b) Buyer Indemnification. To the extent permitted by law, Buyer shall indemnify, defend and hold Seller, its contractors, subcontractors, shareholders, directors, officers, employees, agents, and Financing Party ("Seller's Indemnified Parties"), harmless from and against all Losses incurred by the Seller's Indemnified Parties to the extent arising from or out of any claim for or injury to or death of any Person or loss or damage to property to the extent arising out of the negligence or willful misconduct of Buyer.

(c) Survival of Indemnification. The obligations of indemnification hereunder shall survive termination of this Agreement for three (3) years.

## Section XVI – Warranties

(a) Mutual Representations. Each Party hereby represents and warrants to the other, as of date hereof, that:

1. Legal Power. Each party has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder; all such actions have been duly authorized by all necessary proceedings on its part.
2. No Conflict. The execution and delivery of this Agreement and the performance of and compliance with the provisions of this Agreement shall not conflict with or constitute a breach of or a default under (1) its organizational documents; (2) any agreement or other obligation by which it is bound; (3) any law or regulation.
3. Enforceability. (1) All actions required to be taken by or on the part of such Party necessary to make this Agreement effective have been duly and validly taken; (2) this Agreement has been duly and validly authorized, executed and delivered on behalf of such Party; and (3) this Agreement constitutes a legal, valid and binding obligation of such Party, enforceable in accordance with its terms, subject to laws of bankruptcy, insolvency, reorganization, moratorium or other similar laws.
4. No Material Litigation. There are no court orders, actions, suits or proceedings at law or in equity by or before any governmental authority, arbitral tribunal or other body, or threatened against or affecting it or brought or asserted by it in any court or before any arbitrator of any kind or before or by any governmental authority that could reasonably be expected to have a material adverse effect on it or its ability to perform its obligations under this Agreement, or the validity or enforceability of this Agreement.

5. Bankruptcy. Each Party is not Bankrupt and there are no proceedings pending or being contemplated by it or any of its affiliates, or, to its knowledge, threatened against it or its affiliates which would result in it being or becoming Bankrupt.

(b) Buyer Representations. In addition to the representations and warranties in Section 16(a), Buyer hereby represents and warrants to Seller, as of date hereof, that:

1. Buyer Organization. Buyer is a municipal corporation, duly organized and validly existing, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement.

2. Condition of Premises. Buyer has provided to Seller Buyer's records of the physical condition of the Premises. If it is discovered that the actual site conditions at the Project Site upon which all or part of the Project is to be installed, are materially different from the information presented by Buyer and reasonably relied upon by Seller in a manner which was not reasonably subject to discovery during the due diligence period, then if practicable the rates payable by Buyer hereunder shall be equitably adjusted to compensate Seller for the actual and reasonable costs of design and construction changes and delays incurred to adapt the Project to the unknown conditions. In such event, the Parties will negotiate such equitable adjustment in good faith.

3. Buyer represents, warrants, and covenants that it is the fee owner of and has good, lawful and marketable title to the Premises and the Project Site free of any liens, encumbrances, restrictions or covenants which may impact Seller's proposed use of the Project Site. Buyer shall deliver to Seller copies of any title policies, deeds, orders of taking or other instruments evidencing the fact of Buyer's fee ownership of the Premises and the Project Site in Buyer's possession. Notwithstanding the preceding, Seller may conduct its own due diligence regarding the Premises and Project Site. If any encumbrance, easement, restriction, covenant (or other similar instrument running with the land) on the Premises not reasonably subject to discovery by Seller during the due diligence period materially adversely impacts, or prohibits Seller's ability to install, maintain or operate the Project, Buyer shall make all commercially reasonable efforts to discharge, modify, amend or subordinate any such instrument so that Seller's rights hereunder are not materially adversely impacted.

(c) Seller Representations. In addition to the representations and warranties in Section 16(a), Seller hereby represents and warrants to Buyer, as of the date hereof, that:

1. Seller Organization. Seller is duly organized and validly existing as a corporation under the laws of Delaware, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement, and Seller is duly qualified in Arizona and each jurisdiction wherein the nature of the business transacted by it makes such qualifications necessary.

## Section XVII – Force Majeure

- (a) Excuse for Force Majeure Event. Except as provided in Section 17(b) or otherwise specifically provided in this Agreement, neither Party shall be considered in breach of this Agreement or liable for any delay or failure to comply with this Agreement, if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief as a result of the Force Majeure Event shall promptly (i) notify the other Party in writing of the existence and details of the Force Majeure Event; (ii) exercise all reasonable efforts to minimize delay caused by such Force Majeure Event; (iii) notify the other Party in writing of the cessation of such Force Majeure Event; and (iv) resume performance of its obligations hereunder as soon as practicable thereafter.
- (b) No Excuse for Payment for Prior Services. Obligations to make payments for services already provided shall not be excused by a Force Majeure Event.
- (c) Restoration. In the event of a Force Majeure Event which destroys all or a substantial portion of the Premises, Buyer shall elect, within ninety (90) days of the termination of such Force Majeure Event, whether it will restore the Premises, which restoration will be at the sole expense of Buyer. If Buyer does not elect to restore the Premises, then Seller shall not restore the Project and this Agreement will terminate. If Buyer does elect to restore the Premises, Buyer shall provide notice of such election to Seller and Seller shall then elect, within ninety (90) days of receipt of such notice, whether or not to restore the Project, subject to the Parties agreeing on a schedule for the restoration of the Premises and an equitable extension to the Term of this Agreement. If the Parties are not able to so agree or if Seller does not elect to restore the Project, Seller shall promptly remove any portions of the Project remaining on the Premises, and this Agreement shall terminate. If Seller does elect to restore the Project, it shall do so at its sole expense. In the event of termination of this Agreement pursuant to this Section 17(c), (i) the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the casualty event; and (ii) the confidentiality provisions of Section 14, the indemnity obligations under Section 15 hereof, and the dispute resolution provisions of Section 23 hereof shall continue to apply notwithstanding the termination of this Agreement.
- (d) Termination for Force Majeure Event. Notwithstanding anything to the contrary in this Section 17, if nonperformance on account of a Force Majeure Event extends beyond a continuous period of three hundred and sixty-five (365) days, then either Party shall have the right to terminate this Agreement upon thirty (30) days notice to the other. Upon such termination, Seller shall be required to decommission and remove the Project from the Project Site in accordance with the provisions of Section 9(e) unless a Force Majeure Event has resulted in the destruction of all or a substantial portion of the Premises, in which case the provisions of clause (c) above shall apply to the removal of the Project). In the event of such a termination of this Agreement with respect to the Project, the Parties shall not be released from any payment or other obligation arising under this Agreement which accrued prior to the shutdown of the Project or the Premises, and the indemnity, confidentiality and dispute resolution provisions of this Agreement shall survive the termination of this Agreement.

## Section XVIII – Change in Law

In the event there is a Change in Law that is applicable to the operation of the Project, the sale of Output produced by the Project, or any other material obligation of the Seller hereunder, and compliance with the Change in Law results in a material increase in Seller's costs to operate and/or maintain the Project, Seller will promptly submit to Buyer a written notice setting forth (i) the applicable Change in Law; (ii) the specific manner in which such Change in Law increases Seller's costs and documentation supporting the amounts of such change; and (iii) Seller's proposed adjustment to the then applicable and future Rates for Output under this Agreement to reflect such increases in costs. The Parties shall within thirty (30) days following receipt by Buyer from Seller of notice of such Change in Law, meet and attempt in good faith to negotiate such changes in the Rates or other amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable in good faith to agree upon such amendments within such thirty (30) day period, then Seller shall have the right to terminate this Agreement without further liability to either Party except with respect to payment of amounts accrued prior to termination. If Seller chooses to terminate this Agreement, Buyer will have the option, subject to approval of Seller's lender, which is not to be unreasonably withheld, to purchase the Project from Seller for a purchase price equal to the Fair Market Value of the System at the time of termination. If Buyer provides notice to purchase the Project and Seller's lender refuses the sale of the Project to Buyer, Seller shall decommission and remove the Project in accordance with Section 9 of this Agreement.

## Section XIX – Seller Default and Buyer Remedies

(a) Seller Events of Default. Seller shall be in default of this Agreement if any of the following ("Seller Events of Default") shall occur:

1. Misrepresentation. Any representation or warranty by Seller under Section 16 hereof, is incorrect or incomplete in any material way at the time made, or omits to include any information necessary to make such representation or warranty not materially misleading at the time made, and such defect is not cured within fifteen (15) days after receipt of notice from Buyer identifying the defect.
2. Failure to Complete Installation by the Guaranteed Commercial Operation Date. Failure to complete the Project and achieve commercial operation by, or within sixty (60) days following, the Guaranteed Commercial Operation Date shall constitute a Seller Event of Default. In such event, Buyer shall in addition to any other rights granted in this Section have the right to pursue removal of the unfinished Project at Seller's expense.
3. [Section Intentionally Omitted]
4. Obligation Failure. Seller fails to perform any obligation hereunder, such failure is material, such failure is not excused by the provisions of Section 17(b) (relating to Force Majeure Events), and such failure is not cured within: (A) ten (10) days if the

failure involves a failure to make payment when due or maintain required insurance; or (B) sixty (60) days if the failure involves an obligation other than payment or the maintenance of insurance, after receipt of notice from Buyer identifying the failure provided, however, that the cure period with respect to breaches under this subsection (B) shall be extended for an additional reasonable time as may be necessary to complete such cure if Seller has begun curative action and is proceeding diligently, using commercially reasonable efforts, to complete such curative action.

5.       Insolvency. Seller (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (B) admits in writing its inability, or is generally unable, to pay its debts as such debts become due; (C) makes a general assignment for the benefit of its creditors; (D) commences a voluntary case under any bankruptcy law; (E) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) acquiesces in, or fails to contest in a timely manner, any petition filed against Seller in an involuntary case under bankruptcy law or seeking to dissolve Seller under other Applicable Law; or (G) takes any action authorizing its dissolution.

6.       Merger Event. Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Seller under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to Buyer.

7.       Delivery of False Energy. If at any time during the Term of this Agreement, Seller delivers or attempts to deliver to the Point of Delivery for sale under this Agreement Output that was not generated by the Project.

8.       Creditworthiness. Failure by Seller to satisfy the creditworthiness or collateral requirements agreed to in this Agreement, and such defect is not cured within fifteen (15) days after receipt of notice from Buyer identifying the defect.

9.       Intellectual Property Infringement. Failure by Seller to properly secure intellectual or other proprietary property rights associated with any design or technology used in the Project.

10.      Violation of Interconnection Agreement. Seller, upon notice by Buyer, fails to correct any violation of the Interconnection Agreement within ten (10) days; provided, however, that the cure period shall be extended for an additional reasonable time as may be necessary to complete such cure if Seller has begun curative action and is proceeding diligently, using commercially reasonable efforts, to complete such curative action.

11.      Disruption of Event Features. Seller disrupts the ability of the Buyer to use the Event Features without obtaining Buyer's express written permission in advance, causes

the removal of Event Features without obtaining Buyer's express written permission in advance, or otherwise renders the Event Features or the Project unusable for a period of time that materially disrupts Buyer's use of the Premises, and fails to cure such breach within five (5) days after receipt of notice from Buyer identifying the defect; provided, however, that the cure period shall be extended for an additional reasonable time as may be necessary to complete such cure if Seller has begun curative action and is proceeding diligently, using commercially reasonable efforts, to complete such curative action.

12. **Disruption of Parking.** Seller disrupts the ability of Buyer to use the Premises for parking by rendering 10 or more parking spaces unusable for a period longer than fifteen (15) consecutive days, or thirty (30) non-consecutive days in any Contract Year without Buyer's express written permission in advance., and fails to cure such breach within five (5) days after receipt of notice from Buyer identifying the defect; provided, however, that the cure period shall be extended for an additional reasonable time as may be necessary to complete such cure if Seller has begun curative action and is proceeding diligently, using commercially reasonable efforts, to complete such curative action.

13. **Reduction of Shade.** Seller causes the reduction of more than 5% of the Shade specified in Exhibit E for a period longer than fifteen (15) consecutive days, or thirty (30) non-consecutive days in any Contract Year, and fails to cure such breach within five (5) days after receipt of notice from Buyer identifying the defect; provided, however, that the cure period shall be extended for an additional reasonable time as may be necessary to complete such cure if Seller has begun curative action and is proceeding diligently, using commercially reasonable efforts, to complete such curative action.

14. **Failure to Maintain Aesthetic Conditions of the Project.** Seller unreasonably interferes with Buyer's ability to refinish any exterior surfaces of the Project.

(b) **Buyer Remedies.** Upon an Event of Default by Seller, provided that Buyer complies with its obligations under Section 21 and Financing Party does not cure such Event of Default by Seller, Buyer may (i) terminate this Agreement (in which case Seller shall decommission and remove the Project in accordance with Section IX hereof), (ii) if such Event of Default occurs after the sixth anniversary of the Commercial Operation Date, purchase the Project at Fair Market Value, and pursue other remedies available to Buyer at law or equity. Buyer shall take all commercially reasonable efforts to mitigate its damages as the result of a Seller Event of Default. **If an Event of Default by Seller occurs without termination of this Agreement, Seller's liability to Buyer shall not exceed Two Hundred and Fifty Thousand Dollars (this limitation shall not apply to any Seller indemnification obligations under Section 15).**

## Section XX – Buyer Default and Seller Remedies

(a) **Buyer Events of Default.** Buyer shall be in default of this Agreement if any of the following ("Buyer Events of Default") shall occur:

1. Misrepresentation. Any representation or warranty by Buyer under Section 16 hereof, is incorrect or incomplete in any material way at the time made, or omits to include any information necessary to make such representation or warranty not materially misleading at the time made, and such defect is not cured within fifteen (15) days after receipt of notice from Seller identifying the defect.
2. Obstruction. Buyer obstructs commencement of installation of the Project or fails to take any commercially reasonable actions in its proprietary capacity that are necessary for the interconnection of the Project, or fails to take electric energy produced by the Project, and fails to correct such action within ten (10) days of when such action was due.
3. Payment Failure. Buyer fails to make any payment due under the terms of this Agreement, and fails to make such payment within thirty (30) calendar days after receipt of notice thereof from Seller.
4. Obligation Failure. Buyer fails to perform any obligation hereunder, such failure is material, such failure is not excused by the provisions of Section 17(b) (relating to Force Majeure Events), and such failure is not cured within: (A) ten (10) days if the failure involves a failure to maintain required insurance; or (B) sixty (60) days if the failure involves an obligation other than payment or the maintenance of insurance, after receipt of notice from Seller identifying the failure; provided, however, that the cure period with respect to breaches under this subsection (B) shall be extended for an additional reasonable time as may be necessary to complete such cure if Buyer has begun curative action and is proceeding diligently, using commercially reasonable efforts, to complete such curative action.
5. Insolvency. Buyer (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (B) admits in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) makes a general assignment for the benefit of its creditors; (D) commences a voluntary case under any bankruptcy law; (E) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) acquiesces in, or fails to contest in a timely manner, any petition filed against Buyer in an involuntary case under bankruptcy law or seeking to dissolve Buyer under other Applicable Law; or (G) takes any action authorizing its dissolution.
6. Creditworthiness. Failure by Buyer to satisfy the creditworthiness or collateral requirements agreed to in this Agreement.
7. Project Site License. Buyer revokes Seller's license to Project Site
8. Interconnection. Buyer unreasonably interferes with Seller's interconnection of the Project or Seller's access to and use of the Premises and the Project Site for the purposes intended hereunder and fails to cure such breach within fifteen (15) days after receipt of notice from Seller; provided, however, that the cure period shall be

extended for an additional reasonable time as may be necessary to complete such cure if Buyer has begun curative action and is proceeding diligently, using commercially reasonable efforts, to complete such curative action.

(b) Default Damages. Upon an Event of Default by Buyer, Seller may require Buyer to pay to Seller the Early Termination Amount plus the reasonable costs of removal of the Project, if Seller elects to terminate this Agreement, or pursue other remedies available at law or in equity. After Seller's receipt of such Early Termination Amount and costs of removal pursuant to this Section 20(b), Seller shall collect no additional damages resulting from lost revenues from sales of electricity from the Project or any other breach of this Agreement by Buyer. Seller shall take all commercially reasonable efforts to mitigate its damages as the result of a Buyer Event of Default.

## Section XXI –Financing Provisions

(a) Cooperation with Financing. Buyer acknowledges that Seller will be financing the acquisition of the Project. Buyer agrees that it shall reasonably cooperate with Seller and its financing parties in connection with such financing for the Project, including the execution of any reasonable consents to assignment or acknowledgements, negotiation and delivery of such reasonable estoppel certificates as an existing or prospective financing party may reasonably require, and furnishing of such reasonable information as Seller and its financing parties may request; provided that the foregoing undertaking shall not obligate Buyer to materially change any rights or benefits, or increase any burdens, liabilities or obligations of Buyer, under this Agreement (except for providing notices and additional reasonable cure periods, not to exceed thirty (30) days, to the financing parties with respect to Events of Defaults with respect to Seller as a financing party may reasonably request).

(b) Pledge of Interest. Seller may pledge its interest in this Agreement, including any rights to payment and the Project, as security for loans or financing or to transfer its rights and obligations hereunder in support. If Seller's lender(s) requests additional terms and conditions to those already provided in this Agreement, Buyer will consider any such requests, but may refuse such requests in its sole and absolute discretion and may withhold consent or approval of such additional terms and conditions.

(c) Evidence of Financing. Upon request, Seller must provide Buyer with commercially reasonable evidence of acquisition of financing for the Project.

## Section XXII – Limitation on Damages and Liability

NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY, NOR ITS RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, ADVISERS, REPRESENTATIVES, AFFILIATES, OR SUCCESSOR OR ASSIGNS WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES FOR ANY ACTIONS RESULTING FROM OR ARISING OUT OF THIS AGREEMENT, WHETHER BASED ON



CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PROFESSIONAL LIABILITY, CONTRIBUTION, OR OTHERWISE. NOTWITHSTANDING THE ABOVE AND TO AVOID ANY CONFUSION, THIS SECTION SHALL NOT APPLY TO THE INDEMNIFICATION OBLIGATIONS IN SECTION 15.

## Section XXIII – Dispute Resolution

- (a) Negotiation Period. The Parties 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 30 days after the date that a Party gives written notice of such Dispute to the other Party.
- (b) Mediation. If, after such negotiation in accordance with Section 23(a), the Dispute remains unresolved, either Party may require that a non-binding mediation take place. In such mediation, representatives of the Parties with authority to resolve the dispute shall meet for at least three (3) hours with a mediator whom they choose together. The mediator’s fee and expenses shall be paid one-half by each Party.
- (c) Remedies Available by Law, Venue. This consent to mediation by the Parties shall not constitute a waiver of any rights or remedies otherwise afforded under Applicable Law. If, after mediation in accordance with Section 23(b), the Dispute remains unresolved, either Party can pursue its legal and equitable remedies by bringing a judicial action in the Superior Court of Maricopa County, or in the United States District Court in Phoenix.

## Section XXIV – Notices

Delivery of Notices. All notices or other communications which may be or are required to be given by any party to any other party pursuant to this Agreement shall be in writing and shall be either (i) delivered by hand; (ii) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid; (iii) delivered by a recognized overnight or personal delivery service; (iv) transmitted by facsimile (such transmission to be effective on the day of receipt if received prior to 5:00 pm local time on a Business Day or in any other case as of the next Business Day following the day of transmittal); or (v) transmitted by email if receipt of such transmission by email is specifically acknowledged by the recipient (automatic responses not being sufficient for acknowledgement), addressed as follows:

If to Buyer:

City of Mesa Energy Resources Department  
P.O. Box 1466  
Mesa, AZ 85211-1466

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If to Seller:

\_\_\_\_\_  
\_\_\_\_\_

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Attention:

Email:

Notices shall be effective when delivered (or in the case of email, when acknowledged by the recipient) in accordance with the foregoing provisions, whether or not (except in the case of email transmission) accepted by, or on behalf of, the Party to whom the notice is sent.

Each Party may designate by Notice in accordance with this section to the other Party a new address to which any notice may thereafter be given.

## Section XXV – Creditworthiness

(a) Credit Assurances. If either Party has reasonable grounds during the Operations Period to believe that the other Party's creditworthiness or performance under this Agreement has become unsatisfactory as a result of:

Buyer: Buyer's long term general obligation bond rating falls below A3 with Moody's or A- with S&P or Fitch

Seller: Seller's stock price (NYSE: AMRC) falls below \$2.00 or for any other Seller (i) Seller's stock price falls to 25% of its share price that was to be found at the close of business on the effective date of the assignment of this Agreement or (ii) Seller's credit rating falls below A3 with Moody's or A- with S&P or Fitch

such Party may provide the other with written notice requesting Performance Assurance in an amount determined by the requesting Party in a commercially reasonable manner, but not to exceed one hundred and thirty thousand dollars (\$130,000.00). Upon receipt of such notice the receiving Party shall have ten (10) Business Days to remedy the situation by providing such Performance Assurance to the requesting Party. In the event that a Party fails to provide such Performance Assurance within ten (10) Business Days of receipt of notice, then that Party will be deemed to be in default per Section 19 or Section 20 of this Agreement as applicable and the non-defaulting Party will be entitled to the remedies set forth in Section 19 or Section 20, as applicable. Performance Assurance may be in the form of:

- (i) Cash held in an escrow account; and/or
- (ii) Performance bond(s) through an accredited financial institution; and/or
- (iii) Letter(s) of Credit.
- (iv) Having Buyer named as an additional insured on a commercially acceptable Business Interruption Insurance policy.

(b) Letter of Credit.

(i) If Seller has provided a Letter of Credit pursuant to any of the applicable provisions in this Agreement, then Seller shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and in accordance with this Agreement. In the event the issuer of such Letter of Credit (i) fails to maintain a Credit Rating of at least an A2 by Moody's and at least an A by S&P, (ii) indicates its intent not to renew such Letter of Credit, or (iii) fails to honor Buyer's properly documented request to draw on an outstanding Letter of Credit by such issuer, Seller shall cure such default by complying with either (A) or (B) below in an amount equal to the outstanding Letter of Credit, and by completing the action within five (5) Business Days after Buyer receives Notice of such refusal (all of which is considered the "Cure"):

(A) providing a substitute Letter of Credit that is issued by a qualified bank acceptable to Buyer, other than the bank failing to honor the outstanding Letter of Credit, or

(B) posting cash.

If Seller fails to Cure or if such Letter of Credit expires or terminates without a full draw thereon by Buyer, or fails or ceases to be in full force and effect at any time that such Letter of Credit is required pursuant to the terms of this Agreement, then Seller shall have failed to meet the creditworthiness/collateral requirements of this Agreement.

(ii) In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the Letter of Credit shall be borne by Seller.

## Section XXVI – Miscellaneous

(a) Governing Law. This Agreement shall be governed by the laws of the State of Arizona, including principles of good faith and fair dealing that will apply to all dealings under this Agreement.

(b) Rules of Interpretation. Section headings are for convenience only and shall not affect the interpretation of this Agreement. References to sections are, unless the context otherwise requires, references to sections of this Agreement. The words "hereto", "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The word "person" shall include individuals; partnerships; corporate bodies (including but not limited to corporations, limited partnerships and limited liability companies); non-profit corporations or associations; governmental bodies and agencies; and regulated utilities. The word "including" shall be deemed to be followed by the words "without limitation". In the event of any conflict between the text of this Agreement and the contents of an Exhibit hereto, the text of this Agreement shall govern.

- (c) Severability. If any non-material part of this Agreement is held to be unenforceable, the rest of the Agreement will continue in effect. If a material provision is determined to be unenforceable and the Party which would have been benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith to amend the Agreement to restore to the Party that was the beneficiary of such unenforceable provision the benefits of such provision. If the Parties are unable to agree upon an amendment that restores the Party's benefits, the matter shall be resolved under Section 23(c) in order to restore to the Party that was the beneficiary of the unenforceable provision the economic benefits of such provision.
- (d) Amendment and Waiver. This Agreement may only be amended by a writing signed by both Parties. Any waiver of any of the terms hereof shall be enforceable only to the extent it is waived in a writing signed by the Party against whom the waiver is sought to be enforced. Any waiver shall be effective only for the particular event for which it is issued and shall not constitute a waiver of a subsequent occurrence of the waived event nor constitutes a waiver of any other provision hereof, at the same time or subsequently.
- (e) Both parties must agree on amendments. Waivers can only be for particular events and will not be applied to future occurrences of the waived event or to the rest of the agreement.
- (f) Service Contract. The Parties agree that this Agreement is a service contract pursuant to Section 7701(e)(3) for the purposes of the Internal Revenue Code.
- (g) No Joint Venture. This Agreement does not create a joint venture, partnership or other form of business association between the Parties.
- (h) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of signature by fax, or scan delivered by email, receipt acknowledged, or electronic signature are effective to bind a Party hereto.
- (i) Renewable Energy Standard. Buyer is not subject to the Arizona Corporation Commission's Renewable Energy Standard and Tariff, however, Seller shall register Environmental Attributes to be eligible for that Renewable Energy Standard and Tariff.
- (j) Records. Seller shall maintain an accurate and complete log of all material operations and maintenance information on a daily basis including such records as may be required by any Governmental Authority or other prudent utility practice for a period of five (5) years. Such log shall include, but not be limited to, information on power production, efficiency, availability, maintenance performed, outages, results of inspections, manufacturer recommended services, replacements, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices. Seller shall provide this information electronically to Buyer within thirty (30) days of Buyer's request.
- (k) Organizational Good Standing and Compliance with Laws and Agreement. During the Term of this Agreement, Seller shall continue to (i) preserve, renew and keep in full force and effect its organizational existence and good standing, and take all reasonable action to maintain all applicable Permits, rights, privileges, licenses and franchises necessary or desirable in the

ordinary course of its business; (ii) comply with all Applicable Laws, including environmental laws, applicable to Seller or the Project.

(l) Further Development Information. Seller shall provide to Buyer such other information regarding the permitting, engineering, construction or operations of the Project as Buyer may from time to time reasonably request, subject to licensing or other restrictions of Seller or a third party with respect to confidentiality, disclosure or use; provided, nothing herein shall limit Buyer's right to agree to confidentiality or sign a confidentiality agreement in connection therewith before acquiring knowledge of such information;

(m) WECC and WAPA Agreements. Seller shall enter into any agreements with the WECC or WAPA required for generators delivering power into the WECC/WAPA-controlled grid. Except for such costs and charges as are expressly identified in this Agreement as Seller's costs, Buyer shall reimburse Seller for all costs and charges under such agreements. Seller shall cooperate with Buyer to minimize any such costs as are to be reimbursed by Buyer;

(n) Financial Statements. If requested by Buyer, Seller shall deliver to Buyer (a) within four (4) months following the end of each fiscal year, a copy of Seller's and Seller's Parent's annual report containing audited consolidated financial statements for such fiscal year (or if not available, unaudited consolidated financial statements for such fiscal year) and (b) within forty-five (45) calendar days after the end of each of its first three (3) fiscal quarters of each fiscal year, a copy of Seller's and Seller's Parent's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases, the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting practices and shall be certified by the Chief Financial Officer or equivalent officer of Seller on behalf of Seller and of Seller's Parent on behalf of Seller's Parent, dated no earlier than ten (10) Business Days prior to delivery to Buyer (i) as fairly presenting the financial condition of Seller and Seller's Parent, as applicable, subject only to what would typically be included in year-end audit adjustments and footnotes; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not constitute an Event of Default so long as Seller diligently pursues the preparation, certification and delivery of the statements.

(o) Entire Agreement. This Agreement, together with the Preamble and each and every exhibit, appendix, attachment, amendment, schedule and any written supplements hereto, if any, constitutes the entire, integrated agreement between the Parties and supersedes any and all prior oral or written understandings. No amendment, addition to or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it, unless such amendment, addition, modification or waiver is made, in writing, and signed by a duly authorized officer or representative of the Parties.

(p) Rule of Construction. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

(q) Buyer Payment Limitation. Notwithstanding any other provision of this Agreement, no part of the amounts payable by Buyer pursuant to this Agreement shall be payable out of any ad valorem or other real or personal property taxes imposed by Buyer or from bonds or other obligations, the payment of which Buyer's general taxing authority is pledged, unless (i) the same shall have been duly budgeted by Buyer according to law, (ii) such payment or payments shall be within the budget limitations of the statutes of the State of Arizona, and (iii) any such bonded indebtedness or other obligation is within the debt limitations of the Constitution of the State of Arizona. Buyer's obligation to make payments of any amounts due under this Agreement, including amounts due after default or termination hereof, shall in no circumstances constitute a general obligation of, or a pledge of the full faith and credit of, Buyer, the State of Arizona, or any of its political subdivisions, or require the levy of, or be payable from the proceeds of, any ad valorem or other real or personal property taxes.

(r) Buyer Capacity. Nothing in this Agreement shall constitute a waiver of any rights, privileges, benefits, immunities and exemptions of the City of Mesa in its governmental capacity as a municipal corporation and political subdivision of the State of Arizona; provided, however, that the Buyer represents, warrants, and agrees (and Seller acknowledges) that its execution and delivery of this Agreement and its performance of the contractual obligations contemplated by this Agreement, constitute proprietary and commercial acts rather than public or governmental acts.

(s) Notice of ARS Provisions: Notice is provided to Seller of the following Arizona Revised Statutes:

- i. §38-511. Cancellation of political subdivision and state contracts; definition
  - a. The state, its political subdivisions or any department or agency of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.
  - b. Leases of state trust land for terms longer than ten years cancelled under this section shall respect those rights given to mortgagees of the lessee by section 37-289 and other lawful provisions of the lease.
  - c. The cancellation under this section by the state or its political subdivisions shall be effective when written notice from the governor or the chief executive officer or governing body of the political subdivision is received by all other parties to the contract unless the notice specifies a later time.

d. The cancellation under this section by any department or agency of the state or its political subdivisions shall be effective when written notice from such party is received by all other parties to the contract unless the notice specifies a later time.

e. In addition to the right to cancel a contract as provided in subsection A of this section, the state, its political subdivisions or any department or agency of either may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any department or agency of either from any other party to the contract arising as the result of the contract.

f. Notice of this section shall be included in every contract to which the state, its "political subdivisions," or any of the departments or agencies of either is a party.

g. For purposes of this section, "political subdivisions" do not include entities formed or operating under title 48, chapter 11, 12, 13, 17, 18, 19 or 22.

ii. §35-393. Contracting; procurement; investment; prohibitions

a. A public entity may not enter into a contract with a company to acquire or dispose of services, supplies, information technology or construction unless the contract includes a written certification that the company is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of Israel.

b. A public entity may not adopt a procurement, investment or other policy that has the effect of inducing or requiring a person or company to boycott Israel.

iii. §42-17106. Expenditures limited to budgeted purposes; transfer of monies

a. Except as provided in subsection b, a county, city or town shall not:

1. Spend money for a purpose that is not included in its budget.
2. Spend money or incur or create a debt, obligation or liability in a fiscal year in excess of the amount stated for each purpose in the finally adopted budget for that year, except as provided by law, regardless of whether the county, city or town has received at any time, or has on hand, monies or revenue in excess of the amount required to meet expenditures, debts, obligations and liabilities that are incurred under the budget.

b. A governing body may transfer monies between budget items if all of the following apply:

1. The monies are available.

2. The transfer is in the public interest and based on a demonstrated need.

3. The transfer does not result in a violation of the limitations prescribed in article IX, sections 19 and 20, Constitution of Arizona.

4. A majority of the members of the governing body votes affirmatively on the transfer at a public meeting.

(t) Assignment. 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 shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Seller may, without the prior written consent of Buyer, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement to any Financing Party, (ii) directly or indirectly assign this Agreement to an affiliate of Seller, (iii) assign this Agreement to any entity through which Seller is obtaining financing or capital for the Project and (iv) assign this Agreement to any person succeeding to all or substantially all of the assets of Seller, and Seller shall be released from liability hereunder as a result of any of the foregoing permitted assignments, but only upon assumption of Seller's obligations hereunder by the assignee. Buyer's consent to any other assignment shall not be withheld if Buyer has been provided with reasonable proof that the proposed assignee (x) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the Project and providing services comparable to those contemplated by this Agreement and (y) has the financial capability to maintain the Project and provide the services contemplated by this Agreement in the manner required by this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.

(u) Time of the Essence. Time is of the essence in performance by the Parties.

(v) Immigration and Non-discrimination. Seller shall comply with all applicable Federal, State, and local laws, codes, and regulations including all policies concerning nondiscrimination and equal opportunity in contracting and employment. Seller certifies that it shall ensure that all contractors performing Project under this contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 and A.R.S. §41-4401 related to the immigration status of their employees.



IN WITNESS WHEREOF, intending to be legally bound hereby, Seller and Buyer have executed this Power Purchase Agreement as of the date first set forth above.

Ameresco, Inc.

By: Ameresco, Inc.

By: \_\_\_\_\_

Name (printed): \_\_\_\_\_

Title: \_\_\_\_\_

City of Mesa, AZ

By: \_\_\_\_\_

Name (printed): Christopher J. Brady

Title: City Manager

## EXHIBIT A. - ENERGY PURCHASE RATES

Buyer shall pay seller for Output at the following Rates:

Contract Year	\$/kWh - Output <sup>1</sup>	\$/kWh – Overproduction Output <sup>2</sup>	\$/kWh – Excess Output <sup>3</sup>
1	\$0.1450	The lesser of (i) the monthly Palo Verde Peak, Non-Firm Index Rate as published by Platts <sup>4</sup> or (ii) \$0.1305/kWh	\$0.0000/kWh
2	\$0.1450		
3	\$0.1450		
4	\$0.1450		
5	\$0.1450		
6	\$0.1450		
7	\$0.1450		
8	\$0.1450		
9	\$0.1450		
10	\$0.1450		
11	\$0.1450		
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24	\$0.1450		
25	\$0.1450		

As used in this Agreement, “dollar” and the “\$” sign refer to United States dollars.

Total number of payments over Operations Period	<b>300</b>
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<sup>1</sup> For all Output under and equal to the Upper Production Limit in any Contract Year

<sup>2</sup> For all Output above the Upper Production Limit but below or equal to the Maximum Production Limit in any Contract Year (Overproduction Output)

<sup>3</sup> For all Output above the Maximum Production Limit in any Contract Year (Excess Output)

<sup>4</sup> If the Palo Verde Peak, Non-Firm Index Rate is not available or discontinued, parties will work in good faith to source a replacement index that is similar in nature

## EXHIBIT B - EARLY TERMINATION AND BUYOUT VALUE AMOUNTS

Early Termination Amount in each Contract Year shall be as follows:

Contract Year	Early Termination Amount
1	
2	
3	
4	
5	
6	\$1,429,355
7	
8	
9	
10	\$1,261,409
11	
12	
13	
14	
15	\$993,755
16	
17	
18	
19	
20	\$637,550
21	
22	
23	
24	
25	\$128,948

## EXHIBIT C - DESCRIPTION OF PROJECT SITE

That certain real property located in the County of Maricopa, State of Arizona described as follows:

A portion of land located in the State of Arizona, County of Maricopa, Section 22, Township 1 North, Range 5 East, generally known as Maricopa Assessor Parcel numbers 138-40-008, 138-40-009, 138-40-013, 138-40-014, 138-40-015, 138-40-016; and further described as:

138-40-008

That part of Lots 1 and 2, Block 10, MESA CITY, according to Book 3 of Maps, page 11, records of Maricopa County, Arizona, described as follows:

Beginning at a point 157 feet East of the Southwest corner of Lot 2, Block 10; thence East 43 feet; then North 165 feet; thence West 43 feet; thence South 165 to the beginning.

138-40-009

The East 45 feet of the West 157 feet of the South 165 feet of Lot 2, Block 10, CITY of MESA, according to Book 23 of Maps, page 18, records of Maricopa County, Arizona.

138-40-013

The West 55 feet of the East 108.7 feet of the South 165 feet of Lot 2, Block 10, Mesa, according to Book 23 of Maps, page 18, records of Maricopa County, Arizona.

138-40-014

The West 57 feet of the South 165 feet of Lot 2, Block 10, MESA, according to Book 23 of Maps, page 18, records of Maricopa County, Arizona.

138-40-015

Beginning at a point 61.5 feet West of the Southeast corner of Lot 3, Block 10, MESA CITY running thence North 157 feet; West 55 feet; South 157 feet, East 55 feet to the point of beginning according to Book 3 of maps, page 11, records of Maricopa County, Arizona.

138-40-016

The South 157 feet of the East 61.5 feet of Lot 3, Block 10, CITY OF MESA, according to Book 23 of Maps, page 18, records of Maricopa County, Arizona.

## EXHIBIT D - DESCRIPTION OF PREMISES

[LEGAL BOUNDARIES OF MESA ARTS CENTER BETWEEN S CENTER ST, S SIRRINE, E MAIN ST, E 1<sup>ST</sup> AVE]

**Vehicular & Pedestrian Access:**

**Transmission Lines & Communication Cables:**

DRAFT

## EXHIBIT E - DESCRIPTION OF PROJECT

1. Project Name: MAC Solar
2. Project Site Name: Mesa Arts Center Parking Lot
3. Project Physical Address:
4. Project Installed Module Capacity (DC kW, total module capacity – allowable minimum and maximum range): 500-538 kW-DC at standard test conditions (STC)
5. Project Installed Inverter Capacity: No greater than 500 kW-AC at STC
6. Expected First Year Energy Production (kWh): 874,223 kWh
7. Parking and Solar Shade Structure: Parasol with the ability to hold and operate Event Features and a nominal and average twenty four (24) feet ( $\pm$  one foot) of clearance from the parking lot surface on the Commercial Operation Date to the bottom of the supporting parasol structural beams.
8. Shade Specification: [AMERESCO/POWER PARASOL TO INSERT SHADE DESIGN SPECIFICATION]
9. Modules: (###) [Manufacturer] [Model]  
Module (fixed) Tilt: [ ]°  $\pm 1^\circ$   
Module (fixed) Azimuth Angle: 180° (Directly south)  $\pm 2^\circ$
9. Inverter: (###) [Manufacturer] [Model]
10. Project Output Production:

The Parties agree that the global horizontal irradiance for the Project Site shall be determined using Typical Model Year Level 3 data from the National Renewable Energy Laboratory's Meteorological Statistical Model 2 (or successor) for the coordinates 33.45 North and 111.98 West ("Expected GHI"). The total annual Expected GHI at the Project Site shall be 2,094,203 Watt-hours per square meter. The following production limits shall apply for all Contract Years where the actual Global Horizontal Irradiance as measured at the Arizona Meteorological Network's Mesa weather station 29 ("Actual GHI") falls between 1,890,000 Watt-hours per square meter and 2,300,000 Watt-hours per square meter ("Expected GHI Range"). In all Contract Years where the Actual GHI falls within the Expected GHI Range, the Production Limits in Table 1 shall apply. In all Contract Year where the Actual GHI falls outside the Expected GHI Range, the Minimum Production Limit, the Upper Production Limit and the Maximum Production Limits shall all be multiplied by a factor of the Actual GHI divided by the Expected GHI.

Table 1) Production Limits by Contract Year

Contract Year	Minimum Production Limit (kWh)	Expected Production (kWh)	Upper Production Limit (kWh)	Maximum Production Limit (kWh)
1	786,801	874,223	961,645	1,005,356
2	782,867	869,852	961,645	1,005,356
3	778,953	865,503	961,645	1,005,356
4	775,058	861,175	961,645	1,005,356
5	771,182	856,869	961,645	1,005,356
6	767,327	852,585	961,645	1,005,356
7	763,490	848,322	961,645	1,005,356
8	759,672	844,080	961,645	1,005,356
9	755,874	839,860	961,645	1,005,356
10	752,095	835,661	961,645	1,005,356
11	748,334	831,482	961,645	1,005,356
12	744,593	827,325	961,645	1,005,356
13	740,869	823,188	961,645	1,005,356
14	737,165	819,072	961,645	1,005,356
15	733,479	814,977	961,645	1,005,356
16	729,812	810,902	961,645	1,005,356
17	726,163	806,848	961,645	1,005,356
18	722,532	802,813	961,645	1,005,356
19	718,919	798,799	961,645	1,005,356
20	715,325	794,805	961,645	1,005,356
21	711,748	790,831	961,645	1,005,356
22	708,189	786,877	961,645	1,005,356
23	704,649	782,943	961,645	1,005,356
24	701,125	779,028	961,645	1,005,356
25	697,620	775,133	961,645	1,005,356

11. Existing conditions which may affect solar insolation and Project Output:

Five (5) street lamps in the landscaping on the north side of First Ave

No existing trees are expected to shade the Project if properly maintained

12. Point of Delivery: The Point of Delivery shall be the high side (the side that is of a higher voltage when the Project is producing Output and feeding that Output into the local electrical grid) of the Buyer-owned meter located on the south side of the Project.

13. Exterior coating materials: The following materials have been used to coat and protect the Project and will be serviced on the following schedule:

Surface	Coating Material	Manufacturer's Expected Lifespan (Years)	Contract Year(s) that Material will be reapplied

14. Telemetry Data: The Project shall record and report on the following data in no less than 15 minute intervals:

1. Output

Minimum, maximum and average kW

On an aggregate level and per inverter

Minimum, maximum and average Power factor

On an aggregate level and per inverter

2. Weather conditions

Minimum, maximum and average Solar insolation

Minimum, maximum and average atmospheric temperature



## EXHIBIT F - INSURANCE REQUIREMENTS

### **Insurance Requirements - Initial Period:**

Seller shall procure and maintain, and shall cause all contractors and subcontractors working on the Project to procure and maintain insurance amounts adequate to covers the risk associated with the specific scope of work, until the latter of when all of their obligations have been discharged in connection with construction of the Project or until the Commercial Operations Date, insurance against claims for injury to persons or damage to property that might arise from or in connection with Seller's activities on the Project, including its employees, representatives, agents, contractors, subcontractors, and material men.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.

Buyer in no way warrants that the minimum limits contained herein are sufficient to protect Seller from liabilities that might arise from or in connection with Seller's activities and work on the Project, including its employees, representatives, agents, contractors, subcontractors, and material men. Seller is free to purchase such additional insurance as it may be determined necessary.

**MINIMUM SCOPE AND LIMITS OF INSURANCE:** Seller shall provide coverage with limits of liability not less than those stated below:

#### **A. Commercial General Liability - Occurrence Form**

Policy shall include bodily injury, property liability coverage. damage and broad form contractual liability coverage.

General Aggregate	\$2,000,000
Products- Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Excess Liability-"Following Form"	\$10,000,000

The policy shall be endorsed to include blanket additional insured language.

#### **B. Automobile Liability**

Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance under this Agreement.

Combined Single Limit (CSL)	\$1,000,000
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The policy shall be endorsed to include blanket additional insured language.

#### **C. Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease - Each Employee	\$100,000
Disease - Policy Limit	\$500,000

Policy shall contain a waiver of subrogation against Buyer, the City of Mesa.

**D. Contractors Pollution Liability**

Per Occurrence	\$1,000,000
General Aggregate	\$2,000,000

- a. The policy shall provide for under this Agreement coverage for pollution liability that is the result of a breach of duties .
- b. The policy shall provide for protection against claims for third-party bodily injury, property damage, or environmental damage caused by pollution conditions resulting from contracting activities for which any or all of the Seller, and its contractors, subcontractors, and material men, are legally liable.
- c. The policy shall provide for cleanup costs when mandated by governmental entities, when required by law, or as a result of third-party claims.
- d. The policy shall be endorsed to include blanket additional insured language.
- e. If during the Initial Phase of the Project, the transportation of any hazardous materials or regulated substances is required, then the policy shall provide coverage for claims resulting in bodily injury, property damage or cleanup costs associated with a pollution condition from transported cargo.
- f. For a claims made policy, Seller warrants that any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Agreement is completed.
- g. Deductibles must not exceed five hundred thousand dollars (\$500,000.00).

**E. Builder's Risk Insurance or Installation Floater**

In an amount equal to costs of construction for the Project (but in no event less than one million five hundred thousand dollars (\$1,500,000.00) for the construction of the Project.

- a. Coverage shall be written on all risk, replacement cost basis and shall include to the extent commercially available coverage for soft costs, flood and earth movement, subject to customary sublimits.
- b. Policy shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy.
- c. Policy must provide coverage from the time any covered property becomes the responsibility of the Seller, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is

- being transported to the construction installation site, or awaiting installation, whether on or offsite.
- d. Policy shall contain a waiver of subrogation against Buyer, the City of Mesa. Seller is responsible for the payment of all policy deductibles.
  - e. Professional Liability \$1,000,000 per claim, \$1,000,000 aggregate

**ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

- 1. With the exception of Workers Compensation and, Seller's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources to the extent of Seller's negligence.

**NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to Buyer; except ten (10) days for nonpayment of premiums. Such notice shall be sent directly to City of Mesa, \_\_\_\_\_ and shall be sent by certified mail, return receipt requested.

**ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. Buyer in no way warrants that the above required minimum insurer rating is sufficient to protect the Seller from potential insurer insolvency.

**VERIFICATION OF COVERAGE:** Seller shall furnish Buyer with certificates of insurance (ACORD form or equivalent approved by Buyer) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by Buyer before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.

All certificates required by this Agreement shall be sent directly to City of Mesa,  
\_\_\_\_\_

Buyer reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time. DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.

**SUBCONTRACTORS:** Sellers' certificate(s) shall include all subcontractors as additional insureds under its policies or Seller shall furnish to Buyer separate certificates and endorsements for each subcontractor.

**APPROVAL:** Any modification or variation from the insurance requirements in this Agreement shall be made by the Mesa City Attorney's Office, whose decision shall be final. Such action will not require a formal Agreement amendment, but may be made by administrative action.

## **II. Insurance Requirements - Operations Phase:**

Seller shall procure and maintain, and shall cause all contractors and subcontractors working on the Project to procure and maintain insurance amounts adequate to covers the risk associated with the specific scope of work, from the Commercial Operations Date until all of their obligations have been discharged in connection with operation and maintenance of the Project, insurance against claims for injury to persons or damage to property that might arise from or in connection with Seller's activities and work on the Project, including its employees, representatives, agents, contractors, subcontractors, and material men.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.

Buyer in no way warrants that the minimum limits contained herein are sufficient to protect Seller, and/or the tenant under the Lease, from liabilities that might arise from or in connection with Seller's activities and work on the Project, including its employees, representatives, agents, contractors, subcontractors, and material men. Seller is free to purchase such additional insurance as it may be determined necessary.

**MINIMUM SCOPE AND LIMITS OF INSURANCE:** Seller shall provide coverage with limits of liability not less than those stated below:

### **A. Commercial General Liability - Occurrence Form**

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

General Aggregate	\$2,000,000
Products - Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Excess Liability- "Following Form"	\$10,000,000

The policy shall be endorsed to include blanket additional insured language.

### **B. Automobile Liability**

Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Agreement.

Combined Single Limit (CSL)	\$1,000,000
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The policy shall be endorsed to include blanket additional insured language.

### C. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
-----------------------	-----------

Employers' Liability

Each Accident	\$100,000
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Disease - Each Employee	\$100,000
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Disease - Policy Limit	\$500,000
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Policy shall contain a waiver of subrogation against Buyer, the City of Mesa.

### D. Contractors Pollution Liability

Per Occurrence	\$1,000,000
----------------	-------------

General Aggregate	\$2,000,000
-------------------	-------------

- a. The policy shall provide for complete professional service coverage, including coverage for pollution liability that is the result of a breach of duties under this Agreement.
- b. The policy shall provide for protection against claims for third-party bodily injury, property damage, or environmental damage caused by pollution conditions resulting from contracting activities for which any or all of the Seller, and its contractors, subcontractors, and material men, are legally liable.
- c. The policy shall provide for cleanup costs when mandated by governmental entities, when required by law, or as a result of third-party claims.
- d. The policy shall be endorsed to include blanket additional insured language.
- e. If during the Operations Period of the Project, the transportation of any hazardous materials or regulated substances is required, then the policy shall provide coverage for claims resulting in bodily injury, property damage or cleanup costs associated with a pollution condition from transported cargo.
- f. For a claims made policy, Seller warrants that any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Agreement is completed.
- g. Deductibles must not exceed fifty thousand dollars (\$50,000.00).

### E. Property Insurance

Coverage on Project	<u>Replacement Value</u>
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- a. Property insurance shall be written on an all risk, replacement cost coverage, including to the extent commercially available coverage for flood and earth movement, subject to customary sublimits.
- b. Policy shall be in force at the time of substantial completion of the Project's construction and continue until the termination of the ground lease or until title to the Project passes to Buyer, whichever is earlier.

**ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

1. With the exception of Workers Compensation, Seller's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources to the extent of Seller's negligence.

**NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to Buyer; except ten (10) days for nonpayment of premiums. Such notice shall be sent directly to City of Mesa \_\_\_\_\_ and shall be sent by certified mail, return receipt requested.

**ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. Buyer in no way warrants that the above-required minimum insurer rating is sufficient to protect the Seller from potential insurer insolvency.

**VERIFICATION OF COVERAGE:** Seller shall furnish Buyer with certificates of insurance (ACORD form or equivalent approved by the Buyer) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by Buyer before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.

All certificates required by this Agreement shall be sent directly to City of Mesa \_\_\_\_\_. Buyer reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time. DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.

**SUBCONTRACTORS:** Sellers' certificate(s) shall include all subcontractors as additional insureds under its policies or Seller shall furnish to Buyer separate certificates and endorsements for each subcontractor.

**APPROVAL:** Any modification or variation from the insurance requirements in this Agreement shall be made by the Mesa City Attorney's Office, whose decision shall be final. Such actions will not require a formal Agreement amendment, but may be made by administrative action.

## EXHIBIT G - PROJECT LICENSE

THIS **LICENSE AGREEMENT** ("License") is made and dated this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, (the "**Effective Date**") by and between The City of Mesa, Arizona, whose address is P.O. Box 1466, Mesa, AZ 85211-1466 ("**Licensor**"), and Ameresco Inc. a Delaware Corporation, whose address is \_\_\_\_\_ ("**Licensee**"). Each of Licensor and Licensee is sometimes referred to in this License as a "**Party**" and collectively as the "**Parties**."

### RECITALS

A. Licensor is the owner of certain real property located in Maricopa County, State of Arizona, more particularly described on the attached Exhibit A, which is incorporated herein by this reference (the "**Project Site**"). The Project Site is a portion of the larger parcel of land, owned by the Licensor, located at \_\_\_\_\_, Mesa, Arizona (the "**Premises**") as described in the AGREEMENT.

B. Licensor and Licensee have entered into a Power Purchase Agreement dated on or about the Effective Date (the "**AGREEMENT**") pursuant to which Licensee has agreed to sell to Licensor, and Licensor has agreed to purchase from Licensee, energy generated by a photovoltaic electric generating system mounted on a parking and solar shade structure owned, operated and maintained by Licensee (the "**Project**"). Capitalized terms not otherwise defined herein shall be deemed to have the meaning set forth therefor in the AGREEMENT.

C. The AGREEMENT is for a term of twenty-five (25) years, beginning on \_\_\_\_\_, 20\_\_ and ending on \_\_\_\_\_, 20\_\_ unless earlier terminated or extended, as provided in the AGREEMENT.

D. Pursuant to the Agreement, Licensor has agreed to grant Licensee a non-exclusive license to enter upon the Project Site for the purposes and on the terms set forth in this License.

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

1. **GRANT OF LICENSE.** Licensor, in exchange for the consideration provided by Licensee as set forth in the Agreement, including but not limited to the energy provided by the Project, hereby grants to Licensee a license to access, enter, cross, and use the Project Site for the limited purposes of (a) installing on, maintaining, repairing, replacing, operating, interconnecting and removing from the Project Site the Project; (b) vehicular and pedestrian access to the Project; and (c) temporary parking of vehicles on the Project Site for the foregoing limited purposes (the "**License**"). The License may be exercised by Licensee and by Licensee's employees, agents, and contractors. Licensee will consult with Licensor to schedule and coordinate Licensee's activities on the Project Site, as set out in the AGREEMENT. Such notice by Licensee may be given via email to the address for Licensor set forth in the AGREEMENT. In addition, Licensor hereby grants to Licensee the right to receive sunlight on the Project Site during every hour of each day that sunlight can be received by the Project, subject to the terms of the AGREEMENT.

2. **TERM; NATURE OF LICENSE.** This term of this License and the rights granted herein shall be for twenty-five (25) years beginning on the Commercial Operation Date under the AGREEMENT.

Additionally, this License shall survive and continue until the date that is one hundred and eighty (180) days following the date of expiration, or any earlier termination of this License resulting from either a breach of the provisions set forth herein or pursuant to the AGREEMENT, as necessary for the Parties to complete all obligations hereunder. This License is non-revocable except upon expiration or earlier termination of the AGREEMENT, as described therein.

### **3. USE OF PREMISES.**

**3.1 Use Rights.** Licensee's right to use the Project Site during the Term is specifically limited to solar energy conversion, the collection and transmission of electrical energy to and from the Project, and for related and incidental purposes and activities, including but not limited to: (a) locating, constructing, installing, operating, improving, maintaining, repairing, relocating, and removing the Project on and from the Project Site; (b) constructing and installing supporting structures, including but not limited to ground fasteners, such as piles and posts, and all necessary below- and above-ground foundations; (c) accessing the Project Site and the Project (including but not limited to access for lifting, rigging, and material-handling equipment); (d) installing those security measures approved by Licensor to secure the Project Site and Project; and (e) installing, maintaining, using, and repairing on the Project Site cables, inverters, meters, electrical wires and cables required for the collection and transmission of electrical energy to and from the Project.

**3.2 Non-Interference with Insolation.** Except to the extent expressly permitted under the terms of the AGREEMENT, Licensor will not, on the Project Site or any adjacent property owned by Licensor, construct buildings or structures, plant trees or vegetation of any type or allow any trees or other vegetation to grow in a manner that would overshadow or otherwise block access of sunlight to the Project.

**3.3 Laydown Area.** During any maintenance or repair activities, Licensee may temporarily use the portions of the Project Site designated in Exhibit B for storage of Project components, temporary vehicle parking, and temporary stockpiling of other materials or equipment necessary for the installation of the Project, taking all commercially reasonable steps to maintain the Project Site in compliance with county and municipal ordinances and regulations.

**3.4 Notice of Entry.** On and after the Commercial Operation Date as set forth in the AGREEMENT, Licensee shall notify Licensor in advance and obtain prior approval before entering the Project Site to operate or maintain the Project except in situations where there is imminent risk of damage to persons or property, in which event Licensee shall provide such notice as is practicable under the circumstances. Licensee's contractor's personnel may be escorted by City representatives while on the Project Site.

**3.5 Impacts to Project Site.** Upon completion of installation of the Project, Licensee will replace any disturbed soil or vegetation, and restore the Project Site to as near the condition of the Project Site as of the Effective Date as is commercially reasonable. Licensee shall immediately repair, replace, or reimburse Licensor for any damage to the Project Site caused by Licensee's negligent acts or omissions on the Project Site. The Parties agree that installation of the Project will require mounting and/or supporting such system on the ground of the Project Site, and such does not constitute damage to the Project Site within the meaning of this Section 3.5.



**3.6 Rights Not Exclusive.** Licensors reserves to itself, its successors and assigns, the right to grant easements and rights of way over and under the Project Site for utilities, cell tower and other uses, so long as such easements and rights of way do not create interference with the Project's insolation and access to sunlight, as such access exists as of the Effective Date of this License, or the Use Rights set forth in Section 3.1 hereof. Licensee acknowledges and agrees that the Project Site will be subject to and burdened by such easements and rights of way.

**3.7 Adjacent Property Arts Center Use.** Licensee further acknowledges and agrees that the Project Site is adjacent to, and serves as a parking facility for, Licensors Mesa Arts Center Facility, a premier arts and entertainment venue for the Licensors City of Mesa. Licensee shall, to the maximum extent commercially feasible, in its installation, operation and use of the Project Site and the exercise of the Use Rights provided in Section 3.1 hereof, avoid interrupting or interfering with the operations and events at the Mesa Arts Center Facility and the associated use of the Project Site as a parking facility.

**3.8 Right of Ingress and Egress.** Licensee, its agents, employees, contractors and suppliers have a non-exclusive right of ingress to and egress from the Project Site.

**3.9 Right of Inspection.** Licensors retains the full right of entry in and to the Project Site without notice for any purpose under this License or the AGREEMENT, or in the exercise of its governmental functions, and nothing herein constitutes a waiver of such functions or the police powers of Licensors City of Mesa in its capacity as a political subdivision of the State of Arizona.

**3.10 Care and Maintenance of the Project Site.** Licensee agrees that nothing shall be done or kept on the Project Site and no improvements, changes, alterations, additions, maintenance or repairs shall be made to the Project Site which might be unsafe or hazardous to any person or the Project Site. Licensee shall not do or permit to be done any act or thing upon the Project Site that will constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this License or to the operation of the Mesa Arts Center Facility.

**3.11 Noise, Vibrations, Odors and Annoyances.** Licensee shall conduct its operation of the Project in an orderly and proper manner so as not to commit any nuisance in the Project Site or annoy, disturb, or be offensive to the public and shall take all reasonable measures, using the latest known and practicable devices and means, to eliminate any unusual, nauseous or objectionable noise, gases, vapors, odors and vibrations and to maintain the lowest possible sound level in its operations. Licensors acknowledges and agrees that customary and reasonable amounts of sound, noise, gases, vapors, odors and vibrations generated during the installation, and maintenance of the Project Site for the Project and the Use Rights provided in Section 3.1 hereof do not constitute a violation of the foregoing restrictions.

**3.12 Accessibility.** Licensee shall not do or permit to be done anything which might interfere with or hinder emergency responders in their duties.

**3.13 Utilities and Services.** Licensee shall pay all charges and fees for utilities used during the construction of the Project, including all tap fees. The charges and method of payment for each utility or service shall be determined by the appropriate supplier of the utility or service in accordance with applicable laws and regulations, on such basis as the appropriate supplier of the utility or service may establish.

**3.14 Advertising.** Licensee shall not install or have installed or allow to be installed upon or within the Project Site, without the prior written approval of Licensors in its sole and absolute discretion, any sign, either lighted or unlighted, poster or other display of advertising media, including but not limited to material supplied by manufacturers of merchandise offered for sale.

#### **4. INDEMNITY AND REMEDIATION.**

4.1 Licensee Indemnification. Licensee shall indemnify, defend and hold Licensor and its directors, officers, employees, agents, and volunteers ("Licensor's Indemnified Parties"), harmless from and against all Losses incurred by the Licensor Indemnified Parties from: (i) any claim for or arising out of any injury to or death of any Person or loss or damage to property to the extent arising out of Licensee's (or its Installers', contractors', or subcontractors') negligent acts or omissions or willful misconduct; (ii) Licensee's violation of Applicable Law; or (ii) any failure to properly handle or dispose of any Hazardous Materials brought onto the Premises by Licensee or by any of Licensee's employees, agents, volunteers, and invitees, including but not limited to Licensee's Installer and contractors. Such duty to indemnify with respect to any injuries or death to persons or damage to property arising from the generation of electricity from the Project shall not extend to incidents occurring on Licensor's side of the Point of Delivery except to the extent caused by the negligent acts or omissions or willful misconduct of Licensee. Such duty to indemnify shall not apply to any action or claim, whether in tort (including negligence and strict liability), contract or otherwise for any loss, injury, or costs resulting from interruptions in service. To the extent Licensee declines to defend Licensor against any action seeking to impose upon both or either liability for any claims, and Licensee is later judged by a court of competent jurisdiction in a non-appealable decision to have been obligated to defend Licensor, then, Licensee shall pay to Licensor all additional court costs, investigation costs, and reasonable attorneys' fees incurred by Licensor in effecting such defense in addition to any other sums that Licensee may be obligated to pay by reason of the entry of a judgment against Licensor in such litigation. Licensee waives its right of recourse as to Licensor's Indemnified Parties to the extent indemnification applies, and Licensee shall require its insurer(s) to waive its/their rights of subrogation to the extent such action is required to render such waiver by Licensee effective. Licensor will give Licensee prompt notice of any Claims for which indemnification is or will be sought under this Section and will cooperate and assist Licensee in the defense of the Claims.

4.2 Licensor Indemnification. To the extent permitted by law, Licensor shall indemnify, defend and hold Licensee, its contractors, subcontractors, shareholders, directors, officers, employees, agents, and Financing Party ("Licensee's Indemnified Parties"), harmless from and against all Losses incurred by the Licensee's Indemnified Parties to the extent arising from or out of any claim for or injury to or death of any Person or loss or damage to property to the extent arising out of the negligence or willful misconduct of Licensor.

4.3 Survival of Indemnification. The obligations of indemnification hereunder shall survive termination of this License for three (3) years.

**5. COMPLIANCE WITH LAWS.** Each party will comply with all laws, ordinances, rules, regulations and permit conditions related to the Project Site and the Premises and such Party's operations thereon, including but not limited to all environmental regulations regarding the storage, use and disposal of hazardous materials and special wastes and regarding the releases or threatened releases of same to the environment.

#### **6. HAZARDOUS MATERIALS**

Licensee Hazardous Materials. Licensee shall not introduce or use any Hazardous Materials on, in or under the Project Site in violation of any Applicable Legal Requirements. If Licensee directly causes a

release of Hazardous Materials, Licensee shall perform all required remediation. Licensee shall indemnify and hold harmless Licensor from any costs or expenses incurred by Licensor due to any release of Hazardous Materials on the Project Site caused by Licensee or its subcontractors in excess of quantities allowed under Applicable Legal Requirements.

7. **INSURANCE.** Until such date, if any, as the Project is removed from the Project Site and the Project Site is restored in accordance with the AGREEMENT and this License and all applicable laws, Licensee will, at its expense, maintain a commercial general liability insurance policy in accordance with the AGREEMENT. Certificates of such insurance must be provided to Licensor as provided in the AGREEMENT.

8. **MISCELLANEOUS.**

8.1 **Notices.** All notices or other communications required or permitted by this License shall be given in accordance with the terms of the AGREEMENT.

8.2 **Waiver.** The failure of a Party to insist on the strict performance of any provision of this License or to exercise any right, power, or remedy upon a breach of any provision of this License will not constitute a waiver of any provision of this License or limit the Party's right to enforce any provision or exercise any right in the future.

8.3 **Modification.** No modification or amendment of this License is valid unless made in writing and executed by the Parties.

8.4 **Governing Law.** This License and any disputes arising out of this License will be governed by and construed under the laws of the State of Arizona.

8.5 **Waiver of Consequential Damages.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS LICENSE, NEITHER PARTY WILL BE ENTITLED TO, AND EACH OF LICENSOR AND LICENSEE HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER, CONSEQUENTIAL, INCIDENTAL, AND PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER ARISING, WHETHER IN CONTRACT, IN TORT, OR OTHERWISE, UNDER OR WITH RESPECT TO ANY ACTION TAKEN IN CONNECTION WITH THIS LICENSE.

8.6 **No Partnership.** Nothing contained in this License may be construed to create an association, joint venture, trust or partnership covenant, obligation or liability on or with regard to any one or more of the Parties to this License.

8.7 **No Conflict.** Nothing in this License shall be deemed to amend or modify the terms of the AGREEMENT or any other agreement between Licensor and Licensee. In the event of any conflict between this License and the terms of the AGREEMENT, the terms of the AGREEMENT shall control in all instances.

8.8 **Assignments; Successors and Assigns.** This License may be assigned or transferred only in accordance with the terms of the AGREEMENT. This License and the AGREEMENT shall run with the Project Site and inure to the benefit of each of Licensor and Licensee, and their respective heirs, successors, and assigns. Notwithstanding the foregoing, Licensor specifically agrees, without any further request for prior consent but with advance written notice to Licensor, to permit Licensee to assign, transfer or pledge its rights under this License and its rights to the Project as collateral for the purpose of

obtaining financing or refinancing in connection with the Project (including, without limitation, pursuant to a sale-leaseback or partnership flip transaction) and to sign any agreement reasonably requested by Licensee or its Lenders to acknowledge and evidence such agreement. The Licensor agrees to cooperate with Licensee in the negotiation and execution of any reasonable amendment or addition to this License required by the Financing Parties so long as such amendment or addition does not in any way materially alter or amend the rights and obligations of the Licensor herein.

**8.9     Counterparts.** This License may be executed in two or more counterparts, each of which will be deemed an original, but all of which together constitute one and the same instrument.

**8.10     Severability.** Any term, covenant or condition in this License that to any extent is invalid or unenforceable in any respect in any jurisdiction shall, as to such jurisdiction, be ineffective and severable from the rest of this License to the extent of such invalidity or prohibition, without impairing or affecting in any way the validity of any other provision of this License, or of such provision in other jurisdictions. The Parties shall use good faith efforts to replace any provision that is ineffective by operation of this Section with an effective provision that as closely as possible corresponds to the spirit and purpose of such ineffective provision.

**8.11     Title to Project.** Subject to Licensor's purchase rights as set forth in the AGREEMENT, Licensee or Licensee's Financing Party (as defined in the AGREEMENT) shall be the legal and beneficial owner of the Project. The Parties agree that the Project is personal property and shall not attach to or be deemed a part of, or fixture to, the Project Site or the Premises. The Project shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Licensor covenants that it will place all persons having an interest in the real property comprising the Project Site on notice of the ownership of the Project and the legal status or classification of the Project as personal property. Licensor and/or Licensee shall make any necessary filings to disclaim the Project as a fixture in the appropriate Land Registry to place all interested parties on notice of the ownership of the Project by Licensee.

**8.12     Liens.** Licensor does not and shall not have a lien on any of Licensee's personal property, including, but not limited to, the Project, Licensee's trade fixtures, removable equipment, fixtures and all improvements ("Licensee's Assets"), and all of Licensee's Assets shall be deemed the personal property of Licensee in accordance with applicable state law and the UCC. Licensor expressly waives any lien, levy, rights of distraint or related rights, if any, granted or conferred upon Licensor by applicable law on any of Licensee's Assets, and to the extent any such lien or other rights is nevertheless imposed upon Licensee's Assets, Licensor subordinates such lien to the lien of any Lender or mortgagee having a security interest in any of Licensee's Assets (a "Financing Party"), and will specifically acknowledge the rights of any Financing Party. This provision is operative without execution of any further documentation, and may be relied on by any Financing Party in extending credit to Licensee. Any Financing Party shall be a third-party beneficiary of this section of this License and may take action against Licensor (i) to enforce its rights and Licensee's rights or (ii) in the event of a breach by Licensor of its duties under this provision.

**8.13     No Public Utility.** Nothing contained in this License shall be construed as an intent by Licensee to dedicate its property to public use or subject itself to regulation as a public utility, an electric utility, an investor owned utility, a municipal utility, generation company or a merchant power plant otherwise known as an exempt wholesale generator.

IN WITNESS WHEREOF, Licensor and Licensee have caused this License to be executed and delivered by their duly authorized representatives as of the Effective Date.

LICENSOR:

The City of Mesa,  
a municipal corporation

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LICENSEE:

\_\_\_\_\_,  
a[n] \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **EXHIBIT A of LICENSE**

### **DESCRIPTION OF THE PROJECT SITE**

That certain real property located in the County of Maricopa, State of Arizona described as follows:

A portion of land located in the State of Arizona, County of Maricopa, Section 22, Township 1 North, Range 5 East, generally known as Maricopa Assessor Parcel numbers 138-40-008, 138-40-009, 138-40-013, 138-40-014, 138-40-015, 138-40-016; and further described as:

138-40-008

That part of Lots 1 and 2, Block 10, MESA CITY, according to Book 3 of Maps, page 11, records of Maricopa County, Arizona, described as follows:

Beginning at a point 157 feet East of the Southwest corner of Lot 2, Block 10; thence East 43 feet; then North 165 feet; thence West 43 feet; thence South 165 to the beginning.

138-40-009

The East 45 feet of the West 157 feet of the South 165 feet of Lot 2, Block 10, CITY of MESA, according to Book 23 of Maps, page 18, records of Maricopa County, Arizona.

138-40-013

The West 55 feet of the East 108.7 feet of the South 165 feet of Lot 2, Block 10, Mesa, according to Book 23 of Maps, page 18, records of Maricopa County, Arizona.

138-40-014

The West 57 feet of the South 165 feet of Lot 2, Block 10, MESA, according to Book 23 of Maps, page 18, records of Maricopa County, Arizona.

138-40-015

Beginning at a point 61.5 feet West of the Southeast corner of Lot 3, Block 10, MESA CITY running thence North 157 feet; West 55 feet; South 157 feet, East 55 feet to the point of beginning according to Book 3 of maps, page 11, records of Maricopa County, Arizona.

138-40-016

The South 157 feet of the East 61.5 feet of Lot 3, Block 10, CITY OF MESA, according to Book 23 of Maps, page 18, records of Maricopa County, Arizona.

**EXHIBIT B of LICENSE**

**Storage location as determined by City of Mesa**

DRAFT

## EXHIBIT H - INTERCONNECTION AGREEMENT

### AGREEMENT FOR INTERCONNECTION

#### BETWEEN

#### THE CITY OF MESA AND AMERESCO, INC.

**This** Agreement for Interconnection Service ("Agreement") is made and entered into as of the \_\_\_\_ of \_\_\_\_\_, 201\_\_\_\_ ("Effective Date"), by and between Ameresco, Inc., a Delaware Corporation (hereinafter "Generator"), and the **CITY OF MESA**, an Arizona municipal corporation organized and existing under the laws of the State of Arizona (hereinafter "City"). From time to time Generator and City of Mesa shall be individually referred to herein as a "Party" and collectively as the "Parties."

**WHEREAS**, Generator is installing a Generation Equipment (hereinafter called the "Generation Equipment") at Generator's location (**Address**) ("the Site");

**WHEREAS**, the Generation Equipment is located in City's Energy Resources Department's electric utility's ("ERD Electric Utility") distribution service area (the "Electric Service Area"), and ERD Electric Utility provides electric power and energy to the Site;

**WHEREAS**, Generator desires to establish interconnection with ERD Electric Utility at the Site so Generator may operate a Generation Equipment in parallel with the ERD Electric Utility electric system (the "System");

**WHEREAS**, City requires an executed Agreement for the interconnection of service prior to operation of any Generation Equipment in parallel with the System;

**NOW, THEREFORE**, in consideration of the Recitals and the mutual undertakings and agreements contained in this Agreement, the Parties covenant and agree as follows:

1. **APPLICABILITY:** In order for Generator to be eligible to enter into this Agreement, Generator represents and warrants that it has met all of the following conditions ("Applicability"):
  - A. Generator has complied with all Generator Obligations as set forth in this Agreement that are required to be complied with prior to interconnection, including but not limited to those set forth in Section 4 and Section 5 hereof.
  - B. Generator has submitted a complete record of the proposed equipment satisfactory to ERD Electric Utility, and all information, specifications, designs and test results specified in, and consistent with the requirements of, this Agreement (including Exhibit A and Exhibit B).
  - C. Generator has provided evidence of insurance as required in Section 16 of this Agreement and such insurance has been accepted as to form and requirements by the City.



2. TERM: This Agreement shall become effective as of the Effective Date and, unless otherwise provided herein, will continue in effect from year to year until either Party terminates the Agreement. Any such termination (other than termination for cause by City) requires written notice given at least ninety (90) days prior to the expiration of the existing term. No termination by Generator is permitted at any time Generator's Generation Equipment remains interconnected to the System.
3. INTERCONNECTION POINT: The point(s) of interconnection ("Interconnection Point(s)") must be as indicated in Exhibit A and B, such determination to be solely within ERD Electric Utility's discretion.
4. GENERATOR'S OBLIGATIONS: Generator is, at its own risk and expense, responsible for all costs and requirements relating to the Generation Equipment, any cost and requirement to maintain, operate, and repair Generator's side of the Interconnection Point, and all costs incurred by the City or ERD Electric Utility incurred as a result of interconnecting, or maintaining its System's interconnection with the Generation Equipment in the manner required by City. These obligations include, but are not limited to:
  - A. Having any necessary permits to own and operate the Generation Equipment as then required by any state, local, or other authority having jurisdiction and use of a licensed, bonded and insured contractor to design and install the Generation Facility. Eligible license classifications for dealers include: B-, C-05 (Solar), C-11, KB-1, KB-2, KO- (Solar), K-05 (Solar), K-11, or other license accepted by City. Cooperating with ERD Electric Utility including complying with any City Electric Utility Interconnection Guidelines as they may be revised from time to time.
  - B. Complying with the Technical Interconnection Requirements set forth in Exhibit B attached hereto and hereby incorporated as part of this Agreement as such requirements may be modified from time to time.
  - C. Operating and maintaining the Generation Equipment and all other Generator-owned equipment on Generator's side of the Interconnection Point(s) in good repair, in accordance with manufacturer's guidelines and prudent electrical practices, and providing written evidence of such compliance to City upon request.
  - D. The payment of all costs, fees, and expenses, including those set forth in Section 5 of this Agreement, relating to the initial installation and interconnection and/or reasonable changes in Generator's connection, protective, or control equipment that may be required from time to time to meet conditions and requirements as set forth in the then current Rules and Regulations- Electric Utility, any City permitting requirements, and any other currently existing requirements of the City relating to Generator's interconnection with the System. Generator's obligation for payment to City also includes any and all costs City incurs to accommodate approved Generator modifications to its Generation Equipment.

- E. Generator must provide valid and update evidence of insurance accepted as to form and requirements by the City.
5. [SECTION INTENTIONALLY OMITTED]
6. **GENERATOR ACKNOWLEDGMENT: Generator understands, acknowledges, and agrees that City's review of information, application, specifications, designs and test results shall not be construed as confirming or endorsing the design or as any warranty of safety, durability or reliability of Generator's Generation Equipment, or the technical or economic feasibility of the Generation Equipment. The sole purpose of City and ERD Electric Utility review is to evaluate whether the Generation Equipment will have an impact on the City's System. City is not responsible for any disruption to Generation Equipment's output.**
7. **PARALLEL OPERATION:**
- A. Generator must not commence parallel operation of the Generation Equipment until ERD Electric Utility has: i) received documented assurance in the form of manufacturer's drawings and UL Listings from Generator that all parallel generation at the facility is incapable of energizing any portion of the System that may have separated from the rest of the System, ii) received documented assurance that all Generation Equipment is installed in accordance with the requirements of Exhibit B, and iii) has given final written authorization to Generator.
- B. ERD Electric Utility reserves the right in its sole and absolute discretion to review all information, specifications, designs, and test results relating to the Generation Equipment. Generator understands that any review by ERD Electric Utility is only to ensure that it will not harm or interfere with ERD Electric Utility's electrical distribution system.
- C. Generator must permit the City to witness the functional testing of all protective equipment and schemes. ERD Electric Utility must inspect the Generation Equipment and witness testing of any equipment or devices associated with the interconnection **prior to** giving written approval for parallel operation. Such prior written approval will not be unreasonably withheld by ERD Electric Utility.
- D. To prevent hazardous connections, Generator must install and properly maintain the devices specified in Exhibit B. In addition, Generation Equipment control circuit(s) must be designed in accordance with all electric utility standards. Manufacturer's literature and proof of UL listing may be used to provide the necessary documentation.
- E. Generator shall make such modifications on an ongoing basis as necessary and requested by ERD Electric Utility to the Generator's Generation Equipment to enable ERD Electric Utility to operate its System as safely and reliably as possible.
- F. ERD Electric Utility reserves the right to inspect the Generation Equipment whenever it has reason to believe that (i) Generator may be operating in a manner unsafe or harmful to the System, City personnel, the public, or customers, or (ii) Generator is in default or

has otherwise violated the terms of this Agreement or any other Generator agreement associated with the Generation Equipment. In such circumstances, ERD Electric Utility may also request that Generator test the Generation Equipment and provide it the results in writing irrespective of periodic testing of equipment that may be required or has been completed. Alternately, and at its option, City may, at Generator's expense, test the Generation Equipment.

8. INTERRUPTION OF INTERCONNECTION AND DISCONNECTION:

- A. ERD Electric Utility, in its sole and absolute discretion, may require Generator to disconnect the Generation Equipment from the System or interrupt or reduce deliveries of energy to ERD Electric Utility:
- i. When necessary to investigate, inspect, construct, install, maintain, repair, replace, or remove any ERD Electric Utility equipment, any part of System, or the Generation Equipment; or
  - ii. Because of emergencies, forced outages, uncontrollable forces, or compliance with prudent electrical practice; or
  - iii. Generator is in default of this Agreement.
- B. Notwithstanding any other provision of this Agreement, if ERD Electric Utility, in its sole and absolute discretion, determines that continued operation of the Generation Equipment may:
- i. Endanger City or ERD Electric Utility personnel or the general public; or
  - ii. Impair the integrity of the System;
- or if:
- iii. A System emergency exists;
  - iv. A System maintenance or construction outage is in process;
  - v. Generator is in default of this Agreement;
  - vi. Generator is in default of any other documents relating to the Generation Equipment;
- then, in any such case, ERD Electric Utility may disconnect the Generation Equipment from the System. In such event, the Generation Equipment must remain disconnected until ERD Electric Utility is satisfied that the condition(s) resulting in the disconnection have/has been completely and satisfactorily corrected.
- C. ERD Electric Utility, as it deems prudent, may open the load-break disconnect device specified in Exhibit B, to separate the Generation Equipment from the System. Generator must not close the load-break disconnect switch unless ERD Electric Utility has first energized its service to the Interconnection Point(s).

9. REQUIRED GENERATOR CHANGES: ERD Electric Utility may provide notice to Generator of any changes required by ERD Electric Utility if Generator's existing Generation Equipment is not or is no longer adequate to protect the System and its safety and reliability. Absent any immediate

threat of danger to persons or damage to property, Generator must institute such changes within a reasonable period, not to exceed sixty (60) days, after receipt of notice from ERD Electric Utility. Except as may be otherwise provided in this Agreement, Generator must make such changes at its own expense, and only after receiving written approval from ERD Electric Utility.

10. [SECTION INTENTIONALLY OMITTED]

11. DATA: Generator agrees to let ERD Electric Utility monitor the output of the Generation Equipment and will, if available, provide ERD Electric Utility output information to which Generator has access. Generator acknowledges that City and/or ERD Electric Utility collected data from the Generation Equipment constitutes public information.

12. PROTECTION AND SECURITY OF CITY PERSONNEL AND PROPERTY: Generator must not compromise any safety or security measures taken by City. Generator must exercise reasonable care to prevent unauthorized access to the System or ERD Electric Utility equipment located at the Site.

13. UNCONTROLLABLE FORCES: Neither Party shall be considered to be in default in the performance of any of its obligations under this Agreement, other than the obligation of the Party to make payment of amounts due, as a result of causes beyond its reasonable control, including but not limited to, failure or threat of failure of facilities, unusually severe weather, flood, drought, earthquake, storm, lightning, fire, epidemic, and other natural catastrophes, quarantine restrictions, war (declared or undeclared), sabotage, computer virus, act of a public enemy, insurrection, riot, terrorism, civil disturbance, labor disturbance, labor disputes, strike, work stoppage caused by jurisdictional or similar disputes, restraint by court order or public authority, inability to obtain or delay in obtaining necessary authorizations or approvals from any governmental agency or authority, or any like cause, beyond the control of a Party which by the exercise of due diligence and reasonable foresight such Party should not be expected to have avoided and which by the exercise of due diligence such Party is unable to overcome. Nothing contained herein shall be construed to require either Party to settle any strike or labor dispute in which it may be involved. If Generator is rendered unable to fulfill any of its obligations under this Agreement by reason of this Section 13, it must give prompt written notice of such fact to the City and must exercise due diligence to remove such inability with all reasonable dispatch.

14. INDEMNIFICATION: To the fullest extent permitted by law, Generator must indemnify, defend and hold harmless City, ERD Electric Utility, any and all of the members of their governing bodies, their officers, agents, representative, and employees ("City Indemnifieds") for, from and against any and all claims, demands, suits, costs of defense, attorneys' fees, witness fees of any type, losses, damages, expenses, and liabilities, whether direct, indirect or consequential, related to, arising from, or in any way connected with: (a) Generator's or any non- ERD Electric Utility party's

design, construction, installation, inspection, maintenance, testing or operation of the Generation Equipment used in connection with this Agreement; and (b) the interconnection of the Generation Equipment with, and delivery of energy from the Generating Equipment to the System. Generator's obligations under this Section shall survive the termination of this Agreement.

15. LIABILITY AND DAMAGES: NEITHER PARTY WILL BE ENTITLED TO, AND EACH OF CITY AND GENERATOR HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER, CONSEQUENTIAL, INCIDENTAL, AND PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER ARISING, WHETHER IN CONTRACT, IN TORT, OR OTHERWISE, UNDER OR WITH RESPECT TO ANY ACTION TAKEN IN CONNECTION WITH THIS AGREEMENT.
16. INSURANCE: Upon execution of this Agreement, Generator must deliver a certificate of insurance or self-insurance, if reasonably acceptable to the City, and endorsement directly to City demonstrating that Generator has obtained/has general liability insurance as required by City.
  - A. Any such general liability insurance shall include coverage for the Site, operations, and contractual liability.
  - B. Certificates of Insurance and endorsements evidencing the coverage and provisions required in this Section 16 shall be furnished to City of Mesa prior to interconnection.
  - C. The general liability insurance specified in this Section 16 must name City, its officers, employees, volunteers and elected officials as additional insureds and shall contain a severability of interest and waiver of subrogation clause.
  - D. Generator must continue to provide insurance as required by the City throughout the period that the Generation Equipment is interconnected. Generator must provide to the City, at its expense, updated certificates of insurance in advance of expiration of any prior certificates.
17. NOTICES:
  - A. Any formal notice, demand or request provided for in this Agreement shall be in writing and shall be properly served, given or made, if delivered in person, sent by U.S. mail, postage prepaid, or if sent by overnight delivery service, addressed as follows. Notice may also be given by electronic mail (e-mail); provided, a copy of the notice shall be promptly mailed or sent by overnight delivery service to the appropriate address in the manner stated below:

<p style="text-align: center;"><u>Hand Delivery</u></p> <p>City of Mesa</p> <p>Attn: Energy Resources Program Manager</p> <p>640 North Mesa Drive</p> <p>Mesa, AZ 85211-1466</p>	<p style="text-align: center;"><u>Hand Delivery</u></p> <p>Company</p> <p>Address</p> <p>Attn:</p>
<p style="text-align: center;"><u>U.S. Postal Service</u> City of Mesa:</p> <p>City of Mesa</p> <p>Attn: Energy Resources Program Manager</p> <p>PO Box 1466</p> <p>Mail Stop 5030</p> <p>Mesa, AZ 85211-1466</p>	<p style="text-align: center;"><u>U.S. Postal Service</u> Generator:</p> <p>Company</p> <p>Address</p> <p>Attn:</p>

- B. Either Party may change its address or the person designated to receive notification hereunder by giving notice of such change in the manner provided above.
18. NO THIRD PARTY BENEFICIARIES AND TRANSFER OF INTEREST IN AGREEMENT: This Agreement is for the sole benefit of the Parties and shall not be construed as granting rights to any person other than the Parties. This Agreement shall inure to the benefit of and be binding upon any successor or assign of City and/or ERD Electric Utility whether such succession or assign is by voluntary transfer or operation of law. Generator must not assign this Agreement or its rights or obligations hereunder without the prior written consent of ERD Electric. At City's sole discretion, any successor to Generator in the operation of the Generation Equipment intending to interconnect with ERD Electric Utility may be required to negotiate and execute a separate Agreement for Interconnection Service prior to interconnecting with ERD Electric Utility.
19. [SECTION INTENTIONALLY OMITTED]
20. NON-WAIVER: None of the provisions of this Agreement shall be considered waived by either Party except when such waiver is given in writing. No waiver by either Party of any one or more defaults in the performance of the provisions of this Agreement shall operate or be construed as a waiver of any other existing or future default or defaults.
21. [SECTION INTENTIONALLY OMITTED]

22. CONFORMANCE TO LAW, GOVERNING LAW AND VENUE: Generator must conform to all applicable federal, state, county and local laws, ordinances, codes, rules, regulations and permit requirements, including construction, zoning, operating and environmental regulations. This Agreement shall be construed in accordance with the laws of the State of Arizona without regard to its conflict of laws provisions. Any court action arising under this Agreement shall be initiated and prosecuted in a state or federal court in Maricopa County, Arizona.
23. SEVERABILITY OF AGREEMENT: If any provision hereof or any portion of any provision hereof shall be deemed invalid, illegal or unenforceable, such invalidity, illegality, or unenforceability, shall not alter the remaining portion of any provision, or any other provision hereof, as each provision of the Agreement shall be deemed to be severable from all other provisions hereof.
24. NOTICE: Generator is hereby notified of the following Arizona Revised Statutes to the extent applicable to an agreement of this nature of this Agreement:
- A. A.R.S. § 23-214 - Verification of employment eligibility; e-verify program; economic development incentives; list of registered employers
  - B. A.R.S. §35-392 - State treasurer and retirement System divestments; policy notices
  - C. A.R.S § 38-511 – Cancellation of political subdivision and state contracts;
  - D. A.R.S. § 39-121 - Inspection of public records
  - E. A.R.S. § 41-4401 – Government procurement; e-verify requirement
  - F. Arizona Constitution Article 9, 13, A.R.S. § 41-17106 – expenditures limited to budgeted purposes.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date written above.

**GENERATOR**

BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

**CITY**

BY \_\_\_\_\_

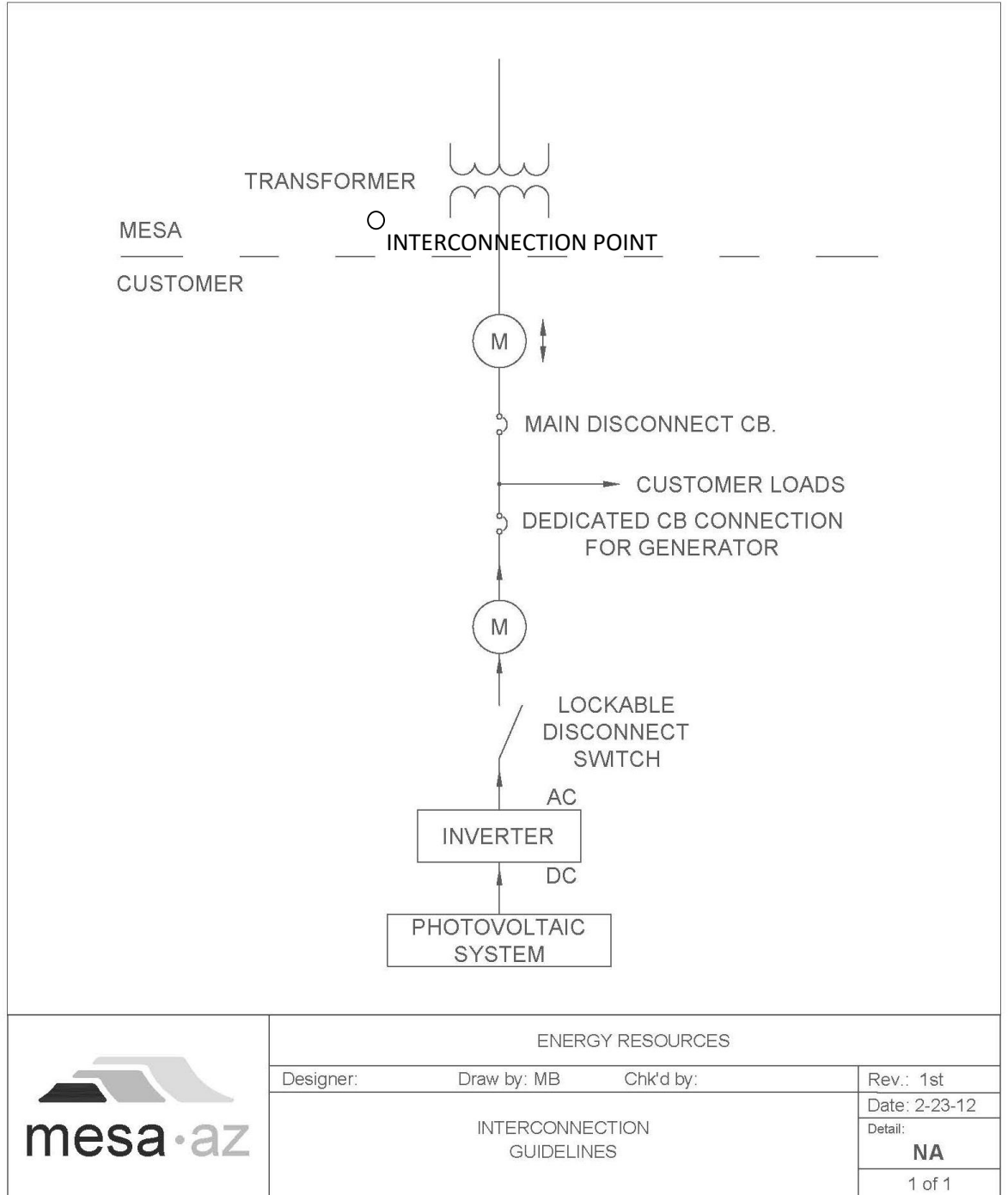
Frank McRae

Its: Energy Resources Department Director

# EXHIBIT A

## ONE-LINE DRAWING OF POINT OF DELIVERY TO GENERATOR

## AND POINT OF SEPARATION OF GENERATOR'S GENERATION EQUIPMENT





**EXHIBIT B**  
**TECHNICAL INTERCONNECTION REQUIREMENTS**

City may from time to time require changes in Generator's connection, protective, or control equipment to meet changing conditions and requirements for the Generation Equipment or System.

**1.0 GENERAL OBLIGATIONS:**

- 1.1 Generator must ensure, at its sole expense, that the electrical characteristics of its load and generation equipment conform to City's normal power quality requirements. Any deviation from sine wave form or unusual interval fluctuations in power demand or production must not result in impairment of electrical service to others. Power factor must be within the acceptable limits defined by ERD Electric Utility's Electric Distribution Specifications and its Rules and Regulations.**
- 1.2 Generator must, at its own expense, design, own, operate and maintain the Generation Equipment in good repair in accordance with manufacturer's guidelines and prudent electrical practices including, but not limited to NFPA 70 and Section 690 of the National Electrical Code, and provide written evidence to City of such compliance upon request of City.
- 1.3 Generator must install only Underwriters Laboratories Inc. (UL) certified equipment and devices as part of the Generation Equipment, unless otherwise approved in writing by City. Inverter must be certified as UL 1741 compliant. Generator must provide evidence of UL 1741 compliance by submitting manufacturer's written specifications to City. New systems must only use PV modules and inverters approved under California SB1 guidelines (which can be found online at <http://www.gosolarcalifornia.org/equipment/>)
- 1.4 The Generation Equipment at the Site must be off-line before the City electric service is restored (reclosed) following a trip of the City's feeder breaker or other protective device. See the Agreement to which this Exhibit is attached for requirement of written assurance.
- 1.5 Relaying and protection requirements stated herein shall take into consideration whether Generator has more than one Generation Equipment, and whether such Generation Equipment can be switched by Generator among multiple Interconnection Points.
- 1.6 During ERD Electric Utility Hot Line Tag (situations when Reclosing of a feeder breaker is disabled for the additional safety of line personnel working on or near energized lines and/or equipment) conditions, the Generator's loads may not be able to be served by another 12kV feeder. ERD Electric Utility reserves the right to isolate the Generation Equipment via the disconnect device (Section 2) and the customer will operate solely from energy provided by ERD Electric Utility.

2.0 LOCKABLE LOAD-BREAK DISCONNECT SWITCH: Generator must install a lockable load-break disconnect switch with a visible break for use by the City as a means of electrically isolating the System from the Generation Equipment and to establish working clearance for maintenance and repair work in accordance with the City's and ERD Electric Utility's safety rules and practices, subject to the following requirements:

- 2.1 The disconnect switch must be **CLEARLY IDENTIFIED AND MARKED BY GENERATOR AND EASILY ACCESSIBLE** at all times to the City's personnel.
- 2.2 The disconnect switch **MUST BE LOCKABLE ONLY IN THE OPEN POSITION** with a standard City or ERD Electric Utility padlock. Only City personnel may remove this padlock. **UNAUTHORIZED REMOVAL IS DEEMED A MATERIAL BREACH OF THIS AGREEMENT.**
- 2.3 Generator is responsible for all labor and material costs to install, maintain, repair, or replace the disconnect switch.
- 2.4 The disconnect switch(es) and its/their location(s) must be approved by ERD Electric Utility prior to installation.
- 2.5 The disconnect switch may be opened at any time by the City without notice.
- 2.6 The disconnect switch must be labeled by the Generator as follows:

GENERATION DISCONNECT SWITCH WARNING!

ELECTRICAL SHOCK HAZARD

DO NOT TOUCH TERMINALS

TERMINALS ON BOTH THE LINE AND LOAD SIDES MAY BE ENERGIZED IN THE  
OPEN POSITION

- 2.7. If the Generation Equipment is on a structure separate from the location of the delivery point/SES, multiple placards are required to be installed and should be shown at all SES of the structures, with concise directions to, and the location of, the SES and solar panel Disconnect Switches. Disconnect Switches to be installed shall be labeled 1/x, 2/x, etc. where x is the total number of Disconnect Switches. Placards must be embossed or engraved metal, permanently riveted or screwed onto the panels.

3.0 [SECTION INTENTIONALLY OMITTED]

4.0. METERING OF GENERATION EQUIPMENT: Generator must install a meter socket and wiring to allow measurement of energy production from the Generation Equipment. The meter socket and its installation must be in accordance with ERD Electric Utility specifications.

- 4.1 The meter socket must be wired such that the meter runs forward while measuring generation from the Generation Equipment.

- 4.2 There must be no load connected on ERD Electric Utility's side of Generator's meter. The breaker in the Generator's main distribution panelboard connected to the Generation Equipment must have no other load, and must be a dedicated circuit.
  - 4.3 ERD Electric Utility may, in its sole discretion, provide and install a meter to measure energy production from the Generation Equipment.
- 5.0 ACCEPTANCE TESTING AND INSPECTION: Prior to commencing parallel operation of the Generation Equipment with the System, the Generation Equipment will be subject to acceptance testing and inspection whereby the ERD Electric Utility may, in its sole discretion, verify the safe and proper operation and interconnection of the Generation Equipment including but not limited to the following:
- 5.1 All equipment comprising the Generation Equipment must be the same, approved equipment listed by the Generator in the Application.
  - 5.2 All equipment comprising the Generation Equipment and the remainder of the Generator's electrical service falls within the guidelines and technical specifications listed in this Agreement.
  - 5.3 The energy produced is both within the acceptable limits for voltage and power quality and that the energy produced is within the normal tolerances for the expected energy output of the Generation Equipment.
  - 5.4 The Generation Equipment stops the flow of energy from the Generation Equipment to the System when an electrical outage is simulated.

**Failure of any acceptance testing and inspection may result in ERD Electric Utility's refusal to allow the interconnection of the Generation Equipment.**

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## EXHIBIT I - INTERCONNECTION AND TEST DOCUMENTATION

Buyer's Balancing and Scheduling Agent: The Western Area Power Administration Energy Management & Marketing Office

Power Specifications: 60 hz +/- x hz, Power factor  $\geq 0.95$ , \_\_\_\_ volts +/- V

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## EXHIBIT J. EVENT FEATURES

The Project is designed and constructed to support the following Event Features:

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## EXHIBIT K. CERTIFICATION OF COMMERCIAL OPERATION

This Certification of Commercial Operation ("Certification") is delivered by Ameresco, Inc. ("Seller") to The City of Mesa ("Buyer") in accordance with the terms of that certain Power Purchase Agreement dated as of the Execution Date ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement. Seller hereby certifies and represents to Buyer the following:

1. Commercial Operation occurred on: \_\_\_\_\_ [date]
2. The Project equipment representing \_\_\_\_\_ kW DC of Initial Capacity has been installed, tested and is capable of generating Output in accordance with the manufacturer's specifications.
3. The Project is substantially complete and capable of delivering Output as described in the Agreement.

EXECUTED by Seller this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

The undersigned, a licensed professional engineer, hereby certifies that, to its current knowledge, the foregoing is substantially true and correct.

[LICENSED PROFESSIONAL ENGINEER]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

RECEIVED by Buyer this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

which date shall be the Commercial Operation Date.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT L. SELLER DOCUMENTATION CONDITION PRECEDENT

Seller shall provide to Buyer all of the following documentation at least five (5) Business Days prior to the Seller Execution:

1. A copy of each of (A) the articles of incorporation, certificate of incorporation, operating agreement or similar applicable organizational document of Seller and (B) the by-laws or other similar document of Seller (collectively, "Charter Documents") as in effect, or anticipated to be in effect, on the Seller Execution.
2. Evidence of all corporate or limited liability company action, as the case may be, of Seller, authorizing the execution, delivery and performance of this Agreement, and that such resolutions have not been modified, rescinded or amended and are in full force and effect.
3. A certificate from the jurisdiction of Seller's incorporation or organization certifying that Seller is duly organized, validly existing and in good standing under the laws of such jurisdiction.
4. A copy of the most recent financial statements (which may be unaudited) from Seller and Seller's Parent together with a certificate from the Chief Financial or equivalent officer of Seller, dated no earlier than ten (10) Business Days prior to the Seller Execution, to the effect that, to the best of such officer's knowledge, (A) such financial statements are true, complete and correct in all material respects and (B) there has been no material adverse change in the financial condition, operations, Properties, business or prospects of Seller since the date of such financial statements.

## EXHIBIT M. CONSTRUCTION OF THE PROJECT

### **Section I Construction Milestones**

The Parties agree time is of the essence in regards to the Agreement. As such, the Parties also agree certain Milestones must be achieved in a timely fashion or Buyer will suffer damages. Seller shall provide Buyer with any requested documentation to support the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller.

- (a) Remedial Action Plan. If Seller misses three (3) or more Milestones, other than a Guaranteed Project Milestone, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("Remedial Action Plan"), which is outlined in the Monthly Progress Report and requires Seller to provide a detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to meet any subsequent Milestones and the Guaranteed Commercial Operation Date. If the missed Milestone(s) is a Guaranteed Project Milestone, then subsection (iv) below shall apply.
- (b) Guaranteed Project Milestones. "Guaranteed Project Milestones" are as follows:
  - (1) The Construction Start Date shall occur no later than June 1, 2018 (the "Guaranteed Construction Start Date") and no sooner than April 1, 2018 (the "Earliest Construction Start Date"); provided that the Guaranteed Construction Start Date may be extended on a day for day basis for not more than:
    - (A) one (1) month if Seller has used commercially reasonable efforts, (including but not limited to Seller's timely filing of required documents and payment of all applicable fees) but is unable to proceed due to delays beyond Seller's reasonable control; or
    - (B) three hundred sixty (360) days in the event of Force Majeure ("Force Majeure Construction Extension"); provided that Seller works diligently to resolve the effect of the Force Majeure and provides evidence of its efforts promptly to Buyer upon Buyer's written request;
- (c) Notwithstanding the foregoing, if Seller claims more than one (1) Delay, such extensions cannot cumulatively exceed six (6) months and all Permitted Extensions taken shall be concurrent, rather than cumulative, during any overlapping days.
- (d) Seller shall have demonstrated commercial operation per the terms of Exhibit K no later than September 1, 2018, (the "Guaranteed Commercial Operation Date"), provided that:
  - (1) the Guaranteed Commercial Operation Date may be extended on a day for day basis equal to any extension claimed by Seller pursuant to and in accordance with This Exhibit M (2); and
  - (2) the Guaranteed Commercial Operation Date may be extended further on a day for day



basis for Force Majeure occurring after the Construction Start Date provided that the total number of such extension days shall not exceed three hundred sixty (360) days.

- (e) If Seller claims a Permitted Extension, Seller shall provide Buyer with sixty (60) days' Notice prior to original date of the applicable Guaranteed Project Milestone, which Notice must clearly identify the Permitted Extension being claimed and include information necessary for Buyer to verify the length and qualification of the extension; provided that in the case of a Force Majeure Construction Extension, if sixty (60) days is impracticable or impossible, Seller shall provide Notice as soon as possible after the occurrence of the Force Majeure event.

## **Section II Cure Period and Performance Guarantee Payments.**

- (a) Seller shall cause the Project to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date. If (I) the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date after giving effect to Permitted Extensions or Force Majeure after Construction Start Date or (II) the Construction Start Date occurs after the Guaranteed Construction Start Date after giving effect to Permitted Extensions, then Buyer shall be entitled to damages equal to the Daily Performance Guarantee Payments for each day or portion of a day that (1) the Construction Start Date occurs after the Guaranteed Construction Start Date after giving effect to Permitted Extensions for up to a total of sixty (60) days ("Construction Cure Period"), and (2) the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date after giving effect to Permitted Extensions for up to a total of sixty (60) days ("Project Cure Period"). The Parties agree that Buyer's receipt of Performance Guarantee Payments shall (x) not be construed as Buyer's declaration that an Event of Default has occurred and (y) not limit Buyer's right to receive a damage payment, as applicable, upon exercise of Buyer's default right.
- (b) Each Party agrees and acknowledges that (I) the damages that Buyer would incur due to Seller's delay in achieving either of the Guaranteed Project Milestones would be difficult or impossible to predict with certainty, and (II) the Performance Guarantee Payments are an appropriate approximation of such damages. Seller shall be entitled to the return of all Performance Guarantee Payments collected by Buyer as a result of Seller's failure to meet the Guaranteed Construction Start Date only if Seller meets the Guaranteed Commercial Operation Date (as may be extended by Permitted Extensions). For sake of certainty, Buyer shall retain all Performance Guarantee Payments drawn (or which Buyer is entitled to draw) as a result of Seller's failure to meet the Guaranteed Commercial Operation Date and the Guaranteed Construction Start Date (both as may be extended by Permitted Extensions), if Seller fails to meet the Guaranteed Commercial Operation Date (as may be extended by Permitted Extensions).

## **Section III Project Development Security.**

- (c) Seller agrees to obtain a performance bond in appropriate amounts to secure completion of the Project under this Agreement, which Seller shall maintain in full force and effect until the Commercial Operation Date. d Buyer shall be entitled to draw Performance Guarantee Payments against the Commercial Operation Date Payment until such time as the Commercial Operation Date Payment is exhausted.

(d) Performance Guarantee Payments shall be equal to \$833 per day.

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