



PURCHASING ITEM FOR COUNCIL AGENDA

1. Agenda Item Number:

27

2. Council Meeting Date: August 16, 2012

TO: MAYOR & COUNCIL

3. Date Prepared: August 3, 2012

THROUGH: CITY MANAGER

4. Requesting Department: City Manager's Office

5. SUBJECT: First Amendment Solar Services Agreement and Performance Guarantee Agreement for Solar Arrays to Police/Courts Building

6. RECOMMENDATION: Approve the First Amendment to the Performance Guarantee Agreement and Agreement No. CM2-290-3024, Solar Power Purchase, with SolarCity which will provide solar arrays to the parking lot at the Police/Courts building as well as the roof of the Police building for twenty (20) years in a pre-paid amount of \$573,938 and applicable taxes of \$57,681 for a total amount of \$631,619 and approve a General Fund Contingency Transfer in the amount of \$2,010.

7. HISTORICAL BACKGROUND/DISCUSSION: On February 23, 2012 City Council approved the Performance Guarantee Agreement and Agreement No. CM2-290-3024 with SolarCity for the purchase of solar power. The agreement with SolarCity is to purchase the solar power upfront for a specified cost per kWh. By purchasing the solar power up front the City is locking in the cost per kWh today. A new APS tariff rate went into effect July 1, 2012. The new winter kWh rate is \$.03650 and the new summer kWh rate is \$.05145. The original agreement guaranteed a minimum kWh production of 18,616,336 which translates into a per kWh price of \$.0308.

The original agreement was predicated on receiving APS Renewable Energy Credits of \$0.075 per kWh. We were unsuccessful in our bid to APS for that level of Renewable Energy Credit. However, during this next funding cycle APS has \$32,000,000 in credits, twice as much as what they had available for distribution during the last funding cycle. The First Amendment is based on a rebate from APS of \$0.07 per kWh.

Another major change to the agreement is the section 4a. Billing and Payment.

ORIGINAL AGREEMENT

FIRST AMENDMENT

Payment 1: 10% upon execution of Agreement

Payment 1: 20% upon ordering of material by Seller

Payment 2: 20% upon Purchaser's approval of System Design

Payment 2: 40% upon 50% completion of the System

Payment 3: 60% upon the ordering of materials by Seller

Payment 3: 40% upon final completion of the System

Payment 4: 10% upon final completion of the System

Major components of the agreement include:

Guaranteed Annual kWh: 18,616,336 kWh

Cost per kWh: \$.0308

Estimated savings over life of agreement: \$950,385

Solar production over the guaranteed minimum amount: no additional cost

8. FINANCIAL IMPLICATIONS: Funding for this amendment will require a transfer of \$2,010 from General Fund contingency (101.1290.5911) to be spent for the Solar Energy program in the General Capital Projects Fund (401.1291.6210.0.6GG631).

9. PROPOSED MOTION: Move to approve the First Amendment to the Performance Guarantee Agreement and Agreement No. CM2-290-3024, Solar Power Purchase, with SolarCity which will provide solar arrays to the parking lot at the Police/Courts building as well as the roof of the Police building for twenty (20) years in a pre-paid amount of \$573,938, and applicable taxes of \$57,681 for a total amount of \$631,619 and approve a General Fund Contingency Transfer in the amount of \$2,010.

ATTACHMENT: First Amendment, Performance Guarantee Agreement and Solar Services Agreement

APPROVALS

10. Department Head

Pat McDermott

Pat McDermott, Assistant City Manager

11. City Manager

Rich Dlugas

Rich Dlugas, City Manager



First Amendment to Solar Services Agreement

Purchaser:		Seller:	
Name and Address	City of Chandler 175 S Arizona Ave, Chandler, AZ 85225 Courts/Police Facility Solar PV project 200 E Chicago St, Chandler AZ 85225 Attention: Marian Norris	Name and Address	SolarCity Corporation 3055 Clearview Way San Mateo, CA 94402 Attention: Legal Department
Phone	(480) 782-2216	Phone	(650) 638-1028
Fax	(480) 782-2209	Fax	(650) 638-1029
E-mail	Marian.norris@chandleraz.gov	E-mail	Contracts@solarcity.com
Purchaser (check one)	<input checked="" type="checkbox"/> owns the Facility <input type="checkbox"/> leases the Facility		

This First Amendment (the "First Amendment") is to that certain Solar Services Agreement dated Feb 28, 2012 (the "Agreement") between SolarCity Corporation ("Seller") and the City of Chandler, ("Purchaser"), is effective as of the date signed by Seller below (the "Effective Date") and hereby amends the Agreement as follows:

Exhibit 1, Finance Attachment, shall be replaced in its entirety with the attached Exhibit 1, Finance Attachment.

Exhibit 7 Section 4(a), Billing and Payment, shall be replaced with the following,

4. Billing and Payment.

- a. Payment. Purchaser shall pay to Seller the Prepayment as follows:
 - i. Payment 1: 20% upon the ordering of materials by Seller
 - ii. Payment 2: 40% upon 50% completion of the System
 - iii. Payment 3: 40% upon final completion of the System

If a conflict or inconsistency arises between the provisions of the First Amendment and the Agreement, the provisions of this First Amendment shall prevail.

Signature page to follow

City of Chandler

SolarCity Corporation

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM

CITY ATTORNEY *CHyer*

Exhibit 1
Finance Attachment

1. **Term:** Twenty (20) years, beginning on the Commercial Operation Date.
2. **Additional Terms:** Up to Two (2) Additional Terms of Five (5) years each.
3. **Environmental Incentives and Environment Attributes.** Notwithstanding anything to the contrary in the Solar Services Agreement (including, without limitation, Sections 5, 6(a), and 16(a) of the General Terms and Conditions), the Environmental Incentives and Environmental Attributes (but not the Tax Credits) accrue to Purchaser. Purchaser has, in turn, assigned payment of the Environmental Incentives to Seller.
4. **Prepayment Amount:** \$573,938
5. **Condition Satisfaction Date:** 2/9/2013
6. **Anticipated Commercial Operation Date:** 5/9/2013
7. **Outside Commercial Operation Date:** 8/9/2013
8. **Purchase Option Price**

YEAR	PURCHASE PRICE
6	\$1,233,829.84
10	\$1,135,234.78
20	Fair Market Value

* Higher of Fair Market Value of System or amount specified

9. **Termination Value:**

YEAR	TERMINATION VALUE
1	\$2,756,456.42
2	\$2,423,522.27
3	\$1,977,675.28
4	\$1,631,297.11
5	\$1,344,346.91
6	\$1,052,275.57
7	\$982,771.75
8	\$960,789.15
9	\$938,063.03
10	\$914,554.43
11	\$890,222.46
12	\$865,024.19
13	\$838,914.55
14	\$811,846.23
15	\$783,769.57
16	\$754,632.42
17	\$724,380.04
18	\$692,954.96
19	\$660,296.85
20	\$657,659.48

10. **Rebate Variance.** All prices in this Agreement are calculated based on a rebate of APS at \$0.070/kWh. If the actual rebate is lower than calculated, prices will be adjusted pro-rata to reflect the actual rebate received, provided, however, that Purchaser shall have the right to terminate this Agreement if it does not accept the pro-rata adjustment.



Solar Services Agreement

18-1878

This Solar Services Agreement (this "Agreement") is entered into between the City of Chandler, an Arizona corporation, and Solar City Corporation, a corporation of the State of Delaware (each a "Party" and collectively the "Parties") as of the date signed by Seller below (the "Effective Date").

Purchaser:		Seller:	
Name and Address	City of Chandler 175 S Arizona Ave, Chandler, AZ 85225 Courts/Police Facility Solar PV project 200 E Chicago St, Chandler AZ 85225 Attention: Marian Norris	Name and Address	SolarCity Corporation 3055 Clearview Way San Mateo, CA 94402 Attention: Legal Department
Phone	(480) 782-2216	Phone	(650) 638-1028
Fax	(480) 782-2209	Fax	(650) 638-1029
E-mail	Marian.norris@chandleraz.gov	E-mail	Contracts@solarcity.com
Purchaser (check one)	<input checked="" type="checkbox"/> owns the Facility <input type="checkbox"/> leases the Facility		

This Agreement sets forth the terms and conditions of the finance, design installation, operation and maintenance of the turnkey solar panel system described in Exhibit 2 (the "System") to be installed at the Purchaser's facility described in Exhibit 3 (the "Facility"). The utility provider referenced in this agreement shall be Arizona Public Service Company (the "Utility").

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

- Exhibit 1 Finance Attachment
- Exhibit 2 System Description
- Exhibit 3 Purchaser's Facility
- Exhibit 4 Delivery Point
- Exhibit 5 License Area
- Exhibit 6 Memorandum of License
- Exhibit 7 General Terms and Conditions (*Revised July 1, 2010*)
- Exhibit 8 Contractor Immigration Warranty



Purchaser:

SolarCity Corporation

Signature: Jay Tibshraedy

Signature: B. Kelly

Printed Name: Jay Tibshraedy

Printed Name: Bob Kelly

Title: Mayor

Title: CFO

Date: 2/24/12

Date: 2/28/12

Exhibit 1
Finance Attachment

1. **Term:** Twenty (20) years, beginning on the Commercial Operation Date.
2. **Additional Terms:** Up to Two (2) Additional Terms of Five (5) years each.
3. **Environmental Incentives and Environment Attributes.** Notwithstanding anything to the contrary in the Solar Services Agreement (including, without limitation, Sections 5, 6(a), and 16(a) of the General Terms and Conditions), the Environmental Incentives and Environmental Attributes (but not the Tax Credits) accrue to Purchaser. Purchaser has, in turn, assigned payment of the Environmental Incentives to Seller.
4. **Prepayment Amount:** \$572,112
5. **Condition Satisfaction Date:** 8/9/2012
6. **Anticipated Commercial Operation Date:** 11/9/2012
7. **Outside Commercial Operation Date:** 2/9/2013
8. **Purchase Option Price**

YEAR	PURCHASE PRICE
6	\$1,732,023
10	\$1,592,374
20	Fair Market Value

* Higher of Fair Market Value of System or amount specified

9. **Termination Value:**

YEAR	TERMINATION VALUE
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1	\$3,948,821
2	\$3,443,782
3	\$2,780,880
4	\$2,256,590
5	\$1,815,003
6	\$1,365,993
7	\$1,262,864
8	\$1,225,774
9	\$1,187,330
10	\$1,147,463
11	\$1,106,098
12	\$1,063,160
13	\$1,018,565
14	\$972,229
15	\$924,064
16	\$873,973
17	\$821,860
18	\$767,620
19	\$711,144
20	\$652,319

10. **Rebate Variance.** All prices in this Agreement are calculated based on a rebate of APS at \$0.075/kWh. If the actual rebate is lower than calculated, prices will be adjusted pro-rata to reflect the actual rebate received, provided, however, that Purchaser shall have the right to terminate this Agreement if it does not accept the pro-rata adjustment.

Exhibit 2

System Description

1. **System Location:** Courts/Police Facility, 200 E Chicago St, Chandler, AZ 85225 United States (MARICOPA County)
2. **System Size (DC kW):** 591.0250
3. **Expected First Year Energy Production:** 977,236
4. **Scope:** Seller intends to finance, design, build, own, operate and maintain a Solar photovoltaic system on the City-owned Police/Courts parking lot and Police building roof.

5. **Expected Module(s):**

QUANTITY	MAKE	MODEL	STC WATTS	PTC WATTS
2,515	Yingli Green Energy	YL235P-29b H4	235.0 W	211.2 W

6. **Expected Inverter(s):**

QUANTITY	MAKE	MODEL	RATED POWER	EFFICIENCY
1	Solectria Renewables	SGI 500KW (480V)	500.00 kW	97.0 %

7. **Expected Structure:** Solar Shade structures and roof mounted system
8. **Includes:** N/A
9. **Excludes:** N/A

Exhibit 3
Purchaser's Facility

A PARCEL OF LAND LOCATED IN THE STATE OF ARIZONA, COUNTY OF MARICOPA, WITH A SITUS ADDRESS OF 200 E CHICAGO ST, CHANDLER, AZ 85225-8508 CURRENTLY OWNED BY CHANDLER CITY OF HAVING A TAX ASSESSOR NUMBER OF 303-10-107-A AND BEING THE SAME PROPERTY MORE FULLY DESCRIBED AS TOWNSITE OF CHANDLER LOTS 440-461 & 466-481 REPLAT MCR 581-46 & TH/PT COLORADO ST P/F 08-210445 AND DESCRIBED IN DOCUMENT NUMBER 29260 RECORDED 01/10/2002.

Exhibit 4
Delivery Point



Exhibit 5
License Area



STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On February 24, 2012, before me, Erica Barba, Notary Public, personally appeared MAYOR Jay Tibshraeny who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of ARIZONA that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.

Erica Barba
Signature of the Notary Public

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN MATEO)

On 2/28/12, before me, S.L. Fenstermaker, Notary Public, personally appeared Bob Kelly who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



S.L. Fenstermaker
Signature of the Notary Public

**Exhibit A
To Memorandum of License**

Legal Description of Premises

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

A PARCEL OF LAND LOCATED IN THE STATE OF ARIZONA, COUNTY OF MARICOPA, WITH A SITUS ADDRESS OF 200 E CHICAGO ST, CHANDLER, AZ 85225-8508 CURRENTLY OWNED BY CHANDLER CITY OF HAVING A TAX ASSESSOR NUMBER OF 303-10-107-A AND BEING THE SAME PROPERTY MORE FULLY DESCRIBED AS TOWNSITE OF CHANDLER LOTS 440-461 & 466-481 REPLAT MCR 581-46 & TH/PT COLORADO ST P/F 08-210445 AND DESCRIBED IN DOCUMENT NUMBER 29260 RECORDED 01/10/2002.

Exhibit 7

Solar Services Agreement General Terms and Conditions

Revised July 1, 2010

Purpose: The purpose of this Agreement is to set forth the terms and conditions by which SolarCity will provide the Purchaser with the financing, design, installation, operation and maintenance of a solar panel system at Purchaser's Facility.

1. **Definitions and Interpretation:** Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time by agreement of both parties; and (d) the words "include," "includes" and "including" mean include, includes and including "without limitation." The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.

2. **Finance, Design, Development and Operation of Solar Panel System.** Seller shall provide for Purchaser the financing, design, development and operation of the System during the Initial Term and any Additional Term (as defined in Exhibit 1, and collectively the "Term"). At the end of the sixth (6th) and tenth (10th) Contract Years and at the end of the Initial Term and each Additional Term, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller as set forth more fully in Section 16 of this Agreement.

3. **Term and Termination.**
 - a. **Initial Term.** The initial term ("Initial Term") of this Agreement shall commence on the Commercial Operation Date (as defined below) and continue for the length of time specified in Exhibit 1, unless earlier terminated as provided for in this Agreement. The "**Commercial Operation Date**" is the date Seller gives Purchaser written notice that the System is mechanically complete and capable of providing electric energy to the Delivery Point. Upon Purchaser's request, Seller will give Purchaser copies of certificates of completion or similar documentation from Seller's contractor and the interconnection or similar agreement with the Utility. This Agreement is effective as of the Effective Date and Purchaser's failure to enable Seller to provide the electric energy by preventing it from installing the System or otherwise not performing shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement.

 - b. **Additional Terms.** If Purchaser has not exercised its option to purchase the System by the end of the Initial Term, either Party may give the other Party written notice of its desire to extend this Agreement on the terms and conditions set forth herein for the number and length of additional periods specified in Exhibit 1 (each an "Additional Term"). Such notice shall be given, if at all, not more than one hundred twenty (120) and not less than sixty (60) days before the last day of the Initial Term or the then current Additional Term, as applicable. The Party receiving the notice requesting an Additional Term shall respond positively or negatively to that request in writing within thirty (30) days after receipt of the request. Failure to respond within such thirty (30) day period shall be deemed a rejection of the offer for an Additional Term. If both Parties agree to an Additional Term, the Additional Term shall begin immediately upon the conclusion of the Initial Term or the then current term on the same terms and conditions as set forth in this Agreement. If the Party receiving the request for an Additional Term rejects or is deemed to reject the first Party's offer, this Agreement shall terminate at the end of the Initial Term (if the same has not been extended) or the then current Additional Term.

4. **Billing and Payment.**

- a. **Payment.** Purchaser shall pay to Seller the Prepayment as follows:
- i. Payment 1: 10% upon the execution of this Agreement;
 - ii. Payment 2: 20% upon Purchaser's approval of the System design;
 - iii. Payment 3: 60% upon the ordering of materials by Seller; and
 - iv. Payment 4: 10% upon final completion of the System.
- b. **Taxes.** Purchaser shall either pay or reimburse Seller for any and all taxes assessed on the generation, sale, delivery or consumption of electric energy produced by the System or the interconnection of the System to the Utility's electric distribution system, including property taxes on the System; provided, however, Purchaser will not be required to pay or reimburse Seller for any taxes during periods when the System fails to deliver electric energy to Purchaser for reasons other than Force Majeure. For purposes of this Section 4(d), "Taxes" means any federal, state and local ad valorem, property occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges but shall not include any income taxes or similar taxes imposed on Seller's revenues due to the sale of energy under this Agreement, which shall be Seller's responsibility.
- c. **Payment Terms.** All amounts due under this Agreement shall be due and payable net thirty (30) days from receipt of invoice. Any undisputed portion of the invoice amount not paid within the thirty (30) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) over the Prime Rate (but not to exceed the maximum rate permitted by law).

5. **Environmental Attributes and Environmental Incentives.**

Unless otherwise specified on Exhibit 1, Seller is the owner of all Environmental Attributes and Environmental Incentives and is entitled to the benefit of all Tax Credits, and Purchaser's benefits under this Agreement do not include the right to the Environmental Attributes, Environmental Incentives or the right to Tax Credits or any other attributes of ownership and operation of the System, all of which shall be retained by Seller. Purchaser shall cooperate with Seller in obtaining, securing and transferring all Environmental Attributes and Environmental Incentives and the benefit of all Tax Credits, including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Attributes, Environmental Incentives and Tax Credits. Purchaser shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. If any Environmental Incentives are paid directly to Purchaser, Purchaser shall immediately pay such amounts over to Seller. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, Purchaser, if engaged in commerce and/or trade, shall submit to Seller for approval any press releases regarding Purchaser's use of solar or renewable energy and shall not submit for publication any such releases without the written approval of Seller. Approval shall not be unreasonably withheld, and Seller's review and approval shall be made in a timely manner to permit Purchaser's timely publication.

"Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation

or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives and Tax Credits. Purchaser and Seller shall file all tax returns in a manner consistent with this Section 5. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, investment credits, emissions allowances, green tags, tradeable renewable credits and Green-e® products.

“**Environmental Incentives**” means any and credits, rebates, subsidies, payments or other incentives that relate to self-generation of electricity, the use of technology incorporated into the System, environmental benefits of using the System, or other similar programs available from the Utility, any other regulated entity, the manufacturer of any part of the System or any Governmental Authority.

“**Governmental Authority**” means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including the Federal Energy Regulatory Commission or the Arizona Corporation Commission), or any arbitrator with authority to bind a party at law.

“**Tax Credits**” means any and all (i) investment tax credits, (ii) production tax credits and (iii) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of energy from the System.

6. **Conditions to Obligations.**

a. **Conditions to Seller’s Obligations.**

Seller’s obligations under this Agreement are conditioned on the completion of the following conditions to Seller’s reasonable satisfaction on or before the Condition Satisfaction Date:

- i. Completion of a physical inspection of the Facility and the property upon which the Facility is located (the “**Premises**”) including, if applicable, geotechnical work, and real estate due diligence to confirm the suitability of the Facility and the Premises for the System;
- ii. Approval of (A) this Agreement and (B) the Construction Agreement (if any) for the System by Seller’s Financing Parties. “**Construction Agreement**” as used in this subsection means an agreement between SolarCity and a subcontractor to install the System;
- iii. Confirmation that Seller will obtain all applicable Environmental Incentives and Tax Credits;
- iv. Receipt of all necessary zoning, land use and building permits;
- v. Execution of all necessary agreements with the Utility for interconnection of the System to the Utility’s electric distribution system;
- vi. Prior to Seller commencing construction and installation of the System, Purchaser shall give Seller proof of insurance for all insurance required to be maintained by Purchaser under this Agreement.

b. **Conditions to Purchaser’s Obligations.**

- i. Purchaser’s obligations under this Agreement are conditioned on the occurrence of the Commercial Operation Date for the System on or before the Outside Commercial Operation Date (See **Exhibit 1**).

- a. **"Force Majeure"** means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence); and failure of equipment not utilized by or under the control of the Party claiming Force Majeure.
- b. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. Seller shall not be liable for any damage to the System or the Facility resulting from a Force Majeure event. The Term shall be extended day for day for each day performance is suspended due to a Force Majeure event.
- c. Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement shall not be excused by a Force Majeure event.
- d. If a Force Majeure event continues for a period of one hundred (100) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, the Party not claiming the Force Majeure shall have the right to terminate this Agreement without fault or further liability to either Party (except for amounts accrued but unpaid).

19. **Assignment and Financing.**

- a. **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 or delayed. Notwithstanding the foregoing, Seller may, without the prior written consent of Purchaser, (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 System and (iv) assign this Agreement to any person succeeding to all or substantially all of the assets of Seller (provided that Seller shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of Seller's obligations hereunder by the assignee). Purchaser's consent to any other assignment shall not be unreasonably withheld if Purchaser has been provided with reasonable proof that the proposed assignee (x) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by this Agreement and (y) has the financial capability to maintain the System 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.
- b. **Financing.** The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from lenders or third parties ("**Financing Parties**") in connection with the

installation, construction, ownership, operation and maintenance of the System. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties; provided, that such changes do not alter the fundamental economic terms of this Agreement. The Parties also agree that Seller may assign this Agreement to the Financing Parties as collateral, and in connection with any such assignment, Purchaser agrees to execute a consent to assignment in customary form and reasonably acceptable to the Financing Parties.

20. **Confidentiality and Publicity.** All of Purchaser's obligations under this Section 20 are subject to compliance with the State of Arizona Public Records Law.
- a. **Confidentiality.** If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System or of Purchaser's business ("Confidential Information") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of this Agreement. Notwithstanding the above, a Party may provide such Confidential Information to its, officers, directors, members, managers, employees, agents, contractors and consultants (collectively, "Representatives"), and affiliates, lenders, and potential assignees of this Agreement (provided and on condition that such potential assignees be bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information), in each case whose access is reasonably necessary to the negotiation and performance of this Agreement. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of this Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Section 0(0), except as set forth in Section 0(b). All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Section 0(0) by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of a breach of the provision of this Section 0(0). To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 0(0), but shall be in addition to all other remedies available at law or in equity.
- b. **Permitted Disclosures.** Notwithstanding any other provision in this Agreement, neither Party shall be required to hold confidential any information that (i) becomes publicly available other than through the receiving Party, (ii) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena (but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement to the extent permitted by applicable law), (iii) is independently developed by the receiving Party or (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall cooperate with the other Party in efforts to limit the disclosure to the maximum extent permitted by law.
21. **Goodwill and Publicity.** Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement. Neither Party shall make any press

release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law) without the specific prior written consent of the other Party. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and Environmental Incentives and any related reporting rights.

22. **General Provisions**

- a. **Choice of Law.** Arizona law shall govern this Agreement without giving effect to conflict of laws principles.
- b. **Arbitration and Attorneys' Fees.** Any dispute arising from or relating to this Agreement shall be arbitrated in Phoenix, Arizona. The arbitration shall be administered by the AAA in accordance with its Comprehensive Arbitration Rules and Procedures, and judgment on any award may be entered in any court of competent jurisdiction. If the Parties agree, a mediator may be consulted prior to arbitration. The prevailing party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys' fees and costs.
- c. **Notices.** All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either party may specify in writing. Each party shall deem a document faxed, emailed or electronically send in PDF form to it as an original document.
- d. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, Section 14 (Representations and Warranties), Section 7(h) (No Warranty), Section 15(b) (Insurance), Section 0 (Indemnification and Limits of Liability), Section 0 (Confidentiality and Publicity), Section 0(0) (Choice of Law), Section 0 (b) (Arbitration and Attorneys' Fees), Section 0(c) (Notices), Section 0 (g) (Comparative Negligence), Section 0(h) (Non-Dedication of Facilities), Section 0(j) (Service Contract), Section 0(k) (No Partnership) Section 0(l) (Full Agreement, Modification, Invalidity, Counterparts, Captions) and Section 0(n) (No Third Party Beneficiaries).
- e. **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Right of Waiver.** Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time; provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall

not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.

- g. **Comparative Negligence.** It is the intent of the Parties that where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.
- h. **Non-Dedication of Facilities.** Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while asserting that Seller should 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, and Seller shall remove the System in accordance with Section 11 of this Agreement.
- i. **Estoppel.** Either Party hereto, without charge, at any time and from time to time, within thirty (30) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.
- j. **Service Contract.** The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser will not take the position on any tax return or in any other filings that is inconsistent with this section of the Code. .
- k. **No Partnership.** No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.
- l. **Full Agreement, Modification, Invalidity, Counterparts, Captions.** This Agreement, together with any Exhibits, completely and exclusively states the agreement of the parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.

- m. **Forward Contract**. The transaction contemplated under this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.
- n. **No Third Party Beneficiaries**. Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.
- o. **SCRUTINIZED BUSINESS OPERATIONS**: Pursuant to A.R.S. §§ 35-391.06 and 35-393.06, contractor hereby certifies that it does not have scrutinized business operations in Iran or Sudan. The submission of a false certification by contractor may result in action up to and including termination of this contract.
- p. **Compliance with Arizona Procurement Law**
 - (i) **Compliance with A.R.S. § 41-4401**: Pursuant to the provisions of A.R.S. § 41-4401, the Seller hereby warrants to the Purchaser that the Seller and each of its subconsultants (“Subconsultants”) will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. §23-214(A) (hereinafter “Contractor Immigration Warranty”).

A breach of the Contractor Immigration Warranty (Exhibit 8) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.

The Purchaser retains the legal right to inspect the papers of any Seller or Subconsultant employee who Projects on this Contract to ensure that the Seller or Subconsultant is complying with the Contractor Immigration Warranty. The Seller agrees to assist the Purchaser in the conduct of any such inspections.

The Purchaser may, at its sole discretion, conduct random verifications of the employment records of the Seller and any Subconsultants to ensure compliance with Contractor Immigration Warranty. The Seller agrees to assist the Purchaser in performing any such random verifications.

The provisions of this Article must be included in any contract the Seller enters into with any and all of its subconsultants who provide services under this Contract or any subcontract. “Services” are defined as furnishing labor, time or effort in the State of Arizona by a Seller or subconsultant. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

End of Document

EXHIBIT 8

Contractor Immigration Warranty
To Be Completed by Seller Prior to Execution of Contract

A.R.S. § 41-4401 requires as a condition of your contract verification of compliance by the Seller and subconsultants with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of its employees.

By completing and signing this form and attached Employee Verification Project sheet the Seller shall attest that it and all subconsultants performing Project under the cited contract meet all conditions contained herein.

Project Number/Division:		
Name (as listed in the contract):		
Street Name and Number:		
City:	State:	Zip Code:

I hereby attest that:

The Seller complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of those employees performing Project under this contract;

All subconsultants 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 related to the immigration status of their employees; and

The Seller has identified all Seller and subconsultant employees who perform Project under the contract and has verified compliance with Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214.

Signature of Seller (Employer) or Authorized Designee:

Linda Keala

Printed Name: LINDA KEALA

Title: VICE PRESIDENT, HUMAN RESOURCES

Date (month/day/year): 2-28-12





Performance Guarantee & Limited Warranty Agreement

This Performance Guarantee & Limited Warranty Agreement (this "Agreement") is entered into by the parties listed below (each a "Party" and collectively the "Parties") as of the date signed by Seller below (the "Effective Date").

Purchaser:		Seller:	
Name and Address	City of Chandler 175 South Arizona Ave Chandler, AZ 85225 Police Facility Solar PV Project 201 S Arizona Ave, Chandler, AZ 85225 Attention: Marian Norris	Name and Address	SolarCity Corporation 3055 Clearview Way San Mateo, CA 94402 Attention: Legal Department
Phone	(480) 782-2216	Phone	(650) 638-1028
Fax	(480) 782-2209	Fax	(650) 638-1029
E-mail	Marian.norris@chandleraz.gov	E-mail	contracts@solarcity.com

This Agreement sets forth the terms and conditions of the performance guarantee required to be provided by Seller in conjunction with that certain Solar Services Agreement by and between Seller and Purchaser dated of even date herewith (the "SSA"). All capitalized terms used hereunder shall have the meanings given such terms in the SSA.

1. Seller guarantees that during the term of the SSA the Generating Facilities in aggregate will generate the guaranteed annual kilowatt-hours (kWh) ("**Guaranteed Annual kWh**") of energy set forth as follows:
 - A. Commencing on the first anniversary of the date that the System achieves permission to operate from the Utility, if at the end of each successive twelve (12) month anniversary of the date that the System achieves permission to operate from the Utility, the cumulative Actual Annual kWh (defined below) generated by the System is *less* than the Guaranteed Annual kWh, then Seller will send Purchaser a refund check equal to the difference between the Guaranteed Annual kWh and the cumulative Actual Annual kWh multiplied by the Guaranteed Energy Price per kWh (defined below). Seller will make that payment within thirty (30) days after the end of the relevant calendar year.
 - B. Commencing on the first anniversary of the date that the System achieves permission to operate from the Utility, if at the end of each successive twelve (12) month anniversary of the date that the System achieves permission to operate from the Utility the Actual Annual kWh is *greater* than the Guaranteed Annual kWh during any twelve (12) month period, this surplus will be carried over and will be used to offset any deficits that may occur in the future.

C. Guaranteed Annual kWh:

Yr	Guaranteed kWh
1	977,236
2	972,349
3	967,463
4	962,577
5	957,691
6	952,805
7	947,918
8	943,032
9	938,146
10	933,260
11	928,374
12	923,488
13	918,601
14	913,715
15	908,829
16	903,943
17	899,057
18	894,170
19	889,284
20	884,398

D. "**Actual Annual kWh**" means the AC electricity produced by the System in kilowatt-hours measured and recorded by Seller during each successive twelve (12) month anniversary (commencing on the third such anniversary) of Purchaser's last of the first monthly payments under the SSA. To measure the Actual kWh we will use the SolarGuard™ Monitoring Service or to the extent such services are not available, Seller will estimate the Actual kWh by reasonable means.

E. "**Guaranteed Energy Price per kWh**" means \$ 0.031 per kWh with an annual increase of two percent (2.0%)

2. The term of this Agreement shall be concurrent with the term of the SSA.

LIMITED WARRANTY AGREEMENT (Commercial SSA)

This Limited Warranty Agreement (this "Agreement") is SolarCity Corporation's ("SolarCity") agreement to provide installation and other services for the solar panel systems(s) (the "System") it will use to provide solar services to you (the "Purchaser") and to provide a warranty for the System. A description of the System that will be used to provide solar services to you is set forth in the SSA agreement (the "SSA") that you executed with SolarCity. The System will be professionally installed by SolarCity at the address you listed in the SSA. We will refer to the installation location as the "Premises" or your "Facility."

When you choose SolarCity, you can be assured that we will stand behind our System and installation with industry-leading warranties. We will professionally install your solar system in a good and workman-like manner and honor our commitment to you to keep your System in good working order. Read below for full details on SolarCity's Installation Warranty, Use Warranty, Roof Warranty and Repair Promise. Capitalized terms not otherwise defined herein shall have the meaning set forth in your SSA.

1. SOLARCITY'S STANDARDS

For the purpose of this Agreement the standards for SolarCity's performance will be (i) normal professional standards of performance within the solar photovoltaic power generation industry in the relevant market; and (ii) Prudent Electrical Practices. "Prudent Electrical Practices" means those practices, as changed from time to time, that are engaged in or approved by a significant portion of the solar energy electrical generation industry operating in the United States to operate electric equipment lawfully and with reasonable safety, dependability, efficiency and economy. For purposes of this Agreement, SolarCity's performance shall include necessary roof preparation for the installation of the System.

2. LIMITED WARRANTIES

A. LIMITED WARRANTIES

SolarCity warrants the System as follows:

i. Installation Warranty

SolarCity will professionally install the System in a good and workman-like manner according to our commitments to you in Section 1. This installation warranty will run for one (1) year following the completion of the System installation.

ii. Use Warranty

Under normal use and service conditions, the System will be free from defects in workmanship or defects in, or a breakdown of, materials or components during the Warranty Period (as defined below);

iii. Roof Warranty

If SolarCity penetrates the Facility roof in performing the Installation Services, SolarCity will warrant roof damage it causes as a direct result of these roof penetrations. This roof warranty will run the longer of (A) one (1) year following the completion of the System installation; and (B) the length of any existing installer warranty on the Facility's roof; and

iv. Repair Promise

During the Warranty Period, SolarCity will repair or replace any defective part, material or component or correct any defective workmanship, at no cost or expense to Purchaser (including all labor costs), when Purchaser submits a valid claim to SolarCity under this Agreement. If we damage your Facility, Property or belongings we will repair the damage we cause or pay you for the damage we cause. SolarCity may use new or reconditioned parts when making repairs or replacements. SolarCity may also, at no additional cost to Purchaser, upgrade or add to any part of the System to ensure that it performs according to the guarantees set forth in this Agreement.

This Agreement will continue from the date SolarCity starts installing the System at your Facility through the longer of (i) the SSA Term (as that term is defined in the SSA); and (ii) ten (10) years (the "Warranty Period") except for the warranties specified in Section 2 (A)(i) and (iii) above, which may have shorter periods. If Purchaser has assumed an existing SSA, then this Agreement will cover Purchaser for the remaining balance of the original Warranty Period.

B. MAINTENANCE AND OPERATION

i. General

During the Warranty Period, SolarCity will operate and perform all routine and emergency repairs to and maintenance of the System. SolarCity will provide Purchaser with a copy of SolarCity's Solar Operation and Maintenance Guide. This guide provides Purchaser with System operation and maintenance instructions, answers to frequently asked questions, troubleshooting tips and service information.

ii. SolarGuard

During the Warranty Period, SolarCity will provide Purchaser, at no additional cost, the SolarGuard Monitoring Service ("SolarGuard"). SolarGuard is a proprietary monitoring system designed and installed by SolarCity that captures and displays historical energy generation data over an Internet connection and consists of hardware located on site and software hosted by SolarCity. The SolarGuard service requires a high speed Internet line to operate. Therefore, during the Warranty Period, Purchaser agrees to maintain the communication link between SolarGuard, the System and the Internet. Purchaser agrees to maintain and make available, at Purchaser's cost, a functioning indoor Internet connection with one available wired Ethernet port and standard AC power outlet within eighty (80)

feet of the System's AC/DC inverter(s). This communication link must be a 101100 Mbps Ethernet connection that supports common internet protocols (TCP/IP and DHCP).

C. MAKING A CLAIM; TRANSFERRING THIS WARRANTY

i. Claims Process

Purchaser can make a claim by:

- a. Emailing SolarCity at the email address below;
- b. Writing us a letter and sending it overnight mail with a well-known service; or
- c. Sending us a fax at the number below.

ii. Transferable Limited Warranty

SolarCity will accept and honor any valid and properly submitted Warranty claim made during the Warranty Period by any person to whom Purchaser properly transfers the SSA.

D. EXCLUSIONS AND DISCLAIMER

The Warranty does not apply to my repair, replacement or correction required due to the following:

- i. Someone other than SolarCity or its approved service providers installed, removed, re-installed or repaired the System;
- ii. Destruction or damage to the System or its ability to safely produce energy not caused by SolarCity or its approved service providers while servicing the System {e.g., a tree falls on the System};
- iii. Purchaser's failure to perform, or breach of, Purchaser's obligations under the SSA {such as if Purchaser modifies or alters the System};
- iv. Purchaser's breach of this Agreement including being unavailable to provide access or assistance to SolarCity in diagnosing or repairing a problem or failing to maintain the System as stated in the Solar Operation and Maintenance Guide;
- v. any Force Majeure Event (as defined below);
- vi. a power or voltage surge caused by someone other than SolarCity including a grid supply voltage outside of the standard range specified by the Utility;
- vii. any System failure not caused by a System defect (e.g., such as making roof repairs); or
- viii. theft of the System.

This Agreement gives you specific rights, and Purchaser may also have other rights which vary from state to state. This Agreement does not warrant any specific electrical performance of the System, other than that described above. The promises in this warranty are the only express warranties made by SolarCity with respect to the System. SolarCity hereby disclaims, and any beneficiary of this Agreement hereby waives any warranty with respect to any cost savings from using the System.

3. ADDITIONAL SERVICES

(A) SCOPE OF ADDITIONAL SERVICES

Purchaser agrees that if (i) the System needs any repairs that are not the responsibility of SolarCity under this Agreement, (ii) the System needs to be removed and re-installed to facilitate remodeling of the Facility or (iii) the System is being relocated to another Facility pursuant to the SSA (collectively, items (i)- (iii) are "Additional Services"), Purchaser will have SolarCity, or another similarly qualified service provider, at Purchaser's expense, perform such repairs, removal and reinstallation or relocation on a time and materials basis.

(B) APPROVED SERVICE PROVIDERS

Purchaser's retention of a third party to perform Additional Services that is not qualified to perform such Additional Services will void the Warranty. To prevent voiding the Warranty, Purchaser should obtain the written consent of SolarCity prior to engaging a third party to perform Additional Services. If Purchaser engages a third party service provider to perform Services without the prior consent of SolarCity, Purchaser does so at the risk that SolarCity will subsequently determine such service provider was not qualified to perform the Additional Services.

(C) PRICING ON ADDITIONAL SERVICES

Performance of Additional Services by SolarCity will be on a time and materials basis at SolarCity's then current standard rates.

4. FORCE MAJEURE

If SolarCity is unable to perform all or some of its obligations under this Agreement because of a Force Majeure Event, SolarCity will be excused from whatever performance is affected by the Force Majeure Event, provided that:

1. SolarCity, as soon as is reasonably practical, gives Purchaser notice describing the Force Majeure Event;
2. SolarCity's suspension of its obligations is of no greater scope and of no longer duration than is required by the Force Majeure Event; and
3. No SolarCity obligation that arose before the Force Majeure Event that could and should have been fully performed before such Force Majeure Event is excused as a result of such Force Majeure Event.

"Force Majeure Event" means any event, condition or circumstance beyond the control of and not caused by SolarCity's fault or negligence. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any governmental authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any governmental authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products; and failure of equipment not utilized by SolarCity or under its control.

5. LIMITATIONS ON LIABILITY

(A) NO CONSEQUENTIAL DAMAGES

In no event shall either party or its agents or subcontractors be liable to the other for special, indirect, punitive, exemplary, incidental or consequential damages of any nature. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation may not apply in such states.

(B) LIMITATION OF DURATION OF IMPLIED WARRANTIES

Any implied warranties, including the implied warranties of fitness for particular purpose and merchantability arising under state law, shall in no event extend past this Agreement. Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply in such states.

(C) LIMIT OF LIABILITY

Notwithstanding any other provision of this Agreement to the contrary, SolarCity's total liability arising out of or relating to this Agreement shall in no event:

- i. For System Failure or Replacement: exceed the total of the Purchaser's payments made during the Term of the PPA
- ii. For damages to your Facility, Property or belongings: exceed three million dollars (\$3,000,000).

6. NOTICES

TO SOLARCITY:

SolarCity Corporation
3055 Clearview Way
San Mateo, CA 94402
Attention: Contracts
Telephone: 650-638-1028
Facsimile: 650-638-1029
Email: contracts@solarcity.com

TO PURCHASER,
City Manager
City of Chandler
Mail Stop 605
175 S. Arizona Ave.
Chandler, AZ 85225

All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and shall be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the party identified in this Agreement at the address set forth above or such other address as either party may specify in writing. Each party shall deem a document faxed or sent by electronic mail to it as an original document.

7. APPLICABLE LAW / ARBITRATION

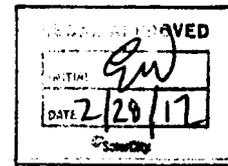
Any dispute arising from or relating to this Agreement shall be arbitrated in Phoenix, Arizona. The arbitration shall be administered by the AAA in accordance with its Comprehensive Arbitration Rules and Procedures, and judgment on any award may be entered in any court of competent jurisdiction. If the Parties agree, a mediator may be consulted prior to arbitration. The prevailing party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys' fees and costs.

8. ASSIGNMENT AND TRANSFER OF THIS AGREEMENT

SolarCity may assign its rights or obligations under this Agreement to a third party without your consent, provided that any assignment of SolarCity's obligations under this Agreement shall be to a party qualified to perform such obligation. SolarCity shall provide notice of any such assignment. This Agreement protects only the party that hosts the System. Purchaser's rights and obligations under this Agreement will be automatically transferred to any party to whom Purchaser properly transfers the SSA.

9. ENTIRE AGREEMENT: CHANGES

This Agreement contains the parties' entire agreement regarding the matters set forth herein. SolarCity's obligations under this Agreement are separate and distinct from the obligations of the Seller or its assigns under the SSA. No breach of this Agreement shall affect Purchaser's obligations under the SSA. The SSA may be assigned to a third party without assignment of SolarCity's obligations under this Agreement. Any change to this Agreement must be in writing and signed by both Parties. If any portion of this Agreement is determined to be unenforceable, the remaining provisions shall be enforced in accordance with their terms or shall be interpreted or re written so as to make them enforceable. Provisions that should reasonably be considered to survive termination of this Agreement shall survive.



City of Chandler

SolarCity Corporation

Signature: Jay Tibskraam

Signature: B. Kelly

Printed Name: Jay Tibskraam

Printed Name: _____

Title: Mayor

Title: _____

Date: 2/24/12

Date: _____