Chandler · Arizona	**PURCHASING ITEM FOR COUNCIL AGENDA**	**1. Agenda Item Number:** 37
		2. Council Meeting Date: December 13, 2012

TO: MAYOR & COUNCIL	**3. Date Prepared:** November 30, 2012
THROUGH: CITY MANAGER	**4. Requesting Department:** City Manager's Office

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

6. RECOMMENDATION: Approve the Second 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 for twenty (20) years in a pre-paid amount of $279,213 and applicable taxes of $28,061 for a total amount of $307,274.

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. On August 16, 2012 City Council approved the First Amendment and Performance Guarantee Agreement. In February and August the City and SolarCity applied with APS for their Performance Based Incentive and in both cases we did not receive the Production Based Incentive from APS. In meetings with APS they recommended the City apply for Production Based Incentives under APS's medium size installations (up to 200 kW ac) with funding divided into six bi-monthly allocation periods. The City applied for PBI's in October and received an Incentive of 0.05.

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. The winter kWh rate is $.03650 and the summer kWh rate is $.05145.

The Second Amendment guarantees a minimum kWh production of 7,587,971, over the course of the 20 year agreement, and translates into a per kWh price of .037. The price is based on a Production Based Incentive of $0.05 per kWh and has been approved by APS. The solar array will be installed in the parking lot in front of the Police/Courts building.

Major components of the Second Amendment:
Guaranteed Annual kWh: 7,587,971 kWh
Cost per kWh: $.03679
Estimated savings over life of agreement: $221,770.57
Solar production over the guaranteed minimum amount: no additional cost to the City

8. FINANCIAL IMPLICATIONS:
Funding for these amendments will come from the Solar Energy program in the General Capital Projects Fund (401.1291.6210.0.6GG631).

9. PROPOSED MOTION: Move to approve the Second 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 for twenty (20) years in a pre-paid amount of $279,213 and applicable taxes of $28,061 for a total amount of $307,274.

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

APPROVALS

10. Department Head	**11. City Manager**
Pat McDermott	Rich Dlugas
Pat McDermott, Assistant City Manager	Rich Dlugas, City Manager

SolarCity

Second Amendment to Solar Services Agreement

Purchaser:		Seller:	
Name and Address	**City of Chandler** 175 South 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)	☒ owns the Facility ❑ leases the Facility		

This Second Amendment (the "Second Amendment") is to that certain Solar Services Agreement dated Feb 28, 2012 (the "Agreement"), as amended on August 14, 2012 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 2, System Description, shall be replaced in its entirety with the attached Exhibit 2, System Description.

Exhibit 4, Delivery Point, shall be replaced in its entirety with the attached Exhibit 4, Delivery Point.

Exhibit 5, License Area, shall be replaced in its entirety with the attached Exhibit 5, License Area.

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

City of Chandler

Signature: _____

Printed Name: _____

Title: _____

Date: _____

SolarCity Corporation

Signature: _____

Printed Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM

CH for

CITY ATTORNEY

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:** $279,213

5. **Condition Satisfaction Date:** 4/1/2013

6. **Anticipated Commercial Operation Date:** 8/1/2013

7. **Outside Commercial Operation Date:** 11/1/2013

8. **Purchase Option Price**

YEAR	PURCHASE PRICE
6	$387,152.41
10	$365,625.68
20	Fair Market Value

*** Higher of Fair Market Value of System or amount specified**

9. **Termination Value**:

YEAR	TERMINATION VALUE
1	$899,248.67
2	$776,178.39
3	$611,043.62
4	$482,990.14
5	$377,097.42
6	$269,311.88
7	$244,483.64
8	$237,381.95
9	$230,021.80
10	$222,389.79
11	$214,471.84
12	$206,253.19
13	$197,718.31
14	$188,850.93
15	$179,633.94
16	$170,049.40
17	$160,078.47
18	$149,701.36
19	$138,897.29
20	$134,026.70

10. **Rebate Variance.** All prices in this Agreement are calculated based on a rebate of APS at $0.05/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): 231.84 kW**

3. **Expected First Year Energy Production: 398,319 kWh**

4. **Scope:** Seller intends to finance, design, build, own, operate and maintain a Solar photovoltaic system at the City-owned Chandler Courts and Police Facility, and sell electrical output to City.

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

QUANTITY	MAKE	MODEL	STC WATTS	PTC WATTS
966	Trina Solar	TSM-240PA05	240.0 W	211.2 W

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

QUANTITY	MAKE	MODEL	RATED POWER	EFFICIENCY
2	Xantrex	GT-100	100.00 kW	97.0 %

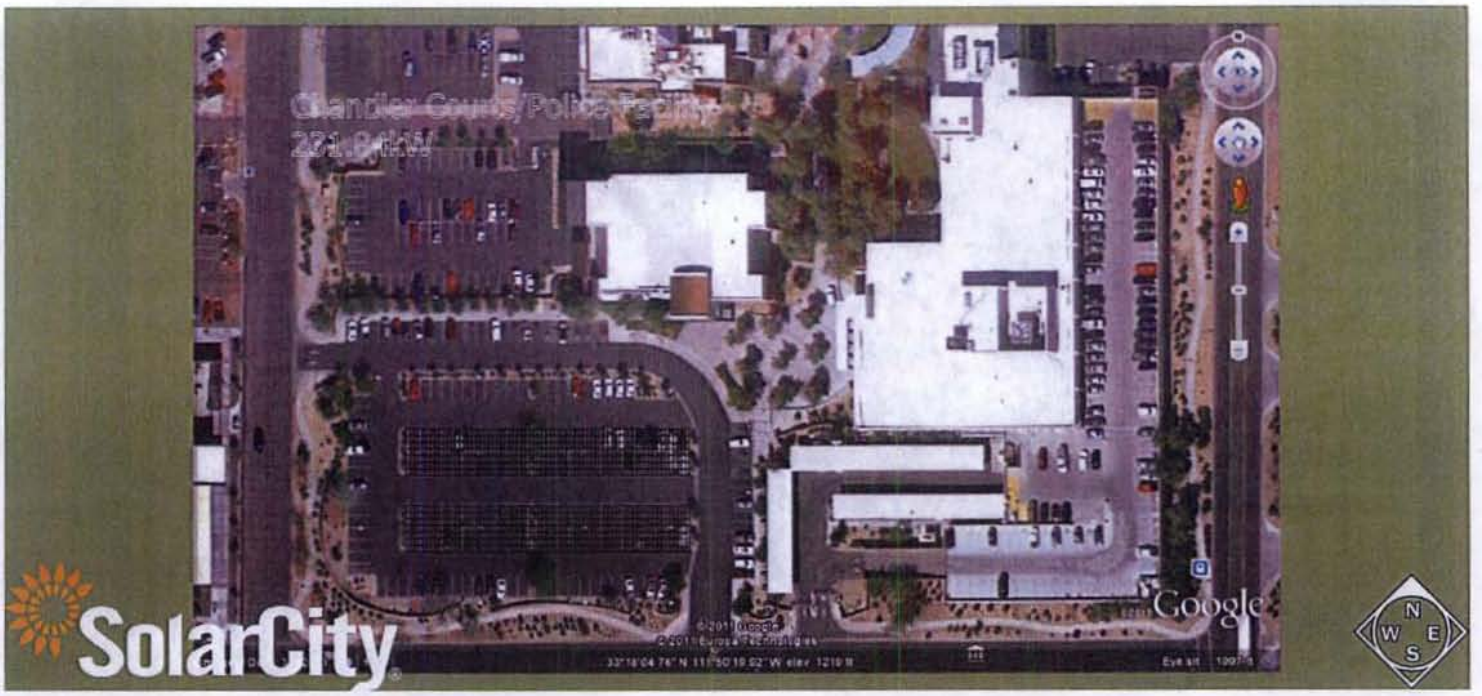
7. **Expected Structure:** Solar Shade Structures

8. **Includes:** N/A

9. **Excludes:** N/A

Exhibit 4
Delivery Point

Exhibit 5
License Area



SolarCity

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** 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

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	398,319
2	396,327
3	394,336
4	392,344
5	390,352
6	388,361
7	386,369
8	384,378
9	382,386
10	380,394
11	378,403
12	376,411
13	374,420
14	372,428
15	370,436
16	368,445
17	366,453
18	364,462
19	362,470
20	360,478

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%)

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/I P 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-dawn, 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: _____	Signature: _____
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

APPROVED AS TO FORM

CH for

CITY ATTORNEY