

Assessor's Parcel Number: N/A

Date: SEPTEMBER 3, 2010

Recording Requested By: _____

Name: CHINA SPRING YOUTH CAMP

Address: _____

City/State/Zip: _____

Real Property Transfer Tax: \$ N/A

Douglas County - NV
Karen Ellison - Recorder
Page: 1 Of 88 Fee: 0.00
BK-0910 PG- 1038 RPTT: 0.00



CONTRACT #2010.216
(Title of Document)

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BK- 0910
PG- 1039

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[Signature]
DEPUTY

SOLAR SERVICES CONTRACT

Between

A3 Energy, LLC
2501 Ridgeline Court Suite 100
Lincoln, NE 68512
(A Nebraska Limited Liability Company)

as Power Provider and Contractor

- and -

China Spring Youth Camp
225 China Spring Road
Gardnerville, Nevada 89410

As Purchaser

Dated as of July 14, 2010

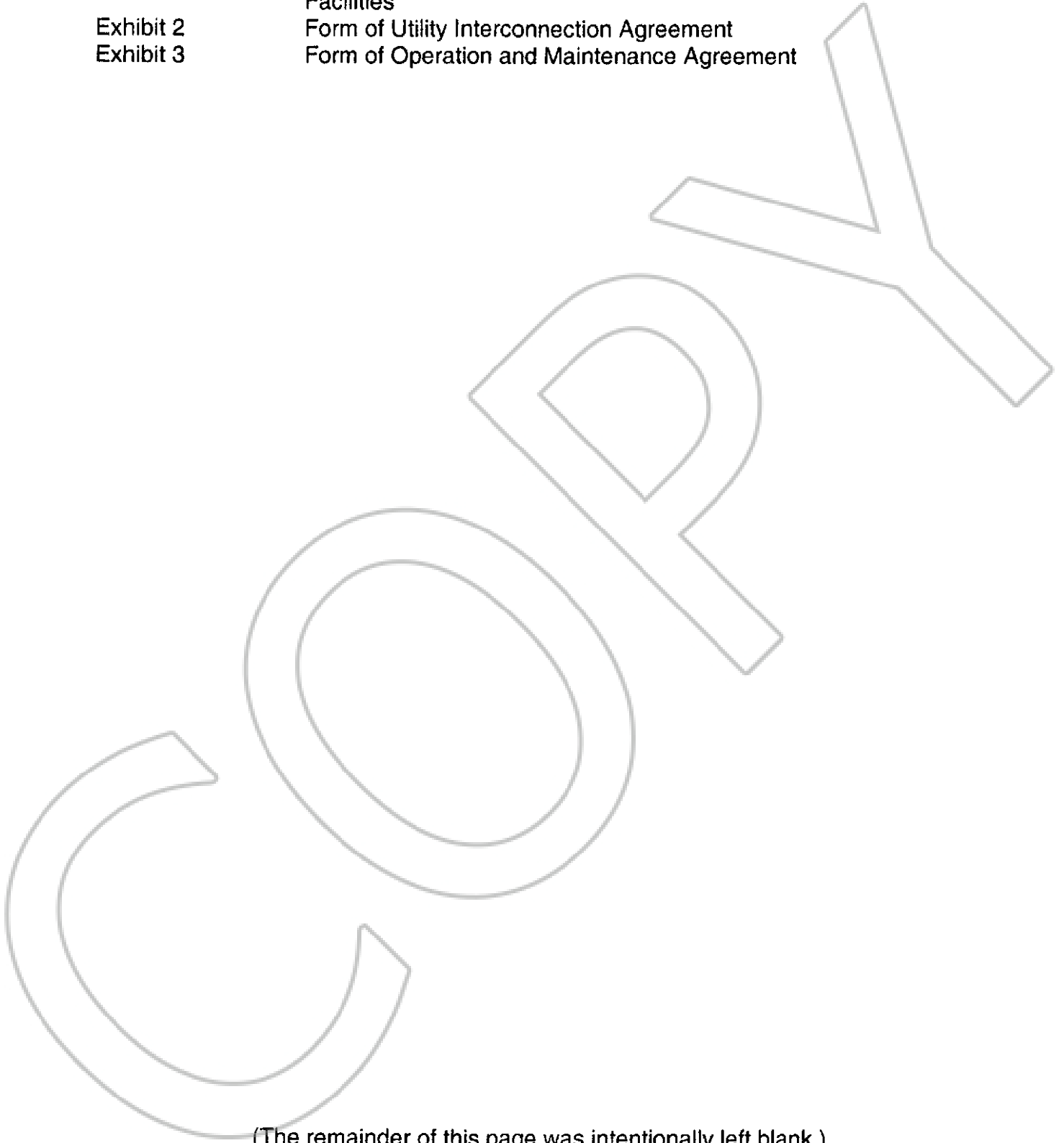
TABLE OF CONTENTS

		Page
Section 1	Definitions	7
Section 2	Emergency Access to Premises	16
Section 3	Use of Premises	16
Section 4	Commencement of Operations and Ownership of the Generating Facilities	18
Section 5	Purchase and Sale of Power: Term: End of Term Option: Early Termination: Early Buyout Option	22
Section 6	Environmental Attributes: Environmental Incentives	28
Section 7	Delivery	29
Section 8	Performance of Work: Additional Terms and Conditions Governing Construction	29
Section 9	Warranty: Limitation of Liability	31
Section 10	Permits and Approvals: Coordination	34
Section 11	Subcontractors	35
Section 12	Project Implementation	35
Section 13	Final Design Phase – Construction Documents: Equipment Procurement	36
Section 14	Construction Phase	38
Section 15	Project Completion	45
Section 16	Cumulative Output Guarantee	46
Section 17	Funding Project Costs	50
Section 18	Representations and Warranties of the Parties	51
Section 19	Certain Covenants of the Purchaser and Power Provider	54

Section 20	Performance and Payment Bonds	54
Section 21	Indemnification and Insurance	55
Section 22	Default	57
Section 23	Temporary Shutdown of Generating Facilities	58
Section 24	Permanent Shutdown of Generating Facilities	59
Section 25	Termination: Action for Damages	60
Section 26	Purchaser Remedies upon Default by Power Provider	62
Section 27	Power Provider Remedies upon Default by Purchaser	63
Section 28	Contractor or Purchaser Remedies upon Default by the Other	63
Section 29	Power Provider Remedies upon Default by Contractor	64
Section 30	Contractor Remedies upon Default by Power Provider	64
Section 31	Limitation of Remedies	64
Section 32	No Waiver	64
Section 33	Limitation of Liability	65
Section 34	Ownership of Certain Property and Existing Equipment	65
Section 35	Force Majeure	66
Section 36	Dispute Resolution	66
Section 37	Attorneys Fees	67
Section 38	Records	67
Section 39	Notices	66
Section 40	Assignment	67
Section 41	Set-Off	68
Section 42	Binding Effect	70

Section 43	Amendments	70
Section 44	Counterparts	70
Section 45	Entire Contract	71
Section 46	Third Party Beneficiaries	71
Section 47	Severability	71
Section 48	Survival	72
Section 49	Governing Law	72
Section 50	Legal Effect of Contract	72
Section 51	Cooperation	73
Section 52	No Partnership	72
Section 53	Remedies Cumulative	72
Section 54	Headings	72
Section 55	Attachments and Exhibits	72
Section 56	Order of Precedence	73
Section 57	Conflict of Interest	73
Section 58	Confidentiality	73
Section 59	Contractor Limitation on Liability	75
Attachment A	Scope of Work	
Attachment B	Site Plans	
Attachment C	Progress Payment Schedule	
Attachment D	Project Schedule	
Attachment E	Annual Power Payments	
Attachment F	Schedule of Termination Value	
Attachment G	Cumulative Guaranteed Energy Output Schedule	
Attachment H	Early Buyout Price Schedule	

- Exhibit 1 Form of Grant of Non-Exclusive Easement for Power Generating Facilities
- Exhibit 2 Form of Utility Interconnection Agreement
- Exhibit 3 Form of Operation and Maintenance Agreement



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SOLAR SERVICES CONTRACT

This Solar Services Contract (the or this "Contract"), dated as of July 06, 2010, is by and among A3 ENERGY, LLC, a Nebraska limited liability company (by and through it's subsidiaries or assigns the "Power Provider" and also the "Contractor") and the CHINA SPRING YOUTH CAMP (the "Purchaser") a non-profit organization of the State of Nevada.

WITNESSETH:

WHEREAS, Purchaser and Power Provider desire to have Contractor provide for the construction and installation of TBD electricity grid-connected photovoltaic, solar power plants with a total generating capacity rated at approximately 10,000 Watts AC (referred to as the "Generating Facilities") located at:

- (i) 225 China Spring Road, Gardnerville, Nevada
- (ii) _____
- (iii) _____
- (iv) _____
- (v) _____
- (vi) Attach separate sheets as needed

all located within the geographic boundaries and/or jurisdiction of the Purchaser (each individually a "Site" or collectively the "Sites"); and

WHEREAS, Purchaser is the owner of the Sites and has declared easements that run with the Sites for the installation, maintenance and operation of the Generating Facilities on the Sites on the terms and conditions contained in the Grant of Non-Exclusive Easement (as such term is defined herein); and

WHEREAS, Contractor is a licensed or shall subcontract a licensed, full-service energy services company with the technical capabilities to perform the Work (as such term is defined herein) for Power Provider and Purchaser, including, but not limited to, engineering, equipment and material procurement, construction management, installation, construction, training and monitoring and verification; and

WHEREAS, Contractor provided, and Purchaser accepted recommendations, regarding solar photovoltaic ("PV") installations and Purchaser has determined that the anticipated cost of the PV generated electricity paid for by Purchaser will be less than the cost of Utility-provided energy to Purchaser that would have been consumed by Purchaser

without the implementation of the recommended alternative PV generated electricity in compliance with applicable Government Codes of the State of Nevada; and

WHEREAS, pursuant to all applicable Government Codes the proper authoritative body of Purchaser (the "Board") states that they have now complied with any required Public Notices, Public Hearings or other such requirements as defined in the Purchaser's by-laws or by the State of Nevada; and

WHEREAS, based upon the foregoing findings and public hearing, the Purchaser has determined that entering into this Contract to implement the PV generated electricity per the Contractor's recommendations is in the best interest of Purchaser and, pursuant to the applicable Government Codes, the Board authorizes Purchaser to enter into this Contract with Contractor and Power Provider to implement the solar PV installations; and

WHEREAS, the Board by adoption of a resolution at its meeting held on _____, 20____, approved this Contract and authorized _____ or his/her designee to execute this Contract on behalf of Purchaser; and

WHEREAS, Contractor and its subcontractors shall perform all the Work as herein provided with Purchaser acknowledging that Contractor may be required to subcontract part or all of the Work in order to meet the licensing requirements of the State of Nevada; and

WHEREAS, Purchaser desires to purchase from Power Provider and Power Provider desires to sell to Purchaser the entire energy output of the Generating Facilities at the Sites; and

WHEREAS, the parties hereto acknowledge this Contract for income tax purposes as a services contract under Section 7701(e) of the Internal Revenue Code of 1986 and not a lease.

NOW, THEREFORE, in consideration of the promises and the mutual benefits from the covenants hereinafter set forth, Power Provider, Contractor and Purchaser agree as follows:

(The remainder of this page was intentionally left blank.)

Section 1. Definitions.

"Actual Cumulative Output" is defined in Section 16(b).

"Annual Termination Date" means the last Business Day of the twelfth (12th) calendar month after the calendar month in which the First Termination Date occurs and the last Business Day of each succeeding twelve (12) calendar month period thereafter that ends prior to the Stated Expiration Date.

"Applicable Laws" means all laws, building codes, rules, regulations or orders of any federal, state, county, local or other governmental body, agency or other authority having jurisdiction over the performance of the Work, as may be in effect at the time the Work is undertaken.

"Applicable Permits" means all permits, waivers, certificates, approvals, variances, authorizations or licenses issued or required to be issued by any federal, state, county, local or other governmental body, agency or other authority having jurisdiction over the performance of the Work, as may be in effect at the time the Work is undertaken.

"Board" is defined in the preambles hereto.

"Business Day" means any day other than a Saturday, a Sunday or a day on which banking institutions in Lincoln, Nebraska, are authorized or obligated by law or executive order to be closed.

"California Solar Initiative" means the program providing ratepayer funded incentives for eligible solar energy systems adopted by the PUC and implemented through Chapter 8.8 (commencing with Section 25780) to Division 15 of the California Public Utilities Code.

"Change" means any addition to, deletion from, suspension of or other modification to the quality, function or intent of the Work, including without limitation any such addition, deletion, suspension or other modification that effects a change in the Scope of Work for a Site that is specified by the Contract. An unforeseen condition experienced by Contractor during the course of the Work for a Site is included within the definition of "Change."

"Change Order" means a written document signed by each of Contractor, Purchaser and Power Provider that authorizes Contractor to perform a Change. A Change Order shall modify the Scope of Work and shall identify: (i) the Change; (ii) any additional compensation to be paid to Contractor to perform such Change; and (iii) any extensions of time to the Project Schedule to perform such Change.

"Claims" means any and all actions, claims, losses, damages, expenses or liabilities of any Party arising from or as a result of the Contract, any addenda to the Contract and/or Change Orders.

“Code” means the Internal Revenue Code of 1986.

“Commercial Operation” means with respect to each Generating Facility on each Site, an event that is deemed to occur when such Generating Facility is (i) mechanically complete and operating and (ii) energy is delivered through such Generating Facility’s meter and the related Site’s electrical system is under an approved and executed Utility Interconnection Agreement.

“Commercial Operation Date” means, with respect to each Generating Facility, the date that such Generating Facility is in Commercial Operation.

“Construction” means any Work to be performed that involves any and all construction, alteration, repair, installation or removal of equipment, addition to, subtraction from, improving, moving, wrecking or demolishing any building, parking facilities, excavation or other structure or improvement, or any part thereof.

“Construction Documents” means the final designs, drawings and specifications that are used for Construction, and any Change Orders affecting those documents, that describe the technical requirements for the installation of all the materials and equipment pursuant to the Contract.

“Contract” means this Solar Services Contract and all Attachments and Exhibits attached hereto which are incorporated herein, as it may be amended or modified from time to time in accordance with the provisions thereof.

“Contract Amount” means N/A, as amended by any Change Order.

“Contractor” means A3 Solar, LLC, a Nebraska limited liability company, and its permitted successors and assigns as provided in Section 40(a).

“Cumulative Guaranteed Energy Output” is defined in Section 16(a).

“Cumulative Guarantee Year” means the one-year period that ends on the last day of the twelfth (12th) calendar month after the calendar month in which the Commercial Operation Date of the last Generating Facility occurs and the last day of each succeeding one-year period thereafter.

“Cumulative Output Guarantee” means the guarantee by Contractor of delivery to Purchaser of the Cumulative Guaranteed Energy Output as provided in Section 16.

“Cumulative Output Guarantee Term” means the 25-year period determined in accordance with Section 16(b) as such period may be modified pursuant to Section 16(e) or terminated in accordance with Section 16(f) or 16(g)(v).

“Delay” means, whether capitalized or not, any circumstances involving delay, disruption, hindrance or interference affecting time of performance.

“Early Buyout Option” means the one-time option that Power Provider grants to Purchaser pursuant to Section 5(e) to terminate this Contract and purchase all of the Generating Facilities at all Sites on the First Termination Date.

“Early Buyout Price” means the purchase price to be paid by Purchaser in connection with its exercise of the Early Buyout Option, which purchase price equals the greater of (i) the Fair Market Value for such Generating Facilities and (ii) the Termination Value, in each case determined as of the First Termination Date.

“Early Termination Date” means either the First Termination Date or an Annual Termination Date, as applicable.

“Effective Date” means the date on which the Contract is fully executed and is in full force and effect.

“Energy Delivery Point” means, for each Site’s electrical system, the point on Purchaser’s side of such Site at which utility meter energy is being delivered, as designated in the Utility Interconnection Agreement.

“Energy Output” means with respect to the Generating Facilities on each Site, the total quantity of all actual net energy generated by the Generating Facilities (measured in kWhac) and delivered in accordance with Section 16 hereof to the respective Energy Delivery Point, in any given period of time. Energy Output does not include the Environmental Incentives.

“Environmental Attributes” means all environmental and other attributes that differentiate the Generating Facilities or the Energy Output from energy generated by fossil-fuel based generation units, fuels or resources, characteristics of the Generating Facilities that may result in the avoidance of environmental impacts on air, soil or water, such as the absence of emission of any oxides of nitrogen, sulfur or carbon or of mercury, or other gas or chemical, soot, particulate matter or other substances attributable to the Generating Facilities or the compliance of the Generating Facilities or the Energy Output with the law, rules and standards of the United Nations Framework Convention on Climate Change (the “UNFCCC”) or the Kyoto Protocol to the UNFCCC or crediting “early action” with a view thereto, or laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency or successor administrator or any state or federal entity given jurisdiction over a program involving transferability of Environmental Attributes and Reporting Rights.

“Environmental Incentives” means all rights, credits (including tax credits), rebates, benefits, reductions, offsets and allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising under federal, state or local law, international treaty, trade association membership or the like arising from the Environmental Attributes of the Generating Facilities on each Site or the Energy Output or otherwise from the development, Construction, Installation or

ownership of the Generating Facilities on each Site or the production, sale, purchase, consumption or use of the Energy Output from each Site. Without limiting the foregoing, "Environmental Incentives" includes green tags, renewable energy credits, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentives under the California Solar Initiative or other similar incentive programs offered by the State of Nevada and the right to claim federal income tax credits under Section 45 or 48 or any other applicable Section of the Code as such credits are available arising from the Environmental Attributes of the Generating Facilities on each Site or the Energy Output or otherwise from the development, Construction, Installation or ownership of the Generating Facilities on each Site or the production, sale, purchase, consumption or use of the Energy Output from each Site.

"Excusable Delay" means a Delay outside of Contractor's control that prevents Contractor from achieving the Commercial Operation Date for any Generating Facility in accordance with the Project Schedule, and to the extent that such Delay adversely affects the Work such that the performance of the Work is prevented or delayed, Contractor shall be entitled to a Change Order providing an adjustment in the Project Schedule and such Commercial Operation Date. For purposes of this Contract, an Excusable Delay shall include one of the following events: (i) an act or failure to act of, or other delay caused by, or negligence of, Purchaser or Power Provider or its agents (expressly excluding, however, A3 Solar, LLC when acting as agent whether in its individual capacity or as Contractor) or employees; (ii) changes in the design, scope or schedule of the Project required by the Purchaser or the Power Provider; (iii) the suspension of Work in whole or in part by Purchaser or Power Provider; (iv) labor disputes, fire, vandalism, delay in manufacturing and deliveries; (v) adverse weather conditions not reasonably anticipated and in excess of 120% of the normal weather (e.g., rain, snow, sleet) for the local geographic area for the past ten (10) years; (vi) unforeseen conditions at any Site, including discovery or existence of Hazardous Substances; (vii) the occurrence of a Force Majeure, or other unavoidable casualties or other causes beyond Contractor's control; (viii) the failure to obtain any Utility Interconnection Agreement, Applicable Permit, or approval of a Governmental Authority or delays caused by changes and/or modifications to the Scope of Work as required by any Governmental Authority having jurisdiction over the Project; (ix) any breach of this Contract or the Utility Interconnection Agreement or any information provided to the Contractor by Purchaser or Power Provider or Utility is inaccurate or incomplete; or (x) any other cause outside Contractor's control after Contractor's best efforts to mitigate that delay, to the extent that Contractor is able to mitigate such delay, provided that a failure to perform of Contractor's subcontractors' shall not be an Excusable Delay, unless such subcontractors are unable to perform the Work as a result of any of the events described in this definition of "Excusable Delay".

"Fair Market Value" means the price that would be negotiated in an arm's-length, free market transaction, for cash, between an informed, willing seller and an informed, willing buyer (other than the user currently in possession), neither of whom is under compulsion to complete the transaction, for the purchase of the Generating Facilities as removed from the Property on which they are located at the date of determination, de-

installed, packed, crated and ready for shipment to such buyer. Fair Market Value shall be determined pursuant to Section 5(c)(ii).

“Final Completion” means the point at which the following conditions have occurred with respect to the Work at each Site: (i) all systems included in the Work are operational as specified, all designated or required inspections and certifications by Governmental Authorities have been made and posted and the entirety of such Work is fully completed, including all minor corrective, or “punch list,” items; (ii) a certificate of occupancy, or equivalent certification issued by the appropriate Division of the State of Nevada, for the entirety of such Work has been delivered to Power Provider; (iii) Purchaser has received all permits and certificates required to operate and use such Work; (iv) all documents required to be submitted by Contractor as a condition of Substantial or Final Completion of such Work have been submitted, including, without limitation, warranties, guaranties and other close-out documents; and (v) all conditions set forth in the Construction Documents for Substantial and Final Completion of the Work of the Project have been, and continue to be, fully satisfied. A Certificate of Final Completion will be executed at the Final Completion of the entire Work for such Site.

“First Termination Date” means the first Business Day of the sixty-first (61st) calendar month after the calendar month in which the Commercial Operation Date of the last Generating Facility occurs.

“Force Majeure” means occurrence or events that are beyond the reasonable control of the party affected, including without limitation any of the following: (i) sabotage, riots or civil disturbances, (ii) acts of God, (iii) acts of the public enemy, (iv) terrorist acts affecting the Sites, (v) volcanic eruptions, earthquake, tornado, hurricane, flood, ice storms, explosion, fire, lightning, landslide or similarly cataclysmic occurrence, (vi) requirement by Utility that the Generating Facilities discontinue operation for any reason, (vii) interference, such as overshadowing or shading of the Generating Facilities in violation of the solar easement granted in the Grant of Easement, such that the Cumulative Output Guarantee cannot be achieved, (viii) appropriation or diversion of electricity by sale or order of any Governmental Authority having jurisdiction thereof, (ix) any other action by any Governmental Authority which prevents or prohibits the Parties from carrying out their respective obligations under this Contract (including, without limitation, an unstayed order of a court or administrative agency having the effect of subjecting the sales of Energy Output to federal or state regulation of prices and/or services, or elimination or alteration of one or more Environmental Incentives or other change in law that results in a material adverse economic impact on Power Provider). Economic hardship of any Party shall not constitute Force Majeure under this Contract.

“Generating Facilities” means a facility that contains electric power generation equipment, controls, meters, switches, connections, conduit, wires and other equipment connected to the respective Energy Delivery Point and is installed by Contractor pursuant to the terms of this Contract as a fixture on the related Site for the purposes of providing electric power to Purchaser at each Site.

"Governmental Authority" means any federal, state or local government agency or regulatory body with jurisdiction over any of the Parties, the Project or the Work.

"Grant of Easement" means each Grant of any Exclusive or Non-Exclusive Easement for Power Generating Facilities dated the Effective Date, executed by Purchaser with respect to the related Site that constitutes a portion of the Property and in substantially the form attached hereto as Exhibit 1.

"Hazardous Substances" means the following: (i) any chemical, material or other substance defined as or included within the definition of "hazardous substances," "hazardous wastes," "extremely hazardous substances," "toxic substances," "toxic material," "restricted hazardous waste," "special waste," "contamination" or words of similar import under any environmental law, including, without limitation, any hazardous, toxic, or dangerous wastes, substances, chemicals, constituents, contaminants, pollutants, and materials and any other carcinogenic, liquids, corrosive, ignitable, radioactive, reactive, toxic, or otherwise hazardous substances or mixtures (whether solids, liquids, gases) now or at any time subject to regulation, control, remediation, or otherwise addressed under Applicable Laws; (ii) any "hazardous substance" as defined by the Resource, Conservation and Recovery Act of 1976 (42 United States Code, Section 6901 et seq.), as amended, and regulations promulgated thereunder; (iii) any "hazardous, toxic or dangerous waste, substance or material" specifically defined as such in United States Code Section 9601 et seq.), as amended and regulations promulgated thereunder; and (iv) any hazardous, toxic or dangerous waste, substance, or material as defined in any so-called "superfund" or "superlien" law.

"Installation" means the installing, setting up, construction and placement of any equipment or materials in the manner it will be operated in accordance with the Scope of Work and in accordance with all Applicable Laws.

"Interest Rate" means interest calculated at the lesser of (i) the per annum rate of interest announced from time to time by Bank of America, N.A., as its "prime" rate for commercial loans plus two percent (2%) or (ii) the maximum rate permitted by Applicable Laws.

"kW" means Kilowatt, the commercial unit of electric power; 1000 Watts.

"kWh" means Kilowatt hour, the commercial unit of electric energy; 1000 Watt hours.

"kWp" means kilowatt rated power, a measure of the peak output of a photovoltaic system.

"kWac" means kilowatt alternating current, a current that flows alternately in one direction and then in the reverse direction.

"kWdc" means kilowatt direct current.

"kWhac" means kilowatt-hour alternating current which is used as a measure of the actual energy generation produced by a Generating Facility.

"Lender" is defined in Section 40(b).

"Losses" means any and all economic and non-economic injuries, losses, costs, liabilities, claims, damages, actions, judgments, settlements, expenses (including reasonable attorney's fees), fines and penalties. The terms "Loss" or "Losses," when used in the context of references in this Contract to Losses shall not include consequential damages.

"Material Changed Condition" means one or more of the following conditions that impact the Project Schedule and/or the Contract Amount: (i) parties outside the control of Contractor caused delays in Project Schedule (or project ownership/operation, such as the PUC); (ii) the discovery of differing and unexpected Site conditions not previously disclosed by Purchaser that could not have been readily discoverable by Contractor prior to start of Work; (iii) the discovery of Hazardous Substances not previously disclosed; (iv) adverse weather conditions not reasonably anticipated; (v) delay in equipment and material deliveries outside Contractor's control; (vi) adverse change in regulatory condition; and (vii) any other condition that could not have been reasonably anticipated by the Parties and is outside Contractor's control. Delay in approval by the appropriate State of Nevada authority and/or other local City or County authorities shall not constitute a Material Changed Condition.

"Notice to Proceed" is defined in Section 8(b).

"Party" means any, and "Parties" means all, of Contractor, Power Provider and Purchaser.

"Permitted Use" is defined in Section 3(a).

"Power Provider" means A3 Solar, LLC, a Nebraska limited liability company, and its permitted successors and assigns as provided in Section 40.

"Pre-existing Conditions" means those conditions that may exist at a Site upon commencement of Work at that Site, which are identified in Section 14(d)(vii).

"Premises" means the Sites, the Property and the Generating Facilities collectively.

"Project" means the entirety of Work to be performed by Contractor pursuant to the terms and conditions of the Scope of Work, and any Change Orders.

"Project Schedule" means a detailed schedule prepared by Contractor pursuant to Section 8(b) of this Contract, using the form attached hereto as part of Attachment D, Project Schedule, depicting in detail Contractor's proposed schedule for performance of its Scope of Work. References in this Contract to a "Project Schedule" shall be deemed

to mean a Project Schedule as adjusted for extensions of time permitted by this Contract.

“Property” means those specific portions of real property on each Site and improvements thereon (if any) upon which the Generating Facilities will be located and as more fully described in the Grant of Easement.

“PUC” means the Public Utilities Commission of Nevada, a state agency which regulates utilities.

“Purchaser” means the China Spring Youth Camp, a school district, non-profit organization or corporation for public benefit (circle appropriate designation) of the State of Nevada, and its permitted successors and assigns as provided in Section 40(d).

“Reporting Rights” means the right of Power Provider to report to any federal, state or local agency, authority or other party, including without limitation under Section 1605(b) of the Energy Policy Act of 1992 and provisions of the Energy Policy Act of 2005, or under any present or future domestic, international or foreign emissions trading program, that Power Provider owns the Environmental Attributes and the Environmental Incentives.

“Scope of Work” means the Work to be performed hereunder by Contractor, and/or Contractor’s subcontractors, pursuant to the Scope of Work (as amended by Change Orders), attached hereto as Attachment A, Scope of Work, and in accordance with the terms and conditions of the Contract.

“Sites” means the real property within which are the specific areas designated as the Property upon which the Generating Facilities will be constructed. The Sites are commonly known by the following address(es):

- (i) 225 China Spring Road, Gardnerville, Nevada
- (ii) _____
- (iii) _____
- (iv) Attach additional sheets as necessary.

“SolarGenerations” means the program providing incentives for eligible solar energy systems adopted by the Nevada PUC and implemented through NV Energy of Nevada.

“Stated Expiration Date” means the last day of the three hundredth (300th) calendar month after the calendar month in which the Commercial Operation Date of the last Generating Facility occurs.

“Substantial Completion” means the point at which the Work is sufficiently and entirely

complete in accordance with the Contract such that such Work can be fully enjoyed and beneficially operated and utilized for its intended purpose (except for minor items which do not impair Purchaser's ability to enjoy the benefit of such Work). In all cases, Substantial Completion as to each and every item of the materials and equipment of the Work at any of the Sites shall be on or before such item is placed-in-service for United States federal income tax purposes.

"Term" is defined in Section 5(b).

"Termination Value" means, with respect to any Early Termination Date, the amount specified for such Early Termination Date on Attachment F, Schedule of Termination Value, to this Contract.

"Utility" means the local provider of electric transmission, distribution and/or commodity and interconnection services to Purchaser at the Sites.

"Utility Interconnection Agreement" means that certain Generating Facility Interconnection Agreement, in substantially the form attached hereto as Exhibit 2, to be entered into between Power Provider and Utility with respect to each of the Sites upon Commercial Operation of such Generating Facilities within such Site.

"Work" means the design, procurement, Installation and/or Construction required for the Generating Facilities at each of the Sites in accordance with the Scope of Work and includes all labor necessary to produce such services, all materials, fabrication, assemblies and equipment incorporated or to be incorporated in such Construction and Installation necessary to achieve Final Completion of Generating Facilities.

Section 2. Emergency Access to Premises.

Notwithstanding anything to the contrary in this Contract, Contractor, Power Provider and Utility shall be permitted to access the Premises twenty-four (24) hours a day, seven (7) days a week for emergency purposes, as reasonably determined by Contractor, Power Provider or Utility. Within twenty-four (24) hours of such emergency access, the party gaining access shall provide Purchaser with an explanation of the nature of the emergency. All such emergency work shall be diligently prosecuted to completion to the end that such work shall not remain in a partly finished condition any longer than necessary for completion.

Section 3. Use of Premises.

(A) Permitted Use of Property by Power Provider and Contractor. Purchaser shall

grant to Power Provider and Contractor for the Term an easement for the Generating Facilities on the Property pursuant to the Grant of Easement for the purpose of construction, installation, maintenance, repair and operation of the Generating Facilities on the Property for the production, transformation and transmission of solar photovoltaic generated electricity and for no other use or purpose (the "Permitted Use"). Purchaser shall also include in Permitted Use access easements, user of property easements and solar easement.

(B) Purchaser's Access to Generating Facilities. Purchaser shall be permitted access to the Generating Facilities at any time for emergency purposes as reasonably determined by Purchaser and with such notice to Contractor and Power Provider as shall be reasonable under the circumstances. Otherwise, Purchaser shall be permitted access to the Generating Facilities at such times and for such purposes as Purchaser shall reasonably determine and with such prior notice to Contractor and Purchaser as shall be reasonable under the circumstances.

(C) Limitation on Use. Neither Power Provider nor Contractor shall use the Premises or any part thereof for any use other than a Permitted Use, or provide the Generating Facilities for the use of others without first obtaining Purchaser's written consent. Power Provider is only to cause the Premises to be used for the collection and conversion of solar energy for electricity generation to be used by and for the benefit of Purchaser. No change or alteration to the Permitted Use, including a change or alteration to the electrical output of the Generating Facilities, except for expected degradation and weather fluctuations, may be made without the prior written approval of Purchaser.

(D) Prohibited Uses. Neither Power Provider nor Contractor shall use the Premises for any immoral or unlawful purposes, nor shall Power Provider or Contractor cause, maintain or permit any nuisance in, on or about the Generating Facilities. Neither Power Provider nor Contractor shall use or allow the Generating Facilities to be used, or fail to use or allow the failure to use, for any purpose inconsistent with this Contract. Power Provider and Contractor shall comply with all rules and regulations adopted by Purchaser for the Premises, including all relevant Board Policies of the Purchaser adopted by the Purchaser for the Premises, as made known in writing to the Contractor pursuant to Section 4(j)(ix). Such rules shall include, but not be limited to, the prohibition against the possession or use of firearms, liquor, tobacco or illegal drugs. Any willful violation of said rules and regulations is grounds for termination of the Contract as provided in Section 5(d).

(E) No Interference with Purchaser's Uses/Quiet Enjoyment. Power Provider shall cause the Generating Facilities to be constructed, installed and operated, and Contractor shall construct, install, maintain and repair the Generating Facilities, in a manner that will not obstruct or interfere with Purchaser's use of the Premises or the rights of any students, faculty or other users of the Premises excepting any disruption caused by normal construction activities or in emergency situations. Purchaser may consider any such interference to be a material breach of this Contract and treat it as a default by Power Provider and/or Contractor for which Purchaser's remedies may

include termination as provided in Section 5(d). In the event interference occurs, Power Provider shall cause to be taken, and Contractor hereby agrees to take, all reasonable steps necessary to eliminate such interference promptly, but no later than sixty (60) days after Purchaser notifies Power Provider and Contractor in writing of such interference. Contractor shall use its best efforts to maintain the Generating Facilities in a manner that does not interfere with the Sites or other property or improvements to the related Premises or other Purchaser's property. Purchaser may construct, reconstruct, modify or make alterations to the Property so long as those activities do not cause interference (including shading) with the operation of the Generating Facilities.

(F) Subordination to Existing Leases, Easements and Rights of Way. Power Provider acknowledges and understands that the easement and other rights granted pursuant to the Grant of Easement and all rights of Power Provider and Contractor under this Contract are subject and subordinate to all existing leases, easements, rights of way, declarations, restrictions or other matters of record and all existing contracts of Purchaser with respect to the Property. Purchaser hereby represents and warrants to Power Provider and Contractor that, to the best of its knowledge, no existing lease, easement, right of way, declaration, restriction or other matter of record or any existing contract of Purchaser with respect to the Property interferes with or impairs, or will interfere with or impair, the easement and other rights granted pursuant to the Grant of Easement for purposes of this Contract. Purchaser reserves the right to grant additional licenses, easements, leases or rights of way, whether recorded or unrecorded, as may be necessary, which do not interfere with or impair (including shading) the easement and other rights granted pursuant to the Grant of Easement.

(G) Compliance with Applicable Laws and Applicable Permits. All activities conducted by Power Provider and Contractor pursuant to this Contract shall be in compliance with all applicable zoning requirements and all Applicable Laws and all Applicable Permits and shall be conducted solely at Contractor's cost and expense. Power Provider shall immediately suspend use of, and Contractor shall immediately suspend the Work relating to, the affected Generating Facilities upon notice to the Contractor and/or Power Provider, as applicable, by any Governmental Authority having jurisdiction that any of Power Provider's or Contractor's activities under the Contract constitutes a violation of any of the Applicable Laws or any Applicable Permits until the violation, if any, is corrected and the applicable Governmental Authority concurs that the violation is corrected. Each of the Contractor and the Power Provider shall promptly notify the other party of receipt of any such notice from a Governmental Authority. Power Provider and Contractor shall immediately notify Purchaser regarding any notice that it has received regarding any alleged violation. Failure of Power Provider or Contractor to immediately suspend use of, or the Work relating to, the affected Generating Facilities, as the case may be, and/or to notify Purchaser in accordance with this subsection after receiving a notice of any violation which may pose a risk to public health or safety is grounds for termination by Purchaser of this Contract as provided in Section 5(d).

(H) No Infringement. Contractor's construction, installation and operation of the Generating Facilities at the Property shall not infringe upon any third party's intellectual

property or other proprietary rights.

Section 4. Commencement of Operations and Ownership of the Generating Facilities.

(A) Purchaser Consent to Construction and Installation. Purchaser hereby consents to the Construction and Installation of the Generating Facilities on the Property in accordance with the Scope of Work and this Contract.

(B) Completion of Generating Facilities. Subject to the terms and conditions of this Contract, including Section 25(c), Power Provider shall cause Construction and Installation of the Generating Facilities to be completed in accordance with the Scope of Work and cause each of the Generating Facilities to begin Commercial Operation on or before May 21, 2011 in accordance with the published guidelines of the SolarGenerations program at NV Energy of Nevada. Contractor has agreed to perform the Construction and Installation of the Generating Facilities in accordance with the terms and conditions of this Contract. The Parties acknowledge and agree that (i) Contractor's agreement to perform the Construction and Installation of the Generating Facilities to be completed in accordance with the terms and conditions of this Contract satisfies Power Provider's agreement to cause such Construction and Installation as provided in this subsection (B); (ii) if, for whatever reason, Contractor fails to perform such Construction and Installation, Power Provider shall not have any obligation itself to construct and install the Generating Facilities or any further obligation to cause such Construction and Installation; and (iii) this subsection (B) does not limit other obligations of Power Provider in accordance with this Contract, including (without limitation) its agreement to sell and deliver Energy Output to Purchaser as provided in Section 5 from and after the Commercial Operation Date of each Generating Facility.

(C) Contractor to Obtain Applicable Permits. Power Provider shall cause Contractor to, and Contractor hereby agrees, at no additional cost and expense to Purchaser, to obtain all Applicable Permits necessary for the Construction, Installation, operation and maintenance of the Generating Facilities on the Property. Purchaser hereby agrees to cooperate with Power Provider or Contractor in applying for any and all Applicable Permits, including but not limited to all necessary Utility Interconnection Agreements at any of the Sites, that Contractor finds necessary or desirable for the Construction, Installation, operation and maintenance of the Generating Facilities on the Property. Purchaser and Power Provider hereby appoint the Contractor as their respective agent for applying for and obtaining such Applicable Permits. Power Provider shall cause the activities set forth in this Section 4 to be carried out in accordance with all Applicable Laws and in such a manner as will not unreasonably interfere with Purchaser's operation or maintenance of the Property for which purpose Contractor hereby agrees that Contractor shall carry out the activities set forth in this Section 4 in accordance with all Applicable Laws and in such manner as will not unreasonably interfere with Purchaser's operation and maintenance of the Property.

(D) Purchaser's Disclaimers Regarding Generating Facilities. Purchaser acknowledges and agrees that, notwithstanding that the Generating Facilities are fixtures on the respective Property,

- (i) Purchaser has no right, title or interest in the Generating Facilities and Power Provider is the exclusive owner and operator of the Generating Facilities; and
- (ii) the Generating Facilities may not be sold, leased, assigned, mortgaged, pledged or otherwise alienated or encumbered by Purchaser (collectively, a "Transfer") with the fee interest or leasehold rights to any of the Property. Purchaser shall give Power Provider at least thirty (30) days written notice prior to any Transfer of all or a portion of the Property identifying the transferee, the Site or portion interest of any of the Sites to be transferred and the proposed date of Transfer; and,
- (iii) Purchaser agrees that all rights of the Power Provider to maintain the Generating Facilities on the Property and in their original location shall be Transferred to any and all new Owners of the Property upon Transfer by the Purchaser.

(E) Combined Generating Capacity. In Commercial Operation, the Generating Facilities are targeted to have a combined generating capacity rating as shown in Attachment A, Scope of Work.

(F) Movement to or Replacement at Alternate Location. If, at the direction of Purchaser, the Generating Facilities on a Site must be moved or replaced from the Site to an alternate location on the Site or an alternate location in proximity to the Site during the Term, such alternate location is subject to (i) the approval (such approval not to be unreasonably withheld or delayed) of Contractor (for and on behalf of Power Provider) and Purchaser; (ii) receipt by Power Provider of evidence reasonably satisfactory to Power Provider that Purchaser has or will have funds legally available for the purpose of continuing to satisfy its payment obligation during the period while such movement or replacement is being implemented; and (iii) an amendment to the Grant of Easement in form and substance satisfactory to Power Provider and Contractor to include such alternate location, and recordation of such amendment, to the extent that such alternate location is not on the Property theretofore subject to the Grant of Easement. Upon satisfaction of the foregoing conditions, the obligation of Purchaser shall remain as set forth in this Contract. Notwithstanding that the Generating Facilities are fixtures on the respective Property, where Purchaser solely requires such movement or replacement of the Generating Facilities or portion thereof from a Site, the Purchaser shall be responsible for all associated costs of removal and reinstallation. If Purchaser requires movement or replacement of the Generating Facilities, or a portion thereof from a Site, Purchaser shall continue to pay to Power Provider its monthly payment for the period of time during which the Generating Facilities or portion thereof are not in Commercial Operation due to the movement or replacement and Contractor's Cumulative Guaranteed Energy Output and the period for which the Cumulative Guaranteed Energy Output is to be calculated shall each be adjusted as provided in Section 16(e).

(G) **Temporary Removal of Generating Facilities.** If temporary removal of the Generating Facilities is required by the Purchaser due to site work that is principally unrelated to the Work completed on the Generating Facilities, Purchaser is responsible for all associated costs of removal and reinstallation and must proceed diligently. During any period while the Generating Facilities or a portion thereof is off-line in connection with a temporary removal, Purchaser shall continue to pay to Power Provider its monthly payment for the period of time during which the Generating Facilities (or portion thereof) are not in Commercial Operation due to such temporary removal and Contractor's Cumulative Guaranteed Energy Output and the period for which the Cumulative Guaranteed Energy Output is to be calculated shall each be adjusted as provided in Section 16(e), provided, however, that Purchaser shall not be entitled to undertake such removal unless it has or will have funds legally available for the purpose of continuing to satisfy its payment obligation during the period of such temporary removal.

(H) **No Interference with Insolation.** Notwithstanding that the Generating Facilities are fixtures on the respective Property, Purchaser shall not cause or permit any interference with the Generating Facilities' insolation and access to sunlight, as such access exists as of the Effective Date, and as provided in the Grant of Easement. If any such interference occurs, Contractor's Cumulative Output Guarantee and the period for which the Cumulative Guaranteed Energy Output is to be calculated shall be adjusted as provided in Section 16(e).

(I) **Operation and Maintenance Agreement.** Within ten (10) days after the Commercial Operation Date of the last Generating Facility, Purchaser and Contractor (in its separate capacity as O&M Provider) shall enter into an Operation and Maintenance Agreement, in substantially the form attached hereto as Exhibit 3, with respect to operation and maintenance of the Generating Facilities by Contractor (in such separate capacity) for the benefit of Purchaser and Power Provider. Power Provider hereby consents to the execution, delivery and performance of the Operation and Maintenance Agreement by Contractor and Purchaser as herein provided. Purchaser may terminate the Operation and Maintenance Agreement with Contractor in accordance with the terms thereof (in its separate capacity as O&M Provider) and may select a replacement O&M Provider solely with the prior written approval of Power Provider, which approval shall be delivered promptly upon request and shall not be unreasonably withheld.

(J) **Conditions Precedent.** Power Provider shall have no obligation to provide funding arrangements for the Project under this Contract, and Contractor shall have no obligation under this Contract to proceed with Construction and Installation of the Project unless the following conditions precedent have been satisfied or waived by Power Provider or Contractor, as the case may be, on or prior to May 21, 2011:

(i) Contractor has received from Power Provider a letter, in form and substance reasonably acceptable to Contractor, from Banc of America Leasing & Capital, LLC, or similar, to the effect that Banc of America Leasing & Capital,

LLC, will capitalize Power Provider, and maintain such capitalization, in such amount as is necessary from time to time to enable Power Provider to satisfy its funding obligations to Contractor under Section 17;

(ii) Contractor shall have delivered to Power Provider such warranty agreement with respect to the performance of Contractor's obligations under this Contract, together with an opinion of Contractor's counsel both in form and substance acceptable to Power Provider;

(iii) Power Provider has received the Payment Bond and the Performance Bond, with dual obligee rider naming Power Provider and Purchaser as dual obligees, as required by Section 20;

(iv) Power Provider has received a copy of each Confirmed Reservation Notice Letter and Program Contract under the applicable State of Nevada Programs and the Utility to Purchaser or Power Provider for each of the Sites;

(v) Power Provider has received evidence of insurance coverages (or self-insurance) required to be obtained and maintained by Contractor and Purchaser pursuant to Section 21;

(vi) counsel to each of Contractor and Power Provider have delivered opinions in form and substance acceptable to each other;

(vii) Power Provider shall have received an opinion of Kennedy & Associates, LLP, as special tax counsel, with respect to certain federal tax matters;

(viii) Purchaser shall have delivered to Power Provider and Contractor the written statement required by Section 14(d)(vi), in form and substance acceptable to Power Provider and Contractor;

(ix) Purchaser shall have delivered to Contractor the relevant rules, regulations, and Board Policies adopted by Purchaser for the Premises; and

(x) Power Provider has delivered to Contractor the Notice to Proceed for purposes of Section 8(b).

If the conditions set out above shall not be satisfied on or prior to May 21, 2011, then this Contract shall terminate and none of Power Provider, Contractor or Purchaser shall be under any further obligation under this Contract.

Section 5. Purchase and Sale of Power; Term; End of Term Option; Early Termination; Early Buyout Option.

(A) Purchase and Sale. Beginning on the Commercial Operation Date of the last Generating Facility, but no earlier than May 21, 2010, and continuing for the Term, Purchaser shall purchase and accept delivery from Power Provider according to the payment schedule set forth in Attachment E, Annual Power Payments and Pricing and Power Provider shall sell and deliver to Purchaser, the Energy Output from the Generating Facilities at the Sites (in such amount of output as the Generating Facilities at such Sites produce from time to time), but in no event in the case of a fixed supply agreement and other than a Force Majeure event and subject to Section 16(e), shall the Energy Output of the Generating Facilities at the Sites be less than the "Guaranteed

Energy Output" described in Section 16, if applicable, provided that the remedy for failure of the Generating Facilities to produce Energy Output at least equal to the Guaranteed Energy Output shall be the true-up with Contractor provided in Section 16(e). Purchaser shall not resell any of the Energy Output without Power Provider's prior written consent, such consent to not be unreasonably withheld; provided, however, that Power Provider shall be entitled to withhold any such consent in the exercise of its sole discretion if any such resale may adversely affect any of Power Purchaser's rights or interests under Section 6.

(i) **Payments.** Purchaser shall make monthly payments to Power Provider according to the amount of power actually generated by the Generating Facilities and the payment schedule set forth in Attachment E, Annual Power Payments and Pricing. The monthly payments shall be paid on a monthly billing cycle. Power Provider shall deliver or cause to be delivered to Purchaser an invoice by the 20th day of each calendar month (or upon a monthly schedule reasonably acceptable to Purchaser and Power Provider) for the amount then due for the preceding calendar month. Purchaser shall pay the invoiced amount on or before thirty (30) days following the date of the invoice, which shall be referred to as the "Due Date." Note as an example the following: If Power Provider invoices Purchaser on March 20th for Energy Output produced during the month of February, Purchaser shall pay Power Provider for such March 20th invoice no later than April 19th. If the Due Date is not a Business Day, payment shall be due on the next following Business Day. Power Provider's obligation to deliver invoices and Purchaser's obligation to make payment shall commence for the first calendar month after the calendar month in which the Commercial Operation Date of the last Generating Facility occurs and shall be prorated for the calendar month in which such Commercial Operation Date occurs. Any invoiced amount not paid on or before its Due Date shall bear interest at a rate equal to the Interest Rate in effect from time to time.

(ii) **Nature of Purchaser's Payment Obligation.** Purchaser's payment obligation under this Contract constitutes a current obligation payable exclusively from funds legally available for such purpose for and in consideration of the delivery and sale to Purchaser of the Energy Output from the Generating Facilities at the Sites from and after the Commercial Operation Date of the last Generating Facility and continuing for the Term, provided, however, that Purchaser's obligations to make payment under this Contract shall be abated, only in the case of Guaranteed Energy Output, during any period in which, by reason of damage or destruction (other than by eminent domain, in which case Section 5(f) shall be applicable), the Generating Facilities at the Sites are not substantially available for Purchaser's beneficial use and enjoyment produced by the operation of such Generating Facilities. Purchaser's payment obligation under this Contract shall not be construed to be an indebtedness within the meaning of any applicable constitutional or statutory limitation or requirement. Purchaser has not pledged its taxing power, if applicable, to pay any amounts due under this Contract. The amount by which such payment obligation would be abated shall be determined by Purchaser in consultation with Contractor and Power Provider such that the unabated portion of such payment obligation represents

fair consideration for Generating Facilities at the affected Site that have not been significantly affected by such damage or destruction and the Generating Facilities at the unaffected Sites. Such abatement shall continue for the period from the date on which Generating Facilities are not substantially available for Purchaser's beneficial use and enjoyment to the date on which such substantial availability is restored, and the Term of this Contract with respect to such Generating Facilities shall be extended for a like period during which Purchaser's obligation to make payments under this Contract with respect to such Generating Facilities shall continue. Notwithstanding the foregoing, there shall be no abatement of Purchaser's payment obligation to the extent that the proceeds of hazard insurance or business interruption insurance are available to satisfy Purchaser's payment obligation which would otherwise be abated, it being declared that such proceeds constitute a special fund for the payment of Purchaser's payment obligation.

(iii) **Covenant to Budget and Appropriate.** Purchaser hereby covenants to take such action as is necessary under the laws applicable to Purchaser to budget for and include and maintain funds sufficient and available to discharge its payment obligations under this Contract due in each of its fiscal years from and after the Commercial Operation Date of the last Generating Facility and continuing for the Term. The covenants on the part of Purchaser herein contained shall be deemed to be and shall be construed to be ministerial duties imposed by law and it shall be the duty of each and every public official of Purchaser to take such action and do such things as are required by law in the performance of the official duty of such officials to enable Purchaser to carry out and perform the covenants and agreements in this Contract agreed to be carried out and performed by Purchaser.

(iv) **Taxes on Sale of Energy Output.** In the event that any state or local taxes are assessed against the generation of Energy Output by the Generating Facilities at any of the Sites or against the sale or delivery to, or consumption by, Purchaser of Energy Output, Purchaser shall either pay or reimburse Power Provider for all such amounts due, including any taxes assessed thereon, except any income taxes imposed on Power Provider based on such sales.

(v) **Real Estate or Property Taxes.** Purchaser shall pay or cause to be paid all real estate or personal property taxes, possessory interest taxes, business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, assessments, bonds, levies, fees or charges of any kind which are now or hereafter assessed, levied, charged, confirmed or imposed by any Governmental Authority on Power Provider's occupancy and use of the Property (or any portion or component thereof) or on Power Provider's ownership or operation of the Generating Facilities except: (A) real and personal property taxes relating to the Property on which the Generating Facilities are situated to the extent that such Property is exempt from such property taxation (B) inheritance or estate taxes imposed upon or assessed against the Premises, or any part thereof or interest therein, and (C) taxes computed upon the basis of the net income or payments derived from the Generating Facilities by Power Provider.

(B) Term. The initial term of this Contract shall commence as of the Effective Date and shall expire on the Stated Expiration Date twenty-five (25) years after the Effective Date unless and until terminated earlier pursuant to the provisions of this Contract or extended pursuant to the provisions of this Contract; provided, however, that in no event shall any such extension result in a term longer than eighteen (18) months after the Stated Expiration Date (the "Term").

(C) End of Term Option. Not less than two hundred ten (210) days, or more than one (1) year, prior to the Stated Expiration Date, Power Provider shall notify Purchaser in writing that Purchaser has the end of term option provided in this Section 5(c); provided, however, that the failure of Power Provider to deliver such notice shall not constitute an Event of Default by Power Provider under this Contract or otherwise give rise to any Claim. Not less than ninety (90), nor more than two hundred ten (210), days prior to the Stated Expiration Date, Purchaser may notify Power Provider of its intent to choose one of the following options with respect to all Generating Facilities on all Sites:

(i) Removal of Generating Facilities. If Purchaser does not deliver a written request to Power Provider pursuant to subsection (c)(ii) of this Section 5 at least ninety (90) days prior to the Stated Expiration Date, Power Provider shall cause to be removed, at Power Provider's sole expense, the Generating Facilities from the Sites by a mutually convenient date but in no case later than one hundred eighty (180) days after the Stated Expiration Date and return the Property to its pre-installation condition (except for Generating Facilities mounting pads in roof mounted installations and ordinary wear and tear), and peaceably and quietly leave, surrender and yield the Property to Purchaser. In no case shall Power Provider's removal of the Generating Facilities affect the integrity of Purchaser's roof (for roof mounted Generating Facilities), which shall be as leak proof as it was prior to removal of Generating Facilities. Purchaser may, within its sole discretion, extend the time allowable for Power Provider to vacate the Property and remove the Generating Facilities upon written request by Power Provider within this 180-day period. Upon completion of the removal of the Generating Facilities and conduct of any necessary repairs, Power Provider shall notify Purchaser that said removal is complete.

(ii) Purchase of Generating Facilities. Upon Purchaser's prior written request, which shall be delivered to Power Provider at least ninety (90) days prior to the Stated Expiration Date, Purchaser may purchase the Generating Facilities at all the Sites for a purchase price equal to the Fair Market Value. The "Fair Market Value" for the Generating Facilities at all Sites shall be the value determined by the mutual agreement of Purchaser and Power Provider within ninety (90) days after receipt by Purchaser of Power Provider's notice pursuant to the first sentence of this subsection (c) of Section 5; provided, however, that if (for whatever reason) Power Provider has failed to deliver the written notice to Purchaser regarding the end of term option, such Fair Market Value shall be determined by mutual agreement of Purchaser and Power Provider no later than the ninetieth (90th) day prior to the Stated Expiration Date. If Purchaser and Power Provider cannot mutually agree to a Fair Market Value, then Purchaser

and Power Provider shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to value the Generating Facilities. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value and shall set forth such determination in a written opinion delivered to Power Provider and Purchaser. The valuation made by the appraiser shall be binding on Purchaser and Power Provider in the absence of fraud or manifest error. The costs of the appraisal shall be borne by Purchaser and Power Provider equally. To the extent transferable, the remaining period, if any, on all warranties for the Generating Facilities shall be transferred from Power Provider to Purchaser at Purchaser's sole expense. If Purchaser and Power Provider are unable to agree on the selection of an appraiser, such appraiser shall be selected by the two appraiser firms proposed by each such Party. Upon the exercise of the foregoing purchase option with respect to the Generating Facilities at all Sites plus receipt of the then Fair Market Value and all other amounts then owing by Purchaser to Power Provider with respect to the Generating Facilities at all Sites, Power Provider shall execute all bills of sale and other instruments necessary (including any documents in recordable form that are required to terminate the easements and other rights granted under the Grant of Easement) to cause title to the Generating Facilities to pass to Purchaser as-is, where-is, free and clear of any liens or other encumbrances placed on the Generating Facilities by Power Provider.

(D) Early Termination Without Buyout. Purchaser may terminate this Contract on the First Termination Date and on each Annual Termination Date thereafter for any reason, in each case upon at least ninety (90) days' prior written notice delivered to Power Provider to the effect that Purchaser desires to terminate the Contract on the related Early Termination Date without exercising its Early Buyout Option. Upon such termination,

- (i) Purchaser shall at the time of notification pay the Termination Value for the related Early Termination Date to Power Provider, and
- (ii) Power Provider shall cause the Generating Facilities to be disconnected and removed from the Property on the same terms and conditions as are provided in Section 5(c)(i). Upon Purchaser's payment to Power Provider of the applicable Termination Value and any other amounts then due under this Contract, this Contract shall terminate automatically. Notwithstanding anything in this subsection (D) or otherwise in this Contract to the contrary, Purchaser may terminate this Contract under any of the circumstances provided in Section 3(d), 3(e) or 3(g) without any obligation to pay the Termination Value, provided that Purchaser shall not be entitled to terminate this Contract prior to providing the Contractor and Power Provider with notice of any such default under Section 3(d), 3(e) or 3(g) and Contractor shall (on its behalf and on behalf of Power Provider) make best efforts to cure as soon as possible, provided further that Contractor shall have sixty (60) days after receipt of notice from the Power Provider to cure such default prior to any Purchaser right to terminate this Contract. Power Provider shall have the right to remove the Generating Facilities

from the Property on the same terms and conditions as are provided in Section 5(c)(i).

(E) Early Buyout Option on First Termination Date. So long as no Event of Default by Purchaser shall have occurred and be continuing,

(i) Purchaser may terminate this Contract on the First Termination Date for any reason upon prior written notice as herein provided and
(ii) Power Provider grants to Purchaser an option to purchase all Generating Facilities at all Sites as of the First Termination Date for the Early Buyout Price as described in Attachment H, Early Buyout Price Schedule. Not less than ninety (90) days prior to the First Termination Date, Purchaser may provide written notice to Power Provider of Purchaser's intent to terminate this Contract and exercise its Early Buyout Option on the First Termination Date. Upon receipt of Purchaser's notice, the Fair Market Value for the Generating Facilities as of the First Termination Date shall be determined in the same manner as provided in Section 5(c)(ii) and, based upon the Fair Market Value so determined, Power Provider shall deliver written notice to Purchaser of the Early Buyout Price at least thirty (30) days prior to the First Termination Date. On and prior to the First Termination Date, (a) Power Provider shall execute all bills of sale and other instruments necessary (including any documents in recordable form that are required to terminate the easements and other rights granted under the Grant of Easement) to cause title to the Generating Facilities to pass to Purchaser as-is, where-is on the First Termination Date, free and clear of any liens or other encumbrances placed on the Generating Facilities by Power Provider; (b) Power Provider shall assign all warranties for the Generating Facilities to Purchaser; and (c) Purchaser shall pay the Early Buyout Price to or at the direction of Power Provider in funds immediately available on the First Termination Date.

(F) Condemnation of Generating Facilities. In the event that the whole or any portion of the Generating Facilities on any Site is acquired or condemned by any authority (including Purchaser to the extent that Purchaser has condemnation power under applicable State law) or is sold by Power Provider in lieu of such condemnation, then this Contract shall terminate at Power Provider's election as to the Generating Facilities at such Site as of the date on which the condemning authority takes title or such earlier date as reasonably necessary or desirable in Power Provider's reasonable discretion. Power Provider and Purchaser hereby acknowledge and agree, to the fullest extent permitted by law, that the market value of the whole or a portion of any Generating Facilities at any Site for purposes of any such condemnation proceeding shall be determined at the time of condemnation as a pro rata share of the value determined in condemnation of the Premises, the Site or Sites or the Property, whichever is subject to condemnation. Power Provider shall be entitled to the proceeds of any such condemnation award to the extent of such pro rata share of value attributable to the Generating Facilities relating to the Premises, the Site or Sites or the Property so condemned.

(G) Nature of Purchaser's Obligation upon Termination. Purchaser's obligation to pay the Early Buyout Price or Termination Value, as applicable, pursuant to this Section 5 or otherwise under any other provision of this Contract shall constitute a current obligation payable exclusively from funds legally available for such purpose (including borrowed funds) for and in consideration of the sale and transfer of the Generating Facilities and shall not be construed to be an indebtedness within the meaning of any applicable constitutional or statutory limitation or requirement. Purchaser has not pledged its taxing power to pay any amounts under this Contract, including any amount in connection with the expiration or termination of this Contract as provided herein.

Section 6. Environmental Attributes; Environmental Incentives.

(A) Delegation of Environmental Attributes to Power Provider. Except as provided in subsections (C) and (D) of this Section 6 and notwithstanding that the Generating Facilities are fixtures on the respective Property, Power Provider shall own, and may assign or sell in its sole discretion, all of its right, title, and interest associated with or resulting from the development, Construction, Installation and ownership of the Generating Facilities or the production, sale, purchase or use of the Energy Output including, without limitation:

- (i) all Environmental Incentives arising from the Environmental Attributes associated with the Generating Facilities; and
- (ii) the Reporting Rights and the exclusive rights to claim that: (a) the Energy Output was generated by the Generating Facilities; (b) Power Provider is responsible for the delivery of Energy Output to each Energy Delivery Point; (c) Power Provider is responsible for the reductions in emissions of pollution and greenhouse gases resulting from the generation of the Energy Output and the delivery thereof to each Energy Delivery Point; and (d) Power Provider is entitled to all credits, certificates, registrations, rebates, etc., evidencing or representing any of the foregoing.

(B) Purchaser's Rights After its Purchase of Generating Facilities. If Purchaser exercises its Early Buyout Option and purchases the Generating Facilities as provided in Section 5(e), Purchaser shall own all right, title and interest associated with or resulting from the production, sale, purchase or use of the Energy Output, notwithstanding Power Provider's right, title or interest prior to such purchase.

(C) Renewable Energy Credits; Future Environmental Incentives. Upon exercising its Right to Purchase the Generating Facilities under any Section of this Contract, Purchaser shall be entitled to;

- (i) all carbon reduction tonne as defined under the California Action Reserve or such similar definition as enacted by the State of Nevada or the U.S. Federal Government (the "Carbon Credits"); and
- (ii) all Environmental Incentives hereafter enacted into law, whether under federal, state or local law, arising from the Environmental Attributes of the

Generating Facilities on each Site or the Energy Output or the production, sale, purchase, consumption or use of the Energy Output from each Site expressly excluding, however, any future Environmental Incentives to the extent such Environmental Incentives are or may be dependent on ownership of the Generating Facilities for federal tax purposes. The Carbon Credits, renewable energy credits and future Environmental Incentives as described in the foregoing clauses (i) and (ii) are herein referred to collectively as the "Energy Credits."

(D) Either Purchaser or Power Provider may assign, sell, transfer or otherwise convey all or any part of its right, title and interest in and to the Energy Credits from time to time and at any time as it may determine to be in its best interests. Subject to Applicable Law, Purchaser and Power Provider shall provide written notice to the Contractor of its intent to sell all or any part of its right, title and interest in and to the Energy Credits. Contractor shall respond in writing within thirty (30) Business Days of receipt of this notice with Contractor's monetary offer to purchase the offered Energy Credits or its notice that it is not interested in purchasing the offered Energy Credits. If Contractor offers to purchase the offered Energy Credits, the Power Provider or Purchaser, as the case may be, may not, within sixty (60) calendar days of the Offer, make an offer to sell such Energy Credits to a potential purchaser other than the Contractor for consideration less than the price the Contractor offered.

(E) Power Provider shall take such steps as Purchaser shall reasonably request to confirm Purchaser's ownership of Energy Credits as herein provided and shall cooperate with Purchaser, to the extent Purchaser reasonably requests and at Purchaser's expense, in the sale or other disposition of Energy Credits.

(F) Performance Based Incentive Payments Under State of Nevada Statutes. In connection with Power Provider's rights and interests (as part of its rights and interests under subsection (a) of this Section 6) any performance based incentive payments to be made under the applicable State of Nevada Statutes, after the Commercial Operation Date of each such Generating Facility, Purchaser agrees to cooperate with Power Provider, including signing authorizations needed by Power Provider, to obtain or transfer any such performance based incentives under the State of Nevada Statutes.

Section 7. Delivery.

(A) Title and Risk of Loss. Title and risk of loss of the Energy Output shall pass from Power Provider to Purchaser upon delivery of the Energy Output at the respective Energy Delivery Point. All deliveries of Energy Output hereunder shall be in the form of three-phase, sixty-cycle alternating current or similar to properly integrate with the Site's electrical system. Purchaser shall purchase and accept delivery of metered Energy Output at each Energy Delivery Point.

(B) Conformity of Energy Output to Utility Specifications. Contractor shall ensure that all energy generated by the Generating Facilities conforms to Utility specifications for energy being generated and delivered to each Site's electric distribution system, which shall include the installation of proper power conditioning and safety equipment, submittal of necessary specifications, coordination of Utility testing and verification and all related costs.

(C) Delivery on Purchaser's Side. Purchaser shall be responsible for arranging delivery of Energy Output from each Energy Delivery Point to Purchaser and any installation and operation of equipment on Purchaser's side of each Energy Delivery Point necessary for acceptance and use of the Energy Output. Purchaser and Power Provider acknowledge that adjustments in the terms and conditions of this Contract may be appropriate to account for rule changes in the respective Utility or Utility control areas, by the respective independent system operators or their successors, that could not be anticipated at the Effective Date or that are beyond the control of Purchaser and Power Provider, and Purchaser and Power Provider agree to make such commercially reasonable amendments as are reasonably required to comply therewith.

Section 8. Performance of Work/Additional Terms and Conditions Governing Construction. Contractor shall perform all Work, including design, engineering, equipment and material procurement, Installation, Construction and measurement and verification of the Generating Facilities in accordance with the terms of this Contract.

(A) Scope of Work. The Scope of Work to be provided hereunder, including all designing, engineering, equipment and material procurement, Installation and Construction, is more fully described in the Scope of Work attached hereto as Attachment A, Scope of Work.

(B) Notice to Proceed. Upon satisfaction of the conditions precedent set forth in Section 4(j) on or before May 30, 2008, Power Provider shall issue to Contractor a written Notice to Proceed ("Notice to Proceed") in form and content satisfactory to Contractor and Power Provider. Contractor shall begin Work within thirty (30) calendar days after Contractor's receipt from Power Provider of the Notice to Proceed.

(C) Commercial Operation Date. The Commercial Operation Date for each Generating Facility at each respective Site shall commence upon the date that Contractor has successfully commissioned each such Generating Facility, which shall be deemed to occur upon the conclusion of testing not to exceed five (5) days during which time such Generating Facility meets its threshold production value as determined by a comparison to meteorological data collection center data.

(D) Access. Contractor's access to the Property shall be subject to all procedures reasonably adopted from time to time by Purchaser. Only Contractor's and Power Provider's employees, agents and/or subcontractors retained by Power Provider and

Contractor shall be permitted access to the Property. Said representatives shall be required to show appropriate identification prior to the requested access. Access to the Property by construction workers, material providers and agents of Contractor during construction shall be conducted so as to minimize interference with the operations of the Purchaser.

(E) Security. At all times during the Construction, Installation and operations on the Premises and any other authorized use areas, Contractor shall keep any and all areas of Construction, Installation and operation adequately secured for safety and security purposes. Contractor shall coordinate with Purchaser's facilities manager and comply with all public safety and Purchaser's security requirements when accessing the Premises.

(F) Fingerprinting Requirement. In the case of the China Spring Youth Camp, Contractor shall comply with the Purchaser's requirement regarding the submission of employee fingerprints to the Nevada Department of Justice and the completion of criminal background investigations of its employees or any such other entity and reasonable investigative process the Purchaser deems necessary. Contractor shall not permit any employees to have any contact with Purchaser's pupils until such time as Contractor has verified in writing to the Board that such employee has not been convicted of a felony, as defined in the applicable State of Nevada Education Code. Contractor's responsibility shall extend to all employees, subcontractors and employees of subcontractors regardless of whether such individuals are paid or unpaid, concurrently employed by Purchaser or acting as independent contractors of Contractor. Verification of compliance with this subsection (F) shall be provided in writing to Purchaser prior to each individual's commencement of employment or participation in the Project and/or prior to permitting contact with pupils. Purchaser agrees to notify Contractor of its specific requirements, in writing, within ten (10) days of the execution of this agreement.

Section 9. Warranty/Limitation of Liability.

(A) Contractor warrants to Power Provider for a period of not less than ten (10) years from the Commercial Operation Date of each such Generating Facility:

- (i) its workmanship provided hereunder, including its subcontractors' workmanship; and
- (ii) that the Equipment shall be free of defective system or component breakdown, or degradation in electrical output of more than fifteen per cent from their originally rated electrical output ("10 Year Contractor Warranty").
- (iii) the warranty period on all PV modules will be no less than twenty (20) years
- (iv) all components required for Power Generation will appear on the California Energy Commission (CEC) approved equipment list.

This 10 Year Contractor Warranty covers solely the solar generating system, including PV modules (panels) except as stated in 9(A)iii above, inverters, solar collectors, tracking mechanisms, heat exchangers, pumps, heat driven cooling systems associated with the solar systems.

(B) Additional equipment and material that are not part of the solar generating systems, as described in Section 9(A) above, including meters, shall be covered by a one (1) year warranty against defective workmanship, system or component breakdown, and degradation in electrical output of more than fifteen per cent (15%) from their originally rated electrical output during such one (1) year warranty period ("1 Year Contractor Warranty", and together with the "10 Year Contractor Warranty", the "Contractor Warranty"). The warranty period with respect to meters that are integrated into the inverter shall be the ten (10) year period set out in Section 9(a) above.

(C) During the Contractor Warranty period, Contractor shall be Power Provider's agent in working with the equipment and material manufacturers in resolving any equipment or material warranty issues. Contractor, or Contractor's subcontractors, shall correct material defects and/or Contractor will work with the equipment or material manufacturer as Power Provider's agent to facilitate the manufacturer's correction of the equipment or material defect. The warranty services shall be performed in a timely manner and at the reasonable convenience of Power Provider and Purchaser.

(D) The Contractor Warranty expressly excludes any remedy for damage or defect caused by improper use, improper or inadequate maintenance, operations of the installed equipment by users other than Contractor or its subcontractors, corrosion, erosion, deterioration, abuse, modifications or repairs not performed by an authorized contractor, subcontractor, improper operation or normal wear and tear under normal usage.

(E) If a warranty issue arises on any equipment or material installed after the 10 Year Contractor Warranty period or 1 Year Contractor Warranty period, as the case may be, and the equipment or material has a warranty period that exceeds ten (10) years or one (1) year, as the case may be, Power Provider shall contact the manufacturer directly to resolve such warranty issues and Power Provider acknowledges that the manufacturer shall have sole responsibility for such issues.

(F) Upon transfer of title to the Generating Facilities at all Sites to Purchaser pursuant to Section 5(c)(ii) or 5(e), any and all warranties which are still in existence shall be passed from Power Provider to Purchaser as well as any associated documentation. Nothing in this Section 9 is intended, or shall be construed, to impose on Power Provider any obligation or liability with respect to any warranty of whatever duration and whether provided by Contractor or any equipment or material manufacturer pursuant to this Section 9 or otherwise.

(G) Purchaser may, from time to time and at any time prior to the termination of the

Contractor Warranty, request Power Provider in writing to make a claim against Contractor under and with respect to the Contractor Warranty. If Power Provider determines in its sole discretion within 30 calendar days not to make and pursue such claim against the Contractor with respect to the Contractor Warranty, Power Provider shall assign and transfer to Purchaser such portion of the Power Provider's rights and interests in the Contractor Warranty, and solely with respect to such particular claim, and not the entirety of the Contractor Warranty (the portion thereof so assigned and transferred is herein referred to as "Assigned Claim Right"), provided that, the Power Provider shall have no further right to make a separate claim against the Contractor with respect to such Assigned Claim Right. Power Provider shall execute and deliver such further acknowledgments and instruments of assignment, transfer and appointment and do all such further acts and things as may be necessary or appropriate in the reasonable opinion of Purchaser to give effect to the Assigned Claim Right. If, in the discretion of the Power Provider, Purchaser or Contractor, the assignment of a particular claim would void or otherwise diminish a particular warranty, Power Provider shall not assign that claim to Purchaser but shall make and pursue any reasonable claim on behalf of the Purchaser and at Purchaser's expense, in a manner and with persons acceptable to the Purchaser. Contractor acknowledges any such Assigned Claim Right that shall be validly assigned pursuant to this Section 9(g), and that is not prohibited, in Contractor's sole discretion, within the relevant underlying warranty. Notwithstanding anything in this Section 9 to the contrary, any disputes that may arise with respect to this Section 9(g) shall be resolved in accordance with Section 36 of this Contract.

EXCEPT FOR THE WARRANTY PROVIDED BY CONTRACTOR IN THIS ONTRACT, POWER PROVIDER AND PURCHASER EXPRESSLY AGREE THAT CONTRACTOR MAKES NO OTHER WARRANTIES AND ASSUMES NO OTHER LIABILITIES, WHETHER IN CONTRACT OR IN NEGLIGENCE, IN CONNECTION WITH THE SALE AND INSTALLATION OF EQUIPMENT AND MATERIALS PROVIDED HEREUNDER WHETHER EXPRESS OR IMPLIED, IN LAW OR IN COMMUNICATION BETWEEN CONTRACTOR AND POWER PROVIDER AND/OR PURCHASER; PROVIDED, HOWEVER, THAT NOTHING HEREIN LIMITS IN ANY MANNER THE CUMULATIVE OUTPUT GUARANTEE SET FORTH IN SECTION 16. CONTRACTOR SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PURCHASER AND/OR POWER PROVIDER SHALL HAVE NO REMEDIES AGAINST EITHER CONTRACTOR OR ANY OF CONTRACTOR'S SUBCONTRACTORS FOR ANY DEFECTIVE WORK INSTALLED EXCEPT FOR THE REPAIR OR REPLACEMENT OF SUCH EQUIPMENT IN ACCORDANCE WITH THE WARRANTY INDICATED ABOVE. SPECIFICALLY, CONTRACTOR, OR CONTRACTOR'S SUBCONTRACTORS, SHALL NOT BE LIABLE TO PURCHASER AND/OR POWER PROVIDER FOR LOSS OF PROFITS OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY. EXCEPT FOR THE WARRANTY EXPRESSLY PROVIDED FOR IN THIS CONTRACT, POWER PROVIDER AND PURCHASER EXPRESSLY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF

MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE EQUIPMENT AND MATERIALS TO BE INSTALLED BY CONTRACTOR AND ITS SUBCONTRACTORS PURSUANT TO THIS CONTRACT. NOTWITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY, IF PURCHASER EXERCISES ITS EARLY BUYOUT OPTION AND PURCHASES ALL THE GENERATING FACILITIES AT ALL THE SITES AS PROVIDED IN SECTION 5(E), CONTRACTOR SHALL REMAIN LIABLE TO PURCHASER FOR ANY LATENT DEFECTS WITHIN THE STATUTORY TIME LIMITS AND AS PERMITTED UNDER APPLICABLE LAW. NOTWITHSTANDING ANY OTHER PROVISION IN THIS CONTRACT TO THE CONTRARY, POWER PROVIDER EXPRESSLY RESERVES ITS STATUTORY RIGHTS TO CLAIMS RELATING TO LATENT DEFECTS.

Section 10. Governmental Permits and Approvals; Coordination.

(A) Permits and Approvals. Purchaser and Power Provider shall cooperate to the extent commercially reasonable with and assist Contractor in obtaining all Applicable Permits required under this Contract as provided in Section 4(c). Contractor, at its own expense, is responsible for obtaining Applicable Permits required for the Construction, Installation, Utility interconnection and start-up of the Work hereunder which are required as of the time such Work is undertaken.

(B) Coordination during Installation. Purchaser and Contractor shall cooperate to the extent commercially reasonable to coordinate the activities of Contractor and Contractor's subcontractors and suppliers with those of Purchaser, its employees and agents. Contractor shall use reasonable efforts not to interfere with the performance of school activities conducted by Purchaser or its employees without prior written approval of Purchaser, which shall not be unreasonably withheld.

(C) No Obligation of Power Provider for Governmental Permits and Approvals. Nothing in this Section 10 or otherwise in this Contract is intended, and shall not be construed, to impose upon Power Provider any obligation or duty to obtain or pay for Applicable Permits or take other actions as provided in this Section 10, all of which are the obligation and duty of Contractor as provided herein.

Section 11. Subcontractors.

(A) Authority to Subcontract. Contractor may delegate its duties and performance under this Contract and shall have the right to enter into contracts with any subcontractors and other service or material providers as Contractor shall select in its discretion to perform the Work hereunder, subject to subsection (b) of this Section 11. Contractor shall not be

required to enter into any subcontracts with parties whom Contractor has not selected or subcontractors whom Contractor has objection to using.

(B) **Purchaser's Approval of Subcontractors.** Purchaser shall have the right to approve subcontractors that Contractor selects as provided in subsection (A) of this Section 11; provided that Purchaser shall act promptly to consider prospective subcontractors that Contractor identifies and either approve subcontractors or advise Contractor in writing of its rejection of subcontractors within ten (10) days after Contractor requests such approval from Purchaser and identifies the prospective subcontractor.

(C) **Prompt Payment of Subcontractors.** Contractor shall promptly pay, when due, all amounts payable for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of the law from arising against any of Purchaser's or Power Provider's property, against the Contractor's rights to payments hereunder or against Purchaser or Power Provider.

(D) **Responsibility.** Contractor shall, at all times, be responsible for the negligent acts, errors and/or omissions of its subcontractors and agents. Nothing in this Contract shall constitute any contractual relationship between any such subcontractors or agents and Purchaser or Power Provider or any obligation on the part of Purchaser or Power Provider to pay, or to be responsible for the payment of, any sums to any of Contractor's subcontractors or agents.

(E) **Labor Code Requirements.** Contractor shall comply with all applicable provisions of the Nevada State Labor Code. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts.

(F) **Certified Payroll Records.** Contractor and its subcontractor(s) shall keep accurate certified payroll records of employees. Contractor shall provide to Power Provider all certified payroll records of employees working on the Project on a monthly basis.

(G) **No Obligation of Power Provider for Subcontracts or to Subcontractors.** Other than its agreement to cause Contractor to take such actions as are provided in this Contract and its agreement to provide funding arrangements for payment of amounts due to the Contractor for the Work pursuant to Section 17, Power Provider shall have no obligation or duty to enter into any contract with any subcontractor or other service or material provider or otherwise to take other actions as provided in this Section 11, all of which are the obligation and duty of Contractor as provided herein.

Section 12. Project Implementation.

(A) **Project Meetings/Status Updates.** During the Design and Construction Phases of the Project as provided in Sections 13 and 14, respectively, Contractor shall meet with Power Provider and Purchaser to review equipment, Scope of Work and installation

plans that relate to the design, Construction and Installation of the Project. Also during the course of the Work, Contractor shall periodically provide reports to the Purchaser and Power Provider of the general status and progress of the Work.

(B) Project Schedule. The Project Schedule attached hereto as Attachment D, Project Schedule, is a preliminary, estimated Project Schedule. During the course of Project implementation, Contractor shall perform its obligations in an expeditious manner that is consistent with reasonable skill and care for the type of project described in the Scope of Work and in keeping with the orderly progress of the Work pursuant to the terms of the Scope of Work. The estimated Project Schedule shall be finalized during the completion of the Construction Documents, provided that such final Project Schedule and the Commercial Operation Date for each Generating Facility, will be subject to amendment and revision to take into account any Excusable Delays. Subject to any such Excusable Delays, Contractor and its subcontractors shall work diligently to implement the Project in accordance with the Project Schedule and Contractor shall notify Purchaser and Power Provider regarding any and all revisions to the Project Schedule necessitated by any such Excusable Delay and shall request, in writing, any requests for extensions in the final Project Schedule.

(C) No Obligation of Power Provider for Project Schedule. Other than its agreement to provide funding arrangements for payment of amounts due to the Contractor for the Work pursuant to Section 17, nothing in this Section 12 or otherwise in this Contract is intended, and shall not be construed, to impose upon Power Provider any duty or obligation for development of the Project Schedule or take other actions as provided in this Section 12, all of which are the duty and obligation of Contractor and Purchaser as provided herein.

Section 13. Final Design Phase – Construction Documents/Equipment Procurement.

(A) General Provisions.

- (i) Contractor has prepared all necessary designs, drawings and specifications related to the Scope of Work identified in Attachment A, Scope of Work.
- (ii) Contractor shall order the equipment identified in the Scope of Work and any other necessary materials and supplies in order to meet the Project Schedule and in order not to cause a delay thereto.
- (iii) Purchaser shall designate a single-point representative with whom Contractor shall consult on a reasonable, regular basis and who is authorized to act on Purchaser's behalf with respect to the Project design, subject to Board approval or ratification. Purchaser's representative shall render decisions in a timely manner with regard to any documents submitted by Contractor and to other requests made by Contractor in order to avoid unreasonable delay in the orderly and sequential progress of Contractor's design services.
- (iv) Within ten (10) Business Days after Contractor's request, Purchaser shall:

(a) furnish all surveys or other information in Purchaser's possession that describe the physical characteristics, legal limitations and utility locations in and around each Site;

(b) disclose any prior environmental review documentation and all known information in its possession concerning subsurface conditions, including without limitation the existence of any known Hazardous Substances, in or around the general area of the each Site where the Work will be performed pursuant to the Scope of Work; and

(c) supply Contractor with all relevant information in Purchaser's possession, including any as-built drawings and photographs, of prior construction undertaken in the general area where the Work will be performed pursuant to the Scope of Work.

(v) All information furnished pursuant to this Section shall be supplied at Purchaser's expense, and Contractor is entitled to rely upon the accuracy and completeness of all information provided.

(vi) In the event that any information is disclosed under this Section that constitutes a Change to the Work and/or is a Material Changed Condition, Contractor shall provide notice to Purchaser and Power Provider within ten (10) Business Days after receipt of this information, and Contractor, Purchaser and Power Provider shall meet and confer with respect to such Changes. If Power Provider authorizes a Change Order and Purchaser agrees to any possible increase in compensation or delay in performance of the Work, Contractor shall be compensated and receive an extension of time for performance, if necessary, to perform the additional Work in accordance with the terms and conditions of the Contract. If the Parties are unable to agree on whether Purchaser's disclosed information constitutes a Change to the Work or a Material Changed Condition, those disputes shall be resolved in accordance with Section 36 of the Contract. Contractor may, at its election, suspend performance of Work affected by any proposed Change Order until an agreement has been reached with Purchaser regarding the Change Order. Contractor shall use its reasonable efforts to continue other portions of the Work not affected or impacted by such Change Order until such time as the Change Order is resolved.

(vii) Contractor contemplates that it will not encounter any Hazardous Substances on the Property, except as has been disclosed as a Pre-Existing Condition by Purchaser prior to the Effective Date. However, any disclosure of Hazardous Substances that will affect the performance of the Work on and after the Effective Date shall constitute a valid basis for a Change Order pursuant to this Contract.

(B) Review of Construction Documents. Contractor shall prepare and submit all designs, drawings and specifications to Purchaser for review. Purchaser shall review the documents and provide any comments in writing to Contractor within thirty (30) Business Days after receipt of documents. Contractor shall incorporate appropriate Purchaser comments into the final designs, drawings and specifications, as applicable. The terms and conditions of any permit approvals required for the Project will be provided. Contractor reserves the right to issue the designs, drawings and specifications

in phases to allow Construction and Installation to be performed in phases. Contractor shall obtain approval of the appropriate governmental agencies for all design and Installation of the Work, including all Changes and all documentation required to secure and memorialize approval by the same agencies of all the Work.

(C) Approvals. Purchaser shall agree to any nonmaterial changes to the designs, drawings and specifications required by any Governmental Authority having jurisdiction over the Work. The Contract Amount provided for in the Scope of Work shall be increased by any additional cost incurred by Contractor due to a change required by a Governmental Authority and the time required to complete the Work pursuant to the Project Schedule will be increased by the number of additional days required to complete the Work because of a governmentally imposed change in the Project.

(D) Changes during Final Design Phase. Subject to documentation to Purchaser's satisfaction, if during the design phase Purchaser requests Changes and/or modifications to the Work identified in the Scope of Work and/or there are Material Changed Conditions, Purchaser shall be responsible for payment of the extra costs caused by such modifications and/or Changes. Valid bases for additional compensation and/or time extension include, but are not limited to:

- (i) Purchaser requests Changes and/or modifications to the Scope of Work during the Project design phase;
- (ii) Purchaser caused delays during Contractor's design work;
- (iii) the discovery of subsurface or other Site conditions that were not reasonably anticipated or disclosed as of the Effective Date;
- (iv) discovery of Hazardous Substances at or impacting the Property;
- (v) damage to any equipment or other Work installed by Contractor caused by the act or omission of Purchaser, its agents or employees; and
- (vi) any other condition caused by Purchaser that would not reasonably have been anticipated by Contractor that modifies and/or changes the Scope of Work that increases the agreed upon Contract Amount or increases the time needed to complete the Work identified in the Scope of Work. Should the Purchaser request a Change to the Work with respect to a change in the location of an electricity grid-connected photovoltaic, solar power plant within its original Site, and the Parties agree upon the terms of a Change Order, the Purchaser shall not be required to pay additional compensation for such Change, provided that:
 - (a) there is no Change in the Scope of Work;
 - (b) the Change in location of such electricity grid-connected photovoltaic, solar power plant shall be within the Site originally contemplated in this Contract and the Scope of Work; and
 - (c) such Change Order is entered into prior to the submission of a request for approval from the appropriate authorities with respect to the Generating Facilities on such Site.

(E) No Obligation of Power Provider for Final Design Phase. Nothing in this Section 13 or otherwise in this Contract is intended, and shall not be construed, to impose upon

Power Provider any duty or obligation with respect to the development, review or approval of any Construction Documents or changes during the final design phase or to take other actions as provided in this Section 13, all of which are the duty and obligation of Contractor and Purchaser as provided herein.

Section 14. Construction Phase.

(A) General Provisions. Contractor shall, after securing necessary permits and obtaining acceptance and approval of final Construction Documents by Purchaser, commence the Construction and Installation of the Project in accordance with the final Construction Documents. The Construction and Installation shall be performed by Contractor and/or one or more licensed subcontractors qualified to perform the Work. The Construction and Installation shall be performed in accordance with all Applicable Laws and Applicable Permits, including, but not limited to, the State Business and Professions Code, State Education Code, State Government Code, State Public Contract Code, State Labor Code and State Public Resources Code.

(B) Contractor's Responsibilities during Construction Phase.

(i) As an independent contractor to Power Provider, Contractor shall be responsible for providing, or causing to be provided by Contractor's subcontractor(s), all labor, materials, equipment, tools, transportation and other facilities and services necessary for the proper execution, Construction, Installation and completion of the Work as defined in the Scope of Work and any Change Orders. Contractor is hereby required to purchase in advance all necessary materials and supplies for the Construction and Installation of the Project in order to assure the prompt and timely delivery of the completed Work pursuant to the Project Schedule. Contractor shall also be responsible for all means, methods, techniques, sequences and procedures employed for the Construction and Installation required by the final Construction Documents.

(ii) Contractor shall be responsible for the preparation of the designated Sites for Construction, including, but not limited to, clearance of all above and below ground obstructions, such as vegetation, buildings, appurtenances and utilities.

(iii) Contractor shall make all reasonable efforts to coordinate Construction and Installation activities and perform the Work to minimize disruption to Purchaser's school activities and operations at the Property. Contractor shall provide at least thirty (30) calendar days written notice to Power Provider and Purchaser of any planned power outages and parking restrictions or closures that will be necessary for the Construction and Installation. Contractor shall cooperate with Purchaser in scheduling such outages, restrictions or closures and Purchaser agrees to provide its reasonable approval of any scheduled outage, restrictions or closures.

(iv) Contractor shall be responsible for initiating and maintaining safety

precautions and programs in connection with its Construction and Installation of the Project. Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

- (a) employees of Contractor and subcontractors performing Work under this Contract;
- (b) Contractor's property and other materials to be incorporated for the Project, under the care, custody and control of Contractor or its subcontractors; and
- (c) other property at or adjacent to the Sites not designated for removal, relocation or replacement during the course of Construction and Installation. Contractor shall not be responsible for Purchaser's employees' safety unless Contractor's negligence in the performance of its Work is the proximate cause of the employee's injury.
- (v) Based on the final Construction Documents, Contractor shall obtain required building permits for Project construction. Purchaser shall cooperate with Contractor in securing such permits.
- (vi) Contractor shall maintain in good order at the Sites copies of the Scope of Work, all Change Orders, the Contract (with all Attachments), one record copy of all drawings, specifications, product data, samples, manufacturer's operation and maintenance manuals and other pertinent construction-related documents.
- (vii) Contractor shall obtain and maintain throughout the Work the appropriate licensure as required by the Contractors State License Board.
- (viii) Contractor shall be responsible, with Purchaser's cooperation to the extent necessary or advisable, for obtaining any required environmental clearance from, and any special permits required by, any Governmental Authority prior to the scheduled construction start date.

(C) Purchaser's Responsibilities during Construction Phase.

- (i) Purchaser shall designate a single-point representative authorized to act on Purchaser's behalf with respect to Project Construction and/or equipment Installation. Purchaser may from time to time change the designated representative and shall provide notice to Contractor of such change. Any independent review of the Construction and Installation shall be undertaken at Purchaser's sole expense, and it shall be performed in a timely manner so as to not unreasonably delay the orderly progress of Contractor's Work. Any independent review of the Construction and Installation by Purchaser shall not relieve Contractor of any of its obligations or responsibilities hereunder.
- (ii) Purchaser shall provide a temporary staging area for Contractor, or its subcontractors, to use during the construction phase to store and assemble equipment for completion of the Work, if needed.
- (iii) Purchaser shall remain responsible for the maintenance of the portion of the Sites that is not directly affected by Contractor's Work. Purchaser shall keep the designated Sites and staging area for the Project free of obstructions, waste and materials within the control of Purchaser.
- (iv) Purchaser shall be solely responsible for the removal of any Hazardous

Substances either known to Purchaser prior to the commencement of the Work or encountered by Contractor during the Construction and Installation of the Project, if necessary in order for the Work to progress safely, that was not knowingly released or brought to the Sites by Contractor. Contractor shall respond to the discovery of Hazardous Substances at or around the Sites during the course of Contractor's Construction and Installation in accordance with subsection (d)(vi) of this Section 14.

(v) Purchaser shall coordinate the Work to be performed by Contractor with its own operations and with any other construction projects that are ongoing at or around any of the Sites, with the exception that Contractor shall coordinate the interconnection work, if any, that will be performed by the Utility.

(vi) Purchaser shall allow Contractor and its subcontractors access to and reasonable use of necessary quantities of Purchaser's existing water and other utilities, including electrical power, as needed for the Construction and Installation of the Work, at no extra cost to Contractor.

(vii) Purchaser shall provide Contractor and/or its subcontractors with reasonable access to the Property to perform the Work, including without limitation and at no extra cost to Contractor, access to perform Work during non-Business Days and during non-regular working hours in compliance with local noise and hours-of-work requirements.

(D) Changes During Construction.

(i) **Change Orders Generally.** Changes and/or modifications to the Scope of Work shall be authorized by a written Change Order signed by each of Purchaser, Power Provider and Contractor. The Change Order shall state the Change and/or modification to the Scope of Work, any additional compensation to be paid or extension of time, if needed, to Contractor to perform such Change and/or modification. Contractor may, at its election, suspend performance of that portion of the Work affected by any proposed Change Order until an agreement has been reached with Purchaser and Power Provider regarding the Change Order. Contractor shall use its reasonable efforts to continue other portions of the Work not affected or impacted by such proposed Change Order until such time as the Change Order is resolved.

(ii) **Change Orders Requiring Additional Compensation.** Subject to documentation to Purchaser's, Power Provider's and Contractor's satisfaction, if during Construction Purchaser requests Changes and/or modifications to the Work identified in the Scope of Work and/or there are Material Changed Conditions, Purchaser shall be responsible for payment of the extra costs caused by such modifications and/or Changes and Contractor shall be entitled to additional compensation for the following reasons, that include, but are not limited to:

- (a) Purchaser requests Changes and/or modifications to the Scope of Work during the Construction phase of the Project;
- (b) Purchaser caused delays during Contractor's construction work;
- (c) discovery of subsurface or other Site conditions that were not reasonably anticipated or disclosed prior to the commencement

of the Work;

(d) discovery of Hazardous Substances at or impacting the Property;

(e) damage to any equipment or other Work installed by Contractor caused by the act or omission of Purchaser, its agents or employees; and

(f) any other condition caused by Purchaser that would not reasonably have been anticipated by Contractor that modifies and/or changes the Scope of Work agreed upon in the Scope of Work that increases the agreed upon Contract Amount identified in the Scope of Work.

(iii) Change Orders Requiring Additional Time/Excusable Delays. Subject to documentation to Purchaser's satisfaction, if during Construction and Installation, Purchaser requests Changes and/or modifications to the Work identified in the Scope of Work and/or there are Material Changed Conditions or an Excusable Delay, the Parties agree that a reasonable extension of time to the Project Schedule may be necessary to perform such modifications and/or Changes. In addition, if Contractor is delayed at any time in the progress of the Work for any reason that represents an Excusable Delay with respect to a Generating Facility, then the targeted milestone dates set forth in the Project Schedule and the Commercial Operation Date for such Generating Facility shall be reasonably extended to the extent of such delay by a Change Order, executed by each of Purchaser, Power Provider and Contractor. Prior to the extension of such milestone dates, Contractor shall use reasonable efforts to mitigate such delays, to the extent that the Contractor is reasonably able to mitigate such delays, including authorizing overtime payments (provided that Purchaser has issued a Change Order authorizing any such overtime payment and has specifically agreed to pay all costs, including administrative charges and expenses, associated therewith).

(iv) Material Changed Conditions/Conditions Beyond Contractor's Control.

Contractor shall provide written notice to Purchaser and Power Provider of any Material Changed Condition and or any event of Force Majeure, within ten (10) Business Days after Contractor's first discovery of such Material Changed Condition or event of Force Majeure. In the event that Contractor's notice concerns unanticipated Hazardous Substances, Contractor shall not disturb the condition until said notice has been given to Purchaser, and Purchaser has had a reasonable opportunity to investigate the condition. If there is a disagreement among Purchaser, Power Provider and Contractor as to whether a Change Order should be issued and executed because of the Hazardous Substances, those disputes shall be resolved in accordance with the provisions of Section 36 of the Contract. Pending the resolution of any dispute among Contractor, Power Provider and Purchaser concerning a Material Changed Condition and/or change beyond Contractor's control, Contractor reserves the right to suspend performance of that portion of the Work affected by such Material Changed Condition and/or change beyond Contractor's control pending the resolution of the dispute. Contractor shall use its commercially reasonable efforts to continue other portions of the Work not affected or impacted by such dispute.

(v) Minor Changes to Scope of Work. Contractor shall have authority to make

minor changes that do not change the total Contract Amount and are consistent with the intent of the final Construction Documents, as amended by Change Order, without prior notice to Purchaser or Power Provider. Contractor shall either promptly inform Purchaser and Power Provider, in writing, of any minor changes made during the implementation of the Project, or make available to Purchaser and Power Provider at the Sites a set of as-built drawings that will be kept current to show those minor changes.

(vi) Hazardous Substances. Contractor shall promptly provide written notice to Power Provider and Purchaser if Contractor observes any Hazardous Substance at or around the Property during the course of Construction and Installation which have not been addressed as part of the Scope of Work. Contractor shall have no obligation to investigate the Property for the presence of Hazardous Substances prior to commencement of any Work unless otherwise specified in the Scope of Work. Purchaser shall be solely responsible for investigating Hazardous Substances and determining the appropriate removal and remediation measures with respect to the Hazardous Substances. Purchaser shall be responsible for complying with all Applicable Laws with respect to the identification, removal and proper disposal of any Hazardous Substances known or discovered at or around the Property, and in such connection shall execute all generator manifests with respect thereto. Contractor shall comply with all Applicable Laws in connection with the use, handling and disposal of any Hazardous Substances in the performance of its Work. In connection with the foregoing, Purchaser shall provide Contractor, as a condition precedent, and as set out in Section 4(j), a written statement that represents and warrants:

- (a) whether or not, to the best of its knowledge, there are Hazardous Substances either on or within the walls, ceiling or other structural components, or otherwise located in the Work area, including, but not limited to, asbestos-containing materials;
- (b) whether or not, to the best of its knowledge, conditions or situations exist at the Property which are subject to special precautions or equipment required by federal, state or local health or safety regulations; and
- (c) whether or not, to the best of its knowledge, there are any unsafe working conditions at the Property. To the extent authorized by law and solely from funds legally available for such purpose, Purchaser shall indemnify, defend and hold Contractor and Power Provider harmless from and against any and all claims and costs of whatever nature, including but not limited to, consultants' and attorneys' fees, damages for bodily injury and property damage, fines, penalties, cleanup costs, costs associated with delay or work stoppage and third party claims (hereinafter "Liabilities"), that in any way result from or arise from exposure to Hazardous Substances that are unknown to the Parties prior to exposure, except for Liabilities due to (1) Contractor's or Power Provider's, or their respective subcontractors', agents', representatives' and employees', negligent or willful misconduct in handling, disturbance or release of

Hazardous Substances and/or (2) exposure after the Hazardous Substances causing the Liabilities become known to the Parties. This indemnification shall survive any termination of this Contract.

(vii) Pre-Existing Conditions. Certain pre-existing conditions may be present within the Property that

- (a) are non-compliant with applicable codes,
- (b) may become non-compliant with applicable codes upon completion of Work,
- (c) may cause Contractor's completed Work to be non-compliant with applicable codes,
- (d) may prevent Purchaser from realizing the full benefits of Contractor's Work,
- (e) may present a safety or equipment hazard or
- (f) are otherwise outside the scope of Contractor's Work.

Regardless of whether or not such conditions may have been readily identifiable prior to the commencement of Work, Contractor shall not be responsible for repairing such Pre-Existing Conditions unless such is expressly provided for in the Scope of Work or an approved change thereto. Contractor, in its sole discretion, may determine whether it will bring said Pre-Existing Conditions into compliance by agreeing to execute a Change Order with the Purchaser and Power Provider for additional compensation and, if appropriate, an extension of time.

(viii) Trenches.

(a) Trenches Greater than Five Feet. Pursuant to California Labor Code Section 6705 and applicable OSHA regulations, if the Work includes the excavation of any trench or trenches five (5) feet or more in depth, Contractor shall, in advance of excavation, promptly submit to Purchaser and/or a registered civil or structural engineer employed by Purchaser or its architect, a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches.

(b) Excavation Safety. If the plan required by subsection (A) varies from the Shoring System Standards established by applicable Construction Safety Orders, such plan shall be prepared by a registered civil or structural engineer, but in no case shall such plan be less effective than that required by such Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by Purchaser or by the person to whom authority to accept has been delegated by Purchaser.

(c) No Tort Liability of Purchaser. Pursuant to California Labor Code Section 6705, nothing in this Section shall impose tort liability upon Purchaser or any of its employees.

(d) No Excavation Without Permits. Contractor shall not commence any portion of the Work that consists of excavation until it has secured all

Applicable Permits including the required Cal OSHA excavation/shoring permit. Any permits shall be prominently displayed at the respective Site prior to the commencement of any excavation.

(e) Discovery of Hazardous Waste and/or Unusual Conditions. Pursuant to applicable State Contract Codes, if the Work includes digging trenches or other excavations that extend deeper than four feet below the surface, Contractor shall promptly, and before the following conditions are disturbed, notify Purchaser, in writing, of any: (1) material that Contractor believes may be material that is hazardous waste, as defined in California Health and Safety Code Section 25117 that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law; (2) subsurface or latent physical conditions at a Site differing from those indicated; or (3) unknown physical conditions at a Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided in this Contract. Purchaser shall promptly investigate the conditions and, if it finds that the conditions do materially so differ or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the Work, shall issue a Change Order under the procedures provided herein. In the event that a dispute arises between Purchaser and Contractor whether the conditions materially differ, or involve hazardous waste or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the Work, those disputes shall be resolved in accordance with Section 36 of the Contract. Contractor may, at its election, suspend performance of that portion of the Work affected by such dispute. Contractor shall use its commercially reasonable efforts to continue other portions of the Work not affected or impacted by such dispute.

(E) No Obligation of Power Provider for Construction Phase. Other than its agreement to provide funding arrangements for payment of amounts due to the Contractor for the Work pursuant to Section 17, nothing in this Section 14 or otherwise in this Contract is intended, and shall not be construed, to impose upon Power Provider any duty or obligation with respect to Construction and Installation of any of the Work or performance of any services related thereto or to take any other actions as provided in this Section 14 (except with respect to Change Orders as expressly provided in this Section 14), all of which are the duty and obligation of Contractor and Purchaser as provided herein.

Section 15. Project Completion

(A) Substantial Completion/. With respect to each Generating Facility, at the time the Work is substantially complete in conformance with the Scope of Work and Construction

Documents, Contractor shall supply to Purchaser and Power Provider a written certificate of Substantial Completion for such Generating Facility. Purchaser shall within ten (10) Business Days after receipt of the Certificate of Substantial Completion, review the Work for such Generating Facility for the sole purpose of determining whether it is substantially complete and in substantial conformance with the Scope of Work, final Construction Documents and any Change Orders. Title to any and all of the materials and equipment installed for such Generating Facility shall pass from Contractor to Power Provider upon the date of Substantial Completion of such Generating Facility. If Purchaser does not respond to the Certificate of Substantial Completion within ten (10) Business Days of receipt thereof, such Generating Facility shall be deemed to have achieved Substantial Completion. If Purchaser determines, within ten (10) Business Days after receipt of the initial Certificate of Substantial Completion, that such Generating Facility is not substantially complete, Purchaser shall immediately notify Contractor and Power Provider in writing of such incomplete Work, with reasonable particularity. Contractor shall complete any such incomplete items and provide a second written Certificate of Substantial Completion for such Generating Facility to Purchaser and Power Provider that the Work is substantially complete. The above process shall continue until the Purchaser and Power Provider have determined that such Generating Facility is substantially complete, provided that with respect to all subsequent Certificates of Substantial Completion the Purchaser shall have five (5) Business Days to determine whether such Generating Facility is substantially complete and if Purchaser does not respond to the subsequent Certificate of Substantial completion within five (5) Business Days of receipt thereof, such Generating Facility shall be deemed to have achieved Substantial Completion.. Contractor shall be paid such portion of the Contract Amount for such Generating Facility retained by Power Provider in accordance with Section 17.

(B) Final Completion. When Contractor considers the Work to be fully complete in accordance with the Scope of Work, Contractor shall issue a Certificate of Final Completion, notifying Purchaser and Power Provider that the Work is fully complete and ready for final inspection. The Purchaser and Power Provider, at its option, shall inspect the Work to verify the status of Final Completion within ten (10) Business Days after its receipt of Contractor's certification that the Work is complete, provided that Purchaser and Power Provider shall be deemed to have accepted such Certificate of Final Completion if Purchaser does not respond within ten (10) Business Days of receipt thereof. If Purchaser determines that any Work is incomplete and/or defective, Purchaser shall promptly notify Contractor and Power Provider in writing of such incomplete and/or defective work, itemizing and describing such remaining items with reasonable particularity. Contractor shall, in a reasonable amount of time, complete any incomplete items or remedy defective items after which Contractor shall reissue its Certificate of Final Completion. Purchaser shall re-inspect all work completed or remedied by Contractor and must accept such Certificate of Final Completion within five (5) Business Days after issuance by Contractor, provided that Purchaser and Power Provider shall be deemed to have accepted such Certificate of Final Completion if Purchaser does not respond within five (5) Business Days of receipt thereof. .. On a date that is not less nor more than 35 calendar days after that time, Contractor shall be

paid any remaining Contract Amount due and any outstanding retainages as provided in Section 17.

(C) No Obligation of Power Provider for Project Completion. Other than its agreement to provide funding arrangements for payment of amounts due to the Contractor for the Work pursuant to Section 17, nothing in this Section 15 is intended, and shall not be construed, to impose upon Power Provider any duty or obligation with respect to the completion of the Work or performance of any services related thereto or to take any other actions as provided in this Section 15, all of which are the duty and obligation of Contractor as provided herein.

Section 16. Cumulative Output Guarantee.

(A) Guarantee. Contractor hereby guarantees to Purchaser a cumulative guaranteed energy output from the aggregate Generating Facilities (as set forth in the table below and herein referred to as the "Cumulative Guaranteed Energy Output") commencing on the Commercial Operation Date of the last of the Generating Facilities and continuing until the first to occur of

- (i) the Stated Expiration Date,
- (ii) the first date on which the Generating Facilities have produced the 25-year cumulative guaranteed energy output of 1,000,000 kWh,
- (iii) all Generating Facilities have been transferred to Purchaser on the First Termination Date pursuant to Section 5(e) or
- (iv) this Contract has terminated on an Early Termination Date pursuant to Section 5(d).

(B) Comparison of Actual Cumulative Output to Cumulative Guaranteed Energy Output. In order to control for variations in weather, during the Cumulative Output Guarantee Term, the actual Energy Output of all of the Generating Facilities ("Actual Cumulative Output") shall be compared to the Cumulative Guaranteed Energy Output in accordance with Section 16(d) below on the last day of each Cumulative Guarantee Year and on the Stated Expiration Date.

(C) Three-Year True-Up. If during the Cumulative Output Guarantee Term the Actual Cumulative Output for the 36 months preceding each of the third (3rd), sixth (6th), ninth (9th), twelfth (12th), fifteenth (15th), eighteenth (18th) and twenty-first (21st) Cumulative Guarantee Years and for the 24 months preceding the Stated Expiration Date, is less than 95% of the Cumulative Guaranteed Energy Output, then within ninety (90) calendar days after such Cumulative Guarantee Year or Stated Expiration Date, as the case may be, the Contractor shall pay the Power Provider the difference between the Cumulative Guaranteed Energy Output and the Actual Cumulative Output for such preceding 36-month (or 24-month) period multiplied by the cost of the Energy (\$/kWh) at the applicable Solar Program Rate set out in Section 16(d). If during the Cumulative Output Guarantee Term, the Actual Cumulative Output for the 36 months preceding

each of the third (3rd), sixth (6th), ninth (9th), twelfth (12th), fifteenth (15th), eighteenth (18th) and twenty-first (21st) Cumulative Guarantee Years and for the 24 months preceding the Stated Expiration Date, is more than 105% of the Cumulative Guaranteed Energy Output, then on such Cumulative Guarantee Year or Stated Expiration Date, as the case may be, the Contractor shall receive a credit for the difference between the Actual Cumulative Output and the Cumulative Guaranteed Energy Output, which shall be applied and credited on the following Cumulative Guarantee Year or Stated Expiration Date, as the case may be.

Example of hypothetical true-up payment calculation. On the third Cumulative Guarantee Year, the Cumulative Guaranteed Energy Output is 12,833,653 kWh. The Actual Cumulative Output is 12,000,000 kWh, which is less than 95% of the Cumulative Guaranteed Energy Output so Contractor shall refund the cost of the energy to Power Provider. The shortfall or difference between the Cumulative Guaranteed Energy Output and the Actual Cumulative Output on the third Cumulative Guarantee Year is 833,653 kWh. If the Solar Program Rate is \$0.175 per kWh on the third Cumulative Guarantee Year. The shortfall payment paid by Contractor to Power Provider is \$145,889 (833,653kWh x \$0.175= \$145,889).

Annual True-Up. If the Actual Cumulative Output on the last day of a Cumulative Guarantee Year is less than 75% of one-third (one-half in the case of such calculation for the twenty-second Cumulative Guarantee Year) of the Cumulative Guaranteed Energy Output for such 12 month period, then within ninety (90) days of that Cumulative Guarantee Year, the Contractor shall pay the Power Provider for the difference between the Cumulative Guaranteed Energy Output and the Actual Cumulative Output for such preceding 12 month period multiplied by the cost of the Energy (\$/kWh) at the applicable Solar Program Rate set out in Section 16(d) (the "Annual True-Up Refund"). If, at the end of such following third (3rd), sixth (6th), ninth (9th), twelfth (12th), fifteenth (15th), eighteenth (18th) and twenty-first (21st) Cumulative Guarantee Years or the Stated Expiration Date, as the case may be, the Actual Cumulative Output is: (i) at least 95% of Cumulative Guaranteed Energy Output for such 36-month period (or 24-month period in the case of the calculation with respect to the Stated Expiration Date), within ninety (90) days of the preceding Cumulative Guarantee Year, Power Provider shall reimburse Contractor for the Annual True-Up Refund paid by the Contractor to the Purchaser; or (ii) less than 95% of the Cumulative Guaranteed Energy Output for such 36-month period or 24-month period, as the case may be, Contractor shall make the requisite damages payment to Purchaser in accordance with Section 16(c)(i), provided that such payment shall deduct an amount equivalent to the Annual True-Up Refund paid by the Contractor to the Power Provider for such 36-month period or 24-month period, as the case may be.

Example of hypothetical annual true-up payment calculation. The Actual Cumulative Output for each of the first (1st) and second (2nd) Cumulative Guarantee Years is 4,700,000 kWh and 3,080,077 kWh, respectively. The Cumulative Guaranteed Energy Output for the first three Cumulative Guarantee Years is 12,833,653 kWh. One-third of such three year Cumulative Guaranteed Energy Output is 4,277,884 kWh. The Actual

Cumulative Output for the second Cumulative Guarantee Year is seventy-two percent (72%) of one-third of the Cumulative Guaranteed Energy Output for such 36 month period, thus it is below the seventy-five percent threshold and an annual true-up payment is required. Subtracting 3,080,077 kWh from 4,277,884 kWh results in an annual shortfall amount of 1,197,807 kWh. Like the example above, the damages payment is calculated using the shortfall amount of 1,197,807 kWh multiplied by \$0.175 (the Solar Program Rate for such 36 month period) and the Contractor is obligated to pay the Power Provider such annual true-up payment of \$209,616. In subsequent year three, the Actual Cumulative Output is 5,100,000 kWh for a three year Actual Cumulative Output of 12,880,077 kWh or 46,424 kWh more than the Cumulative Guaranteed Energy Output for the first three year true-up period. Since the Cumulative Guaranteed Energy Output was satisfied, the Contractor does not pay any damages on the Third Annual Cumulative Guarantee Year, and the Power Provider refunds the Contractor for the \$209,616 payment paid on the preceding Cumulative Guarantee Year and the excess Energy of 46,424 kWh rolls over into the year four Actual Cumulative Output as a credit.

(D) The attached table specifies the Cumulative Guaranteed Energy Output and the Solar Program Rate on the last day of the third, sixth, ninth, twelfth, fifteenth, eighteenth, twenty-first and twenty-fourth Cumulative Guarantee Year.

(E) Temporary Reductions to Cumulative Output Guarantee; Extension to Cumulative Output Guarantee Term. Contractor's Cumulative Output Guarantee shall be proportionately reduced, in accordance with Attachment G, during any period while:

- (i) the Generating Facilities or any Generating Facility is not in Commercial Operation in connection with a temporary removal pursuant to Section 4(g), a movement to an alternate location pursuant to Section 4(f) or a temporary shutdown of the Generating Facilities or any portion thereof pursuant to Section 23;
- (ii) the occurrence of an event of Force Majeure has temporarily impaired or disabled the operation of the Generating Facilities or any portion thereof or
- (iii) Purchaser interferes with or violates its covenant set forth in Section 4(h) by interfering with the Generating Facilities', or any portion thereof, insolation or access to sunlight, in any of which case the period for which the Cumulative Guaranteed Energy Output is to be calculated pursuant to subsection (a) of this Section 16 shall be extended for a period equal to the delay (if any) described in the foregoing clause (i) , (ii) or (iii), provided that the Contractor shall not be obligated to extend the period for which the Cumulative Guaranteed Energy is calculated for any delay exceeding eighteen (18) calendar months.

(F) Termination of Cumulative Output Guarantee. Contractor's Cumulative Output Guarantee shall proportionately terminate in accordance with Attachment G and be of no further force or effect if the Generating Facilities, or any portion thereof, are subject to a permanent shutdown as provided in Section 24 or an event of Force Majeure occurs the effect of which is to permanently impair or interfere with the operation of the Generating Facilities, or any portion thereof.

(G) Effects of Overshadowing or Shading on Cumulative Output Guarantee.

(i) Overshadowing or Shading Avoided Generally. The Parties agree that Purchaser shall avoid activities that result in overshadowing or shading of the Generating Facilities in a manner that would reduce the power output of the Generating Facilities or prevent Contractor from satisfying its expected Cumulative Output Guarantee as provided in this Section for which purpose Purchaser has made its covenant contained in Section 4(h).

(ii) Overshadowing or Shading as a Result of Purchaser's Activities. In the event that Purchaser's activities for whatever reason result in the Generating Facilities, or any portion thereof, being overshadowed or shaded in a manner that prevents Contractor from satisfying its Cumulative Output Guarantee, Purchaser agrees that Contractor's Cumulative Output Guarantee shall be proportionately reduced, and Contractor shall be entitled to a proportionate credit under the Cumulative Output Guarantee for the duration of the period for which the shadowing or shading occurs, all in accordance with Attachment G. Such credit shall be based upon the expected monthly output (as determined by historical energy data) and may be applied against Contractor's "true-up" damages payable under this Section 16. Contractor shall provide and justify data verifying the actual loss of generation that occurred due to overshadowing or shading. Notwithstanding any other provision of this Contract, Parties agree that if Purchaser's actions result in overshadowing or shading of the Generating Facilities, or any portion thereof, which is permanent in nature, such that the Generating Facilities produce less than 100% of the Cumulative Guaranteed Energy Output, Contractor and Purchaser agree to make every effort to relocate the Generating Facilities to a mutually agreeable location on the terms and conditions provided in Section 4(f). If the Parties cannot agree on an alternate location for the Generating Facilities, Purchaser shall pay the Termination Value to Power Provider and Power Provider shall be entitled to remove the Generating Facilities all on the same terms and conditions as provided in Section 5(d). Contractor and Purchaser agree that shading which results from actions outside of the control of Purchaser shall not give rise to the remedies provided for in this Section.

(iii) Overshadowing or Shading as a Result of Contractor's Activities. If the overshadowing or shading of the Generating Facilities or any portion thereof is attributable to Contractor, such that Contractor defaults on its operational or maintenance responsibilities for the Generating Facilities (pursuant to the terms and conditions of its Operation and Maintenance Agreement entered into with Purchaser pursuant to Section 4(i) of this Contract), Purchaser shall be entitled to a true-up, as specified above for the period of time for which such overshadowing or shading persists.

(iv) Purchaser's Continuing Payment Obligation Regardless of Overshadowing or Shading. Regardless of whether the overshadowing or shading of the Generating Facilities is the result of activities of either Purchaser or Contractor, Purchaser shall have a continuing obligation to make payments to Power Provider in accordance with Section 5(a).

(v) Overshadowing or Shading as a Result of an Event of Force Majeure. If overshadowing or shading of the Generating Facilities is the result of an event of Force Majeure, Purchaser and Contractor agree that they shall either mutually agree to renegotiate the Cumulative Output Guarantee or terminate the Contract in accordance with Section 25, subject to the rights and interests of Power Provider to receive from Purchaser payments pursuant to Section 5 or payment of Termination Value.

Section 17. Funding Project Costs.

(A) Monthly Progress Payments and Release of Retainage Amounts. Power Provider shall make funding arrangements so that payments for costs of Construction and Installation of the Project, including all Change Orders, shall be paid to Contractor under this Contract in the form of monthly progress payments as provided below and specifically described in Attachment C, Progress Payment Schedule. Upon execution of this Contract and satisfaction of the conditions precedent in Section 4(j), Power Provider shall pay Contractor a Mobilization Fee, as detailed on Attachment C, Progress Payment Schedule. In addition, on or before the twentieth (20th) day of each month, Contractor shall submit to Power Provider, or its designee, for approval its request for a monthly progress payment per the Estimated Monthly Progress Payment Schedule in Attachment C ("Request for Payment") in a form reasonably acceptable to Contractor and Power Provider. Power Provider, or its designee, shall review each Request for Payment, less a ten percent (10%) retainage amount, within ten (10) calendar days after its receipt thereof. After review and approval of each Request for Payment by Power Provider, or its designee, Power Provider shall cause such amount to be paid from an escrow account set up for this Contract to make such payments. Each monthly progress payment shall be made on or before the tenth (10th) calendar day after such Request for Payment was received by Power Provider. Upon declaration of Substantial Completion of a Generating Facility, the retainage amount with respect to such Generating Facility shall be reduced to five percent (5%) of the portion of the Contract Amount attributable to such Generating Facility, and Contractor shall invoice Power Provider and Power Provider shall pay the amount in excess of such 5% amount to be retained. Power Provider shall pay Contractor the remaining five percent (5%) retainage not less than nor more than thirty-five (35) calendar days after Final Completion.

(B) Final Request for Payment. Contractor shall invoice Power Provider for the final Request for Payment after acceptance or deemed acceptance by Purchaser of Contractor's Certificate of Final Completion. Power Provider shall pay Contractor such final payment amount and the remaining five percent (5%) retainage amounts withheld by Power Provider.

(C) Invoice Adjustments; Disputes Over Invoices. Power Provider may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered or adjust any invoice for any arithmetic, computational or meter-related error within twelve (12) months of the date the invoice or adjustment to an invoice was rendered. In the event that Contractor or Power Provider disputes all or a portion of an invoice, or any

other claim or adjustment arises, that Party shall pay the undisputed portion when due and provide the other Party notice of the dispute and the amount in dispute. In such event, Contractor or Power Provider (as the case may be) shall first use good faith, reasonable, diligent efforts to resolve such dispute within a reasonable period of time not to exceed thirty (30) days from the date of such notice. If Contractor and Power Provider do not resolve such a dispute within such thirty (30) days, then either Party may pursue their rights appropriately. Power Provider shall pay to Contractor any disputed amount which is ultimately determined to have been properly billed to Power Provider, together with interest at a rate of one percent (1%) per month on any disputed amount which is ultimately determined to have been properly billed to Power Provider, until such properly billed amount is paid, which shall be Power Provider's sole and exclusive remedy with respect to a dispute concerning any invoice.

Section 18. Representations and Warranties of the Parties.

- (A) Each Party represents and warrants to each other Party as of the Effective Date that
- (i) each of Power Provider and Contractor is duly organized, validly existing and in good standing under the laws of the state of its organization, Purchaser is a duly created and existing school district or not for profit entity under the Constitution and laws of the State of its organization and each Party has all requisite power and authority to enter into this Contract, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
 - (ii) the execution and delivery of this Contract and the performance of such Party's obligations hereunder have been duly authorized by all necessary corporate or official action;
 - (iii) this Contract is a legal, valid and binding obligation of such Party enforceable against such Party in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to
 - (a) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and
 - (b) the application of general principles of equity (regardless of whether considered in a proceeding inequity or at law);
 - (iv) to such Party's knowledge, no governmental approval (other than any governmental approvals which have been previously obtained or disclosed in writing to each other Party) is required in connection with the due authorization, execution and delivery of this Contract by such Party or the performance by such Party of its obligations hereunder which such Party has reason to believe that it will be unable to obtain in due course; and
 - (v) to such Party's knowledge, neither the execution and delivery of this Contract by such Party nor compliance by such Party with any of the terms and provisions of this Contract conflicts with, breaches or

contravenes the provisions of such Party's organizational documents, the applicable State Public Utilities Code or Public Contract Code as applied to such Party.

(B) Purchaser represents and warrants to Power Provider that, that to the best of Purchaser's knowledge, as of the Effective Date, there are no circumstances and commitments to third parties that may damage, impair or otherwise adversely affect the Generating Facilities or their function (including activities that may adversely affect the Generating Facilities' exposure to sunlight). Purchaser covenants that Purchaser has lawful title to the Property and full right to enter into this Contract and that, subject to Power Provider's compliance with all material provisions contained in this Contract, Power Provider shall have quiet and peaceful possession of the Premises throughout the Term. Purchaser shall not initiate or conduct activities that it knows or reasonably should know may damage, impair or otherwise adversely affect the Generating Facilities or their function (including activities that may adversely affect the Generating Facilities' exposure to sunlight), without Power Provider's prior written consent, which consent shall not be unreasonably withheld or delayed; provided, however, that Power Provider shall be entitled to withhold any such consent in the exercise of its sole discretion in the event that any such activities may materially adversely affect any of Power Provider's rights or interests under Section 6.

(C) Contractor represents and warrants to Purchaser and Power Provider that, as of the Effective Date:

- (i) manufacturer warranties will be in effect with respect to the Generating Facilities to the extent necessary to satisfy the eligibility criteria relating to the California Solar Initiative as provided in Section 25782(a)(4) of the California Public Resources Code;
- (ii) the structural integrity of the roof on the Property at each Site, as is, is sufficient to accommodate the Generating Facilities to be constructed and installed thereon;
- (iii) there is a suitable electrical interconnection point of sufficient capacity to accommodate the Generating Facilities as designed located within 500 feet of the planned location of such Generating Facilities as described in Attachment A, Scope of Work, to this Contract;
- (iv) for any underground placement of electrical cable or conduit, there are no rocks or other obstructions that would prevent ordinary trenching equipment to be used for the installation of underground electrical cable from providing a trench of sufficient depth to comply with the National Electrical Code;
- (v) performance based incentives relating to the Generating Facilities at such Site in an amount acceptable to Power Provider under the California Solar Initiative or similar programs in other States and Utility Districts are available to Power Provider from the Utility and payment thereof has been reserved pursuant to the applicable program for such Generating Facilities as designed;

(vi) there is no material adverse change in the California Solar Initiative or Code that would adversely affect the economics for Power Provider of the construction, Installation and ownership of the Generating Facilities at the Site;

(vii) there is no material adverse change that affects the creditworthiness of Contractor to perform its respective obligations in accordance with, or related to, this Contract; and

(viii) Contractor has received adequate assurances from Power Provider that the funding arrangements provided in Section 17 have been established.

(D) Purchaser represents and warrants to Contractor and Power Provider as of the Effective Date that:

(i) there is no material adverse change that affects the creditworthiness of Purchaser to perform its respective obligations in accordance with, or related to, this Contract; and

(ii) Purchaser has delivered to Power Provider or its Lender such owner/lessor/mortgagee waivers as Power Provider or its Lender have required in connection with the funding arrangements for Construction and Installation of the Generating Facilities.

Section 19. Certain Covenants of Purchaser and Power Provider.

(A) Security. From and after Final Completion, Purchaser shall provide and take reasonable measures for security of the Generating Facilities, including commercially reasonable monitoring of the Sites' alarms, if any.

(B) Liens. Notwithstanding that the Generating Facilities' are fixtures on the Property, neither Purchaser nor Power Provider shall directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or material man's lien), charge, security interest, encumbrance or claim on or with respect to the Generating Facilities or any interest therein, except in connection with the funding arrangements provided in Section 17 or as provided in Section 40. Purchaser also shall pay promptly before a fine or penalty may attach to the Generating Facilities any taxes, charges or fees of whatever type of any relevant Governmental Authority for which Purchaser is responsible, and Power Provider shall pay promptly before a fine or penalty may attach to the Generating Facilities any taxes, charges or fees of whatever type of any relevant Governmental Authority for which Power Provider is responsible. If either Purchaser or Power Provider breaches its obligations under this Section 19(b), it shall immediately notify the other party in writing and shall promptly cause such liens to be discharged and released of record without cost to the other party.

Section 20. Performance and Payment Bonds.

Prior to commencing Work under this Contract, Contractor shall furnish to the Power Provider (a) a Performance Bond in an amount equal to one hundred percent (100%) of the Contract Amount and (b) a Payment Bond to guarantee payment of all claims for labor and materials furnished in an amount equal to one hundred percent (100%) of the Contract Amount (collectively, the "Contract Bonds"). The Contract Bonds shall include a dual obligee rider that identifies Power Provider and Purchaser as dual obligees and shall be maintained in full force and effect until one hundred twenty (120) days after the filing of a notice of completion in accordance with Applicable Laws. The Contract Bonds are not being furnished to cover the performance of any energy guaranty or guaranteed savings under this Contract. Purchaser and Power Provider agree that when the contract Bonds are no longer in full force and effect, the Contract Bonds shall be released and all obligations arising thereunder shall be terminated. The surety supplying the Contract Bonds shall be an "admitted surety insurer," as defined by Section 995.120 of the California Code of Civil Procedure, or similar Rules of Procedure as is required in a different State or jurisdiction, authorized to do business as a surety in the State of California, and reasonably satisfactory to Power Provider. AIA bond forms will be used.

Section 21. Indemnification; Insurance.

(A) General Indemnity by Contractor for its Performance and Activities. Contractor shall indemnify, defend and hold Purchaser and Power Provider, and their respective employees, directors, officers, managers, members, shareholders and agents harmless from and against any and all third party claims, suits, damages, losses, liabilities, expenses and costs (including reasonable attorney's fees), including, but not limited to, those arising out of property damage and personal injury and bodily injury (including death, sickness and disease) ("Demand(s)"), to the extent any such Demand(s) arise out of Contractor's performance or activities under this Agreement or with respect to the Project and are caused either by Contractor's

- (i) material breach of any obligation, representation or warranty contained in this Contract or
- (ii) negligence or willful misconduct.

(B) General Indemnity by Purchaser. Purchaser shall indemnify, defend and hold Power Provider and Contractor, and their respective employees, directors, officers, managers, members, shareholders and agents harmless from and against any and all Demand(s), to the extent caused solely by Purchaser's

- (i) material breach of any obligation, representation or warranty contained in this Contract,
- (ii) negligence or willful misconduct or
- (iii) material breach of a statutory duty related to a Demand on the Property.

(C) **Liability Insurance.** Contractor shall procure prior to commencement of the Work under this Contract and maintain for the Term insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work hereunder by Contractor, its agents, representatives, employees and consultant(s). Contractor shall ensure that Power Provider and Purchaser are named as additional insureds on the Commercial General Liability and Commercial Automobile Liability policies. Minimum Scope and Limits of Insurance: Coverage shall be at least as broad as the following scopes and limits:

(i) **Commercial General Liability.** One million dollars (\$1,000,000) per occurrence/two million dollars (\$2,000,000) aggregate for bodily injury, personal injury and property damage, products and completed operations.

50,000 Fire Damage, Any One Fire

5,000 Medical Payments, Each Person

Excess Liability Limits:

1,000,000 Each occurrence

1,000,000 Aggregate

(ii) **Commercial Automobile Liability, Any Auto.** One million dollars (\$1,000,000) per accident/two million dollars (\$2,000,000) aggregate for bodily injury and property damage.

(iii) **Workers' Compensation.** Statutory limits required by the State of Nevada.

(iv) **Employer's Liability.** One million dollars (\$1,000,000) per accident for bodily injury or disease.

(v) **Professional Liability.** The insurance shall cover Contractor and its design consultant(s) for one million dollars (\$1,000,000) aggregate limit, coverage to continue through Final Completion plus two years thereafter. Any policy or policies of worker's compensation, extended coverage or similar casualty insurance, which either Contractor or Purchaser obtains in connection with the Premises, shall include a clause or endorsement denying the insurer any rights of subrogation against the other party to the extent the insured party has waived rights of recovery against such other party prior to the occurrence of injury or loss. Power Provider and Purchaser waive any rights of recovery against the other for injury or loss due to hazards covered by insurance obtained under this Contract. Within thirty (30) days after the Effective Date and within thirty (30) days after the end of each of Purchaser's fiscal years thereafter, Purchaser shall deliver to Power Provider true and correct copies of all certificates of insurance evidencing such coverage or its self administered claims letter. These certificates shall specify that Power Provider shall be given at least thirty (30) days prior written notice by the insurer in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Purchaser. Should any such policy of insurance be cancelled or changed, Contractor and/or Purchaser agrees to immediately provide Power Provider true and correct copies of all new or revised certificates of insurance.

(D) Any insurance maintained by Purchaser is for the exclusive benefit of Purchaser and shall not in any manner inure to the benefit of Power Provider, except to the extent that any payments are made for claims related to the loss or damage of the Generating Facilities owned by Power Provider. The Power Provider shall pay the Purchaser within thirty (30) days of the Commercial Operation Date of the last Generating Facility a lump sum of seventy-five thousand dollars (\$75,000) for the insurance to be maintained by the Purchaser. Purchaser shall be responsible for paying all insurance premiums throughout the Term for the insurance to be maintained by the Purchaser.

(E) If the Generating Facilities are (i) materially damaged or destroyed or suffer any other material loss or (ii) condemned, confiscated or otherwise taken, in whole or in material part, or the use thereof is otherwise diminished so as to render impracticable or unreasonable the continued production of energy, any insurance or condemnation proceeds available to Power Provider shall be applied as provided in Section 5(f).

(F) All property insurance shall be the responsibility of Purchaser. Purchaser represents that it maintains and covenants that it shall maintain during the Term property insurance sufficient to insure it against complete loss or destruction of the Premises, including losses occasioned by operation of the Generating Facilities, whether or not involving the fault of Power Provider. In addition, Purchaser agrees to maintain, as a rider to its property insurance for the Term, coverage for business interruption for a period of at least eighteen (18) months in an amount at least equal to \$500,000.

(G) Course of Construction ("Builder's Risk") Property Insurance. Contractor shall be responsible for the first \$100,000 of Builder's Risk coverage, either by insurance or by funds reserved for this purpose. For all amounts of Builder's Risk coverage above \$100,000, Purchaser shall insure all Work while in the course of construction, reconstruction, remodeling or alteration, including materials incorporated in the Work, against physical loss or damage resulting from the perils normally insured under a "Standard All Risk Course of Construction" policy, including, but not limited to theft, fire, flood, vandalism, earthquake and mold. Other perils included are those acts of God, as defined in California Public Contract Code Section 7105 or similar Codes in the applicable State or jurisdiction, in excess of the deductible, and up to five percent of the Contract Amount, if the loss does not involve Contractor's negligence and if the work damaged is built in accordance with the Contract and applicable building standards. Contractor shall not be liable for damages proximately caused by acts of God (as defined in California Public Contract Code Section 7105) if the loss does not involve Contractor negligence and if the work damaged is built in accordance with the Contract and applicable building standards.

(H) Self-Insurance by Purchaser and Contractor. Notwithstanding anything in this Section 21 to the contrary, Contractor and Purchaser may each self-insure against the risks for which Contractor and Purchaser, respectively, are obligated to obtain and maintain insurance pursuant to this Section 21 so long as such self-insurance is actuarially sound in light of the risks covered and based on Contractor's and Purchaser's customary self-insurance practices.

Section 22. Default.

(A) Event of Default by Any Party. With respect to a Party, there shall be an "Event of Default" if:

- (i) such Party fails to pay any amount within thirty (30) days after such amount is due;
- (ii) except as otherwise set forth in this Section 22(a), such Party is in breach of any representation or warranty set forth herein or fails to perform any material obligation set forth in this Contract and such breach or failure is not cured within sixty (60) days after notice from a non-defaulting Party; provided, however, that the cure period shall be extended by the number of days during which the defaulting Party is prevented from taking curative action solely by Force Majeure if the defaulting Party had begun curative action and was proceeding diligently, using commercially reasonable efforts, to complete such curative action;
- (iii) such Party admits in writing its inability to pay its debts generally as they become due;
- (iv) such Party files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State thereof;
- (v) such Party makes an assignment for the benefit of creditors;
- (vi) such Party consents to the appointment of a receiver of the whole or any substantial part of its assets;
- (vii) such Party has a petition in bankruptcy filed against it, and such petition is not dismissed within 90 days after the filing thereof;
- (viii) a court of competent jurisdiction enters an order, judgment or decree appointing a receiver of the whole or any substantial part of such Party's assets, and such order, judgment or decree is not vacated or set aside or stayed within 90 days from the date of entry thereof; or
- (ix) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of such Party's assets and such custody or control is not terminated or stayed within 90 days from the date of assumption of such custody or control.

(B) Event of Default by Power Provider. Any of the following may be considered an Event of Default by Power Provider at the option of Purchaser as the non-defaulting party:

- (i) Power Provider's failure to cause operation of the Generating Facilities for a continuous period of sixty (60) days or for ninety (90) days in any six month period (Purchaser shall have the right to demand an explanation of any continuous periods of non-operation in excess of thirty (30) days in order to assess the nature and cause of the failure to operate);

- (ii) unreasonable interference by Power Provider with the operations of Purchaser at the Premises, if the interference is curable by suspension of operation of the Generating Facilities and Power Provider fails to suspend operation of the Generating Facilities within 48 hours of Purchaser's written notice to Power Provider regarding the interference without good cause, as determined by Purchaser;
- (iii) Power Provider fails to execute and maintain all necessary Utility Interconnection Agreements; or
- (iv) for terms other than those listed in (i) or (ii) above, failure by Power Provider to perform or comply with any material term of this Contract within sixty (60) days after written notice to Power Provider by Purchaser, unless Purchaser agrees to a longer period to cure the default.

(C) Event of Default by Purchaser. Any of the following may be considered an Event of Default by Purchaser at the option of Power Provider as the non-defaulting party:

- (i) Purchaser's failure to pay undisputed invoices in accordance with California Government Code Section 927 et seq. or similar statute in the applicable State or jurisdiction for a continuous period of thirty (30) or more days;
- (ii) the renovation, damage, destruction or closure of the Generating Facilities, for other than a "Force Majeure" event, which results in the permanent shutdown of the Generating Facilities at the Premises, if Purchaser and Power Provider are unable to agree upon an alternate location for the Generating Facilities pursuant to Section 4(f);
- (iii) for terms other than those listed in (i) or (ii) above, failure by Purchaser to perform or comply with any material term of this Contract within sixty (60) days after written notice by Power Provider, unless Power Provider agrees to a longer period to cure the default; or (iv) Purchaser refuses to sign authorizations needed by Power Provider to obtain or transfer any performance based incentives under the California Solar Initiative contemplated in Section 6(d) or Purchaser refuses to sign or comply with any material term of the approved Utility Interconnection Agreement required by the Utility for interconnection of the Generating Facilities.

Section 23. Temporary Shutdown of Generating Facilities.

If, during the Term, renovations or damage to any Premises, or Generating Facility occurs, for reasons other than a "Force Majeure" event, which significantly reduces or eliminates the use of electricity from the Generating Facilities or any portion thereof or requires the temporary shutdown of the Generating Facilities or any portion thereof, Purchaser may take such actions as are provided in Section 4(g) as a means of avoiding default under this Contract. Purchaser shall make a good faith effort to give as much notice as possible to Power Provider prior to the shutdown of the Generating Facilities or any portion thereof.

Section 24. Permanent Shutdown of Generating Facilities.

If, through no fault of Power Provider and for reasons other than a Force Majeure event, the Generating Facilities at a Site are permanently shut down due to renovation, damage, destruction or closure of such Site, or Purchaser elects to relocate Generating Facilities from a Site, Power Provider shall be entitled to the following:

(i) Within thirty (30) days after permanent shutdown of the Generating Facilities at such Site, Purchaser shall provide written notice to Power Provider indicating whether or not Purchaser intends to restore operation of such Site, whether relocation of the Generating Facilities from such Site will be pursued or whether such Site is being closed for which there is no alternate location.

(ii) If, within ninety (90) days after permanent shutdown of the Generating Facilities at such Site, Purchaser and Power Provider agree on an alternate location from which Power Provider can provide electricity to Purchaser, then Purchaser shall pay the costs associated with relocation of the Generating Facilities. This alternate location shall, in the opinion of Power Provider, have the potential to provide substantially similar overall system output as the original Site, measured in total kilowatt-hours over a 12-month period, unless Purchaser and Power Provider mutually agree that this output level is not required. If Purchaser and Power Provider mutually agree upon an alternate location which is substantially inferior to the original Site for purposes of insolation or Utility rates (assuming different portions of the Premises have different Utility rates), then Purchaser and Power Provider shall agree to an adjustment in the pricing formula identified in Attachment E, Annual Power Payments, to this Contract to compensate for the alternate location such that Power Provider receives payments comparable to those which it would have received from the Generating Facilities at the original Site.

(iii) Purchaser and Power Provider may agree that Power Provider shall be reimbursed for the period of Generating Facilities shutdown prior to relocation, if any, under the payment mechanism specified in Section 4(f).

(iv) If, within ninety (90) days after permanent shutdown of the Generating Facilities at such Site, Purchaser and Power Provider have not agreed upon an alternate location for the Generating Facilities or if no alternate location is available in connection with closure of a Site, Power Provider may terminate this Contract with respect to the Generating Facilities at such Site in which event Purchaser shall pay to Power Provider the proportionate amount of Termination Value attributable to such Site as set out in Attachment G and each of the Cumulative Guaranteed Energy Output set out in Section 16(a), the Progress Payment Schedule set out in Attachment C, the Annual Power Payments set out in Attachment E and the Schedule of Termination Values set out in Attachment F shall be reduced on a pro rata basis to reflect the termination of this Contract with respect to the Generating Facilities at such Site. Power Provider shall be entitled to remove the Generating Facilities from such Site all on the same terms and conditions as provided in Section 5(d).

Section 25. Termination; Action for Damages.

(A) Termination Rights, Purchaser. Purchaser shall have the right to terminate the Contract at any time on thirty (30) days prior written notice to Power Provider and Contractor, without further liability, if any of the following occur: (i) if a Force Majeure event has occurred that causes a permanent shutdown of the Generating Facilities, or any part thereof, as provided in Section 24, provided that the Purchaser shall only be entitled to terminate its rights and obligations relating to the affected Generating Facility or Generating Facilities or portion thereof, and the Cumulative Guaranteed Energy Output set out in Section 16(a), the Annual Power Payments set out in Attachment E and the Schedule of Termination Values set out in Attachment F shall be reduced on a pro rata basis to reflect the termination of Purchaser's rights and obligations relating to such affected Generating Facility, all in accordance with Attachment G, and provided further that the final payment schedule produced by the Power Provider on the Commercial Operation Date of the last Generating Facility shall be reduced to reflect the termination of the Generating Facilities or any part thereof; (ii) if Contractor fails to demonstrate the ability to perform under this Contract following the occurrence of an Event of Default by Contractor under clause (iii), (iv), (v), (vi), (vii), (viii) or (ix) of subsection (a) of Section 22; or (iii) upon the occurrence of an Event of Default by Power Provider as provided in Section 22(b).

(B) [Reserved]

(C) Contractor Termination Rights with respect to Site or Sites. Contractor shall have the right in its sole discretion at any time until and including May 21, 2011, to terminate its obligation to complete any of the Work with respect to all, or any one or more, Generating Facilities, or any part thereof, on all or any one or more of the Sites (the "Contractor Termination Right"), provided that:

- (i) Contractor shall be entitled to exercise the Contractor Termination Right with respect to all, or any one or more Generating Facilities on three (3) separate occasions;
- (ii) Contractor shall be entitled to exercise the Contractor Termination Right no more than once each calendar month;
- (iii) Contractor shall not be obligated or entitled to resume any Work with respect to any Generating Facility for which it has exercised the Contractor Termination Right;
- (iv) Contractor shall not be entitled to exercise its Contractor Termination Right with respect to any Generating Facility that has achieved Substantial Completion and has been "placed-in-service" for United States federal income tax purposes;
- (v) each of the Cumulative Guaranteed Energy Output set out in Section 16(a), the Progress Payment Schedule set out in Attachment C, the Annual Power Payments set out in Attachment E and the Schedule of Termination Values set out in Attachment F shall be reduced on a pro rata basis to reflect the termination of Contractor's Work on such affected Generating Facility, all in accordance with

Attachment G; (vi) a revised schedule of Annual Power Payments shall be produced by the Power Provider on the Commercial Operation Date of the last Generating Facility and shall be and become Attachment E;

(vii) Contractor shall repair and restore the Site relating to such terminated Generating Facility to its original condition, save for ordinary wear and tear and shall be entitled to keep any part or all of the Generating Facilities relating to such terminated Work; and

(viii) Contractor shall reimburse the Power Provider for any pro rata amount of the Contract Amount paid to the Contractor for Work completed with respect to such terminated Generating Facility in accordance with Attachment G (the "Reimbursed Amount") plus interest on such Reimbursed Amount at the rate of 4.11% per annum for the period from the date the pro rata amount of the Contract Amount relating to such terminated Generating Facility was paid to the Contractor to the date on which such Reimbursed Amount is paid to the Power Provider.

Contractor shall be further entitled to terminate this Contract:

(i) upon the occurrence of an event of Force Majeure with respect to the Generating Facilities at a Site (expressly excluding, however, any event or circumstance relating to a strike, lockout or other labor disturbance of Contractor); and

(ii) in the event that, through no fault of Contractor and for other than an event of Force Majeure with respect to the Generating Facilities at such Site, the Generating Facilities at such Site are permanently shut down due to renovation, damage, destruction or closure of the related Site, and Purchaser and Power Provider cannot agree upon an alternate location for the affected Generating Facilities, all as provided in Section 24.

(D) Termination for Cause. If there is an Event of Default by any Party under this Contract pursuant to the provisions of Section 22(a) unless such Event of Default has been cured within the applicable time periods for a cure set forth in Section 22(a)(ii), and in addition to the remedies provided for in Sections 26 through 30, inclusive, the non-defaulting Party may terminate this Contract by providing three (3) Business Days' prior written notice to the defaulting Party in the case of a monetary default and ten (10) Business Days' prior written notice to the defaulting Party in the case of a non-monetary default. Upon termination of this Contract, each Party shall promptly return to each other all papers, materials and property of the others held by such Party in connection herewith. Each Party shall also assist the other in the orderly termination of this Contract and the transfer of all aspects hereof, tangible and intangible, as may be necessary for the orderly, non-disrupted business continuation of each Party. If the Contract is so terminated for reasons other than an Event of Default by Contractor, Contractor shall be entitled to payment from funding arrangements provided by Power Provider pursuant to Section 17(a) for Work satisfactorily performed, earned profit and overhead and costs incurred in accordance with this Contract up to the date of termination.

(E) Action for Damages Upon Event of Default. Upon an Event of Default by one Party, each other Party shall have the right, but not the obligation, to terminate or suspend this Contract with respect to all obligations arising after the effective date of such termination or suspension (other than payment obligations relating to obligations arising prior to such termination or suspension). The Parties agree that upon an Event of Default by one Party under this Contract that leads to termination of the Contract by a non-defaulting Party, the non-defaulting Party may pursue all remedies available to it at law or in equity (subject, however, to the limitations in Section 33 and 59) to recover amounts due and unpaid by the defaulting Party as provided in this Contract and damages suffered by the non-defaulting Party as a result of such Event of Default, for which damages the defaulting Party shall be liable to the extent determined in any such legal or equitable proceeding.

Section 26. Purchaser Remedies upon Default by Power Provider.

(A) If an Event of Default by Power Provider occurs, Purchaser shall have the right to terminate this Contract by providing at least thirty (30) days' prior written notice to Power Provider and Contractor, which notice shall identify the date of termination, state that the Contract shall terminate on such date and demand that Power Provider cause the Generating Facilities to be removed from the Sites by mutually convenient date (but in no case later than one hundred eighty (180) days after the termination date) and restore the Premises to their pre-installation condition subject to ordinary wear and tear. If this Contract is terminated pursuant to this subsection (a), Purchaser's obligation to make any further payments under this Contract that would accrue, but for such termination, after the termination date shall cease; provided, however, that nothing herein shall terminate or limit Purchaser's obligation to make payments pursuant to this Contract that accrue on and prior to such termination date, Purchaser's obligation to pay any amount that becomes due and payable pursuant to Section 14(d)(vi), which obligation expressly survives termination of this Contract, or any right of a non-defaulting Party to recover its damages as a result of an Event of Default by Purchaser.

(B) If the Power Provider fails to cause the Generating Facilities to be removed and the Premises restored within 180-day period provided in subsection (a) of this Section 26, Purchaser may consider the Generating Facilities abandoned and may remove the Generating Facilities and any other property owned by Power Provider from the Premises and dispose of Power Provider's property in any manner within Purchaser's discretion, but subject to applicable law. In addition, Purchaser may recover from Power Provider any actual damages to which it is entitled as provided in Section 25(e).

(C) If Purchaser elects not to terminate this Contract following an Event of Default by Power Provider, this election shall not constitute a waiver by Purchaser as to any subsequent Event of Default by Power Provider.

Section 27. Power Provider Remedies upon Default by Purchaser.

If an Event of Default by Purchaser occurs, Power Provider shall be entitled to obtain any available legal or equitable remedies through proceedings instituted pursuant to Section 36 below, including, without limitation, terminating this Contract and recovering amounts due and unpaid by Contractor and actual damages to which it is entitled as provided in Section 25(e). In addition to the remedies specified herein, Power Provider may remove its Generating Facilities at its cost, provided the Premises are restored to a condition substantially similar to the pre-installation condition subject to ordinary wear and tear.

Section 28. Contractor or Purchaser Remedies upon Default by the Other.

If an Event of Default by Purchaser or Contractor occurs, the non-defaulting party shall be entitled to obtain any available legal or equitable remedies through proceedings instituted pursuant to Section 36 below, including, without limitation, terminating this Contract and recovering amounts due and unpaid by the defaulting party and actual damages to which it is entitled as provided in Section 25(e).

Section 29. Power Provider Remedies upon Default by Contractor.

If an Event of Default by Contractor occurs, Power Provider shall be entitled to obtain any available legal or equitable remedies through proceedings instituted pursuant to Section 36 below, including, without limitation, terminating this Contract and recovering amounts due and unpaid by Contractor and actual damages to which it is entitled as provided in Section 25(e).

Section 30. Contractor Remedies upon Default by Power Provider.

If an Event of Default by Power Provider occurs, Contractor shall be entitled to obtain any available legal or equitable remedies through proceedings instituted pursuant to Section 36 below, including, without limitation, terminating this Contract and recovering amounts due and unpaid by Power Provider and actual damages to which it is entitled as provided in Section 25(e).

Section 31. Limitation on Remedies.

Except with respect to any Hazardous Substances on any of the Property or the Sites, for purposes of this Contract, Contractor hereby accepts the Premises in an "As-Is" condition and acknowledges that neither Purchaser nor Power Provider have made any statements or representations or warranties regarding the Premises except as set forth in this Contract, and Contractor is not relying upon any statement or representation or warranty of Purchaser, Power Provider or any third party regarding the Premises as to the fitness of the Premises for any particular use of Contractor or any other matter. Purchaser and Power Provider hereby expressly disclaim and Contractor hereby waives all implied warranties, including, without limitation, any warranty of merchantability or warranty of fitness for a particular use or purpose. For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages shall be the sole and exclusive remedy, the obligor's liability shall be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided in the Contract or in a transaction, the obligor's liability shall be limited to direct actual damages only, such direct actual damages shall be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived.

Section 32. No Waiver.

(A) Any waiver at any time by any Party of its rights with respect to an Event of Default under this Contract, or with respect to any other matters arising in connection with this Contract, shall not be deemed to be a waiver with respect to any subsequent default or other matter. Any waiver under this Contract must be in writing.

(B) Notwithstanding any provision to the contrary under this Contract, neither Purchaser nor any party related to Purchaser shall bear or be deemed to bear any significant financial burden if there is nonperformance by Contractor or Power Provider under this Contract, as the phrase "any significant financial burden if there is nonperformance" is used in Section 7701(e)(4)(A)(ii) of the Internal Revenue Code.

(C) Notwithstanding any provision to the contrary under this Contract, neither Purchaser nor any party related to Purchaser shall receive or be deemed to receive any significant financial benefit if the operating costs of the Generating Facilities are less than the standard of performance and/or operation set forth in this Contract, as the phrase "significant financial benefit if the operating costs of the Generating Facilities are less than the standards of performance or operation" is used in Section 7701(e)(4)(A)(iii) of the Internal Revenue Code.

Section 33. Limitation of Liability.

FOR BREACH OF ANY PROVISION OF THIS CONTRACT, THE NON-DEFAULTING PARTY SHALL HAVE THE RIGHT TO EXERCISE ALL RIGHTS AND REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, PROVIDED, HOWEVER, THAT THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE WAIVED. IN NO EVENT SHALL ANY PARTY BE LIABLE TO ANY OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT, CONTRACT OR OTHERWISE.

Section 34. Ownership of Certain Property and Existing Equipment.

Purchaser and/or Power Provider shall not, by virtue of this Contract, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights or similar items of property which are or may be used in connection with the Generating Facilities. Contractor shall grant to Purchaser and/or Power Provider a perpetual, irrevocable royalty-free license for any and all software or other intellectual property rights necessary for Purchaser to continue to operate, maintain and repair the Generating Facilities in a manner that will yield maximal energy consumption reductions.

Section 35. Force Majeure.

In the event that any Party is delayed in, or prevented from, performing or carrying out its obligations under this Contract by reason of any event of Force Majeure beyond the reasonable control of, and without the fault or negligence of, such Party such circumstance shall not constitute an event of default, and such Party shall be excused from performance hereunder and shall not be liable to any other Party for or on account of any loss, damage, injury or expense resulting from, or arising out of, such delay or prevention; provided, however, that the Party encountering such delay or prevention shall use commercially reasonable efforts to remove the causes thereof. The settlement of strikes and labor disturbances shall be wholly within the control of the Party experiencing that difficulty.

Section 36. Dispute Resolution.

In the event of a dispute, claim or controversy arising out of or in connection with this Contract or the breach, interpretation, termination or validity thereof (a "Dispute"), the Parties through their designated representatives/program managers agree to confer and attempt to resolve the matter informally. If such Dispute cannot be resolved in this manner within ten (10) Business Days after notice of the Dispute is given to the other Party or Parties, then the matter shall be referred to the Parties' senior officers for their review and resolution. If the matter cannot be resolved by such officers within fifteen

(15) Business Days following such referral, the matter may be litigated in a court of competent jurisdiction. The venue for any action or proceeding related to a Dispute shall be in Lancaster County, Nebraska.

Section 37. Attorneys' Fees.

The prevailing Party in any action or proceeding brought to enforce the terms of this Contract or arising out of this Contract (including actions to enforce an arbitration award, if arbitration is agreed to by the Parties) may recover its reasonable costs and attorneys' fees expended in connection with such an action or proceeding from the other Party.

Section 38. Records.

Each Party hereto shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Contract. Each Party shall have the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

Section 39. Notices.

Any notice required or permitted to be given in writing under this Contract shall be mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight air courier service, or personally delivered to a representative of the receiving party, or sent by facsimile (provided an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section 39). All such communications shall be mailed, sent or delivered, addressed to the Party for whom it is intended, at its address set forth below:

If to Power Provider and Contractor:
A3 Energy, LLC
2501 Ridgeline Court
Suite 100
Lincoln, NE 68512
Attn: Gregg Nelson
Phone: (402) 770-8274

If to Purchaser:

China Spring Youth Camp
225 China Spring Road
Gardnerville, Nevada 89410

All notices shall be deemed to have been received when delivered in person, sent by facsimile with electronic confirmation of successful transmission or three days after being sent by certified mail or overnight air courier service as provided above.

Section 40. Assignment.

(A) Neither Contractor nor Power Provider shall assign this Contract or any of its rights hereunder without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, either Contractor or Power Provider may upon written notice, without the need for consent from the other Party (and without relieving itself from liability hereunder),

(i) transfer, pledge or assign this Contract and its right, title and interest in and to the Generating Facilities as security for any financing or to an affiliated special purpose entity created for the financing or tax credit purposes related to Generating Facilities;

(ii) transfer or assign this Contract to any person or entity succeeding to all or substantially all of the assets of either Contractor or Power Provider (as the case may be); provided, however, that any such assignee shall agree to be bound by the terms and conditions hereof; or

(iii) assign its rights under this Contract to a successor entity in a merger or acquisition transaction, provided, however, that any such assignee shall agree to be bound by the terms and conditions hereof. No such assignment shall be effective until written notice of such assignment is provided to Purchaser.

(B) With respect to an assignment pursuant to clause (i) in subsection (a) of this Section 40, Purchaser acknowledges and agrees that, upon receipt of written direction by a financing transaction assignee of Power Provider (each, a "Lender"), and notwithstanding any instructions to the contrary from Power Provider, Purchaser shall recognize Lender, or any third party to whom Lender has reassigned the rights of Power Provider under this Contract, as the proper and lawful Power Provider under this Contract and as the proper and lawful successor to Power Provider with respect to access to the Premises across or through the Property and fully entitled to receive the rights and benefits of Power Provider hereunder so long as Lender (or its assignee) performs the obligations of Power Provider hereunder.

(C) In addition, Purchaser agrees and consents as follows:

(i) Purchaser agrees to notify Lender in writing, at the address to be designated by Lender upon not less than five (5) Business Days' written notice to Purchaser prior to any notice by Purchaser hereunder, of any act or event that, with notice or lapse of time or both, would become an Event of Default by Power Provider or Contractor under the Contract of which Purchaser has knowledge that would entitle Purchaser to cancel, terminate, annul or modify the Contract or

dispossess or evict Power Provider from the Premises or otherwise proceed with enforcement remedies against Power Provider or Contractor, and Lender shall have the same amount of time as Power Provider, but at least ten (10) days with respect to any monetary default and at least thirty (30) days with respect to any non-monetary default, to cure any default by Power Provider or Contractor under the Contract; provided that in no event shall Lender be obligated to cure any such default.

(ii) Notwithstanding that the Generating Facilities are fixtures on the Property, and subject to the terms and conditions hereof, Purchaser hereby subordinates any lien it may have in and to the Generating Facilities used by Power Provider in the conduct of its business and which is or may from time to time hereafter be located at the Premises, and to which Power Provider has granted or will grant a security interest to Lender (all such Generating Facilities and the records relating thereto shall be hereafter called the "Collateral") to the lien of Lender; provided, however, that this subordination shall not prevent Purchaser from exercising any right or remedy against Power Provider to which Purchaser may be entitled under the terms of the Contract or as may be provided by applicable law, nor shall it prevent Purchaser from exercising any lien it may have on any property of Power Provider, including the Collateral, so long as Purchaser recognizes Lender's prior right to the Collateral described above. Purchaser recognizes and acknowledges that any claim or claims ("Claims") that Lender has or may have against such Collateral by virtue of any lien or security interest is superior to any lien, security interest or claim of any nature which Purchaser now has or may hereafter have to such Collateral by statute, contract or otherwise. The subordination of lien provided for herein shall be effective until the discharge of the Claims. Purchaser further agrees to notify any purchaser of the Property, and any subsequent mortgagee or other encumbrance holder, of the existence of the foregoing waiver of Purchaser's lien, which shall be binding upon successors and transferees of Purchaser, and shall inure to the benefit of the successors and assigns of Lender.

(iii) Purchaser consents to Lender's security interest in the Collateral and waives all right of levy for rent and all claims and demands of every kind against the Collateral, such waiver to continue so long as any sum remains owing from Power Provider to Lender. Purchaser agrees that the Collateral shall not be subject to distraint or execution by, or to any claim of, Purchaser.

(iv) Purchaser hereby irrevocably agrees and consents to refrain from taking any action to bar, restrain or otherwise prevent Lender from the Property for the purpose of inspecting the Collateral.

(D) Purchaser shall not assign this Contract or any of its rights or interests hereunder or delegate any of its duties or obligations, without the prior written consent of Power Provider in each instance, which may be withheld in the sole discretion of Power Provider, except that Purchaser's right, title and interest under this Contract may be transferred to a successor governmental body as required by applicable law without the requirement for any such consent.

Section 41. Set-Off.

Except as otherwise set forth herein, each Party reserves to itself all rights, set-offs, counterclaims and other remedies and/or defenses to which it is or may be entitled, arising from or out of this Contract or arising out of any other contractual arrangements between or among the Parties. All outstanding obligations to make, and rights to receive, payment under this Contract may be offset against each other.

Section 42. Binding Effect.

The terms and provisions of this Contract, and the respective rights and obligations hereunder of each Party, shall be binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

Section 43. Amendments.

No modification of this Contract shall be effective except by written amendment executed by the Parties.

Section 44. Counterparts.

Any number of counterparts of this Contract may be executed and each shall have the same force and effect as the original. Facsimile signatures shall have the same effect as original signatures and each Party consents to the admission in evidence of a facsimile or photocopy of this Contract in any court or arbitration proceedings between or among the Parties.

Section 45. Entire Contract.

This Contract constitutes the entire contract among the Parties relating to the subject matter hereof and supersedes any other prior contracts, written or oral, between or among the Parties concerning such subject matter (other than the Utility Interconnection Agreements).

Section 46. Third Party Beneficiaries.

Nothing in this Contract shall provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind, it being the intent of the Parties that this Contract shall not be construed as a third party beneficiary Contract.

Section 47. Severability.

Should any provision of this Contract for any reason be declared invalid or unenforceable by final and non-appealable order of any court or regulatory body having jurisdiction, such decision shall not affect the validity of the remaining portions, and the remaining portions shall remain in full force and effect as if this Contract had been executed without the invalid portion.

Section 48. Survival.

Any provision(s) of this Contract that expressly or by implication comes into or remains in full force following the termination or expiration of this Contract shall survive the termination or expiration of this Contract.

Section 49. Governing Law.

This Contract shall be interpreted and construed in accordance with the laws of the State of Nevada, as if executed and to be performed wholly within the State of Nevada.

Section 50. Legal Effect of Contract.

(A) The Parties acknowledge and agree that the transaction contemplated under this Contract 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.

(B) The Parties acknowledge and agree that, for accounting or tax purposes, this Contract is not and shall not be construed as a capital lease and, pursuant to Section 7701(e)(3) of the Code, this Contract is and shall be deemed to be a service contract with respect to the sale to Purchaser of electric energy produced at alternative energy facilities.

Section 51. Cooperation.

Upon the receipt of a written request from another Party, each Party shall execute such additional documents (e.g., Utility Interconnection Agreements), instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. No Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section. Without limiting the foregoing, the Parties acknowledge that they are entering into a long-term arrangement in which the cooperation of all of them will be required. From time to time, upon written request by Power Provider (or its Lenders), Purchaser shall provide within seven (7) days thereafter an estoppel certificate attesting, to the knowledge of Purchaser, of Power Provider's compliance with the terms of this Contract or detailing any known issues of noncompliance.

Section 52. No Partnership.

This Contract is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between or among the Parties or to impose any such obligation or liability upon any Party. No Party shall have any right, power or authority to enter into any contract or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party or Parties.

Section 53. Remedies Cumulative.

No remedy herein conferred upon or reserved to any Party shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 54. Headings.

The headings and subheadings in this Contract are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Contract.

Section 55. Attachments and Exhibits.

- (A) The following Attachments are attached hereto and incorporated herein by this reference:
- (i) Attachment A: Scope of Work;
 - (ii) Attachment B: Site Plans;
 - (iii) Attachment C: Progress Payment Schedule;

- (iv) Attachment D: Project Schedule;
- (v) Attachment E: Annual Power Payments;
- (vi) Attachment F: Schedule of Termination Value; and
- (vii) Attachment G: Schedule of Termination and Revised Cumulative Energy Output and Progress Payment Schedule

- (B) The following Exhibits are attached hereto for purposes of the Project:
- (i) Exhibit 1: Form of Grant of Non-Exclusive Easement for Power Generating Facilities;
 - (ii) Exhibit 2: Form of Utility Interconnection Agreement; and
 - (iii) Exhibit 3: Form of Operation and Maintenance Agreement.

Section 56. Order of Precedence.

If there are any inconsistencies between the Contract, Attachments, and Construction Documents, these inconsistencies shall be resolved by giving precedence in the priority of order so listed.

Section 57. Conflict of Interest.

Conflicts of interest relating to this Contract are strictly prohibited. Except as otherwise expressly provided herein, no Party nor any director, employee or agent of any Party shall give to or receive from any director, employee or agent of any other Party any gift, entertainment or other favor of significant value, or any commission, fee or rebate in connection with this Contract. Likewise, no Party nor any director, employee or agent of any Party, shall without prior notification thereof to all Parties enter into any business relationship with any director, employee or agent of another Party or of any affiliate of another Party, unless such person is acting for and on behalf of the other Party or any such affiliate. A Party shall promptly notify the other Parties of any violation of this Section and any consideration received as a result of such violation shall be paid over or credited to the Party against whom it was charged. Any representative of any Party, authorized by that Party, may audit the records of the other Parties related to this Contract, including the expense records of the Party's employees involved in this Contract, upon reasonable notice and during regular business hours, for the sole purpose of determining whether there has been compliance with this Section.

Section 58. Confidentiality.

(A) Confidentiality Obligation. Subject to the requirements of the California Public

Records Act or similar applicable act or statute in the State of Nevada and/or the Freedom of Information Act, if any Party (the "Disclosing Party") provides or causes to be provided Confidential Information (as hereinafter defined) to any other Party (the "Recipient") or to the Recipient's affiliates, employees, officers, agents, legal counsel, accountants and other representatives and advisors (collectively, its "Representatives"), the Recipient agrees that it shall treat and hold the Confidential Information in confidence and, unless the Disclosing Party otherwise consents in writing, the Recipient shall not disclose Confidential Information other than to:

- (i) its Representatives in connection with the negotiation and performance of this Contract and the evaluation and administration of the transaction contemplated hereby (the "Transaction"), including due diligence, or the development of the relationship between the Recipient and its affiliates and the Parties, where such Representatives have been informed of the confidential nature of the Confidential Information and the obligations of confidentiality provided in this Section 58;
- (ii) any governmental agency or regulatory body asserting regulatory or other oversight authority with respect to any aspect of the Recipient's business or that of its Representatives;
- (iii) any financial institution or other entity to whom the Recipient has or desires to sell, transfer or assign all or any portion of its interests or a participation in the Transaction, provided that any such entity is informed of the confidential nature of the Confidential Information and agrees to keep such Confidential Information confidential;
- (iv) any Lender with whom the Recipient desires to enter into funding arrangements to finance costs of the Project for purposes of Section 17, provided that such Lender is informed of the confidential nature of the Confidential Information and agrees to keep such Confidential Information confidential;
- (v) the extent reasonably necessary or appropriate in the closing or administration of the Transaction, or to preserve or enforce any of the Recipient's rights and remedies in connection therewith (including the perfection and protection of any collateral or other security interest provided therein or with respect thereto). Any provision of this Section 58 to the contrary notwithstanding, the Recipient and its Representatives may disclose to any and all persons, without limitation of any kind, any information with respect to the tax treatment or tax structure of the Transaction and all materials of any kind (including opinions or other tax analysis) that are provided to the Recipient or the other Parties relating to such tax treatment and tax structure.

(B) Confidential Information Defined. As used in this Section 58, "Confidential Information" means all material, non-public data, reports, financial information, interpretations, forecasts and records containing or otherwise reflecting information concerning the Parties which the Disclosing Party will provide or cause to be provided to the Recipient with respect to the Transaction, together with notes, analyses, compilations, minutes of meetings, studies or other documents, whether developed or prepared by the Recipient or its Representatives, which contain or otherwise reflect such information. For purposes of this Section 58, the term "Confidential Information" shall not include information that:

- (i) was known by or in the possession of the Recipient at the time of its disclosure to the Recipient, provided that such information was not then known by the Recipient to be subject to any legal or contractual obligation of confidentiality due to the Parties;
- (ii) is or becomes publicly available (other than through a breach of the obligations and covenants set forth in this Section 58 by the Recipient or its Representatives);
- (iii) becomes available to the Recipient on a non-confidential basis, provided that the source of such information was not known by the Recipient to be bound by a legal or contractual obligation of confidentiality due to the Parties; or
- (iv) is independently developed, discovered or arrived at by the Recipient or any of its Representatives.

(C) Disclosure Relating to Legal Proceedings. In the event that the Recipient or any of its Representatives is requested or required (by interrogatory, request for information or documents, subpoena, deposition, civil investigative demand or other formal process) to disclose any Confidential Information, it is agreed that the Recipient or any of its Representatives may disclose Confidential Information to the extent that the Recipient or such Representatives concludes in good faith that it is legally required to do so; provided that, the Recipient shall, unless prohibited by law, regulation or legal, governmental or regulatory process, use reasonable efforts to provide the Disclosing Party or, at the option of the Recipient, the applicable other Party, with prompt notice of such request or requirement so that such Party may, at its own expense, seek a protective order or other appropriate remedies as the Disclosing Party or other applicable Party deems appropriate to maintain the confidentiality of the Confidential Information, and the Recipient agrees to cooperate in connection with such efforts to the extent deemed reasonable by the Recipient.

Section 59. Contractor Limitation on Liability.

In no event shall the Contractor be liable to the Purchaser for any amount of damages under this Solar Services Contract that cumulatively exceeds the Contract Amount, whether such amounts arise out of breach of contract, guarantee or warranty, tort, product liability, liquidated damages, indemnity, contribution, strict liability or any other legal theory, provided, however, that such limitation of liability shall not apply to claims of third parties for which Contractor is obligated to indemnify the Purchaser pursuant to Section 21.

(The remainder of this page was intentionally left blank.)

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Solar Services Contract as of the day and year first above written.

POWER PROVIDER & CONTRACTOR:
A3 ENERGY, LLC,
a Nebraska limited liability company

By its Duly Authorized Representative:


By: 

Name: GREGG NELSON

Title: PRESIDENT, A3 ENERGY, LLC
(dba A3 SOLAR, LLC)

PURCHASER:

China Spring Youth Camp

By 

Name: Michael A. Olson

Title: Chairman, Douglas County Board of Commissioners

ATTACHMENT A

SCOPE OF WORK

Project is design-build in nature. As specifics become apparent they will be addressed on an ongoing basis. Contractor will design and build a 40,000 Wac Solar Photovoltaic Generating Facility on the Purchaser's site using crystalline silicone (c-Si) modules approved by the California Energy Commission and in accordance with the requirements of the NV Energy SolarGenerations program.

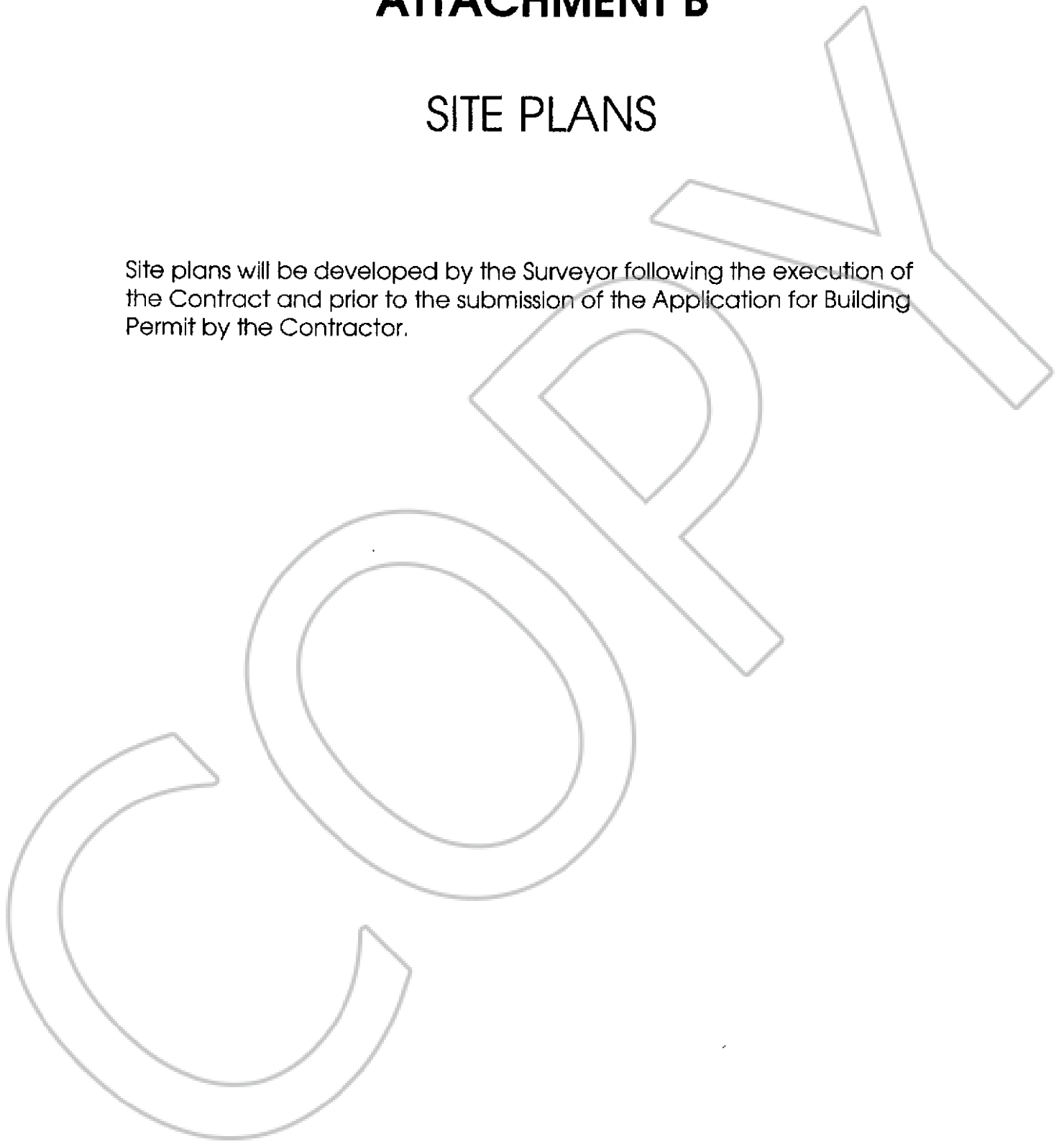
The Contractor will provide the following general peripheral scope at all sites. Site specific modifications will be handled via Contractor's Change Order system. All Change Orders will become addendums to this attachment.

- Survey each site to determine the correct location of the Generating Facilities. This work to be completed with the Purchaser's staff to insure proper placement.
- Secure proper building permits for all sites.
- Rough grade and trench at site as necessary.
- Complete installation of all Generating Facility components.
- Schedule and complete all inspections required by local building officials and the Utility.
- Where fencing is required complete fencing per specifications.
- Reclaim all trenched and other disturbed areas to match existing as close as possible.
- Provide and install utility grade metering and web based monitoring so that Power Provider's staff can remotely access system performance information.

ATTACHMENT B

SITE PLANS

Site plans will be developed by the Surveyor following the execution of the Contract and prior to the submission of the Application for Building Permit by the Contractor.



ATTACHMENT C

PROGRESS PAYMENT SCHEDULE

No payments will be due from Purchaser on this Project. Payments from Power Provider to Contractor will be in accordance with the Power Provider's Master Subcontract Agreement and subsequent, site specific addendums to that agreement.

ATTACHMENT C

PROGRESS PAYMENT SCHEDULE

No payments will be due from Purchaser on this Project. Payments from Power Provider to Contractor will be in accordance with the Power Provider's Master Subcontract Agreement and subsequent, site specific addendums to that agreement.

COPY

ATTACHMENT D

PROJECT SCHEDULE

Following Contract execution Contractor will develop, with input from Purchaser's staff, a master Microsoft Project schedule. The project team will establish a weekly project meeting at which time the progress from the previous week will be reviewed and a three week forward looking plan will be established. The Microsoft Project schedule will be updated on a monthly basis or as needed.

At this time Contractor estimates permitting, issuing of subcontractor master subcontracts, design, engineering, mobilization, construction and implementation will take less than 60 days. The largest variables at this time are the delivery window for the Generating Facilities' components and the final inspection and sign-off from the Utility.

ATTACHMENT E

ANNUAL POWER PAYMENTS AND PRICING

MADE BETWEEN A3 ENERGY, LLC AND THE CHINA SPRING YOUTH CAMP.

For the purposes of this contract, entered into on _____, 20____, between Purchaser and Power Provider, the Purchaser agrees to purchase all power generated by the Generating Facilities for a minimum period of three hundred (300) months beginning with the first full month of operation of the Generating Facilities. **The Power Provider agrees to provide the power to the Purchaser at a rate equal to the calculated, published rate provided by the Utility for the duration of the contract.** The rate paid by the Purchaser will be reviewed and adjusted as required on a semi-annual basis to correspond with any rate change implemented by the Utility. Adjustments will be made in January and July of each year of the Contract and any rate change will be reflected beginning with the billing for those months. In the event there is a discrepancy in the rate published by the Utility for the Purchaser's user class and the rate shown on the Purchaser's monthly Utility billing the higher of the two figures will provide the basis for calculating the rate paid by the Purchaser to the Power Provider.

Beginning in the second (2nd) month of the Contract the Parent Company of the Power Provider, The Nelson Energy Trust or it's assigns or it's majority shareholder(s), **agrees to make a charitable donation to the Purchaser in an amount equal to not less than thirty-five percent (35%) of the total amount of the previous month's invoice from Power Provider to Purchaser, exclusive of taxes and required fees.** Purchaser and Power Provider agree that this arrangement is to continue through the entire duration of the Contract. The Purchaser understands and agrees that this is a charitable donation from The Nelson Energy Trust, its assigns or one or more of its majority shareholders and that it is not a rebate or refund from the Power Provider.

ATTACHMENT F

Schedule of Termination Value

Early Termination of the Contract in which the Purchaser does not exercise an Early Buyout Option will result in the following payments being immediately due and payable to the Power Provider from the Purchaser.

Initial System Cost Basis \$125,000.00

Termination Value Following the **End** of Calendar Year:

Year 1	12/31/2011	\$123,000.00
Year 2	12/31/2012	\$121,000.00
Year 3	12/31/2013	\$119,000.00
Year 4	12/31/2014	\$117,000.00
Year 5	12/31/2015	\$115,000.00
Year 6	12/31/2016	\$112,000.00
Year 7	12/31/2017	\$109,000.00
Year 8	12/31/2018	\$106,000.00
Year 9	12/31/2019	\$103,000.00
Year 10	12/31/2020	\$100,000.00
Year 11	12/31/2021	\$ 96,000.00
Year 12	12/31/2022	\$ 92,000.00
Year 13	12/31/2023	\$ 88,000.00
Year 14	12/31/2024	\$ 84,000.00
Year 15	12/31/2025	\$ 80,000.00

Year 16	12/31/2026	\$ 75,000.00
Year 17	12/31/2027	\$ 70,000.00
Year 18	12/31/2028	\$ 65,000.00
Year 19	12/31/2029	\$ 65,000.00
Year 20	12/31/2030	\$ 55,000.00
Year 21	12/31/2031	\$ 49,000.00
Year 22	12/31/2032	\$ 43,000.00
Year 23	12/31/2033	\$ 37,000.00
Year 24	12/31/2034	\$ 29,000.00
Year 25	12/31/2035	\$ 19,000.00

End of Contract

ATTACHMENT G

CUMULATIVE GUARANTEED ENERGY OUTPUT SCHEDULE

With this Contract Power Provider only invoices and Purchaser only pays for power that is actually produced by the Generating Facilities. As a result there is no guarantee of minimum a amount of power generated for use by Purchaser. It is in the best interest of Power Provider to insure maximum efficiency levels for the Generating Facilities at all times.

ATTACHMENT H

EARLY BUYOUT PRICE SCHEDULE

Power Provider herein grants an Option to Purchase the Generating Facilities to the Purchaser at the following price points. In order for the Purchaser to complete the sale at the stated option price arrangements must be made and approved by the Power Provider to complete the sale and deliver cash or certified funds to the Power Provider on the first business day of the new calendar year, or other such terms as are acceptable to the Power Provider.

It is assumed that the Generating Facilities will be operational on or before December 31, 2010. In the event the Generating Facilities are not operational by that date then the end of the first year will correspond to December 31 of the calendar year following the year in which the Generating Facilities were placed in service. Under no circumstances will the Early Buyout Price equal less than ninety percent (90%) of the Initial System Cost Basis during any of the first sixty (60) months of operation.

Initial System Cost Basis \$125,000.00

Early Buyout Price Following the **End** of Calendar Year:

Year 1	12/31/2011	\$124,000.00
Year 2	12/31/2012	\$123,000.00
Year 3	12/31/2013	\$122,000.00
Year 4	12/31/2014	\$121,000.00
Year 5	12/31/2015	\$ 89,685.00
Year 6	12/31/2016	\$110,000.00
Year 7	12/31/2017	\$108,750.00
Year 8	12/31/2018	\$106,875.00
Year 9	12/31/2019	\$105,000.00
Year 10	12/31/2020	\$103,125.00



Year 11	12/31/2021	\$100,625.00
Year 12	12/31/2022	\$ 98,125.00
Year 13	12/31/2023	\$ 95,625.00
Year 14	12/31/2024	\$ 92,500.00
Year 15	12/31/2025	\$ 88,750.00
Year 16	12/31/2026	\$ 85,000.00
Year 17	12/31/2027	\$ 81,250.00
Year 18	12/31/2028	\$ 77,500.00
Year 19	12/31/2029	\$ 72,500.00
Year 20	12/31/2030	\$ 67,500.00
Year 21	12/31/2031	\$ 62,500.00
Year 22	12/31/2032	\$ 56,250.00
Year 23	12/31/2033	\$ 50,125.00
Year 24	12/31/2034	\$ 43,750.00
Year 25	12/31/2035	\$ 37,500.00

End of Contract

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and on record in my office.

DATE: Sept 3 2010

THROW Clerk of the 9th Judicial District Court of the State of Nevada, in and for the County of Douglas.

By Carol M. Mullock Deputy