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- BOB STUMP

AZ CORP COM
DOCKET CONTROL

NR

IN THE MATTER OF THE APPLICATION
OF SOLAR POWER PARTNERS, INC.
REGARDING ITS REQUEST FOR SPECIAL
CONTRACT RATE APPROVAL FOR A
PHOTOVOLTAIC QUALIFIED
MANAGEMENT AGREEMENT.

DOCKET NO. E-20730A-10-0088

APPLICATION

**(REQUEST FOR EXPEDITED
APPROVAL)**

I. INTRODUCTION

Solar Power Partners, Inc. ("SPP" or the "Applicant"), by and through counsel undersigned, hereby submits for Arizona Corporation Commission ("Commission") approval, the attached Photovoltaic Qualified Management Agreement ("Agreement") that was originally entered into between the Arizona Board of Regents for and on behalf of Arizona State University and APS Energy Services Company, Inc., which in turn have been respectively assigned to a wholly-owned subsidiary of SPP under the attached Conditional Assignment Agreement (both the Photovoltaic Qualified Management Agreement and Conditional Assignment Agreement shall be collectively referred to herein as the "QMA") attached hereto as Exhibit A.

SPP files this Application seeking an Order from the Commission for the limited purpose of approval of the rates proposed in the attached QMA as a Special Contract. SPP submits this QMA for Special Contract approval because of the uncertainty that currently exists under Arizona law as to whether SPP would be acting as a Public Service

Snell & Wilmer
L.P.

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(602) 382-6000

1 Corporation (“PSC”) by providing solar services pursuant to the Agreement.¹ By the
2 filing of this limited Application, SPP is not taking a position as to whether it is or it is not
3 acting as PSC under Arizona law.²

4 II. THE APPLICANT

5 SPP develops, owns, and operates distributed solar energy facilities and sells solar-
6 generated electricity through solar Power Purchase Agreements (“PPAs”) or in this case,
7 QMAs. SPP has been in the solar industry since its inception in October 2006. SPP
8 currently has entered into over 50 PPAs in states such as California, Hawaii, Connecticut,
9 Arizona, and New Jersey. and currently owns, developed or operates solar energy
10 facilities in the states of California, Hawaii and Connecticut. SPP OpCo, LLC, a
11 Delaware limited liability company (“SPP OpCo”) is a wholly owned subsidiary of SPP
12 and was formed for the purpose of designing, procuring and installing solar photovoltaic
13 projects. Once these solar photovoltaic projects are complete, an affiliate of SPP
14 purchases the projects from SPP OpCo in a manner that will qualify for tax credits and
15 rebates. The attached Photovoltaic Qualified Management Agreement that was originally
16 entered into between the Arizona Board of Regents for and on behalf of Arizona State
17 University (“ASU” or “Customer”) and APS Energy Services Company, Inc., was
18 assigned to SPP OpCo on December 1, 2009.

19 III. THE AGREEMENT

20 SPP, through its wholly-owned subsidiary, intends to install and operate solar
21 photovoltaic systems on the premises of ASU pursuant to the QMA (“Project”). SPP will
22 design, install, maintain, and finance the solar systems on the Customer’s premises with
23 no upfront cost pursuant to all applicable Commission rules and regulations, including the

24 ¹ SPP anticipates that the Commission will issue a decision in Docket No. E-206290A-09-0346 (*In the*
25 *Matter of SolarCity Corporation*) in the near future that will provide further legal guidance to the solar
industry in this regard.

26 ² By the filing of this limited Application, SPP does not concede the jurisdiction nor does SPP waive any
right to assert that it is not acting as a PSC in any future proceeding.

1 utility's interconnection requirements. ASU will benefit from this arrangement by being
2 able to adopt solar systems with zero upfront costs while utilizing renewable energy. The
3 potential savings to ASU, the adoption of the system and approval of the QMA rates are
4 in the best interest of the Customer and the public. The estimated projected system output
5 over the life of the QMA is included in Exhibit B attached hereto. Further, approval of
6 the QMA rates proposed in this Application will further the Commission's (as well as the
7 utility's) goals under the REST Arizona Rules.

8 **IV. TIME IS OF THE ESSENCE**

9 SPP submits the attached QMA for Special Contract approval and seeks expedited
10 review because time is of the essence for the Project. SPP has secured funding for the
11 Project and such funding may not be available if the Commission was to ultimately
12 declare that the QMA provider is a PSC without having first secured approval of the
13 QMA as a Special Contract. Accordingly, delays in approval could translate into a loss of
14 funding for the Project, potentially higher rates, and less savings for ASU, or ultimately
15 delay or jeopardize this Project. Additionally, SPP has secured reservations with the
16 applicable utility (Arizona Public Service) for rebates associated with the system and
17 delays may jeopardize these rebates, and, thus, the economic viability of the Project.
18 Finally, every day that passes means one less day that ASU can save money in this
19 difficult economic time.

20 **V. NOTICES TO APPLICANT**

21 All communications and correspondence regarding this Application, as well as
22 communications and pleadings filed with respect hereto, should be served on the
23 following:

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Bradley S. Carroll, Esq.
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VI. CONCLUSION

WHEREFORE, SPP respectfully requests the Commission issue its Order expeditiously approving the Special Contract rates set forth in the QMA.

RESPECTUFLY SUBMITTED this 11th day of March, 2010.

SNELL & WILMER L.L.P.

By 

Robert J. Metli
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400 East Van Buren
Phoenix, Arizona 85004-2202
Attorneys for Solar Power Partners, Inc.

ORIGINAL and 13 copies of the foregoing filed this 11th day of March, 2010, with:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

COPIES of the foregoing hand-delivered this 11th day of March, 2010, to:

1 Steve Olea, Director
2 Utilities Division
3 ARIZONA CORPORATION COMMISSION
4 1200 West Washington Street
5 Phoenix, Arizona 85007

6 Janice Alward, Chief Counsel
7 Legal Division
8 ARIZONA CORPORATION COMMISSION
9 1200 West Washington Street
10 Phoenix, Arizona 85007

11 Lyn Farmer, Chief Administrative Law Judge
12 Hearing Division
13 ARIZONA CORPORATION COMMISSION
14 1200 West Washington Street
15 Phoenix, Arizona 85007

Snell & Wilmer

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EXHIBIT A

**Photovoltaic Qualified Management
AGREEMENT**

BETWEEN:

**The Arizona Board of Regents
for and on behalf of
Arizona State University**

AND

APS Energy Services Company, Inc.

Dated as of:

September 9, 2009

PHOTOVOLTAIC SYSTEM SERVICES MANAGEMENT AGREEMENT

This Photovoltaic System Qualified Management Agreement (this "Agreement") is made and entered into as of this ___ day of September, 2009 (the "Effective Date"), by and between APS Energy Services Company, Inc., an Arizona corporation (the "Company"), and the Arizona Board of Regents, an instrumentality of the State of Arizona and a statutory body corporate, for and on behalf of Arizona State University (the "University") (collectively, the "Parties" or individually as "Party").

RECITALS

- A.** Company intends to finance, own and operate a photovoltaic system (the "**System**") on the premises (the "**Premises**") as more particularly defined in Exhibit A hereto.
- B.** Company desires to sell to University, and University desires to purchase from Company, all of the energy generated by the System during the Initial Term and otherwise in accordance with the terms of this Agreement, such supply of energy by the Company shall be known as the "**Energy Services**".

AGREEMENT

In consideration of the foregoing recitals, the mutual agreements, representations, warranties and covenants set forth in this Agreement and the Schedules and Exhibits hereto, and other good and valuable consideration, the receipt of which is hereby acknowledged, Company and University agree as follows:

1.0 COMMENCEMENT, TERM AND END OF AGREEMENT

- 1.1 Commencement of System Construction: Upon execution of this Agreement by all Parties and subject to the satisfaction of the conditions precedent contained in Section 1.2 and 1.3, the University agrees to allow the Company to commence construction of the System on the Premises. The Company will coordinate installation of the System with its design-build team and with the University's designated representative.
- 1.2 Conditions Precedent to Commencement of Construction and Installation: The respective rights and obligations of the Parties under this Agreement, other than those contained in this Section 1.2, 1.3, 1.9, 1.10, 6.0, 13.0, 14.0 and 16, which are binding upon the Parties as of the Effective Date, are conditioned upon the satisfaction in full (or waiver) of the following:
- 1.2.1 The Company shall have obtained relevant inspections (such as a roof inspection and inspection by a structural engineer) verifying load-bearing capacity and suitability of the System site for construction, installation and ongoing operation of the System;
- 1.2.2 The Company shall have entered into an engineering, procurement, and construction contract ("EPC Contract") and any other applicable contract for the construction and installation of the System;
- 1.2.3 The Company shall have obtained the permits, licenses, and other approvals required by applicable law to be obtained prior to commencement of construction or installation of the System;
- 1.2.4 The University and Arizona Public Service Company ("APS") shall execute APS' Solar Renewable Energy Credit Purchase Agreement ("CPA"), in a form and substance mutually agreed upon by Company and University;
- 1.2.5 The Company and its respective financing institution shall have satisfied all conditions precedent to the effectiveness of the Financing Documents and the initial drawdown of funds thereunder (other than the execution, delivery and effectiveness of this Agreement if the foregoing are conditions precedent under the Financing Documents). "Financing Documents" shall mean the loan and credit agreements,

notes, bonds, indentures, security agreements, lease financing agreements, mortgages, interest rate exchanges, or swap agreements, and any other documents relating to the development, bridge construction or the permanent financing for the System, even if more than one financing arrangement exists at any time and even if the financing arrangements are of different tiers or tranches, including any credit enhancement, credit support, working capital financing, or refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time; and

- 1.2.6 The Company shall have received final written approval from its respective financing institutions necessary to finance the construction of the System.
- 1.3 Conditions Precedent. If after first making good faith efforts to meet the foregoing conditions precedent, the Company has not completed those conditions by 12/1/2009, the Company may terminate this Agreement without incurring any liability under this Agreement. Alternatively, in the event that such conditions precedent are not satisfied by such date, the Parties may mutually agree to amend this Agreement to revise the terms thereof.
- 1.4 Term:
- 1.4.1 Subject to the remaining provisions of this Agreement, Company shall notify and represent to University when the System has achieved Commercial Operation ("**Notice of Commercial Operation**"), and shall in such notice certify to University the Commencement of System Operation. University shall have three (3) Business Days to review the Notice of Commercial Operation and to give notice of any open items to be completed by the Company, if any. Company shall complete those items that have been reasonably requested for completion within 30 days after the date of the University's notice. "Commencement of System Operation" and "Commercial Operation" shall be the date stated in the Notice of Commercial Operation, provided that the Company has acquired all necessary permits for "Commercial Operation" and shall constitute the start of the term hereunder.
- 1.4.2 The initial term of the Agreement shall be fifteen (15) years ("Initial Term"), starting from the date of Commencement of System Operation. At the end of the Initial Term of this Agreement, or any extended term pursuant to Section 1.5 hereof, the University shall either: (a) extend this Agreement pursuant to Section 1.5 or (b) purchase the System in accordance with the process described in Section 1.6 below or (c) have the Company remove the System in accordance with Section 5.14 and the University shall pay the final payment in accordance with the payment schedule attached hereto as Exhibit 1.4.2.
- 1.5 Extension of Initial Term: At the end of the Initial Term of the Agreement, the University shall have the right to extend this Agreement for five (5) successive periods of one (1) year each, in each case by written notice to the Company given not less than ninety (90) days before the scheduled expiration of the then current term. In the event of such a renewal, if necessary, the Parties will, upon mutual agreement, update and revise the attachments to this Agreement. During the period of any renewal, all of the terms of this Agreement remain in effect unless modified in writing executed by both Parties. Notwithstanding any other provision in this Agreement, any renewal of this Agreement shall not be cancelled or terminated during any one-year period of renewal.
- 1.6 System Purchase: Beginning the sixth (6th) year after the Commencement of System Operation until the end of the Initial Term or any extension term hereof, provided the University is not in default of its obligations hereunder (or, if so, Company has waived such default for purposes of this Section 1.6), the University may, upon no less than one hundred twenty (120) days prior written notice to the Company, purchase the System AS IS at Fair Market Value (as defined below) of the System at the time of purchase. "Fair Market Value" shall be the value that would be obtained from the sale of the System in an arm's length

transaction between an informed and willing buyer under no compulsion to buy, and an informed and willing seller under no compulsion to sell, as determined by the mutual agreement of the University and the Company within ten (10) days after receipt by the Company of the University's notice of its election to purchase the System. In the event that the Parties do not come to an agreement on a FMV for the System within ten (10) days, the University's election to purchase shall expire at the conclusion of the ten (10) day period.

1.7 Intentionally omitted.

1.8 Ownership of the System: Unless and until the System is purchased by the University in accordance with Section 1.6, or otherwise lawfully sold by the Company as permitted hereunder, the System shall at all times remain personal property of the Company or its permitted assigns and shall not be considered a fixture of the University on any of its owned or leased property. The System shall not be subject to any encumbrance of any kind of the University or any third party without the written consent of the Company. The University shall ensure that the holder of any encumbrance on any building and/or land upon which the System is located shall not disturb the Company's rights under this Agreement; *further*, University shall ensure that the holder of any title or encumbrance to the building and/or land upon which the System is located shall enter into either (i) a subordination and non-disturbance agreement, or (ii) specifically disclaim in writing any interest in the property and acknowledge the Company's unequivocal right to remove the System. The form of (i) and (ii) above, shall be in form and substance reasonably satisfactory to Company and shall be provided upon Company's request.

1.9 Company Representations and Warranties: The Company hereby represents and warrants that:

1.9.1 It is a corporation duly organized, validly existing and in good standing under the laws of the State of Arizona and has all requisite corporate power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;

1.9.2 The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary corporate actions;

1.9.3 This Agreement is a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law);

1.9.4 To the Company's knowledge, as of the date of execution hereof, no governmental approval (other than any governmental approvals that have been previously obtained or disclosed in writing to the University or that the University has knowledge of) is required in connection with the authorization, execution and delivery of this Agreement by the Company or the performance by the Company of its obligations hereunder which the Company has reason to believe that it will be unable to obtain in due course on or before the date required for the Company to perform such obligations;

1.9.5 Neither the execution and delivery of this Agreement by the Company nor compliance by the Company with any of the terms and provisions hereof (i) conflicts with, breaches or contravenes the organizational documents of the Company or any contractual obligation of the Company, (ii) results in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default under any material contractual obligation of the Company or (iii) will result in the imposition of any lien against the Company or any of its property; and

1.9.6 There are no actions, suits, proceedings, patent or license infringements or investigations pending or, to the Company's knowledge, threatened against it before any court or arbitrator that individually or in the aggregate could result in any materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of the Company or in any impairment of its ability to perform its obligations under this Agreement.

1.10 University Representations and Warranties: The University hereby represents and warrants that:

1.10.1 It has duly authorized the entering into and the execution and delivery of this Agreement and the performance of its obligations hereunder and it has the power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;

1.10.2 This Agreement is a legal, valid and binding obligation of the University enforceable against the University in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law);

1.10.3 No governmental approval (other than any governmental approvals which have been previously obtained or disclosed in writing to the Company) is required in connection with the authorization, execution and delivery of this Agreement by the University or the performance by the University of its obligations hereunder which the University has reason to believe that it will be unable to obtain in due course;

1.10.4 Neither the execution and delivery of this Agreement by the University nor compliance by the University with any of the terms and provisions of this Agreement (i) conflicts with, breaches or contravenes any contractual obligation of the University, (ii) results in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default under any contractual obligation of the University or (iii) will result in the imposition of any lien against the University or any of its property;

1.10.5 The University has not entered into any contracts or agreements with any other person regarding the provision of the services contemplated to be provided by the Company under this Agreement with respect to the Premises described on Exhibit B [A?];

1.10.6 There are no actions, suits, proceedings, patent or license infringements or any governmental or regulatory investigations pending against the Arizona Board of Regents concerning the University that could impair its ability to perform its obligations under this Agreement;

1.10.7 During the term of this Agreement, the University shall use its best efforts to ensure that all payments owed by APS under the CPA are paid to the Company directly on behalf of the University;

1.10.8 The Arizona Legislature does not line item appropriate funds to the University; rather the Arizona Legislature appropriates funds on a lump sum basis; and

1.10.9 The Arizona Legislature has never failed to appropriate funds to the University.

2.0 ENTIRE AGREEMENT

2.1 This Agreement and the documents attached hereto constitute the entire Agreement between the Parties relating to the subject matter hereof, there being no other agreements or understandings, written or oral, other than those contained in this Agreement and the attachments hereto.

- 2.2 The Parties may amend this Agreement but such amendment may only be effective and enforceable if it is set forth in a written instrument signed by both Parties.
- 2.3 The Parties intend the Agreement to be treated as a "service contract" within the meaning of section 7701(e)(3) of the Internal Revenue Code with the Company as the owner of the System and the University as a user of electricity from the System.

3.0 MANAGEMENT SERVICES FEE

3.1 Payment for Services:

3.1.1 In addition to the payment provided by the CPA being paid directly to the Company as provided in Section 1.10.7 the University shall be billed monthly for Energy Services supplied by the Company. Each monthly bill shall be 1/12th of the annual fee amount as detailed in Schedule 3.1 hereto. The first (1st) billing to the University shall be made not more than thirty (30) days after the Commencement of System Operation.

3.1.2 The University agrees that all payments will be made within thirty (30) days of the billing date. Payments not received within thirty (30) days of the billing date shall include interest which shall accrue at a rate of ten percent (10%) per annum, on any unpaid amount.

3.2 Continuous Payments: Payments for Services shall be made continuously on a monthly basis for the duration of this Agreement. If the University extends the Initial Term of this Agreement pursuant to Section 1.5, payments shall continue in the same manner as set forth in this Section 3.0.

3.3 Fee: The annual fee for services during each year of the term is as set forth in Schedule 3.1 of this Agreement. It is agreed and understood between the Parties that Schedule 3.1 reflects pricing calculated on the assumption that each unit comprising the System receives a per location APS CPA minimum incentive amount as provided in Exhibit A ("**Minimum Incentive Amount**"); in the event that the incentive provided by APS for each individual unit which comprises the System is less than the Minimum Incentive Amount for that unit, the Parties agree to adjust Schedule 3.1 in good faith so as to ensure that the Company receives the same economic benefit as if it had received the Minimum Incentive Amount identified in Exhibit A for that unit of the System. A similar adjustment in Schedule 3.1 in the University's favor will be made should there be an increase in the incentive amount payable under the CPA per individual unit that comprises the System, as provided for in Exhibit A hereto.

3.4 Estimated Energy Production: The estimated annual energy production for each year of the Initial Term is as set forth in Schedule 3.4 of this Agreement.

3.5 Measured Energy Production:

3.5.1 The energy production of the System shall be measured. The amount of energy produced during the first twelve (12) months and recorded on the anniversary of the Commencement of System Operation is the Measured Energy Production for year one (1). Energy production will be continuously measured and the measured energy production will be updated for each twelve (12) month period from the anniversary of the Commencement of System Operation during the Initial Term of this Agreement and any extensions thereof. At no time, however, shall the measured energy production include any time period in which the System is non-operational due to an Uncontrollable Force as defined in Section 10 of this Agreement. During these times of interruption, calculated replacement values (to be mutually determined by the Parties acting in a commercially reasonable manner)

will be used in determining the measured energy production for the applicable twelve (12) month period.

3.5.2 Readings of the Metering Device shall be conclusive as to the amount of Measured Energy Production; *provided* that if the Metering Device is out of service, is discovered to be inaccurate, or registers inaccurately, measurement of Measured Energy Production shall be determined in the following sequence: (a) by estimating by reference to quantities measured during periods of similar conditions when Metering Device was registering accurately; or (b) if no reliable information exists as to the period of time during which such Metering Device was registering inaccurately, it shall be assumed for correction purposes hereunder that the period of such inaccuracy was equal to (i) if the period of inaccuracy can be determined, the actual period during which inaccurate measurements were made; or (ii) if the period of inaccuracy cannot be determined, one-half of the period from the date of the last previous test of such Metering Device through the date of the adjustments, *provided, however,* that, in the case of clause (ii), the period covered by the correction shall not exceed six months.

3.6 Reconciliation Payments: On the first (1st) anniversary of the Commencement of System Operation, and each subsequent anniversary, a reconciliation payment for either over-production or under-production will be made between the Parties.

3.6.1 Payment for Over-production: The University agrees to pay for any additional Services provided by the Company during the previous twelve (12) month period based on a percentage equal to the Measured Energy Production for the applicable twelve (12) month period divided by the estimated amount for the same period in Schedule 3.4. The percentage of over-production will be multiplied by the applicable annual fee amount in Schedule 3.1 to equal the reconciliation payment. The reconciliation payment is due within 30 days of receipt of notice of over-production from the Company.

3.6.2 Credit for Under-production: The Company shall credit the University's account for any unexcused shortfall in Services provided by the Company during the previous twelve (12) month period based on a percentage equal to the Measured Energy Production for the applicable twelve (12) month period divided by the estimated amount for the same period in Schedule 3.4. The percentage of under-production will be multiplied by the applicable annual fee amount in Schedule 3.1 to equal the reconciliation credit. The reconciliation credit will be included (or paid) by the Company on the next available billing.

3.7 Renewable Energy Payments: As part of the Services provided under this Agreement, and within a reasonable amount of time after their creation, the Company shall provide the University with certificates representing the Environmental Attributes (as defined herein) associated with the energy produced by the System. "Environmental Attributes" means environmental characteristics that are attributable to renewable energy, includes credits; credits towards achieving local, national or international renewable portfolio standards; green tags; renewable energy certificates; greenhouse gas or emissions reduction, credits, offset, allowances or benefits, actual SO₂, NO_x, CO₂, Carbon, VOC, mercury, and other emissions avoided; and any and all green energy or other environmental benefits associated with the generation of renewable energy. Such "Environmental Attributes" shall not be expressed in kWh. "Environmental Attributes" shall not include tax benefits, payments under the CPA, or any energy, capacity, reliability, or other power attributes associated with the provision of electricity services. IT IS EXPRESSED UNDERSTOOD AND AGREED THAT THE RENEWABLE ENERGY CREDITS (REPRESENTING A PORTION OF THE ENTIRE BUNDLE OF ASSETS THAT COMPRISE THE ENVIRONMENTAL ATTRIBUTES) ARE BEING PROVIDED TO THE UNIVERSITY BY THE COMPANY FOR THE EXPRESS PURPOSE OF BEING TRANSFERRED BY THE

UNIVERSITY TO APS TO SECURE THE PAYMENT TO THE COMPANY UNDER THE CPA (AS REFERENCED IN SECTION 1.10.7 ABOVE).

4.0 PERMITTING AND INTERCONNECTION

- 4.1 General: The Parties acknowledge the need for good faith, timely and reasonable cooperation in order that the System can be constructed, installed and placed into Commercial Operation as contemplated by this Agreement. Accordingly, the Parties agree to cooperate with one another to achieve the permitting, clearances and authorizations required to construct, install, and interconnect the System so that it may operate in an interconnected manner with the electric distribution system of the utility serving the Premises.
- 4.2 Construction and Building Permits: The Company requires permits from the local regulatory authorities to undertake the construction and installation of the System. The University agrees to cooperate in this effort by providing supporting documents, building plans and other information required to assist the Company's design-build team in acquisition of building permits from the jurisdiction having authority.
- 4.3 Utility Interconnection Application Submittals: The University has in place a master agreement with the utility serving the Premises for interconnection of generating facilities on University premises to the utility's distribution system. The University shall therefore be responsible to obtain the utility's agreement to allow interconnected operation of the System thereunder by the date the System achieves Commercial Operation. The Company agrees to cooperate with the University to develop and provide the following, as required, to the University's utility to support this objective: (1) a completed interconnection application, (2) a three-line electrical wiring diagram, (3) a one-line electrical wiring diagram, (4) a System location drawing, and (5) a site plan.
- 4.4 Utility Agreements: The University agrees to exercise all reasonable efforts to obtain and to execute an agreement with the University's utility no later than the date of Commercial Operation that will allow for interconnected operation of the System by the date it achieves Commercial Operation. The University shall provide a copy of the executed interconnection agreement to the Company at the same time it submits it to the utility.
- 4.5 Utility Approvals: If the University fails to execute the utility agreement referred to in Section 4.4 the University agrees to pay all costs expended by the Company to remedy the situation caused by such failure.
- 4.6 Plan Review and Permit Fees: The Company agrees to pay all reasonable review and permit fees charged by the jurisdiction having authority.

5.0 ACCESS TO PROPERTY

- 5.1 Access: The Company, including its employees, subcontractors, agents and representatives, shall have the right to enter the University's Premises (as defined below) at all reasonable times to develop, construct, inspect, maintain, repair or remove any part of the System or any of the Company's equipment. The University agrees that it will provide the Company with a contact person that will provide the Company with access to restricted areas if necessary.
- 5.2 Premises: For purposes of this Section 5, the term "Premises" shall mean the location upon which the System (and all supporting lines) is or will be constructed and maintained as more accurately shown on the map that is attached hereto as Attachment 1.10.5 (which is incorporated herein by this reference).

- 5.3 Grant of License to Premises: Subject to the terms of this Agreement, to the extent of the University's right, title and interest in the Premises, and without any express or implied warranties, the University hereby grants to the Company, including its employees, sub-contractors, agents and representatives, permission to enter the Premises and grants a non-exclusive temporary license together with the right of ingress and egress over, under, and across the Premises for the purposes of performing the following:
- 5.3.1 Construction activities (including, but not limited to, the right to erect and use construction equipment on the Premises) necessary to construct and install the System; and
- 5.3.2 Operating, inspecting, repairing, maintaining, or removing the System or any part thereof. The University acknowledges and agrees that the Company is the exclusive owner and operator of the System, that all equipment comprising the System shall remain the personal property of the Company and shall not become fixtures, notwithstanding the manner in which the System is or may be attached to any real property of the University and subject to the right of the University to receive electricity generated by the System, the University shall have no right, title or interest in any System or any component thereof, notwithstanding that any such System may be physically mounted or adhered to the University's Premises, structures, buildings and fixtures.
- 5.4 No Other Rights Granted Hereunder: The license granted herein does not convey any right or interest in the Premises, except as stated herein, nor does it prevent the University from the use of the Premises; provided, however that such use does not interfere with the rights herein granted.
- 5.5 Duration: The license granted hereunder shall remain in effect unless and until this Agreement or any extension thereof is terminated.
- 5.6 No Warranty: Notwithstanding, the use of the words "grant" and "convey" herein, or the provision of any law to the contrary, except as stated in Sections 5.3, 5.9, and 5.12, the license granted herein by the University is made without warranty or representation whatsoever, and the Company agrees to accept the license herein granted AS IS, without relying upon any warranty or representation made herein or prior to or contemporaneously with or subsequent to the execution of this Agreement.
- 5.7 Damage to the Premises: The Company shall exercise its rights hereunder in a manner so as not to damage the Premises or any property that may at any time be thereon, and further agrees that the Company shall promptly repair any damage caused by the Company or its agents, employees, contractors, permittees, licensees, invitees or guests, and restore the Premises or any property located thereon to substantially the same condition which existed immediately prior to the performance of any work thereon by or on behalf of the Company, or its agents, employees, contractors, permittees, licensees, invitees or guests.
- 5.8 Damage to the System: The University shall exercise its rights hereunder in a manner so as not to damage the System or any of the Company's property that may at any time be associated therewith, and further agrees that the University shall promptly repair any damage caused by the University or its agents, employees, contractors, permittees, licensees, invitees or guests, and restore the System or any property associated therewith thereon to substantially the same condition which existed immediately prior to such damage caused by the University, its agents, employees, contractors, permittees, licensees, invitees or guests.
- 5.9 Non-Exclusive Rights: Notwithstanding anything contained herein to the contrary, and without limiting any other provisions or the non-exclusive nature hereof, at all times during the Initial Term of this Agreement and any extensions thereof, the Company's right to exploit

its license rights granted hereunder shall not be interfered with as long as the Company is not in default under this Agreement beyond any applicable grace or cure periods. The University reserves the right to use, occupy, and improve the Premises for any and all purposes not inconsistent with the rights granted herein. Notwithstanding the foregoing, the University shall not conduct activities on, in or around the Premises that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. The University shall implement and maintain reasonable and appropriate security measures on the Premises to prevent the University's employees, invitees, agents and representatives, and other unrelated third-parties, from having access to the Premises or the System, and to prevent from occurring any theft, vandalism or other actions that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.

- 5.10 Company Cooperation: The Company shall at all times cooperate with the University and comply with reasonable requests not inconsistent with the purpose for which this Agreement is issued.
- 5.11 Abandonment: In the event that the license herein granted is at any time abandoned and ceases to be used for the purposes herein granted, all rights herein granted shall automatically cease and revert to the University, its successors and assigns.
- 5.12 Access to Light: Company shall have unrestricted access to direct light during the Initial Term of this Agreement and any extensions thereof. During any period(s) of interference with access to sunlight for the System, any applicable annual fees will not be subject to any reconciliation payments due to under-production.
- 5.13 University Cooperation: The University will cooperate with the Company and any third parties with whom the Company contracts with respect to the inspections contemplated by Section 1.2.1 and during the installation, operation, and maintenance processes. Cooperation includes, but is not limited to, access to the Premises during working hours without restriction and using best efforts to accommodate Company's contractors' installation, operation, and maintenance schedules. The University represents that there are no restrictions on site access, working hours, or type of personnel to be used for the System.
- 5.14 Removal of the System: Notwithstanding the forgoing, Company at its sole cost and expense, shall have one hundred twenty (120) days to remove the System following expiration of the Initial Term (and any extension terms) hereof, or in the event of Company's termination of this Agreement under Section 13.4. This Section 5.14 shall survive termination of the Agreement for one hundred twenty (120) days.
- 5.15 Recording: University agrees to execute a Memorandum of this Agreement, in form and substance satisfactory to the Parties, which Company may record with the appropriate recording office. The date set forth in the Memorandum of Agreement is for recording purposes only. Company shall also have the right to record with the appropriate recording office a fixture filing, with said fixture filing declaring the System personal property belonging to the Company.

6.0 SYSTEM CONSTRUCTION

- 6.1 Schedule: The Company agrees to provide a construction schedule to the University upon or before receipt of the building permit to construct the System.
- 6.2 Construction Hours: The Company and the University will establish and agree to hours when construction may occur on the University's Premises.

- 6.3 Equipment Staging: The Company may require and University will provide a designated area on the University's Premises for safe storage of the Company's, its agents' or representatives' construction equipment.
- 6.4 Blue Stake: The Company will contact Blue Stake prior to performing any underground excavation on the University's Premises.

7.0 TRANSFER OF SYSTEM TO A DIFFERENT LOCATION

- 7.1 Transfer: During the Initial Term of this Agreement (and any extension terms), the University may request in writing that the System be moved to a location different than the location set forth in this Agreement, which transfer shall require the Company's written approval. The University agrees that it shall be responsible to pay all of the Company's expenses and costs related thereto.
- 7.2 Continued Payment: The University agrees that it shall make all payments to the Company in accordance with Section 3.0 of this Agreement during and after the move.
- 7.3 Effect on Measured Energy Production: During the period of time that the System is offline as a result of a University System transfer, the Measured Energy Production during that period shall be estimated based upon the same period of time in the previous year. If the System is offline in the first year, the Measured Energy Production during this period shall be estimated as a portion of the Estimated Annual Production.

8.0 OPERATIONS AND MAINTENANCE OF THE SYSTEM

- 8.1 Party Responsible for Operation: The Company is responsible for the continued operation and ongoing maintenance of the System during the Initial Term of this Agreement (and any extension terms). The University agrees that its employees, agents or representatives shall exercise reasonable care to avoid any actions that could affect the performance of the System or cause any damage to any part of the System.
- 8.2 Monitoring: The Company will monitor the System routinely and will report to the University, within a reasonable amount of time, upon receipt of information that the System is offline or providing minimal performance. Access to monitoring systems may be provided to the University.
- 8.3 Metering: The Company shall be allowed to install at least two (2) separate and independent meters on the System that will be monitored by the Company. Company will comply with APS meter monitoring requirements to include payment of phone line or cell phone charges at each of the Company's solar installations on the Premises.

9.0 MAINTENANCE OF THE UNIVERSITY'S PREMISES

- 9.1 University Maintenance: The University agrees to maintain its Premises in a reasonable manner that will not adversely affect the performance of the System.
- 9.2 Notice: If, for any maintenance reason, the University determines that the System needs to be temporarily removed, the University must provide the Company with thirty (30) days written notice prior to removal.
- 9.3 Removal: The Company agrees that after receiving notice from the University, the Company will temporarily remove the System and then reinstall the System after the need for removal has ended. The University agrees that it will pay all related costs for the removal and re-installation of the System.

9.4 Continued Payment: The University agrees that it shall make all payments to the Company in accordance with Section 3.0 of this Agreement during the removal for maintenance reasons.

9.5 Effect on Measured Energy Production: During the period of time that the System is offline as a result of University maintenance, the Measured Energy Production during that period shall be estimated based upon the same period of time in the previous year. If the System is offline in the first year, the Measured Energy Production during this period shall be estimated as a portion of the Estimated Annual Production.

10.0 UNCONTROLLABLE FORCES

No Party shall be considered to be in default in the performance of any of its obligations under this Agreement (other than obligations of said Party to pay sums to be paid by it hereunder to the other Party) when a failure of performance shall be due to an uncontrollable force. The term "Uncontrollable Force" shall be any cause beyond which, by exercise of due diligence such Party could not reasonably have been expected to avoid or control, and which by exercise of due diligence it shall be unable to overcome or control, including, but not restricted to, failure of or threat of failure of facilities, flood, earthquake, tornado, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, strikes, labor or material shortage, sabotage, restraint by court order or public authority, and action or non-action by or inability to obtain the necessary authorizations or approvals from any governmental agency or authority. Nothing contained herein shall be construed so as to require a Party to settle any strike or labor dispute in which it may be involved. Either Party rendered unable to fulfill any of its obligations under this Agreement by reason of an uncontrollable force shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability with all reasonable dispatch.

11.0 STRICT PERFORMANCE

The failure by either Party hereto to require strict performance by the other Party of any of the provisions, terms and conditions contained in this Agreement shall not waive, affect or diminish any right of such Party at any time or times hereafter to demand strict performance thereof, and no waiver shall operate as a waiver of any other right or any right with respect to the same condition on a future occasion.

12.0 GOVERNING LAW

This Agreement shall be governed by, construed, and enforceable in accordance with the laws of the State of Arizona applicable to contracts entered into and to be performed solely within such state, without reference to its principles governing conflicts of laws.

13.0 EVENTS OF DEFAULT; REMEDIES

13.1 Events of Default. An "*Event of Default*" means, with respect to a Party (a "*Defaulting Party*"), the occurrence of any of the following:

13.1.1 the failure to make, when due, any payment required under this Agreement if such failure is not remedied within five (5) Business Days after receipt of written notice;

13.1.2 any representation or warranty made by such Party in this Agreement is false or misleading in any material respect when made or when deemed made or repeated;

13.1.3 the failure to perform any material covenant or obligation set forth in this Agreement, if such failure is not remedied, if capable of being remedied, within twenty (20) Business Days after receipt of written notice;

13.1.4 such Party (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in

writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within forty-five (45) Business Days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets except for, with respect to Company, any enforcement of rights by Company's financing parties pursuant to the Financing Documents; (viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

13.1.5 such Party fails to provide or maintain in full force and effect any required insurance, if such failure is not remedied within three (3) Business Days after receipt of written notice from the Non-Defaulting Party to the Defaulting Party.

13.2 Remedies for Event of Default. If at any time an Event of Default has occurred and is continuing, the other Party (the "**Non-Defaulting Party**") may (a) pursue applicable remedies or damages at law or equity, or (b) with notice to the Defaulting Party, designate a date, not earlier than twenty (20) Business Days after the date such notice is effective, an early termination date in respect of this Agreement (an "**Early Termination Date**") and the Non-Defaulting Party shall have the right as of the Early Termination Date to (i) withhold any payments due to the Defaulting Party under this Agreement, and (ii) suspend performance due to the Defaulting Party under this Agreement.

13.3 University Rights Upon Termination for Default. In the event that University is the Non-Defaulting Party, and that University elects to terminate this Agreement as provided in Section 13.2, University will be entitled, at its sole and exclusive option and in its sole and absolute discretion, to (a) require Company to remove the System, or (b) if such Event of Default occurs after the beginning of the sixth (6th) year after Commencement of System Operation, exercise the Purchase Option provided in Section 1.6. In the event that University elects either of the foregoing remedies, such express remedy shall be the sole and exclusive remedy available to University as a result of Company's default, subject, however, to Section 13.8 below. Company's liability shall be limited as set forth in such provision and all other remedies or damages at law or in equity are waived by University.

13.4 Company Rights Upon Termination for University's Default. In the event that Company is the Non-Defaulting Party, and that Company elects to terminate this Agreement as provided in Section 13.2, Company will be entitled, at its sole and exclusive option, and in its sole and absolute discretion to remove the System and require that University pay the Termination Payment to Company. Termination Payment shall be defined as an amount equal to the sum of (i) the sum of present values, calculated at a 6% discount rate, of the Annual Fees (Schedule 3.1) for each Contract Year (or part thereof) remaining between the date of calculation of the Discounted Revenue Forecast and the end of the Initial Term or the applicable Extension Term, as the case may be; (ii) the present value resulting from the loss of any or all APS payments, as determined by the Parties in a commercially reasonable manner, (iii) the expenses associated with any federal tax credit recapture, and (iv) the costs payable by Company as a result of termination of this Agreement, as determined by

Company in a commercially reasonable manner. University's liability shall be limited as set forth in this Section 13.4, and all other remedies or damages at law or in equity are waived by Company.

- 13.5 Termination Payment Notice. In the event that the Termination Payment is owed to Company as provided in Section 13.4, above, then, as soon as practicable after calculation of the Termination Payment by Company, Company will notify University of the amount of the Termination Payment and any amount otherwise due and outstanding under this Agreement. Such notice will include a written statement explaining in reasonable detail the calculation of such amount. University shall be required to pay the Termination Payment and any amount otherwise due and outstanding under this Agreement to Company within thirty (30) Business Days after the effectiveness of such notice.
- 13.6 Closeout Setoffs. The Non-Defaulting Party will be entitled, at its option, and in its discretion, to set off against any amounts due and owing to the Defaulting Party any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under this Agreement.
- 13.7 Remedies Cumulative. Except as provided in Sections 13.3 and 13.4, the rights and remedies contained in this Section 13 are cumulative with the other rights and remedies available under this Agreement or at law or in equity.
- 13.8 Unpaid Obligations. The Non-Defaulting Party shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available under this Agreement. Except as provided in Sections 13.3, 13.4 and 20.6 of this Agreement, the Defaulting Party shall in all events remain liable to the Non-Defaulting Party for any amount payable by the Defaulting Party in respect of any of its obligations remaining outstanding after any such exercise of rights or remedies. **NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN THIS AGREEMENT, AND WITH THE EXCEPTION OF THE TERMINATION PAYMENT PROVIDED FOR IN SECTION 13.4, NEITHER PARTY, NOR ITS RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, ADVISERS, REPRESENTATIVES, AFFILIATES, OR SUCCESSOR OR ASSIGNS WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES FOR ANY ACTIONS RESULTING FROM OR ARISING OUT OF THIS AGREEMENT, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PROFESSIONAL LIABILITY, CONTRIBUTION, OR OTHERWISE.**
- 13.9 Bankruptcy Safe Harbor. The Parties acknowledge, agree, and intend for purposes of "safe harbor" under the United States Bankruptcy Code (the "Bankruptcy Code") that, without limitation, as applicable: (i) all transactions under this Agreement constitute a "forward contract" within the meaning of the Bankruptcy Code or a "swap agreement" within the meaning of the Bankruptcy Code; (ii) all payments made or to be made by one Party to the other Party under this Agreement with respect to forward contracts constitute "settlement payments" and/or "margin payments" within the meaning of the Bankruptcy Code; and (iii) without limitation, each Party's rights under this Agreement constitute a contractual rights "to liquidate, terminate, or accelerate" the transactions within the meaning of the Bankruptcy Code.

14.0 SUCCESSORS AND ASSIGNS

Assignment by University or Company. Neither Party shall assign or otherwise transfer any of its rights or obligations under this Agreement without prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, Company may, with prior written notice of University, assign any of its rights, duties or obligations under this Agreement, *provided, however,* that any such assignee pursuant to clause (i) through clause (iv) below shall agree to be bound by the terms and conditions hereof, expressly including the Purchase Option granted herein: (i) to one or more

of its affiliates, (ii) to any present or future purchaser of the power generated by the System, (iii) to any person or entity succeeding to all or substantially all of the assets of Company, (iv) to a successor entity in a merger or acquisition transaction or (v) to one or more affiliates or third parties in connection with a sale-and-leaseback or other financing transaction. Company shall notify the University prior to the effective date of any assignment of its rights, duties or obligations under this Agreement.

15.0 Financing

15.1 Cooperation with Financing. University acknowledges that Company will be financing the acquisition of the System and University agrees that it shall reasonably cooperate with Company and its financing parties in connection with such financing for the System, including (a) the furnishing of such information, (b) the giving of such certificates, and (c) providing such opinions of counsel and other matters as Company and its financing parties may reasonably request; provided that the foregoing undertaking shall not obligate University to materially change any rights or benefits, or materially increase any burdens, liabilities or obligations of University, under this Agreement (except for providing notices and additional cure periods to the financing parties with respect to Events of Defaults with respect to Company as a financing party may reasonably request).

15.2 Company may pledge its interest in this Agreement, including any rights to payment and the System, as security for loans or financing. If Company's lender(s) requests additional terms and conditions to those already provided in this Agreement, University will consider any such requests, but may refuse such requests in its sole and absolute discretion and may withhold consent or approval of such additional terms and conditions. Company shall not permit any lien or security interest to be placed against the real property upon which the System is located.

16.0 INSURANCE

16.1 University's Insurance

16.1.1 Generally. During the term of this Agreement, the University shall maintain insurance coverages (i) for general liability in the minimum amount of One Million Dollars (\$1,000,000) per occurrence, (ii) for property damage of One Million Dollars (\$1,000,000) per occurrence, and (iii) Workmen's Compensation and Employers Liability Insurance - \$500,000 each accident; \$500,000 each employee/disease; and \$1,000,000 policy limit. The University may maintain any or all insurance coverages through the State of Arizona, Department of Administration, Risk Management Section, self-insurance program. The liability insurance coverage of the University shall be primary and not contributing with respect to any insurance maintained by the Company. The University's insurance coverage shall be on the basis that the coverage will not be invalidated due to any act or omission of the Company or its board or council members, directors, officers, partners, employees, subcontractors or agents. The University's insurance coverages will cover and will be limited to the acts and omissions of the University, its faculty, employees, students and agents.

16.1.2 Insurer Qualifications. To the extent that the University maintains insurance coverage required hereunder outside of the State of Arizona, Department of Administration, Risk Management Section, self-insurance program, such insurance shall be maintained with companies licensed to do business in the State of Arizona and with an AM Best's Insurance Guide, current edition, rating of A-VII (A minus Seven) or higher or having a parent company's debt to policyholder surplus ratio of 1:1.

16.2 Company's Insurance

16.2.1 The Company will obtain and maintain, or will require its subcontractors to obtain and maintain pursuant to Section 15.2.4, during the term of this Agreement

comprehensive liability and other insurance in amounts not less than those set forth below. Such insurance shall protect the Company and the University against any claims, losses, liabilities and expenses arising from the construction and operation of the System as contemplated hereunder, whether performed by the Company or any subcontractor of the Company. The coverages shall include:

- 16.2.1.1 Workmen's Compensation and Employers Liability Insurance - \$500,000 each accident; \$500,000 each employee/disease; and \$1,000,000 policy limit.
- 16.2.1.2 Comprehensive or Commercial General Liability - Commercial general liability insurance, with minimum limits of \$1,000,000 per occurrence, and products and completed operations aggregate limit and general aggregate minimum limit of \$1,000,000. Coverage shall be at least as broad as the Insurance Service Office, Inc. Form CG00010196. The Owner, the State of Arizona, the Arizona Board of Regents, Arizona State University and their regents, officers, officials, agents, employees or volunteers shall be named as additional insureds with respect to the acts and omissions of the Company and the acts and omissions of subcontractors and others for which the Company is responsible under applicable law and shall stipulate that the insurance shall be primary, and that any self-insurance or other insurance carried by the University, the State of Arizona, the Arizona Board of Regents, Arizona State University or any of their regents, officers, officials, agents, employees or volunteers shall be excess and not contributory to the insurance provided by the Company. The policy shall include coverage for: bodily injury, broad form property damage (including completed operations), personal injury, blanket contractual liability, and products and completed operations and this coverage shall extend for one year past the expiration or termination of this Agreement.
- 16.2.1.3 Builder's Risk Insurance - Builder's all risk insurance coverage, which shall insure against physical loss or damage to all property incorporated into the System and shall also insure finished products. Coverage shall also cover the interests of the Company, the University and Subcontractors with respect to the System, but it will not cover any machinery, tools, equipment, appliances or other personal property owned, rented or used by the Company or its subcontractors in the performance of the construction or operation of the System, which will not become a part of the System.
- 16.2.1.4 Property Insurance - Upon completion of construction of the System, all risk property insurance coverage, which shall insure against physical loss or damage to all property incorporated into the System. Coverage shall also cover the interests of the Company, the University and subcontractors with respect to the System, but it will not cover any machinery, tools, equipment, appliances or other personal property owned, rented or used by the Company or its subcontractors in the performance of maintenance or operation of the System, which will not become a part of the System. The property insurance shall include physical loss or damage to the System.
- 16.2.1.5 The Company or its subcontractors, shall be responsible for the deductible of each loss and shall retain responsibility for any loss not covered by the builder's risk policy.
- 16.2.2 Comprehensive Automobile Insurance - Bodily injury liability of \$1,000,000 per occurrence and property damage liability of \$1,000,000 per occurrence with a deductible not to exceed \$ \$1,000,000.

16.2.3 Professional Errors and Omissions – \$1,000,000 with a deductible not to exceed \$1,000,000.

16.2.4 Subcontractors – The Company shall require any subcontractors retained by the Company to perform work or services in connection with this Agreement to maintain the insurance coverage in the amounts specified in Sections 16.2.1.1 and 16.2.1.2.

16.3 All policies of insurance required to be obtained and maintained by the Company (or certificates of insurance relating thereto) shall be obtained from insurers authorized to provide such insurance in the State of Arizona with an AM Best rating of A-VII (A minus seven) or higher, shall name the University and the Arizona Board of Regents as additional insureds and will require not less than thirty (30) days' prior written notice of cancellation, material change or non-renewal. All such coverages will remain in effect until termination or expiration of this Agreement.

17.0 EFFECT OF SECTION HEADINGS AND ATTACHMENTS

17.1 Section headings appearing in this Agreement are inserted for convenience only, and shall not be construed as interpretations of text.

17.2 Attachments are an integral part of the Agreement.

18.0 ATTORNEY'S FEES

In the event either Party shall institute legal proceedings under or arising out of this Agreement and obtain a judgment or decree in its favor, including appeal to enforce any of the terms of this Agreement, the prevailing Party shall be entitled to recover, in addition to any other remedy, its reasonable actual attorney's fees, court costs, cost of investigation and other related costs allowed by law.

19.0 SEVERABILITY

Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

20.0 STATE OF ARIZONA PROVISIONS

20.1 Nondiscrimination. The Parties agree to comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration, nondiscrimination, including the Americans with Disabilities Act, and affirmative action.

20.2 Conflict of Interest. This Agreement is subject to Section 38-511, Arizona Revised Statutes. This Agreement may be canceled if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the University is, at any time while this Agreement or any extension thereof is in effect, an employee or agent of the other party to this Agreement in any capacity or a consultant to any other party with respect to the subject matter of this Agreement.

20.3 Notice of Arbitration Statutes. As required by Sections 12-133 and 12-1518 of the Arizona Revised Statutes, notice is provided that the Parties to this Agreement will be required to make use of mandatory arbitration of any legal action that is filed in the Arizona superior court concerning a controversy arising out of this Agreement if: (1) the court finds or the parties agree that the amount in controversy does not exceed the jurisdictional limit

established by rule of that court for mandatory arbitration, or (2) this agreement is a public works contract and the amount in controversy is less than one hundred thousand dollars (\$100,000).

- 20.4 Dispute Resolution. If a dispute arises under this Agreement, the parties agree to exhaust all applicable administrative remedies provided for under Arizona Board of Regents Policy 3-809.
- 20.5 Company's Records. To the extent required by Section 35-214, Arizona Revised Statutes, the Company agrees to retain all records relating to this Agreement. The Company agrees to make those records available at all reasonable times for inspection and audit by the University or the Auditor General of the State of Arizona during the term of this Agreement and for a period of five (5) years after the completion of this Agreement. The records shall be provided at Arizona State University, Tempe, Arizona, or another location designated by the University upon reasonable notice to the Company.
- 20.6 Failure of Legislature to appropriate. If the University's performance under this Agreement depends upon the appropriation of funds by the Arizona Legislature, and if the Legislature fails to appropriate the funds necessary for performance, then the University may provide written notice of this to the Company and cancel this Agreement without further obligation of University. Appropriation is a legislative act and is beyond the control of the University.
- 20.7 Weapons, Explosive Devices and Fireworks. University prohibits the use, possession, display or storage of any weapon, explosive device or fireworks on all land and buildings owned, leased, or under the control of University or its affiliated or related entities, in all University residential facilities (whether managed by University or another entity), in all University vehicles, and at all University or University affiliate sponsored events and activities. Notification by Company to all persons or entities who are employees, officers, subcontractors, consultants, agents, guests, invitees or licensees of Company ("Company Parties") of this policy is a condition and requirement of this Agreement. Company further agrees to enforce this contractual requirement against all Company Parties. ASU's policy may be accessed through the following web page: <http://www.asu.edu/aad/manuals/dps/dps201-05.html>.
- 20.8 Indemnification. Any other provision of this Agreement to the contrary notwithstanding, the Parties acknowledge that Arizona State University is a public institution and any indemnification or hold harmless provision shall be limited as required by State law, including without limitation Article 9, Sections 5 and 7 of the Arizona Constitution and Sections 35-154 and 41-621 of the Arizona Revised Statutes.

21.0 NOTICES

20.1 Notice Addresses: Unless otherwise provided in this Agreement, all notices, requests, demands and other communications concerning this Agreement shall be in writing and shall be deemed to have been received five (5) business days after having been deposited in the United States mail and enclosed in a certified postage-paid envelope; one (1) business day after having been sent by overnight courier; or otherwise on the day of receipt when scanned by facsimile equipment or when personally delivered on a business day, or otherwise on the next succeeding business day; and, in each case, addressed to the respective Parties at the addresses stated below, or to such other changed addresses that the Parties may have fixed by notice in accordance herewith.

21.1.1 If to the Company:

Jason Scott
APS Energy Services Company, Inc.
60 E Rio Salado Pkwy
Suite 1001
Tempe, AZ 85281
Cell (602)481-0896
Fax (602)744-5003

And

Renate Lewis
APS Energy Services Company, Inc.
60 E Rio Salado Pkwy
Suite 1001
Tempe, AZ 85281
Phone (602)744-5235
Fax (602)744-5003

21.1.2 If to the University:

L. Tena
Arizona State University
Facilities Management
P.O. Box 875512
Tempe, AZ 85287-5512
Phone: (480) 965-1835
Fax: (480) 965-5926

1551 S. Rural Rd.
Tempe, AZ 85281

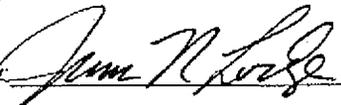
22.0. Change in Law. If, after execution of this Agreement, the actions of the State of Arizona, the Arizona Corporation Commission, federal legislative bodies, courts or regulatory agencies of competent jurisdiction change the law in any manner that requires the Company to submit to or comply with any regulations of the Arizona Corporation Commission (hereinafter "**Regulation**"), the Parties agree to renegotiate this Agreement in good faith to account for the Company's increased regulatory costs associated with the Regulation, or if Company so requests, amend or restate this Agreement any time prior to or upon final decision resulting in Regulation, in such manner as reasonably deemed necessary and requested by Company to avoid Company being regulated as a public service corporation, *provided, however,* that such amendment or restatement shall preserve identical economic benefits for the Parties to this Agreement and, *provided, further,* that such amendment or restatement shall not materially increase any obligation of University stated hereunder.

[SIGNATURE PAGE FOLLOWS]

By signing below and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, the Company and the University have executed this Agreement as of the Effective Date.

APS Energy Services Company, Inc

By:

By: 

Date: 9/9/09

Name: James R Lodge

Title: President

THE ARIZONA BOARD OF REGENTS
for and on behalf of
ARIZONA STATE UNIVERSITY

By: 

Date: 9-9-09

Name: John Riley

Title: Executive Director
Purchasing & Business Services

Exhibit 1.4.2
Exit Fee Schedule

<u>year</u>		<u>exit fee</u>
16	\$	11,428,624
17	\$	9,395,033
18	\$	7,255,575
19	\$	5,003,930
20	\$	2,633,391

Schedule 3.1
Annual Fee Amounts

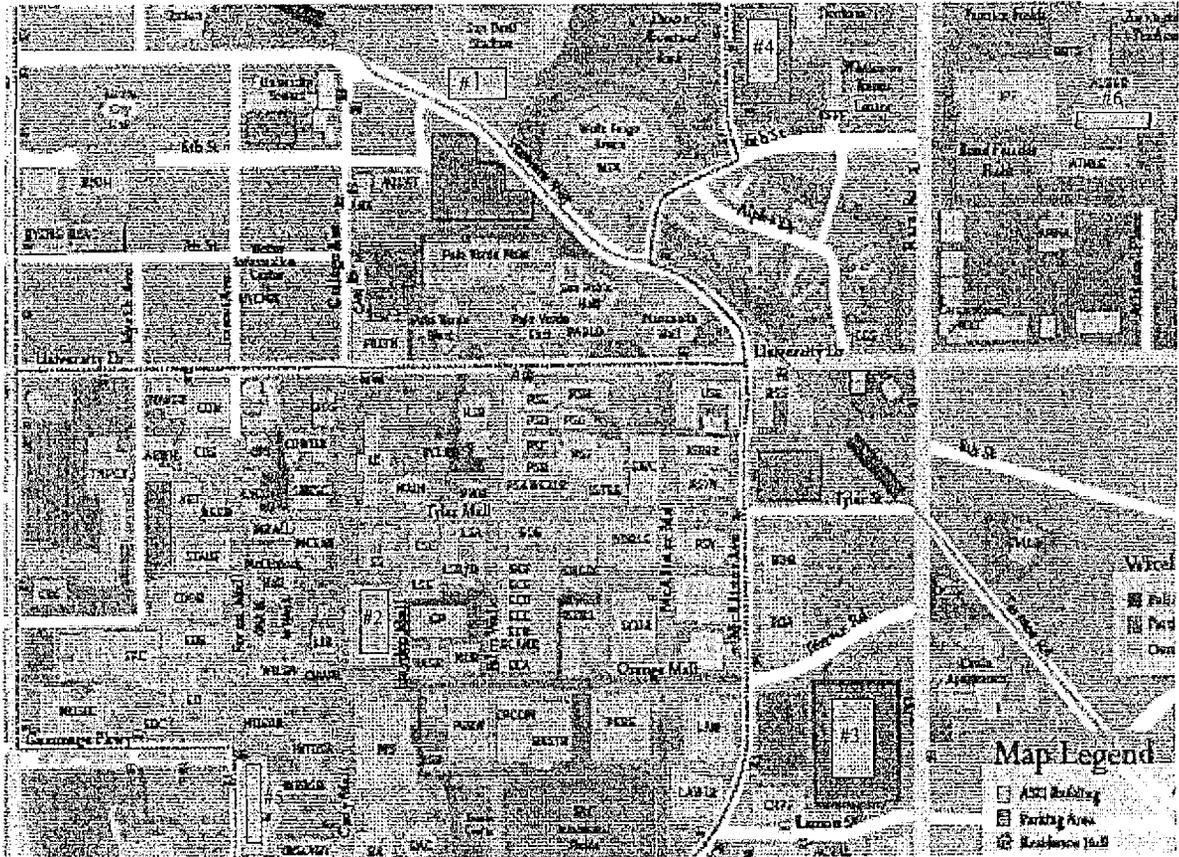
Year	Estimated Annual Fee
1	\$1,367,294
2	\$1,360,458
3	\$1,353,655
4	\$1,346,887
5	\$1,340,153
6	\$1,333,452
7	\$1,326,785
8	\$1,320,151
9	\$1,313,550
10	\$1,306,982
11	\$1,300,447
12	\$1,293,945
13	\$1,287,475
14	\$1,281,038
15	\$1,274,633
16	\$1,268,260
17	\$1,261,918
18	\$1,255,609
19	\$1,249,331
20	\$1,243,084

Schedule 3.4
Estimated Annual Energy Production

Year	Estimated Annual Output (kWh)
1	11,207,330
2	11,151,293
3	11,095,537
4	11,040,059
5	10,984,859
6	10,929,935
7	10,875,285
8	10,820,909
9	10,766,804
10	10,712,970
11	10,659,405
12	10,606,108
13	10,553,078
14	10,500,312
15	10,447,811
16	10,395,572
17	10,343,594
18	10,291,876
19	10,240,416
20	10,189,214

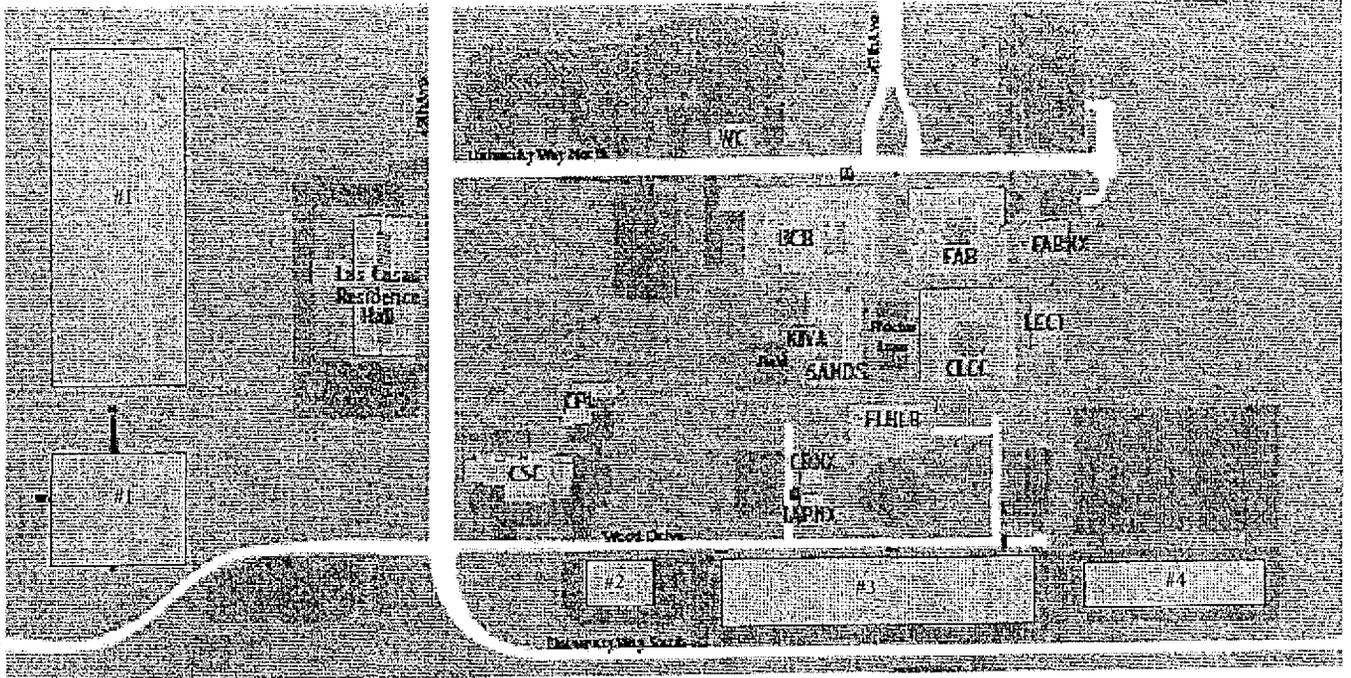
Attachment 1.10.5

Tempe Campus Solar Map



1. Carson Student Athletics Facility
2. Hayden Library
3. Parking Structure No. 4
4. Parking Structure No. 7
5. Student Services Building
6. Weatherup Center

West Campus Solar Map



1. Ground Mount
2. Parking Lot No 1
3. Parking Lot No 2
4. Parking Lot No 3

Exhibit A

SYSTEM and PREMESIS

Arizona State University -- West Campus:

Location	PBI (\$/kWh)
1. Ground Mount	\$0.18
2. Parking Lot No. 1	\$0.18
3. Parking Lot No. 2	\$0.18
4. Parking Lot No. 3	\$0.18

Arizona State University -- Tempe Campus:

Location	PBI (\$/kWh)
1. Carson Student Athletics Facility	\$0.18
2. Hayden Library	\$0.18
3. Parking Structure No. 4	\$0.18 0.18 per AB
4. Parking Structure No. 7	\$0.18
5. Student Services Building	\$0.18
6. Weatherup Center	\$0.18

CONDITIONAL ASSIGNMENT AGREEMENT

THIS CONDITIONAL ASSIGNMENT AGREEMENT (the "Agreement") is entered into and made effective as of this 1st day of December, 2009, by and between APS ENERGY SERVICES COMPANY, INC., an Arizona corporation ("Assignor") and SPP OpCo, LLC, a limited liability company organized and existing under the laws of the State of Delaware ("Assignee") and The Arizona Board of Regents, for and on behalf of Arizona State University, a body corporate of the State of Arizona with perpetual succession (the "University") and shall become effective upon the satisfaction of the conditions precedent set forth in Section 5 (Effective Date) hereof. Assignor, Assignee and the University are each referred to herein as a "Party" or collectively as the "Parties".

RECITALS

WHEREAS, Assignor and the University are parties to a Solar Qualified Management Agreement, dated as of September 9th, 2009 (the "QMA"), providing for, among other things, the supply of energy services from a solar photovoltaic system (the "System") to be designed, constructed, installed operated and maintained by Assignor upon those certain premises more particularly described in the QMA, and subject to the terms and conditions provided for therein; and

WHEREAS, Assignor desires to assign the QMA to Assignee who will own, finance and operate the System, subject to certain conditions precedent and conditions subsequent set forth in this Agreement; and

WHEREAS, Assignor and Assignee intend to enter into an Engineering, Procurement and Construction Contract (the "EPC Contract"), pursuant to which Assignee will retain Assignor to design, construct and install the System, upon terms and conditions set forth in such EPC Contract.

AGREEMENT

NOW THEREFORE, in consideration of the premises, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. Assignment. Assignor hereby transfers and assigns to Assignee all of its right, title and interest in the QMA.
2. Acceptance. Assignee hereby accepts all benefits, burdens, rights, liabilities, and obligations of Assignor under the QMA.
3. Covenants of Assignee.

- 3.1 Assumption. Assignee hereby assumes all the duties and obligations of Assignor under the QMA and agrees to comply with and be bound by the terms and conditions of the QMA.
- 3.2 Indemnification. Assignee hereby agrees to indemnify, defend, and hold harmless Assignor, its officers, employees, agents, and representatives from any and all claims, demands, suits, actions, proceedings, loss, cost, and damages of every kind and description, including attorney's fees and litigation expenses, in any way arising out of the QMA on and after the effective date of this assignment, or incident to this assignment of interests between Assignor and Assignee.
4. Consent. The University hereby acknowledges, consents to and accepts the assignment contained herein, for purposes of Section 14.0 of the QMA and releases Assignor from its obligations under the QMA. Assignor is under no further obligation to the University to perform the QMA and is hereby discharged and the University agrees to look to Assignee exclusively for performance of the QMA.
5. Effective Date. The assignment contemplated by this Agreement will become effective upon the latter of (a) the effective date of one or more definitive agreements which provide to Assignee the necessary financing to undertake all of the projects contemplated in the QMA from which energy services are to be provided as described thereunder; and (b) the effective date of the Credit Purchase Agreement (the "CPA"), referred to in Section 1.2.4 of the QMA, which provides for, among other things, certain production-based incentives ("PBIs") by Arizona Public Service Company related to all or a designated portion of the System to be installed and operated under the QMA, as described in the CPA, for which Assignee shall be the designated recipient for purposes of Section 1.10.7, 3.1.1, 3.3 and 3.7 of the QMA once this Assignment Agreement becomes effective. Should both of these conditions precedent to the effectiveness of this Conditional Assignment Agreement not be satisfied by February 15, 2010, this Agreement may be null and void and of no further legal force and effect without further action of the Parties hereto.
6. Conditions Subsequent. (a) If, after satisfaction of the conditions precedent set forth in Section 5, Assignee for any reason loses or is unable to provide the necessary financing referred to in clause (a) of Section 5, or the production-based incentives provided for under the CPA under clause (b) of Section 5 terminate for any reason, or Assignee elects to terminate the EPC Contract for its convenience in accordance with the terms and conditions thereof, or Assignee shall be in default of its obligations under the EPC Contract, giving rise to Assignor's remedies as provided for in Section 16.1 of the EPC Contract, Assignee shall promptly upon request of Assignor execute a reassignment the QMA to Assignor, except to the extent of those portions of the System where construction of the System has begun and Assignee has begun paying Assignor (and which will be completed by Assignor in accordance with and subject to the EPC Contract's terms and conditions), and/or those portions

of the System that have been constructed and from which energy services are being provided to the University thereunder.

(b) In the event that the Assignee retains any portions of the QMA under the circumstances enumerated under Section 6(a), the Parties agree that the QMA shall be promptly amended by a written agreement executed by the Assignee and the University that has the effect of amending the QMA to remove those portions of the System that are to be reassigned to the Assignor in accordance with Section 6(a). Simultaneously, Assignor and University shall execute a new Qualified Management Agreement (substantially in the form and content of the QMA, except as otherwise agreed by the University and the Assignor giving consideration to portions of the System to be included in the new Qualified Management Agreement) that includes those portions of the System that are removed from the QMA through the amendment executed by Assignee and the University.

7. Governing Law. This Agreement shall be interpreted in accordance with the substantive and procedural laws of the State of Arizona.
8. Attorney's Fees. If any action is brought by any party in respect to its rights under this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs, as determined by the court.

This Agreement has been executed by the duly authorized representatives of the parties and shall be effective as of the date first above written.

"ASSIGNOR":

APS ENERGY SERVICES COMPANY, INC.

By:

Title: Energy Director

"ASSIGNEE":

SPP OPCO, LLC

By:

Title: President & CEO

"UNIVERSITY":

THE ARIZONA BOARD OF REGENTS
FOR AND ON BEHALF OF ARIZONA STATE UNIVERSITY

By:

Title: John E. Riley, C.P.M.

Director of Purchasing

EXHIBIT B

ESTIMATED ANNUAL ENERGY PRODUCTION

Year	Estimated Annual Output (kWh)
1	11,219,332
2	11,163,235
3	11,107,419
4	11,051,882
5	10,996,623
6	10,941,640
7	10,886,931
8	10,832,497
9	10,778,334
10	10,724,443
11	10,670,820
12	10,617,466
13	10,564,379
14	10,511,557
15	10,458,999
16	10,406,704
17	10,354,671
18	10,302,897
19	10,251,383
20	10,200,126