



County of Fairfax, Virginia

ADDENDUM

DATE: August 22, 2019

ADDENDUM NO. 4

TO: ALL PROSPECTIVE OFFERORS

REFERENCE: RFP2000002845

TITLE: Solar Power Purchase Agreement Services

DUE DATE/TIME: **September 12, 2019 at 2:00 P.M. (REVISED)**

The referenced Request for Proposal is amended as follows:

1. For clarity, replace the RFP in its entirety with the attached **REVISED RFP**. The revised RFP includes all changes made to the original RFP via previous Addenda 1-3 as well as addressing additional questions submitted by potential Offerors. A brief highlight of the changes follows:

- Section 1. INTRODUCTION:
 - 1.1 The County will make primary, secondary, and tertiary awards per Phase I project site.
 - 1.3 Offerors will select individual projects from Phase I, they are no longer required to propose against all projects.
- Section 4. BACKGROUND:
 - 4.4 The current rate for electricity column is deleted. The value presented were averages. That information is no longer useful since a separate Attachment B Standard Power Purchase Agreement Pricing Model will be submitted for each Phase I project sites. Additionally, the values for FCPA have been corrected.
- Section 5. SCOPE OF SERVICES:
 - 5.3 Offerors are advised not to include secure power as a feature of the proposed Project(s).
 - 5.6 The Host Entity and the successful Offeror will execute a PPA that is substantially in the form that is included as Amendment D. Non-negotiable provisions within the PPA are clearly indicated.
 - 5.7 A Lease Agreement will be used for all projects. FCG must hold a public hearing before leasing real property that it owns.
- Section 6. TECHNICAL PROPOSAL INSTRUCTIONS:
 - There is no requirement for a construction bond.
 - A decommissioning bond will be addressed as part of the PPA.
 - 6.1.b.2. and 4. have been combined with 6.2.
- Section 7. COST PROPOSAL INSTRUCTIONS:
 - 7.1 A separate Attachment B will need to be submitted for each proposed Phase I Project. Note: Figure 2 has been deleted.
- SECTION 15. INSURANCE:
 - 15.12 Adds a new paragraph to address self-insurance.

- Section 24. ORDER OF PRECEDENCE:
 - 24.1 NOTE: PPA shall take precedence over the General Conditions and Instructions to Bidders
 - Attachment B. STANDARD POWER PURCHASE AGREEMENT PRICING MODEL:
 - A separate Attachment B is required for each Project proposed.
 - New Requirement: Indicate System Type
 - Identify what years apply to system buy-out.
 - Attachment C. MASTER LIST OF FACILITIES:
 - Review which sites are in Phase I as some have been moved to Phase II.
 - Attachment D. POWER PURCHASE AGREEMENT: Power Purchase Agreement Terms Sheet has been replaced by the Power Purchase Agreement.
 - Attachment E. LEASE AGREEMENT, samples. **(NEW)**
2. Refer to ATTACHMENT 1 of this Addendum for the responses to received following the release of Addendum 3 on August 1, 2019.
3. Attachment 2 – **REVISED RFP**

All other terms and conditions remain the same.



Patricia S. Wilkerson
Contract Analyst III

THIS ADDENDUM IS ACKNOWLEDGED AND IS CONSIDERED A PART OF THE SUBJECT REQUEST FOR PROPOSAL:

Name of Firm

(Signature)

(Date)

A SIGNED COPY OF THIS ADDENDUM MUST BE INCLUDED IN THE TECHNICAL PROPOSAL OR RETURNED PRIOR TO DATE/TIME OF CLOSING.

Note: SIGNATURE ON THIS ADDENDUM DOES NOT SUBSTITUTE FOR YOUR SIGNATURE ON THE ORIGINAL PROPOSAL DOCUMENT. THE ORIGINAL PROPOSAL DOCUMENT MUST BE SIGNED.

ATTACHMENT 1

Questions for Fairfax County Government RFP #2000002845
Submitted after August 1, 2019

- Q1. We have analyzed the schedules available on the VEPGA contract, with special focus on Schedules 130, 132 and 134. We determined that they include significant demand charges (\$/kW as opposed to \$/kWh). Section 4.4 of the RFP designates the current rates that Fairfax Entities pay in \$/kWh only. Given our analysis of the VEPGA Schedules, we assume the rates provided are a blend of demand charges (\$/kW) and \$/kWh. Please let us know that this assumption is correct.
- A1. The "current rate" provided in the fourth column is the cost of electricity (column 2) divided by the average electric consumption in kilowatt hours (column 3). The cost for electricity includes all charges for electricity service, including distribution service charges, electricity supply service charges (which may include electricity supply demand charges), and applicable riders. The facilities included in Phase I of the RFP have varying electric billing rate schedules which may or may not include demand charges.
- Q2. In some instances, the use of energy from a solar project will reduce demand charges. However, as solar is an intermittent resource, this is not guaranteed. The consequence is that proposed \$/kWh rates lower than the current rates listed in Section 4.4 would not necessarily result in savings to Fairfax Entities as they do not guarantee a reduction in \$/kW (demand) charges. Is Fairfax County willing to enter into a Power Purchase Agreement priced solely on \$/kWh without any commitment from the Offeror to reduce demand charges (\$/kW)?
- A2. Under Section 7.2.b of the Solicitation, offerors are directed to submit a kilowatt hour (kWh) rate for solar electricity delivered to each Fairfax Entity (with solar renewable energy credits accruing to the Fairfax Entity), and to clearly state any annual escalator and annual degradation rate for panel production, if applicable. The Solicitation does not require or request that offerors make any commitments regarding the reduction of demand charges (\$/kW).
- Q3. Will Fairfax only accept PPA Solar Proposals OR have you considered/willingness to accept a Tax-Exempt Financing Lease (TEFL)?
- A3. The County's Solicitation is limited to power purchase agreements, which are permissible in the service area of Dominion Energy Virginia pursuant to Chapters 382 (2013) and 803 (2017) of the Virginia Code.
- Q4. A TEFL is possibly much lower AND therefore the PPA rate per kWh would need to match (or come in below) the actual kWh offset rate in order for Fairfax to save money on day one. Please see image below of one of the electricity bills you provided AND the highlights of the charges that may/or may not be fully offset by solar.
- A4. To the best of staff's knowledge, the county has not discussed third-party PPA pricing with Dominion Energy Virginia. The Solicitation does not require that pricing exactly offset the current electricity rate or "save money on day one."
- Q5. Regarding Special Provision 15, will Fairfax County allow the Offeror to self-insure or incorporate Fairfax systems and related insurable items into a master corporate policy as long as the minimum requirements are met?
- A5. Any deductibles and/or self-insurance retentions must be declared to and approved by the County's Risk Manager prior to the commencement of services. Use of large deductibles and/or self-insured retentions will require proof of financial ability as determined by the County and Contractor shall provide sufficient information, as requested by County in order to make the determination of financial stability. At the option of the County, either the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the operations under this Contract or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Contractor shall pay all deductibles and be liable for all claims, losses and damages for which it self-insures.

ATTACHMENT 1

- Q6. Special Provision 5.3 indicates that Fairfax is subject to the SCC's Pilot Program Guidelines and the 1MW maximum generation capacity. Hypothetically, a Fairfax entity building roof can accommodate 4MW of solar. Does Fairfax interpret the guidelines to mean that said roof and entity building will need 4 separate 1MW solar facilities at/on it or is said building roof restricted to only 1MW?
- A6. The maximum generation capacity limit of one megawatt (1 MW) is derived from requirements established in VA Code Chapters 382 (2013) and 803 (2017) and the electrical generating facility size limitations set forth in VA Code Sec. 56-594. In the absence of a statutory provision exempting aggregated facilities on a single premise from the size limitation, installing four separate 1 MW solar facilities on a single building would appear to exceed the 1 MW facility size limitation.

ATTACHMENT 2

PRE-PROPOSAL CONFERENCE

RFP# 2000002845

REVISED

An optional pre-proposal conference will be held at 9:30 A. M. on June 17, 2019, at the County Government Center, 12000 Government Center Parkway, Conference Room 2/3, Fairfax Virginia. The purpose of this conference is to allow potential Offerors an opportunity to present questions and obtain clarification relative to any facet of this solicitation.

While attendance at this conference will not be a prerequisite to submitting a proposal, Offerors who intend to submit a proposal are encouraged to attend. Bring a copy of the solicitation with you. Any changes resulting from this conference will be issued in a written addendum to the solicitation.

All questions pertaining to this RFP should be submitted in writing to patricia.wilkerson@fairfaxcounty.gov prior to the pre-proposal conference.

ATTACHMENT 2



FAIRFAX COUNTY

DEPARTMENT OF PROCUREMENT & MATERIAL MANAGEMENT

12000 GOVERNMENT CENTER PARKWAY, SUITE 427
FAIRFAX, VIRGINIA 22035-0013

V I R G I N I A

TELEPHONE: (703) 324-3201 FAX: (703) 324-3228 TTY: 711

ISSUE DATE: June 4, 2019	REQUEST FOR PROPOSAL NUMBER: 2000002845	TITLE: Solar Power Purchase Agreement Services
DEPARTMENT: Office of Environmental and Energy Coordination	DUE DATE/TIME: September 12, 2019 at 2:00 PM REVISED	CONTRACT SPECIALIST: Patricia Wilkerson patricia.wilkerson@fairfaxcounty.gov

Proposals - In accordance with the following and in compliance with all terms and conditions, unless otherwise noted, the undersigned offers and agrees, if the proposal is accepted, to furnish items or services for which prices are quoted, delivered or furnished to designated points within the time specified. It is understood and agreed that with respect to all terms and conditions accepted by Fairfax County the items or services offered and accompanying attachments shall constitute a contract.

Note: Fairfax County does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or Offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment in the performance of its procurement activity.

NAME AND ADDRESS OF FIRM:

Telephone/Fax No.:

E-Mail Address:

Federal Employer Identification No or

Federal Social Security No.(Sole
Proprietor)

Prompt Payment Discount: ____% for payment within ____ days/net
____ days

State Corporation Commission (SCC)
Identification No.

By signing this proposal, Offeror certifies, acknowledges, understands, and agrees to be bound by the conditions set forth in the General Conditions and Instructions to Bidders as described in Appendix A, the Certification Regarding Ethics in Public Contracting set forth in Attachment A, and by any other relevant certifications set forth in Attachment A.

Vendor Legally Authorized Signature

Date

Print Name

Title

Sealed proposals subject to terms and conditions of this Request for Proposal will be received by the Fairfax County Purchasing Agent at 12000 Government Center Parkway, Suite 427, Fairfax, Virginia 22035-0013 until the date/time specified above.

AN EQUAL OPPORTUNITY PURCHASING ORGANIZATION



SPECIAL PROVISIONS

1. INTRODUCTION:

- 1.1. The purpose of this Request for Proposal is to solicit sealed proposals to establish a contract(s) through competitive negotiation for solar power purchase agreement services. Fairfax County (FCG) is conducting this joint procurement on behalf of itself, the Fairfax County Park Authority (FCPA), the Fairfax County Public Schools (FCPS), and the Fairfax County Redevelopment and Housing Authority (FCRHA) (each a "Fairfax Entity"). The successful Offeror(s) ("Solar Power Provider") will design, install, own, operate, and finance grid connected solar photovoltaic ("Solar PV") systems ("Projects") on various facilities and structures that are owned/operated by a Fairfax Entity (the "Host Entity") and sell the electricity produced by each Project to the Host Entity under a Power Purchase Agreement ("PPA").

The County respects economies of scale and has an interest in one large award but also may consider multiple awards were determined to be in the County's best interest. Each Phase I Project Site may be awarded a primary, secondary, and tertiary Contractor. Projects will be on an as needed basis in accordance with the requirements, terms and conditions listed in this solicitation.

- 1.2. It is anticipated that over the life of this contract several different Projects will be required across the County. Projects may include but are not limited to rooftop mounting, ground mount, and canopy structure mounting.

1.3. Phase I Projects

In conjunction with the other Fairfax Entities, the County has identified approximately 113 facilities as sites for potential Phase I Projects. The Offeror is required to utilize the Phase I Projects list in order to identify the Project(s) that it proposes to undertake. Proposals should be based on a Project life of 20, 25, or 30 years (whichever is the best lifespan based on the expertise of the Offeror). The list of potential sites for Phase I is in Attachment C. **NOTE CHANGE: Offeror will select individual projects from Phase I, no longer required to propose against all projects.**

1.4. Phase II Projects

In addition to the potential Project sites listed in Phase I, the County anticipates that the selected contract awardee(s) will be able to evaluate and propose projects for additional facilities in the Fairfax Entities portfolio. The County will work with the awardee(s) to screen appropriate facilities. The County anticipates the identification of additional Projects will occur simultaneously with the implementation of Phase I but may add or adjust as needed. The full list of possible Phase II Projects is included in Attachment C. Potential Phase I sites not awarded will be re-assessed along with Phase II sites.

- 1.5. Fairfax County has established qualifying Offeror criteria, including minimum criteria and experience with similar projects. The most qualified proposals will be evaluated and ranked according to "Best Value" for Fairfax County. A proposal evaluation scoring matrix is provided in Sec 14.6.

2. PRE-PROPOSAL CONFERENCE:

- 2.1. An optional pre-proposal conference will be held on June 17, 2019, at 9:30 A.M. in the County Government Center, Conference Center Room 2/3, 12000 Government Center Parkway, Fairfax, Virginia. To request reasonable ADA accommodations, call the Department of Procurement and Material Management ADA representative at (703) 324-3201 or TTY 1-800-828-1140. Please allow seven working days in advance of the event to make the necessary arrangements.

SPECIAL PROVISIONS

- 2.2. The purpose of the pre-proposal conference is to give potential Offerors an opportunity to ask questions and to obtain clarification about any aspect of this Request for Proposal. Offerors may submit any questions pertaining to the RFP, in writing, no later than June 11, 2019 to patricia.wilkerson@fairfaxcounty.gov.

3. CONTRACT PERIOD AND RENEWAL:

- 3.1. This contract will begin on date of award and terminate on December 31, 2022.
- 3.2. Automatic contract renewals are prohibited. Contract renewals must be authorized by and coordinated through the County's Department of Procurement and Material Management (DPMM). The County reserves the right to renew the contract for four (4) additional years, one (1) year at a time or any combination thereof, if agreeable to all parties.
- 3.3. The contract period set forth in this section establishes the period of time within which a Fairfax Entity may enter into one or more PPAs for approved Projects. Any PPA executed during the contract period will survive expiration of the contract period for the full term of the PPA.
- 3.4. The obligation of the County to pay compensation due the Solar Power Provider under the contract or any other payment obligations under any contract awarded pursuant to this Request for Proposal is subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations. The County's obligations to make payments during subsequent fiscal years are dependent upon the same action. If such an appropriation is not made for any fiscal year, the contract shall terminate effective at the end of the fiscal year for which funds were appropriated and the County will not be obligated to make any payments under the contract beyond the amount appropriated for payment obligations under the contract. The County will provide the Solar Power Provider with written notice of non-appropriation of funds within thirty (30) calendar days after action is completed by the Board of Supervisors. However, the County's failure to provide such notice shall not extend the contract into a fiscal year in which sufficient funds have not been appropriated.

4. BACKGROUND:

- 4.1. Fairfax County, which is home to over 1.1 million residents, is governed by an elected 10-member Board of Supervisors (Board). Through its Statement of Priorities, the Board has pledged to engage residents and businesses to protect investment in eight critical areas, including "a clean, sustainable environment". On July 10, 2018, the "Fairfax County Operational Energy Strategy" (Energy Strategy), <https://www.fairfaxcounty.gov/energy/sites/energy/files/assets/documents/fairfax-county-operational-energy-strategy.pdf> was adopted by the Board with the intended purpose of ensuring energy and resource efficiency are explicitly considered, examined, and executed throughout all County government operations and decision-making.
- 4.2. FCG, FCPA, and FCPS are each members of the Virginia Energy Purchasing Governmental Association (VEPGA). VEPGA's current contract with Virginia Electric and Power Company ("Dominion") authorizes VEPGA members to participate in the third-party power purchase agreement pilot program established by the State Corporation Commission (SCC), subject to certain requirements. FCRHA is also a current customer of Dominion and eligible to participate in the pilot program under Virginia Acts of Assembly Uncodified Chapter 382 ("Uncodified Chapter 382"). It is the intent of each Fairfax Entity to participate in the pilot program by entering into one or more PPAs with the successful Offeror(s).
- 4.3. In 2016, 51% (261,720,286 kWh) of the energy used by the County (not including energy used by FCPS) was from electricity. The cost of that electricity was 69% (\$19,890,742) of the total energy budget. As a vital element of the Energy Strategy, Fairfax County is

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endeavoring to reduce the usage of electricity from the traditional source by looking at innovative energy solutions such as “Solar PV”. The County’s Energy Use and Efficiency target is to reduce energy use 20% (77,370,800 kWh) by 2029.

4.4. Summary of Total Annual Electric Usage for Phase I Projects

Phase I Projects		
County Entity	Annual	
	Cost for Electricity	Average Electric Consumption (kWh)
FCG	\$2,367,985	28,190,293
FCPA	\$319,129	4,293,355
FCPS	\$12,117,055	122,394,497
FCRHA	\$124,075	1,320,576

- 4.5. GIS images and site data for the Phase I and Phase II sites are available at [Solar PPA Services – Phase I Projects](#). Energy usage data for County properties operated by the Fairfax County Facilities Management Division, and for properties owned and operated by FCPA is available at <https://www.fairfaxcounty.gov/apps/energycap/>. Energy data for properties owned and operated by FCPS is available at http://get2green.fcps.edu/energy_db.html.

5. **SCOPE OF SERVICES:**

- 5.1. The Solar Power Provider(s) will provide complete turn-key Solar PV Project(s) including design, financing, installation, interconnection, maintenance, and decommissioning in accordance with applicable local, state, and federal codes. The resulting contract(s) is an indefinite delivery, indefinite quantity contract pursuant to which the Solar Power Provider(s) may sell to a Host Entity the electricity generated by one or more individual Projects at mutually agreed to rates and in accordance with the terms and conditions listed in this solicitation and the resulting PPA(s), ref. Attachment D. The Solar Provider will own the Solar PV Project.
- 5.2. Individual PPA term length must not exceed 30 years (Offeror may propose 20, 25, or 30 year options).
- 5.3. Pursuant to the VEPGA Agreement, Solar PV Projects commenced under the resulting contract and installed on properties owned by FCG, FCPA, and FCPS and served by Dominion will be subject to the SCC’s Pilot Program Guidelines (available at http://www.scc.virginia.gov/pur/ppa/guide_clean.pdf), as they may be amended, including the maximum generation capacity limitation (currently 1MW). Solar PV Projects installed at those sites must also meet the requirements for small electrical generators set forth in the SCC’s currently approved Regulations Governing Interconnection of Small Electrical Generators (20VAC5-314). **Offerors are advised not to include secure power as a feature of the proposed Project(s).**
- 5.4. Unless and until FCRHA becomes a member of VEPGA, Projects for Phase I or Phase II sites owned by FCRHA and served by Dominion shall comply with the requirements of Uncodified Chapter 382, as amended, including the requirement that the electricity generated by the Project not exceed the expected annual energy consumption at the Project site based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available.
- 5.5. Projects for Phase II sites that are served by the Northern Virginia Electric Cooperative (NOVEC) may be commissioned under the resulting contract. Such Projects will be conducted in accordance with the provisions of Va. Code Ann. § 56-594.01 (effective July 1, 2019), and any applicable SCC regulations.

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- 5.6. Upon approval of a Project, the Host Entity and a successful Offeror will execute a PPA that is substantially in the form included as Attachment D to this RFP. **NOTE: “non-negotiable provisions within the PPA are clearly indicated.** By way of example, it is anticipated that a Solar Power Provider awarded 12 Projects would execute 12 PPAs.
- 5.7. In conjunction with execution of a PPA, the Host Entity will provide a Lease Agreement that will govern the successful Offeror's access to and use of the property for the purpose of siting and operating the Project. The form of the Lease Agreement is included as Attachment E. Offerors are advised that pursuant to Va. Code Ann. § 15.2-1800, FCG must hold a public hearing before leasing real property that it owns.
- 5.8. The sole recurring compensation payable by the Host Entity to the Solar Power Provider under the resulting contract shall be payment for electrical power generated by the Solar PV Project for use on-site in accordance with an executed PPA.
- 5.9. The County's strong preference is that the PPAs are off balance sheet and do not impact the County's Aaa/AAA/AAA credit ratings from Moody's Investors Service, S&P Global, and Fitch Ratings, respectively.

6. TECHNICAL PROPOSAL INSTRUCTIONS:

The Offeror must submit a Technical Proposal containing the following information. This information will be considered the minimum content of the proposal. Proposal contents shall be arranged in the same order and identified with headings as presented herein.

NOTE: Construction bond is not required. Decommissioning bond is addressed as part of PPA.

- 6.1. Overview:
 - a. Name of firm submitting proposal; main office address; when organized; if a corporation, when and where incorporated; appropriate Federal, State, and County registration numbers.
 - b. Understanding of the problem and technical approach.
 1. Statement and discussion of the requirements described in Section 5 as they are analyzed by the Offeror.
 2. Explanation of proposed PPA term for each Phase I site (20, 25, 30 years) included in the Offeror's proposal.
 3. Offeror should demonstrate an awareness of difficulties in the completion of this undertaking, and a plan for surmounting them.
 4. Offeror should state its agreement to work with the existing roofing contractor(s) to ensure that Project work will not invalidate the current roof warranty at each site.
 5. Address factors which the Offeror believes to differentiate it from other potential Offerors for the selected project(s).
 6. Address the Offeror's particular strength in the marketplace.

6.2. Preliminary Work Plan:

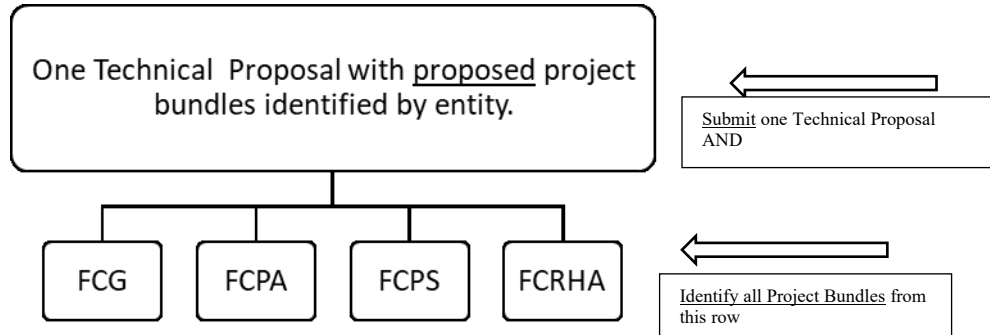
The Offeror must present a definitive Scope of Work which contains technical approach to include design, performance, warranties, equipment, layout, mounting, interconnection, and monitoring. The proposed scope of work should describe the phases or segments into which the Phase I Projects it proposes to undertake can logically be divided and completed, include layouts, sketches, flow charts and other data (if helpful/illustrative) along with a master schedule of proposed installation. The technical narrative should be keyed to appropriate section numbers of this RFP. This section should also contain a discussion of any changes proposed by the Offeror that substantially differs from the project scope described in these Special Provisions and how the proposed change(s) would benefit the Fairfax Entities (or any one of them). Note: the explanation should

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demonstrate its understanding of the technical and administrative requirements for participation in the SCC pilot program under the VEPGA Agreement and Uncodified Chapter 382.

NOTE: Do not submit more than one technical proposal. Clearly identify projects by Host Entity as indicated in Figure 1. Since costs may vary based on type of mounting (rooftop, ground, canopy structure, etc) clearly address the advantages of each mount type proposed.

Figure 1



6.3. Statement of Qualifications:

The Statement of Qualifications must include a description of organizational and staff experience and resumes of proposed staff.

- a. Organizational and Staff Experience: Offerors must describe their qualifications and direct experience with performing the solar power purchase agreement services described in this Request for Proposal (i.e. grid connected Solar PV Projects under a PPA). Full-time and part-time staff, proposed consultants and subcontractors who may be assigned direct work on a Project must be identified. Information about experience should include that of the Offeror as well as individual staff, consultants, and subcontractors.
- b. Project Experience: Special notation must be made by Offeror of at least three (3) completed projects similar in scope and complexity and fully functioning for which they were the awarded (primary) firm. The referenced projects shall have been performed in Virginia, Maryland and the District of Columbia within the past 3 years. For each reference provide the names of the contracting organization (customer), addresses of the project location, contact person's name, email address and telephone number, as well as, nature of work performed and total project cost. Provide name and contact information for all design firms and subcontractors. Include first year PV generation at delivery point (kW, MWh, Capacitor factor %), PPA Term (years), and location of point of delivery (distribution system or other). Offeror hereby releases listed references from all claims and liability for damages that may result from the information provided by the reference. At least one (1) relevant experience project completed within the last three (3) years must include a rooftop Solar PV project of 500kW or larger.
- c. Describe and illustrate company approach or policy regarding coordinating among trades and sub-contractors.
- d. Financial Statements: The Offeror shall provide an income statement and balance sheet from the most recent reporting period. This information will be used to assist in determining overall qualification of Offeror.
- e. Project Financing: Offerors shall provide a statement demonstrating how the Projects will be financed, including costs of design, installation, startup, maintenance,

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operation and decommissioning. Offerors are requested to provide a letter(s) of commitment from any financial entity which is to provide financing for the Projects. Additionally, Offerors shall provide the following information regarding the financing strategy:

1. Describe the Offeror's strategy for ensuring the Project(s) is off- balance sheet and does not impact the County's credit ratings.
 2. If tax equity will be used to finance the Project(s), does the Offeror plan to earn and monetize the Investment Tax Credit (ITC)? In what year of the Solar ITC schedule would the Offeror be likely to commence construction?
- f. The Offeror shall outline its Quality Control and Assurance Programs. Explain the methods used to ensure quality control during each phase of a Project. Provide specific examples of how these techniques or procedures were used from any of the minimum three (3) projects referenced in Project Experience (item 6.4.b) above.
 - g. Offeror must provide a copy of their Virginia Class A Contractor License, with a minimum of an ELE designation.
 - h. Personnel: In this section the Offeror must identify the key personnel who will work on the Project(s), their relationship to the Offeror, and the role of each of them on Offeror's project team. This includes Consultants as well as regular employees of the Offeror, if relevant. At a minimum, this section should identify the person or persons that will serve as Project(s) manager.
 - i. The personnel named as Project manager in the technical proposal will remain assigned to the project throughout the period of this contract. No diversion or replacement may be made without submission of a resume of the proposed replacement with final approval being granted by the County Purchasing Agent.

7. COST PROPOSAL INSTRUCTIONS:

- 7.1. Complete and include a separate Attachment B Standard Power Purchasing Pricing Model for each proposed Project.
- 7.2. The Standard Power Purchase Agreement Pricing Model will establish a pricing methodology for each Phase I Project as proposed. Unawarded Phase I projects along with Phase II Projects will be initiated with mutually agreed on pricing.
 - a. The proposal will be evaluated on the basis of lowest net cost for power, monetary vs. volumetric crediting for solar kilowatt hours (kWh), and other pertinent criteria described herein.
 - b. Offerors shall submit a kilowatt hour(kWh) rate for solar electricity delivered to each Fairfax Entity for each proposed Project. If Offeror is willing to provide a discount based upon number of Projects awarded, Offeror must clearly indicate the criteria for the discounted pricing and the amount of the discount available to each Fairfax Entity. Solar renewable energy credits must accrue to the respective Fairfax Entity. Offerors shall clearly state any annual escalator to the PPA rate(s), and annual degradation rate for panel production, if applicable.
 - c. Offeror shall describe methodology used in determining guaranteed portion of electricity output (%) and guaranteed annual minimum electricity output (kWh)
 - d. The Offeror shall include a financial pro forma clearly showing annual costs or savings realized by the applicable Fairfax Entity for each proposed Project and must use trailing twelve (12) months of actual electricity usage and costs data.

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- e. The Offeror shall include a methodology for determination of the cost of the removal of the Solar PV Project in the event of a default or termination for convenience by the County during the initial seven (7) years of PPA.
- f. The Offeror shall indicate the year(s) in which the Host Entity may, in its discretion, exercise an option to purchase the system. The purchase price for each system shall be the fair market value of the system at the time the purchase option is exercised.

8. TRADE SECRETS/PROPRIETARY INFORMATION:

- 8.1. Trade secrets or proprietary information submitted by an Offeror in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, Offeror(s) must invoke the protections of this section prior to or upon submission of the data or other materials.
- 8.2. The Offeror must identify the data or other materials to be protected and state the reasons why protection is necessary. Disposition of material after award(s) should be stated by the Offeror.
- 8.3. Request for Protection of Trade Secrets or Proprietary Information (Attachment A) is provided as a courtesy to assist Offerors desiring to protect trade secrets or proprietary information from disclosure under the Virginia Freedom of Information Act.
- 8.4. The classification of an entire proposal document, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable and may result in rejection of the proposal.

9. CONTACT FOR CONTRACTUAL MATTERS:

- 9.1. All communications and requests for information and clarifications shall be directed to the following procurement official:

 Patricia Wilkerson, CPPO, Contract Analyst III
 Department of Procurement and Material Management
 Telephone: (703) 324-7535
 Email: patricia.wilkerson@fairfaxcounty.gov
- 9.2. No attempt shall be made by any Offeror to contact members of the Selection Advisory Committee (SAC) about this procurement (see section 14.2).

10. REQUIRED SUBMITTALS:

- 10.1. Each Offeror responding to this Request for Proposal must supply all the documentation required in the RFP. Failure to provide documentation with the Offeror's response to the RFP will result in the disqualification of the Offeror's proposal.

11. SUBMISSION OF PROPOSAL:

- 11.1. One (1) original (duly marked) and five (5) copies of the Technical Proposal, and one (1) original (duly marked) and five (5) copies of the Cost Proposal (including Attachment B) shall be delivered to the following address in sealed envelopes or packages with the proposal number, title, and the Offerors name and address on the outside. It is requested that one copy of the proposal be provided electronically (in a searchable pdf format). The Offeror must include a notarized statement that the electronic version is a true copy of the printed version. Electronically stamped delivery receipts are available.

Department of Procurement and Material Management
 12000 Government Center Parkway, Suite 427
 Fairfax, Virginia 22035-0013
 Telephone: 703-324-3201

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- 11.2. It is the Offeror's responsibility to clearly identify and to describe the services being offered in response to the Request for Proposal. Offerors are cautioned that organization of their response, as well as thoroughness is critical to the County's evaluation process. The RFP forms must be completed legibly and in their entirety; and all required supplemental information must be furnished and presented in an organized, comprehensive and easy to follow manner.
- 11.3. Unnecessarily elaborate brochures of other presentations beyond that sufficient to present a complete and effective proposal is not desired. Elaborate artwork, expensive paper, bindings, visual and other presentation aids are not required. The County encourages the use of recycled paper; therefore, it is urged that proposals be submitted on paper made from or with recycled content and be printed on both sides.
- 11.4. Each original and set of the five (5) copies of the proposal shall consist of:
 - a. Cover sheet (DPMM32).
 - b. Technical proposal as required in the Special Provisions, section 6, **TECHNICAL PROPOSAL INSTRUCTIONS** (Attachment A and Attachment D should be included with the Technical Proposal).
 - c. Cost proposal as required in the Special Provisions section 7, **COST PROPOSAL INSTRUCTIONS** (Attachment B should be included in the Cost proposal).
- 11.5. By executing the cover sheet (DPMM32), Offeror acknowledges that they have read this Request for Proposal, understand it, and agree to be bound by its terms and conditions. Proposals may be submitted by mail or delivered in person.

12. ADDENDA:

- 12.1. Offerors are reminded that changes to the RFP, in the form of addenda, are often issued between the issue date and within three (3) days before the due date. All addenda shall be signed and submitted before the due date/time or must accompany the proposal.
- 12.2. Notice of addenda will be posted on eVA and the DPMM current solicitation webpage. It is the Offeror's responsibility to monitor the web page for the most current addenda at www.fairfaxcounty.gov/solicitation.

13. PROPOSAL ACCEPTANCE PERIOD:

- 13.1. Any proposal submitted in response to this solicitation shall be valid for 120 days. At the end of the days the proposal may be withdrawn at the written request of the Offeror. If the proposal is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.

14. BASIS FOR AWARD:

- 14.1. This Request for Proposal is being utilized for competitive negotiation. Under the competitive negotiation process, a contract may be awarded to the responsible Offeror(s) whose proposal is determined to be the most advantageous to the County, taking into consideration price and the evaluation factors set forth in the Request for Proposal. The County reserves the right to make multiple awards as a result of this solicitation.
- 14.2. A Selection Advisory Committee has been established to review and evaluate all proposals submitted in response to this Request for Proposal. The Committee shall conduct a preliminary evaluation of all proposals in accordance with the evaluation criteria listed below. Based upon this review, the highest rated Offeror(s) will then be invited to make oral presentations. Scores from the oral presentations will be added to the proposal evaluation scores.

SPECIAL PROVISIONS

- 14.3. Selection shall then be made of the top Offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors outlined in the Request for Proposal. Negotiations shall then be conducted with each of these Offerors so selected. After negotiations have been conducted with each Offeror so selected, the County shall select the Offeror(s) which, in its opinion, has made the best proposal, and shall award the contract to that Offeror(s).
- 14.4. Should the County determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror. The Committee will make appropriate recommendations to the Purchasing Agent, if appropriate, prior to actual award of contract.
- 14.5. Evaluation Criteria:

Figure 2. Proposal Evaluation Criteria

Area	Details	Points
Qualification Section 6	<ul style="list-style-type: none"> • Experience installing similar photovoltaic systems (scope & complexity) • Experience with Power Purchase Agreements • Ability to secure letter(s) of commitment from financial entity. • Previous projects with local government • Experience of project key staff who will be assigned to proposed projects 	20
References Section 6.	<ul style="list-style-type: none"> • Satisfaction with work performed • Willingness to hire firm again 	15
Methodology / Technical Approach for Program / Proposed Schedule Section 6	<ul style="list-style-type: none"> • Use of advanced photovoltaic designs • Justification for length of PPA term (20,25,30) • Agreement to work with current roofing contractor to preserve warranty 	25
Financial Benefit to the County and Reasonableness of Cost Proposal Section 7	<ul style="list-style-type: none"> • Price per Kilo-watt hour (kWh) of total proposed project • Performance Guarantee • Financial health of Offeror's business 	40
Total		100

SPECIAL PROVISIONS**14.6. Oral Presentations Evaluation Criteria**

If selected to make oral presentation, the Offeror's project team will deliver a concise one and one-half hour PowerPoint presentation to the SAC, with an additional 30 minutes allocated for questions. The criteria for oral presentations are specified in Figure 4.

Figure 3. Oral Presentation Criteria and Scoring

Area	Details	Points
Presentation	<ul style="list-style-type: none"> Ability to deliver a concise, accurate and professional presentation 	10
Responses to Questions	<ul style="list-style-type: none"> Ability to provide accurate and concise responses to questions 	10
Presentation Distribution by Staff Type	<ul style="list-style-type: none"> Coordination of presentation across disciplines (financing, design, construction, project management, etc.) 	20
Total		40

- 14.7. Fairfax County reserves the right to make on-site visitations to assess the capabilities of individual Offerors and to contact references provided with the proposal.
- 14.8. The County Purchasing Agent may arrange for discussions with Offeror(s) submitting proposals, if required, for the purpose of obtaining additional information or clarification.
- 14.9. Offerors are advised that, in the event of receipt of an adequate number of proposals, which, in the opinion of the County Purchasing Agent, require no clarifications and/or supplementary information, such proposals may be evaluated without further discussion. Consequently, Offerors should provide complete, thorough proposals with the Offerors most favorable terms. Should proposals require additional clarification and/or supplementary information, Offerors should submit such additional material in a timely manner.
- 14.10. Proposals which, after discussion and submission of additional clarification and/or supplementary information, are determined to meet the specifications of this Request for Proposal will be classified as "acceptable". Proposals found not to be acceptable will be classified as "unacceptable" and no further discussion concerning same will be conducted.
- 14.11. No Offeror, including any of their representatives, subcontractors, affiliates and interested parties, shall contact any member of the Selection Advisory Committee or any person involved in the evaluation of the proposals. Selection Advisory Committee members will refer any and all calls related to this procurement to the procurement official named in section 9.1 above. Failure to comply with this directive may, at the sole discretion of the County, result in the disqualification of an Offeror from the procurement process.
- 14.12. The County may cancel this Request for Proposal or reject proposals at any time prior to an award and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

SPECIAL PROVISIONS**15. INSURANCE:**

- 15.1. The Solar Power Provider shall not commence work on the site until he/she has obtained all insurance required under this article nor shall the Solar Power Provider allow any subcontractor to commence work on his/her subcontract until all similar insurance required of the subcontractor has been obtained. The Solar Power Provider shall agree to furnish certificates of such coverage if requested by the County Purchasing Agent.
- 15.2. The Solar Power Provider shall be responsible for its work and every part thereof, and for all materials, tools, equipment, appliances, and property of any and all description used in connection therewith. The Solar Power Provider assumes all risks of direct and indirect damage or injury to the property or persons used or employed by it on or in connection with the work contracted for, and of all damages or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the contract.
- 15.3. The Solar Power Provider shall, during the term of the PPA provide the following:
- a. Maintain statutory Worker's Compensation and Employer's Liability insurance in limits of not less than \$1,000,000 to protect the Solar Power Provider from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia.
 - b. The Solar Power Provider agrees to maintain Commercial General Liability insurance in the amount of \$1,000,000 per occurrence, \$2,000,000 in aggregate, to protect the Solar Power Provider, its subcontractors, and the interest of the County, its officers and employees against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the Contract or in connection with the contracted work. The General Liability insurance shall also include the Broad Form General Liability endorsement, in addition to coverages for explosion, collapse, and underground hazards, where required.
 - c. The Solar Power Provider agrees to maintain owned, non-owned, and hired Commercial Automobile Liability insurance, in the amount of \$1,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the Solar Power Provider. In addition, all mobile equipment used by the Solar Power Provider in connection with the contracted work will be insured under either a standard Commercial Automobile Liability policy, or a Commercial General Liability policy. The Garage Keeper's Liability coverage shall also be maintained where appropriate.
 - d. Builder's Risk Policy: The Solar Power Provider shall provide Builder's Risk and Fire and Extended Coverage insurance to protect the County and Solar Power Provider and subcontractors against loss caused by the perils insured in the amount of 100% of the insurable value of the contract. Such insurance value shall reflect any increases to the contract amount through change orders. Policy to be in Builder's Risk Completed Value forms, including the following:
 1. Policies shall be written to include the names of Solar Power Providers and County and the words "as their interest may appear";
 2. All insurance shall be in effect on or before the date when work is to commence; and
 3. All insurance shall be maintained in full force and effect until the final acceptance of the project by the County.
 - e. Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.

SPECIAL PROVISIONS

- f. The Solar Power Provider agrees to maintain Environmental Impairment Liability including sudden and accidental pollution and in transit coverage as well as coverage for storage at site.
- g. Liability Insurance "Claims Made" basis:

If the liability insurance purchased by the Solar Power Provider has been issued on a "claims made" basis, the Solar Power Provider must comply with the following additional conditions. The limits of liability and the extensions to be included as described previously in these provisions, remain the same. The Solar Power Provider must either:
 - 1. Agree to provide certificates of insurance evidencing the above coverage for a period of two years after final payment for the contract. This certificate shall evidence a "retroactive date" no later than the beginning of the Solar Power Provider's or sub contractor's work under this contract, or a copy of the endorsement itself.
 - 2. Purchase the extended reporting period endorsement for the policy or policies in force during the term of this contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.
- h. The Solar Power Provider shall purchase and maintain such boiler and machinery insurance as may be required by the Contract Documents or by law. This insurance shall include the interests of the County, the Solar Power Provider and subcontractors.
- i. Rating Requirements:
 - 1. Solar Power Provider agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A: VII.
 - 2. European markets including those based in London, and the domestic surplus lines markets that operate on a non-admitted basis are exempt from this requirement provided that the Solar Power Provider's broker can provide financial data to establish that a market is equal to or exceeds the financial strengths associated with the A.M. Best's rating of A:VII or better.
- j. Hold harmless and Indemnification: Article 57 of the General Conditions and Instructions to Bidders (Appendix A) shall apply.
- k. The Solar Power Provider will provide an original, signed Certificate of Insurance citing the contract number and such endorsements as prescribed herein, and shall have it filed with the County Purchasing Agent before any work is started.
- l. The Solar Power Provider will secure and maintain all insurance certificates of its subcontractors, if any, which shall be made available to the County on demand.
- m. The Solar Power Provider will provide on demand certified copies of all insurance coverage related to the Contract within ten business days of demand by the County. These certified copies will be sent to the County from the Solar Power Provider's insurance agent or representative. The County, its officers and employees shall be named as an "additional insured" on all Liability policies and it shall be stated on the Insurance Certificate that this coverage "is primary to all other coverage the County may possess." A Fairfax County contract number must be provided on the certificate.
- n. Compliance by the Solar Power Provider and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Solar Power Provider and all subcontractors of the liability provisions of the Contract.

SPECIAL PROVISIONS

- o. Contractual and other Liability insurance provided under this Contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the County from supervising and/or inspecting the project as to the end result. The Solar Power Provider shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors.
- 15.4. Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the County. The Solar Power Provider shall be as fully responsible to the County for the acts and omissions of the subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.
- 15.5. Precaution shall be exercised at all times for the protection of persons (including employees) and property.
- 15.6. The Solar Power Provider and all subcontractors and sub subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, as it may apply to this Contract.
- 15.7. Any loss insured under subsection "15.3. d" is to be adjusted with the County and made payable to the County as trustee for the requirements of any applicable mortgagee clause. The Solar Power Provider shall pay each subcontractor a just share of any insurance monies received by the Solar Power Provider, and by appropriate agreement, written where legally required for validity, shall require each subcontractor to make payments to his/her sub subcontractors in similar manner.
- 15.8. When the County finds it necessary to occupy or use a portion or portions of the work prior to substantial completion thereof, such occupancy shall commence with a mutual agreement between the County and Solar Power Provider. The insurance company or companies providing the property insurance recognize this contingency and shall provide evidence of such endorsement prior to commencement of work. This insurance shall not be canceled or lapsed for the unoccupied part of the building on account of such partial occupancy. Consent of the Solar Power Provider and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.
- 15.9. If the Solar Power Provider delivers services from a County-leased facility, the Solar Power Provider is required to carry property insurance on all equipment, to include County-owned installed and maintained equipment used by the Solar Power Provider while in their care, custody and control for the use of this contract. The Solar Power Provider will provide on demand certified copies of all insurance policies related to the contract within ten (10) business days of demand by the County. These certified copies will be sent to the County from the Solar Power Provider's insurance agent or representative.
- 15.10. No change, cancellation, or non-renewal shall be made in any insurance coverage without a thirty (30) day written notice to the County. The Solar Power Provider shall furnish a new certificate prior to any change or cancellation date. The failure of the Solar Power Provider to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.
- 15.11. Precaution shall be exercised at all times for the protection of persons (including employees) and property.
- 15.12. Any deductibles and/or self-insurance retentions must be declared to and approved by the County's Risk Manager prior to the commencement of services. Use of large deductibles and/or self-insured retentions will require proof of financial ability as determined by the County and Contractor shall provide sufficient information, as requested by County in order to make the determination of financial stability. At the option of the County, either the insurer shall reduce or eliminate such deductibles or self-insured

SPECIAL PROVISIONS

retentions with respect to the operations under this Contract or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Contractor shall pay all deductibles and be liable for all claims, losses and damages for which it self-insures.

16. METHOD OF ORDERING:

- 16.1. A Purchase Order (PO) or a Letter Order may be issued to the Solar Power Provider on behalf of the County or other Fairfax Entity ordering the services covered under this contract. The Purchase Order or Letter Order indicates that sufficient funds have been obligated as required by Title 15.2-1238 of the Code of the Commonwealth of Virginia.
- 16.2. Regardless of the method of ordering used, solely the contract including a resulting PPA, will determine performance time and dates.
- 16.3. Performance under this contract is not to begin until notification to proceed by the County Purchasing Agent Purchase requisitions shall not be used for placing orders.

17. REPORTS AND INVOICING:

- 17.1. Invoicing information shall be submitted as set forth in the resulting PPA, it is expected that invoicing will occur on a monthly basis.
- 17.2. The Solar Power Provider must provide reporting by site to the entity that owns the facilities (FCG, FPA, FCPS, and FCRHD). Provide access to reports and data by hourly, daily, monthly and annual, as well as peak and off peak reports to allow benchmarking of sites.
- 17.3. Provide monthly reports per site and in aggregate on or before the 15th of each month for life of installation. Two electronic copies (email or CD) of each report shall be provided, as directed by each Fairfax Entity.
- 17.4. The Solar Power Provider must maintain all records in compliance with federal and state regulations.

18. CHANGES:

- 18.1. Fairfax County may, at any time, by written order, require changes in the services to be performed by the Solar Power Provider. If such changes cause an increase or decrease in the Solar Power Providers cost of, or time required for, performance of any services under this contract, an equitable adjustment shall be made, and the contract shall be modified in writing accordingly. The County Purchasing Agent must approve all work that is beyond the scope of this Request for Proposal.
- 18.2. No services for which an additional cost or fee will be charged by the Solar Power Provider shall be furnished without the prior written authorization of the Fairfax County Purchasing Agent.
- 18.3. The contract administrator, subject to section 18.4 below, is the Department representative designated by the Director, Department Procurement and Material Management, in writing and is authorized to:
 - a. serve as liaison between the Fairfax Entities and the Solar Power Provider;
 - b. give direction to the Solar Power Provider to ensure satisfactory and complete performance;
 - c. monitor and inspect the Solar Power Provider's performance to ensure acceptable timeliness and quality;
 - d. serve as records custodian for this contract, including wage and prevailing wage requirements;
 - e. accept or reject the Solar Power Provider's performance;

SPECIAL PROVISIONS

- f. furnish timely written notice of the Solar Power Provider's performance failures to the Director, Department of Procurement and Material Management, and to the County Attorney, as appropriate;
 - g. prepare required reports;
 - h. approve or reject invoices for payment;
 - i. recommend contract modifications or terminations to the Director, Department of Procurement and Material Management;
 - j. issue notices to proceed.
- 18.4. The contract administrator is NOT authorized to make determinations (as opposed to recommendations) that alter, modify, terminate or cancel the contract, interpret ambiguities in contract language, or waive a Fairfax Entity's contractual rights.

19. DELAYS AND SUSPENSIONS:

- 19.1. The County may direct the Solar Power Provider, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time deemed appropriate for the convenience of the County. The County will extend the Solar Power Provider's time of completion by a period of time that in the discretion of the Purchasing Agent is reasonably suited for completion of work. The County may further amend the contract by mutual agreement for any increase in the cost of performance of the contract (excluding profit) resulting solely from the delay or suspension of the contract. No adjustment shall be made under this clause for any delay or interruption resulting from any other cause, including the fault or negligence of the Solar Power Provider.
- 19.2. If the County does not direct the Solar Power Provider, in writing, to suspend, delay, or interrupt the contract, the Solar Power Provider must give the County Purchasing Agent written notice if a Fairfax Entity fails to provide data or services that are required for contract completion by the Solar Power Provider to commission a Project. The applicable Fairfax Entity may extend the Solar Power Provider's time of completion by a period of time that in the discretion of the Purchasing Agent is reasonably suited for completion of work. The County may further amend the contract by mutual agreement for any increase in the cost of performance of the contract (excluding profit) resulting solely from the delay or suspension of the contract. No adjustment shall be made under this clause for any delay or interruption resulting from any other cause, including the fault or negligence of the Solar Power Provider.
- 19.3. The Solar Power Provider shall continue its work on other Projects commissioned under the contract, if in the sole discretion of the Purchasing Agent such work is not impacted by the County's delay, suspension, or interruption. All changes to the work plan or Project milestones shall be reflected in writing as a contract amendment.

20. IDENTIFICATION, SECURITY, AND BACKGROUND CHECK:

- 20.1. Due to enhanced security measures, Solar Power Provider employees, representatives and sub- contractors are required to display Fairfax Entity issued identification badges above the waist at all times while on the job site Solar Power Provider employees, representatives and subcontractors who arrive at the job site without appropriate identification badges will immediately be dismissed from the job site. All supplies, materials and equipment are subject to security inspection.
- 20.2. All Solar Power Provider and subcontractor employees must pass to the satisfaction of the Fairfax Security Chief a Fairfax County Criminal History Check at a cost of approximately \$34 per person payable to Castlebranch Inc.
- 20.3. The Solar Power Provider shall assume all costs directly and indirectly associated with obtaining the Fairfax County Criminal History Checks and Fairfax County Solar Power Provider identification badges.

SPECIAL PROVISIONS

- 20.4. Access to facilities for installation or maintenance of solar equipment requires all Solar Power Provider employees and subcontractors be accompanied by personnel as assigned by the Fairfax Entity. Access will be made available within 72 hours of requests made to the project manager. Additionally, for FCPS, employees will be required to check in and out of the building's office each day.
- 20.5. Security access procedures are subject to change in accordance with changes to the applicable Fairfax Entity's security operating procedures. Solar Power Provider shall be considered notified when changes have been transmitted to Solar Power Provider's designated contact person at the twenty-four (24) hour emergency contact phone number.

PUBLIC SAFETY AND JUDICIAL FACILITIES (additional requirements)

- 20.6. For work at public safety and judicial facilities all Solar Power Provider and subcontractor employees must pass to the satisfaction of the Fairfax County Police and or Sherrieff an additional criminal history check which will be processed by the Police and or Sheriff's Department.

PUBLIC SCHOOLS (additional requirements)

- 20.7. The Solar Power Provider must certify that (i) neither the Solar Power Provider nor any employee of the Solar Power Provider who will have direct contact with students has been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child; and (ii) unless prior Notice has been given to FCPS, no employee or agent of the Solar Power Provider who has been convicted of a crime of moral turpitude will have direct contact with students. The foregoing certification shall be binding upon the Solar Power Provider throughout the Contract Period and the period of any resulting PPA and the Solar Power Provider hereby covenants and agrees to provide the County and FCPS with immediate Notice of any event or circumstance that renders such certification untrue. The Solar Power Provider hereby covenants and agrees that it will require this certification to be included in every Subcontract of every tier in order that the provisions contained herein will be binding upon each Subcontractor and Sub-subcontractor. The Solar Power Provider will ensure that no worker shall perform Work in occupied areas during school hours unless prior written approval has been granted by FCPS and proper safety precautions have been exercised to isolate the area of the Work.
- 20.8. For security purposes, all personnel working at this a FCPS building shall check in and check out at the building's office each day and wear any identification badges required by the building. **Solar Power Provider employees/representatives are required to have photo identification and be able to present upon request.** Solar Power Provider shall further supply all personnel with a form of identification as to company, name of employee and photographic likeness.
- 20.9. Alcoholic beverages, illegal drugs, and weapons are prohibited on FCPS properties and shall constitute grounds for immediate removal from the site of the Project. The Solar Power Provider shall ensure that neither its employees nor those of any subcontractor shall fraternize in any manner with any student of Fairfax County Public Schools at the site of the Project. FCPS shall have the right to remove from the Project site any person whose presence FCPS deems detrimental to the best interests of the Fairfax County Public Schools. Any individual who is removed from the site pursuant to this section may not return to such site or to that of any other Project site without the prior written permission of FCPS.

21. ACCESS TO AND INSPECTION OF WORK:

- 21.1. The Fairfax County Purchasing Agent and using agencies will, at all times, have access to the work being performed under this contract wherever it may be in progress or preparation.

SPECIAL PROVISIONS**22. DATA SOURCES:**

- 22.1. Upon request the County will provide the Solar Power Provider all available data possessed by the County that relates to the resulting contract. However, the Solar Power Provider is responsible for all costs for acquiring other data or processing, analyzing or evaluating County-provided data.

23. SAFEGUARDS OF INFORMATION:

- 23.1. Unless approved in writing by the County Purchasing Agent, the Solar Power Provider may not sell or give to any individual or organization any information, reports, or other materials given to, or prepared or assembled by the Solar Power Provider under the final contract.

24. ORDER OF PRECEDENCE:

- 24.1. In the event of conflict, the Acceptance Agreement (provided at contract award) and the Special Provisions of this contract to include the resulting PPA(s) shall take precedence over the General Conditions and Instructions to Bidders, (Appendix A).

25. SUBCONTRACTING:

- 25.1. The Solar Power Provider shall remain fully liable and responsible for the work done by its subcontractor(s) and shall ensure compliance with all the requirements of the contract documents.
- 25.2. If one or more subcontractors are required, the Solar Power Provider is encouraged to utilize small, minority-owned, and women-owned business enterprises. For assistance in finding subcontractors, contact the Virginia Department of Small Business and Supplier Diversity <https://www.sbsd.virginia.gov>; local chambers of commerce and other business organizations.

26. USE OF CONTRACT BY OTHER PUBLIC BODIES:

- 26.1. Reference Section 75, General Conditions and Instructions to Bidders, Cooperative Purchasing. Offerors are advised that the *resultant* contract(s) may be extended, with the authorization of the Offeror, to other public bodies, or public agencies or institutions of the United States to permit their use of the contract at the same prices and/or discounts and terms of the resulting contract. If any other public body decides to use the final contract, the Solar Power Provider(s) must deal directly with that public body concerning the placement of orders, issuance of purchase orders, contractual disputes, invoicing and payment. The County of Fairfax acts only as the "Contracting Agent" for these public bodies. Failure to extend a contract to any public body will have no effect on consideration of your offer. (See Attachment A for sample listing).
- 26.2. It is the Solar Power Providers responsibility to notify the public body(s) of the availability of the contract(s).
- 26.3. Other public bodies desiring to use this contract will need to make their own legal determinations as to whether the use of this contract is consistent with their laws, regulations, and other policies.
- 26.4. Each public body has the option of executing a separate contract with the Solar Power Provider(s). Public bodies may add terms and conditions required by statute, ordinances, and regulations, to the extent that they do not conflict with the contracts terms and conditions. If, when preparing such a contract, the general terms and conditions of a public body are unacceptable to the Solar Power Provider, the Solar Power Provider may withdraw its extension of the award to that public body.

SPECIAL PROVISIONS

- 26.5. Fairfax County **shall not** be held liable for any costs or damages incurred by another public body as a result of any award extended to that public body by the Solar Power Provider.

27. NEWS RELEASE BY VENDORS:

- 27.1. As a matter of policy, the County does not endorse the products or services of a Solar Power Provider. News releases concerning any resultant contract from this solicitation will not be made by a Solar Power Provider without the prior written approval of the County. All proposed news releases will be routed to the Purchasing Agent for review and approval.

28. AMERICANS WITH DISABILITIES ACT REQUIREMENTS:

- 28.1. The County is fully committed to the Americans with Disabilities Act (ADA) which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all County programs, activities and services. The County contractors, subcontractors, vendors, and/or suppliers are subject to this ADA policy. All individuals having any County contractual agreement must make the same commitment. Your acceptance of this contract acknowledges your commitment and compliance with ADA.
- 28.2. Fairfax County is committed to a policy of nondiscrimination in all County programs, services, and activities and will provide reasonable accommodations upon request. Bidders requesting special accommodations should call the Department ADA representative at (703) 324-3201 or TTY 1-800-828-1140. Please allow seven (7) working days in advance of the event to make the necessary arrangements.

29. STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:

- 29.1. Pursuant to *Code of Virginia*, §2.2-4311.2 subsection B, a bidder or Offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder or Offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or proposal a statement describing why the bidder or Offeror is not required to be so authorized. Any bidder or Offeror that fails to provide the required information may not receive an award.

COUNTY OF FAIRFAX

COMMONWEALTH OF VIRGINIA

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

BIDS ON SOLICITATIONS ISSUED BY THE COUNTY WILL BIND BIDDERS TO THE APPLICABLE CONDITIONS AND REQUIREMENTS IN THE GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS (GCIB) UNLESS OTHERWISE SPECIFIED IN THE SOLICITATION AND SUBJECT TO APPLICABLE STATE, LOCAL, AND FEDERAL LAWS.

BIDDERS OR THEIR AUTHORIZED REPRESENTATIVES SHOULD INFORM THEMSELVES FULLY AS TO THE CONDITIONS, REQUIREMENTS, AND SPECIFICATIONS OF EACH COUNTY PROCUREMENT BEFORE SUBMITTING BIDS. FAILURE TO DO SO WILL BE AT THE BIDDER'S OWN RISK AND RELIEF CANNOT BE SECURED ON THE PLEA OF ERROR.

1. **AUTHORITY:** The Purchasing Agent has the sole responsibility and authority for purchasing supplies, materials, equipment, and services, except as excluded in the Fairfax County Purchasing Resolution. The Purchasing Agent's responsibility and authority includes, but is not limited to, issuing and modifying solicitations, negotiating and executing contracts, and placing purchase orders. In discharging these responsibilities, the Purchasing Agent may be assisted by contract specialists. Unless specifically delegated by the Purchasing Agent, no other County officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the government of the County of Fairfax for an indebtedness. Any purchase ordered or contract made that is contrary to these provisions and authorities shall be of no effect, void, and does not bind the County.
2. **DEFINITIONS:** Unless otherwise defined in the GCIB, capitalized terms shall have the meanings defined by the Fairfax County Purchasing Resolution.

AGENCY: Any Department, Agency, Authority, Commission, Board or other unit in the Administrative Service of the County.

BID: The offer of a bidder to provide specific goods or services at specified prices and/or other conditions specified in the solicitation.

BIDDER/OFFEROR: Any individual, company, firm, corporation, partnership or other organization bidding on solicitations issued by the Purchasing Agent and offering to enter into contracts with the County. The term "bidder" will be used throughout this document and shall be construed to mean "Offeror" where appropriate.

CONTRACTOR: Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the County.

INVITATION FOR BID (IFB): A request which is made to prospective suppliers (bidders) for their quotation on goods or services desired by the County. The issuance of an IFB will contain or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement.

PURCHASING AGENT: The Purchasing Agent employed by the Board of Supervisors of Fairfax County, Virginia.

REQUEST FOR PROPOSAL (RFP): A request for an offer from prospective Offerors which will indicate the general terms which are sought to be procured from the Offeror. The RFP will specify the evaluation factors to be used and will contain or incorporate by reference other contractual terms and conditions applicable to the procurement.

SOLICITATION: The process of notifying prospective bidders that the County wishes to receive bids on a set of requirements to provide goods or services. The notification of County requirements may consist of public advertising (newspaper, County Web Site, or other electronic notification), the mailing of Notices of Solicitation, Invitation for Bid (IFB) or Request for Proposal (RFP), the public posting of notices, issuance of an informal solicitation to include telephone calls to prospective bidders.

CONDITIONS OF BIDDING

3. **BID FORMS:** Unless otherwise specified in the solicitation, all bids must be (i) submitted on the forms provided by the County, including the bid Cover Sheet and Pricing Schedule(s); (ii) properly signed in ink in the identified spaces; and (iii) submitted in a sealed envelope or package.

If the bid prices or any other submissions differ on the copy of the submitted bid, the ORIGINAL copy shall prevail.

4. **LATE BIDS & MODIFICATIONS OF BIDS:**
 - a. Bids or proposals received after the date and time specified for receipt in the solicitation will not be considered.

General Conditions and Instructions to Bidders

- b. If an emergency, unanticipated event, or closing of County offices interrupts or suspends normal County business operations so that bids cannot be received at the County office designated for receipt of bids by the exact time specified in the solicitation, then bids will be due at the same time of day specified in the solicitation on the first work day that normal County business operations resume.
 - c. The official time used for receipt of bids/modifications is the time and date stamp clock located in the Department of Procurement & Material Management. No other clocks, calendars or timepieces are recognized. All bidders must ensure all bids/modifications are received prior to the scheduled due date/time.
5. **WITHDRAWAL OF BIDS:** Bids shall be withdrawn only as set forth in the Fairfax County Purchasing Resolution.
6. **ERRORS IN BIDS:** When an error is made in extending total prices, the unit bid price will govern. Erasures in bids must be initiated by the bidder. Bidders are cautioned to recheck their bids for possible error. Errors discovered after public opening cannot be corrected and the bidder will be required to perform if its bid is accepted.
7. **LABELING OF BIDS:** All bids and proposals submitted in response to a County solicitation must be submitted in a sealed envelope or package identified with the solicitation number, title, and bidder's name and address clearly marked on the outside of the envelope or package.
8. **ACCEPTANCE OF BIDS/BINDING 90 DAYS:** Unless otherwise specified, all formal bids submitted shall be binding for ninety (90) calendar days following bid opening date, unless extended by mutual consent of all parties.
9. **CONDITIONAL BIDS:** Conditional bids may be rejected in whole or in part.
10. **BIDS FOR ALL OR PART:** The Purchasing Agent reserves the right to make award on all items in the aggregate or on any of the items on an individual basis, whichever is in the best interest of the County. A bidder may restrict its bid to consideration in the group aggregate by so stating, but must name a single unit price on each item bid. Any bid in which the bidder names a total price for all the articles without quoting a unit price for each and every separate item may not be considered for award.
11. **AREA BIDS:** For the purchase and delivery of certain goods and services the County may be divided into Areas (e.g., Areas I, II, III, and IV). When such goods and services are included in the Pricing Schedule, bidders may bid on all areas or an individual area. A map showing the areas of the County will be furnished with the solicitation when required.
12. **RECEIPT OF BIDS:** Bids received prior to the time of opening will be securely kept, unopened by the County. No responsibility will attach to the Purchasing Agent or her representative for the premature opening of a bid not properly addressed and identified. Unless specifically authorized in the solicitation, telegraphic, electronic, or facsimile bids/modifications will not be considered by the County.
13. **BID OPENING:** All bids received in response to an Invitation for Bid (IFB) will be opened at the date, time and place specified, read publicly, and made available for inspection as provided in paragraph 62, General Conditions and Instructions to Bidders. The Purchasing Agent's representative assigned to open the bids will decide when the specified time for bid opening has arrived. Tabulations of bids received are posted on the County's website at: <http://www.fairfaxcounty.gov/procurement/bid-tab>

Proposals received in response to a Request for Proposal (RFP) will be made available as provided in Paragraph 62, General Conditions and Instructions to Bidders.
14. **OMISSIONS & DISCREPANCIES:** Any items or parts of any equipment listed in this solicitation that clearly necessary for the operation and completion of such equipment, but are: (i) not fully described by the County; or (ii) are omitted by the County from such specification, shall be considered a part of such equipment even if not directly specified or called for in the specifications.

If a bidder finds discrepancies or ambiguities in, or omissions from, the solicitation, including the drawings and/or specifications, it shall notify the Purchasing Agent at least five (5) days prior to the date set for the opening of bids. If necessary, the Purchasing Agent will send a written addendum for clarification to all bidders no later than three (3) days before the date set for opening of bids. Notifications regarding specifications will not be considered if received within five days of the date set for opening of bids.
15. **BIDDER INTERESTED IN MORE THAN ONE BID:** If more than one bid is offered by a bidder, directly or indirectly, all such bids may be rejected. A bidder who has quoted prices on work, materials, or supplies to a bidder is not disqualified from quoting prices to other bidders or firms submitting a bid directly for the work, materials or supplies.
16. **TAX EXEMPTION:** The County is exempt from the payment of any federal excise or any Virginia sales tax. Fairfax County's Federal Excise Tax Exemption Number is 54-74-0127K.
17. **PROHIBITION AGAINST UNIFORM PRICING:** The Purchasing Agent encourages open and competitive bidding by all possible means and endeavors to obtain the maximum degree of open competition on all purchase transactions using the methods of procurement authorized by the Fairfax County Purchasing Resolution. Each bidder, by virtue of submitting a bid, guarantees that it has not been a party with other bidders to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render void the bids of participating bidders. Any disclosure to or acquisition by a competitive bidder, in advance of the opening of the bids, of the terms or conditions of the bid submitted by another competitor may render the entire proceedings void and may require re-advertising for bids.

General Conditions and Instructions to Bidders

SPECIFICATIONS

18. **CLARIFICATION OF TERMS:** If any prospective bidder has questions about the specifications or other solicitation documents, the prospective bidder should contact the contract specialist whose name appears on the face of the solicitation no later than five working dates before the due date. Any revisions to the solicitation will be made only by addendum issued by the contract specialist.
19. **BRAND NAME OR EQUAL ITEMS:** Unless otherwise provided in the Invitation for Bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired. Any article that the County in its sole discretion determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The bidder is responsible for clearly and specifically identifying the product being offered and providing sufficient descriptive literature, catalog cuts and technical detail to enable the County to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make, or manufacturer specified. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the bidder clearly indicates in its bid that the product is an equivalent product, such bid will be considered to offer the brand name product referenced in the solicitation.
20. **SPECIFICATIONS:** When a solicitation contains a specification that states no substitutes, no deviation therefrom will be permitted and the bidder will be required to furnish articles in conformity with that specification.

The bidder must abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material, or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.

AWARD

21. **AWARD OR REJECTION OF BIDS:** The Purchasing Agent shall award the contract to the lowest responsive and responsible bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of the County to accept it. Awards made in response to a RFP will be made to the highest qualified Offeror whose proposal is determined, in writing, to be the most advantageous to the County taking into consideration the evaluation factors set forth in the RFP. The Purchasing Agent reserves the right to award a contract by individual items, in the aggregate, or in combination thereof, or to reject any or all bids and to waive any informality in bids received whenever such rejection or waiver is in the best interest of the County. Award may be made to as many bidders as deemed necessary to fulfill the anticipated requirements of Fairfax County. The Purchasing Agent also reserves the right to reject the bid of a bidder deemed to be a non-responsible bidder.

In determining the responsibility of a bidder, the following criteria will be considered:

- a. The ability, capacity and skill of the bidder to perform the contract or provide the service required;
 - b. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
 - c. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
 - d. The quality of performance of previous contracts or services;
 - e. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;
 - f. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
 - g. The quality, availability and adaptability of the goods or services to the particular use required;
 - h. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
 - i. Whether the bidder is in arrears to the County on debt or contract or is a defaulter on surety to the County or whether the bidder's County taxes or assessments are delinquent; and
 - j. Such other information as may be secured by the Purchasing Agent having a bearing on the decision to award the contract. If an apparent low bidder is not awarded a contract for reasons of non-responsibility, the Purchasing Agent shall so notify that bidder and shall have recorded the reasons in the contract file.
22. **NOTICE OF ACCEPTANCE/CONTRACT DOCUMENTS:** A written award (or Acceptance Agreement) mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the solicitation shall result in a binding contract. The following documents, which are included in the solicitation, are incorporated by reference in and made part of the resulting contract:
- a. County of Fairfax Solicitation Form (Cover Sheet) and other documents which may be incorporated by reference, if applicable
 - b. Acceptance Agreement
 - c. General Conditions and Instructions to Bidders
 - d. Special Provisions and Specifications
 - e. Pricing Schedule
 - f. Any Addenda/Amendments/Memoranda of Negotiations
23. **TIE-BIDS:** If all bids are for the same total amount or unit price (including authorized discounts and delivery times), and if the public interest will not permit the delay of re-advertisement for bids, the Purchasing Agent is authorized to award the contract to the tie bidder that has its principal place of business in the County, or if there be none, to the resident Virginia tie bidder, or if there be none, to one of the tie bidders by drawing lots in public; or the Purchasing Agent may purchase the goods or services

General Conditions and Instructions to Bidders

in the open market except that the price paid shall not exceed the lowest contract bid price submitted for the same goods or services. The decision of the County to make award to one or more such bidders shall be final.

24. PROMPT PAYMENT DISCOUNT:

- a. Unless otherwise specified in the solicitation, prompt payment discounts requiring payment in less than fifteen (15) days will not be considered in evaluating a bid for award. However, even though not considered in the evaluation, such discounts will be taken if payment is to be made within the discount period.
- b. If a discount for prompt payment is allowed, the discount period will begin on the date of receipt of a properly completed invoice or acceptance of materials or services, whichever is later.
- c. For determining acceptance of supplies in accordance with the provisions of the prompt payment discount paragraph, inspection and acceptance shall be accomplished only after examination (including testing) of supplies and services to determine whether the supplies and services conform to the contract requirements.

For the purpose of earning the discount, payment is deemed to be made as of the date of mailing of the County check or issuance of an Electronic Funds Transfer, or completion of a credit card transaction.

25. **INSPECTION-ACCEPTANCE:** Acceptance shall occur only after receipt and inspection provided such inspection, as appropriate, is accomplished within a reasonable time. The County reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
26. **DEFINITE BID QUANTITIES:** Where definite quantities are specifically stated, acceptance will bind the County to order quantities specified and to pay for, at contract prices, all such supplies or services delivered that meet specifications and conditions of the contract. However, the County will not be required to accept delivery of any balances unordered, as of the contract expiration date, unless the Contractor furnished the Purchasing Agent with a statement of unordered balances not later than ten (10) days after the termination date of the contract.
27. **REQUIREMENT BID QUANTITIES:** On "Requirement" bids, acceptance will bind the County to pay for, at unit bid prices, only quantities ordered and delivered. Where the County specifies estimated quantities, the Contractor shall not be required to deliver more than ten (10) percent in excess of the estimated quantity of each item, unless otherwise agreed upon.

CONTRACT PROVISIONS

28. **TERMINATION OF CONTRACTS:** Contracts will remain in force for full periods specified and/or until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and thereafter until all requirements and conditions shall have been met, unless:
 - a. Terminated prior to expiration date by satisfactory deliveries of entire contract requirements, or upon termination by the County for Convenience or Cause.
 - b. Extended upon written authorization of the Purchasing Agent and accepted by Contractor, to permit ordering of unordered balances or additional quantities at contract prices and in accordance with contract terms.
29. **TERMINATION FOR CONVENIENCE:** A contract may be terminated in whole or in part by the County in accordance with this clause whenever the Purchasing Agent determines that such a termination is in the best interest of the County. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. An equitable adjustment in the contract price shall be made for completed service, but no amount shall be allowed for anticipated profit on unperformed services.
30. **TERMINATION OF CONTRACT FOR CAUSE:**
 - a. If, through any cause, the Contractor fails to fulfill in a timely and proper manner its obligations under this contract, or if the Contractor violates any of the covenants, agreements, or stipulations of this contract, the County shall have the right to terminate the contract. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. In such event all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the contract shall, at the option of the County, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.
 - b. Termination of the Contract for Cause does not relieve the Contractor of liability to the County for damages sustained by the County by virtue of any breach of contract by the Contractor for the purpose of set off until such time as the exact amount of damages due to the County from the Contractor is determined.
31. **CONTRACT ALTERATIONS:** No alterations in the terms of a contract shall be valid or binding upon the County unless made in writing and signed by the Purchasing Agent or her authorized agent.
32. **SUBLETTING OF CONTRACT OR ASSIGNMENT OF CONTRACT FUNDS:** It is mutually understood and agreed that the Contractor shall not assign, transfer, convey, sublet or otherwise dispose of his or her contractual duties to any other person, firm or corporation, without the previous written consent of the Purchasing Agent. If the Contractor desires to assign its right to payment of the contract, Contractor shall notify the Purchasing Agent immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Contractor from its obligations or change the terms of the contract.

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33. **FUNDING:** The obligation of the County to pay compensation due the Contractor under the contract or any other payment obligations under any contract awarded pursuant to this contract is subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations. The County's obligations to make payments during subsequent fiscal years are dependent upon the same action. If such an appropriation is not made for any fiscal year, the contract shall terminate effective at the end of the fiscal year for which funds were appropriated and the County will not be obligated to make any payments under the contract beyond the amount appropriated for payment obligations under the contract. The County will provide the Contractor with written notice of non-appropriation of funds within thirty (30) calendar days after action is completed by the Board of Supervisors. However, the County's failure to provide such notice will not extend the contract into a fiscal year in which sufficient funds have not been appropriated.
34. **DELIVERY/SERVICE FAILURES:** If a Contractor (i) fails to deliver goods or services within the time specified or within a reasonable time as interpreted by the Purchasing Agent; or (ii) fails to make replacements or corrections of rejected articles or services when so requested, immediately or as directed by the Purchasing Agent, then the Purchasing Agent shall have the authority to purchase in the open market goods or services of comparable grade or quality to replace goods or services not delivered or rejected. On all such purchases, the Contractor shall reimburse the County, within a reasonable time specified by the Purchasing Agent, for any expense incurred in excess of contract prices. Such purchases shall be deducted from the contract quantities if applicable. Should public necessity demand it, the County reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the Purchasing Agent.
35. **NON-LIABILITY:** The Contractor shall not be liable in damages for delay in shipment or failure to deliver when such delay or failure is the result of fire, flood, strike, the transportation carrier, act of God, act of Government, act of an alien enemy or by any other circumstances which, in the Purchasing Agent's opinion, are beyond the reasonable control of the Contractor. Under such circumstances, however, the Purchasing Agent may, at her discretion terminate the contract.
36. **NON-DISCRIMINATION:** During the performance of this contract, the Contractor agrees as follows:
- a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
 - b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
 - d. The Contractor will include the provisions of the foregoing paragraphs a, b, and c above in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.
 - e. Contractor shall, throughout the term of this contract, comply with the Human Rights Ordinance, Chapter 11 of the Code of the County of Fairfax, Virginia, as reenacted or amended. Contractor shall further require that all of its subcontractors will comply with the Human Rights Ordinance, Chapter 11 of the Code of the County of Fairfax, Virginia, as reenacted or amended.
37. **SMALL, WOMEN-OWNED, AND MINORITY-OWNED BUSINESS USE:**
- a. It is the declared policy of the County of Fairfax, through its Small and Minority Business Enterprise Program, that Fairfax County and its employees undertake every effort to increase opportunity for use of small or minority businesses in all aspects of procurement to the maximum extent feasible.
 - b. Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to small, women and minority businesses.
 - c. Where Federal grants or monies are involved, it is the policy of Fairfax County, through its agents and employees, to comply with the requirements set forth in the 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as they pertain to small and minority business use.
38. **GUARANTEES & WARRANTIES:** All guarantees and warranties required shall be furnished by the Contractor and shall be delivered to the Purchasing Agent before contract execution. Unless otherwise stated, manufacturer's standard warranty applies.
39. **PRICE REDUCTION:** If the Contractor makes a general price reduction for any material covered by the solicitation to customers generally, an equivalent price reduction shall apply to this contract for the duration of the contract period (or until the price is further reduced). Such price reduction shall be effective at the same time and in the same manner as the reduction in the price to customers generally. For purpose of this provision, a "general price reduction" shall mean any horizontal reduction in the price of an article or service offered (1) to Contractor's customers generally, or (2) in the Contractor's price schedule for the class of customers (i.e., wholesalers, jobbers, or retailers), which was used as the basis for bidding on this solicitation. An occasional sale at a lower price, or sale of distressed merchandise at a lower price is not a "general price reduction" under this provision. The Contractor shall submit its invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the "Price Reduction" provision of the contract documents. The Contractor will also within ten days of any general price reduction notify the Purchasing Agent of such reduction by letter. FAILURE TO DO SO MAY RESULT IN TERMINATION OF THE CONTRACT.

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40. **CHANGES:** If in the Purchasing Agent's opinion, it becomes proper or necessary in the execution of this contract to make any change in design, or to make any alterations that will increase the expense, the Purchasing Agent shall determine an equitable adjustment to the Contractor's compensation.

No payment shall be made to the Contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the Contractor are first expressly authorized and ordered in writing by contract amendment or otherwise furnished by the Purchasing Agent.

41. **PLACING OF ORDERS:** Orders against contracts will be placed with the Contractor by Purchase Order or Procurement Card (P-Card) executed and released by the Purchasing Agent or their designee. When a Blanket Purchase Order has been released by the Purchasing Agent, telephonic orders may be placed directly with the Contractor by authorized personnel in the ordering Agency.

DELIVERY PROVISIONS

42. **SHIPPING INSTRUCTIONS - CONSIGNMENT:** Unless otherwise specified in the solicitation each case, container, package, etc., delivered under the contract must be plainly marked, stating the Contractor's name, purchase order number, and delivery address as indicated in the order. Deliveries must be made within the hours of 8:00 AM - 3:00 PM. Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the receiver at the delivery point. No deliveries will be accepted on Saturdays, Sundays and holidays, unless previous arrangements have been made. It shall be the responsibility of the Contractor to insure compliance with these instructions for items that are drop-shipped.

43. **RESPONSIBILITY FOR MATERIALS OR GOODS TENDERED:** Unless otherwise specified in the solicitation, the Contractor is responsible for the materials or supplies covered by the contract until they are delivered at the delivery point designated by the County. The Contractor bears all risk of loss on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the County may return the rejected materials or supplies to the Contractor at its risk and expense or dispose of them as the County's own property.

44. **INSPECTIONS:** Inspection and acceptance of materials or supplies will be made after delivery at the designated destinations unless otherwise stated. If inspection is made after delivery at the designated destination, the County will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection is conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the County for such materials or supplies as are not in accordance with the specifications.

45. **COMPLIANCE:** Delivery must be made as ordered and in accordance with the contract or as directed by the Purchasing Agent when not in conflict with the contract. The decision of the Purchasing Agent as to reasonable compliance with delivery terms shall be final. If the Contractor claims the delay in receipt of goods was caused by the County, the Contractor must provide evidence satisfactory to the Purchasing Agent supporting the Contractor's claim. Any request for extension of delivery time from that specified in the contract must be approved by the Purchasing Agent, such extension applying only to the particular item or shipment affected. If the Contractor is delayed by the County, there shall be added to the time of completion a time equal to the period of such delay caused by the County. However, the Contractor shall not be entitled to claim damages or extra compensation for such delay or suspension. These conditions may vary for construction contracts. See contract for the individual instructions.

46. **POINT OF DESTINATION:** All materials shipped to the County must be shipped F.O.B. DESTINATION unless otherwise stated in the contract or purchase order. The materials must be delivered to the "Ship to" address indicated on the purchase order.

47. **ADDITIONAL CHARGES:** Unless bought F.O.B. "shipping point" and Contractor prepays transportation, no delivery charges shall be added to invoices except when express delivery is authorized and substituted on orders for the method specified in the contract. In such cases, difference between freight or mail and express charges may be added to invoice.

48. **METHOD AND CONTAINERS:** Unless otherwise specified, goods shall be delivered in commercial packages in standard commercial containers that are constructed to ensure acceptance by common or other carrier for safe transportation to the point of delivery. Containers become the property of the County unless otherwise specified by bidder.

49. **REPLACEMENT:** Materials or components that have been rejected by the Purchasing Agent, in accordance with the terms of a contract, shall be replaced by the Contractor at no cost to the County.

50. **PACKING SLIPS OR DELIVERY TICKETS:** All shipments must be accompanied by Packing Slips or Delivery Tickets and must contain the following information for each item delivered:

- a. The Purchase Order Number,
- b. The Name of the Article and Stock Number (Supplier's),
- c. The Quantity Ordered,
- d. The Quantity Shipped,
- e. The Quantity Back Ordered,
- f. The Name of the Contractor.

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Contractors are cautioned that failure to comply with these conditions is sufficient reason for the County's refusal to accept the goods.

BILLING

51. **BILLING:** Billing for the Fairfax County Public Schools and for County agencies: Unless otherwise specified on the contract or purchase order (PO), invoices are to be submitted for each purchase order immediately upon completion of the shipment or services. Invoices should be mailed to the "BILL TO" address on the PO or to the appropriate address specified in the contract.

PAYMENTS

52. **PAYMENT:** Payment shall be made after satisfactory performance that is in accordance with all provisions of the contract, and upon receipt of a properly completed invoice. The County reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provision of the contract or any subsequent modifications.
53. **PARTIAL PAYMENTS:** Unless otherwise specified, partial payments will be made upon acceptance of materials or services so invoiced if in accordance with completion date. However, up to 5 percent (5%) of the value of the entire order may be retained until completion of contract.
54. **PAYMENT FOR EQUIPMENT, INSTALLATION, AND TESTING:** When equipment requires installation (which includes erection, setting up or placing in position, service, or use) and testing, and the installation or testing is delayed, payment may be made based on 50% of the contract price when such equipment is delivered on the site. A further allowance of 25% may be made when the equipment is installed and ready for test. The balance shall be paid after the equipment is tested and found to be satisfactory. If the equipment must be tested, but installation is not required to be made by the Contractor or if the equipment must be installed but testing is not required, payment may be made based on 75% at the time of delivery and the balance shall be paid after satisfactory test or installation is completed.

GENERAL

55. **GENERAL GUARANTY:** Contractor agrees to:
- Save the County, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a contract for which the Contractor is not the patentee, assignee, Solar Provider or owner.
 - Warrant that when the contract includes a software license, or use of licensed software, the Contractor is the owner of the Software or otherwise has the right to grant to the County the license to use the Software granted through the Contract without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.
 - Protect the County against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
 - Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible.
 - Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules, regulations, and policies of the County.
 - Protect the County from loss or damage to County owned property while it is in the custody of the Contractor.
56. **SERVICE CONTRACT GUARANTY:** Contractor agrees to:
- Furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions of those documents provided that the County may reduce the said services at any time.
 - Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.
 - All work and services rendered in strict conformance to all laws, statutes, and ordinances and the applicable government rules, regulations, methods, and procedures.
 - Allow services to be inspected or reviewed by an employee of the County at any reasonable time and place selected by the County. The County is under no obligation to compensate Contractor for any services not rendered in strict conformity with the contract.
 - Stipulate that the presence of a County Inspector shall not lessen the obligation of the Contractor for performance in accordance with the contract requirements, or be deemed a defense on the part of the Contractor for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Agent.
57. **INDEMNIFICATION:**
- General Indemnification: Contractor must indemnify, keep and save harmless, and defend the County, its agents, officials, employees and volunteers against Claims that may accrue or arise against the County as a result of the granting a contract, if the Claim was caused by the negligence or error, or omission of the Contractor, its employees, its subcontractor, or its subcontractor's employees. As used in this Section, a Claim includes injuries, death, damage to property, breach of data security, suits, liabilities, judgments, or costs and expenses. Upon request by the County, the

General Conditions and Instructions to Bidders

Contractor must at its own expense: appear, defend, and pay all attorney's fees and all costs and other expenses related to the Claim. If, related to a Claim, any judgment is rendered against the County or a settlement reached that requires the County to pay money, the Contractor must at its own expense satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this Contract, or otherwise provided by the Contractor, does not limit the Contractor's responsibility to indemnify, keep and save harmless, and defend the County as provided in this Contract.

- b. **Intellectual Property Indemnification:** In addition to the General Indemnification, Contractor will indemnify the County for and defend the County against third-party claims for infringement of any valid United States patent, trademark or copyright by the Contractor's products, software, services, or deliverables. Contractor must indemnify the County for any loss, damage, expense or liability, including costs and reasonable attorney's fees that may result by reason of any such claim. In the event of a claim covered by this subparagraph, and in addition to all other obligations of Contractor in this Paragraph 57, Contractor must at its expense and within a reasonable time: (a) obtain a right for the County to continue using such products and software, or allow Contractor to continue performing the Services; (b) modify such products, software, services or deliverables to make them non-infringing; or (c) replace such products or software with a non-infringing equivalent. If, in the Contractor's reasonable opinion, none of the foregoing options is feasible Contractor must immediately notify the County and accept the return of the products, software, services, or deliverables, along with any other components rendered unusable as a result of the infringement or claimed infringement, and refund to the County the price paid to Contractor for such components as well as any pre-paid fees for the allegedly infringing services, including license, subscription fees, or both. Nothing in Paragraph 57, however, relieves the Contractor of liability to the County for damages sustained by the County by virtue of any breach of contract related to a third-party infringement claim.
- c. **Right to Participate in Defense.** The County may, at its sole expense, participate in the defense or resolution of a Claim. Contractor will have primary control of the defense and resolution of the Claim, except when such defense or resolution requires the County to (i) admit liability or wrongdoing; or (ii) to pay money. In either of these cases Contractor must obtain the County's prior written consent before entering into such settlement or resolution.
- d. **No Indemnification by the County.** The parties agree that under applicable law the County cannot indemnify or defend the Contractor. To the extent any promise or term contained in this Contract, including any exhibits, attachments, or other documents incorporated by reference therein, includes an indemnification or obligation to defend by the County, that promise, or term is stricken from this Contract and of no effect.

58. OFFICIALS NOT TO BENEFIT:

- a. Each bidder or Offeror shall certify, upon signing a bid or proposal, that to the best of their knowledge no Fairfax County official or employee having official responsibility for the procurement transaction, or member of their immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received, this fact shall be disclosed with the bid or proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.
- b. Whenever there is reason to believe that a financial benefit of the sort described in paragraph "a" has been or will be received in connection with a bid, proposal or contract, and that the Contractor has failed to disclose such benefit or has inadequately disclosed it, the County Executive, as a prerequisite to payment pursuant to the contract, or at any other time, may require the Contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.
- c. In the event the bidder or Offeror has knowledge of benefits as outlined above, this information should be submitted with the bid or proposal. If the above does not apply at time of award of contract and becomes known after inception of a contract, the bidder or Offeror shall address the disclosure of such facts to the Fairfax County Purchasing Agent, 12000 Government Center Parkway, Suite 427, Fairfax, Virginia 22035-0013. Relevant Invitation/Request for Proposal Number (see cover sheet) should be referenced in the disclosure.

59. LICENSE REQUIREMENT: All firms doing business in Fairfax County, shall obtain a license as required by Chapter 4, Article 7, of The Code of the County of Fairfax, Virginia, as amended, entitled "Business, Professional and Occupational Licensing (BPOL) Tax." Questions concerning the BPOL Tax should be directed to the Department of Tax Administration, telephone (703) 222-8234 or visit: <https://www.fairfaxcounty.gov/taxes/business/understanding-bpol-tax>. The BPOL Tax number must be indicated in the space provided on the Cover Sheet, "Fairfax License Tax No." when appropriate.

60. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH: A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a Fairfax County pursuant to the Fairfax County Purchasing Resolution shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. Fairfax County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

61. COVENANT AGAINST CONTINGENT FEES: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the County shall have the right to terminate or suspend this contract without liability to the County or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

62. VIRGINIA FREEDOM OF INFORMATION ACT: All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act except as provided below:

General Conditions and Instructions to Bidders

- a. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
- b. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the County decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract. Any competitive negotiation Offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award except in the event that the County decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to the public inspection only after award of the contract except as provided in paragraph "c" below. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
- c. Trade secrets or proprietary information submitted by a bidder, Offeror or Contractor in connection with a procurement transaction or prequalification application submitted pursuant to the prequalification process identified in the Special Provisions, shall not be subject to the Virginia Freedom of Information Act; however, the bidder, Offeror or Contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.
- d. Nothing contained in this section shall be construed to require the County, when procuring by "competitive negotiation"(Request for Proposal), to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous to the County.
- e. The County cannot maintain as confidential any information, data, or records obtainable through the Virginia Freedom of Information or similar law. This includes records or information that have not been properly designated as trade secret or proprietary information pursuant to Va. Code Ann. § 2.2-4342(F).

BIDDER/CONTRACTOR REMEDIES

63. INELIGIBILITY:

- a. Any person or firm suspended or debarred from participation in County procurement shall be notified in writing by the Purchasing Agent.
 - 1. The Notice of Suspension shall state the reasons for the actions taken and such decision shall be final unless the person or firm appeals within ten (10) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.
 - 2. The Notice of Debarment shall state the reasons for the actions taken and the decision shall be final unless the person or firm appeals within ten (10) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.
- b. The Purchasing Agent shall have the authority to suspend or debar a person or firm from bidding on any contract for the causes stated below:
 - 1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
 - 2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County Contractor;
 - 3. Conviction under the state or federal antitrust statutes arising out of the submission of bids or proposals;
 - 4. Violation of contract provisions, as set forth below, of a character which is regarded by the Purchasing Agent to be so serious as to justify suspension or debarment action:
 - a. failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - b. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the Contractor shall not be considered to be a basis for suspension or debarment;
 - 5. Any other cause the Purchasing Agent determines to be so serious and compelling as to affect responsibility as a Contractor, such as debarment by another governmental entity for any cause listed herein, or because of prior reprimands;
 - 6. The contractor has abandoned performance, been terminated for default on a Fairfax County project, or has taken any actions that inure to the detriment of Fairfax County or a Fairfax County project;
 - 7. The Contractor is in default on any surety bond or written guarantee on which Fairfax County is an obligee.
- c. If, upon appeal, it is determined that the action taken by the Purchasing Agent was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief available to the person or firm shall be restoration of eligibility. The person or firm may not institute legal action until all statutory requirements have been met.

64. APPEAL OF DENIAL OF WITHDRAWAL OF BID:

- a. A decision denying withdrawal of a bid submitted by a bidder or Offeror shall be final and conclusive unless the bidder appeals the decision within ten (10) days after receipt of the decision by instituting legal action as provided in the Code of Virginia. The bidder or Offeror may not institute legal action until all statutory requirements have been met.
- b. If no bid bond was posted, a bidder refused withdrawal of bid under the provisions of Article 2, Section 4.A.8, of the Fairfax County Purchasing Resolution, prior to appealing, shall deliver to the County a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.
- c. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

General Conditions and Instructions to Bidders

65. APPEAL OF DETERMINATION OF NONRESPONSIBILITY:

- a. Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular County contract shall be notified in writing by the Purchasing Agent. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days of receipt of the notice by instituting legal action as provided in the Code of Virginia. The bidder may not institute legal action until all statutory requirements have been met.
- b. If, upon appeal, it is determined that the decision of the Purchasing Agent was arbitrary or capricious and the award for the particular County contract in question has not been made, the sole relief available to the bidder shall be a finding that the bidder is a responsible bidder for the County contract in question. Where the award has been made and performance has begun, the County may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing Contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.

66. PROTEST OF AWARD OR DECISION TO AWARD:

- a. Any bidder or Offeror may protest the award or decision to award a contract by submitting a protest in writing to the Purchasing Agent, or an official designated by the County of Fairfax, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. Any potential bidder or Offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in Article 2, Section 2, of the Fairfax County Purchasing Resolution. However, if the protest of any actual or potential bidder or Offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection under Article 2, Section 4.D of the Fairfax County Purchasing Resolution, then the time within which the protest must be submitted shall expire ten days after those records are available for inspection by such bidder or Offeror under Article 2, Section 4.D, or at such later time as provided herein. No protest shall lie for a claim that the selected bidder or Offeror is not a responsible bidder or Offeror. The written protest shall include the basis for the protest and the relief sought. The Purchasing Agent shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken. This decision shall be final unless the bidder or Offeror appeals within ten (10) days of receipt of the written decision by instituting legal action as provided in the Code of Virginia. Nothing in this section shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation for Bid or Request for Proposal.
- b. If prior to award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Purchasing Agent shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be declared void by the County. Where the award has been made and performance has begun, the Purchasing Agent may declare the contract void upon a finding that this action is in the best interest of the County. Where a contract is declared void, the performing Contractor shall be compensated for the cost of performance at the rate specified in the contract up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.
- c. Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this article shall not be affected by the fact that a protest or appeal has been filed.
- d. An award need not be delayed for the period allowed a bidder or Offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

67. CONTRACTUAL DISPUTES:

- a. Any dispute concerning a question of fact as a result of a contract with the County which is not disposed of by agreement shall be decided by the Purchasing Agent, who shall reduce her decision to writing and mail or otherwise forward a copy to the Contractor within ninety (90) days. The decision of the Purchasing Agent shall be final and conclusive unless the Contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A Contractor may not institute legal action, prior to receipt of the Purchasing Agent's decision on the claim, unless the Purchasing Agent fails to render such decision within the time specified.
- b. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

68. LEGAL ACTION: No bidder, Offeror, potential bidder or Offeror, or Contractor shall institute any legal action until all statutory requirements have been met.

69. VENUE: This contract and its terms, including but not limited to, the parties' obligations, the performance due, and the remedies available to each party, are governed, construed, and interpreted in accordance with the laws of the Commonwealth of Virginia. Any jurisdiction's choice of law, conflicts of laws, rules, or provisions that would cause the application of any laws other than those of the Commonwealth of Virginia do not apply. Any and all disputes, claims, and causes of action arising out of or in any way connected with this contract or its performance must be brought in the applicable court of Fairfax County, or in the United States District Court for the Eastern District of Virginia, Alexandria Division.

70. COOPERATIVE PURCHASING: The County or any entity identified in the Fairfax County Purchasing Resolution, Article 1, Section 3 may participate in, sponsor, conduct or administer a cooperative procurement agreement as set forth in the Fairfax County Purchasing Resolution.

General Conditions and Instructions to Bidders

71. **DRUG FREE WORKPLACE:** During the performance of a contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a Contractor in accordance with this section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.
72. **IMMIGRATION REFORM AND CONTROL ACT:** Contractor agrees that it does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.
73. **AUDIT OF RECORDS:** The parties agree that County or its agent must have access to and the right to examine any books, documents, papers, and records of the Contractor involving transactions related to the Contract or compliance with any clauses thereunder, for a period of three (3) years after final payment. The contractor must include this requirement in all subcontracts related to this Contract.
74. **NONVISUAL ACCESS:** All information technology, which is purchased or upgraded by the County under this contract, must comply with the following access standards from the date of purchase or upgrade until the expiration of the Contract:
- a. Effective, interactive control and use of the technology (including the operating system), applications programs, and format of the data presented, shall be readily achievable by nonvisual means;
 - b. the technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom the blind or visually impaired individual interacts;
 - c. Nonvisual access technology shall be integrated into networks used to share communications among employees, program participants, and the public; and
 - d. The technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired. A covered entity may stipulate additional specifications in any procurement.
 - e. Compliance with the nonvisual access standards set out this Section is not required if the Board of Supervisors determines that (i) the information technology is not available with nonvisual access because the essential elements of the information technology are visual and (ii) nonvisual equivalence is not available.

APPROVED:

/S/ Elizabeth D. Teare
COUNTY ATTORNEY

/S/ Cathy A. Muse
COUNTY PURCHASING AGENT

OFFEROR DATA SHEET

NAME OF OFFEROR: _____

ADDRESS: _____

E-MAIL ADDRESS: _____

Name and e-mail addresses of both service and fiscal representatives (Key Personnel) who would handle this account.

Service Representative: _____
Telephone Number: () _____
E-Mail Address: _____

Fiscal Representative: _____
Telephone Number: () _____
E-Mail Address: _____

Payment Address, if different from above:

BUSINESS CLASSIFICATION SCHEDULE

PLEASE CLASSIFY YOUR BUSINESS/ORGANIZATION BY MARKING IN STEP 1. STEP 2 IS OPTIONAL. This designation is requested of all business/organizations including publicly traded corporations, non-profits, sheltered workshops, government organizations, partnerships, sole proprietorships, etc. Fairfax County does not certify business classifications nor does it establish preferences or set-asides for specific classifications.

Examples:

- A small, Asian women-owned business would mark "Small" in Step 1, then "Women-Owned" and "Minority-Owned" in Step 2
- A small, service-disabled veteran and women-owned business would mark "Small" in Step 1, then "Women-Owned" and "Service-Disabled Veteran-Owned" in Step 2
- A government agency/public body would ONLY mark "Government Agency/Public Body" in Step 1

NAME OF BUSINESS:

LAST 4 DIGITS OF TIN/EIN: _____ **SIGNATURE:** _____

Step 1: Please indicate the classification of your business/organization. Select ONLY one (1) option.

☐ Small ☐ Large ☐ Non-Profit ☐ Government Agency/Public Body ☐ Shelter Workshop

Step 2 (OPTIONAL): Please indicate what type of ownership your business/organization consists of. You may choose MORE than one (1) option.

☐ Women-Owned ☐ Minority-Owned ☐ Service-Disabled Veteran-Owned

DEFINITIONS

Small Business/Organization - "Small business" means a business that is at least 51% independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years. One or more of these individual owners shall control both the management and daily business operations of the small business.

Minority Business - is a business concern that is at least 51% owned by one or more minority individuals or in the case of a corporation, partnership or limited liability company, or other entity, at least 51% of the equity ownership interest in the corporation, partnership or limited company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals. Such individuals shall include Asian American, African American, Hispanic American, Native American, Eskimo, or Aleut.

Women-Owned Business - a business concern that is at least 51% owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership or limited company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women who are U.S. citizens or legal resident aliens.

Service-Disabled Veteran - means a veteran who (i) served on active duty in the United States military ground, naval, or air service, (ii) was discharged or released under conditions other than dishonorable, and (iii) has a service - connected disability rating fixed by the United States Department of Veterans Affairs.

Service-Disabled Veteran-Owned Business - is a business that is at least 51 percent owned by one or more service -disabled veterans or, in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more individuals who are service-disabled veterans and both the management and daily business operations are controlled by one or more individuals who are service-disabled veterans.

Shelter Workshop - a private non-profit, state, or local government institution that provides employment opportunities for individuals who are developmentally, physically, or mentally impaired, to prepare for gainful work in the general economy. These services may include physical rehabilitation, training in basic work and life skills (e.g., how to apply for a job, attendance, personal grooming, and handling money), training on specific job skills, and providing work experience in the workshop.

VIRGINIA STATE CORPORATION COMMISSION (SCC)
REGISTRATION INFORMATION

The Offeror:

☐ is a corporation or other business entity with the following SCC identification number:

-OR-

☐ is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust **-OR-**

☐ is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the bidder in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from bidder's out-of-state location) **-OR-**

☐ is an out-of-state business entity that is including with this bid/proposal an opinion of legal counsel which accurately and completely discloses the undersigned bidder's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

Please check the following box if you have not checked any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for proposals: ☐

Request for Protection of Trade Secrets or Proprietary Information Pursuant to Article 2, Section 4.D.3 of the Purchasing Resolution and Va. Code Ann. § 2.2-4342(F)

Request for Protection of Trade Secrets or Proprietary Information Pursuant to Article 2, Section 4.D.3 of the Purchasing Resolution and Va. Code Ann. § 2.2-4342(F)

This form is provided as a courtesy to assist vendors desiring to protect trade secrets and proprietary information from disclosure under the Virginia Freedom of Information Act. In order to receive protection, you must (a) invoke the protection prior to or upon submission of the data or other materials, (b) identify the data or other materials to be protected, and (c) state the reason(s) why protection is necessary. Each of these requirements must be met with respect to the particular information for which protection is sought.

a) Submission of this form with or without other reference to Article 2, Section 5.C.3 of the Purchasing Resolution or Va. Code Ann. § 2.2-4342(F) shall satisfy the invocation requirement with respect to data or other materials clearly identified herein.

b) Identify the specific data or other material for which protection is sought. Suggested forms of designation include: listing the Proposal Section, Tab, or Page numbers; attaching to this form a copy of the table of contents from your Proposal with the relevant trade secret or proprietary contents highlighted; or identifying herein a document stamp used within the Proposal to designate the relevant materials (e.g. "all portions of the Proposal marked "Proprietary" or "Trade Secret"). NOTE: The classification of an entire proposal document, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable.

c) For each distinct section of data or other information identified in response to paragraph b), above, state the reason(s) why protection is necessary. NOTE: Your explanation must do more than simply stating the materials are "proprietary," or "trade secrets," or "not publicly available." You may attach additional sheets to this form as needed.

Use of this form does not guarantee protection. It is incumbent upon each vendor to meet the prerequisites for protection of their trade secrets or proprietary information. Provision of this form does not constitute legal advice; you are encouraged to consult with your legal counsel prior to designation of materials for protection.

DATA/MATERIAL TO BE PROTECTED	SECTION NO., & PAGE NO.	REASON WHY PROTECTION IS NECESSARY

1.1 BUSINESS, PROFESSIONAL AND OCCUPATIONAL LICENSE

All firms located or operating in Fairfax County must obtain a Business, Professional and Occupational License (BPOL) as required by Chapter 4, Article 7, of the Code of the County of Fairfax, Virginia. In order for the Department of Tax Administration to determine your BPOL requirement prior to contract award, it is necessary for you to provide the following information:

- If you currently have a Fairfax County business license, please submit a copy with your proposal.
- Do you have an office in: Virginia ☐ Yes ☐ No
 Fairfax County ☐ Yes ☐ No
- Date business began/will begin work in Fairfax County

A detailed description of the business activity that will take place in Fairfax County. If business is located outside of Fairfax County, give the percentage of work actually to be done in the County

Signature

Date

Complete and return this form or a copy of your current Fairfax County Business License with your proposal.

SECTION 2 CERTIFICATION REGARDING DEBARMENT OR SUSPENSION

In compliance with contracts and grants agreements applicable under the U.S. Federal Awards Program, the following certification is required by all Offerors submitting a proposal in response to this Request for Proposal:

1. The Offeror certifies, to the best of its knowledge and belief, that neither the Offeror nor its Principals are suspended, debarred, proposed for debarment, or declared ineligible for the award of contracts from the United States federal government procurement or nonprocurement programs, or are listed in the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* issued by the General Services Administration.
2. "Principals," for the purposes of this certification, means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions).
3. The Offeror shall provide immediate written notice to the Fairfax County Purchasing Agent if, at any time prior to award, the Offeror learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. This certification is a material representation of fact upon which reliance will be placed when making the award. If it is later determined that the Offeror rendered an erroneous certification, in addition to other remedies available to The County, the Fairfax County Purchasing Agent may terminate the contract resulting from this solicitation for default.

Printed Name of Representative: _____

Signature/Date: _____/_____

Company Name: _____

Address: _____

City/State/Zip: _____

SSN or TIN No: _____

Certification Regarding Ethics in Public Contracting

In submitting this bid or proposal, and signing below, Bidder/Offeror certifies the following in connection with a bid, proposal, or contract:

Check one:

☐

1. I have not given any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value to any public employee or official have official responsibility for a procurement transaction.

☐

2. I have given a payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value to a public employee or official have official responsibility for a procurement transaction, but I received consideration in substantially equal or greater value in exchange.

If 2 is selected, please complete the following:

Recipient: _____

Date of Gift: _____

Description of the gift and its value:

Description of the consideration received in exchange and its value:

Printed Name of Bidder/Offeror Representative: _____

Signature/Date: _____ / _____

Company Name: _____

Company Address: _____

City/State/Zip: _____

This certification supplements but does not replace the requirements set forth in paragraph 64 (OFFICIALS NOT TO BENEFIT) of the General Conditions and Instructions to Bidders included in this solicitation

Sample Listing of Local Public Bodies

REFERENCE SECTION 28 OF THE SPECIAL PROVISIONS, "USE OF CONTRACTS BY OTHER PUBLIC BODIES." You may select those public bodies that this contract may be extended to; a "blank" will signify a "NO" response:

	Alexandria Public Schools, VA		Manassas Park, Virginia
	Alexandria Sanitation Authority		Maryland-National Capital Park & Planning Commission
	Alexandria, Virginia		Maryland Transit Administration
	Arlington County, Virginia		Metropolitan Washington Airports Authority
	Arlington Public Schools, Virginia		Metropolitan Washington Council of Governments
	Bladensburg, Maryland		Montgomery College
	Bowie, Maryland		Montgomery County, Maryland
	Charles County Public Schools, MD		Montgomery County Public Schools
	College Park, Maryland		Northern Virginia Community College
	Culpeper County, Virginia		Omni Ride
	District of Columbia		Potomac & Rappahannock Trans. Commission
	District of Columbia Courts		Prince George's County, Maryland
	District of Columbia Public Schools		Prince George's County Public Schools
	DC Water and Sewer Authority		Prince William County, Virginia
	Fairfax County Water Authority		Prince William County Public Schools, VA
	Fairfax, Virginia (City)		Prince William County Service Authority
	Falls Church, Virginia		Rockville, Maryland
	Fauquier County Government and Schools, Virginia		Spotsylvania County Schools, Virginia
	Frederick, Maryland		Stafford County, Virginia
	Frederick County Maryland		Takoma Park, Maryland
	Gaithersburg, Maryland		Upper Occoquan Sewage Authority
	Greenbelt, Maryland		Vienna, Virginia
	Herndon, Virginia		Virginia Railway Express
	Leesburg, Virginia		Washington Metropolitan Area Transit Authority
	Loudoun County, Virginia		Washington Suburban Sanitary Commission
	Loudoun County Public Schools		Winchester, Virginia
	Loudoun County Sanitation Authority		Winchester Public Schools
	Manassas, Virginia		
	Manassas City Public Schools, Virginia		

Complete and return this form with your proposal.

Vendor Name

STANDARD POWER PURCHASE AGREEMENT PRICING MODEL
(TO BE CUSTOMIZED FOR EACH PROJECT SITE)

Customer: FCG / FCPA / FCPS / FCRHD (circle one) Phase I

Project Name/Site: _____

Project Address: _____

System Type Roof / Canopy Mount/ Ground Mount (circle one) *[If proposing more than one mount-type option for a single site, submit separate Pricing Model for each mount-type proposed.]*

Capacity AC (kW) _____

Year	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
Escalator Percentage	■	■	■	■	■																									
Price/kWh AC																														
System Buy-out Option (Y/N)																														

Total price/kWh AC including escalator over proposed term of Contract: In Words: _____

In Numbers: _____

MASTER LIST OF FACILITIES

PHASE I										
FACILITY		FACILITY DATA						SOLAR TYPE ACCEPTED		
Facility Name	Address	Roof Age (Years)	Warranty (years)	Gross Building sq. ft.	Electric Utility	Average Annual Electric Consumption (kWh)	Annual Peak Electric Demand (kW)	Building Roof Mount	Parking Lot Mount/ Canopy	Parking Garage Mount/ Canopy
FAIRFAX COUNTY GOVERNMENT FACILITIES										
Animal Shelter	4500 West Ox Road, Fairfax	2	18	29,000	Dominion	876,900	210	Yes	Yes	N/A
Burke Center VRE	10399 Premier Court, Burke	N/A	N/A	1510 spaces	Dominion	165,380	32	N/A	Yes	N/A
Girl's Probation House	12720 Lee Highway, Fairfax	11	1	11,397	Dominion	129,733	35	Yes	Yes	N/A
Great Falls Volunteer Fire Station # 12	9916 Georgetown Pike, Great Falls	8	2	18,700	Dominion	209,646	46	Yes	Yes	N/A
Gum Springs Community Center	8100 Fordson Road, Alexandria	7	13	53,070	Dominion	566,071	220	Yes	Yes	N/A
Herrity Building	12055 Government Center Parkway, Fairfax 22035	1	29	247,000	Dominion	5,022,720	1,860	Yes	Yes	No
John Marshall Library	6209 Rose Hill Drive, Alexandria	1	19	14,685	Dominion	210,567	63	Yes	Yes	N/A
Jermantown Vehicle and Fire Apparatus Maintenance Facility	3609 Jermantown Road, Fairfax	11	9	42,642	Dominion	499,260	150	Yes	Yes	N/A
Lillian Carey Center	5920 Summers Lane, Falls Church	6	14	24,812	Dominion	370,667	126	Yes	Yes	N/A
Mason District Government Center and Police Station	6507 Columbia Pike, Annandale	11	9	33,600	Dominion	566,933	155	Yes	Yes	N/A
McLean Government Center and Police Station	1437 Balls Hill Road, McLean	4	16	39,200	Dominion	616,747	108	Yes	Yes	N/A

MASTER LIST OF FACILITIES

PHASE I										
FACILITY		FACILITY DATA						SOLAR TYPE ACCEPTED		
Facility Name	Address	Roof Age (Years)	Warranty (years)	Gross Building sq. ft.	Electric Utility	Average Annual Electric Consumption (kWh)	Annual Peak Electric Demand (kW)	Building Roof Mount	Parking Lot Mount/ Canopy	Parking Garage Mount/ Canopy
Merrifield Center	8221 Willow Oaks Corporate Drive, Fairfax 22031	3	17	161,454	Dominion	3,453,600	1,196	Yes	No	Yes
Merrifield Center Garage	8221 Willow Oaks Corporate Drive, Fairfax 22031	N/A	N/A	230,000	Dominion			N/A	No	Yes
Newington Vehicle Maintenance Facility	6900 Newington Road, Newington	6	14	94,000	Dominion	1,236,373	293	Yes	Yes	N/A
North County Government Center and Police Station	1801 Cameron Glen Drive, Reston	4	16	36,600	Dominion	561,339	156	Yes	Yes	N/A
Pennino Building	12011 Government Center Parkway, Fairfax 22035	1	29	281,810	Dominion	4,718,400	1,559	Yes	Yes	No
Pohick Regional Library	6450 Sydenstricker Road, Burke	3	17	24,367	Dominion	314,064	132	Yes	Yes	N/A
Providence Community Center and Board Office	3001 Vaden Dr., Fairfax	5	15	32,091	Dominion	519,707	181	Yes	Yes	N/A
Public Safety Headquarters & Parking Garage	12099 Government Center Parkway, Fairfax	2	18	560,332	Dominion	4,078,400	1,633	Yes	Yes	Yes
Reston Community Center	2310 Colts Neck Road, Reston, VA 20191	2 (for the area suitable for solar)	18	50,000	Dominion	1,740,767	4,981	Yes	No	No

MASTER LIST OF FACILITIES

PHASE I										
FACILITY		FACILITY DATA						SOLAR TYPE ACCEPTED		
Facility Name	Address	Roof Age (Years)	Warranty (years)	Gross Building sq. ft.	Electric Utility	Average Annual Electric Consumption (kWh)	Annual Peak Electric Demand (kW)	Building Roof Mount	Parking Lot Mount/ Canopy	Parking Garage Mount/ Canopy
Richard Byrd Library	7250 Commerce Street, Springfield	9	11	18,000	Dominion	217,367	95	Yes	Yes	N/A
Springfield Warehouse	68000 A-Industrial Drive, Springfield 22151	1	29	204,708	Dominion	788,880	333	Yes	Yes	N/A
Thomas Jefferson Library	7415 Arlington Blvd., Falls Church	9	6	17,000	Dominion	298,667	106	Yes	Yes	N/A
Wolf Trap Fire Station # 42	1315 Beulah Road, Vienna	7	13	14,000	Dominion	319,173	78	Yes	Yes	N/A
FAIRFAX COUNTY PARK AUTHORITY										
South Run RECenter – Parking Lot	7550 Reservation Dr., Springfield, VA 22153	N/A		38,577	Dominion	2,550,796	376	No	Yes	No
Spring Hill RECenter – Roof	1239 Spring Hill Road, McLean, VA 22102	West Half 0(new in 2019) East Half 4(new in 2014)	26	42,960	Dominion	2,216,256	776	Yes	Yes	No
FAIRFAX COUNTY PUBLIC SCHOOLS										
Annandale High School	4700 Medford Dr, Annandale, VA	3	17	345,944	Dominion	3,664,747	1,670	Yes	No	No

MASTER LIST OF FACILITIES

PHASE I										
FACILITY		FACILITY DATA						SOLAR TYPE ACCEPTED		
Facility Name	Address	Roof Age (Years)	Warranty (years)	Gross Building sq. ft.	Electric Utility	Average Annual Electric Consumption (kWh)	Annual Peak Electric Demand (kW)	Building Roof Mount	Parking Lot Mount/ Canopy	Parking Garage Mount/ Canopy
	22003									
Beech Tree Elementary School	3401 Beech Tree Lane Falls Church VA 22042	8	12	49,266	Dominion	543,600	300	Yes	No	No
Belle View Elementary School	6701 Fort Hunt Rd Alexandria VA 22307	6	14	53,045	Dominion	637,792	344	Yes	No	No
Belvedere Elementary School	6540 Columbia Pike Falls Church VA 22041	6	14	53,628	Dominion	916,560	317	Yes	No	No
Bucknell Elementary School	6925 University Dr, Alexandria, VA 22307	1	19	96,820	Dominion	954,880	328	Yes	No	No
Cameron Elementary School	3434 Campbell Dr Alexandria VA 22303	4	16	64,731	Dominion	813,952	340	Yes	No	No
Canterbury Woods Elementary School	4910 Willet Dr Annandale VA 22003	6	14	62,821	Dominion	684,000	285	Yes	No	No
Cedar Lane School	101 Cedar Ln. SW Vienna VA 22180	4	16	32,914	Dominion	414,640	190	Yes	No	No
Chantilly High School	4201 Stringfellow Rd, Chantilly, VA 20151	Roof replacement is in progress.	20	387,550	Dominion	3,918,120	1,768	Yes	No	No
Cherry Run Elementary School	9732 Ironmaster Dr, Burke, VA 22015	1	19	83,532	Dominion	837,840	263	Yes	No	No
Chesterbrook	1753 Kirby Rd	6	14	53,699	Dominion	748,800	300	Yes	No	No

MASTER LIST OF FACILITIES

PHASE I										
FACILITY		FACILITY DATA						SOLAR TYPE ACCEPTED		
Facility Name	Address	Roof Age (Years)	Warranty (years)	Gross Building sq. ft.	Electric Utility	Average Annual Electric Consumption (kWh)	Annual Peak Electric Demand (kW)	Building Roof Mount	Parking Lot Mount/ Canopy	Parking Garage Mount/ Canopy
Elementary School	MC Lean VA 22101									
Clermont Elementary School	5720 Clermont Dr Alexandria VA 22310	4	16	56,560	Dominion	935,840	278	Yes	No	No
Crestwood Elementary School	6010 Hanover Ave Springfield VA 22150	7	13	61,542	Dominion	907,660	411	Yes	No	No
Cunningham Park Elementary School	1001 Park St SE Vienna VA 22180	10	10	38,829	Dominion	644,352	257	Yes	No	No
Edison High School	5801 Franconia Rd Alexandria VA 22310	7	13	245,700	Dominion	3,390,470	1,760	Yes	No	No
Fairfax High School	3500 Old Lee Hwy Fairfax VA 22030	8	12	278,185	Dominion	5,041,437	2,098	Yes	No	No
Fairfax Villa Elementary School	10900 Santa Clara Dr Fairfax VA 22030	6	14	40,582	Dominion	706,272	269	Yes	No	No
Falls Church High School	7521 Jaguar Trail Falls Church VA 22042	9	11	214,541	Dominion	2,572,879	1,508	Yes	No	No
Flint Hill Elementary School	2444 Flint Hill Rd Vienna VA 22181	5	15	51,472	Dominion	757,648	272	Yes	No	No
Forestdale Elementary School	6530 Elder Ave Springfield VA 22150	9	11	48,675	Dominion	571,968	300	Yes	No	No
Franconia Elementary School	6043 Franconia Rd Alexandria VA 22310	7	13	50,242	Dominion	567,417	297	Yes	No	No

MASTER LIST OF FACILITIES

PHASE I										
FACILITY		FACILITY DATA						SOLAR TYPE ACCEPTED		
Facility Name	Address	Roof Age (Years)	Warranty (years)	Gross Building sq. ft.	Electric Utility	Average Annual Electric Consumption (kWh)	Annual Peak Electric Demand (kW)	Building Roof Mount	Parking Lot Mount/ Canopy	Parking Garage Mount/ Canopy
Franklin Middle School	3300 Lees Corner Rd Chantilly VA 20151	10	10	105,337	Dominion	1,071,360	529	Yes	No	No
Freedom Hill Elementary School	1945 Lord Fairfax Rd Vienna VA 22182	10	10	55,825	Dominion	732,280	385	Yes	No	No
Frost Middle School	4101 Pickett Rd Fairfax VA 22032	7	13	97,864	Dominion	1,260,160	478	Yes	No	No
Garfield Elementary School	7101 Old Keene Mill Rd Springfield VA 22150	4	16	54,903	Dominion	1,196,160	272	Yes	No	No
Graham Road Elementary School	2831 Graham Rd Falls Church VA 22042	7	13	56,948	Dominion	633,300	348	Yes	No	No
Great Falls Elementary School	701 Walker Rd Great Falls VA 22066	9	11	61,213	Dominion	656,100	330	Yes	No	No
Greenbriar East Elementary School	13006 Point Pleasant Dr Fairfax VA 22033	6	14	63,383	Dominion	901,800	408	Yes	No	No
Gunston Elementary School	10100 Gunston Rd Lorton VA 22079	8	12	56,515	Dominion	811,316	365	Yes	No	No
Haycock Elementary School	6616 Haycock Rd, Falls Church, VA 22043	3	17	85,897	Dominion	887,209	341	Yes	No	No
Hayfield Secondary School	7630 Telegraph Rd, Alexandria, VA 22315	3	17	516,960	Dominion	4,743,624	2,030	Yes	No	No

MASTER LIST OF FACILITIES

PHASE I										
FACILITY		FACILITY DATA						SOLAR TYPE ACCEPTED		
Facility Name	Address	Roof Age (Years)	Warranty (years)	Gross Building sq. ft.	Electric Utility	Average Annual Electric Consumption (kWh)	Annual Peak Electric Demand (kW)	Building Roof Mount	Parking Lot Mount/ Canopy	Parking Garage Mount/ Canopy
Hunt Valley Elementary	7107 Sydenstricker Rd Springfield VA 22152	9	11	63,131	Dominion	991,080	389	Yes	No	No
Hunters Woods Elementary School	2401 Colts Neck Rd Reston VA 20191	10	10	69,851	Dominion	1,259,398	968	Yes	No	No
Hybla Valley Elementary School	3415 Lockheed Blvd Alexandria VA 22306	5	15	76,265	Dominion	1,275,320	467	Yes	No	No
Irving Middle School	8100 Old Keene Mill Rd Springfield VA 22152	4	16	109,787	Dominion	1,311,809	598	Yes	No	No
Jefferson High School	6560 Braddock Rd, Alexandria VA 22312	2	18	398,833	Dominion	5,103,680	1,624	Yes	No	No
Keene Mill Elementary School	6310 Bardu Ave, West Springfield, VA 22152	3	17	92,137	Dominion	790,720	328	Yes	No	No
Kent Gardens Elementary School	1717 Melbourne Dr MC Lean VA 22101	6	14	54,530	Dominion	999,600	456	Yes	No	No
Key Middle School	6402 Franconia Rd Springfield VA 22150	11	9	155,169	Dominion	2,242,200	812	Yes	No	No
Kings Park Elementary School	5400 Harrow Way, Springfield, VA 22151	3	17	80,019	Dominion	815,555	329	Yes	No	No
Lake Anne Elementary School	11510 North Shore Dr Reston VA	7	13	59,777	Dominion	641,700	318	Yes	No	No

MASTER LIST OF FACILITIES

PHASE I										
FACILITY		FACILITY DATA						SOLAR TYPE ACCEPTED		
Facility Name	Address	Roof Age (Years)	Warranty (years)	Gross Building sq. ft.	Electric Utility	Average Annual Electric Consumption (kWh)	Annual Peak Electric Demand (kW)	Building Roof Mount	Parking Lot Mount/ Canopy	Parking Garage Mount/ Canopy
	20190									
Lane Elementary School	7137 Beulah St Alexandria VA 22315	11	9	69,038	Dominion	884,160	418	Yes	No	No
Langley High School	6520 Georgetown Pike MC Lean VA 22101	11	9	173,226	Dominion	3,550,742	1,221	Yes	No	No
Laurel Hill Elementary School	8390 Laurel Crest Dr Lorton VA 22079	10	10	69,013	Dominion	845,400	414	Yes	No	No
Lemon Road Elementary School	7230 Idylwood Rd Falls Church VA 22043	6	14	48,940	Dominion	705,600	318	Yes	No	No
Little Run Elementary School	4511 Olley Ln Fairfax VA 22032	9	11	38,560	Dominion	562,944	219	Yes	No	No
Longfellow Middle School	2000 Westmoreland St Falls Church VA 22043	8	12	122,698	Dominion	1,419,387	806	Yes	No	No
Luther Jackson Middle School	3020 Gallows Rd, Falls Church, VA 22042	3	17	154,818	Dominion	1,449,167	627	Yes	No	No
Lutie Lewis Coates Elementary School	2480 River Birch Rd Herndon VA 20171	10	10	62,831	Dominion	750,600	402	Yes	No	No
Lynbrook Elementary School	5801 Backlick Rd Springfield VA 22150	7	13	62,248	Dominion	641,700	318	Yes	No	No
Marshall High School	7731 Leesburg	4	16	198,307	Dominion	3,354,261	1,558	Yes	No	No

MASTER LIST OF FACILITIES

PHASE I										
FACILITY		FACILITY DATA						SOLAR TYPE ACCEPTED		
Facility Name	Address	Roof Age (Years)	Warranty (years)	Gross Building sq. ft.	Electric Utility	Average Annual Electric Consumption (kWh)	Annual Peak Electric Demand (kW)	Building Roof Mount	Parking Lot Mount/ Canopy	Parking Garage Mount/ Canopy
	Pike Falls Church VA 22043									
Marshall Road Elementary School	730 Marshall Rd Vienna VA 22180	6	14	53,618	Dominion	801,300	333	Yes	No	No
Mason Crest Elementary School	3705 Crest Drive, Annandale, VA 22003	7	13	98,590	Dominion	1,014,000	462	Yes	No	No
Mount Eagle Elementary School	6116 N Kings Hwy Alexandria VA 22303	10	10	48,105	Dominion	659,440	327	Yes	No	No
Newington Forest Elementary School	8001 Newington Forest Ave, Springfield, VA 22153	1	19	90,080	Dominion	1,021,992	285	Yes	No	No
North Springfield Elementary School	7602 Heming Ct, North Springfield, VA 22151	3	17	92,000	Dominion	1,003,840	338	Yes	No	No
Oakton Elementary School	3000 Chain Bridge Rd Oakton VA 22124	7	13	65,692	Dominion	708,300	411	Yes	No	No
Ravenworth Elementary School	5411 Nutting Dr, Springfield, VA 22151	3	17	80,300	Dominion	772,640	299	Yes	No	No
Robinson Secondary School	5035 Sideburn Rd, Fairfax, VA 22032	1	19	532,918	Dominion	5,515,085	2,357	Yes	No	No
Rolling Valley Elementary School	6703 Barnack Dr Springfield VA 22152	8	12	54,461	Dominion	756,720	310	Yes	No	No
Sandburg Middle	8428 Fort Hunt Rd	5	15	184,758	Dominion	2,138,006	954	Yes	No	No

MASTER LIST OF FACILITIES

PHASE I										
FACILITY		FACILITY DATA						SOLAR TYPE ACCEPTED		
Facility Name	Address	Roof Age (Years)	Warranty (years)	Gross Building sq. ft.	Electric Utility	Average Annual Electric Consumption (kWh)	Annual Peak Electric Demand (kW)	Building Roof Mount	Parking Lot Mount/ Canopy	Parking Garage Mount/ Canopy
School	Alexandria VA 22308									
Silverbrook Elementary School	9350 Crosspointe Dr Fairfax Station VA 22039	8	12	66,098	Dominion	652,063	357	Yes	No	No
Sleepy Hollow Elementary School	3333 Sleepy Hollow Rd Falls Church VA 22044	11	9	51,754	Dominion	782,784	336	Yes	No	No
South County Middle School	8700 Laurel Crest Lorton VA 22079	8	12	123,830	Dominion	1,385,700	618	Yes	No	No
South Lakes High School	11400 South Lakes Dr Reston VA 20191	11	9	233,625	Dominion	4,155,078	1,657	Yes	No	No
Spring Hill Elementary School	8201 Lewinsville Rd MC Lean VA 22102	7	13	81,677	Dominion	943,800	452	Yes	No	No
Springfield Estates Elementary School	6200 Charles C Golf Dr, Springfield, VA 22150	3	17	78,060	Dominion	956,320	336	Yes	No	No
Stenwood Elementary School	2620 Gallows Rd Vienna VA 22180	8	12	50,111	Dominion	577,120	306	Yes	No	No
Stratford Landing Elementary School	8484 Riverside Rd, Fort Hunt, VA 22308	1	19	101,780	Dominion	1,306,240	336	Yes	No	No
Sunrise Valley Elementary School	10824 Cross School Rd Reston VA 20191	4	16	49,786	Dominion	692,640	286	Yes	No	No
Terra Centre Elementary School	6000 Burke Center Parkway Burke	4	16	48,300	Dominion	876,000	328	Yes	No	No

MASTER LIST OF FACILITIES

PHASE I										
FACILITY		FACILITY DATA						SOLAR TYPE ACCEPTED		
Facility Name	Address	Roof Age (Years)	Warranty (years)	Gross Building sq. ft.	Electric Utility	Average Annual Electric Consumption (kWh)	Annual Peak Electric Demand (kW)	Building Roof Mount	Parking Lot Mount/ Canopy	Parking Garage Mount/ Canopy
	VA 22015									
Terraset Elementary School	11411 Ridge Heights Rd, Reston, VA 20191	3	17	102,343	Dominion	1,842,600	346	Yes	No	No
Thoreau Middle School	2505 Cedar Ln, Vienna, VA 22180	3	17	179,007	Dominion	1,842,600	597	Yes	No	No
Timber Lane Elementary School	2737 West St, Falls Church, VA 22046	1	19	80,591	Dominion	617,551	317	Yes	No	No
Vienna Elementary School	128 Center St S Vienna VA 22180	9	11	46,939	Dominion	610,800	360	Yes	No	No
West Springfield Elementary School	6802 Delnad Dr Springfield VA 22152	7	13	46,424	Dominion	853,500	223	Yes	No	No
Westbriar Elementary School	1741 Pine Valley Dr, Vienna, VA 22182	3	17	93,392	Dominion	747,476	273	Yes	No	No
Westgate Elementary School	7500 Magarity Rd, Falls Church, VA 22043	3	17	92,578	Dominion	853,500	288	Yes	No	No
Westlawn Elementary School	3200 Westly Rd Falls Church VA 22042	7	13	67,445	Dominion	789,095	393	Yes	No	No
Weyanoke Elementary School	6520 Braddock Rd Alexandria VA 22312	6	14	56,443	Dominion	601,920	302	Yes	No	No
White Oaks Elementary School	6130 Shiplett Blvd, Burke, VA 22015	1	19	75,784	Dominion	1,002,160	341	Yes	No	No
Whitman Middle School	2500 Parker Alexandria VA	6	14	116,725	Dominion	1,522,800	771	Yes	No	No

MASTER LIST OF FACILITIES

PHASE I										
FACILITY		FACILITY DATA						SOLAR TYPE ACCEPTED		
Facility Name	Address	Roof Age (Years)	Warranty (years)	Gross Building sq. ft.	Electric Utility	Average Annual Electric Consumption (kWh)	Annual Peak Electric Demand (kW)	Building Roof Mount	Parking Lot Mount/ Canopy	Parking Garage Mount/ Canopy
	22306									
Wolftrap Elementary School	1903 Beulah Rd Vienna VA 22182	8	12	49,469	Dominion	655,919	277	Yes	No	No
Woodlawn Elementary School	8505 Highland Ln, Alexandria, VA 22309	3	17	98,772	Dominion	964,200	309	Yes	No	No
Woodley Hills Elementary School	8718 Old Mt Vernon rd Alexandria VA 22309	8	12	75,786	Dominion	773,280	331	Yes	No	No
Woodson High School	9525 Main St Fairfax VA 22031	5	15	265,479	Dominion	4,349,552	1,887	Yes	No	No
FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY										
FCRHA Office Building	3700 Pender Dr, Fairfax, VA 22030	5	25	48,846	Dominion	1,366,656		Yes	Yes	N/A

MASTER LIST OF FACILITIES

PHASE II										
FACILITY		FACILITY DATA						SOLAR TYPE ACCEPTED		
Facility Name	Address	Roof Age (Years)	Warranty (years)	Gross Building sq. ft.	Electric Utility	Average Annual Electric Consumption (kWh)	Annual Peak Electric Demand (kW)	Building Roof Mount	Parking Lot Mount/ Canopy	Parking Garage Mount/ Canopy
FAIRFAX COUNTY GOVERNMENT FACILITIES										
Boys Probation/Crisis Care	4410 Shirley Gate Road, Fairfax	Renovation		10,300						
Crosspointe Fire Station # 41	9610 Hampton Road, Fairfax Station	12	0	14,624	Dominion	241,593	71	Yes	Yes	N/A
Fair Oaks Police (2014) and Fire Station # 21 (1982)	12300 Lee Jackson Memorial Hwy, Fairfax	Fire 15 Police (Metal) 5 Police (Membrane) 6	Fire 0 Police (Metal) 15 Police (Membrane) 24	42,000	Dominion	760,985	180	Yes	Yes	N/A
Fairfax Center Fire Station # 40	4621 Legato Road, Fairfax	13	7	24,195	Dominion	497,760	106	Yes	Yes	N/A
Gartlan Center for Community Mental Health	8119 Holland Road, Alexandria	16	9	43,003	Dominion	718,500	261	Yes	Yes	N/A
Great Falls Library	9830 Georgetown Pike, Great Falls	19	1	12,983	Dominion	194,720	80	Yes	Yes	N/A
I-66 Transfer Station						540,288				
James Lee Community Center	2855-A Annandale Road, Falls Church	15	0	65,198	Dominion	1,048,897	321	Yes	Yes	N/A
McLean Fire Station # 1	1455 Laughlin Ave., McLean	17	3	16,706	Dominion	734,720	66	Yes	Yes	N/A
Merrifield Fire Station	8739 Lee Highway,			11,922		281,000				

MASTER LIST OF FACILITIES

PHASE II										
FACILITY		FACILITY DATA						SOLAR TYPE ACCEPTED		
Facility Name	Address	Roof Age (Years)	Warranty (years)	Gross Building sq. ft.	Electric Utility	Average Annual Electric Consumption (kWh)	Annual Peak Electric Demand (kW)	Building Roof Mount	Parking Lot Mount/ Canopy	Parking Garage Mount/ Canopy
	Fairfax									
Mott Community Center	12111 Braddock Road, Fairfax	3	27	7544	NOVEC	168,644	87	Yes	Yes	N/A
Mt. Vernon Fire Station 9	2511 Parkers Lane, Alexandria	Reno & expansion or New		15,000						
North Point Fire Station # 39	1117 Reston Avenue, Herndon	19	1	13,858	Dominion	250,511	62	Yes	Yes	N/A
Oakton Library	10304 Lynnhaven Place, Oakton	12	8	17,000	Dominion	256,113	117	Yes	Yes	N/A
Penn Daw Fire Station	6624 Hulvey Terrace, Alexandria			17,000						
Tysons-Pimmit Regional Library	7584 Leesburg Pike, Falls Church	18	2	25,000	Dominion	362,613	108	Yes	Yes	N/A
West Ox Bus Operations Garage	4960 Alliance Drive, Fairfax	13	7	8,500	Dominion	995,096	180	Yes	Yes	N/A
West Ox Fire Apparatus Maintenance Facility	4620 West Ox Road, Fairfax	49	0	74,050	Dominion	1,145,433	345	Yes	Yes	N/A
West Ox Vehicle Maintenance Facility	4620 West Ox Road, Fairfax	Reno & expansion		52,313						
West Springfield Police and Fire Station # 27	6140 Rolling Road, Springfield	30	0	42,664	Dominion	578,200	120	Yes	Yes	N/A
FAIRFAX COUNTY GOVERNMENT - NEW FACILITIES										
Bailey's Shelter	5914 Seminary Road, Falls Church	New Facility	New Facility	21,500				Yes	No	N/A
Edsall Road Fire	5316 Carolina	New Facility	New Facility	14,132						

MASTER LIST OF FACILITIES

PHASE II										
FACILITY		FACILITY DATA						SOLAR TYPE ACCEPTED		
Facility Name	Address	Roof Age (Years)	Warranty (years)	Gross Building sq. ft.	Electric Utility	Average Annual Electric Consumption (kWh)	Annual Peak Electric Demand (kW)	Building Roof Mount	Parking Lot Mount/ Canopy	Parking Garage Mount/ Canopy
Station	Place, Alexandria									
Embry Rucker Shelter and Supportive Housing	11975 Bowman Towne Drive	New Facility	New Facility	25,000				Yes	No	N/A
Fairview Fire Station 32	5600 Burke Center Pkwy, Fairfax Station	New Facility	New Facility	15,000						
Franconia Police Station	Silver Lake Boulevard, Alexandria (Collocated with Kingstowne Library)	New Facility	New Facility	44,000						
Gunston Fire Station 20	10413 Gunston Road, Lorton	New Facility	New Facility	11,125						
Herndon Station Garage	12530 Sunrise Valley Drive	New Facility	New Facility	622,330				No	No	Yes
Innovation Station Garage	2345 Innovation Center Drive	New Facility	New Facility	696,165				No	No	Yes
Jefferson Fire Station	3101 Hodge Place, Falls Church	New Facility	New Facility	18,047						
Joseph Willard Health Center	3750 Old Lee Highway, Fairfax	New Facility	New Facility	92,000						
Kingstowne Library & Active Adult Center	Silver Lake Boulevard, Alexandria (collocated with Franconia PS)	New Facility	New Facility	38,000						
Lewinsville Center	1611 Great Falls Street, McLean	New Facility	New Facility	31,000						

MASTER LIST OF FACILITIES

PHASE II										
FACILITY		FACILITY DATA						SOLAR TYPE ACCEPTED		
Facility Name	Address	Roof Age (Years)	Warranty (years)	Gross Building sq. ft.	Electric Utility	Average Annual Electric Consumption (kWh)	Annual Peak Electric Demand (kW)	Building Roof Mount	Parking Lot Mount/ Canopy	Parking Garage Mount/ Canopy
Lorton Community Center	9518 Richmond Highway, Lorton	New Facility	New Facility	31,000						
Lorton Fire Station	7701 Armistead Road, Lorton	New Facility	New Facility							
Monument Garage	Government Center Pkwy	New Facility	New Facility							
Operational Support Bureau	3911 Woodburn Road, Annandale	New Facility	New Facility	36,600						
Patrick Henry Permanent Supportive Housing	3080 Patrick Henry Drive, Falls Church	New Facility	New Facility	24,000						
Reston Fire Station 25	1820 Wiehle Avenue, Reston	New Facility	New Facility	17,552		432,000				
Reston Regional Library	11925 Bowman Towne Drive	New Facility	New Facility	43,000				Yes	No	Yes
Seven Corners Fire Station 28	2949 Sleepy Hollow Road, Falls Church	New Facility	New Facility	11,125						
South County Police Station & Animal Shelter	Triangle site on Lorton Rd between Hooes Rd & Workhouse Rd	New Facility	New Facility	55,000						
Springfield Garage	7039 Old Keene Mill Road, Springfield	New Facility	New Facility	Total 414,419 ; Top Floor 75,286						
Stormwater Wastewater Facility	6000 Freds Oak Road, Burke	New Facility	New Facility	90,000						

MASTER LIST OF FACILITIES

PHASE II										
FACILITY		FACILITY DATA						SOLAR TYPE ACCEPTED		
Facility Name	Address	Roof Age (Years)	Warranty (years)	Gross Building sq. ft.	Electric Utility	Average Annual Electric Consumption (kWh)	Annual Peak Electric Demand (kW)	Building Roof Mount	Parking Lot Mount/ Canopy	Parking Garage Mount/ Canopy
Sully Community Center	13949 Endeavor Drive, Chantilly	New Facility	New Facility	31,883						
Tysons East Fire Station	1766 Old Meadow Lane, Tysons	New Facility	New Facility	13,842						
Tysons Fire Station 29	8300 Jone Branch Drive, McLean	New Facility	New Facility	20,000						
Volunteer Fire Station	TBD	New Facility	New Facility	13,175						
Woodlawn Fire Station	8701 Lukens Lane, Alexandria	New Facility	New Facility	15,082		400,814				
FAIRFAX COUNTY PARK AUTHORITY										
Cub Run RECenter-Parking Lot	4630 Stonecroft Blvd. Chantilly, VA 20151	N/A		63,854	Dominion	3,206,700	648	No	Yes	No
FAIRFAX COUNTY PUBLIC SCHOOLS										
Aldrin Elementary School	11375 Center Harbor Rd Reston VA 20194	26	-6	68,205	Dominion	782,640	353	Yes	No	No

MASTER LIST OF FACILITIES

PHASE II										
FACILITY		FACILITY DATA						SOLAR TYPE ACCEPTED		
Facility Name	Address	Roof Age (Years)	Warranty (years)	Gross Building sq. ft.	Electric Utility	Average Annual Electric Consumption (kWh)	Annual Peak Electric Demand (kW)	Building Roof Mount	Parking Lot Mount/ Canopy	Parking Garage Mount/ Canopy
Annandale Terrace Elementary School	7604 Herald St Annandale VA 22003	21	-1	44,451	Dominion	1,026,100	401	Yes	No	No
Baileys Elementary School	6111 Knollwood Dr Falls Church VA 22041	12	8	75,823	Dominion	1,030,920	416	Yes	No	No
Bryant Alternative High School	2709 Popkins Ln Alexandria VA 22306	17	3	108,996	Dominion	1,247,657	638	Yes	No	No
Bull Run Elementary School	15301 Lee Hwy Centreville VA 20121	20	0	69,013	Dominion	1,233,371	506	Yes	No	No
Bush Hill Elementary School	5927 Westchester St Alexandria VA 22310	20	0	49,657	NOVEC	633,600	309	Yes	No	No
Camelot Elementary School	8100 Guinevere Dr Annandale VA 22003	18	2	62,957	Dominion	800,295	334	Yes	No	No
Cardinal Forest Elementary School	8600 Forrester Blvd Springfield VA 22152	21	-1	56,150	Dominion	775,456	282	Yes	No	No
Carson Middle School	13618 McLearen Rd Herndon VA 20171	18	2	125,106	Dominion	1,932,000	703	Yes	No	No
Centreville Elementary School	14330 Green Trails Centreville VA 20121	11	9	69,038	NOVEC	864,333	408	Yes	No	No
Churchill Road Elementary School	7100 Churchill Rd MC Lean VA	26	-6	55,677	Dominion	797,220	370	Yes	No	No

MASTER LIST OF FACILITIES

PHASE II										
FACILITY		FACILITY DATA						SOLAR TYPE ACCEPTED		
Facility Name	Address	Roof Age (Years)	Warranty (years)	Gross Building sq. ft.	Electric Utility	Average Annual Electric Consumption (kWh)	Annual Peak Electric Demand (kW)	Building Roof Mount	Parking Lot Mount/ Canopy	Parking Garage Mount/ Canopy
	22101									
Clearview Elementary School	12635 Builder Rd Herndon VA 20170	13	7	59,926	Dominion	925,280	394	Yes	No	No
Colin Powell Elementary School	13320 Leland Road Centreville VA 20120	16	4	77,154	Dominion	1,152,808	517	Yes	No	No
Columbia Elementary School	6720 Alpine Dr Alexandria VA 22303	21	-1	38,495	Dominion	631,440	259	Yes	No	No
Colvin Run Elementary School	1400 Trap Rd Vienna VA 22182	18	2	69,013	Dominion	974,894	478	Yes	No	No
Cooper Middle School	977 Balls Hill Rd MC Lean VA 22101	30	-10	87,784	Dominion	1,073,319	477	Yes	No	No
Daniels Run Elementary School	3705 Old Lee Hwy Fairfax VA 22030	17	3	65,318	Dominion	771,148	368	Yes	No	No
Deer Park Elementary School	15109 Carlebern Dr Centreville VA 20120	8	12	69,083	NOVEC	860,450	434	Yes	No	No
Dogwood Elementary School	12300 Glade Dr Reston VA 20191	25	-5	69,230	Dominion	969,518	421	Yes	No	No
Eagle View Elementary School	4500 Dixie Hill Rd Fairfax VA 22030	15	5	69,013	Dominion	1,026,904	501	Yes	No	No
Fairhill Elementary School	3001 Chichester Ln Fairfax VA 22031	23	-3	51,222	Dominion	735,120	324	Yes	No	No
Fairview Elementary School	5815 Ox Rd Fairfax Station VA	12	8	57,603	Dominion	730,400	368	Yes	No	No

MASTER LIST OF FACILITIES

PHASE II										
FACILITY		FACILITY DATA						SOLAR TYPE ACCEPTED		
Facility Name	Address	Roof Age (Years)	Warranty (years)	Gross Building sq. ft.	Electric Utility	Average Annual Electric Consumption (kWh)	Annual Peak Electric Demand (kW)	Building Roof Mount	Parking Lot Mount/ Canopy	Parking Garage Mount/ Canopy
	22039									
Floris Elementary School	2708 Centreville Rd Herndon VA 20171	15	5	58,492	Dominion	858,000	396	Yes	No	No
Forest Edge Elementary School	1501 Beacontree Ln Reston VA 20190	13	7	67,637	Dominion	933,600	411	Yes	No	No
Forestville Elementary School	1085 Utterback Store Rd Great Falls VA 22066	18	2	58,080	Dominion	1,077,480	309	Yes	No	No
Fort Belvoir Elementary School	5970 Meeres Rd Fort Belvoir VA 22060	15	5	94,457	Dominion	1,289,119	564	Yes	No	No
Fort Belvoir Upper Elementary School	5980 Meeres Rd Fort Belvoir VA 22060	4	16	66,739	Billed by Fort Belvoir	1,028,100	N/A	Yes	No	No
Fort Hunt Elementary School	8832 Linton Ln Alexandria VA 22308	23	-3	61,237	Dominion	827,400	393	Yes	No	No
Franklin Sherman Elementary School	6630 Brawner St MC Lean VA 22101	24	-4	46,244	Dominion	560,400	288	Yes	No	No
Glasgow Middle School	4101 Fairfax Parkway Alexandria VA 22312	12	8	139,584	Dominion	1,733,340	747	Yes	No	No
Glen Forest Elementary School	5829 Glen Forest Dr Falls Church VA 22041	25	-5	74,808	Dominion	1,110,860	477	Yes	No	No

MASTER LIST OF FACILITIES

PHASE II										
FACILITY		FACILITY DATA						SOLAR TYPE ACCEPTED		
Facility Name	Address	Roof Age (Years)	Warranty (years)	Gross Building sq. ft.	Electric Utility	Average Annual Electric Consumption (kWh)	Annual Peak Electric Demand (kW)	Building Roof Mount	Parking Lot Mount/ Canopy	Parking Garage Mount/ Canopy
Greenbriar West Elementary School	13300 Poplar Tree Rd Fairfax VA 22033	13	7	65,242	Dominion	1,248,150	546	Yes	No	No
Groveton Elementary School	6900 Harrison Ln Alexandria VA 22306	22	-2	72,248	Dominion	1,039,400	417	Yes	No	No
Halley Elementary School	8850 Cross Chase Cir Fairfax Station VA 22039	24	-4	69,230	Dominion	1,060,492	443	Yes	No	No
Herndon Middle School	901 Locust St Herndon VA 20170	24	-4	140,272	Dominion	1,645,200	518	Yes	No	No
Hollin Meadows Elementary School	2310 Nordok Pl Alexandria VA 22306	21	-1	51,759	Dominion	1,197,600	318	Yes	No	No
Holmes Middle School	6525 Montrose St Alexandria VA 22312	17	3	119,203	Dominion	1,676,755	665	Yes	No	No
Hughes Middle School	11401 Ridge Heights Rd Reston VA 20191	20	0	91,280	Dominion	1,513,037	664	Yes	No	No
Hutchison Elementary School	13209 Parcher Ave Herndon VA 20170	13	7	74,486	Dominion	1,141,200	498	Yes	No	No
Island Creek Elementary	7855 Morning View Ln Alexandria VA 22315	18	2	69,013	Dominion	1,041,196	478	Yes	No	No
Justice High School	3301 Peace Valley Ln Falls Church	17	3	210,344	Dominion	3,040,720	1,402	Yes	No	No

MASTER LIST OF FACILITIES

PHASE II										
FACILITY		FACILITY DATA						SOLAR TYPE ACCEPTED		
Facility Name	Address	Roof Age (Years)	Warranty (years)	Gross Building sq. ft.	Electric Utility	Average Annual Electric Consumption (kWh)	Annual Peak Electric Demand (kW)	Building Roof Mount	Parking Lot Mount/ Canopy	Parking Garage Mount/ Canopy
	VA 22044									
Kilmer Middle School	8100 Wolftrap Rd Vienna VA 22182	16	4	105,253	Dominion	1,476,600	653	Yes	No	No
Kings Glen Elementary School	5401 Danbury Forest Springfield VA 22151	21	-1	50,891	Dominion	724,500	270	Yes	No	No
Lake Braddock Secondary School	9200 Burke Lake Rd Burke VA 22015	14	6	423,262	Dominion	7,119,660	3,255	Yes	No	No
Laurel Ridge Elementary School	10110 Commonwealth Fairfax VA 22032	14	6	78,624	Dominion	1,398,450	984	Yes	No	No
Lee High School	6540 Franconia Rd Alexandria VA 22310	16	4	235,248	Dominion	2,926,475	1,506	Yes	No	No
Liberty Middle School	6801 Union Mill Rd Clifton VA 20124	17	3	125,106	NOVEC	1,788,192	714	Yes	No	No
London Towne Elementary School	6100 Stone Rd Centreville VA 20120	19	1	73,234	NOVEC	1,692,866	918	Yes	No	No
Lorton Station Elementary School	9298 Lewis Chapel Rd Lorton VA 22079	16	4	69,230	Dominion	1,124,400	521	Yes	No	No
Mantua Elementary School	9107 Horner Ct Fairfax VA 22031	12	8	73,197	Dominion	941,280	366	Yes	No	No
Marshall High School	7731 Leesburg Pike Falls Church VA 22043	4	16	198,307	Dominion	3,354,261	1,558	Yes	No	No

MASTER LIST OF FACILITIES

PHASE II										
FACILITY		FACILITY DATA						SOLAR TYPE ACCEPTED		
Facility Name	Address	Roof Age (Years)	Warranty (years)	Gross Building sq. ft.	Electric Utility	Average Annual Electric Consumption (kWh)	Annual Peak Electric Demand (kW)	Building Roof Mount	Parking Lot Mount/ Canopy	Parking Garage Mount/ Canopy
Marshall Road Elementary School	730 Marshall Rd Vienna VA 22180	6	14	53,618	Dominion	801,300	333	Yes	No	No
McLean High School	1633 Davidson Rd MC Lean VA 22101	17	3	197,937	Dominion	2,940,624	1,326	Yes	No	No
McNair Elementary School	2499 Thomas Jefferson Herndon VA 20171	20	0	78,715	Dominion	1,153,220	466	Yes	No	No
Mount Vernon High School	8515 Old Mount Vernon Alexandria VA 22309	17	3	320,962	Dominion	5,031,348	1,806	Yes	No	No
Navy Elementary School	3500 West Ox Rd Fairfax VA 22033	16	4	63,709	Dominion	821,100	444	Yes	No	No
Oak View Elementary School	5004 Sideburn Rd Fairfax VA 22032	20	0	62,171	Dominion	691,500	303	Yes	No	No
Olde Creek Elementary School	9524 Old Creek Dr Fairfax VA 22032	22	-2	48,531	Dominion	735,933	260	Yes	No	No
Orange Hunt Elementary School	6820 Sydenstricker Rd Springfield VA 22152	17	3	64,434	Dominion	1,578,150	921	Yes	No	No
Parklawn Elementary School	4116 Braddock Rd Alexandria VA 22312	21	-1	64,631	Dominion	870,300	435	Yes	No	No
Pine Springs Elementary School	7607 Willow Ln Falls Church VA	19	1	46,159	Dominion	731,700	339	Yes	No	No

MASTER LIST OF FACILITIES

PHASE II										
FACILITY		FACILITY DATA						SOLAR TYPE ACCEPTED		
Facility Name	Address	Roof Age (Years)	Warranty (years)	Gross Building sq. ft.	Electric Utility	Average Annual Electric Consumption (kWh)	Annual Peak Electric Demand (kW)	Building Roof Mount	Parking Lot Mount/ Canopy	Parking Garage Mount/ Canopy
	22042									
Poe Middle School	7000 Cindy Ln Annandale VA 22003	23	-3	130,260	Dominion	1,702,800	699	Yes	No	No
Providence Elementary School	3616 Jermantown Rd Fairfax VA 22030	18	2	72,363	Dominion	1,062,530	540	Yes	No	No
Quander Road School	6400 Quander Rd Alexandria VA 22307	20	0	34,752	Dominion	516,960	209	Yes	No	No
Riverside Elementary School	8410 Old Mt Vernon Rd Alexandria VA 22309	16	4	64,957	Dominion	985,747	412	Yes	No	No
Rose Hill Elementary School	6301 Rose Hill Dr Alexandria VA 22310	16	4	70,092	Dominion	781,184	374	Yes	No	No
Shrevewood Elementary School	7525 Shreve Rd Falls Church VA 22043	27	-7	50,127	Dominion	773,096	369	Yes	No	No
South County High School	8501 Silverbrook Rd Lorton VA 22079	14	6	270,130	Dominion	4,375,542	1,718	Yes	No	No
Stone Middle School	5500 Sully Park Dr Centreville VA 20120	28	-8	110,084	NOVEC	1,052,788	523	Yes	No	No
Washington Mill Elementary School	9100 Cherry Tree Dr Alexandria VA 22309	11	9	51,332	Dominion	726,960	366	Yes	No	No

MASTER LIST OF FACILITIES

PHASE II										
FACILITY		FACILITY DATA						SOLAR TYPE ACCEPTED		
Facility Name	Address	Roof Age (Years)	Warranty (years)	Gross Building sq. ft.	Electric Utility	Average Annual Electric Consumption (kWh)	Annual Peak Electric Demand (kW)	Building Roof Mount	Parking Lot Mount/ Canopy	Parking Garage Mount/ Canopy
Waynewood Elementary School	1205 Waynewood Blvd Alexandria VA 22308	21	-1	48,805	Dominion	1,000,080	302	Yes	No	No
West Potomac High School	6500 Quander Rd Alexandria VA 22307	18	2	272,308	Dominion	4,665,934	1,834	Yes	No	No
Westfield High School	4700 Stonecroft Blvd Chantilly VA 20151	13	7	295,609	Dominion	5,016,640	1,886	Yes	No	No
Woodburn Elementary School	3401 Hemlock Dr Falls Church VA 22042	12	8	44,946	Dominion	607,500	300	Yes	No	No
FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY										
Greenwood (multiple meters)	3077 Patrick Henry Dr, Falls Church, VA 22044	18	12	135,534	Dominion	1,542,194		Yes	No	N/A
Gum Springs	7837 Richmond Hwy, Alexandria, VA 22306	17	13	64,000	Dominion	648,860				
Herndon Harbor	912 Jorss Pl, Herndon, VA 20170	20	10	50,328	Dominion	1,423,620				
Hopkins Glen	7522 Broadway Dr, Falls Church, VA 22043				Dominion					
Kingsley Park (multiple meters)	3153 Allen St, Falls Church, VA 22042	5	25	119,100	Dominion	1,469,706				
Murraygate (multiple meters)	7800 Belford Dr, Alexandria, VA				Dominion	35,424,354		Yes	No	N/A

MASTER LIST OF FACILITIES

PHASE II										
FACILITY		FACILITY DATA						SOLAR TYPE ACCEPTED		
Facility Name	Address	Roof Age (Years)	Warranty (years)	Gross Building sq. ft.	Electric Utility	Average Annual Electric Consumption (kWh)	Annual Peak Electric Demand (kW)	Building Roof Mount	Parking Lot Mount/ Canopy	Parking Garage Mount/ Canopy
	22306									
Old Mill (multiple meters)	5800 St. Gregory's Ln, Alexandria, VA 22315	24	6		Dominion					
Olley Glen (multiple meters)	4019 Olley Ln, Fairfax, VA 22032	14	16		Dominion	623,055				
Ragan Oaks (multiple meters)	12101 - 12113 Ragan Oaks Ct, Fairfax, VA 22033	25	5	65,984	Dominion	477,885				
Rosedale (multiple meters)	3401 Spring Ln, Falls Church, VA 22041	7	23	158,846	Dominion	648,338				
Westford (multiple meters)	7911 Fordson Rd, Alexandria, VA 22306	13	17	100,941	Dominion	953,987				

**FORM OF
SOLAR POWER PURCHASE AGREEMENT
[PROJECT SITE]**

BY AND BETWEEN

**[FAIRFAX ENTITY]
("PURCHASER")**

AND

("SELLER")

DATED: _____

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**FORM OF
SOLAR POWER PURCHASE AGREEMENT
[PROJECT SITE]**

THIS SOLAR POWER PURCHASE AGREEMENT (this "Agreement") is made and entered into as of [•] (the "Contract Date"), by and between [FAIRFAX ENTITY] ("Purchaser"), and [•], a [•] ("Seller"). Purchaser and Seller may each be referred to herein as the "Party", or collectively as the "Parties", as the usage of such term may require.

RECITALS

WHEREAS, on June 6, 2019, Fairfax County, Virginia (the "County") issued a Request for Proposal entitled "Solar Power Purchase Agreement Services" (RFP No. 2000002845), as subsequently amended (the "RFP"), to establish one or more contract(s) through competitive negotiation for solar power purchase agreement services;

WHEREAS, Seller, together with other RFP offerors, submitted its technical and cost proposal in response to the RFP;

WHEREAS, Purchaser's Selection Advisory Committee reviewed and evaluated all proposals submitted in response to the RFP and made a recommendation of such offerors deemed fully qualified and best suited among those submitting proposals, on the basis of the factors outlined in the RFP;

WHEREAS, following negotiations, the Purchasing Agent selected Seller, [in addition to other offerors], in reliance on (a) Seller's submissions and representations in its proposal to the County, and (b) this negotiated and finalized Agreement;

WHEREAS, Purchaser desires to engage Seller to furnish all labor, supervision, equipment, tools, parts, and materials, as necessary, to design, install, own, operate, and finance the grid connected solar photovoltaic system, as more particularly described on Schedule 2 (System Description) attached hereto (the "System"), and installed on the real property comprising Purchaser's owned [or leased] premises described or depicted in Schedule 3 (Project Site) (the "Project Site"), including any buildings, parking surface, and/or other improvements on the Project Site other than the System (the "Improvements");

WHEREAS, Seller desires to provide to Purchaser, and Purchaser desires to receive and utilize, solar-powered electricity to be generated by the System at the Project Site in compliance with all Applicable Laws, including the pilot program for third party power purchase agreements pursuant to Chapter 382 of the 2013 Virginia Acts of Assembly (as amended, "Chapter 382"); and

WHEREAS, Seller asserted in its proposal to the RFP and in additional submissions, and thereafter agreed pursuant to the negotiated terms of this Agreement, that from and after the Contract Date, Seller shall satisfy all of its other obligations under this Agreement, all in accordance with the terms hereof.

NOW, THEREFORE, in consideration of the mutual promises and covenants of each Party to the other contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby covenant and agree as follows:

SECTION 1

THE SOLAR POWER PURCHASE AGREEMENT

- 1.1. Purpose. The purpose of this Agreement is to define the terms and conditions by which Seller shall (a) design, install, own, and finance the System, (b) manage, operate, maintain, decommission, and remove the System, (c) provide, deliver, and sell Output produced by the System to Purchaser, and (d) provide the other services, as more particularly described herein.
- 1.2. Effectiveness. Notwithstanding any provision in this Agreement that may be interpreted or construed to the contrary, the Parties shall neither be bound by the terms and conditions of this Agreement nor shall this Agreement have any force and effect unless and until each Party shall have executed and delivered this Agreement to the other Party hereto. Without limiting the generality of the foregoing, and notwithstanding Seller's execution and delivery of this Agreement, there shall be no legally binding agreement with respect to Purchaser regarding the transactions contemplated by and/or the subject matter of this Agreement unless and until Purchaser has duly executed and delivered this Agreement to Seller.
- 1.3. Cooperation. The Parties shall cooperate and exercise all reasonable efforts in the performance of their obligations and exercise of their rights under this Agreement to facilitate the timely and effective implementation of this Agreement. The Parties shall negotiate in good faith to address and endeavor to resolve disputes, if any, in an equitable and timely manner so as to avoid, where feasible, the need for more formal resolution.
- 1.4. Entire Agreement. The RFP, Seller's proposal (including all documents and materials submitted in connection therewith or to the County or Purchaser) in response to the RFP and the following Schedules are attached to and made a part of this Agreement:

SCHEDULES

Schedule 1	-	Definitions
Schedule 2	-	System Description
Schedule 3	-	Project Site
Schedule 4	-	Project Schedule
Schedule 5	-	Contract Price
Schedule 6	-	Annual Contract Quantity
Schedule 7	-	Form of Installation Notice to Proceed
Schedule 8	-	Form of Final Completion Certificate
Schedule 9	-	Form of Monthly Invoice
Schedule 10	-	Form of Lease Agreement
Schedule 11	-	Form of Environmental Attributes Attestation
Schedule 12	-	Form of Decommissioning Bond
Schedule 13	-	Termination Payment Schedule
Schedule 14	-	Representatives
Schedule 15	-	Security/Access Requirements
Schedule 16	-	Construction Safety Resolution

This Agreement, including the recitals hereto and the foregoing Schedules, constitutes the entire agreement of the Parties with respect to the subject matter hereof, and the terms,

conditions, and provisions of this Agreement, inclusive of the Schedules, shall govern the obligations of the Parties with respect to, among other things, Seller's development, management, operation, maintenance, and provision of the Services to Purchaser hereunder. To the extent of any conflict or inconsistency between the provisions of the body of this Agreement and the provisions of any Schedule, the body of this Agreement shall control.

- 1.5. Definitions; Terms Generally. Capitalized terms not defined above or elsewhere in this Agreement shall have the respective meanings assigned to such terms in Schedule 1 (Definitions) attached hereto. The words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation," except as the context may otherwise require. The words "approval" and "consent" shall be deemed to be followed by the phrases (a) "without limitation," except as the context may otherwise require, and (b) "which shall not be unreasonably withheld or unduly delayed" except as the context may otherwise require. The word "or" is not exclusive. Words in the singular number include words in the plural and vice versa unless the context of the usage of such term clearly indicates otherwise. All references to "dollars" or "\$" in this Agreement refer to United States dollars, which is the currency used for all purposes in this Agreement.

SECTION 2 TERM

- 2.1. Initial Term. This Agreement, unless sooner terminated in accordance with its terms or extended pursuant to Section 2.2, shall commence on the Contract Date and terminate at 12:01 a.m. (Eastern time) on the [•]¹ anniversary of the Actual Commercial Operation Date (the "Initial Term").
- 2.2. Extension of Term. The Parties may mutually agree in writing to extend the Initial Term for up to five (5) years, either one (1) year at a time or in multiple years that combine to equal no more than a total of five (5) years (each, an "Extended Term"). If either Party desires to extend the Initial Term or any Extended Term, as applicable, such Party shall give the other Party at least [ninety (90)] Days prior Notice of such desire (including specifying the number of year(s) of the desired extension period) or this Agreement shall expire at the end of the Initial Term or Extended Term, as applicable. Once such Notice is given, the Parties shall promptly meet and discuss the extension of the Term. If the Parties cannot reach mutual agreement on such extension within such [ninety (90)] Day period, then this Agreement shall expire at the end of the Initial Term or Extended Term, as applicable. All of the terms, conditions, covenants, and provisions of this Agreement set forth herein with respect to the Initial Term shall apply to and remain in effect during each Extended Term, if any.
- 2.3. Term. The Initial Term and any and all Extended Term(s), if any, are referred to herein collectively as the "Term".

¹ NTD: Number of years of the Initial Term to be specified (20, 25, or 30 years).

SECTION 3 CONTRACT SERVICES GENERALLY

- 3.1. General Obligations. Seller shall, at its sole cost and expense, design, engineer, finance, install, construct, commission, interconnect, start-up, test, monitor, operate, maintain, decommission, and remove the System and perform the Services, in each case in a good, workmanlike, and professional manner and in accordance with Applicable Law and Prudent Industry Practices. Seller shall faithfully, diligently, competently and to the best of its ability pursue the development, financing, and installation of the System.
- 3.2. Compliance with Laws. Seller shall perform all Services in compliance with all Applicable Laws, and Seller shall ensure that all Subcontractors performing Services shall comply with all Applicable Laws in the performance thereof. Furthermore, Seller shall (and Seller shall ensure that all Subcontractors performing services relative to the Services do) comply with the more stringent of (a) Applicable Laws or (b) the obligations, requirements, and standards of this Agreement; provided, that compliance with the foregoing clause (b) is not a violation of Applicable Law. The System and all Services performed hereunder shall comply with all Codes and Standards.
- 3.3. Compliance with PPA Pilot Program Requirements. Seller shall comply with the PPA Pilot Program Requirements, and Seller shall prepare and timely file and submit all notices, data, and other information (or cause to be prepared and timely filed and submitted) to the SCC and other Persons required by the PPA Pilot Program Requirements. Promptly following each such filing or submission, Seller shall deliver copies to Purchaser.
- 3.4. OSHA Compliance. Without limiting the generality of Section 3.2, Seller shall comply with all Occupational Safety and Health Law requirements and other similar applicable safety laws or codes in the performance of the Services.
- 3.5. Permits; Licenses. Throughout the Term, Seller shall maintain and, as applicable, renew all such Permits required for its performance of the Services and shall be solely liable for the cost and expense of all regulatory fees, levies, assessments, and charges pertaining to such Permits. Without limiting the generality of the foregoing, if any Services involve building, construction, removal, altering, repairing, improving or demolition of, in or upon the Project Site, or if otherwise required by Applicable Law, then such work shall be performed only by a Person holding a then current Virginia Class A Contractor License with the specialty classification application to the work being performed. Upon request, Seller shall provide Purchaser with a copy of Seller's and Subcontractors' Virginia Class A Contractor License. The obligation to obtain and maintain such Permits is solely vested with Seller. Seller shall be solely responsible for, and pay when due, all fines, fees, and penalties pertaining to Permit violations and all other costs, fees, and expenses of performing all work included in administrative orders, notices or similar directives of violation that were the result of Seller Fault or caused by the occurrence of a Change in Law. If Seller receives notice of a Permit violation or is otherwise required to pay any fine or penalty imposed by any Governmental Authority for a Permit violation, Seller shall promptly deliver a copy of such notice to Purchaser. If Seller believes the Permit violation or regulatory fine or penalty is unjustified, Seller shall have the right to contest the regulatory fine or penalty at its sole cost and expense.

- 3.6. Safety Program. Seller shall (a) ensure that all of its employees and Subcontractors comply with the more stringent of all Applicable Laws, the County's Construction Safety Resolution, a current copy of which is attached hereto as Schedule 16 (Construction Safety Resolution), as such Schedule may be updated by the County from time to time (whereupon such Schedule shall be deemed to have been amended), or, to the extent applicable to Seller, industry recommendations concerning safety related issues, (b) develop safety manuals and amend the same, in each case consistent with clause (a) above, and ensure that all employees and Subcontractors are trained in safety, health, and environmental regulations and procedures specific to the Services, (c) take all reasonable precautions, in accordance with Prudent Industry Practices, to prevent damage, injury, or loss, by reason of or related to the provision of Services, (d) establish and maintain safety procedures for the provision of Services and for the protection of employees of Seller and all other Persons, at a level consistent with clause (a) above and otherwise consistent with Prudent Industry Practices, and (e) comply with all Applicable Laws relating to the safety of third parties or property and their protection from damage, injury, or loss. Seller shall provide immediate Notice, including reasonable details, to Purchaser whenever any emergencies (and actions taken in response thereto), work related accidents, injuries, or near misses occur at the Project Site.
- 3.7. Regulatory Reports. Seller shall, in a timely manner, generate, file in an organized and readily retrievable manner, store and provide to all Governmental Authorities all information, applications, renewals, and modifications of Permits, notices and reports, including operational data and reports, as may be required of Seller pursuant to and in form and substance specified by Applicable Law. Seller shall immediately notify in writing and provide Purchaser with any and all information as the same becomes available relative to any activity, problem, event, or circumstance that (a) threatens or may threaten compliance with the requirements of this Agreement, (b) disrupts or may disrupt performance of the System or any of the Services hereunder, or (c) requires notifications to Governmental Authorities.
- 3.8. Compliance With Schedules. Seller shall comply with each and every provision of the Schedules in all respects that is applicable to Seller and/or the performance of its obligations under this Agreement.
- 3.9. Guarantees. Seller warrants and guarantees that it will perform, or cause to be performed, all engineering, design, installation, testing, operation, maintenance, and decommissioning in a good, workmanlike, and professional manner and in accordance with the terms of this Agreement. Seller warrants that the System, including maximum generation capacity, shall be in conformance with and satisfy all PPA Pilot Program Requirements. Seller warrants that, on and following the Actual Commercial Operation Date and throughout the Term, the System, its engineering, design, and installation, its components and related work, shall be free from material defects caused by errors or omissions in design, engineering, and installation. Seller shall exercise commercially reasonable efforts to timely undertake all updates and modifications to the System, and its equipment and materials, including procedures, programming, and software, required by Prudent Industry Practices. If at any time Purchaser reasonably believes that any personnel of Seller or its Subcontractor are not performing their duties in a good, workmanlike, and professional manner and in accordance with Prudent Industry Practices and Applicable Law, then Purchaser may provide Notice to Seller. Should Seller fail to promptly address and take action to correct such problem to the reasonable satisfaction of Purchaser, Purchaser shall have the right to

require Seller to replace such personnel within [one (1)] Business Day after Seller's receipt of such Notice. All costs associated with the replacement of such personnel under this Section 3.9 shall be borne by Seller. Notwithstanding the foregoing, Purchaser shall have the right to require the immediate removal and permanent expulsion from the Project Site and from any work associated with the Services of any person that at any time is found under the influence of or in possession of alcohol or illegal drugs, or who, in the reasonable determination of Purchaser or Purchaser's Representative, acts in an unsafe or negligent manner, while at the Project Site.

3.10. Subcontractors. Without limiting Seller's liability or obligations under this Agreement, Seller may engage Subcontractors to perform any Services under this Agreement. Seller shall use suitably qualified, experienced, and licensed Subcontractors. Seller shall remain fully liable and responsible for the work done by its Subcontractors and shall ensure compliance with all the requirements set forth herein. Seller shall be responsible for the quality of the work performed by its Subcontractors. Any Subcontractors engaged by Seller to perform any portion of the Services shall have all licenses and registrations required to perform such services, and any such Subcontractor shall maintain the insurance required pursuant to Section 9.1 and satisfy the requirements of Section 3.11. Upon request, Seller shall provide to Purchaser with evidence that any such Subcontractor has obtained insurance as required pursuant to Section 9.1. Seller shall pay when due all charges from all Subcontractors, suppliers, and other Persons supplying goods or services to Seller in the performance of its Services under this Agreement.

3.11. Identification, Security and Access Requirements.

- a. Identification. All of Seller's employees and Subcontractors shall display Purchaser-issued identification badges above the waist at all times that such individuals are on the Project Site. Any employee, contractor or Subcontractor of Seller who arrives at the Project Site without required identification will be dismissed from the Project Site. All such employees, contractors, and Subcontractors must pass to the satisfaction of Purchaser a Fairfax County Criminal History Check. Notwithstanding the foregoing, Purchaser disclaims any liability with respect to the accuracy or completeness of the Criminal History Checks. Seller shall be solely responsible for all costs associated with such identification badges and Criminal History Checks.
- b. Inspection. All supplies, materials, and equipment for use at the Project Site are subject to security inspection by Purchaser.
- c. Other Security and Access Requirements. Seller shall, and shall cause all of its Subcontractors to, at all times comply with the identification, security, and other access requirements set forth on Schedule 15 (Security/Access Requirements).
- d. Amendments to Security and Access Procedures. Purchaser reserves the right to amend and/or update its security and access requirements or procedures relative to the Project Site, including Schedule 15 (Security/Access Requirements), from time to time upon at least twenty-four (24) hours' Notice to Seller, whereupon Schedule 15 (Security/Access Requirements) shall be deemed amended accordingly.

3.12. Liens. Seller shall not, directly or indirectly, cause, create, incur, assume, or allow to exist any Lien on or with respect to the Project Site, the Improvements, or any property of Purchaser. Seller shall indemnify, defend, and hold the Purchaser Indemnified Parties harmless from and against all Losses resulting from any Liens filed against Purchaser Indemnified Parties' property as a result of Seller's breach of its obligations under this Section 3.12.

3.13. Reporting Requirements.

- a. Monthly Reports. On or before the fifteenth (15th) Day of each Billing Month during the Term, Seller shall deliver a monthly report to Purchaser in electronic format (via email or two (2) electronic copies if in CD) acceptable to Purchaser, which shall include: (i) a performance summary of the Billing Month and Billing Year-to-date delivery of Output, (ii) descriptions of reasons for any downtime, maintenance, or repairs, and any curtailment periods and other curtailment events during the applicable Billing Month, and (iii) a safety and environmental summary. In addition, Seller shall provide to Purchaser, such other information regarding, permitting, engineering, financing, installation, interconnection, testing, or operations of the System, as Purchaser's Representative may, from time to time, request. Unless otherwise approved in writing by the County's Purchasing Agent, Seller may not sell or give to any Person any information, reports, or other materials given to, prepared, or assembled by, Seller under this Agreement.
- b. Meetings. As requested by Purchaser, Seller's Representative shall attend and, if requested, make a presentation at Purchaser's Board and/or other County or Purchaser meetings concerning the System, its operations and/or Seller's performance of the Services hereunder.

3.14. Hazardous Materials.

- a. Seller shall not, nor shall it permit any of its Subcontractors to bring, use, generate, or release any Hazardous Materials on the Project Site, other than Hazardous Materials to be used by Seller or any of its Subcontractors on the Project Site in a manner that (i) does not violate or contribute to a violation of, or whether individually or on an aggregate basis require reporting or disclosure to any Governmental Authority, Purchaser or any third party under, any Applicable Laws, (ii) is consistent with Prudent Industry Practices and is required for Seller to perform the Services, and (iii) complies with the Lease.
- b. Seller shall bear all responsibility and liability for all Hazardous Materials brought on the Project Site by Seller, or any of its Subcontractors, whether such materials are permitted to be brought on the Project Site pursuant to this Section 3.14 or are brought on the Project Site in violation of this Section 3.14. If any Hazardous Materials are encountered at the Project Site by Seller, Seller shall immediately, upon recognizing such condition (i) stop its work in the affected area of the Project Site, and (ii) provide Notice of such condition to Purchaser.

- c. Seller shall minimize the use of Hazardous Materials in the performance of its work, and all such use shall be as permitted under, and in accordance with, Applicable Law. Seller shall maintain an updated file on all material safety data sheets for all Hazardous Materials used or in connection with the performance of its work and shall deliver an update of such file to Purchaser upon request.
 - d. Without limiting the generality of, and in addition to, Section 9.2, Seller shall indemnify, defend, and hold harmless all of the Purchaser Indemnified Parties from and against all Losses arising out of or relating to the existence at, on, above, below or near the Project Site of any Hazardous Materials to the extent deposited, spilled, or otherwise caused by Seller or any of its Subcontractors, agents, or employees.
 - e. Seller shall be solely responsible for compliance with all Applicable Laws pertaining to Hazardous Materials brought, used, generated, or released in violation of Applicable Law to the extent caused by Seller, or any of its Subcontractors, at the Project Site and for disposing of all Hazardous Materials brought to or used on the Project Site in accordance with this Section 3.14 through a reputable waste disposal service conducted in compliance with all Applicable Laws, and Seller shall maintain written records of such disposal for such period as may be required by Applicable Law and shall provide such records to Purchaser upon request. This provision shall survive termination or expiration of this Agreement.
- 3.15. Clean-Up. Seller shall at all times keep the Project Site and the Services in a safe and orderly state, as appropriate in accordance with Prudent Industry Standards and any requirements of the Lease, to avoid danger to Persons on the Project Site and in the immediate vicinity of the Project Site, and take such measures as are reasonable in accordance with Prudent Industry Practices to prevent access to the Project Site of any Persons not entitled to be there. Seller shall at all times keep the Project Site reasonably free from waste materials or rubbish caused by its activities.
- 3.16. Coordination and Right to Inspect. Purchaser and its representatives, advisors, engineers, and consultants shall have the right (a) to observe and inspect all Services, subject in all cases to Seller's reasonable safety precautions, (b) to be present during commissioning and testing of the System and shall, by way of example and not limitation, (c) to have access to test procedures, quality control reports, test reports, and data. Seller acknowledges and agrees that Purchaser and its representatives shall have the right to observe the Services at all times during the progress of the Services and to inspect and monitor the progress of the Services against the Project Schedule in order to verify compliance with the requirements set forth herein and to verify completion of each individual milestone as detailed in the Project Schedule and, in the case of Purchaser, take appropriate actions as may be required under this Agreement. No observation, inspection or review by Purchaser or its representatives shall constitute an approval, endorsement, or confirmation of any drawing, plan, specification, subcontractor, materials, or Services or an acknowledgment by Purchaser that such drawing, plan, specification, subcontract, materials, or Services satisfies the requirements of this Agreement; nor shall any such inspection or review relieve Seller of any of its obligations to perform the Services and furnish the materials or the Services.

- 3.17. Deliverables. Seller shall provide all deliverables to be provided to Purchaser hereunder pursuant to an online data room or other software program as may be requested by Purchaser.
- 3.18. Records. Seller shall maintain any and all documents and records which demonstrate performance under this Agreement, and all ledgers, books of account, invoices, vouchers, cancelled checks, and other documents evidencing or relating to charges for Services, or expenditures and disbursements charged to Purchaser for a minimum period of five (5) years, or for any longer period required by Applicable Law. Any documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at any time during regular business hours, upon five (5) Days Notice to Seller. Seller shall not charge Purchaser for Purchaser's inspection of records. Where Purchaser has reason to believe that any of Seller's documents relating to this Agreement may be lost or discarded due to dissolution, disbandment, or termination of Seller's business, Purchaser may, by written request to any of Seller's named officers, require that custody of Seller's documents be given to Purchaser. Seller must include this requirement in all subcontracts related to this Agreement.

SECTION 4

PROJECT DEVELOPMENT CONDITIONS PRECEDENT

- 4.1. Seller Project Development Responsibilities. Promptly following the Contract Date, Seller shall, at its sole cost and expense, diligently and faithfully proceed to satisfy all of the following responsibilities (the "Development Tasks"):
- a. Due Diligence. Seller shall have an opportunity to conduct and complete due diligence and physical inspection of the Project Site, including engineering, technical, and structural reviews. Such due diligence shall also include site visits by Seller to the Project Site and other measures deemed reasonably necessary by Seller to perform its obligations hereunder. Prior to any visits by Seller or its Subcontractors to the Project Site, Seller shall coordinate and arrange such visits with Purchaser's Representatives.
 - b. Permits; Governmental Authorizations; Interconnection. Seller shall complete the following: (i) obtain and pay for all Permits required to construct, install, operate and maintain the System, and (ii) obtain and pay for any authorizations and approvals from, and enter into agreements with, the Utility and Governmental Authorities having jurisdiction necessary to interconnect the System to the Site Electrical System and/or the Utility's electrical distribution system. All Permits and all other governmental and Utility authorizations, approvals, and agreements for the performance of the Services that are required to be obtained and in effect shall have been obtained by Seller, and Seller shall have provided reasonable proof of such authorizations, approvals, and agreements to Purchaser. If any of the Permits, agreements or authorizations are required to be in Purchaser's name, Purchaser shall take such actions as Seller may reasonably request to apply for and obtain them, and Seller shall reimburse Purchaser for its actual third party costs incurred, subject to Cost Substantiation.

- c. Structural and Roof Analysis. Seller shall cause a Qualified Engineer to perform a full structural load analysis of the Project Site and perform a complete inspection of the roof system at the Project Site. The Initial Design (as described in Section 4.1(d)(i) below) shall detail any structural or other modifications that must be performed at the Project Site in order for the contemplated System to be installed. Seller acknowledges and agrees that none of Purchaser, the County, or any of its or their employees, contractors, or agents has made, nor shall they make, any express or implied warranty to Seller as to the integrity, condition, or future life of the roof system. In coordination with Purchaser, Seller shall coordinate with any obligors under any existing roof warranties, such that the warranties shall remain in effect in accordance with their terms, and no actions by Seller or its Subcontractors shall compromise or affect such warranties. If structural modifications or repairs to the roof system are required, Seller shall obtain at least two (2) written proposals from third party Persons qualified and licensed to perform the required scope of work and provide copies of the same to Purchaser. Purchaser shall have the option (i) to perform the work itself or with its own contractor(s) and pay for the costs of such work, (ii) to have Seller perform such work and cover such costs, whereupon the Contract Price may be adjusted by mutual written agreement of the Parties, or (iii) to immediately terminate this Agreement upon Notice to Seller.
- d. Initial Design, Project Schedule, Annual Contract Quantity and Termination Payment Schedule. Seller shall prepare and deliver to Purchaser:
- (i) an initial design and engineering plan (the “Initial Design”) setting forth a description of the System (to be attached hereto as Schedule 2 (System Description)), including site plan, System design and layout, equipment specifications, expected System performance, warranty information, equipment location, metering equipment, structural reports (as described in Section 4.1(c)), roof or surface modifications (if necessary), and interconnection and integration of the System with the Project Site’s existing Improvements and the Site Electrical System;
 - (ii) a “critical path method” project schedule for the installation, interconnection, start-up, commissioning, and testing of the System and achievement of Final Completion, substantially in the form attached hereto as Schedule 4 (Project Schedule) (the “Project Schedule”);
 - (iii) the expected Annual Contract Quantity, substantially in the form attached hereto as Schedule 6 (Annual Contract Quantity); and
 - (iv) a termination payment schedule, substantially in the form attached hereto as Schedule 13 (Termination Payment Schedule) (the “Termination Payment Schedule”).
- e. Modifications to Initial Design, Project Schedule, Annual Contract Quantity and Termination Payment Schedule. Following receipt of the Initial Design, Project Schedule, Annual Contract Quantity and Termination Payment Schedule as provided in Section 4.1(d), Purchaser shall have [thirty (30)] Days (or such

longer period as may be agreed by the Parties) to review and comment thereto by delivery of Notice to Seller. If Purchaser provides comments to Seller, Seller shall, within [twenty (20)] Days (or such longer period as may be agreed by the Parties), amend and modify such documents to Purchaser's satisfaction and redeliver the following to Purchaser:

- (i) a revised design and engineering plan (the "Revised Design"), setting forth a complete design and engineering plan, including the items required for the Initial Design, engineering drawings, specifications, identity of the portion(s) of the Project Site that will compromise the System site, laydown and staging areas, and routes of access for the System, and such other aspects to be included or reflected as requested by Purchaser;
- (ii) a revised Project Schedule, if amended;
- (iii) a revised Annual Contract Quantity, if amended; and
- (iv) a revised Termination Payment Schedule, if amended.

If Purchaser has no comments thereof, Seller shall deliver the Revised Design, Project Schedule, Annual Contract Quantity and Termination Payment Schedule, as amended, within [twenty (20)] Days following the end of Purchaser's [thirty (30) Day] review and comment period.

- f. Acceptance of Final Design, Project Schedule, Annual Contract Quantity and Termination Payment Schedule. Within [thirty (30)] Days (or such longer period as may be agreed by the Parties) following receipt of the Revised Design, Project Schedule, Annual Contract Quantity and Termination Payment Schedule as provided in Section 4.1(e), Purchaser shall provide Seller with either (A) Notice accepting such documents, or (B) Notice explaining why Purchaser does not accept such documents and providing comments. The procedures described in this Section 4.1(f) shall be repeated as necessary until Purchaser has accepted the Revised Design, Project Schedule, Annual Contract Quantity, and Termination Payment Schedule. Upon Purchaser's Notice to Seller accepting the Revised Design (whereupon such Revised Design shall be considered the "Final Design"), Project Schedule, Annual Contract Quantity, and Termination Payment Schedule, such documents shall be deemed final and binding on the Parties, and Schedule 2 (System Description), Schedule 4 (Project Schedule), Schedule 6 (Annual Contract Quantity) and Schedule 13 (Termination Payment Schedule), in the forms approved by Purchaser, shall be amended and attached to this Agreement. Each of the foregoing Schedules, including the Final Design, may be amended only upon the written approval of the Parties.
- g. Decommissioning Bond. Seller shall have obtained and delivered the Decommissioning Bond, satisfying the requirements set forth in Section 8.2, to Purchaser.

- h. Required Seller Insurance. Seller shall have furnished to Purchaser evidence that Seller has secured and has in effect all Required Seller Insurance meeting the requirements of Section 9.1.
 - i. Lease Agreement. Seller shall have executed and delivered the Lease to Purchaser.
- 4.2. Satisfaction of Development Tasks; Installation Notice to Proceed. Seller shall provide Notice to Purchaser within [five (5)] Business Days when all of the Development Tasks have been satisfied or achieved by Seller, and Seller is ready to proceed with installation of the System. Notwithstanding anything herein to the contrary, Seller shall not proceed with any portion of installation of the System until Purchaser, in its sole discretion, (i) executes and delivers the Lease to Seller, and (ii) delivers a Notice to proceed (the "Installation Notice to Proceed") to Seller.
- 4.3. Failure to Complete Project Development Responsibilities. If any of the Development Tasks have not been satisfied in their entirety (or otherwise waived in writing by Purchaser, in its sole discretion) on or before [•], then either Party may terminate this Agreement upon [thirty (30)] Days Notice of such termination to the other Party. Notwithstanding anything herein to the contrary, at any time after the Contract Date but prior to issuance of the Installation Notice to Proceed, Purchaser may immediately terminate this Agreement upon Notice to Seller. In the event of termination pursuant to this Section 4, neither Party shall be liable for any payment, damages or penalty as a result of such termination.

SECTION 5 INSTALLATION OF THE SYSTEMS

- 5.1. Installation and Commissioning of the System. Following Seller's receipt of the Installation Notice to Proceed from Purchaser, Seller shall, at its sole cost and expense, promptly and diligently proceed to undertake, perform, and complete installation, start-up, commissioning, and testing of the System in accordance with the approved Final Design and Project Schedule, and the terms of this Agreement.
- 5.2. Installation Schedule.
 - a. Seller shall provide Notice to Purchaser at least [fifteen (15)] Days prior to commencement of installation of the System. Seller shall coordinate, arrange, and schedule all installation activities with Purchaser's Representative to minimize interference with operations and activities at the Project Site.
 - b. Seller shall complete installation of the System within the time provided in the Project Schedule. The Parties agree that time is of the essence in connection with the completion of the System, and that milestones for installation of the System must be achieved in a timely fashion. Upon becoming aware that Seller will, or is reasonably likely to, fail to achieve one or more required date(s) set forth in the Project Schedule, for any reason including for a Force Majeure Event, Seller shall immediately provide Notice to Purchaser. Such Notice shall describe, in reasonable detail (i) the cause of the delay, (ii) any impact such delay may have on achieving Final Completion, including a revised Project

Schedule, if applicable, and (iii) the measures being taken or to be taken by Seller to mitigate such impact. Purchaser may, in its sole discretion, grant extensions to the Project Schedule or waivers for Seller's failure to meet any of the milestones set forth therein; provided, in no way shall any such extension or waiver constitute a waiver of any future failures by Seller to meet other milestones.

- 5.3. Reporting. During the Installation Period, Seller shall provide weekly (on [•] of each week) status reports to Purchaser (or on such other schedule as is mutually acceptable by the Parties). Seller's Representative shall attend such meetings requested by Purchaser, detailing the status of the installation of the System and Seller's progress in achieving the Project Schedule. Seller shall create, maintain, and provide to Purchaser minutes of meetings between the Representatives during the design, engineering, installation, and commissioning phase of the System.
- 5.4. Seller Control of the Services; No Purchaser Responsibility. Seller shall have total control of the Services, including design, installation, start-up, commissioning and all other work involved with the System, and shall effectively direct and supervise the Services so that they are undertaken in compliance with the terms of this Agreement. Seller shall have the sole and exclusive responsibility and liability for the design, installation and performance of the System, notwithstanding Purchaser's review, comment or approval of the Initial Design, Revised Design, or Final Design; the fact that the RFP included certain standards or requirements for any of the Services; or the fact that Purchaser participated in certain design development activities that resulted in the finalization of the Final Design. Nothing in this Agreement shall be interpreted as giving any responsibility for any of the Services to Purchaser or any Purchaser Indemnified Party. Purchaser's rights of review and comment with respect to any aspect of the Services shall be for Seller's benefit only, and no review or comment by Purchaser shall in any way relieve Seller of its obligations for all aspects of the Services.
- 5.5. Laydown; Staging Area. Purchaser may, but shall not be obligated to provide, at no cost to Seller, one or more temporary laydown areas, designated for Seller's use for the storage of equipment, facilities and materials to be incorporated into the System, along with any installation and testing equipment and materials to be used in the installation or testing of the System. If any such areas are permitted and authorized by Purchaser, Schedule 3 (Project Site) shall designate such areas. Seller acknowledges that its use of such areas is at its own risk and that Purchaser shall not be responsible or liable for any Loss that Seller, its Subcontractors or other Persons sustains in connection with its or their use of such areas. Seller shall keep all temporary laydown areas clean and orderly and shall restore them to their original condition.
- 5.6. Installation Period Electricity. Upon Notice to and in coordination with Purchaser, Seller may test the System and deliver all Output resulting from such testing during the Installation Period. Purchaser shall accept delivery of all Output resulting from such testing, but shall not be required to pay for such Output delivered during testing.
- 5.7. Refuse. Seller shall reduce and mitigate noise, dust, and the spread of debris and materials. Seller shall remove all debris, extra materials, scaffolding, tools, machinery, and other materials and leave all portions of the Project Site clean and ready to use.

5.8. Damage to Site. Without limiting the generality of Section 9.2, Seller shall be responsible to repair and promptly pay Purchaser for any damage to any portion of Purchaser's property, including the Project Site, caused by Seller's or its Subcontractors' installation, start-up, commissioning, operation or maintenance of the System.

5.9. Inspections; Interconnection.

- a. Seller shall conduct and supervise all building, electrical, civil, environmental and structural inspections in connection with installation, testing, and commissioning of the System.
- b. Seller shall interconnect the System to the Site Electrical System and shall purchase and install, and be solely responsible for, all equipment, maintenance, and repairs associated with such interconnection equipment. At Seller's sole cost and expense, Seller shall, with Purchaser's assistance, enter into net metering arrangements by executing such agreements, including interconnection agreements, as may be required by the Utility to permit the interconnection of the System with the Site Electrical System and to allow any Output of the System not consumed by Purchaser to flow to the Utility. In advance of signing any such agreements, Seller shall provide to Purchaser, for Purchaser's review, copies of such agreements and arrangements. Promptly following execution of such agreements, Seller shall provide copies of such agreements to Purchaser. Seller shall be responsible for all costs under any interconnection agreement and any other agreements with the Utility, including any upgrades or modifications associated with the interconnection of the Site Electrical System. In no event shall Purchaser be responsible for maintaining the interconnection facilities, or for the cost or expense associated therewith.
- c. Seller is responsible for conducting and supervising the electrical inspections for the System as part of the Services. Before Final Completion is achieved, Seller shall schedule an electrical inspection of the System with the appropriate Governmental Authorities and shall provide to Purchaser a completed inspection certificate from each such Persons, which certificate(s) shall be in form and substance satisfactory to Purchaser. If, for any reason, the System does not receive a satisfactory inspection certificate, Seller shall repair or correct any defect or deficiency that caused such failed inspection at Seller's cost. Upon completion of such repairs or correction, Seller shall cause such electrical inspection to be re-performed in accordance with this Section 5.9(c).
- d. Seller is responsible for conducting and supervising all Utility inspections for the System as part of the Services. Seller shall coordinate with Purchaser's Representatives to schedule and attend Utility inspections of the System. Further, Seller shall provide Purchaser with at least [five (5)] Business Days' Notice prior to installation of the Meter(s). Following receipt by Seller of a satisfactory inspection certificate for the System pursuant to Section 5.9(c), as a condition to Final Completion of the System, Seller shall schedule an inspection of the System by the Utility, if required to do so. Seller shall present evidence satisfactory to Purchaser that the System is authorized to be connected. If, for any reason, the System does not receive a satisfactory inspection certificate or Seller is unable to provide such satisfactory evidence, Seller shall repair or

correct any defect or deficiency that caused such failed inspection at Seller's cost.

5.10. Final Completion.

- a. On or before the Day that is [five (5)] Business Days after the Date on which Seller believes that Final Completion has been achieved, Seller shall submit to Purchaser a Final Completion Certificate, along with all documentation necessary for Purchaser to determine if Final Completion has been achieved and indicating Seller's proposed Actual Commercial Operation Date.
- b. Following receipt of such Final Completion Certificate, Purchaser shall review such certificate and documentation for purposes of determining if Final Completion has been achieved and consideration of the proposed Actual Commercial Operation Date.
- c. At the discretion of Purchaser, the Parties may schedule and arrange for an inspection of the System. Such inspection shall be scheduled for a date, mutually agreeable to Seller and Purchaser. Based on the inspection, Purchaser may prepare and deliver to Seller a punch list of any observed defects or deficiencies (the "Punch List"). Seller shall, at its sole cost and expense, promptly correct and address the items on the Punch List and shall provide Notice to Purchaser when such all such items on the Punch List have been corrected. If requested by Purchaser, Seller shall schedule and arrange a follow-up inspection for Purchaser after all Punch List items are resolved. All Punch List items shall be resolved prior to the Actual Commercial Operation Date, unless otherwise agreed in writing by Purchaser.
- d. Following Purchaser satisfaction, in its discretion, of Final Completion of the System, Purchaser shall countersign and deliver to Seller the Final Completion Certificate to indicate its agreement that Final Completion has been achieved and the Parties' agreement of the Actual Commercial Operation Date for purposes of this Agreement.
- e. Not later than [fifteen (15)] Days following Final Completion, Seller shall deliver to Purchaser (i) two (2) electronic copies of the final draft of the final design specifications of the System (if amended), (ii) final "as-built" plans and line diagrams/drawings stamped and certified by a Qualified Engineer, (iii) all shop drawings and test reports, including performance test reports and commissioning documents for the System, and (iv) such other documentation or materials reasonably requested by Purchaser.

5.11. Purchaser's Right to Suspend.

- a. Purchaser may, at any time after Notice to Seller specifying the effective date of the suspension (a "Suspension Notice"), require Seller to suspend its installation and commissioning work, or any portion thereof. Upon receipt of a Suspension Notice, Seller shall take reasonable steps to suspend its work as soon as reasonably possible and to secure the Project Site for the expected period of the suspension. If Purchaser suspends Seller's installation and commissioning

work without cause (i.e., other than as a result of a Force Majeure Event or Seller Default), Purchaser shall reimburse Seller for reasonable costs and expenses, subject to Cost Substantiation, actually incurred and payable by Seller to protect the Project Site and materials and equipment that would not have been incurred as part of its work.

- b. Upon providing a Suspension Notice to Seller, Purchaser shall promptly arrange to discuss with Seller the specific requirements of the suspension and whether or not Purchaser anticipates that demobilization, remobilization, or idle equipment will occur as a result of the suspension.
- c. Upon receiving a Suspension Notice, Seller shall discontinue the suspended work, place no further purchase orders or subcontracts with respect to the suspended work, and promptly make reasonable efforts to obtain reasonably satisfactory suspension terms with respect to all purchase orders, subcontracts, supply contracts, and rental agreements related to the suspended work. Seller shall continue to perform all other portions of the Services that have not been suspended by Purchaser.
- d. Purchaser may, at any time, authorize the resumption of the suspended work or any part thereof, by giving Seller reasonable Notice specifying the part of the suspended work to be resumed and the effective date of such resumption. Seller shall resume the suspended work on the date and the extent specified in such Notice.
- e. Seller shall use its employees, Subcontractors, equipment, and materials in such manner, and take such other steps as may be necessary or desirable to minimize the costs associated with the suspended work. During the period of the suspended work, Seller shall secure and protect the suspended work and all materials and equipment to be used or incorporated therein.
- f. Purchaser's suspension of the work as provided in this Section 5.11 shall extend the Project Schedule (including the Expected Commercial Operation Date) on a Day-for-Day basis, or as mutually agreed by the Parties.

SECTION 6

PURCHASE AND SALE; DELIVERY AND METERING; PERFORMANCE GUARANTEE; OPERATION AND MAINTENANCE

- 6.1. Purchase and Sale of Output. Beginning on the Actual Commercial Operation Date and continuing throughout the Term, Seller shall sell and deliver at the Delivery Point, and Purchaser shall purchase and accept from Seller at the Delivery Point, all of the Output generated by the System and which is actually consumed by Purchaser at the Project Site; provided, however, in no event shall Purchaser be required to purchase Output in excess of the amount allowable under the PPA Pilot Program Requirements. Any Output not immediately usable by Purchaser shall be exported to the Utility pursuant to interconnection and/or net metering agreements. Title to and risk of loss for the Output generated by the System passes to Purchaser from Seller at the Delivery Point. Seller warrants that it will

deliver all Output and all of the associated Environmental Attributes to Purchaser free and clear of all Liens created by any Person other than Purchaser.

- 6.2. Delivery Point. Seller shall be responsible for all costs or charges imposed on or associated with the Output or the delivery of the Output hereunder up to and at the Delivery Point. Purchaser shall be responsible for any costs or charges imposed on or associated with the Output, or its receipt, after the Delivery Point.
- 6.3. Data Line. If the Project Site has an internet data line, Purchaser may, in its discretion, provide access to an internet data line at the Project Site to enable Seller to record the Output generated by the System. Seller is responsible, at its sole cost, for providing all means of connection to the internet data line, including boring, conduit, and wire, as applicable. Seller shall comply with all policies, procedures, and requirements of Purchaser for use of Purchaser's internet data line, and any violation or misuse thereof may permit Purchaser to suspend or terminate such use. Seller assumes all risks associated with use of the internet data line, including any loss of internet data connectivity or service. If Purchaser is unable to provide access to an internet data line or if such data line is unavailable or out of service, Seller shall, at its sole cost and expense, promptly install and operate a cellular communications device to acquire the necessary production data.
- 6.4. Measurement; Online Monitoring System.
- a. Meter. Seller shall, at its sole cost and expense, install, operate, maintain, repair, replace, and test the Meter at the Delivery Point to measure the amount of Output delivered by Seller to Purchaser and actually consumed by Purchaser. Seller shall operate and maintain the Meter in accordance with Prudent Industry Practices.
 - b. Meter Reading. Seller shall read the Meter at the end of each Billing Month and shall record the Output delivered to Purchaser. The Meter shall be used as the basis for calculating the amounts to be invoiced pursuant to Section 10. Purchaser shall have access to the metered energy output data via the online monitoring system installed and maintained by Seller as part of the System. In addition, upon request, Seller shall provide to Purchaser hardcopy records from the Meter.
 - c. Meter Calibration.
 - (i) Seller shall, at its sole cost and expense, calibrate the Meter prior to its installation and at least annually thereafter to ensure the accuracy of the Meter. Notwithstanding the foregoing, Purchaser may install, or cause to be installed, its own revenue-grade meter at the same location as the Meter. Purchaser may request that Seller perform more frequent testing, however any such testing in excess of the annual tests shall be at Purchaser's expense, subject to Cost Substantiation, if such tests indicate that the Meter is within plus or minus two percent (2%). Purchaser shall be entitled to witness such tests and Seller shall provide Purchaser with such test results.

- (ii) If, upon testing, the Meter is found to be accurate or in error by not more than plus or minus two percent (2%), then the previous recordings of such Meter shall be considered accurate in computing deliveries of Output hereunder, but such Meter shall be promptly adjusted to record correctly, if needed.
 - (iii) If, upon testing, the Meter is found to be inaccurate by an amount exceeding plus or minus two percent (2%), then Seller shall promptly repair or adjust such Meter and any previous recordings by such Meter shall be corrected to zero error. If no reliable information exists as to the period over which such Meter registered inaccurately, it shall be assumed for purposes of correcting previously delivered invoices that such inaccuracy began at a point in time midway between the testing date and the next previous date on which such Meter was tested and found to be accurate.
 - (iv) If, upon testing, the Meter is found to be in error by an amount exceeding plus or minus two percent (2%), then the payments for Output made since the previous Meter test shall be adjusted to reflect the corrected measurements. If the difference in the previously invoiced amounts minus the adjusted payment is a positive number, that difference shall offset amounts owing by Purchaser to Seller in subsequent Billing Month(s). If the difference is a negative number, the difference shall be added to the next Billing Month's invoice and paid by Purchaser to Seller.
- d. Online Monitoring System. Seller shall, at its sole cost and expense, provide, and maintain the necessary software and hardware, including periodic updates and upgrades during the Term consistent with Prudent Industry Practices, for Purchaser and the general public to monitor the Electricity generated by the System. Seller shall provide and maintain, at its cost, the necessary hosting services and access to a cloud-based system that Purchaser may access at any time. Seller shall provide, host, and operate a public-facing dashboard that may be accessed by a hyperlink Purchaser may place on its website.

6.5. Performance Guarantee.

- a. Output Guarantee. Beginning on the Actual Commercial Operation Date and during each Billing Year throughout the Term, Seller guarantees to deliver Output to Purchaser not less than [•] percent ([•]%) of the Annual Contract Quantity (in kWh) (the "Output Guarantee"). The Output Guarantee in any Billing Year shall be reduced by the amount (in kWh), as reasonably estimated by the Parties, of Electricity that Seller was unable to produce and sell to Purchaser as a result of (i) a Force Majeure Event or (ii) a curtailment by Purchaser in excess of the Outage Allowance.
- b. Annual Performance Guarantee Statement. Within [thirty (30) Days] following the end of each Billing Year, Seller shall prepare and deliver to Purchaser a statement (the "Annual Performance Guarantee Statement") setting forth (i) the amount (in kWh) of Output delivered to Purchaser during such Billing Year, (ii) the amount (in kWh) of the Output Guarantee for the Billing Year and any

reductions described in Section 6.5(a) proposed to be applied against and reduce such Output Guarantee during such Billing Year, and (iii) the calculation of the Shortfall Damages, if any, due by Seller to Purchaser for such Billing Year.

- c. Shortfall Damages. If, in any Billing Year, Seller fails to meet the Output Guarantee, Seller shall pay to Purchaser, as liquidated damages, an amount (the "Shortfall Damages") equal to the product of (i) the amount (in kWh) by which the Output Guarantee for the Billing Year exceeds the actual Output to Purchaser during such Billing Year times (b) the Contract Rate (\$/kWh) for the applicable Billing Year. In no event shall the Shortfall Damages be less than zero dollar (\$0). Unless Purchaser disputes the data or calculations set forth in the Annual Performance Guarantee Statement within [thirty (30)] Days following receipt thereof, the Shortfall Damages, if any, shall be applied against and reduce the Monthly Invoice payable by Purchaser to Seller for the immediately succeeding Billing Month, or upon Purchaser's request, Seller shall pay the Shortfall Damages to Purchaser. The Parties acknowledge and agree that the damages that Purchaser would incur due to shortfalls in Output would be difficult or impossible to predict with certainty, and it is impractical and difficult to assess actual damages in those circumstances and, therefore, Shortfall Damages are a fair and reasonable calculation of such damages.

- 6.6. Operation and Maintenance of the System. Seller shall, at its sole cost and expense, (a) operate, maintain, test, repair and replace the System consistent with Prudent Industry Practices and (b) perform all corrective, predictive, preventive, and routine maintenance to the System consistent with Prudent Industry Practices, including repairs and replacements, to maintain the equipment and System, such that they are kept and maintained in good physical, mechanical and operational condition.
- 6.7. System Repair and Maintenance. Seller may suspend delivery of Electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System; provided, that Seller shall (a) provide at least [fourteen (14)] Day advance Notice to Purchaser of any scheduled repair or maintenance of the System, except in the case of an emergency, in which case, Purchaser shall provide immediate verbal notice to Seller's Representative, and within two (2) Business Days, provide Notice to Seller's Representative describing, in reasonable detail, the emergency, (b) coordinate and arrange with Purchaser as to the particular day(s) and time(s) in which maintenance and repair of the System is performed, (c) minimize any interruption in service to Purchaser, and (d) limit any such suspension of service to weekend or off-peak hours. Maintenance and repairs to the System shall be undertaken and performed at Seller's sole cost and expense.
- 6.8. Breakdown Notice. Seller shall provide prompt Notice to Purchaser and, in any event, within twenty-four (24) hours, following Seller's discovery of (a) any material malfunction in the operation of the System, or (b) an interruption in the supply of Electricity from the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice (including telephonic notice) of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.

- 6.9. Outages. Upon Purchaser's written request to Seller, Seller shall take the System off-line for a total of up to [forty-eight (48)] daylight hours (as defined by the United States National Weather Service in the area where the System is located) during each Billing Year (each event an "Outage", and the [forty-eight (48)] hour period, the "Outage Allowance"). To the extent reasonably practicable, Purchaser's request shall be delivered at least [twenty-four (24)] hours in advance. Purchaser is not obligated to accept or pay for Output from the System for Outages up to the annual Outage Allowance. If the aggregate hours for Outages exceed the Outage Allowance in a given Billing Year, the Parties shall reasonably estimate in good faith the amount of Output that would have been delivered to and purchased by Purchaser during such excess Outages, and Purchaser shall pay Seller for such amount in accordance with this Agreement.
- 6.10. Roof and Surface Repairs. If the roof system or parking surface, as applicable, at a Project Site requires repair not caused by Seller or the System and all or a portion of the System must be temporarily removed, Purchaser shall provide as much Notice to Seller as reasonably practicable. Following receipt of such Notice and in coordination with Purchaser, Seller shall promptly remove and store the System (or the portion requested thereof), but in any event, within [fourteen (14)] Days. If Purchaser determines that the roof system or parking surface requires an emergency repair, Seller shall remove the System within [forty-eight (48)] hours of Purchaser's Notice, or sooner if the repair is urgent. If Seller cannot remove the System within the emergency time frame specified by Purchaser in such Notice, Seller hereby authorizes Purchaser or its contractor(s) to remove and store the System at Purchaser's cost and expense. Upon completion of any roof or surface repair, in coordination with Purchaser, Seller shall reinstall and recommission the System at the Project Site in accordance with the provisions of this Agreement. Purchaser shall reimburse Seller for its actual costs, subject to Cost Substantiation, incurred by Seller in removing, reinstalling and recommissioning the System, as applicable, at the Project Site. If the System is offline for more than [five (5)] Days due to a roof or surface repair not caused by Seller or the System, for each Day the System is offline, the Parties shall reasonably estimate in good faith the amount of Output that would have been delivered to and purchased by Purchaser during such period, and Purchaser shall pay Seller for such amount in accordance with this Agreement.
- 6.11. Obstructions. Except in the case of an emergency or performance of routine maintenance or repair of the buildings or other improvements on the Project Site, Purchaser shall not, to the extent within its reasonable control, install or permit to be installed on the Project Site any physical obstruction that materially reduces, or is reasonably likely to materially reduce, the production of Output. If such obstruction is installed by Purchaser and no emergency exists, and such obstruction has the effect of decreasing the Output of the System below the Minimum Output for the relevant Billing Year (as pro rated for a Billing Month basis) for a period of two (2) Billing Months or longer, the Parties shall promptly meet and discuss options for removal of said obstruction, if capable of removal. If such obstruction is unable to be removed within thirty (30) Days and is as a result of action by Purchaser, the Parties shall promptly meet and negotiate in good faith a possible amendment to this Agreement to accommodate for such lost production revenue of Seller.

SECTION 7
OWNERSHIP OF THE SYSTEM, ENVIRONMENTAL ATTRIBUTES
AND TAX BENEFITS; SYSTEM PURCHASE OPTION

7.1. Ownership of the System. Throughout the Term, unless Purchaser exercises its Purchase Option pursuant to Section 7.4, Seller shall be the legal and beneficial owner of the System, and the System will remain the personal property of Seller and will not attach to or be deemed a part of, or fixture to, the Project Site or any Improvement on which the System is installed. The System will at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.

7.2. Environmental Attributes.

- a. For and in consideration of Purchaser entering into this Agreement, and in addition to the agreement by Purchaser and Seller to purchase and sell Output on the terms and conditions set forth herein, Seller hereby transfers, assigns and conveys to Purchaser, and Purchaser accepts and receives from Seller, all right, title, and interest in and to the Environmental Attributes, if any, whether now existing or subsequently generated or acquired (other than by direct purchase from a third party) by Seller, or that hereafter come into existence, during the Term, as a component of the Output purchased by Purchaser from Seller hereunder. Seller shall transfer and make such Environmental Attributes available to Purchaser immediately to the fullest extent allowed by Applicable Law upon Seller's production or acquisition of the Environmental Attributes. Seller acknowledges and agrees that the Contract Price includes the full compensation for the transfer and sale of the Environmental Attributes to Purchaser.
- b. Seller shall not assign, transfer, convey, encumber, sell, or otherwise dispose of any portion of the Environmental Attributes to any Person other than Purchaser.
- c. Seller shall not report to any Person that the Environmental Attributes granted hereunder to Purchaser belong to anyone other than Purchaser, and Purchaser may report under any program that such attributes purchased hereunder belong to Purchaser. Seller shall not make any filing or statements inconsistent with Purchaser's ownership of the Environmental Attributes.
- d. If requested in writing by Purchaser, and at Purchaser's expense, Seller shall register the System with the RTO, and take all other actions necessary to ensure that the Output or Environmental Attributes produced by the System are issued and tracked through RTO for purposes of satisfying the requirements of any Virginia renewable energy portfolio standard and transferred to Purchaser, as applicable.
- e. Seller shall document the production of Environmental Attributes under this Agreement by delivering on an annual basis to Purchaser an attestation of Environmental Attributes produced by the System and purchased by Purchaser in the preceding Billing Year. On or before the anniversary of each Billing Year following the Actual Commercial Operation Date, Seller shall document the

transfer of Environmental Attributes to Purchaser hereunder by executing and delivering to Purchaser an attestation of Environmental Attributes transferred under this Agreement in the preceding Billing Year. The form of attestation is set forth as Schedule 11 (Form of Environmental Attributes Attestation). Schedule 11 (Form of Environmental Attributes Attestation) may be revised or amended by Purchaser as necessary to ensure that Purchaser receives full and complete title to, and the ability to record with any EA Agency as its own, all the Environmental Attributes purchased hereunder.

- f. At Purchaser's option, the Parties, each at Purchaser's expense, shall execute and deliver to Purchaser or such other Person as requested by Purchaser all such other documents and instruments in order to effect the transfer of Environmental Attributes specified in this Agreement to Purchaser or its designee(s), as Purchaser may request. Upon notification by an EA Agency that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfer can be recorded. Each Party shall promptly give the other Party copies of all documents it submits to the EA Agency to effectuate any transfers. If the sale or proceeds from any Environmental Attributes are paid or delivered directly to Seller, Seller shall immediately pay or deliver such items or amounts to Purchaser.

7.3. Ownership of Tax Benefits. Seller, as owner of the System, is the owner of all Tax Benefits. Seller acknowledges and agrees that Purchaser has made no statements, representations or warranties regarding the eligibility of the System for the Tax Benefits, and Seller is not relying on any statement, representation, or warranty by Purchaser or any third party with respect to the Tax Benefits in entering into this Agreement.

7.4. Purchase Option.

- a. Exercise of Option. At the end of (i) the [•] and [•] Billing Years and (ii) the Initial Term and each Extended Term, as applicable, Seller hereby grants to Purchaser the option (the "Purchase Option"), in Purchaser's sole discretion, to purchase the System from Seller on any such date for a purchase price equal to the Fair Market Value of the System as of the date of the transfer of title to the System. Purchaser shall deliver Notice to Seller of its intent to exercise the Purchase Option at least [ninety (90)] Days prior to the end of the applicable Billing Year or the Initial Term or Extended Term, as applicable.
- b. Fair Market Value. The "Fair Market Value" of the System shall be determined by mutual agreement of the Parties; provided, however, if the Parties cannot agree to a Fair Market Value within [thirty (30)] Days after Purchaser has delivered to Seller a Notice of its intent to exercise the Purchase Option, the Parties shall cooperate and select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System on an installed basis and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser will be binding

upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally.

- c. Title Transfer; Warranties; Manuals. If Purchaser exercises its Purchase Option, the Parties shall arrange the sale of the System under customary terms and conditions for the purchase and sale of a facility of the type and size as the System, which terms and conditions shall provide, among other things, that (i) Seller shall transfer good and marketable title to the System, free and clear of all Liens, to Purchaser (or its designee) upon Seller's receipt of the purchase price, but otherwise the System will be sold "as is, where is, with all faults", (ii) Seller will transfer and provide to Purchaser all System operation and maintenance manuals and logs and provide Purchaser and/or its designee(s) training on the operation and maintenance of the System upon Purchaser's request, at no cost to Purchaser, (iii) Seller will assign to Purchaser (or its designee) any manufacturer's warranties that are in effect as of the date of purchase and which are then assignable pursuant to their terms, (iv) Seller shall provide to Purchaser (or its designee) an irrevocable, permanent, transferable, exclusive, royalty-free license to use any intellectual property rights associated with the System, including software, patents, copyrights, intellectual property, and other proprietary information relating to the specification, design, installation, operation, or maintenance and repair of the System, as well as training processes and the contents of service and maintenance manuals and test and inspection procedures, and (v) upon such transfer of title, this Agreement shall automatically, and without further action of either Party, terminate. Seller shall provide all necessary cooperation with Purchaser to give prompt effect to this transfer.

SECTION 8

SYSTEM REMOVAL; DECOMMISSIONING BOND

- 8.1. Removal of System upon Termination or Expiration. Upon the expiration or earlier termination of this Agreement (provided Purchaser does not exercise its purchase option pursuant to Section 7.4), Seller shall, at its sole cost and expense, remove the System from the Project Site within [sixty (60)] Days after expiration of the Term or termination of this Agreement. In addition, Seller shall, at its sole cost and expense, restore the Project Site where the System was located to its original condition (excluding ordinary wear and tear), including removal of System mounting pads or other support structures, and repair and restoration of (i) if the System is installed on a roof, the roof and the roof membrane, or (ii) if the System is installed on a parking lot or parking structure, the parking surface, including resurfacing, patching, and/or re-filling the surface. In no case shall Seller's removal of the System affect the integrity of the roof system, which shall be as leak proof as it was prior to removal of the System and shall be flashed and/or patched to existing roof specifications and Purchaser's then-existing roof warranties. Purchaser shall reasonably cooperate and provide sufficient access to the Project Site as reasonably necessary to facilitate System removal and roof or surface repair, and Seller shall coordinate and arrange with Purchaser's Representative on mutually convenient date(s) for removal of the System and repair of the roof or surface. If Seller fails to remove the System by such agreed-upon date, Purchaser may, at its option and without the consent or approval of Seller, remove the System or engage one or more contractor(s) to remove the System and store at a public

warehouse or sell or dispose of such System, with such proceeds, if any, applied to amounts owed to Purchaser and the remaining amount, if any, remitted to Seller, and restore the Project Site to its original condition (other than ordinary wear and tear), all at Seller's sole cost and expense.

8.2. Decommissioning Bond.

- a. General. As security for the performance of Seller's obligations under Section 8.1 (collectively, "Decommissioning"), prior to the issuance of the Installation Notice to Proceed, Seller shall, at its sole cost and expense, obtain and cause to be issued and delivered to Purchaser by a Qualified Surety a decommissioning bond ("Decommissioning Bond"), in form and substance as provided in Schedule 12 (Form of Decommissioning Bond) or as may otherwise be acceptable to Purchaser. The Decommissioning Bond shall specify that it shall be subject to and governed by Virginia law.
- b. Decommissioning Amount. The Decommissioning Bond shall have a bonded sum amount equal to no less than the Decommissioning Amount and shall be for a term of one (1) year following the date of delivery of such Bond to Purchaser. At least sixty (60) Days prior to the fifth (5th), tenth (10th), fifteenth (15th), [twentieth (20th) and twenty-fifth (25th)] anniversaries of the Billing Year, Seller shall, at its sole cost and expense, engage and cause a Qualified Engineer experienced in preparing decommissioning estimates of solar photovoltaic systems to (i) recalculate the Decommissioning Amount as of such particular anniversary date, and (ii) prepare and send a report with such recalculated Decommissioning Amount, including all data and calculations, to each of Purchaser and Seller. Unless Purchaser disagrees with the recalculation of such Decommissioning Amount by delivery of Notice to Seller within [twenty (20)] Days following receipt of such report from the Qualified Engineer, Seller shall cause the Qualified Surety to amend or replace the Decommissioning Bond with the recalculated Decommissioning Amount, as determined by the Qualified Engineer, and deliver such amended or replacement Decommissioning Bond to Purchaser within thirty (30) Days.
- c. Renewal. At least sixty (60) Days prior to the expiration of each term of such Decommissioning Bond, Seller shall cause the Decommissioning Bond to be renewed for an additional one (1) year term. Seller shall repeat such renewal process each year thereafter for the Term, and such renewal shall be through a Qualified Surety.

SECTION 9
INSURANCE; INDEMNIFICATION; LIMITATION OF LIABILITY

9.1. Required Seller Insurance.

- a. Required Seller Insurance. Seller, on its own behalf and on behalf of anyone directly employed by it for whose acts or omissions Seller may be liable, including Subcontractors, shall secure or cause to be secured on or before the Contract Date, and maintain during and through the Term, the insurance

policies with the policy limits specified in subsection (a) below (the “Required Seller Insurance”). Evidence of the Required Seller Insurance shall be provided to Purchaser promptly following receipt thereof. The administrative and premium payments and all other costs and expenses for each such policy shall be borne exclusively by Seller. Seller may also secure insurance coverages and policies in addition to the Required Seller Insurance, and all such insurance costs shall be borne exclusively by Seller at its sole cost and expense.

b. Seller Insurance Requirements. Seller shall obtain and maintain, at its sole cost and expense, the following insurance coverages from insurers who are licensed in the State and who have a Best’s rating of A: VII or better:

- (i) statutory worker’s compensation and employer’s liability insurance in limits of not less than one million dollars (\$1,000,000) to protect Seller from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the State;
- (ii) commercial general liability insurance having a minimum combined single limit of liability of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in aggregate, to protect Seller, its Subcontractors, and the interest of Purchaser, its officers and employees, against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under this Agreement or in connection with the Services; the general liability insurance shall also include broad form general liability endorsement, in addition to coverages for explosion, collapse, and underground hazards, where required;
- (iii) owned, non-owned and hired commercial automobile liability insurance having a minimum combined single limit of liability of one million dollars (\$1,000,000) per occurrence/aggregate, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by Seller; in addition, all mobile equipment used by Seller in connection with the Services shall be insured under either a standard commercial automobile liability policy or a commercial general liability policy; the garage keeper’s liability coverage shall also be maintained where appropriate;
- (iv) builder’s risk and fire and extended coverage insurance to protect Purchaser and Seller and its Subcontractors against loss caused by perils, in a minimum amount of [•]²; such insurance value shall reflect any increases to the Agreement through change orders; policy to be in builder’s risk completed value forms, including the following (A) policies shall be written to include the names of Seller and Purchaser and the words “as their interest may appear”, (B) all insurance shall be in effect on or before the date when work is to commence, and (C) all insurance shall

2 NTD: Amount to be inserted: cost of the system and the installation cost.

be maintained in full force and effect until the final acceptance of the System by Purchaser;

- (v) environmental impairment liability insurance, including sudden and accidental pollution and in transit coverage as well as coverage for storage at site, having a minimum limit of liability of [•] dollars (\$[•]) per occurrence; and
- (vi) [excess (of subsections (ii), (iii) and (iv) above) liability insurance having a minimum limit of liability of [•] dollars (\$[•]) per occurrence and in aggregate per policy year.]

c. Insurance Requirements Generally. The following shall be applicable to the Required Seller Insurance coverages required to be secured and maintained pursuant to Section 9.1(b):

- (i) Insurance Deductibles. Seller shall be responsible to (and shall) satisfy any and all deductibles and self-insured retentions contained in the Required Seller Insurance coverages required to be secured and maintained by Seller under this Agreement, as well as any excluded loss or losses, if the same are within Seller's liability under this Agreement. Notwithstanding the minimum limits of coverage stated in subsection (a) above, the limit of each underlying insurance coverage must be at least as high as is necessary to support the excess liability insurance coverage, and no individual insurance coverage shall have a deductible in excess of one hundred thousand dollars (\$100,000) without the prior express written consent of Purchaser.
- (ii) Duty to Maintain Insurance. All Required Seller Insurance to be secured and maintained by Seller under this Agreement shall be continuously maintained throughout the Term. Failure of Seller (or its Subcontractor) to obtain and maintain the insurance required under and pursuant to the terms of this Agreement shall be deemed an Event of Default for purposes of Section 12.1(e). Failure of Seller (or its Subcontractor) to maintain any Required Seller Insurance shall also not relieve Seller from any liability under this Agreement, nor shall these requirements be construed to conflict with Seller's indemnification obligations. Seller shall further ensure that all Required Seller Insurance is not canceled or materially changed, and that it is renewed during the Term, and Seller at its sole cost and expense shall pay such extra premium as required to ensure no lapse of Required Seller Insurance coverage for any time period. Seller is required to carry property insurance on all equipment, to include Purchaser-owned, installed, and maintained equipment used by Seller while in its care, custody, and control for the use of this Agreement.
- (iii) Policies of Insurance; Certificates as Evidence of Insurance. Certificates of insurance shall be furnished to Purchaser for review and approval, and original, signed Certificates of insurance, citing the contract number and such endorsements as prescribed herein, shall be filed with the Purchaser before any work is started. Copies of all certificates of

insurance shall be made available to Purchaser upon demand, and certified copies of all insurance policies within ten (10) Business Days of demand by Purchaser. [Any loss insured under Section 9.1(b)(iv) is to be adjusted with the Purchaser and made payable to Purchaser as trustee for the requirements of any applicable mortgagee clause.] Seller shall pay to each Subcontractor a just share of any insurance monies received by Seller, and by appropriate agreement, written where legally required for validity, shall require each Subcontractor to make payments to his/her subcontractors in similar manner. If a policy of Required Seller Insurance is canceled, not renewed or materially changed, Seller shall provide, or cause to be provided, a certificate for the substitute policy to Purchaser for review and approval as early as possible before the commencement of the substitute policy period. If a policy of Required Seller Insurance is renewed without material change, Seller shall supply to Purchaser a certificate of insurance that reflects the policy number of Seller's approved policy, lists the coverages provided and shows the policy's effective and termination dates. Seller shall provide to Purchaser proof of renewed Required Seller Insurance coverages in the form of a certificate of insurance of each such policy as far in advance of the renewal as possible.

- (iv) Carrier Renewal and Cancellation Notification. Any policy or policies procured, or caused to be procured, by Seller shall provide by endorsement that Purchaser shall, without exception, be given not less than (i) ten (10) Days' Notice prior to any non-payment of insurance premium and (ii) thirty (30) Days' Notice prior to the carrier's cancellation, non-renewal, or material change, or within such other period of Days required by Applicable Law, and that, in the case of both clause (i) and (ii), such Notice shall be delivered to Purchaser as provided for in this Agreement. Confirmation of this mandatory Notice of nonrenewal, cancellation, or material change shall appear on the certificate of insurance and on any and all policies for Required Seller Insurance. If any such policy is subject to expiration or cancellation and Seller fails to provide Purchaser with written commitments to renew or purchase other such insurance meeting the requirements of this Section 9.1 at least thirty (30) Days prior to the effective date of such expiration or cancellation, then Purchaser, upon Notice to Seller, shall have the right to purchase or renew such coverage and Seller shall then be obligated to reimburse Purchaser for the premiums and broker fee costs for such insurance. The failure of Seller to deliver a new and valid certificate shall result in suspension of all payments until the new certificate is furnished.
- (v) Additional Insured. Purchaser, its officers and employees shall be covered as an additional insured under all Required Seller Insurance to be secured and maintained by Seller and its Subcontractors under this Section 9.1, and such insurance shall be primary with respect to the additional insured status and a severability of interest provision shall be applicable to each policy.

(vi) Liability Insurance "Claims Made" Basis. If the liability insurance purchased by Seller has been issued on a "claims made" basis, Seller shall comply with the following additional conditions. The limits of liability and the extensions to be included as provided in this Section 9.1 remain the same. Seller must either:

(A) Agree to provide certificates of insurance evidencing the coverage required in this Section 9.1 for a period of two (2) years after final payment hereunder. This certificate shall evidence a "retroactive date" no later than the beginning of Seller's or its Subcontractors' work hereunder, or a copy of the endorsement itself; or

(B) Purchase the extended reporting period endorsement for the policy or policies in force during the Term and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.

(vii) Use of Insurance Proceeds. Unless the Parties otherwise agree in writing, Seller shall promptly restore the System to the condition prior to such loss, and Seller shall use all proceeds received by Seller from any policy of insurance providing coverage for such loss, to make all necessary repairs or replacements to the System and to promptly restore deliveries of Output to Purchaser.

(viii) No Exclusions; No Representation of Coverage Adequacy. Contractual and other liability insurance as required herein shall not contain a supervision, inspection or engineering services exclusion that would preclude the Purchaser from supervising and/or inspecting the System or the Project Site as to the end result. Seller shall assume all on-the-job responsibilities as to the control of persons directly employed by Seller and of the Subcontractors. Compliance by Seller and all Subcontractors with the requirements in this Section 9.1 shall not relieve Seller and the Subcontractors of the liability provisions of this Agreement. The Required Seller Insurance coverages as required in this Section 9.1 represent that amount of insurance coverage considered by Purchaser in its reasonable judgment to be proper and prudent for this Agreement, but Purchaser is not representing that the coverages and limits required will necessarily be adequate to protect Seller, and such coverages and limits shall not under any circumstances be construed nor deemed to be a limitation on Seller's liability under this Agreement.

9.2. Indemnification.

a. Seller shall indemnify, defend, and hold harmless Purchaser, the Board, and Purchaser's agents, officers, subcontractors, employees, invitees, and contractors (each, a "Purchaser Indemnified Party", and collectively, the "Purchaser Indemnified Parties") from and against any and all liability for violations or alleged violation of any Applicable Law (hereinafter in this Section

9.2 referred to as “liability”) and Losses (including claims for property damage and claims for injury to or death of persons, including any claim or amounts recovered under “workers compensation laws” or any other Applicable Laws) arising in connection with, or out of, or resulting from the performance of the Services under this Agreement, if any such liability or Loss (i) is attributable to: (A) bodily injury, sickness, disease or death; (B) violation of any statutory or regulatory rule designed to protect against bodily injury, sickness, disease or death; (C) damage to or destruction of tangible property, including any diminution in value and the loss of use resulting therefrom; (D) any violation of any Applicable Law or any common law duty; or (E) any sums paid or expended by Purchaser to any Governmental Authority or the Utility as a fine, penalty or damage for any violation of any Applicable Law or any agreement; and (ii) is caused by or results from, in whole or in part, any act or omission of Seller, any tier of Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them or Purchaser may be liable. This provision is intended to apply even if the injury or damage is caused in part by any act or omission or default of Purchaser Indemnified Parties, except that Seller shall not be required to defend or indemnify Purchaser Indemnified Parties for a Loss to the extent any such Loss results solely from the negligence of a Purchaser Indemnified Party.

- b. Purchaser shall promptly provide Notice to Seller of the assertion of any claim with respect to which Purchaser Indemnified Parties may be entitled to indemnification hereunder; provided, however, that any failure or delay by Purchaser in giving such Notice shall not affect Seller’s indemnification obligations hereunder except to the extent of a showing by Seller of actual, substantive prejudice to its ability to satisfy such indemnification obligations. Seller shall thereafter defend the Purchaser Indemnified Parties, and may assume sole and exclusive control over the defense and settlement of any claim with respect to which the foregoing indemnity obligations apply, so long as there is not a conflict of interest in such defense; provided, however, that Seller will not enter into any settlement that adversely affects Purchaser’s rights or interests, imposes any liability or obligation on Purchaser or contains any admission or acknowledgement of wrongdoing by Purchaser without Purchaser’s prior written consent (which may be granted or withheld in Purchaser’s sole and absolute discretion). The Purchaser Indemnified Parties shall provide reasonable cooperation to Seller in connection with the defense or settlement of any such claim. Purchaser shall be entitled to participate in the defense of any such claim at its sole cost and expense. The extent of Seller’s indemnification obligations hereunder shall not be limited in any way as to the amount of any insurance limits contained in any insurance policy processed or provided in connection with this Agreement. In any and all claims against Purchaser Indemnified Parties by any employee of Seller or Purchaser, the indemnification obligations under this Section 9.2 shall not be limited in any way as to the amount and types of damages, compensation or benefit acts or other employee benefit acts. Seller’s obligations hereunder shall not be affected by Seller’s use of Subcontractors, but Seller shall use commercially reasonable efforts to require each Subcontractor to indemnify Purchaser Indemnified Parties under any contract entered into by Seller with each such Subcontractor in terms similar to the indemnification provided for the benefit of Purchaser

Indemnified Parties under this Section 9.2, but nothing in this Section 9.2 or otherwise in this Agreement shall ever create any direct relationship between a Subcontractor and Purchaser.

- 9.3. Exclusion of Certain Damages. EXCEPT FOR LIABILITY IN RESPECT OF (A) SELLER'S INTENTIONAL OR WILLFUL MISCONDUCT, FRAUD OR RECKLESSNESS OR (B) CLAIMS FOR BODILY INJURY, INCLUDING DEATH, AND DAMAGE TO REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY RESULTING FROM THE NEGLIGENCE OF SELLER OR ANY AGENT OR EMPLOYEE OF SELLER, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY, IN CONTRACT OR IN TORT (INCLUDING NEGLIGENCE), OR UNDER ANY OTHER LEGAL THEORY (INCLUDING STRICT LIABILITY), FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL OR SIMILAR DAMAGES, INCLUDING DAMAGES FOR LOST PROFITS, LOST REVENUES, LOST TAX BENEFITS, OR ENERGY CREDITS, OR INTERRUPTION OF BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIMS OR DAMAGES.

SECTION 10

INVOICES; PAYMENTS; TAXES

- 10.1. General. Commencing with the first Billing Month and for each Billing Month thereafter, Purchaser shall pay to Seller the Monthly Fee for Services properly performed pursuant to the terms of this Agreement and in accordance with the calculation set forth in Section 10.2. During the period between the Contract Date and the Actual Commercial Operation Date, Seller shall receive no compensation hereunder, and no compensation shall accrue whatsoever. Seller acknowledges and agrees that its pricing and amounts payable by Purchaser hereunder takes into account any and all Services performed, including any such services performed by its Subcontractors, and all liability incurred by Seller in satisfying all obligations during the period between the Contract Date and the Actual Commercial Operation Date. Unless otherwise expressly set forth herein, the Monthly Fee set forth in Section 10.2 shall be the sole and exclusive compensation to be paid to Seller for the Services.

- 10.2. Monthly Fee. The monthly fee (the "Monthly Fee") shall be calculated as follows:

$$\text{Monthly Fee} = O \times CP \text{ +/- ADJ}$$

Where:

O = Total Output (in kWh) during the relevant Billing Month consumed by Purchaser

CP = Contract Price (in \$/kWh) for the particular Billing Year as set forth
on Schedule 5 (Contract Price)

ADJ = Adjustments (Section 10.5)

- 10.3. Monthly Invoices. Seller shall submit its invoice to Purchaser for payment of the Monthly Fee on or after the end of the Billing Month for which payment is requested. In preparing its invoice, Purchaser shall use and comply with the form and content of the invoice attached hereto as Schedule 9 (Form of Monthly Invoice) and as otherwise required by the terms of this Agreement. The Parties may, by mutual agreement, revise the form and content of such invoice form. Seller shall attach all documentation and information necessary, and as otherwise required by this Agreement, to justify payment by Purchaser to Seller or credit from Seller to Purchaser.
- 10.4. Payment. Purchaser shall pay Seller the Monthly Fee due and owing to Seller and invoiced by Seller pursuant to Section 10.3, within thirty (30) Days after the date of the receipt by Purchaser of a properly formatted and completed invoice, consistent with Schedule 9 (Form of Monthly Invoice) containing the required documentation and free of errors. If the due date for payment is not a Business Day, payment is due on the next Business Day following the due date. If Purchaser fails to remit the full amount payable when due, after taking into account the foregoing in this Section 10.4 and other applicable provisions of this Agreement, interest on the unpaid portion that is due and owing at such time shall accrue at the Interest Rate.
- 10.5. Adjustments. The adjustments to the Monthly Fee are as follows: (a) the Monthly Fee shall be reduced by the Shortfall Damages, if any, payable by Seller to Purchaser in accordance with Section 6.5(c), (b) the Monthly Fee shall be increased or decreased, as applicable, in accordance with Section 6.4(c)(iv), and (c) the Monthly Fee shall be reduced by any other provision of this Agreement which expressly permits reduction of, or deduction to, the Monthly Fee.
- 10.6. Taxes. Seller shall be responsible for and pay all taxes assessed and imposed on the generation, sale, delivery or consumption of Output generated by the System, including all income taxes or similar taxes, and all personal property or other taxes imposed on the System. If Purchaser is required by Applicable Law to remit or pay taxes that are Seller's responsibility hereunder, Purchaser may deduct such amounts from payment to Seller hereunder; if Purchaser elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Purchaser for such amounts upon request.
- 10.7. Purchaser's Right of Setoff. In addition to any right now or hereafter granted under Applicable Law and not by way of limitation of any such rights, Purchaser shall have the right at any time or from time to time without Notice to Seller or to any other Person, any such Notice being hereby expressly waived, to set off against any amounts due by Purchaser to Seller hereunder, including any amounts due because of breach of this Agreement or any other obligation and any costs payable by Seller hereunder.

SECTION 11
FORCE MAJEURE EVENT; CHANGE IN LAW

11.1. Force Majeure Event.

- a. Either Party shall be excused from performance of its applicable obligations under this Agreement to the extent it is prevented or, individually, or in the aggregate, materially delayed from performing such obligation due to the occurrence of a Force Majeure Event, and such inability to perform or delay in performance due to a Force Majeure Event shall not constitute a Seller Event of Default, a Purchaser Event of Default or cause for any liability under this Agreement, except as specifically provided in this Agreement.
- b. If either Party claims the occurrence of a Force Majeure Event as a basis for not performing its obligations under this Agreement, then the Party making such claim shall (i) promptly upon discovery thereof, provide verbal notice thereof followed within twenty-four (24) hours thereafter, by Notice, to the other Party of the occurrence of the Force Majeure Event, (ii) provide an estimate of its expected duration, (iii) describe in reasonable detail its probable effect on the performance of its obligations hereunder, (iv) exercise all reasonable efforts to continue to perform its obligations hereunder to the extent not prevented by the Force Majeure Event, (v) expeditiously take action to cure the Force Majeure Event, and provide at least weekly, verbal or written updates and monthly progress reports to the other Party relative to achieving a cure, (vi) exercise all reasonable efforts to mitigate or limit damages to the other Party, and (vii) provide prompt verbal notice, and within twenty-four (24) hours thereafter, Notice to the other Party of the cessation of the Force Majeure Event which gave rise to its inability to perform.
- c. Delay caused by a Force Majeure Event shall extend the Project Schedule (including the Expected Commercial Operation Date) on a Day-for-Day basis, or as mutually agreed by the Parties.

11.2. Change in Law.

- a. Change in Law Notice. If either Party determines that a Change in Law has occurred or is reasonably likely to occur, then such Party may deliver Notice to the other Party of such Change in Law. Within [sixty (60) Days] following receipt of such Notice, the Parties shall meet and attempt in good faith to negotiate an amendment to this Agreement as is reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) Day period, then either Party may terminate this Agreement in accordance with Section 12.5(c).
- b. Illegality or Impossibility. If a Change in Law renders this Agreement, or either Party's performance or obligations pursuant to this Agreement either illegal or impossible, then the affected Party may terminate this Agreement immediately upon Notice to other Party. In the event of termination pursuant to this Section

11.2(b), neither Party shall be liable for any payment, damages or penalty as a result of such termination, except with respect to liabilities accrued prior to the date of termination.

SECTION 12 EVENTS OF DEFAULT; TERMINATION

12.1. Seller Events of Default. The occurrence of any one or more of the following shall constitute an Event of Default of Seller ("Seller Event of Default"):

- a. The Actual Commercial Operation Date has not occurred by the Expected Commercial Operation Date;
- b. The inability, failure, or refusal by Seller to perform timely any material obligations under this Agreement, unless such inability, failure, or refusal is caused by a Force Majeure Event or Purchaser Event of Default; provided, however, such failure continues for [ten (10)] Business Days after Purchaser shall have given Notice demanding that such failure to perform be cured;
- c. Any Lessee Default (as defined in the Lease) under the Lease;
- d. Gross negligence, fraud, or willful misconduct by Seller in connection with this Agreement;
- e. The failure to obtain or maintain the Required Seller Insurance, all pursuant to Section 9.1;
- f. Seller becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect (or, if any such actions are initiated by a third party, such action(s) is(are) not dismissed within sixty (60) Days);
- g. Any representation or warranty of Seller hereunder proves to be false or misleading in any material respect;
- h. Assignment of this Agreement by Seller in breach of Section 14.2 or a Change of Control occurs in breach of Section 14.3;
- i. The failure or refusal of Seller to establish, obtain, maintain, or renew (including to amend or replace the Decommissioning Bond with the updated Decommissioning Amount) in a timely manner the Decommissioning Bond in accordance with Section 8.2;
- j. Following the Actual Commercial Operation Date, failure to meet or achieve the Minimum Output for the relevant Billing Year during three (3) or more consecutive or non-consecutive Billing Years; or

- k. Seller abandons the System or discontinues its Services, other than pursuant to its right to suspend performance due to a Force Majeure Event in accordance with Section 11.1.

12.2. Purchaser Events of Default. The occurrence of any one or more of the following shall constitute an Event of Default of Purchaser ("Purchaser Event of Default"):

- a. The failure by Purchaser to perform any material obligations under this Agreement, unless such failure is caused by a Force Majeure Event or Seller Event of Default; provided, however, such failure continues for [fifteen (15)] Business Days after Seller shall have given Notice demanding that such failure to perform be cured; or
- b. Failure of Purchaser to pay undisputed amounts due and owing to Seller under this Agreement in accordance with the applicable timeframes specified in this Agreement; provided, however, Seller shall have given Notice of any such non-payment to Purchaser after the due date and at least [thirty (30)] Business Days before Seller exercises its rights under this Section 12.2(b).

12.3. Remedies upon Event of Default. Upon the occurrence of an Event of Default by the Defaulting Party (after any applicable cure period), the Non-Defaulting Party shall have the following rights: (a) to terminate this Agreement by Notice to the Defaulting Party, (b) to suspend performance of its obligations and duties hereunder upon Notice to the Defaulting Party, and (c) to pursue any other remedy given under this Agreement or now or hereafter existing at law or in equity.

12.4. Damages Upon Termination by Event of Default. Upon a termination of this Agreement pursuant to Section 12.3, the Defaulting Party shall pay a termination payment to the Non-Defaulting Party determined as follows (the "Termination Payment"):

- a. Termination by Purchaser. If Purchaser terminates this Agreement for a Seller Event of Default, the Termination Payment to Purchaser will be equal to the sum of (i) [the present value of the excess, if any, of the reasonably expected cost of electricity from the Utility in excess of the Contract Price for the reasonably expected production of the System for the remainder of the Term]; (ii) all direct costs incurred by Purchaser by reason of the termination; and (iii) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The Termination Payment determined under this Section 12.4(a) cannot be less than zero.
- b. Termination by Seller. If Seller terminates this Agreement for a Purchaser Event of Default, the Termination Payment payable to Seller shall be equal to the sum of (i) the applicable amount set forth in Schedule 13 (Termination Payment Schedule) and (ii) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Seller.

12.5. Other Termination.

- a. Termination Due to Lack of PPA Pilot Program Capacity. This Agreement may be terminated immediately by either Party upon Notice to the other Party if no

capacity exists for the System under the PPA Pilot Program Requirements. In the event of termination pursuant to this Section 12.5(a), neither Party shall be liable for any payment, damages, or penalty as a result of such termination.

b. Termination Due to Force Majeure Event.

- (i) If a Force Majeure Event shall occur relative to a material obligation of either Party, and such Force Majeure Event or the effect thereof prevents or is reasonably anticipated to prevent the performance of such obligation for a period of [one hundred eighty (180)] Days or more, the affected Party, upon Notice to the other Party, may, in the affected Party's sole discretion, terminate this Agreement forthwith without payment, damage or penalty as a result of such termination and the Parties hereby waive any right to any such damage, penalty, or payment.
- (ii) Purchaser may terminate this Agreement upon Notice to Seller if (A) a Force Majeure Event occurs that diminishes the production of the System by more than [fifty (50%)] of the Annual Contract Quantity for a period of [twelve (12)] consecutive months, or (B) the System is rendered inoperable and a Qualified Engineer that is mutually acceptable to both Parties determines that the System cannot be repaired or replaced within a period not to exceed [twelve (12)] months following the date of the occurrence of the Force Majeure Event.
- (iii) Upon termination under this Section 12.5(b)(i) or (ii), neither Party shall be obligated to the other for the payment of any costs or expenses, except that Purchaser shall be obligated to pay Seller the Monthly Fee(s) that have accrued through the date of such termination but have not been paid.

c. Termination Due to Change in Law. If a Change in Law shall occur and the Parties are unable to mutually agree upon amendments to this Agreement in accordance with Section 11.2(a), then either Party may, upon at least [thirty (30)] Days prior Notice to the other Party, terminate this Agreement. In the event of termination pursuant to this Section 12.5(c), neither Party shall be liable for any payment, damages or penalty as a result of such termination, except with respect to liabilities accrued hereunder prior to the date of termination.

d. Termination for Convenience. Following the Installation Notice to Proceed, Purchaser may, in its sole discretion, terminate this Agreement at Purchaser's convenience. If Purchaser elects to terminate this Agreement for its convenience, Purchaser shall provide Seller Notice of such determination and the termination date shall be [ninety (90)] Days following Purchaser's delivery of such Notice to Seller. The Parties shall continue to perform their respective obligations during such [ninety (90)] Day period. If Purchaser terminates this Agreement pursuant to this Section 12.5(d), Purchaser shall be obligated to pay to Seller, as the sole and exclusive remedy of Seller, (i) the reasonably incurred actual costs of Decommissioning, if any, subject to Cost Substantiation, plus (ii) the Termination Payment for the particular Billing Year in which this Agreement is terminated.

e. Termination for Fiscal Non-Funding. In the event sufficient funds shall not be appropriated which may lawfully be applied to the payment of Purchaser's obligations under this Agreement, Purchaser's rights and obligations under this Agreement shall terminate on the last Day of the last Fiscal Year for which an appropriation is available, or on such earlier date on which a payment is due for which sufficient funds for payment have not been lawfully appropriated, and Purchaser shall not be obligated to make payments under this Agreement beyond the last date for which such an appropriation is available. Not later than thirty (30) Days after Purchaser has knowledge that an appropriation will not be available, Purchaser shall deliver Notice to Seller of such termination, but the failure to give such Notice shall not operate to continue or keep in effect this Agreement beyond the termination date set forth in the preceding sentence or the obligations to make payments under this Agreement beyond the Fiscal Year for which an appropriation is available. Upon termination of Purchaser's obligations under this Agreement for nonappropriation, the obligations of Purchaser requiring the expenditure of money will cease so long as all payments previously approved or appropriated have been made.

12.6. Obligations Following Termination. If a Party terminates this Agreement pursuant to this Section 12, then following such termination, Seller shall remove all equipment constituting the System in compliance with Section 8.1 at the sole cost and expense of the Defaulting Party.

12.7. Duty to Mitigate. Each Party shall mitigate damages and covenants that it will use reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

12.8. System Relocation. If Purchaser ceases to conduct activities or operations at the Project Site or vacates the Project Site, or Purchaser is otherwise unable to continue to host the System at the Project Site or accept the Output delivered by the System for any other reason (other than as a result of a Seller Event of Default, Force Majeure Event or Change in Law), Purchaser may propose in writing to Seller the relocation of the System in lieu of termination of the Agreement. Following Seller's receipt of such Notice, the Parties shall negotiate in good faith an agreement for the relocation of the System to a different site. If the Parties reach agreement on the relocation of the System, Purchaser shall be obligated to pay for the reasonable costs incurred by Seller, subject to Cost Substantiation, in relocating the System and installation and testing of the System at such new project site, and Purchaser shall not be liable for any other damage, penalty or payment hereunder. If the Parties are unable to reach agreement on relocation of the System within [sixty (60)] Days after the date of receipt of Purchaser's proposal and Purchaser is the Defaulting Party, Seller may terminate this Agreement pursuant to Section 12.3.

SECTION 13 REPRESENTATIONS AND WARRANTIES

13.1. Seller Representations and Warranties. Seller represents and warrants to Purchaser as follows:

- a. Existence and Qualification. Seller is duly organized, validly existing and in good standing in its jurisdiction of formation and is qualified to do business in the State and is in good standing therein. Seller is duly qualified to do business wherever necessary to carry on the business and operations contemplated by this Agreement.
- b. Power; Authorization. Seller has the full power, authority, and legal right to enter into and perform its obligations set forth herein, and the execution, delivery and performance by Seller, (i) have been duly authorized, (ii) do not require the approval of any Governmental Authority, other than those Permits or approvals required or contemplated to be obtained after the Contract Date and prior to the Actual Commercial Operation Date, (iii) will not violate any judgment, order, law, or regulation applicable to Seller or any provision of Seller's organizational documents, and (iv) do not constitute a default under or result in the creation of any Lien upon any assets of Seller under any agreement or instrument upon which Seller is a party or by which Seller or its assets may be bound or affected.
- c. Enforceability. This Agreement constitutes a legal, valid, and binding obligation of Seller, fully enforceable in accordance with its terms, subject to (i) applicable bankruptcy, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights or remedies generally, and (ii) general equitable principles, whether considered in a Legal Proceeding at law or in equity.
- d. Compliance with Laws. Seller is in compliance with all Applicable Laws in all material respects.
- e. No Conflict. Seller's performance of its obligations under this Agreement and the transactions contemplated hereby do not conflict with Seller's performance under any other agreements or instruments to which Seller or any of its Affiliates is a party or by which Seller or any of its Affiliates or its or their assets may be bound or affected. Seller has no obligation or indebtedness that would materially impair its ability to fulfill the terms of this Agreement.
- f. Intellectual Property Rights. Seller (i) owns or is licensed or is otherwise lawfully permitted to use any and all of the inventions, processes, know-how, trade secrets, technical expertise, copyrights, trademarks, patents, and other intellectual property relating to the design, engineering, manufacture, sale, supply, importation, assembly, installation, commissioning, start-up, testing, servicing, repair and the performance of the Services, and (ii) the design, engineering, manufacture, sale, supply, importation, assembly, installation, commissioning, start-up, testing, servicing, repair, and performance of the Services will not infringe on the inventions, processes, know-how, trade secrets, technical expertise, copyrights, trademarks, patents, and other intellectual property of any third party.
- g. Knowledge and Experience. Seller has such knowledge and experience in financial and business matters, specifically the business of providing designing, financing, installing, constructing, interconnecting, owning, operating and maintaining solar photovoltaic systems, in order to provide the Services to Purchaser as contemplated in this Agreement

- h. Information Supplied by Seller. All information supplied and all representations and warranties made by Seller and its Affiliates in all submittals made in response to the RFP and in all post-proposal submittals with respect to Seller, its Affiliates or the Services are true, correct, and complete in all material respects.
 - i. RFP. Seller has met, during the RFP procurement process period and through the Contract Date, all of the minimum qualification criteria set forth in the RFP.
 - j. Litigation. There is no litigation pending or, to the knowledge of Seller, threatened, which questions this Agreement or which affects or may affect the transactions contemplated hereby.
 - k. No Gratuities. Neither Seller, nor any of its Affiliates, has, directly or indirectly, offered or given any gratuities (in the form of entertainment, gifts, or otherwise) to any Purchaser Board member or Purchaser employee with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.
- 13.2. Continuing Accuracy of Seller Representations and Warranties. During the Term, Seller shall not take any action or fail to perform any act that results in a representation and warranty made in Section 13.1 or elsewhere in this Agreement becoming untrue. Seller shall promptly send Notice to Purchaser if any such representation or warranty becomes untrue. From time to time, Seller shall provide to Purchaser, upon Purchaser's request, written certification of the continuing accuracy of all representations and warranties in Section 13.1.
- 13.3. Purchaser Representations and Warranties. Purchaser represents and warrants to Seller as follows:
- a. Power and Authority. Purchaser has the full power, authority, and legal right to enter into and perform its obligations set forth herein.
 - b. Enforceability. This Agreement constitutes a legal, valid, and binding obligation of Purchaser, fully enforceable in accordance with its terms, subject to (i) applicable bankruptcy, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights or remedies generally, and (ii) general equitable principles, whether considered in a Legal Proceeding at law or in equity.

SECTION 14 MISCELLANEOUS

- 14.1. Governing Law. The law of the Commonwealth of Virginia shall govern the validity, interpretation, construction and performance of this Agreement, including the Parties' obligation under this Agreement, the performance due from each Party under it and the remedies available to each Party for breach of it. Any jurisdiction's choice of law, conflict of laws, rules, or provisions, including those of the State that would cause the application of any laws other than those of the Commonwealth of Virginia shall not apply.

14.2. Assignment.

a. General. This Agreement shall not be assigned or otherwise transferred by either Party without the prior written consent of the other Party; provided, however, Purchaser may, without the prior written consent of Seller, assign this Agreement to a validly constituted agency or authority of the State, a duly created municipal corporation or authority or similar entity created by Purchaser or by State legislation. Except as expressly permitted herein, any other assignment of this Agreement by either Party without the express written consent of the other Party shall be null and void at inception.

b. Financing Assignment.

- (i) Seller, with the prior written consent of Purchaser, such consent not to be unreasonably withheld, may grant a security interest in its rights and obligations under this Agreement to any Financing Party as security for any loan or other investment (in the form of debt, equity, lease financing or otherwise) made to Seller; provided, that no such grant shall relieve Seller of any of its duties, responsibilities, or obligations hereunder. In connection with a request for a financing assignment, Seller shall provide Notice to Purchaser of the name, address, telephone number and email address of any Financing Party to which Seller intends to assign its interest hereunder. Such Notice shall include the name of the Financing Party to whom all written and telephonic communications may be addressed. Seller shall promptly give Purchaser Notice of any change in the information provided in the initial Notice or any revised Notice.
- (ii) If such financing assignment is approved by [Purchaser]³ under Section 14.2(b)(i), the following provisions shall apply:

(A) Financing Party shall have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement to prevent or cure a Seller Event of Default, and such act performed by Financing Party shall be as effective to prevent or cure a default as if done by Seller.

(B) Promptly following the receipt of a written request from Seller or any Financing Party, Purchaser shall execute or arrange for the delivery of such certificates, consents and other documents as may be reasonably requested and necessary for Seller to consummate any financing or refinancing and will enter into reasonable agreements, in each case in a form customarily used in such transactions and approved by the Fairfax County Attorney's Office, with such Financing Party that provide that Purchaser recognizes the rights of such Financing Party upon foreclosure of Financing Party's security interest and

³ NTD: Purchaser entity/individual to be specified.

such other provisions as may be reasonably requested by any such Financing Party; provided, however, that any such consent or agreement shall not constitute an amendment or modification of this Agreement or the Lease unless Purchaser otherwise agrees in writing, in its sole discretion; and provided, further, that such consent or agreement does not adversely affect, or is not reasonably likely to adversely affect, any of Purchaser's rights, benefits, risks and/or obligations under this Agreement.

14.3. Change of Control. Seller shall provide Notice to Purchaser not less than [ninety (90)] Days prior to any proposed Change of Control of Seller, and no such Change of Control shall be consummated without the prior written consent of Purchaser, which consent may be withheld by Purchaser in its sole discretion, and any such action without Purchaser's prior written approval shall be null and void at inception and of no force and effect.

14.4. Authority of Purchasing Agent. Seller acknowledges and agrees that County's Purchasing Agent or his or her duly authorized representative or agent has the sole responsibility and authority to execute this Agreement and any amendment or modification hereto on behalf of Purchaser. Any execution, amendment or modification of this Agreement by a Person other than the County's Purchasing Agent or his or her duly authorized representative or agent shall be null and void and of no force and effect.

14.5. Dispute Resolution.

a. County Purchasing Resolution. All claims, disputes, controversies, causes of action and other matters involving a question of fact between the Parties arising out of or relating to this Agreement (collectively or individually, the "Dispute") which is not disposed of by the applicable terms of this Agreement shall be decided by the County Purchasing Agent, who shall reduce his or her decision to writing and mail or otherwise forward a copy thereof to Seller within ninety (90) Days. The decision of the County Purchasing Agent shall be final and conclusive unless Seller appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. Seller may not institute legal action prior to receipt of the County Purchasing Agent's decision on the Dispute, unless the County Purchasing Agent fails to render such decision within the time specified. Seller shall not institute any legal action until all statutory requirements have been met.

b. Technical Disputes. If a Dispute primarily involves a technical or engineering issue and the Parties desire to attempt to resolve such Dispute by a Qualified Engineer prior to submitting a Dispute pursuant to Section 14.5(a), then the Parties may agree to refer such Dispute to a Qualified Engineer skilled in the particular discipline that is the matter of controversy. If the Parties desire to refer the matter to a Qualified Engineer, the Parties shall meet to mutually select and agree in writing on a Qualified Engineer to hear and to render a determination on such matter. The selected Qualified Engineer shall be given written notice of such selection by the Parties and the Parties shall secure its agreement to serve as the Qualified Engineer for such matter. Within ten (10)

Business Days after the selection and engagement of the Qualified Engineer, the Parties shall each provide to the Qualified Engineer written notice stating in detail the contested matter and such Party's basis for its position. Within five (5) Business Days thereafter, the Parties shall meet with the Qualified Engineer to resolve the Dispute. Within ten (10) Business Days after such meeting or as soon thereafter as possible, the Qualified Engineer shall decide the Dispute and issue a written memorandum decision to the Parties. Such decision shall be non-binding and either Party may submit such Dispute for resolution in accordance with Section 14.5(a). The Qualified Engineer's costs and expenses shall be shared equally by the Parties.

- c. Venue. Any and all Disputes arising out of or in connection with this Agreement or any performance hereunder, shall be brought in the Circuit Court of Fairfax County, Virginia or in the United States District Court, Eastern District of Virginia, Alexandria Division.

- 14.6. Notices. All Notices and consents required or permitted by this Agreement shall be in writing, shall be transmitted by (a) registered or certified mail, return receipt requested, with Notice deemed to be given upon receipt; postage prepaid, (b) delivered by hand or by nationally recognized courier service, or (c) electronic mail or other electronic communication system acceptable to the Representatives with confirmed receipt thereof, and in all cases, addressed as follows:

If to Purchaser:

With a copy to (which shall not constitute Notice):

If to Seller:

With a copy to (which shall not constitute Notice):

- 14.7. Successors and Permitted Assignees. This Agreement is binding on and inures to the benefit of successors and permitted assignees.
- 14.8. Survivability. Any term, condition, covenant or obligation that requires performance by a Party subsequent to termination or expiration of this Agreement, whether specifically identified herein or not, shall remain enforceable against such Party subsequent to such termination or expiration.
- 14.9. Negotiated Terms. The Parties agree that the terms and conditions of this Agreement are the result of negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.
- 14.10. Further Assurances. Each Party agrees to, and shall use all reasonable efforts to, provide such information, execute and deliver any instruments and documents and take such action as may be reasonably necessary, reasonably requested or required by the other Party that are not inconsistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement in order to give full effect to this Agreement and to carry out the intent of this Agreement.
- 14.11. Waivers. No delay in exercising or failure to exercise any right or remedy accruing to or in favor of either Party shall impair any such right or remedy or constitute a waiver thereof. Every right and remedy given hereunder or by Applicable Law may be exercised from time-to-time and as often as may be deemed expedient by the Parties. Neither this Agreement nor any provision hereof may be changed, modified, amended, or waived except by a written instrument signed by a duly authorized officer of the Party against whom enforcement of such change, modification, amendment, or waiver is sought. If any representation, warranty, or covenant contained in this Agreement is breached by either Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Agreement.

- 14.12. Non-Dedication of Facilities. Nothing in this Agreement may be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party may knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party may assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this Agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use commercially reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller may terminate this Agreement without further liability under this Agreement except with respect to liabilities accrued prior to the date of termination and remove the System and restore the Property Site in accordance with Section 8.
- 14.13. Service Contract. The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser shall not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of Electricity from the System.
- 14.14. Relationship of the Parties. Nothing in this Agreement shall be deemed to constitute either Party a partner, agent, employee, or legal representative of the other Party or to create any fiduciary relationship between the Parties. In addition, nothing in this Agreement shall be deemed or construed as creating any contractual relationship between any Subcontractor and Purchaser. The Parties agree that Seller shall be fully responsible for the acts and omissions of any Subcontractor.

The Parties agree that Seller has entered in this Agreement and shall be performing the services contemplated herein as an independent contractor. As an independent contractor, Seller, including its Subcontractors, is solely responsible for the means, methods, techniques, sequences, procedures, and schedules used to perform the Services. Seller has the sole right to control and direct the means, manner, and methods by which the obligations of this Agreement are satisfied. In furtherance of such right and obligation, Seller shall be responsible for the Services and for all materials, tools, equipment, appliances, and property of any and all description used in connection with the Services. Seller assumes all risk of direct and indirect damage or injury, or both, to the property of Persons used or employed on or in connection with the Services, and all damage or injury to any Person or property wherever located, resulting from any action or omission by Seller under this Agreement.

Nothing in this Agreement may be interpreted to mean Purchaser may exercise control over how services are provided by Seller nor how Seller satisfied its obligations under this Agreement. Except as expressly set forth herein, nothing in this Agreement may be interpreted to give the appearance that either Party possesses the apparent or actual authority to act or speak for the other Party and neither Party shall by words, acts, or representations convey to the general public, any Person or any Governmental Authority the impression that such Party has the authority to speak or act for the other Party. If any Person believes that either Party has the necessary power to bind such other Party or believes that either Party has the power to control how services are provided by the other

Party, such first Party shall take all reasonable actions as are necessary to correct the erroneous inferences and prevent reliance on such a mistake of fact.

- 14.15. Authorized Representatives. The Representative of Purchaser for purposes of this Agreement shall be set forth on Schedule 14 (Representatives) or his or her designee (the "Purchaser's Representative"). The Representative of Seller for purposes of this Agreement shall be set forth on Schedule 14 (Representatives) or his or her designee (the "Seller's Representative"). Either Party may change its Representative upon five (5) Business Days prior Notice to the other Party. The Representatives shall give each other Notice of the appointment of any designee authorized to act on such Representative's behalf, if any. The Representatives may change their designee upon five (5) Business Days prior Notice to the other.

Subject to the following in this paragraph, the respective Representatives are empowered to consult with and to make day-to-day decisions binding on their respective Parties within the confines of this Agreement and to perform such other activities as are expressly recognized and granted pursuant to the terms of this Agreement. Notices or other communications referenced in this Agreement from one Party to the other shall be effective only if delivered to such Party's Representative. Neither Representative shall be empowered to (a) change, amend, extend, waive or otherwise modify any right or obligation of its Party under this Agreement, (b) incur costs, expenses, fees or payments for additional work or services beyond the applicable Party's day-to-day work and services prescribed under this Agreement, or (c) amend or change this Agreement in any way.

- 14.16. Goodwill and Publicity. Seller may not (a) make any press release or public announcement of the specific terms of this Agreement or the use of solar or renewable energy involving this Agreement (except for filings or other statements or releases as may be required by Applicable Law), or (b) use any name, trade name, service mark, or trademark of Purchaser or the County in any promotional, advertising, or other material without the prior written consent of Purchaser. The Parties shall coordinate and cooperate with each other when making public announcements regarding this Agreement, the System and its use, and each Party may promptly review, comment upon, and approve any publicity materials, press releases or other public statements before they are made. Seller shall not place any signage on or at the Project Site (other than as required by Applicable Law) unless approved in advance in writing by Purchaser.

- 14.17. Entire Agreement. This Agreement, the recitals herein, together with the Schedules attached to this Agreement and any applicable Purchase Orders, constitutes the entire and complete agreement and commitment of the Parties with respect to this Agreement. All prior or contemporaneous understandings, arrangements, negotiations or commitments, or any or all of the foregoing with respect to this Agreement, whether oral or written, have been superseded by this Agreement.

- 14.18. Amendments. No amendment, modification or change to this Agreement shall be effective unless the same shall be in writing and duly executed by an authorized person of each Party, which, in the case of Purchaser, shall be by [County Purchasing Agent], or his or her duly authorized representative or agent, consistent with Section 14.4.

- 14.19. No Third-Party Beneficiaries. Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto,

and the Financing Parties to the extent provided herein or in any other agreement between a Financing Party and Seller or Purchaser, and do not imply or create any rights on the part of, or obligations to, any other Person.

- 14.20. Headings. Captions and headings in this Agreement are for convenience of reference only and do not constitute a part of this Agreement.
- 14.21. Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original, and all of which shall constitute one and the same agreement.
- 14.22. Severability. If any provision, portion or application of this Agreement is, for any reason, held to be invalid, illegal or unenforceable in any respect by any court of competent jurisdiction, the Parties shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable, in light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and the other terms of this Agreement, as so amended, modified, supplemented, or otherwise affected by such action, shall remain in full force and effect.
- 14.23. Interest on Payments. All payments to be made pursuant to this Agreement outstanding after the applicable due date shall, commencing after such date until paid, bear interest at the Interest Rate, which rate, the Parties agree, shall be equally applicable to both Parties' late payment obligations.
- 14.24. Payment Disputes. If any Party shall dispute an amount owing to the other Party, such Party shall:
- a. Give Notice to the other Party of such disputed amount together with sufficient information to allow the other Party to understand the nature of the dispute and shall be delivered on or before the due date of the amount disputed; and
 - b. Pay all undisputed amounts by the due date. Interest at the rate specified in Section 14.23 shall accrue from the original due date on disputed amounts, or the portions thereof, to the Party which is ultimately determined to be entitled to such disputed amount, or any portions of such disputed amounts.
 - c. The remedies for disputes over payment are exclusively limited to those provided in this Agreement.
- 14.25. Liability of Officers and Employees. No member of the Board nor any director, officer, agent, consultant, representative, or employee of either Party shall be charged personally by the other or held contractually liable thereto under any term or provision of this Agreement, because of either Party's execution or attempted execution of this Agreement or because of any breach or alleged breach thereof; provided, however, that all Persons remain responsible for any of their own criminal actions.
- 14.26. Pledge of Credit. Seller shall not pledge Purchaser's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. This Agreement shall not constitute a pledge of the full faith and credit of

Purchaser in violation of Section 10 of Article X of the Constitution of Virginia or a bond or debt of Purchaser within the meaning of Section 10 of Article VII of the Constitution of Virginia. For the avoidance of doubt, Seller acknowledges and agrees that all of the payment obligations of Purchaser in this Agreement are expressly conditioned upon Purchaser's receipt of Services rendered by Seller.

- 14.27. No Conflict of Interest. Seller shall not enter into any agreements that would conflict with Seller's performance of its obligations under this Agreement, or the other transactions contemplated herein, without receiving prior written authorization from Purchaser.
- 14.28. Intellectual Property; Protection of County-Owned Property. Seller shall: (a) save Purchaser, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of this Agreement for which Seller is not the patentee, assignee, licensee, or owner; and (b) protect Purchaser from loss or damage to Purchaser and County-owned property while it is in the custody of Seller.
- 14.29. Authorization to Conduct Business in the State. At all times during the Term, Contractor shall be authorized to transact business in the State as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, as amended, or as otherwise required by law. Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the State, if so required under Title 13.1 or Title 50 of the Code of Virginia, as amended, to be revoked or cancelled at any time during the Term.
- 14.30. Covenant Against Contingent Fees. Seller warrants that no Person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by Seller for the purpose of securing business. For violation of this warranty, Purchaser shall have the right to terminate or suspend this Agreement without liability to Purchaser or in its discretion to deduct from the Monthly Fee or other amounts payable to Seller under this Agreement, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
- 14.31. Ineligibility. Any Person or firm suspended or debarred from participation in any County procurement shall be notified in writing by County Purchasing Agent, in accordance with the Fairfax County Purchasing Resolution.
- 14.32. Notice of Certain Applicable Laws. While Seller acknowledges and agrees that it must comply with all Applicable Laws as specified in Section 3.2, certain Applicable Laws require that certain Applicable Laws or provisions therefrom be specified in contracts that Purchaser may enter into, including this Agreement. The list of such Applicable Laws includes, in some cases, certain obligations or procedures, or both, with respect to the same. To the extent an Applicable Law is not specifically identified below, such failure to so list shall not relieve Seller from having to comply with such unidentified Applicable Law, it nevertheless being Seller's obligation to comply with all Applicable Laws.
- 14.33. Statutory Provisions.

a. Non-Discrimination. During the performance of this Agreement, Seller agrees as follows:

- (i) Seller shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by State law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Seller. Seller shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- (ii) Seller, in all solicitation or advertisements for employees placed by or on behalf of Seller, will state that such contractor is an equal opportunity employer.
- (iii) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose meeting the requirements of this Section 14.33(a).
- (iv) Seller shall include the provisions of Section 14.33(a) in every subcontract or purchase order of over Fifty Thousand Dollars (\$50,000), so that the provisions will be binding upon each Subcontractor or vendor.

b. Drug Free Workplace. During the performance of this Agreement, Seller agrees

- (i) to provide a drug-free workplace for Seller's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Seller's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Seller that Seller maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over Ten Thousand Dollars (\$10,000), so that the provisions will be binding upon each Subcontractor or vendor. For purposes of this Section 14.33(b), "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

c. Americans with Disabilities Act Requirements. Purchaser is fully committed to the federal Americans with Disabilities Act ("ADA"), which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all County programs, activities, and services. Purchaser's contractors, subcontractors, vendors and/or suppliers are subject to this ADA policy. All individuals having any County contractual agreement, including this Agreement, must make the same commitment.

Acceptance of this Agreement by Seller acknowledges Seller's commitment and compliance with the ADA.

- d. Immigration Reform and Control Act. Seller represents and warrants to Purchaser that it does not, and Seller covenants that it shall not during the performance of the Agreement, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- e. VFOIA Requirements. All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act ("VFOIA"), except as otherwise provided by Applicable Law. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction, shall not be subject to the VFOIA; however, the bidder, offeror, or contractor shall (i) invoke the protections of this Section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected and (iii) state the reasons why protection is necessary. The Parties acknowledge and agree that the terms of this Agreement shall be subject to disclosure under the VFOIA. Seller accepts and agrees that any information that it submits to Purchaser pursuant to this Agreement shall be subject to the VFOIA, except as otherwise provided by Applicable Law; in which case such information may be excluded from the mandatory disclosure provisions of the VFOIA if Seller identifies and properly invokes a VFOIA exclusion in writing prior to the submission of such information to Purchaser.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed in its name by a duly authorized person as of the date set forth above.

SELLER:

[•],
a [•]

By: _____
Name: _____
Title: _____

PURCHASER:

[•]

By: _____
Name: _____
Title: _____

[Signature Page to Solar Power Purchase Agreement (PROJECT SITE)]

SCHEDULE 1

DEFINITIONS

“Actual Commercial Operation Date” means the commercial operation date established in the Final Completion Certificate executed by the Parties pursuant to Section 5.10(d).

“ADA” has the meaning specified in Section 14.33(c).

“Affiliate” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct all of the policies or operations of such Person.

“Agreement” has the meaning set forth in the opening paragraph of this Solar Power Purchase Agreement identifying the Parties hereto.

“Annual Contract Quantity” means, for the particular Billing Year, the amount of expected Output (in kWh) set forth on Schedule 6 (Annual Contract Quantity).

“Annual Performance Guarantee Statement” has the meaning specified in Section 6.5(b).

“Applicable Law(s)” means any law, regulation, requirement or order of any federal, state or local agency, court or other governmental body, applicable from time to time to the procurement, design, installation, interconnection, equipping, testing, start-up, commissioning, financing, ownership, possession, operation or maintenance of the System or the performance of any obligations under any agreement entered into in connection therewith.

“Billing Month” means each calendar month in each Billing Year, except that (a) the first Billing Month shall begin on the Actual Commercial Operation Date and end at the end of the last Day of the month in which such Actual Commercial Operation Date occurs and (b) the last Billing Month shall end concurrently with the end of the Term.

“Billing Year” means a Fiscal Year comprised of twelve (12) Billing Months, except that (a) the first Billing Year shall commence on the Actual Commercial Operation Date and end on the immediately succeeding June 30, and (b) the last Billing Year shall end concurrently with the end of the Term, or as applicable, the date of termination or expiration of this Agreement.

“Board” means [•], which is the governing body of Purchaser.

“Business Day” means any Day other than a Saturday, Sunday or a Day on which Purchaser is not open for normal operations.

“Change in Law” means either (a) the enactment, adoption, promulgation, modification, or repeal, after the Contract Date, of any Applicable Law or (b) the imposition, after the Contract

Date, of any material conditions on the issuance, modification, or renewal of any Permit that, in the case of either (a) or (b), (i) materially and adversely affects Seller's performance of the Services, (ii) materially increases Seller's costs to perform the Services, (iii) materially and adversely affects Seller's performance of its obligations hereunder, or (iv) materially and adversely affects Purchaser's performance of its obligations hereunder, by establishing, in the case of (i), (ii), (iii) or (iv) requirements that are more burdensome than the most stringent requirements in effect on the Contract Date. The following shall not constitute a "Change in Law": (1) the enactment into law, or any change in, after the Contract Date of, any federal, State, or local tax law, (2) any change, modification or elimination of any of the Tax Benefits, (3) any change after the Contract Date in any Applicable Laws regarding duties, fees, charges, levies, assessments, rates, or similar impositions of Governmental Authorities, or (4) any change that results wholly or partially from the act or omission of the Party or Affiliates of the Party claiming the Change in Law, or the affected Party's or its Affiliates' noncompliance with any Applicable Laws.

"Change of Control" shall be deemed to have occurred if: (a) any individual, partnership, firm, corporation, limited liability company, association, trust, unincorporated organization or other entity or Person, or any syndicate or group acquires securities of Seller representing fifty percent (50%) or more of the combined voting power of Seller's then outstanding securities entitled to vote; (b) there occurs a transaction with respect to which the stockholders, managers, members, partners or owners of Seller immediately prior to such transaction do not, immediately after the transaction, own or control more than fifty percent (50%) of the combined voting power of Seller (then outstanding securities entitled to vote; or (c) all or substantially all of the assets of Seller are sold, liquidated or distributed.

"Chapter 382" has the meaning set forth in the Recitals to this Agreement.

"Codes and Standards" means those applicable technical or numerical codes and standards referenced in this Agreement, those applicable codes and standards of technical societies, organizations or associations and all applicable provisions of all national, state, or local established rules, including those requirements of the organizations, associations, and other entities or requirements for the Services that, in each case, pursuant to Applicable Law, shall be adhered to by Seller in the performance of the Services.

"Commercial Operation Deadline" means the date set forth in the Installation Notice to Proceed.

"Contract Date" has the meaning ascribed to it in the first paragraph of this Agreement.

"Contract Price" means the rate, in \$/kWh, for each Billing Year as set forth on Schedule 5 (Contract Price).

"Cost Substantiation" means documentation reasonably acceptable to Purchaser provided by Seller to support any third party cost or expense incurred or to be incurred by Seller resulting from any costs identified under this Agreement for which Cost Substantiation must be supplied. Such documentation shall describe the direct costs (without margin, fee, or mark-up of any kind by Seller), and shall include a statement identifying in reasonable detail the reason for incurring such direct costs, the amount of such direct costs, the act, event or condition or Section giving rise to Seller's right to incur direct costs and that such direct cost is a fair market value price for the service provided or materials supplied (it being understood that such services

or materials may be provided or supplied by an Affiliate). Purchaser reserves the right to audit such documentation when submitted or to have a third party audit such documentation, in either case, at Purchaser's sole cost and expense. If Purchaser does not object, in writing, to any such documentation provided by Seller within [forty-five (45)] Days after its receipt of such documentation, such direct costs shall be deemed accepted by Purchaser and shall be payable in accordance with the terms of this Agreement. Any documentation provided by Seller shall include copies of all invoices and charges, together with any additional documentation of such costs and expenses incurred which Purchaser deems necessary to enable it to verify the amount of such costs and expenses and to verify the basis for the amount claimed. All costs to be substantiated shall be subject to the review and approval of Purchaser as to their reasonableness; provided that if Seller disagrees with Purchaser's determination, Seller may refer the matter to dispute resolution pursuant to Section 14.5.

"County" has the meaning set forth in the Recitals to this Agreement.

"Day" means a calendar day of time, beginning at midnight in the eastern time zone of the United States coinciding with the calendar day, whether or not a Legal Holiday.

"Decommissioning" has the meaning specified in Section 8.2.

"Decommissioning Amount" means an amount equal to (a) the total expected cost of Decommissioning, as determined by a Qualified Engineer, plus (b) the estimated administrative costs of Purchaser, as reasonably determined and provided in writing by Purchaser to Seller (such amount not to exceed ten percent (10%)). For the avoidance of doubt, the Decommissioning Amount shall not take into account any salvage value of the System or any equipment or materials.

"Decommissioning Bond" has the meaning specified in Section 8.2.

"Defaulting Party" means any Party against which the other Party hereto is entitled to assert an Event of Default under Section 12.1 or 12.2, as applicable.

"Delivery Point" means the metering point at the load side of the transformer for the System, as specified on Schedule 2 (System Description).

"Development Tasks" has the meaning specified in Section 4.1.

"Dispute" has the meaning specified in Section 14.5(a).

"EA Agency" means any Governmental Authority or other Person that has responsibility for or jurisdiction over a program involving transferability of Environmental Attributes, including the Clean Air Markets Division of the United States Environmental Protection Agency, the SCC, and any successor agency thereto.

"Electricity" means the net amount of electrical energy generated by the System to be delivered to Purchaser.

"Environmental Attributes" means any and all existing or future certificates, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of

conventional energy generation, including (a) any avoided emissions of pollutants to the air, soil, or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential treat of altering the Earth's climate by trapping heat in the atmosphere; and (c) the reporting rights related to these avoided emissions such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or State law, if applicable, and to a federal or State agency or other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, State or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives and Tax Benefits. Without limiting the generality of the foregoing, Environmental Attributes include Renewable Energy Credits, carbon trading credits, emissions reduction credits, emissions allowances, green tags tradable renewable credits, and Green-e® products.

"Environmental Incentives" means any and all subsidies, payments, rebates, credits, or other incentives that relate to the self-generation of Electricity, the use of technology incorporated into the System or other similar programs.

"Event of Default(s)" means, as applicable, a Purchaser Event of Default or a Seller Event of Default.

"Expected Commercial Operation Date" means the date on which the Parties expect the System to achieve Final Completion, as set forth in the Installation Notice to Proceed.

"Extended Term" has the meaning specified in Section 2.2.

"Fair Market Value" means the amount that would be paid in an arm's length, free market transaction, for cash, between an informed, willing seller and an informed willing buyer, neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age, condition and performance of the System and advances in solar technology.

"Final Completion" means that each of the following has been achieved:

all Permits and authorizations, approvals and agreements from the Utility and Governmental Authorities have been received necessary for the operation of the System and delivery and sale of Output to Purchaser;

the System has been constructed in accordance with the terms of this Agreement;

Seller has successfully completed all commissioning and start-up tests;

the Utility has approved installation and given its "Permission to Operate" (or equivalent) notification;

the Meter has been commissioned and is accurately transmitting data;

the System is capable of generating Electricity for four (4) continuous hours for sale to Purchaser at the Project Site;

Seller has completed all punch list items, if any, identified by Purchaser to the reasonable satisfaction of Purchaser;

Seller has performed final clean-up of the Project Site, and the Project Site shall have been restored to the same condition as the Project Site was on the Contract Date, except to the extent resulting from installation of the System and ordinary wear and tear; and

Seller has executed and delivered the Final Completion Certificate to Purchaser, in the form of Schedule 8 (Form of Final Completion Certificate), and Purchaser has accepted and counter-signed such certificate.

"Final Completion Certificate" means the certificate attached hereto as Schedule 8 (Form of Final Completion Certificate).

"Final Design" has the meaning specified in Section 4.1(f).

"Financing Party" means any Person providing direct or indirect debt or equity financing, refinancing or extending credit (including any financing lease) to Seller or Seller's Affiliates or the agent for such Person(s), or any agent or designee of such Person that has been granted a security interest in all or part of the System or this Agreement by Seller.

"Fiscal Year" means the year commencing on July 1 of any year and ending on June 30 of the immediately succeeding year.

"Force Majeure Event" means any act, event, or circumstance, occurring after the Contract Date, that directly delays or prevents a Party from performing all or a portion of its obligations under this Agreement, or from complying with all or a portion of the conditions under this Agreement, if such event or circumstance is beyond the reasonable control of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance, including: an act of god; war (declared or undeclared); sabotage; piracy; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; earthquake; hurricane; flood; lightning; wind; drought; and the binding order of any Governmental Authority.

The term "Force Majeure Event" does not include: economic hardship or lack of funds; changes in market conditions, including general deterioration in the economy or in the economic conditions prevalent in the industry which the Party operations; inability of Seller to obtain equipment to construct the System, equipment failures, or acts or omissions of agents or Subcontractors of Seller, except to the extent such acts or omissions arise from a Force Majeure Event; any financial or payment obligations of either Party whether arising under this Agreement or otherwise; the extent to which the Party claiming a Force Majeure Event has caused or contributed to the applicable act, event or condition by its own fault or negligence or has failed to use commercially reasonable efforts to prevent or remedy such act, event, cause or condition and, so far as possible and within a reasonable time period, remove it; any non-national Project Site-specific strike or labor action affecting Seller or its Subcontractors

exclusively; weather conditions that are reasonably foreseeable or that are normally experienced in the geographic area of the Project Site; the roof or surface conditions of the Project Site; the increase in costs of or late delivery of materials or the failure of any suppliers to perform, unless caused by circumstances that are themselves Force Majeure Events; or increased costs of the Services.

"Governmental Authority" means any federal, State, regional, city, county (including the County), or local government, any political subdivision thereof, or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency commission, administration, bureau or court having jurisdiction over, as applicable, (a) the System, (b) the transactions relative to the System, (d) the performance of the Services, (e) the obligations or the rights, or both, of the Parties under this Agreement, (f) leases or property rights relative to the Project Site, or (g) the sale, purchase, or other disposition of commodities consumed, produced or generated by the System.

"Hazardous Materials" means any chemical, waste, or other substance (a) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to the environment, health, safety, or welfare, (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal, or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.

"Improvements" has the meaning set forth in the Recitals to this Agreement.

"Initial Design" has the meaning specified in Section 4.1(d)(i).

"Initial Term" has the meaning specified in Section 2.1.

"Installation Notice to Proceed" has the meaning specified in Section 4.2.

"Installation Period" means the date specified in the Installation Notice to Proceed and ending on the Actual Commercial Operation Date.

"Interconnection" means the interconnection of the Site Electrical System to the distribution system, including installation, testing, start-up, commissioning, operation and maintenance of all interconnection facilities.

"Interest Rate" means the per annum rate of interest published from time to time by *The Wall Street Journal* (or successor publication if *The Wall Street Journal* is not longer published) as the prime rate.

"kWh" means one kilowatt of Electricity supplied for one hour.

"Lease" means that certain Deed of [Rooftop] Lease Agreement, in the form attached hereto as Schedule 10 (Lease), as such agreement may be amended, revised or supplemented from time to time.

“Legal Proceeding” means every judicial, regulatory or administrative action, suit, litigation, administrative proceeding, or other legal or equitable proceeding (including appeals).

“Liens” means all mortgages, liens, pledges, security interests, charges, and encumbrances of any kind or nature whatsoever.

“Loss(es)” means individually or collectively, any and all losses, liabilities, damages, actions, forfeitures, obligations, liens, claims, delays, fines, penalties, recoveries, judgments, payments, demands, allegations, costs, fees and expenses (including reasonable fees and expenses of attorneys, expert witnesses, consultants and other Persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses reasonably incurred in connection with any Legal Proceeding, suits and causes of action of every kind and character).

“Meter” means the physical metering devices, data acquisition equipment, and apparatus associated with the meter(s) owned by Seller and used to measure and record quantities of Output generated by the System and delivered to Purchaser and other related parameters required for the reporting of data to Seller.

“Minimum Output” means, for the particular Billing Year, the minimum amount of Output (in kWh) as set forth on Schedule 6 (Annual Contract Quantity).

“Monthly Fee” has the meaning in Section 10.2.

“Non-Defaulting Party” means, with respect to the occurrence of any Event of Default, the Party that is not the Defaulting Party in connection with such Event of Default.

“Notice(s)” means written notice from the Representative of the applicable Party to the other, all in accordance with Section 14.6 and the timeframes and other requirements of this Agreement.

“Occupational Safety and Health Law” means any Applicable Law designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards, including the Occupational Safety and Health Act, and any program, whether governmental or private (such as those promulgated or sponsored by industry associations and insurance companies), designed to provide safe and healthful working conditions.

“Outage” has the meaning specified in Section 6.9.

“Outage Allowance” has the meaning specified in Section 6.9.

“Output” means the Electricity produced by the System (as expressed in units in kWh) delivered by Seller to Purchaser at the Delivery Point, as recorded by the Meter.

“Output Guarantee” has the meaning specified in Section 6.5(a).

“Party” or “Parties” has the meaning ascribed to it in the first paragraph of this Agreement identifying the Parties hereto.

“Permit(s)” means all actions, reviews, approvals, leases, property rights, consents, waivers, exemptions, variances, franchises, orders, permits, authorizations, rights, licenses, filings, zoning changes or variances, and entitlements, of whatever kind and however described, which are required under Applicable Law or by any Governmental Authority or the Utility or be obtained or maintained, or both, by Seller or Purchaser with respect to System, the Project Site or the Services.

“Person(s)” means, without limitation, any natural or artificial entity, including an individual, person, firm, corporation, company (limited liability), partnership (including general and limited), joint venture, association, joint-stock company, trust (including business trust(s)), unincorporated organization, Governmental Authority, and other entities.

“PPA Pilot Program Requirements” means the requirements imposed on either Seller or Purchaser, or both, set forth in (a) Chapter 382, as amended, (b) those certain guidelines entitled “Guidelines Regarding Notice Information for a Third Party Renewable Power Purchase Agreement,” as established by the SCC pursuant to Chapter 382, as such guidelines may be amended, revised or updated by the SCC, and (c) the Amended and Restated Agreement for the Provision of Electric Service to Municipalities and Counties of the Commonwealth of Virginia between Virginia Electric Power Company and Virginia Energy Purchasing Governmental Association, entered into effective August 1, 2014, as such agreement may be amended, revised or supplemented from time to time.

“Project Schedule” has the meaning specified in Section 4.1(d)(ii), as described in Schedule 4 (Project Schedule).

“Project Site” has the meaning set forth in the Recitals to this Agreement, as described in Schedule 3 (Project Site).

“Prudent Industry Practices” means those practices, methods, techniques, specifications, standards, and acts (including but not limited to those engaged in or approved by a significant portion of the solar-generated electric power industry and/or the North American Electric Reliability Corporation) of design, engineering, installation, safety, maintenance, and performance, as the same may change from time-to-time, as are commonly observed in the United States and commonly performed by competent, qualified Persons performing design, development, installation, management, operation, and maintenance services on solar power generation facilities of the type and size similar to the System, which in the exercise of reasonable judgment and in light of the facts known at the time the decision was made, are (a) considered good, safe and prudent practice in connection with such services and (b) commensurate with a prudent standard of safety, performance, dependability and efficiency. Prudent Industry Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of action reasonable under the circumstances.

“Punch List” has the meaning specified in Section 5.10(c).

“Purchase Option” has the meaning specified in Section 7.4(a).

“Purchaser” has the meaning set forth in the opening paragraph of this Agreement.

“Purchaser Event of Default” has the meaning specified in Section 12.2.

"Purchaser Indemnified Party(ies)" has the meaning specified in Section 9.2(a).

"Purchaser's Representative" has the meaning specified in Section 14.15.

"Purchasing Resolution" means the County's Purchasing Resolution, effective July 1, 2019, as the same may be amended, modified, supplemented or restated from time to time.

"Qualified Engineer" means an independent, professional engineer, reasonably acceptable to Purchaser, licensed in the State and otherwise qualified and experienced in performing the particular work or services to be performed.

"Qualified Surety" means any nationally recognized property and casualty insurance company authorized and licensed to transact suretyship business in the State, and rated by A.M. Best Company with a financial strength rating of "A-" or better and a financial size rating of Class X or larger.

"Renewable Energy Credits" means all certificates (including tradable renewable certificates), "green tags," or other transferable indicia denoting carbon offset credits or indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility attributable to the Output during the Term created under a renewable energy, emission reduction, or other reporting program adopted by a Governmental Authority, or for which a registry and a market exists or for which a market may exist at a future time.

"Representative(s)" means Purchaser's Representative or Seller's Representative, or both, as the context of the usage of such term may require, as such Representative is designated pursuant to Section 14.15.

"Required Seller Insurance" has the meaning specified in Section 9.1(a).

"Revised Design" has the meaning specified in Section 4.1(e)(i).

"RFP" has the meaning set forth in the Recitals to this Agreement.

"RTO" means the regional transmission operator or organization for which the region of the System resides, or any successor thereto.

"Seller" has the meaning set forth in the opening paragraph of this Agreement.

"Seller Event of Default" has the meaning specified in Section 12.1.

"Seller Fault" means (a) any breach, failure, nonperformance, or noncompliance by Seller (including the acts or omissions of a Subcontractor) with the terms and provisions of this Agreement for any reason except to the extent such breach, failure, nonperformance, or noncompliance is caused by the occurrence or continuing effect of a Force Majeure Event or Purchaser Fault or (b) any negligence or willful misconduct of any agent, officer, employee, or Subcontractor of Seller which, in the case of (a) or (b) of this definition, (1) prevents or, individually or collectively, materially interferes with or materially delays Seller's or Purchaser's performance of its obligations, (2) deprives Purchaser of any of its material rights or (3) increases Purchaser's costs of performing its obligations or, as applicable, reduces its revenues, under this Agreement.

"Seller's Representative" has the meaning specified in Section 14.15.

"SCC" means the Virginia State Corporation Commission.

"Schedules(s)" means a schedule attached hereto and which is hereby incorporated herein and made a part of this Agreement, unless the context or usage of such term clearly indicates a reference to another schedule (not part of this Agreement), amendment or agreement.

"Section" means a section of this Agreement, unless the context or usage of such term clearly indicates a reference to another agreement or statute.

"Services" means all obligations, duties, responsibilities, and activities which Seller is responsible for performing or causing to be performed pursuant to the requirements of this Agreement.

"Site Electrical System" means Purchaser's existing building electrical systems at the Project Site that are owned or leased, operated, maintained, and controlled by Purchaser, and which systems are interconnected with the Utility.

"Shortfall Damages" has the meaning specified in Section 6.5(c).

"State" means the Commonwealth of Virginia.

"Subcontractor(s)" means every Person, other than Seller or its employees, who or which directly or indirectly contracts with Seller to provide labor, services, materials, supplies, equipment, or spare parts for or with respect to the System.

"Suspension Notice" has the meaning specified in Section 5.11(a).

"System" has the meaning specified in the Recitals to this Agreement, as further described in Schedule 2 (System Description).

"Tax Benefits" means any and all investment tax credits, production tax credits, and similar tax credits or grants under federal, State, or local law relating to the installation, ownership, or production of energy from the System.

"Term" has the meaning specified in Section 2.3.

"Termination Payment" has the meaning specified in Section 12.4.

"Termination Payment Schedule" has the meaning specified in Section 4.1(d)(iv), as described in Schedule 13 (Termination Payment Schedule).

"Utility" means Purchaser's incumbent electric utility provider, which as of the Contract Date is [Virginia Electric and Power Company], and its successors and permitted assigns.

"VFOIA" has the meaning specified in Section 14.33(e).

SCHEDULE 2

SYSTEM DESCRIPTION

[TO BE DEVELOPED]

SCHEDULE 3

PROJECT SITE

[TO BE DEVELOPED]

SCHEDULE 4

PROJECT SCHEDULE

Milestone	Completion Date
System Installation	
Interconnection	
Start-Up	
Commissioning and Testing of the System	
Final Completion	

SCHEDULE 5

CONTRACT PRICE

Billing Year	Contract Price (in \$/kWh)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
[Etc.]	
[Extend for contract extensions]	

SCHEDULE 6

ANNUAL CONTRACT QUANTITY

Billing Year	Minimum Output (in kWh)	Contract Quantity (in kWh)
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
[Etc.]		
[Extend for contract extensions]		

SCHEDULE 7

FORM OF INSTALLATION NOTICE TO PROCEED

_____, 20__

[Seller]
[Seller Address]
[Seller Address]

Re: Installation Notice to Proceed

Dear _____:

This Installation Notice to Proceed is delivered to you pursuant to Section 4.2 of that certain Solar Power Purchase Agreement by and between [FAIRFAX ENTITY] ("Purchaser") and _____ ("Seller"), dated as of _____, 20__ (the "Agreement"). Capitalized terms used but not defined herein shall have the meanings given such terms in the Agreement.

Purchaser hereby instructs Seller to commence installation of the System on _____, 20__.

Pursuant to the Agreement:

The Commercial Operation Deadline is _____, 20__;

The date on which Purchaser and Seller expect the System to complete Final Completion (the "Expected Commercial Operation Date") is _____, 20__;
and

The Installation Period shall begin on _____, 20__ and end on the Actual Commercial Operation Date.

Sincerely,

[FAIRFAX ENTITY]

By: _____
Name: _____
Title: _____

Acknowledged and Agreed to:

[Seller]

By: _____
Name: _____
Title: _____

SCHEDULE 8

FORM OF FINAL COMPLETION CERTIFICATE

Project Site:

Contract Number:

Contract Date:

Purchaser: [FAIRFAX ENTITY]

Seller: _____

System Description:

This Final Completion Certificate is delivered to [FAIRFAX ENTITY] ("Purchaser") pursuant to that certain Solar Power Purchase Agreement dated as of _____, 20__ (as amended, restated, supplemented or otherwise modified, the "Agreement"), by and between Purchaser and _____ ("Seller"), dated as of _____, 20__ (the "Agreement"). Capitalized terms used but not defined herein shall have the meanings given such terms in the Agreement.

The undersigned, in his capacity as an officer of Seller, hereby certifies that each of the conditions to Final Completion of the above described System set forth in the definition of Final Completion, other than Purchaser's acceptance and signing of this Certificate, has been satisfied. The date of Final Completion is the day after the date on which the last of the conditions to Final Completion, other than Purchaser's acceptance and signing of this Certificate, was satisfied and is hereby certified by the undersigned, as of: _____.

The Actual Commercial Operation Date for purposes of the Agreement shall be: _____.

SELLER:

[SELLER NAME]

By: _____

Name: _____

Title: _____

Date: _____

ACCEPTED:

PURCHASER:

[FAIRFAX ENTITY]

By: _____

Name: _____

Title: _____

Date: _____

SCHEDULE 9

FORM OF MONTHLY INVOICE

INVOICE

INVOICE NUMBER: Invoice Date:	Billing Period: Account Number: Service Address: Billing Address: Remittance Address:
Project Site:	
Contract Number:	Contract Date:

[SELLER]
[SELLER ADDRESS 1]
[SELLER ADDRESS 2]
[BILLING PHONE #]

INVOICE TO:
[]
COUNTY OF FAIRFAX, VIRGINIA
OFFICE OF COUNTY ATTORNEY
12000 GOVERNMENT CENTER PKWY, STE 549
FAIRFAX, VA 22035

Billing and Payment Summary

Due Date: _____, 20__
Total Amount Due: \$ _____

Previous Amount Due: \$ _____
Payments as of _____: \$ _____

kWh Unit Cost	\$ _____
kWh Total Cost	\$ _____
kWh Provided	_____
kWh Commitment	_____
kW Peak Supplied	_____

Power Factor Information:

Additional Charges (if any):

[INSERT RUNNING TOTAL KWH LISTING FOR PREVIOUS 13 MONTHS]

***Seller must have the ability to pull interval data on half-hour periods for the last three (3) years and shall make such data available to Purchaser upon Purchaser's request.**

SCHEDULE 10

LEASE

[TO BE ATTACHED]

SCHEDULE 11

FORM OF ENVIRONMENTAL ATTRIBUTES ATTESTATION

Environmental Attributes Attestation and Bill of Sale

_____, 20__

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, [_____] ("Seller") hereby sells, transfers and delivers to [FAIRFAX ENTITY] ("Purchaser") the Environmental Attributes (as such terms are defined in the Solar Power Purchase Agreement dated as of [_____] between Purchaser and Seller, as amended, restated, supplemented or otherwise modified, the "Agreement") arising from the generation of the energy from the Project Site described below:

Project Site and Location:

APPLICABLE ID #:

APPLICABLE ID #:

APPLICABLE ID #:

Fuel Type: Capacity

(kW):

Commercial Operation Date:

Dates	kWh generated	Dates kWh generated

[Continued on following page]

*[Environmental Attributes Attestation and Bill of Sale –
Continued from previous page]*

In the amount of one Environmental Attribute for each kWh generated, and Seller further attests, warrants and represents as follows:

1. To the best of its knowledge, the information provided herein is true and correct;
2. This transfer to Purchaser is the one and only sale of the Environmental Attributes referenced herein;
3. To the best of its knowledge, the Environmental Attributes were not sold, marketed or otherwise claimed by a third party;
4. The Environmental Attributes or the electricity that was generated with the attributes was not used to meet any federal, state, or local renewable energy requirement, renewable energy procurement, renewable portfolio standard, or other renewable mandate, nor to any other entity;
5. The electrical energy that was generated with the attributes was not separately sold, separately marketed, or otherwise separately represented as renewable energy by Seller, or to any other entity;
6. Each of the Environmental Attributes associated with the generation of the indicated energy have been generated at and sold from the Project Site; and
7. The Project Site generated and delivered the energy in the amount indicated as undifferentiated energy.

This serves as a bill of sale, transferring from Seller to Purchaser all of Seller's right, title and interest in and to the Environmental Attributes.

Contact Person: Name: _____ Phone: _____

Witness my Hand:

[SELLER]

By: _____

Name: _____

Title: _____

Date: _____

SCHEDULE 12

FORM OF DECOMMISSIONING BOND

[TO BE INSERTED]

SCHEDULE 13

TERMINATION PAYMENT SCHEDULE

Billing Year	Termination Payment Amount
1	\$[]
2	\$[]
3	\$[]
4	\$[]
[Etc.]	

SCHEDULE 14
REPRESENTATIVES

Purchaser's Representative:

Name: _____

Title: _____

Phone: _____

Email: _____

Seller's Representative:

Name: _____

Title: _____

Phone: _____

Cell: _____

Email: _____

SCHEDULE 15

SECURITY/ACCESS REQUIREMENTS

[FOR PUBLIC SAFETY AND JUDICIAL FACILITIES: The following additional security requirements shall apply for access to the Project Site:

(i) All of Seller's employees, contractors and Subcontractors must pass to the satisfaction of Purchaser an additional criminal history check, which will be processed by the Fairfax County Police Department of Fairfax County Sheriff's Department ("Sheriff's Department").

(ii) Seller must be accompanied by a representative of Purchaser; however, Seller must be accompanied by personnel from the Sheriff's Department if passage through a secured area of the Building (as defined in the Lease) is necessary.

(iii) If the Sheriff's Department places the Building under lockdown as a result of a security threat, Seller shall not have access to the Building or the Project Site and any of Seller's agents or contractors within the Building and/or Demised Premises may be asked to immediately leave without gathering any equipment or personal belongings.]

[FOR PUBLIC SCHOOLS:

(i) Seller certifies to Purchaser as follows:

(A) No employee, contractor or Subcontractor of Seller who will have direct contact with students has been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child; and

(B) Unless prior Notice has been given to Purchaser, no employee, contractor or Subcontractor of Seller who has been convicted of a crime of moral turpitude will have direct contact with students.

(ii) The foregoing certifications shall be binding on Seller throughout the Term, and Seller hereby covenants and agrees to provide Purchaser and Fairfax County Public Schools ("FCPS") with immediate Notice of any event or circumstance that renders such certification untrue. Seller hereby covenants and agrees that it will require this certification to be included in all contracts or subcontracts that Seller enters into related to the Project Site in order that the provisions contained herein shall be binding on each contractor and Subcontractor.

(iii) Seller will ensure that no employees, contractors or Subcontractors shall perform any work as prescribed under this Agreement or the Lease in occupied areas of the Project Site during school hours unless FCPS has previously agreed to such work in writing and proper safety precautions have been exercised to isolate the area of any such work.

(iv) All of Seller's employees, contractors and subcontractors shall check in and out at the main office for the Building each day and shall wear any additional identification badges as may be required. All such employees, contractors and subcontractors are required to

present photo identification upon request. Seller shall also provide all such employees, contractors and subcontractors with a form of identification reflecting their employment status with Seller, and displaying such individual's name and photograph.

(v) Alcoholic beverages, illegal drugs and weapons are prohibited at the Project Site and shall constitute ground for immediate removal from the Project Site. Seller shall ensure that neither its employees, nor those of any contractor or Subcontractor, shall fraternize in any manner with any student of FCPS at the site of the Project. Purchaser shall have the right to remove from the Project Site any person whose presence Purchaser deems detrimental to the best interests of the FCPS. Any individual who is removed from the Project Site pursuant to this Section may not return to the Project Site or any other FCPS site without prior written permission from FCPS.]

SCHEDULE 15

CONSTRUCTION SAFETY RESOLUTION

1. **FAIRFAX COUNTY CONSTRUCTION SAFETY RESOLUTION:**

The Contractor shall comply with the resolution adopted by the Fairfax County Board of Supervisors on December 8, 2003, as amended:

- 1.1 It shall be required that each bid submitted to the County for a contract for construction, alteration, and/or repairs, including painting or decorating of a building, highway, street, bridge, sidewalk, culvert, sewer, excavation, grading, or any other construction, include a list of all the following actions which have become final in the three years prior to the bid submission:
 - a. Willful violations, violations for failure to abate, or repeated violations, for which the bidder was cited by (a) the United States Occupational Safety and Health Administration; (b) the Virginia Occupational Safety and Health Administration; or (c) the occupational safety and health plan for any other public jurisdiction; or
 - b. Three (3) or more serious construction safety violations for which the bidder was cited by the (a) United States Occupational Safety and Health Administration; or (b) the Virginia Occupational Safety and Health Administration; or (c) the occupational safety and health plan from any other public jurisdiction.
 - c. Termination of a contract between the contractor and any public entity by their purchasing agent or his designee for safety violations.
- 1.2 If the bidder has not received or been the subject of any such violations referenced in paragraph 8.1 in the three (3) years prior to the bid submission, then the bidder shall so indicate by certification on the bid form entitled Certification of Safety Violations. The bidder will also indicate on this form each state in which work was performed in the three (3) years prior to the bid submission.
- 1.3 No bidder or contractor may bid on a County construction contract who has been the subject of any citations for the type and number of violations listed in aforementioned paragraph 1.1, which have become final within the three (3) years prior to the bid submission.
 - a. Notwithstanding the language of paragraph 1.3, above, any bidder or contractor who has been the subject of a violation, as described in paragraph 8.1 A, which has become final in the three (3) years prior to the bid submission, may bid, if the bidder or contractor meets the eligibility criteria set forth in paragraph 8.4, below.

- b. Notwithstanding the language of paragraph 1.3, above, any bidder or contractor who has been the subject of the type and number of violations as described in paragraph 1.2, which have become final within three (3) years prior to bid submission, may bid, if the bidder or contractor meets the eligibility criteria in paragraph 1.5, below.
 - c. Notwithstanding the language of paragraph 8.1.C, above, any bidder or contractor who has previously been terminated from a public contract, as described in paragraph 8.1.C, within three (3) years prior to the bid submission, may bid, if the bidder or contractor meets the eligibility criteria in paragraph 1.5, below.
- 1.4 Prior to bidding on a project, under the provisions of paragraph 1.3 above, a contractor may request that a determination be made by the County's Purchasing Agent or designee, regarding their eligibility to submit a bid on a contract under the terms of this resolution. However, this request for determination and any subsequent adjudication process must be completed prior to submitting a bid on any project and the request for determination must be received by the County's Purchasing Agent or designee no later than twenty-one (21) days before bids are due unless otherwise stated in the Solicitation. A notice of the bidder's request for determination of eligibility will be posted publicly for comments by any interested party. The bidder's request for determination of eligibility and all supporting documentation provided by the bidder to the County in support of its request shall be open to the inspection of any interested person, firm or corporation in accordance to the requirements of Fairfax County Purchasing Resolution and Virginia Freedom of Information Act.
- 1.5 At the request of the Purchasing Agent or designee, the County Risk Manager shall evaluate a contractor's eligibility. Contractors may be subject to a special audit of their safety records as required. The criteria used by the Risk Manager in evaluating contractor's eligibility shall include but not be limited to the following:
- a. Corrective action taken by a bidder or contractor to prevent the recurrence of safety violations.
 - b. Days Away From Work Incident Rate for the past three (3) years.
 - c. Summary of Work-Related Injuries and Illnesses/Incident Rate for the past three (3) years.
 - 1. Worker's Compensation Experience Modification Rating for the past three (3) years.
 - 2. Fatality record for the past five (5) years.
 - 3. Detailed information regarding the firm's safety program including but not limited to a Safety and Health plan and qualifications of the safety

personnel.

4. Verification that management staff directly in charge of projects that experienced safety violations listed in aforementioned paragraph A will not be involved in the County project.
 5. Incorporation of safety and health related issues into their new employee orientation programs.
 6. Incorporation of work safety as a part of an employee's performance evaluation.
 7. Support of safety related matters by senior/corporate management.
Does the firm have a safety policy statement signed by a member of senior/corporate management?
 8. Designation of a full time Safety Manager. Does this person report to a high level, authoritative position within the Company?
 9. Frequency and type of safety inspections conducted at work sites.
 10. The number and type of safety training programs conducted for employees.
 11. Frequency of safety "tailgate meetings" conducted by the firm.
 12. Designation of an active safety committee, frequency of their meetings and list of members of the committee.
 13. Active membership in a recognized construction safety organization in the Washington Metropolitan area, or in the state of contractor's domicile.
- 1.6 The determination of eligibility rendered by the Purchasing Agent or his designee shall be final unless it is appealed in accordance with the provisions of the solicitation or the Fairfax County Purchasing Resolution.
- 1.7 It shall be a condition of each County construction contract, as discussed above, that no contractor or subcontractor contracting for any part of the contract work shall require any laborer, mechanic, or other person employed in the performance of the contract to work in surroundings or under working conditions which are hazardous or dangerous to his safety, as determined under construction safety standards promulgated by the U.S. Department of Labor or the Virginia Department of Labor and Industry.
- 1.8 The contractor awarded a County construction contract shall certify in writing that they will not knowingly, willfully, or recklessly employ or contract with any person, company, corporation, or any other entity for services pursuant to that contract if such person, company, corporation, or other entity could not have been awarded such contract due to the restrictions in paragraph 1.3, above.
- 1.9 The contractor shall also certify in writing that all safety related information provided in accordance with the Safety Resolution and contract requirements are complete, accurate and truthful.
- 1.10 The failure to provide information requested pursuant to this Resolution or the

failure to conform to the certification requirements of this Resolution shall be grounds for disqualifying a prospective bidder.

- 1.11 The County may impose the following sanctions upon a contractor who willfully submits any false or misleading certification or information regarding material facts in connection with submissions pursuant to this Resolution, or willfully omits any certification or information regarding material facts in connection with submissions pursuant to this Resolution. The term willful shall include intentional or reckless acts or omissions.
- a. Disqualify the prospective bidder from bidding a contract.
 - b. Debar the contractor from bidding future contracts for a period not to exceed three years.
 - c. Terminate the contract awarded to the bidder after providing notice and opportunity to be heard.

**FORM OF
DEED OF LEASE AGREEMENT
[PROJECT SITE - CANOPY]**

BY AND BETWEEN

**[FAIRFAX ENTITY]
("LESSOR")**

AND

**[SOLAR POWER PROVIDER]
("LESSEE")**

DATED: _____

DEED OF LEASE AGREEMENT
[PROJECT SITE - CANOPY]

THIS DEED OF LEASE AGREEMENT (this “**Lease**”), dated as of [•] (the “**Effective Date**”), is made by and between **[FAIRFAX ENTITY]** (“**Lessor**”), and **[SOLAR POWER PROVIDER]**, a [•] (“**Lessee**”). Lessor and Lessee may each be referred to herein as the “**Party**”, or collectively as the “**Parties**”, as the usage of such term may require.

RECITALS

WHEREAS, Lessor is the [owner] of that certain real property located at [•], Fairfax County, Virginia (the “**Project Site**”);

WHEREAS, the Project Site includes an estimated [•] square feet of [parking lot] [parking garage] as more particularly depicted on the attached **Exhibit A** attached hereto (the “**Demised Premises**”);

WHEREAS, pursuant to that certain Solar Power Purchase Agreement by and between Lessor and Lessee dated as of [•] (as amended, modified, or supplemented from time to time, the “**PPA**”), Lessor has selected and engaged Lessee to design, install, own, operate, and finance a grid connected solar photovoltaic energy system consisting of solar canopy structures on the Demised Premises, as more particularly described in the PPA (the “**System**”) and to sell the Output produced by such System to Lessor, all in accordance with the terms of the PPA;

WHEREAS, in connection with the foregoing, Lessee desires that Lessor lease, and Lessor desires to lease to Lessee, the Demised Premises, all in accordance with the terms and conditions set forth herein; and

WHEREAS, capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the PPA.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Lessee and Lessor hereby agree as follows:

Lease of Demised Premises; Additional Property Rights.

(a) **Demised Premises**. Lessor hereby leases to Lessee, in accordance with the terms and conditions set forth herein, the Demised Premises for the installation of the System, including, without limitation, solar panels, solar canopy structures, electrical power inverters, interconnection equipment, electrical wiring, underground conduit, collection lines, wire management systems, charging stations, electric meters, metering, switch cabinets, power distribution boxes, and racking systems.

(b) **Lessee's Ancillary Rights**. In connection with Lessor's leasing the Demised Premises to Lessee, Lessor hereby grants to Lessee, for a period co-terminus with this Lease, the non-exclusive right to use portions of access drives, parking lots, and other areas of the Project Site as shown on **Exhibit B** (“**Facility Access**”). Lessor may change the Facility Access at any time with reasonable prior Notice to Lessee. The Facility Access is provided for the purpose of accessing the Demised Premises for installation, operation, maintenance, and decommissioning of the System and to locate any auxiliary equipment necessary to install, operate, or maintain the System on the Demised Premises and for the purposes of interconnecting the System with the Project Site's mechanical and electrical systems as agreed by Lessor and Lessee in accordance with the PPA. Lessee shall not

install any improvements that would prevent access to or prevent use of the Project Site, or any holders of easements across the Project Site or any governmental or public utility personnel (e.g., fire, police, public utility providers, etc.) or other similar parties. Furthermore, Lessee shall utilize the Facility Access in a manner as to not unreasonably interfere with the use of the Project Site by Lessor.

(c) Signage. Lessee shall not place any signage on or at the Project Site (other than as required by Applicable Law) unless approved in advance in writing by Lessor.

Term.

(a) Term. The term of this Lease shall commence on the Effective Date and shall terminate as provided in Section 2.1 of the PPA (the "Term"). The Term may be extended pursuant to Section 2.2 of the PPA.

(b) Termination. Notwithstanding anything contained herein to the contrary, this Lease shall automatically terminate if the PPA is terminated for any reason whatsoever.

(c) Access After Termination. Notwithstanding the foregoing, for a period of [sixty (60)] Days following the expiration or earlier termination of this Lease, Lessee shall have the right to access the Demised Premises for the purpose of decommissioning and removing the System in accordance with Section 8.1 of the PPA. The provisions of this Section 2(c) will survive the expiration or termination of this Lease.

Utilities. During the Term, Lessor shall have no obligation to provide any utilities to Lessee for Lessee's use in connection with the installation, operation, and maintenance of the System on the Demised Premises. To the extent that, during the Term, Lessee requires any utilities in connection with the installation, operation, and maintenance of the System on the Demised Premises, Lessee further acknowledges and agrees that Lessee shall be responsible, at its sole cost and expense, for providing or obtaining such utilities and that Lessee's inability to provide or obtain any such utilities shall not relieve Lessee from the performance of Lessee's obligations under this Lease or the PPA.

Annual Rent. Commencing on the Effective Date and continuing thereafter for the remainder of the Term, Lessee shall pay to Lessor annual rent for the Demised Premises in the amount of One and No/100 Dollars (\$1.00) per year ("Annual Rent"). The Annual Rent for the first year of the Term shall be due and payable by Lessee to Lessor within ten (10) Business Days of the Effective Date, and Annual Rent for each succeeding year of the Term shall be due and payable by Lessee to Lessor, without notice or demand, on or before each anniversary of the Effective Date during the Term. The Annual Rent shall be payable by Lessee to Lessor at the address for the Lessor set forth in the PPA or at such other address as shall be designated in writing by Lessor.

System Installation. The System shall be installed in accordance with Section 5 of the PPA.

Liens.

To the extent permitted by Applicable Law, all of Lessee's contracts with Subcontractors shall provide that no Lien shall attach to or be claimed against the Demised Premises or any interest therein by Lessee or its Subcontractors as a result of supplying goods or services pertaining to the Demised Premises, and Lessee shall use reasonable efforts to cause all subcontracts let thereunder to contain the same provision.

Lessee shall indemnify and hold Lessor, the Board and Lessor's agents, officers, subcontractors, employees, invitees, and contractors harmless from, and defend against (with legal counsel reasonably acceptable to Lessor) all Losses of every kind, nature, and description which may arise out of or in any way be connected with such work. Lessee shall not permit the Demised Premises to become subject to any mechanics', laborers', or materialmen's lien on account of labor, material, or services furnished to Lessee or claimed to have been furnished to Lessee (either directly or through Subcontractors) in connection with work of any character performed or claimed to have been performed for the Demised Premises by, or at the direction or sufferance of Lessee, and if any such Liens are filed against the Demised Premises, Lessee shall promptly and at its cost and expense discharge the same; provided, however, that Lessee shall have the right to contest, in good faith and with reasonable diligence, the validity of any such lien or claimed lien if Lessee shall give to Lessor, within [ten (10)] Business Days after demand, such security as may be reasonably satisfactory to Lessor to assure payment thereof and to prevent any sale, foreclosure, or forfeiture of Lessor's interest in the Demised Premises by reason of non-payment thereof; provided, further, that on final determination of the Lien or claim for Lien, Lessee shall immediately pay any judgment rendered, with all proper costs and charges, and shall have the lien released and any judgment satisfied. If Lessee fails to post such security or does not diligently contest such lien, Lessor may, without investigation of the validity of the lien claim, after [ten (10)] Days' Notice to Lessee, discharge such Lien and Lessee shall reimburse Lessor upon demand for all costs and expenses incurred in connection therewith, which expenses shall include any attorneys' fees and any and all other costs associated therewith, including litigation through all trial and appellate levels and any costs in posting bond to effect a discharge or release of the lien.

Nothing contained in this Lease shall be construed as a consent on the part of Lessor to subject the Demised Premises to liability under any lien law now or hereafter existing.

System Operation, Ownership, Use, and Removal.

Operation, Maintenance, and Removal of System. Lessee shall operate, maintain, decommission, and remove the System in accordance with Section 6 of the PPA and in accordance with all Applicable Laws and in such a manner as will not unreasonably interfere with Lessor's or, if there are any other occupants of the Building, such occupants' operation or maintenance of the Project Site.

Ownership of System. Lessor acknowledges and agrees that (i) notwithstanding that the System may be a fixture under Applicable Laws, as between the Parties, the System shall be deemed to be personal property, and (ii) Lessee is the exclusive owner and operator of the System.

Use of Demised Premises. Lessee shall use the Demised Premises solely for the installation, operation, and maintenance of the System, but for no other uses.

Access to Demised Premises.

Subject to the notice and security requirements set forth in Section 9 below, Lessor shall provide Lessee with access to the Demised Premises as reasonably necessary to allow Lessee to perform the Services, including ingress and egress rights across the Project Site within the Facility Access.

Lessor shall at all times have access to and the right to observe the Services, including without limitation, installation of the System.

During all activities involving the System or the Demised Premises, including but not limited to installation, maintenance, repairs, decommissioning and removal of the System, Lessor's property manager for the Project Site ("Property Manager") must be present onsite at all times.

Lessee shall have access to the Demised Premises under the following conditions:

Normal Business Hours. During normal business hours [(Monday through Friday 8:00 a.m. – 5:00 p.m.)] for routine maintenance of the System, provided that Lessee shall give the Property Manager at least [seventy-two (72)] hours' prior notice of the need for such access.

(ii) Outside Normal Business Hours; Emergency. Outside normal business hours and in the event of an emergency, Lessee shall contact the Property Manager, who will provide access to the Demised Premises.

All of Lessee's employees, contractors, or agents must park their vehicles in the areas designated by Lessor.

Identification, Security, and Access Requirements.

Identification. All of Lessee's employees and Subcontractors shall display Lessor-issued identification badges above the waist at all times that such individuals are on the Project Site. Any employee, contractor, or Subcontractor of Lessee who arrives at the Project Site without required identification will be dismissed from the Project Site. All such employees, contractors, and Subcontractors must pass to the satisfaction of Lessor a Fairfax County Criminal History Check. Notwithstanding the foregoing, Lessor disclaims any liability with respect to the accuracy or completeness of the Criminal History Checks. Lessee shall be solely responsible for all costs associated with such identification badges and Criminal History Checks.

Inspection. All supplies, materials, and equipment for use at the Project Site are subject to security inspection by Lessor.

Additional Security and Access Requirements. Lessee shall, and shall cause all of its Subcontractors to, at all times comply with the identification, security, and other access requirements set forth on Exhibit C attached hereto.

Amendments to Security and Access Procedures. Lessor reserves the right to amend and/or update its security and access requirements or procedures relative to the Project Site, including Exhibit C, from time to time upon at least twenty-four (24) hours' Notice to Seller.

Insurance. Lessee covenants and agrees, from and after the Effective Date, to carry and maintain, at its sole cost and expense, the insurance required under Section 9 of the PPA.

Taxes. Lessee shall pay, on or before the due date thereof, all personal property taxes, business, and license taxes and fees, service payments in lieu of such taxes or fees, annual and periodic license and use fees, excises, assessments, bonds, levies, fees, and charges of any kind which are assessed, levied, charged, confirmed, or imposed by any Governmental Authority due to Lessee's occupancy and use of the Demised Premises (or any portion or component thereof) or the ownership and use of the System thereon,

including but not limited to any real property taxes and assessments attributable the System improvements on the Project Site.

Indemnification.

Indemnification. Lessee shall indemnify, defend, and hold harmless Purchaser Indemnified Parties from and against any liability for violations or alleged violation of any Applicable Law and Losses (including claims for property damage and claims for injury to or death of persons, including any claim or amounts recovered under "workers compensation laws" or any other Applicable Laws) arising in connection with, or out of, or resulting from (i) the negligent acts or omissions or willful misconduct of Lessee, its agents, officers, directors, employees, Subcontractors, or contractors; or (ii) the breach by Lessee of any of its obligations under this Lease. The obligation to indemnify shall extend to and encompass all costs incurred by Lessor and any Lessor Indemnitee in defending such claims, demands, lawsuits, or actions, including, but not limited to, attorney, witness, and expert witness fees, and any other litigation related expenses. This provision is intended to apply even if the injury or damage is caused in part by any act or omission or default of Purchaser Indemnified Parties, except that Lessee shall not be required to defend or indemnify Purchaser Indemnified Parties for a Loss to the extent any such Loss results solely from the negligence of a Purchaser Indemnified Party. The provisions of this Section 12(a) will survive the expiration or termination of the Lease.

Exclusion of Certain Damages. EXCEPT FOR LIABILITY IN RESPECT OF (A) LESSEE'S INTENTIONAL OR WILLFUL MISCONDUCT, FRAUD OR RECKLESSNESS OR (B) CLAIMS FOR BODILY INJURY, INCLUDING DEATH, AND DAMAGE TO REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY RESULTING FROM THE NEGLIGENCE OF LESSEE OR ANY AGENT OR EMPLOYEE OF LESSEE, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY, IN CONTRACT OR IN TORT (INCLUDING NEGLIGENCE), OR UNDER ANY OTHER LEGAL THEORY (INCLUDING STRICT LIABILITY), FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL OR SIMILAR DAMAGES, INCLUDING DAMAGES FOR LOST PROFITS, LOST REVENUES, LOST TAX BENEFITS, OR ENERGY CREDITS, OR INTERRUPTION OF BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THIS LEASE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIMS OR DAMAGES.

Lessee Default.

The occurrence of any one or more of the following shall constitute an event of default of Lessee (a "Lessee Default"):

The failure of Lessee to pay the Annual Rent or other sums due hereunder that is not cured within [ten (10)] Days after Notice thereof to Lessee;

Any representation or warranty of Lessee hereunder provides to be false or misleading in any material respect;

The inability, failure, or refusal of Lessee to perform timely any material obligations under this Lease, unless such failure or refusal is caused by a Force Majeure Event, a Lessor Default or Purchaser Event of Default; provided, however, such failure continues for [ten (10)] Business Days after Lessor shall have given Notice demanding that such failure to perform be cured; or

A Seller Event of Default under Section 12 of the PPA, which default continues beyond any applicable notice and cure period contained in the PPA.

Upon the occurrence of a Lessee Default, Lessor shall have the following rights: (i) to terminate this Lease by Notice to Lessee, and (ii) to pursue any other remedy under the PPA or now or hereafter existing at law or in equity. No termination of this Lease resulting from a Lessee Default shall relieve Lessee of its liability and obligations under this Lease, and such liability and obligations shall survive any such termination.

Lessor Default.

The occurrence of the following shall constitute an event of default of Lessor (a "Lessor Default"):

The failure of Lessor to perform any material obligations under this Lease, unless such failure is caused by a Force Majeure Event, a Lessee Default or Seller Event of Default; provided, however, such failure continues for [fifteen (15)] Business Days after Lessee shall have given Notice demanding that such failure to perform be cured; or

A Purchaser Event of Default under Section 12 of the PPA, which default continues beyond any applicable notice and cure period contained in the PPA.

Upon the occurrence of a Lessor Default, Lessee may pursue any remedies it may have under the terms of Section 12 of the PPA.

[Fee Mortgages. To the extent there any mortgages, deeds of trust, or other indentures encumbering the Project Site as of the Effective Date (each, a "Fee Mortgage"), Lessor shall, on or before the Effective Date, use commercially reasonable efforts to obtain from the holder of each such Fee Mortgage a non-disturbance and attornment agreement, in a form acceptable to Lessee (each, an "SNDA"), pursuant to which the holder of each such Fee Mortgage shall agree that, upon it or its successors and assigns obtaining title to the Project Site (whether through a foreclosure proceeding or through acceptance of a deed in lieu of foreclosure) following an event of default by the Lessor under such Fee Mortgage, the holder of such Fee Mortgage or the purchaser of the Project Site at any foreclosure proceeding shall continue to recognize Lessee's leasehold interest in the Demised Premises for the balance of the term of this Lease, so long as Lessee is not then in default hereunder beyond any applicable notice and cure periods provided for herein. Promptly following the Effective Date, each SNDA shall be recorded in the Clerk's Office at Lessee's sole cost and expense, and, within ten (10) Business Days of Lessee's receipt of a written statement from Lessor setting forth all out-of-pocket costs incurred by Lessor in obtaining each such SNDA, together with such supporting documentation as Lessee may reasonably require, Lessee shall reimburse Lessor for such costs.

Casualty. Notwithstanding anything to the contrary contained herein, in the event of a casualty or condemnation to all or any portion of the Project Site, Lessor shall have no duty or liability to Lessee to restore the Project Site. If Lessor elects not to restore the Project Site, it shall give Lessee Notice of such election within thirty (30) Days after the occurrence of such casualty or condemnation, and, upon its receipt of such Notice, Lessee may, at its option, elect to terminate this Lease upon Notice to Lessor. Lessor shall be entitled to receive the entire award paid by the condemning authority for the Project Site, without deduction therefrom for any estate vested in Lessee by this Lease, and Lessee shall receive no part of such award.

Miscellaneous.

Governing Law. The law of the Commonwealth of Virginia shall govern the validity, interpretation, construction, and performance of this Lease, including the Parties' obligation under this Lease, the performance due from each Party under it and the remedies available to each Party for breach of it. Any jurisdiction's choice of law, conflict of laws, rules, or provisions, including those of the State that would cause the application of any laws other than those of the Commonwealth of Virginia shall not apply.

Assignment. Lessee shall not have the right to assign this Lease, or any of its rights, duties, or obligations hereunder, except in accordance with Section 14.2 of the PPA.

Authority of Purchasing Agent. Lessee acknowledges and agrees that County's Purchasing Agent or his or her duly authorized representative or agent has the sole responsibility and authority to execute this Lease and any amendment or modification hereto on behalf of Lessor. Any execution, amendment, or modification of this Lease by a Person other than the County's Purchasing Agent or his or her duly authorized representative or agent shall be null and void and of no force and effect.

Dispute Resolution.

County Purchasing Resolution. All claims, disputes, controversies, causes of action and other matters involving a question of fact between the Parties arising out of or relating to this Lease (collectively or individually, the "Dispute") which is not disposed of by the applicable terms of this Lease shall be decided by the County Purchasing Agent, who shall reduce his or her decision to writing and mail or otherwise forward a copy thereof to Lessee within ninety (90) Days. The decision of the County Purchasing Agent shall be final and conclusive unless Lessee appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. Lessee may not institute legal action prior to receipt of the County Purchasing Agent's decision on the Dispute, unless the County Purchasing Agent fails to render such decision within the time specified. Lessee shall not institute any legal action until all statutory requirements have been met.

Venue. Any and all Disputes arising out of or in connection with this Lease or any performance hereunder, shall be brought in the Circuit Court of Fairfax County, Virginia or in the United States District Court, Eastern District of Virginia, Alexandria Division.

Due Authorization. Each Party represents and warrants to the other Party that it (i) has been duly authorized to enter into this Lease by all necessary action, and (ii) the execution and delivery of this Lease and the performance by such Party of its obligations hereunder will not result in a default under any agreement to which it is a party.

Notices. Notices shall be given in accordance with Section 14.6 of the PPA.

Successors and Permitted Assignees. This Lease is binding on and inures to the benefit of successors and permitted assignees.

Survivability. Any term, condition, covenant, or obligation that requires performance by a Party subsequent to termination or expiration of this Lease, whether specifically identified herein or not, shall remain enforceable against such Party subsequent to such termination or expiration.

Negotiated Terms. The Parties agree that the terms and conditions of this Lease are the result of negotiations between the Parties and that this Lease shall not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Lease.

Further Assurances. Each Party agrees to, and shall use all reasonable efforts to, provide such information, execute, and deliver any instruments and documents and take such action as may be reasonably necessary or reasonably requested by the other Party that are not inconsistent with the provisions of this Lease and which do not involve the assumption of obligations other than those provided for in this Lease in order to give full effect to this Lease and to carry out the intent of this Lease.

Waivers. No delay in exercising or failure to exercise any right or remedy accruing to or in favor of either Party shall impair any such right or remedy or constitute a waiver thereof. Every right and remedy given hereunder or by Applicable Law may be exercised from time-to-time and as often as may be deemed expedient by the Parties. Neither this Lease nor any provision hereof may be changed, modified, amended, or waived except by a written instrument signed by a duly authorized officer of the Party against whom enforcement of such change, modification, amendment, or waiver is sought. If any representation, warranty, or covenant contained in this Lease is breached by either Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Lease.

Relationship of the Parties. Nothing in this Lease shall be deemed to constitute either Party a partner, agent, employee, or legal representative of the other Party or to create any fiduciary relationship between the Parties. In addition, nothing in this Lease shall be deemed or construed as creating any contractual relationship between any Subcontractor and Lessor. The Parties agree that Lessee shall be fully responsible for the acts and omissions of any Subcontractor.

Entire Agreement. This Lease, the recitals herein, together with the Exhibits attached to this Lease and the PPA, constitutes the entire and complete agreement and commitment of the Parties with respect to this Lease. All prior or contemporaneous understandings, arrangements, negotiations, or commitments, or any or all of the foregoing with respect to this Lease, whether oral or written, have been superseded by this Lease and the PPA.

Amendments. No amendment, modification, or change to this Lease shall be effective unless the same shall be in writing and duly executed by an authorized person of each Party, which, in the case of Lessor, shall be by [County Purchasing Agent], or his or her duly authorized representative or agent, consistent with Section 17(c).

No Third-Party Beneficiaries. Except as otherwise expressly provided herein, this Lease and all rights hereunder are intended for the sole benefit of the Parties hereto, and the Financing Parties to the extent provided in the PPA or in any other agreement between a Financing Party and Lessee or Lessor, and do not imply or create any rights on the part of, or obligations to, any other Person.

Headings. Captions and headings in this Lease are for convenience of reference only and do not constitute a part of this Lease.

Counterparts. This Lease may be executed in more than one counterpart, each of which shall be deemed an original, and all of which shall constitute one and the same agreement.

Severability. If any provision, portion, or application of this Lease is, for any reason, held to be invalid, illegal, or unenforceable in any respect by any court of competent jurisdiction, the Parties shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Lease or such other appropriate actions as shall, to the maximum extent practicable, in light of such determination, implement, and give effect to the intentions of the Parties as reflected herein, and the other terms of this Lease, as so amended, modified, supplemented, or otherwise affected by such action, shall remain in full force and effect.

Liability of Officers and Employees. No member of the Board nor any director, officer, agent, consultant, representative, or employee of either Party shall be charged personally by the other or held contractually liable thereto under any term or provision of this Lease, because of either Party's execution or attempted execution of this Lease or because of any breach or alleged breach thereof; provided, however, that all Persons remain responsible for any of their own criminal actions.

No Conflict of Interest. Lessee shall not enter into any agreements that would conflict with Lessee's performance of its obligations under this Lease, or the other transactions contemplated herein, without receiving prior written authorization from Lessor.

Authorization to Conduct Business in the State. At all times during the Term, Lessee shall be authorized to transact business in the State as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, as amended, or as otherwise required by law. Lessee shall not allow its existence to lapse or its certificate of authority or registration to transact business in the State, if so required under Title 13.1 or Title 50 of the Code of Virginia, as amended, to be revoked or cancelled at any time during the Term.

Immigration Reform and Control Act. Lessee represents and warrants to Lessor that it does not, and Lessee covenants that it shall not during the performance of the Lease, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

Estoppel Certificates. Lessor and Lessee shall execute and deliver to each other, within [fifteen (15)] Business Days after receipt of a written request therefore, a certificate evidencing whether or not (i) this Lease is in full force and effect; (ii) this Lease has been modified or amended in any respect and describing such modifications or amendments, if any; and (iii) there are any existing defaults thereunder to the knowledge of the party executing the certificate, and specifying the nature of such defaults, if any. If either Party shall fail to deliver said certificate within fifteen (15) business days from request therefor it shall be concluded that this Lease is in full force and effect, unmodified and without default.

Remedies Cumulative. No remedy herein conferred upon or reserved to Lessee or Lessor 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.

Attorneys' Fees. Lessee shall bear its own attorneys' fees, costs, and expenses in connection with negotiating and/or reviewing this Lease, including any amendments, and any additional documents relating to the System.

Brokers. Each Party represents and warrants to the other Party that it has not engaged or had any conversations or negotiations with any broker, finder, or other third party

concerning the leasing of the Demised Premises to Lessee who would be entitled to any commission or fee based on the execution of this Lease.

Time is of the Essence. Time is of the essence of this Lease.

Memorandum. Lessor and Lessee agree that at the request of either, each will execute a short form memorandum of this Lease in form satisfactory for recording in the Clerk's Office that shall be recorded on or promptly following the Effective Date at the cost of the Party seeking to record the same. Upon the expiration or earlier termination of this Lease, the Parties shall promptly execute any release or termination that may be required to release such memorandum of record.

Deed of Lease. The Parties intend for this Lease to be deemed a deed of lease and a conveyance of a leasehold interest real property by a sealed writing pursuant to Virginia Code Sections 55-2 and 11-3.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Lease on the day and year first above written.

LESSOR:

[FAIRFAX ENTITY]

By: _____(SEAL)
Name: _____
Title: _____

LESSEE:

[SOLAR POWER PROVIDER],
a _____

By: _____(SEAL)
Name: _____
Title: _____

EXHIBIT A

**SURVEY DEPICTING
DEMISED PREMISES**

[TO BE ATTACHED]

EXHIBIT B

DEPICTION OF FACILITY ACCESS

[TO BE ATTACHED]

EXHIBIT C

ADDITIONAL SECURITY/ACCESS REQUIREMENTS

[FOR PUBLIC SAFETY AND JUDICIAL FACILITIES: Security Requirements for Public Safety and Judicial Facilities. The following additional security requirements shall apply for access to the Demised Premises:

All of Lessee's employees, contractors, and Subcontractors must pass to the satisfaction of Lessor an additional criminal history check, which will be processed by the Fairfax County Police Department of Fairfax County Sheriff's Department ("Sheriff's Department").

Lessee must be accompanied by a representative of Lessor; however, Lessee must be accompanied by personnel from the Sheriff's Department if passage through a secured area of the Project Site is necessary.

If the Sheriff's Department places the Project Site under lockdown as a result of a security threat, Lessee shall not have access to the Demised Premises and any of Lessee's agents or contractors within the Demised Premises may be asked to immediately leave without gathering any equipment or personal belongings.]

[FOR PUBLIC SCHOOLS: Security Requirements for Public Schools:

(i) Lessee certifies to Lessor as follows:

No employee, contractor, or Subcontractor of Lessee who will have direct contact with students has been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child; and

Unless prior Notice has been given to Lessor, no employee, contractor, or Subcontractor of Lessee who has been convicted of a crime of moral turpitude will have direct contact with students.

(ii) The foregoing certifications shall be binding on Lessee throughout the Term, and Lessee hereby covenants and agrees to provide Lessor and Fairfax County Public Schools ("FCPS") with immediate Notice of any event or circumstance that renders such certification untrue. Lessee hereby covenants and agrees that it will require this certification to be included in all contracts or subcontracts that Lessee enters into related to the Project Site in order that the provisions contained herein shall be binding on each contractor and Subcontractor.

(iii) Lessee will ensure that no employees, contractors, or Subcontractors shall perform any work as prescribed under this Lease or the PPA in occupied areas of the Project Site during school hours unless FCPS has previously agreed to such work in writing and proper safety precautions have been exercised to isolate the area of any such work.

(iv) All of Lessee's employees, contractors, and Subcontractors shall check in and out at the main office for the Project Site each day and shall wear any additional identification badges as may be required. All such employees, contractors, and Subcontractors are required to present photo identification upon request. Lessee shall also provide all such employees, contractors, and Subcontractors with a form of identification

reflecting their employment status with Lessee, and displaying such individual's name and photograph.

(v) Alcoholic beverages, illegal drugs, and weapons are prohibited at the Project Site and shall constitute ground for immediate removal from the Project Site. The Lessee shall ensure that neither its employees, nor those of any contractor or Subcontractor, shall fraternize in any manner with any student of FCPS at the site of the Project. Lessor shall have the right to remove from the Project Site any person whose presence Lessor deems detrimental to the best interests of the FCPS. Any individual who is removed from the Project Site pursuant to this Section may not return to the Project Site or any other FCPS site without prior written permission from FCPS.]

**FORM OF
DEED OF ROOF LEASE AGREEMENT
[PROJECT SITE]**

BY AND BETWEEN

**[FAIRFAX ENTITY]
("LESSOR")**

AND

**[SOLAR POWER PROVIDER]
("LESSEE")**

DATED: _____

DEED OF ROOF LEASE AGREEMENT
[PROJECT SITE]

THIS DEED OF ROOF LEASE AGREEMENT (this "Lease"), dated as of [•] (the "Effective Date"), is made by and between **[FAIRFAX ENTITY]** ("Lessor"), and **[SOLAR POWER PROVIDER]**, a [•] ("Lessee"). Lessor and Lessee may each be referred to herein as the "Party", or collectively as the "Parties", as the usage of such term may require.

RECITALS

WHEREAS, Lessor is the [owner] of that certain building commonly known as [•] (the "Building"), and located at [•], Fairfax County, Virginia (the "Project Site");

WHEREAS, pursuant to that certain Solar Power Purchase Agreement by and between Lessor and Lessee dated as of [•] (as amended, modified, or supplemented from time to time, the "PPA"), Lessor has selected and engaged Lessee to design, install, own, operate, and finance a grid connected solar photovoltaic energy system, as more particularly described in the PPA (the "System"), on the roof of the Building and to sell the Output produced by such System to Lessor, all in accordance with the terms of the PPA;

WHEREAS, in connection with the foregoing, Lessee desires that Lessor lease, and Lessor desires to lease to Lessee, the Demised Premises (as defined below), all in accordance with the terms and conditions set forth herein; and

WHEREAS, capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the PPA.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Lessee and Lessor hereby agree as follows:

9. Lease of Demised Premises; Additional Property Rights.

(a) Demised Premises. Lessor hereby leases to Lessee, in accordance with the terms and conditions set forth herein, up to a maximum of [•] square feet of the roof of the Building, generally as shown on Exhibit A attached hereto and made a part hereof, where the System will be installed, operated and maintained (the "Demised Premises").

(b) Lessee's Ancillary Rights. In connection with Lessor's leasing the Demised Premises to Lessee, Lessor hereby grants to Lessee, for a period co-terminus with this Lease, the non-exclusive right to use portions of access drives, parking lots and other areas of the Project Site as shown on Exhibit B ("Facility Exterior Access"), and access routes in the interior of the Building as shown on Exhibit C ("Facility Interior Access"). Lessor may change the Facility Exterior Access and the Facility Interior Access at any time with reasonable prior Notice to Lessee. The Facility Interior Access and Facility Exterior Access are provided for the purpose of accessing the Demised Premises for installation, operation, maintenance, and decommissioning of the System and to locate any auxiliary equipment necessary to install, operate, or maintain the System on the Demised Premises and for the purposes of interconnecting the System with the Project Site's mechanical and electrical systems as agreed by Lessor and Lessee in accordance with the PPA. Lessee shall not install any improvements that would prevent access to or prevent use of the Building by Lessor or any occupant of the Building, or any holders of easements across the Project Site or any governmental or public utility personnel (e.g., fire, police, public utility providers, etc.) or other similar parties. Furthermore, Lessee shall utilize the Facility Exterior Access and the Facility Interior Access in a manner as to not unreasonably interfere with the use of the Building and the Building's mechanical and electrical systems by Lessor or any occupant or invitee of the Building.

(c) Signage. Lessee shall not place any signage on or at the Project Site (other than as required by Applicable Law) unless approved in advance in writing by Lessor.

10. Term.

(a) Term. The term of this Lease shall commence on the Effective Date and shall terminate as provided in Section 2.1 of the PPA (the "Term"). The Term may be extended pursuant to Section 2.2 of the PPA.

(b) Termination. Notwithstanding anything contained herein to the contrary, this Lease shall automatically terminate if the PPA is terminated for any reason whatsoever.

(c) Access After Termination. Notwithstanding the foregoing, for a period of [sixty (60)] Days following the expiration or earlier termination of this Lease, Lessee shall have the right to access the Demised Premises for the purpose of decommissioning and removing the System in accordance with Section 8.1 of the PPA. The provisions of this Section 2(c) will survive the expiration or termination of this Lease.

11. Utilities. During the Term, Lessor shall have no obligation to provide any utilities to Lessee for Lessee's use in connection with the installation, operation, and maintenance of the System on the Demised Premises. To the extent that, during the Term, Lessee requires any utilities in connection with the installation, operation, and maintenance of the System on the Demised Premises, Lessee further acknowledges and agrees that Lessee shall be responsible, at its sole cost and expense, for providing or obtaining such utilities and that Lessee's inability to provide or obtain any such utilities shall not relieve Lessee from the performance of Lessee's obligations under this Lease or the PPA.

12. Annual Rent. Commencing on the Effective Date and continuing thereafter for the remainder of the Term, Lessee shall pay to Lessor annual rent for the Demised Premises in the amount of One and No/100 Dollars (\$1.00) per year ("Annual Rent"). The Annual Rent for the first year of the Term shall be due and payable by Lessee to Lessor within ten (10) Business Days of the Effective Date, and Annual Rent for each succeeding year of the Term shall be due and payable by Lessee to Lessor, without notice or demand, on or before each anniversary of the Effective Date during the Term. The Annual Rent shall be payable by Lessee to Lessor at the address for the Lessor set forth in the PPA or at such other address as shall be designated in writing by Lessor.

13. System Installation. The System shall be installed in accordance with Section 5 of the PPA.

14. Liens.

(a) To the extent permitted by Applicable Law, all of Lessee's contracts with Subcontractors shall provide that no Lien shall attach to or be claimed against the Demised Premises or any interest therein by Lessee or its Subcontractors as a result of supplying goods or services pertaining to the Demised Premises, and Lessee shall use reasonable efforts to cause all subcontracts let thereunder to contain the same provision.

(b) Lessee shall indemnify and hold Lessor, the Board and Lessor's agents, officers, subcontractors, employees, invitees, and contractors harmless from, and defend

against (with legal counsel reasonably acceptable to Lessor) all Losses of every kind, nature, and description which may arise out of or in any way be connected with such work. Lessee shall not permit the Demised Premises to become subject to any mechanics', laborers', or materialmen's lien on account of labor, material or services furnished to Lessee or claimed to have been furnished to Lessee (either directly or through Subcontractors) in connection with work of any character performed or claimed to have been performed for the Demised Premises by, or at the direction or sufferance of Lessee, and if any such Liens are filed against the Demised Premises, Lessee shall promptly and at its cost and expense discharge the same; provided, however, that Lessee shall have the right to contest, in good faith and with reasonable diligence, the validity of any such lien or claimed lien if Lessee shall give to Lessor, within [ten (10)] Business Days after demand, such security as may be reasonably satisfactory to Lessor to assure payment thereof and to prevent any sale, foreclosure, or forfeiture of Lessor's interest in the Demised Premises by reason of non-payment thereof; provided, further, that on final determination of the Lien or claim for Lien, Lessee shall immediately pay any judgment rendered, with all proper costs and charges, and shall have the lien released and any judgment satisfied. If Lessee fails to post such security or does not diligently contest such lien, Lessor may, without investigation of the validity of the lien claim, after [ten (10)] Days' Notice to Lessee, discharge such Lien and Lessee shall reimburse Lessor upon demand for all costs and expenses incurred in connection therewith, which expenses shall include any attorneys' fees and any and all other costs associated therewith, including litigation through all trial and appellate levels and any costs in posting bond to effect a discharge or release of the lien.

(c) Nothing contained in this Lease shall be construed as a consent on the part of Lessor to subject the Demised Premises to liability under any lien law now or hereafter existing.

15. System Operation, Ownership, Use and Removal.

(a) Operation, Maintenance and Removal of System. Lessee shall operate, maintain, decommission, and remove the System in accordance with Section 6 of the PPA and in accordance with all Applicable Laws and in such a manner as will not unreasonably interfere with Lessor's or, if there are any other occupants of the Building, such occupants' operation or maintenance of the Project Site.

(b) Ownership of System. Lessor acknowledges and agrees that (i) notwithstanding that the System may be a fixture under Applicable Laws, as between the Parties, the System shall be deemed to be personal property, and (ii) Lessee is the exclusive owner and operator of the System.

(c) Use of Demised Premises. Lessee shall use the Demised Premises solely for the installation, operation, and maintenance of the System, but for no other uses.

16. Access to Demised Premises.

(a) Subject to the notice and security requirements set forth in Section 9 below, Lessor shall provide Lessee with access to the Demised Premises as reasonably necessary to allow Lessee to perform the Services, including ingress and egress rights through the Building within the Facility Interior Access and across the Project Site within the Facility Exterior Access.

(b) Lessor shall at all times have access to and the right to observe the Services, including without limitation, installation of the System.

(c) During all activities involving the System or the Demised Premises, including but not limited to installation, maintenance, repairs, decommissioning and removal of the System, Lessor's property manager for the Building ("Building Manager") must be present onsite at all times.

(d) Lessee shall have access to the Demised Premises under the following conditions:

(i) Building Access. Lessee's employees, contractors, and Subcontractors must use the front entrance of the Building to obtain access to the Demised Premises.

(ii) Normal Business Hours. During normal business hours [(Monday through Friday 8:00 a.m. – 5:00 p.m.)] for routine maintenance of the System, provided that Lessee shall give the Building Manager at least [seventy-two (72)] hours' prior notice of the need for such access.

(iii) Outside Normal Business Hours; Emergency. Outside normal business hours and in the event of an emergency, Lessee shall contact the Building Manager, who will provide access to the Demised Premises.

(e) Any requested utility outages must be scheduled to occur on Sundays. Requests for outages shall be submitted to the Building Manager a minimum of two (2) weeks in advance of the requested date for the outage for either approval or rejection.

(f) All of Lessee's employees, contractors or agents must park their vehicles in the areas designated by Lessor and shall not park in any loading docks for the Building.

17. Identification, Security and Access Requirements.

(a) Identification. All of Lessee's employees and Subcontractors shall display Lessor-issued identification badges above the waist at all times that such individuals are on the Project Site. Any employee, contractor, or Subcontractor of Lessee who arrives at the Project Site without required identification will be dismissed from the Project Site. All such employees, contractors, and Subcontractors must pass to the satisfaction of Lessor a Fairfax County Criminal History Check. Notwithstanding the foregoing, Lessor disclaims any liability with respect to the accuracy or completeness of the Criminal History Checks. Lessee shall be solely responsible for all costs associated with such identification badges and Criminal History Checks.

(b) Inspection. All supplies, materials, and equipment for use at the Project Site are subject to security inspection by Lessor.

(c) Additional Security and Access Requirements. Lessee shall, and shall cause all of its Subcontractors to, at all times comply with the identification, security, and other access requirements set forth on Exhibit D attached hereto.

(d) Amendments to Security and Access Procedures. Lessor reserves the right to amend and/or update its security and access requirements or procedures relative to the Project Site, including Exhibit D, from time to time upon at least twenty-four (24) hours' Notice to Seller.

18. Insurance. Lessee covenants and agrees, from and after the Effective Date, to carry and maintain, at its sole cost and expense, the insurance required under Section 9 of the PPA.

19. Taxes. Lessee shall pay, on or before the due date thereof, all personal property taxes, business, and license taxes and fees, service payments in lieu of such taxes or fees, annual and periodic license and use fees, excises, assessments, bonds, levies, fees, and charges of any kind which are assessed, levied, charged, confirmed, or imposed by any Governmental Authority due to Lessee's occupancy and use of the Demised Premises (or any portion or component thereof) or the ownership and use of the System thereon, including but not limited to any real property taxes and assessments attributable the System improvements on the Building.

20. Indemnification.

(a) Indemnification. Lessee shall indemnify, defend, and hold harmless Purchaser Indemnified Parties from and against any liability for violations or alleged violation of any Applicable Law and Losses (including claims for property damage and claims for injury to or death of persons, including any claim or amounts recovered under "workers compensation laws" or any other Applicable Laws) arising in connection with, or out of, or resulting from (i) the negligent acts or omissions or willful misconduct of Lessee, its agents, officers, directors, employees, Subcontractors, or contractors; or (ii) the breach by Lessee of any of its obligations under this Lease. The obligation to indemnify shall extend to and encompass all costs incurred by Lessor and any Lessor Indemnitee in defending such claims, demands, lawsuits, or actions, including, but not limited to, attorney, witness, and expert witness fees, and any other litigation related expenses. This provision is intended to apply even if the injury or damage is caused in part by any act or omission or default of Purchaser Indemnified Parties, except that Lessee shall not be required to defend or indemnify Purchaser Indemnified Parties for a Loss to the extent any such Loss results solely from the negligence of a Purchaser Indemnified Party. The provisions of this Section 12(a) will survive the expiration or termination of the Lease.

(b) Exclusion of Certain Damages. EXCEPT FOR LIABILITY IN RESPECT OF (A) LESSEE'S INTENTIONAL OR WILLFUL MISCONDUCT, FRAUD OR RECKLESSNESS OR (B) CLAIMS FOR BODILY INJURY, INCLUDING DEATH, AND DAMAGE TO REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY RESULTING FROM THE NEGLIGENCE OF LESSEE OR ANY AGENT OR EMPLOYEE OF LESSEE, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY, IN CONTRACT OR IN TORT (INCLUDING NEGLIGENCE), OR UNDER ANY OTHER LEGAL THEORY (INCLUDING STRICT LIABILITY), FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL OR SIMILAR DAMAGES, INCLUDING DAMAGES FOR LOST PROFITS, LOST REVENUES, LOST TAX BENEFITS, OR ENERGY CREDITS, OR INTERRUPTION OF BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THIS LEASE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIMS OR DAMAGES.

21. Lessee Default.

(a) The occurrence of any one or more of the following shall constitute an event of default of Lessee (a "Lessee Default");

(i) The failure of Lessee to pay the Annual Rent or other sums due hereunder that is not cured within [ten (10)] Days after Notice thereof to Lessee;

(ii) Any representation or warranty of Lessee hereunder provides to be false or misleading in any material respect;

(iii) The inability, failure, or refusal of Lessee to perform timely any material obligations under this Lease, unless such failure or refusal is caused by a Force Majeure Event, a Lessor Default or Purchaser Event of Default; provided, however, such failure continues for [ten (10)] Business Days after Lessor shall have given Notice demanding that such failure to perform be cured; or

(iv) A Seller Event of Default under Section 12 of the PPA, which default continues beyond any applicable notice and cure period contained in the PPA.

(b) Upon the occurrence of a Lessee Default, Lessor shall have the following rights: (i) to terminate this Lease by Notice to Lessee, and (ii) to pursue any other remedy under the PPA or now or hereafter existing at law or in equity. No termination of this Lease resulting from a Lessee Default shall relieve Lessee of its liability and obligations under this Lease, and such liability and obligations shall survive any such termination.

22. Lessor Default.

(a) The occurrence of the following shall constitute an event of default of Lessor (a "Lessor Default");

(i) The failure of Lessor to perform any material obligations under this Lease, unless such failure is caused by a Force Majeure Event, a Lessee Default or Seller Event of Default; provided, however, such failure continues for [fifteen (15)] Business Days after Lessee shall have given Notice demanding that such failure to perform be cured; or

(ii) A Purchaser Event of Default under Section 12 of the PPA, which default continues beyond any applicable notice and cure period contained in the PPA.

(b) Upon the occurrence of a Lessor Default, Lessee may pursue any remedies it may have under the terms of Section 12 of the PPA.

23. [Fee Mortgages. To the extent there any mortgages, deeds of trust, or other indentures encumbering the Project Site as of the Effective Date (each, a "Fee Mortgage"), Lessor shall, on or before the Effective Date, use commercially reasonable efforts to obtain from the holder of each such Fee Mortgage a non-disturbance and attornment agreement, in a form acceptable to Lessee (each, an "SNDA"), pursuant to which the holder of each such Fee Mortgage shall agree that, upon it or its successors and assigns obtaining title to the Project Site (whether through a foreclosure proceeding or through acceptance of a deed in lieu of foreclosure) following an event of default by the Lessor under such Fee Mortgage, the holder of such Fee Mortgage or the purchaser of the Project Site at any foreclosure proceeding shall continue to recognize Lessee's leasehold interest in the Demised Premises for the balance of

the term of this Lease, so long as Lessee is not then in default hereunder beyond any applicable notice and cure periods provided for herein. Promptly following the Effective Date, each SNDA shall be recorded in the Clerk's Office at Lessee's sole cost and expense, and, within ten (10) Business Days of Lessee's receipt of a written statement from Lessor setting forth all out-of-pocket costs incurred by Lessor in obtaining each such SNDA, together with such supporting documentation as Lessee may reasonably require, Lessee shall reimburse Lessor for such costs

24. Casualty. Notwithstanding anything to the contrary contained herein, in the event of a casualty or condemnation to all or any portion of the Project Site, Lessor shall have no duty or liability to Lessee to restore the Project Site. If Lessor elects not to restore the Project Site, it shall give Lessee Notice of such election within thirty (30) Days after the occurrence of such casualty or condemnation, and, upon its receipt of such Notice, Lessee may, at its option, elect to terminate this Lease upon Notice to Lessor. Lessor shall be entitled to receive the entire award paid by the condemning authority for the Project Site, without deduction therefrom for any estate vested in Lessee by this Lease, and Lessee shall receive no part of such award.

25. Miscellaneous.

(a) Governing Law. The law of the Commonwealth of Virginia shall govern the validity, interpretation, construction, and performance of this Lease, including the Parties' obligation under this Lease, the performance due from each Party under it and the remedies available to each Party for breach of it. Any jurisdiction's choice of law, conflict of laws, rules, or provisions, including those of the State that would cause the application of any laws other than those of the Commonwealth of Virginia shall not apply.

(b) Assignment. Lessee shall not have the right to assign this Lease, or any of its rights, duties, or obligations hereunder, except in accordance with Section 14.2 of the PPA.

(c) Authority of Purchasing Agent. Lessee acknowledges and agrees that County's Purchasing Agent or his or her duly authorized representative or agent has the sole responsibility and authority to execute this Lease and any amendment or modification hereto on behalf of Lessor. Any execution, amendment, or modification of this Lease by a Person other than the County's Purchasing Agent or his or her duly authorized representative or agent shall be null and void and of no force and effect.

(d) Dispute Resolution.

(i) County Purchasing Resolution. All claims, disputes, controversies, causes of action and other matters involving a question of fact between the Parties arising out of or relating to this Lease (collectively or individually, the "Dispute") which is not disposed of by the applicable terms of this Lease shall be decided by the County Purchasing Agent, who shall reduce his or her decision to writing and mail or otherwise forward a copy thereof to Lessee within ninety (90) Days. The decision of the County Purchasing Agent shall be final and conclusive unless Lessee appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. Lessee may not institute legal action prior to receipt of the County Purchasing Agent's decision on the Dispute, unless the County Purchasing Agent fails to render such decision within the time specified. Lessee shall not institute any legal action until all statutory requirements have been met.

(ii) Venue. Any and all Disputes arising out of or in connection with this Lease or any performance hereunder, shall be brought in the Circuit Court of Fairfax County, Virginia or in the United States District Court, Eastern District of Virginia, Alexandria Division.

(e) Due Authorization. Each Party represents and warrants to the other Party that it (i) has been duly authorized to enter into this Lease by all necessary action, and (ii) the execution and delivery of this Lease and the performance by such Party of its obligations hereunder will not result in a default under any agreement to which it is a party.

(f) Notices. Notices shall be given in accordance with Section 14.6 of the PPA.

(g) Successors and Permitted Assignees. This Lease is binding on and inures to the benefit of successors and permitted assignees.

(h) Survivability. Any term, condition, covenant, or obligation that requires performance by a Party subsequent to termination or expiration of this Lease, whether specifically identified herein or not, shall remain enforceable against such Party subsequent to such termination or expiration.

(i) Negotiated Terms. The Parties agree that the terms and conditions of this Lease are the result of negotiations between the Parties and that this Lease shall not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Lease.

(j) Further Assurances. Each Party agrees to, and shall use all reasonable efforts to, provide such information, execute, and deliver any instruments and documents and take such action as may be reasonably necessary or reasonably requested by the other Party that are not inconsistent with the provisions of this Lease and which do not involve the assumption of obligations other than those provided for in this Lease in order to give full effect to this Lease and to carry out the intent of this Lease.

(k) Waivers. No delay in exercising or failure to exercise any right or remedy accruing to or in favor of either Party shall impair any such right or remedy or constitute a waiver thereof. Every right and remedy given hereunder or by Applicable Law may be exercised from time-to-time and as often as may be deemed expedient by the Parties. Neither this Lease nor any provision hereof may be changed, modified, amended, or waived except by a written instrument signed by a duly authorized officer of the Party against whom enforcement of such change, modification, amendment, or waiver is sought. If any representation, warranty, or covenant contained in this Lease is breached by either Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Lease.

(l) Relationship of the Parties. Nothing in this Lease shall be deemed to constitute either Party a partner, agent, employee, or legal representative of the other Party or to create any fiduciary relationship between the Parties. In addition, nothing in this Lease shall be deemed or construed as creating any contractual relationship between any Subcontractor and Lessor. The Parties agree that Lessee shall be fully responsible for the acts and omissions of any Subcontractor.

(m) Entire Agreement. This Lease, the recitals herein, together with the Exhibits attached to this Lease and the PPA, constitutes the entire and complete agreement and commitment of the Parties with respect to this Lease. All prior or contemporaneous understandings, arrangements, negotiations, or commitments, or any or all of the foregoing with respect to this Lease, whether oral or written, have been superseded by this Lease and the PPA.

(n) Amendments. No amendment, modification, or change to this Lease shall be effective unless the same shall be in writing and duly executed by an authorized person of each Party, which, in the case of Lessor, shall be by [County Purchasing Agent], or his or her duly authorized representative or agent, consistent with Section 17(c).

(o) No Third-Party Beneficiaries. Except as otherwise expressly provided herein, this Lease and all rights hereunder are intended for the sole benefit of the Parties hereto, and the Financing Parties to the extent provided in the PPA or in any other agreement between a Financing Party and Lessee or Lessor, and do not imply or create any rights on the part of, or obligations to, any other Person.

(p) Headings. Captions and headings in this Lease are for convenience of reference only and do not constitute a part of this Lease.

(q) Counterparts. This Lease may be executed in more than one counterpart, each of which shall be deemed an original, and all of which shall constitute one and the same agreement.

(r) Severability. If any provision, portion, or application of this Lease is, for any reason, held to be invalid, illegal, or unenforceable in any respect by any court of competent jurisdiction, the Parties shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Lease or such other appropriate actions as shall, to the maximum extent practicable, in light of such determination, implement, and give effect to the intentions of the Parties as reflected herein, and the other terms of this Lease, as so amended, modified, supplemented, or otherwise affected by such action, shall remain in full force and effect.

(s) Liability of Officers and Employees. No member of the Board nor any director, officer, agent, consultant, representative, or employee of either Party shall be charged personally by the other or held contractually liable thereto under any term or provision of this Lease, because of either Party's execution or attempted execution of this Lease or because of any breach or alleged breach thereof; provided, however, that all Persons remain responsible for any of their own criminal actions.

(t) No Conflict of Interest. Lessee shall not enter into any agreements that would conflict with Lessee's performance of its obligations under this Lease, or the other transactions contemplated herein, without receiving prior written authorization from Lessor.

(u) Authorization to Conduct Business in the State. At all times during the Term, Lessee shall be authorized to transact business in the State as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, as amended, or as otherwise required by law. Lessee shall not allow its existence to lapse or its certificate of authority or registration to transact business in the State, if so required under Title 13.1 or Title 50 of the Code of Virginia, as amended, to be revoked or cancelled at any time during the Term.

(v) Immigration Reform and Control Act. Lessee represents and warrants to Lessor that it does not, and Lessee covenants that it shall not during the performance of the Lease, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

(w) Estoppel Certificates. Lessor and Lessee shall execute and deliver to each other, within [fifteen (15)] Business Days after receipt of a written request therefore, a certificate evidencing whether or not (i) this Lease is in full force and effect; (ii) this Lease has been modified or amended in any respect and describing such modifications or amendments, if any; and (iii) there are any existing defaults thereunder to the knowledge of the party executing the certificate, and specifying the nature of such defaults, if any. If either Party shall fail to deliver said certificate within fifteen (15) business days from request therefor it shall be concluded that this Lease is in full force and effect, unmodified and without default.

(x) Remedies Cumulative. No remedy herein conferred upon or reserved to Lessee or Lessor 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.

(y) Attorneys' Fees. Lessee shall bear its own attorneys' fees, costs, and expenses in connection with negotiating and/or reviewing this Lease, including any amendments, and any additional documents relating to the System.

(z) Brokers. Each Party represents and warrants to the other Party that it has not engaged or had any conversations or negotiations with any broker, finder, or other third party concerning the leasing of the Demised Premises to Lessee who would be entitled to any commission or fee based on the execution of this Lease.

(aa) Time is of the Essence. Time is of the essence of this Lease.

(bb) Memorandum. Lessor and Lessee agree that at the request of either, each will execute a short form memorandum of this Lease in form satisfactory for recording in the Clerk's Office that shall be recorded on or promptly following the Effective Date at the cost of the Party seeking to record the same. Upon the expiration or earlier termination of this Lease, the Parties shall promptly execute any release or termination that may be required to release such memorandum of record.

(cc) Deed of Lease. The Parties intend for this Lease to be deemed a deed of lease and a conveyance of a leasehold interest real property by a sealed writing pursuant to Virginia Code Sections 55-2 and 11-3.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Lease on the day and year first above written.

LESSOR:

[FAIRFAX ENTITY]

By: _____(SEAL)

Name: _____

Title: _____

LESSEE:

[SOLAR POWER PROVIDER],

a _____

By: _____(SEAL)

Name: _____

Title: _____

[Signature Page to Deed of Roof Lease Agreement (PROJECT SITE)]

EXHIBIT A

**ROOFTOP SURVEY DEPICTING
DEMISED PREMISES**

[TO BE ATTACHED]

EXHIBIT B

DEPICTION OF FACILITY EXTERIOR ACCESS

[TO BE ATTACHED]

EXHIBIT C

DEPICTION OF FACILITY INTERIOR ACCESS

[TO BE ATTACHED]

EXHIBIT D

ADDITIONAL SECURITY/ACCESS REQUIREMENTS

[FOR PUBLIC SAFETY AND JUDICIAL FACILITIES: Security Requirements for Public Safety and Judicial Facilities. The following additional security requirements shall apply for access to the Demised Premises:

(i) All of Lessee's employees, contractors, and Subcontractors must pass to the satisfaction of Lessor an additional criminal history check, which will be processed by the Fairfax County Police Department of Fairfax County Sheriff's Department ("Sheriff's Department").

(ii) Lessee must be accompanied by a representative of Lessor; however, Lessee must be accompanied by personnel from the Sheriff's Department if passage through a secured area of the Building is necessary.

(iii) If the Sheriff's Department places the Building under lockdown as a result of a security threat, Lessee shall not have access to the Building or Demised Premises and any of Lessee's agents or contractors within the Building and/or Demised Premises may be asked to immediately leave without gathering any equipment or personal belongings.]

[FOR PUBLIC SCHOOLS: Security Requirements for Public Schools.

(i) Lessee certifies to Lessor as follows:

(A) No employee, contractor or Subcontractor of Lessee who will have direct contact with students has been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child; and

(B) Unless prior Notice has been given to Lessor, no employee, contractor or Subcontractor of Lessee who has been convicted of a crime of moral turpitude will have direct contact with students.

(ii) The foregoing certifications shall be binding on Lessee throughout the Term, and Lessee hereby covenants and agrees to provide Lessor and Fairfax County Public Schools ("FCPS") with immediate Notice of any event or circumstance that renders such certification untrue. Lessee hereby covenants and agrees that it will require this certification to be included in all contracts or subcontracts that Lessee enters into related to the Project Site in order that the provisions contained herein shall be binding on each contractor and Subcontractor.

(iii) Lessee will ensure that no employees, contractors, or Subcontractors shall perform any work as prescribed under this Lease or the PPA in occupied areas of the Project Site during school hours unless FCPS has previously agreed to such work in writing and proper safety precautions have been exercised to isolate the area of any such work.

(iv) All of Lessee's employees, contractors, and Subcontractors shall check in and out at the main office for the Building each day and shall wear any additional identification badges as may be required. All such employees, contractors, and Subcontractors are required

to present photo identification upon request. Lessee shall also provide all such employees, contractors, and Subcontractors with a form of identification reflecting their employment status with Lessee, and displaying such individual's name and photograph.

(v) Alcoholic beverages, illegal drugs and weapons are prohibited at the Project Site and shall constitute ground for immediate removal from the Project Site. The Lessee shall ensure that neither its employees, nor those of any contractor or Subcontractor, shall fraternize in any manner with any student of FCPS at the site of the Project. Lessor shall have the right to remove from the Project Site any person whose presence Lessor deems detrimental to the best interests of the FCPS. Any individual who is removed from the Project Site pursuant to this Section may not return to the Project Site or any other FCPS site without prior written permission from FCPS.]