

**SOLAR ENERGY POWER PURCHASE AND SALE AGREEMENT**

**BY AND BETWEEN**

**CONSOLIDATED SOLAR TECHNOLOGIES, LLC,  
System Owner,**

**AND**

**THE VILLAGE OF CORRALES,  
Host Customer.**

**July 20, 2011**

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**EXHIBITS**

<b>Exhibit A</b>	<b>Description of the Premises and the Site</b>
<b>Exhibit B</b>	<b>System Description and Specifications</b>
<b>Exhibit C</b>	<b>Early Termination Fee</b>
<b>Exhibit D</b>	<b>Construction Schedule</b>
<b>Exhibit E</b>	<b>Solar Electricity Price Schedule</b>
<b>Exhibit F</b>	<b>Electronic Funds Transfer Instructions</b>
<b>Exhibit G</b>	<b>Guaranteed Savings (Form of Written Guarantee)</b>

## **SOLAR ENERGY POWER PURCHASE AND SALE AGREEMENT**

This Solar Energy Power Purchase and Sale Agreement (“Agreement”) is made and entered into as of July 20, 2011 (the “Effective Date”), by and between **CONSOLIDATED SOLAR TECHNOLOGIES, LLC**, a New Mexico limited liability company (“System Owner”), and the **VILLAGE OF CORRALES**, a New Mexico municipal corporation (“Village”). Each of System Owner and Village shall be referred to herein as a “Party” and collectively as the “Parties.”

### **RECITALS**

**WHEREAS**, Village owns and controls certain property located at 500 Jones Road, Corrales, New Mexico (as described on Exhibit A, the “Premises”), which uses electricity; and

**WHEREAS**, concurrently herewith, Village and System Owner are entering that certain Solar Facilities Lease (the “Lease”) pursuant to which Village agrees to lease to System Owner a portion of the Premises (as described on Exhibit A, the “Site”) for the purposes of constructing, installing, operating, maintaining, replacing, and repairing a solar photovoltaic electric generation system (as described on Exhibit B, the “System”) and selling the electricity generated from the System to Village; and

**WHEREAS**, System Owner, at Village’s request, intends to design, install, own or lease, operate, and maintain the System for the production of electricity at the Site; and

**WHEREAS**, System Owner desires to sell and Village desires to purchase all of the electricity generated by the System; and

**WHEREAS**, pursuant to this Agreement, System Owner and Village intend that System Owner shall obtain and retain all Green Attributes and Environmental Financial Incentives, and all other financial incentives and Tax Benefits associated with the development of the System, including the installation, ownership, and operation of such System and the sale of electricity from the System to Village; and

**WHEREAS**, the Village Council, the governing body of the Village (“Governing Body”) finds that it is in the best interest of the Village and its residents and taxpayers that the Village enter into this Agreement and the Lease to provide for the production of electricity at the Site and sale of electricity generated by the System to the Village; and

**WHEREAS**, in accordance with its general statutory powers under the laws of New Mexico, including, but not limited to, Sections 3-18-1 *et seq.*, and Sections 3-54-1 *et seq.*, NMSA 1978, as amended and supplemented, the Village has the power and authority to enter into this Agreement and the Lease; and

**WHEREAS**, this Agreement has been approved by all appropriate and requisite action of the Governing Body.

**NOW, THEREFORE**, in consideration of the agreements and covenants hereinafter set forth, and intending to be legally bound hereby, the Parties hereby covenant and agree as follows:

**ARTICLE 1**  
**DEFINITIONS; RULES OF INTERPRETATION**

**Section 1.1** Definitions.

As used in this Agreement, the following terms shall have the following specified meanings unless a different meaning is clearly required by the context:

“Agreement” has the meaning set forth in the introductory paragraph.

“Business Day” means any day other than Saturday, Sunday, or a day on which the Federal Reserve Bank is authorized or required to be closed.

“Capacity” means electrical capacity that is dependent upon the availability and operation of the System, measured in kilowatts.

“Commercial Operation” means the condition existing when the System (a) is capable of generating Output for four continuous hours and (b) such Output is delivered through the Meter to the Site Electrical System under an approved and executed interconnection agreement.

“Commercial Operation Date” has the meaning set forth in Section 3.3.

“Commercial Operation Deadline” has the meaning set forth in Section 4.1.

“Conditions Precedent” has the meaning set forth in Section 4.1.

“Construction Period” means the period commencing on the Effective Date and continuing to the Commercial Operation Date.

“Delivery Point” means the physical location where the System connects to the Site Electrical System.

“Dispute” has the meaning set forth in Section 19.1.1.

“Due Date” has the meaning set forth in Section 7.3.

“Early Termination Date” has the meaning set forth in Section 12.2.

“Early Termination Fee” means, as of any date of termination, the applicable Early Termination Fee set forth on Exhibit C.

“Effective Date” has the meaning set forth in the introductory paragraph.

“Electricity” means electrical energy.

“Emergency” means an event occurring at the Site, or any adjoining property, that (a) poses

actual or imminent risk of (i) serious personal injury or (ii) material physical damage to the System and (b) requiring, in the good faith determination of Village or System Owner, immediate preventative or remedial action.

“Environmental Financial Incentives” means each of the following financial rebates and incentives that is in effect as of the Effective Date or may come into effect in the future: (a) production, energy, or investment tax credits associated with the development, construction, ownership, or operation of the System, accelerated depreciation, and other financial incentives in the form of credits, reductions, or allowances associated with the System or the Green Attributes that may be applied to reduce any state or federal income taxation obligation, including Tax Benefits, (b) performance-based incentives under applicable state or federal law or utility programs, including without limitation any feed-in tariffs that are in effect or may come into effect in the future; and (c) all other rights, credits, rebates, benefits, and entitlements of any kind, howsoever entitled or named, whether arising under federal, state or local law, international treaty, trade association membership or the like, arising from the System or the Output or otherwise from the development, installation, or ownership of the System or the production, sale, purchase, consumption or use of the Output. Without limiting the foregoing, “Environmental Financial Incentives” includes the right to apply for (and entitlement to receive) incentives under any demand-side management, distributed generation, or energy efficiency programs offered by a utility company, a third-party provider or the state in which the System is located, any incentive offered pursuant to a renewable energy program, or any other incentive programs offered by or in the state in which the System is located, the right to receive a grant under Section 1603 of the American Recovery and Reinvestment Act of 2009, and the right to claim federal income tax credits under Sections 45 or 48 of the Internal Revenue Code or any state tax law or income tax deductions with respect to the System under the Internal Revenue Code or any state tax law. Environmental Financial Incentives do not include Green Attributes.

“Event of Default” has the meaning set forth in Section 12.1.

“Fair Market Value” has the meaning set forth in Section 14.1.3.

“Force Majeure Event” means any circumstance not within the reasonable control, directly or indirectly, of the Party affected, but only if and to the extent that (a) such circumstance, despite the exercise of due diligence, cannot be or be caused to be prevented, avoided or removed by such Party, (b) such event is not due to such Party’s negligence or intentional misconduct, (c) such event is not the result of any failure of such Party to perform any of its obligations under this Agreement, (d) such Party has taken all reasonable precautions, due care, and reasonable alternative measures to avoid the effect of such event and to mitigate the consequences thereof and (e) such Party has given the other Party prompt notice describing such event, the effect thereof and the actions being taken to comply with this Agreement. Subject to the foregoing conditions, Force Majeure Events may include: strikes or other labor disputes, supply shortages, adverse weather conditions and other acts of nature, subsurface conditions, riot or civil unrest, actions or failures to act of any governmental authority or agency, but shall not include any inability to make any payments that are due hereunder or to any third party or to procure insurance required to be procured hereunder.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the System, and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides, nitrogen oxides, carbon monoxide and other pollutants, (b) any avoided emissions of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere and (c) the reporting rights to these avoided emissions, such as Reporting Rights. Green Attributes do not include Environmental Financial Incentives.

“Host Utility” means the Public Service Company of New Mexico, the electric distribution company serving or connected to Village or the Site.

“Indemnified Parties” has the meaning set forth in Section 15.2.

“Indemnifying Party” has the meaning set forth in Section 15.2.

“Interconnection and Net Metering Agreements” means, collectively, as appropriate, (i) the interconnection or net metering agreement to be entered into by Village and Host Utility for the interconnection of the System to the Site Electrical System at the Delivery Point and to net meter the System with the Host Utility, (ii) any interconnection services agreement and (iii) any studies regarding interconnection of new generation facilities with respect to the System.

“Lease” has the meaning set forth in the Recitals.

“Lender” or “Lenders” means, either in the singular or collectively, as applicable, the banks, financial institutions or other institutional investors providing debt or equity financing for the System and any trustee or agent acting on any such Person’s behalf.

“Meter” means standard revenue quality meter(s) and electronic data acquisition equipment to be used to continuously measure and record the Output.

“Output” means, and is limited to, the Electricity produced by the System and delivered by System Owner to Village at the Delivery Point.

“Party” or “Parties” has the meaning set forth in the introductory paragraph.

“Permit” means all waivers, approvals, franchises, variances, permits, authorizations, licenses or orders of or from any federal, state, provincial, county, municipal, regional, environmental or other governmental body having jurisdiction over System Owner or Village and their respective obligations under this Agreement or over the System or the Site, as may be in effect from time to time.

“Person” means any natural person, partnership, trust, estate, association, corporation, limited liability company, governmental authority or agency or any other individual or entity.

“Premises” has the meaning set forth in the Recitals.

“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 attributed 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.

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

“Service Term” means the 20-year period from the Commercial Operation Date unless terminated earlier in accordance with the terms of this Agreement. 4

“Site” has the meaning set forth in the Recitals.

“Site Electrical System” means Village’s existing building electrical systems that are owned or leased, operated, maintained and controlled by Village, and which systems are interconnected with the Host Utility.

“Solar Electricity Price” has the meaning set forth in Section 7.1.

“Subcontractor” means any subcontractor, of any tier, or supplier of services to System Owner or any subcontractor, of any tier.

“System” has the meaning set forth in the Recitals.

“System Assets” means all equipment, facilities and materials, including photovoltaic arrays, DC/AC inverters, wiring, Meters, tools, and any other property now or hereafter installed, owned, operated, or controlled by System Owner for the purpose of, or incidental or useful to, maintaining the use of the solar generation system and providing Output to Village at the Delivery Point, and as it may be modified during the Term. For the avoidance of doubt, the System Assets specifically exclude any part of the Site Electrical System.

“System Owner” has the meaning set forth in the introductory paragraph.

“Tax Benefits” means all federal, state and local tax deductions, tax credits, tax grants, and other tax benefits available to taxpayers, including grants under Section 1603 of the American

Recovery and Reinvestment Act of 2009, Public Law 111-5, as well as any replacements or modifications to such tax deductions, credits, grants or benefits.

“Term” means the Construction Period and the Service Term.

“Village” has the meaning set forth in the introductory paragraph.

“Work” has the meaning set forth in Section 2.1.1.

## **ARTICLE 2 CONSTRUCTION AND INSTALLATION OF SYSTEM**

### **Section 2.1 Construction of System; Subcontractors.**

**Section 2.1.1** During the Construction Period, System Owner (or its Subcontractors) shall design, engineer, procure, install, construct, service, test, interconnect and start-up the System at the Site (collectively, the “Work”), consistent with the technical specifications set forth in Exhibit B, in a good and workmanlike manner and in accordance with all applicable laws and regulations.

**Section 2.1.2** Without limiting System Owner’s liability or obligations under this Agreement, System Owner, with the approval of the Village and not otherwise, may engage Subcontractors to meet any obligation under this Agreement. Any Subcontractors engaged by System Owner to perform any portion of the Work shall have all licenses and registrations required to perform the services to be performed by such Subcontractor, and any such contractors shall maintain insurance as required pursuant to Section 16.1. Upon request, System Owner shall provide Village with evidence that any Subcontractors have obtained insurance as required pursuant to Section 16.1. System Owner shall ensure that all Subcontractors comply with all applicable laws and regulations of the State of New Mexico, including without limitation the minimum wage requirements of the Public Works Minimum Wage Act, Sections 13-4-11 *et seq.*, NMSA 1978, as amended and supplemented.

### **Section 2.2 Schedule.**

System Owner has prepared a proposed summary construction schedule for the installation of the System, attached hereto as Exhibit D.

### **Section 2.3 Construction Period Output.**

Upon notice from System Owner during the Construction Period, System Owner or its Subcontractors may test the System and deliver all Output resulting from such testing during the Construction Period to Village, and Village shall accept delivery of all such Output. The charge for Output delivered during the Construction Period shall be equal to the Solar Electricity Price.

**ARTICLE 3**  
**CONNECTION AND DELIVERY POINT; PURCHASE AND SALE OF OUTPUT**

**Section 3.1** Delivery Point.

Title to, risk of loss of, and custody and control of, the Output shall pass from System Owner to Village at the Delivery Point.

**Section 3.2** Connection.

System Owner is responsible for the interconnection of the System to the Site Electrical System and is solely responsible for all equipment, maintenance, and repairs associated with such interconnection equipment in accordance with the terms and conditions of this Agreement; *provided*, that Village shall, with the assistance of System Owner, obtain any Interconnection and Net Metering Agreements and agrees to approve studies and execute Interconnection and Net Metering Agreements as needed to deliver the Electricity to the Site Electrical System; and *provided, further*, that Village shall at all times own and be responsible for the operation and maintenance of the Site Electrical System at and from the Delivery Point, as provided in Section 11.3.

**Section 3.3** Commercial Operation Date.

System Owner shall give Village not less than 15 Business Days' prior written notice that the System will begin Commercial Operation on the date indicated in such notice (the "Commercial Operation Date"). System Owner shall deliver and sell to Village all of the Output at the Delivery Point, and Village shall accept delivery of and purchase all of the Output at the Delivery Point, beginning on the Commercial Operation Date until the end of the Service Term.

**Section 3.4** Sale Only to Village.

In no event shall System Owner sell, or be deemed to have sold, Output to any Person other than Village.

**Section 3.5** Taxes.

**Section 3.5.1** System Owner shall pay any income taxes imposed on System Owner due to the sale of energy under this Agreement. To the extent permitted by law, Village shall either pay or reimburse System Owner for any and all other taxes including but not limited to taxes assessed directly on the generation, sale, delivery or consumption of Output.

**Section 3.5.2** Village shall pay all real property taxes and assessments applicable to the Site, if any, under the terms of the Lease. System Owner shall not be liable for any property taxes or assessments associated with the Site including any increases to property taxes resulting from the installation of the System at the Site. System Owner shall pay all property taxes applicable to the System.

**ARTICLE 4**  
**CONDITIONS PRECEDENT**

**Section 4.1** Conditions Precedent to System Owner's Obligations.

Subject to the terms and conditions of this Agreement, and unless waived by System Owner, System Owner's obligations under this Agreement are conditioned upon the satisfaction of the following conditions ("Conditions Precedent") on or before October 18, 2011 (the "Commercial Operation Deadline"):

- (a) All necessary governmental filings or applications for Green Attributes and Environmental Financial Incentives relating to the operation of the System shall have been completed and approved as applicable;
- (b) All Permits shall have been obtained and any required regulatory approval relating to the System shall have occurred;
- (c) System Owner shall have received all third party consents necessary in order to perform its obligations hereunder;
- (d) System Owner shall have obtained financing for the System on terms and conditions satisfactory to it; and
- (e) System Owner shall have entered into contract(s) for installation of the System, subject to the terms of any proposed financing.

**Section 4.2** Commercial Operation Deadline.

(a) System Owner shall use commercially reasonable efforts to (i) meet the Conditions Precedent, (ii) cause installation of the System to be completed and (iii) cause the System to begin Commercial Operation on or before the Commercial Operation Deadline.

(b) Village shall use commercially reasonable efforts to assist System Owner in satisfying the Conditions Precedent set forth in Section 4.1.

(c) Notwithstanding the foregoing, to the extent that Commercial Operation has not commenced on or before the Commercial Operation Deadline, System Owner may, by written notice to Village at least 10 Business Days before the Commercial Operation Deadline, extend the Commercial Operation Deadline by no more than 30 days.

(d) If Commercial Operation has not commenced on or before the Commercial Operation Deadline or any extension thereof due to Force Majeure or as provided in Section 4.2(c) above, System Owner shall have the option to terminate this Agreement upon 15 days' written notice of such termination to Village without triggering the default provisions of this Agreement or any liability under this Agreement.

**Section 4.3** Termination for Failure to Meet Commercial Operation Deadline.

If the Commercial Operation Date has not occurred on or before the Commercial Operation Deadline or any extension thereof as provided in Section 4.2(c) and System Owner has not provided notice of termination pursuant to Section 4.2(d), Village may terminate this Agreement upon 30 days' written notice of such termination to System Owner; provided that such right to

terminate shall not be available to Village if Village's failure to fulfill any material obligations under this Agreement has been the cause of, or resulted in, the failure of System Owner to achieve Commercial Operation.

**Section 4.4 Ownership of Permits.**

All Permits obtained pursuant to Section 4.1 shall be owned and controlled by System Owner. To the extent that any such Permits must be obtained or owned by Village, Village agrees that, to the maximum extent permitted by law, it shall grant all material decision-making rights with respect to such Permits to System Owner.

**ARTICLE 5  
ACCESS AND SPACE PROVISIONS; EMERGENCIES**

**Section 5.1 Adequate Access for System Owner.**

System Owner and its agents, consultants, and representatives shall have access to the Premises, the Site, the System, all System Assets, System operations and any documents, materials, records and accounts relating thereto in accordance with and subject to the terms and conditions of the Lease.

**Section 5.2 Access by Village to System.**

The Parties acknowledge that Village shall have full access to the Site for maintenance, safety, security, and emergency purposes. Village, to the extent reasonably possible, shall ensure that the operation of the System is not disrupted and the System is not damaged as a result of actions or inactions of Village, its designee(s) or invitees. However, Village does not and cannot undertake to indemnify System Owner against any actions by third parties not within the control of Village.

**Section 5.3 Emergencies.**

In the event of any Emergency during the Term, Village and System Owner, as applicable, shall take such action as may be reasonable and necessary to prevent, avoid or mitigate injury, damage or loss to the System and any interruption, reduction or disruption of its proper operation, and shall, as soon as practicable, report any such incident, including such Party's response thereto, to the other Party.

**Section 5.4 Data Acquisition System.**

Village shall make available to System Owner during the Construction Period (as necessary) and the Service Term broadband internet access at the Premises necessary for System Owner's equipment to continuously monitor the System performance, which equipment shall include a data acquisition system to monitor and meter System performance on a real time basis.

**ARTICLE 6**  
**OWNERSHIP OF SYSTEM, ENVIRONMENTAL ATTRIBUTES**  
**AND FINANCIAL INCENTIVES**

**Section 6.1** System Is Personal Property of System Owner.

The System shall be and shall remain System Owner's personal property at all times, shall not be a fixture on the Site and may be removed by System Owner in accordance with the terms and conditions of this Agreement and the Lease. Neither the System nor any of its components may be sold, leased, assigned, mortgaged, pledged or otherwise alienated or encumbered by Village. Village shall not cause or permit the System or any part thereof to become subject to any lien, encumbrance, pledge, levy or attachment arising by, under or through Village.

**Section 6.2** System Owner Is Exclusive Owner of Output, Environmental Financial Incentives and Green Attributes.

Village agrees that System Owner is the exclusive owner of all (a) Output until Village purchases the Output as provided for in this Agreement, and (b) all Environmental Financial Incentives, Green Attributes attributable to the System. Village hereby assigns its interest (if any) in all such credits, attributes and other financial incentives to System Owner. System Owner shall own, and may assign or sell in its sole discretion, all right title and interest in all of the Environmental Financial Incentives and Green Attributes.

**Section 6.3** Prohibitions on Impairing Value.

Village shall not take any action or suffer any omission at the Site that would have the effect of impairing the value to System Owner of the Green Attributes or the Environmental Financial Incentives. Village shall be solely responsible for notifying System Owner of any action or omission that could impair such value and for consulting with System Owner as necessary to prevent impairment of the value of the Green Attributes or the Environmental Financial Incentives.

**Section 6.4** Ownership of Deposits.

System Owner shall retain all right and ownership to any deposit made by System Owner to reserve for the System, or ensure the System's participation in, any Environmental Financial Incentive, and Village shall transfer, assign or pay to System Owner any amount of such deposit made by System Owner but refunded to Village by the Host Utility or other such applicable agency or program.

**ARTICLE 7**  
**PURCHASE PRICE, INVOICING AND PAYMENT**

**Section 7.1** Solar Electricity Price.

The price for Output shall be on a cents per kilowatt hour alternating current basis, such rate to be adjusted on each anniversary of the Commercial Operation Date, as set forth in the schedule

attached hereto as Exhibit E (the price for Output as in effect from time to time, the “Solar Electricity Price”).

**Section 7.2 Invoices.**

Each month, System Owner shall prepare and provide Village with an invoice for the Output delivered in the prior month. The amount due for the Output shall be determined by multiplying the Solar Electricity Price then in effect by the Output deemed delivered to Village during such month, and each invoice shall set forth in reasonable detail the calculation of all amounts owed to System Owner. Delays in the issuance of any such invoice shall not constitute any waiver of Village’s obligation to pay, or System Owner’s right to collect, any payment by System Owner under any such invoice.

**Section 7.3 Payments.**

Subject to its contest rights set forth in Section 7.4, Village shall pay the full amount of each invoice on or before the 30th calendar day following receipt thereof (the “Due Date”). All payments made by Village under this Agreement shall be by electronic funds transfer pursuant to the instructions set forth in Exhibit F attached hereto, or by check payable to System Owner (unless otherwise directed in writing by System Owner) at the address for notices set forth in Section 19.2, as such instructions may be modified by System Owner by written notice to Village. If the Due Date is not a Business Day, payment will be due the next following Business Day. Late payments shall accrue interest at a per annum rate equal to the lower of 18%, or the maximum rate allowed by law.

**Section 7.4 Contest Rights.**

Village shall notify System Owner in writing in accordance with Section 19.1 within five Business Days of receipt of any invoice of any portion of the invoiced amount that it has a reasonable basis to dispute and the basis for such Dispute. The contested portion of any invoiced amount shall not relieve Village of its obligation to pay the uncontested portion of such invoice when due.

**Section 7.5 Renewable Energy Credits.**

Village shall assign the ownership of the Renewable Energy Credits to System Owner per the process set forth by the Host Utility’s solar incentive program, thereby transferring any and all revenue associated with the generation of such credits to the System Owner for the duration of the Renewable Energy Credit purchase contract with the Host Utility. It is recognized that both the sale of the System’s Output and the value captured from the generation of Renewable Energy Credits are instrumental to the System Owner’s return on investment.

**Section 7.6 Guaranteed Savings.**

- (a) System Owner shall:
  - (i) guaranty annual energy savings as provided in the Form of Written Guarantee attached to this Agreement as Exhibit G, and

(ii) provide a performance guarantee in the form of a performance bond, a cash bond, a letter of credit issued by a bank with a Moody's or Standard and Poor's rating of "A" or better or any other surety, including insurance, satisfactory to the Village.

(b) The guarantee for each year shall be in an amount equal to the amount of the annual guarantee given by the qualified provider in the guaranteed utility savings contract.

## **ARTICLE 8 METERING**

### **Section 8.1 Meter.**

System Owner shall install the Meter at the Delivery Point to measure the amount of Output delivered by System Owner to Village. System Owner shall own, operate and maintain the Meter during the Service Term at System Owner's expense.

### **Section 8.2 Meter Reading.**

System Owner shall read the Meter at the end of each calendar month, and shall record the Output delivered to Village. The Meter shall be used as the basis for calculating the amounts to be invoiced pursuant to Section 7.2. Monthly readings of the Meter used in calculating the amounts to be invoiced shall be provided to Village with the applicable invoice. Other records from the Meter shall be made available to Village upon written request.

### **Section 8.3 Calibration.**

**Section 8.3.1** System Owner shall provide calibration testing of the Meter prior to its installation and at least annually thereafter to ensure the accuracy of the Meter. Village may request that System Owner perform more frequent testing; *provided* that any such testing in excess of the annual tests shall be at Village's expense if such tests indicate that the Meter is accurate within plus or minus two percent. Village shall be entitled to witness such tests.

**Section 8.3.2** If, upon testing, any Meter is found to be accurate or in error by not more than plus or minus two percent, then 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.

**Section 8.3.3** If, upon testing, any Meter shall be found to be inaccurate by an amount exceeding plus or minus two percent, then such Meter shall be promptly repaired or adjusted to record properly 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. If the difference in the previously invoiced amounts minus the adjusted payment is a positive number, that difference shall offset amounts owing by Village to System Owner in subsequent month(s). If the difference is a negative number, the difference shall be added to the next month's invoice and paid by Village to System Owner on the Due Date of such invoice.

**ARTICLE 9  
INTERRUPTION OF SERVICE**

**Section 9.1**    Interruptions Are Expected.

Village acknowledges and understands that solar power is an intermittent resource and that the output of the System, which is dependent on the sun and other factors, will constantly vary and that no particular amount of Output is guaranteed as to amount or time of delivery. Village further acknowledges that it must retain a primary source of power from Host Utility.

**Section 9.2**    Obstructions.

**Section 9.2.1** Village shall not install or permit to be installed on the Premises (or any other property owned or controlled by Village) any physical obstruction that has or could reasonably be expected to have the effect of reducing Output.

**Section 9.2.2** In the event that any obstruction that could reasonably be expected to materially reduce the Output is proposed to be erected or installed on property other than the Premises, Village shall promptly deliver to System Owner copies of any notice relating thereto received by Village and System Owner shall have the right to intervene or to direct Village to intervene (at System Owner's expense) in any proceeding or otherwise contest the installation or erection of any such obstruction; *provided*, that in the event that any such obstruction is nonetheless installed or erected, System Owner shall have the right to terminate this Agreement without penalty to Village.

**Section 9.3**    Interruption of Output.

**Section 9.3.1** Notwithstanding any other provision of this Agreement, System Owner shall have the right to interrupt, reduce or discontinue the delivery of Output for purposes of inspection, maintenance, repair, replacement, construction, installation, removal or alteration of the equipment used for the production or delivery of Output, or at the direction of authorized governmental authorities or electric utilities. Other than in the event of unexpected interruptions or in the event of an emergency, System Owner shall give Village notice at least five Business Days prior to an interruption of Output deliveries and an estimate of the expected duration of the interruption. Both System Owner and Village shall use commercially reasonable efforts to minimize any such interruption or disruption in delivery.

**Section 9.3.2** System Owner shall not be required to supply Output to Village at any time System Owner reasonably believes the Site Electrical System to be unsafe, but in no event shall System Owner have any responsibility to inspect or approve the Site Electrical System.

**Section 9.4**    Repair and Maintenance.

**Section 9.4.1** System Owner shall use commercially reasonable efforts to maintain the System in good working order, ordinary wear and tear excepted, and shall operate the System in accordance with all applicable laws, regulations and ordinances. System Owner shall promptly

repair any damage to the Site (which shall not include normal wear and tear) caused by System Owner.

**Section 9.4.2** Village shall be solely responsible for the repair and maintenance of the Premises, including the Site; *provided* that if such repair, maintenance or replacement is caused by the negligence or intentional misconduct of System Owner, then System Owner shall be responsible for such costs to the extent of its negligence or intentional misconduct. Village and System Owner shall coordinate such activities so as to minimize disruption to the System.

**Section 9.4.3** Village shall notify System Owner immediately upon Village's knowledge of (a) any material malfunction of or damage to the System, or (b) any interruption or alteration of the energy supply to the Premises.

**Section 9.4.4** Village may not adjust, modify, maintain, alter, service or in any way interfere with the System or the Work, except in the event of an Emergency; *provided* that Village shall give System Owner immediate notice in such event; and *provided, further*, that nothing contained in this Section 9.4.4 or any other provision of this Agreement shall be construed to require the Village to suspend, delay, or discontinue any other activities on the Premises, other than the Site, to accommodate the System or the Work.

**Section 9.4.5** System Owner shall bear any costs associated with restoring service following any interruption of the supply of Electricity from the System as a result of System Owner's operation of the System. Village shall bear the costs associated with the restoration of the delivery of Output if an interruption of such supply of Electricity is caused by the actions or inactions of Village or the condition of the Site Electrical System.

## **ARTICLE 10 REPRESENTATIONS**

### **Section 10.1 Mutual Representations.**

The Parties make the following mutual representations and warranties:

**Section 10.1.1 Due Organization.** Each Party represents to the other Party that such Party is duly organized, validly existing and in good standing under the laws of its respective formation.

**Section 10.1.2 Due Authorization.** Each Party represents to the other Party that such Party is duly authorized and has the power to enter into this Agreement and perform its obligations hereunder.

**Section 10.1.3 No Consent Required.** Each Party represents to the other Party that such Party has all the rights required to enter into this Agreement and perform its obligations hereunder without the consent of any third party.

**Section 10.1.4 Accuracy of Information.** To the knowledge of the Party providing such information, the information provided pursuant to this Agreement as of the Effective Date is true, correct and complete in all material respects.

**Section 10.2 Additional Village Representations.**

Village makes the following additional representations and warranties to System Owner:

**Section 10.2.1 No Conflict.** This Agreement is enforceable against Village in accordance with its terms and does not conflict with or violate the terms of any other agreement to which Village is a party or by which Village is bound, including, if applicable, any agreement pursuant to which Village has financed the Premises or the Site, and Village's organizational documents.

**Section 10.2.2 Ownership and Control over Premises.** Village owns the Premises in fee simple.

**Section 10.2.3 Ability to Perform.** Village has no knowledge of any facts or circumstances that could materially adversely affect its ability to perform its obligations hereunder, and Village has complied with all laws and regulations relating to bidding or procurement of the Output hereunder.

**Section 10.3 System Owner Representations.**

System Owner makes the following additional representations and warranties to Village:

**Section 10.3.1 No Conflict.** This Agreement is enforceable against System Owner in accordance with its terms and does not conflict with or violate the terms of any other agreement to which System Owner is a party or by which System Owner is bound, including its organizational documents.

**Section 10.3.2 Ability to Perform.** System Owner has no knowledge of any facts or circumstances that, but for the passage of time, would materially adversely affect System Owner's ability to perform its obligations hereunder.

**ARTICLE 11  
COVENANTS OF THE PARTIES**

**Section 11.1 Permits.**

During the Construction Period, Village shall obtain all permits, approvals, and other authorizations that may be required by any governmental agency or authority or by the Host Utility in connection with the interconnection of the System to the Site Electrical System, the purchase of the Output and the Interconnection and Net Metering Agreements. System Owner shall provide Village with reasonable assistance in, and shall bear all reasonable expenses associated with, obtaining such permits, approvals and other authorizations. Where allowed by law, Village shall designate System Owner as its agent in obtaining all permits, approvals and additional authorizations relating to the System.

**Section 11.2 Compliance.**

At all times during the Service Term, Village shall comply with and maintain in effect all such permits, approvals, and authorizations described in Section 11.1, shall maintain the Interconnection and Net Metering Agreements, and shall meet all requirements imposed by the Host Utility, other electric service provider and any federal, state or local government agencies with respect to the Interconnection and Net Metering Agreements and to the purchase of the Output.

**Section 11.3 Site Electrical System Maintenance and Upgrades.**

Village shall perform (or arrange for the performance of) all normal maintenance and upgrades to the Site Electrical System to maintain the Site Electrical System in good working order, and such other maintenance and upgrades as may be required by the Host Utility or applicable laws, regulations, ordinances, and codes.

**ARTICLE 12  
DEFAULT**

**Section 12.1 Events of Default.**

An “Event of Default” means, with respect to a Party causing such Event of Default (a “Defaulting Party”), the occurrence of any of the following:

**Section 12.1.1 Village Failure to Pay.** Village’s failure to pay an invoice by the Due Date, and such failure continues for a period of fifteen Business Days after System Owner provides written notice of such nonpayment to Village.

**Section 12.1.2 Material Misrepresentation as of Effective Date.** If the representations and warranties and other statements made by a Party hereunder misrepresent a material fact as of the Effective Date, and such misrepresentation has a material adverse effect and such effect is not cured within 60 days from the earlier of (a) notice from the non-breaching Party or (b) the discovery or determination by the breaching Party of the misrepresentation; *provided*, that if the breaching Party commences an action to cure such misrepresentation within such 60-day period, and thereafter proceeds with all due diligence to cure such failure, the cure period shall extend for an additional 60 days.

**Section 12.1.3 Failure to Meet Material Obligations.** If a Party fails to perform fully any material provision of this Agreement other than as explicitly set forth in this Article 12 and either (a) such failure continues for a period of 60 days after written notice of such nonperformance or (b) if the nonperforming Party commences an action to cure such failure to perform within such 60-day period, and thereafter proceeds with all due diligence to cure such failure, and such failure is not cured within 60 days after the expiration of the initial 60-day period.

**Section 12.1.4 Bankruptcy.** If a Party (a) voluntarily or involuntarily files or has filed against it a bankruptcy or other similar petition, (b) enters into an assignment of its assets for the benefit of its creditors or (c) otherwise is unable to pay its debts as they become due.

**Section 12.2 Remedies for Event of Default.**

If at any time an Event of Default with respect to a Defaulting Party has occurred and is continuing, the other Party (the “Non-Defaulting Party”) shall, without limiting the rights or remedies available to the Non-Defaulting Party under this Agreement, applicable law or in equity, have the right: (a) by notice to the Defaulting Party, to designate a date, not earlier than the date of such notice and not later than 20 Business Days after such date, as an early termination date (“Early Termination Date”) in respect of this Agreement; (b) to withhold any payments due to the Defaulting Party under this Agreement until such Event of Default is resolved; and (c) to suspend performance due to the Defaulting Party under this Agreement until such Event of Default is resolved. In the event that the Non-Defaulting Party designates an Early Termination Date, this Agreement will terminate as of the Early Termination Date. Any Village remedies in the event of a System Owner default are subject to Lender cure rights as set forth in Section 18.3.

**Section 12.3 Additional Village Rights upon Termination for Default.**

In the event that Village is the Non-Defaulting Party, and that Village elects to terminate this Agreement as provided in Section 12.2, Village shall be entitled, in its sole and absolute discretion, either (a) to require that System Owner remove and properly dispose of the System and System Assets, including any and all related equipment and materials (or to remove and have stored the System at System Owner’s sole cost and expense, if System Owner fails to remove the System within 60 days after the Early Termination Date), or (b) to exercise the Purchase Option provided in Article 14.

**Section 12.4 Additional System Owner Rights upon Termination for Default.**

In the event that System Owner is the Non-Defaulting Party, and that System Owner elects to terminate this Agreement as provided in Section 12.2, System Owner shall be entitled to receive from Village the Early Termination Fee and System Owner shall remove the System at Village’s sole cost and expense (except for cost to repair damage to the Premises due to System Owner’s negligence during such removal, which shall be at System Owner’s sole cost and expense), after which the Lease shall terminate at no additional cost to System Owner.

**ARTICLE 13  
FORCE MAJEURE**

**Section 13.1 Force Majeure.**

Neither System Owner nor Village shall be considered to be in default in the performance of its obligations under this Agreement to the extent that performance of any such obligation is prevented or delayed by a Force Majeure Event. If a Party is prevented or delayed in the performance of any such obligation by a Force Majeure Event, then such Party shall immediately provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof. Such notice shall be confirmed in writing as soon as reasonably possible. The Party affected by a Force Majeure Event shall use commercially reasonable

efforts to remove or repair the cause of the Force Majeure Event and shall resume performance of its obligations as soon as reasonably practicable.

**Section 13.2 Termination for Force Majeure.**

Either Party shall be entitled to terminate this Agreement upon 15 days prior written notice to the other Party if any Force Majeure Event affecting such other Party has been in existence for a period of 180 consecutive days or longer, unless such Force Majeure Event ceases prior to the expiration of such 15-day period.

**ARTICLE 14  
PURCHASE OPTION; EXPIRATION**

**Section 14.1 Purchase Option.**

**Section 14.1.1** In the event that an Event of Default occurs and Village is the Non-Defaulting Party, upon any Early Termination Date, Village shall have the right to purchase the System upon at least 20 Business Days' written notice prior to any such date (the "Purchase Option"); *provided* that concurrent with any such termination of this Agreement, Village pays to System Owner the Fair Market Value of the System, as determined in accordance with Section 14.1.3. In addition, provided that Village has fulfilled all obligations to System Owner under this Agreement, at the expiration of the Service Term, Village shall have the option to purchase the System at Fair Market Value, as determined in accordance with Section 14.1.3 by notifying System Owner in writing at least 90 days prior to the end of the Service Term that Village intends to exercise its Purchase Option under this Section 14.1.

**Section 14.1.2** Upon Village's payment for the System, System Owner shall furnish the System and System Assets, including all components thereof and operation manuals, in the condition at the time of determination of the Fair Market Value, subject to normal wear and tear.

**Section 14.1.3** The term "Fair Market Value" as used herein shall mean the price that a willing buyer would pay for the operating System in an arm's-length transaction to a willing seller under no compulsion to sell. If Village and System Owner are unable to agree on the Fair Market Value within 15 Business Days after delivery of Village's notice of its intention to exercise the Purchase Option, System Owner and Village shall jointly appoint an independent appraiser (reasonably acceptable to any Lenders) to determine the Fair Market Value of the System, and such determination shall be final, binding and conclusive. If System Owner and Village are unable to agree upon the appointment of an independent appraiser, then each shall appoint an appraiser and the two appraisers so appointed shall appoint a third appraiser, and the three appraisers so appointed shall confer and agree upon a final appraisal reflecting the Fair Market Value of the System. System Owner and Village shall share equally all costs associated with any such appraisal.

**Section 14.2 Transfer to Village.**

If ownership of the System is transferred to Village pursuant to its exercise of the Purchase Option, System Owner shall have no further obligation with respect to the performance,

installation, or operation of any part or component of the System and shall transfer the System on an “as-is, where-is” basis; *provided, however*, System Owner agrees to pass through and to transfer to Village any applicable manufacturers’ warranties provided on the System, to the extent that such warranties are transferable. In addition, upon such transfer of ownership, Village shall accept the assignment of all Environmental Financial Incentives and Green Attributes, as well as System Owner’s rights and obligations pursuant to any agreement for the operation and maintenance of the System, in each case as may be existing at the time of such transfer.

**Section 14.3** Non-Election; Removal.

If Village does not exercise its option to purchase the System pursuant to Section 14.1, at the end of the Service Term, System Owner shall remove the System from the Premises at System Owner’s expense within 120 days of the expiration of the Term. To the extent that System Owner removes any or all of the System, System Owner shall make or have made any repairs to the Premises to the extent necessary to repair any adverse impact such removal directly causes to the Premises.

**ARTICLE 15**  
**LIABILITY; INDEMNIFICATION**

**Section 15.1** Liability and Responsibility.

**Section 15.1.1** Village. To the extent permitted by law, Village agrees to pay System Owner for the reasonable costs and expenses actually incurred relating to the breach of any representation, warranty or covenant of Village hereunder and any repairs to, direct or indirect harm to, or loss of the System, to the extent resulting from negligence or intentional misconduct of Village or any of its contractors, agents, tenants, employees, partners, owners, subsidiaries, affiliates or invitees.

**Section 15.1.2** System Owner. System Owner agrees to pay Village for the reasonable costs and expenses actually incurred relating to the breach of any representation, warranty or covenant of System Owner hereunder and any repairs to, direct or indirect harm to, or loss of the Premises or Village’s personal property or fixtures on the Premises, to the extent resulting from negligence or intentional misconduct of System Owner or any of its contractors, second-tier contractors, agents, employees, partners, owners, subsidiaries or affiliates.

**Section 15.2** Mutual General Indemnity.

To the maximum extent permitted by law, each Party hereto (the “Indemnifying Party”) shall defend, indemnify and hold harmless the other Party and the directors, officers, shareholders, partners, agents and employees of such other Party, and the affiliates of the same (collectively, the “Indemnified Parties”), from and against all loss, damage, expense and liability (including court costs and reasonable attorney’s fees) resulting from injury to or death of persons, and damage to or loss of real or personal property, to the extent caused by or arising out of the negligent acts or omissions of the Indemnifying Party or its failure to materially comply with any provisions of this Agreement.

**Section 15.3 Defense of Claims.**

An Indemnifying Party shall have the right to defend an Indemnified Party by counsel (including insurance counsel) of the Indemnifying Party's selection reasonably satisfactory to the Indemnified Party, with respect to any claims within the indemnification obligations hereof. The Parties shall give each other prompt written notice of any asserted claims or actions indemnified against hereunder and shall cooperate with each other in the defense of any such claims or actions. No Indemnified Party shall take any action relating to such claims or actions within the indemnification obligations hereof without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld, and no Indemnifying Party shall settle any such claims without the Indemnified Party's prior written consent, unless the settlement includes a full and unconditional release of claims against the Indemnified Party.

**Section 15.4 Limitation of Liability; Liquidated Damages.**

Other than for liquidated damages or as otherwise expressly provided for herein, neither Party shall be liable to the other Party for special, punitive, indirect or consequential damages arising out of the performance or non-performance of his Agreement, whether caused by negligence, tort, strict liability, breach of contract, or breach of warranty, including damages in the nature of lost profits or revenues, loss of use of facilities or equipment or inability to perform contracts with third parties (other than for damages incurred under such contracts), other than for damages resulting from the claims of persons not a party to this Agreement; *provided, however*, that the foregoing limitation shall not affect or limit a party's right to recover the Early Termination Fee as set forth in Section 12.4. To the extent any damages required to be paid under this Agreement are liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient and the damages calculated under this Agreement constitute a reasonable approximation of the harm or loss.

**Section 15.5 Limitation of Village Liability under Tort Claims Act.**

Nothing contained in this Article 15 or any other part of this Agreement shall be deemed a waiver or exception to any immunity, right, privilege, or limitation on damages held by the Village pursuant to the New Mexico Tort Claims Act, Section 41-4-1 *et seq.*, NMSA 1978, as amended and supplemented, or any other applicable law, and all such immunities, rights, privileges or limitations on damages shall remain fully applicable in all respects. Nothing contained in this Agreement shall be deemed to impose any duty or obligation of the Village to any third party, nor to any Party to this Agreement except strictly in accordance with the terms of this Agreement.

**ARTICLE 16  
INSURANCE**

**Section 16.1 System Owner's Insurance.**

**Section 16.1.1 During the Construction Period.** Beginning on the Effective Date and continuing until the Commercial Operation Date, System Owner shall maintain (and shall cause

its Subcontractors to maintain), with a company or companies licensed or qualified to do business in the state of New Mexico, the following insurance coverage: (a) workers' compensation insurance as required by the state of New Mexico; (b) comprehensive general liability insurance for bodily injury in an amount not less than \$1,000,000 per occurrence, \$2,000,000 aggregate, and for property damage in an amount not less than \$1,000,000 per occurrence, \$2,000,000 aggregate; and (c) professional liability insurance in an amount of not less than \$500,000 per claim.

**Section 16.1.2 Following the Commercial Operation Date.** Beginning on and after the Commercial Operation Date and continuing through the expiration of the Term, System Owner shall maintain, with a company or companies licensed or qualified to do business in the state of New Mexico, the following insurance coverage: (a) workers' compensation, to the extent and as required by the state of New Mexico; (b) comprehensive general liability insurance for bodily injury in an amount not less than \$1,000,000 per occurrence \$2,000,000 aggregate, and for property damage in an amount not less than \$1,000,000 per occurrence, \$2,000,000 aggregate; and (c) property insurance on the System in an amount not less than the value of the System as an installed operational solar system. Such insurance shall name Village as an additional insured.

**Section 16.2 Village's Insurance.**

Village shall maintain without interruption from the Effective Date until expiration of the Term, with a company or companies licensed or qualified to do business in the state of New Mexico, the following insurance coverage: (a) comprehensive general liability insurance in an amount not less than \$1,000,000 dollars; and (b) property insurance in an amount not less than the replacement value of the Premises. Village at its sole discretion and to the extent permitted by law may provide self-insurance through the New Mexico Self-Insurers Fund or other appropriate agency or organization, provided that the coverage available through such self-insurance substantially meets the foregoing coverage requirements.

**Section 16.3 Evidence of Insurance.**

Each Party (and a Party's contractors) shall maintain the certificate(s) of insurance evidencing the insurance coverages provided in Sections 16.1 and 16.2, and shall provide such certificates to the other Party upon request.

**ARTICLE 17  
ASSIGNMENT**

**Section 17.1 Assignment by Village.**

Village shall not assign this Agreement without the consent of System Owner (which consent not to be unreasonably withheld); *provided*, that in connection with any sale of the Premises, Village may, without the consent of System Owner, assign its interest in, and be released from its obligations under, this Agreement to the purchaser of the Premises, but solely to the extent that such purchaser shall expressly assume this Agreement and agree to be bound by the terms and conditions hereof.

**Section 17.2** Assignment by System Owner.

**Section 17.2.1** Subject to Section 17.2.2, System Owner may, with the consent of Village (which consent shall not be unreasonably withheld), assign its interest in, and be released from its obligations under, this Agreement to an assignee, as long as the assignee shall expressly assume this Agreement and agree to be bound by the terms and conditions hereof.

**Section 17.2.2** System Owner may, without the consent of Village, (a) transfer, pledge or assign all or substantially all of its rights and obligations hereunder as security for any financing and/or sale-leaseback transaction or to an affiliated special purpose entity created for the financing or tax credit purposes related to System, (b) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of System Owner; *provided, however,* that any such assignee shall agree to be bound by the terms and conditions hereof, (c) assign this Agreement to one or more affiliates; *provided, however,* that any such assignee shall agree to be bound by the terms and conditions hereof or (d) assign its rights under this Agreement to a successor entity in a merger or acquisition transaction; *provided, however,* that any such assignee shall agree to be bound by the terms and conditions hereof. Village agrees to provide acknowledgements, consents, or certifications reasonably requested by any Lender in conjunction with any financing.

**ARTICLE 18  
LENDER PROTECTION**

**Section 18.1** Notice of Lender.

System Owner shall notify Village of the identity of any Lender within 30 days of any such party becoming a Lender.

**Section 18.2** Lender Collateral Assignment.

In the event that System Owner identifies a Lender pursuant to Section 18.1, then Village hereby:

**Section 18.2.1** Acknowledges the collateral assignment by System Owner to the Lender, of System Owner's right, title and interest in, to and under this Agreement, as consented to under Section 17.2.2(a) of this Agreement;

**Section 18.2.2** Acknowledges that any Lender as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to System Owner's interests in this Agreement;

**Section 18.2.3** Acknowledges that upon receipt of identification of such Lender it has been advised that System Owner has granted a security interest in the System to the Lender and that the Lender has relied upon the characterization of the System as personal property, as agreed in this Agreement, in accepting such security interest as collateral for its financing of the System; and

**Section 18.2.4** Acknowledges that any such Lender shall be an intended third-party beneficiary of this Article 18.

**Section 18.3** Lender Cure Rights upon System Owner Default.

Upon an Event of Default by System Owner, a copy of any notice delivered under Section 12.1 shall be delivered concurrently by Village to any Lender at the addresses provided by System Owner to Village. Following the receipt by any Lender of any notice that System Owner is in default in its obligations under this Agreement, such Lender shall have the right but not the obligation to cure any such default, and Village agrees to accept any cure tendered by the Lenders on behalf of System Owner in accordance with the following: (a) a Lender shall have the same period after receipt of a notice of default to remedy an Event of Default by System Owner, or cause the same to be remedied, as is given to System Owner after System Owner's receipt of a notice of default hereunder; *provided, however*, that any such cure periods shall be extended for the time reasonably required by the Lender to complete such cure, including the time required for the Lender to obtain possession of the System (including possession by a receiver), institute foreclosure proceedings or otherwise perfect its right to effect such cure; and (b) the Lender shall not be required to cure those Events of Default that are not reasonably susceptible of being cured or performed by the Lender. The Lender shall have the absolute right to substitute itself or an affiliate for System Owner and perform the duties of System Owner hereunder for purposes of curing such Event of Default. Village expressly consents to such substitution, and authorizes the Lender, its affiliates (or either of their employees, agents, representatives or contractors) to enter upon the Premises to complete such performance with all of the rights and privileges of System Owner, but subject to the terms and conditions of this Agreement.

**ARTICLE 19**  
**MISCELLANEOUS**

**Section 19.1** Disputes.

**Section 19.1.1** Procedure. If the Parties are unable to resolve a dispute, controversy or claim arising out of or relating to this Agreement or any breach, termination or invalidity hereof (a "Dispute") within 10 Business Days after one Party's receipt of notice of such Dispute from the other Party, then each Party shall immediately designate a senior executive with authority to resolve the Dispute, subject to ratification by the Village Council in the event that such resolution imposes any costs, direct or indirect, on the Village. If the senior executives do not agree upon a resolution of the Dispute within 60 days of the referral to them, either Party shall have the right to pursue any and all remedies available under this Agreement, at law or in equity in a court of competent jurisdiction. Nothing in this Section 19.1.1 shall prevent the Parties or either of them from seeking relief from a court of competent jurisdiction.

**Section 19.1.2** Termination During Dispute. Notwithstanding the requirements of this Section 19.1, either Party may terminate this Agreement as provided in this Agreement or pursuant to an action at law or in equity. The issue of whether such a termination is proper shall not be considered a Dispute. Neither the giving of notice of a Dispute nor the pendency of

any dispute resolution process shall extend any notice or cure period described in this Agreement or any period within which a Party must act as described in this Agreement.

**Section 19.1.3 Performance During Dispute.** Subject to the rights of the Parties to terminate this Agreement as set forth in this Agreement, each Party shall continue to perform its obligations under this Agreement during the pendency of any Dispute. Either Party may seek preliminary and permanent injunctive relief, including specific performance or other interim or permanent relief, if the Dispute involves (a) threatened or actual breach by the other Party of its confidentiality obligations under this Agreement or (b) risk to the safety or security of persons or property, if in such Party's judgment such relief is necessary to prevent injury or damage. Despite any such action by either Party, the Parties shall continue to proceed in good faith to resolve the Dispute.

**Section 19.2 Notices.**

Any written notice, direction, instruction, request or other communication required or permitted under this Agreement shall be deemed to have been duly given on the date of receipt, and shall be delivered to the Party to whom notice is to be given (a) personally, (b) by electronic mail (receipt acknowledgment), (c) by a recognized overnight delivery service or (d) by first class registered or certified mail, return receipt requested, postage prepaid (with additional notice by regular mail), and addressed to the Party to whom notice is to be given at the address stated below its name below, or at the most recent address specified by written notice given to the other Party in the manner provided in this Section 19.2.

If to System Owner, to:

Consolidated Solar Technologies  
5225 Pino Ave N.E.  
Albuquerque, NM 87109  
Attention: Kevin Bassalleck or Jerry Mosher

If to Village, to:

Village of Corrales  
4324 Corrales Road  
Corrales, New Mexico 87048  
Attention: Mayor

**Section 19.3 Governing Law; Consent to Jurisdiction; Waiver of Jury Trial.**

**Section 19.3.1** This Agreement is made and shall be interpreted and enforced in accordance with the laws of the state of New Mexico. The Parties hereby consent and submit to the personal jurisdiction of the courts of the state of New Mexico.

**Section 19.3.2** To the extent permitted by law, System Owner and Village each hereby waives its rights, if any, to a jury trial of any claim or cause of action based upon or arising out of this Agreement or any dealings between the Parties relating to the subject matter of this Agreement and the underlying transaction described herein. System Owner and Village further waive any

bond or surety or security upon such bond or surety which might, but for this waiver, be required. The scope of this waiver is intended to be all encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this Agreement and the underlying transaction described herein, including without limitation contract claims, tort claims, breach of duty claims, and all other common law and statutory claims and causes of action. This waiver is irrevocable, meaning that it may not be modified either orally or in writing, and the waiver shall apply to any subsequent amendments, renewals, supplements, or modifications to this Agreement. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

**Section 19.4 Amendments.**

No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by duly authorized representatives of both System Owner and Village or their respective successors in interest.

**Section 19.5 Records.**

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

**Section 19.6 Further Assurances.**

Each Party shall use its reasonable efforts to implement the provisions of this Agreement, and for such purpose each, at the request of the other, shall, without further consideration, promptly execute and deliver or cause to be executed and delivered to the other such assignments, consents or other instruments in addition to those required by this Agreement, in form and substance satisfactory to the other, as the other may reasonably deem necessary or desirable to implement any provision of this Agreement or to arrange financing for the System.

**Section 19.7 Severability.**

If and for so long as any provision of this Agreement shall be deemed to be judged invalid for any reason whatsoever, such invalidity shall not affect the validity or operation of any other provision of this Agreement except only so far as shall be necessary to give effect to the recognition of such invalidity, and any such invalid provision shall be deemed severed from this Agreement without affecting the validity of the balance of this Agreement so long as the severance of such invalid provision does not substantively and detrimentally affect the rights of the Parties or either of them under this Agreement.

**Section 19.8 Counterpart Execution.**

The Parties may execute this Agreement in counterparts, which shall, in the aggregate, when signed by both Parties constitute one and the same instrument; and, thereafter, each counterpart shall be deemed an original instrument as against any Party who has signed it. A fax or

scanned transmission of a signature page shall be considered an original signature page. At the request of a Party, a Party shall confirm its faxed or scanned signature page by delivering an original signature page to the requesting Party.

**Section 19.9 Interpretation.**

**Section 19.9.1** In this Agreement, unless the context requires otherwise, the singular includes the plural and the plural the singular, words importing any gender include the other gender; references to statutes, sections or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section or regulation referred to; the words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation” or “but not limited to” or words of similar import; references to articles, sections (or subdivisions of sections), exhibits, annexes or schedules are to those of this Agreement unless otherwise indicated; references to agreements and other contractual instruments shall be deemed to include all exhibits and appendices attached thereto and all subsequent amendments and other modifications to such instruments, and references to Persons include their respective successors and permitted assigns.

**Section 19.9.2** The Parties acknowledge that this is a negotiated agreement and, in the event of any dispute over its meaning or application, this Agreement shall be interpreted fairly and reasonably and neither more strongly for, nor more strongly against, either Party.

**Section 19.10 Service Agreement.**

The Parties intend that this Agreement be treated as a “service contract” within the meaning of Section 7701(e) of the Internal Revenue Code. The Parties intend that this Agreement is not intended to be and shall not be construed as a “construction contract” within the meaning of Section 56-7-1, NMSA 1978.

**Section 19.11 Headings.**

The headings in this Agreement have been inserted for the purpose of convenience and ready reference. They do not purport to, and shall not be deemed to, define, limit, or extend the scope or intent of the clauses to which they pertain.

**Section 19.12 No Waiver Unless in Writing.**

No waiver of any of the terms and conditions of this Agreement shall be effective unless in writing and signed by the Party against whom such waiver is sought to be enforced. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given. The failure of a Party to insist, in any instance, on the strict performance of any of the terms and conditions hereof shall not be construed as a waiver of such Party’s right in the future to insist on such strict performance.

**Section 19.13 Survival.**

Any provisions necessary to give effect to the intent of the Parties hereunder after the termination or expiration of this Agreement shall survive the termination or expiration of this

Agreement, including Section 19.1, Section 19.3 and Article 15.

**Section 19.14 Marketing and Confidential Information; Public Records.**

**Section 19.14.1** The Parties agree and acknowledge that each Party may promote the installation and use of the System by any means; *provided*, however, that such promotion shall be at the sole and exclusive cost and expense of the Party making such promotion and shall not impose any duty, obligation or cost on the other Party.

**Section 19.14.2** The Parties acknowledge that the Village is a municipal corporation subject to all provisions of the New Mexico Open Meetings Act, Section 10-15-1 *et seq.*, NMSA 1978, and the New Mexico Inspection of Public Records Act, Section 14-2-1 *et seq.*, NMSA 1978. This Agreement and all documentation and materials related hereto, including the Lease, Meter records, invoices for Output provided to the Village, and all other records held in the possession of the Village, are subject to public inspection and copying in accordance with the Inspection of Public Records Act. In the event that System Owner deems that any records or materials supplied to the Village are confidential and not subject to public disclosure, System Owner shall identify such records in writing at the time they are provided to the Village and shall specify in writing the legal grounds constituting the basis for the System Owner's assertion that such records are proprietary or otherwise not subject to public disclosure. The Village will thereupon retain the confidentiality of such records, unless otherwise ordered by a court of competent jurisdiction. In the event that any action is brought against the Village by any Person, as a consequence of the Village's refusal to release such records, identified as proprietary or otherwise not subject to release by the System Owner, then the System Owner shall have an obligation to defend the Village in such action and shall indemnify and hold harmless the Village from all costs and penalties, of any nature whatsoever, that may be imposed upon the Village by any court or administrative agency as a consequence of the withholding of such records from public release.

**Section 19.15 No Confidentiality Regarding Tax Structure or Treatment.**

Notwithstanding anything to the contrary set forth herein or in any other agreement to which the Parties are parties or by which they are bound, the obligations of confidentiality contained herein and therein, as they relate to the transaction, shall not apply to the U.S. federal tax structure or U.S. federal tax treatment of the transaction, and each Party (and any employee, representative, or agent of any Party hereto) may disclose to any and all persons, without limitation of any kind, the U.S. federal tax structure and U.S. federal tax treatment of the transaction. The preceding sentence is intended to cause the transaction not to be treated as having been offered under conditions of confidentiality for purposes of Section 1.6011-4(b)(3) (or any successor provision) of the Treasury Regulations promulgated under Section 6011 of the Internal Revenue Code and shall be construed in a manner consistent with such purpose. In addition, each Party acknowledges that it has no proprietary or exclusive rights to the tax structure of the transaction or any tax matter or tax idea related to the transaction.

**Section 19.16 Entire Agreement.**

This Agreement, including all exhibits and attachments hereto (all of which are incorporated by reference herein), constitutes the entire agreement between the Parties relating to the subject

matter hereof and supersedes and replaces any provisions on the same subject contained in any other agreement among the Parties, whether written or oral, prior to the Effective Date.

**Section 19.17 No Third Party Beneficiaries.**

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

*[Remainder of page intentionally left blank.]*

*[Signature page follows.]*



**EXHIBIT A**  
**Description of the Premises and the Site**

The System will be located to the south of the Corrales Recreation Center / Fire Administration Building located at 500 Jones Road in Corrales, NM. See Exhibit B for system specifications and a detailed site plan.

**EXHIBIT B**  
**System Description and Specifications**

Will have final plans from engineers 7.14.11

**EXHIBIT C**  
**Early Termination Fee**

<b>Year from Effective Date of Agreement</b>	<b>Termination Payment Due</b>
Year 1	\$74,796.31
Year 2	\$39,851.10
Year 3	\$39,174.98
Year 4	\$38,425.73
Year 5	\$37,595.61
Year 6	\$36,676.10
Year 7	\$35,657.84
Year 8	\$34,530.51
Year 9	\$33,282.79
Year 10	\$31,902.18
Year 11	\$30,374.95
Year 12	\$28,508.35
Year 13	\$26,445.65
Year 14	\$24,166.78
Year 15	\$21,649.68
Year 16	\$18,870.07
Year 17	\$15,801.23
Year 18	\$12,413.78
Year 19	\$8,675.39
Year 20	\$4,550.51

**EXHIBIT D  
Construction Schedule**

<b>Item</b>	<b>Expected Date</b>
Finalize PPA Documents	1-Aug-11
Finalize Permitting	15-Aug-11
Order Equipment	16-Aug-11
Receive Equipment	31-Aug-11
Begin Construction	1-Sep-11
Foundations Complete	16-Sep-11
Modules & Electrical	28-Sep-11
Commissioning	30-Sep-11
Submit for Inspections	3-Oct-11
PNM Commissioning	17-Oct-11

**EXHIBIT E**  
**Solar Electricity Price Schedule**

Contract Year	PPA Price per kWh
1	\$0.0950
2	\$0.0969
3	\$0.0988
4	\$0.1008
5	\$0.1028
6	\$0.1049
7	\$0.1070
8	\$0.1091
9	\$0.1113
10	\$0.1135
11	\$0.1158
12	\$0.1181
13	\$0.1205
14	\$0.1229
15	\$0.1254
16	\$0.1279
17	\$0.1304
18	\$0.1330
19	\$0.1357
20	\$0.1384

**EXHIBIT F**  
**Electronic Funds Transfer Instructions**

TBD

**EXHIBIT G**  
**Form of Written Guarantee**

System owner hereby guarantees that the System will provide the Village with a minimum energy savings amount as indicated by the following schedule:

Year	Expected System Output (kWh)	Expected Blended Energy Price (\$/kWh)	PPA Price (\$/kWh)	Expected Savings	Actual Savings
1	35,713	\$0.11269	\$0.09500	\$631.76	TBD
2	35,356	\$0.11607	\$0.09690	\$677.80	TBD
3	35,002	\$0.11955	\$0.09884	\$725.07	TBD
4	34,652	\$0.12314	\$0.10081	\$773.60	TBD
5	34,306	\$0.12683	\$0.10283	\$823.43	TBD
6	33,963	\$0.13064	\$0.10489	\$874.57	TBD
7	33,623	\$0.13456	\$0.10699	\$927.07	TBD
8	33,287	\$0.13859	\$0.10913	\$980.94	TBD
9	32,954	\$0.14275	\$0.11131	\$1,036.23	TBD
10	32,624	\$0.14703	\$0.11353	\$1,092.95	TBD
11	32,298	\$0.15145	\$0.11580	\$1,151.16	TBD
12	31,975	\$0.15599	\$0.11812	\$1,210.86	TBD
13	31,655	\$0.16067	\$0.12048	\$1,272.11	TBD
14	31,339	\$0.16549	\$0.12289	\$1,334.93	TBD
15	31,026	\$0.17045	\$0.12535	\$1,399.35	TBD
16	30,715	\$0.17557	\$0.12786	\$1,465.42	TBD
17	30,408	\$0.18083	\$0.13041	\$1,533.17	TBD
18	30,104	\$0.18626	\$0.13302	\$1,602.63	TBD
19	29,803	\$0.19185	\$0.13568	\$1,673.85	TBD
20	29,505	\$0.19760	\$0.13840	\$1,746.86	TBD

On the anniversary of each year following the Commercial Operation Date, System Owner shall verify that the System has provided the Village with, at a minimum, the Expected Savings amount shown in the table above. At each anniversary, System Owner shall review the preceding 12 months of Host Utility billing information for the Site Electrical System, and evaluate the actual cost paid by the Village to the Host facility for the energy purchased from the Host Utility that was not supplied by the System Output. This analysis shall be establish the Actual Blended Energy Price as follows:  $(\text{Total kWh Charges} + \text{Total Fuel Cost Adjustment Charges} + \text{Total Efficiency Fee Charges} + \text{Total Franchise Fee Charges}) / \text{Total kWh Consumption} = \text{Actual Blended Energy Price}$

Once the Actual Blended Energy Price for that year has been established, System Owner shall provide the Village with a statement showing the total amount of System Output in \$ / kWh. The Actual Savings from the System shall then be deemed to be:  $\text{Actual System Output} \times (\text{Actual Blended Energy Price} - \text{PPA Price})$ . If the Actual Savings for that period as calculated is less than the Expected Savings for that period shown in the table in this exhibit, then System Owner shall reimburse the Village for the difference between the Expected Savings and the Actual Savings. In the event that the Actual Savings exceeds the value for the Expected Savings in that year, the amount of Actual Savings over the Expected Savings will be carried forward to increase the value for the Actual Savings for the following year, calculated using the methodology described herein.