

**CITY MANAGER'S REPORT
MARCH 11, 2019, CITY COUNCIL REGULAR MEETING**

ITEM: PUBLIC HEARING (PUBLISHED NOTICE) TO CONSIDER ADOPTION OF ENERGY COST SAVINGS FINDINGS AND ENTERING INTO A SOLAR POWER PURCHASE AGREEMENT AND SOLAR UTILITY EASEMENTS AGREEMENT WITH GENERAL ELECTRIC INTERNATIONAL, INC., AUTHORIZING FILING A CEQA NOTICE OF EXEMPTION AND CIP GG 19-10 SOLAR ENERGY PROJECT

RECOMMENDATION: Council to Consider the following:

- 1. Hold Public Hearing Pursuant to Government Code Section 4217.12; and**
- 2. Adopt a Resolution Adopting the Energy Cost Savings Findings and Entering into a Solar Power Purchase Agreement and Solar Utility Easements Agreement with General Electric International, Inc., Authorizing Filing a CEQA Notice of Exemption and Creating CIP GG 19-10**

SUMMARY:

In 2012, City Council approved the Solar Energy Project Capital Improvement Project (CIP) General Government (GG) 12-14 to fulfill a long-standing City goal to conserve energy and produce future cost savings for the City's general fund and utility ratepayers. In 2013, the City Council approved a contract with TerraVerde Renewable Partners, LLC (TerraVerde), to develop and evaluate optimum locations, size, configurations, costs, and savings for solar arrays at City Facilities.

TerraVerde recommended a solar program that would potentially save the City money annually on the City's electricity costs at three City locations: City Hall, Community/Senior Center, and the South Harlan Road Storm Drain Basin. CIP GG 12-14 Phase 1 Solar Energy Project included installation of solar power systems at the City Corp Yard/Water Treatment Plant and South Harlan Road Storm Drain Basin. The project has since been completed and accepted by City Council.

Phase 2 of the solar project was initiated in early 2018. City Council authorized a contract with TerraVerde to conduct a competitive bid process for solar project installation, procurement, and financing. After extensive qualitative and technical evaluations of the six proposals received, General Electric International, Inc. was selected based on qualifications and expected annual cost savings for electricity.

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SOLAR ENERGY PROJECT, CIP GG 19-10**

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City staff and TerraVerde have concluded their review and discussions and are now recommending the City Council approve the following actions:

1. Hold a public hearing pursuant to California Government Code Section 4217.12
2. Adopt a Resolution to:
 - Enter into a Power Purchase Agreement (PPA) with General Electric International, Inc., pursuant to California Government Code Section 4217.12
 - Find that the anticipated solar energy cost will be less than what the City will pay in the absence of the project
 - Authorize the City Manager or his designee to complete final negotiations and execute the Power Purchase Agreement (Attachment C) and Solar Utility Easement Agreements (Attachment D) with General Electric International, Inc. All documents will be approved as to form by City Attorney prior to final execution.
 - Find that this project is exempt from the California Environmental Quality Act (CEQA) pursuant to Class 11 exemption and Public Resource Code 21080.35 and direct staff to file the CEQA Notice of Exemption (see Attachment E)
 - Create CIP GG 19-10 Solar Energy Project

BACKGROUND:

In 2012, City Council approved Solar Energy Project CIP GG 12-14. In 2013, the City Council approved an agreement with TerraVerde, at no up-front cost to the City, to develop and evaluate optimum locations, size, configurations, costs, and savings for solar arrays at City Facilities.

TerraVerde prepared a feasibility study that recommended a solar program that could save the City money annually on the City's electricity costs at four City sites: City Hall, Community/Senior Center, and the South Harlan Road Storm Drain Basin. The feasibility study also recommended that the most appropriate financial mechanism for the City was a PPA with an independent Solar Power Provider selected through a competitive process, pursuant to California Government Code sections 4217.10 to 4217.18, that allows public agencies to enter into energy services contracts for the purchase of energy from solar systems installed on the City's property, without using a formal competitive bid process. This method did not require any City investment and provided the optimal method to deliver and finance the solar power. Section 4217.12 also requires a public agency to make a determination that this is in the best interest of the public agency after considering public comments at a scheduled public hearing.

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SOLAR ENERGY PROJECT, CIP GG 19-10**

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A PPA allows the City to pay for electricity that is generated by the solar power provider at a fixed price with an escalator over the term of the PPA (25 years). The benefits of a PPA include: no upfront costs, no capital outlay required, no debt, maintenance costs and responsibilities are covered by the system provider, and an option to "buy-out" the Solar Power Provider after 7, 10, 15, or 25 years.

In October of 2018, TerraVerde issued a Request for Proposal (RFP) for Phase 2 of the Solar Energy Project pursuant to Government Code Section 4217.12 for installation, procurement, and financing for the three previously approved City facilities (City Hall, Community Center/Senior Center, and the South Harlan Road Storm Drain Basin). The RFP included the following evaluation criteria: suitability and creativity, cost and value, client references, financial wherewithal, project team, construction site safety plan, project management and execution, corrective maintenance, warranties and clarity/ completeness.

After extensive qualitative and technical evaluations and a valuable engineering review of the respondents' proposals, TerraVerde recommended that the City should consider General Electric International, Inc.'s solar energy system based on:

1. Lowest power price cost which equates to a 1st year's cost savings of \$48,000 for the first year and \$4,154,768 for the 25 year projected life of the installation
2. The power price escalator at 0.0%
3. System buy-out cost of \$2,684,360 for all 3 sites in Year 7
4. General Electric International, Inc., project execution capability
5. General Electric International, Inc., bid meets the Minimum Bid Criteria, and the requirements of California Government Code Section 4217.12

City staff concurred with TerraVerde's evaluation and review of the proposals and, with TerraVerde's assistance, entered into discussions with General Electric International, Inc. on the terms and conditions of the PPA and the project easements. City staff and TerraVerde have concluded their review and discussions of the agreements with General Electric International, Inc., and are now ready to present the agreements for consideration by the City Council.

Prior to approving the PPA, the City Council must fulfill two requirements under Government Code section 4217.12:

- 1) Find that the anticipated cost to the City of Lathrop for thermal or electrical energy or conservation services provided by the Project under the PPA will be less than the anticipated marginal cost to the City of Lathrop of thermal, electrical, or other energy that would have been consumed by City of Lathrop in the absence of those purchases. Based on the Cash Savings Pro Forma that TerraVerde has provided the City of Lathrop, there is support for this finding (see Attachment B).
- 2) Hold a regularly scheduled public hearing on the PPA Public Hearing Notice, of which must be given at least two weeks prior to the public hearing. The notice of the public hearing was posted on February 25, 2019.

In addition, City staff has evaluated this project pursuant to CEQA and is recommending that this project be considered exempt from the requirements of CEQA pursuant to Public Resources Code, section 21080.35 for installation of a solar energy system and pursuant to CEQA class 11 exemption.

REASON FOR RECOMMENDATION:

In 2012, City Council approved the creation of the Phase 1 Solar Energy Project CIP 12-14 to fulfill a long-standing City goal to conserve energy and produce future cost savings for the City's general fund and utility ratepayers.

FISCAL IMPACT:


All City costs associated with this project including, but not limited to, legal, inspections, contingencies, labor compliance, and TerraVerde's fees are reimbursed by the Solar Power Provider through the Power Purchase Agreement (PPA). Furthermore, this project anticipates generating fiscal savings to the City's funds and ratepayers in the amount of approximately \$166,000 annually.

ATTACHMENTS:

- A. Resolution Adopting the Energy Cost Savings findings and entering into a Solar Power Purchase Agreement, Solar Utility Easements with General Electric International, Inc., authorizing filing a CEQA Notice of Exemption and Creating CIP GG 19-10
- B. Pro-Forma Feasibility Study dated February 27, 2019
- C. Solar Power Purchase Agreement by and between General Electric International, INC., and City of Lathrop dated March 11, 2019
- D. Solar Power Easement Agreements
- E. CEQA Notice of Exemption for Three (3) City sites

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MARCH 11, 2019 CITY COUNCIL REGULAR MEETING
SOLAR ENERGY PROJECT, CIP GG 19-10**

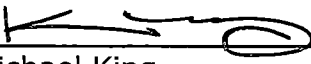
APPROVALS:



Ken Reed
Senior Construction Manager

3-5-2019

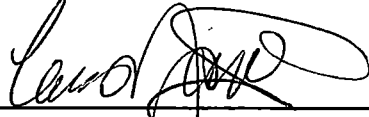
Date



Michael King
Assistant Public Works Director

3-6-19


Date



Cari James
Administrative Services &
Finance Director

3/6/19

Date



Salvador Navarrete
City Attorney

3.5-19

Date



Stephen J. Salvatore
City Manager

3.7.19

Date

RESOLUTION NO. 19-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LATHROP
ADOPTING THE ENERGY COST SAVINGS FINDINGS AND ENTERING INTO A
SOLAR POWER PURCHASE AGREEMENT, SOLAR UTILITY EASEMENTS WITH
GENERAL ELECTRIC INTERNATIONAL, INC., AUTHORIZING FILING A CEQA
NOTICE OF EXEMPTION AND CREATING CIP GG 19-10**

WHEREAS, it is the policy of the State of California and the intent of the State Legislature to promote all feasible means of energy conservation and all feasible uses of alternative energy supply sources; and

WHEREAS, the City of Lathrop ("City") desires to reduce the steadily rising costs of meeting the energy needs at its facilities; and

WHEREAS, TerraVerde Energy, LLC ("TerraVerde"), has provided the City with analysis showing the benefits of implementing certain energy conservation measures through the installation of certain solar photovoltaic systems, and TerraVerde's analysis ("Analysis") is attached as Attachment "3" to the City Council Staff Report of March 11, 2019, and made part hereof by this reference; and

WHEREAS, the City proposes to enter into a Power Purchase Agreement and related contract documents ("Power Purchase Agreement") with General Electric International, Inc. ("Provider"), pursuant to which Provider will design, construct, install, maintain, and operate on City property certain energy-saving improvements consisting of solar photovoltaic facilities and arrange with the local utility for interconnection of the facilities, which will generate energy for the sites on which such facilities are located; and

WHEREAS, the sites where such solar photovoltaic facilities ("Project") will be located are: City Hall, Community Center, and the Christopher Way; and

WHEREAS, the Analysis includes data showing that the anticipated cost to the City for the electrical energy provided by the Project will be less than the anticipated marginal cost to the City of electrical energy that would have been consumed by the City in the absence of those purchases; and

WHEREAS, the City proposes to enter into the Power Purchase Agreement substantially in the form presented at this meeting, subject to such changes, insertions or omissions as the City Manager or their designee reasonably deem necessary and approved as to form by City Attorney, following the City's adoption of this Resolution; and

WHEREAS, pursuant to Government Code section 4217.12, the City has held a public hearing, public notice of which was given at least two weeks in advance, to receive public comment; and

WHEREAS, the City's proposed approval of the Power Purchase Agreement whereby Provider is required to perform the Project is a project for purposes of the California Environmental Quality Act ("CEQA"); and

WHEREAS, the Guidelines for CEQA, California Code of Regulations Title 14, Chapter 13 ("State CEQA Guidelines"), exempt certain projects from further CEQA evaluation, including the following: (1) projects consisting of the new construction or conversion of small structures ("Class 3 Exemption"; Cal. Code Regs., tit. 14, § 15303); (2) projects consisting of the construction or placement of minor accessory structures to existing facilities ("Class 11 Exemption"; Cal. Code Regs., tit. 14, § 15311); and (3) projects consisting of minor additions to existing schools ("Class 14 Exemption"; Cal. Code Regs., tit. 14, § 15314), and the Project is categorically exempt under one or more of such exemptions; and

WHEREAS, the Project does not involve any of the following and so are eligible for a categorical exemption as described above under State CEQA Guidelines section 15300.2:

- (a) the cumulative impact of successive projects of the same type in the same place, which over time are significant;
- (b) an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances;
- (c) a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway;
- (d) a hazardous waste site which is included on any list compiled pursuant to Section 65962.5 of the Government Code; and
- (e) a project which may cause a substantial adverse change in the significance of a historical resource; and

WHEREAS, Public Resources Code section 21080.35 (added by Stats. 2011, c. 469 (S.B.226), § 3), statutorily exempts from CEQA evaluation the installation of a solar energy system, including associated equipment, on the roof of an existing building or at an existing parking lot; and

WHEREAS, the portions of the Project to be installed at an existing parking lot do not involve either of the following and so are eligible for the statutory exemption of Public Resources Code section 21080.35 (added by Stats.2011, c. 469 (S.B.226), § 3):

- (a) the removal of a tree required to be planted, maintained, or protected pursuant to local, state, or federal requirements, unless the tree dies and there is no requirement to replace the tree; or
- (b) the removal of a native tree over 25 years old.

NOW, THEREFORE, BE IT RESOLVED, based upon the above-referenced recitals, the City hereby finds, determines and orders as follows:

1. The City finds that the terms of the Power Purchase Agreement are in the best interests of the City.
2. In accordance with Government Code section 4217.12, and based on data provided by the Analysis, the City finds that the anticipated cost to the City for electrical energy provided by the Project under the Power Purchase Agreement will be less than the anticipated marginal cost to the City of electrical energy that would have been consumed by the City in the absence of those purchases.
3. The City hereby approves the Power Purchase Agreement, which shall be subject to such changes, insertions or omissions as the City Manager or their designee reasonably deems necessary.
4. The City Manager or designee is hereby authorized and directed to negotiate any further changes, insertions, and omissions to the Power Purchase Agreement and related easements as they reasonably deem necessary, and thereafter to execute and deliver the Power Purchase Agreement following the City's adoption of this Resolution. The City Manager or designee is further authorized and directed to execute and deliver any papers, instruments, opinions, certificates, affidavits and other documents and to do or cause to be done any and all other acts and things necessary or proper for carrying out this resolution and said agreements.
5. The Project is hereby found to be exempt from the requirements of CEQA pursuant to the Class 3, Class 11 and Class 14 Exemptions, as described above.
6. The Project is hereby found to be exempt from the requirements of CEQA pursuant to Public Resources Code section 21080.35 (added by Stats.2011, c. 469 (S.B.226), § 3), as described above.
7. City staff is hereby authorized and directed to file and process a Notice of CEQA Exemption for the Project in accordance with CEQA and the State CEQA Guidelines, and the findings set forth in this resolution.

PASSED AND ADOPTED by the City Council of the City of Lathrop this 11th day of March 2019, by the following vote:

AYES:

NOES:

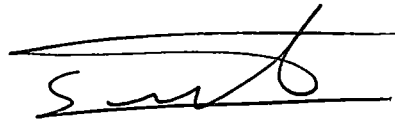
ABSENT:

ABSTAIN:

Sonny Dhaliwal, Mayor

ATTEST:

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to read 'S. Navarrete', is written over a horizontal line.

Teresa Vargas, City Clerk

Salvador Navarrete, City Attorney

TerraVerde ENERGY

City of Lathrop



Pro Forma Feasibility Study

Scenarios Included in this Pro Forma:

#1 - NEM 2.0: Power Purchase Agreement

Cash Flow

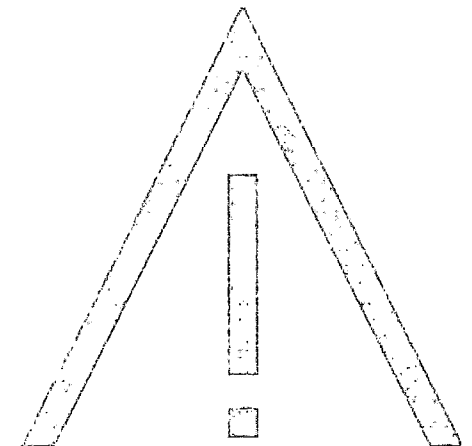


Project: City of Lathrop
 Scenario: #1 - NEM 2.0: Power Purchase Agreement

Year	Electricity	Utility Savings	Expenses	Net Savings	Term					
	Annual Solar Production (kWh)	Solar Savings per kWh Produced	Savings from Solar	Subtotal: Annual Gross Benefits	PPA Payments	Asset Management Service	Subtotal: Annual Operating Expenses	Net Benefits (Solar)	Cumulative Net Benefits	
2019	-	\$-	\$-	\$-	\$-	\$-	\$-	\$-	\$-	0
2020	2,738,765	\$ 0.1368	\$ 374,632	\$ 374,632	\$ (299,073)	\$ (27,388)	\$ (326,461)	\$ 48,172	\$ 48,172	1
2021	2,725,071	\$ 0.1409	\$ 383,942	\$ 383,942	\$ (297,578)	\$ (28,209)	\$ (325,787)	\$ 58,155	\$ 106,327	2
2022	2,711,446	\$ 0.1451	\$ 393,483	\$ 393,483	\$ (296,090)	\$ (29,056)	\$ (325,145)	\$ 68,338	\$ 174,664	3
2023	2,697,889	\$ 0.1495	\$ 403,261	\$ 403,261	\$ (294,609)	\$ (29,927)	\$ (324,537)	\$ 78,724	\$ 253,389	4
2024	2,684,399	\$ 0.1540	\$ 413,282	\$ 413,282	\$ (293,136)	\$ (30,825)	\$ (323,961)	\$ 89,321	\$ 342,710	5
2025	2,670,977	\$ 0.1586	\$ 423,552	\$ 423,552	\$ (291,671)	\$ (31,750)	\$ (323,420)	\$ 100,132	\$ 442,841	6
2026	2,657,622	\$ 0.1633	\$ 434,078	\$ 434,078	\$ (290,212)	\$ (32,702)	\$ (322,915)	\$ 111,163	\$ 554,004	7
2027	2,644,334	\$ 0.1585	\$ 419,211	\$ 419,211	\$ (288,761)	\$ (33,683)	\$ (322,445)	\$ 96,766	\$ 650,770	8
2028	2,631,112	\$ 0.1633	\$ 429,628	\$ 429,628	\$ (287,317)	\$ (34,694)	\$ (322,011)	\$ 107,617	\$ 758,387	9
2029	2,617,957	\$ 0.1682	\$ 440,304	\$ 440,304	\$ (285,881)	\$ (35,735)	\$ (321,616)	\$ 118,689	\$ 877,076	10
2030	2,604,867	\$ 0.1732	\$ 451,246	\$ 451,246	\$ (284,451)	\$ (36,807)	\$ (321,258)	\$ 129,988	\$ 1,007,063	11
2031	2,591,843	\$ 0.1784	\$ 462,459	\$ 462,459	\$ (283,029)	\$ (37,911)	\$ (320,940)	\$ 141,519	\$ 1,148,583	12
2032	2,578,884	\$ 0.1838	\$ 473,951	\$ 473,951	\$ (281,614)	\$ (39,048)	\$ (320,662)	\$ 153,289	\$ 1,301,872	13
2033	2,565,989	\$ 0.1893	\$ 485,729	\$ 485,729	\$ (280,206)	\$ (40,220)	\$ (320,426)	\$ 165,303	\$ 1,467,175	14
2034	2,553,159	\$ 0.1950	\$ 497,800	\$ 497,800	\$ (278,805)	\$ (41,426)	\$ (320,231)	\$ 177,568	\$ 1,644,743	15
2035	2,540,393	\$ 0.2008	\$ 510,170	\$ 510,170	\$ (277,411)	\$ (42,669)	\$ (320,080)	\$ 190,090	\$ 1,834,833	16
2036	2,527,691	\$ 0.2068	\$ 522,848	\$ 522,848	\$ (276,024)	\$ (43,949)	\$ (319,973)	\$ 202,874	\$ 2,037,708	17
2037	2,515,053	\$ 0.2131	\$ 535,840	\$ 535,840	\$ (274,644)	\$ (45,268)	\$ (319,911)	\$ 215,929	\$ 2,253,637	18
2038	2,502,478	\$ 0.2194	\$ 549,156	\$ 549,156	\$ (273,271)	\$ (46,626)	\$ (319,896)	\$ 229,260	\$ 2,482,896	19
2039	2,489,965	\$ 0.2260	\$ 562,802	\$ 562,802	\$ (271,904)	\$ (48,024)	\$ (319,929)	\$ 242,874	\$ 2,725,770	20
2040	2,477,516	\$ 0.2328	\$ 576,788	\$ 576,788	\$ (270,545)	\$ (49,465)	\$ (320,010)	\$ 256,778	\$ 2,982,548	21
2041	2,465,128	\$ 0.2398	\$ 591,121	\$ 591,121	\$ (269,192)	\$ (50,949)	\$ (320,141)	\$ 270,980	\$ 3,253,529	22
2042	2,452,802	\$ 0.2470	\$ 605,811	\$ 605,811	\$ (267,846)	\$ (52,478)	\$ (320,324)	\$ 285,487	\$ 3,539,016	23
2043	2,440,538	\$ 0.2544	\$ 620,865	\$ 620,865	\$ (266,507)	\$ (54,052)	\$ (320,559)	\$ 300,306	\$ 3,839,322	24
2044	2,428,336	\$ 0.2620	\$ 636,294	\$ 636,294	\$ (265,174)	\$ (55,673)	\$ (320,848)	\$ 315,446	\$ 4,154,768	25
	64,514,215	\$ 0.1891	\$ 12,198,254	\$ 12,198,254	\$ (7,044,952)	\$ (998,534)	\$ (8,043,486)	\$ 4,154,768	\$ 4,154,768	

Disclaimers and Assumptions

- 1) Projections of future savings are calculated based on patterns of previous electricity usage with billing data from July 2018, and assume that historical usage patterns hold at the same level over the life of the project.
- 2) Projections based on stated assumptions. Final solar project size and costs will be based on site audit results.
- 3) PG&E is in the process of developing new definitions for time of use periods and the associated rate schedules in their 2017 general rate case. The estimated impact to savings from this transition is reflected in this pro forma and uses rate schedule estimates proposed in the pending PG&E general rate case proceedings for grandfathered and post-grandfathering rate schedules (estimates are based on the PG&E settlement case). Proposed TOU rate schedules will be validated when the PG&E rate case is finalized which is anticipated in early 2019.
- 4) Projections are subject to tariff eligibility over the life of the installation. This analysis uses PG&E rates published January 2019.
- 5) This analysis assumes the electrical service will not require significant upgrades. Possible interconnection upgrade costs may be incurred as a result of the solar interconnection. Final determination on upgrade costs will be based on the final Supplemental Review reported by PG&E once available.
- 6) Projections are based on interconnection of all sites under NEM 2.0 tariff. Remaining capacity under NEM 2.0 is subject to availability.
- 7) Net Operating Benefit does not include repayment of any client capital that may be invested.
- 8) NEM-A analysis assumes the client solely owns contiguous parcels where the benefitting meters exist.
- 9) PPA contracts are for 20 years. Savings shown beyond year 20 are subject to change based on an extension with the provider and a renegotiated PPA price.
- 10) NEM projects are grandfathered for 20 years. Savings shown beyond year 20 are subject to change based on future NEM structure.
- 11) Some meters included in this portfolio are recommended to switch to a lower-tiered tariff than currently assigned by PG&E. This rate switch needs to be confirmed with the utility.
- 12) Only 10 months of electricity usage data is available for the Christopher Way meter. The remaining 2 months were estimated by averaging values from the 10 months provided.
- 13) Christopher Way usage has been increased by 100% in order to capture projected load growth. This increase provides a more accurate projection of solar savings.



SOLAR POWER PURCHASE AGREEMENT

by and between

GENERAL ELECTRIC INTERNATIONAL, INC.

and

CITY OF LATHROP

dated

March 11, 2019

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SOLAR POWER PURCHASE AGREEMENT

This Solar Power Purchase Agreement (“Agreement” or “PPA”) is made and entered into as of this 11th day of March, 2019, (“Effective Date”), between General Electric International, Inc., a Delaware corporation (“Provider”), and the City of Lathrop (“City”). City and Provider are collectively referred to herein as “Parties” and individually as “Party.”

RECITALS

WHEREAS, Provider is in the business of installing and operating solar power facilities and selling electric energy generated from such facilities;

WHEREAS, California Government Code section 4217.10 *et seq.* provides that public agencies may enter into an agreement, including but not limited to, lease agreements, for real property upon which alternative energy facilities may be constructed so that the public agency may purchase the energy generated from the facilities constructed on the real property under a power purchase agreement; and

WHEREAS, the governing body of the City has made those findings required by Section 4217.12 of the California Government Code that: (1) the anticipated cost to the City for electrical energy services provided by the solar panel system under this Agreement will be less than the anticipated marginal cost to the City of electrical energy that would have been consumed by the City in the absence of those purchases and (2) the difference, if any, between the fair market value of the right to access and occupy the real property subject to this Agreement and related payments under this Agreement, if any, is anticipated to be offset by below-market energy purchases or other benefits provided under this Agreement; and

WHEREAS, City desires to reduce its energy costs as well as its dependence on fossil fuel electric generating resources and to promote the generation of electricity from solar photovoltaic facilities; and

WHEREAS, Provider desires to design, install, own, maintain, and operate each solar photovoltaic system including all solar panels and equipment components of the solar system (each a “Solar Facility” and collectively the “Solar Facilities”) on the Site(s) owned by the City, and Provider shall sell the output from the Solar Facilities to City at those rates set forth herein (collectively the “Project”); and

WHEREAS, Provider has developed an ownership and financing structure for the Solar Facilities, which facilitates the use of certain tax incentives, and accelerated depreciation to reduce the expected investment returns of its investors, and which benefits City by offering a competitive Power Price, as defined herein; and

WHEREAS, City desires to provide Provider an Easement for the sole purpose of accessing City’s property to install, operate, maintain and repair a Solar Facility; and

WHEREAS, as part of this PPA and in consideration of the Easement, Provider and City intend that Provider would obtain title, an ownership interest, and retain all financial incentives and tax benefits generated by the Solar Facility and associated with the development of Solar Facility, including the installation, ownership and operation of the Solar Facility and the sale of energy from the system to the City.

NOW, THEREFORE, in consideration of the promises and the mutual benefits from the covenants hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Provider and City hereby agree as follows:

AGREEMENT

1. Definitions.

Capitalized terms used in this Agreement shall have the meanings ascribed to them herein or in the attached Exhibit A.

2. Term.

A. Term. The term of this Agreement shall commence upon the Effective Date and terminate on the Expiration Date (“Initial Term”). The Parties may agree, in a writing signed by both Parties prior to the end of the then effective Term (Initial Term and first Renewal Term) to renew this Agreement for up to two (2) five-year renewal terms (each a “Renewal Term”). The Initial Term and all subsequent Renewal Terms are referred to collectively as “Term.” This Agreement shall terminate as to a Site concurrently with any termination of the Site Easement provided by this Agreement.

3. Removal of Solar Facilities

A. Removal of Solar Facilities. Within one hundred eighty (180) Days of the expiration or any termination of this Agreement (unless City has: (i) purchased the Solar Facilities under the terms of this Agreement; or (ii) otherwise consented in writing to allowing the Solar Facilities to remain installed on the Site(s)), Provider shall, in coordination with City and at Provider’s sole cost and expense except as provided otherwise herein, remove the Solar Facilities from the Site(s) in accordance with Section 3.B. Provider shall bear the cost of any required storage of the Solar Facilities if necessary, during Provider’s removal of the Solar Facilities.

B. Removal and Site Restoration. Removal of a Solar Facility shall include all installed equipment, including, but not limited to, the Solar Facility and all tangible and structural support materials, as well as all appurtenant equipment, above ground. Provider shall not be required to remove (i) any, anchors, penetrations, conduits or other similar ancillary equipment below grade which were installed by Provider if, in Provider’s reasonable judgment, the removal of such supports, anchors, penetrations, conduits or other similar ancillary equipment would cause harm and damage to the Site, and (ii) any underground foundations or underground or buried conduits and cabling installed by Provider on or about the Site. Provider shall additionally restore the Site(s) to a condition substantially similar to the pre-installation condition of the Site(s), excluding ordinary wear and tear, through reasonable efforts. Provider

shall undertake any repairs necessary as a result of such removal and restoration. The Parties shall reasonably coordinate all such removal, restoration, storage and transportation activities and dates.

C. Failure to Remove. If Provider fails to comply with this Section 3 and remove the Solar Facility and restore the Site as required within such one-hundred and eighty (180) day period, City shall have the right, but not the obligation, to remove the Solar Facility and restore the Site and charge Provider for all reasonable costs incurred by City plus a fifteen percent (15%) administration fee. The Parties shall reasonably coordinate all such removal and pick-up activities. The Provider will shut down the Solar Facility upon termination.

4. Purchase and Sale of Output.

A. Purchase and Sale of Output. Beginning on the Commercial Operation Date and through the remainder of the Term, Provider agrees to sell, and City agrees to buy Output from the Solar Facility at the applicable Power Price as set forth on Exhibit B. Provider shall have no obligation to deliver Output from the Solar Facility after the Expiration Date of the Agreement or the earlier termination thereof. City shall have no obligation to pay for Output delivered from the Solar Facility after the Expiration Date of this Agreement or the early termination thereof.

B. Provider guarantees during the Initial Term for each Measurement Period that, the aggregate metered Output plus any Excused Production Losses, as set forth below (the “Adjusted Production”), from each Solar Facility for such Measurement Period shall be at least ninety-five percent (95%) of the Estimated Period Production, set forth on Exhibit F, for the corresponding Measurement Period, (the “Guaranteed Production”); *provided*, the Guaranteed Production for any Measurement Period will be reduced by the estimated generation of the Solar Facility that would have been generated during such Measurement Period, but was not generated, due to a breach of this Agreement by City.

C. Failure to Meet the Guaranteed Production. If the Adjusted Production during any Measurement Period does not equal or exceed the Guaranteed Production for such Measurement Period, Provider shall include in its next invoice(s) to City a credit for the Energy Shortfall Amount. Alternatively, the City has the option to request that the Energy Shortfall Amount be paid by check independently of an invoice. The Parties agree that the payment set forth in this paragraph is City’s sole and exclusive remedy and Provider’s sole and exclusive liability for failure of the Solar Facility to meet the Guaranteed Production, and that such payment is reasonable. Any overproduction in excess of 97% of the Estimated Period Production in one Measurement Period shall cummlate and carry over as a benefit to subsequent Measurement Periods.

D. Excused Production Losses

Excused Production Losses shall include:

1. Force Majeure events: Lost production from the beginning of a Force Majeure until production limiting factors caused by the Force Majeure have been remedied.
2. Grid Event: Lost production when a fluctuation in the Grid frequency or voltage causes the inverters or the Solar Facility to disconnect from the Grid,. The “Grid” is defined to be the system receiving power exported from the Solar Facility.

3. **Grid Outage:** Lost production when a failure in the Grid or Interconnection Infrastructure prevented energy from being exported from the Solar Facility. “Interconnection Infrastructure” means that utility-owned and maintained interconnection equipment (the substation including but not limited to transformers, switches, and protective relays) that is used to connect the Facility to the Grid. Any Grid operator/owner ordered curtailments of the Solar Facility for any reason, other than an issue in the Solar Facility, is a Grid Outage.
4. **New Sources of Shading or Soiling:** Lost production due to shade cast on the solar panels from structures, vegetation planted outside of the array footprint, or other objects and or new sources of soiling not present when the Solar Facility was designed.
5. **City Caused:** Lost production when Solar Facility DC capacity is off-line due to outages attributable to City’s decision to perform or cause to be performed, any investigations, studies, operations, construction, installation and maintenance work or other activities.
6. **Outages under Section 4. H** where a payment was made to City.
7. **Temporary Suspensions by Provider** pursuant to Section 11.E where a payment was made to City.

E. Warranty Disclaimer. OTHER THAN AS EXPRESSLY STATED HEREIN, CITY ACKNOWLEDGES THAT PROVIDER MAKES NO WARRANTY HEREUNDER, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, AND CITY WAIVES ALL SUCH WARRANTIES.

F. Resale of Output. If at any time during the term of this Agreement, City reduces its demand load requirements for Output or otherwise determines that the Distribution Utility or any other purchaser is willing to purchase Output from the Solar Facilities, City, at its option, may sell Output to the Distribution Utility or any other purchaser. If applicable and required by law, City may also request that Provider enter into negotiations with City to pursue a third-party sale agreement. Upon such request, (i) Provider and City shall negotiate in good faith regarding the terms and conditions of the third-party sale agreement; (ii) City shall pay for all costs and expenses incurred by the Provider, including legal fees and (iii) the Power Price shall not be adjusted as a result of any third-party sale. The City may not make any third-party sale if such sale characterizes Provider as a reseller of energy requiring any regulatory action or regulatory requirements or subjects Provider to liability to a Governmental Authority or other party as a reseller of energy.

G. Net Metering, Credits and Storage of Output. Nothing in this Agreement shall limit the City's ability during the Term to participate in or otherwise take advantage of any current or future program or technology which may enable to the City to store Output at any Site or to export Output to any City site or to the Distribution Utility for any available energy credits or offsets at the City's sole cost. The City will give reasonable notice to Provider of its intention to undertake any such project or program, and will coordinate with the Provider to ensure that the Solar Facilities, the terms and conditions of this Agreement and all associated warranties are fully preserved. Furthermore, any such undertaking shall (i) be at no cost to the Provider; (ii) not require any modifications to the Solar Facility unless City is willing to pay for such modifications and (iii) not interfere with the Insolation to the Solar Facility.

H. Outages. Provider may suspend delivery of Output as reasonably necessary for testing, maintaining, replacing and repairing the Solar Facility, or in response to any Distribution Utility directive or dispatch order (an "Outage"). Provider shall take commercially reasonable steps necessary to minimize the duration and scope of any such Outage. In the event that an Outage is caused or prolonged by Provider's negligent act or omission, Provider shall compensate City for the difference between the electricity cost as provided by the Distribution Utility for the applicable period and the Power Price for each 15-minute interval that the Power Price is less than the electricity cost provided by the Distribution Utility. In such event, Provider shall provide the calculation and supporting documentation for determining these amounts, to the reasonable satisfaction of the City. Except as set forth herein, City waives claims related to City's costs of purchasing energy to replace what would have been produced by the Solar Facility but for such Outages, along within any associated net metering, or similar, benefits. If an Outage occurs under this Section and a payment is due from Provider to City, Provider shall include in its next invoice(s) to City (and in the final invoice for any credit owed for the final Contract Year) a credit for the difference between the electricity cost as provided by the Distribution Utility to the City for the applicable period.

I. Adjustments to Power Price. The Parties acknowledge that the Power Price set forth on Exhibit B is based on certain assumptions by Provider, and that the Power Price may, only for the specific assumptions noted below prove to be inaccurate, require an adjustment to the Power Price following the Effective Date, as follows:

1. Distribution Utility Upgrades. Provider assumed that the total amount of upgrades to be required by Distribution Utility and the Sites electrical system upgrades (the "Upgrades") in connection with the Project would not exceed \$160,734 if the actual cost reasonably incurred by Provider for the Upgrades exceeds \$160,734, then Provider shall be entitled to a proportionate increase of the Power Price in an amount of \$0.00045/kWhac for each additional \$10,000 increase in cost. If the actual cost reasonably incurred by Provider for the Upgrades is less than \$160,734, City shall be entitled to a proportionate decrease of the PPA rates in an amount of \$0.00045/kWhac for each \$10,000 decrease in cost. Prior to exceeding the \$160,734, Provider shall notify the City of the necessity of such additional upgrades and the estimated amount for such additional upgrades; and,

2. Site Electric System Upgrades. Provider shall undertake commercially reasonable efforts to assess the Site electrical system for compatibility with the Solar Facility prior to Notice to Proceed. To the extent any subsequent upgrade to such Site electrical system is required, Provider shall cause such upgrades to occur and the cost shall be allocated as set forth in Section 4.I.1. above. To the extent applicable to the Project, prior to the start of construction of the Solar Facilities, Provider shall use commercially reasonable efforts to assist City in selection of equipment required or desired on City's side of any Delivery Point.

J. Distribution Utility Electric Service. City may take parallel energy services from Distribution Utility at each Site.

K. Insolation. City agrees that access to sunlight ("Insolation") is essential to Provider's ability to provide the projected output and is a material inducement to Provider in entering into this Agreement. Accordingly, City shall not permit any interference with Insolation available to the Solar Facilities. If City becomes aware of any potential development, foliage or trees, or other activity on adjacent or nearby properties that will diminish the Insolation to the Sites or the Solar Facilities, City shall advise Provider of such information and reasonably cooperate with Provider in reasonable measures taken by Provider in an attempt to preserve existing levels of Insolation at the Sites and the Solar Facilities.

5. Construction, Operation & Maintenance.

A. Provider's Contractor. Provider shall ensure that any party contracting with Provider for any engineering, procurement, design, installation or construction of the Solar Facilities shall possess sufficient knowledge, experience, expertise, licensing, and financial capacity and creditworthiness necessary for satisfactory completion of Provider's obligations under this Agreement. The contractor performing the construction work on the Project shall possess a Class B and C-10 California Contractor State License, and all other required licenses for performing work under this Agreement, prior to performing any work on the Project. Prior to contracting with any such party, Provider shall obtain and review the qualification of such party and complete any necessary background check or fingerprinting required by law or the City. Provider shall further procure from contractor performance and payment bonds and any other assurances as Provider deems reasonably necessary to secure contractor's timely completion of the Solar Facilities.

B. Permits.

1. Provider shall be solely responsible for ensuring that each Solar Facility are constructed in compliance with all applicable laws, regulations and Permits, and in accordance with the standards set by any governmental program providing funding for each Solar Facility, including, but not limited to, all improvements, conditions and mitigation measures required for compliance with the California Environmental Quality Act (“CEQA”) and the Americans with Disabilities Act (“ADA”). Provider shall, at Provider’s sole cost and expense, obtain from all Authorities having Jurisdiction over the Solar Facility, all necessary Governmental Approvals and other Permits and approvals required for the installation, operation and maintenance of the Solar Facility, including, but not limited to fire safety, California Occupational Safety and Health Administration (“OSHA”), utility interconnection, right-of-way permits, easement agreements and other related requirements.
2. To the extent action is required by City, City shall, upon the request of Provider, use reasonable efforts to assist Provider in obtaining and retaining Permits, licenses, releases and other approvals necessary for the design, construction, engineering, installation, operation and maintenance of the Solar Facility. Provider shall reimburse City for costs reasonably incurred by City in assisting the Provider under this Section. Provider shall be responsible for all costs, expenses and improvements to the extent required to obtain or comply with any permits, Government Approvals or other requirement under state or federal law made necessary as a result of the Solar Facility installation, operation and maintenance. Specifically, the Provider is required to obtain and submit all documents to close out the Solar Facility with the Authorities having Jurisdiction over the Solar Facility. In addition to stamped and approved plans, Provider shall provide any required installation compliance confirmation letter(s) to any applicable Governmental Authorities.

C. Costs Due to Unexpected Site Conditions. If, after Provider has conducted reasonable due diligence and inspection of the Site, Provider incurs material additional costs to re-design, construct, install or maintain the Solar Facility due to (i) unforeseen conditions at the Site, (ii) unforeseen groundwork at the Site (including, but not limited to, excavation/circumvention of underground obstacles), or (iii) Hazardous Substances (as defined in Section 17.C) at the Site, then Parties may agree to (1) make an equitable adjustment to the pricing, schedule and other terms of this Agreement to compensate Provider for the costs incurred from any work in excess of normally expected work required to be performed by Provider arising from such conditions, or (2) if Parties can not agree to an equitable adjustment to the Power Price, then Provider may terminate the Agreement with respect to such Site with no liability to either Party.

D. Notice of Output Interruptions. Each Party shall notify the other Party as soon as reasonably practicable following its discovery of any material malfunction of any Solar Facility or interruption in the supply of electricity from any Solar Facilities. Each Party shall designate and advise the other Party of personnel to be notified in the event of such a malfunction or interruption. Provider shall correct, or cause to be corrected, the conditions that caused the malfunction or interruption as soon as reasonably practicable. However, in no event shall Provider's response to investigate the problem and initiate appropriate corrective action be greater than 48 business hours, which may be (a) done remotely as appropriate, (b) performed on site, (c) scheduled for future visit, following receipt of notice or upon discovery of such malfunction or interruption. In addition, Provider shall remotely monitor the entire system on a daily basis for the presence of alarm conditions and general performance utilizing the data acquisitions systems and monitoring systems installed by the Provider at the Site(s), as described on Exhibit G.

E. Site Operations. In order to prevent any unreasonable disturbance or interruption of City's activities, Provider shall accommodate City's normal operations schedule and scope of activities conducted on the Site(s) during construction and on-going operation of the Solar Facilities pursuant to this Agreement. Parties agree that during construction the Provider requires uninterrupted access to the Site and laydown areas as agreed between the Parties which will be fenced in. Any requirement by the City to limit access and or move the fencing due to such City activities that cause a delay and the Provider shall be afforded an extension in the Project Schedule (as defined on Exhibit G) documented with a change order.

F. Operation and Maintenance of Solar Facilities. Provider shall be responsible for all operations, maintenance, and repair of the Solar Facilities, except to the extent that any maintenance or repair is made necessary by the negligent acts or willful misconduct of the City, its agents, contractors, subcontractors, vendors or employees. All maintenance, repairs and operations, shall be conducted in the manner set forth in this Agreement, and Provider shall reasonably accommodate and cooperate with the City to ensure the City's activities, facility uses, and scheduling requirements are not unreasonably impeded. Except to the extent any repair is due to the negligent act or willful misconduct of City its agents, contractors, subcontractors, vendors or employees Provider's repair work shall be limited to, any repair required as a result of damage caused by the Provider or its contractors, subcontractors or vendors, negligent acts or willful misconduct to the City's facilities. Provider is responsible for repairs and/or replacement of system components to the Solar Facility that are damaged from vandalism, theft or criminal activity except to the extent caused by the City, its agents, contractors, subcontractors, vendors or employees.

G. Prevailing Wages.

1. This Project is subject to compliance with the prevailing wage provisions of the California Labor Code including but not limited to Labor Code 1720.6 and the prevailing wage rate determinations of the Department of Industrial Relations. These rates are on file at the City's main office at the address or may be obtained online at <http://www.dir.ca.gov/dlsr>. A copy of these rates shall be posted at the job site by Provider. Provider and all contractors and subcontractor(s) under it, shall comply with all applicable Labor Code provisions, which include, but are not limited to the payment of not less than the required prevailing rates to all workers employed by them in the execution of this PPA and the employment of

apprentices and submission of certified payroll to the City. Provider hereby agrees to indemnify and hold harmless the City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with any applicable Labor Code provisions arising out of or in connection with the Project.

2. The Provider, its contractor(s) and subcontractor(s) shall keep or cause to be kept an accurate record for work on this Project showing the names, addresses, social security numbers, work classification, straight time and overtime hours worked and occupations of all laborers, workers and mechanics employed by them in connection with the performance of this Agreement or any subcontract thereunder, and showing also the actual per diem wage paid to each of such workers, which records shall be open at all reasonable hours to inspection by the City, its officers and agents and to the representatives of the Division of Labor Law Enforcement of the State Department of Industrial Relations.
3. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations in accordance with the provisions of Sections 1725.5, 1771.1, 1771.3, 1771.4, 1771.5, and 1771.7 of the Labor Code. This requirement applies regardless of whether the Project will use State funds. Pursuant to Labor Code section 1771.1, for any proposal submitted, or any contract for public work entered into, a contractor or subcontractor shall not be qualified to bid on, be listed in a proposal (subject to the requirements of Section 4104 of the Public Contract Code), or engage in the performance of any contract for public work, as defined by Division 2, Part 7, Chapter 1 (§§ 1720 et seq.) of the Labor Code, unless currently registered and qualified to perform public work pursuant to Section 1725.5 of the Labor Code. Provider shall post all required job site notices pursuant to the Labor Code and related regulations. Provider shall ensure that, to the extent required by law, that Provider and its contractors and subcontractors maintain current and ongoing registration status with the Department of Industrial Relations.
4. The Provider, its contractor(s) and subcontractor(s) shall submit records, including those specified in Labor Code Section 1776, to the Labor Commissioner as required by Sections 1771.4(a)(3), 1771.4(c)(2), and 1776 of the Labor Code. City may withhold \$100 for each calendar day after ten Days from Provider's receipt of a request to produce payroll records (as described in Labor Code §1776(a)) that Provider fails to produce such records.

6. Commercial Operation Date; Conditions Precedent; Notice to Proceed.

A. City's Conditions Precedent to Construction. Provider shall complete pre-construction activities relating to a Solar Facility as of the dates below or by the Construction Start Deadline if no date is indicated ("City's Construction Conditions Precedent"):

1. Prior to start of construction or any work on Site, Provider shall submit to City certificates of insurance and endorsements demonstrating compliance with the requirements defined in Section 17 of this Agreement.
2. Prior to the start of construction on Site, Provider shall submit to City a list of subcontractors, general scope, and contact information.

3. Within sixty (60) Days after the Effective Date, Provider shall undertake all commercially reasonable efforts to assess the capacity of the Distribution Utility facilities, including, but not limited to, the applicable transformer(s) and conductor(s) and provide a written assessment of such to the City.
4. Within sixty (60) Days after the Effective Date, Provider shall submit to City for approval a 90% completed design of the Solar Facility, a detailed construction and installation schedule and a detailed project safety plan. Provider's construction and installation schedule shall include start and completion dates for all categories of work on the Site, including but not limited to pre-construction activities, installation of major equipment and anticipated Site deliveries and all required submittal and procurement documentation.

B. Completion of City's Condition Precedent to Construction; Termination. If Provider is unable to timely complete any of the City Construction Conditions Precedent by the date indicated above and if the date is not indicated by the Construction Start Deadline, the City may, but is not required to, either (1) waive or extend such requirements in a written notice to Provider; or (2) terminate this Agreement with respect to the applicable Site without triggering the default provisions of this Agreement, including, but not limited to any default provision requiring the payment of the Termination Value, nor shall any such termination subject the City or Provider to any liability.

C. Provider's Conditions Precedent to Construction. Provider's obligations to install the Solar Facility and sell electric energy generated by the Solar Facility to the City are conditioned on the completion of the following conditions to Provider's reasonable satisfaction on or before the Construction Start Deadline:

1. Provider shall have completed a physical inspection of the Site including, if applicable, structural engineering and or geotechnical reviews as necessary to confirm the suitability of the Site for the Solar Facility;
2. Provider shall have received approval from Provider's financing parties of City and each of (i) this Agreement, (ii) the Real Property Documents as defined in Section 6.C.4. and (iii) the Construction Agreement (if any) for the Solar Facility. "Construction Agreement" as used in this subsection means an agreement between Provider and any contractor or subcontractor to install the Solar Facility;
3. If subsurface excavation is necessary for the Solar Facility, Provider shall have completed environmental due diligence with respect to the Site and such due diligence shall be to Provider's satisfaction;
4. Provider shall have received the Easement and any additional documents required thereunder (such documents together with the Easement, the "Real Property Documents") duly executed and delivered by City and any applicable third parties;
5. Provider shall have received results, satisfactory to Provider, of a recent search of City's jurisdiction of all effective UCC fixture and real property filings that have been made with respect to the Site;

6. Provider shall have obtained all necessary zoning, land use, environmental, building and other Permits from the applicable Governmental Authority necessary for Provider to perform its obligations under this Agreement;
7. Provider shall have executed all necessary agreements with the Distribution Utility for interconnection of the Solar Facility to the Site electrical system and/or the Distribution Utility's electric distribution system; and
8. Provider shall have received:
 - a. City's approval, in writing, of the Solar Facility design and, of material changes required by Governmental Authorities prior to the start of construction, if any, to the Solar Facility design specification set forth in Exhibit E;
 - b. Proof of insurance for all insurance required to be maintained by City under this Agreement; and
 - c. Written confirmation from any person holding a mortgage, lien or other encumbrance over the Site, or any portion thereof, that such person will recognize Provider's rights to the Solar Facility and under this Agreement and the applicable Easement.

D. If any of Provider's Conditions Precedent to Construction are not satisfied by the Construction Start Deadline, the Parties shall attempt in good faith to negotiate new dates for the satisfaction of the failed condition(s), or, if the Parties are unable to negotiate such new dates within thirty (30) days of Construction Start Deadline, then unless the conditions not then satisfied are waived in writing by Provider, Provider may terminate this Agreement with respect to the applicable Site upon ten (10) days written notice to the City, and neither Party shall have liability by reason of such termination.

E. As of the Effective Date, the City shall issue a notice to proceed to Provider ("Notice to Proceed"), authorizing Provider to proceed to complete the conditions precedent set forth above. Upon the timely satisfaction of the City's Construction Conditions Precedent, and Provider's Condition Precedent, the City shall promptly issue a Notice to Proceed to Provider, informing Provider that it may commence the construction of the Solar Facility on the Site. Provider shall not proceed with construction of the Solar Facility until it has received the Notice to Proceed, which shall not be unreasonably withheld, delayed or conditioned. As necessary, Provider shall promptly provide City with copies of all site assessments, received or generated by Provider in connection with this Agreement.

F. Construction; Commercial Operation. Promptly upon receipt of the Notice to Proceed from City, Provider shall commence construction of the Solar Facility and shall cause complete installation and start-up of Commercial Operation thereof on or before December 31, 2019 (the "Commercial Operation Deadline"). Prior to the Commercial Operation Deadline, Provider shall ensure that all necessary connections and equipment are installed in compliance with all applicable codes and standards, and that Provider has procured or caused the complete installation of all necessary equipment and protection devices to enable delivery of Output to the Delivery Point.

G. Commercial Operation.

1. The Commercial Operation Date shall occur on or before the Commercial Operation Deadline.
2. If Commercial Operation for a Solar Facility has not been achieved on or before the ninetieth (90th) day following the Commercial Operation Deadline, as may be extended by a Force Majeure or as mutually agreed to by the Parties (the “Outside Commercial Operation Date”), City may, but shall not be required to assess liquidated damages against Provider in an amount equal to \$500 for each calendar Day after the Outside Commercial Operation Date. (“Delay Liquidated Damages”) . Subject to clause 3 below the Parties agree that: (i) Delay Liquidated Damages is the City’s exclusive remedy and Provider’s sole liability for the damages resulting from Provider’s failure to meet the Outside Commercial Operation Date; (ii) are a reasonable pre-estimate of such damages City shall suffer as a result of delay based on circumstances existing at the time of this Agreement; and (iii) are to be assessed as liquidated damages and not as a penalty.
3. If Provider has not achieved Commercial Operation by the date that is six (6) months after the Commercial Operation Deadline, then either Party shall have the right to terminate this Agreement, and in such event the City’s sole and exclusive remedy and Provider’s sole and exclusive liability shall be the payment of Delay Liquidated Damages as provided above and the removal of the Solar Facility pursuant to Section 3.
4. Liquidated damages may also be applied to compensate the City for undue delays in the completion of punch list items, site clean-up, demobilization, and miscellaneous contractual obligations after Commercial Operation has been achieved. The cost to the City for administration, inspection, mileage, and other similar items would be extremely difficult to determine. For that reason, additional liquidated damages, known as “Administrative Delay Liquidated Damages” shall be imposed in the amount of \$250 per day, effective 60 days after Commercial Operation has been achieved for the applicable Solar Facility. Charges will be assessed until the City reasonably agrees that all outstanding work has been completed.

H. Extension of Commercial Operation Deadline. In addition to an extension due to a Force Majeure, Provider may request in writing an extension of the Commercial Operation Deadline. At the time of the request, Provider shall present City in writing with the reason for delay, confirmation that Commercial Operation shall commence within the requested extension time as well as valid and persuasive evidence demonstrating that the delay in achieving the Commercial Operation Deadline could not have been reasonably avoided by Provider. Provider’s written request must also state the date on which Provider reasonably believes Commercial Operation will be achieved following such extension.

F. Commercial Operation of Individual Sites. For the avoidance of doubt, when Solar Facilities are located on multiple unique Sites, Provider may, upon completion of the respective Solar Facility and all conditions precedent to Commercial Operation as applicable to an individual Site, including, but not limited to, obtaining approval from the Distribution Utility to operate the respective Solar Facility, provide and sell Output to the City through the Site’s Delivery Point utilizing the Contract Year 1 Power Price as set forth on Exhibit B.

G. Notice of Damage. Each Party shall promptly notify the other Party of any matters it is aware of pertaining to any damage to or loss of the use of any Solar Facility or that could reasonably be expected to adversely affect any Solar Facility.

7. Ownership of Solar Facilities, Output, Green Attributes and Environmental Financial Incentives.

A. Ownership of Solar Facilities. Title to the Solar Facilities shall remain with Provider during the Term unless and until City exercises its option to purchase the Solar Facilities as set forth herein. None of the Solar Facilities, including, but not limited to any components thereof may be sold, leased, assigned, mortgaged, pledged or otherwise alienated or encumbered by City. City shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, security interest, encumbrance or any other claim of any nature on or with respect to the Solar Facility or interest therein City shall promptly notify Provider in writing of the existence of any such exist any mortgage, pledge, lien, charge, security interest, encumbrance or any other claim and shall promptly cause the same to discharged and released of record without cost to Provider. Provider shall bear all risk of loss with respect to the Solar Facilities, except for losses arising from the negligence or willful acts or omissions by City or its agents, contractors, subcontractor, vendors or employees. Provider shall be solely responsible for the Solar Facility' operation and maintenance in compliance with all applicable laws, regulations and Permits. Provider shall not be responsible for the cost or expense of any maintenance or repair required as a direct result of the City's or its agents, contractors, subcontractors or employee's negligence or willful misconduct.

B. Ownership of Output, Green Attributes and Environmental Financial Incentives. Provider is the exclusive owner of any Environmental Financial Incentives associated with the construction, ownership and operation of the Solar Facilities. City will assign its interest (if any) in all such credits and other financial incentives to Provider. Provider is the exclusive owner of, and may assign or sell in its sole discretion, all Green Attributes, including, but not limited to, Renewable Energy Certificates ("REC"), and REC Reporting Rights, attributable to the Solar Facilities and the Output therefrom. Without additional charge to City, Provider shall take and bear the costs of all steps necessary to secure and perfect interest in the Green Attributes, including, but not limited to, registering the RECs with WREGIS.

8. Payment.

A. Invoices. Provider shall provide an invoice for each Solar Facility to the City on a monthly basis, by the 15th day of each calendar month following the Commercial Operation Date of the Solar Facility. Each invoice will set forth (i) the Output delivered to City in the preceding month, (ii) the Power Price for such month, (iii) the total amount to be paid by City to Provider for Output delivered in the preceding month, (iv) the year and month of the Term of this PPA, (v) Annual Production Estimate for the relevant year as set forth in Exhibit B, (v) running total of Annual Production Estimate for the relevant year as set forth in Exhibit B versus cumulated actual Output for the relevant year, (vi) and any applicable offsets or credits to such invoice amounts.

B. Due Date. The Power Price and all other payments shall be in U.S. Dollars and paid by wire transfer, check pursuant to Exhibit H, or automated check handling (ACH) payment delivered to Provider at the address specified herein within forty-five (45) Days of the date the invoice is received by the City (“Due Date”). If the Due Date is a weekend or a bank holiday, payment will be due the next following business day.

C. Payment Disputes. In the event a Party disputes all or a portion of an invoice, or any other claim or adjustment arises, such disputes shall be resolved pursuant to Section 15.

9. Purchase Option.

A. Purchase of Solar Facilities. Unless City is in default of its obligations under this Agreement, City shall have the option to purchase (“Purchase Option”) all of Provider’s right, title, and interest in and to each Solar Facility on the seventh (7th), tenth (10th) and fifteenth (15th) anniversaries of the Commercial Operation Date or upon expiration of the Term hereof (each a “Purchase Option Date”). Subject to the terms herein, if the City decides to exercise its Purchase Option for the Christopher Way Solar Facility, the City shall then exercise its Purchase Option for the City Hall Solar Facility and Community Center Solar Facility. If City wishes to exercise its Purchase Option, it must provide notice to Provider at least ninety (90) Days in advance of any such anniversary or the expiration of the Term. The purchase price for each Solar Facility shall be the greater of (1) the Fair Market Value, as defined under Section 9.B., of the Solar Facility as of the Purchase Option Date or (2) the applicable Solar Facility Purchase Option Price indicated on Exhibit D. Upon the exercise of the Purchase Option and Provider’s receipt of all amounts then owing by City under this Agreement, the Parties will execute all documents necessary for the purchase and sale of the Solar Facility, including but not limited to, the delivery of the purchase price, the transfer of title to the Solar Facility, and to the extent transferable, the remaining period, if any, on all warranties and Environmental Financial Incentives and Green Attributes for the Solar Facility to City. Provider shall remove any encumbrances placed or allowed on the Solar Facility by Provider. On the date on which Provider transfers title to the Solar Facility to City and Provider has received payment in accordance with this Section, this Agreement shall terminate without default or penalty to City or Provider with respect to such Solar Facility.

B. Fair Market Value. The “Fair Market Value” of the Solar Facilities shall be the value thereof as determined by a nationally recognized independent appraiser selected by the Parties, with experience and expertise in the solar photovoltaic industry to value such equipment. The Fair Market Value of the Solar Facilities shall be based upon its fair market value in continued use. The valuation made by the appraiser shall be binding on the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. If the Parties are unable to agree on the selection of an appraiser, then each Party shall appoint a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to, and such appraisers shall together promptly appoint a third nationally recognized neutral independent appraiser. The three appraisers shall determine the Fair Market Value within thirty (30) days following such appointment, and if the three appraisers cannot agree on an appraisal, then the lowest and highest of the appraised amount shall be disregarded, and the third appraisal shall be used.

10. Early Termination, Change in Law

A. Change in Law.

If prior to expiration of the Term upon the occurrence of a Change In Law the Parties shall negotiate in good faith to attempt to agree upon an equitable adjustment to the Power Price for the remainder of the Term to compensate Provider for such increased cost. If Parties are unable to come to an agreement either Party may seek dispute resolution under Section 15. Notwithstanding the foregoing, in the event of a Change In Law the City shall have the option to terminate this Agreement upon payment of the Termination Value plus reasonable and documented costs and expenses to remove the Solar Facility in accordance with Section 3 applicable to such Site.

Change In Law shall mean an unstayed order of a court or administrative agency, or a change in federal law or regulation, imposing a substantial cost, (iii) regulation or other requirement upon the sale of Output that (1) is generally applicable to similarly situated electric generating facilities and (2) increases the capital, financing, operating or maintenance costs of the Solar Facility, or (3) otherwise has a material adverse effect on the cost to Provider of performing its obligations under this Agreement

B. City's Early Termination Rights. (1) If City ceases to conduct operations at or vacates a Site, Provider may, but shall not be required to, deem City in default of this Agreement; (2) City may, upon payment to Provider of the Termination Value plus reasonable and documented costs and expenses to remove the Solar Facility in accordance with Section 3 applicable to such Sites and without further penalty hereunder, terminate this Agreement solely as to the Sites affected. Subject to City's payment for the removal of the Solar System, Provider shall remove the Solar Facility at the affected Sites in accordance with Section 3. Furthermore, if the City exercises its early termination right for the Christopher Way Solar Facility under this Section 10.B., the City shall also exercise its right to terminate under this Section 10.B. the City Hall Solar Facility and Community Center Solar Facility such termination shall occur upon the City's payment of the Termination Value and documented costs and expenses to remove the Solar Facility in accordance with Section 3 from such Sites.

11. Delivery; Risk of Loss; Relocation.

A. Output Specifications. Provider shall ensure that all energy generated by the Solar Facilities conforms to Distribution Utility specifications for energy being generated and delivered to the Sites' electric distribution systems, which shall include the installation of proper power conditioning and safety equipment, submittal of necessary specifications, coordination of Distribution Utility testing and verification, and all related costs.

B. Transfer of Output. Provider shall be responsible for the delivery of Output to the Delivery Point. Title and risk of loss of the Output shall pass from Provider to City upon delivery of the Output to the Delivery Point. To the extent applicable to the Site, prior to the start of construction of the Solar Facility, Provider shall use commercially reasonable efforts to assist City in selection of equipment required or desired on City's side of any Delivery Point.

C. Relocation.

1. On or after the seventh (7th) anniversary of the Commercial Operation Date, City may, at its option, require that a Solar Facility be permanently relocated, either on an existing Site or to another site owned and operated by City, at a location with at least equal Insolation to the existing Site and reasonably acceptable to both Parties (the "Relocation Site"). City shall give Provider at least sixty (60) calendar Days' notice of City's need to move or relocate the Solar Facility. Following agreement on a Relocation Site, the Parties will amend this Agreement and other relevant documents to memorialize the required changes in the definition of "Sites".
2. City shall pay the reasonable costs and expenses arising in connection with the relocation of the Solar Facility, including but not limited to removal costs, necessary storage costs, re-installation, re-commissioning costs, development costs and expenses, any applicable interconnection fees and Distribution Utility system upgrade charges. City shall additionally compensate Provider for any revenue during the period in which energy cannot be generated and delivered to City from the Solar Facilities being relocated, at the City Suspension Rate (as defined herein), prorated as needed to apply on a daily basis. City shall also execute such consents or releases reasonably required by Provider or Provider's financing Parties in connection with the relocation. Within thirty (30) Days of agreement on a Relocation Site, Provider will provide City with a calculation of the estimated time required for such relocation, and the total anticipated amount of lost revenues and additional costs to be incurred by Provider as a result of such relocation. City will have twenty (20) Days to review the calculation and make, in writing, any objections to the calculation.
3. In the event that an acceptable Relocation Site for a Solar Facility cannot be agreed upon, either Party shall have the right to terminate this Agreement if the Relocation Site cannot be agreed upon within sixty (60) days of City's initial request to relocate the Solar Facility and prior to such termination, City shall pay Provider an amount equal to the Termination Value for the Site requiring termination plus documented removal costs and expenses. In the event of a termination occurring under this Section, Provider shall at the City's cost and expense remove the Solar Facility and restore the Site in accordance with Section 3. If the Chrispother Way Site is terminated pursuant to this Section 11.C. (2) the City Hall Site and Community Center Site will terminate as well upon the City's payment of the Termination Value and documented removal costs and expenses for each Site.

D. Temporary Suspension by City. Notwithstanding any other provision of this Agreement, City shall have the right, upon forty-eight (48) hours written notice to Provider, to temporarily suspend operations and facility Output for any reason. City shall have the right, upon written notice to Provider, to temporarily render each Solar Facility non-operational for five (5) twelve (12) hour periods over the Term without penalty or charge by Provider. Additionally, the City may perform work at night provided the work starts after sunset and ends prior to sunrise such that the Solar Facility is operational during all day light hours. If City requires temporary suspension of any Solar Facility for more than such five (5) twelve (12) hour periods over the Term, City shall pay to Provider for the energy production of the Solar Facility that, in Provider's reasonable estimation as provided below, would have been delivered to City from the operation of the Solar Facility in the absence of a failure of the Site to accept the energy produced and delivered by the Solar Facility ("**Deemed Delivered Energy**") and compensating Provider for lost revenues or other benefits from Environmental Financial Incentives and Green Attributes from such Deemed Delivered Energy (collectively, with the Deemed Delivered Energy the "City Suspension Rate"). Provider's estimation of Deemed Delivered Energy will be based on (a) past energy output delivery by the Solar Facility during the preceding similar period of Solar Facility operation of the same length as the period of Deemed Energy Delivery and under similar conditions if such information is available or (b) if such information is not available, based upon any other relevant information or bases which may reasonably be available to the Parties and used for such purpose in the circumstances and consistent with good solar industry practices. Each Party shall promptly notify the other of any condition at the Site of which it is aware pertaining to any damage to or loss of use of the Solar Facility or that could reasonably be expected to adversely affect the Solar Facility. Regardless of whether maintenance and repairs are made in the ordinary course or in an emergency, all maintenance and repairs shall be carried out in a manner that minimizes the impact on the Solar Facility. City is fully responsible for the routine maintenance and repair of the Site's electrical system (with the exception of the Solar Facility) and of all of City's equipment that utilizes the Solar Facility's outputs. A failure of the Site to accept energy produced by the Solar Facility (whether due to a failure in City's electrical system, maintenance or otherwise), beyond the five (5) twelve (12) hour periods above, will not excuse City from paying the City Suspension Rate.

E. Temporary Suspension by Provider. Provider shall have the right, upon written notice to City, to temporarily render each Solar Facility non-operational for up to ninety-six (96) hours per year without penalty or charge by City. If Provider renders any Solar Facilities non-operational for a period in excess of ninety-six (96) hours, Provider shall pay to City a monthly payment (prorated as needed) equal to the difference between the cost to City of purchasing energy from the Distribution Utility during the Solar Facilities' period of non-operation and the average monthly cost of power purchased under this Agreement for the preceding twelve (12) months, or for the entire period the Solar Facilities have been in Commercial Operation if less than twelve (12) months, for the period of time during which the Solar Facilities are non-operational.

F. Change in Conditions. If City requests an increase in the Output delivered to the Sites, the Parties agree to use good faith efforts to increase such capacity. If Provider and City are not able to reach an agreement for such additional Output, City may, at its sole discretion, obtain the services of a third party for such purposes, provided that such additional third party provided services and any site access license shall not interfere with Provider's right, title and interest in the Solar Facilities under this Agreement and shall not interfere with the Solar Facility or the Insolation available to the Solar Facility.

G. No Alterations.

1. Provider shall make no alteration to any Solar Facility after the Commercial Operation Date intended or reasonably anticipated to permanently increase the nameplate capacity or Output of the Solar Facility without express written approval by the City. Notwithstanding the foregoing, Provider may alter the Solar Facility's nameplate capacity on a temporary basis when performing maintenance and repair activities provided that Provider returns the Solar Facility's nameplate capacity to that as of the Effective Date upon the completion of such activities.
2. City shall not make any alterations or repairs to the Site which could adversely affect the operation and maintenance of the Solar Facility without Provider's prior written consent. If City wishes to make such alterations or repairs, City shall give prior written notice to Provider, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given within 24-hours), and give Provider the opportunity to advise City in making such alterations or repairs in a manner that avoids damage to the Solar Facility, but, notwithstanding any such advice, City shall be responsible for all damage to the Solar Facility caused by City's or its agents, contractor's, subcontractors, vendors, employees acts or omissions or breach of this Agreement or the Easement. To the extent that temporary disconnection or removal of the Solar Facility is necessary for City to perform such alterations or repairs, such work and any replacement of the Solar Facility after completion of City's alterations and repairs, shall be done by Provider or its contractors at City's cost, and City shall pay Provider the City Suspension Rate that Provider would have received from the Solar Facility during any time that the Solar Facility is not operating due to such disconnection. All of City's alterations and repairs shall be done in a good and workmanlike manner and in compliance with all Applicable Laws.

12. Metering.

A. Meter.

Provider shall provide and maintain a standard revenue grade meter and electronic data acquisition system at each Delivery Point (each a "Meter", collectively "Meters") to measure the actual amount of electricity supplied to the City by each Solar Facility on a continuous basis. Meters shall be installed and maintained at Provider's sole expense and shall be located within close proximity to the Delivery Point, and in any case on the Distribution Utility side of all Provider's transformers and all other major electrical losses within the Solar Facility.

B. Meter Testing. Provider shall arrange for all Meters to be tested once per year, at least three (3) months prior to the end of City's fiscal year. The tests shall be conducted by independent third parties who are qualified to conduct such tests. Provider shall bear all costs and expenses associated with annual Meter testing. City shall be notified ten (10) Days in advance of such tests and shall have a right to be present during such tests. Provider shall provide City with the detailed results of all Meter tests. In addition, the Meters shall be inspected and tested for accuracy at such other times as City may reasonably request, but in no event more than once every six (6) month period. City shall bear the cost of the additionally requested Meter testing, unless such test shows that a Meter was inaccurate by more than two percent (2%), in which case the Provider shall bear the Meter testing costs.

C. Cost of Meter Repair. If the Meter testing demonstrates that a Meter was operating outside of its allowable calibration (+/- 2%), then the Provider will pay for the cost of the repairs, or replacement, necessary to restore a Meter to proper working order. If a Meter is found to be inaccurate by more than two percent (2%), Invoices from the prior six (6) months, or from the last time such Meter was registering accurately, whichever is less, shall be adjusted and calculated based on the inaccuracy of the meter as tested; any payments or credits shall be dealt with in accordance with Section 8, except that City shall not be obligated to pay interest on any amount found to be due because Meter was operating outside of its allowable calibration (+/- 2%). Provider shall submit any request for an adjustment in a fiscal year to City no later than two (2) months prior to the end of City's fiscal year on June 30, and City shall not be obligated to pay any adjustment for a prior fiscal year that was not submitted to City within two months of the end of such prior fiscal year on June 30. City may withhold payments to Provider if a Meter has registered production in excess of 2% of the Output delivered to City and Provider fails to provide City with the appropriate payment pursuant to Section 8 for the amount which the City overpaid to Provider as a result of the Meter being outside of the established calibration range.

D. Meter Data. Provider shall gather, maintain and own the data from a Meter, including but not limited to interval data registered at least once every fifteen (15) minutes (the "Meter Data") and shall make such Meter Data available to City or maintain the Meter Data such that the City can access the Meter Data remotely through a secure internet site or such other remote access as the Parties mutually agree to. The City may use the data and any derivative data created by City for display, advertising and or reports.

E. Meter Data Audit. City shall have the right to audit the invoices and/or the Meter Data once per calendar year per Solar Facilities. If the audit reveals that City has been overcharged by more than two percent (2%), Provider shall bear the cost of such audit, but in all other cases City shall bear the cost of such audit. If it is determined that the Meter was operating outside of its allowable calibration, the Parties shall also evaluate whether any adjustments to the amount of Output will result in a shortfall under the Guaranteed Production.

F. Maintenance of Meter Data. The Parties shall maintain all records related to invoices and Meter Data for a period of the greater of (i) 48 months from the date of such invoice or Meter Data, or (ii) as otherwise required by law. Such records shall be available for audit as described in above.

13. Representations, Warranties and Covenants.

A. Authorization and Enforceability. Each Party represents to the other Party as of the Effective Date that: (i) such Party is duly organized, validly existing and in good standing under the laws of the state of its formation; (ii) the execution and delivery by such Party of, and the performance of its obligations under, this Agreement has been duly authorized by all necessary action, does not and will not require any further consent or approval of any other Person, and does not contravene any provision of, or constitute a default under such Party's organizational documents; and (iii) this Agreement constitutes the legal and valid obligation of such Party, enforceable against such Party in accordance with its terms, except as may be limited by bankruptcy, reorganization, insolvency, bank moratorium or similar laws relating to or affecting creditors' rights generally and general principles of equity, whether such enforceability is considered in a proceeding in equity or at law.

B. City represents and warrants to Provider:

1. that no electricity generated and delivered to the Site will be used to heat a swimming pool;
2. City is not a public electric utility or public electric utility holding company and is not subject to regulation as a public electric utility or a public electric utility holding company.
3. Except as disclosed by the City, to their knowledge there are no Hazardous Substances that exist in the areas on or near the Site where the Provider will undertake to install, operate, maintain or repair the Solar Facility; and
4. The Award of the City of Lathrop RFP for Solar Facilities issued on October 9, 2018 is in full force and effect; and (b) all obligations of the Provider under the RFP referenced in this Section have been satisfied to date, (c) all required approvals for the City's execution, delivery and performance of this Agreement have been satisfied in full and are in full force and effect and not subject to challenge, including pursuant to Gov. Code §§ 4217.10 – 4217.18.

14. Default and Remedies.

A. Events of Default. In the event of a Party's breach of a material obligation, or representation, or warranty under this Agreement, the non-defaulting Party shall provide the defaulting Party with written notice of the default, which notice shall describe the default in reasonable detail. Following the date of receipt of written notice of default, the defaulting Party shall have thirty (30) Days to cure any payment default and forty-five (45) days to cure any other breach or default described in this Agreement; provided, however, that with respect to a non-payment default, the cure period shall be extended by the number of days (not to exceed an additional ninety (90) Day period if the defaulting Party is using commercially reasonable efforts to cure the default. Notwithstanding the foregoing cure period, if the default requires equipment, among other things, to cure the default of equipment the cure period may be extended beyond the 90 Day period if, the defaulting Party provides evidence that (i) the equipment has been ordered and (ii) the delay in receiving the equipment is due to manufacturer's lead-time or delay.

B. Additional Events of Default. In addition to the foregoing, with respect to a Party, there shall be an event of default if:

1. such Party concedes in writing to its inability to pay its debts generally as they become due;
2. such Party files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, City or territory thereof;
3. such Party makes an assignment for the benefit of creditors in connection with bankruptcy proceedings;
4. such Party consents to the appointment of a receiver of the whole or any substantial part of its assets;
5. such Party has a petition in bankruptcy filed against it, and such petition is not dismissed within 60 Days after the filing thereof;
6. a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of such Party's assets, and such order, judgment or decree is not vacated or set aside or stayed within 60 Days from the date of entry thereof;
7. under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of such Party's assets and such custody or control is not terminated or stayed within 60 Days from the date of assumption of such custody or control;
8. such Party ceased its legal existence or ceases doing business or otherwise dissolves.

C. Provider Remedies. If an event of default by City under Sections 14.A. or 14.B. has occurred and is continuing with respect to a Site, then following the expiration of any applicable cure period, Provider may at its discretion: (i) suspend performance under this Agreement with respect to such Site, (ii) seek damages as provided herein, or specific performance pursuant to Section 15 and/or (iii) terminate this Agreement with respect to such Site, and as Provider's sole and exclusive remedy in connection with such termination, require City to pay to Provider as liquidated damages, and not as a penalty, the Termination Value for the Solar Facility plus documented removal costs and expenses, and any and all amounts then owed Provider for Output

delivered to City as of the date of such termination pursuant to this Agreement. In the event of such termination, Provider shall remove the Solar Facility in accordance with Section 3, subject to City payment of any removal costs and expenses. Notwithstanding anything herein to the contrary in the event Provider terminates this Agreement under this Section 14 with respect to Christopher Way Site, then this Agreement shall also terminate with respect to the City Hall Site and Community Center Site and Provider shall be entitled to the remedies set forth in this Section 14.C. with respect to the City Hall Site and the Community Center Site.

D. City Remedies. If an event of default by Provider under Sections 14.A. or 14.B. has occurred and is continuing with respect to a Site, then following the expiration of any applicable cure period, City may at its discretion: (i) suspend performance under this Agreement with respect to such Site except for any payment for Output delivered, (ii) seek damages as provided herein, /or specific performance pursuant to Section 15 and/or (iii) terminate this Agreement with respect to such Site. In the event that City terminates this Agreement pursuant to this Section 10, City may, elect to either (a) purchase the Solar Facilities at Fair Market Value as of the time of the event of as City's sole and exclusive remedy (excluding any liquidated damages owed as of such date by Provider and excluding any obligation of Provider to indemnify under Section 17) or (b) require Provider to remove the Solar Facilities within one hundred eighty (180) Days at Provider's sole cost and expense and restore the Site as required in Section 3.

15. Dispute Resolution.

A. Disputes. The Parties agree to make a good faith attempt to resolve any and all controversies, claims, disagreements, or disputes between the Parties arising out of or related to this Agreement ("Dispute"). In the event of any Dispute, either Party may give notice of the dispute to the other Party. In the event a Party Disputes all or a portion of an invoice or other payment, the disputing Party shall timely pay any undisputed portion of such amount due. The Parties shall first use good faith, reasonable, diligent efforts to resolve the dispute within ninety (90) Days from the date of such notice. If the Parties do not resolve their dispute within ninety (90) Days of notice, then the Parties may, upon mutual agreement, submit the Dispute to mediation before a mutually agreed upon mediator under the then current mediation rules of the American Arbitration Association. If the Parties cannot resolve the Dispute within sixty (60) days of the commencement of the mediation or such longer period as may be agreed upon by the Parties, either Party may refer the Dispute to arbitration pursuant to the terms set forth below.

B. Arbitration. In the event any Dispute is not settled to the mutual satisfaction of the Parties pursuant to Section 15 above, the Dispute shall then be settled by final, binding arbitration pursuant to the U.S. Federal Arbitration Act, 9 U.S.C. Section 1 et seq., in accordance with the American Arbitration Association Commercial Arbitration Rules. The Parties shall mutually select one arbitrator. In the event the Parties are unable to agree on an arbitrator, an arbitrator will be appointed by the American Arbitration Association in accordance with its rules. All arbitration proceedings will take in San Joaquin County, California. The arbitrator will be entitled to award monetary and equitable relief, including specific performance and other injunctive relief; provided, however, that only damages allowed pursuant to this Agreement may be awarded. Except as otherwise expressly provided in this Section 15., each Party will bear the expenses of its own counsel and will jointly bear the expenses of the arbitrator. The Parties agree that the arbitrator will include, as an item of damages, the costs of arbitration, including reasonable legal fees and

expenses, incurred by the prevailing party if the arbitrator determines that either (i) the non-prevailing Party did not act in good faith when disputing its liability hereunder to the prevailing Party or when initiating a claim against the prevailing Party; or (ii) the prevailing Party has had to resort to arbitration with respect to a substantially similar claim more than twice in any thirty-six (36) month period. Should it become necessary to resort or respond to court proceedings to enforce a Party's compliance with this Section 15.A, such proceedings will be brought in accordance with Section 22.I below. If the court directs or otherwise requires compliance herewith, then all costs and expenses, including reasonable attorneys' fees incurred by the Party requesting such compliance, will be reimbursed by the non-complying Party to the requesting Party

16. Taxes; Liens.

A. Taxes. City shall pay Provider for any Taxes assessed on the sale, purchase delivery or consumption of electric energy produced by the Solar Facility and delivered to the Delivery Point. City shall be responsible for and pay any Taxes which are assessed, levied, charged or imposed by any public authority against or relating to the Site and all improvements thereon (excluding the Solar Facility). For purposes of this Section 16. A, "**Taxes**" means any federal, state and local tax, including property (real and personal), occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges, but shall not include any income taxes or similar taxes imposed on Provider's revenues due to the sale of energy under this Agreement, which shall be Provider's responsibility. Provider shall be responsible for Taxes and duties related to purchase and importation of materials and components necessary to construct the Solar Facility taxes based on or related to income, receipts, capital or net worth of the Provider, Provider's contractors', or its subcontractors' labor and income. Provider shall be responsible for all income, gross receipts, and all, personal property or real property taxes directly levied on the Solar Facility or other similar taxes and any and all franchise fees or similar fees assessed against Provider due its ownership of the Solar Facility.

B. Liens. Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any liens on or with respect to the Site(s) or City's interest therein. If Provider breaches its obligations under this Section, it shall immediately notify the City in writing, shall promptly cause such lien to be discharged and released of record without cost to City, and shall defend and indemnify City against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such lien.

17. Liability and Indemnity; Insurance.

A. Indemnity.

1. To the fullest extent provided for by law, each Party ("Indemnifying Party") agrees to indemnify, defend and hold harmless the other Party, its directors, officers, employees, and agents (each, an "Indemnified Party") from and against any and all third party claims, including demands, actions, direct damages, direct loss, direct costs, expenses, and attorney's fees (collectively, "Indemnity Claims"), arising out of or resulting from any, gross negligent act, fraud, or intentional misconduct by the Indemnifying Party or its trustees, directors, officers, employees, contractors, subcontractors or agents under the terms of this Agreement; provided, however, that the Indemnifying Party will not have any obligation to indemnify the Indemnified

Party from or against any Indemnity Claims to the extent caused by, resulting from, relating to or arising out of the gross negligent act, fraud, or intentional misconduct by Indemnified Party or any of trustees, directors, officers, employees, contractors, subcontractors or agents. This Section 17 A. shall not apply to liability arising from Hazardous Substances or other environmental contamination, such matters being addressed exclusively by Section B below.

2. The Indemnified Party determines that it is entitled to defense and indemnification under this Section, such Indemnified Party shall promptly notify the Indemnifying Party in writing of the Indemnity Claim and provide all reasonably necessary or useful information, and authority to settle and/or defend Indemnity Claim. No settlement that would impose costs or expense upon the Indemnified Party shall be made without such Party's written consent. Failure to deliver notice under this Section 17A.2, to an Indemnifying Party shall not relieve an Indemnifying Party of its obligations hereunder except the extent such failure shall have materially prejudiced the Indemnifying Party.

B. Environmental Indemnification. Provider shall indemnify, defend and hold harmless all of City's Indemnified Parties from and against all Indemnity Claims arising out of or relating to the existence at, on, above, below or near the Site of any Hazardous Substance (as defined in Section 17.C.) to the extent deposited, spilled or otherwise caused by Provider or any of its contractors or agents. City shall indemnify, defend and hold harmless all of Provider's Indemnified Parties from and against all Indemnity Claims arising out of or relating to the existence at, on, above, below or near the Site of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Provider or any of its contractors or agents. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Site generally or any deposit, spill or release of any Hazardous Substance.

C. "Hazardous Substance" means any chemical, waste or other substance (i) 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 Environmental Laws, (ii) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (iii) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (iv) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (v) for which remediation or cleanup is required by any Governmental Authority.

D. "Environmental Law" means any applicable federal, state, municipal or local law, statute, rule, regulation, ordinance, code, judgment, decree or decision implementing any of the foregoing by any Governmental Authority relating to (i) the protection of the air, water, land or natural resources or (ii) the generation, use, handling, treatment, storage, disposal and transportation of Hazardous Substance.

E. Insurance.

1. Provider Insurance. At all times during the term of the PPA, and any necessary extension thereof for removal of the Solar Facilities from the Property, Provider shall obtain, maintain and keep in full force and effect the following insurance for coverage of all of its obligations and associated activities under this Agreement, including but not limited to its use and occupancy of the Site(s), and the construction, installation, operation, maintenance and repair of the Solar Facilities, in the amounts, and with the conditions required, as set forth herein. Each policy required in b,c, and d below shall include the City as an Additional Insured for both ongoing and completed operations as it pertains to b, and shall be primary and non-contributory as to any other coverage available to the additional insured. Provider shall, within thirty (30) days of the Effective Date of this Agreement and annually thereafter, provide certificates of insurance demonstrating compliance with the requirements of this Section.
 - a. Workers' Compensation Insurance for Provider's employees to the extent of statutory limits and Employer's Liability Insurance with a limit of \$1,000,000 per injury or disease.
 - b. Commercial General Liability Insurance with a limit of \$2,000,000 per occurrence and \$5,000,000 in the aggregate covering liability for Bodily Injury, Personal and Advertising Injury and Property Damage Liability, including coverage for Contractual Liability and Products and Completed Operations Liability.
 - c. Automobile Liability Insurance with a combined single limit of \$2,000,000
 - d. Excess Liability Insurance in an aggregate amount of \$5,000,000 providing greater limits of insurance to Provider's Employer's Liability, Commercial General Liability and Automobile Liability Insurance which also shall not be more restrictive than coverage provided by these underlying policies.
 - e. Builder's Risk/Installation Floater/ Property Insurance in a sufficient amount to protect Provider's property, materials, tools and other financial interests on the Project.
2. City Insurance and other Requirements. The City represents that it maintains and covenants that it shall maintain during the Term (i) insurance sufficient to insure it against loss or destruction of the Site(s), including losses occasioned by operation of the Solar Facilities, and (ii) general liability insurance including bodily injury, property damage, contractual and personal injury. Notwithstanding the foregoing, City reserves the right to self-insure.
 - (C) Waiver of Subrogation. Each Party shall waive its rights of subrogation against the other Party and cause each insurance policy obtained by them to include a waiver of subrogation or waiver of the transfer of rights of recovery against the other Party by the insurer in connection with any damage covered by any policy of such Party.

- (D) Provider shall require and verify that all of its subcontractors maintain insurance meeting all of the requirements stated herein.

F. Limitations of Liability.

1. No Consequential Damages. EXCEPT WITH RESPECT TO PAYMENT OF A CITY'S TERMINATION PAYMENT, CITY'S SUSPENSION RATE, DEEMED DELIVERED ENERGY, PROVIDER'S DELAY LIQUIDATED DAMAGES, OR IN CONNECTION WITH THIRD-PARTY INDEMNIFICATION CLAIMS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT.

2. Actual Damages. Notwithstanding anything herein to the contrary, Provider's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement including the Easements shall not exceed an amount equal Three Million Seven Hundred Thousand Dollars (\$3,700,000) (such amount, the "Provider Liability Cap"). The provisions of this Section 17.F. shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise. Any action against Provider must be brought within one (1) year after the cause of action accrues.

3. TO THE EXTENT ENFORCEABLE UNDER APPLICABLE LAW, EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR PROVIDER TO ENTER INTO THIS AGREEMENT.

18. Easement. City shall grant to Provider an easement for the sole purpose of access to, on, over, under and across the Site for the purposes of undertaking the work required by Provider under this Agreement, including: installing, constructing, inspecting, operating, owning, maintaining, accessing, repairing, removing and replacing the Solar Facility (the "Easement"). City shall not conduct activities around the Solar Facility that have a reasonable likelihood of causing damage or impairment to the Solar Facility as a result of activities outside of the normal intended use.

19. Assignment; Cooperation with Financing.

A. Assignment by Provider. Except as expressly provided in this Agreement, Provider may not sell, transfer, or assign its rights under this Agreement or any right, interest, or obligation therein (collectively, an "Assignment"), without the prior written consent of City, which consent may not be unreasonably withheld, conditioned or delayed, provided that any assignee possesses all required skills, knowledge, expertise, experience, and financial capacity necessary to perform Provider's obligations under this Agreement, and assumes in writing the obligations of Provider under this Agreement. Provider shall provide City with no less than sixty (60) Days' notice of the request to transfer ownership of the Project. Notice shall include, but not be limited to, the following details of the proposed owner: Experience with PPA's and current portfolio; financial capacity to complete the Project; Proof of insurance, meeting Purchaser requirements and naming the Purchaser; Confirmation of operations and maintenance provider and outline of operations and maintenance program if different from existing; Details and example of annual report and invoicing; and Confirmation that all terms under this Agreement and any related documents and agreements will be performed. Notwithstanding the foregoing, Provider may, without the prior written consent of City, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement to any Secured Party (as defined herein) in connection with any financing for the ownership, acquisition, construction, operation or use of the Solar Facilities as set forth in subsection B, or (ii) assign this Agreement to an affiliate of Provider which is controlled by Provider or under common control with Provider (iii) assign this Agreement and the Solar Facility to any person succeeding to all or substantially all of the assets of Provider (provided that Provider shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of Provider's obligations hereunder by the assignee). This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.

B. Collateral Assignment by Provider for Financing Purposes. In the event Provider assigns its rights under this Agreement as security in connection with any financing transaction entered into by Provider, Provider may mortgage or grant a security interest in this Agreement and the Solar Facilities, and may collaterally assign this Agreement and the Solar Facilities to any mortgagees or holders of security interests, including their successors or assigns (hereinafter collectively referred to as "Secured Parties"), provided that any such collateral assignment of this Agreement by Provider shall not release Provider from its obligations or liabilities under this Agreement. City agrees to not unreasonably withhold, condition or delay its compliance with any reasonable request that City execute any consent, estoppel agreement or other documents related to such financing transaction as may reasonably be required by such Secured Parties.

C. Assignment by City. Except as otherwise provided in this Agreement, City may assign its rights under this Agreement only upon the prior written consent of Provider, which consent may not be unreasonably withheld, conditioned or delayed; provided that any such assignee (a) is of equal or greater creditworthiness than City and (b) assumes in writing the obligations of City under this Agreement. If the City wishes to exercise its assignment option for the Christopher Way Solar Facility, the City is then required to assign the City Hall and Community Center Solar Facilities as well to the same party.

20. Confidentiality; Publicity.

A. Confidential Information. Any financial, statistical, personal, technical and other data and information relating to a Party's operations which are made available to the other Party in order to carry out this Agreement shall be reasonably protected by such other Party with the same degree of care accorded its own confidential and proprietary information from unauthorized use, except to the extent that disclosure thereof is required to comply with applicable law, including but not limited to the California Public Records Act. The disclosing Party shall identify all confidential data and information at the time it is provided. Confidentiality does not apply to information, which is known to a receiving Party from other sources, which is otherwise publicly available or which is required to be disclosed pursuant to an order or requirements of a regulatory body or a court.

B. Disclosure. Other than under the REC Reporting Rights and except as may be required by applicable law, including but not limited to, the California Public Records Act, or as otherwise identified above, neither Party shall make any disclosure of any designated confidential information related to this Agreement without the specific prior written approval from the other of the content to be disclosed and the form in which it is disclosed, except for such disclosures to the Parties' financing sources, creditors, beneficiaries, partners, members, officers, employees, agents, consultants, attorneys, accountants and exchange facilitators as may be necessary to permit each Party to perform its obligations hereunder and as required to comply with applicable laws or rules of any exchange upon which a Party's shares may be traded. Notwithstanding the foregoing, nothing contained herein shall be deemed to restrict or prohibit City from complying with applicable law regarding disclosure of information, including but not limited to the California Public Records Act.

C. Publicity. The Parties share a common desire to generate favorable publicity regarding the Solar Facilities and their association with it. The Parties agree that they may, from time to time, issue press releases regarding the Solar Facilities and that they shall reasonably cooperate with each other in connection with the issuance of such releases. Each Party agrees that it shall not issue any press release regarding the Solar Facilities without the prior written approval from the other of the content to be disclosed and the form in which it is disclosed, and each Party agrees not to unduly withhold, condition or delay any such approval. In addition, the Parties hereby agree that (i) the City may publicize that it is serving as a "solar host" for the Solar Facilities; (ii) Provider may publicize that it is serving as the developer, owner and/or operator of the Solar Facilities; and (iii) each Party may display photographs of the Solar Facilities and disclose the nameplate capacity rating of the as-built Solar Facilities in its advertising and promotional materials, provided that any such materials identify City as the solar host and Provider as the owner, operator and developer, of the Solar Facilities and all information shall be consistent with this Agreement. Without limitation of the foregoing, Provider agrees to share with City, in digital format, any photographs and other schematics taken by Provider of the Sites and the Solar Facilities, and further agrees that City may use such photographs and other schematics for the purpose of marketing and promoting City's operations. Notwithstanding anything herein to the contrary, City shall not use the trademark of Provider without Provider's written consent.

21. Legal Effect and Status of Agreement.

A. City Not Operator. Neither City nor any Party related to City shall have the right or be deemed to operate the Solar Facilities for purposes of Section 7701(e)(4)(A)(i) of the Internal Revenue Code.

B. Burdens/Benefits of Solar Facilities Ownership. Notwithstanding any provision to the contrary under this Agreement, neither City nor any Party related to City shall (a) bear or be deemed to bear any significant financial burden if there is nonperformance by Provider under this Agreement, as the phrase “any significant financial burden if there is nonperformance” is used in Section 7701(e)(4)(A)(ii) of the Internal Revenue Code; or (b) be deemed to receive any significant financial benefit if the operating costs of the Solar Facilities are less than the standard of performance and/or operation set forth in this Agreement, as the phrase “significant financial benefit if the operating costs of such facility are less than the standards of performance or operation” is used in Section 7701(e)(4)(A)(iii) of the Internal Revenue Code.

C. No Capital Lease; Forward Contract. The Parties acknowledge and agree that for accounting or tax purposes, this Agreement is not and shall not be construed as a capital lease and, pursuant to Section 7701(e)(3) of the Internal Revenue Code, this Agreement is and shall be treated by each Party as a service contract for the sale to the City of electric energy produced at alternative energy Solar Facilities. Each of the Parties agrees that it will not dispute that (i) the transaction contemplated by this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code and (ii) each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

22. Miscellaneous.

A. Amendments. This Agreement may be amended only in a writing signed by both Provider and City or their respective successors in interest.

B. Notices. Any notice required or permitted to be given in writing under this Agreement shall be mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight courier service, or personally delivered to a representative of the receiving Party, or sent by facsimile or email (provided an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section). All such communications shall be mailed, sent or delivered, addressed to the Party for whom it is intended, at its address set forth below. A Party may change its address by providing written notice to the other Party in accordance with this Section.

If to City:

City of Lathrop
Attention: Ken Reed
390 Towne Centre Drive
Lathrop CA 95330
Phone: (209) 941 7363
Email: kreed@ci.lathrop.ca.us

If to Provider:

General Electric International, Inc.
Attention: Erik Schiemann
1 River Road
Schenectady, NY
Phone: 518-742-6863
Email: Erik.Schiemann@ge.com

C. Non-Waiver. The failure, delay or forbearance by either Party to exercise any of its rights or remedies under this Agreement or to provide written notice of any default to a defaulting Party, will not constitute a waiver of such rights or remedies. No Party will be deemed to have waived any right or remedy unless it has made such waiver specifically in writing. The waiver by either Party of any default or breach of any term, condition or provision herein contained shall not be deemed to be a waiver of any subsequent breach of the same term, condition or provision, or any other term, condition or provision contained herein.

D. No Set-Off. Except as otherwise set forth herein, each Party hereby waives all rights to set-offs of amounts due hereunder. The Parties agree that all amounts due hereunder are independent obligations and shall be made without set-off for other amounts due or owed hereunder.

E. Intellectual Property. Nothing in this Agreement shall be construed to convey to City a license or other right to trademarks, copyrights, technology or other intellectual property of Provider.

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

G. Survival. Any provision of this Agreement that expressly or by implication comes into or remains in full force following the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

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

I. Choice of Law. This Agreement shall be construed in accordance with the laws of the State of California (without regard to its conflict of laws principles). The venue for any dispute arising out of or relating to this Agreement shall be in the California county in which the Solar Facilities are located.

J. Binding Effect. This Agreement and its rights, privileges, duties and obligations shall inure to the benefit of and be binding upon each of the Parties hereto, together with their respective successors and permitted assigns.

K. No Partnership. This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

L. No Third-Party Beneficiaries. This Agreement is solely for the benefit of the Parties hereto and no right or cause of action shall accrue by reason hereof for the benefit of any third party not a party hereto, other than any Secured Parties.

M. Counterparts. This Agreement may be executed in counterparts, which shall together constitute one and the same agreement. Electronic, facsimile or copies of signature pages shall have the same force and effect as originals.

N. Further Assurances. Upon the receipt of a written request from a Party, each Party shall execute such additional documents, instruments, estoppels and assurances, and take such additional actions, as are reasonably necessary and desirable to carry out the terms and intent hereof, including but not limited to an Interconnection Agreement. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section.

O. Entire Agreement. This instrument and the documents referenced herein represent the full and complete agreement between the Parties hereto with respect to the subject matter contained herein and supersedes all prior written or oral agreements between said Parties with respect to said subject matter.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the Effective Date.

PROVIDER:

General Electric International, Inc.

By: _____ Date: _____
Erik Schiemann
General Manager, GE Solar

CITY:

City of Lathrop, a municipal corporation in
the County of San Joaquin, State of California

By: _____ Date: _____
Stephen J. Salvatore
City Manager

APPROVED AS TO FORM:

By: _____ Date: _____
Salvador Navarrete
City Attorney

Exhibit A

Definitions

1. "Annual Production Estimate" means, for each Solar Facility, the estimated energy production for a Contract Year as set forth in Exhibit B.
2. "Applicable Law" means, with respect to any person, any law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, holding, injunction, registration, license, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such person or its property, as any of the foregoing may be amended from time-to-time, and any corresponding provisions of any successor to the foregoing, together any rules or regulations promulgated under such successor.
3. "Assignment" means as defined in Section 19A.
4. "Authorities Having Jurisdiction" shall mean the governmental organization, office or individual responsible for approving equipment, an installation or a procedure.
5. "Construction Start Deadline" means one hundred and ten (110) days after the Effective Date.
6. "Contract Year" means a period of twelve (12) consecutive months with the first Contract Year commencing on the Commercial Operation Date and each subsequent Contract Year commencing on the anniversary of the first day of the first month following the Commercial Operation Date.
7. "Commercial Operation" means that the Solar Facility is operating and able to produce and deliver Energy to the Delivery Point pursuant to the terms of this Agreement; (b) Provider has received all local, state and federal Permits and other approvals as may be required by Law for the construction, operation and maintenance of the Solar Facility, including permission to operate from the Distribution Utility and approvals, if any, required under the California Environmental Quality Act for the Solar Facility and related interconnection facilities.
8. "Commercial Operation Date" means the date on which Provider achieves Commercial Operation for the Solar Facility.
9. "Commercial Operation Deadline" shall have that meaning as set forth in Section 6.F. of this Agreement.
10. "Days" or "day" shall mean calendar days, unless otherwise specified.
11. "Delivery Point" means each energy delivery point within each Site's electrical system on City's side of the Site's Distribution Utility meter, as designated in the applicable Distribution Utility Interconnection Agreement.
12. "Distribution Utility" shall Pacific Gas and Electric Company.

13. “Distribution Utility Upgrades” shall mean that scope of work and associated costs that the Distribution Utility requires on the Distribution Utility side of the Distribution Utility meter in order for the Solar Facility to interconnect to the Distribution Utility system.
14. “Energy” means electrical energy measured in kWh.
15. “Energy Shortfall Amount” means an amount equal to the product of: (i) the Output Guarantee Rate, multiplied by (ii) the difference between the Adjusted Production for such Measurement Period and the Production Guarantee for such Measurement Period.
16. “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: (1) production, energy, or investment tax credits associated with the development, construction, ownership or operation of the Solar Facilities, accelerated depreciation, and other financial incentives in the form of credits, reductions or allowances associated with the Solar Facilities that may be applied to reduce any state or federal income taxation obligation, (2) performance-based incentives under applicable state or federal law or utility programs, including without limitation the federal investment tax credit and any payments made to City or its affiliates or any feed-in tariffs that may come into effect in the future; and (3) 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 Solar Facilities or the Output or otherwise from the development, installation or ownership of the Solar Facilities 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 Solar Facilities 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 Solar Facilities are 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 Solar Facilities under the Internal Revenue Code or any state tax law. Environmental Financial Incentives do not include Green Attributes.
17. “Expiration Date” means the last day of the month that follows the twenty fifth (25th) annual anniversary of the Commercial Operation Date.
18. “Force Majeure” shall mean any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the construction, production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; weather causing unsafe working conditions; hurricane; flood; lightning; wind; drought; the binding order of any governmental authority; the failure to act on the part of any governmental authority; unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent that any such unavailability

of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence); and failure of equipment not utilized by or under the control of the Party claiming Force Majeure.

19. “Governmental Authority” shall mean the government of the United States of America, any any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, authority having jurisdiction, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government
20. “Governmental Approvals” shall mean any notices to, reports or other filings to be made with, or any Consents, registrations, permits or authorizations to be obtained from, any Governmental Authority.
21. “Green Attributes” shall mean any and all credits, benefits, emissions reductions, offsets and allowances, howsoever entitled, attributable to the generation of Output from the Solar Facilities, and its displacement of conventional energy generation, that is in effect as of the Effective Date or may come into effect in the future. Green Attributes include but are not limited to Renewable Energy Certificates, as well as: (1) 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; (2) 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 threat of altering the Earth’s climate by trapping heat in the atmosphere; and (3) the reporting rights to these avoided emissions, such as REC Reporting Rights. Green Attributes do not include Environmental Financial Incentives.
22. “Interconnection Agreement” means an agreement entered into by and between City and the Distribution Utility which agreement shall provide for (i) each Solar Facility to be interconnected with the Distribution Utility’s electricity distribution system, (ii) for energy to flow from each Solar Facility to such system and (iii) for energy to flow from such system to the Project Sites, as applicable, under the provisions of all applicable Distribution Utility’s tariffs.
23. “Internal Revenue Code” shall mean the Internal Revenue Code of 1986, as amended.
24. “kWac” means kilowatt alternating current.
25. “kWdc” means kilowatt direct current.
26. “kWhac” means kilowatt-hour alternating current.
27. “Measurement Period” means each three Contract Years commencing after the Commercial Operation Date and the final one Contract Year prior to the expiration of the Initial Term.
28. “Notice to Proceed” means as defined in Section 6E.
29. “Outage” means as defined in Section 4H.

30. “Output” means: the total quantity of all actual electrical power generated by the Solar Facilities as measured by a Meter at the Delivery Point measured in kWhac. Output does not include the Green Attributes, Environmental Financial Incentives, RECs or REC Reporting Rights.
31. “Output Guarantee Rate” means as defined in Exhibit F.
32. “Permits” means all government permits and approvals, regulatory or otherwise required for the construction, installation, completion and operation of the Solar Facility.
33. “Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity.
34. “Power Price” shall mean the per kWhac rate(s) as set forth on Exhibit B.
35. “Project” shall have that meaning as set forth in the Recitals of this Agreement.
36. “RECs” or “Renewable Energy Certificates” means renewable energy certificates related to and representing Green Attributes (also known as green tags, renewable energy credits, or tradable renewable certificates), which are tradable environmental commodities in the United States and represent 1 megawatt-hour (MWh) of electricity generated from an eligible renewable energy resource. These certificates can be sold and traded, and the owner of the REC can claim to have purchased renewable energy.
37. “REC Reporting Rights” shall mean the right of a REC purchaser to report the ownership of accumulated RECs in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the REC purchaser’s discretion, and include without limitation those REC 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.
38. “Site” or “Sites” (each a “Site”, collectively the “Sites”) means the portion of City’s real property on which a Solar Facility is to be located pursuant to this Agreement. See Exhibit E for additional details.
39. “Solar Facility” means the solar photovoltaic generation plant, together with all necessary inverters, ancillary plant and equipment with a target installation size expressed in kWdc installed at a Site (collectively, “Solar Facilities”).
40. “Termination Value” shall equal the product of (i) the capacity in Watts DC of the system at the Site(s) and (ii) the value per Watt due in a year or, at any point within such year, as set forth in Exhibit C.
41. “WREGIS” The Western Renewable Energy Generation Information System or WREGIS, a renewable energy registry and tracking system.

Exhibit B

Site Power Price Chart

SITE A- City Hall

Months	Contract Year	Power Price		Annual Production Estimate (kWhac)
1-12	1	\$0.1092	/kWhac	326,121
13-24	2	\$0.1092	/kWhac	324,490
25-36	3	\$0.1092	/kWhac	322,868
37-48	4	\$0.1092	/kWhac	321,254
49-60	5	\$0.1092	/kWhac	319,647
61-72	6	\$0.1092	/kWhac	318,049
73-84	7	\$0.1092	/kWhac	316,459
85-96	8	\$0.1092	/kWhac	314,877
97-108	9	\$0.1092	/kWhac	313,302
109-120	10	\$0.1092	/kWhac	311,736
121-132	11	\$0.1092	/kWhac	310,177
133-144	12	\$0.1092	/kWhac	308,626
145-156	13	\$0.1092	/kWhac	307,083
157-168	14	\$0.1092	/kWhac	305,548
169-180	15	\$0.1092	/kWhac	304,020
181-192	16	\$0.1092	/kWhac	302,500
193-204	17	\$0.1092	/kWhac	300,987
205-216	18	\$0.1092	/kWhac	299,482
217-228	19	\$0.1092	/kWhac	297,985
229-240	20	\$0.1092	/kWhac	296,495
241-252	21	\$0.1092	/kWhac	295,012
253-264	22	\$0.1092	/kWhac	293,537
265-276	23	\$0.1092	/kWhac	292,070
277-288	24	\$0.1092	/kWhac	290,609
289-300	25	\$0.1092	/kWhac	289,156

SITE B- Community Center

Months	Contract Year	Power Price		Annual Production Estimate (kWhac)
1-12	1	\$0.1092	/kWhac	167,644
13-24	2	\$0.1092	/kWhac	166,806
25-36	3	\$0.1092	/kWhac	165,972
37-48	4	\$0.1092	/kWhac	165,142
49-60	5	\$0.1092	/kWhac	164,316
61-72	6	\$0.1092	/kWhac	163,495
73-84	7	\$0.1092	/kWhac	162,677
85-96	8	\$0.1092	/kWhac	161,864
97-108	9	\$0.1092	/kWhac	161,054
109-120	10	\$0.1092	/kWhac	160,249
121-132	11	\$0.1092	/kWhac	159,448
133-144	12	\$0.1092	/kWhac	158,651
145-156	13	\$0.1092	/kWhac	157,857
157-168	14	\$0.1092	/kWhac	157,068
169-180	15	\$0.1092	/kWhac	156,283
181-192	16	\$0.1092	/kWhac	155,501
193-204	17	\$0.1092	/kWhac	154,724
205-216	18	\$0.1092	/kWhac	153,950
217-228	19	\$0.1092	/kWhac	153,180
229-240	20	\$0.1092	/kWhac	152,415
241-252	21	\$0.1092	/kWhac	151,653
253-264	22	\$0.1092	/kWhac	150,894
265-276	23	\$0.1092	/kWhac	150,140
277-288	24	\$0.1092	/kWhac	149,389
289-300	25	\$0.1092	/kWhac	148,642

SITE C- Christopher Way

Months	Contract Year	Power Price		Annual Production Estimate (kWhac)
1-12	1	\$0.1092	/kWhac	2,273,000
13-24	2	\$0.1092	/kWhac	2,261,635
25-36	3	\$0.1092	/kWhac	2,250,327
37-48	4	\$0.1092	/kWhac	2,239,075
49-60	5	\$0.1092	/kWhac	2,227,880
61-72	6	\$0.1092	/kWhac	2,216,740
73-84	7	\$0.1092	/kWhac	2,205,657
85-96	8	\$0.1092	/kWhac	2,194,628
97-108	9	\$0.1092	/kWhac	2,183,655
109-120	10	\$0.1092	/kWhac	2,172,737
121-132	11	\$0.1092	/kWhac	2,161,873
133-144	12	\$0.1092	/kWhac	2,151,064
145-156	13	\$0.1092	/kWhac	2,140,309
157-168	14	\$0.1092	/kWhac	2,129,607
169-180	15	\$0.1092	/kWhac	2,118,959
181-192	16	\$0.1092	/kWhac	2,108,364
193-204	17	\$0.1092	/kWhac	2,097,822
205-216	18	\$0.1092	/kWhac	2,087,333
217-228	19	\$0.1092	/kWhac	2,076,897
229-240	20	\$0.1092	/kWhac	2,066,512
241-252	21	\$0.1092	/kWhac	2,056,180
253-264	22	\$0.1092	/kWhac	2,045,899
265-276	23	\$0.1092	/kWhac	2,035,669
277-288	24	\$0.1092	/kWhac	2,025,491
289-300	25	\$0.1092	/kWhac	2,015,363

Exhibit C

Site Termination Values

SITE A- City Hall

Months	Contract Year	Termination Value per Watt
1-12	1	\$3.27
13-24	2	\$3.02
25-36	3	\$2.67
37-48	4	\$2.37
49-60	5	\$2.11
61-72	6	\$1.84
73-84	7	\$1.77
85-96	8	\$1.73
97-108	9	\$1.68
109-120	10	\$1.63
121-132	11	\$1.52
133-144	12	\$1.47
145-156	13	\$1.42
157-168	14	\$1.36
169-180	15	\$1.30
181-192	16	\$1.24
193-204	17	\$1.17
205-216	18	\$1.10
217-228	19	\$1.02
229-240	20	\$0.93
241-252	21	\$0.93
253-264	22	\$0.84
265-276	23	\$0.74
277-288	24	\$0.64
289-300	25	\$0.53

SITE B- Community Center

Months	Contract Year	Termination Value per Watt
1-12	1	\$3.48
13-24	2	\$3.18
25-36	3	\$2.75
37-48	4	\$2.40
49-60	5	\$2.08
61-72	6	\$1.76
73-84	7	\$1.68
85-96	8	\$1.64
97-108	9	\$1.59
109-120	10	\$1.54
121-132	11	\$1.45
133-144	12	\$1.40
145-156	13	\$1.35
157-168	14	\$1.29
169-180	15	\$1.24
181-192	16	\$1.18
193-204	17	\$1.11
205-216	18	\$1.04
217-228	19	\$0.97
229-240	20	\$0.89
241-252	21	\$0.89
253-264	22	\$0.81
265-276	23	\$0.72
277-288	24	\$0.62
289-300	25	\$0.52

SITE C- South Harlan Road Storm Drain Basin

Months	Contract Year	Termination Value per Watt
1-12	1	\$3.51
13-24	2	\$3.31
25-36	3	\$3.02
37-48	4	\$2.77
49-60	5	\$2.55
61-72	6	\$2.33
73-84	7	\$2.25
85-96	8	\$2.19
97-108	9	\$2.13
109-120	10	\$2.07
121-132	11	\$1.94
133-144	12	\$1.87
145-156	13	\$1.80
157-168	14	\$1.73
169-180	15	\$1.65
181-192	16	\$1.56
193-204	17	\$1.47
205-216	18	\$1.37
217-228	19	\$1.27
229-240	20	\$1.16
241-252	21	\$1.11
253-264	22	\$0.99
265-276	23	\$0.86
277-288	24	\$0.72
289-300	25	\$0.57

Exhibit D

Site Purchase Option Values

SITE A- City Hall

Purchase Option Price:	
End of Year 7:	\$315,558
End of Year 10:	\$284,698
End of Year 15:	\$218,839
End of Year 25:	Fair Market Value

SITE B- Community Center

Purchase Option Price:	
End of Year 7:	\$162,034
End of Year 10:	\$146,188
End of Year 15:	\$112,370
End of Year 25:	Fair Market Value

SITE C- South Harlan Road Storm Drain Basin

Purchase Option Price:	
End of Year 7:	\$2,206,768
End of Year 10:	\$1,990,960
End of Year 15:	\$1,530,389
End of Year 25:	Fair Market Value

Exhibit E

Description of Solar Facilities

Site Name	System Size (kWdc)	System Type
------------------	---------------------------	--------------------

City Hall	203.58	Carport Structure
Community Center	109.44	Carport Structure
South Harlan Road Storm Drain Basin	1,103.76	Ground Mount Single Axis Tracker

Exhibit F

Guaranteed Production Schedule and Output Guarantee Rate

SITE A- City Hall

Guarantee Period	Contract Years	Estimated Period Production (kWhac) *	Guaranteed Production (kWhac) *	Output Guarantee Rate (\$/kWhac)
1	1-3	973,479	924,805	\$.037
2	4-6	958,950	911,003	\$.041
3	7-9	944,638	897,406	\$.046
4	10-12	930,539	884,012	\$.050
5	13-15	916,650	870,818	\$.054
6	16-18	902,969	857,821	\$.059
7	19-21	889,492	845,018	\$.063
8	22-24	876,217	832,406	\$.068
9	25	289,156	274,698	\$.070

* Period Production includes .5% annual degradation.

SITE B- Community Center

Guarantee Period	Contract Years	Estimated Period Production (kWhac) *	Guaranteed Production (kWhac) *	Output Guarantee Rate (\$/kWhac)
1	1-3	500,422	475,400	\$.017
2	4-6	492,953	468,305	\$.021
3	7-9	485,595	461,316	\$.025
4	10-12	478,348	454,430	\$.029
5	13-15	471,208	447,648	\$.032
6	16-18	464,175	440,967	\$.036
7	19-21	457,248	434,385	\$.040
8	22-24	450,423	427,902	\$.044
9	25	148,642	141,210	\$.046

* Period Production includes .5% annual degradation.

SITE C- Christopher Way

Guarantee Period	Contract Years	Estimated Period Production (kWhac) *	Guaranteed Production (kWhac) *	Output Guarantee Rate (\$/kWhac)
1	1-3	6,784,962	6,445,714	\$.064
2	4-6	6,683,695	6,349,510	\$.069
3	7-9	6,583,940	6,254,743	\$.074
4	10-12	6,485,674	6,161,390	\$.079
5	13-15	6,388,875	6,069,431	\$.085
6	16-18	6,293,520	5,978,844	\$.090
7	19-21	6,199,588	5,889,609	\$.095
8	22-24	6,107,059	5,801,706	\$.100
9	25	2,015,363	1,914,595	\$.104

* Period Production includes .5% annual degradation.

Exhibit H

Check Payment Instructions

- GE Solar shall issue an invoice within 45 days of monthly charges to the City of Lathrop
 - Invoice can be submitted by mail to:

City of Lathrop
Attn: Yesenia linnell
390 Towne Centre Dr. Lathrop CA 95330
 - or by email to: ylinnell@ci.lathrop.ca.us

- City of Lathrop shall mail check within 45 days.
 - Checks can be submitted by mail to:

General Electric International Inc.
PO Box 21800
New York, NY 10087
 - or sent overnight mail (rush) to:

JPMorgan Chase - Lockbox Processing
Attn: General Electric International Inc. #21800
4 Chase Metrotech Center, 7th Floor
East Brooklyn, NY 11245

ATTACHMENT D

D1: SOLAR POWER EASEMENT
AGREEMENT - CITY HALL

D2: SOLAR POWER EASEMENT
AGREEMENT - COMMUNITY CENTER

D3: SOLAR POWER EASEMENT
AGREEMENT - SOUTH HARLAN ROAD
STORM DRAIN BASIN

D1

SOLAR POWER EASEMENT
AGREEMENT - CITY HALL

SOLAR POWER EASEMENT AGREEMENT
(City Hall)

This Solar Power Easement Agreement (this "**Agreement**") is effective as of the 11th day of March 2019 ("**Effective Date**"), by and between City of Lathrop. A general law California City, with a place of business at 390 Towne Centre Drive Lathrop CA 95330 ("**Grantor**") and General Electric International, Inc., a Delaware corporation, with a place of business at 1 River Road, Schenectady, New York 12345 ("**Grantee**"), each a ("**Party**") and together ("**Parties**").

RECITALS

A. Grantor is the fee owner of approximately 3 acres of land located 390 Towne Centre Drive Lathrop, CA (the "**Fee Property**").

B. Grantor desires to obtain a portion of the power required to run its facilities from a carport-mounted photovoltaic generating system having an approximate generating capacity of 203.58 kW (DC) and more particularly described on **Exhibit B** of the Power Purchase Agreement (PPA) (as hereinafter defined) (such system, together with all interconnection facilities and other equipment related thereto, the "**System**") to be installed, constructed, interconnected, owned and operated on a portion of the Fee Property (hereinafter defined as the "**Easement Area**"). The Easement Area, as shown on **Exhibit A** annexed hereto, is comprised of approximately .27 acres of land, which is 11,522 square feet of space.

C. Grantee desires to develop the System on the Easement Area and, in furtherance of that desire, Grantee has entered into a Solar Power Purchase Agreement dated March 11, 2019 ("**PPA**") whereby Grantee and the Grantor have agreed to the terms for the installation, maintenance, ownership, and operation of the System in the Easement Area.

D. Grantor, hereby grants the Easement (as hereinafter defined) to Grantee for the use of the Easement Area for the development, construction, installation, ownership, operation, maintenance and removal of the System.

E. Grantee shall, at its sole cost and expense, engineer, procure and install any and all equipment in connection with the System in accordance with the PPA.

G. Grantor desires to grant to Grantee an easement in the Easement Area, and Grantee desires to obtain an easement to the Easement Area, each subject to the terms and conditions set forth in this Agreement.

AGREEMENT

Now therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **Grant of Easement; Term.** Subject to the terms of this Agreement and to any recorded, pre-existing, third-party rights or interests with respect to the Property, Grantor hereby grants and conveys to Grantee, its successors and assigns, non-exclusive easement (the "**Easement**") on, over, across and under the Easement Area for the Intended Use (as hereinafter defined), together with a right of access across the Fee Property for the purposes of exercising its rights hereunder (as further set forth in Section 2.2 hereof), commencing on the Effective Date and

continuing until the expiration or earlier termination of the PPA in its entirety or as to the System (including any extensions or renewals thereof) (the “**Term**”). Upon the expiration or earlier termination of the Term, Grantee shall remove the System in accordance with (including within the time period set forth in) Section 2 of the PPA.

2. **Use/Access.**

2.1 **Use.** Grantee may use the Easement Area to install, construct, interconnect, operate, maintain, upgrade, repair, replace and remove the System, for such other uses as are reasonably and customarily related to such activities, and to undertake such other activities as may be set forth in Section 18 of the PPA (“**Intended Use**”). The Intended Use may include structural elements to physically support equipment, including vertical support poles, carports, concrete or similar anchors or plugs, and mounting hardware used to attach solar modules and other components at the Easement Area. Grantee may, at its sole cost and expense, periodically inspect, clean, maintain, repair and replace the System at times reasonably determined by Grantee to be necessary or desirable. All electrical output generated by the System shall be subject to the terms and conditions contained in the PPA.

2.2 **Access; Insolation.** Grantee shall also have the right of ingress and egress over and across the Fee Property for the purpose of exercising the rights set forth herein, including, but not limited to, access to (a) receive, unload, store, warehouse and protect all materials, tools and equipment in the Easement Area, as needed; (b) use lay down area in the Easement Area and adjoining portions of the Fee Property during construction of the System; (c) provide, install, inspect and maintain through or under the Easement Area during the Term of this Agreement such cables, electric lines, ducts, transformers, fencing and other or other ancillary equipment or apparatus as may, in the opinion of Grantee, be necessary or desirable for connecting the System to or for the benefit of Grantee’s electrical system or the local utility’s distribution system; (d) remove, trim, prune, top or otherwise control the growth of any tree, shrub, plant or other vegetation on the Fee Property to the extent it obstructs or limits insolation to the Easement Area; and (e) provide a non-exclusive easement over the Fee Property for ingress and egress to and from the Easement Area for Grantee and its employees, agents, contractors and subcontractors, at all times during the Term of this Agreement (the foregoing, collectively, the “**Access Easements**”).

3. **Rent.**

3.1 **Rent.** Commencing on the Commercial Operation Date of the System, Grantee shall pay Grantor the sum of \$1 per calendar year as rent for the use of the Easement Area and the Access Easements (“**Rent**”).

3.2 **Payment of Rent.** Rent shall be paid as of the first (1st) day of each calendar year during the Term provided however, Grantee shall have the right for accounting convenience to apply the amount of Rent for the Term as a credit offset against the first monthly payment amounts payable by Grantor pursuant to the PPA, as provided therein.

4. **Construction of System.** Grantor and Grantee shall reasonably cooperate with each other with regard to the coordination of construction of the System described in this Agreement. Grantor has reviewed and approved Grantee’s plans and specifications for the System,

subject to Grantee's obligations to obtain all governmental approvals as set forth in Section 5.B. of the PPA. Grantor shall not grant any licenses, easements, leases or rights of way, whether recorded or unrecorded, which could be reasonably expected to interfere with Grantee's use of the Easement Area to develop, design, construct, install, own, operate, maintain or remove the System or otherwise engage in any Intended Use of the Easement Area. Grantee shall comply with Grantor's Access, Control and Safety Requirements as defined in **Exhibit E**.

5. **Operation, Maintenance and Repair of System.**

5.1 Grantee will own, operate, maintain and repair the System during the Term of this Agreement in accordance with Section 5.F. of the PPA. Grantee shall provide reasonable notice to Grantor prior to any maintenance and repair activities that could be reasonably expected to materially interfere with Grantor's operations at the Fee Property (other than the Easement Area), provided that in the event Grantee needs emergency access after regular business hours, Grantor shall provide immediate access to the Fee Property. All work performed by Grantee in connection with the installation, operation, maintenance and repair of the System shall be performed in accordance with Section 5 of the PPA.

5.2 In the event Grantee is in default of any of the terms and conditions of this Agreement, and such breach is not cured within thirty (30) days following written notice by Grantor to cure the default (unless by the nature of such default a longer period to cure is required, in which event Grantee shall not be in default if it commences to cure the default within thirty (30) days of receipt of notice from Grantor and diligently proceeds to cure the default thereafter) (hereinafter "**Event of Default by Grantee**"), then so long as such Event of Default of Grantee is continuing, without limitation of Grantor's other rights and remedies at law or equity, Grantor may terminate this Agreement by written notice to Grantee, such termination to be effective on the date set forth in such notice. Upon termination of this Agreement, Grantee shall remove the System in accordance with (including within the time period set forth in) Section 3 of the PPA.

6. **Credits, Rebates and Incentives.** Entitlement to all federal and state tax credits, renewable energy credits, including all renewable energy attributes and/or benefits, payments, grants, rebates, incentive payments, or other credits paid as a result of the design, installation, and/or operation of the System (hereinafter "**Incentives**") shall be determined in accordance with the terms and conditions of the PPA. Grantor shall not be entitled to the benefit of any Incentives.

7. **Ownership of the System.** As further set forth in Section 7 of the PPA, which is incorporated herein by reference, the System and all alterations, additions, improvements or installations made thereto by Grantee and all personal property of Grantee used in connection with the installation, operation and maintenance of the System, electric lines, ducts or other apparatus related to the System are, and shall be and remain, the personal property of Grantee ("**Grantee's Property**"). In no event shall any Grantee's Property be deemed a fixture, nor shall Grantor, nor anyone claiming by, through or under Grantor (including, but not limited to, any present or future mortgagee of Grantor) have any rights in or to the Grantee's Property at any time. Ownership of Grantee's Property at the end of the Term or earlier termination of this Agreement shall be in accordance with the terms and conditions of the PPA.

8. **Grantor's Representations and Obligations.**

- (a) Grantor represents and warrants that (i) the execution and delivery by Grantor of this Agreement and the performance by it of its obligations hereunder have been duly and validly authorized by all necessary action on behalf of Grantor, including compliance with all procurement laws, rules and ordinances applicable to Grantor, (ii) this Agreement has been duly and validly executed and delivered by Grantor and constitutes the legal, valid and binding obligation of Grantor enforceable against it in accordance with its terms (iii) Grantor has good and marketable fee simple title to the Fee Property, and (iv) there are no liens, covenants, restrictions, rights of way, easements or other encumbrances affecting the Fee Property that could prevent, limit or adversely affect the Intended Use.
- (b) Grantor covenants that Grantee shall at all times during the Term peaceably and quietly have, hold and enjoy the Easement Area without hindrance or disturbance of any kind by Grantor or any person claiming by, through or under Grantor.
- (c) In no event shall Grantor cause or permit the Fee Property (i) any structure or facility to be erected within the Easement Area or elsewhere on the Fee Property, or (ii) the growth of foliage, in each case that might interfere with or cause or permit any interference with the System, electric lines, ducts, or other apparatus related to the System, or the insulation of the System.
- (d) Grantor at its sole cost and expense shall materially comply with all applicable federal, state and local laws, rules, regulations and ordinances relating to the ownership and occupancy of the Property.
- (e) A failure by Grantor to perform or comply with any of the terms and conditions of this Agreement may be considered an event of default by Grantor under this Agreement (hereinafter "**Event of Default by Grantor**"). If an Event of Default by Grantor occurs, Grantee shall notify Grantor in writing of such default. Grantor shall have thirty (30) days following written notice by Grantee to cure the default unless by the nature of such default a longer period to cure is required, in which event Grantor shall not be in default if it commences to cure the default within thirty (30) days of receipt of notice from Grantee and diligently proceeds to cure the default thereafter. If an Event of Default by Grantor has not been cured within such period, Grantee shall have the right to terminate this Agreement in accordance with the terms and conditions contained in the PPA.

9. **Indemnification.** At all times during the Term, of this Agreement, the Parties will indemnify each other in the same manner and to the extent as provided in Section 17.A. and Section 17.B. of the PPA, subject to the limitations set forth in Section 17.F. of the PPA, each of which sections is incorporated herein by reference, regardless of whether or not at any times the Grantor is the City under the PPA. For the avoidance of doubt, Grantee's aggregate liability under this agreement is subject to the limitations of liability set forth in Section 17 of the PPA.

10. **Insurance.** At all times following the Effective Date, the Parties shall maintain the insurance required under the PPA.

11. **Incorporation of Select PPA Terms.** Except as otherwise expressly provided in this Agreement, the terms, provisions, and conditions contained in the PPA that are expressly incorporated in this Agreement (including defined terms) are made a part hereof as if herein set

15. **Amendments; Governing Law; Severability.** This Agreement may not be amended except by written document signed by the then current owner of the Fee Property and Grantee. This Agreement shall be governed and construed in accordance with the laws of the State of California without regard to its conflict of laws principles. Any dispute or proceeding arising under this Agreement shall be resolved as set forth in Section 15 of the PPA and may be joined with any action arising under the PPA having a common set of facts or circumstances, provided that any matter arising hereunder that is required by applicable law to be determined by or adjudicated in a court of law shall be brought in the state or federal courts sitting in San Joaquin County, California, and solely as to such matters, the Parties hereby consent to the jurisdiction of such courts. The illegality, invalidity or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement. In the event either Party brings an action arising under this Agreement or any provisions contained herein, then the Party that substantially prevails in such action shall be entitled to recover from the non-prevailing Party, in addition to all other remedies or damages as limited herein, reasonable attorneys' fees and costs of court incurred in such action.

16. **Hazardous Materials.** Grantor's representations in Section 13.B.3. of the PPA is hereby incorporated by reference. The Parties indemnity obligations with respect to Hazardous Substances (as defined in the PPA) shall be as set forth in Section 17.B. of the PPA. Without limitation of the foregoing, if Grantor fails to remediate or remove any Hazardous Substance that it is required to remediate or remove pursuant to the PPA, then Grantee may suspend construction or operation of the System until such time as Grantor has remediated or removed such Hazardous Substance in accordance with Applicable Laws, in which event the Rent will be abated for the period of such suspension.

17. **Casualty; Condemnation.**

- (a) In the event that the System is materially damaged or destroyed in whole or part, Grantee (or the Financing Parties) may determine whether and to what extent to repair and restore the System and shall notify Grantor of such determination within ninety (90) days following the relevant event. If Grantee determines not to repair or restore the System such that it is not capable of regular, safe and commercially viable operation at the Easement Area, then Grantee's notice to Grantor may include its election to terminate this Agreement as of a date specified in such notice. Following such termination, Grantee shall remove the System as set forth in Section 3 of the PPA.
- (b) Upon receipt by either Grantor or Grantee of notice of any proceedings for the taking or condemnation of all or a portion of the Fee Property (a "**Taking**"), the Party receiving such notice shall promptly give notice thereof to the other Party and such other Party may also appear in such proceeding. In the event of a permanent Taking of the fee title to or of control of all or substantially all of the Easement Area, this Agreement shall terminate as of the effective date of such Taking. In the event of a Taking of less than all or substantially all of the Easement Area, Grantee shall reasonably determine, in its sole discretion, whether the continued use and occupancy of the remainder of the Easement Area is or can reasonably be made to be safe, economically viable, structurally sound and otherwise feasible. In the event of a Taking, Grantor and Grantee shall be entitled to receive and retain such separate awards and portions of lump sum awards as may be allocated to their

respective interests in any condemnation proceedings. If the condemning authority does not make separate awards, the award will be allocated on a proportionate value basis. If the Parties are unable to agree as to such proportion, then each Party shall select a recognized and neutral independent appraiser experienced in the appraisal of real estate and solar power facilities who shall determine the allocation. The cost of the appraiser shall be borne equally by the Parties. Nothing herein shall limit the rights of either Party to participate in such condemnation proceedings or seek specific compensation from a condemning authority.

18. **Taxes.** The Parties shall pay all real and personal property Taxes (as defined in the PPA) as and to the extent set forth in the PPA.

19. **Recordation.** Grantor shall execute and deliver to Grantee a memorandum of easement substantially in the form attached hereto as **Exhibit D** in form for recordation in the land records of the County Recorder's Office of San Joaquin County, California to evidence the easements granted hereunder within ten (10) days following written request therefor.

20. **Assignment.** The Parties may sell, assign, collaterally assign or otherwise transfer their respective rights under this Agreement to the same extent as and subject to the terms set forth in Section 19 of the PPA.

21. **Financing Party Accommodations.** Grantee may collaterally assign, pledge, mortgage or grant a security interest and/or otherwise encumber its rights, title and/or interest in this Agreement in favor of any financing party to the same extent as and subject to the terms set forth in Section 19 of the PPA. Grantor shall cooperate with Grantee and provide such estoppels, consents and other documents, all to the same extent as and subject to the terms set forth in Section 19 of the PPA.

22. **Subordination and Non-Disturbance.** If Grantor has granted one or more mortgages, deeds of trust or other security instrument (collectively, the "**Mortgages**", individually, a "**Mortgage**") that encumber some or all of the Grantor's Property to certain persons (each such person, a "**Mortgagee**"), then for each Mortgage Grantor will obtain from the Mortgagee within thirty (30) days of Grantee's request, a reasonable and customary subordination and non-disturbance among Grantor, such Mortgagee and Grantee pursuant to which (a) Grantee confirms that this Agreement is subordinated to the Mortgage granted to such Mortgagee and the Grantee will attorn to such Mortgagee in the event that the Mortgagee acquires title to the Fee Property and (b) such Mortgagee shall honor this Agreement, that the Agreement shall remain in full force and effect and shall not be terminated and Grantee shall be permitted to exercise all of its rights and remedies hereunder, including in the event of foreclosure under the Mortgage to which such Mortgagee is a party.

23. **Confidentiality.** Neither Party shall make any disclosure of any information related to this Agreement without the specific prior written consent of the other, except for such disclosures to the Parties' lenders, creditors, officers, employees, agents, consultants, attorneys and accountants as may be necessary to permit each Party to perform its obligations hereunder and as required to comply with applicable laws, rules and regulations.

A Party's response to the other Party's request for written consent under this Section 23 shall be within fifteen (15) days, and written consent shall not be unreasonably withheld.

24. **Non-Waiver.** Unless otherwise expressly provided in this Agreement, no waiver by Grantor or Grantee of any provision hereof shall be deemed to have been made unless expressed in writing and signed by Grantor or Grantee, as the case may be. No delay or omission in the exercise of any right or remedy accruing to Grantor or Grantee, as the case may be, upon any breach under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by Grantor or Grantee of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other term, covenant or condition.

25. **Captions.** Section titles or captions contained in this Agreement are inserted as a matter of convenience and for reference only, and in no way define, limit, extend or describe the scope of this Agreement.

26. **Exhibits.** All Exhibits attached hereto shall be incorporated herein by reference as if set out herein in full.

27. **Entire Agreement.** This Agreement, together with all exhibits attached hereto or mentioned herein, shall constitute the entire Agreement between the parties and may not be amended, modified or terminated except by a writing signed by the Parties hereto. This Agreement and the Exhibits hereto wholly supersede any and all oral statements, representations or agreements made by the Parties to this Agreement. This Agreement shall become binding when executed by Grantor and Grantee.

28. **Construction of Agreement.** This Agreement is the product of negotiations between the Parties and shall not be construed as being drafted by one Party as opposed to the other.

29. **Counterparts.** This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

30. **Further Assurances.** Grantor and Grantee each agree to execute and deliver such other documents and instruments, and to take such other actions, as may commercially reasonably be required and which may be necessary to effectuate the agreements set forth in this Agreement; provided, however, that such additional documents, instruments or actions do not impose upon either Grantor or Grantee any obligations, duties, liabilities or responsibilities which are not expressly provided for in this Agreement.

TO HAVE AND TO HOLD the above-described Easement, together with all and singular, the rights and appurtenances thereto in anywise belonging, unto Grantee, its successors and assigns, forever. Grantor does hereby bind itself, its successors and assigns, to warrant and forever defend, all and singular, the said Easement, subject to all matters now of record affecting the Fee Property, unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise.

[Signature pages follow]

EXHIBIT A

Description of the Easement Area

[TO BE FINALIZED]

EXHIBIT B
OF POWER PURCHASE AGREEMENT
The System

EXHIBIT C

RESERVED

EXHIBIT D

Memorandum of Easement

RECORDING REQUESTED BY, AND
WHEN RECORDED MAIL TO:

CITY OF LATHROP
ATTN: CITY CLERK
390 TOWNE CENTRE DRIVE
LATHROP, CA 95330
Exempt from payment of recording fees (GC 27383)

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MEMORANDUM OF SOLAR POWER EASEMENT AGREEMENT

THIS MEMORANDUM OF SOLAR POWER EASEMENT AGREEMENT (this "**Memorandum**") is made and entered into as of March 11, 2019, by and between by and between City of Lathrop. A General Law California City, with a place of business at 390 Towne Centre Dive Lathrop CA, 95330 ("Grantor") and General Electric International, Inc., a Delaware corporation, with a place of business at 1 River Road, Schenectady, New York 12345 ("**Grantee**") Grantor and Grantee are referred to collectively herein as the "**Parties**".

WITNESSETH:

- A. Grantor and Grantee have entered into a Solar Power Easement Agreement dated [_____] (the "**Agreement**") pursuant to which Grantor granted to Grantee an non-exclusive easement for the installation, maintenance, operation, inspection, repair and replacement of certain photovoltaic systems and related cables, electrical lines, ducts, transformers and other equipment, on, over, across and under the "Easement Area" described in **Schedule A** and as shown in **Schedule B** attached hereto and incorporated herein by reference, together with the right of ingress and egress to and from the Easement Area described in the Agreement.
- B. The term of the Agreement commenced on the date of the Agreement and shall continue until the expiration or earlier termination of the PPA (as defined in the Agreement). The PPA commenced on the date of the Agreement and, unless earlier terminated, shall expire on unless the PPA is terminated earlier according to it terms, the PPA shall expire on the date which is twenty-five (25) years after the Commercial Operation Date (as defined in the PPA) unless extended for up to an additional ten (10) years in accordance with the terms of the PPA.
- C. The Parties have executed this Memorandum, which is to be recorded in order that third parties may have notice of the interests of Grantee in the Easement Area and of the existence of the Agreement and of certain easement rights granted to Grantee in the Easement Area pursuant to the Agreement.

D. In the event of any conflict between this Memorandum and the Agreement, the Agreement shall govern. This Memorandum does not alter, amend, modify or change the Agreement in any respect and is executed by the Parties hereto solely for the purpose of recordation in the real property records of the counties, districts, boroughs and parishes in which the Easement Area is located to give notice of, and to confirm, the Agreement and all of its terms to the same extent as if all such terms were fully set forth herein. All capitalized terms used in this Agreement but not defined herein shall have the meanings ascribed to such terms in the Agreement. This Memorandum may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single instrument.

[Signature page follows]

Schedule A

RESERVED

Schedule B

RESERVED

EXHIBIT E

Grantor's Access, Control, and Safety Requirements

RESERVED

EXHIBIT F

Legal Description of Real Property

RESERVED

D2

SOLAR POWER EASEMENT
AGREEMENT - COMMUNITY CENTER

SOLAR POWER EASEMENT AGREEMENT
(Community Center)

This Solar Power Easement Agreement (this “**Agreement**”) is effective as of the 11th day of March 2019 (“**Effective Date**”), by and between City of Lathrop, a general law California City, with a place of business at 390 Towne Centre Drive Lathrop CA 95330 (“**Grantor**”) and General Electric International, Inc., a Delaware corporation, with a place of business at 1 River Road, Schenectady, New York 12345 (“**Grantee**”), each a (“**Party**”) and together (“**Parties**”).

RECITALS

A. Grantor is the fee owner of approximately 9.19 acres of land located at 15557 5th Street Lathrop, CA (the “**Fee Property**”).

B. Grantor desires to obtain a portion of the power required to run its facilities from a carport-mounted photovoltaic generating system having an approximate generating capacity of 109.44 kW (DC) and more particularly described on **Exhibit B** of the Power Purchase Agreement (PPA) (as hereinafter defined) (such system, together with all interconnection facilities and other equipment related thereto, the “**System**”) to be installed, constructed, interconnected, owned and operated on a portion of the Fee Property (hereinafter defined as the “**Easement Area**”). The Easement Area, as shown on **Exhibit A** annexed hereto, is comprised of approximately .2 acres of land, which is 8,000 square feet of space.

C. Grantee desires to develop the System on the Easement Area and, in furtherance of that desire, Grantee has entered into a Solar Power Purchase Agreement dated March 11, 2019 (“**PPA**”) whereby Grantee and the Grantor have agreed to the terms for the installation, maintenance, ownership, and operation of the System in the Easement Area.

D. Grantor, hereby grants the Easement (as hereinafter defined) to Grantee for the use of the Easement Area for the development, construction, installation, ownership, operation, maintenance and removal of the System.

E. Grantee shall, at its sole cost and expense, engineer, procure and install any and all equipment in connection with the System in accordance with the PPA.

G. Grantor desires to grant to Grantee an easement in the Easement Area, and Grantee desires to obtain an easement to the Easement Area, each subject to the terms and conditions set forth in this Agreement.

AGREEMENT

Now therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **Grant of Easement; Term.** Subject to the terms of this Agreement and to any recorded, pre-existing, third-party rights or interests with respect to the Property, Grantor hereby grants and conveys to Grantee, its successors and assigns, non-exclusive easement (the “**Easement**”) on, over, across and under the Easement Area for the Intended Use (as hereinafter defined), together with a right of access across the Fee Property for the purposes of exercising its rights hereunder (as further set forth in Section 2.2 hereof), commencing on the Effective Date and

continuing until the expiration or earlier termination of the PPA in its entirety or as to the System (including any extensions or renewals thereof) (the “**Term**”). Upon the expiration or earlier termination of the Term, Grantee shall remove the System in accordance with (including within the time period set forth in) Section 2 of the PPA.

2. Use/Access.

2.1 Use. Grantee may use the Easement Area to install, construct, interconnect, operate, maintain, upgrade, repair, replace and remove the System, for such other uses as are reasonably and customarily related to such activities, and to undertake such other activities as may be set forth in Section 18 of the PPA (“**Intended Use**”). The Intended Use may include structural elements to physically support equipment, including vertical support poles, carports, concrete or similar anchors or plugs, and mounting hardware used to attach solar modules and other components at the Easement Area. Grantee may, at its sole cost and expense, periodically inspect, clean, maintain, repair and replace the System at times reasonably determined by Grantee to be necessary or desirable. All electrical output generated by the System shall be subject to the terms and conditions contained in the PPA.

2.2 Access; Insolation. Grantee shall also have the right of ingress and egress over and across the Fee Property for the purpose of exercising the rights set forth herein, including, but not limited to, access to (a) receive, unload, store, warehouse and protect all materials, tools and equipment in the Easement Area, as needed; (b) use lay down area in the Easement Area and adjoining portions of the Fee Property during construction of the System; (c) provide, install, inspect and maintain through or under the Easement Area during the Term of this Agreement such cables, electric lines, ducts, transformers, fencing and other or other ancillary equipment or apparatus as may, in the opinion of Grantee, be necessary or desirable for connecting the System to or for the benefit of Grantee’s electrical system or the local utility’s distribution system; (d) remove, trim, prune, top or otherwise control the growth of any tree, shrub, plant or other vegetation on the Fee Property to the extent it obstructs or limits insolation to the Easement Area; and (e) provide a non-exclusive easement over the Fee Property for ingress and egress to and from the Easement Area for Grantee and its employees, agents, contractors and subcontractors, at all times during the Term of this Agreement (the foregoing, collectively, the “**Access Easements**”).

3. Rent.

3.1 Rent. Commencing on the Commercial Operation Date of the System, Grantee shall pay Grantor the sum of \$1 per calendar year as rent for the use of the Easement Area and the Access Easements (“**Rent**”).

3.2 Payment of Rent. Rent shall be paid as of the first (1st) day of each calendar year during the Term provided however, Grantee shall have the right for accounting convenience to apply the amount of Rent for the Term as a credit offset against the first monthly payment amounts payable by Grantor pursuant to the PPA, as provided therein.

4. Construction of System. Grantor and Grantee shall reasonably cooperate with each other with regard to the coordination of construction of the System described in this

Agreement. Grantor has reviewed and approved Grantee's plans and specifications for the System, subject to Grantee's obligations to obtain all governmental approvals as set forth in Section 5.B. of the PPA. Grantor shall not grant any licenses, easements, leases or rights of way, whether recorded or unrecorded, which could be reasonably expected to interfere with Grantee's use of the Easement Area to develop, design, construct, install, own, operate, maintain or remove the System or otherwise engage in any Intended Use of the Easement Area. Grantee shall comply with Grantor's Access, Control and Safety Requirements as defined in Exhibit E.

5. **Operation, Maintenance and Repair of System**

5.1 Grantee will own, operate, maintain and repair the System during the Term of this Agreement in accordance with Section 5.F. of the PPA. Grantee shall provide reasonable notice to Grantor prior to any maintenance and repair activities that could be reasonably expected to materially interfere with Grantor's operations at the Fee Property (other than the Easement Area), provided that in the event Grantee needs emergency access after regular business hours, Grantor shall provide immediate access to the Fee Property. All work performed by Grantee in connection with the installation, operation, maintenance and repair of the System shall be performed in accordance with Section 5 of the PPA.

5.2 In the event Grantee is in default of any of the terms and conditions of this Agreement, and such breach is not cured within thirty (30) days following written notice by Grantor to cure the default (unless by the nature of such default a longer period to cure is required, in which event Grantee shall not be in default if it commences to cure the default within thirty (30) days of receipt of notice from Grantor and diligently proceeds to cure the default thereafter) (hereinafter "**Event of Default by Grantee**"), then so long as such Event of Default of Grantee is continuing, without limitation of Grantor's other rights and remedies at law or equity, Grantor may terminate this Agreement by written notice to Grantee, such termination to be effective on the date set forth in such notice. Upon termination of this Agreement, Grantee shall remove the System in accordance with (including within the time period set forth in) Section 3 of the PPA.

6. **Credits, Rebates and Incentives**. Entitlement to all federal and state tax credits, renewable energy credits, including all renewable energy attributes and/or benefits, payments, grants, rebates, incentive payments, or other credits paid as a result of the design, installation, and/or operation of the System (hereinafter "**Incentives**") shall be determined in accordance with the terms and conditions of the PPA. Grantor shall not be entitled to the benefit of any Incentives.

7. **Ownership of the System**. As further set forth in Section 7 of the PPA, which is incorporated herein by reference, the System and all alterations, additions, improvements or installations made thereto by Grantee and all personal property of Grantee used in connection with the installation, operation and maintenance of the System, electric lines, ducts or other apparatus related to the System are, and shall be and remain, the personal property of Grantee ("**Grantee's Property**"). In no event shall any Grantee's Property be deemed a fixture, nor shall Grantor, nor anyone claiming by, through or under Grantor (including, but not limited to, any present or future mortgagee of Grantor) have any rights in or to the Grantee's Property at any time. Ownership of Grantee's Property at the end of the Term or earlier termination of this Agreement shall be in accordance with the terms and conditions of the PPA.

8. **Grantor's Representations and Obligations.**

- (a) Grantor represents and warrants that (i) the execution and delivery by Grantor of this Agreement and the performance by it of its obligations hereunder have been duly and validly authorized by all necessary action on behalf of Grantor, including compliance with all procurement laws, rules and ordinances applicable to Grantor, (ii) this Agreement has been duly and validly executed and delivered by Grantor and constitutes the legal, valid and binding obligation of Grantor enforceable against it in accordance with its terms (iii) Grantor has good and marketable fee simple title to the Fee Property, and (iv) there are no liens, covenants, restrictions, rights of way, easements or other encumbrances affecting the Fee Property that could prevent, limit or adversely affect the Intended Use.
- (b) Grantor covenants that Grantee shall at all times during the Term peaceably and quietly have, hold and enjoy the Easement Area without hindrance or disturbance of any kind by Grantor or any person claiming by, through or under Grantor.
- (c) In no event shall Grantor cause or permit the Fee Property (i) any structure or facility to be erected within the Easement Area or elsewhere on the Fee Property, or (ii) the growth of foliage, in each case that might interfere with or cause or permit any interference with the System, electric lines, ducts, or other apparatus related to the System, or the insulation of the System.
- (d) Grantor at its sole cost and expense shall materially comply with all applicable federal, state and local laws, rules, regulations and ordinances relating to the ownership and occupancy of the Property.
- (e) A failure by Grantor to perform or comply with any of the terms and conditions of this Agreement may be considered an event of default by Grantor under this Agreement (hereinafter "**Event of Default by Grantor**"). If an Event of Default by Grantor occurs, Grantee shall notify Grantor in writing of such default. Grantor shall have thirty (30) days following written notice by Grantee to cure the default unless by the nature of such default a longer period to cure is required, in which event Grantor shall not be in default if it commences to cure the default within thirty (30) days of receipt of notice from Grantee and diligently proceeds to cure the default thereafter. If an Event of Default by Grantor has not been cured within such period, Grantee shall have the right to terminate this Agreement in accordance with the terms and conditions contained in the PPA.

9. **Indemnification.** At all times during the Term, of this Agreement, the Parties will indemnify each other in the same manner and to the extent as provided in Section 17.A. and Section 17.B. of the PPA, subject to the limitations set forth in Section 17.F. of the PPA, each of which sections is incorporated herein by reference, regardless of whether or not at any times the Grantor is the City under the PPA. For the avoidance of doubt, Grantee's aggregate liability under this Agreement is subject to the limitations of liability set forth in Section 17 of the PPA.

10. **Insurance.** At all times following the Effective Date, the Parties shall maintain the insurance required under the PPA.

11. **Incorporation of Select PPA Terms.** Except as otherwise expressly provided in this Agreement, the terms, provisions, and conditions contained in the PPA that are expressly incorporated in this Agreement (including defined terms) are made a part hereof as if herein set forth at length, Grantor being substituted for "City" under the PPA, Grantee being substituted for "Provider" under the PPA, and this Agreement being substituted for "Agreement" under the PPA. Notwithstanding the foregoing, unless expressly incorporated herein, the terms and provisions of the PPA are not made a part hereof and neither Party shall be hereby bound by or obligated to perform any of its respective obligations under and pursuant to such provisions of the PPA, unless such obligations also independently arise under this Agreement without regard to the existence of the PPA. Notwithstanding any other provision of this Agreement, the terms, provisions, and conditions contained in the PPA that are expressly incorporated in this Agreement (including defined terms) shall survive the expiration or termination of the PPA.

12. **Force Majeure.** To the same extent as set forth in the PPA, neither Party hereto shall be liable to the other for any failure of performance due to the occurrence and continuation of an event of Force Majeure (as defined in the PPA).

13. **Run with the Land.** The burdens and benefits of this Agreement shall run with the land and shall bind and inure to the benefit of the parties hereto, the successors in title of Grantor in and to the Fee Property, and the successors and assigns of Grantee and Grantee's employees, agents and contractors

14. **Notices.** Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of Federal Express or another nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Grantor: City of Lathrop
 Attn: City Attorney
 390 Towne Centre Drive
 Lathrop CA 95330

With a copy to: City of Lathrop
 Attn: City Manager
 390 Towne Centre Drive
 Lathrop CA 95330

If to Grantee: General Electric International, Inc.
 1 River Road Building 53
 Schenectady, NY 12345
 Attn: Eric Schiemann, Solar Business Leader

With a copy to: General Counsel GE Solar
 1 River Road
 Building 53
 Schenectady, NY 12345
 Attn: Jennifer Gerrard

15. **Amendments; Governing Law; Severability.** This Agreement may not be amended except by written document signed by the then current owner of the Fee Property and Grantee. This Agreement shall be governed and construed in accordance with the laws of the State of California without regard to its conflict of laws principles. Any dispute or proceeding arising under this Agreement shall be resolved as set forth in Section 15 of the PPA and may be joined with any action arising under the PPA having a common set of facts or circumstances, provided that any matter arising hereunder that is required by applicable law to be determined by or adjudicated in a court of law shall be brought in the state or federal courts sitting in San Joaquin County, California, and solely as to such matters, the Parties hereby consent to the jurisdiction of such courts. The illegality, invalidity or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement. In the event either Party brings an action arising under this Agreement or any provisions contained herein, then the Party that substantially prevails in such action shall be entitled to recover from the non-prevailing Party, in addition to all other remedies or damages as limited herein, reasonable attorneys' fees and costs of court incurred in such action.

16. **Hazardous Materials.** Grantor's representations in Section 13.B.3. of the PPA is hereby incorporated by reference. The Parties indemnity obligations with respect to Hazardous Substances (as defined in the PPA) shall be as set forth in Section 17.B. of the PPA. Without limitation of the foregoing, if Grantor fails to remediate or remove any Hazardous Substance that it is required to remediate or remove pursuant to the PPA, then Grantee may suspend construction or operation of the System until such time as Grantor has remediated or removed such Hazardous Substance in accordance with Applicable Laws, in which event the Rent will be abated for the period of such suspension.

17. **Casualty; Condemnation.**

- (a) In the event that the System is materially damaged or destroyed in whole or part, Grantee (or the Financing Parties) may determine whether and to what extent to repair and restore the System and shall notify Grantor of such determination within ninety (90) days following the relevant event. If Grantee determines not to repair or restore the System such that it is not capable of regular, safe and commercially viable operation at the Easement Area, then Grantee's notice to Grantor may include its election to terminate this Agreement as of a date specified in such notice. Following such termination, Grantee shall remove the System as set forth in Section 3 of the PPA.

- (b) Upon receipt by either Grantor or Grantee of notice of any proceedings for the taking or condemnation of all or a portion of the Fee Property (a "Taking"), the Party receiving such notice shall promptly give notice thereof to the other Party and such other Party may also appear in such proceeding. In the event of a permanent Taking of the fee title to or of control of all or substantially all of the Easement Area, this Agreement shall terminate as

of the effective date of such Taking. In the event of a Taking of less than all or substantially all of the Easement Area, Grantee shall reasonably determine, in its sole discretion, whether the continued use and occupancy of the remainder of the Easement Area is or can reasonably be made to be safe, economically viable, structurally sound and otherwise feasible. In the event of a Taking, Grantor and Grantee shall be entitled to receive and retain such separate awards and portions of lump sum awards as may be allocated to their respective interests in any condemnation proceedings. If the condemning authority does not make separate awards, the award will be allocated on a proportionate value basis. If the Parties are unable to agree as to such proportion, then each Party shall select a recognized and neutral independent appraiser experienced in the appraisal of real estate and solar power facilities who shall determine the allocation. The cost of the appraiser shall be borne equally by the Parties. Nothing herein shall limit the rights of either Party to participate in such condemnation proceedings or seek specific compensation from a condemning authority.

18. **Taxes.** The Parties shall pay all real and personal property Taxes (as defined in the PPA) as and to the extent set forth in the PPA.

19. **Recordation.** Grantor shall execute and deliver to Grantee a memorandum substantially in the form attached hereto as **Exhibit D** in form for recordation in the land records of the County Recorder's Office of San Joaquin County, California to evidence the easements granted hereunder within ten (10) days following written request therefor.

20. **Assignment.** The Parties may sell, assign, collaterally assign or otherwise transfer their respective rights under this Agreement to the same extent as and subject to the terms set forth in Section 19 of the PPA.

21. **Financing Party Accommodations.** Grantee may collaterally assign, pledge, mortgage or grant a security interest and/or otherwise encumber its rights, title and/or interest in this Agreement in favor of any financing party to the same extent as and subject to the terms set forth in Section 19 of the PPA. Grantor shall cooperate with Grantee and provide such estoppels, consents and other documents, all to the same extent as and subject to the terms set forth in Section 19 of the PPA.

22. **Subordination and Non-Disturbance.** If Grantor has granted one or more mortgages, deeds of trust or other security instrument (collectively, the "**Mortgages**", individually, a "**Mortgage**") that encumber some or all of the Grantor's Property to certain persons (each such person, a "**Mortgagee**"), then for each Mortgage Grantor will obtain from the Mortgagee within thirty (30) days of Grantee's request, a reasonable and customary subordination and non-disturbance among Grantor, such Mortgagee and Grantee pursuant to which (a) Grantee confirms that this Agreement is subordinated to the Mortgage granted to such Mortgagee and the Grantee will attorn to such Mortgagee in the event that the Mortgagee acquires title to the Fee Property and (b) such Mortgagee shall honor this Agreement, that the Agreement shall remain in full force and effect and shall not be terminated and Grantee shall be permitted to exercise all of its rights and remedies hereunder, including in the event of foreclosure under the Mortgage to which such Mortgagee is a party.

23. **Confidentiality.** Neither Party shall make any disclosure of any information related to this Agreement without the specific prior written consent of the other, except for such disclosures to the Parties' lenders, creditors, officers, employees, agents, consultants, attorneys and accountants as may be necessary to permit each Party to perform its obligations hereunder and as required to comply with applicable laws, rules and regulations. A Party's response to the other Party's request for written consent under this Section 23 shall be within fifteen (15) days, and written consent shall not be unreasonably withheld.

24. **Non-Waiver.** Unless otherwise expressly provided in this Agreement, no waiver by Grantor or Grantee of any provision hereof shall be deemed to have been made unless expressed in writing and signed by Grantor or Grantee, as the case may be. No delay or omission in the exercise of any right or remedy accruing to Grantor or Grantee, as the case may be, upon any breach under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by Grantor or Grantee of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other term, covenant or condition.

25. **Captions.** Section titles or captions contained in this Agreement are inserted as a matter of convenience and for reference only, and in no way define, limit, extend or describe the scope of this Agreement.

26. **Exhibits.** All Exhibits attached hereto shall be incorporated herein by reference as if set out herein in full.

27. **Entire Agreement.** This Agreement, together with all exhibits attached hereto or mentioned herein, shall constitute the entire Agreement between the parties and may not be amended, modified or terminated except by a writing signed by the Parties hereto. This Agreement and the Exhibits hereto wholly supersede any and all oral statements, representations or agreements made by the Parties to this Agreement. This Agreement shall become binding when executed by Grantor and Grantee.

28. **Construction of Agreement.** This Agreement is the product of negotiations between the Parties and shall not be construed as being drafted by one Party as opposed to the other.

29. **Counterparts.** This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

30. **Further Assurances.** Grantor and Grantee each agree to execute and deliver such other documents and instruments, and to take such other actions, as may commercially reasonably be required and which may be necessary to effectuate the agreements set forth in this Agreement; provided, however, that such additional documents, instruments or actions do not impose upon either Grantor or Grantee any obligations, duties, liabilities or responsibilities which are not expressly provided for in this Agreement.

TO HAVE AND TO HOLD the above-described Easement, together with all and singular, the rights and appurtenances thereto in anywise belonging, unto Grantee, its successors and assigns, forever. Grantor does hereby bind itself, its successors and assigns, to warrant and forever defend, all and singular, the said Easement, subject to all matters now of record affecting the Fee Property, unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise.

[Signature pages follow]

Executed to be effective as of the Effective Date.

GRANTOR:

City of Lathrop,
a General Law California City

BY: _____
Stephen J. Salvatore
City Manager

APPROVED AS TO FORM

BY: _____
Salvador Navarrete
City Attorney

GRANTEE:

GENERAL ELECTRIC INTERNATIONAL, INC.,
a Delaware corporation

By: _____
Erik Schiemann
General Manager – Solar Business

THE STATE OF NEW YORK §
 §
COUNTY OF SCHENECTADY §

This instrument was acknowledged before me on _____, 2019, by Erik Schiemann, General Manager – Solar Business of General Electric International, Inc., a Delaware corporation, on behalf of said corporation.

Notary Public, State of _____
Printed Name: _____
My commission expires: _____

EXHIBIT A

Description of the Easement Area

[TO BE FINALIZED]

EXHIBIT B

THE SYSTEM

EXHIBIT C

RESERVED

EXHIBIT D

Memorandum of Easement

RECORDING REQUESTED BY, AND
WHEN RECORDED MAIL TO:

CITY OF LATHROP
ATTN: CITY CLERK
390 TOWNE CENTRE DRIVE
LATHROP, CA 95330
Exempt from payment of recording fees (GC 27383)

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MEMORANDUM OF SOLAR POWER EASEMENT AGREEMENT

THIS MEMORANDUM OF SOLAR POWER EASEMENT AGREEMENT (this "**Memorandum**") is made and entered into as of _____, 2019, by and between City of Lathrop. A general law California City, with a place of business at 390 Towne Centre Lathrop, CA 95330 ("**Grantor**") and General Electric International, Inc., a Delaware corporation, with a place of business at 1 River Road, Schenectady, New York 12345 ("**Grantee**") Grantor and Grantee are referred to collectively herein as the "**Parties**".

WITNESSETH:

- A. Grantor and Grantee have entered into a Solar Power Easement Agreement dated [_____] (the "**Agreement**") pursuant to which Grantor granted to Grantee an non-exclusive easement for the installation, maintenance, operation, inspection, repair and replacement of certain photovoltaic systems and related cables, electrical lines, ducts, transformers and other equipment, on, over, across and under the "Easement Area" described in **Schedule A** and as shown in **Schedule B** attached hereto and incorporated herein by reference, together with the right of ingress and egress to and from the Easement Area described in the Agreement.
- B. The term of the Agreement commenced on the date of the Agreement and shall continue until the expiration or earlier termination of the PPA (as defined in the Agreement). The PPA commenced on the date of the Agreement and, unless earlier terminated, shall expire on unless the PPA is terminated earlier according to it terms, the PPA shall expire on the date which is twenty-five (25) years after the Commercial Operation Date (as defined in the PPA) unless extended for up to an additional ten (10) years in accordance with the terms of the PPA.
- C. The Parties have executed this Memorandum, which is to be recorded in order that third parties may have notice of the interests of Grantee in the Easement Area and of the existence of the Agreement and of certain easement rights granted to Grantee in the Easement Area pursuant to the Agreement.

D. In the event of any conflict between this Memorandum and the Agreement, the Agreement shall govern. This Memorandum does not alter, amend, modify or change the Agreement in any respect and is executed by the Parties hereto solely for the purpose of recordation in the real property records of the counties, districts, boroughs and parishes in which the Easement Area is located to give notice of, and to confirm, the Agreement and all of its terms to the same extent as if all such terms were fully set forth herein. All capitalized terms used in this Agreement but not defined herein shall have the meanings ascribed to such terms in the Agreement. This Memorandum may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single instrument.

[Signature page follows]

IN WITNESS WHEREOF, Grantor and Grantee have executed this Memorandum as of the day and year first above written.

GRANTOR:

City of Lathrop,
A General Law California City

BY: _____
Stephen J. Salvatore
City Manager

GRANTEE:

GENERAL ELECTRIC INTERNATIONAL, INC.
a Delaware corporation

By: _____

Name: Erik Schiemann

Title: General Manager – Solar Business

THE STATE OF NEW YORK §
 §
COUNTY OF SCHENECTADY §

This instrument was acknowledged before me on _____, 2019, by Erik Schiemann, General Manager – Solar Business of General Electric International, Inc., a Delaware corporation, on behalf of said corporation.

Notary Public, State of _____
Printed Name: _____
My commission expires: _____

Schedule A

RESERVED

Schedule B

RESERVED

EXHIBIT E

Grantor's Access, Control, and Safety Requirements

RESERVED

1

EXHIBIT F

Legal Description of Real Property

RESERVED

D3

SOLAR POWER EASEMENT
AGREEMENT - SOUTH HARLAN ROAD
STORM DRAIN BASIN

SOLAR POWER EASEMENT AGREEMENT
(Christopher Way)

This Solar Power Easement Agreement (this "**Agreement**") is effective as of the 11th day of March 2019 ("**Effective Date**"), by and between City of Lathrop. A general law California City, with a place of business at 390 Towne Centre Drive Lathrop CA 95330 ("**Grantor**") and General Electric International, Inc., a Delaware corporation, with a place of business at 1 River Road, Schenectady, New York 12345 ("**Grantee**"), each a ("**Party**") and together ("**Parties**").

RECITALS

A. Grantor is the fee owner of approximately 10.25 acres of land located at 18500 South Harlan Road Lathrop, CA (the "**Fee Property**").

B. Grantor desires to obtain a portion of the power required to run its facilities from a ground-mounted photovoltaic generating system having an approximate generating capacity of 1,103.76 kW (DC) and more particularly described on **Exhibit B** of the Power Purchase Agreement (PPA) (as hereinafter defined) (such system, together with all interconnection facilities and other equipment related thereto, the "**System**") to be installed, constructed, interconnected, owned and operated on a portion of the Fee Property (hereinafter defined as the "**Easement Area**"). The Easement Area, as shown on **Exhibit A** annexed hereto, is comprised of approximately 3.5 acres of land, which is 154,896 square feet of space.

C. Grantee desires to develop the System on the Easement Area and, in furtherance of that desire, Grantee has entered into a Solar Power Purchase Agreement dated March 11, 2019 ("**PPA**") whereby Grantee and the Grantor have agreed to the terms for the installation, maintenance, ownership, and operation of the System in the Easement Area.

D. Grantor, hereby grants the Easement (as hereinafter defined) to Grantee for the use of the Easement Area for the development, construction, installation, ownership, operation, maintenance and removal of the System.

E. Grantee shall, at its sole cost and expense, engineer, procure and install any and all equipment in connection with the System in accordance with the PPA.

G. Grantor desires to grant to Grantee an easement in the Easement Area, and Grantee desires to obtain an easement to the Easement Area, each subject to the terms and conditions set forth in this Agreement.

AGREEMENT

Now therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **Grant of Easement; Term.** Subject to the terms of this Agreement and to any recorded, pre-existing, third-party rights or interests with respect to the Property, Grantor hereby grants and conveys to Grantee, its successors and assigns, non-exclusive easement (the "**Easement**") on, over, across and under the Easement Area for the Intended Use (as hereinafter defined), together with a right of access across the Fee Property for the purposes of exercising its rights hereunder (as further set forth in Section 2.2 hereof), commencing on the Effective Date and

continuing until the expiration or earlier termination of the PPA in its entirety or as to the System (including any extensions or renewals thereof) (the "**Term**"). Upon the expiration or earlier termination of the Term, Grantee shall remove the System in accordance with (including within the time period set forth in) Section 2 of the PPA.

2. **Use/Access.**

2.1 **Use.** Grantee may use the Easement Area to install, construct, interconnect, operate, maintain, upgrade, repair, replace and remove the System, for such other uses as are reasonably and customarily related to such activities, and to undertake such other activities as may be set forth in Section 18 of the PPA ("**Intended Use**"). The Intended Use may include structural elements to physically support equipment, including vertical support poles, carports, concrete or similar anchors or plugs, and mounting hardware used to attach solar modules and other components at the Easement Area. Grantee may, at its sole cost and expense, periodically inspect, clean, maintain, repair and replace the System at times reasonably determined by Grantee to be necessary or desirable. All electrical output generated by the System shall be subject to the terms and conditions contained in the PPA.

2.2 **Access; Insolation.** Grantee shall also have the right of ingress and egress over and across the Fee Property for the purpose of exercising the rights set forth herein, including, but not limited to, access to (a) receive, unload, store, warehouse and protect all materials, tools and equipment in the Easement Area, as needed; (b) use lay down area in the Easement Area and adjoining portions of the Fee Property during construction of the System; (c) provide, install, inspect and maintain through or under the Easement Area during the Term of this Agreement such cables, electric lines, ducts, transformers, fencing and other or other ancillary equipment or apparatus as may, in the opinion of Grantee, be necessary or desirable for connecting the System to or for the benefit of Grantee's electrical system or the local utility's distribution system; (d) remove, trim, prune, top or otherwise control the growth of any tree, shrub, plant or other vegetation on the Fee Property to the extent it obstructs or limits insolation to the Easement Area; and (e) provide a non-exclusive easement over the Fee Property for ingress and egress to and from the Easement Area for Grantee and its employees, agents, contractors and subcontractors, at all times during the Term of this Agreement (the foregoing, collectively, the "**Access Easements**").

3. **Rent.**

3.1 **Rent.** Commencing on the Commercial Operation Date of the System, Grantee shall pay Grantor the sum of \$1 per calendar year as rent for the use of the Easement Area and the Access Easements ("**Rent**").

3.2 **Payment of Rent.** Rent shall be paid as of the first (1st) day of each calendar year during the Term provided however, Grantee shall have the right for accounting convenience to apply the amount of Rent for the Term as a credit offset against the first monthly payment amounts payable by Grantor pursuant to the PPA, as provided therein.

4. **Construction of System.** Grantor and Grantee shall reasonably cooperate with each other with regard to the coordination of construction of the System described in this Agreement. Grantor has reviewed and approved Grantee's plans and specifications for the System, subject to Grantee's obligations to obtain all governmental approvals as set forth in Section 5.B. of the PPA. Grantor shall not grant any licenses, easements, leases or rights of way, whether recorded or unrecorded, which could be reasonably expected to interfere with Grantee's use of the Easement Area to develop, design, construct, install, own, operate, maintain or remove the System or otherwise engage in any Intended Use of the Easement Area. Grantee shall comply with Grantor's Access, Control and Safety Requirements as defined in **Exhibit E.**

5. **Operation, Maintenance and Repair of System.**

5.1 Grantee will own, operate, maintain and repair the System during the Term of this Agreement in accordance with Section 5.F. of the PPA. Grantee shall provide reasonable notice to Grantor prior to any maintenance and repair activities that could be reasonably expected to materially interfere with Grantor's operations at the Fee Property (other than the Easement Area), provided that in the event Grantee needs emergency access after regular business hours, Grantor shall provide immediate access to the Fee Property. All work performed by Grantee in connection with the installation, operation, maintenance and repair of the System shall be performed in accordance with Section 5 of the PPA.

5.2 In the event Grantee is in default of any of the terms and conditions of this Agreement, and such breach is not cured within thirty (30) days following written notice by Grantor to cure the default (unless by the nature of such default a longer period to cure is required, in which event Grantee shall not be in default if it commences to cure the default within thirty (30) days of receipt of notice from Grantor and diligently proceeds to cure the default thereafter) (hereinafter "**Event of Default by Grantee**"), then so long as such Event of Default of Grantee is continuing, without limitation of Grantor's other rights and remedies at law or equity, Grantor may terminate this Agreement by written notice to Grantee, such termination to be effective on the date set forth in such notice. Upon termination of this Agreement, Grantee shall remove the System in accordance with (including within the time period set forth in) Section 3 of the PPA.

6. **Credits, Rebates and Incentives.** Entitlement to all federal and state tax credits, renewable energy credits, including all renewable energy attributes and/or benefits, payments, grants, rebates, incentive payments, or other credits paid as a result of the design, installation, and/or operation of the System (hereinafter "**Incentives**") shall be determined in accordance with the terms and conditions of the PPA. Grantor shall not be entitled to the benefit of any Incentives.

7. **Ownership of the System.** As further set forth in Section 7 of the PPA, which is incorporated herein by reference, the System and all alterations, additions, improvements or installations made thereto by Grantee and all personal property of Grantee used in connection with the installation, operation and maintenance of the System, electric lines, ducts or other apparatus related to the System are, and shall be and remain, the personal property of Grantee ("**Grantee's Property**"). In no event shall any Grantee's Property be deemed a fixture, nor shall Grantor, nor anyone claiming by, through or under Grantor (including, but not limited to, any present or future mortgagee of Grantor) have any rights in or to the Grantee's Property at any time. Ownership of

Grantee's Property at the end of the Term or earlier termination of this Agreement shall be in accordance with the terms and conditions of the PPA.

8. **Grantor's Representations and Obligations.**

- (a) Grantor represents and warrants that (i) the execution and delivery by Grantor of this Agreement and the performance by it of its obligations hereunder have been duly and validly authorized by all necessary action on behalf of Grantor, including compliance with all procurement laws, rules and ordinances applicable to Grantor, (ii) this Agreement has been duly and validly executed and delivered by Grantor and constitutes the legal, valid and binding obligation of Grantor enforceable against it in accordance with its terms (iii) Grantor has good and marketable fee simple title to the Fee Property, and (iv) there are no liens, covenants, restrictions, rights of way, easements or other encumbrances affecting the Fee Property that could prevent, limit or adversely affect the Intended Use.
- (b) Grantor covenants that Grantee shall at all times during the Term peaceably and quietly have, hold and enjoy the Easement Area without hindrance or disturbance of any kind by Grantor or any person claiming by, through or under Grantor.
- (c) In no event shall Grantor cause or permit the Fee Property (i) any structure or facility to be erected within the Easement Area or elsewhere on the Fee Property, or (ii) the growth of foliage, in each case that might interfere with or cause or permit any interference with the System, electric lines, ducts, or other apparatus related to the System, or the insulation of the System.
- (d) Grantor at its sole cost and expense shall materially comply with all applicable federal, state and local laws, rules, regulations and ordinances relating to the ownership and occupancy of the Property.
- (e) A failure by Grantor to perform or comply with any of the terms and conditions of this Agreement may be considered an event of default by Grantor under this Agreement (hereinafter "**Event of Default by Grantor**"). If an Event of Default by Grantor occurs, Grantee shall notify Grantor in writing of such default. Grantor shall have thirty (30) days following written notice by Grantee to cure the default unless by the nature of such default a longer period to cure is required, in which event Grantor shall not be in default if it commences to cure the default within thirty (30) days of receipt of notice from Grantee and diligently proceeds to cure the default thereafter. If an Event of Default by Grantor has not been cured within such period, Grantee shall have the right to terminate this Agreement in accordance with the terms and conditions contained in the PPA.

9. **Indemnification.** At all times during the Term, of this Agreement, the Parties will indemnify each other in the same manner and to the extent as provided in Section 17.A. and Section 17.B. of the PPA, subject to the limitations set forth in Section 17.F. of the PPA, each of which sections is incorporated herein by reference, regardless of whether or not at any times the Grantor is the City under the PPA. For the avoidance of doubt, Grantee's aggregate liability under this Agreement is subject to the limitations of liability set forth in Section 17 of the PPA.

10. **Insurance.** At all times following the Effective Date, the Parties shall maintain the insurance required under the PPA.

11. **Incorporation of Select PPA Terms.** Except as otherwise expressly provided in this Agreement, the terms, provisions, and conditions contained in the PPA that are expressly incorporated in this Agreement (including defined terms) are made a part hereof as if herein set forth at length, Grantor being substituted for "City" under the PPA, Grantee being substituted for "Provider" under the PPA, and this Agreement being substituted for "Agreement" under the PPA. Notwithstanding the foregoing, unless expressly incorporated herein, the terms and provisions of the PPA are not made a part hereof and neither Party shall be hereby bound by or obligated to perform any of its respective obligations under and pursuant to such provisions of the PPA, unless such obligations also independently arise under this Agreement without regard to the existence of the PPA. Notwithstanding any other provision of this Agreement, the terms, provisions, and conditions contained in the PPA that are expressly incorporated in this Agreement (including defined terms) shall survive the expiration or termination of the PPA.

12. **Force Majeure.** To the same extent as set forth in the PPA, neither Party hereto shall be liable to the other for any failure of performance due to the occurrence and continuation of an event of Force Majeure (as defined in the PPA).

13. **Run with the Land.** The burdens and benefits of this Agreement shall run with the land and shall bind and inure to the benefit of the parties hereto, the successors in title of Grantor in and to the Fee Property, and the successors and assigns of Grantee and Grantee's employees, agents and contractors

14. **Notices.** Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of Federal Express or another nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Grantor: City of Lathrop
 Attn: City Attorney
 390 Towne Centre Drive
 Lathrop CA 95330

With a copy to: City of Lathrop
 Attn: City Manager
 390 Towne Centre Drive
 Lathrop CA 95330

If to Grantee: General Electric International, Inc.
 1 River Road Building 53
 Schenectady, NY 12345
 Attn: Eric Schiemann, Solar Business Leader

With a copy to: General Counsel GE Solar
 1 River Road
 Building 53
 Schenectady, NY 12345
 Attn: Jennifer Gerrard

15. **Amendments; Governing Law; Severability.** This Agreement may not be amended except by written document signed by the then current owner of the Fee Property and Grantee. This Agreement shall be governed and construed in accordance with the laws of the State of California without regard to its conflict of laws principles. Any dispute or proceeding arising under this Agreement shall be resolved as set forth in Section 15 of the PPA and may be joined with any action arising under the PPA having a common set of facts or circumstances, provided that any matter arising hereunder that is required by applicable law to be determined by or adjudicated in a court of law shall be brought in the state or federal courts sitting in San Joaquin County, California, and solely as to such matters, the Parties hereby consent to the jurisdiction of such courts. The illegality, invalidity or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement. In the event either Party brings an action arising under this Agreement or any provisions contained herein, then the Party that substantially prevails in such action shall be entitled to recover from the non-prevailing Party, in addition to all other remedies or damages as limited herein, reasonable attorneys' fees and costs of court incurred in such action.

16. **Hazardous Materials.** Grantor's representations in Section 13.B.3. of the PPA is hereby incorporated by reference. The Parties indemnity obligations with respect to Hazardous Substances (as defined in the PPA) shall be as set forth in Section 17.B. of the PPA. Without limitation of the foregoing, if Grantor fails to remediate or remove any Hazardous Substance that it is required to remediate or remove pursuant to the PPA, then Grantee may suspend construction or operation of the System until such time as Grantor has remediated or removed such Hazardous Substance in accordance with Applicable Laws, in which event the Rent will be abated for the period of such suspension.

17. **Casualty; Condemnation.**

- (a) In the event that the System is materially damaged or destroyed in whole or part, Grantee (or the Financing Parties) may determine whether and to what extent to repair and restore the System and shall notify Grantor of such determination within ninety (90) days following the relevant event. If Grantee determines not to repair or restore the System such that it is not capable of regular, safe and commercially viable operation at the Easement Area, then Grantee's notice to Grantor may include its election to terminate this Agreement as of a date specified in such notice. Following such termination, Grantee shall remove the System as set forth in Section 3 of the PPA.

- (b) Upon receipt by either Grantor or Grantee of notice of any proceedings for the taking or condemnation of all or a portion of the Fee Property (a "Taking"), the Party receiving such notice shall promptly give notice thereof to the other Party and such other Party may also appear in such proceeding. In the event of a permanent Taking of the fee title to or of control of all or substantially all of the Easement Area, this Agreement shall terminate as

of the effective date of such Taking. In the event of a Taking of less than all or substantially all of the Easement Area, Grantee shall reasonably determine, in its sole discretion, whether the continued use and occupancy of the remainder of the Easement Area is or can reasonably be made to be safe, economically viable, structurally sound and otherwise feasible. In the event of a Taking, Grantor and Grantee shall be entitled to receive and retain such separate awards and portions of lump sum awards as may be allocated to their respective interests in any condemnation proceedings. If the condemning authority does not make separate awards, the award will be allocated on a proportionate value basis. If the Parties are unable to agree as to such proportion, then each Party shall select a recognized and neutral independent appraiser experienced in the appraisal of real estate and solar power facilities who shall determine the allocation. The cost of the appraiser shall be borne equally by the Parties. Nothing herein shall limit the rights of either Party to participate in such condemnation proceedings or seek specific compensation from a condemning authority.

18. **Taxes.** The Parties shall pay all real and personal property Taxes (as defined in the PPA) as and to the extent set forth in the PPA.

19. **Recordation.** Grantor shall execute and deliver to Grantee a memorandum substantially in the form attached hereto as **Exhibit D** in form for recordation in the land records of the County Recorder's Office of San Joaquin County, California to evidence the easements granted hereunder within ten (10) days following written request therefor.

20. **Assignment.** The Parties may sell, assign, collaterally assign or otherwise transfer their respective rights under this Agreement to the same extent as and subject to the terms set forth in Section 19 of the PPA.

21. **Financing Party Accommodations.** Grantee may collaterally assign, pledge, mortgage or grant a security interest and/or otherwise encumber its rights, title and/or interest in this Agreement in favor of any financing party to the same extent as and subject to the terms set forth in Section 19 of the PPA. Grantor shall cooperate with Grantee and provide such estoppels, consents and other documents, all to the same extent as and subject to the terms set forth in Section 19 of the PPA.

22. **Subordination and Non-Disturbance.** If Grantor has granted one or more mortgages, deeds of trust or other security instrument (collectively, the "**Mortgages**", individually, a "**Mortgage**") that encumber some or all of the Grantor's Property to certain persons (each such person, a "**Mortgagee**"), then for each Mortgage Grantor will obtain from the Mortgagee within thirty (30) days of Grantee's request, a reasonable and customary subordination and non-disturbance among Grantor, such Mortgagee and Grantee pursuant to which (a) Grantee confirms that this Agreement is subordinated to the Mortgage granted to such Mortgagee and the Grantee will attorn to such Mortgagee in the event that the Mortgagee acquires title to the Fee Property and (b) such Mortgagee shall honor this Agreement, that the Agreement shall remain in full force and effect and shall not be terminated and Grantee shall be permitted to exercise all of its rights and remedies hereunder, including in the event of foreclosure under the Mortgage to which such Mortgagee is a party.

23. **Confidentiality.** Neither Party shall make any disclosure of any information related to this Agreement without the specific prior written consent of the other, except for such disclosures to the Parties' lenders, creditors, officers, employees, agents, consultants, attorneys and accountants as may be necessary to permit each Party to perform its obligations hereunder and as required to comply with applicable laws, rules and regulations. A Party's response to the other Party's request for written consent under this Section 23 shall be within fifteen (15) days, and written consent shall not be unreasonably withheld.

24. **Non-Waiver.** Unless otherwise expressly provided in this Agreement, no waiver by Grantor or Grantee of any provision hereof shall be deemed to have been made unless expressed in writing and signed by Grantor or Grantee, as the case may be. No delay or omission in the exercise of any right or remedy accruing to Grantor or Grantee, as the case may be, upon any breach under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by Grantor or Grantee of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other term, covenant or condition.

25. **Captions.** Section titles or captions contained in this Agreement are inserted as a matter of convenience and for reference only, and in no way define, limit, extend or describe the scope of this Agreement.

26. **Exhibits.** All Exhibits attached hereto shall be incorporated herein by reference as if set out herein in full.

27. **Entire Agreement.** This Agreement, together with all exhibits attached hereto or mentioned herein, shall constitute the entire Agreement between the parties and may not be amended, modified or terminated except by a writing signed by the Parties hereto. This Agreement and the Exhibits hereto wholly supersede any and all oral statements, representations or agreements made by the Parties to this Agreement. This Agreement shall become binding when executed by Grantor and Grantee.

28. **Construction of Agreement.** This Agreement is the product of negotiations between the Parties and shall not be construed as being drafted by one Party as opposed to the other.

29. **Counterparts.** This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

30. **Further Assurances.** Grantor and Grantee each agree to execute and deliver such other documents and instruments, and to take such other actions, as may commercially reasonably be required and which may be necessary to effectuate the agreements set forth in this Agreement; provided, however, that such additional documents, instruments or actions do not impose upon either Grantor or Grantee any obligations, duties, liabilities or responsibilities which are not expressly provided for in this Agreement.

TO HAVE AND TO HOLD the above-described Easement, together with all and singular, the rights and appurtenances thereto in anywise belonging, unto Grantee, its successors and assigns, forever. Grantor does hereby bind itself, its successors and assigns, to warrant and forever defend, all and singular, the said Easement, subject to all matters now of record affecting the Fee Property, unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise.

[Signature pages follow]

Executed to be effective as of the Effective Date.

GRANTOR:

City of Lathrop,
a General Law California City

BY: _____
Stephen J. Salvatore
City Manager

APPROVED AS TO FORM

BY: _____
Salvador Navarrete
City Attorney

GRANTEE:

GENERAL ELECTRIC INTERNATIONAL, INC.,
a Delaware corporation

By: _____
Erik Schiemann
General Manager – Solar Business

THE STATE OF NEW YORK §
 §
COUNTY OF SCHENECTADY §

This instrument was acknowledged before me on _____, 2019, by Erik Schiemann, General Manager – Solar Business of General Electric International, Inc., a Delaware corporation, on behalf of said corporation.

Notary Public, State of _____
Printed Name: _____
My commission expires: _____

EXHIBIT A

Description of the Easement Area

[TO BE FINALIZED]

EXHIBIT B
OF POWER PURCHASE AGREEMENT
The System

EXHIBIT C

RESERVED

EXHIBIT D

Memorandum of Easement

**RECORDING REQUESTED BY, AND
WHEN RECORDED MAIL TO:**

CITY OF LATHROP
ATTN: CITY CLERK
390 TOWNE CENTRE DRIVE
LATHROP, CA 95330
Exempt from payment of recording fees (GC 27383)

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MEMORANDUM OF SOLAR POWER EASEMENT AGREEMENT

THIS MEMORANDUM OF SOLAR POWER EASEMENT AGREEMENT (this "**Memorandum**") is made and entered into as of March 11, 2019, by and between City of Lathrop. A General Law California City, with a place of business at 390 Towne Centre Dive Lathrop CA, 95330 ("**Grantor**") and General Electric International, Inc., a Delaware corporation, with a place of business at 1 River Road, Schenectady, New York 12345 ("**Grantee**") Grantor and Grantee are referred to collectively herein as the "**Parties**".

WITNESSETH:

- A. Grantor and Grantee have entered into a Solar Power Easement Agreement dated [] (the "**Agreement**") pursuant to which Grantor granted to Grantee an non-exclusive easement for the installation, maintenance, operation, inspection, repair and replacement of certain photovoltaic systems and related cables, electrical lines, ducts, transformers and other equipment, on, over, across and under the "Easement Area" described in **Schedule A** and as shown in **Schedule B** attached hereto and incorporated herein by reference, together with the right of ingress and egress to and from the Easement Area described in the Agreement.
- B. The term of the Agreement commenced on the date of the Agreement and shall continue until the expiration or earlier termination of the PPA (as defined in the Agreement). The PPA commenced on the date of the Agreement and, unless earlier terminated, shall expire on unless the PPA is terminated earlier according to it terms, the PPA shall expire on the date which is twenty-five (25) years after the Commercial Operation Date (as defined in the PPA) unless extended for up to an additional ten (10) years in accordance with the terms of the PPA.
- C. The Parties have executed this Memorandum, which is to be recorded in order that third parties may have notice of the interests of Grantee in the Easement Area and of the existence of the Agreement and of certain easement rights granted to Grantee in the Easement Area pursuant to the Agreement.

D. In the event of any conflict between this Memorandum and the Agreement, the Agreement shall govern. This Memorandum does not alter, amend, modify or change the Agreement in any respect and is executed by the Parties hereto solely for the purpose of recordation in the real property records of the counties, districts, boroughs and parishes in which the Easement Area is located to give notice of, and to confirm, the Agreement and all of its terms to the same extent as if all such terms were fully set forth herein. All capitalized terms used in this Agreement but not defined herein shall have the meanings ascribed to such terms in the Agreement. This Memorandum may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single instrument.

[Signature page follows]

IN WITNESS WHEREOF, Grantor and Grantee have executed this Memorandum as of the day and year first above written.

GRANTOR:

City of Lathrop,
A General Law California City

BY: _____
Stephen J. Salvatore
City Manager

GRANTEE:

GENERAL ELECTRIC INTERNATIONAL, INC.
a Delaware corporation

By: _____

Name: Erik Schiemann

Title: General Manager – Solar Business

THE STATE OF NEW YORK §
 §
COUNTY OF SCHENECTADY §

This instrument was acknowledged before me on _____, 2019, by Erik Schiemann, General Manager – Solar Business of General Electric International, Inc., a Delaware corporation, on behalf of said corporation.

Notary Public, State of _____
Printed Name: _____
My commission expires: _____

Schedule A

RESERVED

Schedule B

RESERVED

EXHIBIT E

Grantor's Access, Control, and Safety Requirements

RESERVED

EXHIBIT F

Legal Description of Real Property

RESERVED

ATTACHMENT E

Notice of Exemption

To: Office of Planning and Research
1400 Tenth Street,
Sacramento, CA 95814
 County Clerk
County of San Joaquin

From: City of Lathrop
390 Towne Center Drive
Lathrop, CA 95330
Attn: Ken Reed, Senior Const. Mgr.

Project Title: Solar Photovoltaic System

Project Applicant: CITY OF LATHROP

Project Location - Specific: City of Lathrop City Hall - 390 Towne Centre Drive, Lathrop, CA

Project Location - City: Lathrop, CA Project Location - County: SAN JOAQUIN COUNTY

Description of Nature, Purpose, and Beneficiaries of Project:

The City of Lathrop ("City") proposes to undertake a project to install photovoltaic arrays at three City sites to provide the City with clean energy for the operation of the facilities ("Project"). The beneficiaries of the Project will be the City and the public.

Name of Public Agency Approving Project: City of Lathrop

Name of Person or Agency Carrying Out Project: City of Lathrop

Exempt Status: (check one)

- Ministerial (Sec. 21080(b)(1); 15268;
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number: Class 3 (14 CCR § 15303), Class 11 (14 CCR § 15311), and Class 14 (14 CCR, § 15314).
- Statutory Exemptions. State code number: Public Resources Code, § 21080.35

Reasons why project is exempt: The project is exempt under Public Resources Code section 21080.35 for installation of solar energy systems, including associated equipment. Also, the project involves new construction or conversion of small structures pursuant to section 15303, construction or placement of minor accessory structures to existing facilities pursuant to section 15311, and minor additions to existing sites pursuant to section 15314. The project will not result in any increase in capacity. The project is not located in a particularly sensitive environment, is located on previously developed land, and will not have cumulative impacts resulting from successive projects of the same type. There are no unusual circumstances.

Lead Agency

Contact Person: Ken Reed

Area Code/Telephone/Extension: (209) 941-7363

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has Notice of Exemption been filed by the public agency approving the project? Yes No

Signature: _____ Date: _____, 2019 Title:

- Signed by Lead Agency
- Signed by Applicant

Date received for filing at OPR:

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