

**Agreement to Terminate the Power Purchase Agreement Between the City of Santa Fe and Dissigno Holdings, LLC**

This Termination Agreement, effective as of the date of the final signature (the "**Termination Agreement**"), between City of Santa Fe, a New Mexico a home-rule municipality, having its principal place of business at 200 Lincoln Avenue, Santa Fe, New Mexico 87501 ("**the City**"), and Dissigno Holdings, LLC, a California limited liability company, having its principal place of business at 366 Eldridge Ave, Mill Valley, California 94941 ("**the System Owner**," and together with the City, the "**Parties**," and each, a "**Party**").

**WHEREAS**, the Parties have entered into a *Purchase Power Agreement by and Between the City of Santa Fe and MLH Cripple Creek LLC*, No. 11-1171, dated as of December 16, 2011, as amended by *Amendment No. 1 to the Purchase Power Agreement*, No. 12-0571 dated June 11, 2012, and the *Second Amendment to and Consent to Assignment of Purchase Power Agreement By and Between MLH Cripple Creek Solar, LLC*, No. 16-0702 dated July 22, 2016, attached hereto as Exhibit A;

**WHEREAS**, the Parties have entered into a *Purchase Power Agreement by and Between the City of Santa Fe and MLH Cripple Creek LLC*, No. 11-1170, dated as of December 16, 2011, as amended by *Amendment No. 1 to the Purchase Power Agreement*, No. 13-0118, dated March 1, 2013, and the *Second Amendment to and Consent to Assignment of Purchase Power Agreement By and Between MLH Cripple Creek Solar, LLC*, No. 16-0701 dated August 15, 2016, attached hereto as Exhibit B, (collectively the "**Purchase Power Agreements**");

**WHEREAS**, the Parties and the Public Service Company of New Mexico ("**PNM**") have also entered into the following agreements: *Public Service Company of New Mexico Agreement No. 1035338, Standard Large Solar Renewable Energy Certificate Purchase Agreement for Third party Owner Participation in PNM's Solar REC Incentive Program*, and *Public Service Company of New Mexico Agreement No. 1033683, Standard Large Solar Renewable Energy Certificate Purchase Agreement for Third party Owner Participation in PNM's Solar REC Incentive Program* (the "**REC Agreements**"), attached hereto as Exhibit C;

**WHEREAS**, the Parties agree that the System Owner can no longer perform its obligations under the Purchase Power Agreements in their current form;

**WHEREAS**, the Parties hereto desire to terminate the Purchase Power Agreement and the Parties desire that Dissigno's rights under the REC Agreements be assigned to the City on the terms and subject to the conditions set forth herein; and

**WHEREAS**, pursuant to Section 20.8, *Amendments and Modifications*, of the Purchase Power Agreements, the Parties may modify or terminate the Agreement by a writing signed by an authorized Representative each Party.

**NOW, THEREFORE**, in consideration of the premises set forth above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions.** Capitalized terms used and not defined in this Termination Agreement have the respective meanings assigned to them in the Purchase Power Agreement.

2. **Termination of the Agreement.** Subject to the terms and conditions of this Termination Agreement, the Purchase Power Agreements are hereby terminated as of the date on which the System Owner transfers and assigns to the City all of its right, title, and interest in: 1) the System, as defined by the Purchase Power Agreements, and 2) any Environmental Credits identified by the REC Agreements (the "Termination Date"). From and after the Termination Date, the Agreement will be of no further force or effect, and the rights and obligations of each of the Parties thereunder shall terminate.

3. **Certain Rights and Obligations.**

As material consideration for the covenants, agreements, and undertakings of the Parties under this Termination Agreement:

(a) Within 30 days following the effective date of this agreement, the System Owner shall assign or convey to the City, in a form acceptable to the City, all of System Owner's right, title, and interest in the "System".

(b) Within 30 days following the effective date of this agreement, the System Owner shall assign or convey to the City, in a form acceptable to the City all of the System Owner's right, title and interest in the REC Agreements to the City. The System owner agrees to fully cooperate and to timely complete any and all documentation reasonably required by any mandatory or voluntary program governing the existence or trade of Environmental Credits, including documentation required to verify the Environmental Credits, including Renewable Energy Credits.

4. **Mutual Release.**

(a) In consideration of the covenants, agreements, and undertakings of the Parties under this Termination Agreement, each Party, on behalf of itself and its respective present and former parents, subsidiaries, Affiliates, officers, directors, shareholders, members, successors, and assigns (collectively, "Releasors") hereby releases, waives, and forever discharges the other Party and its respective present and former, direct and indirect, parents, subsidiaries, Affiliates, employees, officers, directors, shareholders, members, agents, Representatives, permitted successors, and permitted assigns (collectively, "Releasees") of and from any and all actions, causes of action, suits, losses, liabilities, rights, debts, dues, sums of money, accounts, reckonings, obligations, costs, expenses, liens, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands, of every kind and nature whatsoever, whether now known or unknown, foreseen or unforeseen, matured or unmatured, suspected or unsuspected, in law, admiralty, or equity (collectively, "Claims"), which any of such Releasors ever had, now have, or hereafter can, shall, or may have against any of such Releasees for, upon, or by reason of any matter, cause, or thing whatsoever from the beginning of time through the date of this Termination Agreement arising out of or

relating to the Agreement, except for any Claims relating to rights and obligations preserved by, created by, or otherwise arising out of this Termination Agreement (including any surviving indemnification obligations under the Agreement).

(b) Each Party, on behalf of itself and each of its respective Releasors, understands that it may later discover Claims or facts that may be different than, or in addition to, those that it or any other Releasor now knows or believes to exist regarding the subject matter of the release contained in this Section 4, and which, if known at the time of signing this Termination Agreement, may have materially affected this Termination Agreement and such Party's decision to enter into it and grant the release contained in this Section 4. Nevertheless, the Releasors intend to fully, finally and forever settle and release all Claims that now exist, may exist or previously existed, as set forth in the release contained in this Section 4, whether known or unknown, foreseen or unforeseen, or suspected or unsuspected, and the release given herein is and will remain in effect as a complete release, notwithstanding the discovery or existence of such additional or different facts. The Releasors hereby waive any right or Claim that might arise as a result of such different or additional Claims or facts.

5. Representations and Warranties. Each Party hereby represents and warrants to the other Party that:

(a) It has the full right, power, and authority to enter into this Termination Agreement and to perform its obligations hereunder.

(b) The execution of this Termination Agreement by the individual whose signature is set forth at the end of this Termination Agreement on behalf of such Party, and the delivery of this Termination Agreement by such Party, have been duly authorized by all necessary action on the part of such Party.

(c) This Termination Agreement has been executed and delivered by such Party and (assuming due authorization, execution, and delivery by the other Party hereto) constitutes the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

(d) It (i) knows of no Claims against the other Party relating to or arising out of the Agreement that are not covered by the release contained in Section 4 and (ii) has neither assigned nor transferred any of the Claims released herein to any Person and no Person has subrogated to or has any interest or rights in any Claims.

(e) EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS TERMINATION AGREEMENT, (A) NEITHER PARTY HERETO NOR ANY PERSON ON SUCH PARTY'S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, EITHER ORAL OR WRITTEN, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, AND (B) EACH PARTY HERETO ACKNOWLEDGES THAT, IN ENTERING INTO THIS TERMINATION AGREEMENT, IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY THE OTHER PARTY, OR

ANY OTHER PERSON ON SUCH OTHER PARTY'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION 5.

**6. Indemnification.**

(a) the System Owner (as "**Indemnifying Party**") shall defend, indemnify and hold harmless the City, and its officers, directors, employees, agents Affiliates, permitted successors and permitted assigns (collectively, "**Indemnified Party**"), against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, fees and costs of enforcing any right to indemnification under this Termination Agreement, and the cost of pursuing any insurance providers, awarded against an Indemnified Party (collectively, "**Losses**"), arising out or resulting from any claim of a third party or Party alleging: (i) material breach by Indemnifying Party or its Personnel of any representation, warranty, covenant, or other obligations set forth in this Termination Agreement; or (ii) negligence or more culpable act or omission of an Indemnifying Party or its Personnel (including any recklessness or willful misconduct) in connection with the performance of its obligations under this Termination Agreement.

(b) Notwithstanding anything to the contrary in this Termination Agreement, the Indemnifying Party is not obligated to indemnify, defend or hold harmless the System Owner and the other Indemnified Parties against any Losses arising out of or resulting from an Indemnified Party's: (i) willful, reckless or negligent acts or omissions; or (ii) bad faith failure to materially comply with any of its obligations set forth in this Termination Agreement.

(c) An Indemnified Party seeking indemnification under this Section 6 shall give the Indemnifying Party: (i) prompt Notice (as defined below) of the relevant claim; provided, however, that failure to provide such notice shall not relieve the Indemnifying Party from its liability or obligation hereunder except to the extent of any material prejudice directly resulting from such failure; and (ii) reasonable cooperation, at the Indemnifying Party's expense, in the defense of such claim. The Indemnifying Party shall have the right to control the defense and settlement of any such claim; provided, however, that the Indemnifying Party shall not, without the prior written approval of the Indemnified Party, settle or dispose of any claims in a manner that affects the Indemnified Party's rights or interests. The Indemnified Party shall have the right to participate in the defense at its own expense.

(d) THIS SECTION 6 SETS FORTH THE ENTIRE LIABILITY AND OBLIGATION OF EACH INDEMNIFYING PARTY AND THE SOLE AND EXCLUSIVE REMEDY OF EACH INDEMNIFIED PARTY FOR ANY DAMAGES COVERED BY THIS SECTION 6.

**7. Publicity and Announcements.** Neither Party shall (orally or in writing) issue any press release or make any other public statement, or otherwise communicate with the media, concerning the existence of this Termination Agreement or the subject matter hereof, without the prior written approval of the other Party (which shall not be unreasonably

withheld or delayed), except to the extent that such Party is required to make any public disclosure, including seeking approval from the Governing Body to terminate the Purchase Power Agreement or filing with respect to the subject matter of this Termination Agreement (i) by applicable Law or (ii) pursuant to any rules or regulations of any securities exchange of which the securities of such party are listed or traded.

**8. Miscellaneous.**

(a) All notices, requests, consents, claims, demands, waivers, summons, and other legal process, and other similar types of communications hereunder (each, a "Notice") must be in writing and addressed to the relevant Party at the address set forth on the first page of this Termination Agreement (or to such other address that may be designated by the receiving Party from time to time in accordance with this Section 8(a)). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). A Notice is effective only (i) upon receipt by the receiving Party and (ii) if the Party giving the Notice has complied with the requirements of this Section 8(a).

(b) This Agreement and all related documents, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of New Mexico, United States of America. Service of process, summons, notice, or other document by certified mail in accordance with Section 8(a) will be effective service of process for any suit, action or other proceeding brought in any such court.

(c) This Termination Agreement and each of the terms and provisions hereof may only be amended, modified, waived, or supplemented by an agreement in writing signed by each Party.

(d) Neither Party may assign, transfer, or delegate any or all of its rights or obligations under this Termination Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; provided, however, that either Party may assign this Termination Agreement to an Affiliate, a successor-in-interest by consolidation, merger, or operation of law, or to a purchaser of all or substantially all of the Party's assets. No assignment will relieve the assigning party of any of its obligations hereunder. Any attempted assignment, transfer, or other conveyance in violation of the foregoing will be null and void. This Termination Agreement will inure to the benefit of and be binding upon each of the Parties and each of their respective permitted successors and permitted assigns.

(e) The Parties drafted this Termination Agreement without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

(f) If any term or provision of this Termination Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability

shall not affect any other term or provision of this Termination Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

(g) Each Party acknowledges and agrees that (i) a breach or threatened breach by such party of any of its obligations under this Termination Agreement would give rise to irreparable harm to the other party for which monetary damages would not be an adequate remedy and (ii) in the event of a breach or a threatened breach by such Party of any such obligations, the other Party will, in addition to any and all other rights and remedies that may be available to such party at law, in equity or otherwise in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages will not afford an adequate remedy. Each Party agrees that it shall not oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this Section 8(g).

(h) This Termination Agreement constitutes the sole and entire agreement between the Parties with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

(i) Except as expressly set forth in the second sentence of this Section 8(i), this Termination Agreement benefits solely the Parties hereto and their respective permitted successors and permitted assigns, and nothing in this Termination Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Termination Agreement. The Parties hereby designate all Releasers and Indemnified Parties as third-party beneficiaries of Section 4 and Section 6, respectively, having the right to enforce such Sections.

(j) This Termination Agreement may be executed in counterparts, each of which is deemed an original, but all of which constitutes one and the same agreement.

IN WITNESS WHEREOF, the Parties have executed this Termination Agreement as of the date first written above.

**CITY OF SANTA FE**

By 

**Name: Alan Webber**

**Title: Mayor**

**Attest:**



**Kristine Bustos Mihelcic, City Clerk** *XIV*

**GB MTG 04/12/2023**

**City Attorney's Office:**

  
Marta Martinez (Oct 8, 2023 16:27 MDT)

**Senior Assistant City Attorney**

**Approved for Finances:**

  
Emily K. Oster (Apr 18, 2023 14:30 MDT)

**Emily Oster, Finance Director**

**DISSIGNO HOLDINGS, LLC**

By 

**Name: David Williams**

**Title: Managing Director**



# City of Santa Fe, New Mexico

## Memorandum



**DATE:** March 6, 2023

**TO:** Public Works and Utilities Committee, Finance Committee, Governing Body

**FROM:** Regina Wheeler, Public Works Director  
 Marcos Martinez, Senior Assistant City Attorney

*Regina Wheeler*  
 Regina Wheeler (Mar 14, 2023 10:59 MDT)

*MDM*  
 MDM (Mar 14, 2023 10:06 MDT)

**REQUESTED ACTION:**

Request approval of Agreement to Terminate Power Purchase Agreements Between City of Santa Fe and Dissigno Holdings, LLC; Regina Wheeler, Public Works Director, rawheeler@santafenm.gov, 505-955-6622 and Marcos Martinez, Senior Assistant City Attorney, mdmartinez@santafenm.gov, 505-955-6502

- 1) Request approval of General Services Contract with Positive Energy Solar (PES) in the amount of \$96,000, excluding NMGRT, for repairs to solar arrays at Compost and Convention Center
- 2) Request for approval of a Budget Adjustment Resolution (BAR) in the amount of \$51,221 from Wastewater Operations Administration for repairs to Compost Array to Solar Projects CIP
- 3) Request for approval of a Budget Adjustment Resolution (BAR) in the amount of \$51,221 from Civic Convention Center Operations for repairs to Convention Center Array to Solar Projects CIP

**BACKGROUND AND SUMMARY:**

In 2011, the City of Santa Fe and MLH Cripple Creek Solar, LLC, entered Power Purchase Agreements (PPA) for solar arrays to be installed and operated at the Convention Center and the Compost Facility. The City agreed to purchase power from the arrays, thus reducing energy costs and shifting City operations to renewables. In 2016, those agreements were amended to transfer the PPAs from MLH Cripple Creek Solar, LLC, to Dissigno Holdings, LLC.

An evaluation of these arrays and PPA agreements in November 2021 indicated that these two systems had not been maintained and have fallen below 50 percent of the anticipated energy production specified in the agreements. The City of Santa Fe sent a letter in January 2022 to Dissigno Holdings requesting that Dissigno meet the obligations specified in the agreements. Dissigno indicated that it was unable to perform its obligations and offered to donate the systems to the City "as is." Dissigno cannot perform terms of the PPA agreements and are in default.

In the face of Dissigno's default, staff has determined that termination of the agreements and assumption of the assets is in the best interest of the City. Upon termination of this agreement, ownership of the arrays and the PNM Renewable Energy Certificate (REC) agreements will be transferred to the City. When restored to full function, the combined value of the production and RECs on both arrays is approximately \$70,000 annually. With 13 years of warranty remaining on the panels, a total benefit of \$910,000 is projected. This benefit offsets the \$95,000 cost of repairs and remaining unpaid loan balance of approximately \$400,000.

To minimize the risk of this type of default in the future, staff recommends that loans be managed separately from service agreements, and that entities providing the type of service also provide some form of security to ensure performance, such as a payment and performance bond.



**PROCUREMENT METHOD:**

No procurement on termination.

Repairs were procured using NM State Price Agreement #20-00000-21-00029 Photovoltaic (Solar Electric) Systems.

**FUNDING SOURCES:**

BAR 1 to transfer \$51,221 from:

**Munis Org Name/Number:** Wastewater Operations-Admin/5000361

BAR 2 to transfer \$51,221 from:

**Munis Org Name/Number:** Civic Convention Center Operations /5206600

To:

**Project Ledger ID:** SOLAR REP

**Munis Org Name/Number:** Solar Projects CIP/3159980

**Munis Object Name/Number:** WIP Construction (Replace Inverter)/572970

**PROJECT SCHEDULE:**

Once the Agreement to Terminate is completed and the assignment or conveyance has been made to the City, repairs can be made to the system. It is anticipated that the lead-time for the inverters and other materials will be approximately 10 weeks based on current information.

**CONTRACT NUMBER:**

The Munis contract number with Dissigno Holdings is 3201933.

The Munis contract number for Positive Energy Solar for repairs is 3203911.

**ATTACHMENTS:**

Dissigno Agreement to Terminate and Exhibits

Summary of Contract-Dissigno

Production Spreadsheet

Positive Energy Solar Repair Contract and Proposal for Repair

BARs for Repairs (2)

SPA 20-00000-21-00029 Photovoltaic (Solar Electric) Systems

PES Business License

PES Certificate of Insurance

Summary of Contract-PES

Procurement Checklist-PES

ITEM # 11-1171

**POWER PURCHASE AGREEMENT**

By and between

**MLH CRIPPLE CREEK SOLAR, LLC**

and

**The CITY OF SANTA FE**

**(Convention Center)**

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## **EXHIBITS**

- Exhibit A      System Description**
- Exhibit B      Monthly Project System Production Estimates and Cost Estimates**
- Exhibit C      Sample Invoice**
- Exhibit D      Early Buyout Option**

## POWER PURCHASE AGREEMENT (CONVENTION CENTER)

This Power Purchase Agreement (Convention Center) (this "Agreement") is made and entered into as of this 30<sup>th</sup> day of November, 2011 (the "Effective Date"), by and between MLH Cripple Creek Solar, LLC its principal office at 4 Embarcadero Center, Suite 3670, San Francisco, California 94111, ("System Owner") and the City of Santa Fe with its principal office at 200 Lincoln Ave Santa Fe, NM 87504, ("Host Customer"); System Owner and Host Customer shall be referred to herein as a "Party" and collectively, as the "Parties".

### RECITALS

WHEREAS, the Host Customer desires to receive Electricity from the System;

WHEREAS, the Host Customer owns the Premises and Site upon which the System will be located;

WHEREAS, the System Owner, at the Host Customer's request, intends to design, install, own or lease, operate, and maintain the System for the production of Electricity on the Host Customer's Site;

WHEREAS, the System Owner desires to sell and the Host Customer desires to purchase all of the Electricity generated by the System;

WHEREAS, pursuant to this Agreement, System Owner and Host Customer agree that any Tax Credits associated with the development and operation of the solar photovoltaic system, including the installation, ownership, maintenance and operation of the System and the sale of Electricity from the System to the Host Customer shall inure to the benefit of the System Owner during the Term of this Agreement;

WHEREAS, pursuant to this Agreement, the System Owner and Host Customer agree that, absent an Event of Default by Host Customer, the Host Customer shall own all Environmental Credits, including renewable energy credits, and net metering benefits from the Output of the System during the Term of this Agreement.

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

### ARTICLE I DEFINITIONS; RULES OF INTERPRETATION

#### Section 1.1 Definitions.

The following terms shall have the following meanings:

**"Agreement"** means this Solar Energy Agreement, as the same may be modified or amended from time to time in accordance with the provisions hereof.

**"Bankruptcy"** means any case, action or proceeding under any bankruptcy, reorganization, debt arrangement, insolvency, or receivership law or any dissolution or liquidation proceeding commenced by or against a Person and, if such case, action or proceeding is not commenced by such Person, such case or proceedings shall be consented to or acquiesced in by such Person or shall result in an order for relief or shall remain un-dismissed for sixty (60) days.

**"Business Day"** means any day other than Saturday, Sunday, or a legal holiday in the State of New Mexico.

**"City of Santa Fe"** means the city of Santa Fe, New Mexico.

**"Commencement Date"** has the meaning established in Section 5.1.

**"Construction Period"** has the meaning established in Section 2.2.

**"Default"** means any event or circumstance which, with notice or lapse of time or both, would constitute an Event of Default under Article XIII.

**"Delivery Point"** means the physical location, as set forth on Exhibit A (System Description), attached hereto, where the System connects to the Premises at the load side lugs of the Delivery Point Circuit Breaker.

**"Delivery Point Circuit Breaker"** means that circuit breaker located in the "Medium Voltage Switchgear" that is owned by the Host Customer and designed and furnished for interconnection of the System with the Premises and the Host Utility.

**"Due Date"** has the meaning established in Section 6.3.

**"Effective Date"** has the meaning provided in the introductory paragraph.

**"Electricity"** means electrical energy generated and delivered to the Delivery Point from the operation of the System.

**"Environmental Credits"** mean any and all renewable energy certificates or emissions credits, rebates or any other green tag, renewable energy, emissions reduction credits, emission allowances, attributes, offsets or other environmental benefit, or other tradable renewable energy credits, whether related to any renewable portfolio standard or other renewable energy purchase requirement or otherwise, arising from the production of Output and whether existing as of the Commencement Date or enacted thereafter by the State of New Mexico, pursuant to the Renewable Energy Act, Sections 62-16-1 et seq. NMSA 1978 and Title 17.9.572 NMAC, as amended, provided, however, that "Environmental Credits" shall not include Tax Credits.

**"Event of Default"** has the meaning provided in Article XIII.



**"Fair Market Value" has the meaning provided in Section 15.2.4.**

**"Force Majeure Event" means, when used in connection with the performance of a Party's obligations under this Agreement, any act, event, or condition (to the extent not caused by such Party or its agents or employees) which is unforeseeable, or being foreseeable, could not have been avoided by the exercise of reasonable diligence and care and outside the control of the Party which invokes it, and which renders said Party unable to comply totally or partially with its obligations under this Agreement, including: (i) war (whether or not war is declared), hostilities, revolution, rebellion, insurrection against any governmental authority, riot, acts of terrorism, acts of a public enemy or other civil disturbance; (ii) acts of God, including but not limited to, storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, volcanic eruptions, fires, excess winds, and objects striking the earth from space (such as meteorites);(iii) sabotage or destruction by a third party (other than any, agent, employees or contractors retained by or on behalf of the Party and acting in the performance of its duties) of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement; (iv) regional or national strikes, walkouts, lockouts, or similar industrial or labor actions or disputes other than those directed at the Party seeking to claim a Force Majeure Event hereunder; (v) acts of any governmental authority, excluding however acts of Host Customer that occur as the result of any act, action, rule, regulation, or order of the City of Santa Fe, that materially restrict or limit System Owner's access to the Site or its activities at the Site or Host Customer's usage of the Output, and (vi) any act, action, rule, regulation, order, or power failure caused by the Host Utility.**

**"Good Utility Industry Practices" means the practices, methods and acts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy, and expedition. With respect to the System, Good Utility Industry Practices include, but are not limited to, taking reasonable steps to ensure that:**

- 1. equipment, materials, resources, and supplies are available to meet the System's needs;**
- 2. sufficient operating personnel are available at all times and are adequately experienced, trained and licensed as necessary to operate the System property and efficiently, and are capable of responding to reasonably foreseeable emergency conditions whether caused by events on or off the site of the System;**
- 3. preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation, and are performed by knowledgeable trained and experienced personnel utilizing proper equipment and tools;**
- 4. appropriate monitoring and testing are performed to ensure equipment is functioning as designed;**

5. equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or contrary to environmental laws or regulations or without regard to defined limitations such as flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and/or control system limits; and
6. the System will function properly under both normal and reasonable expected emergency conditions at the Premises.

**"Host Customer"** has the meaning provided in the introductory paragraph.

**"Host Utility"** means Public Service Company of New Mexico or PNM.

**"Interconnection"** means that the System has met all of the Host Utility requirements to begin normal operations of the System, which has then initially produced useable Electricity.

**"Interconnection Agreement"** means the agreement between the Host Customer and Host Utility authorizing interconnected System operations.

**"Interconnection Notice"** has the meaning provided in Section 5.1.

**"Late Fee"** has the meaning provided in Section 6.4.

**"Meter"** means the standard instrument(s) and equipment owned and installed at the Site by Host Utility, which the Host Utility uses to measure and record the Output delivered to the Host Customer at the Delivery Point, which term does not include meters installed by the Host Customer or System Owner.

**"Meter Reading Dispute Resolution Process"** means the procedures established by rule or regulation of the Host Utility pertaining to its meter readings or billing error and in effect at the time either the Host Customer or the System Owner initiates this process.

**"Mountain Prevailing Time"** or **"MPT"** means Mountain Standard Time or Mountain Daylight Time, as in effect from time to time.

**"Net Metering Agreement"** means the agreement between the Host Customer and the Host Utility pursuant to 17.9.570 of the NMAC.

**"Notice-to-Proceed"** is a separate notice or instruction authorizing the System Owner to proceed with the work or a part thereof.

**"Output"** means the Electricity produced by the System and delivered at the Delivery Point.

**"Party"** or **"Parties"** has the meaning established in the introductory paragraph.

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

**"Potential Output"** means solar electric energy that cannot be generated or delivered by the System because of an act or omission of the Host Customer.

**"Premises"** means property under the control of the City of Santa Fe and the Host Customer, including the improvements thereon, as described in Exhibit "A".

**"Projected Output"** means the anticipated level of System Output as provided in Exhibit "B" for a stated period of time.

**"Prudent Industry Practice"** means the practices, methods, and acts engaged in or approved by a significant portion of the solar energy industry that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy, and expedition.

**"Quarterly Date"** means the first Business Day of each of January, April, July, and October.

**"Renewable Energy Credits"** means a certificate in accordance with 17.9.572.13.C NMAC, Renewable Portfolio Standard, representing the renewable energy benefits of the output of 1 MWh of solar electricity.

**"Service Term"** means the 20-year period from the Commencement Date.

**"Site"** means the area of the Premises on which the System Owner will install, operate, and maintain the System, as described in the Site Plan in Exhibit A.

**"Solar Electricity Price"** has the meaning provided in Section 6.1.

**"System"** means all equipment and materials, including photovoltaic arrays, DC/AC inverters, wiring, transformers, switches, instruments and meters, medium voltage equipment and circuits, and other appurtenant facilities installed as part of the System now or hereafter owned by System Owner for the purpose of providing Output to the Host Customer at the Delivery Point, and as such equipment and materials may be modified during the Term. The System excludes any part of the equipment owned and under the control of the Host Utility or Host Customer.

**"System Owner"** has the meaning provided in the introductory paragraph.

**"Tax Credits"** mean all state, local and or federal production tax credit, tax deduction and/or investment tax credit and/or other financial assistance (including any grants) specific to or arising from the production of Output by the System and/or investment in the System.

"Term" has the meaning established in Section 2.1.

"Utility Rate" means the applicable all-inclusive electric service rate per kilo-Watt-hour (kWh) charged to Host Customer by the Host Utility (including a municipal or cooperative utility, as applicable) serving Host Customer in the service territory in which Premises are located. The Utility Rate shall include all electric charges, transmission, distribution or other delivery charges, ancillary service charges, demand charges, transition or competitive service charges, taxes, and other fees and charges in effect.

Section 1.2 Interpretation.

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

Section 1.3 Service Agreement.

The Parties intend that this Agreement be treated as a "service contract" within the meaning of Section 7701(e) of the Internal Revenue Code.

**ARTICLE II  
TERM**

Section 2.1 Service Term.

The term of this Agreement (the "Term") shall commence on the Effective Date and shall terminate on the 15th anniversary of the Commencement Date, unless terminated earlier, or extended pursuant to the option, in accordance with the terms and conditions in this Agreement. 11/30/11 to 11/20/14

Section 2.2 Construction Period.

The period commencing on the Effective Date and continuing to the Commencement Date shall be the "Construction Period".

**ARTICLE III  
CONSTRUCTION AND INSTALLATION OF SYSTEM**

Section 3.1 Construction of System.

**During the Construction Period:**

**Section 3.1.1** System Owner shall install, construct, service, and test the System consistent with the specifications set forth in Exhibit A, all in a good and workmanlike manner and in accordance with all applicable laws and regulations.

**Section 3.1.2** System Owner may hire independent contractors to design, build, install, construct, service, and test the System (each, a "Contractor"). Such Contractors may use subcontractors (who for purposes of this Agreement shall be deemed Contractors) for any part or all of the services contracted by System Owner. System Owner shall require any Contractors and each of their respective subcontractors to have all licenses, and registrations reasonably necessary or customary to perform the services to be performed by such Contractor or subcontractor.

**Section 3.1.3** Host Customer shall provide System Owner, its employees, Contractors, invitees, agents, and assigns access to the Site, and as may be necessary, upon reasonable advance notice, to the Premises, in order to construct and test the System.

**Section 3.1.4** System Owner shall procure or shall ensure that the Contractors have procured and shall maintain insurance in respect of the design, construction, and installation of the System in accordance with requirements of this Section 3.1.4 and at minimum amounts set forth in Section 18.

The insurance shall: (i) be maintained with insurers with a Best's rating of at least "A", Financial Class Size VIII, (ii) be in the name of such Contractor, (iii) include Host Customer and its officials, officers, employees, agents, volunteers, and representatives as additional insureds under the commercial general liability policy, and (iv) be primary, without right of contribution, to any insurance maintained by Host Customer. System Owner shall ensure that each Contractor shall furnish to Host Customer upon the issuance of notice of commencement of construction pursuant to Section 3.1. a certificate of insurance for such coverage stating the name of the insurance company and policy number, the policy period, the named insured and address, a description of coverage, policy limits, a description of location of covered operations, the name and address of the certificate holder, a notice of cancellation provision, and an authorized signature and date. Such certificate shall further indicate that the insurance will not be cancelled unless thirty (30) days' (ten (10) days if cancellation is due to nonpayment of premium) prior written notice has been given to the Host Customer. In the event the Contractors' insurance carriers do not agree to this notice requirement, the System Owner will provide written notice to the Host Customer, within five (5) Business Days', of System Owner's receipt of any such notice from an insurance carrier(s) of cancellation or non-renewal of the required insurance. For the avoidance of doubt, the failure of any Contractor to provide such certificate shall not be deemed to be a waiver by Host Customer of any of Contractor's or System Owner's obligations hereunder.

**Section 3.2 Location of System.**

The System shall be situated on the Site as set forth and in accordance with Exhibit A.

**Section 3.3 Schedule.**

System Owner will give the Host Customer at least five (5) Business Days' written notice prior to the commencement of construction, together with a proposed construction schedule and an estimated Commencement Date. System Owner will notify Host Customer of any material changes to the proposed schedule and the estimated Commencement Date during the Construction Period. The System Owner (or its Contractor) will endeavor to coordinate construction activities with the Host Customer so as to ensure that there will be no interference with normal operations at the Premises.

System Owner will work diligently toward completion of construction and Interconnection by September 30, 2012.

**Section 3.4 Construction Period Electricity.**

The System Owner or its Contractors may test the System during the Construction Period. Any energy generated and delivered to the Delivery Point incidental to testing during the Construction Period or before the Commencement Date shall not be considered to be Output for the purposes of accounting or payments.

**Section 3.5 Construction Related Energy Supply and Water Supply.**

The System Owner shall self-supply or purchase from another source all energy and water the System Owner needs to construct the System.

**ARTICLE IV  
CONNECTION AND DELIVERY POINT**

**Section 4.1 Delivery.**

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

**Section 4.2 Connection.**

System Owner, on behalf of Host Customer, is responsible for arranging for Interconnection of the System to the Host Utility and is solely responsible for all equipment, maintenance, and repairs associated with such Interconnection equipment in accordance with the terms and conditions of this Agreement and the Interconnection Agreement.

**Section 4.3 System Operation and Status of Delivery Point Circuit Breaker Prior to Interconnection**

The Host Customer will lock open its Delivery Point Circuit Breaker until Host Utility authorization for testing and demonstration of proper operation of the System is obtained by the

System Owner and provided to the Host Customer. The Host Customer will then close the Delivery Point Circuit Breaker for the duration of testing as directed by the System Owner and authorized by the Host Utility. The System Owner will accommodate, as part of this testing, the Host Customer's testing, verification, and calibration as necessary of the Delivery Point Circuit Breaker over current and reverse current trip functions, other trip functions, and integral and transmitted power and power quality readings and settings.

## **ARTICLE V**

### **PURCHASE AND SALE OF OUTPUT**

#### **Section 5.1 Commencement Date.**

System Owner will give Host Customer not less than five (5) Business Days' prior written notice (the "Interconnection Notice") that the System has completed testing and that the System has satisfied the requirements of the Host Utility for Interconnection. The date of interconnection shall be the Commencement Date.

#### **Section 5.2 Sale and Delivery of Output.**

Beginning on the Commencement Date or To Be Determined, whichever is later, System Owner will deliver and sell all of the Output at the Delivery Point, and Host Customer shall purchase all of the Output at the Delivery Point, and continuing until the end of the Term.

#### **Section 5.3 System to Reduce Other Electric Purchases.**

The Parties acknowledge that the System is not expected to meet the entirety of Host Customer's demand for Electricity. To the extent that at any time the Output is insufficient to meet all of Host Customer's Electricity demand, Host Customer shall be responsible for purchasing and paying for Electricity from other sources.

#### **Section 5.4 Sale of Potential Output; Sale Only to Host Customer**

If generation and delivery of Output is foregone or reduced due to an act or omission of the Host Customer and such foregone Output is not due to (i) a Force Majeure Event (ii) an act or omission of System Owner, or (iii) a System failure, Host Customer shall purchase all of the Potential Output. Notwithstanding the preceding sentence, Host Customer shall also purchase and pay for any Potential Output on those occasions where the Host Utility is able to receive such Output from the System and apply net metering program credit to Host Customer's account. Host Customer shall pay System Owner an amount equal to the applicable Solar Electricity Price as expressed in Section 6.1 of this Agreement multiplied by the calculated Potential Output that would have been paid during the period of the temporary shutdown, curtailment, or foregone Output (Potential Output shall be calculated based on the Projected Output expressed in Exhibit B as adjusted by the actual historical production of electricity by the System). The average hourly production shall be reduced at a rate of 0.5% per year following the first year of the agreement.

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

Section 5.5 Taxes.

System Owner is responsible for payment of local, state, and federal income taxes attributable to System Owner for income received under this Agreement and for any personal property taxes, license taxes, or privilege taxes attributable to ownership or usage of the System. System Owner agrees to bear and pay when due any sales or gross receipts tax, to the extent applicable, imposed upon System Owner a seller of Electricity, to the extent of and in the same amount as any similar sales, use, excise or gross receipts that is included in the Utility Rate. If such a sales, use, excise or gross receipts tax is attributable to the sale of Output from System Owner to Host Customer, but not otherwise included or includable in the Solar Electricity Price, then Host Customer agrees to bear the costs of such sales or gross receipts taxes and shall either pay such taxes or reimburse System Owner if paid by System Owner. System Owner shall not be obligated for any taxes payable by or assessed against Host Customer.

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

Section 6.1 Solar Electricity Price.

The price for Output shall be at a fixed price of \$0.1475 per kilowatt-hour for years one (1) through fifteen (15) (the "Solar Electricity Price").

Section 6.2 Invoices.

Host Customer and System Owner shall make arrangements directly with the Host Utility to obtain the Meter data that will be the basis of each System Owner Invoice for Output. Not later than five (5) business days following its receipt of such Meter data, System Owner shall prepare and provide the Host Customer an invoice for the Output delivered to the Host Customer in the prior month (or partial month) commencing with the month in which the Commencement Date occurs and continuing thereafter until the last full month in the Service Term. The amount due for the Output delivered or Potential Output for such month shall be determined by multiplying the Solar Electricity Price by the Output or Potential Output for such month, and each invoice shall set forth in reasonable detail the calculation of all amounts owed, including any amounts owed pursuant to Section 5.4 and Section 6.1 of this Agreement. A sample invoice calculation is shown on Exhibit C. Delays in the issuance of any such invoice shall not constitute any waiver of Host Customer's obligation to pay, or System Owner's right to collect, any payment due System Owner under any such invoice.

Section 6.3 Payments.

Host Customer shall pay the undisputed amount of each invoice on or before the thirtieth (30<sup>th</sup>) calendar day following receipt thereof ("Due Date"). All payments made by Host Customer under this Agreement shall be made in the form of a check payable to MLH CRIPPLE CREEK



SOLAR, LLC at the address for notices set forth in Section 20.4, as such address may be modified by System Owner by notice to Host Customer in writing.

Section 6.4 Late Fees.

To the extent permitted by New Mexico law, if any undisputed part of a monthly payment is not made by the Host Customer or the System Owner within thirty (30) calendar days following the Due Date, the Host Customer or the System Owner agrees to pay a late fee that shall accrue on the basis of twelve percent (12%) per annum (or such lower percentage as and if required by applicable law) on the amount of such late payment from the Due Date until the date of payment ("Late Fee"). The calculation of Late Fees shall not constitute any waiver of the Party's obligation to pay such amounts when due or a Party's right to collect such amounts or to exercise any other right or remedies it may have for failure to pay such amounts when due under this Agreement or now or hereafter existing at law or in equity or otherwise.

**ARTICLE VII  
METERING**

Section 7.1 Installation of Meter.

The System Owner shall provide as part of the System the metering infrastructure hardware required by the Host Utility's standards for installation of the Meter. When the infrastructure is ready as demonstrated by the System Owner to the Host Customer, the System Owner and the Host Customer shall request that the Host Utility furnish and set the Meter and commence testing of the System for interconnected operations.

Section 7.2 Meter Testing and Calibration.

The Host Utility provides renewable energy generation data on its monthly invoices. If there is a discrepancy between the System Owner's Meter and the amount reported by the Host Utility by greater than one half of one percent, then either the Host Customer or System Owner may request accuracy testing and calibration of the Meter by the Host Utility. The cost, if any, of such testing shall be borne by the requesting Party.

Section 7.3 Meter Reading Dispute Resolution

Either the System Owner or the Host Customer may invoke the Host Utility's current Meter Reading Dispute Resolution Process at any time and shall pay the Host Utility's charges.

Section 7.4 Alternative Measures in Event of Meter Non-Operability.

In the event the Meter is out of service or the Parties agree to jointly dispute the accuracy of a monthly measurement of Output by the Meter, the Output shall be determined by the following alternatives, and in the following order: (a) the best of any alternative or back-up meter that System Owner or the Host Customer may have installed as demonstrated by mathematical analysis of historical simultaneous readings of the Meter and the alternative or back up meter; or

(b) calculating the Output in an agreed manner for such period of Meter inoperability using the System Projected Output tables in Exhibit B as a basis for such calculation.

**Section 7.5** **Retroactive Adjustment of Historical Invoice for Meter Error**

Any disputed reading of the Meter may be the basis of either Party invoking the Meter Reading Dispute Resolution Process. In that event, the Host Customer shall pay to the System Owner the amount calculated in accordance with Section 7.4. The System Owner shall submit a corrected invoice to the Host Customer for each billing period invoice questioned. The corrected invoice shall reflect the finding of the Host Utility. The parties shall use their best efforts to fully resolve any and all disputed monthly invoices prior to the due date for the final invoice of Host Customer's fiscal year.

**ARTICLE VIII**  
**SITE USE AND ACCESS**

**Section 8.1** **Notice-to-Proceed**

System Owner shall not commence construction activities on the Site until the City of Santa Fe has issued the Notice-to-Proceed.

**ARTICLE IX**  
**ENVIRONMENTAL CREDITS**

**Section 9.1** **Environmental Credits.**

All Environmental Certificates (Renewable Energy Credits), whether available directly or indirectly, shall be the property of the Host Customer for the Term of this agreement.

**Section 9.2** **Environmental Credits Documentation.**

System Owner, at no additional cost to the Host Customer, agrees to fully cooperate and to timely complete any and all documentation reasonably required by any mandatory or voluntary program governing the existence or trade of Environmental Credits, including documentation required to verify the Environmental Credits, including Renewable Energy Credits.

**ARTICLE X**  
**CONDITIONS PRECEDENT TO THE PARTIES' OBLIGATIONS**

**Section 10.1** **Conditions Precedent to the System Owner's Obligations**

Subject to the terms and conditions of this Agreement, and unless waived by System Owner, System Owner's obligations to initiate construction of the System on the Site under this Agreement are conditioned upon the occurrence of the following:

**Section 10.1.1 Necessary Governmental Approvals.** System Owner shall have filed all applicable applications and certifications and shall have obtained all approvals, permits, licenses and authorizations necessary for the construction and installation of the System.

**Section 10.2 Conditions Precedent to the Host Customer's Obligations.**

Subject to the terms and conditions of this Agreement, and unless waived by Host Customer, Host Customer's obligations under this Agreement are conditioned upon the occurrence of the following:

**Section 10.2.1** The System Owner shall have applied for on behalf of the Host Customer and received from the Host Utility an Interconnection Agreement, Renewable Energy Credit Agreement, and Net Metering Agreement with respect to the Output of the System.

**Section 10.2.3** The System Owner shall have applied for and received all necessary permits, licenses, approvals and authorization for construction of the PV System. Notwithstanding the foregoing, this Section 10.2.3 shall be deemed waived and satisfied upon the Commencement Date.

**Section 10.3 Reasonable Efforts.**

System Owner and Host Customer each agrees to use reasonable efforts to satisfy the applicable conditions precedent set forth above as promptly as practicable after the Effective Date.

**Section 10.4 Ownership of Approvals.**

All permits and approvals obtained pursuant to Section 10.1 shall be owned and controlled by System Owner. To the extent that any such permits or approvals must be obtained and/or owned by Host Customer, then Host Customer agrees that it will reasonably cooperate with the gaining of all such permits and approval to the extent necessary.

## ARTICLE XI REPRESENTATIONS

**Section 11.1 Host Customer Representations.**

Host Customer makes the following representations and warranties to System Owner as of the Effective Date:

**Section 11.1.1 Due Authorization.** Host Customer has the power and authority to enter into this Agreement and perform its obligations hereunder and has taken all necessary action to authorize the execution, delivery and performance of this Agreement. Host Customer has duly executed and delivered this Agreement and this Agreement constitutes the valid and legally binding obligations of Host Customer, enforceable in accordance with its terms.

**Section 11.1.2 No Consent Required.** Host Customer has all the rights required to enter into this Agreement and perform its obligations hereunder without the consent, approval, permit or authorization of any third party, and without notice to any third party, other than these notices that have been given.

**Section 11.1.3 No Conflict.** This Agreement is enforceable against Host Customer in accordance with its terms and does not conflict with or violate the terms of its organizational documents, or any laws, rules, regulations, or agreements to which the Host Customer is a party.

**Section 11.1.4 Ability to Perform.** Host Customer has no knowledge of any facts or circumstances that, but for the passage of time, could materially adversely affect its ability to perform its obligations hereunder.

**Section 11.1.5 Absence of Litigation.** There is no litigation pending or, to the knowledge of Host Customer threatened against Host Customer which could have a material adverse effect on its business, operations, financial condition, or its existing electricity load profile or its ability to perform its obligations under this Agreement.

**Section 11.1.6 All the necessary permits, licenses, approvals and authorization for construction of the PV System upon the Premises are in full force and effect, and no default by Host Customer has occurred under such permits that has not been cured and Host Customer has not received any notice, claim or other form of communication that it is in default under the same.**

**Section 11.2 System Owner Representations.**

System Owner makes the following representations and warranties to Host Customer as of the Effective Date:

**Section 11.2.1. Due Authorization.** System Owner is a limited liability company, duly organized, validly existing, and in good standing under the laws of the State of Delaware and has full power to engage in the business it presently conducts and is in good standing under the laws of the State of New Mexico. System Owner has the power and authority to enter into this Agreement and perform its obligations hereunder and has taken all corporate or other action to authorize the execution, delivery and performance of this Agreement and no other action on the part of System Owner or on the part of its equity owners is necessary. System Owner has duly executed and delivered this Agreement and this Agreement constitutes the valid and legally binding obligations of System Owner, enforceable in accordance with its terms.

**Section 11.2.2 No Conflict.** This Agreement is enforceable against System Owner in accordance with its terms and does not conflict with or violate the terms of its organizational documents, any other agreement to which System Owner is a party, or applicable law.

**Section 11.2.3 Ability to Perform.** System Owner has no knowledge of any facts or circumstances that, but for the passage of time, would materially adversely affect System Owner's ability to perform its obligations hereunder.

**Section 11.2.4 No Consent Required.** System Owner has all the rights required to enter into this Agreement and perform its obligations hereunder without the consent, approval, permit or authorization of any third party.

**Section 11.2.5 Absence of Litigation.** There is no litigation pending or, to the knowledge of System Owner, threatened against System Owner which could have a material adverse effect on its business, operations, financial condition or prospects or its ability to perform its obligations under this Agreement.

**Section 11.2.6 No Material Changes.** Since the date of its formation, System Owner has not experienced any material changes to, its creditworthiness or the results of its business or financial condition, profile that could have a material adverse effect on the Host Customer or the System.

**Section 11.2.7 Projected Output.** The System Owner has calculated the Projected Output set forth in Exhibit B in accordance with its normal professional practices and expects the System Output will meet or exceed the Projected Output.

**Section 11.2.8 Ability to Complete Construction and Interconnection.** The System Owner has the capacity to complete Interconnection by September 30, 2012 and will meet the deadline unless due to actions or omissions of the Host Customer the Host Utility, or government authorities or the occurrence of a Force Majeure event which prevents such timely completion.

## **ARTICLE XII COVENANTS OF THE PARTIES**

For the Term of the Agreement, the Parties hereby covenant as follows:

### **Section 12.1 Additional Consent and Approvals.**

The Parties shall work together cooperatively to assist one another in procuring and maintaining all necessary easements, rights of way, leases, licenses, consents and approvals, including the completion of the Interconnection Agreement, Net Metering Agreement, and Renewable Energy Credit Agreement between the Host Customer and the Host Utility and other rights the Parties deem necessary or desirable for the construction and installation of the System, the production and delivery of Output to the Delivery Point, and the operation and maintenance of the System under this Agreement, provided however that the cost for the same shall be attributed to the Party responsible for obtaining such consent or approvals. System Owner and Host Customer shall each provide one another with a copy of all such permits, licenses, leases, consents and approvals, including copies of those approvals, permits, and related documents. Any easements, leases, licenses or any other agreement that will burden the Site must be pre-approved in writing by Host Customer, which approval shall not be unreasonably withheld.

### **Section 12.2 Repair and Maintenance of the System**

**Section 12.2.1** System Owner shall use commercially reasonable efforts to maintain the System in good working order, and shall operate the System in accordance with manufacturer's

specifications, Host Utility requirements, applicable laws, regulations and ordinances. System Owner shall promptly repair any damage to or failure of the System.

**Section 12.2.2** Host Customer shall be responsible for maintaining and fulfilling all its respective (i) obligations to the interconnected Host Utility and any other electric service provider, including with respect to the Interconnection Agreement, Net Metering Arrangement, and Renewable Energy Credit agreement, and (ii) requirements imposed by the Host Utility and/or other electric service provider and any federal, state or local government agencies with respect to such services.

**Section 12.2.3** System Owner, on behalf of the Host Customer, shall be responsible for maintaining and fulfilling all its respective obligations to the Host Customer and Host Utility, including implementing operations and maintenance in accordance with the Interconnection Agreement and all requirements imposed by the Host Utility and any federal, state or local government agencies with respect to such services for the generation and sale of the Output to the Host Customer.

### **Section 12.3 Contractors.**

System Owner may engage Contractors to operate and maintain the System. Such Contractors may use subcontractors for any part or all of the services contracted by System Owner. System Owner shall require any such Contractors and subcontractors to have all licenses, registrations and insurance coverage as required by this Agreement for such service providers and shall provide copies of same to Host Customer upon request. System Owner shall ensure that such Contractors and subcontractors comply fully with the terms of this Agreement. Host Customer agrees to provide System Owner, its employees, Contractors, invitees, and assigns access to the Site during the Term of this Agreement.

### **Section 12.4 Ownership of System by System Owner.**

Host Customer and System Owner agree that the System is and shall at all times be the personal property of System Owner severable from the Site and the Premises and shall not become or constitute a fixture. If any person attempts to claim ownership of or other rights to System by asserting any claim against or through Host Customer and such claim is not attributable to any act or omission of System Owner, its agents, contractors, or employees, Host Customer agrees to take necessary action to protect System Owner's title to the System. Host Customer will at all times keep the System free from any legal process and any lien not attributable to any act or omission of System Owner, and will give System Owner immediate notice if any legal process or lien is asserted or made against the System or against Host Customer where the System may be subject to any lien, attachment or seizure by any Person. The Host Customer shall not take any position on any tax return or on any other filings indicating that it is the owner of the System.

### **Section 12.5 Interconnection: Compliance.**

**Section 12.5.1** During the Construction Period, System Owner will obtain all permits, approvals, and other authorizations that may be required by any governmental agency or authority or by the interconnected Host Utility in connection with the Interconnection of the System to the Host Customer at the Delivery Point. System Owner will use commercially reasonable efforts to assist Host Customer by providing technical information for the completion of the Interconnection Agreement.

**Section 12.5.2** System Owner and Host Customer will comply with such permits, approvals, and authorizations described in Section 12.5.1 above in effect at all times during Service Term, and at all times during the Service Term shall comply with such other authorizations and applicable requirements of the Host Utility necessary for the flow of Electricity from the System to the Host Utility's system.

**Section 12.5.3** The Host Customer will execute the Interconnection Agreement within two business days of receipt of the Interconnection Agreement from the Host Utility, provided that it is materially identical in form to that form provided one month previously to the Host Customer by the System Owner and it is materially identical to the Host Utility's current standard form. Otherwise, the System Owner will grant to the Host Customer up to ten (10) business days for legal and management review by the Host Customer.

**Section 12.5.4** The System Owner shall comply with all applicable requirements of the Host Utility regarding the quality of Electricity produced by the System with regard to power factor and electrical noise, spikes, harmonic content, phase imbalance, sine wave distortion and all other applicable measures of the quality of the Electricity.

**Section 12.5.5** The Host Customer, following the execution of the initial Interconnection Agreement pursuant to Section 12.5.3, shall not amend or modify such agreement, without the prior written consent of the System Owner, which consent shall not be unreasonably withheld.

**Section 12.6 Notice of Malfunction: Non-Interference.**

**Section 12.6.1** Each Party shall notify the other immediately upon actual knowledge of (a) any material malfunction of or damage to the System, (b) to the Meter, or (c) any other matters that could reasonably be expected to adversely affect the System, the Site, or the Premises.

**Section 12.6.2** Host Customer may not adjust, modify, maintain, alter, or interfere with service from the System, except as authorized in writing by System Owner or in the event of an emergency where there is an imminent threat to life or property; provided that Host Customer shall give System Owner (or its contractor) immediate notice in such event. The Host Customer's operation and maintenance of the Medium Voltage Switchgear are exempt from the requirements of this paragraph.

**Section 12.7 Financing Incentives: Financing.**

Host Customer agrees to take all action reasonably requested by System Owner in order for System Owner to obtain all rebates or subsidies that would be applicable under this

Agreement, in connection with the installation and operation of the System by any state, local or federal government, utility or other source, but at no cost to Host Customer.

**Section 12.8 Status of Premises and Site.**

In the event that any or all of the Site is or becomes subject during the term of this Agreement to a lease, security interest, lien or mortgage, City of Santa Fe shall use reasonable efforts to have such holder of any such security interest, lien or mortgage enter into a recognition agreement with System Owner reasonably acceptable to System Owner acknowledging and recognizing System Owner's rights under this Agreement and acknowledging that the System is the personal property of System Owner severable from the Site and not a fixture.

**ARTICLE XIII  
DEFAULT**

The occurrence of any of the following events shall be an "Event of Default" under this Agreement.

**Section 13.1 Host Customer's Failure to Pay.**

Host Customer's failure to make timely payments when due under Sections 6.3 of this Agreement.

**Section 13.2 Material Misrepresentation as of Effective Date.**

If any of the representations and warranties made by a Party hereunder shall have been inaccurate in any material respect (or if a representation or warranty is qualified by materiality, such representation or warranty is inaccurate in any respect) as of the Effective Date, and such inaccuracy or the effect thereof, to the extent it can be cured, is not cured within 30 days from the earlier of (a) notice from the non-breaching Party and (b) the discovery or determination by the breaching Party of the misrepresentation; provided that if the breaching Party commences an action to cure such inaccurate representation within such thirty (30) days, and thereafter proceeds with all due diligence to cure such failure the cure period shall extend for an additional sixty (60) days.

**Section 13.3 Bankruptcy.**

If any Party becomes the subject of a winding-up or liquidation order or petition (whether compulsory or voluntary), or insolvent, or the subject of an administration order, or (ii) entering into any composition or arrangement with creditors or (iii) having a receiver appointed over the whole or any portion of its assets.

**Section 13.4 Failure to Meet Provisions of this Agreement.**

A failure by any Party to perform fully any provision of this Agreement other than as explicitly set forth in this Article XIII and either (a) such failure continues for a period of thirty



(30) days after written notice of such nonperformance or (b) the nonperforming Party commences an action to cure such failure to perform within such thirty (30) days, and thereafter proceeds with all due diligence to cure such failure, and such failure is still not cured within sixty (60) days after the expiration of the initial thirty (30) day period.

## ARTICLE XIV FORCE MAJEURE

### Section 14.1 Force Majeure.

Section 14.1.1 Neither System Owner nor Host Customer shall be considered to be in default in the performance of its obligations under this Agreement or liable for any delay or failure to comply with this Agreement to the extent that performance of any of its obligations hereunder is prevented or delayed by a Force Majeure Event.

Section 14.1.2 If a Party is prevented or delayed in the performance of any such obligation by a Force Majeure Event, such Party shall immediately provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof. Such notice shall be confirmed in writing as soon as reasonably possible. The Party affected by a Force Majeure Event shall use commercially reasonable efforts to remove or repair the cause of the Force Majeure Event and shall resume performance of its obligations as soon as reasonably practicable, and shall notify the other party in writing of the cessation or termination of the Force Majeure Event.

### Section 14.2 Termination

Section 14.2.1 Any Party shall be entitled to terminate this Agreement upon thirty (30) days prior written notice to the other Party if any Force Majeure Event has been in existence for a period of one hundred fifty (150) consecutive days or longer, unless such Force Majeure Event ceases prior to the expiration of such thirty (30) day period. In the event of a termination of this Agreement pursuant to this Section 14.2.1, System Owner shall retain title to the System and shall remove it from the premises. Host Customer shall allow System Owner, its employees, agents, assigns Contractors and invitees reasonable access to the Site to remove the System from the Site within ninety (90) days after such termination.

## ARTICLE XV TERMINATION AND PARTIES' RIGHTS

### Section 15.1 Termination for Default.

Section 15.1.1 Upon the occurrence and during the continuation of any Event of Default hereunder, the non-defaulting Party shall have the option but not the obligation to terminate this Agreement, by providing written notice of termination to the defaulting Party.

**Section 15.1.2** If such termination occurs as a result of Host Customer's default System Owner shall retain title to the System and shall remove it from the premises. Host Customer shall allow System Owner, its employees, agents, assigns, Contractors and invitees reasonable access to the Site to remove the System from the Site within ninety (90) days after such termination, and shall make or have made promptly any repairs to the Site to the extent necessary to repair any adverse impact such removal causes to the Site; provided, that Host Customer shall be responsible for the reasonable costs associated with any such repairs.

**Section 15.1.3** If such termination occurs as a result of the System Owner's default, then System Owner shall retain title to the System and shall remove it from the premises. Host Customer shall allow System Owner, its employees, agents, assigns, Contractors and invitees reasonable access to the Site to remove the System from the Site within ninety (90) days after such termination, and System Owner shall make or have made promptly any repairs to the Site to the extent necessary to repair any adverse impact such removal causes to the Site.

**Section 15.1.4** Termination pursuant to this Section 15.1 shall not eliminate the non-defaulting Party's right to pursue any other remedy given under this Agreement or now or hereafter existing at law or in equity or otherwise, except to the extent limited by this Agreement.

**Section 15.2 Substitute Solar Energy Agreement.**

Notwithstanding any other provision of this Agreement to the contrary, in the event that Host Customer terminates this Agreement because it will no longer occupy the Site or the Premises, Host Customer shall use commercially reasonable efforts to facilitate discussions between System Owner and a successor occupant of the Site and Premises regarding the sale of Output to such new occupant if there is a successor occupant.

**Section 15.4 Option to Purchase.**

Host Customer shall have the option on the sixth anniversary of the Commencement Date and again at each subsequent anniversary of the Commencement Date, exercisable by written notice thereof from Host Customer to System Owner not later than 60 days following the relevant anniversary date, to purchase the System from System Owner at a price equal to the Fair Market Value at the time such option is exercised. Host Customer acknowledges that System Owner makes no representation or promise as to the Fair Market Value at any future time. This Agreement shall terminate upon Host Customer's purchase of the System pursuant to the exercise of the purchase option set forth in this Section 15.4 without any further payment; provided, however, that the foregoing shall not relieve any party of any obligation or liability that had accrued hereunder prior to termination. Upon Host Customer's payment for the System, System Owner shall furnish the System, including all components thereof and operation manuals, in the condition at the time of determination of the Fair Market Value, subject to normal wear and tear free and clear of all liens other than any liens attributable to the actions of Host Customer

"Fair Market Value" of the System is the price that would be established in an arm's-length transaction between an informed and willing buyer and an informed and willing seller for the equipment that comprises the System as installed on the Premises. The parties shall first

attempt to reach mutual agreement on the Fair Market Value. If after thirty (30) days Host Customer and System Owner cannot agree to the Fair Market Value, then the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to value such equipment. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. 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. To the extent transferable, the remaining period, if any, on all warranties for the System will be transferred from System Owner to Host Customer at Host Customer's sole expense.

#### Section 15.5 Option to Purchase at End of Term.

**Section 15.5.1** Provided that Host Customer has fulfilled all obligations to System Owner under this Agreement, at the expiration of the Service Term, Host Customer shall have the option to purchase the System by notifying System Owner in writing at least one hundred eighty (180) days prior to the end of the applicable term that Host Customer intends to exercise its option under this Section 15.5.

**Section 15.5.2** If Host Customer exercises its option under this Section 15.5, Host Customer shall pay System Owner an amount equal to the Fair Market Value of the System as agreed upon by the Parties.

**Section 15.5.3** Upon Host Customer's payment for the System, System Owner shall furnish the System, including all components thereof and operation manuals, in the condition at the time of determination of the Fair Market Value, subject to normal wear and tear free and clear of all liens.

**Section 15.5.4** If Host Customer chooses to exercise its purchase option pursuant to this Section 15.5, System Owner shall replace the System inverter(s), unless the System inverter(s) have been replaced subsequent to the tenth (10th) anniversary of the Commencement Date.

**Section 15.5.5** Upon transfer of ownership of the System to Host Customer, System Owner shall have no further obligation with respect to the performance, installation, or operation of any part or component of the System.

#### Section 15.6 Option to Renew Agreement.

Provided Host Customer has fulfilled all material obligations to System Owner under this Agreement and is not in default of this Agreement, at the expiration of the Service Term, Host Customer shall have the option to renew this Agreement for one (1) five (5) year period upon the same terms and conditions except for the Solar Electricity Price which shall be mutually agreed upon by Host Customer and System Owner at the expiration of the Service Term. In the event Host Customer elects to renew this Agreement pursuant to this Section 15.6, Host Customer shall provide System Owner written notice of its election to renew upon at least ninety (90) days prior to the expiration of the Service Term.

**Section 15.7 Host Customer Declines Option to Renew Agreement.**

Provided that Host Customer has fulfilled all material obligations to System Owner under this Agreement and is not in default of this Agreement, and in the event Host Customer fails to renew this Agreement at the expiration of the Service Term as provided for in Section 15.6, System Owner shall remove the System and restore the Site to its original condition within 120 days after the expiration of the Service Term.

**ARTICLE XVI  
LIABILITY; INDEMNIFICATION**

**Section 16.1 Indemnity.**

To the extent permitted by New Mexico law and to the extent covered by the insurance required under this Agreement, each Party shall indemnify, defend and hold harmless the other party, and all of their respective present or future elected officials, officers, directors, shareholders, employees, agents, volunteers and representatives from and against any and all losses, damages, liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs and expenses (including, but not limited to, reasonable costs of defense, settlement, and reasonable attorney's fees), which may be asserted against any or all of them by any person or governmental agency, or which any or all of them may hereafter suffer, incur, be responsible for or pay out, including damages in connection with bodily injuries (including, but not limited to, present and future death, sickness, disease and emotional or mental distress) to any person (including the indemnified Party's employees), damage (including, but not limited to, loss of use) to any property ( public or private), or any violation or alleged violation of any laws, to the extent caused or arising out of a party's (a) negligent acts or omissions or (b) breach of its obligations, covenants or warranties hereunder. For purposes of interpretation of this Section 16.1 the term "party", when referring to the Host Customer, shall include the respective elected officials, officers, employees, agents, volunteers and representatives of the City of Santa Fe.

**Section 16.2 Consequential Damages and Limitation of Liability.**

Except to the extent specifically provided elsewhere in this Agreement, neither Party will be liable to the other for special, indirect or consequential damages arising out of the performance or non-performance of this Agreement, whether caused by negligence, tort, strict liability, breach of contract, or breach of warranty, including damages in the nature of loss profits or revenues, loss of use of facilities, or equipment or inability to perform contracts with third parties (other than for any damages incurred under such contracts), other than for damages resulting from the claims of parties not a party to this Agreement.

**Section 16.3 Liability and Responsibility.**

Host Customer. Subject to the New Mexico Tort Claims Act and other applicable law, Host Customer agrees to pay System Owner for the costs and expenses relating to any repairs to, direct or indirect harm to, or loss of the System, to the extent resulting from the action or inaction

of Host Customer or any of its contractors, agents, tenants, employees, partners, owners, subsidiaries, or affiliates. If such harm to or loss of the System results in the Site or the System becoming unusable in whole or in part by the casualty, and such casualty event causes a material reduction in the Output of the System or diminishes the ability of the System Operator to operate the System, and, if such damage shall be so extensive that System Owner, in its sole but reasonable judgement, determines not to rebuild, then System Owner shall have the right to cancel this Agreement by notice to Host Customer within one hundred eighty (180) days after the date of such damage.

**System Owner.** System Owner agrees to pay Host Customer for the costs and expenses relating to any repairs to, direct or indirect harm to, or loss of Host Customer's personal property or fixtures on the Premises, to the extent resulting from the action or inaction of System Owner or any of its contractors, agents, employees, partners, owners, subsidiaries or affiliates. If such harm to or loss to all or a portion of the Premises other than the Site shall be so damaged that in the sole but reasonable opinion of Host Customer the Premises should be restored in such a way as to alter the Site materially, Host Customer may cancel this Agreement by notice to System Owner given at any time within one hundred eighty (180) days after the date of such damage.

## ARTICLE XVII INTERRUPTION OF SERVICE

### Section 17.1 Interruptions Are Expected.

The Parties acknowledge and understand that the System consists of intermittent generation facilities. This Agreement provides no warranty or guaranty to Host Customer with respect to the supply of Electricity. System Owner shall not be liable for any damages caused by or resulting from any interruption in Electricity during the Term, other than if caused by System Owner or its agents, contractors or subcontractors, nor shall System Owner be responsible for the cost of alternative supplies of Electricity during any such interruption. If the capability of the System to produce and deliver Electricity is interrupted, other than as a result of the acts or omissions of Host Customer or as otherwise provided herein, System Owner will make commercially reasonable efforts to restore Output in a timely manner.

### Section 17.2 Obstructions.

**Section 17.2.1** Host Customer shall not install or permit to be installed on the Premises (or any other property owned or controlled by City of Santa Fe) any physical obstruction to the operation of the System that would reduce or block sunlight or otherwise interfere with the System or reduce Output.

**Section 17.2.2** In the event that any obstruction that could reasonably be expected to reduce the Output is proposed to be erected or installed on property other than the Premises, Host Customer and System Owner mutually agree to cooperate with one another in opposing the erection of such obstruction.

### Section 17.3 System Owner's Interruption of Output.

Notwithstanding anything to the contrary herein, System Owner shall have the reasonable right to interrupt, reduce or discontinue the delivery of Output for purposes of inspection, maintenance, repair, replacement, construction, installation, removal or alteration of the equipment used for the production or delivery of Output, or at the direction of authorized governmental authorities or electric utilities. Other than in the event of unexpected interruptions or in the event of an emergency, System Owner shall give Host Customer written notice at least five (5) Business Days prior to an interruption of Output deliveries and an estimate of the expected duration of the interruption. To the extent practical, all maintenance and repairs to the system will be performed during off peak hours, and in a manner that would not require a complete interruption in Output of the overall System. In no case shall any System Owner's interruption of Output or failure of the System be construed by the System Owner as Potential Output.

### Section 17.4 Host Customer's Interruption of Output.

Notwithstanding anything to the contrary herein, Host Customer shall have the right for reasonable periods of time, which such periods shall be mutually agreed upon between Host Customer and System Owner, to interrupt the delivery of Output for purposes of inspection, maintenance, Host Utility feeder and buss tie-breaker interlocked circuit breaker switching operations, or replacement of the Medium Voltage Switchgear or any part thereof or at the direction of authorized governmental authorities or electric utilities. Host Customer shall give System Owner email or telephonic notice at least five (5) Business Days prior to a planned interruption of Output deliveries and an estimate of the expected duration of the interruption. To the extent practical, all maintenance and repairs to the System will be performed when there is no solar Output and in a manner that will minimize the duration of any complete interruption in Output of the overall System. Potential Output is created by any Host Customer discretionary interruption of Output at the Delivery Point. Host Customer agrees to pay all costs and expenses incurred to de-install and re-install the System, if required by Host Customer, during any delivery interruption, temporary shutdown or curtailment period. System Owner will be compensated for any Potential Output as discussed in Section 5.4 of this Agreement.

### Section 17.5 Cost to Restore Service Following Interruption.

System Owner shall bear all costs associated with restoring service following any interruption in the capability of the System to produce and deliver Electricity from Solar irradiance resulting from (i) a failure of any component of the System, (ii) System Owner's operation of the System, or (iii) any failure of the System to automatically resume normal production of Electricity following any interruption of Host Utility power at the Delivery Point. Host Customer shall bear the costs associated with the restoration of the delivery of Output if an interruption of such supply of Electricity is the result of damage to the System or Meter caused by actions or inactions of Host Customer.

### Section 17.6 Output Guaranty

After year six (6) of the term of the Agreement, if the System fails to generate at least 50% of Projected Output adjusted annually based on a -0.5% system degradation rate in each 12-month calendar period, and provided, however, that such reduced Output is not caused by a Force Majeure Event or act of Host Customer, the System Owner shall allow the Host Customer after written notification to remove the said system. The Host Customer shall provide a written notice to the System Owner outlining their intent to remove the system at 30 days prior to any action.

## ARTICLE XVIII INSURANCE

### Section 18.1 Insurance Requirements.

18.1.1 Host Customer shall maintain without interruption from the Commencement Date until the expiration of the Term, with a company or companies rated A or above by A.M. Best, commercial general liability insurance in an amount not less than one million (\$1,000,000) dollars per occurrence. Such insurance shall name System Owner and its equity owners and any parties providing financing to System Owner for the System as additional insured. Host Customer shall furnish to System Owner within five (5) business days of issuance of notice of commencement of construction pursuant to Section 3.3 by System Owner and annually thereafter, a certificate of insurance for such coverage stating the name of the insurance company and policy number, the policy period, the named insured and address, a description of coverage, policy limits, a description of location of covered operations, the name and address of the certificate holder, a notice of cancellation provision, and an authorized signature and date. Such certificate shall further indicate that the insurance will not be cancelled unless thirty (30) days' prior written notice (10 days if cancellation is due to nonpayment of premium) has been given to System Owner and that System Owner is named as an additional insured under the commercial general liability policy. In the event the Host Customer's insurance carriers will not agree to this notice requirement, the Host Customer will provide written notice to the System Owner, the required notices within four working days of Host Customers receipt of notice from its insurance carrier(s) of cancellation or non-renewal of the required insurance. For the avoidance of doubt, the failure of Host Customer to provide such certificate shall not be deemed to be a waiver by System Owner of any of Host Customer's obligations hereunder.

18.1.2 At all times while this Agreement is in force, System Owner shall at its own expense maintain insurance in at least the amounts specified below. For the avoidance of doubt, such amounts are the minimum required and shall not be construed as a limitation on System Owner's liability or indemnification obligations hereunder:

(a) Commercial general liability (including products liability, completed operations and contractual liability coverage) at \$3,000,000 per occurrence combined single limit and \$5,000,000 in the aggregate.

(b) Commercial automobile liability insurance at \$3,000,000 combined single limit.

- (c) Workers' compensation insurance as required by Applicable Law.
- (d) Employer's liability insurance with the following limits:

Bodily Injury by Accident	\$500,000	Each Accident
Bodily Injury by Disease	\$500,000	Each Employee
Bodily Injury by Disease	\$500,000	Policy Limit

Without limiting the foregoing System Owner, at its sole cost and expense, shall keep in force at all times while this Agreement is in force an insurance policy which will provide All Risk Property insurance, including coverage for Earthquake, Machinery & Equipment coverage, on a Replacement Cost basis. Such policy shall include Business Interruption and, during any period of construction or reconstruction, Builders Risk coverage.

The insurance shall: (i) be maintained with insurers with a Best's rating of at least "A", Financial Class Size VIII, (ii) be in the name of System Owner, (iii) include Host Customer and its officials, officers, employees, agents, volunteers and representatives as additional insureds under the commercial general liability policy, and (iv) all policies shall be primary, without right of contribution, to any insurance maintained by Host Customer and its officials, officers, employees, agents, volunteers and representatives. System Owner shall furnish to Host Customer upon the issuance of notice of commencement of construction pursuant to Section 3.3 and annually thereafter a certificate of insurance for such coverage stating the name of the insurance company and policy number, the policy period, the named insured and address, a description of coverage, policy limits, a description of location of covered operations, the name and address of the certificate holder, a notice of cancellation provision, and an authorized signature and date. Such certificate shall further indicate that the insurance will not be cancelled unless thirty (30) days' (10 days if cancellation is due to nonpayment of premium) prior written notice has been given to Host Customer and that Host Customer and its officials, officers, employees, agents, volunteers and representatives are named as an additional insureds under the commercial general liability policy. In the event the System Owner's insurance carriers will not agree to this notice requirement, the System Owner will provide written notice to the Host Customer within four working days of System Owner's receipt of notice from its insurance carrier(s) of cancellation or non-renewal of the required insurance. For the avoidance of doubt, the failure of System Owner to provide such certificate shall not be deemed to be a waiver by Host Customer of any of System Owner's obligations hereunder.

## ARTICLE XIX ASSIGNMENT

### Section 19.1 Assignment.

Neither party may assign this Agreement without the prior written consent of the other, such consent not to be unreasonably withheld or delayed; provided, however, that no such consent



shall be required if Host Customer assigns this Agreement to an affiliated entity or System Owner collaterally assigns its rights and obligations under this Agreement in connection with a financing of the System.

## ARTICLE XX MISCELLANEOUS

### Section 20.1 Independent Contractors.

Nothing in this Agreement, and no action taken by the parties under this Agreement, shall constitute a partnership, association, joint venture or other co-operative entity between the parties or make one party the agent or legal representative of the other. Neither party is herein granted, nor shall it hold itself out as having, any right or authority to assume or create any obligation, express or implied, on behalf of or in the name of the other. In fulfilling its obligations hereunder, each party is acting as an independent contractor.

### Section 20.2 Disputes.

Any dispute, controversy or claim (each, a "Dispute") arising out of or relating to this Agreement or any breach or alleged breach hereof, either Party may request that the Dispute first be submitted to mediation for resolution. Prior to mediation (if requested by a Party) or the filing of a lawsuit, the parties, through a manager with authority to resolve the Dispute, shall meet and use their best efforts to resolve the Dispute. Mediation shall commence no later than thirty (30) days after submission of the Dispute and shall be conducted at the locality where the Premises is situated and in accordance with the then prevailing rules of the Construction Industry Mediation Rules of the American Arbitration Association. In the event that the Dispute is not resolved pursuant to mediation, each Party may pursue any rights and remedies as each may have, whether hereunder or in law or at equity. Except to the extent that this Agreement expressly permits a party to suspend performance pending final resolution of a Dispute, the Parties shall each proceed diligently and faithfully with performance of their respective obligations under this Agreement; provided, in no event shall System Owner be obligated to deliver Electricity to Host Customer in the event that Host Customer is in Default of its payment obligations to System Owner hereunder.

### Section 20.3 No Third Party Beneficiaries.

No person who is not a party to this Agreement (other than a successor in title to one of the original parties) shall be entitled in their own right to enforce any provisions of this Agreement; except that any person who is expressly entitled to indemnification as provided in Article XVI hereof shall be entitled to enforce such rights as and to the extent provided therein.

### Section 20.4 Notices.

Any written notice, direction, instruction, request or other communication required or permitted under this Agreement shall be deemed to have been duly given on the date of receipt or refusal, and shall be delivered (a) personally to the Party to whom notice is to be given, (b) by facsimile (provided that the original of such facsimile is sent to the other Party by a recognized

overnight delivery service with positive tracking of items on the same day as the day on which the facsimile transmission is received by such other Party) to the Party to whom notice is to be given, (c) by a recognized overnight delivery service with positive tracking of items, to the Party to whom notice is to be given, or (d) to the Party to whom notice is to be given, by first class registered or certified mail, return receipt requested, postage prepaid, and addressed to the addressee at the address stated opposite its name below, or at the most recent address specified by written notice given to the other party in the manner provided in this Section 20.4:

If to Host Customer:

City of Santa Fe  
200 Lincoln Ave  
Santa Fe, New Mexico 87504  
Attn.: Energy Specialist  
naschiavo@santafenm.gov

If to System Owner:

MLH Cripple Creek Solar, LLC  
Four Embarcadero CTE STE 3670  
San Francisco, CA 94111  
Attn. Brad Bauer  
brad@mp2capital.com

**Section 20.5 Applicable Law and Jurisdiction: Waiver.**

This Agreement is made and shall be interpreted and enforced in accordance with the laws of the State of New Mexico.

**Section 20.6 Complete Agreement.**

This Agreement and any documents expressly incorporated herein or therein by reference shall constitute the entire Agreement between both Parties regarding the subject matter hereof and supersedes all prior agreements, understandings, representations, and statements, including any marketing materials and sales presentations (including related any energy audit) whether oral or written. There are no agreements, understandings, or covenants between the parties of any kind, expressed or implied, or otherwise, pertaining to the rights and obligations set forth herein that have not been set forth in this Agreement.

**Section 20.7 Right to Set-Off.**

Neither Host Customer nor System Owner shall have any right to set-off any payment obligation under this Agreement against any obligations due to System Owner or Host Customer, as applicable, under any provision of this Agreement.

**Section 20.8 Amendments and Modifications.**

No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by duly authorized representatives of both Parties.

Section 20.9 Further Assurances.

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

Section 20.10 Invalidity.

The invalidity or unenforceability, in whole or in part, of any portion or provision of this Agreement will not affect the validity and enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision. Notwithstanding the provisions of the preceding sentence, should any term or provision of this Agreement be found invalid or unenforceable, the Parties shall immediately renegotiate in good faith such term or provision of this Agreement to effectuate the same intent and to eliminate such invalidity or unenforceability.

Section 20.11 Counterpart Execution.

This Agreement may be executed and delivered by the Parties in any number of 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.

Section 20.12 Neutral Interpretation.

The Parties acknowledge that this is a negotiated Agreement and, in the event of any dispute over its meaning or application, this Agreement shall be interpreted fairly and reasonably and neither more strongly for, nor more strongly against, either Party. Any headings or captions contained in this Agreement are for reference purposes only and are in no way to be construed to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

Section 20.13 No Waiver.

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

#### Section 20.14 Survival.

Any provisions necessary to give effect to the intent of the Parties hereunder after the termination of this Agreement shall survive the termination of this Agreement, including, without limitation, the indemnification provisions set forth in Article XVI hereof.

#### Section 20.15 Obligations.

The Host Customer and the System Owner agree to satisfy their payment obligations in accordance with the terms of this Agreement.

#### Section 20.16 Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations to and authorization being made for the Host Customer for the performance of this Agreement. Host Customer shall make reasonable efforts to secure continuing appropriations and authorization to continue payments under this Agreement. In the event appropriations and authorization are not made, written notice shall be given by Host Customer to System Owner that payments under this Agreement may no longer be made; provided, that the Host Customer shall allow System Owner to continue to occupy the Site, to operate the System, and shall transfer environmental credits referred to in Article IX of this Agreement to System Owner.

#### Section 20.17 Improvement Loan

(a) Host Customer shall advance to System Owner a portion of the funds required to construct, assemble and install the System on the Premises (the "Improvement Loan") in an amount equal to Three Hundred Fifteen Thousand Three Hundred Dollars (\$315,300). Interest shall accrue at an annual interest rate of two percent (2.0%). System Owner shall pay quarterly installments of principal and interest within thirty (30) days of the first Quarterly Date following the Commencement Date. Thereafter, System Owner shall pay equal quarterly installments of principal and interest within thirty (30) days of each Quarterly Date thereafter sufficient to amortize the Improvement Loan over a twenty (20) year term.

(b) The proceeds of the Improvement Loan may be used only to pay a portion of the costs of constructing, assembling and installing the System, including without limitation, engineering, permitting and related costs. The amount by which the total cost of constructing, assembling and installing the System and otherwise improving the Premises exceeds the Improvement Loan shall be paid by System Owner. Host Customer shall disburse a portion of the Improvement Loan from time to time, within thirty (30) days after receipt of a complete Application for Payment pursuant to Section 20.17 (c) below. Disbursements shall be paid to System Owner, where the disbursement is a reimbursement of costs actually paid by System Owner. Disbursements of the Improvement Loan shall be made monthly and shall be subject to an annual interest rate of two and one-half percent (2.5%) based on the average balance of outstanding loan for the preceding month. The first quarterly installment payment shall include

the interest accrued pursuant to the preceding sentence and thereafter the Improvement Loan shall be repaid as provided in Section 20.17 (a) above.

(c) To request a disbursement of the Improvement Loan, System Owner shall submit a written application for payment, which shall include all of the following (collectively, the "Application for Payment"):

(i) a completed AIA form G702 (1992 Edition), Application and Certification for Payment, or other comparable form reasonably approved by Host Customer;

(ii) a certification from System Owner stating that the materials or work for which payment is being requested have been supplied and installed to the Premises (in the case of materials) or performed (in the case of work);

(iii) representation by System Owner that no default exists; and

(iv) Such other commercially reasonable documentation as Host Customer may require.

[SIGNATURE PAGE FOLLOWS]

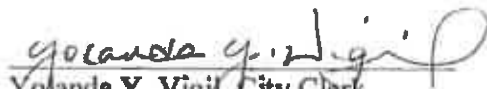
IN WITNESS WHEREOF, the duly authorized representatives of the Parties have each executed this Solar Energy Agreement, as of the Effective Date.

CITY OF SANTA FE

  
\_\_\_\_\_  
David Coss, Mayor  
City of Santa Fe

12/5/11  
\_\_\_\_\_  
Date

ATTEST:

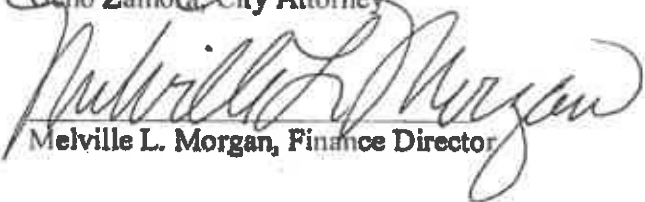
  
\_\_\_\_\_  
Yolanda Y. Vigil, City Clerk  
contg 11/30/11

12-27-11  
\_\_\_\_\_  
Date

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Geno Zamota, City Attorney

11/8/11  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Melville L. Morgan, Finance Director

12/9/11  
\_\_\_\_\_  
Date

Business Unit/Line Item  
52102/514050

MLH Cripple Creek Solar, LLC

  
\_\_\_\_\_  
Brad Bauer, President

12/16/11  
\_\_\_\_\_  
Date

NM Taxation & Revenue  
CRS # 03-202206-00-9

City of Santa Fe Business  
Registration # 11-00109639

## EXHIBIT A

### System Description

100 kW DC photovoltaic system located at 201 West Marcy Street Santa Fe, New Mexico

#### A-1 Drawing of Premises and Site



**EXHIBIT B**

**Monthly Project System Production Estimates and Cost Estimates**

**B-1 Year 1: Quarterly Projected Output**

QTR	Cost/kWh	kWh Generated Quarterly	Payments
1	\$0.1475	40,625	\$5,992
2	\$0.1475	40,625	\$5,992
3	\$0.1475	40,625	\$5,992
4	\$0.1475	40,625	\$5,992

**B-2 20 Year Annual Projected Output**

Year	Cost/kWh	kWh Generated Annually	Payments
1	\$0.1475	162,500	\$ 23,969
2	\$0.1475	161,688	\$ 23,849
3	\$0.1475	160,879	\$ 23,730
4	\$0.1475	160,075	\$ 23,611
5	\$0.1475	159,274	\$ 23,493
6	\$0.1475	158,478	\$ 23,375
7	\$0.1475	157,686	\$ 23,259
8	\$0.1475	156,897	\$ 23,142
9	\$0.1475	156,113	\$ 23,027
10	\$0.1475	155,332	\$ 22,911
11	\$0.1475	154,555	\$ 22,797
12	\$0.1475	153,783	\$ 22,683
13	\$0.1475	153,014	\$ 22,570
14	\$0.1475	152,249	\$ 22,457
15	\$0.1475	151,487	\$ 22,344
16	\$0.1475	150,730	\$ 22,233
17	\$0.1475	149,976	\$ 22,122
18	\$0.1475	149,226	\$ 22,011
19	\$0.1475	148,480	\$ 21,901
20	\$0.1475	147,738	\$ 21,791



**EXHIBIT C**

**Sample Invoice**

**MLH Cripple Creek Solar, LLC  
Four Embarcadero Center Suite 3670  
San Francisco, CA 94111**

**Solar Energy Agreement Monthly Invoice**

**From:  
MLH Cripple Creek Solar, LLC  
Four Embarcadero Center Suite 3670  
San Francisco, CA 94111**

**To:  
City of Santa Fe  
Attn: Santa Fe Convention Center  
200 LINCOLN AVE  
SANTA FE, NM 87504**

**Invoice #: XXXXXXX**

**Invoice Date: x/xx/20xx**

**This invoice is for the power generated by the system at City of Santa Fe Community Convention Center located at 201 West Marcy Street in Santa Fe, New Mexico between the dates of xx/xx/20xx and xx/xx/20xx. Please make checks payable to "MP2 CAPITAL, LLC."**

<b>Item</b>	<b>Description</b>	<b>Unit Cost</b>	<b>Total Cost</b>
<b>1</b>	<b>Output: xxx,xxx kWh</b>	<b>\$0.1475</b>	<b>\$xxxxxx</b>
<b>2</b>	<b>Potential Output: xxx,xxx kWh</b>	<b>\$0.1475</b>	<b>\$xxxxxx</b>
	<b>Total Due Net 30</b>		<b>\$xxxxxx</b>

**Submitted by:**

**, Controller**

**EXHIBIT D**

**Early Buyout Option/Termination Fee**

<b>Year*</b>	<b>Buyout Price</b>
1	\$ 433,500
2	\$ 407,998
3	\$ 382,638
4	\$ 357,420
5	\$ 332,344
6	\$ 247,850
7	\$ 233,533
8	\$ 218,928
9	\$ 204,029
10	\$ 188,829
11	\$ 173,324
12	\$ 157,506
13	\$ 141,369
14	\$ 124,907
15	\$ 108,113
16	\$ 90,981

\* Each Year shall be a calendar year. The first Year shall begin on the January 1<sup>st</sup> following the Full Commercial Operation Date.



City Of Santa Fe  
PO BOX 909  
Santa Fe NM, 87504

# City of Santa Fe, New Mexico BUSINESS LICENSE

Official Document  
Please Post

Business Name: **MLH CRIPPLE CREEK SOLAR LLC**

Location: **LINCOLN AVE**

Class: **BUSINESS REGISTRATION-STANDARD PSA W/CTY**

Comment:

Control Number: 0060647

License Number: 11-001096319

Issue Date November 22, 2011

Expiration Date December 31, 2011

**MLH CRIPPLE CREEK SOLAR LLC  
FOUR EMBARCADERO CENTER #3670**

**SAN FRANCISCO CA 94111**

**CITY OF SANTA FE**

**AMENDMENT No. 1 TO  
POWER PURCHASE AGREEMENT**

AMENDMENT No. 1 (the "Amendment") to the CITY OF SANTA FE POWER PURCHASE AGREEMENT, dated November 30, 2011 (the "Agreement"), between the City of Santa Fe (the "City") and MLH Cripple Creek Solar, LLC (the "Contractor").

The date of this Amendment shall be the date when it is executed by the City.

**RECITALS**

A. Under the terms of the Agreement, Contractor has agreed to construct, own, operate and maintain a utility interconnected photovoltaic system at the City's Community Convention Center. The Contractor has further agreed to sell to the City 100 percent of the energy generated at that facility at a fixed price.

B. Pursuant to Article 20.8 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City and the Contractor agree as follows:

1. SOLAR ELECTRICITY PRICE.

Article 6.1 of the Agreement is amended as follows:

The price for Output shall be a fixed price of \$0.145 per kilowatt hour for years (1) one through fifteen (15) (the "Solar Electricity Price").

Article 6.2 of the Agreement is amended by deleting the third sentence of such section in its entirety and, in lieu thereof, inserting the following text:

"The amount due for the Output delivered or Potential Output for such month shall be determined by multiplying the Solar Electricity Price by the Output or Potential Output for such month. Such amount owed by Host Customer shall then be reduced by the amount of payment

received by System Owner for such month pursuant to that certain Standard Large Solar Renewable Energy Certificate Purchase Agreement among System Owner, Host Customer, and Public Service Company of New Mexico. Each invoice shall set forth in reasonable detail the calculation of all amounts owed, including any amounts owed pursuant to Section 5.4 and Section 6.1 of this Agreement”

2. ENVIRONMENTAL CREDITS

Article 9.1 of the Agreement is amended by deleting such section in its entirety and, in lieu thereof, inserting the following text:

“All Environmental Certificates (Renewable Energy Credits), whether available directly or indirectly, shall be the property of the System Owner for the Term of this Agreement.”

Article 9.2 of the Agreement is amended by deleting such section in its entirety and, in lieu thereof, inserting the following text:

“Host Customer, at no additional cost to the System Owner, agrees to fully cooperate and to timely complete any and all documentation reasonably required by any mandatory or voluntary program governing the existence or trade of Environmental Credits, including documentation required to verify the Environmental Credits, including Renewable Energy Credits.”

3. EXHIBIT A: SYSTEM DESCRIPTION

Exhibit A of the Agreement is amended to reflect the revised system size as follows:

A 90.7 KW DC photovoltaic system located at 201 West Marcy Street Santa Fe, New Mexico.

4. EXHIBIT C: SAMPLE INVOICE

Exhibit C shall be amended to reflect the correct unit cost price of  
\$0.145/kWh.

AGREEMENT IN FULL FORCE.

Except as specifically provided in this Amendment the Agreement remains  
and shall remain in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the City of Santa Fe  
Power Purchase Agreement as of the date set forth below.

CITY OF SANTA FE:


  
ROBERT ROMERO, CITY MANAGER

Date: 6/11/12

ATTEST:

  
YOLANDA Y. VIGIL, CITY CLERK 

CONTRACTOR:

By:   
(Name & Title)  
JEFFREY GLAVAN  
SECRETARY

APPROVED AS TO FORM:

  
\_\_\_\_\_  
GENO I. ZAMORA, CITY ATTORNEY

APPROVED:

  
\_\_\_\_\_  
MELVILLE L. MORGAN,  
FINANCE DEPARTMENT DIRECTOR 6/16/12

**SECOND AMENDMENT TO AND CONSENT TO ASSIGNMENT OF  
POWER PURCHASE AGREEMENT BY AND BETWEEN MLH CRIPPLE  
CREEK SOLAR, LLC AND THE CITY OF SANTA FE (CONVENTION  
CENTER)**

**THIS SECOND AMENDMENT TO AND CONSENT TO ASSIGNMENT OF THE  
POWER PURCHASE AGREEMENT BY AND BETWEEN MLH CRIPPLE  
CREEK SOLAR, LLC AND THE CITY OF SANTA FE (CONVENTION  
CENTER) ("Amendment and Consent to Assignment") is made and entered into as of  
July 27, 2016 (the "Effective Date") by and between the CITY OF SANTA FE, New  
Mexico ("City of Santa Fe") and MLH CRIPPLE CREEK SOLAR, LLC. The City of  
Santa Fe and MLH CRIPPLE CREEK SOLAR, LLC, are referred to individually herein  
as a "Party" and collectively as the "Parties".**

**RECITALS**

**WHEREAS**, the City of Santa Fe and MLH CRIPPLE CREEK SOLAR, LLC  
entered into that certain "Power Purchase Agreement By and Between MLH CRIPPLE  
CREEK SOLAR, LLC and The CITY OF SANTA FE (Convention Center)" dated  
November 30, 2011 and as amended by the parties pursuant to "AMENDMENT No. 1  
TO POWER PURCHASE AGREEMENT" dated June 11, 2012 (collectively the  
"Convention Center PPA");

**WHEREAS**, MLH CRIPPLE CREEK SOLAR, LLC desires to assign the  
Convention Center PPA to DISSIGNO HOLDINGS, LLC and the City of Santa Fe  
consents to such assignment;

**WHEREAS**, the City of Santa Fe and MLH CRIPPLE CREEK SOLAR, LLC  
desire to amend the Convention Center PPA as set forth below to effectuate the  
assignment of the Convention Center PPA to DISSIGNO HOLDINGS, LLC;

**NOW THEREFORE**, in consideration of the agreements herein contained and  
for other good and valuable consideration (the receipt and adequacy whereof is hereby  
acknowledged) the Parties agree as follows:

**ARTICLE I  
INTERPRETATION**

- 1.1 Defined Terms.** Unless otherwise defined in this Amendment and Consent to  
Assignment, capitalized terms used and not otherwise defined herein shall have  
the meanings specified in the Convention Center PPA.



**ARTICLE 2  
CONSENT TO ASSIGNMENT**

- 2.1 **Consent to Assignment.** Pursuant to Section 19.1 of the Convention Center PPA, the City of Santa Fe hereby provides written consent for MLH CRIPPLE CREEK SOLAR, LLC to assign its rights and responsibilities under the Convention Center PPA to DISSIGNO HOLDINGS, LLC, an Oregon limited liability company with an address of 19547 Blue Lake Loop, Bend, OR, 97702.

**ARTICLE 3  
AMENDMENTS**

- 3.1 **Amendments to the Convention Center PPA.** Subject to the conditions precedent set forth in Section 4.1 hereof, the Parties agree to amend the Convention Center PPA as follows:

- 3.1.1 **Introductory Paragraph.** The following sentence shall be added at the end of the introductory paragraph: "Effective May\_\_\_\_, 2016, System Owner shall be Dissigno Holdings, LLC."
- 3.1.2 **Section 1.1.** Section 1.1 shall be amended by revising the definition of "Service Term" by striking reference to "20-year period" and replacing it with "15-year period".
- 3.1.3 **Section 6.3.** Section 6.3 shall be amended by striking reference to "MLH CRIPPLE CREEK SOLAR, LLC" and replacing it with "DISSIGNO HOLDINGS, LLC".
- 3.1.4 **Section 20.4.** Section 20.4 shall be amended by striking the name and address for System Owner and replacing it with:

Tara Doyle  
Dissigno Holdings, LLC  
19547 Blue Lake Loop  
Bend, OR 97702  
(510) 684-5546  
tara@dissigno.com

- 3.1.5 **Exhibit C.** Exhibit C shall be amended by striking references to:

MLH Cripple Creek Solar, LLC  
Four Embarcadero Center, Suite 3670  
San Francisco, CA 94111

And replacing such references with:

Tara Doyle  
Dissigno Holdings, LLC  
19547 Blue Lake Loop  
Bend, OR 97702

- 3.1.6 Exhibit C. Exhibit C shall be further amended by striking reference to: "MP2 CAPITAL, LLC" and replacing it with "DISSIGNO HOLDINGS, LLC".

**ARTICLE 4**  
**CONDITIONS PRECEDENT, EFFECT ON THE CONVENTION CENTER PPA**

- 4.1 Conditions Precedent to Amendment. The amendments set forth in Article 3 shall have no force and effect unless and until MLH CRIPPLE CREEK SOLAR, LLC assigns its rights under the Convention Center PPA to DISSIGNO HOLDINGS, LLC and notice of such assignment having been completed is provided to the City of Santa Fe.
- 4.2 Convention Center PPA to Remain in Full Effect. Except as specifically amended in this Amendment and Consent to Assignment, the Convention Center PPA shall continue in full force and effect and is hereby in all respects ratified and confirmed. The Convention Center PPA shall henceforth be read and construed in conjunction with this Amendment and Consent to Assignment.

**ARTICLE 5**  
**REPRESENTATIONS**

- 5.1 Mutual Representations. Each Party hereby represents and warrants to the other Party that:
- 5.1.1 it has the full power and authority to execute and deliver this Amendment and Consent to Assignment and to perform all of its obligations hereunder.
- 5.1.2 its obligations under the Amendment and Consent to Assignment constitute its legal, valid and binding obligations, enforceable in accordance with its respective terms.
- 5.1.3 all representations contained in this Amendment and Consent to Assignment are true and accurate as of the Effective Date.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –  
SIGNATURES APPEAR ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the undersigned, which hereby declare under penalty of perjury to be the authorized representatives of the Parties named hereto, have executed this Amendment and Consent to Assignment on the dates specified below to be effective as of the Effective Date.

<b>CITY OF SANTA FE</b> By: <u>[Signature]</u> Name: Javier M. Gonzales, Title: Mayor Date: <u>8/2/16</u>	<b>MLH CRIPPLE CREEK SOLAR, LLC</b> By: <u>[Signature]</u> Name: <u>Paul Boyer</u> Title: <u>Authorized Representative</u> Date: <u>8/15/16</u>
Attest: <u>[Signature]</u> Yolanda Y. Vigil, City Clerk cc mtg 7/27/16 Approved as to form: <u>[Signature]</u> 6/13/16 Kelley A. Brennan, City Attorney Approved: <u>[Signature]</u> 7-29-2016 Oscar Rodriguez, Finance Director	

ITEM # 11-1170

**POWER PURCHASE AGREEMENT**

**By and between**

**MLH CRIPPLE CREEK SOLAR, LLC**

**and**

**The CITY OF SANTA FE**

**(Compost Facility)**

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## **EXHIBITS**

- Exhibit A      System Description**
- Exhibit B      Monthly Project System Production Estimates and Cost Estimates**
- Exhibit C      Sample Invoice**
- Exhibit D      Early Buyout/Termination Schedule**



## POWER PURCHASE AGREEMENT (COMPOST FACILITY)

This Power Purchase Agreement (Compost Facility) (this "Agreement") is made and entered into as of this 30<sup>th</sup> day of November, 2011 (the "Effective Date"), by and between MLH Cripple Creek Solar, LLC its principal office at 4 Embarcadero Center, Suite 3670, San Francisco, California 94111, ("System Owner") and the City of Santa Fe with its principal office at 200 Lincoln Ave Santa Fe, NM 87504, ("Host Customer"); System Owner and Host Customer shall be referred to herein as a "Party" and collectively, as the "Parties".

### RECITALS

WHEREAS, the Host Customer desires to receive Electricity from the System;

WHEREAS, the Host Customer owns the Premises and Site upon which the System will be located;

WHEREAS, the System Owner, at the Host Customer's request, intends to design, install, own or lease, operate, and maintain the System for the production of Electricity on the Host Customer's Site;

WHEREAS, the System Owner desires to sell and the Host Customer desires to purchase all of the Electricity generated by the System;

WHEREAS, pursuant to this Agreement, System Owner and Host Customer agree that any Tax Credits associated with the development and operation of the solar photovoltaic system, including the installation, ownership, maintenance and operation of the System and the sale of Electricity from the System to the Host Customer shall inure to the benefit of the System Owner during the Term of this Agreement;

WHEREAS, pursuant to this Agreement, the System Owner and Host Customer agree that, absent an Event of Default by Host Customer, the Host Customer shall own all Environmental Credits, including renewable energy credits, and net metering benefits from the Output of the System during the Term of this Agreement.

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

### ARTICLE I DEFINITIONS; RULES OF INTERPRETATION

#### Section 1.1 Definitions.

The following terms shall have the following meanings:

**“Agreement”** means this Solar Energy Agreement, as the same may be modified or amended from time to time in accordance with the provisions hereof.

**“Bankruptcy”** means any case, action or proceeding under any bankruptcy, reorganization, debt arrangement, insolvency, or receivership law or any dissolution or liquidation proceeding commenced by or against a Person and, if such case, action or proceeding is not commenced by such Person, such case or proceedings shall be consented to or acquiesced in by such Person or shall result in an order for relief or shall remain un-dismissed for sixty (60) days.

**“Business Day”** means any day other than Saturday, Sunday, or a legal holiday in the State of New Mexico.

**“City of Santa Fe”** means the city of Santa Fe, New Mexico.

**“Commencement Date”** has the meaning established in Section 5.1.

**“Construction Period”** has the meaning established in Section 2.2.

**“Default”** means any event or circumstance which, with notice or lapse of time or both, would constitute an Event of Default under Article XIII.

**“Delivery Point”** means the physical location, as set forth on Exhibit A (System Description), attached hereto, where the System connects to the Premises at the load side lugs of the Delivery Point Circuit Breaker.

**“Delivery Point Circuit Breaker”** means that circuit breaker located in the “Medium Voltage Switchgear” that is owned by the Host Customer and designed and furnished for interconnection of the System with the Premises and the Host Utility.

**“Due Date”** has the meaning established in Section 6.3.

**“Effective Date”** has the meaning provided in the introductory paragraph.

**“Electricity”** means electrical energy generated and delivered to the Delivery Point from the operation of the System.

**“Environmental Credits”** mean any and all renewable energy certificates or emissions credits, rebates or any other green tag, renewable energy, emissions reduction credits, emission allowances, attributes, offsets or other environmental benefit, or other tradable renewable energy credits, whether related to any renewable portfolio standard or other renewable energy purchase requirement or otherwise, arising from the production of Output and whether existing as of the Commencement Date or enacted thereafter by the State of New Mexico, pursuant to the Renewable Energy Act, Sections 62-16-1 et seq. NMSA 1978 and Title 17.9.572 NMAC, as amended, provided, however, that “Environmental Credits” shall not include Tax Credits.

**“Event of Default”** has the meaning provided in Article XIII.

**“Fair Market Value” has the meaning provided in Section 15.2.4.**

**“Force Majeure Event” means, when used in connection with the performance of a Party’s obligations under this Agreement, any act, event, or condition (to the extent not caused by such Party or its agents or employees) which is unforeseeable, or being foreseeable, could not have been avoided by the exercise of reasonable diligence and care and outside the control of the Party which invokes it, and which renders said Party unable to comply totally or partially with its obligations under this Agreement, including: (i) war (whether or not war is declared), hostilities, revolution, rebellion, insurrection against any governmental authority, riot, acts of terrorism, acts of a public enemy or other civil disturbance; (ii) acts of God, including but not limited to, storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, volcanic eruptions, fires, excess winds, and objects striking the earth from space (such as meteorites);(iii) sabotage or destruction by a third party (other than any, agent, employees or contractors retained by or on behalf of the Party and acting in the performance of its duties) of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement; (iv) regional or national strikes, walkouts, lockouts, or similar industrial or labor actions or disputes other than those directed at the Party seeking to claim a Force Majeure Event hereunder; (v) acts of any governmental authority, excluding however acts of Host Customer that occur as the result of any act, action, rule, regulation, or order of the City of Santa Fe, that materially restrict or limit System Owner’s access to the Site or its activities at the Site or Host Customer’s usage of the Output, and (vi) any act, action, rule, regulation, order, or power failure caused by the Host Utility.**

**“Good Utility Industry Practices” means the practices, methods and acts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation codes, standards, equipment manufacturer’s recommendations, reliability, safety, environmental protection, economy, and expedition. With respect to the System, Good Utility Industry Practices include, but are not limited to, taking reasonable steps to ensure that:**

- 1. equipment, materials, resources, and supplies are available to meet the System’s needs;**
- 2. sufficient operating personnel are available at all times and are adequately experienced, trained and licensed as necessary to operate the System property and efficiently, and are capable of responding to reasonably foreseeable emergency conditions whether caused by events on or off the site of the System;**
- 3. preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation, and are performed by knowledgeable trained and experienced personnel utilizing proper equipment and tools;**
- 4. appropriate monitoring and testing are performed to ensure equipment is functioning as designed;**

5. equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or contrary to environmental laws or regulations or without regard to defined limitations such as flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and/or control system limits; and
6. the System will function properly under both normal and reasonable expected emergency conditions at the Premises.

“Host Customer” has the meaning provided in the introductory paragraph.

“Host Utility” means Public Service Company of New Mexico or PNM.

“Interconnection” means that the System has met all of the Host Utility requirements to begin normal operations of the System, which has then initially produced useable Electricity.

“Interconnection Agreement” means the agreement between the Host Customer and Host Utility authorizing interconnected System operations.

“Interconnection Notice” has the meaning provided in Section 5.1.

“Late Fee” has the meaning provided in Section 6.4.

“Meter” means the standard instrument(s) and equipment owned and installed at the Site by Host Utility, which the Host Utility uses to measure and record the Output delivered to the Host Customer at the Delivery Point, which term does not include meters installed by the Host Customer or System Owner.

“Meter Reading Dispute Resolution Process” means the procedures established by rule or regulation of the Host Utility pertaining to its meter readings or billing error and in effect at the time either the Host Customer or the System Owner initiates this process.

“Mountain Prevailing Time” or “MPT” means Mountain Standard Time or Mountain Daylight Time, as in effect from time to time.

“Net Metering Agreement” means the agreement between the Host Customer and the Host Utility pursuant to 17.9.570 of the NMAC.

“Notice-to-Proceed” is a separate notice or instruction authorizing the System Owner to proceed with the work or a part thereof.

“Output” means the Electricity produced by the System and delivered at the Delivery Point.

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

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

**“Potential Output”** means solar electric energy that cannot be generated or delivered by the System because of an act or omission of the Host Customer.

**“Premises”** means property under the control of the City of Santa Fe and the Host Customer, including the improvements thereon, as described in Exhibit “A”.

**“Projected Output”** means the anticipated level of System Output as provided in Exhibit “B” for a stated period of time.

**“Prudent Industry Practice”** means the practices, methods, and acts engaged in or approved by a significant portion of the solar energy industry that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy, and expedition.

**“Quarterly Date”** means the first Business Day of each of January, April, July, and October.

**“Renewable Energy Credits”** means a certificate in accordance with 17.9.572.13.C NMAC, Renewable Portfolio Standard, representing the renewable energy benefits of the output of 1 MWh of solar electricity.

**“Service Term”** means the 20-year period from the Commencement Date.

**“Site”** means the area of the Premises on which the System Owner will install, operate, and maintain the System, as described in the Site Plan in Exhibit A.

**“Solar Electricity Price”** has the meaning provided in Section 6.1.

**“System”** means all equipment and materials, including photovoltaic arrays, DC/AC inverters, wiring, transformers, switches, instruments and meters, medium voltage equipment and circuits, and other appurtenant facilities installed as part of the System now or hereafter owned by System Owner for the purpose of providing Output to the Host Customer at the Delivery Point, and as such equipment and materials may be modified during the Term. The System excludes any part of the equipment owned and under the control of the Host Utility or Host Customer.

**“System Owner”** has the meaning provided in the introductory paragraph.

**“Tax Credits”** mean all state, local and or federal production tax credit, tax deduction and/or investment tax credit and/or other financial assistance (including any grants) specific to or arising from the production of Output by the System and/or investment in the System.

**"Term"** has the meaning established in Section 2.1.

**"Utility Rate"** means the applicable all-inclusive electric service rate per kilo-Watt-hour (kWh) charged to Host Customer by the Host Utility (including a municipal or cooperative utility, as applicable) serving Host Customer in the service territory in which Premises are located. The Utility Rate shall include all electric charges, transmission, distribution or other delivery charges, ancillary service charges, demand charges, transition or competitive service charges, taxes, and other fees and charges in effect.

**Section 1.2 Interpretation.**

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

**Section 1.3 Service Agreement.**

The Parties intend that this Agreement be treated as a "service contract" within the meaning of Section 7701(e) of the Internal Revenue Code.

**ARTICLE II  
TERM**

**Section 2.1 Service Term.**

The term of this Agreement (the "Term") shall commence on the Effective Date and shall terminate on the 20th anniversary of the Commencement Date, unless terminated earlier, or extended pursuant to the option, in accordance with the terms and conditions in this Agreement.

**Section 2.2 Construction Period.**

The period commencing on the Effective Date and continuing to the Commencement Date shall be the "Construction Period".

**ARTICLE III  
CONSTRUCTION AND INSTALLATION OF SYSTEM**

**Section 3.1 Construction of System.**

**During the Construction Period:**

**Section 3.1.1** System Owner shall install, construct, service, and test the System consistent with the specifications set forth in Exhibit A, all in a good and workmanlike manner and in accordance with all applicable laws and regulations.

**Section 3.1.2** System Owner may hire independent contractors to design, build, install, construct, service, and test the System (each, a "Contractor"). Such Contractors may use subcontractors (who for purposes of this Agreement shall be deemed Contractors) for any part or all of the services contracted by System Owner. System Owner shall require any Contractors and each of their respective subcontractors to have all licenses, and registrations reasonably necessary or customary to perform the services to be performed by such Contractor or subcontractor.

**Section 3.1.3** Host Customer shall provide System Owner, its employees, Contractors, invitees, agents, and assigns access to the Site, and as may be necessary, upon reasonable advance notice, to the Premises, in order to construct and test the System.

**Section 3.1.4** System Owner shall procure or shall ensure that the Contractors have procured and shall maintain insurance in respect of the design, construction, and installation of the System in accordance with requirements of this Section 3.1.4 and at minimum amounts set forth in Section 18.

The insurance shall: (i) be maintained with insurers with a Best's rating of at least "A", Financial Class Size VIII, (ii) be in the name of such Contractor, (iii) include Host Customer and its officials, officers, employees, agents, volunteers, and representatives as additional insureds under the commercial general liability policy, and (iv) be primary, without right of contribution, to any insurance maintained by Host Customer. System Owner shall ensure that each Contractor shall furnish to Host Customer upon the issuance of notice of commencement of construction pursuant to Section 3.1. a certificate of insurance for such coverage stating the name of the insurance company and policy number, the policy period, the named insured and address, a description of coverage, policy limits, a description of location of covered operations, the name and address of the certificate holder, a notice of cancellation provision, and an authorized signature and date. Such certificate shall further indicate that the insurance will not be cancelled unless thirty (30) days' (ten (10) days if cancellation is due to nonpayment of premium) prior written notice has been given to the Host Customer. In the event the Contractors' insurance carriers do not agree to this notice requirement, the System Owner will provide written notice to the Host Customer, within five (5) Business Days', of System Owner's receipt of any such notice from an insurance carrier(s) of cancellation or non-renewal of the required insurance. For the avoidance of doubt, the failure of any Contractor to provide such certificate shall not be deemed to be a waiver by Host Customer of any of Contractor's or System Owner's obligations hereunder.

**Section 3.2 Location of System.**

The System shall be situated on the Site as set forth and in accordance with Exhibit A.

**Section 3.3 Schedule.**

System Owner will give the Host Customer at least five (5) Business Days' written notice prior to the commencement of construction, together with a proposed construction schedule and an estimated Commencement Date. System Owner will notify Host Customer of any material changes to the proposed schedule and the estimated Commencement Date during the Construction Period. The System Owner (or its Contractor) will endeavor to coordinate construction activities with the Host Customer so as to ensure that there will be no interference with normal operations at the Premises.

System Owner will work diligently toward completion of construction and Interconnection by September 30, 2012.

Section 3.4 Construction Period Electricity.

The System Owner or its Contractors may test the System during the Construction Period. Any energy generated and delivered to the Delivery Point incidental to testing during the Construction Period or before the Commencement Date shall not be considered to be Output for the purposes of accounting or payments.

Section 3.5 Construction Related Energy Supply and Water Supply.

The System Owner shall self-supply or purchase from another source all energy and water the System Owner needs to construct the System.

**ARTICLE IV**  
**CONNECTION AND DELIVERY POINT**

Section 4.1 Delivery.

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

Section 4.2 Connection.

System Owner, on behalf of Host Customer, is responsible for arranging for Interconnection of the System to the Host Utility and is solely responsible for all equipment, maintenance, and repairs associated with such Interconnection equipment in accordance with the terms and conditions of this Agreement and the Interconnection Agreement.

Section 4.3 System Operation and Status of Delivery Point Circuit Breaker Prior to Interconnection

The Host Customer will lock open its Delivery Point Circuit Breaker until Host Utility authorization for testing and demonstration of proper operation of the System is obtained by the System Owner and provided to the Host Customer. The Host Customer will then close the Delivery Point Circuit Breaker for the duration of testing as directed by the System Owner and



authorized by the Host Utility. The System Owner will accommodate, as part of this testing, the Host Customer's testing, verification, and calibration as necessary of the Delivery Point Circuit Breaker over current and reverse current trip functions, other trip functions, and integral and transmitted power and power quality readings and settings.

## **ARTICLE V PURCHASE AND SALE OF OUTPUT**

### Section 5.1 Commencement Date.

System Owner will give Host Customer not less than five (5) Business Days' prior written notice (the "Interconnection Notice") that the System has completed testing and that the System has satisfied the requirements of the Host Utility for Interconnection. The date of interconnection shall be the Commencement Date.

### Section 5.2 Sale and Delivery of Output.

Beginning on the Commencement Date or To Be Determined, whichever is later, System Owner will deliver and sell all of the Output at the Delivery Point, and Host Customer shall purchase all of the Output at the Delivery Point, and continuing until the end of the Term.

### Section 5.3 System to Reduce Other Electric Purchases.

The Parties acknowledge that the System is not expected to meet the entirety of Host Customer's demand for Electricity. To the extent that at any time the Output is insufficient to meet all of Host Customer's Electricity demand, Host Customer shall be responsible for purchasing and paying for Electricity from other sources.

### Section 5.4 Sale of Potential Output; Sale Only to Host Customer.

If generation and delivery of Output is foregone or reduced due to an act or omission of the Host Customer and such foregone Output is not due to (i) a Force Majeure Event (ii) an act or omission of System Owner, or (iii) a System failure, Host Customer shall purchase all of the Potential Output. Notwithstanding the preceding sentence, Host Customer shall also purchase and pay for any Potential Output on those occasions where the Host Utility is able to receive such Output from the System and apply net metering program credit to Host Customer's account. Host Customer shall pay System Owner an amount equal to the applicable Solar Electricity Price as expressed in Section 6.1 of this Agreement multiplied by the calculated Potential Output that would have been paid during the period of the temporary shutdown, curtailment, or foregone Output (Potential Output shall be calculated based on the Projected Output expressed in Exhibit B as adjusted by the actual historical production of electricity by the System). The average hourly production shall be reduced at a rate of 0.5% per year following the first year of the agreement.

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

Section 5.5 Taxes.

System Owner is responsible for payment of local, state, and federal income taxes attributable to System Owner for income received under this Agreement and for any personal property taxes, license taxes, or privilege taxes attributable to ownership or usage of the System. System Owner agrees to bear and pay when due any sales or gross receipts tax, to the extent applicable, imposed upon System Owner a seller of Electricity, to the extent of and in the same amount as any similar sales, use, excise or gross receipts that is included in the Utility Rate. If such a sales, use, excise or gross receipts tax is attributable to the sale of Output from System Owner to Host Customer, but not otherwise included or includable in the Solar Electricity Price, then Host Customer agrees to bear the costs of such sales or gross receipts taxes and shall either pay such taxes or reimburse System Owner if paid by System Owner. System Owner shall not be obligated for any taxes payable by or assessed against Host Customer.

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

Section 6.1 Solar Electricity Price.

The price for Output shall be at a fixed price of \$0.1475 per kilowatt-hour for years one (1) through twenty (20) (the "Solar Electricity Price").

Section 6.2 Invoices.

Host Customer and System Owner shall make arrangements directly with the Host Utility to obtain the Meter data that will be the basis of each System Owner Invoice for Output. Not later than five (5) business days following its receipt of such Meter data, System Owner shall prepare and provide the Host Customer an invoice for the Output delivered to the Host Customer in the prior month (or partial month) commencing with the month in which the Commencement Date occurs and continuing thereafter until the last full month in the Service Term. The amount due for the Output delivered or Potential Output for such month shall be determined by multiplying the Solar Electricity Price by the Output or Potential Output for such month, and each invoice shall set forth in reasonable detail the calculation of all amounts owed, including any amounts owed pursuant to Section 5.4 and Section 6.1 of this Agreement. A sample invoice calculation is shown on Exhibit C. Delays in the issuance of any such invoice shall not constitute any waiver of Host Customer's obligation to pay, or System Owner's right to collect, any payment due System Owner under any such invoice.

Section 6.3 Payments.

Host Customer shall pay the undisputed amount of each invoice on or before the thirtieth (30<sup>th</sup>) calendar day following receipt thereof ("Due Date"). All payments made by Host Customer under this Agreement shall be made in the form of a check payable to MLH Cripple Creek Solar, LLC at the address for notices set forth in Section 20.4, as such address may be modified by System Owner by notice to Host Customer in writing.

Section 6.4 Late Fees.

To the extent permitted by New Mexico law, if any undisputed part of a monthly payment is not made by the Host Customer or the System Owner within thirty (30) calendar days following the Due Date, the Host Customer or the System Owner agrees to pay a late fee that shall accrue on the basis of twelve percent (12%) per annum (or such lower percentage as and if required by applicable law) on the amount of such late payment from the Due Date until the date of payment ("Late Fee"). The calculation of Late Fees shall not constitute any waiver of the Party's obligation to pay such amounts when due or a Party's right to collect such amounts or to exercise any other right or remedies it may have for failure to pay such amounts when due under this Agreement or now or hereafter existing at law or in equity or otherwise.

**ARTICLE VII  
METERING**

Section 7.1 Installation of Meter.

The System Owner shall provide as part of the System the metering infrastructure hardware required by the Host Utility's standards for installation of the Meter. When the infrastructure is ready as demonstrated by the System Owner to the Host Customer, the System Owner and the Host Customer shall request that the Host Utility furnish and set the Meter and commence testing of the System for interconnected operations.

Section 7.2 Meter Testing and Calibration.

The Host Utility provides renewable energy generation data on its monthly invoices. If there is a discrepancy between the System Owner's Meter and the amount reported by the Host Utility by greater than one half of one percent, then either the Host Customer or System Owner may request accuracy testing and calibration of the Meter by the Host Utility. The cost, if any, of such testing shall be borne by the requesting Party.

Section 7.3 Meter Reading Dispute Resolution

Either the System Owner or the Host Customer may invoke the Host Utility's current Meter Reading Dispute Resolution Process at any time and shall pay the Host Utility's charges.

Section 7.4 Alternative Measures in Event of Meter Non-Operability.

In the event the Meter is out of service or the Parties agree to jointly dispute the accuracy of a monthly measurement of Output by the Meter, the Output shall be determined by the following alternatives, and in the following order: (a) the best of any alternative or back-up meter that System Owner or the Host Customer may have installed as demonstrated by mathematical analysis of historical simultaneous readings of the Meter and the alternative or back up meter; or (b) calculating the Output in an agreed manner for such period of Meter inoperability using the System Projected Output tables in Exhibit B as a basis for such calculation.

Section 7.5 Retroactive Adjustment of Historical Invoice for Meter Error

Any disputed reading of the Meter may be the basis of either Party invoking the Meter Reading Dispute Resolution Process. In that event, the Host Customer shall pay to the System Owner the amount calculated in accordance with Section 7.4. The System Owner shall submit a corrected invoice to the Host Customer for each billing period invoice questioned. The corrected invoice shall reflect the finding of the Host Utility. The parties shall use their best efforts to fully resolve any and all disputed monthly invoices prior to the due date for the final invoice of Host Customer's fiscal year.

**ARTICLE VIII  
SITE USE AND ACCESS**

Section 8.1 Notice-to-Proceed

System Owner shall not commence construction activities on the Site until the City of Santa Fe has issued the Notice-to-Proceed.

**ARTICLE IX  
ENVIRONMENTAL CREDITS**

Section 9.1 Environmental Credits.

All Environmental Certificates (Renewable Energy Credits), whether available directly or indirectly, shall be the property of the Host Customer for the Term of this agreement.

Section 9.2 Environmental Credits Documentation.

System Owner, at no additional cost to the Host Customer, agrees to fully cooperate and to timely complete any and all documentation reasonably required by any mandatory or voluntary program governing the existence or trade of Environmental Credits, including documentation required to verify the Environmental Credits, including Renewable Energy Credits.

**ARTICLE X  
CONDITIONS PRECEDENT TO THE PARTIES' OBLIGATIONS**

Section 10.1 Conditions Precedent to the System Owner's Obligations

Subject to the terms and conditions of this Agreement, and unless waived by System Owner, System Owner's obligations to initiate construction of the System on the Site under this Agreement are conditioned upon the occurrence of the following:

**Section 10.1.1 Necessary Governmental Approvals.** System Owner shall have filed all applicable applications and certifications and shall have obtained all approvals, permits, licenses and authorizations necessary for the construction and installation of the System.

**Section 10.2 Conditions Precedent to the Host Customer's Obligations.**

Subject to the terms and conditions of this Agreement, and unless waived by Host Customer, Host Customer's obligations under this Agreement are conditioned upon the occurrence of the following:

**Section 10.2.1** The System Owner shall have applied for on behalf of the Host Customer and received from the Host Utility an Interconnection Agreement, Renewable Energy Credit Agreement, and Net Metering Agreement with respect to the Output of the System.

**Section 10.2.3** The System Owner shall have applied for and received all necessary permits, licenses, approvals and authorization for construction of the PV System. Notwithstanding the foregoing, this Section 10.2.3 shall be deemed waived and satisfied upon the Commencement Date.

**Section 10.3 Reasonable Efforts.**

System Owner and Host Customer each agrees to use reasonable efforts to satisfy the applicable conditions precedent set forth above as promptly as practicable after the Effective Date.

**Section 10.4 Ownership of Approvals.**

All permits and approvals obtained pursuant to Section 10.1 shall be owned and controlled by System Owner. To the extent that any such permits or approvals must be obtained and/or owned by Host Customer, then Host Customer agrees that it will reasonably cooperate with the gaining of all such permits and approval to the extent necessary.

***ARTICLE XI  
REPRESENTATIONS***

**Section 11.1 Host Customer Representations.**

Host Customer makes the following representations and warranties to System Owner as of the Effective Date:

**Section 11.1.1 Due Authorization.** Host Customer has the power and authority to enter into this Agreement and perform its obligations hereunder and has taken all necessary action to authorize the execution, delivery and performance of this Agreement. Host Customer has duly executed and delivered this Agreement and this Agreement constitutes the valid and legally binding obligations of Host Customer, enforceable in accordance with its terms.

**Section 11.1.2 No Consent Required.** Host Customer has all the rights required to enter into this Agreement and perform its obligations hereunder without the consent, approval, permit or authorization of any third party, and without notice to any third party, other than these notices that have been given.

**Section 11.1.3 No Conflict.** This Agreement is enforceable against Host Customer in accordance with its terms and does not conflict with or violate the terms of its organizational documents, or any laws, rules, regulations, or agreements to which the Host Customer is a party.

**Section 11.1.4--Ability to Perform.** Host Customer has no knowledge of any facts or circumstances that, but for the passage of time, could materially adversely affect its ability to perform its obligations hereunder.

**Section 11.1.5 Absence of Litigation.** There is no litigation pending or, to the knowledge of Host Customer threatened against Host Customer which could have a material adverse effect on its business, operations, financial condition, or its existing electricity load profile or its ability to perform its obligations under this Agreement.

**Section 11.1.6 All the necessary permits, licenses, approvals and authorization for construction of the PV System upon the Premises are in full force and effect, and no default by Host Customer has occurred under such permits that has not been cured and Host Customer has not received any notice, claim or other form of communication that it is in default under the same.**

## **Section 11.2 System Owner Representations.**

System Owner makes the following representations and warranties to Host Customer as of the Effective Date:

**Section 11.2.1. Due Authorization.** System Owner is a limited liability company, duly organized, validly existing, and in good standing under the laws of the State of California and has full power to engage in the business it presently conducts and is in good standing under the laws of the State of New Mexico. System Owner has the power and authority to enter into this Agreement and perform its obligations hereunder and has taken all corporate or other action to authorize the execution, delivery and performance of this Agreement and no other action on the part of System Owner or on the part of its equity owners is necessary. System Owner has duly executed and delivered this Agreement and this Agreement constitutes the valid and legally binding obligations of System Owner, enforceable in accordance with its terms.

**Section 11.2.2 No Conflict.** This Agreement is enforceable against System Owner in accordance with its terms and does not conflict with or violate the terms of its organizational documents, any other agreement to which System Owner is a party, or applicable law.

**Section 11.2.3 Ability to Perform.** System Owner has no knowledge of any facts or circumstances that, but for the passage of time, would materially adversely affect System Owner's ability to perform its obligations hereunder.

**Section 11.2.4 No Consent Required.** System Owner has all the rights required to enter into this Agreement and perform its obligations hereunder without the consent, approval, permit or authorization of any third party.

**Section 11.2.5 Absence of Litigation.** There is no litigation pending or, to the knowledge of System Owner, threatened against System Owner which could have a material adverse effect on its business, operations, financial condition or prospects or its ability to perform its obligations under this Agreement.

**Section 11.2.6 No Material Changes.** Since the date of its formation, System Owner has not experienced any material changes to, its creditworthiness or the results of its business or financial condition, profile that could have a material adverse effect on the Host Customer or the System.

**Section 11.2.7 Projected Output.** The System Owner has calculated the Projected Output set forth in Exhibit B in accordance with its normal professional practices and expects the System Output will meet or exceed the Projected Output.

**Section 11.2.8 Ability to Complete Construction and Interconnection.** The System Owner has the capacity to complete Interconnection by September 30, 2012 and will meet the deadline unless due to actions or omissions of the Host Customer the Host Utility, or government authorities or the occurrence of a Force Majeure event which prevents such timely completion.

## *ARTICLE XII COVENANTS OF THE PARTIES*

For the Term of the Agreement, the Parties hereby covenant as follows:

### Section 12.1 Additional Consent and Approvals.

The Parties shall work together cooperatively to assist one another in procuring and maintaining all necessary easements, rights of way, leases, licenses, consents and approvals, including the completion of the Interconnection Agreement, Net Metering Agreement, and Renewable Energy Credit Agreement between the Host Customer and the Host Utility and other rights the Parties deem necessary or desirable for the construction and installation of the System, the production and delivery of Output to the Delivery Point, and the operation and maintenance of the System under this Agreement, provided however that the cost for the same shall be attributed to the Party responsible for obtaining such consent or approvals. System Owner and Host Customer shall each provide one another with a copy of all such permits, licenses, leases, consents and approvals, including copies of those approvals, permits, and related documents. Any easements, leases, licenses or any other agreement that will burden the Site must be pre-approved in writing by Host Customer, which approval shall not be unreasonably withheld.

### Section 12.2 Repair and Maintenance of the System

**Section 12.2.1** System Owner shall use commercially reasonable efforts to maintain the System in good working order, and shall operate the System in accordance with manufacturer's

specifications, Host Utility requirements, applicable laws, regulations and ordinances. System Owner shall promptly repair any damage to or failure of the System.

Section 12.2.2 Host Customer shall be responsible for maintaining and fulfilling all its respective (i) obligations to the interconnected Host Utility and any other electric service provider, including with respect to the Interconnection Agreement, Net Metering Arrangement, and Renewable Energy Credit agreement, and (ii) requirements imposed by the Host Utility and/or other electric service provider and any federal, state or local government agencies with respect to such services.

Section 12.2.3 System Owner, on behalf of the Host Customer, shall be responsible for maintaining and fulfilling all its respective obligations to the Host Customer and Host Utility, including implementing operations and maintenance in accordance with the Interconnection Agreement and all requirements imposed by the Host Utility and any federal, state or local government agencies with respect to such services for the generation and sale of the Output to the Host Customer.

### Section 12.3 Contractors.

System Owner may engage Contractors to operate and maintain the System. Such Contractors may use subcontractors for any part or all of the services contracted by System Owner. System Owner shall require any such Contractors and subcontractors to have all licenses, registrations and insurance coverage as required by this Agreement for such service providers and shall provide copies of same to Host Customer upon request. System Owner shall ensure that such Contractors and subcontractors comply fully with the terms of this Agreement. Host Customer agrees to provide System Owner, its employees, Contractors, invitees, and assigns access to the Site during the Term of this Agreement.

### Section 12.4 Ownership of System by System Owner.

Host Customer and System Owner agree that the System is and shall at all times be the personal property of System Owner severable from the Site and the Premises and shall not become or constitute a fixture. If any person attempts to claim ownership of or other rights to System by asserting any claim against or through Host Customer and such claim is not attributable to any act or omission of System Owner, its agents, contractors, or employees, Host Customer agrees to take necessary action to protect System Owner's title to the System. Host Customer will at all times keep the System free from any legal process and any lien not attributable to any act or omission of System Owner, and will give System Owner immediate notice if any legal process or lien is asserted or made against the System or against Host Customer where the System may be subject to any lien, attachment or seizure by any Person. The Host Customer shall not take any position on any tax return or on any other filings indicating that it is the owner of the System.



Section 12.5 Interconnection: Compliance.

Section 12.5.1 During the Construction Period, System Owner will obtain all permits, approvals, and other authorizations that may be required by any governmental agency or authority or by the interconnected Host Utility in connection with the Interconnection of the System to the Host Customer at the Delivery Point. System Owner will use commercially reasonable efforts to assist Host Customer by providing technical information for the completion of the Interconnection Agreement.

Section 12.5.2 System Owner and Host Customer will comply with such permits, approvals, and authorizations described in Section 12.5.1 above in effect at all times during Service Term, and at all times during the Service Term shall comply with such other authorizations and applicable requirements of the Host Utility necessary for the flow of Electricity from the System to the Host Utility's system.

Section 12.5.3 The Host Customer will execute the Interconnection Agreement within two business days of receipt of the Interconnection Agreement from the Host Utility, provided that it is materially identical in form to that form provided one month previously to the Host Customer by the System Owner and it is materially identical to the Host Utility's current standard form. Otherwise, the System Owner will grant to the Host Customer up to ten (10) business days for legal and management review by the Host Customer.

Section 12.5.4 The System Owner shall comply with all applicable requirements of the Host Utility regarding the quality of Electricity produced by the System with regard to power factor and electrical noise, spikes, harmonic content, phase imbalance, sine wave distortion and all other applicable measures of the quality of the Electricity.

Section 12.5.5 The Host Customer, following the execution of the initial Interconnection Agreement pursuant to Section 12.5.3, shall not amend or modify such agreement, without the prior written consent of the System Owner, which consent shall not be unreasonably withheld.

Section 12.6 Notice of Malfunction; Non-Interference.

Section 12.6.1 Each Party shall notify the other immediately upon actual knowledge of (a) any material malfunction of or damage to the System, (b) to the Meter, or (c) any other matters that could reasonably be expected to adversely affect the System, the Site, or the Premises.

Section 12.6.2 Host Customer may not adjust, modify, maintain, alter, or interfere with service from the System, except as authorized in writing by System Owner or in the event of an emergency where there is an imminent threat to life or property; provided that Host Customer shall give System Owner (or its contractor) immediate notice in such event. The Host Customer's operation and maintenance of the Medium Voltage Switchgear are exempt from the requirements of this paragraph.

Section 12.7 Financing Incentives; Financing.

Host Customer agrees to take all action reasonably requested by System Owner in order for System Owner to obtain all rebates or subsidies that would be applicable under this Agreement, in connection with the installation and operation of the System by any state, local or federal government, utility or other source, but at no cost to Host Customer.

Section 12.8 Status of Premises and Site.

In the event that any or all of the Site is or becomes subject during the term of this Agreement to a lease, security interest, lien or mortgage, City of Santa Fe shall use reasonable efforts to have such holder of any such security interest, lien or mortgage enter into a recognition agreement with System Owner reasonably acceptable to System Owner acknowledging and recognizing System Owner's rights under this Agreement and acknowledging that the System is the personal property of System Owner severable from the Site and not a fixture.

*ARTICLE XIII  
DEFAULT*

The occurrence of any of the following events shall be an "Event of Default" under this Agreement.

Section 13.1 Host Customer's Failure to Pay.

Host Customer's failure to make timely payments when due under Sections 6.3 of this Agreement.

Section 13.2 Material Misrepresentation as of Effective Date.

If any of the representations and warranties made by a Party hereunder shall have been inaccurate in any material respect (or if a representation or warranty is qualified by materiality, such representation or warranty is inaccurate in any respect) as of the Effective Date, and such inaccuracy or the effect thereof, to the extent it can be cured, is not cured within 30 days from the earlier of (a) notice from the non-breaching Party and (b) the discovery or determination by the breaching Party of the misrepresentation; provided that if the breaching Party commences an action to cure such inaccurate representation within such thirty (30) days, and thereafter proceeds with all due diligence to cure such failure the cure period shall extend for an additional sixty (60) days.

Section 13.3 Bankruptcy.

If any Party becomes the subject of a winding-up or liquidation order or petition (whether compulsory or voluntary), or insolvent, or the subject of an administration order, or (ii) entering into any composition or arrangement with creditors or (iii) having a receiver appointed over the whole or any portion of its assets.

Section 13.4 Failure to Meet Provisions of this Agreement.

A failure by any Party to perform fully any provision of this Agreement other than as explicitly set forth in this Article XIII and either (a) such failure continues for a period of thirty (30) days after written notice of such nonperformance or (b) the nonperforming Party commences an action to cure such failure to perform within such thirty (30) days, and thereafter proceeds with all due diligence to cure such failure, and such failure is still not cured within sixty (60) days after the expiration of the initial thirty (30) day period.

*ARTICLE XIV  
FORCE MAJEURE*

Section 14.1 Force Majeure.

Section 14.1.1 Neither System Owner nor Host Customer shall be considered to be in default in the performance of its obligations under this Agreement or liable for any delay or failure to comply with this Agreement to the extent that performance of any of its obligations hereunder is prevented or delayed by a Force Majeure Event.

Section 14.1.2 If a Party is prevented or delayed in the performance of any such obligation by a Force Majeure Event, such Party shall immediately provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof. Such notice shall be confirmed in writing as soon as reasonably possible. The Party affected by a Force Majeure Event shall use commercially reasonable efforts to remove or repair the cause of the Force Majeure Event and shall resume performance of its obligations as soon as reasonably practicable, and shall notify the other party in writing of the cessation or termination of the Force Majeure Event.

Section 14.2 Termination

Section 14.2.1 Any Party shall be entitled to terminate this Agreement upon thirty (30) days prior written notice to the other Party if any Force Majeure Event has been in existence for a period of one hundred fifty (150) consecutive days or longer, unless such Force Majeure Event ceases prior to the expiration of such thirty (30) day period. In the event of a termination of this Agreement pursuant to this Section 14.2.1, System Owner shall retain title to the System and shall remove it from the premises. Host Customer shall allow System Owner, its employees, agents, assigns Contractors and invitees reasonable access to the Site to remove the System from the Site within ninety (90) days after such termination.

*ARTICLE XV  
TERMINATION AND PARTIES' RIGHTS*

Section 15.1 Termination for Default.

**Section 15.1.1** Upon the occurrence and during the continuation of any Event of Default hereunder, the non-defaulting Party shall have the option but not the obligation to terminate this Agreement, by providing written notice of termination to the defaulting Party.

**Section 15.1.2** If such termination occurs as a result of Host Customer's default System Owner shall retain title to the System and shall remove it from the premises. Host Customer shall allow System Owner, its employees, agents, assigns, Contractors and invitees reasonable access to the Site to remove the System from the Site within ninety (90) days after such termination, and shall make or have made promptly any repairs to the Site to the extent necessary to repair any adverse impact such removal causes to the Site; provided, that Host Customer shall be responsible for the reasonable costs associated with any such repairs.

**Section 15.1.3** If such termination occurs as a result of the System Owner's default, then System Owner shall retain title to the System and shall remove it from the premises. Host Customer shall allow System Owner, its employees, agents, assigns, Contractors and invitees reasonable access to the Site to remove the System from the Site within ninety (90) days after such termination, and System Owner shall make or have made promptly any repairs to the Site to the extent necessary to repair any adverse impact such removal causes to the Site.

**Section 15.1.4** Termination pursuant to this Section 15.1 shall not eliminate the non-defaulting Party's right to pursue any other remedy given under this Agreement or now or hereafter existing at law or in equity or otherwise, except to the extent limited by this Agreement.

**Section 15.2 Substitute Solar Energy Agreement.**

Notwithstanding any other provision of this Agreement to the contrary, in the event that Host Customer terminates this Agreement because it will no longer occupy the Site or the Premises, Host Customer shall use commercially reasonable efforts to facilitate discussions between System Owner and a successor occupant of the Site and Premises regarding the sale of Output to such new occupant if there is a successor occupant.

**Section 15.4 Option to Purchase.**

Host Customer shall have the option on the sixth anniversary of the Commencement Date and again at each subsequent anniversary of the Commencement Date, exercisable by written notice thereof from Host Customer to System Owner not later than 60 days following the relevant anniversary date, to purchase the System from System Owner at a price equal to the Fair Market Value at the time such option is exercised. Host Customer acknowledges that System Owner makes no representation or promise as to the Fair Market Value at any future time. This Agreement shall terminate upon Host Customer's purchase of the System pursuant to the exercise of the purchase option set forth in this Section 15.4 without any further payment; provided, however, that the foregoing shall not relieve any party of any obligation or liability that had accrued hereunder prior to termination. Upon Host Customer's payment for the System, System Owner shall furnish the System, including all components thereof and operation manuals, in the condition at the time of determination of the Fair Market Value, subject to normal wear and tear free and clear of all liens other than any liens attributable to the actions of Host Customer

“Fair Market Value” of the System is the price that would be established in an arm's-length transaction between an informed and willing buyer and an informed and willing seller for the equipment that comprises the System as installed on the Premises. The parties shall first attempt to reach mutual agreement on the Fair Market Value. If after thirty (30) days Host Customer and System Owner can not agree to the Fair Market Value, then the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to value such equipment. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. 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. To the extent transferable, the remaining period, if any, on all warranties for the System will be transferred from System Owner to Host Customer at Host Customer's sole expense.

Section 15.5 Option to Purchase at End of Term.

Section 15.5.1 Provided that Host Customer has fulfilled all obligations to System Owner under this Agreement, at the expiration of the Service Term, Host Customer shall have the option to purchase the System by notifying System Owner in writing at least one hundred eighty (180) days prior to the end of the applicable term that Host Customer intends to exercise its option under this Section 15.5.

Section 15.5.2 If Host Customer exercises its option under this Section 15.5, Host Customer shall pay System Owner an amount equal to the Fair Market Value of the System as agreed upon by the Parties.

Section 15.5.3 Upon Host Customer's payment for the System, System Owner shall furnish the System, including all components thereof and operation manuals, in the condition at the time of determination of the Fair Market Value, subject to normal wear and tear free and clear of all liens.

Section 15.5.5 Upon transfer of ownership of the System to Host Customer, System Owner shall have no further obligation with respect to the performance, installation, or operation of any part or component of the System.

Section 15.6 Option to Renew Agreement.

Provided Host Customer has fulfilled all material obligations to System Owner under this Agreement and is not in default of this Agreement, at the expiration of the Service Term, Host Customer shall have the option to renew this Agreement for one (1) five (5) year period upon the same terms and conditions except for the Solar Electricity Price which shall be mutually agreed upon by Host Customer and System Owner at the expiration of the Service Term. In the event Host Customer elects to renew this Agreement pursuant to this Section 15.6, Host Customer shall provide System Owner written notice of its election to renew upon at least ninety (90) days prior to the expiration of the Service Term.

Section 15.7 Host Customer Declines Option to Renew Agreement.

Provided that Host Customer has fulfilled all material obligations to System Owner under this Agreement and is not in default of this Agreement, and in the event Host Customer fails to renew this Agreement at the expiration of the Service Term as provided for in Section 15.6, System Owner shall remove the System and restore the Site to its original condition within 120 days after the expiration of the Service Term.

**ARTICLE XVI**  
**LIABILITY; INDEMNIFICATION**

**Section 16.1 Indemnity.**

To the extent permitted by New Mexico law and to the extent covered by the insurance required under this Agreement, each Party shall indemnify, defend and hold harmless the other party, and all of their respective present or future elected officials, officers, directors, shareholders, employees, agents, volunteers and representatives from and against any and all losses, damages, liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs and expenses (including, but not limited to, reasonable costs of defense, settlement, and reasonable attorney's fees), which may be asserted against any or all of them by any person or governmental agency, or which any or all of them may hereafter suffer, incur, be responsible for or pay out, including damages in connection with bodily injuries (including, but not limited to, present and future death, sickness, disease and emotional or mental distress) to any person (including the indemnified Party's employees), damage (including, but not limited to, loss of use) to any property ( public or private), or any violation or alleged violation of any laws, to the extent caused or arising out of a party's (a) negligent acts or omissions or (b) breach of its obligations, covenants or warranties hereunder. For purposes of interpretation of this Section 16.1 the term "party", when referring to the Host Customer, shall include the respective elected officials, officers, employees, agents, volunteers and representatives of the City of Santa Fe.

**Section 16.2 Consequential Damages and Limitation of Liability.**

Except to the extent specifically provided elsewhere in this Agreement, neither Party will be liable to the other for special, indirect or consequential damages arising out of the performance or non-performance of this Agreement, whether caused by negligence, tort, strict liability, breach of contract, or breach of warranty, including damages in the nature of loss profits or revenues, loss of use of facilities, or equipment or inability to perform contracts with third parties (other than for any damages incurred under such contracts), other than for damages resulting from the claims of parties not a party to this Agreement.

**Section 16.3 Liability and Responsibility.**

Host Customer. Subject to the New Mexico Tort Claims Act and other applicable law, Host Customer agrees to pay System Owner for the costs and expenses relating to any repairs to, direct or indirect harm to, or loss of the System, to the extent resulting from the action or inaction of Host Customer or any of its contractors, agents, tenants, employees, partners, owners, subsidiaries, or affiliates. If such harm to or loss of the System results in the Site or the System

becoming unusable in whole or in part by the casualty, and such casualty event causes a material reduction in the Output of the System or diminishes the ability of the System Operator to operate the System, and, if such damage shall be so extensive that System Owner, in its sole but reasonable judgement, determines not to rebuild, then System Owner shall have the right to cancel this Agreement by notice to Host Customer within one hundred eighty (180) days after the date of such damage.

**System Owner.** System Owner agrees to pay Host Customer for the costs and expenses relating to any repairs to, direct or indirect harm to, or loss of Host Customer's personal property or fixtures on the Premises, to the extent resulting from the action or inaction of System Owner or any of its contractors, agents, employees, partners, owners, subsidiaries or affiliates. If such harm to or loss to all or a portion of the Premises other than the Site shall be so damaged that in the sole but reasonable opinion of Host Customer the Premises should be restored in such a way as to alter the Site materially, Host Customer may cancel this Agreement by notice to System Owner given at any time within one hundred eighty (180) days after the date of such damage.

*ARTICLE XVII*  
*INTERRUPTION OF SERVICE*

Section 17.1 Interruptions Are Expected.

The Parties acknowledge and understand that the System consists of intermittent generation facilities. This Agreement provides no warranty or guaranty to Host Customer with respect to the supply of Electricity. System Owner shall not be liable for any damages caused by or resulting from any interruption in Electricity during the Term, other than if caused by System Owner or its agents, contractors or subcontractors, nor shall System Owner be responsible for the cost of alternative supplies of Electricity during any such interruption. If the capabilities of the System to produce and deliver Electricity from solar irradiance of Electricity from the System is interrupted, other than as a result of the acts or omissions of Host Customer or as otherwise provided herein, System Owner will make commercially reasonable efforts to restore Output in a timely manner.

Section 17.2 Obstructions.

**Section 17.2.1** Host Customer shall not install or permit to be installed on the Premises (or any other property owned or controlled by City of Santa Fe) any physical obstruction to the operation of the System that would reduce or block sunlight or otherwise interfere with the System or reduce Output.

**Section 17.2.2** In the event that any obstruction that could reasonably be expected to reduce the Output is proposed to be erected or installed on property other than the Premises, Host Customer and System Owner mutually agree to cooperate with one another in opposing the erection of such obstruction.

Section 17.3 System Owner's Interruption of Output.

Notwithstanding anything to the contrary herein, System Owner shall have the reasonable right to interrupt, reduce or discontinue the delivery of Output for purposes of inspection, maintenance, repair, replacement, construction, installation, removal or alteration of the equipment used for the production or delivery of Output, or at the direction of authorized governmental authorities or electric utilities. Other than in the event of unexpected interruptions or in the event of an emergency, System Owner shall give Host Customer written notice at least five (5) Business Days prior to an interruption of Output deliveries and an estimate of the expected duration of the interruption. To the extent practical, all maintenance and repairs to the system will be performed during off peak hours, and in a manner that would not require a complete interruption in Output of the overall System. In no case shall any System Owner's interruption of Output or failure of the System be construed by the System Owner as Potential Output.

#### Section 17.4 Host Customer's Interruption of Output.

Notwithstanding anything to the contrary herein, Host Customer shall have the right for reasonable periods of time, which such periods shall be mutually agreed upon between Host Customer and System Owner, to interrupt the delivery of Output for purposes of inspection, maintenance, Host Utility feeder and buss tie-breaker interlocked circuit breaker switching operations, or replacement of the Medium Voltage Switchgear or any part thereof or at the direction of authorized governmental authorities or electric utilities. Host Customer shall give System Owner email or telephonic notice at least five (5) Business Days prior to a planned interruption of Output deliveries and an estimate of the expected duration of the interruption. To the extent practical, all maintenance and repairs to the System will be performed when there is no solar Output and in a manner that will minimize the duration of any complete interruption in Output of the overall System. Potential Output is created by any Host Customer discretionary interruption of Output at the Delivery Point. Host Customer agrees to pay all costs and expenses incurred to de-install and re-install the System, if required by Host Customer, during any delivery interruption, temporary shutdown or curtailment period. System Owner will be compensated for any Potential Output as discussed in Section 5.4 of this Agreement.

#### Section 17.5 Cost to Restore Service Following Interruption.

System Owner shall bear all costs associated with restoring service following any interruption in the capability of the System to produce and deliver Electricity from Solar irradiance resulting from (i) a failure of any component of the System, (ii) System Owner's operation of the System, or (iii) any failure of the System to automatically resume normal production of Electricity following any interruption of Host Utility power at the Delivery Point. Host Customer shall bear the costs associated with the restoration of the delivery of Output if an interruption of such supply of Electricity is the result of damage to the System or Meter caused by actions or inactions of Host Customer.

#### Section 17.6 Output Guaranty

After year six (6) of the term of the Agreement, if the System fails to generate at least 50% of Projected Output adjusted annually based on a -0.5% system degradation rate in each 12-month



calendar period, and provided, however, that such reduced Output is not caused by a Force Majeure Event or act of Host Customer, the System Owner shall allow the Host Customer after written notification to remove the said system. The Host Customer shall provide a written notice to the System Owner outlining their intent to remove the system at 30 days prior to any action.

**ARTICLE XVIII**  
**INSURANCE**

**Section 18.1 Insurance Requirements.**

18.1.1 Host Customer shall maintain without interruption from the Commencement Date until the expiration of the Term, with a company or companies rated A or above by A.M. Best, commercial general liability insurance in an amount not less than one million (\$1,000,000) dollars per occurrence. Such insurance shall name System Owner and its equity owners and any parties providing financing to System Owner for the System as additional insured. Host Customer shall furnish to System Owner within five (5) business days of issuance of notice of commencement of construction pursuant to Section 3.3 by System Owner and annually thereafter, a certificate of insurance for such coverage stating the name of the insurance company and policy number, the policy period, the named insured and address, a description of coverage, policy limits, a description of location of covered operations, the name and address of the certificate holder, a notice of cancellation provision, and an authorized signature and date. Such certificate shall further indicate that the insurance will not be cancelled unless thirty (30) days' prior written notice (10 days if cancellation is due to nonpayment of premium) has been given to System Owner and that System Owner is named as an additional insured under the commercial general liability policy. In the event the Host Customer's insurance carriers will not agree to this notice requirement, the Host Customer will provide written notice to the System Owner, the required notices within four working days of Host Customers receipt of notice from its insurance carrier(s) of cancellation or non-renewal of the required insurance. For the avoidance of doubt, the failure of Host Customer to provide such certificate shall not be deemed to be a waiver by System Owner of any of Host Customer's obligations hereunder.

18.1.2 At all times while this Agreement is in force, System Owner shall at its own expense maintain insurance in at least the amounts specified below. For the avoidance of doubt, such amounts are the minimum required and shall not be construed as a limitation on System Owner's liability or indemnification obligations hereunder:

- (a) Commercial general liability (including products liability, completed operations and contractual liability coverage) at \$3,000,000 per occurrence combined single limit and \$5,000,000 in the aggregate.
- (b) Commercial automobile liability insurance at \$3,000,000 combined single limit.
- (c) Workers' compensation insurance as required by Applicable Law.
- (d) Employer's liability insurance with the following limits:

Bodily Injury by Accident	\$500,000	Each Accident
Bodily Injury by Disease	\$500,000	Each Employee
Bodily Injury by Disease	\$500,000	Policy Limit

Without limiting the foregoing System Owner, at its sole cost and expense, shall keep in force at all times while this Agreement is in force an insurance policy which will provide All Risk Property insurance, including coverage for Earthquake, Machinery & Equipment coverage, on a Replacement Cost basis. Such policy shall include Business Interruption and, during any period of construction or reconstruction, Builders Risk coverage.

The insurance shall: (i) be maintained with insurers with a Best's rating of at least "A", Financial Class Size VIII, (ii) be in the name of System Owner, (iii) include Host Customer and its officials, officers, employees, agents, volunteers and representatives as additional insureds under the commercial general liability policy, and (iv) all policies shall be primary, without right of contribution, to any insurance maintained by Host Customer and its officials, officers, employees, agents, volunteers and representatives. System Owner shall furnish to Host Customer upon the issuance of notice of commencement of construction pursuant to Section 3.3 and annually thereafter a certificate of insurance for such coverage stating the name of the insurance company and policy number, the policy period, the named insured and address, a description of coverage, policy limits, a description of location of covered operations, the name and address of the certificate holder, a notice of cancellation provision, and an authorized signature and date. Such certificate shall further indicate that the insurance will not be cancelled unless thirty (30) days' (10 days if cancellation is due to nonpayment of premium) prior written notice has been given to Host Customer and that Host Customer and its officials, officers, employees, agents, volunteers and representatives are named as an additional insureds under the commercial general liability policy. In the event the System Owner's insurance carriers will not agree to this notice requirement, the System Owner will provide written notice to the Host Customer within four working days of System Owner's receipt of notice from its insurance carrier(s) of cancellation or non-renewal of the required insurance. For the avoidance of doubt, the failure of System Owner to provide such certificate shall not be deemed to be a waiver by Host Customer of any of System Owner's obligations hereunder.

*ARTICLE XIX  
ASSIGNMENT*

Section 19.1 Assignment.

Neither party may assign this Agreement without the prior written consent of the other, such consent not to be unreasonably withheld or delayed; provided, however, that no such consent shall be required if Host Customer assigns this Agreement to an affiliated entity or System Owner collaterally assigns its rights and obligations under this Agreement in connection with a financing of the System.

*ARTICLE XX  
MISCELLANEOUS*

Section 20.1 Independent Contractors.

Nothing in this Agreement, and no action taken by the parties under this Agreement, shall constitute a partnership, association, joint venture or other co-operative entity between the parties or make one party the agent or legal representative of the other. Neither party is herein granted, nor shall it hold itself out as having, any right or authority to assume or create any obligation, express or implied, on behalf of or in the name of the other. In fulfilling its obligations hereunder, each party is acting as an independent contractor.

Section 20.2 Disputes.

Any dispute, controversy or claim (each, a "Dispute") arising out of or relating to this Agreement or any breach or alleged breach hereof, either Party may request that the Dispute first be submitted to mediation for resolution. Prior to mediation (if requested by a Party) or the filing of a lawsuit, the parties, through a manager with authority to resolve the Dispute, shall meet and use their best efforts to resolve the Dispute. Mediation shall commence no later than thirty (30) days after submission of the Dispute and shall be conducted at the locality where the Premises is situated and in accordance with the then prevailing rules of the Construction Industry Mediation Rules of the American Arbitration Association. In the event that the Dispute is not resolved pursuant to mediation, each Party may pursue any rights and remedies as each may have, whether hereunder or in law or at equity. Except to the extent that this Agreement expressly permits a party to suspend performance pending final resolution of a Dispute, the Parties shall each proceed diligently and faithfully with performance of their respective obligations under this Agreement; provided, in no event shall System Owner be obligated to deliver Electricity to Host Customer in the event that Host Customer is in Default of its payment obligations to System Owner hereunder.

Section 20.3 No Third Party Beneficiaries.

No person who is not a party to this Agreement (other than a successor in title to one of the original parties) shall be entitled in their own right to enforce any provisions of this Agreement; except that any person who is expressly entitled to indemnification as provided in Article XVI hereof shall be entitled to enforce such rights as and to the extent provided therein.

Section 20.4 Notices.

Any written notice, direction, instruction, request or other communication required or permitted under this Agreement shall be deemed to have been duly given on the date of receipt or refusal, and shall be delivered (a) personally to the Party to whom notice is to be given, (b) by facsimile (provided that the original of such facsimile is sent to the other Party by a recognized overnight delivery service with positive tracking of items on the same day as the day on which the facsimile transmission is received by such other Party) to the Party to whom notice is to be given, (c) by a recognized overnight delivery service with positive tracking of items, to the Party to whom notice is to be given, or (d) to the Party to whom notice is to be given, by first class

registered or certified mail, return receipt requested, postage prepaid, and addressed to the addressee at the address stated opposite its name below, or at the most recent address specified by written notice given to the other party in the manner provided in this Section 20.4:

If to Host Customer:

City of Santa Fe  
200 Lincoln Ave  
Santa Fe, New Mexico 87504  
Attn.: Energy Specialist  
[naschiavo@santafenm.gov](mailto:naschiavo@santafenm.gov)

If to System Owner:

MLH Cripple Creek Solar, LLC  
Four Embarcadero CTE STE 3670  
San Francisco, CA 94111  
Attn. Brad Bauer  
[brad@mp2capital.com](mailto:brad@mp2capital.com)

**Section 20.5 Applicable Law and Jurisdiction: Waiver.**

This Agreement is made and shall be interpreted and enforced in accordance with the laws of the State of New Mexico.

**Section 20.6 Complete Agreement.**

This Agreement and any documents expressly incorporated herein or therein by reference shall constitute the entire Agreement between both Parties regarding the subject matter hereof and supersedes all prior agreements, understandings, representations, and statements, including any marketing materials and sales presentations (including related any energy audit) whether oral or written. There are no agreements, understandings, or covenants between the parties of any kind, expressed or implied, or otherwise, pertaining to the rights and obligations set forth herein that have not been set forth in this Agreement.

**Section 20.7 Right to Set-Off.**

Neither Host Customer nor System Owner shall have any right to set-off any payment obligation under this Agreement against any obligations due to System Owner or Host Customer, as applicable, under any provision of this Agreement.

**Section 20.8 Amendments and Modifications.**

No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by duly authorized representatives of both Parties.

Section 20.9 Further Assurances.

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

Section 20.10 Invalidity.

The invalidity or unenforceability, in whole or in part, of any portion or provision of this Agreement will not affect the validity and enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision. Notwithstanding the provisions of the preceding sentence, should any term or provision of this Agreement be found invalid or unenforceable, the Parties shall immediately renegotiate in good faith such term or provision of this Agreement to effectuate the same intent and to eliminate such invalidity or unenforceability.

Section 20.11 Counterpart Execution.

This Agreement may be executed and delivered by the Parties in any number of 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.

Section 20.12 Neutral Interpretation.

The Parties acknowledge that this is a negotiated Agreement and, in the event of any dispute over its meaning or application, this Agreement shall be interpreted fairly and reasonably and neither more strongly for, nor more strongly against, either Party. Any headings or captions contained in this Agreement are for reference purposes only and are in no way to be construed to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

Section 20.13 No Waiver.

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

Section 20.14 Survival.

Any provisions necessary to give effect to the intent of the Parties hereunder after the termination of this Agreement shall survive the termination of this Agreement, including, without limitation, the indemnification provisions set forth in Article XVI hereof.

Section 20.15 Obligations.

The Host Customer and the System Owner agree to satisfy their payment obligations in accordance with the terms of this Agreement.

Section 20.16 Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations to and authorization being made for the Host Customer for the performance of this Agreement. Host Customer shall make reasonable efforts to secure continuing appropriations and authorization to continue payments under this Agreement. In the event appropriations and authorization are not made, written notice shall be given by Host Customer to System Owner that payments under this Agreement may no longer be made; provided, that the Host Customer shall allow System Owner to continue to occupy the Site, to operate the System, and shall transfer environmental credits referred to in Article IX of this Agreement to System Owner.

Section 20.17 Improvement Loan.

(a) Host Customer shall advance to System Owner a portion of the funds required to construct, assemble and install the System on the Premises (the "Improvement Loan") in an amount equal to Two Hundred Thirty Seven Thousand Dollars (\$237,000). Interest shall accrue at an annual interest rate of two and three-tenths percent (2.3%). System Owner shall pay quarterly installments of principal and interest within thirty (30) days of the first Quarterly Date following the Commencement Date. Thereafter, System Owner shall pay equal quarterly installments of principal and interest within thirty (30) days of each Quarterly Date thereafter sufficient to amortize the Improvement Loan over a twenty (20) year term.

(b) The proceeds of the Improvement Loan may be used only to pay a portion of the costs of constructing, assembling and installing the System, including without limitation, engineering, permitting and related costs. The amount by which the total cost of constructing, assembling and installing the System and otherwise improving the Premises exceeds the Improvement Loan shall be paid by System Owner. Host Customer shall disburse a portion of the Improvement Loan from time to time, within thirty (30) days after receipt of a complete Application for Payment pursuant to Section 20.17 (c) below. Disbursements shall be paid to System Owner, where the disbursement is a reimbursement of costs actually paid by System Owner. Disbursements of the Improvement Loan shall be made monthly and shall be subject to an annual interest rate of two and three-tenths percent (2.3%) based on the average balance of outstanding loan for the preceding month. The first quarterly installment payment shall include the interest accrued pursuant to the preceding sentence and thereafter the Improvement Loan shall be repaid as provided in Section 20.17 (a) above.

(c) To request a disbursement of the Improvement Loan, System Owner shall submit a written application for payment, which shall include all of the following (collectively, the "Application for Payment"):

(i) a completed AIA form G702 (1992 Edition), Application and Certification for Payment, or other comparable form reasonably approved by Host Customer;

(ii) a certification from System Owner stating that the materials or work for which payment is being requested have been supplied and installed to the Premises (in the case of materials) or performed (in the case of work);

(iii) representation by System Owner that no default exists; and

(iv) Such other commercially reasonable documentation as Host Customer may require.

[SIGNATURE PAGE FOLLOWS]

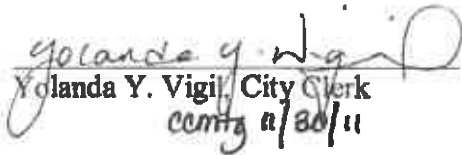
IN WITNESS WHEREOF, the duly authorized representatives of the Parties have each executed this Solar Energy Agreement, as of the Effective Date.

CITY OF SANTA FE

  
David Coss, Mayor  
City of Santa Fe

12-5-11  
Date

ATTEST:

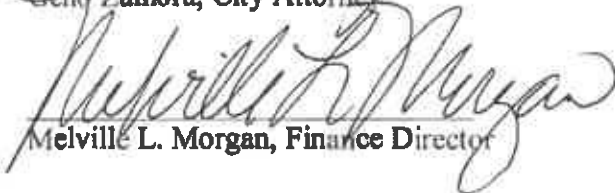
  
Yolanda Y. Vigil, City Clerk  
comm. 11/30/11

12-27-11  
Date

APPROVED AS TO FORM:

  
Geny Zamora, City Attorney

11/7/11  
Date

  
Melville L. Morgan, Finance Director

12/9/11  
Date

Business Unit/Line Item  
52452/ 514050

MLH Cripple Creek Solar, LLC



Brad Bauer, President

12/16/11  
Date

NM Taxation & Revenue  
CRS # 03-202206-00-9

City of Santa Fe Business  
Registration # 11 - 00109639



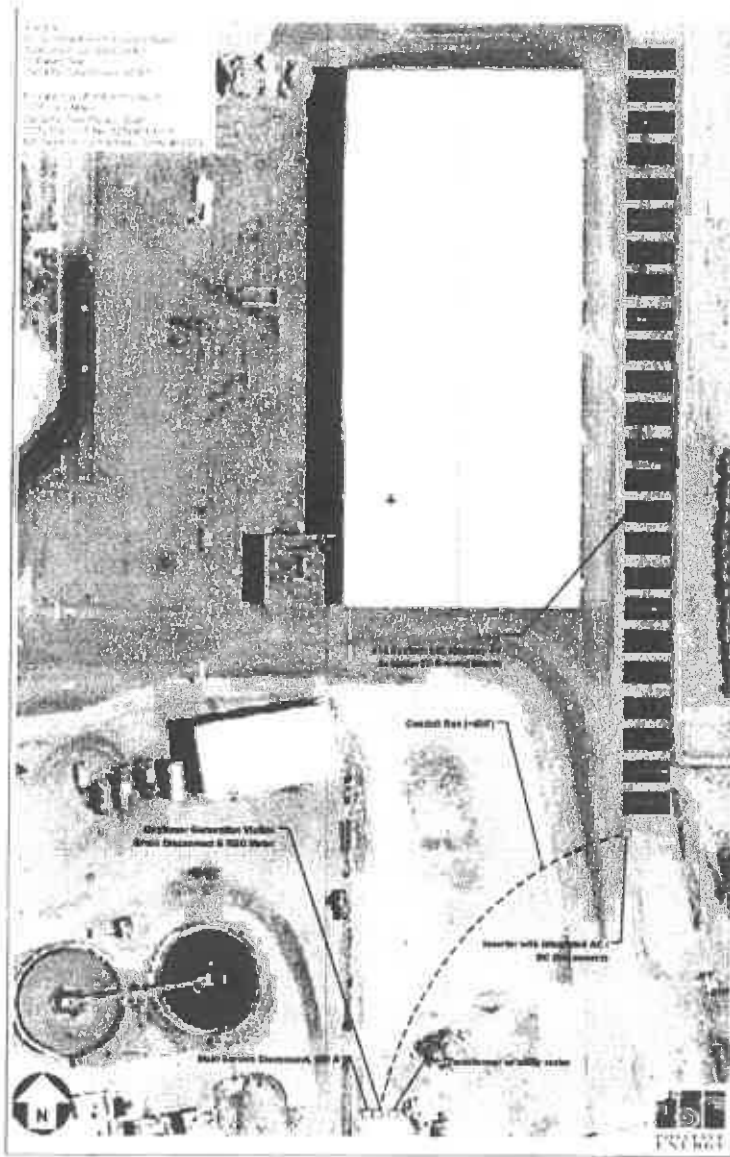
# EXHIBIT A

## System Description

100 kW DC photovoltaic system located at

73 Paseo Real Santa Fe, New Mexico 87507

### A-1 Drawing of Premises and Site



**EXHIBIT B**

**Monthly Project System Production Estimates and Cost Estimates**

**B-1 Year 1: Quarterly Projected Output**

QTR	Cost/kWh	kWh Generated Quarterly	Payments
1	\$0.1475	40,625	\$5,992
2	\$0.1475	40,625	\$5,992
3	\$0.1475	40,625	\$5,992
4	\$0.1475	40,625	\$5,992

**B-2 20 Year Annual Projected Output**

Year	Cost/kWh	kWh Generated Annually	Payments
1	\$0.1475	162,500	\$ 23,969
2	\$0.1475	161,688	\$ 23,849
3	\$0.1475	160,879	\$ 23,730
4	\$0.1475	160,075	\$ 23,611
5	\$0.1475	159,274	\$ 23,493
6	\$0.1475	158,478	\$ 23,375
7	\$0.1475	157,686	\$ 23,259
8	\$0.1475	156,897	\$ 23,142
9	\$0.1475	156,113	\$ 23,027
10	\$0.1475	155,332	\$ 22,911
11	\$0.1475	154,555	\$ 22,797
12	\$0.1475	153,783	\$ 22,683
13	\$0.1475	153,014	\$ 22,570
14	\$0.1475	152,249	\$ 22,457
15	\$0.1475	151,487	\$ 22,344
16	\$0.1475	150,730	\$ 22,233
17	\$0.1475	149,976	\$ 22,122
18	\$0.1475	149,226	\$ 22,011
19	\$0.1475	148,480	\$ 21,901
20	\$0.1475	147,738	\$ 21,791

**EXHIBIT C**

**Sample Invoice**

**MLH Cripple Creek Solar, LLC  
Four Embarcadero Center Suite 3670  
San Francisco, CA 94111**

**Solar Energy Agreement Monthly Invoice**

**From:  
MLH Cripple Creek Solar, LLC  
Four Embarcadero Center Suite 3670,  
San Francisco, CA 94111**

**To:  
City of Santa Fe  
Attn: Purchasing Division  
200 LINCOLNAVE  
SANTA FE, NM87504**

**Invoice #: XXXXXXX**

**Invoice Date: x/xx/20xx**

**This Invoice is for the power generated by the system at Wastewater Management Division Compost Facility at 73 Paseo Real in Santa Fe, New Mexico between the dates of xx/xx/20xx and xx/xx/20xx. Please make checks payable to "MP2 CAPITAL, LLC."**

<b>Item</b>	<b>Description</b>	<b>Unit Cost</b>	<b>Total Cost</b>
<b>1</b>	<b>Output: xxx,xxx kWh</b>	<b>\$0.1475</b>	<b>\$xxxxxx</b>
<b>2</b>	<b>Potential Output: xxx,xxx kWh</b>	<b>\$0.1475</b>	<b>\$xxxxxx</b>
	<b>Total Due Net 30</b>		<b>\$xxxxxx</b>

**Submitted by:**

**, Controller**

**EXHIBIT D**

**Early Buyout Option/Termination Fee  
(\$/W)**

<b>Year*</b>	<b>Buyout Price (\$/W)</b>
1	\$434,000
2	\$404,000
3	\$374,000
4	\$344,000
5	\$315,000
6	\$188,000
7	\$177,000
8	\$166,000
9	\$155,000
10	\$144,000
11	\$132,000
12	\$120,000
13	\$108,000
14	\$ 96,000
15	\$ 83,000
16	\$ 70,000
17	\$ 56,000
18	\$ 43,000
19	\$ 29,000
20	\$ 15,000

\* Each Year shall be a calendar year. The first Year shall begin on the January 1<sup>st</sup> following the Full Commercial Operation Date.

**CITY OF SANTA FE  
AMENDMENT No. 1 TO  
POWER PURCHASE AGREEMENT  
(Compost Facility)**

AMENDMENT No. 1 (the "Amendment") to the CITY OF SANTA FE POWER PURCHASE AGREEMENT, dated December 27, 2011 (the "Agreement"), between the City of Santa Fe (the "City") and MLH Cripple Creek Solar, LLC (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City.

**RECITALS**

A. Under the terms of the Agreement, Contractor has agreed to construct, own, operate and maintain a utility interconnected photovoltaic system at the Wastewater Management Division's Compost Facility. The Contractor has further agreed to sell to the City 100 percent of the energy generated at that facility at a fixed price.

B. Pursuant to Article 20.8 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City and the Contractor agree as follows:

1. SOLAR ELECTRICITY PRICE.

Article 6.1 of the Agreement is amended as follows:

The price for Output shall be a fixed price of \$0.1475 per kilowatt hour for years (1) one through twenty (20) (the "Solar Electricity Price").

Article 6.2 of the Agreement is amended by deleting the third sentence of such section in its entirety and, in lieu thereof, inserting the following text:

“The amount due for the Output delivered or Potential Output for such month shall be determined by multiplying the Solar Electricity Price by the Output or Potential Output for such month. Such amount owed by Host Customer shall then be reduced by the amount of payment received by System owner for such month pursuant to that certain Standard Large Solar Renewable Energy Certificate Purchase Agreement among System Owner, Host Customer, and Public Service Company of New Mexico. Each invoice shall set forth in reasonable detail the calculation of all amounts owed, including any amounts owed pursuant to Section 5.4 and Section 6.1 of this Agreement”.

2. ENVIRONMENTAL CREDITS

Article 9.1 of the Agreement is amended by deleting such section in its entirety and, in lieu thereof, inserting the following text:

“All Environmental Certificates (Renewable Energy Credits), whether available directly or indirectly, shall be the property of the System Owner for the Term of this Agreement.”

Article 9.2 of the Agreement is amended by deleting such section in its entirety and, in lieu thereof, inserting the following text:

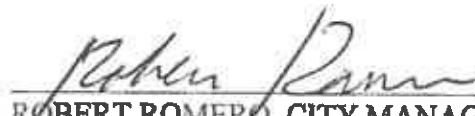
“Host Customer, at no additional cost to the System owner, agrees to fully cooperate and to timely complete any and all documentation reasonably required by any mandatory or voluntary program governing the existence or trade of Environmental Credits, including documentation required to verify the Environmental Credits, including Renewable Energy Credits.”

AGREEMENT IN FULL FORCE

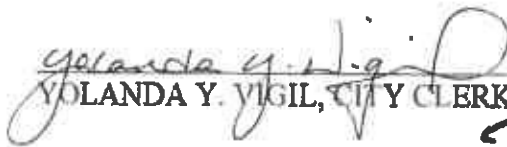
Except as specifically provided in this Amendment, the Agreement remains and shall remain in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the City of Santa Fe Power Purchase Agreement as of the date set forth below:


CITY OF SANTA FE:

  
ROBERT ROMERO, CITY MANAGER  
Date: 3.1.13

**ATTEST:**

  
YOLANDA Y. VIGIL, CITY CLERK  
R.O.

CONTRACTOR:

By:   
(Name & Title)  
JEFFREY GORMAN,  
PRESIDENT

APPROVED AS TO FORM:

  
GENO I. ZAMORA, CITY ATTORNEY

APPROVED:

  
MELVILLE L. MORGAN,  
FINANCE DEPARTMENT DIRECTOR 2/27/13

**SECOND AMENDMENT TO AND CONSENT TO ASSIGNMENT OF  
POWER PURCHASE AGREEMENT BY AND BETWEEN MLH CRIPPLE  
CREEK SOLAR, LLC AND THE CITY OF SANTA FE (COMPOST FACILITY)**

**THIS SECOND AMENDMENT TO AND CONSENT TO ASSIGNMENT OF THE  
POWER PURCHASE AGREEMENT BY AND BETWEEN MLH CRIPPLE  
CREEK SOLAR, LLC AND THE CITY OF SANTA FE (COMPOST FACILITY)**  
 ("Amendment and Consent to Assignment") is made and entered into as of July 27,  
 2016 (the "Effective Date") by and between the CITY OF SANTA FE, New Mexico  
 ("City of Santa Fe") and MLH CRIPPLE CREEK SOLAR, LLC. The City of Santa Fe  
 and MLH CRIPPLE CREEK SOLAR, LLC, are referred to individually herein as a  
 "Party" and collectively as the "Parties".

**RECITALS**

**WHEREAS**, the City of Santa Fe and MLH CRIPPLE CREEK SOLAR, LLC  
 entered into that certain "Power Purchase Agreement By and Between MLH CRIPPLE  
 CREEK SOLAR, LLC and The CITY OF SANTA FE (Compost Facility)" dated  
 November 30, 2011 and as amended by "AMENDMENT No. 1 TO POWER  
 PURCHASE AGREEMENT (Compost Facility)" dated March 1, 2013 (collectively the  
 "Compost Facility PPA");

**WHEREAS**, MLH CRIPPLE CREEK SOLAR, LLC desires to assign the  
 Compost Facility PPA to DISSIGNO HOLDINGS, LLC and the City of Santa Fe  
 consents to such assignment;

**WHEREAS**, the City of Santa Fe and MLH CRIPPLE CREEK SOLAR, LLC  
 desire to amend the Compost Facility PPA as set forth below to effectuate the assignment  
 of the Compost Facility PPA to DISSIGNO HOLDINGS, LLC;

**NOW THEREFORE**, in consideration of the agreements herein contained and  
 for other good and valuable consideration (the receipt and adequacy whereof is hereby  
 acknowledged) the Parties agree as follows:

**ARTICLE I  
INTERPRETATION**

- 1.1 **Defined Terms.** Unless otherwise defined in this Amendment and Consent to  
 Assignment, capitalized terms used and not otherwise defined herein shall have  
 the meanings specified in the Compost Facility PPA.

**ARTICLE 2  
CONSENT TO ASSIGNMENT**

- 2.1 **Consent to Assignment.** Pursuant to Section 19.1 of the Compost Facility PPA,  
 the City of Santa Fe hereby provides written consent for MLH CRIPPLE CREEK



SOLAR, LLC to assign its rights and responsibilities under the Compost Facility PPA to DISSIGNO HOLDINGS, LLC, an Oregon limited liability company with an address of 19547 Blue Lake Loop, Bend, OR, 97702.

### ARTICLE 3 AMENDMENTS

3.1 **Amendments to the Compost Facility PPA.** Subject to the conditions precedent set forth in Section 4.1 hereof, the Parties agree to amend the Compost Facility PPA as follows:

3.1.1 **Introductory paragraph.** The following sentence shall be added at the end of the introductory paragraph: "Effective May\_\_\_\_, 2016, System Owner shall be Dissigno Holdings, LLC."

3.2.2 **Section 6.3.** Section 6.3 shall be amended by striking reference to "MLH CRIPPLE CREEK SOLAR, LLC" and replacing it with "DISSIGNO HOLDINGS, LLC".

3.2.3 **Section 20.4.** Section 20.4 shall be amended by striking the name and address for System Owner and replacing it with:

Tara Doyle  
Dissigno Holdings, LLC  
19547 Blue Lake Loop  
Bend, OR 97702  
(510) 684-5546  
tara@dissigno.com

3.2.4 **Exhibit A.** Exhibit A shall be amended by striking reference to "100 kW DC photovoltaic system" and replacing it with "94.9 kW DC photovoltaic system".

3.2.5 **Exhibit C.** Exhibit C shall be amended by striking references to:

MLH Cripple Creek Solar, LLC  
Four Embarcadero Center, Suite 3670  
San Francisco, CA 94111

And replacing such references with:

Tara Doyle  
Dissigno Holdings, LLC  
19547 Blue Lake Loop  
Bend, OR 97702

- 3.2.6 Exhibit C. Exhibit C shall be further amended by striking reference to “MP2 CAPITAL, LLC” and replacing it with “DISSIGNO HOLDINGS, LLC”.

#### ARTICLE 4

#### CONDITIONS PRECEDENT, EFFECT ON THE COMPOST FACILITY PPA

- 4.1 Conditions Precedent to Amendment. The amendments set forth in Article 3 shall have no force and effect unless and until MLH CRIPPLE CREEK SOLAR, LLC assigns its rights under the Compost Facility PPA to DISSIGNO HOLDINGS, LLC and notice of such assignment having been completed is provided to the City of Santa Fe.
- 4.2 Compost Facility PPA to Remain in Full Effect. Except as specifically amended in this Amendment and Consent to Assignment, the Compost Facility PPA shall continue in full force and effect and is hereby in all respects ratified and confirmed. The Compost Facility PPA shall henceforth be read and construed in conjunction with this Amendment and Consent to Assignment.

#### ARTICLE 5

#### REPRESENTATIONS

- 5.1 Mutual Representations. Each Party hereby represents and warrants to the other Party that:
- 5.1.1 it has the full power and authority to execute and deliver this Amendment and Consent to Assignment and to perform all of its obligations hereunder.
- 5.1.2 its obligations under the Amendment and Consent to Assignment constitute its legal, valid and binding obligations, enforceable in accordance with its respective terms.
- 5.1.3 all representations contained in this Amendment and Consent to Assignment are true and accurate as of the Effective Date.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –  
SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned, which hereby declare under penalty of perjury to be the authorized representatives of the Parties named hereto, have executed this Amendment and Consent to Assignment on the dates specified below to be effective as of the Effective Date.

<b>CITY OF SANTA FE</b> By: <u>[Signature]</u> Name: Javier M. Gonzales, Title: Mayor Date: <u>8/2/16</u>	<b>MLH CRIPPLE CREEK SOLAR, LLC</b> By: <u>[Signature]</u> Name: <u>B Bance</u> Title: <u>Authorized Representative</u> Date: <u>8/15/16</u>
Attest: <u>[Signature]</u> Yolanda Y. Vigil, City Clerk cc mtg 7/29/16 Approved as to form: <u>[Signature]</u> <u>6/13/16</u> Kelley A. Brennan, City Attorney Approved: <u>[Signature]</u> <u>7-29-2016</u> Oscar Rodriguez, Finance Director	

ITEM # 13-0177

PUBLIC SERVICE COMPANY OF NEW MEXICO  
AGREEMENT NO. 1035338

STANDARD LARGE SOLAR RENEWABLE ENERGY  
CERTIFICATE PURCHASE AGREEMENT FOR  
THIRD-PARTY OWNER  
PARTICIPATION IN PNM'S SOLAR REC INCENTIVE PROGRAM

**THIS AGREEMENT** is made and entered into as of the Effective Date, as hereinafter defined, by and among (individually "Party" or collectively "Parties"): City SF 52452 Sewer PLT Compost Building ("Customer"), MHL Cripple Creek Solar, LLC ("Third-Party Owner") and Public Service Company of New Mexico ("PNM").

**WHEREAS**, Customer owns or leases the Premises on which the Large Solar Facility described in Section 1 below is located; and

**WHEREAS**, Third-Party Owner owns and/or operates the Large Solar Facility which is sized no greater than one hundred twenty percent (120%) of the average annual consumption of electricity in kWh by Customer at the Premises at which the Large Solar Facility is located; and

**WHEREAS**, in accordance with 17.9.572.13.C NMAC, Third-Party Owner is the owner of certain renewable energy certificates associated with the electricity generated by the Large Solar Facility and consumed by Customer on the Premises ("Solar RECs"); and

**WHEREAS**, Third-Party Owner desires to sell and PNM desires to purchase the Solar RECs pursuant to the terms of this Agreement and as provided in PNM Rate 32;

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. **SOLAR FACILITY.** Customer owns or leases the Premises on which the following solar photovoltaic ("PV") or solar thermal electric facility rated larger than  $10\text{kW}_{AC}$  up to  $1\text{MW}_{AC}$  (the "Large Solar Facility") is located. The Large Solar Facility is associated with PNM electric service account numbers: 115942955-1324334 ("Electric Service Account"), and 115993547-1324334 ("REC Payment Account"), and is interconnected to PNM's electric distribution system pursuant to Interconnection Agreement No. 1035338 ("Interconnection Agreement"), effective on March 28, 2013

Solar Facility address: 73 Paseo Real  
Santa Fe, NM 87507

Rated solar generating capacity:  $99.84\text{ (kW}_{DC}\text{ STC)}$

" $\text{kW}_{DC}\text{ STC}$ " is defined as the rated total capacity of the installed panels or collector at their DC output.

“Premises” is defined as the building, structure, or facility to which electricity is being or is to be furnished by the Solar Facility; two or more buildings, structures, or facilities located on one tract or contiguous tracts of land that are utilized by one Customer for residential, commercial, industrial, institutional, or governmental purposes constitutes one Premises, except that any such building, structure, or facility shall not, together with any other building, structure, or facility, constitute one Premises if the electric service to it is separately metered and the charges for such service are calculated independently of charges for service to any other building, structure, or facility.

2. **OWNER OF LARGE SOLAR FACILITY.** Customer and Third-Party Owner hereby certify that Third-Party Owner is the owner or long-term lessee of the Large Solar Facility. Third-Party Owner’s contact information is:

Name: MHL Cripple Creek Solar, LLC

Contact Person: Marc Pangburn

Address: 500 Sansome St, Ste 750

San Francisco, CA 94111

Telephone: 415-874-5360

REC Payment Account No. 115993547-1324334

3. **PURCHASE AND DELIVERY OF LARGE SOLAR RECs.** PNM will purchase from Third-Party Owner, and Third-Party Owner will deliver to PNM, the Solar RECs that are generated by the Solar Facility and associated with the energy consumed each month on the Premises as metered by PNM. The applicable rate is 8 cents per kWh as set forth by PNM in its Notice of Completion of Application and REC Reservation. The payment for the Solar RECs will be calculated by multiplying the applicable rate by the number of kWh of energy generated by the Solar Facility and consumed on the Premises as measured by a PNM meter as further described in Section 5 of this Agreement.

If the Solar Facility generates electricity in excess of the amount of electricity consumed each month on the Premises (“Excess Energy”), PNM shall purchase such Excess Energy from Customer at its avoided cost, and PNM shall receive from Third-Party Owner, without cost, all RECs associated with such Excess Energy, to the extent authorized by the New Mexico Renewable Energy Act.

Solar REC purchase payments that total in excess of \$200 will be paid to Third-Party Owner on a monthly basis. If the amount due for the Solar RECs is less than \$200 the amount will be carried forward to the following month until such time as the balance due exceeds \$200, at which time the total balance due will be paid directly to Third-Party Owner.

Payments by PNM to Third-Party Owner for Solar RECs will commence subsequent to the execution of a Standard Interconnection Agreement, PNM’s receipt and execution of this Agreement, and the billing cycle in which the meters on Customer’s Premises are read. Payments for Solar RECs shall be made within thirty (30) days of

the date the meters on the Premises are read by PNM. Purchase of Solar RECs produced by generating capacity added to the Large Solar System after execution of this Agreement will be made in accordance with Section 4 below.

4. **MODIFICATION OF GENERATING FACILITIES.** The rated capacity of the Solar Facility shall not be increased without prior approval of PNM and shall not be increased to a capacity greater than 1 MW<sub>AC</sub> in any event. PNM will purchase Solar RECs generated by a modified Solar Facility only upon execution of a new REC Purchase Agreement, at the applicable rate as of the effective date of such agreement.
5. **METERING.** Third-Party Owner shall provide and install, at its own expense, a meter socket to accommodate a PNM meter that measures only the total output of the Large Solar Facility inverters. This meter socket shall be installed in accordance with PNM's standard meter specifications and shall be in addition to the PNM meter socket used for the normal billing meter. Unless otherwise approved by PNM, this second meter socket shall be physically located next to the Customer/Third-Party Owner-provided meter socket for the PNM electric billing meter. PNM shall furnish and install a standard kilowatt-hour meter for the purpose of measuring the total output of the Large Solar Facility inverter. In accordance with 17.9.570.10 NMAC, if provision of the net metering option requires metering equipment and related facilities that are more costly than would otherwise be necessary absent the requirement for net metering, PNM shall not incur, and shall not be liable for, any incremental costs associated with installing the more costly metering equipment and facilities.

Attached hereto and incorporated herein as Appendix A is the application for interconnection and sale of Solar RECs, including a one-line diagram and three-line diagram showing the Large Solar Facility, the interconnection equipment, breaker panel(s), PNM required disconnect switches, PNM meters, PNM transformers and other required information. Customer and Third-Party Owner represent and warrant, jointly and severally, that the information contained in Appendix A is accurate as of the date of this Agreement.

6. **TERM OF AGREEMENT.** This Agreement shall be in effect for twenty (20) years from the Effective Date as stated in the Interconnection Agreement, unless terminated as provided herein.
7. **TERMINATION.** This Agreement shall automatically terminate (a) upon execution of a new REC Purchase Agreement among the Parties; (b) sixty (60) days after Customer closes the Electric Service Account unless Customer assigns this Agreement and the Interconnection Agreement as provided herein; or (c) upon termination of the Interconnection Agreement.

This Agreement may be terminated by a non-breaching Party if a material breach occurs with respect to any Party at any time during the term of this Agreement. A non-breaching Party may (a) terminate this Agreement upon five (5) business days' notice to the breaching Party with a copy to the other non-breaching Party, and (b)

exercise such other remedies as may be available at law or in equity or as otherwise provided in this Agreement.

As used in this Agreement, "material breach" means, as to the breaching Party (a) failure to make, when due, any payment required under this Agreement if such failure is not subject to offset and is not remedied within ten (10) business days after written notice of such failure is given to the breaching Party; or (b) any representation or warranty made by the breaching Party in this Agreement shall prove to have been false or misleading in any material respect when made; or (c) failure to perform any covenant or agreement set forth in this Agreement (other than its obligations to make any payment or obligations that are otherwise specifically covered as a separate material breach), and such failure is not cured by the breaching Party within thirty (30) days of written notice from any non-breaching Party, or, if such breach is not susceptible to cure within thirty (30) days, if the breaching Party has not commenced to cure the breach within thirty (30) days and/or fails to proceed with reasonable diligence to cure such breach; under no circumstances, however, shall the total cure period exceed ninety (90) days; or (d) making an assignment or any general arrangement for the benefit of creditors; or (e) filing a petition or otherwise commencing, authorizing or acquiescing in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or having such petition filed against it and such proceeding remains undismissed for thirty (30) days; or (f) otherwise becoming bankrupt or insolvent (however evidenced), or (g) being unable to pay its debts as they become due.

If this Agreement is terminated for any reason, the final Large Solar REC payment will be calculated based on PNM's last meter readings at the Premises and Solar Facility and the determination of whether or not any excess generation has occurred. The Third-Party Owner will be paid for RECs up to the amount of Customer's consumption at the Premises through the date of the last meter reading, except that PNM may offset such payment against any amounts owed to PNM by Third-Party Owner. PNM shall purchase any Excess Energy from Customer at PNM's avoided cost, except that PNM may offset such payment against any amounts owed to PNM by Customer, and PNM shall own outright all RECs associated with such Excess Energy to the extent authorized by the New Mexico Renewable Energy Act. Payment for any Excess Energy will be calculated and paid directly to Customer within thirty (30) calendar of the last meter reading.

8. **TRANSFER OF PREMISES; ASSIGNMENT OF AGREEMENT.** If Customer sells or leases the Premises, Customer may assign this Agreement and the Interconnection Agreement to the new owner or occupant of the Premises upon prior written consent of Third-Party Owner and PNM, which consent shall not be unreasonably withheld or delayed. Such assignments must be made within sixty (60) days of the date the Customer terminates the Electric Service Account. If this Agreement and the Interconnection Agreement are not assigned within the 60-day period, this Agreement terminates.
9. **TRANSFER OF LARGE SOLAR FACILITY; ASSIGNMENT OF AGREEMENT.** If Third-Party Owner sells the Large Solar Facility, Third-Party Owner may assign

this Agreement and the Interconnection Agreement to the new owner of the Large Solar Facility upon prior written consent of Customer and PNM, which consent shall not be unreasonably withheld or delayed. Such assignment must be made within thirty (30) days of the date the Third-Party Owner closes on the sale of the Large Solar Facility. If this Agreement and the Interconnection Agreement are not assigned within the 30-day period, this Agreement terminates.

**10. RELOCATION OF SOLAR FACILITY.**

- a. If Third-Party Owner relocates the Solar Facility in its entirety to a different property owned or leased by Customer within PNM's service area, Third-Party Owner shall: (a) notify PNM of such relocation within 30 days before the Solar Facility is relocated; (b) submit a new Application for Interconnection for the new Premises; and (c) complete the Interconnection process. The Parties shall amend this Agreement to reflect the new Premises, the new Electric Service Account number and the new REC Payment Account number. The Parties understand and agree that the rated solar generation capacity of the Solar Facility shall not be modified, and the term of this Agreement shall not be extended, on account of the relocation.
- b. If Third-Party Owner relocates the Solar Facility in its entirety to a different property within PNM's service area, and such property is not owned by or leased by Customer, this Agreement shall terminate upon disconnection of the Solar Facility from PNM's system, unless earlier terminated as set forth in this Agreement. Third-Party Owner shall: (a) notify PNM of such relocation within 30 days before the Solar Facility is relocated; (b) submit a new Application for Interconnection for the new Premises; (c) complete the interconnection process; and (d) enter into a new REC purchase agreement at the applicable rate as of the effective date of such agreement.

**11. INTERRUPTION OR REDUCTION OF DELIVERIES; DISCONTINUANCE OF SERVICE.** PNM shall not be obligated to pay for a reduction in the number of Solar RECs caused by interruptions of utility service or by utility-required Large Solar Facility shutdowns as specified in the executed Standard Interconnection Agreement or due to actions caused by Customer or Third-Party Owner. If service to the Electric Service Account is discontinued for any time period for any reason permitted under applicable NMPRC rules: (a) PNM shall have no liability for and shall not pay Customer for any actual or potential generation that may or could have occurred while such service was discontinued; and (b) PNM shall have no liability for and shall not pay Third-Party Owner for any RECs associated with any actual or potential generation that may or could have occurred while service to the Electric Service Account is discontinued.

**12. ACCESS TO PREMISES.** PNM may enter Customer's Premises at all reasonable hours to read or test meters and for access to the Solar Facility.

**13. NO WARRANTY OR GUARANTEE.** The Parties agree that the sale and purchase of the Solar RECs is not an endorsement, confirmation, warranty, guarantee or representation concerning the safety, operating characteristics, durability or reliability of the Large Solar Facility. No Party assumes the duty of inspecting any other Party's



lines, wiring, apparatus, machinery or appliances, or any part thereof (collectively, "Associated Equipment") and shall not be responsible to any other Party therefore. PNM further disclaims any obligation to inspect, and any liability for, Associated Equipment owned by Third-Party Owner. Third-Party Owner and Customer agree to install and maintain, or to have installed and maintained, in a safe and efficient manner, and in accordance with good electrical practices and all applicable regulations, all of the Associated Equipment connected at the Premises to PNM's electric distribution system.

14. **POTENTIAL TAX LIABILITY.** Third-Party Owner understands that the sale and purchase of the Large Solar RBCs may create a tax liability for Third-Party Owner. Third-Party Owner further understands that PNM may issue Internal Revenue Service Form 1099 or other tax form to Third-Party Owner relating to these transactions. By signing this Agreement, Third-Party Owner acknowledges and agrees that Third-Party Owner has the sole responsibility for paying any federal, state or local taxes, including federal income tax that may be due on amounts received by Third-Party Owner, as a result of transactions under this Agreement. Third-Party Owner hereby indemnifies and defends PNM and Customer, and their respective officers, directors, employees, boards, commission, agents, successors and assigns, from and against any and all such taxes and any and all charges or damages arising out of Third-Party Owner's failure to pay such taxes or any associated penalties.
15. **GOVERNING LAW.** This agreement shall be interpreted, governed, and construed under the laws of the state of New Mexico as if executed and to be performed wholly within the state of New Mexico.
16. **AMENDMENT, MODIFICATIONS OR WAIVER.** Any amendments or modifications to this Agreement shall be in writing and agreed to by the Parties. The failure of any Party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any Party of the breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, shall be deemed to be, or construed as, a further or continuing waiver of any such breach or a waiver of the breach of any other term or covenant unless such waiver is in writing.
17. **NOTICES.** Except as expressly agreed in writing among the Parties, any notice, request, approval, consent, instruction, direction or other communication required or permitted under this Agreement shall be in writing and shall be deemed given if personally delivered, delivered by reputable overnight courier or sent by First Class Mail, postage prepaid, and shall be deemed received, if personally delivered, or delivered by courier, upon delivery, and if mailed, on the third day following deposit in the U. S. mail.

If to PNM:

Attention: Customer Owned Generation Programs  
Public Service Company of New Mexico  
414 Silver Ave SW  
Albuquerque, NM 87102-1135

If to Customer:

City SF 52452 Sewer PLT Compost Building  
2651 Siringo Rd, Bldg H  
Santa Fe, NM 87505

If to Third-Party Owner:

MHL Cripple Creek Solar, LLC  
Marc Pangburn  
500 Sansome St, Ste 750  
San Francisco, CA 94111

All notices under this Agreement shall refer to the Solar Facility address set forth in Section 1 of this Agreement.

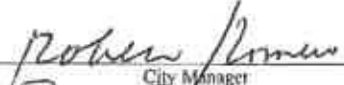
18. ASSIGNMENT. Except as otherwise provided in this Section 18, no Party shall assign this Agreement without the prior written consent of the other Parties, which consent shall not be unreasonably conditioned, delayed or withheld.
- 18.1 Any Party may assign any of its rights, duties, or obligations under this Agreement to any Affiliate (which shall include a successor entity in a merger or acquisition transaction) of the assigning Party, provided such assignee (a) has a credit rating that is equal to or greater than the credit rating of the assigning Party's credit rating; (b) has the legal authority and operational ability to satisfy the assigning Party's obligations under this Agreement; and (c) agrees to be bound by the terms and conditions of this Agreement. In the event PNM makes such an assignment, it shall be relieved of all financial responsibility related to this Agreement.
- 18.2 Third-Party Owner may assign any of its rights, duties or obligations under this Agreement to one or more Affiliates or third parties in connection with a sale-and-leaseback or other debt and/or equity financing transaction to aid in financing of the Large Solar Facility. In connection with such an assignment, Third-Party Owner may pledge its interest in this Agreement, including any rights to payment, as collateral or security for loans or financing against its personal property. Any financing arrangement entered into by Third-Party Owner pursuant to this section will provide that, before or upon the exercise of the secured party's, trustee's, mortgagee's or other third party's assignment rights pursuant to such arrangement, the secured party, trustee, mortgagee or other third party will notify PNM of the date and particulars of any such exercise of assignment right(s).
- 18.3 Notwithstanding anything to the contrary herein, no assignment by Third-Party Owner or Customer shall be effective until Third-Party Owner or Customer has notified PNM of such assignment and has obtained all applicable consents from PNM. No assignment under this Agreement shall expand a Party's obligations under this Agreement. Any attempted assignment that violates this Section 18 is void and ineffective.


- 18.4 As used herein, "Affiliate(s)" of a Party means any other Person that, directly or indirectly, controls, is controlled by, or is under common control with such Party and any Person in which a Party has an ownership interest and to which the Party or an Affiliate of the Party provides services. For the purposes of this definition, (a) "control" means the power to direct the management or policies directly or indirectly whether through the ownership of voting securities, by contract, or otherwise; and (b) "Person" means an individual, partnership, corporation, limited liability company, company, business trust, joint stock company, trust, un incorporated association, joint venture, government authority or other legally recognized entity of whatever nature.
19. REGULATORY. This Agreement shall at all times be subject to such changes and modifications as shall be required from time to time by any legally constituted regulatory body, including the Commission, having jurisdiction to require such changes and modifications. Notice shall be given in accordance with the Commission's requirements if and when the Commission is requested to take action that could cause a change in terms of this Agreement.
20. CERTIFICATIONS, REPRESENTATIONS AND WARRANTIES. Third-Party Owner acknowledges and agrees that the RECs generated from the Large Solar Facility represent all of the environmental attributes associated with the generation of electricity from the Large Solar Facility. Third-Party Owner certifies that the attributes represented by the Large Solar RECs are not being claimed by, delivered, sold and/or transferred to any other entity, in whole or in part. Third-Party Owner represents and warrants that Third-Party Owner has good and marketable title to the Solar RECs and will transfer good and marketable title, free and clear of all claims, liens, security interests and encumbrances of any kind. Customer understands and agrees that Solar REC payments to be made under this Agreement will be made to Third-Party Owner and that Customer has no right, title or interest in or to such Solar REC payments or the RECs generated by the Solar Facility.
21. THIRD PARTY BENEFICIARIES. Except as expressly provided in this Agreement, the Parties do not intend to create rights in, or grant remedies to, any third party beneficiary of this Agreement not specifically included herein.
22. ENTIRE AGREEMENT. It is understood and agreed that all representations and agreements among the Parties covering the subject matter hereof are expressed herein and that no other representation of any kind or nature, whether made by the officers or agents of either of the Parties, shall be binding. There shall be no presumption or burden of proof favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.
23. EFFECTIVE DATE. This Agreement is effective as of the last date of execution set forth below.

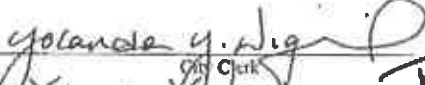
Agreement No. 1035338

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives. This Agreement is effective as of the last date set forth below.


CUSTOMER

By:   
Name: Robert Romero  
Title: City Manager  
Date: 3-27-13


By:   
Name: Grenda Zamora  
Title: \_\_\_\_\_  
Date: 3/20/13

By:   
Name: Yolanda Y. Nigri  
Title: City Clerk  
Date: 3-28-13

THIRD-PARTY OWNER

By:   
Name: JEFFREY GUZMAN  
Title: SECRETARY  
Date: 3/6/13

PUBLIC SERVICE COMPANY OF NEW MEXICO

By:   
Name: Gerard Ortiz  
Title: Vice President, PNM Regulatory Affairs  
Date: March 28, 2013

**APPENDIX A**

**APPLICATION FOR THE LARGE SOLAR REC INCENTIVE PROGRAM  
THIRD-PARTY OWNER'S ONE-LINE AND THREE-LINE DIAGRAM AND  
SITE DRAWING SHOWING LARGE SOLAR SYSTEM, METERING AND  
PROTECTION EQUIPMENT**

STANDARD LARGE SOLAR RENEWABLE ENERGY  
CERTIFICATE PURCHASE AGREEMENT FOR  
THIRD-PARTY OWNER  
PARTICIPATION IN PNM'S SOLAR REC INCENTIVE PROGRAM

**THIS AGREEMENT** is made and entered into as of the Effective Date, as hereinafter defined, by and among (individually "Party" or collectively "Parties"): City SF 52102 SF Convention Center Marcy St ("Customer"), MLH Cripple Creek Solar, LLC ("Third-Party Owner") and Public Service Company of New Mexico ("PNM").

**WHEREAS**, Customer owns or leases the Premises on which the Large Solar Facility described in Section 1 below is located; and

**WHEREAS**, Third-Party Owner owns and/or operates the Large Solar Facility which is sized no greater than one hundred twenty percent (120%) of the average annual consumption of electricity in kWh by Customer at the Premises at which the Large Solar Facility is located; and

**WHEREAS**, in accordance with 17.9.572.13.C NMAC, Third-Party Owner is the owner of certain renewable energy certificates associated with the electricity generated by the Large Solar Facility and consumed by Customer on the Premises ("Solar RECs"); and

**WHEREAS**, Third-Party Owner desires to sell and PNM desires to purchase the Solar RECs pursuant to the terms of this Agreement and as provided in PNM Rate 32;

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. **SOLAR FACILITY.** Customer owns or leases the Premises on which the following solar photovoltaic ("PV") or solar thermal electric facility rated larger than 10kW<sub>AC</sub> up to 1 MW<sub>AC</sub> (the "Large Solar Facility") is located. The Large Solar Facility is associated with PNM electric service account numbers: 115993535-1268887 ("Electric Service Account"), and 115993547-1268887 ("REC Payment Account"), and is interconnected to PNM's electric distribution system pursuant to Interconnection Agreement No. 1033681 ("Interconnection Agreement"), effective on July 6, 2012:

Solar Facility address:

200 Lincoln (Civic CNTR) Ave.  
Santa Fe, NM 87501

Rated solar generating capacity: 99.84 (kW<sub>DC</sub> STC)

**"kW<sub>DC</sub> STC"** is defined as the rated total capacity of the installed panels or collector at their DC output.

**"Premises"** is defined as the building, structure, or facility to which electricity is being or is to be furnished by the Solar Facility; two or more buildings, structures, or facilities located on one tract or contiguous tracts of land that are utilized by one Customer for residential, commercial, industrial, institutional, or governmental purposes constitutes one Premises, except that any such building, structure, or facility shall not, together with any other building, structure, or facility, constitute one Premises if the electric service to it is separately metered and the charges for such service are calculated independently of charges for service to any other building, structure, or facility.

2. **OWNER OF LARGE SOLAR FACILITY.** Customer and Third-Party Owner hereby certify that Third-Party Owner is the owner or long-term lessee of the Large Solar Facility. Third-Party Owner's contact information is:

**Name:** MLH Cripple Creek Solar, LLC

**Contact Person:** Marc Pangburn

**Address:** Four Embarcadero Center, Ste 3670

San Francisco, CA 94111

**Telephone:** (415) 874-5360

**REC Payment Account No.** 115993547-1268887

3. **PURCHASE AND DELIVERY OF LARGE SOLAR RECs.** PNM will purchase from Third-Party Owner, and Third-Party Owner will deliver to PNM, the Solar RECs that are generated by the Solar Facility and associated with the energy consumed each month on the Premises as metered by PNM. The applicable rate is 8 cents per kWh as set forth by PNM in its Notice of Completion of Application and REC Reservation. The payment for the Solar RECs will be calculated by multiplying the applicable rate by the number of kWh of energy generated by the Solar Facility and consumed on the Premises as measured by a PNM meter as further described in Section 5 of this Agreement.

If the Solar Facility generates electricity in excess of the amount of electricity consumed each month on the Premises ("Excess Energy"), PNM shall purchase such Excess Energy from Customer at its avoided cost, and PNM shall receive from Third-Party Owner, without cost, all RECs associated with such Excess Energy, to the extent authorized by the New Mexico Renewable Energy Act.

Solar REC purchase payments that total in excess of \$200 will be paid to Third-Party Owner on a monthly basis. If the amount due for the Solar RECs is less than \$200 the amount will be carried forward to the following month until such time as the balance due exceeds \$200, at which time the total balance due will be paid directly to Third-Party Owner.

Payments by PNM to Third-Party Owner for Solar RECs will commence subsequent to the execution of a Standard Interconnection Agreement, PNM's receipt and execution of this Agreement, and the billing cycle in which the meters on Customer's Premises are read. Payments for Solar RECs shall be made within thirty (30) days of the date the meters on the Premises are read by PNM. Purchase of Solar RECs produced by generating capacity added to the Large Solar System after execution of this Agreement will be made in accordance with Section 4 below.

4. **MODIFICATION OF GENERATING FACILITIES.** The rated capacity of the Solar Facility shall not be increased without prior approval of PNM and shall not be increased to a capacity greater than 1 MW<sub>AC</sub> in any event. PNM will purchase Solar RECs generated by a modified Solar Facility only upon execution of a new REC Purchase Agreement, at the applicable rate as of the effective date of such agreement.
5. **METERING.** Third-Party Owner shall provide and install, at its own expense, a meter socket to accommodate a PNM meter that measures only the total output of the Large Solar Facility inverters. This meter socket shall be installed in accordance with PNM's standard meter specifications and shall be in addition to the PNM meter socket used for the normal billing meter. Unless otherwise approved by PNM, this second meter socket shall be physically located next to the Customer/Third-Party Owner-provided meter socket for the PNM electric billing meter. PNM shall furnish and install a standard kilowatt-hour meter for the purpose of measuring the total output of the Large Solar Facility inverter. In accordance with 17.9.570.10 NMAC, if provision of the net metering option requires metering equipment and related facilities that are more costly than would otherwise be necessary absent the requirement for net metering, PNM shall not incur, and shall not be liable for, any incremental costs associated with installing the more costly metering equipment and facilities.

Attached hereto and incorporated herein as Appendix A is the application for interconnection and sale of Solar RECs, including a one-line diagram and three-line diagram showing the Large Solar Facility, the interconnection equipment, breaker panel(s), PNM required disconnect switches, PNM meters, PNM transformers and other required information. Customer and Third-Party Owner represent and warrant, jointly and severally, that the information contained in Appendix A is accurate as of the date of this Agreement.

6. **TERM OF AGREEMENT.** This Agreement shall be in effect for twenty (20) years from the Effective Date as stated in the Interconnection Agreement, unless terminated as provided herein.
7. **TERMINATION.** This Agreement shall automatically terminate (a) upon execution of a new REC Purchase Agreement among the Parties; (b) sixty (60) days after Customer closes the Electric Service Account unless Customer assigns this Agreement and the Interconnection Agreement as provided herein; or (c) upon termination of the Interconnection Agreement.



This Agreement may be terminated by a non-breaching Party if a material breach occurs with respect to any Party at any time during the term of this Agreement. A non-breaching Party may (a) terminate this Agreement upon five (5) business days' notice to the breaching Party with a copy to the other non-breaching Party, and (b) exercise such other remedies as may be available at law or in equity or as otherwise provided in this Agreement.

As used in this Agreement, "material breach" means, as to the breaching Party (a) failure to make, when due, any payment required under this Agreement if such failure is not subject to offset and is not remedied within ten (10) business days after written notice of such failure is given to the breaching Party; or (b) any representation or warranty made by the breaching Party in this Agreement shall prove to have been false or misleading in any material respect when made; or (c) failure to perform any covenant or agreement set forth in this Agreement (other than its obligations to make any payment or obligations that are otherwise specifically covered as a separate material breach), and such failure is not cured by the breaching Party within thirty (30) days of written notice from any non-breaching Party, or, if such breach is not susceptible to cure within thirty (30) days, if the breaching Party has not commenced to cure the breach within thirty (30) days and/or fails to proceed with reasonable diligence to cure such breach; under no circumstances, however, shall the total cure period exceed ninety (90) days; or (d) making an assignment or any general arrangement for the benefit of creditors; or (e) filing a petition or otherwise commencing, authorizing or acquiescing in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or having such petition filed against it and such proceeding remains undismissed for thirty (30) days; or (f) otherwise becoming bankrupt or insolvent (however evidenced), or (g) being unable to pay its debts as they become due.

If this Agreement is terminated for any reason, the final Large Solar REC payment will be calculated based on PNM's last meter readings at the Premises and Solar Facility and the determination of whether or not any excess generation has occurred. The Third-Party Owner will be paid for RECs up to the amount of Customer's consumption at the Premises through the date of the last meter reading, except that PNM may offset such payment against any amounts owed to PNM by Third-Party Owner. PNM shall purchase any Excess Energy from Customer at PNM's avoided cost, except that PNM may offset such payment against any amounts owed to PNM by Customer, and PNM shall own outright all RECs associated with such Excess Energy to the extent authorized by the New Mexico Renewable Energy Act. Payment for any Excess Energy will be calculated and paid directly to Customer within thirty (30) calendar of the last meter reading.

8. **TRANSFER OF PREMISES; ASSIGNMENT OF AGREEMENT.** If Customer sells or leases the Premises, Customer may assign this Agreement and the Interconnection Agreement to the new owner or occupant of the Premises upon prior written consent of Third-Party Owner and PNM, which consent shall not be unreasonably withheld or delayed. Such assignments must be made within sixty (60) days of the date the Customer terminates the Electric Service Account. If this Agreement and the

Interconnection Agreement are not assigned within the 60-day period, this Agreement terminates.

9. **TRANSFER OF LARGE SOLAR FACILITY; ASSIGNMENT OF AGREEMENT.** If Third-Party Owner sells the Large Solar Facility, Third-Party Owner may assign this Agreement and the Interconnection Agreement to the new owner of the Large Solar Facility upon prior written consent of Customer and PNM, which consent shall not be unreasonably withheld or delayed. Such assignment must be made within thirty (30) days of the date the Third-Party Owner closes on the sale of the Large Solar Facility. If this Agreement and the Interconnection Agreement are not assigned within the 30-day period, this Agreement terminates.
10. **RELOCATION OF SOLAR FACILITY.**
  - a. If Third-Party Owner relocates the Solar Facility in its entirety to a different property owned or leased by Customer within PNM's service area, Third-Party Owner shall: (a) notify PNM of such relocation within 30 days before the Solar Facility is relocated; (b) submit a new Application for Interconnection for the new Premises; and (c) complete the interconnection process. The Parties shall amend this Agreement to reflect the new Premises, the new Electric Service Account number and the new REC Payment Account number. The Parties understand and agree that the rated solar generation capacity of the Solar Facility shall not be modified, and the term of this Agreement shall not be extended, on account of the relocation.
  - b. If Third-Party Owner relocates the Solar Facility in its entirety to a different property within PNM's service area, and such property is not owned by or leased by Customer, this Agreement shall terminate upon disconnection of the Solar Facility from PNM's system, unless earlier terminated as set forth in this Agreement. Third-Party Owner shall: (a) notify PNM of such relocation within 30 days before the Solar Facility is relocated; (b) submit a new Application for Interconnection for the new Premises; (c) complete the interconnection process; and (d) enter into a new REC purchase agreement at the applicable rate as of the effective date of such agreement.
11. **INTERRUPTION OR REDUCTION OF DELIVERIES; DISCONTINUANCE OF SERVICE.** PNM shall not be obligated to pay for a reduction in the number of Solar RECs caused by interruptions of utility service or by utility-required Large Solar Facility shutdowns as specified in the executed Standard Interconnection Agreement or due to actions caused by Customer or Third-Party Owner. If service to the Electric Service Account is discontinued for any time period for any reason permitted under applicable NMPRC rules: (a) PNM shall have no liability for and shall not pay Customer for any actual or potential generation that may or could have occurred while such service was discontinued; and (b) PNM shall have no liability for and shall not pay Third-Party Owner for any RECs associated with any actual or potential generation that may or could have occurred while service to the Electric Service Account is discontinued.
12. **ACCESS TO PREMISES.** PNM may enter Customer's Premises at all reasonable hours to read or test meters and for access to the Solar Facility.

13. **NO WARRANTY OR GUARANTEE.** The Parties agree that the sale and purchase of the Solar RECs is not an endorsement, confirmation, warranty, guarantee or representation concerning the safety, operating characteristics, durability or reliability of the Large Solar Facility. No Party assumes the duty of inspecting any other Party's lines, wiring, apparatus, machinery or appliances, or any part thereof (collectively, "Associated Equipment") and shall not be responsible to any other Party therefore. PNM further disclaims any obligation to inspect, and any liability for, Associated Equipment owned by Third-Party Owner. Third-Party Owner and Customer agree to install and maintain, or to have installed and maintained, in a safe and efficient manner, and in accordance with good electrical practices and all applicable regulations, all of the Associated Equipment connected at the Premises to PNM's electric distribution system.
14. **POTENTIAL TAX LIABILITY.** Third-Party Owner understands that the sale and purchase of the Large Solar RECs may create a tax liability for Third-Party Owner. Third-Party Owner further understands that PNM may issue Internal Revenue Service Form 1099 or other tax form to Third-Party Owner relating to these transactions. By signing this Agreement, Third-Party Owner acknowledges and agrees that Third-Party Owner has the sole responsibility for paying any federal, state or local taxes, including federal income tax that may be due on amounts received by Third-Party Owner, as a result of transactions under this Agreement. Third-Party Owner hereby indemnifies and defends PNM and Customer, and their respective officers, directors, employees, boards, commission, agents, successors and assigns, from and against any and all such taxes and any and all charges or damages arising out of Third-Party Owner's failure to pay such taxes or any associated penalties.
15. **GOVERNING LAW.** This agreement shall be interpreted, governed, and construed under the laws of the state of New Mexico as if executed and to be performed wholly within the state of New Mexico.
16. **AMENDMENT, MODIFICATIONS OR WAIVER.** Any amendments or modifications to this Agreement shall be in writing and agreed to by the Parties. The failure of any Party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any Party of the breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, shall be deemed to be, or construed as, a further or continuing waiver of any such breach or a waiver of the breach of any other term or covenant unless such waiver is in writing.
17. **NOTICES.** Except as expressly agreed in writing among the Parties, any notice, request, approval, consent, instruction, direction or other communication required or permitted under this Agreement shall be in writing and shall be deemed given if personally delivered, delivered by reputable overnight courier or sent by First Class Mail, postage prepaid, and shall be deemed received, if personally delivered, or delivered by courier, upon delivery, and if mailed, on the third day following deposit in the U. S. mail.

**If to PNM:**

**Attention: Customer Owned Generation Programs  
Public Service Company of New Mexico  
Aparado Square  
Albuquerque, NM 87158-0510**

**If to Customer:**

**City SF 52102 SF Convention Center Marcy St  
2651 Siringo  
Santa Fe, NM 87505-5229**

**If to Third-Party Owner:**

**MLH Cripple Creek Solar, LLC  
Marc Pangburn  
Four Embarcadero Center, Ste 3670  
San Francisco, CA 94111**

**All notices under this Agreement shall refer to the Solar Facility address set forth in Section I of this Agreement.**

**18. ASSIGNMENT. Except as otherwise provided in this Section 18, no Party shall assign this Agreement without the prior written consent of the other Parties, which consent shall not be unreasonably conditioned, delayed or withheld.**

**18.1 Any Party may assign any of its rights, duties, or obligations under this Agreement to any Affiliate (which shall include a successor entity in a merger or acquisition transaction) of the assigning Party, provided such assignee (a) has a credit rating that is equal to or greater than the credit rating of the assigning Party's credit rating; (b) has the legal authority and operational ability to satisfy the assigning Party's obligations under this Agreement; and (c) agrees to be bound by the terms and conditions of this Agreement. In the event PNM makes such an assignment, it shall be relieved of all financial responsibility related to this Agreement.**

**18.2 Third-Party Owner may assign any of its rights, duties or obligations under this Agreement to one or more Affiliates or third parties in connection with a sale-and-leaseback or other debt and/or equity financing transaction to aid in financing of the Large Solar Facility. In connection with such an assignment, Third-Party Owner may pledge its interest in this Agreement, including any rights to payment, as collateral or security for loans or financing against its personal property. Any financing arrangement entered into by Third-Party Owner pursuant to this section will provide that, before or upon the exercise of the secured party's, trustee's, mortgagee's or other third party's assignment rights pursuant to such arrangement, the secured party, trustee, mortgagee or other third party will notify PNM of the date and particulars of any such exercise of assignment right(s).**

- 18.3 Notwithstanding anything to the contrary herein, no assignment by Third-Party Owner or Customer shall be effective until Third-Party Owner or Customer has notified PNM of such assignment and has obtained all applicable consents from PNM. No assignment under this Agreement shall expand a Party's obligations under this Agreement. Any attempted assignment that violates this Section 18 is void and ineffective.
- 18.4 As used herein, "Affiliate(s)" of a Party means any other Person that, directly or indirectly, controls, is controlled by, or is under common control with such Party and any Person in which a Party has an ownership interest and to which the Party or an Affiliate of the Party provides services. For the purposes of this definition, (a) "control" means the power to direct the management or policies directly or indirectly whether through the ownership of voting securities, by contract, or otherwise; and (b) "Person" means an individual, partnership, corporation, limited liability company, company, business trust, joint stock company, trust, unincorporated association, joint venture, government authority or other legally recognized entity of whatever nature.
19. REGULATORY. This Agreement shall at all times be subject to such changes and modifications as shall be required from time to time by any legally constituted regulatory body, including the Commission, having jurisdiction to require such changes and modifications. Notice shall be given in accordance with the Commission's requirements if and when the Commission is requested to take action that could cause a change in terms of this Agreement.
20. CERTIFICATIONS, REPRESENTATIONS AND WARRANTIES. Third-Party Owner acknowledges and agrees that the RECs generated from the Large Solar Facility represent all of the environmental attributes associated with the generation of electricity from the Large Solar Facility. Third-Party Owner certifies that the attributes represented by the Large Solar RECs are not being claimed by, delivered, sold and/or transferred to any other entity, in whole or in part. Third-Party Owner represents and warrants that Third-Party Owner has good and marketable title to the Solar RECs and will transfer good and marketable title, free and clear of all claims, liens, security interests and encumbrances of any kind. Customer understands and agrees that Solar REC payments to be made under this Agreement will be made to Third-Party Owner and that Customer has no right, title or interest in or to such Solar REC payments or the RECs generated by the Solar Facility.
21. THIRD PARTY BENEFICIARIES. Except as expressly provided in this Agreement, the Parties do not intend to create rights in, or grant remedies to, any third party beneficiary of this Agreement not specifically included herein.
22. ENTIRE AGREEMENT. It is understood and agreed that all representations and agreements among the Parties covering the subject matter hereof are expressed herein and that no other representation of any kind or nature, whether made by the officers or agents of either of the Parties, shall be binding. There shall be no presumption or burden of proof favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

23. EFFECTIVE DATE. This Agreement is effective as of the last date of execution set forth below.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives. This Agreement is effective as of the last date set forth below.

CUSTOMER

By: [Signature]  
Name: Robert Romero  
Title: City Manager  
Date: 6/14/12

By: [Signature]  
Name: MARLO MARTINEZ  
Title: ASST. CITY ATTORNEY  
Date: 6/12/12

By: [Signature]  
Name: Yolanda Vigil  
Title: City Clerk  
Date: 7-6-12

THIRD-PARTY OWNER

By: [Signature]  
Name: JEFFREY CLAVAN  
Title: SECRETARY  
Date: 6/22/12

PUBLIC SERVICE COMPANY OF NEW MEXICO

By: [Signature]  
Name: Gerard Ortiz  
Title: Executive Director, New Mexico Retail Regulatory Services  
Date: July 6, 2012

**APPENDIX A**

**APPLICATION FOR THE LARGE SOLAR REC INCENTIVE PROGRAM  
THIRD-PARTY OWNER'S ONE-LINE AND THREE-LINE DIAGRAM AND  
SITE DRAWING SHOWING LARGE SOLAR SYSTEM, METERING AND  
PROTECTION EQUIPMENT**



# City of Santa Fe

## Real Estate Summary of Contracts, Agreements, Amendments & Leases

### Section to be completed by department

1. Munis Contract # 3201933

Contractor: Dissigno Holdings, LLC

Description: Termination of Power Purchase Agreements between City of Santa Fe and Dissigno Holdings, LLC.

Contract  Agreement  Lease / Rent  Amendment

Term Start Date: \_\_\_\_\_ Term End Date: upon execution

Approved by Council Date: \_\_\_\_\_

### Contract / Lease:

Amendment # Termination to the Original Contract / Lease # 11-1170, 11-1171

Increase/(Decrease) Amount \$ \_\_\_\_\_

Extend Termination Date to: \_\_\_\_\_

Approved by Council Date: \_\_\_\_\_

### Amendment is for:

2. **HISTORY of Contract, Amendments & Lease / Rent - Please Elaborate** (option: attach spreadsheet if multiple amendments)

Original Contract (CVB) 11-1171, Amendment#1 12-0571, Amendment #2 16-0702

Original Contract (Compost) 11-1170, Amendment #1 13-0118, Amendment #2 16-0701

3. Procurement History: \_\_\_\_\_

*JoAnn Lovato*

JoAnn Lovato (Jan 10, 2023 13:28 MST)

Jan 10, 2023

Purchasing Officer Review: \_\_\_\_\_ Date: \_\_\_\_\_

Comment & Exceptions: No procurement

4. Funding Source: \_\_\_\_\_ Org / Object: 3159980.572970

*Anita Heston*

Anita Heston (Jan 10, 2023 10:44 MST)

Jan 10, 2023

Budget Officer Approval: \_\_\_\_\_ Date: \_\_\_\_\_

Comment & Exceptions: \_\_\_\_\_

Staff Contact who completed this form: Caryn Grosse Phone # 505-955-5938

Email: cigrosse@santafenm.gov

### To be recorded by City Clerk:

Clerk # \_\_\_\_\_

Date of Execution: \_\_\_\_\_

ITT Representative (attesting that all information is reviewed) \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_



Compost Anticipated Production per Contract #11-1170										Actual Compost Production 2017-2022				
Year	Contract effective date 11/30/2011	Production Value per kWh	RECs Value per kWh	Anticipated annual production (kWh)	Anticipated Value from Production	Anticipated Value from RECs	Actual Production (kWh)	Value of Production	Production Shortfall	Percentage of Anticipated Production	Lost Value due to Shortfall			
1	2012	\$0.1475	\$0.0800	162,500	\$23,968.75	\$13,000.00								
2	2013	\$0.1475	\$0.0800	161,688	\$23,848.98	\$12,935.04								
3	2104	\$0.1475	\$0.0800	160,879	\$23,729.65	\$12,870.32								
4	2015	\$0.1475	\$0.0800	160,075	\$23,611.06	\$12,806.00								
5	2016	\$0.1475	\$0.0800	159,274	\$23,492.92	\$12,741.92								
6	2017	\$0.1475	\$0.0800	158,478	\$23,375.51	\$12,678.24	150,147	\$12,011.76	8,331	94.74%	\$11,363.75			
7	2018	\$0.1475	\$0.0800	157,686	\$23,258.69	\$12,614.88	136,042	\$10,883.36	21,644	86.27%	\$12,375.33			
8	2019	\$0.1475	\$0.0800	156,897	\$23,142.31	\$12,551.76	88,553	\$6,684.24	73,344	53.25%	\$16,458.07			
9	2020	\$0.1475	\$0.0800	156,113	\$23,026.67	\$12,489.04	35,519	\$2,841.52	120,594	22.75%	\$20,185.15			
10	2021	\$0.1475	\$0.0800	155,332	\$22,911.47	\$12,426.56	12,901	\$1,092.08	142,431	8.31%	\$21,879.39			
11	2022	\$0.1475	\$0.0800	154,555	\$22,796.86	\$12,364.40	921	\$73.68	153,634	0.60%	\$22,723.18			
12	2023	\$0.1475	\$0.0800	153,783	\$22,682.99	\$12,302.64								
13	2024	\$0.1475	\$0.0800	153,014	\$22,569.57	\$12,241.12								
14	2025	\$0.1475	\$0.0800	152,249	\$22,456.73	\$12,179.92								
15	2026	\$0.1475	\$0.0800	151,487	\$22,344.33	\$12,118.96								
6	2027	\$0.1475	\$0.0800	150,730	\$22,232.68	\$12,058.40								
17	2028	\$0.1475	\$0.0800	149,976	\$22,121.46	\$11,998.08								
18	2029	\$0.1475	\$0.0800	149,226	\$22,010.84	\$11,938.08								
19	2030	\$0.1475	\$0.0800	148,480	\$21,900.80	\$11,878.40								
20	2031	\$0.1475	\$0.0800	147,738	\$21,791.36	\$11,819.04								

Convention Center Anticipated Production per Contract #11-1171										Actual Convention Center Production 2017-2022				
Year	Contract effective date 11/30/2011	Production Value per kWh	RECs Value per kWh	Anticipated annual production (kWh)	Anticipated Value from Production	Anticipated Value from RECs	Actual Production (kWh)	Value of Production	Production Shortfall	Percentage of Anticipated Production	Lost Value due to Shortfall			
1	2012	\$0.1475	\$0.0800	162,500	\$23,968.75	\$13,000.00								
2	2013	\$0.1475	\$0.0800	161,688	\$23,848.98	\$12,935.04								
3	2104	\$0.1475	\$0.0800	160,879	\$23,729.65	\$12,870.32								
4	2015	\$0.1475	\$0.0800	160,075	\$23,611.06	\$12,806.00								
5	2016	\$0.1475	\$0.0800	159,274	\$23,492.92	\$12,741.92								
6	2017	\$0.1475	\$0.0800	158,478	\$23,375.51	\$12,678.24	116,509	\$9,320.72	41,969	73.52%	\$ 14,054.79			
7	2018	\$0.1475	\$0.0800	157,686	\$23,258.69	\$12,614.88	131,277	\$10,502.16	26,409	83.25%	\$ 12,756.53			
8	2019	\$0.1475	\$0.0800	156,897	\$23,142.31	\$12,551.76	88,517	\$7,081.36	68,380	56.42%	\$ 16,060.95			
9	2020	\$0.1475	\$0.0800	156,113	\$23,026.67	\$12,489.04	61,162	\$4,892.96	94,951	39.18%	\$ 18,133.71			
10	2021	\$0.1475	\$0.0800	155,332	\$22,911.47	\$12,426.56	55,624	\$4,449.92	99,708	35.81%	\$ 18,681.55			
11	2022	\$0.1475	\$0.0800	154,555	\$22,796.86	\$12,364.40	29,249	\$2,339.92	125,306	18.92%	\$ 20,456.94			
12	2023	\$0.1475	\$0.0800	153,783	\$22,682.99	\$12,302.64								
13	2024	\$0.1475	\$0.0800	153,014	\$22,569.57	\$12,241.12								
14	2025	\$0.1475	\$0.0800	152,249	\$22,456.73	\$12,179.92								
15	2026	\$0.1475	\$0.0800	151,487	\$22,344.33	\$12,118.96								
6	2027	\$0.1475	\$0.0800	150,730	\$22,232.68	\$12,058.40								
17	2028	\$0.1475	\$0.0800	149,976	\$22,121.46	\$11,998.08								
18	2029	\$0.1475	\$0.0800	149,226	\$22,010.84	\$11,938.08								
19	2030	\$0.1475	\$0.0800	148,480	\$21,900.80	\$11,878.40								
20	2031	\$0.1475	\$0.0800	147,738	\$21,791.36	\$11,819.04								












# 23-0151 Dissingo Holdings LLC PW GB

Final Audit Report

2023-04-19

Created:	2023-04-17
By:	Xavier Vigil (xivigil@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAayvQiB-L8LJ7Ydpbhw9Kio4Os1flL4Yw

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-  Signer ekoster@santafenm.gov entered name at signing as Emily K. Oster  
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Signature Date: 2023-04-18 - 9:39:43 PM GMT - Time Source: server- IP address: 50.216.167.55
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2023-04-19 - 5:00:58 PM GMT- IP address: 104.47.65.254
-  Document e-signed by Kristine Mihelcic (kmmihelcic@santafenm.gov)  
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✔ Agreement completed.

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