

**POWER PURCHASE AND SALE AGREEMENT**

**[NON-INCENTIVE]**

This POWER PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is entered into effective as of \_\_\_\_\_, 20\_\_ (the “**Effective Date**”), by and between \_\_\_\_\_ (“**Seller**”), and Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona (“**SRP**”). Seller and SRP are sometimes referred to in this Agreement individually as a “**Party**” and collectively as the “**Parties.**”

**RECITALS**

WHEREAS, Seller intends to develop, design, construct, own and operate a solar-powered electrical generation facility for the benefit of \_\_\_\_\_ (“**Customer**”) located on Customer’s premises at \_\_\_\_\_, Arizona, with a nameplate capacity of \_\_\_\_\_ kW (the “**Project**”);

WHEREAS, Seller has entered into an agreement (the “**Project Agreement**”) pursuant to which Seller has agreed to sell and Customer has agreed to purchase all of the energy generated by the Project; and

WHEREAS, to facilitate the transaction contemplated by the Project Agreement, SRP has agreed to purchase all Metered Output from the Project and to resell the Metered Output to Customer, all on the terms and conditions set forth in this Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

**ARTICLE I  
DEFINITIONS**

1.1. Definitions. As used in this Agreement, the following terms, when initially capitalized, shall have the meanings specified in this Section 1.1.

“**Commercial Operation Date**” means the date that (a) the nameplate capacity of the Project has been constructed, commissioned and tested, (b) Seller has obtained all necessary rights under the interconnection agreement for the interconnection and delivery of the Metered Output to the Metered Output Delivery Point, and (c) Seller is capable of making available Metered Output from the Project to the Metered Output Delivery Point.

“**Interest Rate**” means a per annum rate of interest equal to the lesser of (a) the prime lending rate published from time to time by the Federal Reserve Bank H.15 (519) Statistical

Release website on such day (or if not published on such day, on the most recently preceding day published) plus 200 basis points or (b) the maximum rate permitted by applicable law.

“**Metered Output**” means the electrical energy output, intermittent and variable within the hour, made available from the Project at the Metered Output Delivery Point, as measured by SRP’s meter installed at the Metered Output Delivery Point.

“**Metered Output Delivery Point**” means the meter owned and maintained by SRP that measures the output of the Project.

“**Person**” means an individual, partnership, corporation, limited liability company, joint venture, association, trust, unincorporated organization, governmental authority, or other form of entity.

## **ARTICLE II PURCHASE AND SALE**

2.1. Purchase of Metered Output by SRP. In accordance with and subject to the terms and conditions of this Agreement, commencing on the Commercial Operation Date and continuing through the end of the Term (as defined in Section 3.1 below), Seller shall sell to SRP and SRP shall purchase from Seller all of the Metered Output at the rate specified in Exhibit A. Seller shall deliver the Metered Output to and make such Metered Output available to SRP at the Metered Output Delivery Point. SRP shall receive the Metered Output at, and shall take such Metered Output from, the Metered Output Delivery Point. Title to, and risk of loss associated with, Metered Output shall pass from Seller to SRP at the Metered Output Delivery Point. Seller shall transfer the Metered Output to SRP free and clear of all liens, security interests, claims and encumbrances or any other interest therein or thereto by any Person.

2.2 Reserved.

2.3 Reserved.

2.4 SRP’s Obligations. SRP’s obligation to purchase Metered Output from Seller shall be suspended during any time that Seller is in default of this Agreement or if Customer is in default of any contract for service from SRP or SRP’s Rules and Regulations.

## **ARTICLE III TERM AND TERMINATION**

3.1. Term. This Agreement shall become effective on the Effective Date and, unless terminated earlier as provided in this Agreement, shall remain in full force and effect until the earlier of (a) the termination of the Project Agreement for any reason, (b) the termination or disconnection of Customer’s SRP account for any reason, including termination or disconnection by SRP as permitted by SRP’s Rules and Regulations or by any contract between SRP and Customer; or (c) midnight Mountain Standard Time on the \_\_\_\_ anniversary of the Commercial Operation Date (the “**Term**”).

3.2. Notice of Commercial Operation Date. Seller shall notify SRP at least five business days in advance of the anticipated Commercial Operation Date and shall confirm to SRP in writing within three business days of when the Commercial Operation Date occurs.

#### **ARTICLE IV METERING**

4.1. Metering. Metered Output delivered to the Metered Output Delivery Point shall be measured by meters owned, installed and maintained by SRP. SRP shall maintain and calibrate its meters in accordance with the SRP Rules and Regulations. Seller may install and maintain its own meters, but SRP's meters shall be used for all purposes under this Agreement. In the case where a meter read is unavailable, SRP will make commercially reasonable efforts to estimate generation and/or consumption.

#### **ARTICLE V BILLING AND PAYMENT**

5.1. Monthly Billing. SRP shall invoice Seller monthly. Such monthly invoices shall state (i) the amount of Metered Output produced by the Project and delivered to the Metered Output Delivery Point, (ii) the amount of energy delivered to the Project by SRP, (iii) the applicable price plan, and (iv) the total amount due. All amounts due under this Section 5.1 shall be due and payable net 21 days from the date of billing. Any undisputed portion of the invoice amount not paid within the 21 day period shall accrue interest at the Interest Rate.

#### **ARTICLE VI EVENTS OF DEFAULT; REMEDIES**

6.1. Events of Default. An “**Event of Default**” means with respect to a Party (the “**Defaulting Party**”):

- (a) A Party fails to make any payment when due under this Agreement and fails to cure within 10 days after notice thereof; or
- (b) A Party fails to comply with any other obligation under this Agreement, and such failure is not cured with 30 days after notice thereof.

6.2. Remedies for an Event of Default. Upon the occurrence and notice to the Defaulting Party, the other Party (the “**Non-Defaulting Party**”) shall have the right (but not the obligation) to:

- (a) suspend performance of its obligations under this Agreement; and/or
- (b) receive from the Defaulting Party direct damages incurred by the Non-Defaulting Party in connection with such Event of Default (including during any applicable cure period, whether or not the Non-Defaulting Party has elected to suspend performance during such cure period).

6.3. Termination for an Event of Default. If an Event of Default has occurred and is not cured within the applicable cure period, if any, set forth in Section 6.1, the Non-Defaulting Party shall have the right, at any time when such Event of Default is continuing, and in addition to the remedies set forth in Section 6.2, to:

(a) designate by notice to the Defaulting Party a day, no earlier than the day such notice becomes effective and no later than 20 days after the day such notice becomes effective, on which this Agreement shall terminate, in which event this Agreement will terminate on such date; and

(b) subject to the express limitations on remedies set forth in this Agreement, pursue any other right or remedy available under this Agreement or applicable law. If notice of termination has not been received by the date that is 30 days following the last day of any applicable cure period, the Event of Default is deemed to have been waived by the Non-Defaulting Party and no further damages shall accrue with respect to such Event of Default.

6.4 Waiver of Consequential Damages. NO PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY NATURE ARISING OUT OF THEIR PERFORMANCE OR NON-PERFORMANCE HEREUNDER.

**ARTICLE VII  
NOTICES**

7.1. Notices. All notices to be given under this Agreement shall be made to the addresses set forth below. All notices shall be made in writing. Notices shall be delivered by hand delivery, U.S. Mail or express courier. All notices, requests, statements and other communications shall be deemed to have been duly given on (a) the date of delivery if delivered by hand or by express courier, or (b) five days after deposit in the U.S. Mail. Any Party may change its respective notice information upon giving the other Parties at least 10 days' prior notice thereof.

If to SRP, addressed to it at:

P.O. Box 52025, Mail Station \_\_\_\_\_  
Phoenix, Arizona 85072-2025  
Attention: \_\_\_\_\_

If to Seller, addressed to it at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ARTICLE VIII  
MISCELLANEOUS**

8.1. Assignment. Neither Party may assign this Agreement without the other Party's prior written consent, such consent not to be unreasonably delayed, conditioned or withheld. For purposes of this Agreement, any direct or indirect change in control of a Party shall constitute an assignment.

8.2. Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of Arizona, without regard to its principles of conflicts of law.

8.3. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof. There are no prior or contemporaneous agreements or representations affecting the same subject matter other than those expressed herein.

8.4. Amendment. No amendment, modification or change to this Agreement shall be enforceable unless set forth in writing and executed by both Parties.

8.5. Non-Waiver. No waiver by any Party hereto of any one or more defaults by the other Parties in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature. No failure or delay by any Party hereto in exercising any right, power, privilege, or remedy hereunder shall operate as a waiver thereof.

8.6. Severability. Any provision of this Agreement declared or rendered invalid, unlawful, or unenforceable by any applicable governmental authority or deemed unlawful because of a change in applicable law shall not otherwise affect the remaining lawful obligations that arise under this Agreement, provided that the Parties shall use commercially reasonable efforts to reform this Agreement in order to give effect to the original intention of the Parties.

8.7. No Third-Party Beneficiaries. Nothing in this Agreement shall provide any benefit to any third Person or entitle any third Person to any claim, cause of action, remedy or right of any kind, it being the intent of the Parties that this Agreement shall not be construed as a third-party beneficiary contract.

8.8. Relationships of Parties. The Parties shall not be deemed to be in a relationship of partners or joint venturers by virtue of this Agreement, nor shall any Party be an agent, representative, trustee or fiduciary of any other Party. Neither Seller nor SRP shall have any authority to bind the other to any agreement. This Agreement is intended to secure and provide for the services of each Party as an independent contractor.

8.9. Jurisdiction; Venue. Any dispute relating to this Agreement shall be brought exclusively in the Maricopa County, Arizona Superior Court or in the United States District Court for the District of Arizona. By execution and delivery of this Agreement, with respect to such disputes, each of the parties knowingly, voluntarily and irrevocably (a) consents, for itself and in respect of its property, to the exclusive jurisdiction of these courts; and (b) waives any immunity or objection, including any objection to personal jurisdiction or the laying of venue or

based on the grounds of forum non conveniens, which it may have from or to the bringing of the dispute in such jurisdiction.

8.10. Waiver of Jury Trial. To the fullest extent permitted by law, each of the Parties waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this Agreement.

8.11. Attorneys' Fees. If a Party commences a legal proceeding against the other Party because of an alleged breach of such Party's obligations under this Agreement, each Party shall bear its own expenses, including reasonable attorneys' fees, incurred in connection with the legal proceeding and any appeal thereof.

8.12. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

8.13. Counterparts. This Agreement may be executed in counterparts, including in facsimile and electronic formats (including portable document format (.pdf)), each of which is an original and all of which constitute one and the same instrument.

8.14. Compliance with Law. Each Party shall at all times comply in all respects with all applicable laws. As applicable, each Party shall give all required notices, and shall procure and maintain all necessary governmental permits, licenses, and inspections necessary for performance of this Agreement, and shall pay its respective charges and fees in connection therewith.

8.15. Enforcement of Rights. At Customer's request, SRP shall have the right but not the obligation, to enforce on Customer's behalf any of Customer's rights and remedies against Seller that arise under the Project Agreement.

8.16 Construction. The headings in this Agreement are inserted for convenience only, and shall not constitute a part of this Agreement or be used to construe or interpret any of its provisions. The parties have participated jointly in negotiating and drafting this Agreement. If a question of interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement. Any reference to any statute shall be deemed to refer to the statute, as amended, and to all rules and regulations promulgated thereunder, as amended, unless the context requires otherwise. The word "include" or "including" means include or including, without limitation.

*[signatures appear on the following page]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first above written. This Agreement shall not become effective as to either Party unless and until executed by both Parties.

**SRP:**

Salt River Project Agricultural Improvement and Power District

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SELLER:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

**RATE**

**POWER PURCHASE AND SALE AGREEMENT**

**FOR:** \_\_\_\_\_

(Insert Project Name Here)

**YEAR                      CONTRACT PRICE PER KWH**

1	
2	
3	
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