

**POWER PURCHASE AND SALE AGREEMENT
BY AND BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA
AND SUNPOWER CORPORATION, SYSTEMS, CALIFORNIA**

This Power Purchase and Sale Agreement (“Agreement”) is by and between the City of Santa Clara, California, a chartered California municipal corporation doing business as Silicon Valley Power (“SVP”) and SunPower Corporation, Systems (“SunPower” or “Counterparty”). SVP and SunPower may be referred to herein individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

RECITALS

WHEREAS:

- A. This Agreement will serve as a Master Service Agreement to enable either Party to purchase, sell or exchange Services from, to, or with the other Party (“Transaction”) in accordance with the following terms and conditions; and
- B. This Agreement does not obligate either Party to engage in a Transaction, but it does provide the terms and conditions that shall govern Transactions entered into by the Parties in accordance with this Agreement; and
- C. SunPower will install on the premises of an SVP customer (the “Host Customer”) solar photovoltaic generating systems and/or energy storage systems that SunPower will operate the BESS in accordance with instructions provided by SVP in order to provide Services to SVP; and
- D. SVP wishes to purchase such Services from SunPower.

In consideration of the following mutual covenants, agreements, and obligations, the Parties agree as follows:

AGREEMENT PROVISIONS

1.0 Definitions

Definitions of the terms used in this Agreement with initial capitalization are found either in the body of this Agreement, or in Exhibit A.

2.0 Term of Agreement

This Agreement shall become binding upon the Parties on the Effective Date and shall remain in effect until terminated by either Party upon thirty (30) days advance written notice to the other Party. However, no termination (except for default) shall be effective until the completion of any ongoing Transaction agreed to by the Parties.

3.0 Availability and Sale of Energy Capacity and/or, Transmission Service, or Other Services

- 3.1 Transactions. At any time during the term of this Agreement, the Parties may notify each other that specified amounts of Services are available for purchase, sale or exchange. The general terms and conditions for any Transaction with the other Party shall be in accordance with the terms and conditions of this Agreement. The specific terms and conditions of each Transaction shall be as agreed to by the Parties in advance of the Transaction and are referred to herein as "Economic Terms."
- 3.2 Economic Terms. The Economic Terms of each Transaction shall be agreed upon by the Operating Representatives, shall be reflected in a Transaction Sheet substantially in the form of the Transaction Sheet attached hereto as Exhibit "B." The Transaction Sheet shall include, at a minimum, the following terms and conditions: (1) Description of Product (e.g., financial, physical); (2) Buying Party; (3) Selling Party; (4) Delivery Period/Term; (5) Delivery Rate; (6) Delivery Point; (7) Contract Price (\$ US); (8) Interruption Rights (i.e.; firm, non-firm); and (9) Special Conditions.
- 3.3 Schedule Imbalances. Any discrepancy between (i) the amount scheduled by a Party with the other Party and (ii) the amount scheduled with an interconnecting utility shall be corrected by the Party responsible for the discrepancy in scheduled quantities without affecting the other Party. Any discrepancy between scheduled deliveries and actual receipts as recorded by Seller and as recorded by an interconnecting utility, shall be resolved by Seller and such interconnecting utility without affecting Buyer.
- 3.4 Transaction Sheets. A Transaction Sheet shall be completed prior to the commencement of the Transaction. The terms and conditions of a Transaction may supplement, but shall not conflict with, the terms and conditions of this Agreement. Said Transaction Sheet may be sent via facsimile, by United States mail, or by other means, which reduces the Transaction to writing, as agreed upon by the Parties. Each Transaction Sheet shall constitute an integral part of this Agreement and shall be read and construed as one with this Agreement. In the event of any conflict between the language of this Agreement and the Transaction Sheet, the language contained in this Agreement shall control, except with regard to Economic Terms, the Transaction Sheet shall control unless contradicted by the oral recording.
- 3.5 Recording of Transactions. Each Party consents to the recording of its Operating Representatives' telephone conversations and such recordings may be introduced into evidence to prove the existence and terms of any oral Transaction. To the extent terms in the Transaction Sheet contradict the oral recording, the oral recording shall govern. Unless such Transaction Sheet is signed by both Parties, only the additional Economic Terms that are in the tape recording of the oral agreement shall be deemed included in the Economic Terms for the Transaction.

- 3.6 Operating Representatives. Within thirty (30) calendar days after execution of this Agreement, each Party shall designate in writing one or more persons with authority to act on its behalf with respect to matters contained herein (“Operating Representatives”). Operating Representatives shall have the authority to negotiate the Economic Terms of a Transaction provided, however, such Operating Representatives shall have no authority to modify any provision of this Agreement in any manner. Each Party shall give written notice to the other Party of the identity of its designated Operating Representatives and shall promptly notify the other Party of any subsequent changes in such designation.
- 3.7 Term of Transactions. For any single Transaction whose Delivery Term exceeds three hundred and sixty five (365) days, each Party shall provide the other Party with proof of authority to enter into such a Transaction.
- 3.8 Curtailment. In the event of sudden or emergency curtailment or interruption of energy deliveries or Services hereunder, whichever Party first receives notice of the interruption or curtailment (whether by experiencing such curtailment or otherwise) shall contact the other Party’s Operating Representatives as soon as possible after that Party becomes aware of the necessity for such curtailment or interruption. Such notification shall include the cause of the curtailment or interruption, the expected duration of the curtailment or interruption, and such other information as appropriate.
- 3.9 Conditions Precedent. City’s obligation to purchase Services or output from a Facility under this Agreement will commence upon the Delivery Date. The “Delivery Date” is the date identified by Seller in a written notice to Buyer as the date upon which Seller attests that all of the conditions (a) through (e) below have been completed or otherwise satisfied.
- (a) All Facility systems necessary for continuous operation and metering are tested and certified, in each case as required by SVP for the purpose of telemetry of real-time data to the City, as required;
 - (b) All applicable agreements between Seller and SVP which are required for Seller’s performance of this Agreement are signed and delivered, including but not limited to a Interconnection Agreement and any other agreements required by SVP.
 - (c) All applicable regulatory authorizations, approvals and permits for the continuous operation of the Facility (“Governmental Approvals”) are obtained; and
 - (d) Seller may have obtained the CEC Certification for the Facility for RPS Qualification.
 - (e) Seller may have obtained WREGIS account for the transfer of renewable attributes for the Facility.
- 3.10 Dedication of Output or Services. Throughout the Term of and Transaction under this Agreement, Seller agrees that the net Product from a Facility or Services shall

be sold exclusively to the City, (except for any period in which the Parties' obligations are suspended due to a Uncontrollable Force).

3.11 **Purchase and Sale of Product or Services.** Throughout the Term of this Agreement, Seller shall sell and deliver to City at the Delivery Point, and City shall purchase, receive at the Delivery Point, and pay for, the Product produced by the Facility or Services, as measured by the meter at the Delivery Point.

- (a) Seller shall arrange and be responsible for all costs associated with metering and telemetry.
- (b) Buyer shall arrange and be responsible for receipt of energy and transmission service associated with the Net Electrical Output at and from, or associated with Seller's provision of Services at or from the Delivery Point.

4.0 Title and Risk of Loss

As between the Parties, Seller shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of the Services prior to the Delivery Point and Buyer shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of the Services at and from the Delivery Point. Seller warrants that it will deliver to Buyer the Contract Quantity free and clear of all liens, claims and encumbrances arising prior to the Delivery Point.

- 4.1 Seller and Buyer, respectively, shall be responsible for any costs or charges imposed on or associated with the delivery of the Contract Quantity, including control area services, inadvertent energy flows, emission allowances and environmental charges, transmission losses and loss charges relating to the transmission of the Contract Quantity (i) up to the Delivery Point in the case of Seller and (ii) at and from the Delivery Point in the case of Buyer.
- 4.2 Seller shall arrange and be responsible for transmission service to the Delivery Point and shall schedule or arrange for scheduling services with its transmission providers to deliver the Services to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall schedule or arrange for scheduling services with its transmission providers to receive the Services at the Delivery Point.

5.0 Ancillary Services

For purposes of this section, Ancillary Services are defined as scheduling services and other services required to maintain voltage and supply reactive power requirements in accordance with standard practices within the electric utility industry. The Seller shall provide such Ancillary Services as are necessary or appropriate to effect the Transactions agreed to hereunder up to the Delivery Point and the Buyer shall provide such Ancillary Services as are necessary or appropriate to effect the Transactions agreed hereunder at and after the Delivery Point.

6.0 Billing, Netting and Payment

- 6.1 All Transactions initiated under the terms of this Agreement shall be accounted for on the basis of scheduled hourly quantities or Services rendered. The billing cycle for Transactions under this Agreement shall be one calendar month. The Parties shall maintain records of hourly schedules for accounting and billing purposes.
- 6.2 Beginning on the Effective Date of this Agreement, and for each calendar month hereafter in which Transactions occur (the "Transaction Month" in which Product or Services are delivered and for RECs, Transaction Month is when RECs are transferred to Buyer's WREGIS account), each Party shall determine the price(s) for the Services sold to the other Party and agreed to by the Parties in advance of the Transactions plus any interest and damages, to determine the total amount owed by each Party during such Transaction Month. During each Transaction Month, the Parties shall confer by telephone, or by other mutually agreeable means of communication, regarding the total amounts owed by and /or to each other. The payment under this Agreement is not netted against retail sales made to Host Customer.
- 6.3 On or before the 10th day of each calendar month (the "Invoice Month"), each Party shall furnish the other Party with an accounting setting out its calculation of the amount owed by the other Party for the previous Transaction Month. After netting the total amount each Party owes to the other Party under the Transactions, any resulting difference in the balance owed between the Parties shall be paid by the Party owing the greater amount to the Party owing the lesser amount (the "Net Remittance Amount"). On or before the 15th day of the Invoice Month, the Party owed the Net Remittance Amount shall furnish the other Party with an invoice. Payment of the Net Remittance Amount shall be made by wire transfer in immediately available funds on or before the 20th day of the Invoice Month ("Settlement Date"). If the Settlement Date falls on a Saturday, Sunday, or Federal Energy Regulatory Commission ("FERC") holiday or other non-banking day, payment shall be made on the next banking day. Seller will render the statement as supporting documents for invoice to Buyer based on actual quantities of RECs transferred to Buyer in the Buyer's WREGIS account.
- 6.4 The Parties shall make a good faith effort to confer and attempt to promptly resolve any disagreements regarding items contained in any statement or invoice or any

claim or dispute arising out of or relating to this Agreement in an amicable, prompt and mutually agreeable manner. Neither Party may refuse to participate in the netting-out process provided for in this Agreement due to a disputed statement or invoice. In the event the Parties disagree about an amount owed, the Parties shall nevertheless agree to the payment of the disputed amount, pending resolution of the dispute, and shall proceed with the netting-out process. After a dispute is settled, any amount which is determined to be payable by either Party shall bear interest at the Interest Rate set forth in Exhibit A. If an overpayment existed, the refund shall bear interest from the date payment was made until the date of refund. If an underpayment existed, the payment shall bear interest from the original due date to the date payment is made. If, following reasonable efforts to amicably resolve the dispute, the Parties cannot reach resolution then the dispute resolution procedures set forth in this Agreement shall be followed.

- 6.5 All invoices to SVP shall be sent to:
City of Santa Clara
Silicon Valley Power
1500 Warburton Avenue
Santa Clara, CA 95050
Attn.: Account Clerk
Telephone No.: (408) 261-5292
Facsimile No.: (408) 261-2758
- 6.6 All billings to SUNPOWER shall be sent to:
SunPower
Address:
Attn:
- 6.7 All payments to SVP shall be wire transferred to:
Name of Bank: Bank of America
ABA: 121-000-358
Credit: City of Santa Clara - Silicon Valley Power
Account no.: 14363-80211
- 6.8 All payments to SunPower shall be wire transferred to:
Name of Bank:
ABA Routing No.:
Account Number:
- 6.9 The terms and conditions of this Billing, Netting and Payment section apply to the physicals purchased and sold pursuant to an exchange of futures for physicals, and to any financial derivative transactions between the Parties, such as, but not limited to, swaps and options.

7.0 Metering Requirements

- 7.1 Meters. The transfer of all Net Electrical Output or provision of Services from Seller to Buyer shall be measured by certified revenue quality Meters at the Delivery Point or corrected to the Delivery Point. Such Meters shall be selected, provided, installed, owned, maintained and operated by Seller at Seller's sole cost and expense. Seller shall exercise reasonable care in the maintenance and operation of the Meters, and shall test and verify the accuracy of each Meter at least annually. Seller shall inform Buyer in advance of the time and date of these tests, and shall permit Buyer to be present at such tests and to receive the results of such tests. In addition, Customer-Generator's Facility shall be required to install a separate production meter(s) provided by SVP and paid for by the customer or Seller on all customer generation equipment. The meter will have the capability of being read remotely utilizing SVP's remote metering system within one year of installation. If the radio frequency is insufficient, provisions must be made by the customer or Seller to pay for and install equipment to boost the signal as required.
- 7.2 Access by Buyer. Buyer, at its discretion, shall be provided access to all monitored SCADA points to be used for real time monitoring. Seller shall permit Buyer or Buyer's representative access to its Generating Facility for the purpose of installing and maintaining such check meters.

8.0 Confidentiality

- 8.1 Confidential Information. The Contract Price and rate terms of each Transaction shall be treated as Confidential Information by each Party to this Agreement. Except as may be required by applicable law or order of any regulatory agency, court, or commodities exchange, neither Party will, without the express written agreement of the other Party, publish, disclose or otherwise divulge Confidential Information to any third party.
- 8.2 Public Records. Counterparty acknowledges that SVP is a public agency subject to the requirements of the California Public Records Act Cal. Gov. Code section 6250 et seq. SVP acknowledges that Counterparty may submit information to SVP that Counterparty considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise not subject to disclosure pursuant to an exemption to the California Public Records Act (Government Code section 6254). Counterparty acknowledges that SVP may submit to Counterparty information that SVP considers confidential or proprietary or not subject to disclosure pursuant to an exemption to the California Public Records Act (Government Code section 6254). Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection, and/or copying of information designated as "Confidential Information" by a Party disclosing the Confidential Information ("Disclosing Party"), the Party receiving the Confidential Information ("Receiving Party") shall, as soon as practical but within three (3) days of receipt of the request, notify the Disclosing Party, in accordance with the notice provisions of this Agreement, that such request has been made. The Disclosing Party shall be solely responsible for taking whatever legal steps are

necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action, after receiving notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it.

- 8.3 **Liability.** The Receiving Party may cooperate with the Disclosing Party in any efforts to prevent release of the Confidential Information; however, the Receiving Party shall not be required to expend any monies in excess of the cost of notifying the Disclosing Party by telephone, facsimile and/or mail of the pending demand for the Confidential Information. So long as the Receiving Party complies with the provisions of notification set forth in this Agreement, the Receiving Party shall not be liable for, and Counterparty and SVP hereby release each other from, any liability for any damages arising from any requirement under the law that the Receiving Party release Confidential Information to a Requestor, and such release includes the officers, commissioners, employees, agents, council members, and directors, as those terms may apply to each Party hereto, without limitation.

9.0 Creditworthiness

- 9.1 As a condition to entering into this Power Purchase Agreement, either Party may demand a letter of credit, guarantee, or other satisfactory security ("Assurance") if the other Party's creditworthiness does not meet the required standards formally adopted and non-discriminately imposed by the Party requiring the Assurance.
- 9.2 If at any time one Party gives the other Party reasonable grounds to believe that it will commit a breach by non-performance of the terms or conditions of this Agreement, then the other Party may demand Assurance (regardless of whether or not Assurance was required as of the Effective Date of this Agreement) to the extent necessary to fully protect the demanding Party. Such Assurance shall be in a form satisfactory to the demanding Party and shall be delivered to the Party making the demand with forty eight (48) hours of receipt of the demand.

10.0 Notice

All notices given pursuant to this Agreement shall be in writing and delivered by means of the United States Postal Service first-class mail, or private overnight delivery systems, or by facsimile transmission, provided that a copy of the facsimile is also sent on that same date by United States mail or by private express delivery systems, addressed as follows:

To City:
City of Santa Clara
Silicon Valley Power
1500 Warburton Avenue
Santa Clara, CA 95050
Attn.: Risk Manager

Telephone No.: (408) 261-5292
Facsimile No.: (408) 249-0217

To SunPower:

Name
Address
Attn.:
Telephone No:
Facsimile No.:

Notices shall be deemed received on the same day as a facsimile is sent, the day following the date on which the Notice was sent via an overnight mail service, and five (5) days from the date postmarked by the United States Postal Service if sent by first-class mail. If Notice is given pursuant to two different methods receipt, shall be deemed to occur on the earlier date.

11.0 Necessary Authorization

Each Party represents that it has the necessary corporate and/or legal authority to enter into this Agreement and any Transaction[s] which it agrees to hereunder, and to perform each and every duty and obligation imposed by this Agreement, and that this Agreement, when executed by each Party, represents a valid, binding, and enforceable legal obligation of each Party. Each individual affixing a signature to this Agreement represents and warrants that he or she has been duly authorized to execute this Agreement on behalf of the Party he or she represents, and that by signing the Agreement a valid, binding, and enforceable legal obligation of said Party has been created.

12.0 Liability and Damages

- 12.1 Limitation of Remedies, Liability and Damages. For breach of any provision for which an express remedy or measure of damages is provided in this Agreement, such express remedy or measure of damages shall be the sole and exclusive remedy, and the obligor's liability shall be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct actual damages only, and all other remedies or damages at law or in equity are waived.
- 12.2 Consequential Damages. Unless agreed to in writing with respect to a specific Transaction, neither Party shall be liable to the other for any incidental, consequential, punitive, exemplary, or indirect damages, lost profits, other business interruption damages or other special damages arising out of the performance or nonperformance of any obligation under this Agreement, by statute, in tort or in contract or under any indemnity provision or otherwise.
- 12.3 Damages for Failure to Deliver or Receive. If either Party fails to deliver or receive, as the case may be, the Contract Quantity due under a Transaction (thereby

becoming the Defaulting Party), the Non-Defaulting Party shall be entitled to receive from the Defaulting Party an amount calculated as follows (unless performance is excused by Uncontrollable Forces).

12.3.1 Buyer Takes Less Than Contract Quantity. If the amount the Buyer scheduled or received in any hour is less than the hourly Contract Quantity agreed upon in the Transaction, then Buyer shall pay to the Seller an amount calculated as the product of:

- a. the amount, if any, by which the Contract Price exceeded the price for which Buyer's Contract Quantity, or portion thereof, was ultimately sold to a third Party, or absent such a resale, the market price for such quantity at the Delivery Point as determined by the Seller in a commercially reasonable manner (the "Re-sale Price"), and
- b. the amount by which the quantity received by the Buyer was less than the Contract Quantity; plus
- c. all other reasonable costs related to the replacement transaction (e.g. fixed charges, transmission losses, transmission service charges, commissions or other selling costs).

12.3.2 Seller Provides Less Than Contract Quantity. If the amount the Seller scheduled or delivered in any hour is less than the hourly Contract Quantity agreed upon, then Seller shall pay to the Buyer an amount calculated as the product of:

- a. the amount, if any, by which the quantity delivered was less than the Contract Quantity, and
- b. the amount, if any, by which the Contract Price is exceeded by the price at which Buyer purchases Services to replace the Services not delivered by Seller, or absent such a purchase, the market price for such quantity at the Delivery Point, as determined by Buyer in a commercially reasonable manner (the "Replacement Price"); plus,
- c. all other reasonable costs related to the replacement transaction (e.g. fixed charges, losses incurred, transmission source charges, commissions or other purchasing costs).

13.0 Default and Remedies for Default

13.1 Immediate Default. This Agreement may be terminated immediately, without prior notice, by the Non-Defaulting Party upon the occurrence of any of the following:

- 13.1.1
 - 13.1.2 Assignment or transfer of Defaulting Party's interest in this contract, whether voluntarily or by operation of Law, in violation of the provisions of this Agreement;
 - 13.1.3 General assignment of assets for the benefit of Defaulting Party's creditors;
 - 13.1.4 Approval of an order or decree concerning a petition for bankruptcy protection or reorganization or other arrangement under any law relating to the bankruptcy or insolvency of Defaulting Party;
 - 13.1.5 Failure to provide Assurances when demanded.
 - 13.1.6 In the event of a termination of this Agreement for a default under this Section 13.1, the Non-Defaulting Party may elect to be relieved of all obligations under this Agreement, including but not limited to the obligation to schedule or deliver future electric power and shall be entitled to collect any and all damages resulting therefrom, unless there is a good faith dispute of all or any amount of such fee or charge, in which case only the undisputed portion shall be paid, until such dispute is resolved.
- 13.2 Default. This Agreement may be terminated by the Non-Defaulting Party upon the occurrence of a default by the Defaulting Party under this Agreement, and the Defaulting Party fails to cure the same within thirty (30) days or such longer period of time or times as are provided below, after its receipt of notice thereof from the Non-Defaulting Party, or, when the cure reasonably requires more than thirty (30) days, the failure of the Defaulting Party to commence curing the default within such thirty-day period and thereafter diligently and continuously prosecute such cure to completion, including, but not limited to, any of the following:
- 13.2.1 The failure of Defaulting Party to pay any fee or charge by 12 o'clock noon, Pacific Prevailing Time, on the last business day of the Invoice Month
 - 13.2.2 Failure to pay any tax when due;
 - 13.2.3 Failure to observe, perform or comply with any material covenant, term, condition, or provision of this Agreement required to be observed, performed or complied with by the Defaulting Party; or
 - 13.2.4 Any representation, warranty, or statement made in this contract that shall prove to have been incorrect in any material respect when made.

13.3 Remedies for Default. In addition to all other rights and remedies provided by law or otherwise provided in this contract, to which the Non-Defaulting Party may resort cumulatively, or in the alternative, the Non-Defaulting Party is entitled to any of the following:

13.3.1 Except as otherwise provided herein, keep this contract in effect and enforce all of its rights and remedies hereunder, including the right to collect fees and charges as they become due, by appropriate legal action;

13.3.2 Seek the specific performance of the Defaulting Party or other rights or remedies at law or in equity; or

14.0 Uncontrollable Force

14.1 Neither Party shall be in default in the performance of any obligation under this Agreement when a failure to perform its obligations under this Agreement shall be due to an Uncontrollable Force (as defined in Exhibit A). For the duration of the Uncontrollable Force, but for no longer period, the obligations of the Party claiming the event (other than the obligations to make payments then due or becoming due with respect to performance prior to the event) shall be suspended to the extent required.

14.2 Either Party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt written notice and full details of the event to be confirmed in writing to the other Party, as soon as possible, but in no event later than five (5) days after the occurrence. The Party claiming Uncontrollable Force shall exercise due diligence to remove such inability within a reasonable time period.

14.3 In the event a Party becomes aware of an Uncontrollable Force that will affect or may affect its ability to perform under this Agreement, it shall provide notice to the other Party as soon as possible after that Party becomes aware of the anticipated Uncontrollable Force, and in accordance with the notice procedures set forth in this Agreement.

15.0 Assignment

Neither Party shall assign this Agreement or its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Upon any assignment made in compliance with this paragraph, this Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the assigning Party. Notwithstanding the foregoing, either Party may, following written notice to the other Party, but without the need for consent from the other Party (and without relieving itself from liability hereunder), (a) transfer, pledge, or assign this Agreement as security for any financing; (b) transfer or assign this Agreement to a legally related business entity of such Party, or (c) transfer or assign this

Agreement to any person or entity succeeding to all or substantially all of the assets of such Party; provided, however, City may consider, without limitation, the following matters: the net worth of the proposed assignee, its intended or proposed use of the Premises of the Facility, and such assignee's reputation and experience in the energy industry, and any such assignee shall agree to be bound by the terms and conditions of this Agreement.

16.0 Taxes

Seller will be responsible for payment of all Taxes due on the generation or transmission of the power prior to its delivery at the Delivery Point(s) or for the provision of Services. Buyer will be responsible for payment of all Taxes applicable to the Transaction at or after the Delivery Point(s). Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with their intent to minimize taxes, so long as neither Party is materially adversely affected by such efforts. Either Party, upon written request of the other, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with obtaining any exemption from or reduction of tax. Either Party with knowledge of a tax on the purchase or sale of power or Services that may be applicable to a Transaction under this Agreement shall notify the other Party in advance of entering into a Transaction under this Agreement of the applicability of such tax, and shall also notify the other Party of any proposal to implement a new tax or apply an existing tax to the purchase, sale, delivery, or receipt of power or Services hereunder. If either Party is required by a taxing authority to remit Taxes for which the other Party is responsible hereunder, such responsible Party will reimburse the remitting Party for such Taxes paid by the non-responsible Party hereunder.

17.0 Alternative Dispute Resolution

- 17.1 Any controversies between the Parties regarding the construction or application of this Agreement, and claims arising out of this Agreement or any Transaction subject to this Agreement, or breach thereof, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.
- 17.2 The Parties may agree on one (1) mediator. If they cannot agree on one (1) mediator, the Party demanding the mediation shall request that the Superior Court of the county in which the party is situated appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.
- 17.3 Each Party shall bear their own attorney's fees.
- 17.4 The costs of mediation shall be borne by the Parties equally.
- 17.5 Mediation under this paragraph is a condition precedent to filing an action in any court.

18.0 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflict of law rule. State and federal courts situated in the state of California shall have exclusive jurisdiction to resolve any disputes with respect to this Agreement.

19.0 Entire Agreement

This Agreement, the Exhibits hereto, and the Transaction Sheet for each Transaction constitute the entire agreement between the Parties relating to the subject matter hereof and supersedes any other agreements, written or oral, between the Parties concerning such subject matter.

20.0 Binding Effect

The terms and provisions of this Agreement, and the respective rights and obligations hereunder of each Party, shall be binding upon, and inure to the benefit of, its successors and assigns.

21.0 Non-Waiver of Defaults

No waiver by either Party of any default of the other Party under this Agreement shall operate as a waiver of a future default, whether of a like or different character.

22.0 Required Licenses

Each Party guarantees that it has obtained, and will continue to maintain throughout the term of this Agreement, all licenses required by the State of California, Federal, or local governments, and all applicable regulatory agencies for the work to be performed by each Party under the Agreement.

23.0 Credit Reports

If required, each Party agrees to supply the other Party with information regarding its creditworthiness, including but not limited to, agreeing to promptly fill out and return any credit information forms.

24.0 Independent Contractor

The Parties acknowledge that no agency, joint, or other fiduciary relationship shall be deemed to exist or arise with respect to the matters addressed in this Agreement.

25.0 Headings

The headings of the various sections, paragraphs, and subparagraphs are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

26.0 Written Amendments

No amendment, modification or change of the terms and provisions of this Agreement shall become effective unless by written amendment executed by the Parties.

27.0 Severability and Renegotiation

Should any provision of this Agreement for any reason be declared invalid or unenforceable by final and non-appealable order of any court or regulatory body having jurisdiction, such decision shall not affect the validity of the remaining portions of the Agreement, and the remaining portions shall remain in force and effect as if this Agreement had been executed without the invalid portion. In the event any provision of this Agreement is declared invalid, the Parties shall promptly renegotiate such provision(s) to restore this Agreement as near as possible to its original intent and effect.

28.0 Affordable Care Act Obligations

To the extent Counterparty is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Counterparty warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Consultant's responsibilities under the Act.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

29.0 Audit

Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the quantities of Energy delivered at the Delivery Point. If any such examination reveals inaccuracies in any invoice, a new invoice shall be prepared reflecting corrected amounts owed. Such amounts shall be due within ten (10) days of receipt, after which time interest shall accrue at the Interest Rate. No adjustment for any statement or payment will be made unless objection to the accuracy was made prior to the lapse of twelve (12) months from the Settlement Date.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation
doing business as Silicon Valley Power

APPROVED AS TO FORM:

Dated: _____

BRIAN DOYLE
City Attorney

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

“SVP”

***COUNTERPARTY**

***CHOOSE ONE: ENTER STATE NAME CORPORATION/PARTNERSHIP/INDIVIDUAL**

Dated: _____

By: _____

(Signature of Person executing the Agreement on behalf of Counterparty)

Name: _____

Title: _____

Local Address: _____

Email Address: _____

Telephone: _____

Fax: _____

“Counterparty”

S:\Attorney\AGREEMENTS\Electric\Power Purchase (Form).doc

EXHIBIT “A” DEFINITIONS

BESS: means an electrical battery energy storage system.

Business Day: Any day except a Saturday, Sunday, or a Federal Reserve Bank holiday and shall be between the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party’s principal place of business where the relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

Buyer: The Party to a Transaction which is obligated to purchase and receive, or cause to be received, energy during a Delivery Period.

CEC: means California’s State Energy Resources Conservation and Development Commission, also known as the California Energy Commission.

CEC Certification: means that the California Energy Commission (or its successor agency) has certified that the Facility is an ERR for purposes of the California Renewables Portfolio Standard and that all Energy produced by the Facility qualifies as generation from an ERR for purposes of the Facility.

Claiming Party: has the meaning set forth in Exhibit A.

Conditions Precedent: has the meaning set forth in Section 3.9.

Contract Price: The agreed price in US dollars (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of Energy and any other required charges, as specified in a Transaction.

Contract Quantity: The quantity of Services that Seller agrees to deliver, or cause to be delivered to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller, Expressed in hourly, daily, or monthly amounts and quantities for the life of the Transaction.

Contract Year: means a twelve (12) month period beginning on the Delivery Date and each successive twelve (12) month period thereafter during the Term.

Customer-Generator: means a residential or commercial Customer who uses an electrical generating or electric storage facility, or a hybrid system of both, on its premises, interconnected and operating in parallel with SVP’s grid, to manage that Customer-Generator’s own electrical requirements.

Delivery Period: The period of time from the date physical delivery of Energy is to commence to the date physical delivery is to terminate under a Transaction.

Delivery Point: The agreed point (or points) of delivery and receipt of Energy, on an electric

system, as specified in a Transaction.

Energy: means three-phase, 60-cycle alternating current electric energy generated by the Generating Facility pursuant to this Agreement, as expressed in units of kWh or MWh as measured at the Meter(s) at the Delivery Point.

Facility: means an electric generating facility, including a BESS that is located on Customer-Generator's premises, is interconnected and operates in parallel with SVP's electric grid, and is intended to manage Customer-Generator's own electrical requirements.

ERR: means Eligible Renewable Resource as defined in the Renewables Portfolio Standard (RPS) Eligibility Guidebook (Ninth Edition, Revised), publication # CEC-300-2016-006-ED9-CMF-REV, adopted April 27, 2017.

Firm Power: With respect to a Transaction, the only excuse of nonperformance or non-receipt of the Contract Power subject to the Transaction shall be the existence of Uncontrollable Force.

Interest Rate: For any day, the Prime Rate of interest established by the Bank of America, or its successor, at the close of business on such day or if not a Business Day, the immediately proceeding Business Day, plus a differential of two percent (2%), but in no event greater than the maximum interest rate permitted by law.

Interconnection Agreement: An agreement between a customer and SVP that defines how a customer generation system can connect to SVP's electric grid.

Invoice Month: The month in which invoices are sent out for the prior Transaction Month.

Net Remittance Amount: After netting the total amount each Party owes to the other Party under the Transactions, any resulting difference in the balance owed between the Parties shall be paid by the Party owing the greater amount to the Party owing the lesser amount.

Non-Firm Power: With respect to a Transaction, delivery or receipt of Energy may be interrupted for any reason at any time, without liability by either Party, subject to notice and any other agreed limitations contained in the terms of the Transaction.

Schedule or Scheduling: The acts of Seller, Buyer, and/or their designated representatives, including each Party's transmission providers, if applicable, of notifying, requesting, and confirming to each other the quantity and type of Energy to be delivered hourly on any given day or days during the Period of Delivery at a specified Delivery Point.

Rate Schedule: is the set of rates for electric service adopted by the City Council of the City of Santa Clara from time to time.

RECs or Renewable Energy Credits: are tradable, non-tangible energy commodities in the United States that represent proof that 1 megawatt-hour (MWh) of electricity was generated from an eligible renewable energy resource

RPS or Renewable Portfolio Standard Program: A regulation that places an obligation on electricity supply companies to produce a specified fraction of their electricity from renewable energy sources such as hydro, wind, solar, biomass, and geothermal.

Seller: The Party to a Transaction which is obligated to sell and deliver or cause to be delivered the Services covered by the Transaction during a Delivery Period.

Services: Provision of capacity, energy, or transmission.

Taxes: Shall include, but not be limited to: all ad valorem, occupation, utility, gross receipts, sales, use, excise or other income or net worth. Excluded from the foregoing definition of Taxes are any charges associated with restructuring of the electric utility industry, including but not limited to: public benefits charges, grid management charges, or any other governmentally mandated charges imposed or collected as a result of deregulation of the electric industry.

Transaction: Each sale, purchase, or transfer entered into under this Agreement.

Transaction Month: Each calendar month in which wholesale transaction(s) occur. For energy product, the Transaction Month is when energy is physically delivered and for RECs, the Transaction Month is when RECS are transferred to Buyer's WREGIS account.

Transaction Sheet: Written confirmation of the oral agreement between the Parties regarding the sale and purchase of electric energy and/or transmission capacity under the Agreement containing the following terms and conditions: (1) Description of Product (i.e.; Physical, Financial); (2) Buying Party; (3) Selling Party; (4) Delivery Period/Term; (5) Delivery Rate; (6) Point of Delivery; (7) Contract Price (\$ US); (8) Interruption Rights (i.e.; Firm, Non-firm); and (9) Special Conditions.

Uncontrollable Force: Any cause that renders a Party ("Claiming Party") unable to meet its obligations to the other Party, in the exercise of due diligence, to avoid, overcome, or obtain a commercially reasonable substitute therefore, and is beyond the reasonable control of the Claiming Party, including, without limitation: acts of God, such as floods, earthquakes, landslides, tornadoes, hurricanes, blizzards, or unusually severe storms; fires; explosions; civil or public disturbances, strikes, lockouts, or labor disputes; acts of the public enemy; invasions; wars; insurrections or riots; sabotage; action or restraint of any government or governmental authority (so long as the Claiming Party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action); labor or material shortage; force majeure under any supply contract affecting a transmission provider or supplier of electric services; fuel or supply curtailments; and threatened or actual system emergencies. The settlement of strikes, walkouts, lockouts, and other labor disputes shall be entirely within the discretion of a Party.

- a. Neither (i) the loss of Buyer's market nor Buyer's inability economically to use or resell Energy purchased hereunder, nor (ii) Seller's ability to sell Energy at a more advantageous price, shall constitute an event of Uncontrollable Force.

- b. In a firm Transaction, interruption by a transmission provider shall not be deemed to be an event of Uncontrollable Force unless (i) the Party contracting with the transmission provider shall have made arrangement with such transmission provider for the firm transmission of energy to be delivered hereunder, as defined in the transmission provider's tariff, and (ii) such interruption is due to Uncontrollable Force as defined under the transmission provider's tariff.
- c. The term "Uncontrollable Force" shall also specifically include unscheduled power flows which reduce transmission capacity used for the Transaction and are not anticipated, unanticipated deratings of transmission lines used for the Transaction, and forced outages of transmission facilities used for the Transaction.
- d. If a Party specifies the transmission path for the transaction, then neither Party shall be required to use due diligence to find alternate transmission paths in the event of an interruption. If a Party specifies a Delivery Point, then the Seller must use due diligence to deliver to the Delivery Point and the Buyer must take the energy delivered to the Delivery Point unless the Seller cannot deliver to the Delivery Point after exercising due diligence.
- e. In Transaction for financial derivatives, Uncontrollable Force will not stand as an excuse for nonperformance.

WREGIS: The Western Renewable Energy Generation Information System, or any successor renewable energy tracking system for implementing California's Renewables Portfolio Standard.

**EXHIBIT “B”
TRANSACTION SHEET**

This Transaction Letter confirms the agreement between Silicon Valley Power and SunPower Corporation, Systems regarding the sale and purchase of Services under the following terms and conditions:

- 1) **Description of Services:** Daily cycling (charge and discharge) program of a BESS located at the Host Site according to the Operating Schedule set forth in Section 8 of this Transaction Sheet and the Performance Requirements set forth in Section 9 of this Transaction Sheet.
- 2) **Buying Party:** City of Santa Clara, DBA. Silicon Valley Power (“SVP”)
- 3) **Selling Party:** SunPower Corporation, Systems (“SunPower”)
- 4) **Host Site & Delivery Point:**

Host Site Name	Mission College
Host Site Address	3000 Mission College Blvd Santa Clara, CA 95054
Host Site SVP [Account/Meter] Number	[###]
Delivery Point	Charge and discharge of the BESS shall be measured by an interval meter located at the inverter of the BESS (the “BESS Meter”). Meter specifications will be outlined in the Interconnection Agreement

- 5) **Estimated Delivery Date & Term**

Estimated Delivery Date	September 30, 2020
Term	15 years

- 6) **Price (\$ US):** The pricing under this exhibit is established as part of a pilot program under a cooperative research project. Terms and prices may not apply to future customers. Monthly fixed payment of \$15,643.24 over the term of the project (the “Monthly Service Fee”).
- 7) **BESS Specifications:**

BESS Power Capacity (MW)	2 MW
BESS Energy Capacity at Commercial Operation Date (COD) (MWh)	4 MWh

Equipment	Fluence Advancion Energy Storage System consisting of DC energy storage cells, inverter and enclosure
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8) **Operating Schedule:**

- a. Each day of the year (365 days per year, 366 days per leap year) (an “Operating Day”) SunPower will:
 - i. charge the BESS (a) only during the four (4) lowest priced hours for an Operating Day as determined by the California Independent System Operator (“CAISO”) PG&E DLAP day ahead market hourly prices published on the day prior to the Operating Day (the “Daily Charging Period”).
 - ii. discharge the BESS during the two (2) highest priced hours for an Operating Day as determined by the CAISO PG&E DLAP Day Ahead Market hourly prices published on the day prior to the Operating Day (the “Daily Discharge Period”).
 - iii. On Operating Days when highest priced hours as described in Section 8.a.ii above occur prior to the lower priced hours as described in Section 8.a.i above such that SunPower cannot charge the battery completely before the Daily Discharge Period, SunPower shall be permitted to charge the BESS during the lowest priced hours before the first hour of the Daily Discharge Period such that SunPower can completely charge the BESS.
 - iv. The applicable price this Section 8.a will be for Market DAM, and Location DLAP_PGAE-APND, as currently published at the following website: <http://oasis.aiso.com/mrioasis/logon.do>.
- b. Changes to Operating Requirements:
 - i. SVP may request a change to the operating schedule set forth in Section 7.a. above no more than three (3) times per year. Upon receipt of a written request (a “Change Request”) from SVP to change the operating schedule, SunPower will respond within ten (10) business days with its approval or denial of such Change Request, based on the viability of complying with such Change Request based on the physical capabilities of the BESS and SunPower’s obligations to the Host. If approved, SunPower will be obligated to begin complying with the Change Request not later than forty-five (45) days from receipt of the Change Request.

9) **Performance Requirements:**

- a. **Annual Discharges.** SunPower guarantees to SVP that the total kWh to be discharged during the Daily Discharge Periods (the “Annual Discharges”) in each year of the Term (each, a “Performance Year”) shall be greater than or equal to the amounts set forth in the table below (the “Guaranteed Discharges”):

Performance Year	End of Year Guaranteed Discharges (kWh)
1	1,399,939
2	1,358,129

3	1,319,201
4	1,280,274
5	1,242,789
6	1,206,745
7	1,172,143
8	1,137,541
9	1,104,381
10	1,072,662
11	1,040,944
12	1,010,667
13	981,832
14	951,555
15	924,162

- b. **BESS Controller:** SunPower and SVP will cooperate to provide SVP with access to operating data about the BESS, provided that SunPower will only be obligated to provide such data to the extent permitted by the Host Customer.

- c. **Calculation of Annual Discharges.** Annual Discharges for each day of Performance Year shall be calculated according to the following formula:

$$\text{Annual Discharges} = \text{Metered Discharges} - \text{Non-Compliant Charges}$$

where:

Metered Discharges shall be equal to the total kWh discharged by the BESS during the Daily Discharge Periods during all Operating Days of a Performance Year

Non-Compliant Charges shall be equal to the product of (a) the total kWh charged by the BESS during hours outside of the Daily Charging Period during all of the Operating Days of a Performance Year, times (b) 85%.

- d. **Liquidated Damages.**

- i. **Annual Discharge Shortfall.** If, in any Performance Year, the Annual Discharges, as measured according to this Section 9, are less than the Guaranteed Discharges for that Performance Year, SunPower will pay to SVP an amount equal to the product of (a) the \$/kWh in the table below for the applicable Performance Year, times (b) the difference, if positive, of the Guaranteed Discharges minus the Annual Discharges (the “Annual Discharge Shortfall LD Amount”).

Performance Year	LD Amount /kWh	Total Daily LD	Total Peak Day LD	Total LD
1	\$0.050	\$69,999	\$117,720	\$187,719
2	\$0.052	\$69,999	\$117,720	\$187,719
3	\$0.053	\$69,999	\$117,720	\$187,719
4	\$0.055	\$69,999	\$117,720	\$187,719
5	\$0.056	\$69,999	\$117,720	\$187,719
6	\$0.058	\$69,999	\$117,720	\$187,719
7	\$0.060	\$69,999	\$117,720	\$187,719
8	\$0.062	\$69,999	\$117,720	\$187,719
9	\$0.063	\$69,999	\$117,720	\$187,719
10	\$0.065	\$69,999	\$117,720	\$187,719
11	\$0.067	\$69,999	\$117,720	\$187,719
12	\$0.069	\$69,999	\$117,720	\$187,719
13	\$0.071	\$69,999	\$117,720	\$187,719
14	\$0.074	\$69,999	\$117,720	\$187,719
15	\$0.076	\$69,999	\$117,720	\$187,719

ii. **Peak Day Shortfall.** SunPower shall be obligated to discharge at least one-thousand nine hundred and sixty-two (1,962) kWh from the BESS during each Peak Day Max Price Hour in each Peak Day in each calendar month of the Term. To the extent SunPower fails to meet such obligation, SunPower will pay SVP an amount equal to the product of (a) \$5.00/kWh, times (b) the difference, if positive, of (i) one thousand nine hundred and sixty-two (1,962) kWh *minus* (ii) the minimum kWh discharged by the BESS during any single Peak Day Max Price Hour on any Peak Day in such calendar month. For the purposes of this Section 8.d.ii, “Peak Day” shall mean an Operating Day for which the maximum daily temperature as measured by the weather station at San Jose Airport, is one of the three (3) highest maximum daily temperatures for the calendar month during which the Operating Day occurs, and “Peak Day Max Price Hour” shall mean the single highest priced hour of a Peak Day as determined by the CAISO Day Ahead Market hourly prices published on the day prior to that Peak Day (the “Peak Day Shortfall LD Amount”).

iii. **LD Payments.** Annual Discharge Shortfall LD Amounts and Peak Day

Shortfall LD Amounts will be measured at the end of each Performance Year and will be due with sixty (60) of the end of such Performance year upon an invoice from SVP, *provided that*, in no event shall the sum of any Annual Discharge Shortfall LD Amounts and Peak Day Shortfall LD Amounts owed by SunPower with respect to a Performance Year exceed the total Monthly Service Fees received by SunPower in that Performance Year.

10) **Non-Applicable Sections to Exhibit:** The following sections of the Agreement will not apply to the transaction governed by this Transaction Sheet:

- a. Section 3.3 Schedule Imbalances;
- b. Section 3.9 Conditions Precedent (d) and (e)
- c. Section 4.0 Title and Risk of Loss
- d. Section 5.0 Ancillary Services
- e. Under Section 6.0 Billing, Netting and Payment
 - i. The last sentence of Section 6.3 that reads as follows: "Seller will render the statement as supporting documents for invoice to Buyer based on actual quantities of RECs transferred to Buyer in the Buyer's WREGIS account."
 - ii. Section 6.9
- f. Under Section 7.0 Metering Requirements:
 - i. Section 7.2
- g. Under Section 12.0 Liabilities and Damages
 - i. Section 12.3, which shall be superseded by the Performance Requirements set forth in Section 9 of this Transaction Sheet
- h. Under Section 13.0 Default and Remedies for Default
 - i. Section 13.1.5

This Transaction Letter is being provided pursuant to and in accordance with the Transaction Enabling Agreement dated the ____ day of ____, 2019_ between the parties and constitutes part of and is subject to all the terms and conditions of such Agreement.

ACKNOWLEDGED AND AGREED TO:

Silicon Valley Power

SunPower

Per: _____

Per: _____

Title: _____

Title: _____

Date: _____

Date: _____

For any single Transaction whose Delivery Term exceeds three hundred and sixty five (365) days, the undersigned acknowledges that he/she has the necessary authorization to enter into such a Transaction.

EXHIBIT "C"

TERM

Term. Unless terminated earlier as provided herein, the term of this Agreement shall commence on the Delivery Date and shall terminate at 2400 hours PST on _____ following the _____ anniversary of the Delivery Date. Any renewals will require mutual written consent of intent to extend the term of this agreement for an additional _____ term.

Confidential Status. As noted in Section 8.2 above, City is a public agency subject to the requirements of the California Public Records Act (Cal. Government Code section 6250 et seq.). Notwithstanding the previous sentence, both Seller and the City consider the information contained in this EXHIBIT B to be confidential and/or proprietary and/or protected from disclosure pursuant to exemptions to the California Public Records Act (Cal. Government Code sections 6254 and 6255). Consequently, the Parties agree to treat the contents of this EXHIBIT B as confidential.

Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information contained in this EXHIBIT B, City as soon practical but within three (3) days of receipt of the request, shall notify Seller that such request has been made, by telephone call, letter sent via facsimile and/or by US Mail to the address and facsimile number listed in Section 10 of this Agreement. Seller shall be responsible for taking whatever legal steps are necessary to protect information contained in this EXHIBIT B and to prevent release of information to the Requestor. If Seller takes no such action, after receiving the foregoing notice from City, City shall be permitted to comply with the Requestor's demand and is not required to defend against it.

City agrees to cooperate with Seller in any efforts to prevent release of the information contained in this EXHIBIT B; however, City shall not be required to expend any monies in excess of the cost of notifying Seller by telephone, facsimile and/or mail of the pendency of a demand for the information contained in this EXHIBIT B. So long as City complies with the provisions of notification set forth in this EXHIBIT B, City shall not be liable for, and Seller and City hereby release each other from, any liability for any damages arising from any requirement under the law that City release the information contained in this EXHIBIT B to a Requestor, and such release includes the officers, commissioners, employees, agents, council members, attorneys and directors, as those terms may apply to each Party, without limitation.