Performance Guarantee Agreement & Limited Warranty Agreement

This Performance Guarantee Agreement (this "**Agreement**") is entered into by the parties listed below (each a "**Party**" and collectively the "**Parties**") as of the date signed by Seller below (the "**Effective Date**").

Purchaser:		**Seller:**	
Name and Address	**City of Tempe** 20 E 6th St, Tempe, AZ 85281 **East Valley Bus and Operations Maintenance Facility SES 2** Attn: Michael Greene	Name and Address	**SolarCity Corporation** 3055 Clearview Way San Mateo, CA 94402 Attention: Contracts
Phone	(480) 350-8516	Phone	(650) 638-1028
Fax		Fax	(650) 560-6460
E-mail	Michael_Greene@tempe.gov	E-mail	contracts@solarcity.com

This Agreement sets forth the terms and conditions of the performance guarantee required to be provided by Seller pursuant to the requirements of A.R.S. §15-213.03 in conjunction with that certain Solar Services Agreement by and between Seller and Purchaser dated of even date herewith (the "**SSA**"). All capitalized terms used hereunder shall have the meanings given such terms in the SSA. Pursuant to § 21.e of the SSA both Parties acknowledge that this Agreement is (a) necessary to the performance under the SSA, (b) necessary to carry out the intent of the SSA, (c) is not consistent with the provisions of the SSA, and (d) does not involve the assumptions of obligations other than those provided for in the SSA. This agreement provides additional assurance to the Purchaser in exchange for $10 and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged. Exhibit 1 attached to this Agreement is incorporated and made part of this Agreement.

1. Seller will provide to Purchaser a feasibility study pursuant to provisions of A.R.S. §15-213.03(E). This report shall be reviewed and approved by Purchaser before the commencement of design. Seller shall transmit a copy of the approved feasibility study to the Governor's Office of Energy Policy.

2. Seller guarantees that during the term of the SSA the Generating Facilities in aggregate will generate the guaranteed annual kilowatt-hours (kWh) ("**Guaranteed Annual kWh**") of energy set forth as follows:

   A. Commencing on the first anniversary of the date that the System achieves permission to operate from the Utility, if at the end of each successive twelve (12) month anniversary of the date that the System achieves permission to operate from the Utility, the cumulative Actual Annual kWh (defined below) generated by the System is ***less*** than the Guaranteed Annual kWh, then Seller will send Purchaser a refund check equal to the difference between the Guaranteed Annual kWh and the cumulative Actual Annual kWh multiplied by the Guaranteed Energy Price per kWh (defined below). Seller will make that payment within thirty (30) days after the end of the relevant calendar year.

   B. Commencing on the first anniversary of the date that the System achieves permission to operate from the Utility, if at the end of each successive twelve (12) month anniversary of the date that the System achieves permission to operate from the Utility the Actual Annual kWh is ***greater*** than the Guaranteed Annual kWh during any twelve (12) month period, this surplus will be carried over and will be used to offset any deficits that may occur in the future.

   C. Guaranteed Annual kWh:

Year	**Guaranteed kWh**
Year 1 (95%)	262,565
Year 2 (95%)	261,252
Year 3 (95%)	259,946
Year 4 (95%)	258,646

Year 5 (aggregate of years 1-5 @ 100%)	1,368,170
Year 6 (95%)	256,066
Year 7 (95%)	254,786
Year 8 (95%)	253,512
Year 9 (95%)	252,244
Year 10 (aggregate of years 6-10 @ 100%)	1,334,306
Year 11 (95%)	249,728
Year 12 (95%)	248,479
Year 13 (95%)	247,237
Year 14 (95%)	246,001
Year 15 (aggregate of years 11-15 @ 100%)	1,301,280
Year 16 (95%)	243,547
Year 17 (95%)	242,329
Year 18 (95%)	241,118
Year 19 (95%)	239,912
Year 20 (aggregate of years 16-20 @ 100%)	1,269,072

D. "**Actual Annual kWh**" means the AC electricity produced by the System in kilowatt-hours measured and recorded by Seller during each successive twelve (12) month anniversary (commencing on the first such anniversary) of Purchaser's last of the first monthly payments under the SSA. To measure the Actual kWh we will use the SolarGuard™ Monitoring Service or to the extent such services are not available, Seller will estimate the Actual kWh by reasonable means.

E. "**Guaranteed Energy Price per kWh**" means the dollar value per kWh as calculated in the table below:

True Up Term	**Guaranteed Energy Price per kWh**
Year 1 Guaranteed Energy Price	$0.007
Year 2 Guaranteed Energy Price	$0.008
Year 3 Guaranteed Energy Price	$0.010
Year 4 Guaranteed Energy Price	$0.011
Year 5 Guaranteed Energy Price	$0.013
Year 6 Guaranteed Energy Price	$0.014
Year 7 Guaranteed Energy Price	$0.016
Year 8 Guaranteed Energy Price	$0.018
Year 9 Guaranteed Energy Price	$0.019
Year 10 Guaranteed Energy Price	$0.021
Year 11 Guaranteed Energy Price	$0.023
Year 12 Guaranteed Energy Price	$0.024
Year 13 Guaranteed Energy Price	$0.026
Year 14 Guaranteed Energy Price	$0.028
Year 15 Guaranteed Energy Price	$0.030
Year 16 Guaranteed Energy Price	$0.032
Year 17 Guaranteed Energy Price	$0.033
Year 18 Guaranteed Energy Price	$0.035
Year 19 Guaranteed Energy Price	$0.037
Year 20 Guaranteed Energy Price	$0.039

3. The term of this Agreement shall be concurrent with the term of the SSA.

LIMITED WARRANTY AGREEMENT (Commercial SSA)

This Limited Warranty Agreement (this "Agreement") is SolarCity Corporation's ("SolarCity") agreement to provide installation and other services for the solar panel systems(s) (the "System") it will use to provide solar services to you (the "Purchaser" or the "City") and to provide a warranty for the System. A description of the System that will be used to provide solar services to you is set forth in the SSA agreement (the "SSA") that you executed with SolarCity. The System will be professionally installed by SolarCity at the address you listed in the SSA. We will refer to the installation location as the "Premises" or your "Facility."

When you choose SolarCity, you can be assured that we will stand behind our System and installation with industry-leading warranties. We will professionally install your solar system in a good and workman-like manner and honor our commitment to you to keep your System in good working order. Read below for full details on SolarCity's Installation Warranty, Use Warranty, Roof Warranty and Repair Promise. Capitalized terms not otherwise defined herein shall have the meaning set forth in your SSA.

1. **SOLARCITY'S STANDARDS**

A. For the purpose of this Agreement the standards for SolarCity's performance will be (i) normal professional standards of performance within the solar photovoltaic power generation industry in the relevant market; and (ii) Prudent Electrical Practices. "Prudent Electrical Practices" means those practices, as changed from time to time, that are engaged in or approved by a significant portion of the solar energy electrical generation industry operating in the United States to operate electric equipment lawfully and with reasonable safety, dependability, efficiency and economy. For purposes of this Agreement, SolarCity's performance shall include necessary roof preparation for the installation of the System.

B. All work done under this Agreement shall be performed in accordance with the Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction – 2013 Revision to the 2012 Edition ("MAG Specifications") and the City of Tempe Supplement to the MAG Uniform Standard Details and Specifications for Public Works Construction – 2010 ("City of Tempe Supplement"), except as modified in this Agreement.

2. **LIMITED WARRANTIES**

A. **LIMITED WARRANTIES**

SolarCity warrants the System as follows:

i. **Installation Warranty**

SolarCity will professionally install the System in a good and workman-like manner according to our commitments to you in Section 1. This installation warranty will run for two (2) years following the commencement of System operation.

ii. **Use Warranty**

Under normal use and service conditions, the System will be free from defects in workmanship or defects in, or a breakdown of, materials or components during the Warranty Period (as defined below);

iii. **Roof Warranty**

If SolarCity penetrates the Facility roof in performing the Installation Services, SolarCity will warrant roof damage it causes as a direct result of these roof penetrations. This roof warranty will run the longer of (A) two (2) years following the completion of the System installation; and (B) the length of any existing installer warranty on the Facility's roof; and

iv. **Repair Promise**

During the Warranty Period, SolarCity will repair or replace any defective part, material or component or correct any defective workmanship, at no cost or expense to Purchaser (including all labor costs), when Purchaser submits a valid claim to SolarCity under this Agreement. If we damage your Facility, Property or belongings we will repair the damage we cause or pay you for the full reasonable documented cost to repair the damage we cause. SolarCity may use new or reconditioned parts when making repairs or replacements. SolarCity may also, at no additional cost to Purchaser, upgrade or add to any part of the System to ensure that it performs according to the guarantees set forth in this Agreement.

This Agreement will continue from the date SolarCity starts installing the System at your Facility through the longer of (i) the SSA Term (as that term is defined in the SSA); and (ii) ten (10) years (the "Warranty Period") except for the warranties specified in Section 2 (A)(i) and (iii) above, which may have shorter periods. If Purchaser has assumed an existing SSA, then this Agreement will cover Purchaser for the remaining balance of the original Warranty Period.

B. MAINTENANCE AND OPERATION

i. General

During the Warranty Period, SolarCity will operate and perform all routine and emergency repairs to and maintenance of the System. SolarCity will provide Purchaser with a copy of SolarCity's Solar Operation and Maintenance Guide. This guide provides Purchaser with System operation and maintenance instructions, answers to frequently asked questions, troubleshooting tips and service information.

ii. SolarGuard

During the Warranty Period, SolarCity will provide Purchaser, at no additional cost, the SolarGuard Monitoring Service ("SolarGuard"). SolarGuard is a proprietary monitoring system designed and installed by SolarCity that captures and displays historical energy generation data over an Internet connection and consists of hardware located on site and software hosted by SolarCity. The SolarGuard service requires a high speed internet line to operate. Therefore, during the Warranty Period, Purchaser agrees to maintain the communication link between SolarGuard, the System and the Internet. Purchaser agrees to maintain and make available, at Purchaser's cost, a functioning indoor Internet connection with one available wired Ethernet port and standard AC power outlet within eighty (80) feet of the System's AC/DC inverter(s). This communication link must be a 101100 Mbps Ethernet connection that supports common internet protocols (TCP/1 P and DHCP).

C. MAKING A CLAIM; TRANSFERRING THIS WARRANTY

i. Claims Process

Purchaser can make a claim by:

a. Emailing SolarCity at the email address below;
b. Writing us a letter and sending it overnight mail with a well-known service; or
c. Sending us a fax at the number below.

ii. Transferable Limited Warranty

SolarCity will accept and honor any valid and properly submitted Warranty claim made during the Warranty Period by any person to whom Purchaser properly transfers the SSA.

D. EXCLUSIONS AND DISCLAIMER

The Warranties set forth in Section 2 (A)(i), (ii) and (iii) do not apply to my repair, replacement or correction required due to the following:

i. Someone other than SolarCity or its approved service providers installed, removed, re-installed or repaired the System;

ii. Destruction or damage to the System or its ability to safely produce energy not caused by SolarCity or its approved service providers while servicing the System (e.g., a tree falls on the System);

iii. Purchaser's failure to perform, or breach. of, Purchaser's obligations under the SSA (such as if Purchaser modifies or alters the System);

iv. Purchaser's breach of this Agreement including being unavailable to provide access or assistance to SolarCity in diagnosing or repairing a problem or failing to maintain the System as stated in the Solar Operation and Maintenance Guide;

v. any Force Majeure Event (as defined below);

vi. a power or voltage surge caused by someone other than SolarCity including a grid supply voltage outside of the standard range specified by the Utility;

vii. any System failure not caused by a System defect (e.g., such as making roof repairs); or

viii. theft of the System.

This Agreement gives you specific rights, and Purchaser may also have other rights which vary from state to state. This Agreement does not warrant any specific electrical performance of the System, other than that described above. The promises in this warranty are the only express warranties made by SolarCity with respect to the System. SolarCity hereby disclaims, and any beneficiary of this Agreement hereby waives any warranty with respect to any cost savings from using the System.

3. ADDITIONAL SERVICES

(A) SCOPE OF ADDITIONAL SERVICES

Purchaser agrees that if (i) the System needs any repairs that are not the responsibility of SolarCity under this Agreement, (ii) the System needs to be removed and re-installed to facilitate remodeling of the Facility or (iii) the System is being relocated to another Facility pursuant to the SSA (collectively, items (i)- (iii) are "Additional Services"), Purchaser will have SolarCity, or another similarly qualified service provider, at Purchaser's expense, perform such repairs, removal and reinstallation or relocation on a time and materials basis.

(B) APPROVED SERVICE PROVIDERS

Purchaser's retention of a third party to perform Additional Services that is not qualified to perform such Additional Services will void the Warranty. To prevent voiding the Warranty, Purchaser should obtain the written consent of SolarCity (which shall not be unreasonable withheld) prior to engaging a third party to perform Additional Services. If Purchaser engages a third party service provider to perform Services without the prior consent of SolarCity, Purchaser does so at the risk that SolarCity will subsequently determine such service provider was not qualified to perform the Additional Services.

(C) PRICING ON ADDITIONAL SERVICES

Performance of Additional Services by SolarCity will be on a time and materials basis at SolarCity's then current standard rates.

4. FORCE MAJEURE

If SolarCity is unable to perform all or some of its obligations under this Agreement because of a Force Majeure Event, SolarCity will be excused from whatever performance is affected by the Force Majeure Event, provided that:

1. SolarCity, as soon as is reasonably practical, gives Purchaser notice describing the Force Majeure Event;
2. SolarCity's suspension of its obligations is of no greater scope and of no longer duration than is required by the Force Majeure Event; and
3. No SolarCity obligation that arose before the Force Majeure Event that could and should have been fully performed before such Force Majeure Event is excused as a result of such Force Majeure Event.

"Force Majeure Event" means any event, condition or circumstance beyond the control of and not caused by SolarCity's fault or negligence. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any governmental authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any governmental authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products; and failure of equipment not utilized by SolarCity or under its control.

5. LIMITATIONS ON LIABILITY

(A) NO CONSEQUENTIAL DAMAGES

In no event shall either party or its agents or subcontractors be liable to the other for indirect, punitive, exemplary, incidental or consequential damages of any nature. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation may not apply in such states.

(B) LIMITATION OF DURATION OF IMPLIED WARRANTIES

Any implied warranties, including the implied warranties of fitness for particular purpose and merchantability arising under state law, shall in no event extend past this Agreement. Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply in such states.

(C) LIMIT OF LIABILITY

Notwithstanding any other provision of this Agreement to the contrary, SolarCity's total liability arising out of or relating to this Agreement shall in no event:

i. For System Failure or Replacement: exceed the total of the Purchaser's payments projected to be made during the Term of the PPA.

ii. For damages to your Facility, Property or belongings: exceed five million dollars ($5,000,000.00).

6. NOTICES

TO SOLARCITY:
SolarCity Corporation
3055 Clearview Way
San Mateo, CA 94402
Attention: Contracts
Telephone: 650-638-1028
Facsimile: 650-560-6460
Email; contracts@solarcity.com

TO Purchaser:
Name: City of Tempe
Address: 20 East 6th Street, Tempe, AZ 85281
Attention: Michael Greene
Telephone: 480-350-8516
Facsimile: 480-858-7701
Email: Michael_Greene@tempe.gov

All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and shall be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the party identified in this Agreement at the address set forth above or such other address as either party may specify in writing. Each party shall deem a document faxed or sent by electronic mail to it as an original document.

7. APPLICABLE LAW / DISPUTE RESOLUTION

All Agreement claims and controversies under this Agreement shall be resolved according to A.R.S. Title 15-213 and rules adopted there under including Tempe City Code, Chapter 26A.

8. ASSIGNMENT AND TRANSFER OF THIS AGREEMENT

SolarCity may assign its rights or obligations under this Agreement to a third party without your consent, provided that any assignment of SolarCity's obligations under this Agreement shall be to a party qualified to perform such obligation. SolarCity shall provide notice of any such assignment. This Agreement protects only the party that hosts the System. Purchaser's rights and obligations under this Agreement will be automatically transferred to any party to whom Purchaser properly transfers the SSA.

9. ENTIRE AGREEMENT: CHANGES

This Agreement together with Exhibit 1 and other identified Exhibits/Addendums, attached hereto incorporated herein by reference, contains the parties' entire agreement regarding the matters set forth herein (which, for the avoidance of doubt specifically excludes the SSA). SolarCity's obligations under this Agreement are separate and distinct from the obligations of the Seller or its assigns under the SSA. No breach of this Agreement shall affect Purchaser's obligations under the SSA. The SSA may be assigned to a third party without assignment of SolarCity's obligations under this Agreement. Any change to this Agreement must be in writing and signed by both Parties. If any portion of this Agreement is determined to be unenforceable, the remaining provisions shall be enforced in accordance with their terms or shall be interpreted or re written so as to make them enforceable. Provisions that should reasonably be considered to survive termination of this Agreement shall survive.

Signature page to follow

City of Tempe

Signature: _____

Printed Name: _____

Title: _____

Date: _____

SolarCity Corporation

Signature: _____

Printed Name: Lyndon Rive

Title: CEO

Date: 10/2/15

LEGAL APPROVED
INITIAL
DATE 10/2/15
SolarCity

EXHIBIT 1

1. ARIZONA LAW. The law of Arizona applies to this Agreement including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona, Arizona Revised Statutes (A.R.S. §) 15-213, and its implementing rules.

2. CANCELLATION FOR CONFLICT OF INTEREST. Per A.R.S.§ 38-511 the City may cancel this Agreement within three (3) years after Agreement execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on behalf of the City is, or becomes at any time while the Agreement or an extension the Agreement is in effect, an employee of or a consultant to any other party to this Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when SolarCity receives written notice of the cancellation unless the notice specifies a later time.

3. Contract Claims. All Agreement claims and controversies under this Agreement shall be resolved according to A.R.S. Title 15-213 and Tempe City Code, Section 26A.

4. Contractor's Employment Eligibility. By entering the contract, contractor warrants compliance with A.R.S. 41-4401, A.R.S. 23-214, the Federal Immigration and Nationality Act (FINA), and all other federal immigration laws and regulations.

   a. The City may request verification of compliance from any contractor or subcontractor performing work under this contract. The City reserves the right to confirm compliance in accordance with applicable laws.

   b. Should the City suspect or find that the contractor or any of its subcontractors are not in compliance, the City may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the contract for default, and suspension and/or debarment of the contractor. All costs necessary to verify compliance are the responsibility of the contractor.

5. Scrutinized Business Operations. Per A.R.S. 35-391 and 35-393, the City is prohibited from purchasing from a company with scrutinized business operations in Sudan or Iran.

6. Terrorism Country Divestments. Per A.R.S. 35-392, the City is prohibited from purchasing from a company that is in violation of the Export Administration Act.

7. Licenses and Permits: SolarCity and its sub-contractors shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by SolarCity, at its sole expense.

8. Professional Electrical Engineer. A professional electrical engineer, registered in the State of Arizona, must provide sealed electrical plans and specifications.

9. Professional Structural Engineer. A professional structural engineer, registered in the state of Arizona, must provide sealed structural plans and calculations for proposed roof mounted and ground mounted installations relative to the applicable live and dead loads in accordance with the Tempe Building Code.

10. The City is an equal opportunity, affirmative action employer. SolarCity hereby covenants that it shall not discriminate unlawfully against any employee or applicant for employment, nor shall it deny the benefits of this Contract, to any person on the basis of race, religion, color, national origin, ancestry, physical or mental disability, age, veteran status, marital status, sex, gender, sexual orientation or gender identification. SolarCity agrees and covenants that it will comply in all respects with the applicable provisions of Executive Order 11246, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Vietnam Era Veterans' Readjustment Assistance Act, the Rehabilitation Act, Arizona Executive Order No. 99-4, and all other applicable state and federal statutes governing equal opportunity.

11. SolarCity expressly warrants that it has and will continue to comply in all respects with Arizona law concerning employment practices and working conditions, pursuant to A.R.S. § 23-211, *et seq.*, and all laws, regulations, requirements and duties relating thereto. SolarCity further warrants that to the extent permitted by law, it will fully indemnify the City for any and all losses arising from or relating to any violation thereof.

12. SolarCity agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work and services pursuant to the Contract, and all applicable safety and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, and the Legal Arizona Workers Act (LAWA), and all amendments thereto, along with all attendant laws, rules and regulations. SolarCity acknowledges that a breach of this warranty is a material breach of this Contract and SolarCity is subject to penalties for violation(s) of this provision, including termination of this Contract. City retains the right to inspect the documents of

any and all contractors, subcontractors and sub-subcontractors performing work and/or services relating to the Contract to ensure compliance with this warranty. Any and all costs associated with City inspection are the sole responsibility of SolarCity. Solarcity hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.

13. SolarCity will comply with all security clearance requirements in place for personnel access to the South Water Treatment Plant facility that may include fingerprint processing and background checks.

14. SolarCity shall complete a video/photo inventory of the selected facilities within the project limits and provide a copy of the video or photos to the City prior to the start of construction. SolarCity will restore all materials and facilities in "like kind" and will be responsible for repairing any damage to facilities that are within the project limits or were disturbed or damaged as a result of the contractor's work.

15. SolarCity shall be responsible for all costs involved in the development and implementation of a comprehensive monitoring system that will track technical and financial information for each PV system installed.

16. All components of the PV system shall be approved, listed, and labeled by an acceptable third party and meet the requirements of the Tempe Building Code and Tempe Electrical Code.

17. Any and all required permits, easements and associated costs for this project are the responsibility of SolarCity.