CITY AND COUNTY OF SAN FRANCISCO
SAN FRANCISCO PUBLIC UTILITIES COMMISSION

AGREEMENT

between

CITY AND COUNTY OF SAN FRANCISCO

and

_____

THIS AGREEMENT (this "Agreement") is made this _____ day of _____ 20__, in the City and County of San Francisco, State of California, by and between _____ ("System Owner"), and, if the Site Owner is different from the System Owner, _____ ("Site Owner") (together the "Project Proponent") and the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("City" or "CCSF") acting by and through the San Francisco Public Utilities Commission ("Agency") (each individually a "Party" and collectively the "Parties"). If an additional individual (the Applicant) assists the Project Proponent with the GoSolarSF Program requirements, s/he must also sign below to verify the accuracy of the information provided.

W I T N E S S E T H:

WHEREAS, Project Proponent has submitted to the Agency an application seeking a Solar Incentive Payment to reimburse Project Proponent for expenses incurred in the installation of a _____-kilowatt (kW) CEC-AC photovoltaic panel system at the following location, _____, ("Site") as described in the Application Documents ("the Project"); and

WHEREAS, City desires to provide such a payment on the terms and conditions set forth herein**;**

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Specific Terms. The following capitalized terms (whether singular or plural) shall have the meanings set forth below:

(a) "**Agreement**" shall mean this Agreement.

(b) "**Application Documents**" shall mean collectively: (i) the application for a Solar Incentive Payment submitted by Project Proponent to the Agency, including all exhibits, schedules, appendices and attachments thereto; (ii) all documents, correspondence and other written materials submitted in respect of such application; (iii) all amendments, modifications or supplements to any of the foregoing approved in writing by City, and (iv) any documents submitted by Project Proponent to the State of California to obtain an incentive under the CSI.

(c) "**California Solar Initiative**" or "**CSI**" shall mean the program providing incentives for the installation and operation of solar photovoltaic projects authorized by Chapter 132, Statues of 2006 (SB 1, Murray) and the California Public Utilities Commission ("CPUC"), and managed by the CPUC, as such program may be amended from time to time.

(d) "**California Solar Initiative Program Handbook**" or "**CSI Program Handbook**" shall mean the handbook for the CSI as such handbook may be amended from time to time.

(e) "**GoSolarSF Program**" shall mean the solar energy incentive program approved by the San Francisco Board of Supervisors in Ordinance Number 102-08 and the solar energy incentive pilot program approved by the San Francisco Board of Supervisors in Ordinance Number 106-08.

(f) "**GoSolarSF Rules**" shall mean the requirements for the GoSolarSF Program developed by the Agency, including applicable requirements from the CSI program, as set forth in Section 3.3 of this Agreement, as such requirements may be amended from time to time, including but not limited, to any requirements set forth in the application package, the application submitted by Project Proponent to the Agency, and this Agreement.

(g) "**Charter**" shall mean the Charter of City.

(h) "**Indemnified Parties**" shall mean: (i) City, including the Agency and all commissions, departments, agencies and other subdivisions of City; (ii) City's elected officials, directors, officers, employees, agents, successors and assigns; and (iii) all persons or entities acting on behalf of any of the foregoing.

(i) "**Losses**" shall mean any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, judgments, fees, expenses and costs of whatsoever kind and nature (including legal fees and expenses and costs of investigation, of prosecuting or defending any Loss described above) whether or not such Loss be founded or unfounded, of whatsoever kind and nature.

(j) "**Publication**" shall mean any report, article, educational material, handbook, brochure, pamphlet, press release, public service announcement, web page, audio or visual material or other communication for public dissemination, which relates to all or any portion of the Project or is paid for in whole or in part using the Solar Incentive Payment.

(k) "**Site Owner**" shall mean all persons who own the Site.

(l) "**Solar Incentive Payment**" shall mean any and all funds allocated or disbursed to Project Proponent under this Agreement.

(m) "**Tenant**" shall mean the person(s) that has legal rights to occupy the Site and is the recipient of the net electricity generated from the solar equipment. If the Tenant is not the utility customer of record at the Site, a letter of explanation must be sent to the City explaining the relationship of the Tenant to the person(s) who is on the utility service bill.

1.2 Additional Terms. All capitalized terms that are not otherwise defined in this Agreement are as defined in the CSI Program Handbook. The terms "as directed," "as required" or "as permitted" and similar terms shall refer to the direction, requirement, or permission of the Agency. The terms "sufficient," "necessary" or "proper" and similar terms shall mean sufficient, necessary or proper in the sole judgment of the Agency. The terms "approval," "acceptable" or "satisfactory" or similar terms shall mean approved by, or acceptable to, or satisfactory to the Agency. The terms "include," "included" or "including" and similar terms shall be deemed to be followed by the words "without limitation".

1.3 References to this Agreement. References to this Agreement include: (a) any and all appendices, exhibits, schedules, attachments hereto; (b) any and all statutes, ordinances, regulations or other documents expressly incorporated by reference herein; and (c) any and all amendments, modifications or supplements hereto made in accordance with Article 12. References to articles, sections, subsections or appendices refer to articles, sections or subsections of or appendices to this Agreement, unless otherwise expressly stated. Terms such as "hereunder," "herein" or "hereto" refer to this Agreement as a whole.

ARTICLE 2
TERM

2.1 Effective Date. This Agreement shall become effective on the date (the "Effective Date") upon which the Parties hereto have duly executed and delivered the Agreement.

2.2 Duration of Term. The term of this Agreement shall commence on the Effective Date. Unless the Agreement is terminated earlier as set forth herein, such term shall end at 11:59 P.M. San Francisco time on first anniversary of the Effective Date.

ARTICLE 3
IMPLEMENTATION OF PROJECT

3.1 Implementation of Project; Cooperation with Monitoring. Project Proponent shall, in good faith and with diligence, undertake the construction and operation of the Project, on the terms and conditions set forth in this Agreement, the Application Documents and the GoSolarSF Rules. Project Proponent shall not materially change the nature or scope of the Project during the term of this Agreement without the prior written consent of City. Project Proponent shall promptly inform the Agency of any change in the System Owner, the Host Customer, the Applicant or the Site Owner; any such change may result in disqualification of the Project for a particular Solar Incentive Payment and/or the need to resubmit the Application Documents. Project Proponent shall cooperate in good faith with City in any evaluation, planning or monitoring activities conducted or authorized by City.

3.2 Eligibility. The Project Proponent must include an individual or entity that meets all of the criteria set forth in the GoSolarSF Rules at the time the Application

Documents are submitted, at the time Solar Incentive Payment is made, and during the entire term of this Agreement. The Site must be within the boundaries of CCSF.

3.3 Rules. Project Proponent acknowledges having read a copy of the CSI Program Handbook and the GoSolarSF Rules. Project Proponent acknowledges and agrees that the CSI Program Handbook (except to the extent modified by the GoSolarSF Rules) and the GoSolarSF Rules set forth additional terms, conditions and requirements of this Agreement. The Parties agree to comply with, and be bound by all Program requirements in the CSI Program Handbook (except to the extent modified by the GoSolarSF Rules) and the GoSolarSF Rules, as these documents may be modified from time to time, including, but not limited to: (a) warranty requirements (CSI Program Handbook Section 2.4), (b) metering requirements (CSI Program Handbook Section 2.7); (c) conditions of the application process, including eligibility criteria and documentation required for incentive payment (CSI Program Handbook Sections 2-6 and GoSolarSF Rules); (d) installer qualification requirements (CSI Program Handbook Section 2.1.4); (e) equipment requirements (CSI Program Handbook Section 2.2); (f) permanency requirements (CSI Program Handbook Section 2.5); (f) measurement and evaluation requirements (CSI Program Handbook Section 7); (g) project ownership and legal occupancy requirements (GoSolarSF Rules); (h) standards of conduct (GoSolarSF Rules). The requirements of the CSI Program Handbook (except to the extent modified by the GoSolarSF Rules) and GoSolarSF Rules are incorporated herein by reference as though set forth in full in this Agreement.

3.4 Licenses and Permits. The Project Proponent, at his/her own expense, obtained and will maintain all licenses and permits needed to perform work on the Project and for operation of the Project at the Site.

3.5 Compliance with Other Laws and Applicable Safety and Performance Standards. The Project Proponent shall keep itself fully informed of City's Charter, codes, ordinances and regulations and all state, and federal laws, rules and regulations affecting the performance of this Agreement and shall at all times comply with such Charter, codes, ordinances, and regulations, rules and laws. In addition, the Project must meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories, and where applicable rules of the California Public Utilities Commission regarding safety and reliability.

3.6 Disclosures by the CEC: The Project Proponent hereby authorizes the California Energy Commission (CEC) and the California Solar Initiative Program Administrators to share with the City any and all information provided by the Project Proponent to the CEC or to any Program Administrator as part of the California Solar Initiative process, including any information about the Project or the Project Proponent entered in a statewide database that permits tracking of the application for the California Solar Incentive and other incentive programs.

3.7 Disclosure of Other Incentives: The Project Proponent understands that other program rebates, grants, forgiven loans, financial incentives, post-installation agreements, renewable energy credits (aka RECs, Green Credits, etc.), and performance payments must be disclosed to CCSF as soon as those agreements or payments are made.

3.8 No Endorsement by the City. The Project Proponent understands that the City's review of the Project and authorization for the Solar Incentive Payment shall not be construed as confirming or endorsing the qualifications of the Project Proponent or any person(s) involved with the Project, including but not limited to the Project installer(s),

designer(s), or manufacturer(s); endorsing the Project design; or as warranting the economic value, safety, durability or reliability of the Project. Project Proponent shall not use CCSF's name, trademark, trade name, logo, identity, or affiliation for any reason, without prior written consent of CCSF.

3.9 Project Proponent is an Independent Contractor. The Project Proponent is solely responsible for the Project, including selection of any designer(s), manufacturer(s), contractor(s), or installer(s). The Project Proponent understands that s/he, and any third parties involved with the Project, are independent contractors and are not authorized to make any representations on behalf of the CCSF. Should the City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Division, or any court, arbitrator or administrative authority determine that Project Proponent is an employee for purposes of collection of any employment taxes, or for any other purpose, the amounts payable under this Agreement shall be reduced by any amounts paid by the City as a result of such determination, including if applicable, both the employee and employer portions of any tax due.

3.10 Environmental Attributes and Renewable Energy Credits: The Project Proponent agrees that any and all environmental attributes, including but not limited to renewable energy credits, associated with the Project shall become the property of the City upon payment of the Solar Incentive Payment to Project Proponent. The Project Proponent agrees that it will not 1) sell or otherwise encumber the environmental attributes from the Project to or for the benefit of any other person or entity and 2) upon receipt of the Solar Incentive Payment, s/he will cooperate with the City to effectuate the intent of this section including executing any necessary additional documents.

ARTICLE 4
USE AND DISBURSEMENT OF SOLAR INCENTIVE PAYMENT

4.1 Maximum Amount of Solar Incentive Payment. The amount of Solar Incentive Payment disbursed hereunder shall be _____ Dollars ($_____).

4.2 Solar Incentive Payment: CCSF reserves the right to modify or to not pay the Solar Incentive Payment if the actual installation of the Project differs from the proposed installation, if the Project fails inspection, if the Project is not installed within six months after the Solar Incentive Payment is reserved by the Agency, and/or if the documents submitted fail to meet the requirements of the CSI Program Handbook (except to the extent modified by the GoSolarSF Rules) or the GoSolarSF Rules.

4.3 Disbursement Procedures. The Solar Incentive Payment shall be disbursed to Project Proponent as follows:

(a) Project Proponent has submitted an application for a Solar Incentive Payment. The Agency shall have no obligation to disburse any portion of the Solar Incentive Payment requested in the application unless and until (1) Project Proponent submits an application and the additional documentation required for receipt of a Solar Incentive Payment as set forth in the GoSolarSF Rules, and (2) the application and additional documentation are in all respects acceptable to the Agency.

(b) The Agency shall make all disbursements of the Solar Incentive Payment pursuant to this Section by check payable to the person or entity designated in the application for the Solar Incentive Payment, sent via U.S. mail, unless the Agency

otherwise agrees in writing, in its sole discretion. The Agency shall make one disbursement of the Solar Incentive Payment.

ARTICLE 5
REPORTING REQUIREMENTS; AUDITS; PENALTIES FOR FALSE CLAIMS

5.1 Books and Records. Project Proponent shall establish and maintain accurate files and records of all aspects of the Project and the matters funded in whole or in part with the Solar Incentive Payment during the term of this Agreement, including all of the files, records, books, invoices, documents, payrolls and other data required to be maintained under this Section in a readily accessible location and condition for a period of not less than five (5) years after final payment under this Agreement or until any final audit has been fully completed, whichever is later.

5.2 Inspection and Audit. Project Proponent shall make available to City, its employees and authorized representatives, during regular business hours, or during such other times as the Parties may mutually agree, all of the files, records, books, invoices, documents, payrolls and other data required to be established and maintained by Project Proponent under Section 5.1. Project Proponent shall permit City, its employees and authorized representatives to inspect, audit, examine and make excerpts and transcripts from any of the foregoing. The rights of City pursuant to this Section shall remain in effect so long as Project Proponent has the obligation to maintain such files, records, books, invoices, documents, payrolls and other data under this Article 5.

5.3 Submitting False Claims; Monetary Penalties. Any Project Proponent who submits a false claim shall be liable to City for three times the amount of damages which City sustains because of the false claim. A Project Proponent who submits a false claim shall also be liable to City for the costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to City for a civil penalty of up to ten thousand dollars ($10,000) for each false claim. A Project Proponent will be deemed to have submitted a false claim to City if the Project Proponent (a) knowingly presents or causes to be presented to an officer or employee of City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by City; (c) conspires to defraud City by getting a false claim allowed or paid by City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to City; or (e) is a beneficiary of an inadvertent submission of a false claim to City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to City within a reasonable time after discovery of the false claim.

ARTICLE 6
TAXES

6.1 Project Proponent to Pay All Taxes. Project Proponent shall pay to the appropriate governmental authority, as and when due, any and all taxes, fees, assessments or other governmental charges, including possessory interest taxes and California sales and use taxes, levied upon or in connection with this Agreement, the Project, the Solar Incentive Payment or any of the activities contemplated by this Agreement.

ARTICLE 7
INDEMNIFICATION AND GENERAL LIABILITY

7.1 Indemnification. Project Proponent shall indemnify, protect, defend and hold harmless each of the Indemnified Parties from and against any and all Losses arising from, in connection with or caused by: (a) a material breach of this Agreement by Project Proponent; (b) a material breach of any representation or warranty of Project Proponent contained in this Agreement; (c) any personal injury caused, directly or indirectly, by any act or omission of Project Proponent or its employees, subcontractors or agents; (d) any property damage caused, directly or indirectly by any act or omission of Project Proponent or its employees, subcontractors or agents; (e) the use, misuse or failure of any equipment or facility used by Project Proponent, or by any of its employees, subcontractors or agents, regardless of whether such equipment or facility is furnished, rented or loaned to Project Proponent by an Indemnified Party; (f) any tax, fee, assessment or other charge for which Project Proponent is responsible under Article 6; or (g) any infringement of patent rights, copyright, trade secret or any other proprietary right or trademark of any person or entity in consequence of the use by any Indemnified Party of any goods or services furnished to such Indemnified Party in connection with this Agreement. Project Proponent's obligations under the immediately preceding sentence shall apply to any Loss that is caused in whole or in part by the active or passive negligence of any Indemnified Party, but shall exclude any Loss caused solely by the willful misconduct of the Indemnified Party. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. This indemnity shall survive the termination of this Agreement for any reason.

7.2 Duty to Defend; Notice of Loss. Project Proponent acknowledges and agrees that its obligation to defend the Indemnified Parties under Section 7.1: (a) is an immediate obligation, independent of its other obligations hereunder; (b) applies to any Loss which actually or potentially falls within the scope of Section 7.1, regardless of whether the allegations asserted in connection with such Loss are or may be groundless, false or fraudulent; and (c) arises at the time the Loss is tendered to Project Proponent by the Indemnified Party and continues at all times thereafter. The Indemnified Party shall give Project Proponent prompt notice of any Loss under Section 7.1 and Project Proponent shall have the right to defend, settle and compromise any such Loss; provided, however, that the Indemnified Party shall have the right to retain its own counsel at the expense of Project Proponent if representation of such Indemnified Party by the counsel retained by Project Proponent would be inappropriate due to conflicts of interest between such Indemnified Party and Project Proponent. An Indemnified Party's failure to notify Project Proponent promptly of any Loss shall not relieve Project Proponent of any liability to such Indemnified Party pursuant to Section 7.1, unless such failure materially impairs Project Proponent's ability to defend such Loss. Project Proponent shall seek the Indemnified Party's prior written consent to settle or compromise any Loss if Project Proponent contends that such Indemnified Party shares in liability with respect thereto.

7.3 Incidental and Consequential Damages. Losses covered under this Article 7 shall include any and all incidental and consequential damages resulting in whole or in part from Project Proponent's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that any Indemnified Party may have under applicable law with respect to such damages.

7.4 LIMITATION ON LIABILITY OF CITY. CCSF's payment obligations under this Agreement shall be limited to the Solar Incentive Payment. Notwithstanding any other provision of this Agreement, in no event shall CCSF be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or CCSF's performance or nonperformance of its obligations under this Agreement.

ARTICLE 8
INSURANCE

8.1 Types and Amounts of Coverage. Without limiting Project Proponent's liability pursuant to Article 7, Project Proponent shall maintain in force, during the full term of this Agreement and for a full four years thereafter, a commercial general liability insurance policy at least as broad as the Insurance Services Office (ISO) commercial general liability coverage "occurrence" form; or, if the Project Proponent is an individual, then liability coverage with respect to premises and use at least as broad as the ISO homeowners' or personal liability insurance occurrence policy form, or substitute, providing equivalent coverage no less than the following limits, based on the size of the Project:

(i) one million dollars ($1,000,000) for each occurrence if the Gross Nameplate Ration of the Project is greater than twenty (20) kW and less than or equal to one hundred (100) kW;

(ii) five hundred thousand dollars ($500,000) for each occurrence if the Gross Nameplate Ration of the Project is twenty (20) kW or less; and

(iii) two hundred thousand dollars ($200,000) for each occurrence if the Gross Nameplate Ration of the Project is ten (10) kW or less and the Project is connected to an account receiving residential service.

8.2 Additional Requirements for Coverage. The general liability insurance policies shall:

(a) Name as additional insured City and its officers, agents and employees.

(b) Provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to limits of liability.

8.3 Additional Requirements for All Policies. All policies shall be endorsed to provide at least thirty (30) days' advance written notice to City of cancellation of policy for any reason, nonrenewal or reduction in coverage and specific notice mailed to City's address for notices pursuant to Article 10.

8.4 Required Post-Expiration Coverage. Should any of the insurance required hereunder be provided under a claims-made form, Project Proponent shall maintain such

coverage continuously throughout the term of this Agreement and, without lapse, for a period of seven (7) years beyond the expiration or termination of this Agreement, to the effect that, should occurrences during the term hereof give rise to claims made after expiration or termination of the Agreement, such claims shall be covered by such claims-made policies.

8.5 General Annual Aggregate Limit/Inclusion of Claims Investigation or Legal Defense Costs. Should any of the insurance required hereunder be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

8.6 Evidence of Insurance. At the time it submits an executed Agreement to the City, Project Proponent shall furnish to City certificates of insurance, and additional insured policy endorsements, in form and with insurers satisfactory to City, evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon City's request. Project Proponent shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

8.7 Effect of Approval. Approval of any insurance by City shall not relieve or decrease the liability of Project Proponent hereunder.

8.8 Waiver. If the requirements of sections 8.2 or 8.3 prevent the Project Proponent from obtaining the insurance required in this Section, then upon Project Proponent's written notice to the City in accordance with Article 10, the requirements of sections 8.2 and 8.3 may be waived.

ARTICLE 9
EVENTS OF DEFAULT AND REMEDIES

9.1 Events of Default. The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Agreement:

(a) **False Statement**. Any statement, representation or warranty contained in this Agreement, in the Application Documents, or in any other document submitted to City under this Agreement is found by City to be false or misleading.

(b) **Failure to Inform Agency of a Material Change**. A failure on the part of the Project Proponent to promptly inform the City of a material change to the Project or of a change in the identity of the System Owner, the Host Customer, the Applicant or the Site Owner.

(c) **Failure to Provide Insurance**. Project Proponent, or if applicable, the Contractor responsible for installing the Project, fails to provide or maintain in effect any policy of insurance required in Article 8.

(d) **Failure to Perform**. Project Proponent fails to perform or breaches any agreement or covenant of this Agreement to be performed or observed by Project Proponent as and when performance or observance is due and such failure or breach continues for a period of ten (10) days after receipt of written notice from the City.

(e) **Failure to Comply with Program Rules**. Project Proponent fails to comply with the GoSolarSF Rules.

9.2 Remedies Upon Event of Default. Upon and during the continuance of an Event of Default, City may do any of the following, individually or in combination with any other remedy:

(a) **Termination**. City may terminate this Agreement by giving a written termination notice to Project Proponent and, on the date specified in such notice, this Agreement shall terminate and all rights of Project Proponent hereunder shall be extinguished. The termination of this Agreement shall not operate to discharge any liability which has been incurred by either Party prior to the effective date of such termination. For the avoidance of doubt, CCSF shall not be required to pay any Solar Incentive Payment to the Project Proponent if the Project fails to meet all the requirements of the GoSolarSF Program.

(b) **Withholding of the Solar Incentive Payment**. City may withhold all or any portion of the Solar Incentive Payment not yet disbursed hereunder, regardless of whether Project Proponent has previously submitted an application for such payment or whether City has approved the disbursement of the Solar Incentive Payment requested in any application. Any Solar Incentive Payment withheld pursuant to this Section and subsequently disbursed to Project Proponent after cure of applicable Events of Default shall be disbursed without interest.

(c) **Offset**. City may offset against all or any portion of undisbursed Solar Incentive Payment hereunder or against any payments due to Project Proponent under any other agreement between Project Proponent and City the amount of any outstanding Loss incurred by any Indemnified Party, including any Loss incurred as a result of the Event of Default.

(d) **Return of the Solar Incentive Payment**. City may demand the immediate return of any previously disbursed Solar Incentive Payments that have been claimed or expended by Project Proponent in breach of the terms of this Agreement, together with interest thereon from the date of disbursement at the maximum rate permitted under applicable law.

9.3 Remedies Nonexclusive. Each of the remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The remedies contained herein are in addition to all other remedies available to City at law or in equity by statute or otherwise and the exercise of any such remedy shall not preclude or in any way be deemed to waive any other remedy.

ARTICLE 10
NOTICES AND OTHER COMMUNICATIONS

10.1 Requirements. Unless otherwise indicated elsewhere in this Agreement, all notices, directions, approvals, instructions, or requests hereunder shall be in writing. Notices and all other written communications sent by the parties shall be either by U.S. mail or e-mail. Notices and all other written communications from the Project Proponent to the City or Agency shall be addressed as follows, or to such new address provided in writing by the City or Agency to the Project Proponent:

San Francisco Water Power Sewer, Power Enterprise
525 Golden Gate Avenue, 7th Floor
San Francisco, CA 94102
Attn: GoSolarSF
Email Address: GoSolarSF@sfwater.org

Notices from the City or Agency to the Project Proponent shall be directed to the Host Customer (or the Site Owner, if Site is rented) and to the Applicant to the address(es) indicated in the application for a Solar Incentive Payment submitted by the Project Proponent to the Agency.

ARTICLE 11
ADDITIONAL REQUIREMENTS APPLICABLE TO PROJECT PROPONENT

11.1 Prohibition on Political Activity with City Funds. In accordance with S. F. Administrative Code Chapter 12.G, no funds appropriated by the City and County of San Francisco for this Agreement may be expended for organizing, creating, funding, participating in, supporting, or attempting to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity"). The terms of San Francisco Administrative Code Chapter 12.G are incorporated herein by this reference. Accordingly, an employee working in any position funded under this Agreement shall not engage in any Political Activity during the work hours funded hereunder, nor shall any equipment or resource funded by this Agreement be used for any Political Activity. In the event Project Proponent, or any staff member in association with Project Proponent, engages in any Political Activity, then (i) Project Proponent shall keep and maintain appropriate records to evidence compliance with this section, and (ii) Project Proponent shall have the burden to prove that no funding from this Agreement has been used for such Political Activity. Project Proponent agrees to cooperate with any audit by the City or its designee in order to ensure compliance with this section. In the event Project Proponent violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement and any other agreements between Project Proponent and City, (ii) prohibit Project Proponent from bidding on or receiving any new City contract for a period of two (2) years, and (iii) obtain reimbursement of all funds previously disbursed to Project Proponent under this Agreement.

11.2 Conflict of Interest. Through its execution of this Agreement, Project Proponent acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such facts during the term of this Agreement.

11.3 Limitations on Contributions. The restriction set forth in this section applies only if the contract or a combination or series of contracts approved by the same individual or board in a Fiscal Year have a total anticipated or actual value of $50,000 or more. Through execution of this Agreement, Project Proponent acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which

an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Project Proponent acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Project Proponent's board of directors; Project Proponent's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Project Proponent; any subgrantee listed in the bid or contract; and any committee that is sponsored or controlled by Project Proponent. Additionally, Project Proponent acknowledges that Project Proponent must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

ARTICLE 12
MISCELLANEOUS

12.1 Sunshine Ordinance. Project Proponent acknowledges and agrees that this Agreement and the Application Documents are subject to Section 67.24(e) of the San Francisco Administrative Code, which provides that contracts, including this Agreement, and all other records of communications between City and persons or entities seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in such Section 67.24(e) (as it exists on the date hereof) requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All information provided by Project Proponent that is covered by such Section 67.24(e) (as it may be amended from time to time) will be made available to the public upon request.

12.2 No Assignment by Project Proponent. Project Proponent shall not, either directly or indirectly, assign, transfer, hypothecate, subcontract or delegate all or any portion of this Agreement or any rights, duties or obligations of Project Proponent hereunder without the prior written consent of City. This Agreement shall not, nor shall any interest herein, be assignable as to the interest of Project Proponent involuntarily or by operation of law without the prior written consent of City. Any agreement made in violation of this Section 12.2 shall confer no rights on any person or entity and shall automatically be null and void.

12.3 No Waiver. No waiver by the Agency or City of any default or breach of this Agreement shall be implied from any failure by the Agency or City to take action on account of such default if such default persists or is repeated. No express waiver by the Agency or City shall affect any default other than the default specified in the waiver and shall be operative only for the time and to the extent therein stated. Waivers by City or the Agency of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by the Agency or City of any action requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

12.4 Modification. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

12.5 Administrative Remedy for Agreement Interpretation. Should any question arise as to the meaning or intent of this Agreement, the question shall, prior to any other

action or resort to any other legal remedy, be referred to the director or president, as the case may be, of the Agency who shall decide the true meaning and intent of the Agreement. Such decision shall be final and conclusive.

12.6 Governing Law; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws principles. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

12.7 Headings. All article and section headings and captions contained in this Agreement are for reference only and shall not be considered in construing this Agreement.

12.8 Entire Agreement. This Agreement, the CSI Program Handbook (except to the extent modified by the GoSolarSF Rules), the GoSolarSF Rules and the Application Documents set forth the entire Agreement between the parties, and supersede all other oral or written provisions. If there is any conflict between the terms of this Agreement and the Application Documents, the terms of this Agreement shall govern.

12.9 Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

12.10 Successors; No Third-Party Beneficiaries. Subject to the terms of Section 12.2, the terms of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any person or entity (other than the parties hereto and their respective successors and assigns and, in the case of Article 7, the Indemnified Parties) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

12.11 Survival of Terms. The obligations of Project Proponent and the terms of the following provisions of this Agreement shall survive and continue following expiration or termination of this Agreement: Sections 5.1 through 5.3, Articles 6, 7, 8, and this Article 12.

12.12 Project Proponent and Applicant Declaration.

a. Certification by Project Proponent. The undersigned Project Proponent declares under penalty of perjury under the laws of the State of California that:

1) The Project Proponent has duly authorized by all necessary action the execution, delivery and performance of this Agreement. Project Proponent has duly executed and delivered this Agreement and this Agreement constitutes a legal, valid and binding obligation of Project Proponent, enforceable against Project Proponent in accordance with the terms hereof;

2) The Project meets all GoSolarSF Program eligibility requirements;

3) The Project has been completed, is new and intended to offset part or all of the electrical needs at the Site;

4) The Site is located within CCSF at the geographic location specified in the Application Documents;

5) The Project is not intended to be used as a backup generator;

6) No document furnished or to be furnished by Project Proponent to City in connection with the Application Documents, this Agreement, or any other document relating to any of the foregoing, contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made;

7) The Project Proponent has the authority to install the Project at the Site; and

8) The Site Owner has 1) described in writing to the Tenant any reasonably foreseeable material impacts of the Project on: a) the Tenant's use and enjoyment of the Property; b) the lease including the rent; c) electric service at the Property; and d) the electricity rate applicable to and the electric bills for the Property; and 2) obtained Tenant's consent to the Project.

b. Certification by Applicant: Where an Applicant has been separately identified on the application submitted to the Agency, the Applicant must certify that the information provided on the Application Documents is true, accurate, and complete. The Applicant is not a Party to the Agreement, but certifies under penalty of perjury that the information provided in the Application Documents is true, accurate, and complete.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first specified herein.

CITY

SAN FRANCISCO PUBLIC UTILITIES COMMISSION

By: _____

Barbara Hale
Assistant General Manager
SFPUC Power

PROJECT PROPONENT:

By:_____
SYSTEM OWNER

Print Name:_____

Print Title and Company Name, if applicable:

_____

By:_____
SITE OWNER (IF DIFFERENT FROM SYSTEM OWNER)

Print Name:_____

Print Title and Company Name, if applicable:

_____

APPLICANT:

By signing this Agreement, I am not made party to the Agreement but rather, I certify under penalty of perjury that the information provided on the Reservation Form, the CSI Reservation Request Form and the CSI Incentive Calculation Worksheet is true, accurate, and complete.

By:_____
APPLICANT

Print Name:_____

Print Name of Company, if applicable:

_____