

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement"), is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado ("City" or "the City"), and SOLARCITY, whose address is 3055 Clearview Way, San Mateo, California 94402, a Delaware corporation authorized to do business in the State of Colorado ("Licensee" or "the Licensee").

WHEREAS, the City, in the exercise of its lawful authority, has caused to be constructed, developed and equipped the Premises listed on Exhibit B ("Premises"), the location and general configuration of the Premises being shown on Exhibit A, attached hereto and made a part hereof;

WHEREAS, the City as shown on Exhibit E has entered into the Third Amended And Restated Build To Suit Lease Purchase Agreement No. 2008A (the "2008A Lease") subject to Certificates of Participation ("COPs") in respect of the Premises;

WHEREAS, pursuant to the COP Ordinance, Ordinance No.484, Series of 2008 and the tax exempt status of the COPs, the Premises' use is subject to regulation under the Internal Revenue Code. The parties agree therefore that this License Agreement must be and has been approved by Special Counsel for the COPs;

WHEREAS, upon due consideration the City has determined that in the exercise of its lawful functions, and to serve better the Premises public use, it is desirable and appropriate that an electricity grid-connected photovoltaic, solar power plants with a total generating capacity rated at approximately 9.87 kWp (the "Generating Facility") be developed, constructed, equipped, owned, and operated by the Licensee on the Licensed Premises at the Premises and that such use is compatible and appropriate within the uses allowed for the Premises, in order to put the same to full, productive use and for the benefit of the general public; and

WHEREAS, the City deems it appropriate and necessary in the public interest to have the Licensed Premises operated on its behalf by others, and to have the same operated by Licensee, but under and subject to the continuing jurisdiction, supervision and control of the Department of General Services of the City, under this Agreement, all as herein provided; and

WHEREAS, Licensee hereby binds itself subject to the terms and provision of this Agreement to pay the City the fees and payments required herein and to otherwise perform all the terms and conditions of this Agreement.

NOW THEREFORE, the City, for the term herein specified, and for and in consideration of the fees and energy production herein stated, and of the terms and conditions herein stated on the part of the Licensee to be kept, observed and performed, has and does license to Licensee, and the Licensee has agreed to access and occupy for the purposes of operation of a Generating Facility, the Licensed Premises, as hereinafter improved, all upon and subject to the following express terms, provisions, and conditions:

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## SECTION 1 GENERAL

### 1.01 CONSIDERATION

City enters into this Agreement for and in consideration of the payment of compensation by Licensee as herein provided, the construction of all improvements by Licensee as herein provided, the observance by Licensee of the covenants and agreements herein.

### 1.02 INCORPORATION OF ATTACHED EXHIBITS AND ADDENDA

The Exhibits and Addenda attached to this Agreement shall be deemed incorporated in this Agreement. The terms and conditions this Agreement shall control over any contradictory or inconsistent terms and conditions that may be found or contained in the Exhibits. The order of precedence of control among those Exhibits, from the controlling exhibit, shall be "E", "D", "C", "B", and "A".

### 1.03 CONDITIONS PRECEDENT TO EFFECTIVENESS OF LICENSE.

The Parties agree that approval of Special Counsel of the License and Power Purchase Agreement for the Generating Facility shall be a condition precedent to the effectiveness of this License.

## SECTION 2 DEFINITIONS

### 2.01 AUDITOR

"Auditor" shall mean the City's Auditor and his authorized representative.

### 2.02 COMMENCEMENT DATE

The "Commencement Date" shall mean the date of execution of this agreement.

### 2.03 DIRECTOR

"Director" shall mean the Director of Facilities Management for the City.

### 2.04 GENERATING FACILITY

"Generating Facility" shall have the meaning given in the Recitals.

## 2.05 LICENSED PREMISES

"Licensed Premises" shall mean the Licensed Premises as generally depicted on the Licensed Premises Plan and Proposal attached hereto as Exhibit A, located within the Premises Site and containing approximately 2,500 square feet, more or less. "Licensed Premises" shall include the plural where applicable. The City and Licensee acknowledge and agree that the dimensions of the Licensed Premises as set forth in Exhibit A are approximate and that, the precise dimensions and footage shall be determined by the Manager and a revision to the Exhibit A will be made, if necessary, depicting the dimensions and footage of the Licensed Premises as actually constructed, each of these actions to be taken without the requirements of a formal amendment to this Agreement

## 2.06 LICENSEE'S PROPOSAL.

"Licensee's Proposal" shall mean the proposal presented to the City on or about May 10, 2011 and accepted by City, and consisting of Licensee's plans for the design, construction and its plan of operation.

## 2.07 MANAGER

"Manager" shall mean the City's Manager of General Services.

## 2.08 MANAGER'S AUTHORIZED REPRESENTATIVE

Whenever reference is made herein to "Manager or his/her authorized representative," or words of similar import are used, the City's Director of Facilities Management shall be such authorized representative of the Manager, unless notice otherwise is given to the Licensee by the Manager.

## 2.09 PAST DUE INTEREST RATE

"Past Due Interest Rate" shall mean interest accruing at one percent (1%) per month commencing on the fifth calendar day after the date such amount is due and owing until paid to City.

## 2.10 POWER PURCHASE AGREEMENT.

"Power Purchase Agreement" shall mean that certain Power Purchase Agreement of even date herewith, between Licensee as Power Provider, and the City as Purchaser.

## 2.11 PREMISES.

"Premises" shall mean the City owned locations specified and located in Denver, Colorado, including the real property as further described in Exhibit B attached hereto.

## 2.12 SPECIAL COUNSEL

"Special Counsel" shall mean the City's Special Counsel, Peck Shaffer & Williams, 1801 Broadway, Suite 1700, Denver, Colorado 80202.

## 2.13 TERM

“Term” shall have the meaning given in Section 4.01.

## SECTION 3 GRANT OF LICENSEE RIGHTS

### 3.01 RIGHTS GRANTED

City grants to Licensee the right to access, occupy, improve and use the Licensed Premises consistent with and subject to all of the terms and provisions of this License Agreement.

### 3.02 USE OF LICENSED PREMISES

Licensee may use the Licensed Premises only to construct upon, occupy, own, operate, and use the Generating Facility on the Licensed Premises consistent with and subject to all of the terms and provisions of this Agreement and provide related services as set forth herein and for no other purposes, unless otherwise authorized in writing by the Manager. It is understood that the use of Licensed Premises is restricted by the COP Ordinance, existing zoning code designation of the City, and existing or future cell tower agreements, between the City and by all applicable rules, regulations, statutes or ordinances promulgated by any federal, state or municipal agency having jurisdiction over the Licensed Premises. Licensee represents and warrants that it has reviewed the applicable zoning and land use restrictions pursuant to the COP Ordinance. As of the Commencement Date, Licensee represents and warrants that it shall comply with applicable zoning, cell tower agreements, and land use restrictions. The City represents that the applicable COP ordinances permit the development, construction, ownership and operation of the Generating Facility on the Premises.

### 3.03 RIGHTS NOT EXCLUSIVE

City reserves the right to grant to other licensees or lessees the right to operate other photovoltaic, solar power plants in other locations within the City, and Licensee understands and agrees that its right to operate an electricity grid-connected photovoltaic, solar power plant within the City is not exclusive. Further, City reserves to itself, its successors and assigns, the right to grant easements and rights of way after the Commencement Date, over and under the Licensed Premises for utilities, cell tower, and other uses, so long as such easements and rights of way do not create any interference with the Generating Facility’s insolation and access to sunlight, as such access exists as of the Commencement Date of this License. Licensee acknowledges and agrees that the Licensed Premises will be subject to and burdened by such easements and rights of way. If the area of the Licensed Premises is reduced at City's direction from the Agreement the license fee thereafter shall be reduced in the same proportion as the area deleted bears to the area originally subject to the Agreement

### 3.04 NO INTERFERENCE

Notwithstanding the Generating Facility’s presence as a fixture on the Licensed Premises, City represents to Licensee that City has a leasehold interest in the premises and that

there are no circumstances known to City and no commitments to third parties that may damage, impair, or otherwise adversely affect or interfere with the Generating Facility or its function by blocking the Generating Facility's insolation and access to sunlight; furthermore, City covenants that, except in the exercise of its police powers, City shall not cause or permit any such interference with the Generating Facility's insolation and access to sunlight.

### 3.05 MEANS OF ACCESS

Licensee, its agents, invitees, guests, employees and suppliers have a non-exclusive right of ingress to and egress from the Licensed Premises. Because the Licensed Premises are not accessible to the public, Licensee shall coordinate access with the Director or his designee. The City may at any time close, relocate, reconstruct or modify such means of access, provided that a reasonably convenient and adequate means of ingress and egress is available for the same purposes.

### 3.06 RIGHT OF INSPECTION

City retains the full right of entry in and to the Licensed Premises without notice for any purpose necessary, incidental to or in connection with its obligations hereunder, or in the exercise of its governmental functions, or for the purpose of making any inspection or performing any testing it deems necessary.

## SECTION 4 TERM AND TERMINATION

### 4.01 TERM

Subject to the City's annual appropriation of the 2008A Lease approved under the COP Ordinance, the City shall license the Licensed Premises to the Licensee for the Term. "Term" shall mean the period commencing at noon on the date of execution by City of this Agreement and expiring at noon on the date Twenty (20) years after the Commencement Date ("Expiration Date") as the original term along with any extensions and renewals thereafter.

### 4.02 TERMINATION OF LICENSE BY CITY

In the event the Manager determines that the City may not use the Licensed Premises for Generating Facility purposes during the Term of this License the City has the right to terminate this Agreement upon six (6) months prior written notice to the Licensee. The City Council may appropriate a reasonable termination fee.

### 4.03 TERMINATION OF LICENSE BY LICENSEE

In the event the City terminates or defaults under the Power Purchase Agreement, the Licensee shall have the right to terminate this License upon sixty (60) days written notice to City.

### 4.04 TERMINATION FOR CAUSE

Either Party may terminate the Agreement if the other Party or any of such Party's officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with such Party's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

#### 4.05 SURRENDER OF LICENSED PREMISES

Upon the Expiration Date or earlier termination of this Agreement or on the date specified in any demand to vacate made by City after any Default by Licensee, Licensee covenants and agrees to surrender occupancy of the Licensed Premises and, if all or any portion of the Generating Facility is removed as requested by City, Licensee shall, at Licensee's expense, restore to the conditions existing prior to the installation of such improvements or applicable portions thereof, and upon failure to do so, City may cause such removal and restoration to be done at Licensee's expense. Licensee shall remove its equipment, unless the City has elected to purchase the Generating Facility and rights of associated S-RECs in accordance with paragraph 6.05 of this Agreement. If Licensee fails to remove any of Generating Facility within one hundred twenty (120) days by the expiration or termination of this Agreement, City may, at its option, keep and retain any such Generating Facility or dispose of the same and retain any proceeds therefrom, and City shall be entitled to recover from Licensee any costs of City in removing the same and in restoring the Licensed Premises subject to ordinary wear and tear, in excess of the actual proceeds, if any, received by City from disposition thereof.

#### 4.06 EXTENSION OF LICENSE

If Licensee continues to occupy the Licensed Premises after Expiration Date of the Term or any extension thereof, thereafter Licensee's occupancy shall be deemed a month-to-month License at an annual license fee equal to one hundred fifty percent (150%) of the annual compensation provided in Section 5 herein. Licensee shall be subject to all other terms and conditions of this Agreement not specifically modified above. Nothing herein shall be construed to give Licensee the right to hold over, and City may exercise any remedy at law or in equity to recover access and occupancy of the Licensed Premises, as well as any damages incurred by City.

### SECTION 5 COMPENSATION

#### 5.01 COMPENSATION

Licensee covenants and agrees, without offset, deduction or abatement, to pay City as compensation for the rights and privileges granted by City, a license fee of Fifty Dollars (\$50.00) per year payable annually in advance as described in paragraph 5.03 of this License; however, if the License is prepaid in full on or before December 31, 2011, Licensee may pay a one time discounted rate of Three Hundred Twenty Dollars (\$320.00) for the entire Term. After December 31, 2011, the license fee may otherwise be paid in advance without discount at any time during

the Term of this License without penalty. In the event of termination of the License, no refund of fees, including any prepaid fees, shall be made.

Licensee shall provide all energy produced by the Generating Facility to the City for use at the Licensed Premises.

The obligation to pay such compensation shall commence upon the Commencement Date set forth herein and continue through the Term hereof.

#### 5.02 INTEREST ON PAST DUE AMOUNTS

Any payments not made to City when due shall accrue interest at the Past Due Interest Rate, as herein defined.

#### 5.03 PLACE AND MANNER OF PAYMENTS

All sums payable to City hereunder shall be made payable to "Manager of Finance" without notice at the following:

Manager of General Services  
201 West Colfax Dept 1106  
Denver, Colorado 80202

or at such other place as the Manager or his authorized representative may hereafter designate by notice in writing to Licensee. All sums shall be made in legal tender of the United States. Any check given to the City shall be received by it subject to collection, and Licensee agrees to pay any charges, fees or costs incurred by the City for such collection, including reasonable attorney's fees.

#### 5.04 BOOKS OF ACCOUNT AND AUDITING

Licensee shall make available upon request within the Denver metropolitan area true and complete records and accounts of all revenues and business transacted. Licensee agrees to establish and maintain a system of bookkeeping satisfactory to City's Auditor and in accordance with generally accepted accounting principles. Licensee shall keep and preserve for at least three years, or until sooner audited by City, all evidence of revenues and business transacted for such period. The City's Auditor and Manager and their respective authorized representatives shall have the right, upon reasonable prior notice, to inspect or audit at any time all of the books of account, bank statements, documents, records, returns, papers and files of Licensee relating to the Gross Revenues and business transacted, whether stored in electronic media or hard copy.

Licensee, upon request, shall make all such documents available for examination within the Denver metropolitan area. Such documents shall be available to the City representative within fourteen (14) calendar days of the date of the written request.

The City's right to perform such an audit shall expire three years after the Expiration Date, or earlier termination of this Agreement, whichever is earlier.

Licensee expressly agrees that the City's Manager and Auditor and their authorized representatives may inspect any sales tax return or report and accompanying schedules and data which Licensee may file with the City pursuant to the City's Retail Sales Tax Article, and any reporting and Environmental Incentive data which Licensee may file with the Public Service Co. of Colorado, and waives any claim of confidentiality which it may have in connection therewith.

## SECTION 6 CONSTRUCTION OF GENERATING FACILITY

### 6.01 FACILITY TO BE CONSTRUCTED

Licensee, at its cost shall prepare plans and specifications for the Generating Facility to be constructed hereunder. The plans and specifications shall be subject to the Manager's and the Director's approval, which approval shall not be unreasonably withheld. Such plans shall be generally in accordance with Licensee's Proposal. Any changes to Licensee's Proposal must be approved by the Manager and the Director in their respective sole discretion. Licensee agrees to have construction of all of the Generating Facility completed no later than October 31, 2011. The City affirmatively represents and the Licensee agrees that the roof is under warranty. The Licensee shall not take any action which would void, compromise, or limit the warranty. Licensee agrees to receive express permission for the installation of the Generating Facility from the warranty provider, to cooperatively work with the warranty provider, and to provide the City with evidence of the permission as a condition precedent to beginning installation of the Generating Facility. The Licensee shall cease installation and inform the City immediately upon any notice from the warranty provider that permission may be revoked. Licensee shall cooperate with the warranty provider and the City to take corrective action to ensure that the warranty remains effective. In the event the roof warranty is compromised and unable to remain effective due to an action of the Licensee, Licensee will be responsible for all repairs to the same extent as would have been covered by the roof warranty had it not been compromised.

In the event Licensee has failed to secure a commitment for construction financing of the Generating Facility, fails to obtain permissions and licenses required by the Power Purchase Agreement, or fails to meet any other condition precedent in the Power Purchase Agreement by August 15, 2011, this License shall terminate and be of no further force and effect. The Manager in the Manager's sole discretion may extend the construction deadlines set forth above without the need for City Council approval, however, in any event, the Manager may not extend the date for completion of construction beyond October 31, 2011.

### 6.02 CAPITAL CONTRIBUTIONS

Licensee commits to spending a minimum of Sixty Thousand Dollars (\$60,000.00) for the design, development, and ultimate installation of the Generating Facility generally in accordance with Licensee's Proposal. The Manager and the Director shall approve the final design of the Generating Facility and shall jointly approve any changes in the concept or design of the Generating Facility.



### 6.03 GENERATING FACILITY

A Generating Facility shall contain a maximum of 2,500 square feet and a capacity of approximately 9.87 kWp. The Manager and the Director may approve changes in the location of the Generating Facility, as long as the size of the site does not increase the area of the Licensed Premises.

### 6.04 TITLE TO IMPROVEMENTS; TITLE TO SYSTEM

Licensee agrees that all improvements to the roof installed by the City to the Licensed Premises, including approved changes and renovations, which are affixed to the realty, are the property of the City or its Lessor under the 2008A Lease upon their completion and acceptance by City. Licensee shall sign any documents reasonably requested by City which show the ownership in the City or its Lessor under the 2008A Lease. The City agrees that the Generating Facility and all equipment attached to the mounting system are the property of the Licensee. The City shall sign any documents reasonably requested by Licensee which show the ownership of the Generating Facility in the Licensee.

### 6.05 DESIGN, DEVELOPMENT AND CONSTRUCTION OF IMPROVEMENTS/RESTRICTION ON CHANGES

The Generating Facility development must consider the historical values in its design and operation.

Site development shall conform to all applicable local, state and federal requirements. This includes, but is not limited to, State and EPA water and air quality requirements, storm drainage management plans by the Urban Drainage and Flood Control District (UDFCD) and related agencies to the Premises site. In addition, the design, construction and operation of the Generating Facility and related facilities shall protect and maintain the integrity of materials and quality of the existing building..

Licensee shall cooperate with the City and its planners, designers, architects, the warranty provider and engineers in the construction and installation of the Generating Facility and Site Improvements on the Premises and shall comply with the approved plans and specifications of the Building Code, and to the extent applicable the Development Guidelines

Coordination with the Premises staff will be the sole responsibility of the Licensee for obtaining all site development and building permits.

Licensee shall be responsible for all utilities needed during construction.

Licensee's design, construction, operation and maintenance of the Licensed Premises shall conform to the requirements of the Director.

All construction work, materials, and installations involved in or incidental to the construction on the Premises shall be subject at all times to inspection and approval by the City. The City shall at all times have the right of access to the Premises to monitor and

inspect the construction of the Generating Facility to assure that the Generating Facility is constructed and installed in compliance with the approved plans and specifications.

The City shall have the right to halt construction or deny access to the Premises at any time if such construction is at material variance from the approved plans and specifications until such material variance is corrected, or if such construction poses an immediate safety hazard at any of the Premises, until such safety hazard is eliminated. The City shall cooperate and use its best efforts to alleviate and resolve any such material variance or impediment to the safe operation of all of the Premises so as to permit continuation of construction as expeditiously as possible.

Thereafter, Licensee agrees not to alter, add to, remove, or demolish any of the improvements on the Licensed Premises without the prior written approval of the Manager and the Director.

6.06 AS-BUILT DRAWINGS. Not later than sixty (60) days after completion of all work for the Generating Facility, Licensee shall provide the City complete sets of as-built drawings prepared. If Licensee fails to provide the as-built drawings after written notice from the City, the City may elect to have the drawings completed and charge Licensee for the costs associated therewith. Licensee agrees that, upon the request of the City, Licensee will inspect the Licensed Premises jointly with the City to verify the as-built drawings. All material improvements made by Licensee shall be subject to inspection by the City and approval by Manager within fourteen (14) calendar days of request for approval, and shall be removed and replaced at Licensee's sole cost immediately if disapproved.

6.07 CONSTRUCTION BONDS. Prior to the commencement of construction, Licensee shall deliver to the Manager a payment and performance bond in a sum not less than One Hundred Percent (100%) of construction contract price payable to Licensee's contractor. Said bond shall guarantee prompt and faithful payment by the Licensee directly to Licensee's contractors and by Licensee's contractors to all persons supplying labor, materials, team hire, sustenance, provisions, provender, supplies, rental machinery, tools and equipment used directly or indirectly by the said contractor, subcontractor(s) and suppliers in the prosecution of the work provided for in said construction contract and shall protect the City from any liability, losses or damages arising therefrom.

All bonds shall be issued by a surety company licensed to transact business in the State of Colorado and satisfactory to and approved by the City.

6.08 LIMITATION ON LIABILITY. Licensee agrees that no liability shall attach to the City for any damages or losses incurred or claimed by Licensee or any other person or party on account of the construction or installation of the Generating Facility or other improvements to or upon the Licensed Premises made by Licensee. Licensee agrees that no liability shall attach to the City for any interference or delay caused by construction in adjacent areas or the Premises operations, including without limitation damages or losses in the nature of delay damages, lost labor productivity, and impact damages. The City agrees that no liability shall attach to Licensee as a result of any City-caused interference or delay.

SECTION 7  
OPERATION AND USE OF LICENSED PREMISES

7.01 OPERATIONS

Licensee agrees to conduct its business to accommodate the public using the Premises and to operate the Generating Facility in the following manner:

- A. Licensee shall operate the Generating Facility in a first-class manner satisfactory to the Manager or the Manager's authorized representative. Service shall be prompt, clean, courteous and efficient.
- B. Licensee shall at all times retain an experienced manager of high quality to manage the Generating Facility who is fully authorized to represent and act for Licensee in the operation of the Generating Facility and to accept service of all notices provided for herein. At times when this manager is not available, Licensee shall assign, or cause to be assigned, a qualified subordinate to be in charge of the Licensed Premises, services and facilities and to be available to act for such manager.
- C. During the required hours of operation, Licensee shall provide personnel in sufficient number and quality necessary to conveniently and efficiently serve the public. Such personnel shall be thoroughly qualified, familiar with the business, courteous, informative and helpful to the public. The attire of such personnel shall be of the highest character and in keeping with that worn by personnel in similar first-class businesses in the Denver metropolitan area. Personnel while at the Licensed Premises shall be attired in identifiable dress and at all times possess visible identification as to their name and employer.
- D. Licensee shall comply with all applicable federal, state and local laws and regulations, including without limitation those governing operation of energy utilities. Licensee shall allow duly authorized representatives of governmental entities access to the Licensed Premises for inspection purposes. Licensee agrees to obtain at its own expense, and maintain at all times, all licenses and certificates necessary for the operation of the Generating Facility and to comply with all applicable health, safety and sanitary laws, regulations and inspections concerning same.
- E. Licensee shall develop detailed written operating and security procedures and City shall have twenty-one (21) days to review such procedures.
- F. Licensee shall comply with all IRS regulations and the COP Ordinance.
- G. The Manager or the Manager's authorized representative shall have the right to make reasonable objections to the character of the service rendered, energy produced, and the appearance and condition of the Licensed Premises. Licensee agrees to promptly discontinue or remedy any objectionable practice or condition within five (5) days after written notice by the Manager or his/her authorized representative.

## 7.02 HOURS OF OPERATION

Licensee agrees to keep the Generating Facility open year round during daylight hours, extenuating circumstances such as weather excepted.

## 7.03 CARE OF AREA

Licensee agrees that it will keep the Licensed Premises in a neat, clean, safe, sanitary and orderly condition at all times, and further agrees that it will keep such area free at all times of all paper, rubbish, spills, and debris. Licensee, at its own expense, shall collect and deposit all trash and refuse.

## 7.04 COMPLIANCE WITH ALL LAWS AND REGULATIONS

Licensee agrees not to use or permit the Licensed Premises to be used for any purpose prohibited by the laws of the United States or the State of Colorado or the ordinances or Charter of the City and County of Denver, or not authorized hereunder, and it further agrees that it will use the Licensed Premises in accordance with all applicable federal, state and local laws and all general rules and regulations adopted by the City or the Manager for the management, operation and control of the Premises, either promulgated by the City on its own initiative or in compliance with regulations or other authorized federal agency. Licensee further agrees to submit any report or reports or information which the City is required by law or regulation to obtain from Licensee or which the Manager may request relating to Licensee's operations. Without limiting the foregoing, Licensee shall comply at all times with the Americans with Disabilities Act, 42 USC 12,000 et seq., and all applicable regulations adopted pursuant thereto, in the physical conditions in the Licensed Premises and in Licensee's operations.

## 7.05 PREVAILING WAGE; SMALL BUSINESS ENTERPRISES

Licensee, where applicable, shall comply with Section 20-76 of the Denver Revised Municipal Code on prevailing wages and Sections 28-201, et. seq., of the Denver Revised Municipal Code on small business enterprises. . By executing this Agreement, the Licensee covenants that it is familiar with Code Section 20-76 and is prepared to pay or cause to be paid prevailing wages, if any, required by the scope of work of the Licensee's or his subcontractor's employees. A schedule of prevailing wage is attached as Exhibit D. The schedule of prevailing wage is periodically updated and Licensee is responsible for payment of then current prevailing wage. Exhibit D shall be deemed replaced by updated schedules with out amendment to this Agreement. The Licensee may obtain an updated scheduled of prevailing wage at any time from the Auditor's Office.

## 7.06 COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS

Licensee, in conducting any activity on the Licensed Premises, shall comply with all applicable local, state or federal environmental rules, regulations, statutes, laws or orders (collectively "Environmental Requirements"), including but not limited to Environmental Requirements regarding the storage, use and disposal of Hazardous Materials or Special Wastes and regarding releases or threatened releases of Hazardous Materials or Special Wastes to the environment. For purposes of this Agreement the terms "Hazardous Materials" shall refer to those materials, including

without limitation asbestos and asbestos-containing materials, polychlorinated biphenyls (PCBs), oil or any other petroleum products, natural gas, source material, pesticides, and any hazardous waste, toxic substance or related material, including any substance defined or treated as a "hazardous substance," "hazardous waste" or "toxic substance" (or comparable term) in the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sec. 9601 et seq. (1990)), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq. (1990)), and any rules or regulations promulgated pursuant to such statutes or any other applicable federal or state statute. Licensee shall comply with the City's Ordinance 196, as amended on March 18, 1991 (amendments to the City Uniform Public Code related to water conservation fixtures).

Licensee shall acquire all necessary federal, state and local environmental permits and comply with all applicable federal and state environmental permit requirements.

Licensee agrees to ensure that its Licensed Premises is designed, constructed, operated and maintained in a manner that minimizes environmental impact through appropriate preventive measures and complies with all federal, state and local environmental requirements. Licensee agrees to evaluate methods to reduce the generation and disposal of waste materials as applicable. Wastewater from maintenance or operational activities shall be pretreated with sand and grease traps as applicable.

In the case of a release, spill or leak as a result of Licensee's construction, operation or maintenance activities, Licensee shall immediately control and remediate the contaminated media to applicable federal, state and local standards. Licensee shall reimburse the City for any penalties and all cost and expense, including without limitation attorney's fees, incurred by the City as a result of the release or disposal by Licensee of any pollutant or hazardous material on the Premises.

#### 7.07 WASTE OR IMPAIRMENT OF VALUE

Licensee agrees that nothing shall be done or kept in the Licensed Premises which might impair the value of the City's property or which would constitute waste.

#### 7.08 HAZARDOUS USE

Licensee agrees that nothing shall be done or kept in the Licensed Premises and no improvements, changes, alterations, additions, maintenance or repairs shall be made to the Licensed Premises which might be unsafe or hazardous to any person or property. Further, Licensee shall not do or permit to be done any act or thing upon the Licensed Premises which will invalidate, suspend or increase the rate of any fire insurance policy required under this Agreement, or carried by the City, covering the Licensed Premises or the buildings in which the Licensed Premises is located or which, in the opinion of the Manager or his authorized representative, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this Agreement. If, by reason of any failure by Licensee to comply with the provisions of this section, after receipt of notice in writing from the City, any fire insurance rate on the Licensed Premises or on the buildings in which the same is located, shall at any time be higher than it normally would be, then Licensee shall pay the City, on demand, that part of all fire insurance premiums paid by the City which have been charged because of such violation or failure of Licensee; provided, that

nothing herein shall preclude Licensee from bringing, keeping or using on or about the Licensed Premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on the normal operations contemplated herein.

#### 7.09 STRUCTURAL, ELECTRICAL OR SYSTEM OVERLOADING

Licensee shall operate the Generating Facility and appurtenant utilities in a manner that will not create a hazard by overloading the capacity of any structural, roof load, snow load, wind tolerances, electrical or other system facility. Additional concerns may appear pending technical review, and Licensee shall address all such issues in a reasonably timely manner.

#### 7.10 NOISE, ODORS, VIBRATIONS AND ANNOYANCES

Licensee shall conduct its operations in an orderly and proper manner so as not to commit any nuisance in the Licensed Premises or unreasonably annoy, disturb or be offensive to the public and shall take all reasonable measures, using the latest known and practicable devices and means, to eliminate any unusual, nauseous or objectionable noise, gases, vapors, odors and vibrations and to maintain the lowest possible sound level in its operations.

7.11 ACCESSIBILITY. Licensee shall not do or permit to be done anything which might interfere with or hinder police, firefighting, or other emergency personnel in the discharge of their duties.

### SECTION 8 UTILITIES AND SERVICES

#### 8.01 UTILITIES AND SERVICES

Licensee shall pay all charges and fees for utilities used during construction of the Generating Facility including all repair and janitorial services. Licensee shall also be responsible for payment of any and all tap fees.

#### 8.02 ELECTRICITY AND NATURAL GAS

Licensee shall pay all costs for electricity and gas used within the Licensed Premises.

#### 8.03 MAINTENANCE

Licensee shall, at its expense maintain the Licensed Premises in accordance with prudent industry standards including redecoration, painting and repair and replacement of worn furnishings as the conditions and Director or Director's authorized representative may reasonably require. The cost of maintenance, care and any necessary replacement of the Generating Facility shall be borne by Licensee. Licensee agrees, at its expense and without cost or expense to the City, during the Term hereof that:

A. Licensee shall keep the Generating Facility in good order and condition and will make all necessary and appropriate repairs and replacements in accordance with industry standards and in a good and workmanlike fashion without diminishing the original quality of such improvements;

B. Licensee shall not permit rubbish, debris, waste materials or anything unsightly or detrimental to health, or likely to create a fire hazard, or conducive to deterioration, to remain on any part of the Premises or to be disposed of improperly.

C. Licensee shall provide and maintain obstruction lights and all similar equipment or devices now or at any time required by any applicable law, ordinance or municipal, state or federal regulation.

D. Licensee shall be responsible for the removal of snow and ice on the Licensed Premises to the extent Licensee or the City need to access the Generating Facility.

E. The Manager or his authorized representative shall have the right to make reasonable objections regarding the maintenance and appearance of the Premises. Licensee agrees to promptly discontinue or remedy any reasonably objectionable condition within five (5) days after written notice by the Manager or his authorized representative.

#### 8.04 INTERRUPTION OF SERVICES

The parties agree that neither party shall be liable for City's failure to supply any utility services. City reserves the right to temporarily discontinue utility services at such time as may be necessary by reason of accident, unavailability of employees, repairs, alterations or improvements or whenever by reason of strikes, lockouts, riots, acts of God or any other happenings beyond the control of the City, the City is unable to furnish such utility services. The City shall not be liable for damages to persons or property for any such discontinuance, nor shall such discontinuance in any way be construed as cause for abatement of compensation or operate to release the Licensee from any of its obligations hereunder, except as otherwise provided in the section entitled "Damage, Destruction or Loss."

### SECTION 9 INDEMNITY, INSURANCE AND BONDS

#### 9.01 DEFENSE AND INDEMNIFICATION:

A. Licensee hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this License ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify

City for any acts or omissions of Licensee or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

B. Licensee's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether claimant has filed suit on the Claim. Licensee's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

C. Licensee will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

D. Insurance coverage requirements specified in this License shall in no way lessen or limit the liability of the Licensee under the terms of this indemnification obligation. The Licensee shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

E. This defense and indemnification obligation shall survive the expiration or termination of this License.

## 9.02 INSURANCE

A. Full Term of Agreement. Licensee further agrees to secure at its own expense, and to keep in force at all times during the Term hereof, the following insurance:

1. General Conditions: The Licensee shall secure, at or before the time of execution of this License, the following insurance covering all operations, goods or services provided pursuant to this License. Licensee shall keep the required insurance coverage in force at all times during the term of this License, or any extension thereof, during any warranty period, and for three (3) years after termination of this License. The required insurance shall be underwritten by an insurer licensed to do business in Colorado and rated by A.M. Best Company as "A"VIII or better. Each policy shall contain a valid provision or endorsement stating "Should any of the above-described policies be canceled or non-renewed before the expiration date thereof, the issuing company shall send written notice to the Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202. Such written notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior." Additionally, Licensee shall provide written notice of cancellation, non-renewal and any reduction in coverage to the address above by certified mail, return receipt requested. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Licensee. Licensee shall be responsible for the payment of any deductible or self-insured retention. The City reserves the right to require the Licensee to provide a bond, at no cost to the City, in the amount of the deductible or self-insured retention to guarantee payment of claims. The insurance coverages specified in this License are the minimum requirements, and these requirements do not lessen or limit the liability of the



Licensee. The Licensee shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this License.

2. Proof of Insurance: Licensee shall provide a copy of this License to its insurance agent or broker. Licensee may not commence occupancy under this License prior to placement of coverage. Licensee certifies that the certificate of insurance attached as Exhibit C preferably an ACORD certificate, complies with all insurance requirements of this License. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this License shall not act as a waiver of Licensee's breach of this License or of any of the City's rights or remedies under this License. The City's Risk Management Office reserves the right to require the Licensee to provide a certificate of insurance, a policy, or other proof of insurance including, but not limited to, policies and endorsements.

3. Additional Insureds: For Commercial General Liability, and Auto Liability, Licensee's insurer shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as an additional insured.

4. Waiver of Subrogation: For all coverages, Licensee's insurer shall waive subrogation rights against the City.

5. Sub-consultants: All sub-consultants and subcontractors (including independent contractors, suppliers or other entities providing goods or services required by this License) shall be subject to all of the insurance coverages herein and shall procure and maintain the same coverages required of the Licensee. Licensee shall include all such sub-consultants, subcontractors, independent contractors, suppliers or other entities as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that these entities maintain the required coverages. Licensee agrees to provide proof of insurance for all such subcontractors and sub-consultants upon request by the City.

6. Workers' Compensation/Employer's Liability Insurance: Licensee shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Licensee expressly represents to the City, as a material representation upon which the City is relying in entering into this License, that none of the Licensee's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this License, and that any such rejections previously effected, have been revoked as of the date Licensee executes this License.

7. General Liability: Licensee shall maintain limits of \$1,000,000 for each occurrence claim, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate. Aggregate limits must be "per project" or "per location;"

8. Business Automobile Liability: Licensee shall maintain Business Automobile Liability with limits of \$1,000,000 for combined single limit applicable to all owned, hired, and non-owned vehicles used in performing services under this License.

9. Builder's Risk Insurance: Power Provider shall maintain either Builder's Risk policy or an Installation Floater in limits equal to the initial contract amount plus additional coverage equal to contract amount for all subsequent change orders.

10. Excess/Umbrella Liability: Licensee shall maintain limits of \$5,000,000.

11. Additional Provisions:

(a) For all Commercial General Liability, excess/umbrella liability, the policies must provide the following:

- (i) That this License is an Insured Contract under the policy;
- (ii) Defense costs in excess of policy limits;
- (iii) A severability of interests, separation of insureds, or cross liability provision;
- (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance provided by the City.

(b) For claims-made coverage, the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.

(c) Licensee shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Licensee shall procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force

B. Construction Period. Licensee agrees to secure or require each contractor to secure and to keep in full force and effect during and until completion of the Generating Facility the following insurance:

1. The Licensee shall obtain and keep in force during the construction period pursuant to this License, insurance policies as described in the Section 9.02 (Insurance).

2. The City's acceptance of any submitted insurance certificate is subject to the approval of the City's Risk Management Administrator. All coverage requirements specified in Section 9.02 (Insurance) shall be enforced unless waived or otherwise modified in writing by the City's Risk Management Administrator.

3. Unless specifically excepted in writing by the City's Risk Management Administrator, the Licensee shall include all sub-consultants performing services hereunder as insureds under each required policy or shall furnish a separate certificate (on the form certificate provided), with authorization letter(s) and receipt(s) of premium payment for each sub-consultant. All coverages for sub-consultants shall be subject to all of the requirements herein.

4. Licensee understands and agrees that the City, its officers, officials and employees, are relying on and do not waive or intend to waive by any provisions of this License the monetary limitations or any other rights, immunities and protections provided by the

Colorado Governmental Immunity Act, § 24-10-101 to 120, C.R.S., or otherwise available to the City, its officers, officials and employees.

### 9.03 NO PERSONAL LIABILITY

No director, officer or employee of either party hereto shall be held personally liable under this Agreement or because of its execution or attempted execution.

### 9.04 TAXES, LICENSES, LIENS AND FEES

Licensee agrees to promptly pay all taxes, excises, license fees and permit fees of whatever nature applicable to its operations hereunder and to take out and keep current all municipal, state or federal licenses required for the conduct of its business at and upon the Licensed Premises and further agrees not to permit any of said taxes, excises, license fees or permit fees to become delinquent. Licensee also agrees not to permit any mechanic's or materialman's or any other lien to become attached or be foreclosed upon the Licensed Premises or improvements thereto, or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any mechanic or materialman. Licensee agrees to furnish to the Manager, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment by it of Social Security, unemployment insurance and worker's compensation insurance, and all required licenses and all taxes. Licensee further agrees to promptly pay when due all bills, debts and obligations incurred by it in connection with its operations hereunder and not to permit the same to become delinquent and to suffer no lien, mortgage, judgment or execution to be filed against the Licensed Premises or improvements thereon which will in any way impair the rights of the City under this Agreement.

## SECTION 10 DEFAULT AND REMEDIES

### 10.01 DEFAULT

Licensee shall be in default under this Agreement if Licensee:

- A. Fails to timely pay when due to City the compensation or any other payment required hereunder; or
- B. Is in default under any other Agreement with the City for Licensed Premises at the Premises; or
- C. Becomes insolvent, or takes the benefit of any present or future insolvency or bankruptcy statute, or makes a general assignment for the benefit of creditors, or consents to the appointment of a receiver, trustee or liquidator of any or substantially all of its property; or
- D. Transfers its interest under this Agreement, without the prior written approval of the City, by reason of death, operation of law, assignment, sublicense or otherwise, to any other person, entity or corporation; or

E. Fails to complete construction of all of the Generating Facility no later October 31,2011, or fails to make sufficient progress on construction of the Generating Facility where it becomes apparent that the construction deadline will not be met, unless such date is extended by the Manager in his/her discretion.

F. Abandons, deserts or vacates the Licensed Premises, or fails to operate the Generating Facility; or

G. Suffers any lien or attachment to be filed against the Licensed Premises, the Premises or City's property because of any act or omission of Licensee, and such lien or attachment is not discharged or contested by Licensee in good faith by proper legal proceedings within twenty (20) days after receipt of notice thereof by Licensee; or

H. Fails to keep, perform and observe any other promise, covenant or agreement set forth in this Agreement and such failure continues for a period of more than thirty (30) days after delivery by Manager of a written notice of such breach or default, except where a shorter period is specified herein, or where fulfillment of its obligation requires activity over a period of time and Licensee within ten (10) days of notice commences in good faith to perform whatever may be required to correct its failure to perform and continues such performance without interruption except for causes beyond its control; or

I. Gives its permission to any person to use for any illegal purpose any portion of the Premises made available to Licensee for its use under this Agreement.

## 10.02 REMEDIES

If Licensee defaults in any of the covenants, terms and conditions herein, the City may exercise any one or more of the following remedies:

A. The City may elect to allow this Agreement to continue in full force and effect and to enforce all of City's rights and remedies hereunder, including without limitation the right to collect compensation as it becomes due together with interest accrued at the Past Due Interest Rate; or

B. The City may cancel and terminate this Agreement and repossess the Licensed Premises, with or without process of law, and without liability for so doing, upon giving thirty (30) days written notice to Licensee of its intention to terminate, at the end of which time all the rights hereunder of the Licensee shall terminate, unless the default, which shall have been stated in such notice, shall have been cured within such thirty (30) days. The notice shall be final and the City shall at its option (1) cancel and terminate all of the rights hereunder of the Licensee, reenter the Licensed Premises, remove therefrom all property of the Licensee and store the same at the expense of the Licensee, or (2) elect to proceed under subparagraph C. below.

If City elects to terminate, Licensee shall be liable to City for all amounts owing at the time of termination, including but not limited to compensation due plus interest thereon at the Past Due Interest Rate together with any other amount to fully compensate City for all loss of compensation, damages, including but not limited to loss of roof warranty, and costs, including attorney's fees,

caused by Licensee's failure to perform its obligations hereunder, or which in the ordinary course would likely result therefrom.

C. The City for itself and its Lessor may elect to reenter and remove Licensee from the Licensed Premises and expel Licensee or any person claiming under Licensee, and remove all effects as may be necessary, without prejudice to any remedies for damages or breach. Such reentry shall not be construed as termination of this Agreement unless a written notice specifically so states; however, the City reserves the right to terminate the Agreement at any time after reentry. Following reentry, the City may license or lease the Licensed Premises, or any portion thereof, for the account of Licensee, on such terms and conditions as the City may choose, and may make such repairs or improvements as it deems appropriate to accomplish the lease or license. The City shall not be responsible for any failure to license or lease or any failure to collect compensation due for such licensing or letting.

Licensee shall be liable to City for all costs of reentry and removal including attorney's fees and repairs or improvements. Notwithstanding re-entry by the City, Licensee shall continue to be liable for all amounts due as compensation under this License, on the dates specified and in such amounts as would be payable if default had not occurred. Upon expiration of the Term, or any earlier termination of the License by the City, the City shall refund, without interest, any amount which exceeds the compensation, damages, and costs payable by Licensee under this License.

#### 10.03 REMEDIES CUMULATIVE

The remedies provided in this Agreement shall be cumulative and shall in no way affect any other remedy available to City under law or equity.

#### 10.04 ADMINISTRATIVE HEARING

Disputes arising out of this Agreement shall be resolved by administrative hearing which shall be conducted in accordance with the procedures set forth in Section 56-106(b), et seq., Revised Municipal Code of the City and County of Denver. The Parties hereto agree that the Manager of General Services' determination resulting from said administrative hearing shall be final, subject only to the Licensee's right to appeal the determination under Colorado Rule of Civil Procedure, Rule 106; provided, that City shall retain its right to obtain an order of eviction in accordance with applicable state law. It is further agreed that no cause of action shall be brought against the City until there has been full compliance with the terms of this paragraph.

#### 10.05 WAIVERS

No failure of a non-defaulting party to insist upon the strict performance of a term, covenant or agreement contained in this Agreement, no failure by a non-defaulting party to exercise any right or remedy under this Agreement, and no acceptance of full or partial payment during the continuance of any default by a defaulting party shall constitute a waiver of any such term, covenant or agreement or a waiver of any such right or remedy or a waiver of any default by a defaulting party.

#### 10.06 APPROPRIATION

Notwithstanding any other term or condition of this Agreement, it is understood and agreed that the obligation of the City for all or any payment obligation, whether direct or contingent, shall only extend to payment of monies duly and lawfully appropriated by the City Council for the purpose of this Agreement, encumbered for the purpose of this Agreement, and paid into the Treasury of the City. The Licensee acknowledges that (i) the City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

## SECTION 11 DAMAGE, DESTRUCTION OR LOSS

### 11.01 DAMAGE TO OR DESTRUCTION OF LICENSED PREMISES

If the Licensed Premises, or any portion thereof, is destroyed or damaged by fire or otherwise to an extent which renders it unusable, City may rebuild or repair any portions of the building structure destroyed or damaged, and, if the cause was beyond the control of Licensee, the obligation of Licensee to pay the compensation hereunder shall abate as to such damaged or destroyed portions during the time they are unusable. If the City elects not to proceed with the rebuilding or repair of the building structure, it shall give notice of its intent within 90 days after the destruction or damage. Licensee may then, at its option, cancel and terminate this Agreement.

### 11.02 COOPERATION IN THE EVENT OF LOSS

If the City elects to rebuild, Licensee must replace the Generating Facility at its sole cost and in accordance with the Required Minimum Investment in June 1, 2011 dollars, subject to increase or deduction according to the Engineering News Record Building Cost Index for the Denver, Colorado area, and to the same condition as existed at the time of the loss. City and Licensee shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss or damage.

### 11.03 LOSS OR DAMAGE TO PROPERTY

City shall not be liable for any loss of property by theft or burglary from the Licensed Premises or for any damage to person or property on the Licensed Premises resulting from operating the elevators, or electric lighting, or water, rain or snow, which may come into or issue or flow from any part of the Premises, or from the pipes, plumbing, wiring, gas or sprinklers thereof or that may be caused by the City's employees or any other cause, and Licensee agrees to make no claim for any such loss or damage at any time, except for any abatement of compensation or right to insurance proceeds provided for in this Section.

### 11.04 MUTUAL WAIVER/INSURANCE COVERAGE

City and Licensee each waive any and every claim for recovery from the other for any and all loss of or damage to the Licensed Premises or to the contents thereof, which loss or damage is covered by valid and collectible fire and extended insurance policies, to the extent that such loss or damage

is recoverable under such insurance policies. Since this mutual waiver will preclude the assignment of any such claim by subrogation or otherwise to an insurance company or any other person, Licensee agrees to give to each insurance company which has issued, or may issue, to the Licensee policies of fire and extended coverage insurance, written notice of the terms of this mutual waiver, and to have such insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverage by reason of this waiver.

## SECTION 12 MISCELLANEOUS PROVISIONS

### 12.01 ADVERTISING AND PUBLIC DISPLAYS

Licensee shall not install or have installed or allow to be installed upon or within the Licensed Premises, without the prior written approval of the Manager or his/her authorized representative, any sign, either lighted or unlighted, poster or other display of advertising media, including material supplied by manufacturers of merchandise offered for sale, as well as other types of display permitted by City zoning standards. Permission will not be granted for any advertising which fails to comply with building standards or City zoning standards, or any advertising material, fixture or equipment which extends beyond the Licensed Premises. Each party agrees that it shall not issue any formal press release regarding the Generating Facility without the prior consent of the other, and each party agrees not to unduly withhold, condition or delay any such consent. On all permitted signage at the Premises, and in all publicly distributed written materials issued by either party that refer to the Generating Facility by name, such name will contain a statement to the effect attributing ownership and operation of the Generating Facility.

### 12.02 AGREEMENT BINDING UPON SUCCESSORS

This Agreement, subject to the provisions of the section entitled "Assignment", shall be binding upon and extend to the heirs, personal representatives, successors and assigns of the respective parties hereto.

### 12.03 AGREEMENT MADE IN COLORADO

This Agreement shall be deemed to have been made in and shall be construed in accordance with the laws of the State of Colorado.

### 12.04 ASSIGNMENT

A. Assignment by Licensee. The Licensee's right, title and interest in, to, and under this License and the Generating Facility and all proceeds therefrom, may be assigned and reassigned in whole or in part (including by way of any direct or collateral assignment) (i) in accordance with Section 29 of the Power Purchase Agreement; (ii) to one or more of Licensee's affiliates, (iii) to one or more affiliates or third parties in connection with a sale-and-leaseback or other financing transaction, and the parties specifically agree that Licensee may make an assignment in part or in whole to US Bancorp Community Development Corporation, whose address is 1307

Washington Ave., Ste. 300, St. Louis, MO 63103 or to a wholly owned subsidiary of U.S. Bank N.A. that owns or has a beneficial interest in the Generating Facility as part of Licensee's financing; (iv) to any person or entity succeeding to all or substantially all of the assets of Licensee, or (v) to a successor entity in a merger or acquisition transaction without the necessity of obtaining the consent of the City; provided that any such assignment does not change any obligation of the City. Any such assignment shall not be effective until the Manager of General Services has received written notice, signed by the assignor, of the name and address of the assignee. The City hereby agrees that the Licensee may, without notice to the City, sell, dispose of, or assign this License through a pool, trust, limited partnership, or other similar entity, whereby one or more interests are created in this License or the Generating Facility.

The Licensee and the City agree that any such assignment of this License or the Power Purchase Agreement is not intended as the offer or sale of a security, and the Licensee and all assignees hereof understand and agree that: (i) the City shall not be responsible for any information provided to any assignee or subassignee in connection with any such assignment and (ii) if any such assignment constitutes the offering of a security under applicable securities laws, the City shall not be responsible for compliance with any such laws, and any offering or other disclosure document delivered by the Licensee in connection with such assignment shall include a statement to the effect that the City has assumed no responsibility for such document and has neither reviewed nor undertaken to verify any information contained therein.

The Manager of General Services shall (i) retain all assignment notices as a register of all assignees (other than registered owners of certificates of participation) and (ii) shall be responsible for making any payments under the terms of this License or the Power Purchase Agreement only if an appropriation has been effected by the City for such purpose, and only to the Licensee at the address set forth in herein, notwithstanding any assignment by the Licensee pursuant to the terms of this section, unless this License is modified in a writing signed by the Parties amending this License to so provide for different payment terms.

City agrees to notify in writing, an assignee which has been approved by an amendment to this License, at the address to be designated by assignee upon not less than five (5) business days' written notice to City prior to any notice by City hereunder, of any act or event of default of Licensee under this License of which City has knowledge that would entitle City to cancel, terminate, annul, or modify this License or dispossess or evict Licensee from the Licensed Premises or otherwise proceed with enforcement remedies against Licensee, and assignee shall have the same amount of time as Licensee, but at least ten (10) days with respect to any monetary default and at least thirty (30) days with respect to any non-monetary default, to cure any default by Licensee under the License; provided that in no event shall assignee be obligated to cure any such default.

City consents to assignee accessing the Licensed Premises and the Premises, upon three (3) days notice for the purpose of inspecting the Generating Facility.

B. Assignment and Subleasing by the City. None of the City's right, title and interest in, to and under this Agreement or any portion of the Generating Facility may be assigned or



encumbered by the City for any reason; except if the City obtains the prior written consent of the Licensee, which consent shall not be unreasonably withheld or delayed and an opinion of nationally recognized counsel in the area of tax exempt municipal obligations satisfactory to both the City and the Licensee that such assignment will be permissible under the COP Ordinance.

#### 12.05 COP ORDINANCES

This License is in all respects subject and subordinate to the City COP ordinance and agreements issued in connection with the COP Ordinance applicable to the Premises and Premises system and to any other COP ordinances which should amend, supplement or replace such COP ordinances. The Parties to this License acknowledge and agree that all property subject to this License which was financed by the net proceeds of tax-exempt COPs is owned by the City, and Licensee agrees not to take any action that would impair, or omit to take any action required to confirm, the treatment of such property as owned by the City for purposes of Section 142(b) of the Internal Revenue Code of 1986, as amended. In particular, the Licensee agrees to make, and hereby makes, an irrevocable election (binding on itself and all successors in interest under this License) not to claim depreciation or an investment credit with respect to any property subject to this License which was financed by the net proceeds of tax-exempt COPs and shall execute such forms and take such other action as the City may request in order to implement such election.

#### 12.06 FORCE MAJEURE

Neither party hereto shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this Agreement due to causes beyond the control of that party, including without limitation strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstance for which such party is not responsible or which is not in its power to control, but in no event shall this paragraph be construed so as to allow Licensee to reduce or abate its obligation to pay the annual license fee herein, or any other compensation due hereunder.

#### 12.07 INCONVENIENCES DURING CONSTRUCTION

Licensee recognizes that from time to time during the Term of this Agreement, it may be necessary for City to commence or complete extensive programs of construction, expansion, relocation, maintenance and repair in order that the Premises and its facilities may be completed and operated in accordance with any present or future master layout plan, and that such construction, expansion, relocation, maintenance and repair may inconvenience the Licensee in its operation at the Premises. Licensee agrees that no liability shall attach to City, its officers, agents, employees, contractors, subcontractors and representatives by way of such inconveniences, and Licensee waives any right to claim damages or other consideration therefrom.

#### 12.08 MASTER PLAN

Licensee agrees that no liability shall attach to the City, its officers, agents and employees by reason of any efforts or action toward implementation of any present or future master layout plan for the Premises, and waives any right to claim damages or other consideration arising therefrom.

#### 12.09 NONDISCRIMINATION

In connection with the performance of work under this Agreement, Licensee agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability, and Licensee further agrees to insert the foregoing provision in all subcontracts hereunder.

#### 12.10 NOT PARTNERSHIP

It is expressly understood and agreed that neither party shall be construed or held to be a partner, associate, agent, representative, or joint venturer of the other party in the conduct of its business. Licensee shall at all times have the status of an independent contractor without the right or authority to impose tort or contractual liability upon the City.

#### 12.11 NOTICES

All notices required or permitted to be given to the City or Licensee hereunder shall be in writing and sent by certified mail, postage prepaid, return receipt requested, or sent by overnight air courier service, or personally delivered to a representative of the receiving party, or sent by facsimile or email (provided an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this section)to:

City:                      Manager of General Services  
                                 201 West Colfax Dept. 1106  
                                 Denver, Colorado 80202

with a copy to:        Denver City Attorney's Office  
                                 Municipal Operations Section  
                                 201 West Colfax Dept. 1207  
                                 Denver, Colorado 80202

Licensee:                SolarCity  
                                 3055 Clearview Way  
                                 San Mateo, California 94402

Either party hereto may designate in writing from time to time the address of substitute or supplementary persons to receive such notices. The effective date of service of any such notice shall be the date such notice is mailed or delivered to Licensee or Manager.

## 12.12 PARAGRAPH HEADINGS

The paragraph headings herein are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

## 12.13 PATENTS AND TRADEMARKS

Licensee represents that it is the owner of or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its operations under this Agreement. Licensee agrees to save and hold harmless the City, its officers, employees, agents and representatives from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark or copyright arising from any alleged or actual unfair competition or other similar claim arising out of the operations of Licensee under this Agreement.

## 12.14 SEVERABILITY

If any provision in this Agreement is held by a court to be invalid, the validity of other provisions herein which are severable shall be unaffected.

## 12.15 THIRD PARTIES

This Agreement does not, and shall not be deemed or construed to, confer upon or grant to any third party or parties (except parties to whom the Licensee may assign this Agreement in accordance with the terms hereof, and except any successor to the City) any right to claim damages or to bring any suit, action or other proceeding against either the City or the Licensee because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein.

## 12.16 USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS

Licensee, its officers, agents and employees shall cooperate and comply with the provisions of the Federal Drug-Free Workplace Act of 1988 and Denver Executive Order No. 94, or any successor thereto, concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring Licensee from City facilities or participating in City operations.

## 12.17 CITY SMOKING POLICY

Licensee and its officers, agents and employees shall cooperate and comply with the provisions of Denver Revised Municipal Code Sec. 24-304 prohibiting smoking in City buildings and facilities.

Licensee agrees that it will prohibit smoking by its employees and the public in the Licensed Premises.

#### 12.18 ENTIRE AGREEMENT;AMENDMENT

The parties acknowledge and agree that the provisions herein together with the Power Purchase Agreement constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications, shall be valid unless executed by an instrument in writing by all the parties or their respective successors in interest with the same formality as this Agreement.

#### 12.19 FINAL APPROVAL

This Agreement is expressly subject to and shall not be or become effective or binding on the City until approved by the City Council and fully executed by all signatories of the City and County of Denver.

#### 12.20 ESTOPPEL CERTIFICATES

From time to time, upon written request by either party (or a Lender), the other party shall provide within thirty (30) days thereafter an estoppel certificate attesting, to the knowledge of the other party, of the other party's compliance with the terms of this Agreement or detailing any known issues of noncompliance. If the other party fails to deliver such a statement to the requesting party within such thirty (30)-day period, then the requesting party may make an additional written demand for such statement and if the other party does not deliver the statement within fifteen (15) days following such additional written demand from the requesting party, then such failure shall constitute an event of default under this Agreement.

#### 12.21 ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS

Power Provider consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

#### 12.22 Counterparts Of The Agreement

The Agreement may be executed in counterparts, each of which is an original and constitute the same instrument.

*Remainder of page left intentionally blank.*

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY

ATTEST:

CITY AND COUNTY OF DENVER

By \_\_\_\_\_  
STEPHANIE Y. O'MALLEY, Clerk and Recorder,  
Ex-Officio Clerk of the City and County of Denver

By \_\_\_\_\_  
Mayor

APPROVED AS TO FORM

RECOMMENDED AND APPROVED:

DAVID R. FINE,  
Attorney for the City and County of Denver

By \_\_\_\_\_  
Manager of General Services

By \_\_\_\_\_  
Assistant City Attorney

By \_\_\_\_\_  
Director of Greenprint

By \_\_\_\_\_  
Director of Facilities Management

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_  
Manager of Finance

By \_\_\_\_\_  
Auditor  
Contract Control No. RC11010

THE CITY

ATTEST:  
By \_\_\_\_\_  
Secretary  
SETH WEISSMAN

SOLARCITY  
By \_\_\_\_\_  
DAVID WHITE

Title DAVID WHITE, CFO

LICENSEE

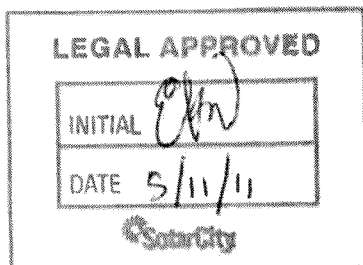


EXHIBIT A  
LICENSED PREMISES PLAN AND PROPOSAL

Meter and Electric Panel located inside building. Estimated conduit run of 200 feet.

Est. Inverter location

Estimated Array location

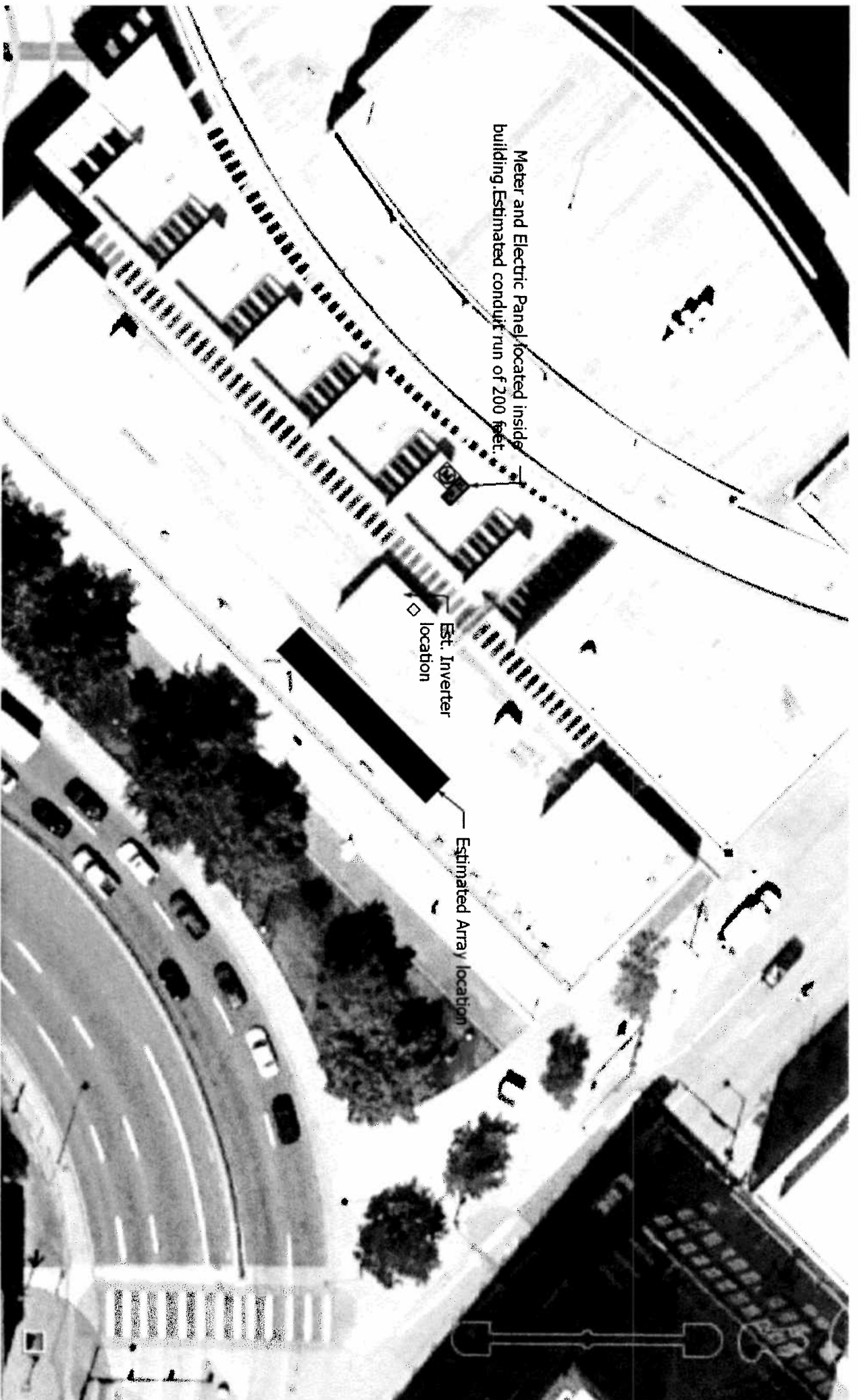


EXHIBIT B  
DESCRIPTION OF PREMISES

LOTS 1-32, AND ALL OF THE VACATED ALLEY INTERJACENT THERETO, BLOCK 232, EAST DENVER, AND OUTLOT 3, EVANS ADDITION TO THE CITY OF DENVER, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

Also known and numbered as 201 West Colfax Avenue, Denver, Colorado 80202.



EXHIBIT C

CERTIFICATE OF INSURANCE

# ACORD CERTIFICATE OF PROPERTY INSURANCE

DATE (MM/DD/YY)  
04/26/2011

PRODUCER 0726293 1-415-546-9300  
Arthur J. Gallagher & Co.  
Insurance Brokers of California, Inc., License #0726293  
One Market Plaza, Spear Tower  
Suite 200  
San Francisco, CA 94105

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

## COMPANIES AFFORDING COVERAGE

COMPANY  
**A** HARTFORD FIRE IN CO  
COMPANY  
**B**  
COMPANY  
**C**  
COMPANY  
**D**

INSURED  
SolarCity Corporation  
3055 Clearview Way  
San Mateo, CA 94402

## COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	COVERED PROPERTY	LIMITS
<b>A</b>	<input checked="" type="checkbox"/> <b>PROPERTY</b>	57UUMU08194	09/01/10	09/01/11	BUILDING	\$
	CAUSES OF LOSS				PERSONAL PROPERTY	\$
	<input type="checkbox"/> BASIC				BUSINESS INCOME	\$
	<input type="checkbox"/> BROAD				EXTRA EXPENSE	\$
	<input checked="" type="checkbox"/> <b>SPECIAL</b>				BLANKET BUILDING	\$
	<input type="checkbox"/> EARTHQUAKE				BLANKET PERS PROP	\$
	<input type="checkbox"/> FLOOD				BLANKET BLDG & PP	\$
	<input checked="" type="checkbox"/> <b>Installation/InlandMa</b>				<input checked="" type="checkbox"/> <b>Installation</b>	\$ 3,500,000
	<input type="checkbox"/> INLAND MARINE				<input checked="" type="checkbox"/> <b>In Transit</b>	\$ 1,000,000
	TYPE OF POLICY					\$
	CAUSES OF LOSS					\$
	<input type="checkbox"/> NAMED PERILS					\$
	<input type="checkbox"/> OTHER					\$
	<input type="checkbox"/> CRIME					\$
	TYPE OF POLICY					\$
	<input type="checkbox"/> BOILER & MACHINERY					\$
	<input type="checkbox"/> OTHER					\$
						\$
						\$
						\$

LOCATION OF PREMISES/DESCRIPTION OF PROPERTY  
Inland Marine: Replacement Cost  
Installation Floater: Replacement Cost  
Deductible: \$1,000

SPECIAL CONDITIONS/OTHER COVERAGES

## CERTIFICATE HOLDER

Evidence of Coverage

**CANCELLATION**\*10 day notice for non-payment of premium.

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30\* DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

*Frank Q. [Signature]*

ACORD 24 (1/95) cbuts

20824685

© ACORD CORPORATION 1996



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
04/27/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER 0726293 1-415-546-9300  
Arthur J. Gallagher & Co.  
Insurance Brokers of California, Inc., License #0726293  
One Market Plaza, Spear Tower  
Suite 200  
San Francisco, CA 94105

CONTACT  
NAME:PHONE  
(A/C, No. Ext):FAX  
(A/C, No):

E-MAIL:

ADDRESS:

PRODUCER

CUSTOMER ID #:

INSURED  
SolarCity Corporation  
3055 Clearview Way  
San Mateo, CA 94402

## INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A: ZURICH AMER INS CO

16535

INSURER B: AMERICAN GUAR &amp; LIAB INS

26247

INSURER C:

INSURER D:

INSURER E:

INSURER F:

## COVERAGES

CERTIFICATE NUMBER: 20879116

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY		GLO967364402	09/01/10	09/01/11	
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY					EACH OCCURRENCE \$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000
	<input checked="" type="checkbox"/> Deductible: \$25,000					MED EXP (Any one person) \$ 10,000
	GEN'L AGGREGATE LIMIT APPLIES PER:					PERSONAL & ADV INJURY \$ 1,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					GENERAL AGGREGATE \$ 2,000,000
						PRODUCTS - COMP/OP AGG \$ 2,000,000
						\$
A	AUTOMOBILE LIABILITY		BAP982931700	11/01/10	09/01/11	
	<input checked="" type="checkbox"/> ANY AUTO					COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input type="checkbox"/> ALL OWNED AUTOS					BODILY INJURY (Per person) \$
	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS					PROPERTY DAMAGE (Per accident) \$
	<input checked="" type="checkbox"/> NON-OWNED AUTOS					\$
						\$
						\$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR		UMB967365702	09/01/10	09/01/11	
	<input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE					EACH OCCURRENCE \$ 10,000,000
	DEDUCTIBLE					AGGREGATE \$ 10,000,000
	<input checked="" type="checkbox"/> RETENTION \$ 10,000					\$
						\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		WC967346702	09/01/10	09/01/11	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N N				<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER
	If yes, describe under DESCRIPTION OF OPERATIONS below	N/A				E.L. EACH ACCIDENT \$ 1,000,000
						E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
						E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

City and County of Denver, its elected and appointed officials, employees and volunteers are hereby named as an additional insured per written contract.

Waiver of subrogation applies for the General Liability and Workers Compensation.

Coverage is primary and non-contributory.

RE: City of Denver Sunlight Art Project

## CERTIFICATE HOLDER

City and County of Denver, its elected and appointed officials, employees and volunteers

201 West Colfax Avenue

Denver, CO 80202

USA

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

EXHIBIT D  
PREVAILING WAGE SCHEDULE



**DENVER**  
THE MILE HIGH CITY

**Career Service Authority**  
Denver's Human Resource Agency

201 W. Colfax, Department 412

Denver, CO 80202

p: 720.913.5751

f: 720.913.5720

[www.denvergov.org/csa](http://www.denvergov.org/csa)

TO: All Users of the City of Denver Prevailing Wage Schedules

FROM: Meredith Creme, Staff Human Resources Professional

DATE: Friday April 1, 2011

SUBJECT: Latest Change to Prevailing Wage Schedules

The Career Service Authority Board in their meeting held on November 3, 2005, approved to use the last comprehensive prevailing wage schedule for Heavy and Highway projects, which was published on March 1, 2002, to fill in for missing rates from subsequent Heavy and Highway wage schedules. The missing rates will be provided as supplemental to the Davis Bacon Heavy and Highway rates issued by CSA.

With regards to the Building rates, the last comprehensive prevailing wage schedule for Building projects which was published on November 9, 2001 will continue to be used to fill in for missing rates from subsequent Building Construction schedules. The missing rates will be provided as supplemental to the Davis-Bacon Building rates issued by CSA.

The attached Prevailing Wage Schedule is effective as of **Friday April 1, 2011** and applies to the City and County of Denver for **BUILDING CONSTRUCTION PROJECTS** (does not include residential construction consisting of single family homes and apartments up to and including 4 stories) in accordance with the Denver Revised Municipal Code, Section 20-76(c).

General Wage Decision No. CO080004  
Superseded General Decision No. CO20070004  
Modification No. 13  
Publication Date: 03-25-2011  
(5 pages)

Unless otherwise specified in this document, apprentices shall be permitted only if they are employed pursuant to, and individually registered in, a bona fide apprenticeship program registered with the U.S. Department of Labor (DOL). The employer and the individual apprentice must be registered in a program, which has received prior approval, by the DOL. Any employer, who employs an apprentice and is found to be in violation of this provision, shall be required to pay said apprentice the full journeyman scale.

For questions call (720) 913-5009

Attachments as listed above.

General Decision Number: CO100004 03/25/2011 CO4

Superseded General Decision Number: CO20080004

State: Colorado

Construction Type: Building

County: Denver County in Colorado.

BUILDING CONSTRUCTION PROJECTS (does not include residential construction consisting of single family homes and apartments up to and including 4 stories)

Modification Number	Publication Date
0	03/12/2010
1	05/21/2010
2	06/04/2010
3	07/02/2010
4	07/09/2010
5	07/16/2010
6	08/06/2010
7	08/13/2010
8	09/24/2010
9	10/08/2010
10	01/21/2011
11	01/28/2011
12	02/11/2011
13	03/25/2011

ASBE0028-001 07/01/2010

	Rates	Fringes
Asbestos Workers/Insulator (Includes application of all insulating materials, protective coverings, coatings and finishings to all types of mechanical systems).....	\$ 30.23	11.53

-----  
BRCO0007-001 01/01/2010

	Rates	Fringes
BRICKLAYER.....	\$ 22.48	9.54

-----  
BRCO0007-005 05/01/2009

	Rates	Fringes
TILE SETTER.....	\$ 25.65	8.83

-----  
CARP0001-004 05/01/2009

	Rates	Fringes
Carpenters:		
Acoustical, Drywall		
Hanging/Framing and Metal		
Stud, Form Building/Setting.	\$ 26.60	8.89

-----

CARP2834-001 05/01/2009

	Rates	Fringes
MILLWRIGHT.....	\$ 27.60	10.65

-----

ELEC0068-002 06/01/2010

	Rates	Fringes
ELECTRICIAN		
(Includes Low Voltage		
Wiring and Installation of		
Fire alarms, Security		
Systems, Telephones,		
Computers and Temperature		
Controls).....	\$ 31.60	12.32

-----

ELEV0025-002 01/01/2011

	Rates	Fringes
Elevator Constructor.....	\$ 38.19	21.99

FOOTNOTE:

- a. Employer contributes 8% of basic hourly rate for over 5 years' service and 6% basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit.

PAID HOLIDAYS: New Year's Day; Memorial Day; Independence Day; Labor Day; Veterans Day; Thanksgiving Day; Friday after Thanksgiving Day; and Christmas Day.

-----

ENGI0009-003 05/01/2009

	Rates	Fringes
Power equipment operator -		
crane		
141 tons and over.....	\$ 24.88	9.22
50 tons and under.....	\$ 23.82	9.22
51 to 90 tons.....	\$ 23.97	9.22
91 to 140 tons.....	\$ 24.12	9.22

-----

IRON0024-001 11/01/2009

	Rates	Fringes
IRONWORKER, STRUCTURAL.....	\$ 24.80	9.91

LABO0720-003 05/01/2009

	Rates	Fringes
Laborers:		
Concrete/Mason Tenders.....	\$ 16.52	6.84

PAIN0079-002 08/01/2009

	Rates	Fringes
Drywall Finisher/Taper		
Hand.....	\$ 19.19	5.59
Tool.....	\$ 19.54	5.59
Painters:		
Brush and Roller.....	\$ 18.49	5.59
Spray.....	\$ 19.49	5.59
PAPERHANGER.....	\$ 19.19	5.59

PAIN0930-001 07/01/2009

	Rates	Fringes
GLAZIER.....	\$ 27.95	7.10

PLAS0577-001 05/01/2010

	Rates	Fringes
Cement Mason/Concrete Finisher...	\$ 24.60	10.10

PLUM0003-001 01/01/2011

	Rates	Fringes
PLUMBER		
(Excluding HVAC work).....	\$ 32.69	11.03

PLUM0208-001 01/01/2011

	Rates	Fringes
PIPEFITTER		
(Including HVAC pipe).....	\$ 32.61	11.21

\* SFCO0669-001 01/01/2011

	Rates	Fringes
SPRINKLER FITTER.....	\$ 32.76	16.85

SHEE0009-001 01/01/2011

	Rates	Fringes
Sheet metal worker		
(Includes HVAC duct and		



installation of HVAC systems).....	\$ 31.66	10.98
---------------------------------------	----------	-------

-----  
 SUCO2001-011 12/20/2001

	Rates	Fringes
Carpenters:		
All Other Work.....	\$ 16.12	2.84
Ironworkers:		
Reinforcing.....	\$ 18.49	3.87
Laborers:		
Brick Finisher/Tender.....	\$ 12.78	1.41
Common.....	\$ 10.62	2.09
Power equipment operators:		
Mechanic.....	\$ 18.48	

-----  
 WELDERS - Receive rate prescribed for craft performing  
 operation to which welding is incidental.  
 =====

Unlisted classifications needed for work not included within  
 the scope of the classifications listed may be added after  
 award only as provided in the labor standards contract clauses  
 (29CFR 5.5 (a) (1) (ii)).  
 -----

In the listing above, the "SU" designation means that rates  
 listed under the identifier do not reflect collectively  
 bargained wage and fringe benefit rates. Other designations  
 indicate unions whose rates have been determined to be  
 prevailing.  
 -----

#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can  
 be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on  
 a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests  
 for summaries of surveys, should be with the Wage and Hour  
 Regional Office for the area in which the survey was conducted  
 because those Regional Offices have responsibility for the  
 Davis-Bacon survey program. If the response from this initial  
 contact is not satisfactory, then the process described in 2.)

and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====  
END OF GENERAL DECISION

**Career Service Authority-Supplemental to the Davis-Bacon Building rates**  
**(Specific to the Denver projects)**  
**(Supp #89, Date: 04-01-2011)**

(The following rates are from the Fed Davis-Bacon Build-Mod No. 8, 11/09/01 to fill in for missing rates from subsequent Build Construction Schedules)

	<u>Rates</u>	<u>Fringes</u>
• Boilermakers	21.34	11.04
• Power Equip Operator (Local #9)		
Concrete Mixers:		
Less than 1 yd.	19.22	5.17
1 yd. And over	19.37	5.17
Drillers	19.22	5.17
Loaders over 6 cu yd	19.37	5.17
Oilers	18.52	5.17
• Soft Floor Layers	15.70	5.19
• Ironworkers (Ornamental) use current Structural rate published by the Federal Davis-Bacon rates issued by CSA.		
• Laborers:		
Concrete Saw	13.89	-
• Plasters	16.10	-
• Plaster Tenders	10.79	-
• Power Equip Operator:		
Backhoe	13.84	2.96
Loader up to and incl 6 cu Yd	14.15	3.03
Motor Grader	14.48	3.49
Roller	14.59	-
• Truck Drivers:		
Dumps:		
6 to 14 cu yds	13.05	3.49
15 to 29 cu yds	13.12	3.49
Flatbed	14.71	2.94
Semi	13.85	-
• To determine the Tile Setters-Marble Mason-Terrazzo mechanic rates—Use Davis Bacon-Building rates adopted by the Career Service Board.		
• To determine the Tile Finisher-Floor Grinder-Base Grinder—Use current Career Service Prevailing Wage Schedules.		
• Caulkers—Receive rate prescribed for craft performing operation to which caulking is incidental i.e. glazier, painter, brick layer, cement mason.		
• Use the “Carpenters—All Other Work” rates published by the federal Davis Bacon rates for batt insulation, pre-stress concrete and tilt up concrete walls, Roofers (including foundation waterproofing).		
• Use the “Laborer—Common”, rates published by the federal Davis Bacon rates for General Housekeeping, Final Cleanup and Fence Installer.		

EXHIBIT E  
FORM OF SPECIAL COUNSEL CONSENT

{Letterhead of Special Counsel}

Laurie Heydman, Esq.  
City of Denver - City Attorneys Office  
201 W. Colfax Avenue, Department 1207  
Denver, CO 80202

Re: License for Portion of \_\_\_\_\_

Dear Laurie:

You have asked that I review a proposed transaction comprising a license for use and occupancy of a portion of certain property that is the subject of a federal tax sensitive lease purchase transaction in which the City is the lessee. I submit the following:

General Facts

The subject property described above ("\_\_\_\_\_") is a portion of the "Leased Property" as that term is defined and described in the Lease Purchase Agreement No. \_\_\_\_\_ (\_\_\_\_\_) dated \_\_\_\_\_, 20\_\_ (the "\_\_\_\_\_ Lease") under which the City and County of Denver, as lessee (the "City"), is leasing \_\_\_\_\_ comprising the Leased Property. The City is proposing to license a portion of the roof of \_\_\_\_\_ to a private enterprise for the installation of certain power generating equipment (the "Power Equipment") to generate power for the sole use and benefit of the City. Under the proposed License the City will license to the Licensee approximately \_\_\_\_\_ square feet of roof space which is not even part of the \_\_\_\_\_ square feet of interior space of \_\_\_\_\_ described in the \_\_\_\_\_ Lease (less than 5% of the aggregate interior space). The proposed license fee for the roof space is \$\_\_\_\_ per year.

You have asked that I review a document designated "License Agreement" to be dated on the date of execution and delivery thereof (for purposes of this letter, the "License") by and between the City and \_\_\_\_\_ [Company], as "licensee" (for purposes of this letter, the "Licensee") and a document designated "Solar Power Purchase Agreement" to be dated the date of execution and delivery thereof (the "Power Purchase Agreement") by and between the City and the Licensee under which the City will purchase the power generated by the Power Equipment. The obligation of the City to purchase power is subject to annual appropriation in the full discretion of the City and, in the event of nonappropriation, the power will not go to the "grid." Under the Power Purchase Agreement nonappropriation is a risk of the Licensee and no amount for which the City does not appropriate will ever be due from the City.

Subleasing Provision of the \_\_\_\_\_ Lease

Section \_\_\_\_ of the \_\_\_\_ Lease provides that "...the Leased Property may be subleased, as a whole or in part, by the City, without the necessity of obtaining the consent of the Corporation or the Trustee, subject to each of the following conditions:

(a) The Leased Property may be subleased, in whole or in part, only to an agency or department of, or a political subdivision of, the State, or to another entity or entities with Approval of Special Counsel as provided in the \_\_\_\_ Indenture;

(b) This \_\_\_\_ Lease, and the obligations of the City hereunder, shall, at all times during the Lease Term remain obligations of the City, and the City shall maintain its direct relationships with the Corporation and the Trustee, notwithstanding any sublease; and

(c) The City shall furnish or cause to be furnished to the Trustee a copy of any sublease agreement."

#### Conclusion

The License for operation of Power Equipment may be considered a "sublease" for purposes of the \_\_\_\_ Lease. It is our opinion that the transaction described herein satisfies the \_\_\_\_ Lease conditions for subleasing a portion of \_\_\_\_ and that the described use of such licensed portion of \_\_\_\_ will not cause the \_\_\_\_ Lease or the related Certificates of Participation to be "private activity bonds" under the Internal Revenue Code of 1986.

Very truly yours,  
PECK, SHAFFER & WILLIAMS LLP

Erick D. Stowe