

DEVELOPMENT AGREEMENT

AGREEMENT made as of January __, 2012 (the "Effective Date") by and among, the CITY of Lancaster (the "CITY") and SolarCity Corporation, a Delaware corporation (the "Developer"). the CITY and the Developer are a "Party" and collectively are the "Parties."

Recitals

A. The CITY desires to develop renewable energy supplies for consumption, in particular solar photovoltaic developments, and to promote public/private partnerships for renewable energy developments.

B. The Developer is in the business of providing photovoltaic systems ("Systems") for use on residential and commercial properties and is experienced in the design, engineering, equipment procurement, installation, commissioning, construction and testing of such Systems.

C. The CITY desires for the Developer to design, engineer, procure, install, commission, construct and performance test Systems on the rooftops of particular school buildings located throughout the state of California (each such school, a "Customer", and each such System on a particular Customer rooftop, a "Site", the Sites collectively, the "Project");

D. With respect to each Site, (i) the Developer shall own the Systems located on such Site and shall sell to the CITY electricity generated from the Systems located on such Site, pursuant to the terms of a power purchase agreement, the terms of which shall be mutually agreed upon between the parties (each such power purchase agreement, a "Developer PPA" and collectively, the "Developer PPAs"), and (ii) the CITY shall sell such electricity to the Customer affiliated with such Site pursuant to the terms of a power purchase agreement (each such power purchase agreement, a "Customer PPA" and collectively, the "Customer PPAs").

E. The CITY and the Developer wish to set forth the rights and obligations of each Party with respect to completing the Project herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Definitions.

As used herein, the following terms have the following meanings:

"Bond Issuance" shall have the meaning set forth in Section 2(A)(i).

"City" shall have the meaning set forth in the Preamble.

"Claims" shall have the meaning set forth in Section 9(A).

“CITY Marketing Efforts” shall have the meaning set forth in Section 2(A)(iv).

“CITY Obligations” shall mean those duties and obligations of the CITY set forth in Sections 2.1(A) and (C).

“Contact Person” shall have the meaning set forth in Section 4(A)(ii).

“Customer” shall have the meaning set forth in the Recitals.

“Customer PSA” shall have the meaning set forth in the Recitals.

“Developer” shall have the meaning set forth in the Preamble.

“Developer Marketing Efforts” shall have the meaning set forth in Section 2(B)(xi).

“Developer Obligations” shall mean those duties and obligations of the Developer set forth in Sections 2.1(B) and (C).

“Developer PPA” shall have the meaning set forth in the Recitals.

“Effective Date” shall have the meaning set forth in the Preamble.

“Exclusivity Termination Date” shall mean (i) if the CITY terminates this Agreement in accordance with Section 6(B) or the CITY defaults in the performance of any of its Obligations and the Developer exercises its rights to terminate this Agreement in accordance with Section 7(A)(i), then December 31, 2012 or (ii) if the Developer terminates this Agreement in accordance with Section 6(B) or the Developer defaults in the performance of any of its Obligations and the CITY exercises its rights to terminate this Agreement in accordance with Section 7(A)(i), then the date of such termination.

“Indemnifying Party” shall have the meaning set forth in Section 9(A).

“Indemnified Person” shall have the meaning set forth in Section 9(A).

“Losses” shall have the meaning set forth in Section 9(A).

“Marketing Efforts” shall mean the joint and several efforts of the CITY and the Developer in the pursuit of the CITY Marketing Efforts and the Developer Marketing Efforts.

“Obligations” shall mean with respect to the Developer, the Developer Obligations and with respect to the CITY, the CITY Obligations.

“Party” or “Parties” shall have the meaning set forth in the Preamble.

“Project” shall have the meaning set forth in the Recitals.

“Proprietary Information” shall have the meaning set forth in Section 4(A)(i).

“Site” shall have the meaning set forth in the Recitals.

“System” shall have the meaning set forth in the Recitals.

“Term” shall mean the period from the Effective Date until [December 31, 2012] or a later date as extended by mutual agreement of the Parties.

Section 2. Obligations.

A. The CITY shall be responsible for the following:

(i) using its best efforts to finance projects in California by the issuance of up to two hundred million (\$200,000,000) of bonds (“Bond Issuance”) subject to all legal and marketing considerations that exist at the time of issuance;

(ii) determining that all actions contemplated by this agreement, the Developer PPA’s or the Customer PSA’s comply with all applicable federal, state, and local laws. Such determination may be based on certificates and opinion of counsel for any or all of the participating entities, including Developer;

(iii) using its best efforts to find and develop Customers, including but not limited to (a) providing target lead lists to the Developer through public and professional networks, (b) facilitating Customer references with the CITY and other cities, and (c) assisting the Developer in dealing with Customers, neighborhood groups, local organizations, abutters and other parties interested in the development of the Project; (d) developing marketing materials such as flyers, direct mailers, e-mails to target customers, press releases and other advertising efforts, (e) making sales calls and planning promotional events, and (f) facilitating the Developer Marketing Efforts when necessary (“CITY Marketing Efforts”); *provided, however*, that the CITY shall not release, disclose or disseminate any materials related to an CITY Marketing Effort without the consultation and consent of the Developer;

(iv) using its best efforts to perform all obligations of the “Purchaser” under each of the Developer PPAs, once each such Developer PPA is executed and delivered by the parties thereto;

(v) the negotiation, drafting and finalization of the Customer PSAs and any ancillary legal documentation and all obligations of the “Seller” under each of the Customer PSAs once each such Customer PPA is executed and delivered by the parties thereto;

(vi) with respect to each Site and each Developer PPA, the acquisition of all necessary rights and entitlements from the applicable Customer to effectively provide the “Easement” (as such term is defined in Section 8 of such Developer PPA) to the Developer for the “Easement Area” (as such term is defined in Section 8 of such Developer PPA);

(vii) upon the commencement of construction of each System, the inspection of the progress of the course of construction for such System and the Project as a whole to verify that the same is being carried out substantially in accordance with the plans and specifications set forth in the applicable Developer PPA;

(viii) all work arising under and in connection with the administration and management of the Customer PSAs, including but not limited to the invoicing of the Customers and collection of payments under the Customer PPAs pursuant to the terms of the Customer PSAs;

(ix) the compliance with all applicable present and, to the extent reasonably possible, future laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, courts, having jurisdiction in the counties in which each System is located or any other body exercising functions similar to those of any of the foregoing;

(x) the assembly and retention of all contracts, agreements and other records and data as may be necessary to carry out the CITY's functions hereunder; and

(xi) the performance and administration of any and all other services and responsibilities of the CITY which are set forth in any other provisions of this Agreement or the Developer PPAs, or are within the general scope of the services described herein.

B. The Developer shall be responsible for the following:

(i) the effort to find and develop Customers and relationships with Customers throughout the State of California who are interested in having a System installed on their property and purchasing electricity generated from such System from the CITY;

(ii) the design, engineering, procurement, installation, commissioning, construction and performance testing of each of the Systems in accordance with the applicable Developer PPA;

(iii) the drafting of the Developer PPAs and any ancillary legal documentation;

(iv) all obligations of the "Seller" under each of the Developer PPAs, once each such Developer PPA is executed and delivered by each of the parties thereto;

(v) the on-going operation and maintenance of the Systems in accordance with each of the Developer PPAs;

(vi) any obligations or rights arising under or in connection with rebate reservation fees for any Customers;

(vii) the provision of any energy production calculations necessary under the Developer PPA or under applicable municipal, state or federal law;

(viii) the acquisition of any necessary insurance in accordance with the Developer PPA and to the extent requested by the CITY or a Customer, assisting such person in obtaining and maintaining insurance coverage for the applicable System and Site, as necessary;

(ix) the development and management of the Customers, including but not limited to (a) developing marketing materials such as flyers, direct mailers, e-mails to target customers, press releases and other advertising efforts, (b) coordinating a Project "kick-off" event and subsequent road shows across the State of California and (c) assisting the CITY with the CITY Marketing Efforts when necessary (the "Developer Marketing Efforts"); *provided, however,* that the Developer shall not release, disclose or disseminate any materials related to a Developer Marketing Effort without the consent of the CITY;

(x) the compliance with all applicable present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, courts, having jurisdiction in the counties in which each System is located or any other body exercising functions similar to those of any of the foregoing;

(xi) the assembly and retention of all contracts, agreements and other records and data as may be necessary to carry out the Developer's functions hereunder;

(xii) the use of its commercially reasonable good faith efforts to accomplish the timely completion of the Project in accordance with the plans, specifications and the time schedules mutually agreed upon by the Parties; and

(xiii) the performance and administration of any and all other services and responsibilities of the Developer which are set forth in any other provisions of this Agreement or the Developer PPA, or which are requested to be performed by the CITY and are within the general scope of the services described herein.

C. Both the CITY and the Developer shall be responsible for the following:

(i) the execution and delivery of each of the Developer PPAs;

(ii) cooperating and coordinating the CITY Marketing Efforts and the Developer Marketing Efforts so as to have a maximum impact on developing Customers and relationships with Customers; and

(iii) use commercially reasonable efforts to assist each other Party as necessary to manage Customer relationships (except for the invoicing and

collection of payments under each of the Customer PSAs which shall be the sole responsibility of the CITY).

Section 3. Limitations and Restrictions

A. Notwithstanding any provisions of this Agreement, the Developer shall not take any action, expend any sum, make any decision, give any consent, approval or authorization, or incur any obligation with respect to any of the following matters unless and until the same has been approved by the CITY:

(i) any amendment, supplement, change order or alteration to the construction plans and designs for any of the Systems that is not in accordance with the applicable Developer PPA;

(ii) any proposed change in the work or the construction of any System, or in the plans and specifications for such System as previously approved by the CITY or set forth in the applicable Developer PPA, or any other change which would affect the design, cost, value or quality of such System, except for such matters as may be expressly delegated in writing to the Developer by the CITY or set forth in the Developer PPA; and

(iii) any Developer Marketing Effort.

B. Notwithstanding any provisions of this Agreement, neither the CITY, nor any of its affiliates, shall take any action, expend any sum, make any decision, give any consent, approval or authorization, or incur any obligation with respect to any of the following matters unless and until the same has been approved by the Developer:

(i) any CITY Marketing Effort;

(ii) any material change or revision to the form of Customer PSA provided by the Developer pursuant to Section 2.1(B)(iii) or any material amendment to any executed and delivered Customer PSA; and

(iii) until the Exclusivity Termination Date shall occur, any solicitation of, negotiation of, participation in, or entering into a transaction similar to the Project with a party that is not the Developer, including but not limited to (w) any transaction with a California municipal agency involving the installation, sale or lease of solar photovoltaic panels that involve net metering agreements, (w) any transaction with a California municipal agency involving the sale of electric power from solar photovoltaic panels that involve net metering agreements, (y) any financing by a California municipal agency of solar photovoltaic panels that involve net metering agreements.

Section 4. Agreements and Covenants of the Parties.

A. Each of the Parties hereby agrees that:

(i) title to and ownership of all systems, software (including any modifications, enhancements and updates), documentation, tools, utilities, methodologies, specifications, techniques and other materials, know-how and hardware owned by a Party or in the possession of such Party prior to the date of this Agreement (together the intellectual property rights therein) shall remain with such Party. Title to and ownership of any systems, software (including any modifications, enhancements and updates), documentation, tools, utilities, methodologies, specifications, techniques and other materials, know-how and hardware resulting from a Party's performance of its respective Obligations (together with the intellectual property rights therein, the "Proprietary Information") shall vest in such Party;

(ii) within five (5) days after the Effective Date, each Party shall provide the other Party with the name, address (physical and electronic mail) and other relevant information of an individual that shall serve as such Party's contact person for all matters arising out of or relating to this Agreement (each such individual, a "Contact Person") and either Party may change its own Contact Person at any time upon written notice to the other Party;

(iii) each Party shall use commercially reasonable efforts to provide the other Party with updates and information regarding such Party's pursuit and completion of its Obligations;

(iv) each Party shall keep during the Term, accurate records relating to such Party's Obligations, which records shall be maintained as confidential, but shall be available for inspection and audit as provided herein; and

(v) each of the Developer and the CITY shall have the right at least once per calendar year to have an independent public accountant, reasonably acceptable to the other Party, examine the other Party's relevant books, records and accounts for the purpose of verifying to the reasonable satisfaction of such Party the accuracy of payments made and required under this Agreement or the Developer PPAs. Each audit will be conducted at the audited Party's place of business, or such other place as may be agreed to by the parties, during such audited Party's normal business hours and with at least five (5) business day's prior written notice. The auditing Party shall pay the fees and expenses of the auditor for the examination; *provided that* should any examination disclose a shortfall in the payments due the auditing Party greater than five percent (5%) for the period being audited, the audited Party shall pay the reasonable fees and expenses of the auditor for that examination.

Section 5. Expenses.

A. Each Party shall be responsible solely for the expenses arising under or in connection with the completion of such Party's Obligations, including but not limited to

expenses of external advisors, including consultants, financial advisors, legal counsel and independent engineers. For the avoidance of doubt, the Developer shall not be responsible or liable for any expenses, fees or costs incurred by the CITY in the completion of the CITY Obligations (except as set forth in Clause (C) below with respect to the Marketing Efforts) and the CITY shall not be responsible or liable for any expenses, fees or costs incurred by the Developer in the completion of the Developer Obligations.

B. Each Party shall bear the cost and expense of its own audit or inspection conducted in accordance with Section 4(A)(v).

Section 6. Amendment and Termination for Convenience.

A. This Agreement may be amended or supplemented in a writing executed by both of the Parties hereto.

B. This Agreement may be terminated by Party upon thirty (30) days written notice to the other Party that such Party wishes to terminate this Agreement.

Section 7. Default and Remedies.

A. If either CITY or the Developer shall default in the performance of any of its Obligations, or covenants under this Agreement and such default shall continue unremedied for a period of [thirty (30) days] after written notice thereof from the other Party, such Party may exercise one or more of the following rights and remedies; *provided, however,* if the default is of such a nature that it cannot be cured within the 30-day period, and defaulting Party has commenced to cure each default within the 30-day period, the defaulting Party shall have an additional [thirty (30) days] in which to cure said default provided it acts in good faith and with due diligence to cure the same (all of which shall be cumulative):

(i) terminate this Agreement.

(ii) enforce the provisions of this Agreement by legal proceedings for the specific performance of any covenant or agreement contained herein or for the enforcement of any other appropriate legal or equitable remedy and recover damages caused by any breach by the defaulting Party of the provisions of this Agreement, including court costs, reasonable attorneys' fees and other expenses incurred in the enforcement of the Obligations of the defaulting Party hereunder; or

(iii) exercise any and all rights and remedies which the non-defaulting Party may have under applicable law.

Section 8. Confidentiality. The terms and conditions in this Agreement are confidential and are not to be disclosed to any other person, except that (i) any Party may disclose the terms and conditions of this Agreement to its affiliates, agents and advisors for the purposes of the implementation or financing of the Project or the negotiation and execution of the Developer PPAs or the Customer PPAs, as the case may be, and (ii) in the event that disclosure of the terms and conditions of this Agreement by any Party is required by applicable laws and/or requested by competent authorities; *provided, however,*

that in the case of the event described in the foregoing clause (ii), the Party that is required to make such disclosure (x) shall promptly so notify the other Parties, and (y) shall request confidential treatment of the information so disclosed.

Section 9. Indemnity

A. The City and the Developer (each, an "Indemnifying Party"), agrees to indemnify and hold harmless the other Party, its respective affiliates and its officers, directors, employees, advisers, consultants, agents and controlling persons (each an "Indemnified Person") from and against any and all losses, claims, damages, liabilities and expenses, to which any such Indemnified Person may become subject to the extent arising out of or in connection with claims by third parties in connection with the Indemnifying Party's execution or performance of this Agreement or the transactions contemplated by this Agreement and occurring prior to the expiration or termination of this Agreement ("Losses"), or any claim, litigation, investigation or proceedings relating to the foregoing ("Proceedings") regardless of whether any of such Indemnified Persons is a party to this Agreement, and to reimburse such Indemnified Persons for any reasonably incurred and documented legal fees and expenses as they are incurred in connection with investigating or defending any of the foregoing (subject to the provisions of this Section 9, including the notice rights set forth below) provided, however, that the foregoing indemnification will not, as to any Indemnified Person, apply to losses, claims, damages, liabilities or expenses to the extent that they are determined by a relevant court of competent jurisdiction in a final, non-appealable judgment to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnified Person. In no event shall any Party hereto or any Indemnified Person be responsible nor shall such party have any liability for any indirect, special or consequential damages arising out of or in connection with this Agreement or the transactions contemplated hereby, even if advised of the possibility thereof. Promptly after receipt by an Indemnified Person of notice of any Loss or the commencement of any Proceeding, such Indemnified Person will, if a claim in respect thereof is to be made against the Indemnifying Party, notify the Indemnifying Party in writing of the commencement thereof; provided, however, that the failure to provide such notice shall not affect the Indemnified Party's right to be indemnified hereunder except to the extent of any actual and documented Losses arising directly from such failure or delay in giving such notice. In case any such Proceedings are brought against any Indemnified Person and it notifies the Indemnifying Party of the commencement thereof, the Indemnifying Party shall promptly assume the legal defense of such Proceeding with counsel reasonably satisfactory to such Indemnified Person; provided, however, that if the defendants in any such Proceedings include both the Indemnified Person and the Indemnifying Party, and the Indemnified Person shall have reasonably concluded based on advice of counsel that there exists a conflict of interest among the Indemnified Parties and the Indemnifying Party, the Indemnified Person shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the legal defense of such Proceedings on behalf of such Indemnified Person at the cost and expense of the Indemnifying Party. Upon receipt of notice from the Indemnifying Party informing such Indemnified Person that the Indemnifying Party is undertaking defense of such Proceedings and approval by the Indemnified Person of the Indemnifying Party's counsel (not to be unreasonably withheld or delayed), the Indemnifying Party will not be liable to such Indemnified Person for expenses incurred by the Indemnified Person in connection with the legal defense and management thereof (other than reasonable costs of investigation) unless (i) the Indemnified Person shall

have employed separate counsel in connection with the assertion of legal defenses in accordance with the proviso to the immediately preceding sentence (it being understood, however, that the Indemnifying Party shall not be liable for the expenses of more than one separate counsel, in addition to any local counsel, representing the Indemnified Persons who are parties to such Proceedings) or (ii) the Indemnifying Party shall have failed to employ counsel previously approved by the Indemnified Person.

B. The Indemnifying Party shall not be liable for any settlement of any Proceedings effected without its prior written consent (which consent shall not be unreasonably withheld), but if settled with its prior written consent, the Indemnifying Party agrees to indemnify and hold harmless each Indemnified Person from and against any and all losses, claims, damages, liabilities and reasonably incurred and documented expenses by reason of such settlement. The Indemnifying Party shall not, without the prior written consent of an Indemnified Person, effect any settlement of any pending or threatened Proceedings in respect of which indemnity could have been sought hereunder by such Indemnified Person unless such settlement includes an unconditional release of such Indemnified Person in form and substance reasonably satisfactory to such Indemnified Person from all liability on claims that are the subject matter of such Proceedings.

C. If the foregoing indemnification is judicially determined to be unavailable to an Indemnified Person (other than in accordance with the terms hereof), the Indemnifying Party shall contribute to the losses, claims, damages, liabilities and reasonably incurred and documented expenses that are paid or payable by the Indemnified Party in such proportion as is appropriate to reflect the relative economic interests of the Indemnifying Party, on the one hand, and of an Indemnified Party, on the other hand, in any transaction, and any other relevant equitable considerations.

Section 10. Applicable Law

This Agreement, and the application or interpretation hereof, shall be governed by and construed in accordance with the laws of the State of California.

Section 11. Binding Agreement

Subject to the following sentence, this Agreement shall be binding on the Parties, their heirs, executors, personal representatives, successors and assigns. Neither Party may assign any of its rights (including rights to payment) or Obligations hereunder without the consent of the other Parties.

Section 12. Headings

All section headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any section.

Section 13. Terminology

All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

Section 14. Benefit of Agreement

The obligations and undertakings of each of the Parties set forth in this Agreement are made for the benefit of such Parties and shall not inure to the benefit of any creditor of the CITY or the Developer, notwithstanding any pledge or assignment by the CITY or the Developer of this Agreement or any rights hereunder.

Section 15. Notices.

Except as otherwise specifically provided herein, all notices, demands or other communications hereunder shall be in writing and shall be deemed to have been given and received (i) two (2) business days after being deposited in the United States mail and sent by certified or registered mail, postage prepaid, (ii) one (1) business day after being delivered to a nationally recognized overnight delivery service, (iii) on the day sent by telecopier or other facsimile transmission, answer back requested, or (iv) on the day delivered personally, in each case, to the parties at the addresses set forth below or at such other addresses as such parties may designate by notice to the other party:

A. If to the CITY,

Lancaster Power Authority
44933 Fern Avenue
Lancaster, California 93534
Attn: Mark Bozigian
Telephone: (661)723-6133
Facsimile: (661)723-6141
Electronic Mail: mbozigian@cityoflancasterca.org;

and

B. If to the Developer,

SolarCity Corporation
3055 Clearview Way
San Mateo, CA 94402
Attn: Contracts
Telephone: 650.963.5194
Electronic Mail: contracts@solarcity.com

Section 16. Relationship of the Parties.

A. Nothing contained in this Agreement shall be construed to constitute the Developer as a partner, employee or agent of the CITY nor shall the Developer hold itself out as such. Except as specifically set forth herein, the Developer has no right or authority to incur, assume or create, in writing or otherwise, any liability or obligation of any kind, express or implied, in the name or on behalf of the CITY, it being intended by the parties that the Developer be and remain an independent contractor responsible for its own actions.

B. Nothing contained in this Agreement shall be construed to constitute the CITY as a partner, employee or agent of the Developer, nor shall the CITY hold itself out as such. Except as specifically set forth herein, the CITY does not have any right or authority to incur, assume or create, in writing or otherwise, any liability or obligation of any kind, express or implied, in the name or on behalf of the Developer, it being intended by the parties that the CITY be and remain a municipality.

Section 15. Termination.

This Agreement shall be terminate on the earlier to occur of (i) a termination by one of the Parties in accordance with Sections 6(B) or 7(A)(i), or (ii) the expiration of the Term by its terms.

Notwithstanding the foregoing, the provisions set forth in Sections 3, 8, 9 and 16 shall survive termination of this Agreement.

Section 16. Representation.

The Developer hereby represents that neither it nor any of its controlling principals is on the list of Specially Designated Nationals and Blocked Persons promulgated by the U.S. Department of the Treasury.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date and year first above written.

CITY:

[The CITY of Lancaster], a charter city

By: _____
Mark V. Bozigian

Title: City Manager

DEVELOPER:

SOLARCITY CORPORATION, a Delaware corporation

By: _____

Title:

APPROVED AS TO FORM:

David R. McEwen
City Attorney