SOLAR RENEWABLE ENERGY CREDIT PURCHASE AGREEMENT

GRID-TIED PHOTOVOLTAIC SYSTEM

REVISED

THIS SOLAR RENEWABLE ENERGY CREDIT PURCHASE AGREEMENT ("**Contract**") between **Arizona Public Service Company ("APS"),** and **Town of Prescott Valley, ("TOPV"** or "Participant"**)**, (collectively referred to herein as the "**Parties**," and each individually referred to herein as a "**Party**") shall be effective as of _____, 201__ (the "Effective Date").

RECITALS

WHEREAS, APS is a public utility that provides energy to its retail customers in the State of Arizona;

WHEREAS, TOPV desires to replace some of the energy that it would otherwise purchase from APS with energy generated from a photovoltaic system installed on property owned by **TOPV** or to which **TOPV** has the right to install such a system (the "System");

WHEREAS, TOPV, or its designee, intends to install, maintain and own the System, or otherwise have title to and ownership of the Renewable Energy Credits (as defined herein) associated with the output of the System;

WHEREAS, APS is subject to certain state regulatory requirements governing its use of renewable resources to supply energy to its customers, including a Renewable Energy Standard and Tariff. "Renewable Energy Standard and Tariff or RES" means the Arizona Renewable Energy Standard Rules, A.A.C. R14-2-1801 *et seq.,* as the same may be amended from time to time.

WHEREAS, TOPV desires to sell and APS desires to purchase certificates representing the Environmental Attributes (as defined herein) associated with the energy produced by the System in order to comply with its obligations under the RES;

WHEREAS, this Contract sets forth the terms and conditions for the sale and purchase of such certificates; and

NOW, THEREFORE, in consideration of the above recitals and the mutual agreement of the Parties set forth below, the following terms and conditions shall apply to this Contract:

TERMS AND CONDITIONS

1. <u>Definitions</u>. The following definitions apply to terms used in this Contract and in the reservation request.

"Aggregate Contract Price" means the lesser of either fifty percent (50%) of the Total Project Cost as provided in the approved reservation application in Exhibit D, or fifty percent (50%) of the Total Project Cost as of the Commissioning of the System.

"Arizona Registrar of Contractors" or "ROC" means the Arizona regulatory agency for the licensing and oversight of contractors.

"Authority Having Jurisdiction ("AHJ") means the governmental agency or sub agency which regulates the construction process applicable to the System.

"Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

"Commissioning Deadline" means the date that is 365 days following the Reservation Date. The Commissioning Deadline shall be extended on a day-for-day basis as a result of any Force Majeure event, as defined herein, or in accordance with Section 3.

"Commissioning of the System" shall occur only after all conditions precedent to commercial operation of the System have been satisfied, as documented by the certificate attached hereto as Exhibit B.

(a) **TOPV,** or its designee, shall have obtained and be in compliance with all governmental and regulatory authorizations required for the construction, and operation of the Project, including, but not limited to, any and all permits and/or approvals as required by an AHJ, or if the site is not governed by an AHJ, **TOPV,** or its designee, must provide certification in lieu of AHJ clearance, acceptable to APS in its reasonable discretion;

(b) The System shall have been installed by a contractor holding an active license appropriate for installation of the System with the Arizona Registrar of Contractors;

(c) **TOPV** shall have executed an Interconnection Agreement and the System shall meet all applicable interconnection requirements, specifically including, but without limitation, the requirement that the System not be activated or paralleled with the APS distribution system without the express permission from an authorized representative of APS following inspection by APS;

(d) The System shall meet the Equipment Qualifications identified in Exhibit E attached hereto;

(e) **TOPV,** or its designee, shall have installed a meter socket(s), pursuant to Section 10 herein;

(f) **TOPV,** or its designee, shall have installed, at **TOPV**'s, or its designee's, expense, the necessary dedicated phone lines in accordance with Section 10 herein; and

(g) **TOPV** shall be subject to an established rate schedule, either pursuant to an executed Special Contract-Solar or by application of one of APS' pre-established rates.

"Contract Quantity" means the RECs associated with the annual production of the System as specified in Section 6.

"Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party in connection with any new arrangements which replace this Contract; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Contract.

"Defaulting Party" has the meaning set forth in Section 25.

"Environmental Attributes" means environmental characteristics that are attributable to Renewable Energy, including credits; credits towards achieving local, national or international renewable portfolio standards; green tags; Renewable Energy Certificates; greenhouse gas or emissions reductions, credits, offset, allowances or benefits; actual SO2, NOx, CO2, CO, Carbon, VOC, mercury, and other emissions avoided; and any and all other green energy or other environmental benefits associated with the generation of Renewable Energy (regardless of how any present or future law or regulation attributes or allocates such characteristics). Such Environmental Attributes shall be expressed in kWh. Environmental Attributes does not include Tax Benefits, or any energy, capacity, reliability, or other power attributes associated with the provision of electricity services.

"Financing Rate" means the interest rate charged to **TOPV,** or its designee, by its lender in connection with the financing of the Project and disclosed to APS pursuant to Section 12 herein. In the event that the **TOPV,** or its designee, does not use third party financing in connection with the Project, the Financing Rate shall mean the internal cost of capital calculated by **TOPV,** or its designee, subject to review and approval by APS in its sole discretion. In no event shall such Financing Rate exceed the Prime Rate as of the Reservation Date plus five percent (5%), regardless of the actual interest rate that may be charged to **TOPV,** or its designee.

"Forecasted Quantity" means an amount of the RECs associated with the production of energy from the Project, measured on the basis of a calendar quarter, that is at least seventy-five percent (75%) of the amount of such RECs represented on **TOPV**'s Initial Production Profile or Annual Production Profile (as set forth in Section 4 and 9), as applicable, for the same quarterly period.

"Force Majeure" means an event or circumstance which prevents one Party from performing its obligations, which event or circumstance was not anticipated as of the date the transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. So long as the requirements of the preceding sentence are met, a "Force Majeure" event may include, but shall not be limited to, flood, drought, earthquake, storm, fire, lightning, epidemic, war, terrorism or riot; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. Notwithstanding the foregoing, Force Majeure shall not be based on (a) **TOPV**'s, or its designee's, delay or inability to obtain financing, or other economic hardship of any kind; (b) **TOPV**'s, or its designee's, inability to economically use the System; or (c) loss or failure of materials or equipment for the System.

"Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Contract, determined in a commercially reasonable manner.

"Generating Facility" means all or part of the Participant's, or its designee's, electrical generator(s) or inverter(s) together with all protective, safety, and associated equipment necessary to produce electric power at the Participant's, or its designee's, facility.

"Interconnection Agreement" means the agreement, together with appendices, signed between APS and the Participant, covering the terms and conditions governing the interconnection and parallel operation of the Generating Facility with APS.

"Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

"kWh" means kilowatt hour.

"Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Contract, determined in a commercially reasonable manner.

"Major System Components" means PV Panels and Inverter.

"Minimum Contract Quantity" means RECs associated with a minimum production from the System which shall mean, for purposes of this Contract, the production of at least fifty percent (50%) of the Quarterly Contract Quantity in every calendar quarter hereunder, together with the production of at least the Forecasted Quantity in one out of every two consecutive calendar quarters hereunder, subject to adjustment of the Contract Quantity pursuant to Section 6.

"Month" means a calendar Month.

"Non-Defaulting Party" has the meaning set forth in Section 25.

"OEM" means Original Equipment Manufacturer.

"Prime Rate" means the lowest rate of interest on bank loans at a given time and place, offered to preferred borrowers as published in the Wall Street Journal on the Reservation Date.

"Project" means the System owned by **TOPV,** or its designee, which is a photovoltaic system utilizing solar energy as the energy source for the solar system.

"Project Site" means **TOPV** property located in Prescott Valley, Arizona, which is either owned by **TOPV** or to which **TOPV** has rights necessary for the installation of the System as contemplated herein.

"Quarterly Contract Quantity" means the Contract Quantity divided equally into four calendar quarters or such other quarterly schedule provided by **TOPV**.

"Renewable Energy" means energy derived from resources that are regenerative or for all practical purposes cannot be depleted. Resources that qualify as Renewable Energy, provided that they meet any and all requirements set forth in the RES, include moving water (hydro, tidal and wave power) thermal gradients in ocean water, wind, solar power, geothermal, hydropower, landfill gas, various other forms of biomass, and municipal solid waste.

"Renewable Energy Credit" ("REC") means: (i) the Environmental Attributes associated with the generation of power from a Renewable Energy resource and (ii) the REC reporting rights arising therefrom or connected therewith. One (1) REC represents the Environmental Attributes and REC reporting rights associated with one (1) kWh generated from one (1) or more Renewable Energy sources, as defined by the RES.

"Replacement Price" means the price (including its transaction costs), determined by APS in a commercially reasonable manner, at which APS purchases (if at all) or installs capacity to generate its own substitute RECs for the deficiency or, absent such a purchase, the market price indexed at the closest geographic location to the System's installation, if any, and if none is established or available, then at a market price determined solely by APS in a commercially reasonable manner.

"Reservation Date" means the date on which **TOPV** has been notified that its reservation has been accepted, which shall trigger the start of the 365-day time period for the Commissioning of the System as evidenced by **TOPV**'s executed Reservation application attached hereto as Exhibit D.

"Special Contract – Solar" or "SCS" means the agreement between APS and Participant for electric power supply and consumption, a copy of which is attached as Exhibit F hereto.

"Settlement Amount" means, with respect to a transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a terminated transaction pursuant to Section 25.

"Tax Benefits" means, Renewable Energy related tax credits established under Section 45 of the Internal Revenue Code, as amended, or any similar or successor provision of the Internal Revenue Code, except for any credits or other tax benefits that are associated with any carbon tax or other assessment (regardless of how any present or future law or regulation attributes or allocates such characteristics).

"Total Project Cost" means the total costs directly associated with the installation of the equipment necessary to produce solar energy to generate electricity to heat and/or cool building interiors, provide hot water and/or provide for other energy needs at Participant's facility. The Total Project Cost may also include costs associated with financing the installation of the System, provided that such costs are disclosed by the Participant, or its designee, and provided further that such costs will be included at a rate not to exceed the Financing Rate. The Total Project Cost shall not include any non-financing expenses incurred after the Commissioning of the System, which shall be defined in this Contract.

"Transmission Owner" means APS, and its successors and assigns, in its capacity as provider of interconnection services under the Interconnection Agreement.

2. **Term of the Contract.** **Twenty (20)** years beginning with the Commissioning of the System ("Term").

3. **Commissioning of the System**. If Commissioning of the System (including all conditions precedent as set forth in Section 1 of this Contract) is not completed by the Commissioning Deadline, APS may, in its sole discretion, terminate this Contract, in which event neither Party shall be liable to the other Party for any claimed costs, expenses or damages arising directly or indirectly out of this Contract, the System or any energy or associated RECs produced by the System; provided, however, that the Commissioning Deadline may be extended on a day-for-day basis for up to ninety (90) days if the System is substantially completed and APS approves, in its sole discretion the extension, such approval not to be unreasonably withheld.

As soon as reasonably practicable following the completion of the conditions precedent for Commissioning of the System, **TOPV,** or its designee, must present to APS a certificate in the form attached hereto as Exhibit B (the "Commissioning Certificate"), evidencing that such conditions precedent have been satisfied. Following the receipt of such Commissioning Certificate, APS will conduct an inspection of the System and countersign the Commissioning Certificate confirming that such conditions precedents have been satisfied.

4. **Development Milestones.** Within forty-five (45) days following the Reservation Date, this Credit Purchase Agreement must be executed and returned to APS. Not more than seventy-five (75) days following the execution of this Contract or one hundred twenty (120) days following the Reservation Date, whichever is longer, **TOPV,** or its designee, shall provide to APS proof of project development, a production profile for the System for each calendar quarter for the Term of the Contract (the "Initial Production Profile"), proof of submission of building and/or construction permits, and must have submitted an application for an Interconnection Agreement. If **TOPV,** or its designee, fails to provide such documentation by the stated deadline, APS may, in its sole discretion, terminate this Contract, in which event neither Party shall be liable to the other Party for any claimed costs, expenses or damages arising directly or indirectly out of this Contract, the System or any energy or associated RECs produced by the System. **TOPV** may also terminate this Contract in writing at any time prior to Commissioning of

the System; provided, however, that **TOPV** may not submit a new reservation for one hundred eighty (180) days after the Contract has been terminated by **TOPV**.

5. **Product.** Renewable Energy Certificates or RECs as defined herein. **TOPV** agrees to transfer to APS any and all RECs purchased by APS pursuant to this Contract for the Term of this Contract. **TOPV** shall complete and deliver to APS a REC Certificate and Bill of Sale/Invoice as described in Section 17 herein.

6. **Contract Quantity.** The Contract Quantity is RECs associated with up to **174,874** kWhs per calendar year for the Term of this Contract. The Parties acknowledge that following the submittal of the proof of project development described in Section 4 above, **TOPV** shall have ten (10) days to amend, in writing, the Contract Quantity herein; provided, however, that such amendment shall not increase the Contract Quantity by more than ten percent (10%), subject to available program funding as determined by APS at its sole discretion, or, in the alternative, the amendment shall not decrease the Contract Quantity by more than twenty percent (20%) (the "Amendment Deadband"). In the event the amendment submitted is outside the Amendment Deadband, the reservation shall be considered rejected as amended and this Contract shall be automatically terminated. **TOPV** may not submit a new reservation for one hundred eighty (180) days after the Contract has been terminated in accordance with this provision.

APS shall receive and pay for any and all RECs delivered up to the Contract Quantity. If **TOPV** fails to deliver any RECs associated with energy produced by the System, APS shall be entitled to damages for such RECs not delivered, in accordance with Section 26 herein. In addition, if the System fails to produce the Minimum Contract Quantity, APS shall be entitled, in its sole discretion, to either terminate this Contract or modify the Contract Quantity in accordance with Section 27 herein.

7. **Contract Price.** APS shall pay **TOPV $0.0888** for each REC associated with a kWh of Renewable Energy actually produced by the System up to the maximum Contract Quantity (the "Contract Price").

APS shall be obligated to pay **TOPV,** or its payment designee if such designation has been made, the Contract Price until the earlier of: (i) the date that is **Twenty (20)** years after the Commissioning of the System; or (ii) the date on which the aggregate payment by APS to **TOPV**, or such payment designee, under this Contract equals the Aggregate Contract Price.

The Parties expressly acknowledge and agree that the Aggregate Contract Price, which shall be paid by APS over the time period described herein, represents full and total payment for the RECs associated with all energy produced by the System, up to the maximum Contract Quantity, for the Term of this Contract. Accordingly, APS shall retain the sole and exclusive rights to the RECs associated with the Renewable Energy produced by the System, up to the maximum annual Contract Quantity, for the full Term of this Contract and **TOPV** shall provide REC Certificates to APS as described in Section 17, even after full payment has been made by APS in accordance with the preceding paragraph. The purchase of any RECs in excess of the maximum annual Contract Quantity shall be subject to the mutual agreement of the Parties.

8. **TOPV's Obligation to Operate.** **TOPV**, or its designee, shall operate and maintain the System in accordance with applicable law, equipment manufacturers' recommendation and widely accepted industry practice, and, without relieving itself of any liability thereunder, maintain such documents and records necessary to confirm **TOPV** 's, or its designee's, operation and maintenance of the Project in accordance with such standards. **TOPV** may, in its sole discretion, use third parties, to perform duties associated with this operation and maintenance obligation; provided, however, that **TOPV** shall remain fully and solely liable for the satisfaction of its obligations under this agreement notwithstanding its use of third parties to perform associated duties.

9. **TOPV**'s **Obligation to Provide Annual Production Profile.** Within ten (10) Business Days following the first anniversary of the Commissioning of the System, and during the same period each year thereafter, **TOPV,** or its designee, shall provide to APS a production profile for the System that shows expected production for the current calendar quarter as well as the next three (3) calendar quarters ("Annual Production Profile"). In the event APS does not receive a revised production profile each year thereafter, the most recent production profile received shall be used as the basis for establishing the production profile portion of the Minimum Contract Quantity from that point forward unless or until a new production profile is submitted. In the absence of any production profile, the defined term of the Contract Quantity as shown in Section 6 shall be used.

10. **Metering.** APS shall provide and set at its sole cost and expense an electronic, utility-grade electrical meter ("Inverter-Output Meter") on the System that is compatible with the APS meter reading and billing systems.

TOPV shall provide, at **TOPV**'s expense, a dedicated phone line to each generator meter and also to the facility service entrance section main billing meter and/or sub meters if necessary as determined by APS. Each dedicated phone line is to be landed on the APS-provided telephone interface module which is typically located within two (2) feet of the meter.

At **TOPV**'s expense, **TOPV** shall be responsible for installing the meter socket and all associated equipment, the cost of which shall be borne solely by **TOPV**. The location of the Inverter-Output meter shall be approved by APS and shall be located so that APS has unassisted access to the meter in accordance with APS requirements, including but not limited to Section 300 of the APS ESRM ("Electric Service Requirements Manual") and Service Schedule 1 ("Terms and Conditions for Standard Offer and Direct Access Services").

APS will read the meter remotely for the purpose of providing metered data to **TOPV,** and its designee, in order that **TOPV**, or its designee, may prepare and send an invoice to APS pursuant to Section 11 below. In the alternative, or additionally, APS may read the meter at the Project Site.

11. **REC Certificate Delivery, Billing and Payment.** The calendar quarter shall be the standard period for all payments under this Contract. Within fourteen (14) days after the end of each calendar quarter, or as soon thereafter as reasonably practicable under the circumstances, APS shall provide the metered data to **TOPV** for the preceding calendar quarter, based on its Monthly read of **TOPV**'s meter, which shall be done at the same time **TOPV**'s standard electricity meter is read. **TOPV,** or its designee, shall use such metered data to complete its invoice (using the form referenced in Section 17 and attached as Exhibit A) for the payment obligations, if any, incurred hereunder during the preceding quarter based on the Monthly meter readings provided by APS. Within five (5) Business Days after its receipt of such information from APS, **TOPV,** or its designee, shall issue the invoice to APS. APS shall begin making payments based on such invoices after it has approved the Total Project Costs submitted by **TOPV**, or its designee, subject to the limitations set forth in Section 12 herein. APS shall make any required payment no later than thirty (30) days following its receipt of a quarterly invoice from **TOPV**, or its designee. **TOPV** expressly agrees that any payment for the Product to which it is entitled hereunder is hereby assigned to **SEC PVAZ Solar One, LLC**. APS shall make all payments under this Contract to an Automatic Clearinghouse Credit (ACH) account designated by **TOPV** which may be in the name of **SEC PVAZ Solar One, LLC.** in accordance with the foregoing assignment. If **TOPV**'s, or its designee's, invoice is received more than twenty (20) days after the end of the calendar quarter, payment may be delayed an additional thirty (30) days. If an invoice is not received by APS within six (6) Months after the close of the calendar quarter, the right to receive payment for such quarter is waived.

12. Documentation of Total Project Cost. Within ninety (90) days after Commissioning of the System, **TOPV,** or its designee, shall provide APS with the Total Project Cost, together with any and all supporting documentation. APS shall have the right to request any additional financial documents that it deems necessary for the purpose of auditing and determining the validity of the Total Project Cost including, but not limited to, original invoices of each item included in the Total Project Costs. The invoice must show proof of payment and provide sufficient detail to identify the material or installation cost. **TOPV,** or its designee, shall provide any and all documentation requested by APS in connection with such audit. Costs that may be included by **TOPV,** or its designee, in the Total Project Costs are set forth in Exhibit C hereto. All costs listed in Exhibit C are subject to all limitations set forth in this Contract. APS shall have the right to dispute the Total Project Cost, and shall not be required to pay any portion of the Contract Price in excess of fifty percent (50%) of the undisputed Total Project Cost until it approves a Total Project Cost, which approval shall not be unreasonably withheld, or until a Total Project Cost is determined by arbitration as set forth herein. In such cases, once a Total Project Cost is determined and approved by APS, APS shall pay any additional portion of the Contract Price not already paid with the total payment by APS not to exceed fifty percent (50%) of the Total Project Cost.

13. Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Contract, or adjust any invoice for any arithmetic or computational error, within twelve (12) Months of the date of the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within ten (10) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments upon request, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 13 within twelve (12) Months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) Months after the close of the Month during which performance of a transaction occurred, the right to payment for such performance is waived.

14. TOPV's Representations and Warranties. **TOPV** represents that each REC: (i) represents all of the Environmental Attributes associated with one (1) kWh of energy from the System; (ii) is associated with the generation of Renewable Energy and represents title to and claim over all Environmental Attributes associated with the specified kWh; and (iii) meets all requirements of the Arizona RES, as of the Effective Date of this Contract.

TOPV warrants that the RECs have not otherwise been, nor will they be sold, retired, claimed or represented as part of Renewable Energy output or sales, or used to satisfy obligations, in any other jurisdiction or for any other emissions compliance program requiring solar generation, including those established or regulated by the U.S. Attorney General, Federal Trade Commission or other entities providing guidelines on the advertisement of REC ownership claims.

TOPV represents and warrants that it has and will have at the time of sale, title and ownership to the RECs sold hereunder as evidenced by documentation of the same that is acceptable to APS in its sole discretion.

TOPV represents and warrants that the RECs sold hereunder are delivered free and clear of all liens, encumbrances, and claims or any interest therein or thereto by any person arising prior to delivery to APS.

15. Mutual Representations and Warranties. Throughout the Term of this Contract, each Party represents and warrants to the other Party that: (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Contract; (iii) the execution, delivery and performance of this Contract is within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it; (iv) this Contract and each other document executed and delivered in accordance with this Contract constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any equitable defenses, bankruptcy principles, or the like; (v) it is acting for its own account, has made its own independent decision to enter into this Contract and as to whether this Contract is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Contract; (vi) it has entered into this Contract in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all RECs referred to in the Contract to which it is a party; and (vii) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it.

16. Confidentiality. Subject to applicable Arizona public records laws, no receiving Party shall itself, nor shall it permit its employees, consultants and/or agents to, disclose to any person, corporation or other entity any non-public, confidential or proprietary information which the Parties require be kept confidential ("Confidential Information") without the prior written consent of the Party providing the Confidential Information, except a receiving Party may distribute the Confidential Information to its board members, officers, employees, agents and consultants and others who have a need for such Confidential Information and have agreed to keep such information confidential. In the event that any Party becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, the legally compelled Party shall give the other Party providing such Confidential Information prompt prior written notice of such requirement so that the providing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Contract. In the event that such protective order or other remedy is not obtained, the providing Party waives compliance with the terms hereof with respect to such Confidential Information.

As used herein, Confidential Information shall not include any information which: (i) at the time of disclosure or thereafter is generally available to the public (other than as a result of a disclosure by any Party in violation of this Contract); (ii) was available to any Party on a non-confidential basis from a source other than the Party hereto providing the Confidential Information, provided such source is not and was not known by the receiving Party to be bound by a confidentiality agreement that protects the Confidential Information; or (iii) has been independently acquired or developed by any Party without violating any of its obligations under this Contract.

The Parties acknowledge, however, that APS may need to disclose the Confidential Information in connection with its regulatory filings or to otherwise satisfy its regulatory requirements. In the event that APS intends to disclose any of the Confidential Information to its regulatory authorities including, but not limited to, the Arizona Corporation Commission ("ACC"), the Residential Utility Consumer Office ("RUCO"), the Federal Energy Regulatory Commission ("FERC") or any employee, staff member, consultant, and/or agent of the foregoing, it shall give a minimum of ten (10) Business Days prior written notice of its intention so that **TOPV** may seek a protective order or other appropriate remedy. In the event

that a protective order or other remedy is not obtained, **TOPV** waives compliance with the terms hereof with respect to such Confidential Information to the minimum extent necessary to comply with and solely for the purpose of such regulatory disclosure. Any information so submitted shall be identified as Confidential. Nothing herein shall be deemed to permit **TOPV** to disclose Confidential Information to the foregoing regulatory agencies, or any other party, unless such disclosure is otherwise permitted under this Confidentiality provision.

In addition, **TOPV** specifically agrees to use the following APS approved language in connection with this transaction in any press releases, public meetings or hearings, or other public communications, including any release to any newswire service.

> "The installation was facilitated, in part, by the APS Renewable Energy Incentive Program. This Program offers financial incentives to customers who add Renewable Energy systems to their homes or business. The Program is funded by APS customers and approved by the Arizona Corporation Commission."

Any other language used in connection with such public communications that specifically relates to the APS Renewable Energy Incentive Program or this Contract must be approved in advance by APS. The Parties anticipate that at some future time it may be in the best interests of one or both of them to disclose Confidential Information to the media and the Parties anticipate that, in such event, they will enter into a subsequent agreement that will govern the terms of such disclosure. The Parties expressly agree, however, that unless and until such subsequent agreement is executed between the Parties, the terms of this Confidentiality provision shall be binding with respect to such disclosure. Each Party acknowledges that the unauthorized disclosure of any Confidential Information may cause irreparable harm and significant injury that may be difficult to ascertain. Each Party therefore agrees that specific performance or injunctive relief, in addition to other legal and equitable relief, are appropriate remedies for any actual or threatened violation or breach of the provisions of this Section, **although neither Party shall be entitled to any special, consequential, indirect or punitive damages as a result of a breach of the provisions of this Section, whether a claim is based in contract, tort, or otherwise.** The Parties agree that the respondent in any action for an injunction, specific performance decree, or similar relief shall not allege or assert that the initiating Party has an adequate remedy at law in respect to the relief sought in the proceeding, nor shall the respondent seek the posting of a bond by the Party initiating the action. In no event shall a Party's directors, management, employees, agents, or consultants be individually liable for any damages resulting from the disclosure of any Confidential Information in violation of the provisions of this Section.

The Parties expressly acknowledge and agree that no third party, including any developer or installer of the System is expressly bound by the provisions of this Section 16, and **TOPV** understands that in order to maintain the confidential nature of any of its Confidential Information with respect to such third party, it should enter into a separate confidentiality agreement with any such third party.

17. <u>Administration of Contract</u>. Each Party hereby designates the employee identified below as its administrator for purposes of this Contract. Each Party may change its designated administrator(s) by giving not less than two (2) days prior written notice of its new administrator to the other Party.

TOPV Administrator:
Contact Name:
Telephone No.:
Fax No:

APS Reservation Coordinator
Contact Name: Reservation Coordinator
Telephone No.: (602) 328-1924
Fax No.: (602) 328-1991

Invoices:
Attention: APS Energy Settlements
Telephone No.: (602) 250-3150
Fax No.: (602) 250-2325

In consideration of APS' purchase of the Product herein, **TOPV** Administrator shall provide the APS Energy Settlements with a REC Certificate and Bill of Sale/Invoice, in the form attached hereto as Exhibit A ("REC Certificate"), which shall serve as a quarterly invoice referenced in Section 11 herein. **TOPV** shall provide the REC Certificate on a quarterly basis, in accordance with Sections 7 and 11 herein, for the full Term of this Contract.

18. Notices. All notices or other communications given, delivered or made under this Contract by either Party to the other Party will be in writing and may be delivered personally, by first class mail, overnight delivery service or by facsimile. All notices shall be delivered or sent to the other Party at the address shown below or to any other address as the Party may designate by two (2) days prior written notice given in accordance with this paragraph.

If to **TOPV**:

Company: Town of Prescott Valley
Address: 7501 E. Civic Circle, Prescott Valley, AZ 86314

Contact Larry Tarkowski, Town Manager
Telephone No.: (928) 759-3100
Fax No: (928) 759-3125

With a copy to: Diane Russell, Town Clerk
Telephone No.: (928) 759-3135
Fax No: (928) 759-5536

If to APS:

Company: **Arizona Public Service Company**
Address: P.O. Box 53933
Phoenix, AZ 85072-3933

Contact: APS Renewable Energy
Mail Station 9649

Telephone No.: (602) 250-2547
Fax No. (602) 250-3546

***With a copy to*:**

Attention: Renewable Program Manager
Mail Station 9649

19. Independent Contractor. The Parties agree that they are independent contractors for the purpose and activities undertaken in accordance with or as contemplated in this Contract, and that no Party will be considered or permitted to be an agent, servant, or partner of, nor in joint venture with, any other Party. It is expressly understood and agreed that neither Party has any right or authority to directly or indirectly incur any obligation or responsibilities on behalf of the other Party or commit the other Party to any matter or understanding or make any warranties or representations with respect to the Project, without the other Party's prior written consent. Each Party waives any and all rights that it may otherwise have under applicable laws or legal precedents to make any claims or take any action against the other Party or any of its related parties in respect of this Contract based on any theory of agency or fiduciary duty. The Parties agree that this Contract is intended solely for the benefit of the Parties hereto, and that nothing in this Contract shall be construed to create any duty, or standard of care with reference to, or any liability to, any person not a Party to this Contract.

20. Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS CONTRACT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES

ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

21. **Alternative Dispute Resolution**. All disputes arising under this Contract are subject to the provisions of this Section 21.

(a) Mediation. Any disputes between the Parties shall first be submitted to a non-binding mediation. The mediation shall be commenced by written request of either Party and shall begin within thirty (30) calendar days of such written notice. The mediator shall be chosen by mutual agreement of the Parties within fifteen (15) calendar days of submission of the above written notice. Any discussions or materials presented during or for purposes of the mediation shall be confidential and governed by the limitations and restrictions of Rule 408 of the Federal and Arizona Rules of Evidence and/or any like regulatory rules. The compensation and any costs and expenses of the mediation shall be borne equally by the Parties. Any arbitration commenced under this Section shall not be initiated until following the completion of the mediation detailed herein; provided, however, that if a Party refuses to participate in the mediation process as provided herein, the other Party may immediately initiate arbitration as set forth in this Section 21. Any dispute that remains unresolved thirty (30) days after the appointment of a mediator shall be settled by binding arbitration in accordance with the procedures set forth in this Section 21.

(b) Arbitration. Any disputes between the Parties and/or their respective representatives involving or arising under claim, counterclaim, demand, cause of action, dispute, and/or controversy relating to the terms of this Contract, or the breach thereof (collectively "Claims"), shall be submitted to binding arbitration, whether such Claims sound in contract, tort or otherwise. The arbitration shall be conducted in accordance with the Federal Arbitration Act and the then prevailing Commercial Arbitration Rules of the American Arbitration Association. The validity, construction, and interpretation of this agreement to arbitrate and all procedural aspects of the arbitration conducted pursuant hereto shall be decided by the arbitrator(s). Submission shall be made upon the request of either Party. Within twenty (20) calendar days of the receipt by the respondent of service of the notice of arbitration, the Parties shall select one (1) arbitrator by mutual consent. If the Parties are unable to agree upon a single arbitrator, there shall be three (3) arbitrators. Specifically, in the event the Parties cannot agree upon a single arbitrator, both the claimant and the respondent shall appoint one (1) arbitrator within ten (10) calendar days after written notice by either Party that three (3) arbitrators shall be necessary. The two (2) arbitrators so appointed shall then select the third arbitrator within twenty (20) calendar days, who shall be the chairperson, of the tribunal. The chairperson shall be a person who has over eight (8) years of experience in energy-related transactions, and none of the arbitrators shall have been previously employed by either Party or have any direct interest in either Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by both Parties. The chairperson shall be bound to schedule and hear the dispute within six (6) Months after his/her appointment and shall render the panel's decision within thirty (30) calendar days after the hearing concludes. It is agreed that the arbitration proceeding shall be conducted in a neutral location mutually agreed to by the Parties. It is further agreed that the arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their

rights, if any, to recover or claim such damages. The compensation and any costs and expenses of the arbitrators shall be borne equally by the Parties. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction. The Parties agree that all information exchanged as a result of any proceeding as described herein shall be deemed confidential.

(c) Judicial Relief. Either Party may petition a court of appropriate jurisdiction, as described in Section 23, for non-monetary relief relating to any claim of breach of this Contract in order to prevent undue hardship relating to any such claimed breach pending the appointment of an arbitration panel as described in this Section 21.

(d) To the extent that there is any inconsistency between the provisions of this Section 21 and the provisions of A.R.S. §12-821.01, the provisions of A.R.S. §12-821.01 shall govern with respect to disputes arising under this Contract for which monetary damages may be awarded.

22. **Governing Law.** This Contract shall be governed by, construed and enforced in accordance with the laws of the State of Arizona without regard to principles of conflict of laws.

23. **Venue**. Subject to the mandatory arbitration provisions herein, with respect to any proceeding in connection with any claim, counterclaim, demand, cause of action, dispute and controversy arising out of or relating to this Contract, each Party hereto irrevocably: (i) consents to the exclusive jurisdiction of the federal courts sitting in Phoenix, Arizona; provided, however, that if the federal courts sitting in Phoenix, Arizona refuse jurisdiction, the Parties agree to the exclusive jurisdiction of the state courts sitting in the County of Maricopa, State of Arizona; (ii) waives any objection which it may have to the laying of venue of any proceedings brought in any such court; and (iii) waives any claim that such proceedings have been brought in an inconvenient forum. Each Party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this Contract."

24. **Assignment**. Neither Party shall assign or otherwise transfer any of its rights or obligations under this Contract without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, either Party may, without the consent of the other Party: (i) without relieving itself from liability hereunder, transfer, sell, pledge, encumber or assign this Contract or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; (ii) transfer or assign this Contract to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party; or (iii) transfer or assign this Contract to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request. Any assignment in violation of this provision shall be deemed to be null and void.

25. **Events of Default/Remedies.** An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(a) the failure to make, when due, any payment required pursuant to this Contract if such failure is not remedied within ten (10) Business Days after written notice;

(b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated if such failure is not remedied within ten (10) days after written notice;

(c) the failure to perform any material covenant or obligation set forth in this Contract (except to the extent constituting a separate Event of Default, and except for **TOPV**'s, or its designee's, obligations to deliver the Product or produce the Minimum Contract Quantity, the remedies for which are set forth herein and in Sections 26 and 27) if such failure is not remedied within thirty (30) days after written notice; provided such thirty (30) day period shall be extended for an additional period not to exceed fifteen (15) days so long as the Defaulting Party is diligently attempting to remedy such failure;

(d) any failure to comply with applicable interconnection requirements including, but not limited to, operating the System in parallel with the APS distribution system without having received explicit permission from APS to do so;

(e) such Party becomes bankrupt;

(f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Contract to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

(g) if, during any consecutive ninety (90) day period under this transaction, there have occurred three (3) or more **TOPV** failures as that term is used in Section 26, regarding which **TOPV** shall be deemed to be the Defaulting Party and regarding which APS shall also be entitled to its remedies under Section 26.

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right but not the obligation to: (i) designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate the transaction under this Contract consistent with the provisions of the succeeding paragraph; (ii) withhold any payments due to the Defaulting Party under this Contract; and (iii) suspend performance.

The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount as of the Early Termination Date. The Non-Defaulting Party shall also calculate any amounts that it owes or owed to the Defaulting Party on or before the Early Termination Date (including any payments due to the Defaulting Party and withheld in the preceding paragraph). The Non-Defaulting Party shall take this total amount owed to the Defaulting Party and net it against the Settlement Amount (which shall also include any accrued but unpaid amounts due to the Non-Defaulting Party on or before the Early Termination Date) to arrive at a single payment amount (the "Termination Payment"). The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate. Notwithstanding the foregoing, in no event shall any Termination Payment made by APS to **TOPV**, together with any amounts otherwise paid by APS to **TOPV** under this Contract, exceed the Aggregate Contract Price.

As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in

reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

26. Failure to Deliver Product. If **TOPV** fails to deliver any portion of the Contract Quantity actually produced and required to be delivered under the terms of this Contract, **TOPV** shall pay APS for any such deficiency in an amount equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price plus reasonable legal costs incurred by APS in enforcement and protection of its rights under this Contract. Each Party hereby stipulates that the payment obligations set forth above are reasonable in light of the anticipated harm and each Party hereby waives the right to contest such payments as an unreasonable penalty or otherwise.

27. Failure to Produce the Minimum Contract Quantity. If the System fails to produce the Minimum Contract Quantity as described in Section 6, APS shall be entitled, in its sole discretion, to either terminate this Contract or, upon written notice to **TOPV**, modify the Contract Quantity accordingly. In the event that APS exercises such right to terminate, neither APS nor **TOPV** shall have any further obligation to one another under this Contract except that the provisions contained in Sections 16 and 29 shall survive any such termination, together with any other provisions that survive termination by operation of law. In addition, APS shall be entitled to recover damages associated with such termination, in accordance with the procedures set forth in Section 25. Specifically, since pursuant to Section 7 APS may pay **TOPV** in advance for RECs that it is entitled to receive beyond the term of payment under this Agreement, an early termination pursuant to this Section 27 will result in APS having paid for RECs that it did not yet receive. Accordingly, APS shall be entitled to recover damages associated with a termination under this Section 27 by declaring an Early Termination Date and calculating a Settlement Amount in accordance with the procedures set forth in Section 25.

28. Taxes. TOPV shall pay or cause to be paid, all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Product prior to its delivery to APS. APS shall pay or cause to be paid, all Taxes on or with respect to the Product after delivery from **TOPV** (other than ad valorem, franchise, or income taxes which are related to the sale of the Product and therefore the responsibility of **TOPV**). Nothing herein shall obligate or cause a Party to pay or be liable to pay any taxes for which it is exempt under the law. Each Party shall indemnify, defend and hold the other Party harmless from any liability against all of any Taxes for which the indemnifying Party is liable.

29. Indemnity. To the extent allowable by statute in Arizona, each Party shall indemnify, defend and hold harmless the other Party from and against any claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party, unless a claim is due to the other Party's willful misconduct. To the extent allowable by statute in Arizona, each Party shall indemnify, defend and hold harmless the other Party against any Taxes for which such Party is responsible under Section 28.

30. Forward Contract. The Parties acknowledge and agree that this transaction is a forward contract and that the Parties are forward contract merchants, as those terms are used in the United States Bankruptcy Code. The Parties acknowledge and agree that the transaction, together with this Contract, form a single, integrated agreement, and agreements and transactions are entered into in reliance on the fact that the agreements and each transaction form a single agreement between the Parties.

31. Force Majeure. To the extent either Party, or **TOPV**'s designee, is prevented by Force Majeure from carrying out, in whole or part, its obligations under the transaction and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy

the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

32. **Non-FERC Jurisdictional**. The Product will be RECs, as defined herein, and shall not be subject to the jurisdiction of the Federal Energy Regulatory Commission or successor agency or commission under the Federal Power Act.

33. **Entire Agreement; Amendments.** This Contract contains the entire agreement of the Parties and there are no oral or written representations or understandings or agreements between the Parties respecting the subject matter of this Contract, which are not expressed herein. No amendment or modifications to this Contract shall be enforceable unless reduced to writing and executed by both Parties.

By its signature below, Participant acknowledges that it has read and understands this Contract and agrees to be bound by all of the terms and conditions set forth herein.

Town of Prescott Valley
("TOPV")

Signed: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A
Production Based Incentive - PV
REC Certificate and Bill of Sale / Invoice

TOPV ("Seller") hereby transfers and delivers to Arizona Public Service Company ("APS") the Environmental Attributes associated with the energy produced by the solar system (the "System") as described in the CREDIT PURCHASE AGREEMENT between the Parties dated _____ (the "Contract"). Terms used but not defined herein shall have the meaning set forth in the Contract.

The Photovoltaic System is located at _____.

Monthly Meter Read Date	KWh generated
_____, 20__	_____
_____, 20__	_____
_____, 20__	_____

Total PV Quarterly Production: _____ kWh x $____ per kWh = $_____

Total Amount Due: $_____

One (1) REC represents the Environmental Attributes and REC reporting rights associated with one (1) kWh generated from the Renewable Energy resource, as defined in the Contract.

Seller further attests, warrants and represents as follows:

i) to the best of its knowledge, the information provided herein is true and correct;

ii) its sale to APS is its one and only sale of the Environmental Attributes with respect to the energy referenced herein and no third party has claimed nor can claim any interest in such Environmental Attributes;

iii) the System identified above produced the number of kWh above during the period indicated above; and

iv) Seller covenants that all RECs required to be delivered hereunder satisfy all Arizona Renewable Energy regulatory requirements set forth in the Contract;

This serves as a bill of sale, transferring from Seller to APS all of Seller's right, title and interest in and to the Environmental Attributes associated with the generation of the above referenced energy.

Contact Person: _____ phone: _____; fax: _____

ACH Account Information/Instructions:_____.

TOPV

Signed: _____ Bank Name _____

Name: _____ ABA# _____

Title: _____ Acct.# _____

Date: _____ Ref: _____

EXHIBIT B

COMMISSIONING CERTIFICATE

Customer Details:
Name:
Correspondence Address:
Installation Address: (if different)

Installer Details:
Installer Company Name:
Accreditation No.
Address:

Telephone:
Email Address:
Website:
Installation carried out by:
(if different from above)

System Details:
Manufacturer
Model:
System Peak Power Output kWh

Inverter Manufacturer

TOPV (Seller) hereby certifies that the photovoltaic system installed on its property (the "System") has been installed and commissioned at the above-referenced address. **TOPV** certifies that the following conditions precedent to commercial operation of the System have been satisfied:

1. **TOPV**, or its designee, has obtained and is in compliance with all governmental and regulatory authorizations required for the construction, and operation of the Project, including, but not limited to, any and all permits and/or approvals as required by an AHJ, or if the site is not governed by an AHJ, the Participant, or its designee, has provided certification in lieu of AHJ clearance, acceptable to APS in its reasonable discretion;
2. **TOPV** has an established rate schedule either pursuant to a fully executed SCS or by application of a pre-approved APS rate schedule, which **TOPV** shall specifically delineate;
3. The System was installed by a contractor holding an active license appropriate for installation of the System with the Arizona Registrar of Contractors;
4. **TOPV** has executed an Interconnection Agreement and the System meets all applicable interconnection requirements;
5. **TOPV**, or its designee, has installed meter sockets acceptable to APS;
6. **TOPV**, or its designee, has installed the necessary dedicated phone lines;

7. The System meets the Equipment Qualifications identified in Exhibit E attached to the Contract;

8. The System is operating correctly; and

9. **TOPV** further certifies that it has title to and ownership of all RECs associated with the energy produced by the System and is legally able to transfer ownership of such RECs to APS in connection with the Contract and has provided documentation of such title and ownership to APS as requested by APS in its sole discretion.

I certify that all statements made in this Certificate are correct to the best of my knowledge and that I have the authority to bind **TOPV** to the statements made herein.

Town of Prescott Valley
("TOPV ")

Signed: _____
Name: _____
Title: _____
Date: _____

ACKNOWLEDGED AND AGREED:

ARIZONA PUBLIC SERVICE COMPANY
("APS")

Signed: _____
Name: _____
Title: _____
Date: _____

EXHIBIT C

PHOTOVOLTAIC SYSTEMS

ELIGIBLE PROJECT COSTS

The following costs, subject to review and approval by APS in its sole discretion, may be included in total eligible project cost:

- **Photovoltaic equipment capital cost for Major System Components and all parts and materials as necessary for proper functioning of the system**
- **Engineering and design cost**
- **Construction and installation costs. For projects in which the generation equipment is part of a larger project, only the construction and installation costs directly associated with the installation of the energy generating equipment are eligible**
- **Engineering feasibility study costs**
- **Building permit costs**
- **Sales tax and use tax**
- **On-site System measurement, monitoring and data acquisition equipment**
- **Necessary mounting hardware and installation costs excluding any costs that might have been incurred had a photovoltaic system not been installed, such as roof resurfacing, roof replacement or replacement of roof structural elements due to failure or need to upgrade for purposes other than solar array mounting.**
- **Cost of capital included in the System price by the vendor, contractor or subcontractor (the entity that sells the System) is eligible if paid by the owner of the System**
- **Interconnection costs, including:**
    - **Electric grid interconnection application fees**
    - **Metering costs associated with interconnection**

EXHIBIT D

RESERVATION APPLICATION

[ATTACHED]

SREC # 17560

2011 NON-RESIDENTIAL PHOTOVOLTAIC SYSTEM (GRID-TIED) PRODUCTION BASED INCENTIVE RESERVATION APPLICATION

This Incentive Program is funded by APS customers and approved by the Arizona Corporation Commission

Is this a revision of a previously submitted reservation application? ☒ Yes ☒ No

In order to qualify for a production based incentive, the total incentive over the lifetime of the project must be over $75,000. Projects not meeting this requirement may apply for funding using our Up-Front Incentive program application.

RESERVATION APPLICATION

APS Customer Name Town of Prescott Valley
(This should be the customer name as shown on APS bill for this location. If the name you want is different than what APS has in our system, please contact the APS customer care center at 602-371-7171 and make the account name change PRIOR to submitting the reservation application).

Installation Address 3820 N. Prescott East Highway, Prescott Valley, AZ 86314

Is the property: ☒ Owned ☐ Leased
If leased, a Landlord-Tenant rider will also be required and must be submitted with the application (located at www.aps.com/gosolar).

APS Account Number * 228601285

Meter Number * (6 digits) C46717
(List only the meter to which system is being interconnected)

Is meter Totalized: ☐ Yes ☒ No
If yes, please list submeter above (Meter Number)

*If there is currently no electrical service at the installation site, please leave account and meter number blank and check here. ☐

APS CUSTOMER CONTACT INFORMATION (Please Note: installer/dealer contact information requested on next page)

APS Customer Contact Name Kimberly Moon

Email: kmoon@pvaz.net

Business Phone (928) 759-3083

Alternate Phone (928) 759-3100

Fax Number (928) 759-3125

Mailing Address 7501 E. Civic Circle, Prescott Valley, AZ 86314
(No P.O. Boxes, please – must be able to receive FedEx deliveries at this address)

Is the Customer a dealer or manufacturer of any of the components proposed in the qualifying system, or an employee of a dealer or manufacturer? ☐ Yes ☒ No

<u>If customer is a dealer, employee of, or a manufacturer of the system components, system costs are limited to actual costs rather than retail.</u>

Is the Customer the primary occupant at the site location? ☒ Yes ☐ No
If not, are you the landlord or owner? ☐ Yes ☐ No

(1/28/11)

9/13/2011

INSTALLER INFORMATION

Installer Name (please supply full legal name) Wilson Electric Services Corp.

Contact Name Mark Holohan Email mark.holohan@wilsonelectric.net

Telephone 480-505-6559 Fax 480-505-6759

Mailing Address 600 E. Gilbert Drive, Tempe, AZ 85281

Installer's Arizona Registrar of Contractors (AZROC) License Information

Number ROC181769 Class K-11 Expiration 01/13

EQUIPMENT DEALER INFORMATION (If same as installer, check here ☒)

Dealer Name (please supply full legal name) _____

Contact Name _____ Email _____

Telephone _____ Fax _____

Mailing Address _____

Dealer's Arizona Registrar of Contractors (AZROC) License Information

Number _____ Class _____ Expiration _____

SYSTEM OWNER INFORMATION (if different than customer)

Company Name (please supply full legal name) SEC PVAZ Solar One, LLC

Contact Name Konstantin Braun Email konstantin@smartenergycapital.com

Telephone 914-595-2600 Fax 914-239-5317

Mailing Address 487 East Main STreet, St 114, Mount Kisco, NY 10549

SYSTEM INFORMATION [Please contact your dealer/installer if unsure of the information to provide in this section]

Estimated Installation Date 12/31/2011 Is this a system expansion? ☐ Yes ☒ No

(For Production Based Incentives, the system must be installed within 365 days from date of reservation. Allowing for engineering, permitting and interconnection approvals, what is the realistic estimated date of installation?)

If you plan for the system **(under 1 MW)** to be installed in 2011, the following year-end interconnect deadlines apply:

1. October 7, 2011: interconnection application with full set of diagrams must be submitted
2. November 4, 2011: diagrams must be approved
3. November 18, 2011: scheduling of inspection must be confirmed

Estimated number of PV Panels ~~448~~ 1188 PV Module Manufacturer ~~Canadian Solar~~ SOLAR FRONTIER

Model # ~~CS5P-230~~ SF80-US-B UL Listing UL- Yes

What is the DC watt rating per panel? ~~230 watts~~ 80 watts

Estimated number of Inverters 1 Inverter Manufacturer ~~Satcon~~ PV Powered

Model #(s) ~~PVS-100~~ PV 100 UL Listing UL- Yes

What is the AC watt rating of each inverter? 100

Estimated Total Project Costs* and system installation ~~$760,140~~ $701,395

* Total Project Costs is defined in the Credit Purchase Agreement and may include eligible financing, if applicable.

(1/28/11)

9/13/2011

APS Compensation for Excess Production from PV System:
Please indicate your rate plan choice for any excess kWh production that will be delivered to the APS distribution system by your PV system. Please note that the rate chosen below is not a guarantee, but will be confirmed during the review process.

☒ EPR-6 (Energy sent back to the APS grid will appear as a kWh credit on your bill, often called "net metering". Any unused kWh credits that appear in the last billing cycle of the year will be paid out at a wholesale price) **NOTE: In order to qualify for this rate, the total AC inverter rating(s) CANNOT exceed 125% of the customer's metered peak demand during the last twelve months.**

☐ EPR-2 (Energy sent back to the APS grid will be purchased by APS at a wholesale price, often called "net billing")

☐ SC-S (If your inverter size is 100 kWac or larger and you are not using EPR-6, you must select the Standard Contract-Solar, or SC-S, rate. Energy sent back to the APS grid will be purchased by APS at the EPR-2 price, but additional standby charges may also apply based on customer demand.)

Rate schedules are posted at www.aps.com or call 602-328-1924.

POTENTIAL ADDITIONAL CHARGES:
Additional charges could include, but are not limited to:

- Upgrades to APS existing infrastructure required to support customer project
- Additional equipment required based on size or design of system
- RTUs as required by the interconnection study group

The interconnection process for 1-megawatt systems or greater will take additional time to complete once the interconnection application and diagrams are received. APS will advise you of any additional requirements, including whether or not an interconnection study will be required, and of any estimated costs if modifications are necessary to the APS system in order to accommodate your project. A copy of APS's Interconnection Requirements can be found at http://www.aps.com/main/green/choice/choice_79.html

INCENTIVE REQUEST

Please review the following information prior to completing the Incentive Request below. Payment of the requested incentive is subject to the following Incentive Program guidelines:

Funding reservations for production-based incentives are awarded on a competitive basis. For more detailed information, please see the decision process on the APS website at www.aps.com/gosolar under the appropriate program and technology. The per kWh incentive levels listed below are **maximum** amounts available. Because this is a competitive process, requesting less than the maximum amount will typically provide a more competitive ranking score.

Requested Renewable Energy Credit (REC) Agreement Term Incentive:

☐ 10-Year – up to $0.140/kWh
☐ 15-Year – up to $0.130/kWh
☒ 20-Year – up to $0.125/kWh

The following information is REQUIRED to process your application and verify your PBI Ranking Score:

1. Copy of a signed contract with Installer or Developer (application will not be accepted without this documentation)
2. Most recent 12 month usage history (kWh) for the meter the system is interconnecting to at the installation site: 184560 ~~175440~~ kWh (If this is new construction, please provide an annual use estimate along with supporting documentation such as E-sheets from your electrical engineer).
3. Highest Peak demand (kW) during the most recent 12 month usage history: 341 kW
4. Proposed kWdc System Size: ~~103~~ 95.04 kWdc kWdc
5. Proposed System Inverter Size: 100 kWac (Maximum 2MWac)
6. System Size: ~~103~~ 95.04 kWdc kWdc x Estimated Annual kWh per kWdc*: ~~1,680~~ 1840 = Anticipated Annual kWh Production**

(1/28/11)

9/13/2011

174,874 kWh

*** Please include PV Watts calculation sheet** (http://rredc.nrel.gov/solar/calculators/PVWATTS/version2/)

7. Estimated kWh per kW according to PVWatts2 (please attach) 1,602 kWh per kW
8. Anticipated Annual kWh Production ~~173,040~~ x $ .0888 per kWh (REC Term Incentive)
   = Estimated Annual Incentive Payment ~~$15,365.95~~ $15,528.78
9. PBI Ranking Score: 888

(PBI Ranking Calculator and current non-residential ranking scores can be found at www.aps.com/gosolar)

****NOTE: Annual system production CANNOT exceed annual metered consumption**

ASSIGNMENT OF PAYMENT

Will payment be assigned to an installer, dealer or manufacturer of the qualifying system? ☒ Yes ☐ No

If yes, please provide the following information:

Name of Assignee: SEC PVAZ Solar One, LLC

Mailing Address: ~~487 East Main STreet, St 114, Mount Kisco, NY 10549~~ 50 Main Street, Suite 812, White Plains, NY, 10606

CONFIDENTIALITY

Neither Party shall disclose any non-public, confidential or proprietary information relating to the Reservation (the "Confidential Information") to any third party (other than the Party's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) without the other Party's prior written consent. In the event that any Party becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, the legally compelled Party shall give the other Party providing such Confidential Information prompt prior written notice of such requirement so that the providing Party may seek a protective order or other appropriate remedy and/or waive compliance with this Confidentiality provision. In the event that such protective order or other remedy is not obtained, the providing Party waives compliance with the terms hereof with respect to such Confidential Information.

Each Party acknowledges that the unauthorized disclosure of any Confidential Information may cause irreparable harm and significant injury that may be difficult to ascertain. Each Party therefore agrees that specific performance or injunctive relief, in addition to other legal and equitable relief, are appropriate remedies for any actual or threatened violation or breach of the provisions of this Paragraph, although neither Party shall be entitled to any special, consequential, indirect or punitive damages as a result of a breach of the provisions of this Paragraph, whether a claim is based in contract, tort, or otherwise.

Have you provided the required attachments?

☒ Copy of a signed contract with Installer or Developer (application will not be accepted without this documentation)
NOTE: Installation contracts made contingent upon APS funding are also acceptable

☒ PV Watts calculation sheet (http://rredc.nrel.gov/solar/calculators/PVWATTS/version2/)

☒ Ranking score calculation sheet

☒ A written system description

☒ A quote from your installer that includes an itemized list of system components including panel count, model and manufacturer of both the PV module(s) and the inverter(s)

☐ A Landlord-Tenant Rider, if applicable

☐ If this is new construction, supporting documentation for estimated annual usage

9/13/2011

(1/26/11)

If your reservation is approved, please note the following timelines:

1. **Your signed Credit Purchase Agreement must be returned to APS within 45 days of reservation date.**
2. **Submittal of an Interconnection Application within 90 days of reservation date**
3. **A progress update is required at 120 days from reservation date, including status of the following:**
    a. **Interconnection Application**
    b. **Local permitting applications**
    c. **Equipment orders**
4. **System must be installed within 365 days from reservation date.**

Projects not meeting timelines may be cancelled. If extenuating circumstances exist, you may request consideration for an extension by contacting APS at commercial-renewables@aps.com. If your project requires outside financing, it should be secured at the beginning of the application process. Please note that extensions will not be granted for lack of secured financing.

This Reservation Request and any attachments provided supersede all prior Reservation Requests submitted for the installation address listed on the first page of this document and for this particular technology.

Please note that this is a CUSTOMER program, and the signature required is that of the of APS customer of record. By signing below, customer acknowledges that all application information and all required documents provided have been submitted in good faith.

CUSTOMER:

Larry Tarkowski
Name (Please Print)

Town Manager
Title/Business Name

Signature

2-28-11
Date

In order for an application to be submitted, please submit this request electronically to commercial-renewables@aps.com. Once the application is received, a confirmation email will be sent to the e-mail address from which the application was sent. If a confirmation response is not received within five days, you should contact APS by sending a follow-up email to commercial-renewables@aps.com.

APS will not accept incomplete applications. Please note:

- **APS is not responsible for applications not received due to an undeliverable email address**
- **A reservation application will not be accepted unless it is signed by the APS customer of record**
- **A reservation application must be received by the nomination period deadline (which ends the last BUSINESS day of the month – weekends are not included in the deadline period)**

EXHIBIT E

EQUIPMENT QUALIFICATIONS

- All components of the PV System must be new and must not have been previously placed in service in any other location or for any other application
- All photovoltaic modules must be certified by a nationally recognized testing laboratory as meeting the requirements of UL 1703.
- The inverter must be listed to UL 1741.
- All other electrical components must be UL listed.
- All systems shall be installed with an array angle above horizontal (horizontal tilt angle) between 0 degrees and 60 degrees, and an array azimuth angle from due south of plus or minus 110 degrees of due south. The shade factor shall not exceed 59%.
- PV modules must be covered by a manufacturer's warranty of at least twenty (20) years.
- Inverters must be covered by a manufacturer's warranty of at least five (5) years. The remaining operational life must be supported by a planned maintenance or equipment replacement schedule.
- Participant must be the original purchaser of the System.
- It must be a complete solar system, which includes solar panels, inverter, and all other related equipment required to provide AC electricity to Participant's premises.
- It must satisfy all APS Interconnection Requirements. A copy of the APS Interconnection Requirements is available on aps.com or can be obtained by calling 602-328-1924. It is important to note that only an authorized APS representative can provide permission for your PV system to operate in parallel to the APS distribution system.
- The PV System must be installed consistent with the manufacturer's recommendations and comply with all applicable governmental statutes, codes, ordinances, rules and regulations, as well as generally accepted engineering, safety and installation practices.
- The Project must comply will all applicable local, state, and federal regulations
- Installations must meet applicable governmental statutes, codes, ordinances, and accepted engineering and installation practices
- APS may request copies of any documents to assure compliance with government, institutional, or program requirements that are either explicitly or implicitly described in this Credit Purchase Agreement.