

LICENSE AGREEMENT

<u>AGREEMENT COVERING FACILITY LOCATED AT</u> 	<u>AGREEMENT NO.:</u>
<u>AGENCY</u> Department of General Services Department of	<u>LICENSEE</u> <u>Fuel Cell Company, LLC</u>

This Site License Agreement (“SLA” or “Agreement”), made and entered into this day of , (the “Effective Date”) by and between the State of California, acting by and through its Director of the Department of General Services (“DGS” or “State”), with the consent of the Department of (“Department”) and Fuel Cell Company, (“Licensee”), collectively referred to as “the Parties.” The Parties agree as follows:

WITNESSETH:

WHEREAS, the California State Legislature provided for the Director of DGS, with the consent of the state agency concerned, to let for up to 35 years any real state property to permit the construction and operation of alternative energy supply source facilities pursuant to Section 14671.6 of the Government Code; and

WHEREAS, the State is the owner of certain real property located in the City of , County of , State of California, under the control and jurisdiction of the Department, upon which is constructed a facility commonly known as , as herein further defined as the Facility (“Facility”) as depicted on Exhibit "A" attached hereto; and

WHEREAS, Licensee desires to obtain, and the State desires to provide, a non-exclusive license to use a portion of the Facility to install, maintain and operate a fuel cell system, which area subject to this license within the Facility to be defined as the Licensed Area (as more particularly defined in Exhibit “B”); and

WHEREAS, Licensee desires to sell, and Department desires to purchase, electricity from the fuel cell system (“System”), as more particular described in Exhibit “C”; and

WHEREAS, Licensee and the Department, with the consent of DGS, agree to enter into a Power Purchase Agreement (“PPA”) for the provision of this Electricity from the System by Licensee to Department, which PPA is attached as Exhibit “D” and incorporated by reference herein; and

NOW, THEREFORE, in consideration of the above recitals and mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

I. DEFINITIONS

In addition to the terms that are defined elsewhere in this SLA and the PPA, the following terms are used in this Agreement:

"Access Procedures" has the meaning set forth in Section IV(3) and in Exhibit "E."

"Alterations" has the meaning set forth in Section IV(4).

"Applicable Laws and Requirements" has the meaning set forth in Section III(8).

"Commercial Operation Date" has the meaning set forth in Section IV(2)(c).

"Department" means the State of California Department of _____, which has jurisdiction and control of the property containing the Facility, including the Licensed Area.

"Electricity" means electrical energy, measured in kilowatts and kilowatt-hours that is produced by the System and delivered by Licensee to the Department at the Electrical Interconnection Point and that conforms to the applicable utility and/or authoritative regulatory body standards.

"Electrical Interconnection Point" means the point(s) specified in the Project Design where the System connects to the existing electrical systems serving the Facility.

"Environmental Law(s)" means each and every applicable federal, state and local law, statute, ordinance, regulation, rule, judicial or administrative order or decree, permit, license, approval, authorization or similar requirement of each and every federal, state and local governmental agency or other governmental authority pertaining to the protection of human health and safety or the environment.

"Facility" means the state building or site operated, managed and maintained by the Department which will house or contain the System.

"Hazardous Material" means, without limitation, any substance defined as "hazardous substance", "hazardous waste", "extremely hazardous waste," or stated to be known to cause cancer or reproductive toxicity, under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Section 1317 et seq.; Sections 25115, 25117, 25122.7, 25140, 25249.5, 25249.8, 25281, 25316 or 25501 of the California Health & Safety Code; and any substance regulated pursuant to any Environmental Law(s). The term "Hazardous Material" includes, but is not restricted to, asbestos, polychlorobiphenyls ("PCBs") and petroleum.

"Licensed Area" means the area within the Facility used by Licensee to install, operate and maintain the System at the Facility, as described in Exhibit "B".

"Licensee" means Fuel Cell Company, LLC, who holds the license to install and operate the System and sell Electricity to the Department at the Facility pursuant to the PPA.

"Power Purchase Agreement" or "PPA" means the agreement in Exhibit "D" between the Department and Licensee, with the consent of DGS, which governs the terms by which the Department will purchase Electricity from Licensee as generated from the System at the Facility.

"State" means the State of California, acting by and through the Department of General Services, and its agencies, departments and divisions.

“System” means, but is not limited to, the integrated assembly of fuel cells, inverters, converters, metering, lighting fixtures, transformers, ballasts, auxiliary equipment, cooling equipment, switches, wiring devices and wiring (as more specifically defined in Exhibit “C” and Exhibit “F”) installed in the Licensed Area of the Facility for the purpose of generating Electricity for purchase by Department.

II. TERM

The term of this Agreement shall commence on the Effective Date and shall continue for a period of fifteen (15) years **after** the Commercial Operation Date unless and until terminated pursuant to 1 and 2 below, or Section III(5), or Section III(6), or Section III(8), or Section IV(5), or Section VI(2)(f), or Section VII(4) of this SLA, or pursuant to termination by the Department and Licensee of the PPA under the provisions thereof. The date on which this Agreement terminates shall be referred to as the “Termination Date.” Department shall provide at least sixty (60) days written notice prior to the Termination Date pursuant to the notice provisions in Section VIII(1).

- 1) Term Consistent with PPA: Notwithstanding any other provision of this SLA, Parties agree that the term of this SLA shall be contingent upon, and parallel to, the terms of the PPA, as incorporated by reference in Exhibit “D”.
- 2) Compliance with PPA, including Remedies: The Power Purchase Agreement is hereby incorporated by reference into this SLA. In particular, any default by Licensee under the PPA shall be deemed a default by Licensee under the SLA, and the provisions in the PPA regarding Parties’ default, termination, and remedies shall also apply to this SLA. In addition, provisions in the PPA regarding destruction of the Facility and assignment of Licensee’s interest shall also apply to this SLA. Should any provision, term or requirement in this SLA be in conflict with any provision, term or requirement in the PPA, the PPA shall be controlling.

III. USE

- 1) Permitted Use: The State does hereby grant to Licensee a non-exclusive license to use the Licensed Area within the Facility for the construction, maintenance and operation of the System for the production, transformation and transmission of fuel cell generated Electricity and for no other use or purpose (the “Permitted Use”). Subject to the requirements and obligations of Exhibit D of the PPA, the State and Department shall have the right to require Licensee to relocate the System, at State and/or Department’s expense, except as provided in Section V(1)(c) Facility Reroofing.
- 2) No State Warranties: Licensee acknowledges that the State has not made any statements or representations or warranties regarding the Facility and Licensee is not relying upon any statement or representation or warranty by State or any third party regarding the Facility, the fitness of the Facility for any particular use of Licensee or any other matter. Licensee has had an opportunity to inspect the Facility and every aspect thereof and represents to State that the Facility is in acceptable condition for Licensee’s anticipated use as provided in this SLA. State hereby expressly disclaims and Licensee hereby waives all implied warranties including, without limitation, any warranty of merchantability or warranty of fitness for a particular use or purpose. **Licensee hereby initials this Section to verify this waiver.**

Initials

- 3) Lead Paint/Asbestos:
 - a) Lead Base Paint Disclaimer: Licensee, by acceptance of this License, is hereby notified and informed that the Licensed Area may contain lead-based paint. Licensee accepts the Facility

in its "As-is" condition and shall hold harmless, indemnify and defend the State, its officers, agents and employees of all liability which may occur to any real or personal property or persons by the presence of any lead-based paint currently in or at the Licensed Area.

- b) Asbestos Disclaimer: Licensee, by acceptance of this License, is hereby notified and informed that the Licensed Area may contain asbestos. Licensee accepts the Licensed Area of the Facility in its "As-Is" condition and shall hold harmless, indemnify and defend the State and its officers, agents and employees of all liability which may occur to any real or personal property or persons by the presence of any asbestos current in or at the Licensed Area of the Facility. If asbestos containment and/or removal will be required solely as a result of Licensee's installation of the System at the Licensed Area, Licensee shall not install the System until all asbestos containment and/or removal work is performed and certified as completed by a licensed asbestos contractor approved by the State. Licensee shall submit copies of the certification of completion of any and all asbestos work to State and the Department pursuant to the Notice provisions in Section VIII below prior to the installation of the System at the Licensed Area of the Facility.
- 4) Limitation on Use: Licensee shall not permit or suffer any use of the Licensed Area or any part thereof, or provide the System for the use of others without first obtaining Department's written consent. Licensee is only to use the Licensed Area for the generation of Electricity to be used by and for the benefit of Department. No change or alteration to the Permitted Use, including a change or alteration to the electrical output of the fuel cell system, except for expected degradation and weather fluctuations, may be made by Licensee without the prior written approval of Department.
- 5) Prohibited Uses: Licensee shall not use or allow the Facility to be used for any improper, immoral, or unlawful purposes, nor shall Licensee cause, maintain or permit any nuisance in, on or about the Facility. Licensee will not use, nor allow the Facility to be used or fail to use or allow the failure to use, for any purpose inconsistent with the SLA and/or the PPA. Licensee will comply with all rules and regulations adopted by Department or the State for the Facility. Such rules shall include, but not be limited to, the prohibition against the possession or use of firearms, liquor or illegal drugs. Any willful violation of said rules and regulations may be grounds for immediate termination of the License and PPA and eviction of Licensee; however, Licensee shall have the right to remove its System pursuant to Exhibit D Section 13 of the PPA. Upon such removal of the System, the PPA and this Agreement shall terminate, and neither the Department nor the State shall have any obligation to pay Licensee a Termination Fee pursuant to Exhibit D Section 13 or Exhibit E of the PPA.
- 6) No Interference with Department Uses/Quiet Enjoyment: Licensee shall operate, maintain and repair the System in a manner that will not obstruct or interfere with Department's use of the Facility or the rights of any other occupants of the Facility and Licensee will not injure or annoy any occupants of the Facility. Department may consider any such interference that is unreasonable and that Licensee does not eliminate within thirty (30) days of receipt of Department's written notice of such interference to be a material breach of this SLA and treat it as a default by Licensee. In the event interference occurs, Licensee agrees to take all reasonable steps necessary to eliminate such interference promptly, but no later than thirty (30) days from notification by the Department. Licensee will use its best efforts to maintain its System in a manner that does not interfere with the Facility or other Department property or improvements to the Facility or other Department property. State may construct, reconstruct, modify or make alterations to the Facility so long as such activities do not cause interference (including shading) with the operation of the System.
- 7) Subordination to Existing Leases, Easements and Rights of Way: Licensee acknowledges and understands that this License and all rights of Licensee are subject and subordinate to all existing leases, easements, rights of way, declarations, restrictions or other matters of record and all existing agreements of the State with respect to the Facility. Department and the State reserve

the right to grant additional licenses, easements, leases or rights of way, whether recorded or unrecorded, as may be necessary, which do not unreasonably interfere (including shading) with Licensee's use of the Facility and the System.

- 8) Applicable Laws and Regulations; Permits and Approvals: All activities conducted by Licensee pursuant to this Agreement shall be in compliance with all applicable zoning requirements and all applicable Federal, State and local laws, ordinances, rules and regulations, and all issued permits and licenses (collectively "Applicable Laws and Requirements"), and shall be conducted at Licensee's own cost and expense. Licensee shall provide Department with two (2) copies of all permits, approvals and conditions issued by applicable Federal, State and local governmental entities, including the applicable local utility service company. Licensee shall immediately suspend any use of the System upon notice by any governmental authority having jurisdiction over any of Licensee's activities under this Agreement which constitutes a violation of any of the Applicable Laws and Requirements until the violation, if any, is corrected and the applicable governmental authority concurs that the violation is corrected. Licensee shall immediately notify the Department and the State regarding any alleged violation. Failure of Licensee to immediately suspend use of the System and/or to notify Department and the State in accordance with this provision after receiving a notice of any violation which may pose a risk to public health or safety may be grounds for termination by Department of this Agreement with no obligation to pay a Termination Fee to Licensee under the PPA or the SLA; however, Licensee shall have the right to remove its System pursuant to Exhibit D Section 13 of the PPA. Upon such removal of the System, the PPA and this Agreement shall terminate, and neither the Department nor the State shall have any obligation to pay Licensee a Termination Fee pursuant to Exhibit D Section 13 or Exhibit E of the PPA.
- 9) No Infringement: Licensee's installation and operation of the System at the Facility shall not infringe upon any third party's intellectual property or other proprietary rights.

IV. CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM

- 1) Ownership of System:
 - a) Title to System: Subject to the rights provided to Department pursuant to other terms hereof, the System and all alterations, additions, improvements or installations made thereto by Licensee and all Licensee property used in connection with the installation, operation and maintenance of the System is, and shall remain, the personal property of Licensee ("Licensee Property"). In no event shall any Licensee Property be deemed a fixture, nor shall Department, nor anyone claiming by, through or under Department (including but not limited to any present or future mortgagee of the Facility) have any rights in or to the Licensee Property at any time except as otherwise provided herein.
 - b) Security Interests in System: Except as provided in this Agreement, Department acknowledges and agrees that Licensee may grant or cause to be granted to a secured party a security interest in Licensee Property and Licensee's rights to payment under the PPA, and Department expressly disclaims and waives any rights it may have in the Licensee Property, at any time and from time to time, pursuant to this License, at law or in equity. Any security interest or mortgage shall be subordinate to the interest of the State in the Facility and subject to the terms and conditions of this Agreement.
 - c) Possessory Interest Taxes; Copyright and Patent Obligations: Licensee acknowledges that there may be a possessory interest or other tax imposed as a result of the System and this Agreement, and that such tax, if imposed, shall be Licensee's obligation and shall be paid as and when required by the taxing authority. In addition, Licensee shall pay all royalties and license fees which may be required for the methodology, techniques, and for other intellectual property, in connection with operating the System. Licensee shall indemnify the State

against and defend all suits or claims for infringement of any patent, copyright, trade secret, trade name, trademark or any other proprietary or contractual rights and shall hold State harmless from loss, expense, claim or cost on account thereof.

- d) No Recordation: Licensee shall not record this SLA nor the PPA nor any memorandum or short-form hereof.

2) Installation and Operation of System

- a) In General: Excepting minor field changes, the construction and installation of the System and all related matters are subject to, and shall be completed in accordance with the terms and conditions of the PPA and SLA Exhibit "C" (Description of System, including Approved Equipment), Exhibit "F" (Project Design & Installation Process (Facility, Electrical and Equipment)), Exhibit "G" (Phase II RFP Attachment 1 – General Installation Requirements for Participating State Agencies), and Exhibit "H" (Phase II RFP Attachment 2 – Minimum Technical and Installation Specifications). These Exhibits are incorporated by reference and made a part of this SLA.

For purposes of this Agreement, a "minor field change" is defined as a change or deviation from the approved System plans, System drawings, construction and installation plans, or bill of materials that does not significantly affect the construction, installation or operation of the System or materially deviate from the design, construction, installation or operational intent or understanding of the System, as originally approved. To the extent the specifications in Exhibit "G" and Exhibit "H" of this SLA conflict with any other provision of this SLA, including any other Exhibit, the SLA provision shall prevail. Pursuant to Exhibits "C", "F", "G", and "H", Licensee shall commence construction and shall proceed, with reasonable diligence and continuity to construct a System at the Facility. Parties acknowledge that Licensee may be required to complete some of the documents necessary for compliance with, and completion of, the above-referenced Exhibits after the Effective Date of this SLA.

- b) State Approval: Limitations: No construction or installation by Licensee shall be permitted to begin until the Department and the State have approved the completed plans and specifications for the project and have issued a **Notification to Proceed with construction**. The approval of the completed plans and specifications shall not be unreasonably withheld or delayed. Notwithstanding Department and State approval of the System in accordance with these Exhibits, in no event shall such approval be interpreted as making the Department and the State responsible for, and Licensee acknowledges that the Department and the State are not responsible for, the design or construction of the System. Licensee shall at its sole cost and expense design, build, own, maintain and operate the System in compliance with this SLA and the PPA.
- c) "Commercial Operation Date": The Commercial Operation Date shall be commensurate with the date that the State and the Department have issued a **Certification of Completion** for the construction and installation of the System pursuant to Section IV(2)(b) and Exhibit "F".
- d) Prevailing Wage: For purposes of any activities performed pursuant to this SLA or the PPA, Licensee, and any subcontractor thereof, shall pay the rate of wages for regular, overtime and holiday work plus employer payments for all benefits generally prevailing in the locality in which the work under this SLA is to be performed to the extent required by law. This requirement shall include all crafts, classifications or types of workmen used on Department premises at the point of delivery of Licensee, or Licensee's subcontractor(s), for the assembly and installation of the materials at the Facility under this SLA. Licensee shall comply with the Laws and Regulations governing the payment of prevailing wage as identified in the Labor Code and applicable law.

- e) Mechanic's Lien / Stop Notices – Removal of Liens: Licensee shall not cause or permit any liens to attach or to be placed upon or encumber the System or the Facility arising from or resulting out of any improvements, alterations or other work performed by Licensee. If any such lien attaches, Licensee agrees to cause the lien to be removed within ten (10) days of notification thereof by the post of a bond, payment of the lien or otherwise. If Licensee fails to remove the lien within this time period, in addition to its other remedies under this Agreement, Department or State may undertake to cause such lien to be removed and charge to Licensee any costs and expenses incurred in connection with the removal of said Lien. Licensee agrees to hold harmless, defend and indemnify Department and State against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing any such lien.
 - f) Performance Bond: Before starting any installation, Licensee shall furnish a performance bond in an amount necessary to restore the Facility to its pre-installation condition in the event Licensee fails to complete the installation as specified under Section IV(2)(a) above (See Exhibit "I"). In the alternative, with the approval of the Department and the State, Licensee may provide either i) a performance guarantee from an entity acceptable to the State and Department, to guarantee restoration of the Facility to a condition substantially similar to that prior to the initiation of installation of the System in the event Licensee fails to complete the installation of the System, or ii) establish a cash escrow account which contains sufficient funding to restore the Facility to its original pre-installation condition should Licensee fail to complete installation. This cash escrow account shall be solely for the purpose of serving in lieu of a performance bond and shall be accessible to the Department and the State only. With Department and State approval, Licensee may establish a Master Cash Escrow Account for all of the State's projects as awarded through the RFP, so long as this Master Account contains sufficient funding for all State RFP projects under construction and installation at any one time and is only accessible to the Department and the State through the construction and installation period of all State RFP projects.
 - g) Standard California Nondiscrimination Construction Contract Specifications: Licensee shall comply with all of the nondiscrimination requirements as specified in Standard Form 18, attached herein and incorporated by reference into this Agreement as Exhibit "K".
 - h) Employment of Undocumented Aliens: Licensee verifies and warrants that, in entering into this Agreement with State, Licensee has not, in the preceding five years, been convicted of violating a state or federal law regarding the employment of undocumented aliens.
- 3) Licensee's Access: Licensee acknowledges that, prior to the effective date of the SLA, Licensee was provided access to the Facility in order to conduct feasibility and configuration assessments, environmental assessments, and other inspections of the Facility, as Licensee deemed necessary. Other issues regarding early access for Licensee are included in Exhibit "F" (Project Design and Installation Process). Licensee's access to the Facility shall be subject to all procedures reasonably adopted from time to time by Department including, but not limited to, the procedures addressed in this Section and Exhibit "E" (Access Procedures for Facility) attached hereto and incorporated by reference. Only Licensee's employees, agents and/or contractors retained by Licensee and listed in Exhibit "E" as amended by Licensee's written notice shall be permitted access to the Facility; provided that System Lessor and its employees and agents (all as agent of Licensee) shall have access to the Facility once during each calendar year to inspect the System, subject to the same limitations and requirements as Licensee's access. Said representatives shall be required to show appropriate identification prior to the requested access. Licensee shall be permitted to access the Facility twenty-four (24) hours per day, seven (7) days a week for emergency purposes as reasonably agreed to and defined by Licensee and Department and further described in Exhibit "E". Licensee shall use the provided or authorized access at Licensee's sole risk. Access to the Facility by construction workers, material providers and agents of Licensee during construction shall be conducted so as to minimize interference with the operations of the Department, in accordance with and as further described in Exhibit "E".

- 4) Modifications/Alterations: Upon approval by Department and the State of the design of the System, Licensee shall have no right to change the approved design without receiving prior written approval of the Department and the State. Upon approval of the Department and the State of the construction and installation of the System in accordance with Exhibit "F" (Project Design and Installation Process), Licensee shall have no right to change, replace or alter the System, nor attach fixtures or erect additions, structures or signs in or upon the Facility (collectively "Alterations") without receiving prior written approval of the Department and the State, except for minor field changes as defined in Section IV(2)(a) above. Prior to undertaking any such Alterations, Licensee shall submit to the Department and the State detailed and complete plans and specifications for the proposed Alterations. In their sole discretion, Department and the State may waive the requirement for detailed plans upon Licensee's demonstration that the proposed Alterations consists solely of modification or replacement of like-kind equipment. Department and the State shall not unreasonably delay or withhold written approval of Licensee's proposed Alterations. However, as a condition to consenting to the Alterations, the Department and/or the State may impose reasonable requirements, including the requirement that Licensee provide the State with a surety bond or other financial assurance that the cost of the Alterations will be paid when due, and reimbursement of any costs incurred by Department and/or State in responding to Licensee's request. Any such Alterations performed by Licensee shall be performed in accordance with all Applicable Laws and Requirements, including any and all necessary permits and approvals obtained and a copy thereof provided to Department. Licensee agrees to provide Department with sufficient advance notice of any proposed Alterations to allow the coordination and approval by Department of the construction schedule for such Alterations.
- 5) Energy Efficiency Requirements: In the event that the rules and regulations associated with the California Initiative incentive program change, as mandated by the California Public Utilities Commission, and as it relates specifically to any energy efficiency requirements for receiving incentives, and if the Facility is deemed to not be in compliance with any new requirements as such, the Department will evaluate the feasibility and timing of coming into compliance with these new requirements, and at their sole discretion will decide to either implement the necessary energy efficiency requirements, or terminate this SLA and the PPA. If the Department must terminate the SLA and the PPA for this reason, the Licensee shall not collect a Termination Fee in accordance with Exhibit E in the PPA, nor shall the Department be held liable for any damages that may arise as a result. The Department will return any unspent funds that were submitted by the Licensee for the purpose of paying for Transaction Costs as per Exhibit "J" of this SLA.
- 6) Security: At all times during the construction and operations on the Facility and any other authorized use areas, Licensee shall keep any and all areas of construction and operation adequately secured for safety and security purposes. Licensee shall coordinate with the Facility manager and comply with all Facility security requirements when accessing the Facility. Licensee hereby acknowledges that Department shall have no obligation whatsoever to provide guard services or other security measures for the benefit of the Licensee. Licensee assumes all responsibility for the protection of Licensee, its agents and invitees and the property of the Licensee and of Licensee's subcontractors, agents and invitees from acts of third parties.
- 7) State Inspection of System: State shall be permitted non-emergency access to inspect the System upon seventy-two (72) hours prior written notice to Licensee. State personnel must be accompanied by personnel of Licensee during any non-emergency inspection of the System, unless Licensee agrees in writing to waive its right to accompany State personnel on all non-emergency inspections. This requirement in no way prohibits Department and/or the State from inspecting any and all portions of the Facility other than the System itself. In the event of emergency, the State may inspect the System unaccompanied and must notify Licensee within twenty-four (24) hours after such inspection. Inspections of the System during construction shall be allowed, and in accordance with the construction schedule as indicated in Exhibit "F". Licensee understands that the State's inspection of the construction of the System is required to

ensure compliance with the approved System design and plans, and is a necessary element for final sign off and approval to commence with commercial operations.

- 8) During the first five (5) years after the Commercial Operation Date the Department and the State may, at its sole option and in its sole discretion, notify the Licensee that it desires additional power generating capacity to be installed upon the same terms and conditions of the PPA and this SLA. The Department and Licensee shall meet and confer to determine the amount of additional power generating capacity which Licensee believes can be technically and economically installed. In the event that the Department and Licensee agree that additional power generating capacity can be installed the PPA and this SLA will be amended to reflect the installation and operation of the additional power generating capacity. The Department and the State reserve the right in its sole discretion to pursue other suppliers of renewable power generating capacity and Licensee has no option or right to provide such additional power generating capacity.
- 9) The Licensee shall install the approved System and achieve the Commercial Operation Date milestone within three (3) years from the Effective Date of the SLA. Failure to achieve this milestone within this required timeframe may result in termination of the SLA and the PPA by the Department and State. If the Department and State has issued a Notice to Proceed to Construction and the Licensee has not begun construction activity within thirty (30) months after the Effective Date, then Licensee shall notify the Department and State of its intentions to build the System within the remaining six (6) month period. In addition, if at any time during the three year period Licensee decides not to build the System, then Licensee shall notify the Department and State within five (5) business days after making such decision.

V. OPERATIONS AND MAINTENANCE

1) Licensee's Obligations

- a) In General: Licensee shall cause the System to be operated and maintained at Licensee's sole expense, including the cost of capital repairs and replacements, in a commercially reasonable manner throughout the term of this SLA and the PPA. Licensee warrants that all of its operating and maintenance personnel will be adequately qualified and trained throughout the term of the License. Licensee shall also be responsible for any maintenance and repairs to the Facility if such maintenance and repairs are necessary as a direct result of Licensee's Permitted Use. In particular, if the System is located on the roof of the Facility, Licensee shall, at its sole cost and expense, examine and repair to the reasonable satisfaction of Department to ensure that the warranty for the Facility roof is not invalidated and to ensure that the roof remains watertight.

Licensee shall maintain the Licensed Area in a commercially reasonable manner at Licensee's sole expense. Licensee shall have no expectation of Department's obligation to maintain the Licensed Area for purposes such as vegetation management. For roof mounted systems Department will maintain and repair the roof as required and necessary in order to maintain the roof warranty, other than those maintenance and repair activities which are either directly attributable to the System or were caused by the System and/or Licensee.

- b) Licensee's Failure to Maintain: If Licensee fails to comply with its maintenance and repair obligations pursuant to this SLA, Department shall give Licensee notice in writing to do such maintenance and repair activities as are reasonably required under this Agreement. If within ten (10) days thereafter, Licensee fails to commence and diligently attempt to complete the requested activities, then, in addition to its other remedies under the SLA, Department shall have the right to have such work performed and expend such funds at the expense of Licensee as are reasonably required to perform such work. Any amount so expended by Department shall be paid promptly by Licensee upon Department's submittal of the work

invoices to Licensee. Licensee shall notify Department in writing fifteen (15) days prior to any planned downtime for maintenance and repair.

- c) Protection of Premises: Licensee shall not do or permit to be done anything which will invalidate any fire, extended coverage or other insurance policy covering the Facility or the State's interest in the property located thereon and therein, or that will violate any warranty for the Facility roof. Licensee shall comply with all rules, orders, regulations, requirements and recommendations of the State, or any department, office or division thereof, including without limitation any risk management department or office or any other department or office performing a similar function.
- d) Health and Safety: Licensee shall take all necessary and reasonable safety precautions with respect to performing the installation work, providing Electricity and operation and maintenance work that shall comply with all Applicable Laws and Requirements pertaining to the safety of persons and real and personal property. Licensee shall immediately report to State and Department any death, loss time injury, or property damage to State's property that occurs within the Licensed Area at the Facility or as part of the Licensee's operation of the System.
- e) Losses/Damages: Department and the State will not be responsible for losses or damage to personal property, equipment or materials of Licensee at the Facility. Licensee will hold harmless the Department and State from any such losses or damages. All losses by Licensee at the Facility shall be reported immediately to Department upon discovery by Licensee.
- f) Hazardous Material: Licensee agrees to comply with all applicable Environmental Laws pertaining to the use, storage and disposal of Hazardous Material at the Facility, as the terms "Environmental Laws" and "Hazardous Material" are defined in Section I above. Licensee shall indemnify, defend and hold harmless the State and its agents, representatives and employees from any and all liabilities and costs (including any and all sums paid for settlement of claims, litigation, expenses, attorneys' fees, consultant and expert fees) of whatever kind or nature, known, or unknown, resulting from any violation of Environmental Laws caused by Licensee or Licensee's representatives at the Facility. In addition, Licensee shall reimburse the State for any and all costs related to investigation, clean up and/or fines incurred by the State for non-compliance with Environmental Laws, as defined in Section I above, that are caused by Licensee or Licensee's representatives at the Facility. The State and the Department reserve the right to inspect the Licensed Area for purposes of verifying compliance with these Hazardous Materials requirements.
- g) Malfunctions and Emergencies:
 - i) Department and Licensee each shall notify the other within twenty-four (24) hours following their discovery of any material malfunction in the operation of the System or of their discovery of an interruption in the supply of Electricity from the System. Licensee and Department shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Licensee's repair or alteration at all times, consistent with PPA Exhibit A, Section 3(b)(iv). Licensee and Department each shall notify the other Party upon the discovery of an emergency condition in a System.
 - ii) Licensee shall commence repairs to the malfunctioning System and restore the supply of Electricity, as soon as reasonably possible after notice or upon its own discovery of any of the conditions specified in the Section above during normal business hours and, subject to the Access Procedures in Exhibit "E", take steps to mobilize personnel to commence repairs after notice or discovery of a condition requiring repair or other corrective action. If an emergency condition exists, Licensee shall promptly dispatch the appropriate personnel immediately to perform the necessary repairs or corrective action

in an expeditious and safe manner, subject to the Department's emergency rights under PPA Exhibit A, Section 3(b)(v). For routine and emergency repairs, the Parties shall contact the persons identified in the Notices provisions in Section VIII(1) below.

2) State's Obligations

- a) In General: Subject to any specific limitations in this SLA or the PPA, Department shall at all times during the term of this Agreement use commercially reasonable efforts to maintain the Facility, other than the System, in good condition and repair so as to be able to receive and utilize the Electricity delivered to the Facility from the System. Department will maintain in good working order and available at all times, its connection and service contract(s) with the relevant utilities so that Department can, upon any suspension or interruption of Electricity from the System, provide the Facility with the full requirements for Electricity. All obligations of the Department in this SLA regarding maintenance shall be subject to the right of the Department during periods of renovation of any part of the Facility to issue a shut down order to the System, consistent with Exhibit D, Section 10 of the PPA, "Temporary Shutdown of System" and Exhibit D, Section 11 of the PPA, "Permanent Shutdown of the System at the Facility." Department will use commercially reasonable efforts to remedy any interruption as soon as possible, consistent with these provisions.
- b) Health and Safety: Department shall at all times maintain the areas of the Facility consistent with all Applicable Laws and Requirements pertaining to the health and safety of persons and property.
- c) Notice of Damage: Department shall promptly notify Licensee of any matter it is aware of pertaining to any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System.
- d) Liens: Department shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein. If the Department breaches its obligations under this paragraph, it shall immediately notify Licensee in writing, shall promptly cause such lien to be discharged and released of record without cost to Licensee.
- e) Estoppel Certificate: Department and/or the State shall, upon not less than thirty (30) days prior written request by Licensee or Licensee's lender, execute, acknowledge and deliver to Licensee or to Licensee's lender a statement in writing, substantially in the form of the document in Exhibit "L", "Form of Estoppel Certificate", incorporated herein by reference, which may be relied upon by any prospective lender.
- f) No Relocation Assistance: Other than any relocation payment mutually agreed upon by parties under Exhibit D, Section 11 of the PPA, parties to this Agreement agree that no relocation payment or relocation advisory assistance under applicable state and federal law will be sought or provided in any form as a consequence of this Agreement. Licensee also acknowledges that Licensee, its employees, contractors, subordinates or assignees are not entitled to any relocation payment or relocation advisory assistance due to their occupancy at the Facility. In the event an assignment of this Agreement is permitted pursuant to the terms herein, Licensee shall incorporate the above paragraph into each assignment. Failure to do so may obligate Licensee for any damages and costs resulting from claims for relocation payments from its assignees.

VI. INSURANCE

- 1) No State Obligation to Insure: Department and the State are not responsible for and will not maintain insurance covering the System against any fire or casualty, and Licensee will make no

claim of any nature against Department or the State by reason of any damage to the property of Licensee in the event of damage or destruction by fire or other cause.

- 2) Licensee's Insurance Obligations: Licensee shall procure and maintain for the duration of the SLA insurance against all claims for injuries to persons or damages to property which may arise from or in connection with Licensee's performance of the work under this SLA and the results of that work by Licensee, his agents, representatives, employees or subcontractors. This insurance shall meet the following requirements:
- a) Any insurance company used by Licensee shall be acceptable to the Department of General Services, Office of Risk and Insurance Management (ORIM). In any event, insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII. If self-insured, Licensee must demonstrate to the satisfaction of DGS, ORIM that such insurance is adequate.
 - b) Licensee shall furnish Department with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the State and Department before work commences. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.
 - c) All coverage shall be in force as long as Licensee owns the System. If the insurance expires during the term of this SLA, Licensee shall immediately provide a new current certificate or may be declared in default of this SLA. The Department and the State reserve the right to withhold all payment for Electricity service until the default is cured to the satisfaction of Department and the State. Renewal insurance certificates must be tendered to Department at least ten (10) days prior to the expiration of the previous insurance certificate. This new insurance shall be in accordance with the terms of this SLA.
 - d) Insurance policies shall contain a provision stating that coverage will not be cancelled without thirty (30) days prior written notice to Department and State.
 - e) Licensee shall be responsible for any deductible or self-insured retention contained within the insurance.
 - f) In the event Licensee fails to keep in effect at all times the specified insurance coverage, the Department and the State may, in addition to any other remedies it may have, terminate this SLA upon the occurrence of such event, subject to the provisions of this SLA.
 - g) Any insurance required shall be primary.
 - h) The insurance coverage required herein shall not in any way limit the liability of the Licensee, its officers, agents, partners or employees.
 - i) Minimum Scope of Insurance: Coverage shall be at least as broad as:
 - i. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001)
 - ii. Insurance Services Office Form Number CA 0001 covering Automobile Liability, code 1 (any auto)
 - iii. Workers' Compensation Insurance if required by the State of California and Employer's Liability Insurance
 - iv. Property insurance, Fire and Extended Coverage Form

- j) Minimum Limits of Insurance: Licensee shall maintain limits no less than:
- i. General Liability (including operations, products, and completed operations): \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
 - ii. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
 - iii. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
 - iv. Property Insurance: Fire and Extended Coverage in an amount sufficient to reimburse Licensee for all of its equipment, fixtures, and personal property located on or in the Premises including improvements hereinafter constructed or installed.
- k) Deductibles and Self-Insure Retentions: Any deductibles or self-insured retentions must be declared to and approved by the Department. At the option of the Department, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Department, its officers, officials, and employees; or the Licensee shall provide a financial guarantee satisfactory to the Department guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- l) Other Insurance Provisions: The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
- i. The State of California, its officers, officials, employees, servants, agents and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Licensee; and with respect to liability arising out work or operations performed by or on behalf of the Licensee including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Licensee's insurance, or as a separate owner's policy (CG 20 10 11 85).
 - ii. For any claims related to this SLA, the Licensee's insurance coverage shall be primary insurance as respects the State of California, its officers, officials and employees. Any insurance or self-insurance maintained by the Department or the State of California, its officers, or officials shall be excess of the Licensee's insurance and shall not contribute to it.
 - iii. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the State of California and the Department.
 - iv. Coverage shall not be extended to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

- m) Subcontractors: Licensee shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor to the State of California and Department for review and approval. All coverages for subcontractors shall be subject to all of the requirements stated here. All certificates and endorsements shall be received and approved by the Department and/or State prior to the start of work by subcontractors.

VII. VACATING PREMISES/OPTION TO BUY-OUT

- 1) Vacating the Facility/Removal of Equipment: Licensee shall, within sixty (60) days of expiration of this Agreement, remove the System from the Facility, return the Facility to its pre-installation condition, (except for System mounting pads in roof mounted installations, and ordinary wear and tear), and peaceably and quietly leave, surrender and yield the Licensed Area to Department and the State. In no case shall Licensee's removal of the System affect the integrity of Department's roof (for a roof mounted System), which shall be as leak proof as it was prior to removal of System. Department and the State may, within their sole discretion, extend the time allowable for Licensee to vacate the Facility and remove the System upon written request by Licensee within this 60-day period. Upon completion of Licensee's removal of the System and conduct of any necessary repairs, a qualified representative from Department and/or the State shall inspect the Facility to determine that the Facility was left in accordance with this Section. If the Department and/or the State determine that Licensee has not removed the System or repaired damage in an adequate or timely manner in accordance with this Section, Department and/or the State shall have the right to any and all remedies as specified in Exhibit D, Section 13 of PPA, including, but not limited to, consideration of the System as "abandoned."
- 2) Security for System Removal: Five (5) years prior to the expiration of this Agreement, Licensee shall provide State and Department with an estimate of the cost to remove the System and restore Facility in accordance to the Section above. Licensee, State and Department shall then meet and confer within thirty (30) days after such estimate is provided to resolve any concerns regarding such estimated cost, and a revised estimate taking those concerns into account shall then constitute the final restoration cost estimate. Licensee shall then either elect to provide a performance bond covering such final restoration cost estimate, or a lock box type escrow account shall be established with an acceptable financial institution into which payments under the PPA shall be deposited by Department until the escrow reaches the final restoration cost estimate. The escrow account shall serve as the security for the restoration of the Facility, and such funds shall be released to Licensee when the Facility restoration is accepted by State and Department. In event of a default by Licensee the State and Department shall have the right to all the funds in the escrow account for purposes of restoring the facility. Interest on the escrow account shall be retained in the escrow account for the benefit of whichever party is entitled to the funds in the escrow account.
- 3) State's Purchase Option:
- a) End of Term: Department shall have an option to purchase the System and any Alterations, materials or equipment or any portions of the System at the end of the term of this Agreement, Department shall, within one hundred and eighty (180) days before the expiration of this Agreement, advise Licensee as to whether it shall enter negotiations with Licensee to exercise its option to purchase Licensee's System. The value of the System at the expiration of this SLA shall be based on the fair market value, except in the case that the fair market value is less than the residual value of the System as indicated in Exhibit E of the PPA, labeled "At Expiration". In this case, Department will pay Licensee for the purchase of the System an amount as determined by Exhibit E of the PPA. Licensee and Department shall first attempt to agree on a fair market value price for Licensee's System. In all events, "fair market value" shall mean the price that would be established in an arm's length transaction between an informed and willing buyer and an informed and willing seller under no

compulsion, respectively, to buy or sell, and neither of which is related to Department, Licensee or any financing entity of Licensee. If the Parties cannot agree on a value, fair market value shall be determined at the time of the option by an independent energy appraiser mutually acceptable to both Department and Licensee.

- b) Right of First Refusal: If, at any time during the term of this Agreement, Licensee receives a bona fide offer from any party other than a parent or wholly owned subsidiary of Licensee ("Offering Party") to purchase all or any part of Licensee's System, which offer Licensee would accept, Licensee shall, before accepting such offer, (i) send to Department and the State a true copy of the proposed offer; (ii) notify Department and the State of the intention of Licensee to accept the offer if the System is not purchased by Department, and (iii) offer Licensee's System for sale to Department under the same terms and conditions. Department shall have thirty (30) days after receipt of the notice and the offer to notify Licensee that, conditioned upon obtaining the necessary authorizations to accept the offer, it will accept the terms of the offer.

However, if Licensee is utilizing a sale-leaseback financing arrangement to finance the initial construction of the System and under this financing arrangement the legal owner of the System will be the System Lessor and Licensee will leaseback the System, and the System Lessor has a right to assign its rights in the System once during the first ninety (90) days of the effective date of the Leaseback Lease, then the initial sale and leaseback or the one assignment of the System and the Leaseback Lease by the System Lessor during the first ninety (90) days of the effective date of the Leaseback Lease shall not constitute a sale for the purposes of this Right of First Refusal. Any exercise of an option to purchase the System by Licensee or its assignee under the Leaseback Lease documents shall constitute an offer and be subject to this Right of First Refusal. In addition, if the System Lessor elects to sell, except during the first ninety (90) days of the effective date of the Leaseback Lease or in connection with a securitization of the rents from the Leaseback Lease at any time (whereby the System Lessor remains the same entity), all or a part of the System then receipt of such an offer shall constitute a sale and be subject to the First Right of Refusal. The Licensee shall within five (5) days after any change in ownership of the System lessor provide to the State new notice information for the System Lessor.

- i) Department's failure to so notify Licensee within the said thirty (30) day period shall thereby waive Department's right of first refusal in that instance, but not as to any subsequent offer, and Licensee then may sell Licensee's System to the Offering Party, provided that said sale is on the same terms and conditions and for not less than the price set forth in the offer to Department and the State, that said sale is conditioned by the Offering Party's agreement to be bound by all terms of the PPA and this SLA, including Department's right of first refusal, and that the sale would otherwise meet the conditions of assignment as provided in Exhibit D Section 16 of the PPA.
- ii) If Department notifies Licensee that, conditioned upon obtaining the necessary authorizations, it will accept the offer, then Department shall have one-hundred and twenty (120) days from the date of said notification to satisfy said condition. If Department fails to satisfy the condition in the preceding sentence within one-hundred and twenty (120) days, then Licensee may sell Licensee's System to the Offering Party, conditioned upon meeting the conditions specified in the Section above. If the necessary authorizations are obtained within the one-hundred and twenty (120) day period mentioned above, then the closing of the purchase shall take place as provided in the offer but no sooner than sixty (60) days after the date of such approval.
- iii) Notwithstanding Section (3)(ii), if the Right of First Refusal is triggered by a decision of the System Lessor to sell all or part of the System, and if Department notifies Licensee that, conditioned upon obtaining the necessary authorizations, it will accept the offer, then Department shall have sixty (60) days from the date of said notification to satisfy

said condition and close on the purchase. If Department fails to satisfy the conditions in the preceding sentence within sixty (60) days, then Licensee may sell Licensee's System to the Offering Party, conditioned upon meeting the conditions specified in Section 3(i) above.

- 4) Condemnation: In the event that the whole or any portion of the Facility is acquired or condemned by any authority or sold by the State in lieu thereof, then this SLA shall terminate at State's election as of the date of the condemning authority takes title or such earlier date as reasonably necessary. In such event, Licensee shall be entitled to a termination fee pursuant to Exhibit D Section 14 and Exhibit E of the PPA. The State agrees to immediately notify Licensee in the event of such termination. The entire award in any such condemnation proceeding shall be and remain the property of the State, and Licensee hereby fully waives and relinquishes any right to seek an award or participate in the condemnation proceeding.
- 5) Clear Title: At the termination of this SLA, or in the event of a breach of the express terms of this SLA or the PPA by Licensee and termination of this SLA by State, Licensee shall execute and deliver to State within thirty (30) days a good and sufficient Quitclaim Deed to any rights arising under this SLA. If Licensee fails or refuses to deliver such Quitclaim Deed, a written notice by State documenting this failure shall, after ten (10) days from the date of recordation of said notice, be conclusive evidence of such termination against Licensee and all persons claiming interest under this SLA.

VIII. MISCELLANEOUS

- 1) Notices: Unless a provision in the PPA or this SLA specifically provides otherwise, all notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth below, or sent by electronic facsimile to the telefacsimile numbers set forth below. All such notices or other communications shall be deemed received upon the earlier of (i) if personally delivered or sent by overnight courier, the date of delivery to the address of the person to receive such notice, (ii) if mailed as provided above, on the date of receipt or rejection, or (iii) if given by electronic facsimile, when received by the other party if received between Monday through Friday between 9 a.m. and 5:00 p.m. so long as such day is not a state or federal holiday and otherwise, on the next day, provided that if the next day is a Saturday, Sunday, or a state or federal holiday, such notice shall be effective on the following business day.

To SunEdison:

ATTN:
TITLE:
ADDRESS:

PHONE:
FAX:

With a copy to Lender/System Lessor:

ATTN:
TITLE:

ADDRESS:

PHONE:
FAX:

To State of California:

DEPARTMENT OF GENERAL SERVICES
ATTN:
TITLE:
ADDRESS:

PHONE:
FAX:

To Department:

DEPARTMENT OF MENTAL HEALTH
ATTN:
TITLE:
ADDRESS:

PHONE:
FAX:

- 2) Integration; Exhibits: This SLA, together with the Exhibits (including the PPA, attached as Exhibit "D" hereto) and Schedules executed hereunder, constitute the entire agreement and understanding between the State, the Department and Licensee with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. These Exhibits and Schedules referred to herein are integral parts hereof and thereof and are made a part of this Agreement by reference.
- 3) Cumulative Remedies: Except as set forth to the contrary herein, any right or remedy of State, Department or Licensee shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.
- 4) Limited Effect of Waiver: The failure of either the State, Department or Licensee to enforce any of the provisions of this Agreement, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.
- 5) Survival: The obligations under Sections III (3) (Lead Paint/Asbestos disclaimers), IV(1)(c) (Possessory Interest Taxes, Copyright and Patent Obligations), IV(2)(e) (Mechanics Liens / Stop Notices – Removal of Liens), V(1)(c)(Facility Reroofing), V(1)(g) (Hazardous Materials) and V (2)(d) (Liens), or pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement shall survive the expiration or termination of this Agreement for any reason.
- 6) Relation of Parties: The relationship between the State and Licensee shall not be that of partners, agents or joint venturer for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes.
- 7) Successors and Assigns: This License Agreement and the rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of State, Department and Licensee and their respective permitted successors and assigns. Licensee may assign its rights under this Agreement in accordance with the provisions of Exhibit D Section 16 of the PPA. In no event shall this Agreement be assigned or transferred to an entity that is not the same entity which has the rights and obligations under the PPA.
- 8) Counterparts: This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

- 9) Authority: The signatories hereto represent and warrant that they are duly authorized on behalf of their respective entities to enter into and consummate this Agreement.

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement of ____ pages and intending to be legally bound hereby, State, Department and Licensee have executed this Agreement as of the Effective Date.

**STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF GENERAL SERVICES**

By: _____

NAME _____

TITLE _____

CONSENT TO:

DEPARTMENT OF

By: _____

NAME _____

TITLE _____

FUEL CELL COMPANY LLC (“LICENSEE”)

By: _____

NAME _____

TITLE _____

License Agreement

Exhibits

- A. Facility Location Map
- B. Licensed Area Map and Definition
- C. Description of System, including Approved Equipment
- D. Power Purchase Agreement
- E. Access Procedures for Facility
- F. Project Design & Installation Process (Facility, Electrical and Equipment)
- G. RFP Attachment 1 – General Installation Requirements for Participating State Facilities
- H. RFP Attachment 2 – Minimum Technical & Installation Specifications
- I. Performance Bond: Form
- J. Transaction Costs
- K. STD 18: Standard California Nondiscrimination Construction Contract Specifications (contracts exceeding \$5,000)
- L. Estoppel Certificate

License Agreement Exhibit "A"

Facility Location Map

License Agreement Exhibit "B"
Licensed Area Map and Definition

License Agreement Exhibit "C"

Description of System, including Approved Equipment

License Agreement Exhibit “D”

Power Purchase Agreement

License Agreement Exhibit "E"

Access Procedures for the Facility

TO BE DISTRIBUTED TO ALL LICENSEE'S REPRESENTATIVES LISTED BELOW

- I. Access Procedures for Licensee - As stated in the SLA, Section IV (3), Licensee's access to the Facility shall be subject to all procedures adopted from time to time by the Department including, but not limited to, the procedures addressed in this Exhibit "E". Only Licensee's employees, agents, and/or contractors retained by Licensee as listed below shall be permitted access to the Facility; provided that System Lessor and its employees and agents shall have access to inspect the Facility once during each calendar year to inspect the System, subject to the same limitations as Licensee's access. Said representatives shall be required to show appropriate identification prior to the requested access. Licensee shall be escorted by the Facility representative or his/her designee, who shall log the arrival and departure of said Licensee representative.
 - A. Non-Emergency Access - Licensee must contact the Facility representative referenced below, to schedule all non-emergency access to the Facility which shall be conducted Monday through Friday between 8:00 am and 4:30 pm. Such access shall 1) require at least twenty-four (24) hours prior written notice to Department or Facility representative (as identified in III below) for scheduling purposes and 2) require that Licensee be accompanied by the Facility representative or his/her designee who shall log the arrival and departure of said representative. Access to the Facility during the hours of 4:30 pm to 8:00 am on weekdays or during weekends and holidays shall be granted for emergency purposes only, as described below, unless otherwise agreed to in writing between the parties. For Correctional Facilities, refer below for additional guidelines.
 - B. Emergency Access - Licensee shall be permitted to access the Facility twenty-four (24) hours a day, seven (7) days a week for emergency purposes, as reasonably determined by Licensee. Within twenty-four (24) hours of such access, Licensee shall provide the Department or Facility representative (as identified in III below) with a written explanation of the nature of the emergency. For Correctional Facilities, refer to Section VI E. Gate Clearance for additional guidelines.
 - i. Weekday Emergencies - For emergencies between the hours of 8:00 am and 4:30 pm Monday through Friday, Licensee shall follow the protocol described above for non-emergency access except that the twenty-four (24) hours prior written notice shall not be required.
 - ii. Weekday Evening Emergencies - For emergencies between the hours of 4:30 pm and 8:00 am Monday through Friday, Licensee shall contact Facility representative. Said Facility representative shall meet Licensee's authorized representative at the Facility, escort Licensee's representative to the Facility, and log the arrival and departure of said representative. Alternately, Access cards and/or keys may be issued to Licensee's representative when available.
 - iii. Weekend and Holiday Emergencies - For emergencies between Friday 4:30 pm to Monday 8:00 am or on any holiday observed by the Department, Licensee shall contact the Facility representative. The Facility representative will meet the Licensee's representative at the Facility, escort said representative to the Facility, and log the arrival and departure of said representative.

- C. Construction Access – Licensee’s employees, agents, and contractors must abide by the procedures for access to the Facility as specified in Exhibit F during construction of the System. For Correctional Facilities, refer below for additional guidelines.

II. Names, Company Names, Company Addresses for Access Notice and Phone Numbers of Licensee’s Employees, Agents and Contractors Permitted Access to Facility

Contractor:	Contractor:
Name:	Name:
Address:	Address:
Office Phone:	Office Phone:
Cell Phone:	Cell Phone:

Licensee will submit a list of all names with the above contact information to the Facility Contact.

III. Names/Titles, Facility Address for Access Notice and Phone Numbers of Facility Contacts

Facility Contact:	Alternate Facility Contact: Dept. of
Name:	Name:
Address:	Address:
Office Phone:	Office Phone:
Cell Phone:	Cell Phone:

IV. Access cards and/or keys have been issued to the following Licensee Representatives:

Name:	Card / Key No.:
_____	_____
_____	_____

V. For Correctional Facilities - Licensee represents and warrants that wards and inmates will not have access to modems, pagers, outside telephone systems or the tools and materials to construct such devices. Because of the security issues involved in working in a prison environment, the Licensee further agrees to comply with all rules and regulations adopted by said Institution. No article or material that the Department considers as being contraband shall be brought on the Facility. Said rules prohibit, but are not limited to beer, alcoholic beverages, narcotics, the possession or use of firearms, explosives or edged weapons, or restricted controlled substances. Any willful violation of said rules and regulations or of the terms of this Lease will be grounds for immediate termination of this License and removal of the Licensee from the Facility. Licensee shall comply with the following:

A. Employment of Ex-Offenders - Contractor cannot and will not either directly, or on a subcontract basis, employ in connection with this Agreement:

- i. Ex-Offenders on active parole or probation;

- ii. Ex-Offenders at any time if they are required to register as a sex offender pursuant to Penal Code Section 290 or if such ex-offender has an offense history involving a "violent felony" as defined in subparagraph (c) of Penal Code Section 667.5; or
- iii. Any ex-felon in a position which provides direct supervision of parolees.
- iv. Ex-Offenders who can provide written evidence of having satisfactorily completed parole or probation may be considered for employment by the contractor subject to the following limitations:
 - a. Contractor shall obtain the prior written approval to employ any such ex-offender from the Authorized Administrator; and
 - b. Any ex-offender whose assigned duties are to involve administrative or policy decision-making; accounting, procurement, cashing, auditing, or any other business-related administrative function shall be fully bonded to cover any potential loss to the State of California.
- B. The State reserves the right to conduct fingerprinting and/or security clearance through the Department of Justice, Bureau of Criminal Identification and Information (BCII), prior to award and at any time during the term of the Agreement, in order to permit Contractor and/or Contractor's employees access to State premises. The State further reserves the right to terminate the Agreement should a threat to security be determined.
- C. Contractor must notify the State, in writing, of any changes of those personnel allowed access to State premises for the purpose of providing services under this Agreement. In addition, contractor must recover and return any State-issued identification card provided to contractor's employee(s) upon their departure or termination.

VI. Primary Laws, Rules, and Regulations Regarding Conduct and Association with State Prison Inmates

- A. Individuals who are not employees of the California Department of Corrections (CDC), but who are working in and around inmates who are incarcerated within California's institutions/facilities or camps, are to be apprised of the laws, rules and regulations governing conduct in associating with prison inmates. The following is a summation of pertinent information when non-departmental employees come in contact with prison inmates.
- B. By signing this contract, the Contractor agrees that if the provisions of the contract require the Contractor to enter an institution/facility or camp, the Contractor and any employee(s) and/or subcontractor(s) shall be made aware of and shall abide by the following laws, rules and regulations governing conduct in associating with prison inmates:
 - i. Persons who are not employed by CDC, but are engaged in work at any institution/facility or camp must observe and abide by all laws, rules and regulations governing the conduct of their behavior in associating with prison inmates. Failure to comply with these guidelines may lead to expulsion from CDC institutions/facilities or camps.

- SOURCE: California Penal Code (PC) Sections 5054 and 5058; California Code of Regulations (CCR), Title 15, Sections 3285 and 3415
- ii. CDC does not recognize hostages for bargaining purposes. CDC has a “NO HOSTAGE” policy and all prison inmates, visitors, and employees shall be made aware of this.
- SOURCE: PC Sections 5054 and 5058; CCR, Title 15, Section 3304
- iii. All persons entering onto institution/facility or camp grounds consent to search of their person, property or vehicle at any time. Refusal by individuals to submit to a search of their person, property, or vehicle may be cause for denial of access to the premises.
- SOURCE: PC Sections 2601, 5054 and 5058; CCR, Title 15, Sections 3173, 3177, and 3288
- iv. Persons normally permitted to enter an institution/facility or camp may be barred, for cause, by the CDC Director, Warden, and/or Regional Parole Administrator.
- SOURCE: PC Sections 5054 and 5058; CCR, Title 15, Section 3176 (a)
- v. It is illegal for an individual who has been previously convicted of a felony offense to enter into CDC institutions/facilities or camps without the prior approval of the Warden. It is also illegal for an individual to enter onto these premises for unauthorized purposes or to refuse to leave said premises when requested to do so. Failure to comply with this provision could lead to prosecution.
- SOURCE: PC Sections 602, 4570.5 and 4571; CCR, Title 15, Sections 3173 and 3289
- vi. Encouraging and/or assisting prison inmates to escape is a crime. It is illegal to bring firearms, deadly weapons, explosives, tear gas, drugs or drug paraphernalia on CDC institutions/facilities or camp premises. It is illegal to give prison inmates firearms, explosives, alcoholic beverages, narcotics, or any drug or drug paraphernalia, including cocaine or marijuana.
- SOURCE: PC Sections 2772, 2790, 4533, 4535, 4550, 4573, 4573.5, 4573.6 and 4574
- vii. It is illegal to give or take letters from inmates without the authorization of the Warden. It is also illegal to give or receive any type of gift and/or gratuities from prison inmates.
- SOURCE: PC Sections 2540, 2541 and 4570; CCR, Title 15, Sections 3010, 3399, 3401, 3424 and 3425
- viii. In an emergency situation the visiting program and other program activities may be suspended.
- SOURCE: PC Section 2601; CCR, Title 15, Section 3383

- ix. For security reasons, visitors must not wear clothing that in any way resembles state issued prison inmate clothing (blue denim shirts, blue denim pants).

SOURCE: CCR, Title 15, Section 3171 (b) (3)

- x. Interviews with SPECIFIC INMATES are not permitted. Conspiring with an inmate to circumvent policy and/or regulations constitutes a rule violation that may result in appropriate legal action.

SOURCE: CCR, Title 15, Sections 3261.5, 3315 (3) (W), and 3177.

C. Clothing Restrictions

While on institution grounds, contractor and all its agents, employees, and/or representatives shall be professionally and appropriately dressed in clothing distinct from that worn by inmates at the institution. Specifically, blue denim pants and blue chambray shirts, orange/red/yellow/white/chartreuse jumpsuits and/or yellow rainwear shall not be worn onto institution grounds, as this is inmate attire. Contractor should contact the institution regarding clothing restrictions prior to requiring access to the institution to assure the contractor and their employees are in compliance.

D. Security Regulations

- i. Unless otherwise directed by the entrance gate officer and/or Contract Manager, the contractor, contractor's employees and subcontractors shall enter the institution through the main entrance gate and park private and nonessential vehicles in the designated visitor's parking lot. Contractor, contractor's employees and subcontractors shall remove the keys from the ignition when outside the vehicle and all unattended vehicles shall be locked and secured while on institution grounds.
- ii. Any State- and contractor-owned equipment used by the contractor for the provision of contract services, shall be rendered temporarily inoperative by the Contractor when not in use, by locking or other means unless specified otherwise.
- iii. In order to maintain institution safety and security, periodic fire prevention inspections and site searches may become necessary and contractor must furnish keys to institutional authorities to access all locked areas on the worksite. The State shall in no way be responsible for contractor's loss due to fire.
- iv. Due to security procedures, the contractor, contractor's employees and subcontractors may be delayed at the institution vehicle/pedestrian gates and sally ports. Any loss of time checking in and out of the institution gates and sally ports shall be borne by the contractor.
- v. Contractor, contractor's employees and subcontractors shall observe all security rules and regulations and comply with all instructions given by institutional authorities.
- vi. Electronic and communicative devices such as pagers, cell phones and cameras/microcameras are not permitted on institution grounds.

- vii. Contractor, contractor's employees and subcontractors shall not cause undue interference with the operations of the institution.
- viii. No picketing is allowed on State property.

E. Gate Clearance

- i. Contractor and contractor's employee(s) and/or subcontractor(s) must be cleared prior to providing services. The contractor will be required to complete a Request for Gate Clearance for all persons entering the facility a minimum of ten (10) working days prior to commencement of service. The Request for Gate Clearance must include the person's name, social security number, valid state driver's license number or state identification card number and date of birth. Information shall be submitted to the Contract Liaison or his/her designee. CDC uses the Request for Gate Clearance to run a California Law Enforcement Telecommunications System (CLETS) check. The check will include Department of Motor Vehicles check, Wants and Warrants check, and Criminal History check.
- ii. Gate clearance may be denied for the following reasons: Individual's presence in the institution presents a serious threat to security, individual has been charged with a serious crime committed on institution property, inadequate information is available to establish positive identity of prospective individual, and/or individual has deliberately falsified his/her identity.
- iii. All persons entering the facilities must have a valid state driver's license or photo identification card on their person.

License Agreement Exhibit “F”
Project Design and Installation Process
(Facility, Electrical and Equipment)

This Exhibit will contain the System design documents which will reflect the final installed System (As Built drawings). Prior to the submittal of final As Built drawings, Licensee shall submit preliminary project design documents for signature in order to complete the SLA. Licensee understands that As Built drawings are required to be submitted for the purposes of full and complete compliance with the applicable provisions of this SLA.

Also to be listed in this Exhibit are project design, construction and installation requirements, constraints and specifications that are deemed to be necessary by either the Facility or Department, and the outcome of the CEQA review. Licensee understands that the project design, construction and installation documents will address these special considerations and be included in the review process by either DGS' Real Estate Services Division (RES/DGS) or by the Department's designated review team for compliance.

Licensee understands that all System design documents and engineering calculations will be submitted under the authority of a licensed professional engineer (or engineers) who is certified to practice in the State of California and is a professional engineer in good standing. Licensee also understands that System design documents and engineering calculations that are submitted for review without the appropriate professional engineering stamp will not be reviewed and will be returned to Licensee as incomplete and insufficient System documentation.

System design documents will include, but not be limited to, the following:

1. System layout
2. System schematics
3. Single line electrical diagram
4. Point of Interconnection schematics
5. Point of Interconnection single line electrical diagram
6. Construction plans (structural, civil, mechanical, etc.)
7. Structural calculations
8. List of Equipment and Materials Schedule
9. Construction schedule
10. Geotechnical Report / Foundation Recommendations as applicable

Licensee acknowledges that the System will be designed to comply with all applicable California Building Codes and Standards. System design documents will expressly state and identify the applicable building codes and standards.

The following table represents a general overview of the review and approval of the System project design and construction documentation. The table assumes that the CEQA review has been completed in a satisfactory manner, that Due Diligence has been completed, as required, and that both the SLA and PPA have been duly signed and executed. Initiation of the tasks and/or activities as outlined in the table is contingent upon the issuance of a **Notice to Proceed to Project Design** letter from the State. A construction schedule is required to be submitted by the Licensee as part of the System design documents. Coordination between the submitted construction schedule and the State's review and approval process shall be based on best efforts by both the State and the Licensee and established in a cooperative manner.

Installation Construction Documentation & Technical Review

Ref #	Task or Milestone	Deliverable or Activity	Responsible Party	Comment
1	Licensee submits Transaction Costs in accordance with Exhibit J	Check to be drawn and submitted as per Department's instructions.	Licensee	No work by the Department shall commence until this task is completed.
2	Project Kick Off Meeting	Meeting at host facility to discuss project.	Department	
3	System Design and Construction Documents	Detailed plans, specifications, engineering calculations and construction schedule.	Licensee	Construction schedule needed to determine inspection and guarding costs.
4	State Fire Marshall	Plans and construction documents reviewed and approval by State Fire Marshall (SFM).	Department	As necessary and required.
5	Office of Universal Design, Division of State Architect (DSA) or other	Construction Documents Review and Approval by Office of Universal Design for accessibility issues, if applicable	Licensee	Concurrent with SFM review; Department will determine applicability and assist as appropriate.
6	Technical Review Submittal	Plans, construction documents, calculations and updated schedule to Department Project Manager for review (5 sets)	Licensee	
7	Department Technical Review	Construction documents and calculation reviews, marked up copies returned to Licensee	Department	
8	Plan review comments	Licensee corrects or resolves all comments, updates construction documents, corrected "wet signed" construction documents and schedule are submitted for back check review.	Licensee	
9	Plan Review Back-check	Correction or resolution of comments verified, acceptance of design package	Department	
10	Submittal of Performance Bonds and Insurance Documents.	See SLA Section IV (2)(f) and Section VI for required submittal documents.	Licensee	Required prior to issuing NTP to construction.

11	Notice to Proceed to Construction	Letter NTP issued	Department	
Installation and Construction				
12	Licensee submits Transaction Costs in accordance with Exhibit J.	Check to be drawn and submitted as per Department's instructions.	Licensee	No work shall commence until this task is completed
13	Installation period coordination and communication – Pre-construction Meeting	Licensee and installation subcontractors meet host facility and Department representatives to discuss project procedures and facility requirements (Construction Kick-Off meeting)	Department, Host Facility	Requirements for access and construction to be determined and established at this meeting.
14	Construction and Installation	Installation of photo-voltaic system	Licensee	Per Licensee's Construction Schedule.
15	Construction and installation inspection	Inspection of the work for compliance with approved plans and applicable codes and regulations.	Department	Concurrent with and per Licensee's Construction Schedule as submitted by Licensee.
16	Construction and Installation Completion	Notice from Licensee that construction and installation is complete.	Licensee	
17	Final Inspection and testing as required by host facility and/or Department	Inspection for compliance with approved plans and applicable codes and regulation, punch list of minor items to be corrected, installation is determined to be "Substantially Complete"	Department	Requires utility sign off and acceptance of interconnection facility.
18	Punch List	Correction of Punch List items	Licensee	Punch List items must be corrected and/or addressed to the satisfaction of Department inspectors before Certificate of Completion is issued.
19	Acceptance and Operation	Certificate of Completion	State	Begin Commencement of Commercial Operations.

Construction access requirements will be established contingent upon the submittal of the project design, construction and installation documents, including construction schedule. The Facility and/or Department will provide construction access requirements in written form to be attached to this Exhibit and distributed to Licensee's employees, contractors, and/or agents as listed in Exhibit "E" of the SLA or as submitted to the Facility and/or Department for their review, approval or otherwise informational purposes. Licensee acknowledges that strict adherence to the construction access requirements as established by the Facility and/or Department will be observed by Licensee, its employees, contractors, and/or agents during the entire length and scope of the construction period.

License Agreement Exhibit "G"

General Installation Requirements for Participating State Facilities

These "General Installation Requirements" should be taken into consideration by bidders to better prepare bid responses. While each State host facility candidate for PV listed in this RFP will present their own requirements for constructing, installing and operating the proposed PV system, as well as unique siting characteristics, these general installation requirements pertain universally to all State host facility candidates as grouped below by State agency.

For Department of Corrections and Rehabilitation host facility candidates:

- 1) All fuel cell systems will be installed outside of the secure perimeter fencing.
- 2) The fuel cell system will include a security fence around the perimeter of the array. The fence will be ten (10) feet high from ground level to the top of the chain link fencing, and will require three (3) strands of barbed wire on top.
- 3) This fence shall be built first so that the fenced enclosure can be utilized during construction as the staging and lay down area for equipment and materials.
- 4) Guarding requirements during construction and installation will be left to the discretion of the Warden and the Captain of the Guard.
- 5) As a key step in the acceptance and sign off of the fuel cell system, the contractor must demonstrate that the fuel cell system will not interfere with the operation of the emergency diesel back up generators. This demonstration will be in the form of actual tests as directed by the Correctional Plant Manager and/or Supervisor. These generators are tested at least monthly and must come on line as expected during a loss of utility power service.
- 6) Security clearances will be required for all those who perform site visits and participate in the construction and installation of the proposed fuel cell system.
- 7) Contractor must provide 30 days notice prior to disrupting utility electrical service for the purpose of electrically interconnecting the fuel cell system. Once a date for service shut off is set, Contractor must perform the electrical interconnection on this date.

For Department of Mental Health host facility candidates:

- 1) All fuel cell systems will be installed outside of any secured fenced in areas.
- 2) Fence requirements will be specified during the development of preliminary plans. Bidders should include, at a minimum, a 6 foot chain link fence around the perimeter of the fuel cell system.
- 3) Security clearances may be required for contractors who perform the installation and construction of the fuel cell system. This requirement will be further vetted at the project kick off meeting.
- 4) Security requirements will also be identified during the project kick off meeting.
- 5) As a key step in the acceptance and sign off of the fuel cell system, the contractor must demonstrate that the fuel cell system will not interfere with the operation of the emergency diesel back up generators. This demonstration will be in the form of actual tests as directed by the Chief of Plant and/or Chief Engineer. These generators are tested at least monthly and must come on line as expected during a loss of utility power service.
- 6) Contractor must provide 30 days notice prior to disrupting utility electrical service for the purpose of electrically interconnecting the fuel cell system. Once a date for service shut off is set, Contractor must perform the electrical interconnection on this date.

In all cases, safety program documentation must be developed and submitted as part of the construction schedule for review and approval. The safety program documentation should include how construction and installation personnel will conduct themselves and manage the job site in a safe and appropriate manner.

License Agreement Exhibit "H"

Minimum Technical & Installation Specifications

MINIMUM REQUIREMENTS

The conditions listed in this Attachment should be considered as generally applicable to all sites. Host facilities will discuss site-specific technical requirements with successful bidders during preliminary investigation site visits, and with the contractor during preliminary engineering and design development. **The intent of these minimum technical and installation specifications and requirements is to be consistent with and adhere to any and all applicable California Building Codes and Standards, the CPUC's Self Generation Incentive Program, applicable utility rules and tariffs, and any and all CEC technical and installation specifications and guidelines as may be developed and established in accordance with statutory and regulatory requirements and directives.** Bidders are advised to be familiar with these rules, requirements and specifications as they pertain to the installation of fuel cell systems in all of the California utility service territories that are affected by this RFP.

Electric Power Requirements

The general requirements are:

- The power must be provided at 60 Hertz and at the appropriate voltage for electrically interconnecting to the host facility's voltage service level. The installation and operation of the fuel cell system shall not interfere with any operations of the host facility.
- The system must include all hardware needed for the installation, interconnection, and operation of the fuel cell system. Bidders are advised that the definition of a "fuel cell system" in this RFP includes all of the equipment necessary to interconnect and operate in parallel to the utility grid, including metering.
- Systems must be designed and installed using UL or ETL listed components. Interconnection of the fuel cell system will also adhere to the requirements of the local utility's rules, regulations and tariffs pertaining to the interconnection and operation of a fuel cell system.

Meters

The Contractor will provide and install revenue-grade interval data recording meter(s) ("interval meters") that is acceptable to the utility and in compliance with the Self Generation Incentive Program and/or regulatory requirements as established and enforced by the CPUC and/or the CEC. These interval meters shall include industry standard telemetry for communication with Ethernet, cellular and other common output capabilities including but not limited to k/y out connection to customers own energy management system (EMS) for the purposes of metering /monitoring/data collection of power production. The State host facility shall have access to data from these meters on both a near real time basis, as well as for monthly or billing period data downloads. Downloadable data shall be in a CSV format. The preferred method for accessing data will be through a password protected web-site connection.

For those fuel cell systems that require step up transformers to deliver power at the host facility's service voltage level (i.e. greater than the output voltage level of the inverter) the interval meter shall either be installed on the output side of the transformer (high voltage side) or the meter data shall be adjusted to incorporate transformer losses of 2%. This means that the metered data that is both utilized for calculating invoices and presented for access to the host facility shall reflect this 2% transformer adjustment. The requirement being enforced is that the host facility only pays for the amount of power that is actually delivered at the electrical interconnection point, which is where the revenue interval meter should be located.

Host sites will conduct occasional billing inquiry, validation and verification, as well as end of fiscal year reconciliation of both billing and power generation output. The Contractor must be able to provide data and information that was utilized to generate billing determinants in accordance with this RFP and the agreements. This would include interval metered data representing generation output. Each host site will make its best efforts to provide or arrange for utility metered data that can support the billing process, whether it is directly through a data file transmission, or through some arrangement with the local utility service provider.

Structural Requirements

Any and all structures and structural elements necessary for the installation and operation of the fuel cell system shall be designed in accordance with all applicable California Building Codes and Standards that pertain to the erection of such structures. Contractors shall provide structural calculations, stamped and signed by a licensed professional structural engineer in good standing with the State of California, as part of the plan check and review requirement.

All structural components, including array structures, shall be designed in a manner commensurate with attaining a minimum 30-year design life (even if the fuel cell system is warranted for less time) and consistent with any host facility specific design guidelines and standards. This will enable the host facility to upgrade the fuel cell system components in the future, if desired. Particular attention shall be given to the prevention of corrosion at the connections between dissimilar metals such as aluminum and steel, or corrosive soils. Successful bidders must warrant and maintain the full structural integrity of the fuel cell system for the full term of the agreements.

Permits and Environmental Clearances

The State is a self certifying agency, meaning that building permits are obtained directly from the State agency involved, and not local jurisdictions with building and permitting authority. The "permit" to install and construct a fuel cell system at the State host facility will come in the form of a Notice to Proceed to Construction, after the fuel cell system plans and drawings have been reviewed and approved for both compliance with the applicable California Building Codes and Standards and achieving constructability requirements as dictated by the State agency involved or host facility. Constructability requirements typically mean that the fuel cell system plans and drawings indicate that the fuel cell system can be installed as engineered and designed, and that the construction schedule, tasks and activities have been vetted and reviewed to ensure coordination with host facility operations and requirements.

The State agencies will be the lead agency responsible for performing the California Environmental Quality Act (CEQA) reviews and submitting the appropriate forms and documents. The bidder's responsibility will be to pay the associated costs of performing the CEQA review and being a participant in the review at the direction of the State agency. The CEQA process requires that the bidder submit plans and drawings for the fuel cell system to be installed. **The CEQA process must be completed to the point of the submission of the CEQA document filing, which starts the 30 day public review process, before any construction, or mobilization for construction, can begin.** For certain State host facilities, construction may not begin until the completion of the public review process. The State agency environmental services staff or consultant will provide more information for each project as this process begins.

Operations and Maintenance

The Contractor shall plan to provide host facility notification as early as practical (but in no event less than ten (10) business days) prior to any planned maintenance and repairs. The Contractor will be required to coordinate maintenance and repair activity with the State host facility. Contractor shall operate and maintain the fuel cell system so as not to disrupt the operation of the State facility as per the agreements.

The State shall use commercially reasonable efforts to maintain the State facility in good condition and repair so as to be able to receive and utilize the electricity supplied by the proposed project.

Contractor shall not expect the host facility to assist in the operation and maintenance of the fuel cell system. As part of the acceptance of the fuel cell system by the host facility, the Contractor shall instruct and provide operations manuals on how to shut down the fuel cell system in the event of an emergency at the host facility. Contractor shall insure that emergency first responders can easily identify what to do in the event of an emergency and perform these tasks quickly and safely.

License Agreement Exhibit "I"

Performance Bond Form

**PAYMENT BOND and PERFORMANCE BOND TO ACCOMPANY
CONSTRUCTION CONTRACT**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, The State of California, acting by and through the Department of General Services has awarded to Fuel Cell Company **LLC**, whose address , an **A CORPORATION**, existing under and by virtue of the laws of the State of California as Contractor, a Contract for the work described as follows:

Contract Number: _ **Project Title:** INSTALLATION PROJECT

Project Location:

AND WHEREAS, Said Contractor is required to furnish a bond in connection with said contract, guaranteeing the faithful performance thereof;

NOW, THEREFORE, We the undersigned Contractor and surety are held and firmly bound unto the State of California in the sum of AN AMOUNT SUFFICIENT TO COVER THE CIRCUMSTANCE WHERE THE CONTRACTOR FAILS TO COMPLETE THE PROJECT AND IT IS NECESSARY TO RESTORE THE SITE TO ITS ORIGINAL CONDITION, (OR) 100 % OF THE PROJECT to be paid to the State or its certain attorney, its successors and assigns; for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally firmly by these presents.

THE CONDITION OF THIS OBLIGATIONS IS SUCH,

That if the above bounded Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the foregoing contract and any alteration thereof made as therein provided, on his or their part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the State of California, its officers and agents, as therein stipulated, then this obligation shall become and be null and void; otherwise it shall be and remain in full force and virtue.

IN WITNESS WHEREOF, We have hereunto set our hands and seals on this ____ day of _____, 2009

(NAME OF THE LICENSEE OR CONTRACTOR)

By _____
Signature of Contractor

(SEAL)

Name and Address of Surety

By _____
Signature of Attorney-in-Fact

CERTIFICATE OF ACKNOWLEDGEMENT

STATE OF CALIFORNIA
COUNTY OF _____

On this _____ day of _____ in the year of 2007, before me, a notary public in and for the county and State aforesaid, personally appeared,

_____ known to me to be the person whose name is subscribed to the within instrument and known to me to be the attorney-in-fact of _____, and acknowledged to me that he subscribed the name of the said company thereto as surety, and his own name as attorney-in-fact.

(SEAL)

NOTARY PUBLIC

PERFORMANCE BOND (REVISED 10/29/01)

License Agreement Exhibit "J"

Transaction Costs - State Project Costs to be Reimbursed

- A. In accordance with the provisions of this Site License Agreement LICENSEE shall reimburse the DEPARTMENT for its Transaction Costs incurred during the project development and installation process. These Transaction Costs include the following:
- (1) Project management and coordination of the state's review, approval and inspection processes.
 - (2) Preparation, review and filing of California Environmental Quality Act (CEQA) compliance documentation.
 - (3) Due diligence reviews for real estate title issues.
 - (4) Technical review and approval of project plans and specifications in the areas where the proposed fuel cell system affects or is connected to the State's land and facilities.
 - (5) Inspection of the work during the installation of the proposed fuel cell system for compliance with applicable codes and regulations and the specific requirements of the approved project plans and specifications.
 - (6) Security and guarding costs for projects located at California Department of Corrections facilities (as applicable).
- B. It is anticipated the LICENSEE will include the Transaction Costs as part of the capital cost of the proposed fuel cell system and recover them as a portion of the price to be paid for delivered energy over the term of the Power Purchase Agreement.
- C. LICENSEE shall submit payment in check form as per the DEPARTMENT's instructions for the Transaction Costs necessary for the management, review, approval and inspection of the project in accordance with the amounts and times as specified in Table J1 – Project Transaction Costs to be Reimbursed.
- E. Transaction Costs are estimates on a per project basis at a single site location, except for construction inspection and security / guarding costs at CDC locations, which are primarily based upon the duration in weeks of the project's construction field operations.
- F. Should the project be abandoned by the LICENSEE through no fault of the State or DEPARTMENT, Transaction Costs paid to the State or DEPARTMENT by the LICENSEE are refundable only to the extent they have not been incurred.
- G. Should the Transaction Costs exceed the amounts stated in Table J1 through no fault of the State or DEPARTMENT, LICENSEE shall reimburse the State or DEPARTMENT for the excess Transaction Costs without any adjustment to the pricing incorporated into the PPA.**

Table J1 - Project Transaction Costs to be Reimbursed

Transaction Cost Areas	Unit Cost per Fuel Cell System Type				
	Unit			With Thermal Energy Component	
To be Paid Upon Execution of License and Power Purchase Agreements					
CEQA Environmental	Per Project	\$35,000	\$35,000	\$35,000	
Project Management / Coordination	Per Project	\$20,000	\$25,000	\$25,000	
Design Review and Approval	Per Project	\$7,500	\$10,000	\$10,000	
Due Diligence	Per Project	\$7,500	\$7,500	\$7,500	
To be Paid Upon Issuance of Notice to Proceed to Construction					
Construction Inspection	Per Week of Construction Operations at Facility	\$6,000	\$6,000	\$6,000	
Security and Guarding Costs – CDCR projects only	Per Week of Construction Operations at Facility	\$2,500	\$2,500	\$2,500	

Notes to Table J1:

1. CEQA compliance costs are based upon review and documentation at the Categorical Exemption level. Licensee understands that a Negative Declaration or Environmental Impact Report review and documentation may cost more than what is listed.
2. Construction inspection costs are for a full time inspector, including travel time to and from work site. Expenses limited to and associated with field operations only during construction. The actual construction inspection cost will be calculated prior to issuing the Notice to Proceed to Construction and submitted as a line item on the invoice request for payment..
3. Security and Guarding costs are based upon the costs for one guard 5 days per week at 10 hours per day.

License Agreement Exhibit "K"

STD 18: Standard California Nondiscrimination Construction Contract Specifications

STATE OF CALIFORNIA
STANDARD CALIFORNIA NONDISCRIMINATION
CONSTRUCTION CONTRACT SPECIFICATIONS
(GOVERNMENT CODE, SECTION 12990)
STD. 18 (REV. 1/95)

Print

These specifications are applicable to all state contractors and subcontractors having a construction contract or subcontract of \$5,000 or more.

1. As used in the specifications:
 - a. "Administrator" means Administrator, Office of Compliance Programs, California Department of Fair Employment and Housing (DFEH), or any person to whom the Administrator delegates authority;
 - b. "Minority" includes:
 - (i) **Black** (all persons having primary origins in any of the black racial groups of Africa, but not of Hispanic origin);
 - (ii) **Hispanic** (all persons of primary culture or origin in Mexico, Puerto Rico, Cuba, Central or South America or other Spanish derived culture or origin regardless of race);
 - (iii) **Asian/Pacific Islander** (all persons having primary origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands); and
 - (iv) **American Indian/Alaskan Native** (all persons having primary origins in any of the original peoples of North America and who maintain culture identification through tribal affiliation or community recognition).
2. Whenever the contractor or any subcontractor subcontracts a portion of the work, it shall physically include in each subcontract of \$5,000 or more the non-discrimination clause in this contract directly or through incorporation by reference. Any subcontract for work involving a construction trade shall also include the Standard California Construction Contract Specifications either directly or through incorporation by reference. Any subcontract for work involving a construction trade shall also include the Standard California Construction Contract Specifications, either directly or through incorporation by reference.
3. The contractor shall implement the specific non-discrimination standards provided in paragraphs 6(a) through (e) of these specifications.
4. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Government Code, Section 12990, or the regulations promulgated pursuant thereto.
5. In order for the nonworking training hours of apprentices and trainees to be counted, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor or the California Department of Industrial Relations.
6. The contractor shall take specific actions to implement its nondiscrimination program. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor must be able to demonstrate fully its efforts under Steps a. through e. below:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and at all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all leadpersons, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligations to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Provide written notification within seven days to the director of DFEH when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 - c. Disseminate the Contractor's equal employment opportunity policy by providing notice of the policy to unions and training, recruitment and outreach programs and requesting their cooperation in assisting the Contractor to meet its obligations; and by posting the company policy on bulletin boards accessible to all employees at each location where construction work is performed.

(Continue on reverse)

**STANDARD CALIFORNIA NONDISCRIMINATION
CONSTRUCTION CONTRACT SPECIFICATIONS***(GOVERNMENT CODE, SECTION 12990)*

STD. 18 (REV. 1/95) (REVERSE)

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- d. Ensure all personnel making management and employment decisions regarding hiring, assignment, layoff, termination, conditions of work, training, rates of pay or other employment decisions, including all supervisory personnel, superintendents, general leadpersons, on-site leadpersons, etc., are aware of the Contractor's equal employment opportunity policy and obligations, and discharge their responsibilities accordingly.
 - e. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the equal employment opportunity policy and the Contractor's obligations under these specifications are being carried out.
7. Contractors are encouraged to participate in voluntary associations which assist in fulfilling their equal employment opportunity obligations. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's.
 8. The Contractor is required to provide equal employment opportunity for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of the Fair Employment and Housing Act (Gov. Code Section 12990 et seq.) if a particular group is employed in a substantially disparate manner.
 9. Establishment and implementation of a bona fide affirmative action plan pursuant to Section 8104(b) of this Chapter shall create a rebuttable presumption that a contractor is in compliance with the requirements of Section 12990 of the Government Code and its implementing regulations.
 10. The Contractor shall not use the nondiscrimination standards to discriminate, harass or allow harassment against any person because of race, color, religious creed, sex, national origin, ancestry, disability (including HIV and AIDS), medical condition (cancer), age, marital status, or denial of family and medical care leave and denial of pregnancy disability leave.
 11. The Contractor shall not enter into any subcontract with any person or firm decertified from state contracts pursuant to Government Code Section 12990.
 12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and the nondiscrimination clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Government Code Section 12990 and its implementing regulations by the awarding agency. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Government Code Section 12990.
 13. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company equal employment opportunity policy is being carried out, to submit reports relating to the provisions hereof as may be required by OCP and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status, (e.g., mechanic, apprentice trainee, helper or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in any easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
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License Agreement Exhibit "L"

Form of Estoppel Certificate

Premises:_____. License Number:_____. License dated:_____, 200X, between the State of California, acting by and through the Department of _____, with the review and approval of the Department of General (Licensor) and SunEdison (Licensee). The undersigned, Licensor under the above License, certifies to _____, holder or proposed holder of a note or other obligation secured, or to be secured, by a mortgage or deed of trust upon the above ground License on the premises and assignee, or proposed assignee of said License, that;

1. Said License is presently in full force and effect and unmodified except as indicated at the end of this certificate.
2. The Term thereof commenced on _____, 200X, and will expire on _____, and the Commencement Date became effective and commenced on _____, 200X.
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