

Agreement “3”
Solar Performance Guarantee Agreement

Performance Guarantee Agreement

Between

SunPower Corporation, Systems

And

Nevada County, CA

SOLAR SYSTEM PERFORMANCE GUARANTEE AGREEMENT

THIS SOLAR SYSTEM PERFORMANCE GUARANTEE AGREEMENT (“Agreement”) dated April 12, 2016 (“Effective Date”), is entered into by and between SUNPOWER CORPORATION, SYSTEMS, a Delaware corporation (“SunPower”), with its principal place of business at 1414 Harbour Way South, Richmond, California 94804, and the COUNTY OF NEVADA, a political subdivision of the State of California, (“Customer”), with its principal place of business at 950 Maidu Avenue, Nevada City, CA 95959. In this Agreement, SunPower and Customer are referred to individually as a “Party” and collectively as the “Parties.”

Recitals

WHEREAS, SunPower has separately entered into an Engineering, Procurement and Construction Agreement (“EPC”), and Operations and Maintenance Agreement (“O&M”) with Customer (collectively, “Solar Agreement”) pursuant to which Customer has purchased from SunPower the solar power System identified on Exhibit A: Solar Power System; and

WHEREAS, SunPower and Customer desire to enter into an agreement pursuant to which SunPower will guarantee annual energy generation by the System;

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the receipt and adequacy of which is hereby acknowledged, SunPower and Customer agree as follows:

ARTICLE I. DEFINED TERMS

Defined Terms.

As used in this Agreement, the following terms shall have the meanings set forth below:

Actual Generation means, for each Guarantee Year during the Term, the System’s alternating current or “AC” electricity production in kilowatt-hours (“kWh”) as measured under 0.

Avoided Energy Price per kWh means the amount that the Customer will be paid for each Kilowatt-hour as set out in Exhibit C: Avoided Energy Price.

Commissioning Date means the date the System is capable of commercial deliveries of energy to the full extent of its designed capacity and commences delivery of energy for sale or use.

Customer Responsibilities shall have the meaning set forth in Article IV.

Data Acquisition System or DAS means SunPower’s system that displays historical meteorological and production data over an Internet connection and consists of hardware located on-site and software housed on SunPower’s DAS server. The DAS measures and logs, at a minimum, the following parameters on a 15-minute average basis at the Sites: actual AC electricity production of the System (in kWh) and solar irradiance (in W/m²)

Expected Energy means, for the System in a specified Guarantee Year, the kilowatt hours set forth on Exhibit B: Expected Energy.

Force Majeure means:

- Acts of God, including, without limitation, earthquakes, epidemics, landslides, fires, volcanic activity, storms and floods or similar occurrence;
- Acts of terrorism, vandalism, theft, a public enemy, war, war defense conditions, blockade, insurrection, riots, general arrest or restraint of government and people, or civil disturbance;
- Any general (i.e., national or regional) strikes, walkouts, lockouts, or similar industrial or labor actions or disputes (excluding strikes, walkouts, lockouts or similar industrial or labor actions limited to a party or any subcontractor or materials supplier);
- Any temporary or permanent quarantines, blockades, rules or regulations, enacted or imposed by governmental authorities causing any disruption to System energy generation or impedance to a party's Site access;
- Changes in any law, ordinance, or regulation relating specifically to the design, construction, installation, interconnection or operation of the System which law is effective after the date of this Agreement that materially and adversely affects the ability of a Party to perform its obligations under this Agreement or under the Solar Agreement;
- Fire, explosion or other casualty to the extent not caused by the System;
- Impingements on solar access by structures or activities on neighboring sites or by facilities that are beyond the control of either Party;
- Externally caused outages, including:
 - Network Disturbance Hours: hours during the Period when a fluctuation in the utility network parameters (e.g., a frequency or voltage variation) disconnected the inverters or Facility from the utility network and prevented energy from being evacuated from the Facility
 - Network Outage Hours: hours during the Period when a failure in the distribution network or in the Connection Infrastructure prevented energy from being evacuated from the Facility
 - Owner Caused Hours: hours during the Period when the equipment or Facility is off-line due to Owner required outages
 - Major Maintenance Hours: hours during the Period when the equipment or Facility is off-line due to Owner-approved major maintenance work.

Guaranteed Level means 90% of the Expected Energy for a Guarantee Year for specified System(s).

Guarantee Year means each successive 12-month period during the Term commencing on the first day of the Term.

In Compliance Letter shall have the meaning set forth in Article IV.

Kilowatt-hour or kWh means electrical energy expressed in kilowatt-hours and recorded from the kWh interval records of the Revenue Meter.

Noncompliance Period shall have the meaning set forth in Article IV.

Operations & Maintenance Agreement means that certain Operations & Maintenance Agreement of even date herewith between SunPower Energy Systems Corporation, an affiliate of SunPower, and Customer.

Out of Compliance Letter shall have the meaning set forth in Article IV.

PVSim means the software program utilized by SunPower to predict the amount of energy a Solar Power System will produce in an average year which currently has the following characteristics: (1) based on PVFORM, the photovoltaic simulation software produced by Sandia National Laboratories and the US Department of Energy, (2) all photovoltaic characteristics are modeled, (3) all ancillary array losses are taken into account and (4) PVSim simulations use either measured data or typical meteorological year files from Meteonorm and NREL.

Revenue Meter means the principal meter of a given System from which energy output is read and documented.

SEMMY or Simulated Energy in a Measured Meteorological Year, means, with respect to any Guarantee Year, Year 1 AC Energy output of the System simulated by PVSim using measured average hourly irradiance, wind speed, and air temperature as recorded by the Data Acquisition System, holding all other inputs equal to those used in calculating SETMY.

SETMY or Simulated Energy for a Typical Meteorological Year, means the Year 1 AC Energy output of the System simulated by PVSim using average hourly irradiance, wind speed, and air temperature data contained within the Weather File.

Site means the real estate where the System and any support structure are located including any building and building roof that touch or support the System.

Solar Agreement means the agreement(s) described in the recitals.

System means Customer's photovoltaic system located at the Site and purchased from SunPower as more particularly identified in Exhibit A: Solar Power System.

Subcontractor means, any person or firm who contracts with SunPower or with any contractor of any tier operating under a contract with SunPower to provide or furnish any supplies, materials, equipment, or services of any kind, whether design, construction, service, or otherwise, for the System.

Term means the period of time commencing on the Commissioning Date of the first System commissioned pursuant to the Solar Agreement and expiring five (5) years after the Commissioning Date of the last system commissioned pursuant to the Solar Agreement. The Term shall automatically renew for one subsequent five-year period, up to a total Term of not more than ten years, unless Customer provides written notice to SunPower within thirty (30) days of the expiration of the first five-year term of its intent to not renew.

True-up Period means each successive 5 year period during the Term commencing on the first day of the Term.

Weather Adjustment means the method for reconciling expected kWh during a typical weather year with the actual meteorological conditions measured on-site, as described in 0.

Weather File means the following typical meteorological year data set, which contains average hourly values of measured solar radiation, temperature, and wind speed:

Weather Data Location:

United States, California, Echo Ridge Estates (39.25, -121.05)
United States, California, Lake of the Pines (39.05, -121.05)

Weather Source:

3Tier (v1.1 10km)
3Tier (v1.1 10km)

PERFORMANCE GUARANTEE PRICE.

Price

In consideration of SunPower entering into this Agreement, Customer shall pay to SunPower on the Commissioning Date and on each anniversary of the Commissioning Date throughout the Term, for each System commissioned pursuant to the Solar Agreement, the following schedule of values:

Guarantee Year	Performance Guarantee (\$/year)
1	\$4,331
2	\$4,461
3	\$4,595
4	\$4,733
5	\$4,875
6	\$5,021
7	\$5,171
8	\$5,327
9	\$5,486
10	\$5,651

Price Adjustment

An adjustment to the price set forth in this Section II will be made in the event that, prior to commissioning, there is any change in the Systems' Expected Energy. If SunPower provides notification of changes to Expected Energy, the price shall be adjusted proportionate to the change in Expected Energy.

ARTICLE III. PERFORMANCE GUARANTEE

SunPower guarantees to Customer that the Actual Generation of the System during any Guarantee Year, subject to the limitations, terms and conditions stated in this Agreement, shall be not less than the product of the Guaranteed Level and the Expected Energy, as adjusted for measured meteorological conditions in 0.

Guaranteed Output Calculations.

SunPower shall calculate the Annual Deficit and Annual Surplus for each Guarantee Year during the Term:

$$\begin{aligned} \text{Annual Deficit} \\ &= (\text{Expected Energy} \times \text{Guaranteed Level}) \\ &\quad \times \text{Weather Adjustment} - \text{Actual Generation} \end{aligned}$$

$$\begin{aligned} \text{Annual Surplus} \\ &= \text{Actual Generation} - (\text{Expected Energy} \times \text{Bonus Level}) \\ &\quad \times \text{Weather Adjustment} \end{aligned}$$

Where “Weather Adjustment” means the following ratio:

$$\frac{\text{Simulated Energy in a Measured Meteorological Year (SEMMY)}}{\text{Simulated Energy for a Typical Meteorological Year (SETMY)}}$$

For each Guarantee Year, SunPower shall calculate the Annual Deficit and Annual Surplus.

Guarantee Payment/Reimbursement.

At the end of each True-up Period:

if the \sum Annual Deficits > 0 , then SunPower shall pay to Customer an amount equal to the cumulative product of (i) the Annual Deficits and (ii) the Avoided Energy Price per kWh (a “Guarantee Payment”);

SunPower shall, by invoice, promptly notify Customer of any Guarantee Payment due. A Guarantee Payment shall be payable within thirty (30) days of the date of such invoice.

For purposes of calculating a Guarantee Payment, the Annual Deficit shall not exceed twenty percent (20%) of the Expected Energy for that year.

Actual Generation Measurement.

The process for measuring Actual Generation for each Guarantee Year shall be:

Initial Output Data Collection. During the Term, SunPower will collect energy output data using its Data Acquisition System. For each Guarantee Year, SunPower will sum the daily kWh output provided by the DAS to calculate the Actual Generation for such Guarantee Year.

Equipment Calibration and Replacement. SunPower may request to have the meteorological equipment independently calibrated or replaced at its own expense every eighteen to thirty months. SunPower shall notify the other party of the scheduled calibration date and time no less than 30 days prior, and shall provide the Customer written proof of calibration or replacement.

Contingency for Equipment Failure. In the event of hardware, communication, or other failure affecting the DAS, SunPower will make commercially reasonable efforts to resolve the failure in a timely manner. In the event that data is lost, Actual Generation shall be adjusted to compensate for such lost data:

In lieu of lost meteorological data, SunPower will utilize satellite data. In the event that satellite data is not available, SunPower will utilize data obtained from the nearest meteorological station to each system site that SunPower monitors and selects for such purpose.

In lieu of lost electricity data, SunPower will utilize the cumulative data from System meter readings to calculate the electricity generated during the missing interval. In the event that data from the System meter is inaccurate or missing, SunPower will simulate electricity production during the missing interval utilizing measured meteorological data and PVSIM. The simulated electricity production during the missing interval will be added to the Actual Generation for the subject Guarantee Year.

This Article III states SunPower's sole liability, and Customer's exclusive remedy, for any Guaranteed Output arising from any equipment failure or lost data relating to the DAS.

ARTICLE IV. CUSTOMER RESPONSIBILITIES

Designated Contacts.

Customer hereby designates an individual as "Primary Contact" and another individual as "Secondary Contact," each of whom shall be authorized to represent Customer in the administration of this Agreement:

Primary Contact:

Name: Tom Coburn, Facilities Manager
Work Phone: (530) 470-2637
Cell Phone: (530) 362-2288
Mailing address: 10014 North Bloomfield Road, Nevada City, CA 95959
Fax: (530) 265-7087
Email: tom.coburn@co.nevada.ca.us

Secondary Contact:

Name: Steve Monaghan, Chief Information Officer
Work Phone: (530) 265-1239
Mailing address: 950 Maidu Avenue, Nevada City, CA 95959
Fax: (530) 265-7112
Email: steve.monaghan@co.nevada.ca.us

Customer Responsibilities.

Throughout the Term, and as conditions to the obligations of SunPower hereunder, Customer shall:

- a) maintain an Operations & Maintenance Agreement with SunPower for the System and allow repairs in a timely fashion as may be recommended from time to time by SunPower;
- b) not be in breach of any Customer obligations under the Solar Agreement;
- c) grant reasonable access to the System by SunPower personnel and representatives;
- d) insure that Primary and Secondary Contacts have the capability to resolve any failures of DAS communications, and
- e) not modify, alter, damage, service, shade, or repair, without SunPower's prior written approval, any part of the System, the supporting structure for the System (including building roof, if applicable), or the associated wiring.

Customer's Failure to Uphold Responsibilities.

SunPower's obligations under this Agreement shall be suspended for the duration of Customer's failure to satisfy one or more of Customer's Responsibilities under 0. SunPower shall promptly notify Customer of any such failures ("Out of Compliance Letter"). Upon Customer's cure of all failures described in an Out of Compliance Letter, SunPower will notify Customer ("In Compliance Letter") that Customer is complying with Customer's Responsibilities. For any period between the issuance of an Out of Compliance Letter and of an In Compliance Letter (a "Noncompliance Period"), SunPower shall have no liability under this Agreement. Each month in which there is a Noncompliance Period and any Actual Generation in such month(s) shall be disregarded in the calculation of Annual Deficits or Annual Surpluses under Article III and the Expected kWh for any Guarantee Year in which there is a Noncompliance Period shall be reduced by an amount proportionate to the period so disregarded and to the actual or reasonably estimated meteorological data during such period.

ARTICLE V. EXPECTED ENERGY ADJUSTMENT

Adjustment of Expected Energy.

If, and to the extent, any of the following events results in a change in the production of electricity by the System, Expected Energy shall be adjusted correlatively for the period of such change:

A material portion of the components of the System fail, and the manufacturer of such component(s) refuses, or otherwise fails to honor its corresponding warranty;

There is structural failure in a building supporting the System;

There is any failure of the System to perform caused by legislative, administrative or executive action, regulation, order or requisition of any federal, state or local government, local utility or public utilities commission;

There is an event of Force Majeure; or

There is any change in usage of or structures on any of the Sites, or buildings at or near any of the Sites, which causes additional shading, soiling, or otherwise reduced performance of the System.

Notification of Changes to Expected Energy.

If SunPower determines that any changes to Expected Energy are required based on an event or events described in 0, then SunPower shall notify the Customer in writing of the basis for its determination and SunPower shall either provide revised definitions of Expected Energy in exhibits that shall replace the current exhibits to this Agreement, or specify a date by which it shall do so.

ARTICLE VI. MISCELLANEOUS PROVISIONS

Limitation of Liability.

Neither Party shall be liable under this Agreement for any indirect, consequential or punitive damages, including, without limitation, loss of profits, loss of revenue, or loss of use of any equipment or facilities. In no event shall SunPower's liability hereunder exceed any payment obligations arising under 0.

Technical Disputes.

In case of any technical dispute between the Parties in a matter related to the calculation of the Actual Generation, Monthly Deficit, or Monthly Surplus, the Customer shall have the right to request the appointment of a technical expert (the Expert) for the solution of the issue amongst the following experts: Sandia, BEW Engineering, SGS, or TUV. The Expert shall finally determine the technical matter at issue in accordance with the provisions of this Contract, acting as arbitrator. The Expert shall deliver its determination to the Parties in writing, including an explanation of the underlying reasons, within thirty (30) calendar days after the acceptance of the mandate. The Expert's determination shall be final and binding upon the Parties. The costs of the determination, including fees and expenses of the Expert, shall be borne by the Party the Expert deems is in the wrong.

Notices.

All notices or other communications given, delivered or made under this Agreement by either party to the other party shall be in writing and shall be delivered personally, by first-class mail, by reputable overnight delivery company, or by facsimile (with reasonable proof of successful transmission). All such notices or communications to a party shall be mailed, delivered or faxed to such party at its address shown below or to such other address as the party may designate by ten (10) days' prior notice:

If to Customer:

Tom Coburn, Facilities Manager
10014 North Bloomfield Road
Nevada City, CA 95959
Telephone No: (530) 470-2637
Facsimile No: (530) 265-7087

If to SunPower:

SunPower Corporation, Systems
1414 Harbour Way South
Richmond, California 94804 USA
Telephone No.: (510) 260-8218
Facsimile No: (510) 540-0552
Attention: Steve Hanawalt

Entire Agreement.

This Agreement and referenced Exhibits or other attachments hereto constitute the entire agreement regarding the subject matter of this Agreement and supersede all prior agreements and understandings between the parties relating to the subject matter of this Agreement.

Amendments.

This Agreement may not be amended, supplemented or otherwise modified except by a written instrument specifically referring to this Agreement and signed by both parties, or as specifically allowed under the terms and conditions outlined in this Agreement

No Waiver.

Failure or delay by a party to exercise any right or remedy under this Agreement shall not constitute a waiver thereof. A waiver of breach or default shall not operate as a waiver of any other breach or default, a waiver of the provision itself, or of the same type of breach or default on a future occasion. No waiver shall be effective unless explicitly set forth in writing and executed by the party making the waiver.

Successors and Assigns.

Except as provided herein, no party may assign this Agreement without the prior written consent of the other party. Such consent shall not be unreasonably withheld. Either party may assign the Agreement without consent to a parent or subsidiary, an acquirer of assets, or a successor by merger. Nothing in this Agreement, expressed or implied, is intended to confer any rights, remedies, obligations or liabilities under or by reason of this Agreement upon any person or entity other than the parties. In the event there is a change in ownership of the System or any component of the Site, Customer shall cause the new owner to execute and deliver to SunPower an assumption of Customer's obligations under this Agreement in a form reasonably acceptable to SunPower.

Severability.

If any part of this Agreement shall be invalid or unenforceable under any applicable law, such invalidity or unenforceability shall not affect the enforceability of any other part hereof.

Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

Applicable Law.

This Agreement shall be governed in all respects by the laws of the State of California, in each case without application of conflict of laws principles and without regard to the actual place or

places of residence or business of the parties or the actual place or places of negotiation, execution or delivery of this Agreement.

Interpretation.

Each party agrees that this Agreement will be interpreted fairly to carry out its purpose and intent. Each party waives any statute or rule of construction or interpretation, which would require that any ambiguity be interpreted against any party.

IN WITNESS WHEREOF, SunPower and Customer have executed this Agreement.

SUNPOWER INCORPORATED, SYSTEMS:

COUNTY OF NEVADA:

Name:
Title:

Honorable Dan Miller
Chair, Board of Supervisors

Dated: _____

Dated: _____

Licensed in accordance with an act providing for the registration of Contractors

Attest:

License Number: _____

Julie Patterson-Hunter
Clerk of the Board

Fed. Tax ID No: _____

Dept. of Industrial Relations
Registration No.: _____

Approved as to form:

By: _____
County Counsel

EXHIBIT A: SOLAR POWER SYSTEM

Solar Power System Name and Solar Agreement	Solar Power System Location/Address
1. Admin Center – 469.8 kWdc, Carport	1. Admin Center – 950 Maidu Ave, Nevada City, CA 95959
2. Wayne Brown CF – 313.2 kWdc, Carport	2. Wayne Brown CF – 925 Maidu Ave, Nevada City, CA 95959
3. Carl Bryan JH – 90.3 kWdc, Roof Single Tilt	3. Carl Bryan JH – 15434 CA-49, Nevada City, CA 95959
4. WWTP LOP – 365.4 kWdc, Tracker	4. WWTP LOP – 10984 Riata Way, Auburn, CA 95602
5. Ranch – 1200.6 kWdc, Ground Fixed Tilt	5. Ranch – 16782 CA-49, Nevada City, CA 95959

EXHIBIT B: EXPECTED ENERGY

Site #	Annual kWh					Total
	1	2	3	4	5	
Guarantee Year	Admin Center	Wayne Brown CF	Carl Bryan JH	WWTP LOP	Ranch	
1	804,206	538,240	159,367	744,947	2,109,811	4,356,571
2	802,195	536,894	158,969	743,085	2,104,536	4,345,680
3	800,190	535,552	158,571	741,227	2,099,275	4,334,815
4	798,190	534,213	158,175	739,374	2,094,027	4,323,978
5	796,194	532,878	157,779	737,525	2,088,792	4,313,168
6	794,204	531,546	157,385	735,682	2,083,570	4,302,385
7	792,218	530,217	156,991	733,842	2,078,361	4,291,630
8	790,238	528,891	156,599	732,008	2,073,165	4,280,900
9	788,262	527,569	156,207	730,178	2,067,982	4,270,198
10	786,291	526,250	155,817	728,352	2,062,812	4,259,523
Total	7,952,187	5,322,250	1,575,860	7,366,220	20,862,332	43,078,849

EXHIBIT C: AVOIDED ENERGY PRICE

Guarantee Year	Avoided Energy Price per kWh
1	\$0.1895
2	\$0.1952
3	\$0.2011
4	\$0.2071
5	\$0.2133
6	\$0.2197
7	\$0.2263
8	\$0.2331
9	\$0.2401
10	\$0.2473

EXHIBIT D: TYPICAL MONTHLY AC ENERGY

	Typical Monthly AC Energy (kWh)					
Site #	1	2	3	4	5	
Guarantee Year	Admin Center	Wayne Brown CF	Carl Bryan JH	WWTP LOP	Ranch	Total
Jan	36,437	24,553	7,181	30,167	102,161	200,499
Feb	41,611	27,954	8,419	36,571	113,694	228,249
Mar	63,907	42,804	12,887	58,866	169,721	348,185
Apr	75,467	50,442	14,942	71,772	195,049	407,672
May	92,104	61,446	17,924	88,748	233,523	493,745
Jun	95,873	63,923	18,623	92,536	240,935	511,890
Jul	99,634	66,476	19,562	94,919	252,331	532,922
Aug	91,816	61,371	18,295	88,953	237,210	497,645
Sep	75,863	50,810	15,343	69,726	200,968	412,710
Oct	59,738	40,117	12,153	52,634	163,111	327,753
Nov	39,606	26,665	7,851	33,224	110,528	217,874
Dec	32,150	21,679	6,187	26,831	90,580	177,427
Annual	804,206	538,240	159,367	744,947	2,109,811	4,356,571