

SOLAR THERMAL FACILITY OPERATION AND MAINTENANCE AGREEMENT

This SOLAR THERMAL FACILITY OPERATION AND MAINTENANCE AGREEMENT ("Agreement") is entered into as of 4/11/2017 ("Effective Date") between Ameresco, Inc., a Delaware corporation, with an address of 60 E. Rio Salado Parkway, Suite 1001, Tempe, AZ 85281, successor in interest to APS Energy Services, Inc. (together with its successors and assigns, the "Operator") and Lake Havasu City, an Arizona municipality with an address of 2330 McCulloch Blvd. North, Lake Havasu City, Arizona 86403 (together with its successors and assigns, the "City").

RECITALS

WHEREAS, City owns, operates and maintains a solar thermal system located at the Lake Havasu City Aquatic Center (100 Park Avenue, Lake Havasu City, Arizona 86403) with an installed capacity of approximately 2,598 MMBtu (the "System") on property owned by the City;

WHEREAS, City and Operator are parties to that certain agreement, dated May 19, 2011, and entitled Measurement, Verification Agreement and Savings Guarantee Agreement No. 111-010, as amended by that certain Amendment to Measurement, Verification Agreement and Savings Guarantee Agreement No. 111-010 dated on or about the date hereof (as so amended, the "M&V Agreement");

WHEREAS, prior to the date hereof, Operator installed certain energy conservation measures ("ECMs") at properties owned by the City, including the System, and under the terms of the M&V Agreement, City is responsible for operating and maintaining all of such ECMs, including, without limitation, the System; and

WHEREAS, City and Operator have agreed that Operator will perform certain operations and maintenance functions with respect to the System (but not the remaining ECMs), previously performed by City under the terms of the M&V Agreement, as described herein.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:

ARTICLE 1. DEFINITIONS

As used in the attached Agreement, the following terms shall have the meanings set forth below. The singular shall include the plural. "Includes" or "including" shall mean "including, but not limited to".

"Additional Service Fee" has the meaning given in Section 3.1(b).

"Additional System Services" are those services identified on Exhibit A as "Additional System Services" and any services which are not included in Basic System Services.

"Affiliate" of a specified Person means any Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person. As used in this definition of Affiliate, the term "control" of a specified Person including, with correlative meanings, the terms, "controlled by" and "under common control with," means (a) the ownership, directly or indirectly, of 50% or more of the equity interest in a Person or (b) the power to direct or cause the

direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

"Agreement" means this Solar Thermal Facility Operation and Maintenance Agreement as it may be amended, supplemented, modified and/or restated from time to time.

"Annual Reports" has the meaning given in Section 2.4(a).

"Applicable Law" shall mean any constitutional provision, law, statute, rule, regulation, ordinance, order, decree, judgment, injunction, permit, governmental approval, consent or requirement of Governmental Authority having jurisdiction over and applicable to the Parties, the Site, the Basic System Services, the Additional System Services and the interconnection of the System to the local distribution system.

"Basic System Services" means those services identified as "Basic System Services" on Exhibit A.

"Basic Service Fee" has the meaning given in Section 3.1(a).

"Billing Rate Schedule" shall have the meaning in Exhibit [A].

"Business Day" means a day (other than a Saturday or Sunday) on which banks are generally open in Boston, Massachusetts for normal business.

"City" has the meaning given in the preamble of this Agreement.

"Dispute" has the meaning given in Section 5.9.

"ECMs" has the meaning given in the Recitals set forth above.

"Effective Date" has the meaning given in the preamble of this Agreement.

"Equipment" means all equipment, apparatus, materials, articles, components, raw materials, parts, structures and any other equipment or items comprising or otherwise installed and forming a part of the System.

"Force Majeure" means the occurrence of any act or event beyond the reasonable control of the Party affected that prevents the affected Party from performing its obligations under this Agreement, in full or part, if such act or event is beyond the reasonable control of, and not the result of the fault or negligence of, the affected Party and such Party has been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums), including the following: drought, flood, earthquake, landslide, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, terrorism, accident, or restraint, order or decree by a Governmental Authority, labor strikes, work stoppages, boycotts, walkouts and other labor difficulties ("Labor Disputes") that are national or regional in nature; provided, however, that Labor Disputes specific to the Site involving Operator's (or its Affiliate's) or any Subcontractor's on-Site employees shall not constitute an event of Force Majeure.

"Governmental Authority" shall mean any national, regional, town, city, or municipal government, or other administrative, regulatory or judicial body of any of the foregoing.

"Hazardous Materials" shall mean any chemical, material or substance in any form, whether solid, liquid, gaseous, semisolid, or any combination thereof, whether waste material, raw material, chemical, finished product, byproduct, or any other material or article, that is defined, listed or regulated or as to which liability could be imposed, under Applicable Law as a "hazardous" or "toxic" substance or waste or material, or as a "pollutant" or contaminant," (or words of similar meaning or import) or is otherwise listed or regulated, or as to which liability could be imposed, under applicable Laws; including without limitation, petroleum products, petroleum derived substances, radioactive materials, asbestos, asbestos containing materials, polychlorinated biphenyls, urea formaldehyde foam insulation, and lead-containing paints or coatings, including without limitation any "hazardous substance" or "petroleum" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 1801, et seq.), "hazardous wastes" as defined in the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 9601, et seq.), "toxic substances" as defined in the Toxic Substance Control Act as amended (15 U.S.C. §§ 2601 et seq.) and in the regulations adopted, published, and promulgated pursuant thereto, or in any other Laws.

"Industry Standards" shall mean the practices, methods and acts engaged in or approved by a significant portion of the solar energy industry, including standards of the National Electrical Code, that at a particular time in performing services of a similar nature in jurisdictions in which the System Services will be performed, in the exercise of reasonable judgment in light of the facts known or that reasonably should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with Applicable Law, safety and environmental protection. Industry Standards are not intended to be limited to optimum practice or methods to the exclusion of all others, but rather to be a spectrum of reasonable and prudent practices and methods that must take the conditions specific to any given facility into consideration.

"Insolvent" means (i) a Party shall file a voluntary petition in bankruptcy or shall be adjudicated as bankrupt or insolvent, or shall file any petition or answer or consent seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under the present or future applicable federal, state or other statute or law relative to bankruptcy, insolvency or other relief for debtors, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver, conservator or liquidator of such party or of all or any substantial part of its properties (the term "acquiesce", as used in this definition, includes the failure to file a petition or motion to vacate or discharge any order, judgment or decree within thirty (30) days after entry of such order, judgment or decree); (ii) a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against a Party seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy act, or any other present or future applicable federal, state or other statute or law relating to bankruptcy, insolvency or other relief for debtors, and such party shall acquiesce and such decree shall remain unvacated and unstayed for an aggregate of ninety (90) days (whether or not consecutive) from the date of entry thereof, or a trustee, receiver, conservator or liquidator of such party shall be appointed with the consent or acquiescence of such party and such appointment shall remain unvacated and unstayed for an aggregate of ninety (90) days, whether or not consecutive; (iii) a Party shall admit in writing its inability to pay its debts as they mature; (iv) a Party shall give notice to any governmental body of insolvency or pending insolvency, or suspension or pending suspension of operations; or (v) a Party shall make an assignment for the benefit of creditors or take any other similar action for the protection or benefit of creditors.

"Lien" means any interest, mortgage, attachment, claim, lien, charge (fixed or floating), pledge, option, right to acquire, right of pre-emption, assignment by way of security or trust arrangement for the purpose of providing an interest of any kind (including any retention arrangement) or any other encumbrance having similar effect, or any agreement to create any of the foregoing.

"Manuals" means the operation and maintenance procedures manuals prepared from time to time by the Operator (acting reasonably) and approved by City in respect of the System.

"M&V Agreement" has the meaning given in the Recitals set forth above.

"Operating Year" means each consecutive twelve-month period beginning with the Effective Date or, if the Effective Date is not the first calendar day of a calendar month, beginning with the first day of the first full calendar month following the Effective Date.

"Operator" has the meaning given in the preamble to this Agreement, or its permitted successors and assigns in accordance with Section 5.4.

"Parties" means Operator and City.

"Party" means either Operator or City.

"Site" means the premises on which the System is located but only to the extent of the area where the System is located. The system is installed at the Lake Havasu City Aquatic Center (100 Park Avenue, Lake Havasu City, Arizona 86403).

"Subcontract" means a subcontract under which the Operator subcontracts any of its obligations under this Agreement.

"Subcontractor" means any person to whom the Operator subcontracts any of its obligations under this Agreement, including the suppliers and any person to whom such obligations are further subcontracted of any tier.

"System" has the meaning given in the Recitals set forth above.

"System Services" means, collectively, the Basic System Services and the Additional System Services.

"Term" has the meaning given in Section 4.1(a).

ARTICLE 2. SYSTEM SERVICES

Section 2.1 Engagement of the Operator

Commencing on the Effective Date hereof, City hereby engages the Operator to perform the Basic System Services in accordance with the provisions of this Agreement and as listed in Exhibit A. City hereby acknowledges and agrees that such Basic System Services shall be performed by the Operator with respect to the System, only, and that City shall remain responsible for all maintenance and operation of the remaining ECMs, other than the System, under the terms of the M&V Agreement.

Section 2.2 Additional System Services

City may submit to the Operator a written request for services in addition to the Basic System Services. If the Operator is reasonably capable of providing and is licensed to provide such Additional System Services, the Operator shall respond to the written request with its pricing for such Additional System Services. Operator shall not perform Additional System Services without the written agreement of City to the price of the Additional System Services. From time to time during the Term, Operator may

recommend to City that certain Additional System Services be provided by Operator, and in such event, the City may authorize in writing Operator to perform such work. Operator shall have no obligation to perform Additional System Services until each Party has agreed in writing to such Additional System Services.

Section 2.3 **Standards of Performance.** Operator shall perform the System Services in a good and workmanlike manner in accordance with all Applicable Laws and the written guidelines of Equipment manufacturers given to Operator. With respect to any operation and maintenance of the electrical components of the System, Operator warrants to City that such operation and maintenance services shall be performed consistent with Industry Standards. EXCEPT AS SET FORTH IN THIS AGREEMENT, OPERATOR MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE WITH RESPECT TO THE SYSTEM SERVICES OR THE SYSTEM OR ANY EQUIPMENT.

Section 2.4 **Subcontracts**

Operator may enter into subcontracts for any of the System Services; provided, that (a) Operator may only subcontract to persons and entities that are licensed (if applicable) and qualified to perform the System Services requested, and (b) Operator must provide notice of any subcontracts and subcontractors to City if the Subcontract value is over \$50,000.

Section 2.5 **Personnel Standards**

Operator shall provide all labor and professional, supervisory and managerial personnel as are required to perform the System Services hereunder. Such personnel shall be qualified and experienced in the duties to which they are assigned. Operator shall retain sole authority, control and responsibility with respect to its employees and subcontractors in connection with the performance of its obligations hereunder.

Section 2.6 **Annual Reports**

Throughout the Term, Operator shall furnish to City, annual maintenance and inspection reports for the System (the "Annual Reports") for each Operating Year within 60 calendar days after the end of the Operating Year. Each Annual Report shall include a summary of (i) maintenance performed during such year; (ii) reports of any environmental or Site disturbances; (iii) safety/accident reports; (iv) Additional System Services performed during such period; (v) maintenance and inspection reporting; and (vi) any proposal of recommended maintenance for the upcoming year including cost estimates. Operator shall be given access to the data acquisition and monitoring system in order to prepare all reports required hereunder.

Section 2.7 **Costs and Expenses.** City shall bear all costs and expenses for the acquisition and storage of replacement materials, equipment, components, parts and supplies with respect to the System Services. Title to all spare parts, equipment and supplies provided by or supplied by Operator in connection with the rendering of the System Services shall transfer to City upon payment to Operator.

Section 2.8 **General Obligations of City**

(a) **Right of Access.** Throughout the Term, the City shall ensure that Operator and its authorized agents, employees or subcontractors (i) have sufficient and adequate access to the System and

to any of the electrical panels or electrical interconnection and other Site infrastructure as may be necessary to provide all System Services, and (ii) have sufficient and adequate rights of ingress and egress to and from the Site and System for Operator to perform the System Services. City shall be responsible for the security of the System. The City shall be responsible for preventing unauthorized access to the System.

(b) **Utility Service; Data Service.** The City will, at its expense, maintain all utility or other third party communication services, data lines, data connections or services required for operation of the System and required by the local utility serving the Site.

(c) **Duty to Cooperate.** The City will take actions reasonably requested by the Operator or the local utility to facilitate the Operator's performance of the System Services.

(d) **Other.** The City shall obtain and comply with all necessary authorizations, construction licenses, interconnection requirements, utility authorizations, interconnection agreements, certificates, permits that are held by owners of solar photovoltaic systems and necessary for City's ownership of the System and for Operator to be able to perform the System Services, other than those specifically required for operation and maintenance services. City shall provide to Operator all drawings, models, specifications, plans and other documents prepared with respect to the System including all civil engineering, structural, instrumentation, control, mechanical, electrical, plumbing, fire protection and safety system design and engineering documents.

Section 2.9 **Representatives.** Each Party shall designate a representative in all matters relating to this Agreement. Either Party may change its designated representative by written notice to the other Party.

ARTICLE 3. SERVICE FEES

Section 3.1 **Basic Service Fee.**

(a) As compensation for provision of the Basic System Services by Operator, City shall pay the fee set forth on Exhibit A (the "**Basic Service Fee**").

(b) City shall compensate Operator for provision of the Additional System Services on a time and materials basis, based on Operator's then-current Billing Rate Schedule (hourly rates, truck charges, environmental fees and current equipment and parts prices) (the "**Additional Service Fees**"). Operator shall provide a copy of these rates to City upon request.

(c) City shall pay Operator the Basic Service Fee quarterly at the end of each quarter for each Operating Year within thirty (30) days after receipt of an invoice from Operator. City shall pay Operator any Additional Service Fees within thirty (30) days of invoice for such fees.

Section 3.2 **Late Payments.** Overdue payment obligations of City hereunder shall accrue interest each day from the date due until the date paid at a rate per annum equal to the rate published by the *Wall Street Journal* as the "prime rate" on the date on which such interest begins to accrue plus three percent (3%) per annum, computed and compounded daily. If Operator is prohibited by law from charging interest at said rate but is instead limited by law to charging a maximum rate which is a lower rate, Operator shall charge interest at said lower rate. In addition City shall pay an administrative late fee of one hundred dollars for each late payment.

Section 3.3 **Disputed Payments.** In the event that City disputes any portion of an invoice submitted by Operator, City shall pay the undisputed portion thereof when due and shall provide Operator with a written notice of such dispute including the amount in dispute and the basis for such dispute ("Dispute Notice") within ten Business Days of receipt of such invoice. If a Dispute Notice is timely given, Operator and City shall work in good faith to resolve the dispute. In the event Operator and City are unable to agree on a resolution of the disputed amounts within thirty days after Operator's receipt of the Dispute Notice, either Party may pursue legal action.

Section 3.4 **Taxes.** City shall pay any taxes associated with income generated by the System, as well as any real property taxes or personal property taxes levied upon the System or with respect to the Site. Operator is not responsible for any sales taxes on the sale of electricity generated by the System.

ARTICLE 4. TERM

Section 4.1 **Term**

(a) The term of this Agreement (the "**Term**") will commence on the Effective Date hereof and, unless terminated earlier under the terms of this Agreement, will expire on July 31, 2028. Either Operator or City shall have the right to terminate this Agreement for convenience at the end of the then-current Operating Year by providing at least 60 days written notice to the other Party prior to the end of the then-current Operating Year. Termination of this Agreement shall also automatically terminate the Guarantee Period (as defined in the M&V Agreement) with respect to the System.

(b) Termination of this Agreement prior to the expiration of any Operating Year shall be without prejudice to the Operator's right to receive a proportional amount of the fees that have accrued up to the date of termination.

(c) The Parties may, upon negotiating mutually satisfactory conditions, extend the Term of this Agreement for additional terms or as otherwise mutually agreed to by the Parties. Neither Party shall be under any compulsion to extend the Term.

Section 4.2 **Termination on Default**

(a) **By City.** City may terminate this Agreement if (i) the Operator becomes Insolvent; or (ii) the Operator fails to perform any of its material obligations under this Agreement, which failure is not remedied within thirty (30) calendar days of written notice of such failure from City to Operator; provided however that City may not terminate this Agreement pursuant to clause (ii) if, during such thirty-day period, Operator shall have commenced and is diligently pursuing the remedy of such failure; or (iii) damage to or destruction of the System cannot reasonably be expected to be repaired or rebuilt within one hundred eighty days. Operator shall be entitled to payment of all fees owed to Operator prior to the date of termination.

(b) **By Operator.** Operator may terminate this Agreement if (i) the City fails to pay to the Operator any amounts due under this Agreement and such failure continues for five (5) calendar days after written notice of such failure from the Operator to City; or (ii) material breach by City of any of its obligations under this Agreement (other than a failure described in item (i) above), which breach is not remedied within thirty (30) calendar days of written notice of such failure from the Operator to City, or (iii) the City becomes Insolvent; or (iv) damage to or destruction of the System cannot reasonably be expected to be repaired or rebuilt within one hundred eighty days.

(c) **Pre-Termination Rights.** Termination of this Agreement shall not affect any rights or obligations as between the Parties which may have accrued prior to such termination or which expressly are intended to survive termination whether resulting from the event giving rise to termination or otherwise.

(d) Upon termination of this Agreement, Operator will remove its personnel, property and equipment from the Site. All tools (other than those owned by Operator or its Subcontractors), supplies, Manuals, operating logs, records and reports and any other items furnished and paid for under this Agreement shall be left at a designated location. Termination of this Agreement shall also automatically terminate the Guarantee Period (as defined in the M&V Agreement) with respect to the System.

Section 4.3 **Access to Data and Meters.** The City will allow the Operator access to and grants to Operator a non-exclusive, revocable, royalty-free license to collect use reproduce and prepare derivative works based on (a) all data relating to the electricity production of the System and (b) all data relating to the weather conditions at the Site. Operator shall be entitled to use the foregoing data for its internal purposes and make such data available to third parties for analysis to Operator to assist in performing Operator's obligations under this Agreement.

Section 4.4 **Insurance and Indemnities**

(a) **Operator Insurance.**

Operator shall procure and maintain, or shall cause its subcontractors to procure and to maintain, in full force and effect while this Agreement is in effect with responsible insurance providers the following insurance in at least the minimum amounts specified below. The procurement and maintenance of such insurance shall be at Operator's or its subcontractors' own expense.

(A) **Workers' Compensation and Employers Liability.** Workers' compensation insurance in compliance with appropriate federal and state laws, and Employers Liability Insurance with limit of not less than \$1,000,000 per accident or disease for each employee; and \$1,000,000 disease policy limit;

(B) **Commercial General Liability.** Commercial general liability insurance, occurrence form, with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate;

(C) **Automobile Liability.** Automobile liability insurance, including vehicles owned, hired and non-owned, with a combined single limit of not less than \$1,000,000 per accident;

(ii) City shall be furnished with satisfactory evidence that the foregoing insurance is in effect, and City shall be notified thirty (30) days prior to the cancellation or material change of any such coverage. City shall be named as additional insured with respect to the coverages required by subsections (B) and (C) above. Maintenance by Operator of the insurance required herein shall in no way be interpreted as relieving Operator of any other obligations it may have under this Agreement.

(iii) Operator's insurance coverage shall be primary coverage without right of contribution from any other insurance carried by City. All policies procured by Operator shall require the insurer to waive subrogation against City.

(b) **City Insurance.**

(i) City shall procure and maintain in full force and effect while this Agreement is in effect with responsible insurance providers the following insurance in at least the minimum amounts specified below. The procurement and maintenance of such insurance shall be at City's own expense.

(A) **Commercial General Liability.** Commercial general liability insurance, occurrence form, including, but not limited to, contractual coverage for all of the provisions of this Agreement, with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate;

(B) "All Risk" Property insurance, including physical damage, property damage and business interruption with commercially reasonable sublimits and deductibles as determined by the City;

(C) Automobile liability insurance, including vehicles owned, hired and non-owned, with a combined single limit of not less than \$1,000,000 per accident;

(D) If City has employees, Workers' Compensation insurance in compliance with appropriate federal and state laws, and Employers Liability Insurance with limit of not less than \$1,000,000 per accident or disease for each employee; and \$1,000,000 disease policy limit;

(E) Excess liability insurance, Umbrella Form shall carry coverage in excess of the limits provided for in the above policies (except Workers Compensation), with a limit of not less than \$2,000,000.

Operator shall be furnished with satisfactory evidence that the foregoing insurance is in effect, and Operator shall be notified thirty (30) days prior to the cancellation or material change of any such coverage. Operator and its affiliates shall be named as additional insureds under the coverages required by this Section 4.4(b). City shall be responsible for insuring the physical assets by purchasing or otherwise acquiring and maintaining its own physical damage and property damage insurance as City deems necessary or appropriate to protect City against claims and damages.

(ii) City's insurance coverage shall be primary coverage without right of contribution from any other insurance carried by Operator. Insurance maintained by Operator is for the exclusive benefit of Operator and shall not inure to the benefit of City. All policies procured by City shall require the insurer to waive subrogation against Operator.

(c) **Operator Indemnification.** Operator shall indemnify City, its successors and permitted assigns, and their respective affiliates, officers, directors and employees from and against any and all liabilities, demands, proceedings, damages, costs, claims, and expenses (including reasonable legal fees) incurred by City in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any person, but only to the extent caused by the negligence or willful misconduct of Operator or its agents or employees or others under Operator's control.

(d) **City Indemnification.** City shall fully indemnify Operator, its successors and permitted assigns, and their respective affiliates, officers, directors, agents, employees, and members ("Operator Indemnified Parties"), from and against any and all liabilities, demands, proceedings, damages, costs, claims, and expenses (including reasonable legal fees) incurred by Operator in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any person, but only to the extent caused by the negligence or willful misconduct of City or its agents or employees or others under City's control.

(e) **Net of Insurance Benefits.** Any recovery under this Section 4.4 shall be limited to the amount of actual out-of-pocket damages sustained by the indemnified party, net of insurance recoveries from insurance policies of the indemnified parties.

Section 4.5 **Limitation of Liability**

IN NO CIRCUMSTANCE SHALL OPERATOR OR CITY OR ANY OF THEIR RESPECTIVE OFFICERS, MEMBERS OR EMPLOYEES BE LIABLE FOR PUNITIVE, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES OF ANY NATURE INCLUDING, BUT NOT LIMITED TO, (I) DAMAGES FOR LOST PROFITS OR REVENUES OR THE LOSS OR USE OF SUCH PROFITS OR REVENUE, (II) LOSS BY REASON OF PLANT SHUTDOWN OR INABILITY TO OPERATE AT RATED CAPACITY, (III) INCREASED OPERATING EXPENSES OF PLANT OR EQUIPMENT, (IV) DAMAGES TO REPUTATION, OR (V) DAMAGES FOR LOST OPPORTUNITIES.

Operator's total liability to City under this Agreement shall not exceed One Hundred Thousand Dollars (\$100,000) during the term of this Agreement; provided that such limitation shall not apply to bar City's right of recovery of proceeds of insurance, if any, which Operator is required to maintain pursuant to Section 4.4 of this Agreement, in the event of personal injury or property damage resulting from Operator's negligence or willful misconduct.

Section 4.6 **Force Majeure Event**

(a) Except for the obligation of either Party to make payment under this Agreement, neither Party shall be considered to be in default of its obligations under this Agreement when and to the extent that performance of such obligations is prevented by any Force Majeure.

(b) If either Party shall rely on the occurrence of a Force Majeure as a basis for being excused from the performance of its obligations under this Agreement, then the Party relying on the event or condition will (i) promptly notify the other Party; (ii) exercise commercially reasonable efforts to continue to perform its obligations hereunder; (iii) take action within its reasonable control to correct or cure the Force Majeure; and (iv) exercise all commercially reasonable efforts to mitigate damages to the other Party to the extent such action will not adversely affect its own interests.

(c) In the event that the Operator is prevented from providing all or part of the System Services as a result of a Force Majeure for a continuous period of one hundred and eighty (180) days, either Party may terminate this Agreement.

Section 4.7 **Environmental Liability.**

Operator shall have no liability for and City agrees to indemnify, defend and hold each Operator Indemnified Party harmless against and from, any and all damages, losses, liabilities, claims, litigation, demands, proceedings, judgments, or suits of any kind or of any nature whatsoever (including

reasonable legal, consultant, expert fees incurred in investigating, defending against, settlement or prosecuting any claim, litigation or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against any Operator Indemnified Party arising out of or relating to the presence of any Hazardous Materials which are (i) present on the Site prior to or after the commencement of Operator's work, or (ii) improperly handled or disposed of by City or parties under City's supervision (other than Operator or the owner of the Site) or (iii) brought on to the Site or produced thereon by parties other than Operator, its subcontractor or parties under Operator's supervision. "Operator Indemnified Party" means Operator, its officers, directors, shareholders, employees.

ARTICLE 5. MISCELLANEOUS

Section 5.1 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona without regard to principles of conflicts of law.

Section 5.2 **Amendments.** No amendment to this Agreement shall be binding on the Parties unless set out in writing, expressed to vary this Agreement, and signed by authorized representatives of each of the Parties.

Section 5.3 **No Waiver.** No provision of this Agreement shall be considered waived by either Party except when such waiver is made in writing. The failure of either Party to insist, on one or more occasions, upon strict performance of any of the provisions of this Agreement or to take advantage of its rights hereunder or the delay or failure in exercising totally or partially any right or remedy under this Agreement, shall not be construed as a waiver of any such provisions or the relinquishment of any such rights or any other rights for the future, but the same shall continue and remain in full force and effect.

Section 5.4 **Successors and Assigns.** No Party shall be entitled to assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, without consent from the other Party (i) Operator shall be entitled to assign its rights and interests in this Agreement to any Affiliate of Operator or in connection with a merger or acquisition of all or substantially all assets of the business or other corporate transaction in any form affecting all or substantially all of the Operator's business, and (ii) City may assign its rights and interest in this Agreement to a purchaser of the entire System, provided such purchaser is a creditworthy entity in Operator's reasonable judgment and that the System is not moved or decommissioned by the purchaser.

Section 5.5 Representations and Warranties

(a) **Representations and Warranties of City.** City represents and warrants to Operator that City (i) is duly organized and existing in good standing under the laws of the State of Arizona and (ii) possesses all requisite power and authority to enter into and perform this Agreement and to carry out the transactions contemplated herein.

(b) **Representations and Warranties of Operator.** Operator represents and warrants to City that Operator (i) is a corporation duly organized and existing in good standing under the laws of the State of Delaware and is qualified to do business in the State of Arizona; and (ii) possesses all requisite power and authority to enter into and perform this Agreement and to carry out the transactions contemplated herein.

Section 5.6 **Additional Documents and Acts.** Each Party agrees to execute and deliver such additional commercially reasonable documents and instruments as may be reasonably requested by

the other Party to effectuate, carry out and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated by this Agreement.

Section 5.7 **Independent Contractors.** Each Party is entering into this Agreement as an independent contractor and nothing in this Agreement shall be interpreted or applied so as to make the relationship of any of the Parties that of partners, joint ventures or anything other than independent contractors.

Section 5.8 **Notices.** Any written notice, request, demand or other communication required or permitted under this Agreement, shall be deemed to be properly given by the sender and received by the addressee (a) on the date personally delivered; or (b) one (1) Business Day after being delivered with a nationally recognized overnight courier. Notices shall be addressed to the Parties at the addresses provided on the first page or at the most recent address specified by written notice to the other Party. A copy of any notice to Operator hereunder shall be forwarded to Ameresco, Inc., 111 Speen Street, Suite 410, Framingham, MA 01701 Attention: General Counsel.

Section 5.9 **Dispute Resolution**

(a) Any controversy, claim or dispute arising out of or relating to the interpretation, construction, or performance of this Agreement, or breach thereof (a "dispute") shall be resolved only in the manner specified in this Section.

(b) Any dispute between the City and the Operator shall be resolved, if possible, by negotiations between duly authorized representatives of the City and the Operator. If the representatives of the City and the Operator are unable to resolve the dispute within twenty (20) days after submission to them, the Parties may by mutual decision thereafter submit the dispute to non-binding mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Energy/Solar Industry Mediation Rules of the American Arbitration Association currently in effect if no such division/area exists, then the Construction Industry. The mediation shall be conducted by a single mediator agreed to by the parties (or, if the parties fail to agree upon a single mediator within fifteen (15) days following the date that such dispute is submitted to the American Arbitration Association, by a mediator appointed by the American Arbitration Association). Each party shall bear its own attorney's fees and costs of the mediation and the parties shall share in the fees and expenses of the mediator. The period within which the mediation shall be completed shall not exceed sixty (60) days from the time the dispute arose. The Parties shall not be required to mediate the dispute for more than a single day of mediation.

(c) Any dispute which is not resolved by mediation as provided for herein shall be subject to litigation by either party in the federal or state courts in the city of Phoenix, Arizona. The parties hereto waive any argument that this venue is not appropriate or that the forum is inconvenient. Unless ordered by the City to suspend all or a portion of the System Services hereunder, (a) the Operator shall proceed with the performance of the System Services which are not in dispute without any interruption or delay during the pendency of any of the foregoing dispute resolution procedures and (b) the City shall pay all amounts which are not in dispute during the pendency of any of the foregoing dispute resolution procedures. Notwithstanding the foregoing, injunctive relief from a court may be sought without resorting to alternative dispute resolution.

Section 5.10 **Complete Agreement.** This Agreement and any agreements executed by the Parties on the date of this Agreement contain the whole agreement between the Parties relating to the transactions contemplated by this Agreement and supersedes all previous agreements between the Parties relating to these transactions. Each party acknowledges that, in agreeing to enter into this Agreement, it has not relied on any representation, warranty, collateral contract or other assurance (except those

repeated in this Agreement and any other agreement entered into on the date of this Agreement between the Parties) made by or on behalf of any other party at any time before the signature of this Agreement. Each party waives all rights and remedies which might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.

Section 5.11 **Headings**. The table of contents and headings for each Article and Section of this Agreement are inserted for convenience of reference purposes only and will not be deemed and are not intended to limit, affect or expand on the meaning of the language contained in the particular Article or Section or to constitute a part hereof, and will be of no force or effect in construing or interpreting any of the provisions in this Agreement.

Section 5.12 **Severability**. The provisions contained in each section, subsection and clause of this Agreement shall be enforceable independently of each of the others and their validity shall not be affected if any of the others are invalid. If any of those provisions is void but would be valid if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid.

Section 5.13 **Multiple Counterparts**. This Agreement and any amendments of this Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. A signature on a copy of this Agreement received by either Party by facsimile or electronic transmission (in PDF format) is binding upon the other Party as an original.

Section 5.14 **Non-Recourse**. City agrees that there shall be no personal liability on the part of any directors, officers, shareholders, employees of Operator for the payment of any amounts due hereunder, or the performance of any obligations hereunder.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

AMERESCO, INC.

By: 

Name: Robert Georgeoff

Title: ~~Executive~~ Vice President

LAKE HAVASU CITY

By: _____

Name:

Title: City Manager

**EXHIBIT A to
SOLAR THERMAL FACILITY OPERATION AND MAINTENANCE AGREEMENT**

SYSTEM SERVICES

Basic Service Fee:

The cost for basic services is waived as more particularly set forth in the Amendment to Measurement, Verification Agreement and Savings Guarantee Agreement No. 111-010 dated on or about the date hereof.

Basic System Service:

Operation and Maintenance activities for the Lake Havasu City Aquatic Center Solar Thermal Plant.

Ameresco proposed to conduct O&M as detailed in the attached inspection check lists. A full inspection would be conducted twice each month with additional maintenance performed on a quarterly basis. Maintenance will be performed in accordance with the manufacturer's suggested maintenance practices and periodicity. Included with this O&M program is on site control adjustments that will maximize the production and efficiency of the solar thermal system. The estimated annual value of this O&M Program is \$20,000 per year.

In addition to the below O&M Services, the System will be monitored every Business Day to capture system performance parameters including solar production, heat utilization, system alarms and the operation of the new Thermal Solutions boiler. These details will be captured in a operators log and via EMS trending. Details of these readings will be provided in the O&M Reports.

Lake Havasu City Aquatic Center Solar Thermal System

Sub-System	Equipment	Unit ID	Manufacturer	Model Number	HP	Bi-Monthly	Quarterly Maintenance	Annual
Pumps	Solar Loop	P-5	Aurora	MUU-104584070	7.5	Inspect	Grease Motor Bearings	
	Solar Loop	P-6	Aurora	MUU-104584070	7.5	Inspect	Grease Motor Bearings	
	Pool Loop	P-7	Aurora	VEJMMB211T	3	Inspect	Grease Motor Bearings	
	DHW Loop	P-8	Aurora	VEJMMB211T	3	Inspect	Grease Motor Bearings	
Make-up Water Package	pump	GMP-1	Wessels	GMPT-35100	0.50	Inspect		
Plate/Frame HXs	Plate & Frame	HX-5	Aurora	AUR023-CYFS-1515		Inspect		
	Plate & Frame	HX-6	Aurora	AUR023-CYFS-1515		Inspect		
ABB VFDs	VFD 1	P-5	ABB	ACH550-VCR-012A-4	7.5	Inspect	Check Clean/Replace Inlet Air Filter	Check Clean/Replace Exhaust Air Filter and Check Clean Heat Sink
	VFD 2	P-6	ABB	ACH550-VCR-015A-4 K452	7.5	Inspect	Check Clean/Replace Inlet Air Filter	Check Clean/Replace Exhaust Air Filter and Check Clean Heat Sink
Control Valves	Solar Loop	V-1 / V-6	Bray	MKL2-C040		Inspect		
	Solar Loop Bypass	V-2	Bray	MKL2-C030		Inspect		
	Pool Heat	V-3	Bray	MKL2-C040		Inspect		
	DHW Heat	V-4 / V-5	Bray	MKL2-C040		Inspect		
Wessels Air/Dirt Separator	Solar Loop Air Dirt Separator	AS-1	Wessels	WVA-4		Inspect		
Expansion Tank	Solar Loop	ET-1	Aurora	1060B-800		Inspect		
BTU Meters	Space Heat/Dump	n/a	ONICON	System-10		Inspect		Calibrate
	Pool Heat	n/a	ONICON	System-10		Inspect		Calibrate
	DHW Heat	n/a	ONICON	System-10		Inspect		Calibrate
Solar Collector Tubes	Solar Collectors	SIDO				Inspect		Clean Tubes

All Quarterly Maintenance Items to be performed with Annual Maintenance

AMERESCO Bi-Monthly Inspection Check Sheet

LHC Aquatic Center

Inspect system pressure and verify flow of fluids

System Pressure:	
Solar Loop Flow [Yes/No]:	
Chiller Water Flow [Yes/No]:	
Condenser Water Flow [Yes/No]:	
DHW Flow [Yes/No]:	

Check DDC controllers and panels.

Note Any Discrepancies

Check Glycol makeup status, and level.

Make-up Tank Level:

Note Make Up Status

Inspect pumps and other mechanical equipment for leakage

Note Any Discrepancies

Heat exchangers

Note Any Discrepancies

AMERESCO Bi-Monthly Inspection Check Sheet

LHC Aquatic Center

Pressure relief valves

Note Any Discrepancies

Automatic flow balance valves

Note Any Discrepancies

Air separators

Note Any Discrepancies

Check suction and discharge pressure of pumps

Pump	Suction [psi]	Discharge [psi]
P-5		
P-6		
P-7		
P-8		

Inspect braided connectors, air vents.

Note Any Discrepancies

AMERESCO Bi-Monthly Inspection Check Sheet

LHC Aquatic Center

Inspect storage tanks for leaks

Note Any Discrepancies

Check expansion tanks for functionality

Note Any Discrepancies

Heat Rejection Coils: Visually inspect and clean if necessary

Note Any Discrepancies

**Collectors: visually inspect all tubes to ensure the gas has not evacuated.
Inspect all manifolds for leaks and tighten or service as required.**

Note Any Discrepancies

Inspection Performed By: _____

Date: _____

AMERESCO Quarterly Maintenance Inspection Check Sheet

LHC Aquatic Center

Exhibit F Reference	Equipment	Unit ID	Frequency	Quarterly Maintenance	COMPLETE [Yes/No]
Baldor MUU	Solar Loop	P-5	Quarterly	Grease Motor Bearings	
	Notes:				
	Solar Loop	P-6	Quarterly	Grease Motor Bearings	
Baldor VEJ	Pool Loop	P-7	Quarterly	Grease Motor Bearings	
	Notes:				
	DHW Loop	P-8	Quarterly	Grease Motor Bearings	
ABB VFDs	VFD 1	P-5	Quarterly	Check Clean/Replace Inlet Air Filter	
	Notes:				
	VFD 2	P-6	Quarterly	Check Clean/Replace Inlet Air Filter	
BTU METER READINGS	Onicon System-10	Space Heat/Dump	Current BTU Reading	<<<Enter Meter Reading	
	Notes:				
	Onicon System-10	Pool Heat	Current BTU Reading	<<<Enter Meter Reading	
	Onicon System-10	DHW Heat	Current BTU Reading	<<<Enter Meter Reading	
	Notes:				
	Onicon System-10	DHW Heat	Current BTU Reading	<<<Enter Meter Reading	

Maintenance Performed By: _____

Date: _____

AMERESCO Annual Maintenance Inspection Check Sheet

LHC Aquatic Center

Exhibit F Reference	Equipment	Unit ID	Frequency	Annual Maintenance	COMPLETE [Yes/No]
Solar Collector Tubes	SIDO		Annual	Clean and Inspect	
	Notes:				
ONICON System-10	Equipment	Unit ID	Frequency	Annual Maintenance	COMPLETE [Yes/No]
	Space Heat/Dump		Annual	Calibrate BTU Meter	
	Notes:				
	Pool Heat		Annual	Calibrate BTU Meter	
ONICON System-10					
	Notes:				
ONICON System-10	DHW Heat		Annual	Calibrate BTU Meter	
	Notes:				

Additional System Services:

- Equipment replacement
- Plant alterations
- Repairs
- Services not covered under Basic System Services
- Flushing system
- Replenishing / Replacing Glycol

Billing Rate Schedule:

- \$120/hr during normal business hours**
- \$175/hr after hours, weekends, holidays**
- Parts at cost**
- Glycol at cost**