

# Renewable Energy Credit Purchase Agreement for Balance of System Program

This Renewable Energy Credit Purchase Agreement for Balance of System Program (the "Agreement") is hereby made and entered into this \_\_\_ day of \_\_\_\_\_, 20 \_\_ (the "Effective Date"), by and between Tucson Electric Power Company, an Arizona corporation ("Company"), and \_\_\_\_\_, ("Customer"). Company and Customer may be referred to individually herein as a "Party" or collectively as the "Parties."

## RECITALS

A. Company desires to increase the number of solar electricity generation facilities and the consumption of solar electricity within its service territory, while concurrently reducing the cost of solar electric generation systems. In support of these objectives and to further Company's continuing commitment to develop and encourage the use of renewable energy resources, Company has developed the School Vocational Program (the "Program") under which Company has agreed to provide financial incentives for the installation of solar generating equipment to schools within its service territory; and

B. Company desires for Customer to participate in the Program and Customer desires to so participate under the terms and conditions contained in this Agreement, at the address of \_\_\_\_\_, Arizona (the "Premises").

NOW, THEREFORE, in consideration of these premises and of the mutual promises herein contained, Company and Customer hereby agree as follows:

## AGREEMENT

### 1. SYSTEM INSTALLATION

Company will be responsible for the installation of the \_\_\_\_\_ output (DC) photovoltaic renewable electricity generation facility located at the Premises (the "Customer System") and will be solely responsible for purchase of the Customer System and costs associated with its installation.

### 2. CUSTOMER RENEWABLE ENERGY SYSTEM

Customer owns the Customer System and will be solely responsible for any System maintenance. Company shall have the right to conduct periodic inspections of the Customer System during the Term (defined below) upon notice to Customer. Customer shall provide Company with reasonable access to the Customer System to conduct any such inspection.

### **3. RENEWABLE ENERGY CREDITS**

A "REC" means any and all environmental credits, attributes and benefits, including greenhouse gas or emissions reductions and any associated credits, environmental air quality credits, offsets, allowances and benefits howsoever entitled, actual SO<sub>2</sub>, NO<sub>x</sub>, CO<sub>2</sub>, CO, Carbon, VOC, mercury, and other emissions avoided, credits towards achieving local, national or international renewable portfolio standards, green tags, and any and all other green energy or other environmental benefits associated with the generation of renewable energy (regardless of how any present or future law or regulation attributes or allocates such characteristics), including those created under the Arizona Renewable Energy Standard and Tariff codified at A.A.C. R14-2-1801 et. seq., as may be amended from time to time (the "REST").

### **4. OWNERSHIP OF RENEWABLE ENERGY CREDITS**

Customer hereby irrevocably and unconditionally assigns and transfers to Company any and all RECs derived from the installation and use of the Customer System during the Term. Customer shall not sell, trade, assign or otherwise transfer, or permit to be sold, traded, assigned or otherwise transferred, any RECs derived from the installation and use of the Customer System to any party other than Company during such time Company is entitled to receive such RECs hereunder. Upon Company's request, Customer shall provide Company with reasonable documentation evidencing its ownership of such RECs and transfer thereof to Company.

### **5. SYSTEM ELECTRICAL OUTPUT**

Customer hereby assigns to Company all of its rights to all electrical output of the Customer System. Company will thereafter return any and all such electric output to the Customer at no cost to Customer.

### **6. CUSTOMER SYSTEM REMOVAL**

Customer shall make all reasonable efforts not to remove the Customer System from the Premises during the Term (defined below) and shall notify the Company promptly in writing in the event that the Customer System must be removed.

### **7. CUSTOMER REPRESENTATIONS**

Customer hereby represents and warrants to Company that the following statements are true and correct to the best of Customer's knowledge as of the Effective Date and will be true and correct at the time of any transfer by Customer to Company of any RECs hereunder:

- a. Customer is the true and lawful owner of, and has good title to, all RECs transferred from Customer to Company hereunder, free and clear of all liens and encumbrances;
- b. Each REC transferred from Customer to Company hereunder meets the requirements of the REST;

- c. Neither Customer nor, to Customer's knowledge, any third party has sold, traded, assigned or otherwise transferred any RECs to be transferred from Customer to Company hereunder to any party other than Company;
- d. Customer has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, including, without limitation, the transfer of any RECs to Company; and
- e. Customer is in full compliance with all applicable federal, state and local laws, regulations, ordinances and codes governing the production and/or sale of electricity.

## **8. WARRANTY**

**COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND HEREUNDER, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ITS PERFORMANCE OF ANY SERVICES OR PROVISION OF ANY GOODS HEREUNDER AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, COMPANY HEREBY DISCLAIMS ANY AND ALL LIABILITY ASSOCIATED THEREWITH.**

## **9. LIMITATION OF LIABILITY**

**COMPANY'S ENTIRE LIABILITY ARISING OUT OF ITS PERFORMANCE UNDER THIS AGREEMENT SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES STEMMING FROM CLAIMS DIRECTLY ATTRIBUTABLE TO COMPANY'S GROSS NEGLIGENCE OR WILFUL MISCONDUCT. IN NO EVENT SHALL COMPANY, ITS EMPLOYEES OR AGENTS BE LIABLE TO CUSTOMER FOR LOSS OF PROFITS OR ANY OTHER SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGE, HOWEVER CAUSED, RESULTING FROM COMPANY'S PERFORMANCE HEREUNDER.**

## **10. TERM AND TERMINATION**

This Agreement shall commence on the Effective Date and, unless earlier terminated as provided herein, shall continue for the useful life of the Customer System (the "Term"). Company may immediately terminate this Agreement if Customer shall at any time commit any material breach of this Agreement and fails to cure the same within thirty (30) days following written notice thereof. This Agreement may also be terminated at any time by mutual written agreement of the Parties.

## **11. MISCELLANEOUS**

- 11.1. Assignment. This Agreement and the rights, duties, and obligations hereunder may not be assigned or delegated by the Customer without the prior written consent of Company.

- 11.2. Modification. Waiver and Severability. This Agreement may not be modified or supplemented except by written instrument signed by the Parties. No waiver of any default or breach hereof shall be deemed a waiver of any other default or breach thereof. If any part of this Agreement is declared void and/or unenforceable, such part shall be deemed severed from this Agreement which shall otherwise remain in full force and effect.
- 11.3. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Arizona, without regard to the choice of law provisions thereof. Venue for any dispute arising hereunder shall be any court of competent jurisdiction located in Pima County, Arizona.
- 11.4. Entire Agreement. This Agreement is the final integration of the agreement between the Parties with respect to the matters covered by it and supersedes any prior understanding or agreements, oral or written, with respect thereto.
- 11.5. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement.
- 11.6. Titles and Captions. Titles or captions contained in this Agreement are inserted for convenience and for reference only and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision hereof.
- 11.7. Expenses and Attorney's Fees. In the event of a breach or threatened breach of any term or provision of this Agreement, the non-breaching party shall be entitled to all of its remedies available at law or in equity, unless otherwise limited in this Agreement, and in addition shall be entitled to be reimbursed for all of its reasonable costs and expenses in enforcing this Agreement (if successful), including, but not limited to, reasonable attorney's fees. This section shall survive termination or expiration of this Agreement for any reason.
- 11.8. Force Majeure. Neither Party shall be liable to the other for failure to perform its obligations hereunder to the extent such failure results from causes beyond its reasonable control, including strikes, climatic conditions, acts of God, governmental laws, regulations, orders or requirements, interruptions of power or unavailability of equipment or supplies.
- 11.9. Notices. All notices under this Agreement shall be in writing and shall be given to the Parties thereto by personal service (including receipted confirmed facsimile), or by certified or registered mail, return receipt requested, or by recognized overnight courier service, to the Parties at the

Addresses set forth below. All notices shall be deemed given upon the actual receipt thereof.

Company: **Tucson Electric Power Company**  
PO Box 711  
Tucson, AZ 85702  
Fax: (520) 918-8350  
Attn: Renewable Energy & Efficiency Group

Customer: See Below

***[signatures on following page]***

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**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed as of \_\_\_\_\_, 20\_\_\_\_.

**TUCSON ELECTRIC POWER COMPANY**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**CUSTOMER**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

**Estimated kWh Production** \_\_\_\_\_

