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CITY OF FRESNO
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**AMENDED AND RESTATED
SOLAR ENERGY POWER PURCHASE AGREEMENT**

by and between

FRESNO SOLAR, LLC

and

THE CITY OF FRESNO

January 2012

TABLE OF CONTENTS

	<u>Page</u>
Article I DEFINITIONS; RULES OF INTERPRETATION	1
Section 1.1 Definitions	1
Section 1.2 Interpretation	4
Section 1.3 Service Agreement	5
Article II TERM; SERVICE COMMENCEMENT DATE	5
Section 2.1 Service Term.....	5
Section 2.2 Interim Term	5
Section 2.3 Service Commencement Date.....	5
Article III CONSTRUCTION AND INSTALLATION OF SYSTEM	5
Section 3.1 Construction of System.....	5
Section 3.2 Contractors	5
Section 3.3 Location of System.....	6
Article IV CONNECTION AND POINT OF DELIVERY	6
Section 4.1 Point of Delivery	6
Section 4.2 Connection	6
Article V SALE OF OUTPUT	6
Section 5.1 Sale and Delivery of Output.....	6
Section 5.2 System to Reduce Other Electric Purchases.....	6
Section 5.3 Sale Only to Host Customer	6
Section 5.4 Interim Term Energy.....	7
Section 5.5 Taxes.....	7
Article VI PURCHASE PRICE, PAYMENT AND BILLING	7
Section 6.1 Purchase Price	7
Section 6.2 Monthly Payment.....	7
Section 6.3 Invoices.....	7
Section 6.4 Payments	7
Section 6.5 Late Fees	7
Section 6.6 Contest Rights	8
Article VII METERING.....	8
Section 7.1 Installation of Meter	8
Section 7.2 Ownership, Operation and Maintenance of Meters	8
Section 7.3 Meter Reading	8
Section 7.4 Alternatives in Event of Non-Operability.....	8

Article VIII ACCESS AND SPACE PROVISIONS	8
Section 8.1 Adequate Space for System	8
Section 8.2 Adequate Access for System Owner on Premises	9
Section 8.3 Access by Host Customer to System.....	9
Article IX ENVIRONMENTAL ATTRIBUTES	9
Section 9.1 Environmental Credits	9
Section 9.2 Environmental Documentation.....	9
Article X CONDITIONS PRECEDENT TO SYSTEM OWNER'S OBLIGATIONS	10
Section 10.1 Conditions Precedent to System Owner's Obligations	10
Article XI REPRESENTATIONS	11
Section 11.1 Host Customer Representations	11
Section 11.2 System Owner Representations	12
Article XII OBLIGATIONS OF THE PARTIES	12
Section 12.1 Maintenance of System	12
Section 12.2 Contractors	12
Section 12.3 Ownership.....	12
Section 12.4 Host Customer General Responsibilities	13
Section 12.5 Host Customer Data.....	13
Section 12.6 Notice of Malfunction	14
Section 12.7 Cooperation Regarding Approvals.....	14
Section 12.8 Alteration of System Owner Equipment.....	14
Section 12.9 Host Customer Maintenance of BES.....	14
Section 12.10 Use of Premises.....	14
Section 12.11 No Authorization	14
Article XIII DEFAULT	14
Section 13.1 System Failure to Perform	14
Section 13.2 Host Customer Failure to Pay.....	14
Section 13.3 Material Misrepresentation as of Effective Date.....	15
Section 13.4 Material Failure to Meet Obligations.....	15
Section 13.5 Bankruptcy	15
Article XIV FORCE MAJEURE.....	15
Section 14.1 Force Majeure	15
Section 14.2 Result of Force Majeure	15
Article XV TERMINATION AND PARTIES' RIGHTS.....	16

Section 15.1	Termination for Failure to Meet Condition Precedent	16
Section 15.2	Termination for Failure to Achieve Service Commencement Date	16
Section 15.3	Termination due to Hazardous Materials or Contamination Discovery	16
Section 15.4	Termination for Default	16
Section 15.5	Termination due to Force Majeure Event	17
Article XVI OPTIONS UPON EXPIRATION.....		17
Section 16.1	Options	17
Section 16.2	Operations and Maintenance Agreement.....	17
Article XVII LIABILITY; INDEMNIFICATION		17
Section 17.1	Liability and Responsibility	17
Section 17.2	Disruption in Delivery	18
Section 17.3	Consequential Damages and Limitation of Liability	18
Section 17.4	Indemnification	18
Section 17.5	Survival	19
Article XVIII LIMITED WARRANTY; INTERRUPTION OF SERVICE.....		19
Section 18.1	System Performance	19
Section 18.2	Transfer to Host Customer	19
Section 18.3	Interruptions Are Expected	20
Section 18.4	Reasons for System Owner's Interruption of Output	20
Section 18.5	Cost to Restore Service Following Interruption.....	20
Article XIX INSURANCE.....		20
Section 19.1	System Owner's Insurance.....	20
Article XX ASSIGNMENT		20
Section 20.1	Assignment by Host Customer.....	21
Section 20.2	Assignment by System Owner.....	21
Article XXI MISCELLANEOUS		21
Section 21.1	Disputes	21
Section 21.2	Confidentiality	21
Section 21.3	Notices and Changes of Address.....	22
Section 21.4	Applicable Law and Jurisdiction.....	22
Section 21.5	Complete Agreement	22
Section 21.6	No Amendment.....	23
Section 21.7	Energy Audit	23
Section 21.8	Further Documents	23

Section 21.9	Severability	23
Section 21.10	Counterparts.....	23
Section 21.11	Neutral Interpretation	23
Section 21.12	No Waiver	23
Section 21.13	Survival	23
Section 21.14	Marketing	23

EXHIBITS

Exhibit A	System
Exhibit B	Solar Electricity Price
Exhibit C	Monthly Estimates
Exhibit D	DELETED
Exhibit E	Performance Specifications
Exhibit F	Request for Proposals
Exhibit G	System Owner's Proposal
Exhibit H	Early Termination Payment
Exhibit I	Insurance Requirements

**AMENDED AND RESTATED
SOLAR ENERGY POWER PURCHASE AGREEMENT**

This Solar Energy Power Purchase Agreement (this "Agreement") is made and entered into as of the 23 day of January, 2012 (the "Effective Date"), by and between Fresno Solar, LLC ("System Owner") and The City of Fresno ("Host Customer"). Each of System Owner and Host Customer shall be referred to herein as a "Party" and collectively, as the "Parties".

RECITALS

WHEREAS, Host Customer owns and controls the parking structure located at 707 O Street, Fresno, CA 93721 (the "Premises"), which uses Electricity; and

WHEREAS, Host Customer desires to reduce its dependence on fossil fuel electric generating resources and to promote the generation of Electricity from solar photovoltaic facilities; and

WHEREAS, Host Customer invited proposals to design, finance, install and operate a solar photovoltaic electricity generating system on a portion of the Premises (the "Request for Proposals"), which is attached as Exhibit F hereto, and hereby made a part hereof; and

WHEREAS, System Owner responded to the Request for Proposals and made a proposal (the "System Owner's Proposal") which is attached as Exhibit G hereto, and hereby made a part hereof; and

WHEREAS, Host Customer determined System Owner's Proposal to be the most advantageous to Host Customer and is therefore prepared to grant System Owner a non-exclusive license to occupy a portion of the Premises for the purposes of installing, operating, maintaining and repairing the System and selling all of the Output to Host Customer;

NOW, THEREFORE, in consideration of the agreements and covenants herein, including without limitation thereto System Operator's Proposal, and intending to be legally bound hereby, the Parties hereby covenant and agree as follows:

**ARTICLE I
DEFINITIONS; RULES OF INTERPRETATION**

Section 1.1 Definitions. The following terms shall have the following meanings:

"**Agreement**" Shall have the meaning set forth in the introductory paragraph hereto.

"**Business Day**" Any day other than Saturday, Sunday, or a legal holiday in the State of California.

“BES” The Host Customer’s existing building electrical systems that are owned, operated, maintained and controlled by the Host Customer, including the interconnection of these systems with the local utility.

“Conditions Precedent” Shall have the meaning set forth in Section 10.1 (Conditions Precedent to System Owner’s Obligations) hereof.

“Default” Any event or circumstance which, with notice or lapse of time or both, would constitute an Event of Default under Article XIII (Default) hereof.

“Dispute” Shall have the meaning set forth in Section 21.1 (Disputes) hereof.

“Due Date” Shall have the meaning set forth in Section 6.4 (Payments) hereof.

“Early Termination Payment” Shall have the meaning set forth in Exhibit H (Early Termination Payment), attached hereto.

“Effective Date” Shall have the meaning set forth in the introductory paragraph hereto.

“Electricity” Electrical capacity and associated electrical energy.

“Emergency” Any event or condition relating to or affecting the System which poses an imminent threat or injury to persons or damage to property, including any person or property at the Premises.

“Energy Audit” Shall have the meaning set forth in Section 21.7 (Energy Audit) hereof.

“Environmental Credits” Any and all federal, state or local renewable energy or emissions credits, incentives or any other green tag, renewable energy, emissions reduction or other environmental benefit, whether related to any renewable portfolio standard or other renewable energy purchase requirement or otherwise, whether existing as of the Effective Date or enacted thereafter and whether available to System Owner as producer of Output or available to Host Customer as purchaser of Output, including incentives pursuant to the California Solar Initiative or successor program.

“Event of Default” A Default of this Agreement, as set forth in Article XIII (Default) hereof.

“Final Date” Shall have the meaning set forth in Section 15.2 (Termination for Failure to Achieve Service Commencement Date) hereof.

“Force Majeure Event” Shall have the meaning set forth in Section 14.1 (Force Majeure) hereof.

“Governmental Approvals” Shall have the meaning set forth in Section 10.1.1 (Necessary Governmental Approvals) hereof.

“Host Customer” Shall have the meaning set forth in the introductory paragraph hereto.

“Indemnified Parties” Shall have the meaning set forth in Section 17.4 (Indemnification) hereof.

“Indemnifying Party” Shall have the meaning set forth in Section 17.4 (Indemnification) hereof.

“Interim Term” Shall have the meaning set forth in Section 2.2 (Interim Term) hereof.

“Late Fee” Shall have the meaning set forth in Section 6.5 (Late Fees) hereof.

“Material Adverse Effect” means an event, change or occurrence with respect to one Party which, individually or together with any other event, change or occurrence, has a material adverse effect on the financial position, business, properties, assets or results of operations of the other Party.

“Meter” The standard instrument(s) and equipment used to measure and record the Output and delivered to the Host Customer at the Point of Delivery. The Meter will be considered part of the System.

“Output” Electricity produced by the System delivered by System Owner to the Host Customer at the Point of Delivery.

“Party/ies” Shall have the meaning set forth in the introductory paragraph hereto.

“Person” Shall mean any natural person, partnership, trust, estate, association, corporation, limited liability company, Governmental Authority or any other individual or entity.

“Point of Delivery” The physical location, as set forth on Exhibit A (System), attached hereto, where the System connects to the BES, at which point custody and control of, and title to the, Output is transferred from System Owner to Host Customer.

“PPT” Pacific Prevailing Time

“Premises” Shall have the meaning set forth in the recitals hereto.

“Prudent Industry Practice” The practices, methods and acts engaged in or approved by a significant portion of the solar energy industry that, at a particular time, 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 law, regulation, reliability, safety, environmental protection, economy and expedition.

“Renewal Term” Any additional term, which shall extend the Initial Term, to the extent agreed upon by the Parties in writing pursuant to Section 2.1 (Service Term) hereof.

“Request for Proposals” Shall have the meaning set forth in the recitals hereto.

“Service Term” Shall have the meaning set forth in Section 2.1 (Service Term) hereof.

“Service Commencement Date” Shall have the meaning set forth in Section 2.3 (Service Commencement Date) hereof.

“Site” Those areas on the Premises where the Solar Facility is to be located, as more fully described in Exhibit A (System).

“Solar Electricity Price” Shall have the meaning set forth in Section 6.1 (Purchase Price) hereof.

“System” All equipment, facilities and materials, including photovoltaic arrays, DC/AC inverters, wiring, Meters, and any other property now or hereafter installed, owned, operated, or controlled by System Owner for the purpose of, or incidental or useful to maintaining the use of the System and providing Output to Host Customer through and in conjunction with the BES. The System excludes any part of the BES as shown in Exhibit A (System), attached hereto, as such Exhibit A (System) may be modified from time to time during the Service Term.

“System Owner” Shall have the meaning set forth in the introductory paragraph hereto.

“System Owner’s Proposal” Shall have the meaning set forth in the recitals hereto.

“Utility Rate” The applicable all-inclusive electric service rate charged to Host Customer by the electric utility (including municipal or cooperative utility, as applicable) serving Host Customer in the service territory in which Host Customer is located and any other energy service provider serving Host Customer, as applicable. This all-inclusive rate shall include all electric charges, transmission, distribution or other delivery charges, ancillary service charges, transition or competitive service charges, taxes, and other fees and charges in place.

Section 1.2 Interpretation.

Section 1.2.1 In this Agreement, unless the context indicates otherwise, the singular includes the plural and the plural the singular, words importing any gender include the other gender, any reference to a time of day shall mean the local time; references to statutes, sections or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section or regulation referred to; references to “writing” include printing, typing, lithography, facsimile reproduction and other means of reproducing words in a tangible visible form; the words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation” or “but not limited to” or words of similar import; references to articles, sections (or subdivisions of sections), exhibits, annexes or schedules are to those of this Agreement unless otherwise indicated; references to agreements and other contractual instruments shall be deemed to include all exhibits and appendices attached thereto and all subsequent amendments and other modifications to such instruments, but only to the extent such amendments and other modifications are not prohibited by the terms of this Agreement; and references to Persons include their respective successors and permitted assigns.

Section 1.2.2 In the case of any conflict between a provision of the Request for Proposals, attached hereto as Exhibit F, or System Owner’s Proposal, attached hereto as Exhibit

G, and a provision contained in the body of this Agreement, the provision contained in the body of this Agreement shall control.

Section 1.3 Service Agreement. The Parties intend that this Agreement be treated as a “service contract” within the meaning of Section 7701(e) of the Internal Revenue Code.

ARTICLE II TERM; SERVICE COMMENCEMENT DATE

Section 2.1 Service Term. The term of this Agreement (the “Service Term”) shall commence on the Effective Date and shall expire twenty (20) years following the Service Commencement Date (subject to the additional timeframes in certain Force Majeure Events described in Section 14.2 (Result of Force Majeure), as applicable), unless terminated earlier in accordance with the terms and conditions in this Agreement.

Section 2.2 Interim Term. The period commencing on the Effective Date and continuing through and until the Service Commencement Date shall be referred to herein as the “Interim Term”.

Section 2.3 Service Commencement Date. System Owner shall provide no less than three (3) Business Days written notice prior to the Service Commencement Date to Host Customer that the System is ready for operation in accordance with Prudent Industry Practice and that service under this Agreement will begin on the date certain indicated in the notice (the “Service Commencement Date”).

ARTICLE III CONSTRUCTION AND INSTALLATION OF SYSTEM

Section 3.1 Construction of System. During the Interim Term, System Owner shall install, construct, service and test the System, pursuant to the terms and conditions set forth in Exhibit A (System), attached hereto. Host Customer shall provide System Owner reasonable access to the Premises, pursuant to the provisions in Article VIII (Access and Space Provisions), in order for System Owner to install, construct, service and test the System.

Section 3.1.1 Hazardous Materials or Contamination Discovery. In the event that System Owner discovers the presence or discharge of hazardous materials or environmental contamination at the Site or the designated construction laydown areas, System Owner shall provide to notice to Host Customer of such discovery. System Owner shall not be obligated to continue any work with respect to the System, including without limitation installation or construction, until such time as Host Customer has removed and remediated such presence or discharge. Host Customer shall be responsible for all costs associated with such removal and remediation, including any costs incurred by System Owner to accommodate such removal and remediation. Any delay in the Service Commencement Date due to such discovery shall automatically extend, on a day-for-day basis, the Final Date.

Section 3.2 Contractors. System Owner may hire independent contractors to design, build, and install the System. Such independent contractors may use subcontractors for any part or all of the services contracted by System Owner. System Owner agrees to notify Host Customer of

System Owner's intent to use any contractors or subcontractors at least three (3) days before contractor or subcontractor work is set to commence.

Section 3.3 Location of System. Host Customer and System Owner agree that the System shall be situated on Host Customer's Premises at the location specified in Exhibit A (System), attached hereto.

ARTICLE IV CONNECTION AND POINT OF DELIVERY

Section 4.1 Point of Delivery. The Point of Delivery is the point identified in Exhibit A (System), attached hereto, which is the point of connection of the System to the BES. Title to the Output shall pass from System Owner to Host Customer at the Point of Delivery.

Section 4.2 Connection. System Owner shall provide all necessary wiring requirements from the System to the Point of Delivery. System Owner is responsible for the interconnection of the System to the BES within the Premises and is solely responsible for all equipment, maintenance and repairs associated with such interconnection equipment in accordance with the terms and conditions of this Agreement.

ARTICLE V SALE OF OUTPUT

Section 5.1 Sale and Delivery of Output. System Owner shall deliver and sell all Output to the Point of Delivery, and Host Customer shall accept delivery of and purchase all Output at the Point of Delivery, beginning on the Service Commencement Date until the end of the Service Term.

Section 5.2 System to Reduce Other Electric Purchases. The Parties intend that the Output will reduce Host Customer's purchase of Electricity from other sources, including the Host Customer's local utility, Pacific Gas & Electricity a/k/a PG&E. Host Customer agrees to meet its Electricity needs first, by the Output from the System, and second, by purchasing Electricity and other electric products from other sources. The System is not intended to eliminate entirely Host Customer's Electricity needs from other sources, and therefore, Host Customer shall have a contractual arrangement in place at all times during the Service Term with its local electric utility or with another provider of retail electricity which is responsible for meeting all of Host Customer's Electricity needs, regardless of the Output from the System.

Section 5.3 Sale Only to Host Customer. In no event shall System Owner sell directly, or be deemed to have sold directly, Output to any Person other than Host Customer. In the event that Host Customer's load is less than the total Output being delivered by System Owner to the Point of Delivery at any given time, the Parties acknowledge and agree that such Output shall have been delivered to Host Customer at the point of Delivery in accordance with Sections 4.1 (Point of Delivery) and 5.1 (Sale and Delivery of Output) and shall flow through the BES to the interconnection point between the BES and the local utility. The Parties further acknowledge and agree that in such instance, the treatment of such Output shall be determined by arrangements between Host Customer and its local utility (which arrangements are typically

referred to as “Net Metering”), and Host Customer shall be responsible for all charges, fees or taxes related to such Net Metering.

Section 5.4 Interim Term Energy. Host Customer shall accept delivery of Output, including in form of test energy, during the Interim Term. There shall be no charge imposed upon Host Customer for System Owner’s provision of this Output during the Interim Term.

Section 5.5 Taxes. System Owner is responsible for local, state and federal income taxes attributable to System Owner for income received under this Agreement. System Owner agrees to bear and pay when due any sales or gross receipts tax, to the extent applicable, imposed upon a seller of Electricity, to the extent that the Utility Rate also includes a similar sales or gross receipts tax that is at least as high, on a kWh basis, as the sales or gross receipts tax attributable to System Owner. If such a sales or gross receipts tax is attributable to the sale of Output from System Owner to Host Customer, but not otherwise included or includable in the Utility Rate, then Host Customer agrees to bear the costs of such sales or gross receipts taxes. System Owner is responsible for any ownership or personal property taxes attributable to the System, if applicable.

ARTICLE VI PURCHASE PRICE, PAYMENT AND BILLING

Section 6.1 Purchase Price. System Owner will charge Host Customer the “Solar Electricity Price” for each kilowatt hour (kWh) delivered to Host Customer in accordance with the pricing provisions set forth in Exhibit B (Solar Electricity Price), attached hereto.

Section 6.2 Monthly Payment. Host Customer shall pay System Owner a monthly payment as set forth in the monthly invoice by System Owner, based on the Purchase Price provided in Exhibit B.

Section 6.3 Invoices. Each month, System Owner shall prepare and provide Host Customer an invoice for Output delivered in the prior month. Delays in the issuance of any such invoice shall not constitute any waiver of Host Customer’s obligation to pay, or System Owner’s right to collect, any payment by System Owner under any such invoice. Each invoice shall set forth in reasonable detail the calculation of all amounts owed as part of the Solar Electricity Price.

Section 6.4 Payments. Subject to its contest rights, Host Customer shall pay the full amount of each invoice on or before the fifteenth (15th) calendar day following receipt thereof (“Due Date”). All payments made by Host Customer under this Agreement shall be by check. Unless otherwise directed in the monthly invoice, all payments must be made payable to:

Fresno Solar, LLC
12970 Earhart Avenue
Suite 110
Auburn, CA 95602

Section 6.5 Late Fees. If any part of a Monthly Payment is not made by Host Customer within fifteen (15) calendar days following the Due Date, Host Customer agrees to pay System Owner a late fee of twelve (12) percent per annum of each such late payment (“Late Fee”), to the

extent such Late Fee is permitted by law. Host Customer agrees to pay System Owner any Late Fees not later than one (1) month following the original Due Date. The calculation of Late Fees that remain unpaid as set forth in this Section 6.5 (Late Fees) shall not constitute any waiver of Host Customer's obligation to pay such amounts when due, or System Owner's right to collect, any payment by Host Customer under any such invoice, as well as System Owner's right to exercise its rights with respect to Host Customer's Default.

Section 6.6 Contest Rights. Host Customer shall notify System Owner in writing within ten (10) calendar days of receipt of the monthly invoice of any portion of the invoiced amount which it has a reasonable basis to dispute in accordance with Section 21.1 (Disputes). The contested portion of any invoiced amount shall not relieve Host Customer of its obligation to pay the uncontested portion of such invoice as set forth in Section 6.4 (Payments).

ARTICLE VII METERING

Section 7.1 Installation of Meter. System Owner shall install the Meter, in accordance with the requirements of the California Solar Initiative, at the Point of Delivery to measure accurately the amount of Output delivered by System Owner to Host Customer.

Section 7.2 Ownership, Operation and Maintenance of Meters. System Owner shall own, and at its own expense, operate and maintain the Meter during the Service Term. System Owner shall exercise reasonable care in the operation and maintenance of the Meter so as to assure to the maximum extent reasonably practical an accurate determination of the Output.

Section 7.3 Meter Reading. System Owner shall read the Meter at the end of each calendar month, and shall record the Output delivered to Host Customer. The Meter shall be used as the basis for calculating the Solar Electricity Price under this Agreement. The records from each Meter shall be made available to Host Customer upon written request.

Section 7.4 Alternatives in Event of Non-Operability. In the event the Meter is out of service or registers inaccurately, the measurement of Output shall be determined by the following alternatives, in the following order: (a) any alternative or back-up meter that System Owner may have installed, if registering accurately; (b) a mathematical calculation if upon a calibration test of such Meter a percentage error is ascertainable; or (c) estimates of deliveries of Output by reference to quantities measured during periods of similar conditions when such Meter was registering accurately.

ARTICLE VIII ACCESS AND SPACE PROVISIONS

Section 8.1 Adequate Space for System. Host Customer shall provide System Owner adequate space on the Premises for System Owner's installation, operation, maintenance, and, to the extent applicable, removal, of the System, including the Meter and any applicable transmission facilities. The space for the location of the System may include, but is not limited to, roof, riser, interior, and exterior space, on which the System will reside during the Service Term. Specific plans for the location of the System are provided in Exhibit A (System), attached

hereto. Host Customer shall provide System Owner with such space no later than January 1, 2012.

Section 8.2 Adequate Access for System Owner on Premises. Host Customer shall provide System Owner adequate access to the Premises for System Owner's installation, operation, maintenance, and, to the extent applicable, removal, of the System, including the Meter. Host Customer shall provide System Owner access to Host Customer's Premises on a twenty-four (24) hour basis to permit System Owner to access its equipment, read and test metering equipment and perform any other functions as may be necessary for System Owner to fulfill its obligations under this Agreement, including inspection, repair, replacement, construction, installation, removal, alteration, expansion, or calibration of the Meter and the System, subject to such reasonable supervision by Host Customer as Host Customer may require. This Agreement shall constitute a non-exclusive license that grants System Owner reasonable access to, occupancy of and use of the Premises of Host Customer in order for System Owner to meet its obligations hereunder, including interconnection with the BES.

Section 8.3 Access by Host Customer to System. Because the System will be located on the Premises owned by Host Customer, the Parties acknowledge that Host Customer will have access to the Site for safety, security and Emergency purposes. However, Host Customer agrees to use reasonable best efforts to ensure that, other than in emergencies, the operability of the System is not disrupted, and the System is not damaged as a result of actions or inactions of Host Customer or its designee(s).

ARTICLE IX ENVIRONMENTAL ATTRIBUTES

Section 9.1 Environmental Credits. All Environmental Credits, whether available directly or indirectly, shall be and shall remain the property of System Owner for the Service Term. System Owner shall have sole use of such Environmental Credits and shall be permitted to use such Environmental Credits for itself, or to sell, grant, convey, or otherwise dispose of such Environmental Credits to any other Person, in System Owner's sole discretion. Host Customer hereby grants, makes and conveys to System Owner an absolute and irrevocable assignment of any and all right, title and interest Host Customer may at any time have in or to any Environmental Credits; provided that, in the event that Host Customer takes title to the System, System Owner shall re-assign to Host Customer all such right, title and interest in any Environmental Credits upon such purchase.

Section 9.2 Environmental Documentation. Host Customer, with the assistance of System Owner, will complete any and all documentation required by the California Solar Initiative or other Environmental Credit program to verify System Owner's rights to any economic incentives and the sale of Renewable Energy Certificates (which evidence Environmental Credits) or other Environmental Credits and unfettered ability to sell the Renewable Energy Certificates or other Environmental Credits to a third party.

ARTICLE X
CONDITIONS PRECEDENT TO SYSTEM OWNER'S OBLIGATIONS

Section 10.1 Conditions Precedent to System Owner's Obligations. Each of the following conditions precedent (the "Conditions Precedent") must be met or waived by System Owner, in its sole discretion, prior to System Owner's obligations to: (a) commence construction and installation of the System; and (b) commence the delivery of Output to Host Customer. System Owner agrees to use good faith efforts to satisfy the Conditions Precedent as expeditiously as practicable. Host Customer agrees to cooperate with System Owner, upon System Owner's reasonable request, in order for System Owner to meet the Conditions Precedent.

Section 10.1.1 Necessary Governmental Approvals. System Owner shall have received and retained where necessary, all applicable and material federal, state and local approvals, permits, licenses and authorizations necessary: (a) for the construction and installation of the System, prior to the commencement of construction and installation of the system; and (b) for the generation and sale of Output to the Host Customer under this Agreement, prior to the commencement of delivery of Output to Host Customer (collectively, "Governmental Approvals").

Section 10.1.2 Additional Consents and Approvals. System Owner shall have obtained any necessary easements, leases, licenses, consents and approvals and other rights System Owner deems necessary or desirable for the construction and installation of the System, the production and delivery of Output to the Point of Delivery, and the operation and maintenance of the System under this Agreement.

Section 10.1.3 Ownership of Approvals. All such permits and approvals in this Article X (Conditions Precedent to System Owner's Obligations) shall be owned and controlled by System Owner. To the extent that any such permits or approvals must be obtained and/or owned by Host Customer, then Host Customer agrees that it will grant all material decision-making rights with respect to such permits and approvals to System Owner.

Section 10.1.4 Agreements with Third Parties.

- (a) System Owner may execute a Renewable Energy Certificate agreement; and
- (b) Prior to commencement of construction and installation of the System, System Owner shall have obtained a financing commitment from a third party on terms acceptable to System Owner, such acceptability being in System Owner's sole discretion. Prior to commencement of delivery of Output to Host Customer, System Owner shall have obtained financing from a third party on terms acceptable to System Owner, such acceptability being in System Owner's sole discretion; and

- (c) System Owner shall have obtained, with Host Customer's assistance, a non-disturbance agreement with each holder of a security interest, lien or mortgage with respect to the Premises existing as of the Effective Date acknowledging and recognizing System Owner's rights as provided hereunder and acknowledging that the System is the personal property of System Owner severable from the Premises and not a fixture.

ARTICLE XI REPRESENTATIONS

Section 11.1 Host Customer Representations. Host Customer hereby represents to System Owner that:

Section 11.1.1 Due Authorization. Host Customer is duly authorized and empowered to enter into this Agreement;

Section 11.1.2 No Conflict. This Agreement is enforceable according to its terms and does not conflict with or violate the terms of any other material agreements to which Host Customer is a party, including, if applicable, any Host Customer leases with respect to the Premises;

Section 11.1.3 Host Customer Data. Host Customer has furnished, or caused others to furnish, to System Owner accurate and complete data concerning energy usage for and other information pertaining to the Premises, including but not limited to the following:

- (a) Utility and any other energy service provider records for the 12-month period preceding the Effective Date;
- (b) Any energy or environmental audits relating to all or any part of the Premises;
- (c) Any service or maintenance agreement(s) regarding the BES, or any part thereof; and
- (d) Construction drawings ("as-builts") in existence as of the Effective Date;

Section 11.1.4 Accuracy of Information. The information provided pursuant to this Agreement as of the Effective Date is true and accurate in all material respects;

Section 11.1.5 Ability to Perform. Host Customer has no knowledge of any facts or circumstances that, but for the passage of time, would materially, adversely affect either Party's ability to perform its respective obligations hereunder and, if Host Customer is a Governmental Authority or instrumentality thereof, Host Customer has complied with all laws and regulations relative to bidding or procurement of the Output hereunder; and

Section 11.1.6 Ownership and Control over Premises. Host Customer owns title to and controls the Premises and the real estate upon which the Premises are located, and no other parties hold a security interest in said Premises or real estate.

Section 11.1.7 Hazardous Materials or Contamination. Host Customer, after due diligence, has no knowledge of any hazardous materials or environmental contamination on the Site or the designated construction laydown areas.

Section 11.2 System Owner Representations. System Owner hereby represents to Host Customer that:

Section 11.2.1 Due Authorization. System Owner is duly authorized and empowered to enter into this Agreement;

Section 11.2.2 No Conflict. This Agreement is enforceable according to its terms and does not conflict with or violate the terms of any other material agreements to which it is a party;

Section 11.2.3 Accuracy of Information. The information provided pursuant to this Agreement as of the Effective Date is true and accurate in all material respects; and

Section 11.2.4 Ability to Perform. System Owner has no knowledge of any facts or circumstances that, but for the passage of time, would materially adversely affect either Party's ability to perform its respective obligations hereunder.

ARTICLE XII OBLIGATIONS OF THE PARTIES

Section 12.1 Maintenance of System. System Owner shall maintain the System in good working order, ordinary wear and tear excepted, and shall ensure that the System performs to the performance criteria set forth in Exhibit E (Performance Specifications), attached hereto.

Section 12.2 Contractors. System Owner may utilize independent contractors to operate and maintain the System. Such independent contractors may use subcontractors for any part or all of the services contracted by System Owner. System Owner agrees to notify Host Customer of use of any contractors or subcontractors at least three (3) days before contractor or subcontractor work is set to commence

Section 12.3 Ownership.

Section 12.3.1 Host Customer acknowledges and agrees that it is not the owner of the System and does not have title to the System. Host Customer agrees that it will at all times keep the System free from any legal process or lien as a result of the actions or inactions of Host Customer. Host Customer will give System Owner immediate notice if any legal process or lien is asserted or made against the System or against Host Customer where the System may be subject to any lien, attachment or seizure by any Person. Notwithstanding any other provision of this Agreement, the Parties acknowledge and agree that the System shall, at all times, be personal property severable from the Premises and that it is not, and shall not be deemed to be, a fixture to the Premises.

Section 12.3.2 In the event that any or all of the Premises is, or becomes, subject during the term of this Agreement to a lease, or to a security interest, lien or mortgage, Host Customer shall ensure that the lessor or the holder of such security interest, lien or mortgagee shall enter

into a non-disturbance agreement with System Owner acknowledging and recognizing System Owner's rights as provided hereunder and acknowledging that the System is the personal property of System Owner (or its Lessor) severable from the Premises and not a fixture.

Section 12.3.3 Host Customer shall from time to time grant to System Owner easements, leases, licenses, consents and approvals and other rights System Owner reasonably deems necessary or desirable for the production and delivery of Output to the Point of Delivery, and the operation and maintenance of the System under this Agreement.

Section 12.4 Host Customer General Responsibilities.

Section 12.4.1 Host Customer shall be responsible for maintaining and fulfilling all contractual obligations with respect to its interconnected utility service provider, including with respect to such interconnection service, power supply service, Net Metering arrangements, and delivery service, and meeting all requirements imposed by the local utility and the California Public Utilities Commission with respect to such service.

Section 12.4.2 Host Customer shall be responsible for all ongoing maintenance and upgrades to the BES, required by the local utility or mandated by Prudent Industry Practice and applicable laws and regulations.

Section 12.4.3 Host Customer shall use reasonable efforts, consistent with its customary and usual practices as of the date hereof, to ensure the safety and security of the System against trespass or unauthorized access to the System; provided that Host Customer shall not be subject to liability for damage or loss caused by such trespass or unauthorized access unless, and to the extent, such damage or loss is caused by the gross negligence, recklessness or willful misconduct of Host Customer.

Section 12.5 Host Customer Data. Host Customer will furnish, or cause others to furnish, for the Service Term hereof, to the System Owner, promptly as information becomes available, accurate and complete data concerning energy usage for and other information pertaining to the Premises, including but not limited to the following:

Section 12.5.1 Utility records throughout the Service Term;

Section 12.5.2 Any energy or environmental audits performed during the Service Term relating to all or any part of the Premises;

Section 12.5.3 Any service or maintenance agreement(s) entered into during the Service Term regarding the BES, or any part thereof;

Section 12.5.4 Construction drawings ("as-builts") developed during the Service Term; and

Section 12.5.5 Annual unaudited financial statements of Host Customer, including a Statement of Net Assets and a Statement of Revenues, Expenses and Changes in Fund Net Assets within 140 days of the end of each fiscal year of Host Customer, and annual audited financial statements of Host Customer, including a Statement of Net Assets and a Statement of

Revenues, Expenses and Changes in Fund Net Assets, no later than thirty (30) days following approval by Host Customer's City Council during the Term.

Section 12.6 Notice of Malfunction. Host Customer shall notify System Owner within twenty-four (24) hours of Host Customer's receipt of actual or constructive notice of (a) any material malfunction in the operation of the equipment installed on the Premises in connection with this Agreement or equipment affected by the Output provided pursuant to this Agreement (including the BES) and/or (b) any interruption or alteration of the energy supply to the Premises.

Section 12.7 Cooperation Regarding Approvals. The Parties shall work together cooperatively to assist one another in procuring and maintaining all necessary approvals and consents described in this Agreement or otherwise required to effectuate the purposes of this Agreement.

Section 12.8 Alteration of System Owner Equipment. Host Customer shall not cause or voluntarily permit any modification or alteration to any part of System Owner's equipment located on the Premises, including without limitation the System, valves, conduits, piping or other materials or tools, except in an Emergency where life or property is threatened.

Section 12.9 Host Customer Maintenance of BES. Host Customer shall use care to ensure that the BES does not disrupt or interfere with the operation of the System. Host Customer shall maintain, repair and replace such parts of the BES as necessary in accordance with Prudent Industry Practice so that its equipment within the Premises complies with all applicable building codes and industry standards.

Section 12.10 Use of Premises. Host Customer intends to continue to use the Premises in a manner similar to its present use, except as may have been disclosed to System Owner by Host Customer in writing;

Section 12.11 No Authorization. Host Customer, under the operation and maintenance provisions of this Agreement, agrees that it is not authorized to adjust, maintain, alter, service, or in anyway interfere with operation of the System, except as authorized in writing by System Owner or in the event of an Emergency where life or property is threatened.

ARTICLE XIII DEFAULT

Section 13.1 System Failure to Perform. An Event of Default shall occur with respect to System Owner if System Owner fails to provide any Output for a period of at least ninety (90) consecutive days following the Service Commencement Date; provided, however, that non-operation of the System for days involving a Force Majeure Event shall not be used in calculating such consecutive days.

Section 13.2 Host Customer Failure to Pay. An Event of Default shall occur with respect to the Host Customer if the Host Customer fails to pay an Invoice following the Due Date, and such failure continues for a period of seven (7) days after System Owner provides written notice of such nonpayment to Host Customer.

Section 13.3 Material Misrepresentation as of Effective Date. An Event of Default shall occur with respect to either Party if a Party misrepresents a material fact as of the Effective Date.

Section 13.4 Material Failure to Meet Obligations. An Event of Default shall occur with respect to either Party if a Party fails to perform fully any material provision of this Agreement other than as explicitly set forth in this Article XIII (Default), and either: (a) such failure continues for a period of thirty (30) days after written notice of such nonperformance; or (b) if the nonperforming Party commences an action to cure such failure to perform within such thirty (30) days, and thereafter proceeds with all due diligence to cure such failure, and such failure is still not cured within the following sixty (60) days.

Section 13.5 Bankruptcy. An Event of Default shall occur with respect to any Party that: (a) voluntarily or involuntarily files or has filed against it a bankruptcy or other similar petition that is not dismissed within sixty (60) days of the initial filing; (b) enters into an assignment of its assets for the benefit of its creditors; or (c) otherwise is unable to pay its debts as they become due.

ARTICLE XIV FORCE MAJEURE

Section 14.1 Force Majeure. Neither System Owner nor Host Customer shall be considered to be in default in the performance of its obligations under this Agreement (excluding Host Customer's obligations to make payment, which obligations are absolute and shall not be excused for any reason whatsoever, including the cessation of operations of Host Customer or the sale of the Premises), to the extent that performance of any such obligation, including the Service Commencement Date, is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of, and not the result of the fault or negligence of, the affected Party or its affiliates (a "Force Majeure Event"), including, but not limited to, by way of example, strikes or other labor disputes (other than strikes or labor disputes solely by employees of the Parties to this Agreement), supply shortages, adverse weather conditions and other acts of nature, subsurface conditions, riot or civil unrest. If a Party is prevented or delayed in the performance of any such obligation by a Force Majeure Event, such Party shall immediately provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof. Such notice shall be confirmed in writing as soon as reasonably possible. The Party so affected by a Force Majeure Event shall endeavor, to the extent reasonable, to remove the obstacles which prevent performance and shall resume performance of its obligations as soon as reasonably practicable.

Section 14.2 Result of Force Majeure. If System Owner is unable to deliver Output due to a Force Majeure Event, but Host Customer is able to receive such Output, Host Customer shall not be obligated to make payment for such period. The Service Term of this Agreement will be extended for an equal number of days in which Host Customer payment was not required due to a Force Majeure Event affecting System Owner as described in this Article XIV (Force Majeure).

**ARTICLE XV
TERMINATION AND PARTIES' RIGHTS**

Section 15.1 Termination for Failure to Meet Condition Precedent. If at any time prior to March 1, 2012, System Owner determines that any of the Conditions Precedent have not been, or are not capable of being, met, System Owner may terminate this Agreement following twenty (20) days written notice of such termination to Host Customer.

Section 15.2 Termination for Failure to Achieve Service Commencement Date. Subject to the provisions of this Section 15.2 (Termination for Failure to Achieve Service Commencement Date), in the event that System Owner fails to achieve the Service Commencement Date by December 31, 2012, (the "Final Date"), Host Customer may terminate this Agreement upon written notice to System Owner. The Final Date shall be extended, on a day-for-day basis:

- (a) Pursuant to the terms of Section 3.1.1 (Hazardous Materials or Contamination Discovery);
- (b) Upon the occurrence of a Force Majeure Event;
- (c) In the event of any delay by Host Customer in fulfilling its obligations under this Agreement, including without limitation its obligations pursuant to Article VIII (Access and Space Provisions); and
- (d) In the event of any delay outside of the reasonable control of System Owner with respect to obtaining any Governmental Approvals.

Section 15.3 Termination due to Hazardous Materials or Contamination Discovery. In the event that Host Customer fails to remove and remediate hazardous materials or environmental contamination pursuant to Section 3.1.1 (Hazardous Materials or Contamination Discovery) within sixty (60) days of receiving a notice of discovery from System Owner, then System Owner shall have the right to terminate this Agreement upon written notice to Host Customer. Upon such termination, Host Customer shall pay System Owner an amount equal to System Owner's actual costs incurred and obligated to be incurred with respect to the System and this Agreement prior to such termination.

Section 15.4 Termination for Default.

Section 15.4.1 Upon the occurrence and during the continuation of any Event of Default hereunder, the non-defaulting Party shall have the right to terminate this Agreement upon ten (10) days' prior written notice to the defaulting Party. Without limitation of and notwithstanding the foregoing, if there has occurred a Host Customer default, System Owner shall have a period of nine (9) months from the occurrence of such default during which it may elect to exercise in its sole discretion, by written notice to Host Customer, either of "Option A" and "Option B" in Exhibit H (Early Termination Payment), attached hereto, in which event, Host Customer shall pay System Owner the amounts established in accordance with the applicable provisions of Option A or Option B and thereafter Host Customer shall have no further liability in connection with such Event of Default and the termination of this Agreement.

Section 15.4.2 At all times following an Event of Default by the Host Customer until the termination of this Agreement as provided in this Section 15.4, System Owner shall have the right but not the obligation to deliver the Output to the Host Customer, and the Host Customer shall be obligated to purchase and pay for such Output in accordance with this Agreement.

Section 15.4.3 Host Customer and System Owner may each exercise any right or remedy that may be available to it under this Agreement in law or equity to enforce the terms of this Agreement or to recover damages for the breach hereof. Such rights and remedies shall all be cumulative and not exclusive and may be exercised concurrently or successively.

Section 15.5 Termination due to Force Majeure Event. Either Party shall be entitled to terminate this Agreement upon thirty (30) days' prior written notice to the other Party if any Force Majeure Event affecting the non-terminating Party has been in existence for a period of ninety (90) days or longer, unless such Force Majeure Event ceases prior to the expiration of such thirty (30) day period.

ARTICLE XVI OPTIONS UPON EXPIRATION

Section 16.1 Options. Upon expiration of this Agreement, Host Customer shall have the option either to: (a) purchase the System at fair market value, as agreed upon by the Parties; (b) negotiate with System Owner in good faith to extend the term of this Agreement by five (5) years at a mutually-agreeable price; or (c) instruct the System Owner to remove the System and restore the Site to its original condition.

Section 16.2 Operations and Maintenance Agreement. In the event that Host Customer takes title to the System upon expiration of this Agreement, upon Host Customer's request, System Owner agrees to negotiate in good faith with Host Customer with respect to an arrangement for the ongoing operation and maintenance of the System.

ARTICLE XVII LIABILITY; INDEMNIFICATION

Section 17.1 Liability and Responsibility.

Section 17.1.1 Host Customer. Host Customer agrees to pay System Owner for any repairs to, direct or indirect harm to, or loss of System Owner's personal property or fixtures on the Premises, including the System, or loss, damage, expense or liability resulting from injury to or death of persons, to the extent caused by the gross negligence, recklessness or willful misconduct of Host Customer or any of its contractors, agents, employees, partners, owners, subsidiaries, affiliates or invitees. Host Customer may meet its obligations under this Section 17.1 (Liability and Responsibility) from any insurance proceeds that Host Customer may obtain.

Section 17.1.2 System Owner. System Owner agrees to pay Host Customer for any repairs to, direct or indirect harm to, or loss of Host Customer's personal property or fixtures on the Premises, or loss, damage, expense or liability resulting from injury to or death of persons, to the extent caused by System Owner or any of its contractors, agents, employees, partners,

owners, subsidiaries or affiliates. System Owner may meet its obligations under this Section 17.1 (Liability and Responsibility) from any insurance proceeds that System Owner may obtain.

Fresno Solar LLC will own, operate, maintain and insure the PV system

Section 17.2 Disruption in Delivery. In the event that System Owner is capable of generating and delivering Output to Host Customer, but as a result of Host Customer's negligence, recklessness, or willful misconduct, Host Customer does not accept delivery of such Output (or as a result of Host Customer's change to the BES, Host Customer is unable to accept delivery of such Output), Host Customer agrees to pay System Owner the sum of (a) the amount of kWh for which delivery was disrupted, on a *pro rata* basis, based on the Output estimates provided in Exhibit C (Monthly Estimates) times the Solar Electricity Price and (b) the value of the Environmental Credits that were foregone due to such delivery disruption, based upon market value of such Environmental Credits at the time of such delivery disruption.

Section 17.3 Consequential Damages and Limitation of Liability. Except as expressly provided for herein, neither Party will be liable, even if given prior notice, to the other for special, indirect or consequential damages arising out of the performance or non-performance of this Agreement, whether caused by negligence, tort, strict liability, breach of contract, or breach of warranty, including but not limited to damages in the nature of loss profits or revenues, loss of use of facilities, or equipment, and claims of third parties or inability to perform contracts with third parties, except to the extent such damages are caused by the gross negligence, recklessness or willful misconduct of such Party. In no event will the liability of System Owner due to any claim or cause arising out of this Agreement exceed the total value of all amounts paid by Host Customer to System Owner under this Agreement prior to System Owner's payment to Host Customer of such claim plus all amounts reasonably estimated to be due from Host Customer to System Owner under this Agreement thereafter.

Section 17.4 Indemnification.

Section 17.4.1 Indemnification by System Owner. To the furthest extent allowed by law, including California Civil Code Section 2782, System Owner shall indemnify, hold harmless and defend Host Customer and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including, but not limited to personal injury, death at any time and property damage) incurred by Host Customer, System Owner or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of the System or under this Agreement. System Owner's obligations under the preceding sentence shall apply regardless of whether Host Customer or any of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active negligence or willful misconduct of Host Customer or any of its officers, officials, employees, agents or volunteers. If System Owner should subcontract all or any portion of the System work, System Owner shall require each subcontractor to indemnify, hold harmless and defend Host Customer and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of the preceding sentence.

Section 17.4.2 Indemnification by Host Customer.

- (a) To the maximum extent permitted by law, Host Customer (the “Indemnifying Party”) shall defend, indemnify and hold harmless System Owner and the directors, officers, shareholders, partners, agents and employees of such other Party, and the affiliates of the same (collectively, the “Indemnified Parties”), from and against all third party claims of loss, damage, expense and liability (including court costs and reasonable attorney’s fees) resulting from injury to or death of persons, and damage to or loss of real or personal property, to the extent caused by the gross negligence, recklessness or willful misconduct of the Indemnifying Party, in connection with this Agreement.
- (b) The Indemnifying Party shall have the right to defend an Indemnified Party by counsel of the Indemnifying Party’s selection, with respect to any claims within the indemnification obligations hereof. The Indemnified Party shall give the Indemnifying Party prompt written notice of any asserted claims or actions indemnified against hereunder and shall cooperate with the Indemnifying Party in the defense of any such claims or actions. No Indemnified Party shall settle any such claims or actions without prior written consent of the Indemnifying Party.

Section 17.5 Survival. The provisions of this Article XVII (Liability; Indemnification) shall survive the expiration or termination of this Agreement.

**ARTICLE XVIII
LIMITED WARRANTY; INTERRUPTION OF SERVICE**

Section 18.1 System Performance. System Owner hereby warrants the sufficient performance of the System during the Service Term. To the extent that the System does not perform properly, System Owner agrees, as part of its operation and maintenance obligations hereunder, to purchase such equipment and undertake such labor to bring the System into proper performance. Such warranty includes all components and labor costs associated with keeping the System in proper working order. System Owner shall retain any and all rights to manufacturer’s warranties and any warranties with respect to the work of contractors or subcontractors during the Service Term in order to meet its obligations to maintain the proper performance of the System.

Section 18.2 Transfer to Host Customer. Upon transfer of ownership of the System to Host Customer under this Agreement, System Owner agrees to pass-through and to transfer to Host Customer any applicable manufacturers’ warranties provided on the System, as provided in Exhibit E (Performance Specifications), attached hereto. Such warranties include any guarantee, reflective of the passage of time, of the System nameplate rating in standard test conditions and any other express or implied warranty that may be transferable to Host Customer from the manufacturer, designer or installer of the System. Following any such transfer of ownership to Host Customer, the Service Term shall end, and System Owner shall have no further obligation with respect to the performance of any part of the System.

Section 18.3 Interruptions Are Expected.

Section 18.3.1 System Owner shall use reasonable care to ensure the operation of the System and supply of Output. However, the Parties explicitly acknowledge and understand that the System is comprised of intermittent generation facilities, and will not provide Host Customer with an uninterrupted supply of Electricity. Given weather and other conditions beyond the control of System Owner, this Agreement provides no warranty or guarantee for any particular level of Output to Host Customer. System Owner shall not be liable for any special, direct, indirect, consequential or incidental damages caused by or resulting from any interruption in Output during the Service Term, nor shall System Owner be responsible for the cost of alternative supplies of Electricity during any interruption. If Output is interrupted, System Owner will make commercially reasonable efforts to restore Output in a timely manner.

Section 18.3.2 Host Customer shall not install, or permit to be installed, on the Premises (or any other property owned or controlled by Host Customer) any physical obstruction to the operation of the System.

Section 18.4 Reasons for System Owner's Interruption of Output. Notwithstanding anything to the contrary herein, System Owner shall have the right to interrupt, reduce or discontinue the delivery of Output for purposes of inspection, maintenance, repair, replacement, construction, installation, removal or alteration of the equipment used for the production or delivery of Output. System Owner shall use reasonable efforts to give written notice to Host Customer of any expected interruption of delivery of Output at least five (5) Business Days prior to the date of any interruption and shall use its reasonable efforts to inform Host Customer of the expected length of any interruption and to schedule such interruption to minimize disruption to Host Customer and the use of its Premises. Notwithstanding the foregoing, System Owner shall not be required to supply Output to Host Customer at any time System Owner reasonably believes BES to be unsafe. System Owner reserves the right to curtail Output if so directed by authorized governmental authorities or electric utilities.

Section 18.5 Cost to Restore Service Following Interruption. System Owner shall bear any costs associated with restoring service following any interruption of Output as part of System Owner's operation of the System; provided, however, that, if interruptions of Output are caused directly by the actions or inactions of Host Customer, then Host Customer agrees to bear the incremental costs associated with the restoration of the delivery of Output.

ARTICLE XIX INSURANCE

Section 19.1 System Owner's Insurance Throughout the Interim Term and Service Term of this Agreement, as applicable, System Owner or its contractors shall pay for and maintain in full force and effect all policies of insurance as provided in Exhibit I.

ARTICLE XX ASSIGNMENT

Section 20.1 Assignment by Host Customer. Host Customer may not assign this Agreement without the consent of System Owner.

Section 20.2 Assignment by System Owner. System Owner may not assign this Agreement without the consent of Host Customer; provided, however, that System Owner may, without the consent of Host Customer, collaterally assign its rights and obligations under this Agreement in connection with any financing of the System. Host Customer agrees to use commercially reasonable efforts to provide acknowledgements or consents requested by financing parties in conjunction with such financing.

ARTICLE XXI MISCELLANEOUS

Section 21.1 Disputes. Any dispute, controversy or claim (each, a “Dispute”) arising out of or relating to this Agreement or any breach or alleged breach hereof, upon the agreement of the Parties, first shall be submitted to mediation. Said mediation shall commence no later than 30 days after submission of the Dispute and shall be conducted at the locality where the Premises are situated and in accordance with the then prevailing rules of the Construction Industry Mediation Rules of the American Arbitration Association. In the event that the Dispute is not resolved pursuant to mediation or, in the event the Parties do not agree upon submission of the Dispute to mediation, each Party may pursue any rights and remedies as each may have, whether in law or at equity. Except to the extent that this Agreement expressly permits a party to suspend performance, pending final resolution of a Dispute, the Parties shall each proceed diligently and faithfully with performance of their respective obligations under this Agreement; provided, however, in no event shall System Owner be obligated to deliver Output in the event that Host Customer is in Default of its payment obligations to System Owner hereunder.

Section 21.2 Confidentiality.

Section 21.2.1 Host Customer is a municipal corporation subject to the California Freedom of Information Act and other laws, rules and policies affording members of the public certain rights to information about Host Customer’s business dealings. To the extent consistent with such laws, Host Customer agrees (i) to keep confidential the terms and conditions of this Agreement and its performance by both Parties, and (ii) not to disclose to any third parties the terms of this Agreement or costs incurred by either Party under this Agreement, without System Owner’s prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. Host Customer shall notify System Owner of any requests by any Person for such information. To the extent allowable by law, System Owner agrees to keep confidential all documents, utility bills, architectural and mechanical plans, and any other information provided to System Owner by Host Customer during the Service Term of this Agreement and thereafter.

Section 21.2.2 Notwithstanding anything to the contrary set forth herein or in any other agreement to which the Parties are parties or by which they are bound, the obligations of confidentiality contained herein and therein, as they relate to the transaction, shall not apply to the U.S. federal tax structure or U.S. federal tax treatment of the transaction, and each Party (and any employee, representative, or agent of any party hereto) may disclose to any and all persons, without limitation of any kind, the U.S. federal tax structure and U.S. federal tax treatment of the

transaction. The preceding sentence is intended to cause the transaction not to be treated as having been offered under conditions of confidentiality for purposes of Section 1.6011-4(b)(3) (or any successor provision) of the Treasury Regulations promulgated under Section 6011 of the Code and shall be construed in a manner consistent with such purpose. In addition, each Party acknowledges that it has no proprietary or exclusive rights to the tax structure of the transaction or any tax matter or tax idea related to the transaction.

Section 21.3 Notices and Changes of Address. All notices to be given by either Party to the other shall be in writing and must be either delivered or mailed by registered or certified mail, return receipt requested, or expresses overnight delivery service addressed as follows:

If to System Owner:

Fresno Solar, LLC
12970 Earhart Avenue
Suite 110
Auburn, CA 95602
Attention: CEO

If to Host Customer:

City of Fresno

Attention: _____

or such other addresses as either Party may hereinafter designate by notice to the other. Notices are deemed delivered or given and become effective upon mailing if mailed as aforesaid and upon actual receipt if otherwise delivered.

Section 21.4 Applicable Law and Jurisdiction. This Agreement is made and shall be interpreted and enforced in accordance with the laws of the State of California. Each of Host Customer and System Owner hereby consents and submits to the personal jurisdiction of the courts of the State of California.

Section 21.5 Complete Agreement. This Agreement, together with any documents expressly incorporated herein by reference, shall constitute the entire Agreement between both parties regarding the subject matter hereof and supersedes all prior agreements, understandings, representations, and statements, whether oral or written. There are no agreements, understandings, or covenants between the parties of any kind, expressed or implied, oral or otherwise pertaining to the rights and obligations set forth herein that have not been set forth in this Agreement.

Section 21.6 No Amendment. This Agreement may not be amended, modified or terminated except by a writing signed by the parties hereto.

Section 21.7 Energy Audit. Any energy audit that may be authored by System Owner(s) including any summaries, excerpts, and abstracts thereof (collectively, the “Energy Audit”), are used to show operational and consumption data and calculations and projections regarding savings, but do not reflect the savings guaranteed by System Owner; in the event of any conflict or contradiction between the Energy Audit and the provisions of this Agreement, the provisions of this Agreement shall govern.

Section 21.8 Further Documents. The Parties shall timely execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

Section 21.9 Severability. If any part of this Agreement is deemed to be unlawful, invalid, void or otherwise unenforceable, the rights and obligations of the Parties shall be reduced only to the extent required to remove the invalidity or unenforceability.

Section 21.10 Counterparts. This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement.

Section 21.11 Neutral Interpretation. The Parties acknowledge that this is a negotiated Agreement and, in the event of any dispute over its meaning or application, this Agreement shall be interpreted fairly and reasonably and neither more strongly for, nor more strongly against, either Party. Any headings or captions contained in this Agreement are for reference purposes only and are in no way to be construed to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

Section 21.12 No Waiver. The failure of a Party to enforce any term of this Agreement or a Party’s waiver of the nonperformance of a term by the other Party shall not be construed as a general waiver or amendment of that term, but the term shall remain in effect and enforceable in the future. This Agreement can be amended only by written agreement of the Parties.

Section 21.13 Survival. Any provisions necessary to give effect to the intent of the Parties hereunder after the termination of this Agreement shall survive the termination of this Agreement, including without limitation Section 21.1 (Disputes).

Section 21.14 Marketing. System Owner shall have the right to promote the installation and usage of the installed System through any means, including through press releases, case studies, published material, Internet websites and sales literature. Host Customer shall have the right to promote the installation of the System in accordance with the guidelines of the California Solar Initiative criteria; provided, however, that Host Customer agrees to provide System Owner the opportunity to review and edit all marketing materials regarding the System. Host Customer agrees to provide space within the Premises for an information kiosk, provided at System Owner’s expense, regarding the System; provided, however, that Host Customer shall have the right to review and approve the location and aesthetic qualities of such kiosk.

[Signature page follows]

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have each executed this Agreement, effective as of the date first above written.

CITY OF FRESNO
a Municipal Corporation

Fresno Solar, LLC
A Delaware Limited Liability Company

By:

By:

Name: Mark Scott
Title: City Manager

David W. Dwelle
David W. Dwelle
Authorized Signatory
Fresno Solar, LLC
12970 Earhart Avenue
Suite 110
Auburn, CA 95602
Phone: 530-887-1984
Fax: 530-887-1986

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: Haag Wu 2/6/12
Deputy

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By: [Signature] 2/6/12
Talía Kolluri-Barbick Date 1/23/12
Deputy

CITY:
City of Fresno

Phone: _____
Fax: _____

EXHIBIT A

System

The System plan is described in drawing:

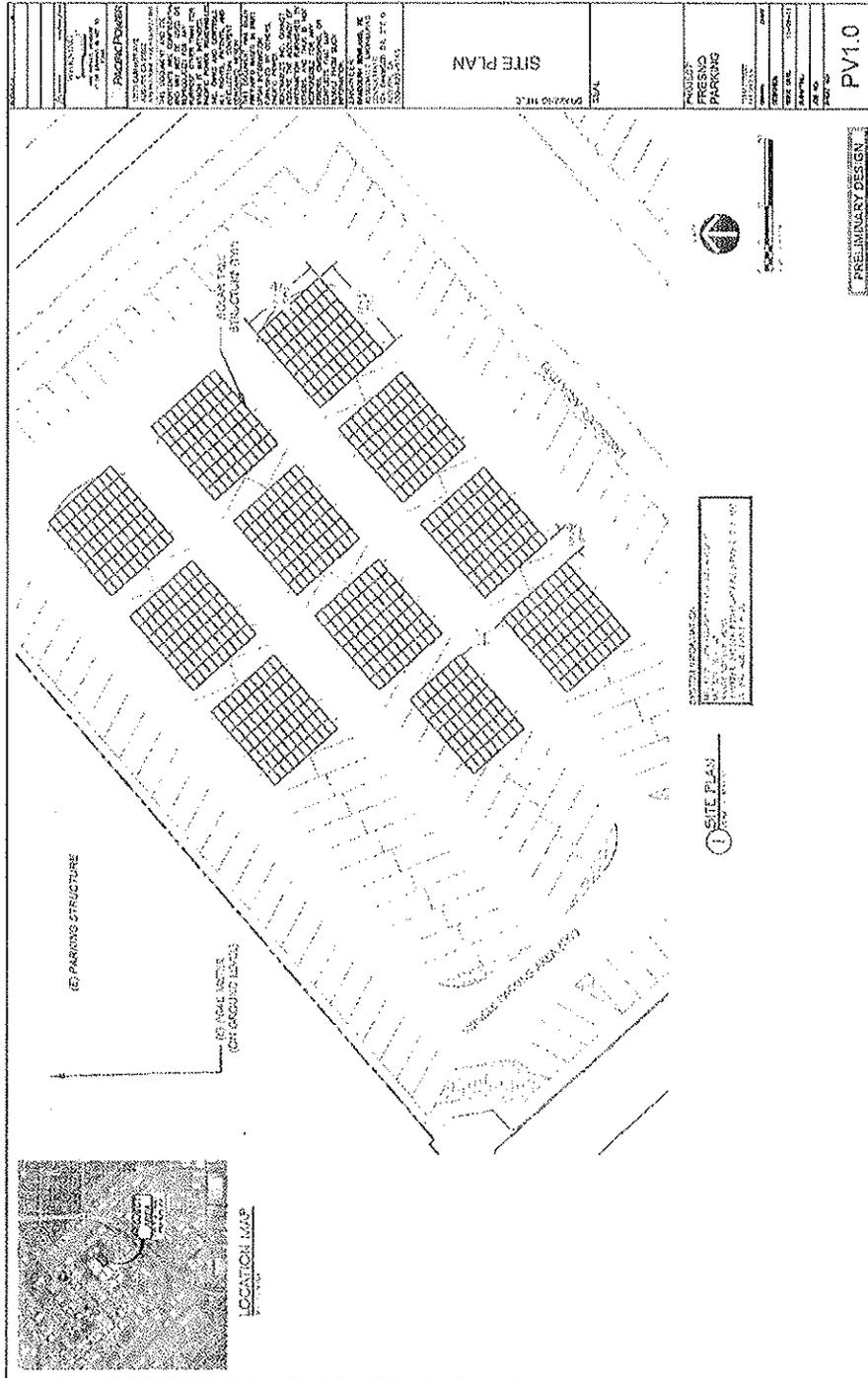


EXHIBIT B

Solar Electricity Price

For 20 years, System Owner will sell electricity production from solar electric power system at the following rates and under the terms and conditions listed in this agreement and this exhibit.

Year	PPA Rate
1	\$0.21344
2	\$0.21984
3	\$0.22644
4	\$0.23323
5	\$0.24023
6	\$0.24744
7	\$0.25486
8	\$0.26250
9	\$0.27038
10	\$0.27849
11	\$0.28685
12	\$0.29545
13	\$0.30431
14	\$0.31344
15	\$0.32285
16	\$0.33253
17	\$0.34251
18	\$0.35278
19	\$0.36337
20	\$0.37427

EXHIBIT C

Monthly Estimates

Estimated production of the system is predicted as follows, based on use of fixed tilt rooftop system. System Owner reserves the right to utilize any CEC approved PV module or technology.

Annual Production Estimates (Year 1)

Fixed Tilt PV Modules, 170 kWdc = 249.83 MWh/yr

Total annual kWh production per year is influenced in part on module technology and the available solar resource.

Customer:	City of Fresno - Parking Structure			System DC Size:	170,100
Location:	Fresno, CA			System AC Size:	146,676
Month	Monthly Insolation kWh/m ²	Average Daily Insolation kWh/m ²	Days per Month	Daily Avg. Temperature °C	Output MWh
January	57.7	1.9	31	8.2	8.37
February	89.3	3.2	28	10.4	13.08
March	145.8	4.7	31	13.0	20.70
April	196.1	6.5	30	16.9	26.52
May	227.8	7.3	31	21.7	29.24
June	245.3	8.2	30	25.7	30.43
July	242.9	7.8	31	28.6	29.88
August	227.6	7.3	31	27.1	28.73
September	171.8	5.7	30	24.1	22.70
October	135.1	4.4	31	19.8	18.90
November	81.9	2.7	30	11.3	12.34
December	59.5	1.9	31	7.6	8.94
Total Annual Energy Production					249.83

EXHIBIT D

[Deleted]

EXHIBIT E

Component Specifications

Component	Manufacturer	Model	Quantity
Solar Modules *	LG	LG225P1C-G2	756
Inverter *	Satcon	PVS-210-480	1
Carport Structures			11
Combiner Boxes			As Required
DC Disconnects			As Required

* System Owner reserves the right to change modules or inverters in type, quantity or mix, as long as the selected components meet CEC approval at time of commissioning.

EXHIBIT F
Request for Proposals

EXHIBIT G

System Owner's Proposal

EXHIBIT H

EARLY TERMINATION PAYMENT

Option A

This Agreement shall terminate and System Owner shall transfer title to the System to Host Customer free and clear of liens and encumbrances upon the payment by Host Customer of the Early Termination Payment set forth in the following table corresponding with the date on which such termination occurs plus all other amounts due and payable to the System Owner hereunder as of the termination date.

Year	Early Termination Payment
1	\$1,345,507
2	\$1,304,794
3	\$1,250,226
4	\$1,194,302
5	\$1,136,988
6	\$1,078,250
7	\$1,018,052
8	\$956,359
9	\$893,133
10	\$828,336
11	\$761,930
12	\$693,873
13	\$624,125
14	\$552,644
15	\$479,388
16	\$404,311
17	\$327,368
18	\$248,514
19	\$167,701
20	\$84,879

Termination of this Agreement, transfer of title and the payment of the Early Termination Payment shall take place not more than thirty (30) days following notice from System Owner to Host Customer of its election to exercise this Option A as provided in Section 15.4 of this Agreement. System Owner shall deliver to Host Customer all necessary and customary documents to effect the transfer of the System.

Option B

System Owner may terminate this Agreement and remove the System from the Host Customer's Premises, and the Host Customer shall pay the System Owner an Early Termination Payment equal to the sum of (1) loss of revenue and other economic benefits of the System that otherwise would have been earned under or in connection with this Agreement for the period from the date of the disconnection of the System from the BES to the start up of the System at an alternate location, less an amount equal to the variable operating costs that the System Owner would have incurred in such period, which period, for purposes of calculating the Early Termination Payment, shall not exceed ninety (90) days, and (2) all other amounts due and payable to the System Owner hereunder as of the date of termination. Termination of this Agreement, removal of the System and payment of the Early Termination Payment shall take place within sixty (60) days of written notice from System Owner. The System Owner shall thereafter promptly restore the Site to its condition prior to the construction and installation of the System.

EXHIBIT I

INSURANCE REQUIREMENTS

Minimum Scope of Insurance

Coverage shall be at least as broad as:

- 1 The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, and contractual liability.
- 2 The most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, which shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).
- 3 Workers' Compensation insurance as required by the California Labor Code and Employer's Liability Insurance.
- 4 Professional Liability (Errors and Omissions) insurance appropriate to SYSTEM OWNER'S profession. Architect's and engineer's coverage is to be endorsed to include contractual liability.

Minimum Limits of Insurance

SYSTEM OWNER shall maintain limits of liability of not less than:

1. General Liability:
\$1,000,000 per occurrence for bodily injury and property damage \$1,000,000 per occurrence for personal and advertising injury \$2,000,000 aggregate for products and completed operations \$2,000,000 general aggregate applying separately to the work performed under the Agreement
2. Automobile Liability:
\$1,000,000 per accident for bodily injury and property damage
3. Employer's Liability:
\$1,000,000 each accident for bodily injury
\$1,000,000 disease each employee
\$1,000,000 disease policy limit
4. Professional Liability (Errors and Omissions)
\$1,000,000 per claim/occurrence
\$2,000,000 policy aggregate

Umbrella or Excess Insurance

In the event SYSTEM OWNER purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Deductibles and Self-Insured Retentions

SYSTEM OWNER shall be responsible for payment of any deductibles contained in any insurance policy(ies) required hereunder and SYSTEM OWNER shall also be responsible for payment of any self-

insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the HOST CUSTOMER'S Risk Manager or his/her designee. At the option of the HOST CUSTOMER'S Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects HOST CUSTOMER, its officers, officials, employees, agents and volunteers; or (ii) SYSTEM OWNER shall provide a financial guarantee, satisfactory to HOST CUSTOMER'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall HOST CUSTOMER be responsible for the payment of any deductibles or self-insured retentions.

Other Insurance Provisions

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

- 1 HOST CUSTOMER, its officers, officials, employees, agents and volunteers are to be covered as additional insureds.
- 2 The coverage shall contain no special limitations on the scope of protection afforded to HOST CUSTOMER, its officers, officials, employees, agents and volunteers.
- 3 SYSTEM OWNER'S insurance coverage shall be primary and no contribution shall be required of HOST CUSTOMER.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: SYSTEM OWNER and its insurer shall waive any right of subrogation against HOST CUSTOMER, its officers, officials, employees, agents and volunteers.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

- 1 The "Retro Date" must be shown, and must be before the effective date of the Agreement or the commencement of work by SYSTEM OWNER.
 2. Insurance must be maintained and evidence of insurance must be provided for at least 5 years after any expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a 5-year discovery period. This requirement shall survive expiration or termination of the Agreement.
- 2 If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of the Agreement, SYSTEM OWNER must purchase "extended reporting" coverage for a minimum of 5 years following the expiration or termination of the Agreement.
- 3 A copy of the claims reporting requirements must be submitted to HOST CUSTOMER for review.
- 4 These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to HOST CUSTOMER. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, SYSTEM OWNER shall furnish HOST CUSTOMER with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for HOST CUSTOMER, SYSTEM OWNER shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

Acceptability of Insurers

All policies of insurance required hereunder shall be placed with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or authorized by HOST CUSTOMER'S Risk Manager.

Verification of Coverage

SYSTEM OWNER shall furnish HOST CUSTOMER with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the HOST CUSTOMER'S Risk Manager or his/her designee prior to HOST CUSTOMER'S execution of the Agreement and before work commences.

City of **FRESNO** REPORT TO THE CITY COUNCIL

AGENDA ITEM NO.	9:15am #1C
COUNCIL MEETING:	11/18/2010
APPROVED BY	
DEPARTMENT DIRECTOR	<i>John M. Dugan</i>
CITY MANAGER	<i>Bob Hall</i>

November 18, 2010

FROM: JOHN M. DUGAN, Director
Development and Resource Management Department

THROUGH: KEITH BERGTHOLD, Assistant Director *KAB*
Development and Resource Management Department

BY: JOSEPH W. OLDHAM, Sustainability Manager *JWO*
Sustainable Fresno Division, Development and Resource Management Department

SUBJECT: AUTHORIZE PRIVATE SOLAR PHOTOVOLTAIC PROJECT AT CITY CONVENTION CENTER

1. ADOPT CEQA CATEGORICAL EXEMPTION PURSUANT TO GUIDELINES ARTICLE 19, SECTION 15301/CLASS 1 (EXISTING FACILITIES), SECTION 15329/CLASS 29 (COGENERATION PROJECTS AT EXISTING FACILITIES) AND SECTION 15332/CLASS 32 (INFILL DEVELOPMENT PROJECTS), TO AUTHORIZE DEVELOPMENT AND OPERATION OF A PRIVATE SOLAR PHOTOVOLTAIC PROJECT AT THE FRESNO CONVENTION CENTER
2. AUTHORIZE PACIFIC POWER RENEWABLES OF AUBURN, CA, TO DEVELOP AND OPERATE A PRIVATE SOLAR PHOTOVOLTAIC PROJECT AT THE FRESNO CONVENTION CENTER AND CITY'S PURCHASE OF POWER GENERATED AND ALL ACTIONS NECESSARY THERETO, AND AUTHORIZE THE DIRECTOR OF THE DEVELOPMENT AND RESOURCE MANAGEMENT DEPARTMENT TO EXECUTE DOCUMENTS, SUBJECT TO CITY ATTORNEY APPROVAL TO FORM -RFP BID FILE 3023

RECOMMENDATIONS

Staff recommends that the City Council authorize a private solar photovoltaic project at the City Convention Center and:

1. Adopt CEQA categorical exemption pursuant to guidelines Article 19, Section 15301/Class 1 (Existing Facilities), Section 15329/Class 29 (Cogeneration Projects at Existing Facilities) and Section 15332/Class 32 (Infill Development Projects), to authorize development and operation of a private solar photovoltaic project at the Fresno Convention Center, and
2. Authorize Pacific Power Renewables of Auburn, CA, to develop and operate a private solar photovoltaic project at the Fresno Convention Center and city's purchase of power generated and all actions necessary thereto, and authorize the Director of the Development and Resource Management Department to execute documents, subject to City Attorney approval as to form.

Presented to City Council
Date 11/18/10
Disposition Rec. approved

REPORT TO THE CITY COUNCIL

Authorize solar PPA at Fresno Convention Center

Nov. 18, 2010

Page 2

EXECUTIVE SUMMARY

The Sustainable Fresno Division of the Development and Resource Management Department has been working in collaboration with the General Services Department to deploy more renewable energy in the form of solar photovoltaic systems on city-owned facilities since July, 2009. The focus of these efforts has been on using a Power Purchase Agreement (PPA) type of contract where the city does not purchase or own the systems, but only agrees to purchase the power from the arrays on an annual fixed price per kilowatt hour (kwh) basis over a period of typically 20 years. All up-front and on-going costs for construction and maintenance of the arrays are born by the solar power provider; not by the City of Fresno. The PPA type of solar deployment was first successfully used by the City of Fresno in 2007 at Fresno Yosemite International Airport with installation of over 2 megawatts of solar power on Airport property and the Airport's agreement to purchase the power from those arrays over 20 years.

The Sustainable Fresno Division analyzed the energy usage for all city-owned facilities using 2008 and 2009 meter data from PG&E. A list of twenty-four (24) sites was chosen for a Request for Proposal (RFP) based on the cost per kilowatt hour paid by the city for those specific sites in those years and information from solar providers as to the potential for solar power to compete favorably with current city costs.

The RFP was advertised on August 9, 2010 and five (5) proposals received and opened at a public bid opening on September 9, 2010. A review committee made up of representatives from the Police Department, Fire Department, Finance Department, Pacific Gas and Electric Company, a private energy consultant, and the Sustainable Fresno Division was established to evaluate the proposals. After a comprehensive review, the evaluation committee determined that the proposal from Pacific Power Renewables of Auburn, CA, for a 797 kW solar array on the roof of Selland Arena, a 201 kW solar array mounted on carport structures in the parking lot of Selland Arena, a 298 kW roof mounted solar array on Valdez Hall, and a 499 kW solar array mounted on carport structures in the parking lot of Valdez Hall, represented the best immediate value for the City of Fresno. The proposal offers an immediate savings of 10% on the 1,976,000 kwh of electricity annually generated from the roof mounted systems on Selland Arena and Valdez Hall compared to current city costs from PG&E. The parking structure mounted arrays offer an immediate 5% savings for the 1,228,000 kwh of electricity generated annually compared to current city cost from PG&E. In addition to the direct electricity cost savings, the proposal also offers a 2% savings in escalation costs compared to historic rate increases from PG&E. The total annual savings for the project is \$42,642.

Staff has determined that the proposed project at the Convention Center is categorically exempt from CEQA pursuant to guidelines Article 19, Section 15301/Class 1 (Existing Facilities), Section 15329/Class 29 (Cogeneration Projects at Existing Facilities) and Section 15332/Class 32 (Infill Development Projects).

Staff recommends the City Council authorize Pacific Power Renewables of Auburn, CA, to develop and operate a private solar photovoltaic project at the Fresno Convention Center and city's purchase of power generated and all actions necessary thereto, and authorize the Director of the Development and Resource Management Department to execute documents, subject to City Attorney approval as to form.

REPORT TO THE CITY COUNCIL

Authorize solar PPA at Fresno Convention Center

Nov. 18, 2010

Page 3

BACKGROUND

The Sustainable Fresno Division of the Development and Resource Management Department has been working in collaboration with the General Services Department to deploy more renewable energy in the form of solar photovoltaic systems on city-owned facilities since July, 2009. The focus of these efforts has been on using a Power Purchase Agreement type of contract where the city does not purchase or own the systems, but only agrees to purchase the power from the arrays on an annual fixed price per kilowatt hour (kwh) basis over a period of typically 20 years. All up-front and on-going costs for construction and maintenance of the arrays are born by the solar power provider; not by the City of Fresno. The PPA type of solar deployment was first successfully used by the City of Fresno in 2007 at Fresno Yosemite International Airport with installation of over 2 megawatts of solar power on Airport property and the Airport's agreement to purchase the power from those arrays over 20 years.

To determine the city-owned facility locations where a Power Purchase Agreement type of solar deployment would be successful, the Sustainable Fresno Division analyzed the energy usage for all city-owned facilities using 2008 and 2009 meter data from PG&E. A list of twenty-four (24) sites was chosen for a Request for Proposal (RFP) based on the cost per kilowatt hour paid by the city for those specific sites in those years and information from solar providers as to the potential for solar power to compete favorably with current city costs. The primary sites identified were the Convention Center, City Hall Annex, Regional Sports Complex, Police Headquarters, the compressed natural gas (CNG) fueling station operated by Fresno Area Express (FAX), fifteen (15) fire stations, and three (3) police substations. Emphasis was placed on top energy users and locations that received funding through the General Fund to potentially help those department's budgets. City Hall was also considered, but the unusual roof angle and lack of clear space in the parking lots made it unsuitable.

The RFP was advertised in the Fresno Business Journal on August 9, 2010. Specifications were downloaded by seventy-eight (78) interested parties through the City of Fresno Bids On-Line system. Five (5) proposals were received and opened at a public bid opening on September 9, 2010. A review committee made up of representatives from the Police Department, Fire Department, Finance Department, Pacific Gas and Electric Company, a private energy consultant, and the Sustainable Fresno Division was established to evaluate the proposals. The specifications allowed for the possibility of multiple awards and concurrent negotiations. The evaluation committee determined that three of the five proposals were non-responsive either through exceptions taken to city insurance and indemnification requirements or failure to supply information required in the RFP. After a comprehensive review of the remaining two proposals, which included reference checks and interviews with proposal teams from both companies, the evaluation committee determined that the proposal from Pacific Power Renewables of Auburn, CA, for a 797 kW solar array on the roof of Selland Arena, a 201 kW solar array mounted on carports structures in the parking lot of Selland Arena, a 298 kW roof mounted solar array on Valdez Hall, and a 499 kW solar array mounted on carport structures in the parking lot of Valdez Hall, represented the best immediate value for the City of Fresno. The evaluation committee also recommended the proposal from Pacific Power Renewables for a 442 kW solar array that would provide 100% of the power for the Regional Sports Complex, but this proposal will require further environmental review before it could be potentially be brought forward to Council for consideration. The evaluation committee also considered the proposals from EcoPlexus for the FAX CNG fueling station, City Hall Annex, and Fire Station 19 worth further investigation and negotiation is underway on those sites.

REPORT TO THE CITY COUNCIL

Authorize solar PPA at Fresno Convention Center

Nov. 18, 2010

Page 4

The proposed arrays at the Convention Center equal over 1.7 megawatts of added solar generation for the city and would reduce annual carbon emissions by 932 metric tons.

The economic benefit to the city from the proposal is an immediate cost savings of 10% on the 1,976,000 kwh of electricity annually generated from the roof mounted systems on Selland Arena and Valdez Hall compared to current city costs from PG&E. The parking structure mounted arrays offer an immediate 5% cost savings for the 1,228,000 kwh of electricity generated annually compared to current city cost from PG&E. This is a direct annual cost savings of \$33,642 in electricity for the Convention Center. In addition to the direct savings the proposal also offers a 2% savings in escalation costs compared to historic rate increases from PG&E. This savings is equal to an additional \$9,000 per year for a total annual cost savings of \$42,642. 2009 electricity cost for the Convention Center locations was \$947,822.

Staff has determined that the proposed project at the Convention Center is categorically exempt from CEQA pursuant to guidelines Article 19, Section 15301/Class 1 (Existing Facilities), Section 15329/Class 29 (Cogeneration Projects at Existing Facilities) and Section 15332/Class 32 (Infill Development Projects), and recommends authorizing Pacific Power Renewables of Auburn, CA, to develop and operate a private solar photovoltaic project at the Fresno Convention Center and city's purchase of power generated and all actions necessary thereto, and authorize the Director of the Development and Resource Management Department to execute documents, subject to City Attorney approval as to form..

FISCAL IMPACT

All costs for preparation of this RFP including research, data collection, and bid processing are paid for through funding from the U.S. Department of Energy, Energy Efficiency and Conservation Block Grant program. All costs associated with engineering, permitting, construction, and maintenance for the solar power arrays at the Convention Center are born by the solar provider. The City of Fresno has no costs associated with this project other than the agreement to purchase the power produced by the systems. There is no impact to the General Fund from this project.

ATTACHMENTS

- RFP List of Proposers
- Report from Evaluation Committee for RFP # 3023
- Comparison of Solar RFP Pricing: Bid File 3023
- Environmental Assessment

LISTING OF PROPOSERS

FOR: REQUEST FOR PROPOSALS FOR SOLAR PHOTOVOLTAIC GENERATING SYSTEM(S)

RFP No. 3023
RFP Opening: 09/09/2010

PROPOSER=S (In alphabetical order)	TOTAL PROPOSAL AMOUNT
1. EcoPlexus 101 Townsend Street – Ste. 312 San Francisco, CA 94107	
Convention Center, 700 M Street	N/B
Convention Center, 707 O Street	\$.17 per kwh
City Hall Annex, 2326 Fresno St.	\$.16 per kwh
Regional Sports Complex, 1707 W. Jensen Ave.	\$.15 per kwh
CNG Pumps, 2223 G Street	\$.18 per kwh
Fire Station #19, 3187 W. Belmont Ave.	\$.18 per kwh
2. Pacific Power Renewables 12970 Earhart Ave. Auburn, CA 95602	
Convention Center, 700 M Street	\$.129 per kwh
Convention Center, 707 O Street	\$.134 per kwh
City Hall Annex, 2326 Fresno St.	N/B
Regional Sports Complex, 1707 W. Jensen Ave.	\$.144 per kwh
CNG Pumps, 2223 G Street	N/B
Fire Station #19, 3187 W. Belmont Ave.	N/B
3. Solar City (Non-responsive) 393 Vintage Park Drive, Suite 140 Foster City, CA 94404	
Convention Center, 700 M Street	N/B
Convention Center, 707 O Street	\$.16 per kwh
City Hall Annex, 2326 Fresno St.	\$.22 per kwh
Regional Sports Complex, 1707 W. Jensen Ave.	\$.18 per kwh
CNG Pumps, 2223 G Street	\$.19 per kwh
Fire Station #19, 3187 W. Belmont Ave.	\$.27 per kwh
4. 510 Nano (Non-responsive) 1101 30 th Street, NW, Suite 510 Washington, CD 20007	
Convention Center, 700 M Street	\$.156 per kwh
Convention Center, 707 O Street	\$.156 per kwh
City Hall Annex, 2326 Fresno St.	\$.156 per kwh
Regional Sports Complex, 1707 W. Jensen Ave.	\$.156 per kwh
CNG Pumps, 2223 G Street	\$.156 per kwh
Fire Station #19, 3187 W. Belmont Ave.	\$.156 per kwh

LISTING OF PROPOSERS

FOR: REQUEST FOR PROPOSALS FOR SOLAR PHOTOVOLTAIC GENERATING SYSTEM(S)

RFP No. 3023
RFP Opening: 09/09/2010

5. SunEdison (**Non-responsive**)
12500 Baltimore Ave.
Beltsville, MD 20705

Convention Center, 700 M Street	N/B
Convention Center, 707 O Street	\$.17 per kwh
City Hall Annex, 2326 Fresno St.	N/B
Regional Sports Complex, 1707 W. Jensen Ave.	N/B
CNG Pumps, 2223 G Street	N/B
Fire Station #19, 3187 W. Belmont Ave.	N/B

Each proposer has agreed to allow the City one hundred twenty (120) days from date proposals were opened to accept or reject their proposal.

DEPARTMENT CONCLUSIONS AND RECOMMENDATION:

Award a Power Purchase Agreement contract to Pacific Power Renewables for the specific sites listed below in accordance with the Selection Committee recommendation (see attached RFP Evaluation Committee Report).

Reject all proposals. Reason:

Remarks: The award of a Power Purchase Agreement contract to Pacific Power Renewables is recommended for the following specific site locations:

Convention Center, 700 M Street
Convention Center 707 O Street
Regional Sport Complex, 1707 W. Jensen Ave.

**REPORT FROM EVALUATION COMMITTEE
REQUEST FOR PROPOSAL FOR
SOLAR PHOTOVOLTAIC GENERATING SYSTEM(S)**

COMMITTEE MEMBERS:

Rene Watahira, Police Department Administrative Manager
Phillip Hardcastle, Finance Department Principal Accountant
Keith Sipe, Fire Department Project Manager
Robert Riding, PG&E Community Energy Manager
John Richau, Energy Consultant
Joseph Oldham, Sustainability Manager

Jason MacDonald Purchasing Manager City of Fresno, General Services Dept. Purchasing Facilitator

BACKGROUND:

The goal of this Request for Proposal (RFP) was to solicit proposals to provide cost-effective solar power for city-owned facilities using a Power Purchase Agreement (PPA) with a fixed price per kilowatt hour (kwh) of power from the arrays that is less than current city costs and where the cost escalation from the solar power provider is less than average cost increases from PG&E. Twenty-four (24) sites were selected for potential solar power based on energy usage data from PG&E and cost per kilowatt hour for power from 2008 and 2009. The sites were primarily General Fund facilities such as fire stations, police stations, parking facilities, but also included were the Convention Center and the Regional Sports Complex. Detailed energy usage data and site layout information was provided to all proposers. One hundred six (106) sets of specifications for the project were downloaded from Bids On-line with five (5) proposals submitted for review and evaluation on September 9, 2010.

EVALUATION BY COMMITTEE:

EcoPlexus:

This proposer conformed to all the RFP requirements and offered proposals for twenty-three (23) of the twenty-four (24) sites listed in the specifications. However, after comparing their cost proposals against the current city cost for power at the sites, only three (3) locations appeared to be potential candidates for implementation. The review committee recommended that further discussion and negotiation be done with EcoPlexus regarding the three (3) potential cost-effective sites. The sites for continued negotiation are the compressed natural gas (CNG) fueling station operated by Fresno Area Express, the City Hall Annex, and Fire Station 19. An interview with EcoPlexus staff revealed that they did not fully understand how the current solar power at the Fresno Area Express facility is used and city staff requested they reexamine their proposal for that site in light of the information from the interview. It is possible that once that re-examination is completed and a revised proposal submitted, staff will be bringing forward a second award recommendation to the City Council. The references were checked and the response ranged from satisfactory to excellent.

Pacific Power Renewables.

This proposer conformed to all the RFP requirements and offered proposals for three (3) sites, the Regional Sports Complex; Selland Arena and Valdez Hall at the Convention Center; and the parking lots for Selland Arena and Valdez Hall at the Convention Center. The proposal for the Regional Sports Complex consisted of ground-mounted arrays totaling 442 kW that offered an immediate 10% savings in energy cost as compared with current city costs for the site which is currently equal to \$16,000 per year. The proposal for the building mounted arrays on Selland Arena and Valdez Hall at the Convention Center offer an immediate 10% savings over the current cost of power for the facility from PG&E. The proposal

Report from Evaluation Committee
RFP No. 3023, Solar Photovoltaic Generating System(s)

for the parking structure mounted arrays in the parking lots of the Convention Center offer an immediate 5% savings over current city costs for the equivalent power from PG&E. The cost escalation factor for all the proposed sites from Pacific Power Renewables is 2% less than average rate increases from PG&E. The references were checked and the responses ranged from good to excellent.

Solar City

This proposer took exception to the City of Fresno insurance and indemnification requirements in the specifications in the RFP and the committee determined them to be non-responsive.

SunEdison Government Solutions, LLC

This proposer took exception to the City of Fresno insurance and indemnification requirements in the specifications in the RFP and the committee determined them to be non-responsive.

510Nano, Inc.

This proposer did not conform to the specifications in the RFP and the committee determined them to be non-responsive, because they failed to provide any technical details of the systems they proposed to install for any of the sites listed as required in Section 2.0 of the specifications.

RECOMMENDATION

1. The Committee recommends entering into a Power Purchase Agreement with Pacific Power Renewables for the purchase of solar power from arrays located at the Regional Sports Complex, mounted on the roofs of Selland Arena and Valdez Hall at the Convention Center, and parking structure mounted arrays in the parking lots of the Convention Center based on the goals of the RFP and the proposal from Pacific Power Renewables resulting in immediate cost savings for the City of Fresno at those locations.

See attached

Summary of Information Cost per KWH for Sites Submitted by Proposers

Comparison Solar RFP Pricing Bid File 3023

Site Address	Eco Plexus	SolarCity (NR)	SunEdison (NR)	Pac Power	510Nano (NR)	Current City Cost
CNG Pump (FAX) 2223 G Street	\$0.18	\$0.19	NB	NB	\$0.156	\$0.175
Conv. Ctr. 700 M Street	NB	NB	NB	\$0.129	\$0.156	\$0.143
Con. Ctr. 707 O Street	\$0.17	\$0.16	\$0.17	\$0.134	\$0.156	\$0.141
City Hall Annex 2326 Fresno St.	\$0.16	\$0.22	NB	NB	\$0.156	\$0.148
Reg. Sports Ctr 1707 W. Jensen Ave.	\$0.15	\$0.18	NB	\$0.144	\$0.156	\$0.160
Fire Stn #1 1264 N. Jackson Ave.	\$0.18	\$0.23	NB	NB	\$0.156	\$0.153
Fire Stn #2 7114 N. West Ave.	\$0.18	\$0.22	NB	NB	\$0.156	\$0.149
Fire Stn #3 1420 Fresno St.	\$0.18	\$0.22	NB	NB	\$0.156	\$0.147
Fire Stn #4 3065 E. Iowa Ave.	\$0.18	\$0.19	NB	NB	\$0.156	\$0.158
Fire Stn #5 3131 N. Fresno St.	\$0.18	\$0.21	NB	NB	\$0.156	\$0.163
Fires Stn #6 4343 E. Gettysburg Ave.	\$0.18	\$0.23	NB	NB	\$0.156	\$0.159
Fires Stn #7 2571 S. Cherry Ave.	\$0.18	\$0.19	NB	NB	\$0.156	\$0.160
Fires Stn #10 5545 E. Aircorp Way	\$0.18	\$0.22	NB	NB	\$0.156	\$0.157
Fires Stn #11 5544 N. Fresno St.	\$0.18	\$0.21	NB	NB	\$0.156	\$0.152
Fires Stn #13 815 E. Nees Ave.	\$0.18	\$0.26	NB	NB	\$0.156	\$0.162
Fires Stn #14 6239 N. Polk Ave.	\$0.18	\$0.22	NB	NB	\$0.156	\$0.157
Fires Stn #15 5630 E. Park Circle Dr.	\$0.18	\$0.23	NB	NB	\$0.156	\$0.157
Fires Stn #16 4170 N. Brix Ave.	\$0.18	\$0.31	NB	NB	\$0.156	\$0.157
Fire Stn #19 3187 W. Belmont Ave.	\$0.18	\$0.27	\$0.16	NB	\$0.156	\$0.179
Fire Stn #21 10512 N. Maple Ave.	\$0.18	\$0.22	NB	NB	\$0.156	\$0.160
Police Stn 1211 Fresno St.	\$0.18	\$0.21	NB	NB	\$0.156	\$0.163
Police Stn 940 N. Broadway St.	\$0.18	\$0.24	NB	NB	\$0.156	\$0.140
Police Stn 1617 S. Cedar Ave.	\$0.18	\$0.22	NB	NB	\$0.156	\$0.156
PD Headqtrs 2323 Mariposa Mall	NB	\$0.17	\$0.16	NB	\$0.156	\$0.127
ANNUAL ESCALATOR	3%	3.90%	3.00%	2.50%	0.00%	4.50%

CITY OF FRESNO
CATEGORICAL EXEMPTION
ENVIRONMENTAL ASSESSMENT NO. EA-10-133

THE PROJECT DESCRIBED HEREIN IS DETERMINED TO BE CATEGORICALLY
EXEMPT FROM THE PREPARATION OF ENVIRONMENTAL DOCUMENTS
PURSUANT TO ARTICLE 19 OF THE STATE CEQA GUIDELINES.

APPLICANT: Joseph Oldham
City of Fresno
Development and Resource Management Department
2600 Fresno Street, Third Floor
Fresno, CA 93721

PROJECT LOCATION: 700 'M' Street; Located at the City of Fresno Convention Center between 'M' and 'O' Streets, south of Inyo Street (APN: 468-400-01T)

PROJECT DESCRIPTION: Authorize Pacific Power Renewables of Auburn, CA, to develop and operate a private solar photovoltaic project at the Fresno Convention Center.

This project is exempt under Sections 15301/Class 1, 15329/Class 29, and 15332/Class 32 of the State of California CEQA Guidelines.

EXPLANATION:

A Class 1 exemption consists of, among other things, the addition to existing facilities, a Class 29 exemption consists of cogeneration projects at existing facilities, and a Class 32 exemption consists of projects characterized as in-fill development meeting the following conditions; (a) the project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations, (b) the proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses, (c) the project site has no value, as habitat for endangered, rare or threatened species, (d) approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality, and (e) the site can be adequately served by all required utilities and public services.

The above described project consists of the addition of a solar photovoltaic system at the Fresno Convention Center. The project involves the cogeneration of projects at the existing facility. The above described project is consistent with the 2025 Fresno General Plan and the Central Area Community Plan without negatively impacting the characteristics of the area and complies with all conditions described in Sections 15332/Class 32, 15329/Class 29, and 15301/Class 1 of the CEQA Guidelines. No adverse environmental impacts will occur as a result of the proposed project. Staff had determined that none of the exceptions as set forth in Section 15300.2 of the CEQA Guidelines apply to the project.

No adverse environmental impacts will occur as a result of the proposed project.

Date: November 8, 2010

Submitted By:



Kevin Fabino, Planning Manager
City of Fresno
Development and Resource Management Department
(559) 621-8277

THE BUSINESS JOURNAL

FRESNO | KINGS | MADERA | TULARE
P.O. Box 126
Fresno, CA 93707
Telephone (559) 490-3400

(Space Below for use of County Clerk only)

IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA

NOTICE INVITING PROPOSALS AND SPECIFICATIONS
REQUEST FOR PROPOSALS FOR:

SOLAR PHOTOVOLTAIC GENERATING SYSTEM

BID FILE 3023

DEADLINE FOR PROPOSALS:

AUGUST 29, 2010, at 3:00 P.M.

DECLARATION OF PUBLICATION (2015.5 C.C.P.)

MISC. NOTICE

NOTICE INVITING PROPOSALS AND SPECIFICATIONS BID FILE 3023

Scaled proposals will be received at the office of the City of Fresno, General Services Department, Purchasing / Administration, 2101 G Street, Building A, Fresno, CA 93706, all in accordance with the Specifications for:

REQUEST FOR PROPOSALS FOR SOLAR PHOTOVOLTAIC GENERATING SYSTEM

The City of Fresno, California ("City") is soliciting proposals for a proposer designed, constructed, owned and operated solar photovoltaic generating system to be located on City property as detailed in Exhibit A under a ground lease or license use arrangement where under City will purchase power generated at a fixed price (collectively the "Project"). It is anticipated that all incentive credits from the California Solar Initiative (CSI), and / or Federal tax credits, and / or any other financing options will be applied toward proposer's installation of the electric generation facility.

Upon request the City will mail or email the proposal to interested proposers. Please contact Joseph Oldham at (559) 621-8179 or Jason MacDonald at (559) 621-1332 or the proposal is available on the City of Fresno web site (www.fresno.gov) under the Government tab, pull down menu for Department Directory, then go to General Services/Purchasing and bid opportunities is located in the highlighted blue text on the left column.

No questions or inquiries should be directed to any individual(s) at the locations detailed in this attached document. All inquiries should be submitted in writing per the process below.

A pre-proposal meeting and site visit is scheduled for 10:00 AM Tuesday, August 17, 2010 at General Services Department, Administration Office (Purchasing Conference Room) (2101 G Street Building A, Fresno, CA 93706). This is intended to include an escorted site visit to the locations in consideration. An alternate meeting if needed has been scheduled for August 19, 2010. The purpose of the pre-proposal meeting will be to discuss any questions interested proposers may have regarding the RFP. Interested proposers are strongly encouraged to attend this meeting. **Questions and suggestions concerning the RFP must be submitted in writing no later than 5:00 P.M. Friday August 20,**

2010. Written questions or inquires should be mailed or faxed to:

Joseph Oldham
City of Fresno
Planning and Development Department,
Sustainable Fresno Division
2600 Fresno Street, Room 3065
Fresno, CA 93721
FAX No. 559-498-1012

In accordance with the American's with Disabilities Act, all persons who are disabled and who need special accommodations to participate in any proceeding because of that disability should contact Christie Kelley at 559-621-1000 or by email at christie.kelley@fresno.gov in the City's General Services Department no later than five (5) business days prior to the proceeding.

Six (6) copies of the proposal submittals are due by 3:00 PM on Thursday, August 29, 2010 at which time they will be publicly opened and recorded.

Proposals including all written, video, or other information that proposer desires to provide to City shall be submitted to:

Jason MacDonald
Purchasing Manager
City of Fresno
General Services Department, Purchasing
Division
2101 G Street, Building A
Fresno, CA 93706

The Planning and Development Department hereby notifies all proposers that no person shall be excluded from participation in, denied any benefits of, or otherwise discriminated against in connection with the award and performance of any contract on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation or on any other basis prohibited by law.

Each proposer shall carefully examine each and every term of this Request for Proposal; and each proposer shall judge all the circumstances and conditions affecting his/her proposal. Failure on the part of any proposer to make such examination and to investigate thoroughly shall not be grounds for any declaration that the proposer did not understand the conditions of this Request for Proposal.

The proposer shall comply with any and all federal, state or local laws, now in effect or hereafter promulgated, which apply to the Project herein specified including without limitation as to any applicable prevailing or public wage.

STATE OF CALIFORNIA

COUNTY OF FRESNO

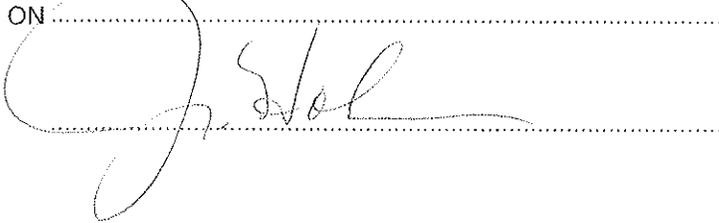
I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or intrested in the above entitled matter. I am the principal clerk of **THE BUSINESS JOURNAL** published in the city of Fresno, County of Fresno, State of California, Monday, Wednesday, Friday, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Fresno, State of California, under the date of March 4, 1911, in Action No.14315; that the notice of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

AUGUST 9, 2010

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Fresno, California,

AUGUST 9, 2010

ON



This solicitation for proposals does not commit the City of Fresno to enter into an agreement to pay any costs incurred in the preparation of responses to the request. The City of Fresno reserves the right to accept or reject any proposals, and to negotiate with any qualified source, or to cancel in part or in its entirety this Request for Proposals. It may accept the proposal that it considers to be in the interest of the City of Fresno, with or without negotiation. The City reserves the right to waive any informality or minor irregularity when it is in the best interest of the City to do so, to negotiate for the modification of any proposal with mutual consent of the proposer, to re-advertise for proposals if desired, and to accept the proposal which in the judgment of the City, even though it does not offer the lowest cost, is nevertheless deemed to offer the best value for the public and City. Any proposal which is incomplete, conditional, obscure, or which contains irregularities of any kind, may be cause for rejection.

The proposals received shall become the property of the City of Fresno and are subject to public disclosure. Those parts of a proposal which are defined by the proposer as business or trade secrets as that term is defined in California Evidence Code, Section 3426.1, and are reasonably marked Trade Secrets, Confidential, or Proprietary and placed in a separate envelope shall only be disclosed to the public if such disclosure is required or permitted under the California Public Records Act or otherwise by law. Proposers who indiscriminately and without justification identify most or all of their proposal as exempt from disclosure may be deemed non-responsive. Proposals, excluding confidential information, will be available for review after posting of staff recommendation.

Proposals shall be received as set forth in the Advertisement. Proposals received after the scheduled time for opening will be returned to the proposer unopened. The opening of any proposal shall **NOT** be considered as acceptance of the Proposal as a responsive Proposal.

Proposals may be withdrawn at any time prior to the time set in the Advertisement or in subsequent Addenda, for opening of proposals. No proposer shall be permitted to withdraw its proposal after the time specified in the Advertisement or subsequent Addenda for the opening of proposals, unless selection of successful proposers is delayed by inaction of the City for one hundred twenty (120) days after the opening of proposals.

Proposals which contain any alteration, addition, condition, limitation or show irregularity of any kind, may be rejected by the City as non-responsive or irregular. The City reserves the right to waive any irregularities, technicalities or informalities in any proposal, and to reject any or all proposals.

The City reserves the right to issue supplemental instructions or modifications to this Request for Proposals including the Exhibits thereto, which, if issued, will be in the form of addenda, and will be hand delivered or sent by certified mail or facsimile to all prospective proposers of record as of the date of issuance of such addenda, at the address furnished by each prospective proposer.

The City makes a concentrated effort to ensure any addenda issued relating to this RFP/these Specifications are distributed to all interested parties. It shall be the proposer's responsibility to inquire as to whether any addenda to the RFP/these Specifications have been issued. Upon issuance by the City, all addenda are part of the proposal. Signing the proposal on the signature page thereof shall also constitute signature on all addenda.

The undersigned proposer agrees that the City may have one hundred twenty (120) days from the date proposals are opened to accept or reject proposals. It is further understood that, if the proposer to whom any award is made fails to enter into Project documents as provided in the RFP/these Specifications, award may be made to another proposer, who shall be bound to perform as if she/he had received the award in the first instance.

08/09/2010