

## **Attachment 2**

### **AGREEMENT FOR COOPERATIVE PURCHASING OF SOLAR POWER**

This agreement (“Agreement”) is effective September 15, 2011 by and among the following California jurisdictions: City of El Cerrito (“El Cerrito”), City of Albany, City of Piedmont, and City of San Pablo. Signatories to this Agreement other than El Cerrito, are referred to herein as “Other Cities.”

#### **Recitals**

WHEREAS, the parties desire to purchase solar energy for their operations;

WHEREAS, large volume purchases of solar energy through a multi-jurisdictional purchasing arrangement, where project sites are aggregated into groups on the basis of various risk and other financing related factors, will more likely result in lower pricing than would otherwise be available if individual jurisdictions independently purchased renewable energy;

WHEREAS, the parties wish to take advantage of such potential discounts when purchases are made at large volumes;

WHEREAS, the parties agree that the City of El Cerrito shall be the lead agency for issuing a solicitation to purchase solar energy (the “Solicitation”);

WHEREAS, the parties acknowledge that the transaction costs associated with purchasing renewable energy are significantly reduced when the parties agree to the same terms and conditions incorporated within standardized template documents; and

WHEREAS, at the completion of the Solicitation process, the parties are will evaluate all offers and contracts in good faith for solar power purchase, financing, real estate and/or other required agreements with selected vendors (“Vendors”) in the forms prepared by the City of El Cerrito.

NOW THEREFORE, in consideration of their mutual promises and agreements, and subject to the terms, conditions and provisions hereinafter set forth, the parties agree as follows:

## **SECTION 1. ROLE AND RESPONSIBILITIES OF THE CITY OF EL CERRITO**

- A. El Cerrito shall (i) perform the “lead” role in preparing and issuing the Solicitation, (ii) create templates of transaction documents, which may include, without limitation, a form of power purchase agreement and a form of lease (the “Template Documents”), and (iii) coordinate with the Other Cities, as necessary.
- B. El Cerrito will consult with Other Cities with respect to the content of the Solicitation and the terms and conditions contained within Template Documents, provided, however, that any comments or concerns must be communicated to El Cerrito within the allotted timeframe provided by El Cerrito.
- C. The Other Cities agree that El Cerrito shall be the single point of contact for Vendors and necessary third parties throughout the Solicitation process.

## **SECTION 2. ROLES AND RESPONSIBILITIES OF THE OTHER CITIES**

- A. Each Other City has undertaken its own due diligence prior to entering into this Agreement to determine feasibility of solar technology to be located at project sites.
- B. Each Other City is responsible for meeting its individual legal, procedural and other requirements.
- C. Other Cities are responsible for promptly providing site surveys and any additional facility or utility information needed for the Solicitation and vendor inquiries.
- D. Upon conclusion of the Solicitation process, Other Cities may enter into binding agreements, substantially in the form of the Template Documents, with the Vendors, provided the Other Cities determine, to their satisfaction, that the Vendors are responsible, and comply with the Other Cities’ terms, conditions and requirements. El Cerrito shall not be responsible for reference checks, performance, or for compliance with any agreement, regulations, laws or policies (by either the Vendor(s) or Other Cities).
- E. Other Cities agree to participate in the Solicitation under the lead role of El Cerrito and agree to work cooperatively and promptly with El Cerrito throughout the Solicitation process. The parties agree that time is of the essence; and failure of an Other City to provide the required information in the requested format and within the deadlines established by El Cerrito may result in termination of that party’s participation in the cooperative purchase.

### **SECTION 3. TERM OF AGREEMENT.**

The term of this Agreement shall commence on September 15, 2011 and shall expire on December 30, 2012.

### **SECTION 4. GOVERNING LAW AND VENUE.**

The law governing this Agreement shall be that of the State of California. In the event that suit shall be brought by any party to this contract, the parties agree that venue shall be exclusively vested in the states courts of the County of Contra Costa, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California.

### **SECTION 5. WARRANTY DISCLAIMER; LIABILITY; WAIVER.**

- A. No warranty, express or implied, is provided by El Cerrito as to results or success of the Solicitation, this Agreement, or any agreements ultimately entered into by the Other Cities. Each Other City acknowledges that El Cerrito has not made, and is not making, any assurances, guaranties or promises with respect to the subject matter of this Agreement and that each party is ultimately responsible for conducting its own due diligence with respect to feasibility, pricing, technology, third parties and all other matters in any way related to the subject matter of this Agreement.
- B. In no event shall El Cerrito, nor its officers, agents, employers, or representatives be liable for any direct, indirect, incidental, special, exemplary, or consequential damages (including, but not limited to, procurement of substitute goods or services, loss of use, data, or profits, or business interruption) however caused and on any theory of liability, whether in contract, strict liability, or tort (including negligence or otherwise) arising in any way, directly or indirectly, from this Agreement, participation in the Solicitation, or any agreement(s) between an Other City and any third party, even if advised of the possibility of such damage.
- C. Each party is responsible for negotiation, execution, administration and enforcement of any contract with a Vendor or third party related to the subject matter of this Agreement and the agreements ultimately entered into by each party shall not be cross-defaulted or cross-collateralized in any respect with the agreements entered into by any other party to this Agreement.

D. No waiver by any party to this Agreement of any breach or violation of any term or condition of this Agreement shall be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition.

**SECTION 6. NOTICES.**

Notices shall be deemed effective on the date delivered if by personal service or overnight delivery service, or, if mailed, three (3) days after deposit in the U.S. Postal Service mail. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be personally served, delivered by overnight service, or by mail, first class, certified or registered postage prepaid and return receipt requested, addressed to the respective parties as follows:

City of El Cerrito 10890 San Pablo Avenue El Cerrito, CA 94530	City of Albany 1000 San Pablo Avenue Albany, CA 94706
City of Piedmont _____ _____	City of San Pablo _____ _____

**SECTION 7. MISCELLANEOUS PROVISIONS.**

- A. If any term, condition or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall be valid and binding on the parties.
- B. This Agreement may be executed in counterparts and will be binding as executed.
- C. All changes or extensions to this Agreement shall be in writing in the form of an amendment approved by all parties.
- D. This Agreement is entered into only for the benefit of the parties executing this Agreement and not for the benefit of any other individual, entity, or person.

**SECTION 8. TERMINATION.**

- A. El Cerrito may, upon thirty (30) days' written notice, terminate this Agreement without penalty or liability.
- B. Other Cities may terminate this agreement at any time up to three (3) weeks prior to the issuance of the Solicitation pursuant to the schedule developed by El Cerrito.

## **SECTION 9. INDEMNIFICATION**

In lieu of and notwithstanding the pro rata risk allocation, which might otherwise be imposed between the parties pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party that are in any way related to this Agreement shall not be shared pro rata but, instead, the parties agree that, pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees, and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees, or agents, under or in connection with or arising out of any work, authority, or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of another party hereto, its officers, board members, employees, or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other party under this Agreement.

## **SECTION 10. NON-DISCRIMINATION**

Parties shall comply with all applicable Federal, State, and local laws, regulations and policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101 and 1102. Parties shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall parties discriminate in provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex/gender,

sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

IN WITNESS WHEREOF, the parties have executed this Agreement:

City of El Cerrito

Scott Hanin, City Manager

City of Albany

Beth Pollard, City Manager

City of Piedmont

Name, Title

City of San Pablo

Name, Title

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