

## **First Amendment to Solar Power and Services Agreement**

This First Amendment to Solar Power and Services Agreement (this “Amendment”) is made and entered this \_\_\_\_\_ day of December, 2020 between the City of San Jose, a California Municipal Corporation (the “Purchaser”), and SunE J10 Holdings, LLC (as successor in interest to SunEdison Origination1, LLC), a Delaware limited liability company (the “Provider”).

### **Recitals**

**Whereas**, the Purchaser and Provider entered into that certain Solar Power and Services Agreement, dated January 22, 2010 (the “SPSA”), and the General Terms and Conditions of Solar Power & Services Agreement, dated January 22, 2010 and incorporated by reference into the SPSA (together with the SPSA, the “Agreement”);

**Whereas**, the Agreement was for the installation and operation of a solar photovoltaic system on Purchaser’s property located at 1661 Senter Road, San Jose, CA 95112 and identified as “Senter A” (“Solar Photovoltaic System”);

**Whereas**, due to the development of a new project, the Purchaser desires to have the Provider remove the portion of the Solar Photovoltaic System known as “Carport A,” which is more particularly described in Exhibit A and Exhibit B of this Amendment (“Carport A”); and

**Whereas**, the purpose of this Amendment is to set forth the terms and conditions pursuant to which the Provider will remove Carport A.

**NOW THEREFORE**, the Purchaser and Provider hereby agree as follows:

1. **Recitals:** The above recitals are true and correct. The recitals are incorporated into this Amendment.
2. **Definitions:** Except as otherwise expressly stated in this Amendment, capitalized words in this Amendment have the same meaning as set forth in the Agreement.
3. **Removal of Carport A:** Provider will remove Carport A in accordance with the following requirements.
  - 3.1 Provider shall have the right to engage third party contractors to perform any of removal work as set forth in this Section 3.
  - 3.2 The Provider shall complete the removal of Carport A by February 15, 2021.
  - 3.3 Before commencing work to remove Carport A, the Provider shall submit to the Purchaser for review and approval a removal plan that minimizes impacts on Purchaser’s operations (“Removal Plan”).

- 3.4 The Provider will give Purchaser at least 48 hours' notice before coming onto the Premises to remove Carport A. Once Provider has entered the Premises, it will remove Carport A within the time and in accordance with the Removal Plan approved by Purchaser pursuant to Section 3.3 of this Amendment.
- 3.5 The Purchaser will cooperate in providing the Provider with reasonable access needed to remove Carport A.
- 3.6 Notwithstanding anything to the contrary in the Agreement, the Purchaser can do the following: (a) remove, demolish and dispose of the portion of the Solar Photovoltaic System known as Carport A if the Provider does not do so by February 15, 2021, and (b) deduct from the Removal Fee (as defined in Section 4 of this First Amendment) all its costs associated with removing, demolishing and disposing of this portion of the Solar Photovoltaic System.
4. **Removal Fee:** The Purchaser will pay to the Provider a removal fee in the total amount of \$1,131,417.84 ("Removal Fee"). The Removal Fee is calculated by multiplying \$3.738 (taken from the 10<sup>th</sup> year of Column 1 of Schedule 3 of the Agreement, entitled "Early Termination Fee), by 302.68 (the agreed upon estimated annual kWh production of Carport A).
  - 4.1 The Purchaser will pay the Removal Fee to the Provider no later than sixty (60) calendar days following the Provider's completion of the removal of Carport A.
  - 4.2 The Purchaser's payment of the Removal Fee satisfies all of Purchaser's payment obligations under the Agreement related to removal Carport A, including, but not limited to, payment of all costs related to the Provider's removal of Carport A, and all anticipated revenues and profits derived from Carport A.
5. **Remaining System:** Carport 1 and Building C will continue to be subject to the terms and conditions of the Agreement.
6. **Third-Parties:** Provider warrants to Purchaser that no Financing Party or other third-party entity or person has any kind of an interest (financial or otherwise) in Carport A.
7. **No Other Amendments.** Except as expressly set forth herein, this Amendment shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Agreement, all of which are hereby ratified and affirmed in all respects, are valid and enforceable and shall continue in full force and effect. Except as expressly set forth herein, the provisions of the Agreement are and shall remain in full force and effect in accordance with their terms. All references to the Agreement in any document, instrument, agreement, or writing shall from hereof be deemed to refer to the Agreement as amended hereby, and, as used in the Agreement, the terms "Agreement," "herein," "hereafter," "hereunder," "hereto" and words of similar import shall mean, from and after the date hereof, this Amendment.

IN WITNESS WHEREOF, Provider and Purchaser have executed this Amendment as of the date first written above.

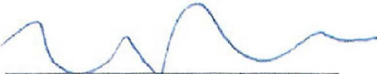
**APPROVED AS TO FORM**


**City of San Jose**

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Glenn Schwarzbach  
Senior Deputy City Attorney

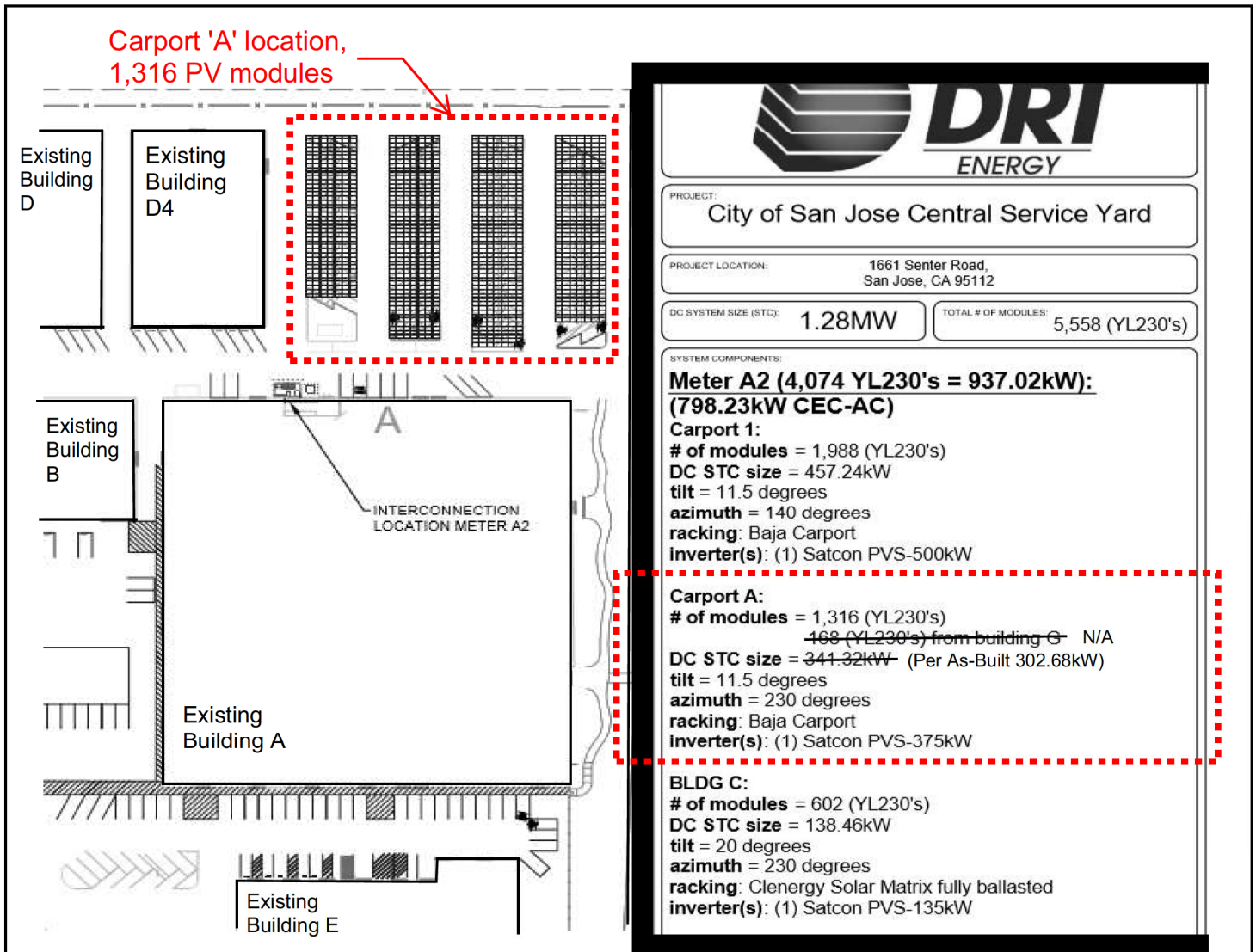
\_\_\_\_\_  
Name:  
Title:

**SunE J10 Holdings, LLC**

  
\_\_\_\_\_  
Name: Megha Shah  
Title: VP + Assistant Secretary

  
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Name: ROMAN KHALIL  
Title: VP Solar Operations

**EXHIBIT A**  
**Existing Photovoltaics (PV) Panels**  
 at 1661 Senter Road, San Jose  
 Carport 'A' location



Information above is referenced and identified from the Photovoltaics project installation construction documents and adjusted as identified per As-Built set 12/22/2010.



Partial Central Service Yard (CSY) Site Plan



