



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Matt Cano

SUBJECT: SEE BELOW

DATE: November 16, 2020

Approved

Date

11/20/20

SUBJECT: AMENDING SOLAR POWER AGREEMENT TO REMOVE A PORTION OF THE SOLAR PHOTOVOLTAIC SYSTEM AT THE CENTRAL SERVICE YARD TO ACCOMMODATE CONSTRUCTION OF THE FDTC/EOC PROJECT

RECOMMENDATION

- (a) Adopt a resolution adopting the Fire Training and Emergency Operations Center Relocation Project Mitigated Negative Declaration and associated Mitigation Monitoring and Reporting Program, for which an Initial Study was prepared, in accordance with the California Environmental Quality Act (“CEQA”), as amended.
- (b) Approve of a first amendment to the Solar Power and Services Agreement with SunE J10 Holdings, LLC for the removal of a portion of the solar photovoltaic system at the Central Service Yard and the payment of a removal fee in the amount of \$1,131,418.

OUTCOME

Adoption of a resolution adopting the Mitigated Negative Declaration for the project will ensure that environmental considerations have been properly taken into account and will be mitigated in accordance with CEQA and will allow the project to proceed into construction. Approval of the first amendment will allow the removal of existing solar panels and supporting structures currently located at the City of San José Central Service Yard (“CSY”) visitor’s parking lot, also known as Carport ‘A’. The removal of the existing solar panels and support structures will allow for the upcoming construction of the City of San José Fire Department Training Center (“FDTC”), Emergency Operations Center (“EOC”) and Office of Emergency Management (“OEM”) Relocation Project to the Central Service Yard at 1661 Senter Road.

BACKGROUND

On January 12, 2010, the City entered into a Power Purchase Agreement with SunEdison Origination1 LLC, now known as SunE J10 Holdings, LLC, to purchase solar energy at the Central Service Yard (CSY) for a 20-year term. Under the Agreement (Attachment B), SunE constructed and installed the solar panel system, and as the owner of the equipment is responsible for the operations and maintenance of the system. The City is obligated to purchase the electricity generated from the system over the term of the agreement, with a base price per kilowatt-hour starting in the first year and inflation escalators calculated for each subsequent year. SunE provides only the electric commodity, whereas the City is still purchasing distribution and transmission services from PG&E.

On November 6, 2018, the voters of San José passed ballot Measure T - The Disaster Preparedness, Public Safety and Infrastructure Bond with over 70 percent of the electorate voting yes. The measure authorizes the City to issue up to \$650 million in general obligation bonds for infrastructure projects. One of the projects identified in Measure T was a new or upgraded Emergency Operations Center (“EOC”).

On December 4th, 2018, City Council approved the sale of the existing FDTC site at 255 South Montgomery Street. The sales agreement stipulated that the existing FDTC would need to be vacated and relocated by June 2022.

City staff is currently moving forward in the design phase of a single project that combines the FDTC and EOC relocations, with the Central Service Yard as the proposed site. Construction is scheduled to start in February 2021. Staff intends to utilize the existing Central Service Yard visitor’s parking lot, known as Carport ‘A’ as the location of the new FDTC administration building, OEM offices, and EOC relocation project. A new, expanded parking lot will be provided as part of the project to replace the existing visitor’s lot.

An Initial Study and Mitigated Negative Declaration was prepared for the full buildout of the Fire Training and Emergency Operations Center project. Pursuant to CEQA, the IS/MND was publicly circulated from October 20, 2020 to November 9, 2020. The IS/MND concluded that the project could have significant construction-related impacts for resources such as Biological Resources, Geology, Noise, Hazards and Hazardous Materials, and Noise. The project includes sufficient mitigation measures that reduce these impacts to a less than significant level with the implementation of those measures. The project also includes a Mitigation Monitoring and Reporting Program (MMRP) that includes all mitigation measures and standard project conditions for the implementation of the projects.

A portion of the solar photovoltaic system installed under the Agreement is located on Carport A and must be removed to accommodate the project. Exhibit A of this memorandum shows the portion of the system that must be removed.

The FDTC and EOC relocation project incorporates Bid Alternates for a new solar panel system on the roofs of the proposed buildings and on new support structures in the proposed paved parking lot. This installation includes 1,368 solar panels (at 360W each) for a total 493 KW generation of energy. The estimated cost of the new panels is \$1,445,000, not including the parking lot support structures.

The existing 1,316 solar panels recommended for removal were installed in 2010 and are declining in efficiency and utilize aged technology. The system's output has currently reduced to approximately 250KW. In comparison, the new PV system proposed for the project would provide 493KW from the system, twice the energy generation of the current PV system utilizing a similar number of panels and square footage. The PV System is identified as a Bid Alternate in the FDTC and EOC relocation project in order to prioritize project award of the new buildings and ensure project occupancy in 2022 and maximizes the use of the available project budget. The cost of the solar panels removal was known and factored into the project budget.

The new project also includes a Bid Alternate for four Battery Energy Storing Systems ("BESS") Three of these systems are proposed for the new EOC building, which would support the building's use through almost an entire night without the use of PG&E electricity or a generator. The fourth BESS would support the FDTC classroom and training building during an EOC activation. In addition, the project includes a Bid Alternate for two Microgrid panels, which would automatically manage and direct energy use from various sources (PV system, BESS, generators, PG&E sources, etc.) for the two proposed new buildings.

ANALYSIS

City staff explored three options available under the Agreement for removing the solar photovoltaic system located on Carport A: (1) Payoff fee based on SunE removing the system on Carport 'A', (2) Buy-out, Removal and Relocation (City to own system) paying SunE a lower "payoff" fee based the City buying the system on Carport A and then removing the system itself, and (3) Relocation by SunE J10 Holdings, LLC. (Maintain the Power Purchase Agreement (PPA)). Staff has concluded that the first option is the most favorable and feasible solution given project restrictions, timing, and budget.

Option 1: Amend Agreement, Remove Solar Panels, Invest in Solar in new Fire Training Center/Emergency Operations Center

The existing Agreement requires the City to pay a "fee" for the early removal of the photovoltaic system to compensate SunE for lost revenues and profits. The Agreement contains a per kilowatt fee based on the following: (1) how many years the Agreement has been in place and (2) whether SunE removes the system or whether the City buys the system.

Under option 1, SunE J10 Holdings, LLC would be responsible for removing all existing solar panels and supporting structures located at City of San Jose Central Service Yard visitor's

parking lot, Carport 'A'. This option would cost \$1,131,418. The Removal Fee is calculated by multiplying \$3,738 (taken from the 10th year of Column 1 of Schedule 3 of the Agreement (Attachment B), entitled "Early Termination Fee), by 302.68 (the agreed upon estimated annual kWh production of Carport 'A').

Also included are SunE J10 Holdings, LLC fees for the removal of the solar photovoltaics panels, supporting structures and connectivity equipment's for Carport 'A' only, as referenced in Exhibit A and B. No involvement from City of San José is required with this option.

Option 2: Amend Agreement, Remove Solar Panels, Invest in Solar panels in city owned parking lot in another to be determined location

Under this option the City would effectively buy-out the system from SunE by paying SunE a fee of \$918,0000, based on \$3,033 (taken from the 10th year of Column 2 of Schedule 3 of the Agreement (Attachment A), entitled "Early Termination Fee, where purchaser takes title), by 302.68 (the agreed upon estimated annual kWh production of Carport 'A').

City would be responsible for hiring a local general contractor to either demolish and dispose of the existing solar panels and supporting structures or remove and store the solar panels at a storage space for the duration of the FDTC/EOC project construction. Upon construction of new parking lot for the FDTC/EOC project, City would bid and hire a general contractor to reinstall solar panels and build new supporting structures and reconnect system to existing circuit on Building A of the Central Service Yard. The cost of the removal is estimated to be \$375,000. The cost of storing the panels, construct new the structures and reinstalling the panels is estimated to be \$2.4 million. This option would cost approximately between \$2.4 and \$2.7 million – which is far more than Option 1. By selecting this option, the City earns full rights to the solar panels being relocated, and to all solar energy produced by the system upon reinstallation. This option has higher up-front costs and may not be the best option due to 10-year-old technology of the solar panels, and the current lower energy generation efficiency compared to the new PV system, as identified in a previous paragraph.

Option 3: Amend Agreement with SunE J10 Holdings, LLC. and have them relocate panels to another location (Maintain the Power Purchase Agreement (PPA))

Under this option, SunE J10 Holdings, LLC would pay for the removal of the solar system before construction of the Project. Upon completion of the City's Project, SunE would newly rebuild the supporting structures, reinstall solar panels, and connectivity equipment. The City would have to pay for the storage of the solar system during construction. This option would cost \$1.9 million. The City would pay SunE J10 Holdings the amount of \$1.9M for the removal, provide new structures and relocate the aging photovoltaics panels on the new location on the site. It includes general contractor fees, fees for PG&E, permitting/inspections, and city staff project management.

This option would also add two years to the remaining eight years of the original contract, for a total of ten years for the remaining total contract to amount 22 years total. The two added years

are due to the downtime while the project is in construction. The additional two-year contract would help offset SunE relocation of panels. Similar to Option 2, this option requires the City to provide storage space for the duration of the FDTC/EOC relocation project construction, and to reinstall an aging technology. In an assessment and communications with the project consultants, the existing photovoltaics solar panels are not worth relocating due to their old technology, and lower energy generation of solar energy from the current system. Also note that the FDTC/EOC will incorporate the most up to date photovoltaics systems into the new project and serve the new project. It would not be a buy-out since the panels will still be owned by SunE J10 Holdings.

A summary of the three options discussed above is shown in the following table:

Option	Upfront Cost to remove panels	City solar investment elsewhere	Total Cost to project	Final Energy Generation	Comments
1. Amend agreement, remove panels	\$1.13M	\$2.45M	\$3.58M	493KW	\$2.45 million of new solar is intended to be invested in new facility. Maximizes new Project energy usage
2. Amend agreement, replace panels	\$1.3M	\$2.4M	\$3.7M	250KW	Misses opportunity for rooftop solar on new facility, costs more than option 1 and has less energy output.
3. Amend agreement, relocate panels (Maintains PPA)	\$1.9M	\$0	\$1.9M	250KW	Aging technology, not suffice needed energy for the new project.

It should be noted that the original system was intended to save approximately \$184,000 for the first ten years and has only saved approximately \$72,000 over the first 10 years. With the recommended new system staff anticipates saving roughly \$2.7 million over a 10 year period. The savings increase is due to the increased output, the newer technology and the city ownership of the system.

CONCLUSION

Staff recommends Option 1: Amend agreement with SunE by removing the system at Carport ‘A’ as it is the most affordable and efficient when taking into consideration the cost of relocation of the panels and construction of new supporting structure above parking stalls, and the need for storage space of the removed panels. Approval of the first amendment to the agreement with SunE J10 Holdings, LLC, will allow SunE J10 Holdings, LLC to remove the existing structures and solar panels and allow city staff to move forward with the construction of the FDTC/EOC relocated project as planned to start construction in February 2021. The FDTC/EOC relocation project is in line with Measure T budget strategies, and City of San Jose’s redevelopment goal for downtown, due to the sale of the existing training center.

For the above reasons, staff recommends approving the first amendment, which will implement option 1 by requiring SunE to remove the photovoltaics solar system and the city paying a “payoff” fee of \$1,131,418.

EVALUATION AND FOLLOW-UP

No further action with the Council is expected at this time. Upon City Council approval of this first amendment to the agreement, City staff will continue to coordinate with SunE J10 Holdings, LLC on the immediate removal of the supporting structures, the solar panels and the connectivity equipment’s in order to progress with the FDTC and EOC relocation project. Future actions will be brought to the City Council for approval for the FDTC/EOC relocation project.

CLIMATE SMART SAN JOSE

The recommendation in this memo supports Climate Smart San José energy, water, or mobility goals, since the new FDTC and EOC relocation project will install newer solar panels with a higher efficiency rate. The project also includes Climate Smart San Jose initiatives, such as new solar panel technology, and Battery Energy Storage System.

PUBLIC OUTREACH

This memorandum will be posted on the City’s Council Agenda website for the December 1, 2020 Council Meeting.

COORDINATION

This memo has been coordinated with the City Attorney's Office, the City Manager’s Budget Office, and the Department of Planning, Building, and Code Enforcement.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

FISCAL/POLICY ALIGNMENT

The proposed action is consistent with Measure T’s budget strategy and City of San Jose goals for the redevelopment of downtown.

COST SUMMARY/IMPLICATIONS

1. AMOUNT OF RECOMMENDATION/COST OF PROJECT:

Project Delivery	\$50,000
Construction / Removal of Solar Panels and Supporting Structures	\$1,131,418
Total Project Costs	\$1,181,418
2. COST ELEMENTS OF AGREEMENT/CONTRACT: LUMP SUM
3. SOURCE OF FUNDING:
 - 498 – Public Safety and Infrastructure Bond Fund
 - 001 – General Fund
4. FISCAL IMPACT: This project will not have any operating and maintenance impacts since the removal of the PV structures will leave the site area free and clear for the construction of the FDTC/EOC relocation project.

BUDGET REFERENCE

The table below identifies the fund and appropriations to fund the contract recommended as part of this memo and remaining project costs, including project delivery, construction, and contingency costs.

Fund #	Appn #	Appn. Name	Current Total Appn	Amt. for Contract	2020-2021 Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
498	414W	Measure T - Emergency Operations Center Relocation	\$23,804,000	\$391,418	V-479	10/20/2020 Ord. No. 30494
001	417L	Fire Training Center Relocation	\$3,130,000	\$790,000	V-478	10/20/2020 Ord. No. 30494
Total Current Funding Available			\$26,934,000	\$1,181,418		

CEQA

Fire Training and Emergency Operations Center Relocation Project Mitigated Negative Declaration, File No. ER20-180.

/s/
 MATT CANO
 Director of Public Works

For questions, please contact John.Cannon@sanjoseca.gov or David.French@sanjoseca.gov

Attachments:

Attachment A: First Amendment to Solar Power and Services Agreement.

Exhibit 'A' (attached to Agreement): Existing PV Panels Partial Site Plan.

Exhibit 'B' (attached to Agreement): Existing PV Panels Single line Diagram.

Attachment B: Solar Power and Service Agreement (dated 22nd day of January 2010).

Attachment C: CEQA Resolution.

Attachment D: Mitigation Monitoring and Reporting Program (MMRP).

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 October, 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 10th 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.

City of San Jose

Name:

Title:

SunE J10 Holdings, LLC



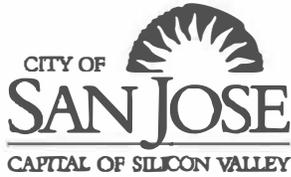
Name: Megha Shah

Title: VP + Assistant Secretary



Name: ROMAN KHALIL

Title: VP Solar Operations



- FOR YOUR ELECTRONIC SIGNATURE
- FULLY EXECUTED COPY TO FOLLOW

CITY STAFF: _____
STAFF EMAIL: _____

SCANNED SIGNATURE AUTHORIZATION

DATE: 10/19/2020

TOTAL PAGES: _____
(INCLUDING THIS PAGE) 7

CONSULTANT NAME: Megha Shah – Sun E J10 Holdings, LLC
EMAIL: megha.shah@brookfieldrenewable.com
PHONE: 646.992.2439

I agree to use electronic signatures

SIGNATURE OF CONSULTANT: 

DIRECTIONS:
REVIEW THE ENCLOSED DOCUMENT, IF IT IS ACCEPTABLE: <ol style="list-style-type: none">1. SIGN THE DOCUMENT2. CHECK THE BOX BELOW YOUR NAME AND SIGN AGREEING TO THE USE OF ELECTRONIC SIGNATURES3. SCAN YOUR EXECUTED DOCUMENT TOGETHER WITH THIS COVER PAGE IN BLUE INK4. EMAIL THE ENTIRE DOCUMENT TO (CITY STAFF EMAIL ADDRESS):

To Be Completed by City Staff:
ALTERNATIVE METHODS OF VERIFICATION: <ul style="list-style-type: none"><input type="checkbox"/> USE OF A PASSWORD PROTECTED WEBSITE<input type="checkbox"/> CONFIRMED BY A KNOWN TELEPHONE NUMBER / EMAIL<input type="checkbox"/> PERSONALLY KNOWN TO CITY STAFF



- FOR YOUR ELECTRONIC SIGNATURE
- FULLY EXECUTED COPY TO FOLLOW

CITY STAFF: _____
STAFF EMAIL: _____

SCANNED SIGNATURE AUTHORIZATION

DATE: 10/19/2020 TOTAL PAGES: _____
(INCLUDING THIS PAGE) 7

CONSULTANT NAME: Roman Khalil– Sun E J10 Holdings, LLC

EMAIL: Roman.Khalil@brookfieldrenewable.com

PHONE: 646.276.4419

I agree to use electronic signatures

SIGNATURE OF CONSULTANT: 

DIRECTIONS:

REVIEW THE ENCLOSED DOCUMENT, IF IT IS ACCEPTABLE:

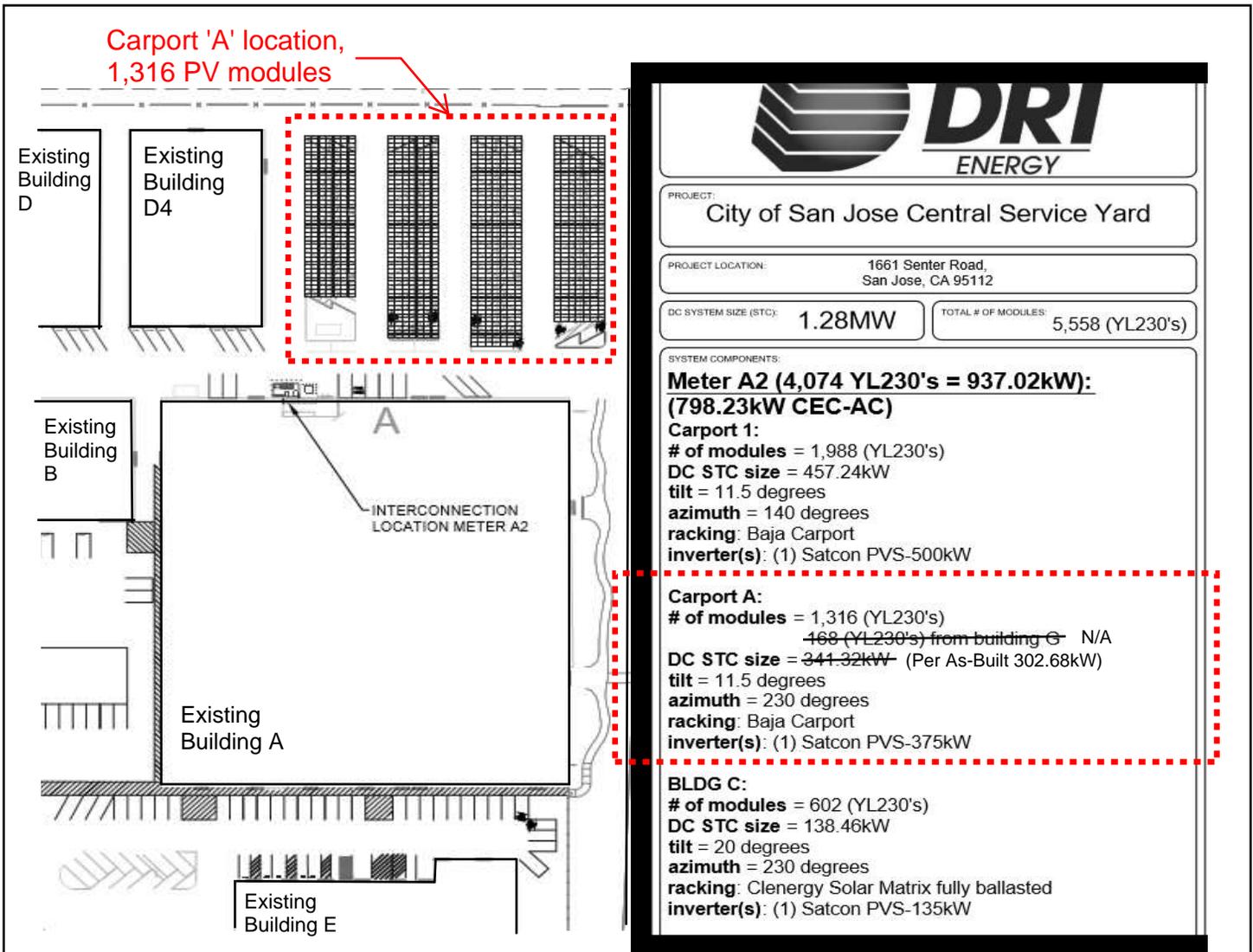
1. SIGN THE DOCUMENT
2. CHECK THE BOX BELOW YOUR NAME AND SIGN AGREEING TO THE USE OF ELECTRONIC SIGNATURES
3. SCAN YOUR EXECUTED DOCUMENT TOGETHER WITH THIS COVER PAGE IN **BLUE INK**
4. EMAIL THE ENTIRE DOCUMENT TO (CITY STAFF EMAIL ADDRESS):

To BE COMPLETED BY CITY STAFF:

ALTERNATIVE METHODS OF VERIFICATION:

- USE OF A PASSWORD PROTECTED WEBSITE
- CONFIRMED BY A KNOWN TELEPHONE NUMBER / EMAIL
- PERSONALLY KNOWN TO CITY STAFF

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

ORIGINAL

SOLAR POWER & SERVICES AGREEMENT

This Solar Power & Services Agreement is made and entered into as of this 22 day of January, 2010 (the "Effective Date"), between SunEdison Origination1, LLC, a Delaware limited liability company ("Provider"), and City of San Jose, a municipality ("Purchaser"; and, together with Provider, each, a "Party" and together, the "Parties").

WITNESSETH:

WHEREAS, Purchaser desires that Provider install and operate a solar photovoltaic system at the Premises (as hereafter defined) for the purpose of providing Solar Services (as hereafter defined), and Provider is willing to do the same;

WHEREAS, Provider and Purchaser acknowledged those certain General Terms and Conditions of Solar Power & Services Agreement dated as of 22 January, 2010 ("General Conditions"), which are incorporated by reference as set forth herein; and

WHEREAS, the terms and conditions of this Solar Power & Services Agreement, excluding the General Conditions incorporated herein, constitute the "Special Conditions" referred to in the General Conditions.

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Incorporation of General Conditions. The General Conditions are incorporated herein as if set forth in their entirety.
2. Schedules. The following Schedules hereto are the respective Schedules to the Special Conditions referenced in the General Conditions:

Schedule 1	Description of the Premises & System
Schedule 2	kWh Rate
Schedule 3	Early Termination Fee
Schedule 4	Estimated Annual Production
Schedule 5	Notice Information

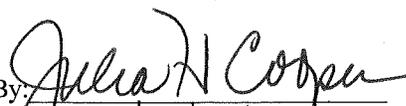
IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, Provider and Purchaser have executed this Agreement as of the Effective Date.

SUNEDISON ORIGATION1, LLC

CITY OF SAN JOSE
200 E. SANTA CLARA ST
SAN JOSE, CA 95113

By: SUN EDISON LLC

By: 
 Name: Jaime Smith
 Title: VP of Sales
 Date: 13 September 2010

By: 
 Name: Julia H Cooper
 Title: Assistant Director of Finance
 Date: 9/16/2010

LEGAL DEPT.
 Approved as to Form
 Initials: JS
 Date: 9

APPROVED AS TO FORM

 Brian Doyle
 Senior Deputy City Attorney
 City of San Jose

SCHEDULES

I. Schedule 1: Description of Premises and System

Solar System Premises: Senter A
1661 Senter Rd, San Jose, CA 95112

Anticipated Rebate or Subsidy: 15¢ / kWh (5 years) per CSI in PG&E

Solar System Size: 951 kW (DC)

Scope: Design and supply grid-interconnected, ground mounted or roof-top solar electric (PV) system.

Module: SunTech 210W or equivalent

Inverter: IEEE 1547 qualified

II. Schedule 2 - - kWh Rate

The kWh Rate with respect to the System under the Agreement shall be in accordance with the following schedule:

Year of System Term	kWh Rate[*] (\$/kWh)	Year of System Term	\$/kWh Rate[*] (\$/kWh)
1	\$ 0.1599	11	\$ 0.2367
2	\$ 0.1663	12	\$ 0.2462
3	\$ 0.1730	13	\$ 0.2560
4	\$ 0.1799	14	\$ 0.2663
5	\$ 0.1871	15	\$ 0.2769
6	\$ 0.1946	16	\$ 0.2880
7	\$ 0.2023	17	\$ 0.2995
8	\$ 0.2104	18	\$ 0.3115
9	\$ 0.2189	19	\$ 0.3240
10	\$ 0.2276	20	\$ 0.3369

[*Calculated based on the year 1 kWh Rate multiplied by 4.0% escalation factor each year.]

NOTE: Purchaser shall not be given ownership of the Renewable Energy Credits in consideration for this pricing schedule.

III. Schedule 3 – Early Termination Fee

The Early Termination Fee with respect to the System under the Agreement shall be calculated in accordance with the following:

Early Termination Occurs in Year:	Column 1 Early Termination Fee where Purchaser does <u>not</u> take Title to the System (\$/Wdc including costs of removal)	Purchase Date Occurs on the 91st day following : (Each “Anniversary” below shall refer to the anniversary of the Commercial Operation Date)	Column 2 Early Termination Fee where Purchaser takes Title to the System (\$/Wdc, does <u>not</u> include costs of removal)*
1*	\$ 6.971		--
2	\$ 6.472		--
3	\$ 5.957		--
4	\$ 5.454		--
5	\$ 4.876		--
6	\$ 4.268	5 th Anniversary	\$ 3.768
7	\$ 4.149	6 th Anniversary	\$ 3.649
8	\$ 4.024	7 th Anniversary	\$ 3.524
9	\$ 3.894	8 th Anniversary	\$ 3.394
10	\$ 3.738	9 th Anniversary	\$ 3.238
11	\$ 3.533	10 th Anniversary	\$ 3.033
12	\$ 3.305	11 th Anniversary	\$ 2.805
13	\$ 3.071	12 th Anniversary	\$ 2.571
14	\$ 2.831	13 th Anniversary	\$ 2.331
15	\$ 2.583	14 th Anniversary	\$ 2.083
16	\$ 2.325	15 th Anniversary	\$ 1.825
17	\$ 2.055	16 th Anniversary	\$ 1.555
18	\$ 1.770	17 th Anniversary	\$ 1.270
19	\$ 1.467	18 th Anniversary	\$ 0.967
20	\$ 1.195	19 th Anniversary	\$ 0.695

At Expiration (the end of the Initial Term), the amount in Column 1 shall be deemed to be zero (0).

*Includes Early Termination prior to the Commercial Operation Date.

IV. Schedule 4 – Estimated Annual Production

Estimated Annual Production commencing on the Commercial Operation Date with respect to System under the Agreement shall be as follows:

Year of System Term	Estimated Production (kWh)	Year of System Term	Estimated Production (kWh)
1	1,333,913	11	1,230,961
2	1,323,242	12	1,221,113
3	1,312,656	13	1,211,344
4	1,302,155	14	1,201,653
5	1,291,737	15	1,192,040
6	1,281,403	16	1,182,504
7	1,271,152	17	1,173,044
8	1,260,983	18	1,163,660
9	1,250,895	19	1,154,350
10	1,240,888	20	1,145,115

The values set forth in the table above are estimates (and not guarantees), of approximately how many kWhs are expected to be generated annually by the System.

V. Schedule 5 – Notice Information

Purchaser:

CITY OF SAN JOSE
200 E. SANTA CLARA ST
SAN JOSE, CA 95113

Provider:

SunEdison Origination1, LLC
c/o Sun Edison LLC
12500 Baltimore Avenue
Beltsville, MD 20705
1-800-786-3347

With a copy to

General Counsel
12500 Baltimore Avenue
Beltsville, MD 20705-6375
Tel. (443) 909-7200
Fax (443) 909-7121

Financing Party:

[To be provided by Provider when known]

Bond Number: CMS247091

**CONTRACTOR'S BOND FOR
FAITHFUL PERFORMANCE**

KNOW ALL PERSONS BY THESE PRESENTS:

That **SUNEDISON ORIGINATION I, LLC**, a **Corporation**, as Principal, and RLI INSURANCE COMPANY incorporated under the laws of the State of Illinois, and authorized to execute bonds and undertakings as sole surety, are held and firmly bound unto the CITY OF SAN JOSE, a municipal corporation of the State of California, in the sum of **THREE HUNDRED THIRTY FIVE THOUSAND and 00/100 DOLLARS (\$335,000.00)**, for the payment thereof, well and truly to be made, said Principal and Surety bind themselves, their administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that:
WHEREAS, the above bounden Principal is about to enter into a certain contract with the City of San Jose for the following:

Solar Power & Services Agreement

the award of which said contract was made to said Principal by the City of San Jose on 1/22/2010

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without notice to the Surety, and if he/she shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this 13th

day of September, 20 10.

PRINCIPAL

SURETY

SUNEDISON ORIGINATION I, LLC

RLI INSURANCE COMPANY

Legal Company Name

By: L Baevskas

By: Susan A. Welsh
Susan A. Welsh

Title: Treasury Director

Title: Attorney-in-Fact

By: _____

Title: _____

Address 9025 North Lindbergh Drive

Peoria

Illinois

61615

Telephone 800-645-2402

(Affix Corporate Seals)

(Attach Acknowledgments of both Principal and Surety signatures)

Approved by the City Attorney of the City of San Jose on the 16th day of

September, 20 10.

By: [Signature]
Senior Deputy

ACKNOWLEDGEMENT BY PRINCIPAL

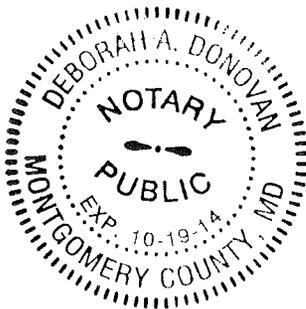
STATE OF MARYLAND
COUNTY OF MONTGOMERY

On this 14th day of September, 2010 before me, Deborah A. Donovan, a Notary Public, within and for said County and State, personally appeared Lora Bacanskas to me personally known to be the Authorized Representative SunEdison Origination I, LLC and acknowledged that he executed the said instrument as the free act and deed of said Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the aforesaid County, the day and year in this certificate first above written.

Deborah Donovan

Notary Public in the State of Maryland
County of Montgomery



ACKNOWLEDGEMENT BY SURETY

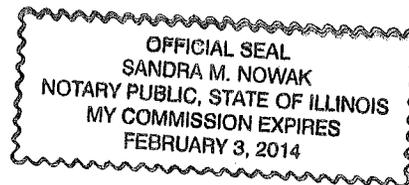
STATE OF ILLINOIS
COUNTY OF COOK

On this 13th day of September, 2010 before me, Sandra M. Nowak, a Notary Public, within and for said County and State, personally appeared Susan A. Welsh to me personally known to be the Attorney-in-Fact of and for RLI Insurance Company and acknowledged that she executed the said instrument as the free act and deed of said Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the aforesaid County, the day and year in this certificate first above written.



Notary Public in the State of Illinois
County of Cook





RLI Surety
 P.O. Box 3967 | Peoria, IL 61612-3967
 Phone: (800)645-2402 | Fax: (309)689-2036
 www.rlicorp.com

POWER OF ATTORNEY

RLI Insurance Company

Know All Men by These Presents:

That this Power of Attorney is not valid or in effect unless attached to the bond which it authorizes executed, but may be detached by the approving officer if desired.

That **RLI Insurance Company**, an Illinois corporation, does hereby make, constitute and appoint:

Robert E. Duncan, Sandra M. Martinez, Kathleen J. Mailes, Susan A. Welsh, Susan J. Preiksa, Karen L. Daniel, Linda M. Iser, Joellen M. Mendoza, Patricia M. Doyle, Marcia K. Cesafsky, William P. Reidinger, jointly or severally.

in the City of Chicago, State of Illinois its true and lawful Agent and Attorney in Fact, with full power and authority hereby conferred, to sign, execute, acknowledge and deliver for and on its behalf as Surety, the following described bond.

Any and all bonds provided the bond penalty does not exceed Twenty Five Million Dollars (\$25,000,000.00).

The acknowledgment and execution of such bond by the said Attorney in Fact shall be as binding upon this Company as if such bond had been executed and acknowledged by the regularly elected officers of this Company.

The **RLI Insurance Company** further certifies that the following is a true and exact copy of the Resolution adopted by the Board of Directors of **RLI Insurance Company**, and now in force to-wit:

"All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or Agents who shall have authority to issue bonds, policies or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

IN WITNESS WHEREOF, the **RLI Insurance Company** has caused these presents to be executed by its Vice President with its corporate seal affixed this 4th day of May, 2010.



RLI Insurance Company

By: [Signature]
 Roy C. Die Vice President

State of Illinois }
 County of Peoria } SS

CERTIFICATE

On this 4th day of May, 2010, before me, a Notary Public, personally appeared Roy C. Die, who being by me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of the **RLI Insurance Company** and acknowledged said instrument to be the voluntary act and deed of said corporation.

I, the undersigned officer of **RLI Insurance Company**, a stock corporation of the State of Illinois, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable; and furthermore, that the Resolution of the Company as set forth in the Power of Attorney, is now in force. In testimony whereof, I have hereunto set my hand and the seal of the **RLI Insurance Company** this 13th day of September, 2010.

By: [Signature]
 Cherie L. Montgomery Notary Public

RLI Insurance Company

By: [Signature]
 Roy C. Die Vice President





Bond Number: CMS247091

CONTRACTOR'S PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the CITY OF SAN JOSE, a municipal corporation of the State of California, (hereinafter designated as "Public Entity"), is about to enter into a certain contract with Sunedision Origination I, Llc, a Delaware **Corporation**, as Principal, namely, "Contract for: Solar Power & Services Agreement", for the work hereinafter briefly described, to wit: Specifications for Solar PPA For Central Service Yard and more fully described in and required by said contract, the award of which said Contract was made to said Principal by the City of San Jose on 1/22/2010.

WHEREAS, said Principal is required by Chapter 5 (commencing at Section 3225) and Chapter 7 (commencing at Section 3247), Title 15, Part 4, Division 3 of the California Civil Code to furnish a bond in connection with said contract.

NOW, THEREFORE, we, the Principal and RLI INSURANCE COMPANY incorporated under the laws of the State of Illinois, and authorized to execute bonds and undertakings as sole surety, as Surety, are held and firmly bound unto the Public Entity in the penal sum of **THREE HUNDRED THIRTY FIVE THOUSAND and 00/100 DOLLARS (\$335,000.00)**, lawful money of the United States of America for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay any of the persons named in Section 3181 of the California Civil Code, or amounts due under the Unemployment Insurance Code with respect to any work or labor performed or materials supplied by any such claimant, which said work, labor or materials are covered by the said contract and any amendments, changes, change orders, additions, alterations, or modifications thereof, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal and their Subcontractors, pursuant to Section 18806 of the Revenue and Taxation Code, with respect to such work and labor, the Surety will pay for the same, in an amount not exceeding the sum hereinabove specified, and also, in case suit is brought upon this bond, a reasonable attorney's fee to be fixed by the court.

This bond shall insure to the benefit of any of the persons named in Section 3181 of the California Civil Code, so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement hereinabove described or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement hereinabove described, nor by any rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or Public Entity and original Contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 3110 or 3112 of the California Civil Code, and has not been paid the full amount of their claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration, modification, rescission or attempted rescission, herein mentioned.

It is further stipulated and agreed that no final settlement between the Public Entity and the Contractor with reference to the work, shall abridge the right of any beneficiary hereunder whose claims may be unsatisfied.

This bond is executed and delivered to comply with requirements of the City of San Jose, and to comply with the provisions of Title 15, Chapters 5 and 7 of Part 4, Division 3 of the Civil Code of the State of California.

SIGNED AND SEALED this 13th day of September, 2010.

PRINCIPAL

SURETY

SUNEDISON ORIGATION I, LLC

RLI INSURANCE COMPANY
Legal Company Name

By: *L Bacanskas*
Title: Treasury, Director

By: *Susan A. Welsh*
Title: Susan A. Welsh
Attorney-in-Fact

By: _____
Title: _____

Address 9025 North Lindbergh Drive
Peoria, IL 61615

Telephone 800-645-2402

(Affix Corporate Seals)

(Attach Acknowledgments of both Principal and Surety signatures)

Approved by the City Attorney of the City of San Jose on the 16th day of
September 2010.

By: *[Signature]*
Senior Deputy

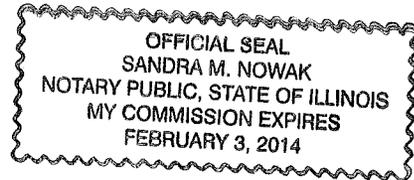
ACKNOWLEDGEMENT BY SURETY

STATE OF ILLINOIS
COUNTY OF COOK

On this 13th day of September, 2010 before me, Sandra M. Nowak, a Notary Public, within and for said County and State, personally appeared Susan A. Welsh to me personally known to be the Attorney-in-Fact of and for RLI Insurance Company and acknowledged that she executed the said instrument as the free act and deed of said Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the aforesaid County, the day and year in this certificate first above written.


Notary Public in the State of Illinois
County of Cook



ACKNOWLEDGEMENT BY PRINCIPAL

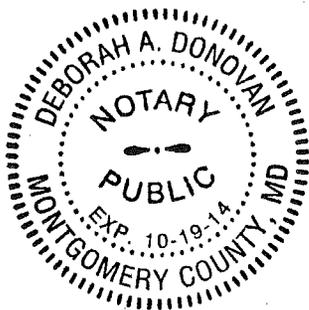
STATE OF MARYLAND
COUNTY OF MONTGOMERY

On this 14th day of September, 2010 before me, Deborah A. Donovan, a Notary Public, within and for said County and State, personally appeared Lora Bacanskas to me personally known to be the Authorized Representative SunEdison Origination I, LLC and acknowledged that he executed the said instrument as the free act and deed of said Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the aforesaid County, the day and year in this certificate first above written.



Notary Public in the State of Maryland
County of Montgomery





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POWER OF ATTORNEY

RLI Insurance Company

Know All Men by These Presents:

That this Power of Attorney is not valid or in effect unless attached to the bond which it authorizes executed, but may be detached by the approving officer if desired.

That **RLI Insurance Company**, an Illinois corporation, does hereby make, constitute and appoint:

Robert E. Duncan, Sandra M. Martinez, Kathleen J. Mailes, Susan A. Welsh, Susan J. Preiksa, Karen L. Daniel, Linda M. Iser, Joellen M. Mendoza, Patricia M. Doyle, Marcia K. Cesafsky, William P. Reidinger, jointly or severally.

in the City of Chicago, State of Illinois its true and lawful Agent and Attorney in Fact, with full power and authority hereby conferred, to sign, execute, acknowledge and deliver for and on its behalf as Surety, the following described bond.

Any and all bonds provided the bond penalty does not exceed Twenty Five Million Dollars (\$25,000,000.00).

The acknowledgment and execution of such bond by the said Attorney in Fact shall be as binding upon this Company as if such bond had been executed and acknowledged by the regularly elected officers of this Company.

The **RLI Insurance Company** further certifies that the following is a true and exact copy of the Resolution adopted by the Board of Directors of **RLI Insurance Company**, and now in force to-wit:

"All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or Agents who shall have authority to issue bonds, policies or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

IN WITNESS WHEREOF, the **RLI Insurance Company** has caused these presents to be executed by its Vice President with its corporate seal affixed this 4th day of May, 2010.



RLI Insurance Company

By: [Signature]
 Roy C. Die Vice President

State of Illinois }
 County of Peoria } SS

CERTIFICATE

On this 4th day of May, 2010, before me, a Notary Public, personally appeared Roy C. Die, who being by me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of the **RLI Insurance Company** and acknowledged said instrument to be the voluntary act and deed of said corporation.

I, the undersigned officer of **RLI Insurance Company**, a stock corporation of the State of Illinois, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable; and furthermore, that the Resolution of the Company as set forth in the Power of Attorney, is now in force. In testimony whereof, I have hereunto set my hand and the seal of the **RLI Insurance Company** this 1st day of September, 2010.

By: [Signature]
 Cherie L. Montgomery Notary Public

RLI Insurance Company

By: [Signature]
 Roy C. Die Vice President



RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ADOPTING THE FIRE TRAINING AND EMERGENCY OPERATIONS CENTER RELOCATION PROJECT MITIGATED NEGATIVE DECLARATION, FOR WHICH AN INITIAL STUDY WAS PREPARED, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED, AND ADOPTING A RELATED MITIGATION MONITORING AND REPORTING PROGRAM

WHEREAS, prior to the adoption of this Resolution, the Director of Planning, Building and Code Enforcement of the City of San José prepared an Initial Study and approved for circulation a Mitigated Negative Declaration for the Fire Training and Emergency Operations Center Relocation Project under Planning File No. ER20-180 (the “Initial Study/Mitigated Negative Declaration”), all in accordance with the requirements of the California Environmental Quality Act of 1970, together with state and local guidelines implementing said Act, all as amended to date (collectively “CEQA”); and

WHEREAS, the Fire Training and Emergency Operations Center Relocation Project (the “Project”) analyzed under the Initial Study/Mitigated Negative Declaration consists of a Public project to relocate the City’s existing fire training and emergency operations facilities to the Project site. The project would result in the removal of existing structures such as solar panels, freestanding metal canopy structure, electric panels, infrastructure, and equipment, the renovation of approximately 16,000 square feet of existing building space, and construction of an approximate total of 56,393 square feet of new building area on the 26-acre project site located at 1591 and 1661 Senter Road, (Assessor’s Parcel Numbers 477-38-007 and 477-38-016), San José, California; and

WHEREAS, the Initial Study/Mitigated Negative Declaration concluded that implementation of the Project could result in certain significant effects on the environment and identified mitigation measures that would reduce each of those significant effects to a less-than-significant level; and

WHEREAS, in connection with the approval of a project involving the preparation of an initial study/mitigated negative declaration that identifies one or more significant environmental effects, CEQA requires the decision-making body of the lead agency to incorporate feasible mitigation measures that would reduce those significant environmental effects to a less-than-significant level; and

WHEREAS, whenever a lead agency approves a project requiring the implementation of measures to mitigate or avoid significant effects on the environment, CEQA also requires a lead agency to adopt a mitigation monitoring and reporting program to ensure compliance with the mitigation measures during project implementation, and such a mitigation monitoring and reporting program has been prepared for the Project for consideration by the decision-maker of the City of San José as lead agency for the Project (the “Mitigation Monitoring and Reporting Program”); and

WHEREAS, the City of San José is the lead agency on the Project, and the City Council is the decision-making body for the proposed approval to undertake the Project; and

WHEREAS, the City Council has reviewed and considered the Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program for the Project and intends to take actions on the Project in compliance with CEQA and state and local guidelines implementing CEQA; and

WHEREAS, the Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program for the Project are on file in the Office of the Director

of Planning, Building and Code Enforcement, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, are available for inspection by any interested person at that location and are, by this reference, incorporated into this Resolution as if fully set forth herein;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

THAT THE CITY COUNCIL does hereby make the following findings: (1) it has independently reviewed and analyzed the Initial Study/Mitigated Negative Declaration and other information in the record and has considered the information contained therein, prior to acting upon or approving the Project, (2) the Initial Study/Mitigated Negative Declaration prepared for the Project has been completed in compliance with CEQA and is consistent with state and local guidelines implementing CEQA, and (3) the Initial Study/ Mitigated Negative Declaration represents the independent judgment and analysis of the City of San José, as lead agency for the Project. The City Council designates the Director of Planning, Building and Code Enforcement, at the Director's Office at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, as the custodian of documents and records of proceedings on which this decision is based.

THAT THE CITY COUNCIL does hereby find that based upon the entire record of proceedings before it and all information received that there is no substantial evidence that the Project will have a significant effect on the environment and does hereby adopt the Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program prepared for the Project (Planning File No. ER20-180). The Mitigation Monitoring and Reporting Program for the Project is attached hereto as Exhibit "A" and fully incorporated herein. The Initial Study/ Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program are: (1) on file in the Office of the Director of Planning, Building and Code Enforcement, located at 200 East Santa Clara Street,

3rd Floor Tower, San José, California, 95113 and (2) available for inspection by any interested person.

ADOPTED this ____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

MITIGATION MONITORING AND REPORTING PROGRAM

Fire Training and Emergency Operations Center Relocation Project

File No. ER20-180

October 2020



PREFACE

Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring and reporting program is to ensure compliance with the mitigation measures during project implementation.

The Initial Study/Mitigated Negative Declaration prepared for the Fire Training and Emergency Operations Center Relocation Project concluded that the implementation of the project could result in significant effects on the environment and mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This Mitigation Monitoring and Reporting Program addresses those measures in terms of how and when they will be implemented.

This document does *not* discuss those subjects for which the Initial Study/Mitigated Negative Declaration concluded that the impacts from implementation of the project would be less than significant.

The City of San José hereby agrees to fully implement the Mitigation Measures described below, which have been developed in conjunction with the preparation of an Initial Study/Mitigated Native Declaration for the proposed project. The City understands that these mitigation measures, or substantially similar measures, will be adopted as conditions of approval to avoid or significantly reduce potential environmental impacts to less than significant levels.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
BIOLOGICAL RESOURCES					
Impacts BIO-1 and BIO-2: Demolition, grading, and construction activities and tree removal during the nesting season could impact migratory birds.					
<p>MM BIO-1: Avoidance and Inhibit Nesting. To avoid disturbance of nesting and special-status birds, the Project Proponent shall schedule activities related to the Project, including, but not limited to, vegetation removal, ground disturbance, construction, and demolition to occur outside of the bird nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1 through August 31 (inclusive).</p>	<p>Schedule project activities to occur outside of the bird nesting season (September 1 through January 31, inclusive).</p>	<p>Prior to the issuance of any demolition or grading permits.</p>	<p>Director of Planning, Building, and Code Enforcement and the Director of Public Works, or Directors' designee</p>	<p>Construction schedule and timing.</p>	<p>Prior to issuance of any demolition or grading permits, and during construction activities occurring between February 1 through August 31.</p>

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<p>MM BIO-2: Preconstruction Surveys. If demolition and construction activities cannot be scheduled to occur between September 1 and January 31 (inclusive), pre-construction surveys for nesting birds shall be completed by a qualified biologist or ornithologist to ensure that no nests shall be disturbed during project implementation. The nesting bird pre-construction survey shall be conducted within the Project boundary, including within 250 feet of the project area. The survey shall be conducted by a biologist familiar with the identification of avian species known to occur in the area. The pre-construction survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February 1 through April 30, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1 through August 31, inclusive).</p> <p>If active nests are found, the qualified biologist or ornithologist, in consultation with the California Department of Fish and Wildlife (CDFW), shall determine the extent of a construction-free buffer zone to be established around the nest, typically 250 feet, for raptors and 100 feet for other birds to ensure that raptor or migratory bird nests will not be disturbed during project construction (which depends upon the species, the proposed work activity, and existing disturbances associated with land uses outside the site). The buffer zone shall be demarcated by the qualified biologist or</p>	<p>The biologist or ornithologist shall conduct pre-construction surveys. The project biologist or ornithologist shall also establish the appropriate buffers on site during construction activities.</p> <p>Submit a pre-construction survey report to the City's Director of Planning, Building, and Code Enforcement and the Director of Public Works or Directors' designee.</p>	<p>No more than 14 days prior to the initiation of construction and during the early part of the breeding season (February 1 through April 30, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1 through August 31, inclusive).</p>	<p>Director of Planning, Building, and Code Enforcement and Director of Public Works or Directors' designee</p>	<p>Receive a copy of the pre-construction survey report and confirm use of the appropriate construction buffers.</p>	<p>Prior to the issuance of any demolition or grading permits.</p>

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<p>ornithologist with bright orange construction fencing, flagging, construction lathe, or other means to mark the boundary. All construction personnel shall be notified as to the existence of the buffer zone and shall be instructed to avoid entering the buffer zone during the nesting season. No ground- disturbing activities shall occur within this buffer until the qualified biologist or ornithologist has confirmed that breeding/nesting is completed and the young have fledged the nest. Encroachment into the buffer shall occur only at the discretion of the qualified biologist.</p> <p>The Project Proponent shall submit a report to the City's Director of Planning, Building and Code Enforcement and Director of Public Works or Directors' designee indicating the results of the survey and any designated buffer zones, and is to be completed to the satisfaction of the Director of Planning, Building and Code Enforcement and the Director of Public Works or Directors' designee prior to the issuance of any demolition or grading permits.</p>					
GEOLOGY AND SOILS					
Impact GEO-1: The Project site is in a designated Liquefaction Hazard Zone and the potential for on-site liquefaction to occur is high. As such, the Project may be subject to impacts related to seismically induced liquefaction.					
<p>MM GEO-1: Geohazard Clearance-Liquefaction. Prior to the issuance of any building permits, the Project Proponent shall submit a request for geohazard clearance, with a copy of the geotechnical report prepared for the site (Appendix C of the Initial Study/Mitigated Negative Declaration), to the City</p>	<p>Submit a request for geohazard clearance, with the accompanying geotechnical report to the City Engineering Geologist.</p>	<p>Prior to the issuance of any building permits.</p>	<p>City Engineering Geologist</p>	<p>Review the geotechnical report and issue geohazard clearance.</p>	<p>Prior to the issuance of any building permits.</p>

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<p>Engineering Geologist. The Project shall conform to the recommendations of the project-specific geotechnical report, including soil improvements and foundation and design considerations for the proposed foundations, unless otherwise determined by the City Engineering Geologist.</p>					
HAZARDS AND HAZARDOUS MATERIALS					
<p>Impact HAZ-1: Construction of the proposed Project has the potential to disturb soil and groundwater contaminants that are known to occur on the site. Such contaminants are associated with past uses on the site, and could result in the release of hazardous materials/substances into the environment.</p>					
<p>MM HAZ-1: Site Management/Removal Action Plan. Prior to the issuance of any demolition or grading permits, the Project Proponent shall obtain regulatory oversight from the Santa Clara County Department of Environmental Health (or Department of Toxic Substances Control). A Soil Management Plan (SMP), Removal Action Plan (RAP), or equivalent document shall be prepared by a qualified hazardous materials consultant to address contaminants known to occur on the Project site. The Plan must establish remedial measures and/or soil and groundwater management practices to ensure construction worker safety and the health of future workers and visitors. The Plan and evidence of regulatory oversight shall be provided to the Director of Planning, Building, and Code Enforcement (PBCE), Director of Public Works, or Directors' designee and the Environmental Compliance Officer in the City of San José's Environmental Services Department.</p>	<p>A hazardous materials consultant shall prepare a Site Management Plan (SMP), Removal Action Plan (RAP), or equivalent document.</p>	<p>Prior to the issuance of any demolition or grading permits.</p>	<p>Director of Planning, Building, and Code Enforcement, Director of Public Works, or Directors' designee and Environmental Compliance Officer in the City of San José's Environmental Services Department.</p>	<p>Site Management Plan (SMP), Removal Action Plan (RAP), or equivalent document.</p>	<p>Prior to the issuance of any demolition or grading permits.</p>

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
NOISE AND VIBRATION					
Impact NOI-1: Sensitive receptors in the Project area would be intermittently exposed to high noise levels during Project construction.					
<p>MM NOI-1: Construction Phasing. Prior to the issuance of any grading or demolition permits, the Project Proponent shall submit and implement a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting and notification of construction schedules, equipment to be used, and designation of a noise disturbance coordinator. The noise disturbance coordinator shall respond to neighborhood complaints and shall be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses.</p> <ul style="list-style-type: none"> • As a part of the noise logistic plan, construction activities for the proposed Project shall include, but are not limited to, the following best management practices: <ol style="list-style-type: none"> a) Limit construction hours to between 7:00 a.m. and 7:00 p.m., Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence. 	<p>Prepare and implement a construction noise logistics plan and designate a noise disturbance coordinator. Submit a copy of the Plan to the Director of Planning, Building, and Code Enforcement and Director of Public Works or Directors' designee.</p>	<p>Prior to the issuance of any demolition, grading or building permits and prior to the start of construction.</p>	<p>Director of Planning, Building, and Code Enforcement and Director of Public Works or Directors' designee</p>	<p>Receive construction noise logistics plan.</p>	<p>Prior to the start of construction and issuance of any grading or building permits, and implemented during construction.</p>

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<ul style="list-style-type: none"> b) Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses. c) Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment. d) Prohibit unnecessary idling of internal combustion engines. e) Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses. f) Utilize "quiet" air compressors and other stationary noise sources where technology exists. g) Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site. h) Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide 					

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<p>a written schedule of "noisy" construction activities to the adjacent land uses and nearby residences.</p> <p>i) If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.</p> <p>j) Designate a "disturbance coordinator" who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.</p> <p>k) Limit construction to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of Planning, Building and Code Enforcement and approval from the</p>					

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<p>Director of Public Works or Directors' designee that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.</p> <p>The Project Proponent shall submit the construction noise logistics plan to the Director of Planning, Building, and Code Enforcement and Director of Public Works or Directors' designee prior to the issuance of any grading or building permits.</p>					

Source: Initial Study/Mitigated Negative Declaration for the Fire Training and Emergency Operations Center Relocation Project (September. 2020).