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CITY OF KNOXVILLE, TENNESSEE

CITY COUNCIL

AGENDA INFORMATION SHEET

AGENDA DATE: July 26, 2011

DEPARTMENT: Policy & Communications

SR. DEPT. DIRECTOR: William Lyons, 215-2612

AGENDA SUMMARY - Resolution of Council authorizing the Mayor to enter into a contract with FLS Energy, Inc. for the installation, ownership, and operation of a 90kW solar photovoltaic system on the Convention Center. During the term of the 7-year contract, the City is a recipient of lease payments from FLS Energy and of TVA Generation Partners payments for the energy produced. The City will pass the TVA incentive payments to FLS Energy as part of the financial agreement, and will receive ownership of the system and the energy it generates seven years from contract execution.

COUNCIL DISTRICT(S) AFFECTED – 2nd District.

BACKGROUND – In September 2009, the City of Knoxville was awarded $2,012,700 in Energy Efficiency & Conservation Block Grant (EECBG) funds from the U.S. Department of Energy (DOE). The EECBG grant is part of the City's American Recovery and Reinvestment Act (ARRA) funds.

Seven projects were defined from the $2,012,700, and $250,000 was allocated to develop a third party finance model for renewable energy in the TVA region.

This portion of EECBG funds is being used to create a 3rd party finance model for renewable energy in the Tennessee Valley region. Funds will be used for due diligence and system design. The remaining project costs are covered by FLS Energy with the understanding that they will receive the tax incentives and renewable energy credits for the term of the lease agreement. The main deliverable of this project is the contract structuring between the host (City), the owner (FLS Energy), the distributor (TVA), and the utility (KUB). Contract structure will be made available to parties interested in hosting renewable energy systems who do not have upfront installation costs budgeted.

OPTIONS – Approve, deny, or adjust the contract.

RECOMMENDATION – Approve the contract.

ESTIMATED PROJECT SCHEDULE – FLS Energy will receive notice to proceed for due

diligence and design upon contract execution; this ARRA grant-funded project must be expended in full by June, 2012.

PRIOR ACTION/REVIEW – None for this contract.

FISCAL INFORMATION – The $250,000 grant is the City's contribution to this project; however, the City intends to own the system in its 7th year.

ATTACHMENTS - Draft Resolution and draft agreement with scope of work.

Respectfully submitted:

William Lyons
Senior Director, Policy & Communications

RESOLUTION NO. _____

RESOLUTION

A RESOLUTION OF THE COUNCIL OF THE CITY OF KNOXVILLE AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH FLS ENERGY, INC. AND TO EXECUTE ANY AND ALL ASSOCIATED DOCUMENTS FOR THE INSTALLATION, OWNERSHIP, AND OPERATION OF A 90kW SOLAR PHOTOVOLTAIC SYSTEM, IN AN AMOUNT NOT TO EXCEED $250,000.00.

RESOLUTION NO: _____

REQUESTED BY: Policy & Communications
PREPARED BY: Law Department

APPROVED: _____

APPROVED AS AN EMERGENCY MEASURE: _____

MINUTE BOOK: _____ **PAGE** _____

WHEREAS, in September 2009, the U.S. Department of Energy ("DOE") awarded the City of Knoxville (the "City") Two Million, Twelve Thousand, Seven Hundred and 00/100 Dollars ($2,012,700.00) in Energy Efficiency and Conservation Block Grant ("EECBG") funds; and

WHEREAS, the EECBG Program is funded by the 2009 American Recovery and Reinvestment Act ("ARRA"); and

WHEREAS, the City has DOE approval to provide Two Hundred Fifty Thousand and 00/100 Dollars ($250,000.00) in EECBG funds as an initial investment to support the installation of a high quality Solar Photovoltaic system ("Solar PV system"), ideally on the roof of the

of a high quality Solar Photovoltaic system ("Solar PV system"), ideally on the roof of the Knoxville Convention Center, using a third-party or other innovative financing model (the "Project"); and

WHEREAS, through the Project, the City intends to demonstrate how municipal, non-profit, or other non-tax-paying entities in the Tennessee Valley can deploy large solar photovoltaic systems without incurring significant costs; and

WHEREAS, the Solar PV System will be connected to the electrical grid through the Tennessee Valley Authority's Generation Partners Program via Knoxville Utilities Board; and

WHEREAS, because of the structure of the Generation Partners Program, the City does not expect the Solar PV System to offset or reduce electricity usage or cost at the host site during the term of this Agreement, but the City does wish to find a duplicable financial structure to show that Solar PV systems are workable and financially feasible in the Tennessee Valley Authority ("TVA") and Knoxville Utilities Board ("KUB") service areas; and

WHEREAS, the City's Purchasing Agent issued a Request for Qualifications inviting interested firms to provide professional services qualifications for the design and installation of a Solar PV system meeting the intent of the Project; and

WHEREAS, a City evaluation committee selected FLS Energy, Inc. as the most responsible, responsive firm to perform the Project; and

WHEREAS, FLS Energy, Inc. has proposed that the Project be financed through a type of third party financing arrangement called a Solar Power Production Agreement ("SPPA"); and

WHEREAS, using the SPPA model, FLS will: (1) use the $250,000.00 in EECBG funds from the City as an initial investment to install a 90kW solar PV system, (2) pay to the City

$10,000.00 for an annual roof lease for a period of seven (7) years, (3) provide the City with an option to purchase the Solar PV system at the end of the lease term; and (4) remove the Solar PV system if the City does not purchase the Solar PV system in seven (7) years or renew the agreement to allow FLS Energy, Inc. to continue to own and operate the Solar PV system after seven (7) years; and

WHEREAS, the City and DOE have reviewed the scope of work proposed by FLS Energy, Inc., and have determined that it is within the purview of ARRA and EECBG; and

WHEREAS, FLS Energy, Inc. has represented to the City that it has the qualifications, experience, expertise and personnel necessary to perform the Project, and has expressed a desire to do so; and

WHEREAS, the City and FLS Energy, Inc. now wish to enter into an agreement whereby FLS Energy, Inc. will perform the Project.

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

SECTION 1: The Mayor be, and hereby is, authorized to execute an Agreement with FLS Energy, Inc., and to execute any and all associated documents, in substantially the form attached hereto, for the installation, ownership, and operation of a 90kW solar photovoltaic system on the Convention Center, in an amount not to exceed TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS ($250,000.00).

SECTION 2: This Resolution shall take effect from and after its passage, the welfare of the City requiring it.

_____
Presiding Officer of the Council

_____
City Recorder

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ANGELA RAUBER
Attorney
City of Knoxville

Document No. C-12-0056

AGREEMENT

THIS AGREEMENT is made and entered into by and between the **City of Knoxville, Tennessee**, having its principal place of business located at 400 Main Street, Knoxville, Tennessee 37902 (the "**City**"), and **FLS SOLAR 60, LLC**, a North Carolina limited liability company ("**FLS**"). The City and FLS are at times collectively referred to herein as the "Parties."

WITNESSETH:

WHEREAS, in September 2009, the U.S. Department of Energy ("DOE") awarded the City Two Million, Twelve Thousand, Seven Hundred and 00/100 Dollars ($2,012,700.00) in Energy Efficiency and Conservation Block Grant ("EECBG") funds; and

WHEREAS, the EECBG Program is funded by the 2009 American Recovery and Reinvestment Act ("ARRA"); and

WHEREAS, the City has DOE approval to provide Two Hundred Fifty Thousand and 00/100 Dollars ($250,000.00) in EECBG funds as an initial investment to support the installation of a high quality Solar Photovoltaic system (the "Solar PV System"), ideally on the roof of the Knoxville Convention Center, using a third-party or other innovative financing model (the "Project"); and

WHEREAS, through the Project, the City intends to demonstrate how municipal, non-profit, or other non-tax-paying entities in the Tennessee Valley can deploy large solar photovoltaic systems without incurring significant costs; and

WHEREAS, the Solar PV System will be connected to the electrical grid through the Tennessee Valley Authority's Generation Partners Program via Knoxville Utilities Board; and

WHEREAS, because of the structure of the Generation Partners Program, the City does not expect the Solar PV System to offset or reduce electricity usage or cost at the host site during the term of this Agreement, but the City does wish to find a duplicable financial structure to show that Solar PV systems are workable and financially feasible in the Tennessee Valley Authority ("TVA") and Knoxville Utilities Board ("KUB") service areas; and

WHEREAS, the City's Purchasing Agent issued a Request for Qualifications inviting interested firms to provide professional services qualifications for the design and installation of a Solar PV system meeting the intent of the Project; and

WHEREAS, a City evaluation committee selected FLS as the most responsible, responsive firm to perform the Project; and

WHEREAS, FLS has proposed that the Project be financed through a type of third party financing arrangement called a Solar Power Production Agreement ("SPPA"); and

WHEREAS, using the SPPA model, FLS will: (1) use the $250,000.00 in EECBG funds from the City as an initial investment to install a 90kW solar PV system, (2) pay to the City a $10,000.00 annual roof lease for a period of seven (7) years, (3) provide the City with an option to purchase the Solar PV system at the end of the lease term; and (4) remove the system if the City does not purchase the system in seven (7) years or renew the agreement to allow FLS to continue to own and operate the system after seven (7) years; and

WHEREAS, the City and DOE have reviewed the scope of work proposed by FLS, and have determined that it is within the purview of ARRA and EECBG; and

WHEREAS, FLS has represented to the City that it has the qualifications, experience, expertise and personnel necessary to perform the Project, and has expressed a desire to do so; and

WHEREAS, the City and FLS now wish to enter into an agreement whereby FLS will perform the Project, on all the terms and conditions more particularly set out herein.

NOW, THEREFORE, for and in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1.
DEFINITIONS

1.1 *DEFINITIONS*. In addition to other terms defined elsewhere in this Agreement, the following terms shall have the following meanings.

A. "*Commercial Operation*" means the condition existing when (i) the System is mechanically complete and operating as specified in **Exhibit A**, and (ii) Electrical Output is delivered to the Delivery Point.

B. "*Commercial Operation Date*" means the date upon which Commercial Operation is achieved.

C. "*Electrical Output*" means the total quantity of all actual net energy generated by the System (measured in kWhs) and delivered in accordance with Section 10 to the Delivery Point, in any given period of time. Electrical Output does not include the Environmental Incentives or Environmental Attributes.

D. "*Environmental Attributes*" means the characteristics of electricity generation by the System that have intrinsic value, separate and apart from the Electrical Output, arising from the perceived environmental benefits of the System of the Electrical Output, including all environmental and other attributes that differentiate the System or the Electrical Output from energy generated by fossil-fuel based generation units, fuels or resources, or characteristics of the System that may result in the avoidance of environmental impacts on air, soil or water, such as the absence of emission of any oxides of nitrogen, sulfur or carbon or of mercury, or other gas or chemical, soot, particulate matter or other substances attributable to the System.

E. "*Environmental Incentives*" means all rights, credits (including tax credits), rebates, benefits, reductions, offsets and allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising under federal, state or local law, international treaty, trade association membership or the like, arising from the Environmental Attributes of the System or the Electrical Output or otherwise from the development or installation of the System or the production, sale, purchase, consumption or use of the Electrical

Output. "Environmental Incentives" include green tags, RECs, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentive programs offered by the Utility or other incentive programs offered by the State of Tennessee, the right to claim any available Tennessee state income tax credits and the right to claim federal income tax credits under Sections 48 and 50 of the Code and Section 1.48-4 of the Treasury Regulations or an equivalent 1603 grant.

F. "*kWh*" means kilowatt-hour.

G. "*REC*" means the set of non-energy attributes, including any and all "renewable energy certificates", directly attributable to the amount of Electrical Output generated from the System.

H. "*Site*" means the City's facility at 301 Church Avenue, Knoxville, Tennessee 37902.

I. "*Solar PV Facility*" or "*System*" means the solar electrical generation equipment, controls, meters, switches, connections, conduit, wires and other associated equipment to be installed by FLS or its Affiliate(s) on certain buildings located on the Site in accordance with the terms of the Site Agreement for the purposes of producing electricity under this Agreement, which electricity will be distributed on the electrical grid and will not be used for on-site use.

ARTICLE 2.
CONTRACT DOCUMENTS

2.1 *CONTRACT DOCUMENTS*

The executed Contract Documents will consist of the following:

A. This Agreement;
B. City of Knoxville Request for Professional Services, Solar Photovoltaic Installation, U.S. Department of Energy, Energy Efficiency and Conservation Block Grant prepared by the City Purchasing Agent, dated March 5, 2010, a copy of which is on file in the Office of the City Purchasing Agent and the City Recorder's Office;
C. Scope of Work developed by FLS entitled "Solar PV on the Knoxville Convention Center Through Third-Party Financing, FLS Energy and Green Earth Solar Project Scope of Work" dated June 18, 2010, as revised September 30, 2010", a copy of which is attached hereto as **Exhibit A**;
D. Solar Power Production Agreement, a copy of which is attached hereto as **Exhibit B**;
E. Roof Lease and Easement Agreement, a copy of which is attached hereto as **Exhibit C**;
F. Maintenance Plan a copy of which is attached hereto as **Exhibit D**;

G. Purchase Option, a copy of which is attached hereto as **Exhibit E**;

H. American Recovery and Reinvestment Act of 2009 Requirements – Certification of Sub-Recipient Regarding Debarment, Suspension, and other Responsibility Matters, a copy of which is attached hereto as **Exhibit F**; and

I. American Recovery and Reinvestment Act of 2009 Requirements – Notice, a copy of which is attached hereto as **Exhibit G**; and

J. American Recovery and Reinvestment Act of 2009 Requirements – Reporting Data Elements to be Reported to the City of Knoxville Monthly, a copy of which is attached hereto as **Exhibit H**; and

K. American Recovery and Reinvestment Act of 2009 Requirements – Report Formats, with the Data Elements, a copy of which is attached hereto as **Exhibit I**; and

G. Department of Energy Special Terms and Conditions, a copy of which is attached hereto as **Exhibit J**.

All contract documents are incorporated herein by reference and made a part of this Agreement as if they were fully set out verbatim. To the extent there is a conflict between the terms of any of the documents which constitute this Agreement, the terms that provide the greater benefit to the City and/or impose the greater obligation on FLS shall control.

ARTICLE 3.
BASIC AGREEMENTS

3.1 *SCOPE OF WORK*

In consideration of the receipt of grant funds pursuant to this Agreement (the "EECBG funds") to perform the Project, which is more specifically described in "Solar PV on the Knoxville Convention Center Through Third-Party Financing, FLS Energy and Green Earth Solar Project Scope of Work" dated June 18, 2010, as revised September 30, 2010", a copy of which is attached hereto as **Exhibit A**, and incorporated herein by reference. FLS will use the EECBG funds to cover the cost of due diligence, the design of the Solar PV System, hardware for the Solar PV System, or any combination of these or other EECBG eligible expenses. Funds will be disbursed following the receipt of an itemized invoice in accordance with Article 5 of this Agreement. In order to receive reimbursement for eligible Project expenses, FLS must submit all invoices to the City by **June 1, 2012**.

FLS shall coordinate the performance of all services hereunder with the City's Purchasing Agent and the City's Sustainability Program Manager, or their designees.

Coincident with the execution of this Agreement, the City and FLS will enter into a Solar Power Production Agreement ("SPPA"), attached hereto as **Exhibit B,** setting forth the terms and conditions of the parties' agreement concerning the generation, sale and delivery of Electrical Output, the capture of renewable energy credits (RECs) from the Solar PV Facility by TVA in return for incentive funds to the City, and the transfer of

the incentive from the City to FLS, subject to the KUB and TVA Interconnection and Parallel Operation Agreement for Renewable Generation Operating Under Generation Partners Program dated _____.

In addition to the SPPA, and also coincident with the execution of this Agreement, the City and FLS shall also enter into a Roof Lease and Easement Agreement (the "Lease Agreement"), attached hereto as **Exhibit C**, whereby FLS, as owner of the Solar PV System will lease the City-owned site for the installation and maintenance of the Solar PV System as necessary for the Project.

FLS acknowledges that the work to be provided pursuant to this Agreement is funded, in part, with EECBG funds administered by DOE, and FLS agrees to comply with all applicable rules and regulations promulgated by the City and DOE concerning EECBG funds, specifically including but not limited to the American Recovery and Reinvestment Act of 2009 Requirements Attachments, a copy of which is attached hereto as **Exhibits E-H**; and the DOE Special Instructions, a copy of which is attached hereto as **Exhibit I**.

3.2 *THIRD PARTY FINANCING*

A. *Pre-installation activities*. Promptly following the execution of this Agreement, FLS shall at its sole cost and expense commence pre-installation activities relating to the Solar PV System, which shall include, without limitation, the following:

1. secure third party financing for the Project, which will provide tax exempt financing for installation of the Solar PV System on terms acceptable to the City;
2. obtain a commitment from an investor in such amounts as FLS deems sufficient in its sole discretion for any available incentive credits for construction or operation of the Solar PV System;
3. authorize subcontractors to design the Solar PV system;
4. obtain all permits, contracts, and agreements required for installation of the Solar PV System;
5. obtain all necessary authority from regulatory entities for the operation of the Solar PV System and sale and delivery of Electrical Output to the Utility;
6. enter into contract(s) for installation of the Solar PV System, subject to the terms of any proposed financing.

3.3 *CONSTRUCTION WORK AND EQUIPMENT INSTALLATION*. Upon FLS's receipt of (i) a written notice to proceed, (ii) execution and delivery of such documents required with respect to the Lease Agreement, and (iii) evidence that all pre-installation activities described in Section 3.2(A) of this Agreement have been satisfactorily completed, FLS shall furnish all labor, materials and equipment and cause the installation of the Solar PV System, in accordance with **Exhibits A and C** to this Agreement (the "Work"). The City

and FLS shall mutually plan the scheduling of the Work. The Work will be planned to minimize the interruption of the daily routine of the City's employees and/or the employees of any entity occupying the System where the Work is to be performed except as permitted in writing by the City. FLS shall provide the City reasonable notice of the progress of the installation of the Solar PV System and shall provide reasonable notice to the City of the Commercial Operation Date. With respect to ARRA spend deadlines, FLS shall invoice the City as promptly as possible for the $250,000.00 in EECBG funds.

FLS shall be solely responsible for all costs and the performance of all tasks required for installation of the Solar PV System.

FLS shall (i) use commercially reasonable efforts to cause installation of the Solar PV System to be completed and to cause the Solar PV System to begin Commercial Operation on or before June 30, 2012 or (ii) on such date, notify the City of the actual or estimated Commercial Operation Date.

FLS shall take commercially reasonable measures to prevent activities associated with installation, operation and repair, maintenance of the Solar PV System from disrupting or interfering with the City's business or commercial activities at the Premises.

3.4 *OPERATION OF THE SOLAR PV SYSTEM.*

A. FLS shall be solely responsible for operation and maintenance of the Solar PV System (subject, however, to the obligations and responsibilities of the City) and shall, at all times during the term of this Agreement, maintain the Solar PV System in accordance with Good Industry Practice. FLS shall bear all risk of loss with respect to the Solar PV System, except for losses arising from actions or negligence by the City or its agents and employees, and shall have full responsibility for its operation and maintenance in compliance with all laws, regulations and governmental permits.

B. The City shall have no ownership interest in the Solar PV System or Environmental Attributes and no responsibility for the operation or maintenance of the Solar PV System other than using commercially reasonable efforts to protect the Solar PV System against vandalism and other destruction. Neither the City nor any party related thereto shall have the right or be deemed to operate the Solar PV System for purposes of Section 7701(e)(4)(A)(i) of the Internal Revenue Code.

3.5 *SERVICES AT PROJECT COMPLETION.*

A. *Commissioning Inspection.* FLS will perform an internal quality assurance procedure to verify that the Solar PV System is installed according to design specifications, and that the Solar PV System will meet standards for performance over the entire projected life of the Solar PV System. The commissioning

inspection will include a multi-point inspection, thorough array and system testing, and initial system performance verification.

B. *Monitoring, Verification, Data Collection and Reporting*. Following completion, FLS will monitor the Solar PV System to ensure quality and proper functioning. FLS will meter the Solar PV System to assure that it is performing as intended and to verify the kWh production. FLS will utilize a web-based monitoring service to provide easy access to energy production data on a daily, weekly and monthly basis.

FLS will monitor the Solar PV System by recording and storing hourly data for AC-kWh output from each inverter, AC-kWh output from the entire Solar PV System, and incident solar radiation in the plane of the array (a pyranometer shall be used), tailored to provide only the data necessary to meet any TVA/KUB monitoring requirements and monthly DOE reporting. FLS will report data concerning the Solar PV System to the Utility and will submit annual reports to the appropriate department responsible for regulating utilities within the State of Tennessee.

C. *Maintenance and Training*. During the term of this Agreement, FLS will be responsible for all maintenance, insurance, and necessary repairs to the Solar PV System.

At the time of installation completion, FLS will provide five (5) copies of the complete operation and maintenance manuals (O&M) manuals for all components of the Solar PV System on compact discs to the City. The O&M manuals will include, but not be limited to, all information required to allow the City to operate the Solar PV System, if the City decides to self-operate in the future, including equipment specification, maintenance schedules, suppliers information, and warranty information. If the City opts to purchase the Solar PV System, FLS will train City staff on equipment use, function, operation, maintenance and repair. An annual maintenance plan to be performed by FLS is attached hereto as **Exhibit D**. The purpose of the maintenance plan is to ensure that the Solar PV System continues to function as described in the Scope of Work.

3.6 *COMPLIANCE WITH LAW*. FLS shall, at its expense, comply with and obtain all applicable licenses and permits required by Federal, State and local laws in connection with (i) the installation of the Solar PV System, and (ii) the operation and/or maintenance of the Solar PV System. In the event that FLS cannot procure any such license or permit in light of a requirement that the City is required to do so, the City shall promptly procure the same.

3.7 *CONSTRUCTION DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF FLS*:

A. FLS shall be responsible for the professional and technical accuracy of all the Work performed, whether by FLS or its subcontractors/subconsultants. All labor

furnished pursuant to this shall be competent to perform the tasks undertaken, all materials and equipment provided shall be new and of appropriate quality and the completed Work shall comply in all material respects with the requirements of this Agreement. FLS shall ensure that all Work is completed in a good and workmanlike manner.

B. FLS shall maintain the Project site in a reasonably clean condition during the performance of the Work.

C. FLS shall regularly clean the Project site of all debris, trash and excess material or equipment.

D. During the performance of the Work, FLS shall permit the City and/or any of its representatives to enter upon the Project site to review or inspect the construction work; provided that in each case, the City and/or its representatives coordinate such review or inspection with FLS and agree to comply with all applicable Federal, State and local safety laws, rules and regulations, including, without limitation, those promulgated by the U.S. Department of Labor, Occupational Safety, & Health Administration.

ARTICLE 4.
TERM

4.1 *INITIAL TERM*. The term of this Agreement (the "*Initial Term*") shall commence upon the execution of this Agreement and, unless sooner terminated in accordance with the terms hereof, shall expire at 2400 hours on the date seven (7) years following the Commercial Operation Date; *provided, however*, that payment for the generation of the Electrical Output shall commence on the Commercial Operation Date.

4.2 *PURCHASE OPTION AND RENEWAL TERMS*. At the end of the Initial Term (and any Renewal Term), this Agreement will terminate unless:

(a) the City elects to purchase the Solar PV System at its fair market value consistent with the terms of the attached **Exhibit E**, in which case the term of this Agreement shall extend until the Closing Date (as defined in **Exhibit C**); or

(b) FLS provides written notice at least six (6) months prior to the end of the Initial Term or any subsequent Renewal Term that FLS desires to extend this Agreement for an additional five (5) years and the City accepts the extension in writing within thirty (30) days (each, a "Renewal Term").

Unless otherwise agreed to by the parties in writing, upon the renewal of this Agreement, the terms and conditions of this Agreement shall remain in effect.

4.3 *TERMINATION BY FLS*. Commencing on the fifth (5^{th}) anniversary of the Commercial Operation Date and at all times thereafter, FLS shall have the unilateral and unrestricted right to terminate this Agreement by providing written notice to the City at least six (6) months prior to the desired date of termination. The City's option to purchase the System shall accelerate to the date of such termination.

4.4 *REMOVAL OF SOLAR PV SYSTEM AT TERMINATION OF THE AGREEMENT.* Upon expiration of this Agreement or early termination by either Party pursuant to the terms hereof, FLS shall cause the removal of the Solar PV System from the Premises and the restoration of the Premises to its original condition, reasonable wear and tear excepted, by a mutually convenient date but in no case later than one hundred twenty (120) days after such expiration or termination. The City shall reimburse FLS for reasonable costs of removal if removal occurs as a result of early termination by the City other than termination resulting from a default by FLS. FLS shall be responsible for all costs of removal at the end of the term of the Agreement or if removal occurs as a result of early termination by FLS pursuant to Section 4.4 of this Agreement. The City shall provide FLS with reasonable access to perform such activities. The City agrees and acknowledges that all of the Solar PV System (including all of its components) shall remain the sole property of FLS and shall have the right to remove the same, whether or not said items are considered fixtures and attachments to real property under applicable law. The City waives any and all right, title, and interest, and without limitation, any "landlord lien", in and to the Solar PV System.

ARTICLE 5.
CONSIDERATION

5.1 *GRANT FUNDS.* For the satisfactory performance of this Agreement, the City will pay FLS a total amount not to exceed Two Hundred Fifty Thousand and 00/100 Dollars ($250,000.00). The funds for this Agreement will be provided through the EECBG Program, and must be expended no later than June 30, 2012 to allow time for processing and reporting by the August 2012 grant expiration. All payments will be made as reimbursement to FLS for the expenses it incurs in fulfilling its obligations under this Agreement.

5.2 *INVOICES AND SUPPORT DOCUMENTATION.* FLS will file all requests for reimbursement for any costs incurred pursuant to this Agreement with the City Sustainability Program Manager. Each request for reimbursement must (i) show the amount spent during the term of the invoice, (ii) show the amount spent to date, (iii) show the total amount charged to the City, and (iv) show percentage completed with breakdown of accomplishments attached. Unless other arrangements are made with and approved by the City, each request for reimbursement will have attached any receipts, invoices, time sheets, and other supporting documentation of the actual costs that have been incurred. Supporting documents will be provided to the City as invoice backup; said supporting documents will include invoices and payments for Program expenditures, canceled checks, payroll registers supporting personnel expenses, and claims for travel expenses. Unless an alternative payment plan is otherwise approved by the City, the City will disburse the EECBG funds in no more than monthly payments (as invoiced). Payment will only be released after FLS has fulfilled the requirements for compensation as stated in this Agreement. The City reserves the right to:

A. make an on-site inspection of the Premises;

B. request further documentation or clarification regarding the eligibility of expenses for which payment is requested; and

C. review any relevant materials regarding FLS's productivity under this Agreement before the disbursement of any funds.

Under no circumstances will funds be released for ineligible or unreasonable expenses. Change orders that request any amount exceeding the project's budget will not be considered.

5.3 *RIGHT TO AUDIT AND DATA COLLECTION.* FLS shall maintain accurate and detailed books, records, correspondence and accounts regarding the services provided to the City hereunder, in accordance with sound cost accounting and generally accepted accounting principles and procedures. The City shall have the right to audit same during regular business hours and upon reasonable advance notice to FLS, at any time during the term of this Agreement and for a period of three (3) years thereafter.

ARTICLE 6.
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 REQUIREMENTS

6.1 *GENERAL.* The funding for this Project is provided either in whole, or in part, by the Federal or State Government as a portion of ARRA. As such, FLS is classified as a vendor and agrees to the following stipulations by accepting the EECBG funds from the City.

A. *Wage Rate Requirements.* FLS will comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, and all other applicable federal, state, and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. FLS will maintain documentation that demonstrates compliance with the hour and wage requirements of this part; said documentation must be made available to the City for review upon request. Specifically, FLS and FLS's contractor(s) shall comply with the wage rate requirements for all new construction, alteration or repair projects (includes painting and decorating) being funded by ARRA funds valued at $2,000 or more. All laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of Chapter 31, Title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan numbered 14 of 1950 (64 Stat. 1267, 5 U.S.C. App.) and section 3145 of Title 40 United States Code. See http://www.dol.gov/esa/whd/contracts/dbra.htm. Note that the City of Knoxville fully intends to conduct inspections to ensure that the Davis-Bacon Act is adhered

to by FLS, FLS's contractors and/or subcontractors. **The current wage determination which should be referenced is "General Decision Number: TN100108 08/27/2010 TN108" for the contractors use in adhering to Davis-Bacon requirements.**

B. *Buy American Act*. For all construction projects, FLS and/or its contractor shall comply to the Buy American Act which is incorporated herein by reference as FAR Clause 52.225-21, Required Use of American Iron, Steel, and Other Manufactured Goods - Buy American Act - Construction Materials (Mar 2009).

C. *Payment Terms*. FLS shall be paid by the City based on measurable deliverables and/or milestones developed by the City. The deliverables/milestones that must be met by FLS in order to receive payment from the City are set forth in **Exhibit A** to this Agreement.

D. *Prohibition on Use of Funds*. None of the funds provided under this Agreement derived from ARRA may be used for any casino or other gambling establishment, aquarium, zoo, golf course or swimming pool.

E. *Whistleblower Protections*.

1. FLS shall post notice of employees' rights and remedies for whistleblower protections provided under section 1553 of ARRA.

2. FLS shall include the substance of this clause including this paragraph (b) in all subcontracts.

F. *Certification regarding Debarment, Suspension and Other Responsibility Matters*.

1. FLS will provide a sworn certification stating that to the best of its knowledge and belief, it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statues or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (a)(ii) of this certification; and

d. Have not within a three-year period preceding this Agreement had one or more public transactions (Federal, State, or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to its proposal.

3. FLS further agrees to include a provision requiring such compliance in its lower tier covered transactions.

4. FLS must submit a signed affidavit certifying its status with regard to debarment, suspension, and other responsibility matters as provided in **Exhibit F** to this Agreement prior to final execution of this Agreement. Failure to provide these forms will result in the City denying execution of the Agreement. See **Exhibit F**.

G. *One-Time Funding*. FLS understands and agrees that awards under ARRA are one-time awards. Accordingly activities and deliverables for each specific project funded with ARRA funds are to be accomplished without additional ARRA funding from the City.

H. *Fraud and Abuse Hotline Notice*. FLS, its contractors and subcontractors shall prominently display the attached notice concerning the Comptroller Hotline in a location where employees and citizens can see said notice, attached hereto as **Exhibit G**.

6.2. *FUNDING*

A. *No Commingling of ARRA Funds*. FLS must segregate the obligations and expenditures related to ARRA funding. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the ARRA funds shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for ARRA funded projects. Where ARRA funds are authorized to be used in conjunction with other funding to complete projects, tracking and reporting must be separate from the original funding source to meet the reporting requirements of ARRA and ARRA-related OMB Guidance. Invoices or requests for payment, if required by this Agreement, must clearly indicate the portion of the requested payment that is for work funded by ARRA and billings/payment requests must be separated by line items identified in the Agreement.

6.3 *REPORTING*

A. *General*. FLS shall provide information to the City as necessary to comply with reporting requirements of FAR 52.204-11 American Recovery and Reinvestment Act – Reporting Requirements (Mar 2009), which is incorporated herein by reference. A partial list of the data elements FLS is required to report to the City on a monthly basis is provided in **Exhibit H**. Note that these requirements may be increased or modified by the City, based on future guidance provided by the Federal government. If and when said additional guidance is received by the City, then the City shall provide this guidance to FLS and the additional reporting guidance and requirements shall become a part of this Agreement.

B. *Timing of Reports*. The City is required to provide quarterly reports to the Federal government concerning this award to the FLS and its contractors/subcontractors. As such, the City requires FLS to provide monthly reports to the City no later than **four (4) working days** after the end of the calendar month that is considered an "off month." An "off month" is defined as a month that does not coincide with the end of the federal government's fiscal quarters. However, at the end of each federal quarter (as defined in the following sentence), FLS shall submit the required reports to the City no later than close of business on the **4th calendar day** of the month (regardless of weekends or holidays) following the end of the federal quarter. The Federal government's quarters end on the following dates each year: March 31, and June 30, September 30, and December 31. For example, during an off month (such as at the end October 2009), FLS shall submit the required report(s) to the City no later than close of business on November 5, 2009. This takes into consideration the weekend of Saturday (October 31) and Sunday (November 1). However, for a Federal quarter month such as December 31, FLS shall provide the required report(s) to the City no later than close of business on Monday, January 4, 2009. In this instance, the holiday of January 1 and the weekend of January 2 and 3 are not taken into consideration and are merely considered working days in which FLS must work to compile the report(s) as needed. Note that FLS is responsible for working out agreements with its contractors and/or subcontractors on the timing of their reports to FLS such that FLS's report can be submitted to the City on time and in compliance with the City's requirements. All reports shall be submitted before 5:00 p.m. on the date specified to the City Department administering this Agreement. The preferred method of rendering the report is by email with attachments as needed.

Please be advised that the City-County Building has secured entrances, please allow time to enter the City-County Building if you plan to hand-deliver the required reports.

The reporting schedule is provided below.

CONTRACTOR REPORTING SCHEDULE

ARRA Activity/Funding Month	On / Off Month	Report Due to City
Sep-09	On	04-Oct-09
Oct-09	Off	05-Nov-09
Nov-09	Off	04-Dec-09
Dec-09	On	04-Jan-10
Jan-10	Off	04-Feb-10
Feb-10	Off	04-Mar-10
Mar-10	On	04-Apr-10
Apr-10	Off	06-May-10
May-10	Off	04-Jun-10
Jun-10	On	04-Jul-10
Jul-10	Off	04-Aug-10
Aug-10	Off	07-Sep-10
Sep-10	On	04-Oct-10
Oct-10	Off	04-Nov-10
Nov-10	Off	06-Dec-10
Dec-10	On	04-Jan-11
Jan-11	Off	04-Feb-11
Feb-11	Off	04-Mar-11
Mar-11	On	04-Apr-11

ARRA Activity/Funding Month	On / Off Month	Report Due to City
Apr-11	Off	05-May-11
May-11	Off	06-Jun-11
Jun-11	On	04-Jul-11
Jul-11	Off	04-Aug-11
Aug-11	Off	07-Sep-11
Sep-11	On	04-Oct-11
Oct-11	Off	04-Nov-11
Nov-11	Off	06-Dec-11
Dec-11	On	04-Jan-12
Jan-12	Off	06-Feb-12
Feb-12	Off	06-Mar-12
Mar-12	On	04-Apr-12
Apr-12	Off	04-May-12
May-12	Off	06-Jun-12
Jun-12	On	04-Jul-12
Jul-12	Off	06-Aug-12
Aug-12	Off	07-Sep-12
Sep-12	On	04-Oct-12
Oct-12	Off	06-Nov-12
Nov-12	Off	06-Dec-12
Dec-12	On	04-Jan-13

C. *Cumulative Data*. All data reported to the City are to be cumulative throughout the life of this Agreement. For example, the first monthly report to the City might state that FLS spent $100,000, that the Project was 25% complete, and that 10 jobs were created. By the time the second monthly report is due to the City, FLS may have spent another $75,000, completed another 15% of the Project, and created 7 more jobs. In this case, the second monthly report would state that FLS had spent $175,000, completed 40% of the Project, and created 17 jobs.

D. *Reporting Data Elements*. All reports from FLS to the City shall be submitted electronically (via e-mail) to the City Department managing this Agreement. Under no circumstances shall FLS submit the report directly to the Federal or State government. FLS is required to report (as a minimum) the data elements provided in **Exhibit H** to the City at the end of each month as described above. See **Exhibit H** for reporting data requirements.

E. *Reporting Format and Forms*. **Exhibit H**—Reporting Data Elements to this Agreement describes the data elements to be reported in the monthly FLS reports to the City. Additionally, the actual report formats, with the data elements, is provided in **Exhibit I**. FLS will contact the City's Purchasing Division in order to receive the report format in an Excel template. The Purchasing Division can be reached at 865-215-2648 or 865-215-2070.

F. *Liquidated Damages Pertaining to Reporting*. FLS agrees that if it does not meet the reporting submission deadline established by the City, it will be subject to liquidated damages in the amount of $500 per day for each calendar day that the report is late in arriving to the City. Note that the City will only consider the report submission as being on time if the report is accurate and filled out in full. Providing inaccurate information or incomplete information will result in the report being returned to FLS for additional information and may cause the report to be considered late which will trigger the liquidated damages provisions of this Agreement.

6.4 *INSPECTIONS/AUDITS*

A. The Comptroller General and his representatives are authorized to examine any records of FLS and its contractors that involve transactions relating to this Agreement and any and all projects funded by FLS with ARRA funds provided by the City and to interview any officer or employee of FLS regarding the transaction(s). Any representative of an appropriate inspector general also is authorized to examine any records of FLS its contractor(s) and to interview any officer or employee of FLS or its contractor(s) regarding the transaction(s).

B. The Federal Government and/or State of Tennessee's Recovery Accountability and Transparency Board (the "Board") and its representatives are authorized to conduct audits and review of subcontracts that use ARRA funds. In addition to having access to records of FLS or its contractor(s), and the right to interview any officer or employee of the FLS or its contractor(s), the Board is also authorized to issue and enforce subpoenas to compel the testimony at public hearings, or otherwise, of persons who are not Federal officers or employees.

ARTICLE 7.
NOTICES

All notices required hereunder shall be in writing and shall be deemed to have been duly given if either hand delivered or mailed by certified or registered mail, postage prepaid, addressed to the party to whom intended at the address provided below or at such other address as such party shall hereinafter designate to the other party in writing:

City: City of Knoxville
P.O. Box 1631
Knoxville, Tennessee 37901
Attn: Boyce Evans
Purchasing Agent

and

Susanna Sutherland
Program Manager, Sustainability
P.O. Box 1631
Knoxville, Tennessee 37901

FLS: FLS Array Owner 15, LLC
2389 Amboy Road
Asheville, North Carolina 28806
(828) 350-3993
(828) 350-3997 (fax)

Any notice so mailed shall be deemed to have been given and received by the party to whom addressed on the third (3rd) day after the date said notice was properly deposited in the mail.

ARTICLE 8.
ACCESS TO PREMISES

During the term, the City shall provide to FLS, its employees, agents and subcontractors\subconsultants access to the Project site for the purpose of fulfilling FLS's obligations under this Agreement. The City shall provide mutually satisfactory space for the installation and operation of the Solar PV System, as more fully described in the Lease Agreement, and shall protect such equipment in the same careful manner that the City protects its own property.

ARTICLE 9.
CHANGES IN WORK

The quantity, quality, dimensions, type or other characteristics of the Solar PV System may be changed only by written consent of the City and FLS, by execution of a written change order. Change orders in excess of the original not to exceed $250,000 budget will not be considered.

ARTICLE 10.
WARRANTIES

10.1 FLS will provide a seven year guarantee on the performance of the Solar PV System. FLS will monitor the energy generation from the system to verify performance and will assume all responsibilities for work on the Solar PV System during the term of this Agreement. If the City exercises its option to purchase the Solar PV System, FLS will assign all warranties to the City pursuant to the Bill of Sale.

10.2 At the time of installation completion, FLS will provide five (5) copies of the complete operation and maintenance manuals (O&M) manuals for all components of the Solar PV System on compact discs to the City. The O&M manuals will include, but not be limited to, all information required to allow the City to operate the Solar PV System, if the City decides to self-operate in the future, including equipment specification, maintenance schedules, suppliers information, and warranty information.

ARTICLE 11.
DEFAULTS BY THE CITY AND FLS

11.1 *EVENT OF DEFAULT*. With respect to a Party, there shall be an Event of Default if:

A. such Party fails to pay any amount within fifteen (15) days after receipt of written notice that such amount is due two times in any one year period;

B. except as otherwise set forth in Section 6(A)(1), such Party is in breach of any material representation or warranty set forth herein or fails to perform any material obligation set forth in this Agreement and such breach or failure is not cured within thirty (30) days after written notice from the non-defaulting Party; provided, however, that the cure period shall be extended by the number of days during which the defaulting Party is prevented from taking curative action solely by Force Majeure if the defaulting Party had begun curative action and was proceeding diligently, using commercially reasonable efforts, to complete such curative action;

C. such Party admits in writing its inability to pay its debts generally as they become due;

D. such Party files a petition or answer seeking reorganization or arrangement under the Federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof;

E. such Party makes an assignment for the benefit of creditors;

F. such Party consents to the appointment of a receiver of the whole or any substantial part of its assets;

G. such Party has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof;

H. a court of competent jurisdiction enters an order, judgment or decree appointing a receiver of the whole or any substantial part of such Party's assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or

I. under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of such Party's assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control.

ARTICLE 12.
REMEDIES FOR DEFAULTS

12.1 In the event FLS defaults under this Agreement, the City may terminate this Agreement and exercise any and all remedies at law or equity, or institute other proceedings, including, without limitation, bringing an action or actions, from time to time for specific performance, and/or for the recovery of amounts due and unpaid and/or for damages, which shall include all costs and expenses reasonably incurred.

12.2 In the event the City defaults under this Agreement, FLS:

A. may bring actions for any remedies available at law or in equity or other appropriate proceedings for the recovery of direct damages, or institute other proceedings, including, without limitation, bringing an action or actions, from time to time for specific performance, and/or for the recovery of amounts due and unpaid and/or for damages, which shall include all costs and expenses reasonably incurred; or

B. without recourse to legal process, FLS may terminate this Agreement by delivery of written notice of termination.

12.3 In the event that this Agreement is terminated a result of a default described in this Article 12, FLS shall remove all solar related equipment installed pursuant to this Agreement from the City building at the sole cost and expense of the defaulting party.

12.4 Notwithstanding any provision to the contrary under this Agreement, neither the City nor any party related to the City shall bear or be deemed to bear any significant financial burden if there is nonperformance by FLS under this Agreement, as the phrase "any significant financial burden if there is nonperformance" is used in Section 7701(e)(4)(A)(ii) of the Internal Revenue Code.

12.5 Notwithstanding any provision to the contrary under this Agreement, neither the City nor any party related to the City shall be deemed to receive any significant financial benefit if the operating costs set forth in this Agreement, as the phrase "significant financial benefit if the operating costs of the Solar PV System are less than the standard of performance and/or operation" is used in Section 7701(e)(4)(A)(ii) of the Internal Revenue Code.

ARTICLE 13.
INSURANCE

13.1 The City shall at its sole expense obtain and maintain or participate in any government insurance program as provided by for law which operates as the equivalent of occurrence version commercial general liability insurance, and if necessary umbrella liability insurance, with a limit of not less than $2,000,000 each occurrence for bodily injury, personal injury, property damage, and products and completed operations. If such insurance contains a general aggregate limit, it shall apply separately to the work/location in this Agreement or be no less than $3,000,000.

13.2 FLS shall at its sole expense obtain and maintain in full force and effect for the duration of the Agreement and any extension hereof at least the following types and amounts of insurance for claims which may arise from or in connection with this Agreement. All insurance must be underwritten by insurers with an A.M. Best rating of A-VIII or better.

1. ***Commercial General and Umbrella Liability Insurance***; occurrence version commercial general liability insurance, and if necessary umbrella liability insurance, with a limit of not less than $2,000,000 each occurrence for bodily injury, personal injury, property damage, and products and completed operations. If such insurance contains a general aggregate limit, it shall apply separately to the work/location in this Agreement or be no less than $3,000,000.

Such insurance shall:

a. Contain or be endorsed to contain a provision that includes the City, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of FLS including materials, parts, or equipment furnished in connection with such work or

operations. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds.

b. For any claims related to this project, FLS's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance programs covering the City, its officials, officers, employees, and volunteers shall be excess of FLS's insurance and shall not contribute with it.

c. At the sole discretion of the City, dedicated limits of liability for this specific project may be required.

2. ***Automobile Liability Insurance;*** including vehicles owned, hired, and non-owned, with a combined single limit of not less than $1,000,000 each accident. Such insurance shall include coverage for loading and unloading hazards. Insurance shall contain or be endorsed to contain a provision that includes the City, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of FLS.

3. ***Workers' Compensation Insurance.*** FLS shall maintain workers' compensation insurance with statutory limits as required by the State of Tennessee or other applicable laws and employers' liability insurance with limits of not less than $500,000. FLS shall require each of its subcontractors to provide Workers' Compensation for all of the latter's employees to be engaged in such work unless such employees are covered by FLS's workers' compensation insurance coverage. Such insurance shall include a waiver of subrogation in favor of the City.

4. ***Other Insurance Requirements.*** FLS shall:

a. Prior to commencement of services, furnish the City with original certificates and amendatory endorsements effecting coverage required by this section and provide that such insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage except on 30 days' prior written notice to the Law Director, City of Knoxville, P.O. Box 1631, Knoxville, Tennessee 37901.

b. Provide certified copies of endorsements and policies if requested by the City in lieu of or in addition to certificates of insurance.

c. Replace certificates, policies, and endorsements for any such insurance expiring prior to completion of services.

d. Maintain such insurance from the time services commence until services are completed. Failure to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of contract.

e. Require all subcontractors to maintain during the term of the Agreement Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation/Employer's Liability insurance (unless subcontractor's employees are covered by FLS's insurance) in the same manner as specified for FLS. FLS shall furnish subcontractors' certificates of insurance to the City without expense immediately upon request.

f. Any deductibles and/or self-insured retentions greater than $50,000 must be disclosed to and approved by the City of Knoxville prior to the commencement of services. Use of large deductibles and/or self-insured retentions will require proof of financial ability as determined by the City.

g. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, and employees for losses arising from work performed by FLS for the City.

All policies must be written on an occurrence basis. Use of policies written on a claims made basis must be approved by the City and retroactive dates and/or continuation dates must be provided to the City prior to commencement of any work performed.

ARTICLE 14.
HOLD HARMLESS AND INDEMNIFICATION

FLS shall defend, indemnify and hold harmless the City, its officers, employees and agents from any and all liabilities which may accrue against the City, its officers, employees and agents or any third party for any and all lawsuits, claims, demands, losses or damages alleged to have arisen from an act or omission of FLS in performance of this Agreement or from FLS's failure to perform this Agreement using ordinary care and skill, except where such injury, damage, or loss was caused by the sole negligence of the City, its agents or employees.

FLS shall save, indemnify and hold the City harmless from the cost of the defense of any claim, demand, suit or cause of action made or brought against the City alleging liability referenced above, including, but not limited to, costs, fees, attorney fees, and other expenses of any kind whatsoever arising in connection with the defense of the City; and FLS shall assume and take over the defense of the City in any such claim, demand, suit, or cause of action upon written notice and demand for same by the City. FLS will have the right to defend the City with counsel of its choice that is satisfactory to the City, and the City will provide reasonable cooperation in the defense as FLS may request. FLS will not consent to the entry of any judgment or enter into any settlement with respect to an indemnified claim without the prior written consent of the City, such consent not to be unreasonably withheld or delayed. The City shall have the right to participate in the defense against the indemnified claims with counsel of its choice at its own expense.

FLS shall save, indemnify and hold City harmless and pay judgments that shall be rendered in any such actions, suits, claims or demands against City alleging liability referenced above.

The indemnification and hold harmless provisions of this Agreement shall survive termination of the Agreement.

ARTICLE 15.
PERFORMANCE AND PAYMENT BONDS

FLS will, within fifteen (15) days after the receipt of this Agreement and simultaneously with its execution, furnish the City a satisfactory performance bond and payment bond of even date in the penal sums equal to a minimum of $250,000, conditioned that FLS will fairly and faithfully perform all undertakings, covenants, provisions and conditions of this Agreement and pay all persons supplying labor and materials in the prosecution of the Project. Such bond will be from a surety company that is (i) authorized to transact business in the State of Tennessee and (ii) named on the current list of "Surety Companies Acceptable on Federal Bonds." Attorneys-in-fact who sign any bond must file a certified and effective dated copy of their power of attorney with each instrument.

ARTICLE 16.
NONDISCRIMINATION CLAUSE

FLS:

A. will not discriminate against any employee or applicant for employment because of race, age, color, religion, national origin, sex or disability;

B. will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, age, color, religion, national origin, sex or disability;

C. will, in all solicitations or advertisements for employees placed by or on behalf of it, state that all qualified applicants will receive consideration for employment without regard to race, age, color, religion, national origin, sex or disability; and

D. will include these provisions in every subcontract or sublease let by or for him.

ARTICLE 17.
ETHICAL STANDARDS

FLS hereby takes notice of and warrants that it is not in violation of, or has not participated, and will not participate, in the violation of any of the following ethical standards prescribed by the Knoxville City Code:

17.1 *Sec. 2-1048. Conflict of Interest.*

It shall be unlawful for any employee of the city to participate, directly or indirectly, through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase

standard, rendering advice, investigation, auditing or otherwise, in any proceeding or application, request for ruling or other determination, claim or controversy or other matter pertaining to any contract or subcontract and any solicitation or proposal therefor, where to the employee's knowledge there is a financial interest possessed by·

(1) The employee or the employee's immediate family;
(2) A business other than a public agency in which the employee or a member of the employee's immediate family serves as an officer, director, trustee, partner or employee; or
(3) Any other person or business with whom the employee or a member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment.

17.2 *Sec. 2-1050. Gratuities and Kickbacks Prohibited.*

Gratuities. It is unlawful for any person to offer, give or agree to give to any person, while a city employee, or for any person, while a city employee, to solicit, demand, accept or agree to accept from another person, anything of a pecuniary value for or because of:

(1) An official action taken, or to be taken, or which could be taken;
(2) A legal duty performed, or to be performed, or which could be performed; or
(3) A legal duty violated, or to be violated, or which could be violated by such person while a city employee.

Anything of nominal value shall be presumed not to constitute a gratuity under this section.

Kickbacks. It is unlawful for any payment, gratuity or benefit to be made by or on behalf of a subcontractor or any person associate therewith as an inducement for the award of a subcontract or order.

17.3 *Sec. 2-1051. Covenant Relating to Contingent Fees.*

(a) *Representation of Contractor.* Every person, before being awarded a contract in excess of ten thousand dollars ($10,000.00) with the city, shall represent that no other person has been retained to solicit or secure the contract with the city upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for bona fide employees or bona fide established commercial, selling agencies maintained by the person so representing for the purpose of securing business.

(b) *Intentional violation unlawful.* The intentional violation of the representation specified in subsection (a) of this section is unlawful.

17.4 *Sec. 2-1052. Restrictions on Employment of Present and Former City Employees.*

Contemporaneous employment prohibited. It shall be unlawful for any city employee to become or be, while such employee, an employee of any party contracting with the particular department or agency in which the person is employed.

17.5 *Remedies for Violations*. For violations of the ethical standards outlined in the Knoxville City Code, the City has the following remedies:

(1) Oral or written warnings or reprimands;
(2) Cancellation of transactions; and
(3) Suspension or debarment from being a Contractor or subcontractor under city or city-funded contracts.

The value of anything transferred in violation of these ethical standards shall be recoverable by the City from such person. All procedures under this section shall be in accord with due process requirements, included but not limited to a right to notice and hearing prior to imposition of any cancellation, suspension or debarment from being a Contractor or subcontractor under a city contract.

ARTICLE 18.
ADA COMPLIANCE

FLS will comply all applicable requirements of the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.* ("ADA"), including but not limited to the removal of all structural barriers, the accessibility of programs, services and goods, the provision of all auxiliary aids and services, and the modification of policies, practices and procedures. FLS agrees that the City will not be responsible for any costs or expenses related to compliance with the ADA. FLS agrees that it will defend, indemnify and hold the City harmless against any and all claims, demands, suits or causes of action which arise out of this Agreement or the use of the Premises, or an act or an act of omission by FLS, its employees, agents or representatives that violates or claims to violate the ADA.

ARTICLE 19.
AGREEMENT INTERPRETATION AND PERFORMANCE

The interpretation and performance of this Agreement, and the interpretation and enforcement of rights of the Parties hereunder, shall be construed in accordance with and governed by the laws of the State of Tennessee.

ARTICLE 20.
WAIVER

The failure of either Party to require compliance with any provision of this Agreement shall not affect that Party's right to later enforce the same. It is agreed that the waiver by either Party of performance of any term of this Agreement or of any breach thereof will not be held or deemed to be a waiver by that Party of any subsequent failure to perform the same or any other term or condition of this Agreement or any breach thereof.

ARTICLE 21.
FORCE MAJEURE

In the event that either Party is delayed in or prevented from performing or carrying out its obligations under this Agreement by reason of any cause beyond the reasonable control of, and without the fault or negligence of, such Party (an event of "Force Majeure"), such circumstances shall not constitute an event of default, and such Party shall not be liable to the other Party for or on account of any loss, damage, injury, or expense resulting from or arising out of, such delay or prevention; provided, however, that the Party encountering such delay or prevention shall use commercially reasonable efforts to remove the causes thereof (with failure to use such efforts constituting an event of default hereunder). The settlement of strikes and labor disturbances shall be wholly within the control of the Party experiencing that difficulty.

As used herein, the term "Force Majeure" shall include, without limitation, (i) sabotage, riots or civil disturbances, (ii) acts of God, (iii) acts of the public enemy, (iv) terrorist acts affecting the Project site, (v) volcanic eruptions, earthquake, hurricane, flood, ice storms, explosion, fire, lightning, landslide or similarly cataclysmic occurrence, (vi) requirement by the TVA or state of Tennessee that the Solar PV System discontinue operation for any reason, (vii) appropriation or diversion of solar electrical output by sale or order of any governmental authority having jurisdiction thereof , or (viii) any other action by any governmental authority which prevents or prohibits the Parties from carrying out their respective obligations under this Agreement. Economic hardship of either Party shall not constitute a Force Majeure under this Agreement. Notwithstanding anything provided in this Article 22, nothing shall limit the City's obligation to make payments under the SPPA unless otherwise provided for therein.

ARTICLE 22.
PUBLICITY

The Parties (including any members of FLS and their members) share a common desire to generate favorable publicity regarding the Solar PV System and their association with it. The Parties (including any members of FLS and their members) agree that they will, from time to time, issue press releases regarding the Solar PV System and that they shall cooperate with each other in connection with the issuance of such releases including, without limitation, completed reviewed of press releases proposed to be issued by the other Party (including any members of FLS and their members) by no later than four (4) business days after submission by such other Party. Each Party (including any members of FLS and their members) agrees that it shall not issue any press release regarding the Solar PV System without the prior consent of the other, and

each Party agrees not to unduly withhold or delay any such consent. The City shall have the right to publicize that it is serving as a "solar host" for the Solar PV System and to display photographs of the Solar PV System in its advertising and promotional materials; provided, that any such materials identify FLS as the owner and developer of the Solar PV System and shall be consistent with Article VII of this Agreement. FLS shall use commercially reasonable efforts to cause the City to maintain the area in the immediate vicinity of the Solar PV System in a reasonably neat and clean condition.

ARTICLE 23.
REPRESENTATIONS AND WARRANTIES

Each Party warrants and represents to the other that:

A. such Party is duly organized, validly existing and in good standing under the laws of the state of its formation and has all requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transaction contemplated hereby;

B. the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized by, and are in accordance with, as to FLS, its organic instruments and, as to the City, by all requisite municipal, City Council or other action and are not in breach of any applicable law, code or regulation;

C. this Agreement is a legal, valid and binding obligation of such Party enforceable against such Party in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law);

D. to such Party's knowledge, no governmental approval (other than any governmental approvals which have been previously obtained or disclosed in writing to the other Party) is required in connection with the due authorization, execution and delivery of this Agreement by such Party or the performance by such Party of its obligations hereunder which such Party has reason to believe that it will be unable to obtain in due course; and

E. neither the execution and delivery of this Agreement by such Party nor compliance by such Party with any of the terms and provisions of this Agreement conflicts with, breaches or contravenes the provisions of such Party's organizational documents, the rules or regulations or the Tennessee law as applies to such Party.

ARTICLE 24.
MISCELLANEOUS PROVISIONS

24.1 *INDEPENDENT CONTRACTOR*. FLS shall at all times be considered an independent contractor hereunder, and neither FLS nor its employees, agents or representatives shall, under any circumstances, be considered employees of the City; and the City shall not be legally responsible for negligence or other wrongdoing, either intentional or unintentional, by FLS or FLS's employees, agents or representatives. The City shall not deduct from payment to FLS any Federal or State unemployment taxes, Federal or State income taxes, Social Security tax, or any other amounts for benefits to FLS. Further, the City shall not provide to FLS any insurance coverage or other benefits, including Workers' Compensation, normally provided by the City for the City's employees.

24.2 *ASSIGNMENT*. This Agreement may be sold, assigned or transferred by FLS without approval or consent of the City to FLS's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of FLS's assets in the market in which the Premises is located by reason of a merger, acquisition or other business reorganization. As to other Parties, this Agreement may not be sold, assigned or transferred without the written consent of the City, which consent will not be unreasonably withheld or delayed.

24.3 *SET-OFF*. Except as otherwise set forth herein, each Party reserves to itself all rights, set-offs, counterclaims and other remedies and/or defenses to which it is or may be entitled, arising from or out of this Agreement or arising out of any other contractual arrangements between the Parties. All outstanding obligations to make, and rights to recive, payment under this Agreement may be offset against each other.

24.4 *SEVERABILITY*. If any part or provision of this Agreement is held invalid or unenforceable under applicable law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining parts and provisions of this Agreement.

24.4 *NONWAIVER*. The waiver by the City or FLS of a breach of this Agreement shall not operate as a waiver of any subsequent breach, and no delay in acting with regard to any breach of this Agreement shall be construed to be a waiver of the breach.

24.5 *WRITTEN AMENDMENTS*. This Agreement may be modified only by a written amendment or addendum which has been executed and approved by the appropriate officials shown on the signature page of this Agreement.

The Parties acknowledge that adjustments in the terms and conditions of this Agreement may be appropriate to account for rules changes in the respective state or by TVA, by the respective independent system operators, or their successors, that could not be anticipated at the date of execution of this Agreement or that are beyond the control of the Parties, and the Parties agree to make such commercially reasonable amendments as are reasonably required to comply therewith.

24.6 *ARTICLE CAPTIONS*. The captions appearing in this Agreement are for convenience only and are not a part of this Agreement; they do not in any way limit or amplify the provisions of this Agreement.

24.7 *GOVERNING LAW*. This Agreement and the rights, obligations and remedies of the parties hereto, shall in all respects be governed by and construed in accordance with the laws of the State of Tennessee.

24.8 *FEDERAL, STATE AND LOCAL REQUIREMENTS*. FLS is responsible for full compliance with all applicable Federal, State and local laws, rules and regulations.

In particular, FLS agrees to comply with the applicable Federal, State and City requirements referenced below and made a part hereof as if set forth verbatim: (1)The Charter and Code Provisions of the City of Knoxville; (2) President's Executive Order Nos. 11246 and 11375, which prohibit discrimination in employment based on race, color, religion, sex or national origin; (3)Title VI of the Civil Rights Act of 1964; and (4) Copeland Anti-Kickback Act.

24.9 *SUCCESSORS AND ASSIGNS*. The rights and obligations herein shall inure to and be binding upon the successors and assigns of the parties hereto.

24.10 *COUNTERPARTS*. Any number of counterparts of this Agreement may be executed and each shall have the same force and effect as the original. Facsimile signatures shall have the same effect as original signatures and each Party consents to the admission in evidence of a facsimile or photocopy of this Agreement in any court or arbitration proceedings between the Parties.

24.11 *THIRD PARTY BENEFICIARIES*. Nothing in this Agreement shall provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind, it being the intent of the Parties that this Agreement shall not be construed as a third party beneficiary contract.

24.12 *SURVIVAL*. Any provision(s) of this Agreement that expressly or by implication comes into or remains in full force following the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

24.13 *BINDING EFFECT*. The terms and provisions of this Agreement, and the respective rights and obligations hereunder of each Party, shall be binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

24.14 *RIGHTS UPON SALE*. Should the City, at any time during the term of this Agreement, decide to sell all or any part of the Premises to a third party lessor, such sale shall be under and subject to this Agreement and the City's rights hereunder.

24.15 *COOPERATION*. Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section. Without limiting the foregoing, the Parties acknowledge that they are entering into a long-term arrangement in which the cooperation of both of them will be required.

24.16 *NO PARTNERSHIP*. This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

24.17 *ENTIRE AGREEMENT*. This Agreement constitutes the entire agreement between the parties hereto and may not be modified or amended except in a writing signed by both parties hereto. In the case of any conflict between the terms and conditions of this Agreement and any other agreement between the parties hereto, the terms of this Agreement shall control.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Agreement on the date first above written.

APPROVED AS TO FORM:

_____

DEBRA C. POPLIN
LAW DIRECTOR

CITY OF KNOXVILLE

BY: _____

DANIEL T. BROWN
MAYOR

DATE: _____

FUNDS CERTIFIED:

_____

JAMES YORK
FINANCE DIRECTOR

FLS SOLAR 60, LLC

BY: FLS ENERGY, INC., MANAGING MEMBER

By: _____

MICHAEL SHORE
PRESIDENT

Required Documents:
Certificate of Insurance X
Performance and Payment Bonds X

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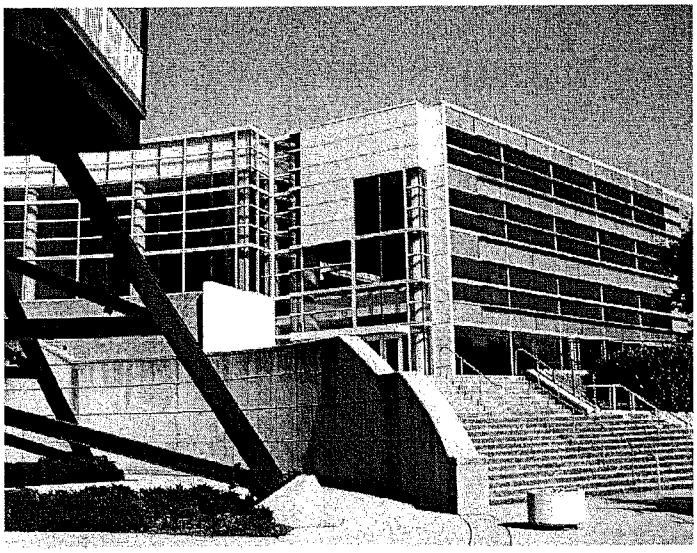
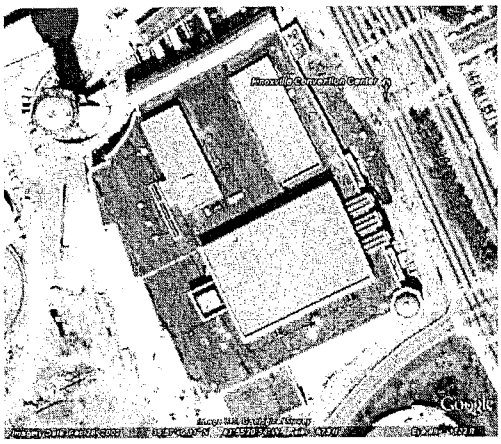
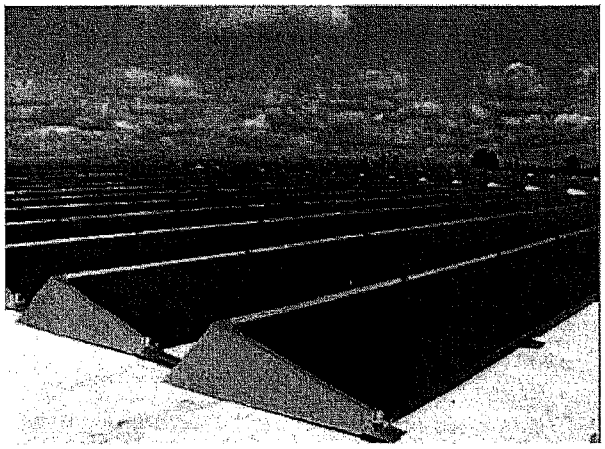
SOLAR PV ON THE KNOXVILLE CONVENTION CENTER THROUGH THIRD-PARTY FINANCING

FLS ENERGY AND GREEN EARTH SOLAR PROJECT SCOPE OF WORK

JUNE 18, 2010 - REVISED OCTOBER 9, 2010







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Executive Summary

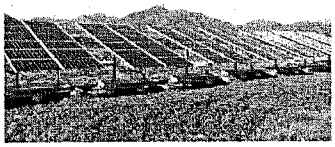
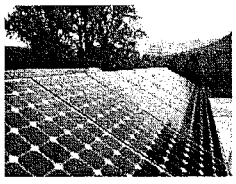
The City of Knoxville shows great leadership in researching the third-party finance arrangement for its solar projects, with the Knoxville Convention Center as a model for the region. Not only does this support the ARRA objectives for leveraging stimulus funds, but also provides an excellent model for municipalities and businesses that are looking for a way to budget renewable energy projects cost-effectively, but are not yet familiar with this concept.

As a team, Green Earth Services and FLS Energy, Inc. are uniquely qualified to complete this project, owing to our multiple team NABCEP certifications, strong financial position with verified financial backing for a project of this scope, proven experience in third party finance of solar systems, participation as members of the Knoxville Chamber of Commerce, and holding business licenses in Knoxville and Knox County.

In this document, FLS Energy outlines some ideas for financing a solar project at the Convention Center that will give the City of Knoxville the maximum return on its investment. Our financing model is called the Photovoltaic Purchase Agreement (PPA). Using the PPA model, FLS Energy can use a $250,000 investment to install a 90 kW PV system, pay to the City a $10,000 annual roof lease beginning in year one (1), and give the option for the City to own the system in year seven (7).

Critical elements for the success of this project will include:

- Site verification through engineering study and NEPA approval
- Historic Preservation Committee approval of the design
- Working with the roofing contractor to preserve warrantees
- Grid interconnection with Knoxville Utility Board
- TVA's Generation Partner Program requirements met and contract for third-party ownership
- Working around the Convention Center's activities to schedule the installation
- Completing the project as early as feasible, with minimal impact on the facility's operations
- Ability to offer the City of Knoxville an ownership option without use of additional funding
- Effective communication with all parties involved in the project during all phases
- Community outreach and the ability to provide educational opportunities
- Accurate and timely reporting of project parameters, in compliance with ARRA requirements

I. KNOXVILLE'S STATEMENT OF INTENT

The Energy Efficiency & Conservation Block Grant Program (EECBG) was authorized in the Energy Independence and Security Act of 2007, but was funded for the first time in the American Recovery and Reinvestment Act (ARRA) of 2009. Program dollars are allocated by the Department of Energy (DOE) directly to cities with populations of at least 35,000 and counties with populations of at least 200,000. The City of Knoxville's (City) allocation is $2,012,700. Of these funds, $250,000 is allocated for deploying a Solar Photovoltaic (PV) system, ideally on the roof of the Knoxville Convention Center, using a third-party or other innovative financing model.

The City intends to leverage the available $250,000 to allow the installation of a high quality solar array with the highest electricity output possible given financial constraints. FLS Energy expects to budget that amount as a seed fund to plan a third party financed project, and will incorporate applicable financial incentives such as the 30% federal tax credit, MACRS depreciation, TVA's Generation Partners Program (a power purchase program), and any other available opportunities to reduce net system cost. The City does not require panel ownership upon the completion of installation and is interested in considering financial models in which the selected firm proposes to own the panels permanently, or own the panels for a period of time with eventual City option to purchase.

Through this project, the City intends to demonstrate how municipal, non-profit, or other non-tax paying entities in the Tennessee Valley can deploy large solar PV systems without incurring significant costs. FLS Energy and Green Earth Solar (FLS/ GES) will connect the PV system with the electrical grid through the Tennessee Valley Authority's (TVA) Generation Partners Program via Knoxville Utilities Board (KUB). Because of the structure of Generation Partners, the City does not expect the PV installation to offset or reduce electricity usage or cost at the host site, particularly during the ten-year duration of the Generation Partners agreement. A financing model for the project through which the City can benefit economically from the system will be outlined in the Scope of Work section. This model is a duplicable financial structure that is workable in the TVA and KUB power service areas.

FLS/ GES will be responsible for the due diligence, financing, design, installation and grid-connection of the PV system. Due diligence includes, but is not limited to, verification of sufficient structural integrity, solar resource, and National Environmental Protection Act (NEPA) approval for an installation on the proposed host site, the Knoxville Convention Center. Although no major barriers are anticipated, if NEPA approval or structural and solar due diligence prevent the Convention Center from being an appropriate site, FLS/ GES will assist the City in a new site selection and clearance process. During the scoping process, the budget will reflect the potential for site change if necessary.

Because there is a component of risk in site approval, the contract will have two phases and two separate notices to proceed. The first notice to proceed will be given when the contract receives City Council approval, and Phase I will entail performing site due diligence, schematic design renderings, aiding the City in obtaining NEPA clearance, securing financing, and initiating a Generation Partners Agreement. The second notice to proceed will be issued upon NEPA compliance and DOE approval, and Phase II will entail final design and installation.

FLS/ GES will be responsible for budgeting for both phases of this project, and managing those funds accordingly.

Phase I: Due Diligence (Notice to Proceed upon contract execution)

- Conduct a solar site assessment, a structural assessment, and a NEPA assessment. FLS/GES won't expect Phase II notice to proceed until a written structural engineering report has been submitted, done by a TN licensed engineer.
- Produce schematic design documents;
- Ensure NEPA compliance, either by subcontracting for an environmental assessment or by following other guidance provided by the DOE / State Historic Preservation Office (SHPO) in this capacity (a waste stream plan is needed here);
- Develop a system financing structure to insure the City expends no more than $250,000 total in relation to this project; and
- Initiate a Power Purchase Agreement (through Generation Partners) with TVA / KUB.

Phase II: Design and Build (Notice to Proceed upon DOE / NEPA approval)

- Finalize system design and technical specifications;
- Finalize design certification and maintenance plans;
- Complete installation and waste stream documentation;
- Provide turn-key installation of designed system:
  - Connect to the utility grid using KUB's interconnection guidelines, found at http://www.kub.org/wps/portal/generationpartners,
  - Use these in conjunction with TVA's Green Power Switch Generation Partners Program, found at http://www.tva.com/greenpowerswitch/partners/;
- Issue engineering certification and performance guarantees / warranties; and
- Issue consistent monthly reporting, as well as any other tasks required to allow successful fulfillment of the City's contractual obligations to DOE for the expenditure of the EECBG grant for a solar PV array. The Buy America provision also applies and will be documented.

City of Knoxville will contribute up to and no more than $250,000 for this project. These funds will be used to cover the cost of due diligence, design of the system, consulting, engineering, and legal expenses. FLS/ GES does not expect that the City will commit any additional funds towards purchasing the project at any point in the future (i.e., no commitment to purchase PV panels at a reduced rate after tax credits/depreciation have been captured). However, FLS/ GES has included a panel purchase option for the City's consideration. FLS Energy will be responsible for system maintenance as long as it owns the PV system. If the City of Knoxville purchases the system, FLS/ GES will provide maintenance services at a modest rate.

The professional services contract will require coordination with federal, state, and local entities, will require open and continual communication with City representatives, will consider NEPA compliance, will require aiding the City with DOE coordination and reporting, will require a cost conscious, technical, and innovative approach to aiding the City in good stewardship and appropriate completion of grant obligations, will require flexibility with unknown conditions, and will require project completion absolutely no later than August of 2012. Because the

project is intended to be a model, FLS/ GES expects to share basic information regarding PPA financing with the public if requested by the City. Specific work requirements are listed in the Scope of Work section.

II. BACKGROUND:

Energy Efficiency and Conservation Block Grant (EECBG)

In 2007, the City of Knoxville began seriously examining ways to bring sustainable practices to the way it does business. Cities all over the nation have engaged or are engaging in this same effort to develop programs that enable environmentally responsible business practices to be implemented while still maintaining fiscal responsibility. Instead of putting all of its EECBG funding into our energy services performance contract, the City has allocated funds to seven different efforts, the implementation of which is private sector and market driven. Interested partners and members of the public will be involved throughout the open expenditure process and will participate in the City's EECBG funded sustainable program development.

In September 2009, the City was awarded $2,012,700 for energy savings initiatives. The purpose of this DOE program is to assist local governments in creating and implementing strategies to increase energy efficiency, reduce fossil fuel emissions, reduce energy costs, deploy renewable energy technologies, leverage public and private resources, create jobs, spur economic growth, and maximize benefits over the long term. These Energy Efficiency & Conservation Block Grant funds will provide a booster to the renewable energy market of Knoxville, and will be a significant energy-saving asset to the Community, City, and private property owners.

Documents related to the City's sustainability program are available for review on the City of Knoxville website at www.cityofknoxville.org/sustainability.

Tax Credits, Grants, and Other Financial Incentives

The Federal Government offers the Business Energy Investment Tax Credit to commercial, industrial, or utility entities that install eligible renewable technology systems, such as the Solar PV array the city wishes to pursue. This tax credit is worth 30% of the cost of the system. With the passage of the American Recovery and Reinvestment Act of 2009, the solar investment tax credit can be combined with tax exempt financing, which could significantly reduce the required capital. Through the end of 2010, the federal government provides a grant in lieu of an investment tax credit, for business owners.

In partnership with FLS Energy, the City of Knoxville will be able to monetize available federal tax credits. FLS will also be able to leverage the MACRS depreciation schedule for the solar array. More information about these federal tax incentives may be found through the IRS website and at http://www.dsireusa.org/solar/incentives/index.cfm?state=us&re=1&EE=1&spv=1&st=1

The City of Knoxville will work with FLS/ GES to pursue any opportunity for additional grant funding. It has been noted that TN Solar Institute funding may not be applied to any government – owned properties.

TVA Generation Partners Program

The TVA Generation Partners Program is offered in Knoxville through KUB. Owners of eligible, solar energy generation systems can contract with TVA to participate in the Generation Partners Program. TVA will purchase 100% of the green energy output at a premium of $0.12 cents per kilowatt-hour (kWh) for solar above the retail rate, plus any fuel cost adjustments. All new participants will qualify for an additional $1,000.00 incentive to help offset start-up costs. TVA will meter the output of the PV system separately from the electricity consumption of the host site. Purchase of all generated power is guaranteed for 10 years from the start of the agreement with the local power company. To be eligible for the program, all equipment must be in compliance with environmental regulations and national standards, certified by a licensed electrician, and meet all applicable codes. It should be noted that upon purchase of produced electricity, TVA owns the right to all Renewable Energy Credits or other green attributes; these cannot be re-sold by the solar array owner.

III. CONTRACT STRUCTURE AND SCOPE OF WORK REQUIREMENTS

Scope Overview

The City is responsible to the DOE for the stewardship of the EECBG grant funds, and will work closely with FLS/ GES to ensure each task on the solar array project is completed and reported to the satisfaction of the DOE well within the 3 year timeframe of this grant. The scope of services and budget will include their role in each of the following tasks:

a.) **Project Development:** FLS/ GES will aid the City in establishing guiding criteria and project milestones, and will host a kick-off meeting with critical local, state, and federal players, including the DOE if they are able to attend. FLS/ GES will address and schedule the Phase I and II project components outlined in the Statement of Intent to financially structure, obtain site clearances, design, build, commission, own, operate, and maintain a complete roof-mounted PV system. Although the exact size will depend on financing constraints, the city anticipates the system to be approximately 90 kW.

The PV system likely will be a fixed ballasted array, and will be installed at the azimuth and orientation that provides the highest quantity of electricity at the lowest price. The PV system will be designed, constructed, and fully functional no later than June of calendar year 2012 to allow for final DOE reporting to be completed by August 2012. However, in the interests of adequately fulfilling City obligation to DOE and recognizing the pressure to invest ARRA funds, the soonest possible installation is expected, ideally in 2010 or 2011, and the City will work with FLS/ GES to aid in expediting the process. Outcomes of this task include establishing a solid framework for successful third party financing of a large PV system that leverages available City funds to the greatest extent possible. Deliverables include getting a strong oversight team and developing a legally, fiscally, and structurally cohesive plan of action.

b.) Communication: In keeping with the transparent nature of all City undertakings, this task has already begun with the announcement of the grant award on the Sustainability webpage and in the December 2009 Energy & Sustainability Task Force presentation. Community understanding of the work this grant authorizes is a City goal. Outcomes of this Task include increasing environmental awareness and building trust for successful completion of third party financed systems in the private sector. Deliverables include the effective transfer of information through written documents and face-to-face communication with the City, TVA, KUB, and the Convention Center management (SMG), as well as any other interested stakeholders. FLS/ GES will present any requested progress briefings and/or papers to the Task Force during the project. FLS/ GES is willing to publicly share the financial model and structure used for this project.

c.) Site Selection and Due Diligence: Completion of this task will identify a location for the system, both the building and an appropriate place for the system on the roof. The City has received NEPA clearance to proceed with the Knoxville Convention Center, which is City-owned and aiming for LEED certification. It is expected that plans for a roof-mounted installation will not trigger an EIS, but rather a less intensive NEPA review process. However, if the NEPA process or other due diligence prevents the system from being installed at the Convention Center, an acceptable alternate site must be located and cleared environmentally. FLS Energy has experience with NEPA compliance, having recently submitted nine NEPA forms for clients who are moving through Renewable Grants process with the NC Energy Office.

d.) Financial and Generation Partners Agreement Structure: Because the intent of this project is to identify and implement a workable model that will help facilitate other third-party financed solar projects in the Tennessee Valley, the City requires that the system is connected to the electrical grid through TVA's Generation Partners Program. The Generation Partner agreement acts, effectively, as a power purchase agreement; for the 10-year life of the agreement, TVA will purchase all electricity produced by the system at a rate $0.12 above retail electricity rates.

Because of this model, the city does not expect to benefit monetarily from the PV installation, particularly during the term of the Generation Partner agreement—the city simply wants to host the system on one of its buildings. The City is willing to put $250,000 into figuring out how this will work within its existing power generation and distribution system, with the intent to showcase the end product; a financing model that allows the city to benefit monetarily from the system (such as through roof lease agreement) is preferred, but not required. It is the responsibility of FLS/ GES to ensure that the financing model adheres to all legal requirements. TVA and KUB have been involved in the scoping of this project and will be at the table from notice to proceed; it will be up to FLS/ GES to work with the City to find a method or a tailored agreement all parties can accept.

e.) System Design: The NEPA process requires design documentation prior to approval. Deliverables of this task include design documentation. The City will coordinate with DOE and the State Historic Preservation Office (SHPO) to receive final clearance. System design will be as transferable as possible to prevent wasted effort if NEPA requires site change. *Note: KUB's interconnection procedures (http://www.kub.org/wps/portal/generationpartners) require KUB review and approval prior to the purchase of equipment.*

f.) System Installation and Connection to Grid: Pending NEPA clearance, FLS/ GES will proceed with well coordinated installation and grid connections, consulting with TVA, KUB, and S&G throughout the design and installation process.

Deliverables

FLS/ GES will collaborate with all partners to develop and provide deliverables in phases as indicated below. Financial deliverables will be submitted in Word format electronically to the City, KUB, and TVA. Design deliverables will be submitted electronically to the City, KUB, and TVA, in PDF and Microstation file formats, for review, feedback and approval. FLS/ GES will provide four (4) hard copies at 100% final design.

a.) Phase I, Project Execution Plan: Detail the phased approach to the work, client requirements, key milestones, and steps to completion of the work. Explain the general design plan and financing structure that will be used for the project, including how the Generation Partners agreement will be structured. PowerPoint Presentation that summarizes key attributes of the system and agreement. Due after 1st notice to proceed.

b.) Phase I, Finance Structure and Generation Partners Agreement: Develop and provide legal documents that detail financial structure and site lease agreement. The site lease agreement will include both the transfer of funds from FLS to the City of Knoxville for a roof lease, as well as provisions for the transfer from the City of Knoxville to FLS of Generation Partner Credits. Due after site due diligence and environmental clearances are obtained.

c.) Phase I, Layout, Conceptual Drawings, and Waste Management Plan: Provide layout and schematic design drawings of the system for use in the NEPA approval process. Due after 1st notice to proceed.

d.) Phase II, Final Design Data: Provide basic design data and product datasheets for the system, including, but not necessarily limited to, solar panels, mounting structure, inverters, disconnects, cables, monitoring and security system. Due after 2nd notice to proceed.

e.) Phase I & II, Progress Reporting: Provide weekly progress reports including a schedule with progress, forecasts of delivery, manufacturing, installation, commissioning and hand-over schedule milestones. Participation in bi-monthly calls will be required for participating FLS Energy representatives located out of state. Due throughout the project until installation is complete and energy savings are being reported.

f.) Phase II, Operations and Maintenance Manual: FLS/ GES will provide five (5) copies of the operation and maintenance manual for the system on compact discs, due at installation completion.

Technical Standards

a.) **OSHA:** FLS/ GES and any sub-contractors will comply with all OSHA health and safety (H&S) requirements during construction and start-up of the PV system. The City of Knoxville may, at its discretion, impose additional H&S requirements which exceed OSHA standards. Any special requirements will be agreed upon between FLS/ GES and the City before construction begins.

b.) **Waste Stream:** FLS/ GES will provide a waste stream document for City and DOE approval prior to the 2nd notice to proceed that includes type of wastes generated and addresses of where those wastes will be disposed. All scrap metal, wiring, and product packaging is to be recycled. For example, 20,440 lbs of material was recycled by FLS during the installation at Evergreen Solar Farm.

Throughout the term of the contract, FLS/ GES will keep the site free from accumulations of waste material, debris, or rubbish. FLS/ GES will remove all waste, rubbish, tools, and surplus materials from the work site and keep the area clean. Clean up will be performed in accordance with established safety and proper disposal procedures and in accordance with all applicable federal, state and local laws, rules, and ordinances.

c.) **Licenses and Insurance:** The team of FLS/ GES/ and subcontractors is licensed and insured in the State of Tennessee and possesses all applicable licenses and certifications to perform services under this contract.

d.) **Permits:** FLS/ GES will be responsible for obtaining all required permits. No exemptions for permits have been confirmed or should be assumed. FLS/ GES will design to code, apply for the necessary permits, and secure all required permits before proceeding.

e.) **Design and Installation:** FLS/ GES will design the system and install all equipment in accordance with manufacturer's recommendations. All aspects of the installation will comply with appropriate national and local codes and ordinances; electrical components of the installation will comply with the 2008 National Electrical Code. Current applicable local codes can be found at: http://www.cityofknoxville.org/plansreview/building.asp. Both FLS Energy and Green Earth Solar will have on-site project managers who are Installer Certified by the North American Board of Certified Energy Practitioners (NABCEP).

f.) **Subcontractors:** FLS/ GES will utilize only fully qualified, trained employees or subcontractors to perform the work specified in this contract. FLS/ GES and all subcontractors are appropriately licensed and insured to perform services under this contract.

g.) **Maintenance:** FLS/ GES will provide five (5) copies of the complete operation and maintenance (O&M) manuals for all components of the system on compact discs to the City upon system commissioning. The O&M manuals will include, but not be limited to, all information required to allow client operation, should the client decide to self-operate in the future, including equipment specification, maintenance schedules, suppliers information, warranty information, etc. In the event that the City opts to purchase the equipment, FLS/ GES will train City staff on equipment use, function, operation, maintenance and repair.

Photovoltaic Module Technical Standards

a.) All PV modules and electrical components used for this installation are UL-listed or approved equivalent and will be installed to meet the requirements set forth in this specification.

b.) The PV modules are designed to have minimum maintenance requirements and high reliability, have a minimum 25 year warrantee, and are designed for normal unattended operation in the Knoxville-area local climate.

c.) The power warranty for modules is 90% of the initial power rating for the first 10 years and 80% of the initial power rating for years 11 through 25.

d.) Framed PV modules are anodized aluminum with pre-drilled holes or mounting channels. For unframed modules, acceptable mounting methods shall be provided by the manufacturer.

e.) Bolted and similar connections are non-corrosive and include locking devices designed to prevent twisting over the 25 year design life of the PV system.

f.) The modules and system will be designed for outdoor installation in Knoxville, TN. The area is subject to long-term humidity and temperature conditions. The system will be designed to handle expected ambient temperatures that range from regional winter lows to regional summer roof top highs. Supplied equipment is rated and warranted to withstand and operate under these conditions. The PV system and its associated structures will be certified by a Tennessee-registered Professional Engineer to meet the local wind loading requirements. The modules will not adversely impact the roof's ability to contain and control rainfall. The system will not create leaks or decrease the life span of the roof, and FLS Energy assumes full responsibility for this aspect. Removing panels should not cause any damage to the integrity of the roof.

g). FLS/ GES will create a uniform appearance of the array, and spacing between individual modules and panel-groups will be uniform. As much as possible, all mechanical hardware, conduit, junction boxes, and other equipment will be concealed beneath and/or behind the array.

Electric Power Requirements

a.) Power produced by the PV system will be compatible with the onsite and/or KUB electric distribution system.

b.) The PV system will be installed in accordance with all applicable requirements of local electrical and national electric codes. The PV system electrical design will also comply with IEC, IEEE, ANSI or other standards as determined by the local jurisdiction. Local utility codes will dictate the interconnection of the PV system to the KUB's electric utility distribution system, through TVA's Green Power Switch Generation Partners Program: http://www.tva.com/greenpowerswitch/partners/

c.) All electrical components, including over-current protection, disconnect, surge suppression devices, conduit, wiring, and terminals are commercial- or utility-grade and have appropriate voltage, current, and temperature ratings for this application.

d.) Voltage drop in the PV array DC circuits should be within the 2008 National Electric Code (NEC) guidelines, including losses in conductors and through all fuses, blocking diodes, and termination points. All installation and connection must apply to 2008 NEC standards. A voltage drop of 3% or better is preferred.

e.) Although the requirement is not anticipated - FLS Energy will supply a step-up transformer, if necessary, to match the voltage of KUB's distribution system. The step-up transformer will be compatible with KUB's standards for voltage, phasing and grounding. This transformer will be housed in the dust-tight and rain-tight enclosure. It may be dry type or liquid-filled type. For oil filled transformers, FLS will provide an adequate oil containment system. PCBs will not be used.

f.) FLS Energy will supply an automatic positive load-breaking means of disconnect (e.g., switch, circuit breaker, etc.) on the high side. A disconnect means will be provided to disconnect all phases simultaneously. The utility will connect to the disconnect. FLS Energy will be responsible for all equipment, including the disconnect, and will coordinate the details (equipment, placement, etc.) with KUB in advance.

Inverters

a.) All inverters will comply with UL 1741 – "Standard for Static Inverters and Charge Controllers for use in Photovoltaic Systems".

b.) The inverters will be UL-listed or approved equivalent and installed to meet the requirements set forth in this specification.

c.) The inverters will be designed for a fully-functional utility-interactive system.

d.) The inverters will be designed to produce high-efficiency energy, have minimum maintenance requirements and high reliability, and be designed for normal unattended operation.

e.) The inverters are of a proven design which has been demonstrated in other solar power systems for a minimum period of at least one year.

f.) The design will plan for maximum power availability at all times.

g.) The inverters will be housed in an appropriately waterproof and dust proof enclosure, or in a building. The inverters will have provisions to prevent moisture condensation and entrance of rodents into air intake or exhaust ports. The inverter enclosure will take into consideration the effects of direct sunlight and extreme weather such that the inverters are appropriately shielded from the elements. The inverter enclosure will be well ventilated or air conditioned so that the inverters operate safely at or near their maximum power point (MPP).

h.) Inverters will be installed in accordance with Federal Emergency Management Agency (FEMA) Flood Control District regulations. Inverter pre-approval and location will be coordinated with KUB staff. This approval process is outlined in TVA's Green Power Agreement.

i.) The inverters are capable of completely automatic unattended operation, including wake up, synchronization, and disconnect. The inverters are also capable of operation by local (front panel) controls.

j.) The inverters are capable of operating in parallel with other inverters meeting the specifications delineated herein, the electrical collection system, and connected loads.

k.) FLS/ GES' PV system will be capable of interrupting line-to-line fault currents and line-to-ground fault currents. It is preferred that the inverter design include turning off the inverter before AC or DC contactors are opened, as applicable.

l.) The inverters include all necessary self-protective features and self diagnostic features to protect the inverter from damage in the event of component failure or from parameters beyond normal operating range, due to internal or external causes. The self-protective features prevent the inverters from being operated in a manner which may be unsafe or damaging. Faults due to malfunctions within the inverter or solar conversion system equipment will be cleared by the inverter over-current protection device and not by protection devices.

m.) An inverter grounding system will be designed and installed with the system. The grounding system will provide personnel protection for step and touch potential in accordance with utility standards. The system will also be adequate for the detection and clearing of ground faults.

Monitoring Requirements

a.) FLS Energy will provide a metering system that records and stores the following data on an hourly basis:

- AC-kWh output from each individual inverter
- AC-kWh output from the entire solar plant

b.) Other points may be metered as specified by FLS Energy to monitor and maintain the system with a high degree of reliability. The kWh meters will be utility-grade and will meet ANSI utility testing standards. The inverter output meters may be an integral part of the inverter. The meter will be used to provide data to the City in real time.

Additional Technical Requirements

a.) All structures and structural elements, including array structures, will be designed in accordance with all applicable local codes and standards pertaining to the erection of such structures.

b.) All outdoor enclosures will be at minimum rated NEMA 3R.

c.) All structural components, including array structures, will be designed in a manner commensurate with attaining a minimum 25 year design life. Particular attention will be given to the prevention of corrosion at the connections between dissimilar metals.

d.) Compression-type connectors at the PV module output terminals will be provided in a watertight connection terminal box with knockouts for watertight conduit mountings. Twist-on wire splices, crimped, soldered, or taped connections are not permitted for required field-installed wiring.

e.) All of the exposed non-current carrying metal parts will be solidly grounded. Particular attention will be given to prevention of corrosion at the connection of dissimilar metals such as aluminum and steel.

f.) Other technical codes that may apply include ASME PTC 50 (solar PV performance) and ANSI Z21.83 (solar PV performance and safety)

g.) All modules will be installed in accordance with any applicable FEMA regulations.

h.) FLS/ GES will provide (as needed) its own construction office or trailer on the site during construction and will include temporary electricity if needed. The City shall not provide office or storage space for FLS/ GES' use.

i.) FLS/ GES will be responsible for all maintenance and operation associated with the PV array during the PPA agreement term, with an additional service contract available thereafter.

Interconnection to the Utility Grid

The PV system will be interconnected to the utility grid through TVA's Generation Partners Program to KUB's electric system per their requirements and standards; examples of these requirements are outlined in KUB's Generation Partners Program "Interconnection Procedures", for Tier 2 (greater than 30 kW and less than or equal to 100 kW) - located at http://www.kub.org/wps/portal/generationpartners. TVA's technical specifications and interconnection requirements can be found in the Model Interconnection Procedures in section 1.4. Standards and Certification Criteria and are listed as follows:

> *The DG equipment must comply with the latest revision of the following standards and the customer must provide evidence of certification with the DG Equipment Application or with the Certificate of Completion:*
>
> *1.4.1. IEEE1547 Standard for Interconnecting Distributed Resources with Electric Power Systems (including use of IEEE 1547.1 testing protocols to establish conformity)*
>
> *1.4.2. IEEE1547.1 Standard Conformance Test Procedures for Equipment Interconnecting Distributed Resources with Electric Power Systems*
>
> *1.4.3. UL 1741 Inverters, Converters, and Controllers for Use in Independent Power Systems*
>
> *1.4.4. NFPA 70 National Electrical Code*
>
> *1.4.5. The DG Equipment shall be considered certified for interconnected operation if the generation equipment and all related interconnection components have been tested and listed by a Nationally Recognized Testing Laboratory (NRTL certification by Department of Labor) for continuous interactive operation with an electric distribution system in compliance with the codes and standards outlined in 1.4.1 - 1.4.4 above.*
>
> *1.4.6. The customer must provide evidence that the installation has been inspected and approved by state or local code officials, as applicable, prior to its operation in parallel. This information will be submitted with the Certification of Completion. The Contractor shall provide all the equipment including the step-up transformer (s) and automatic disconnect to connect to KUB's 3 phase, 13200 volts (phase to phase) system.*

FLS Energy will negotiate a custom interconnection agreement between the TVA and KUB. A PDF template of this agreement is found at the referenced website; FLS Energy will agree to the indemnification clause in the participation agreement. Unless an alternative can be negotiated with TVA/KUB, the Generation Partners agreement will need to be between the City and TVA/KUB. In this case, the City has stated it will commit to re-issuing 100% of the Generation Partners credit/value back to FLS Energy to capture the value of the system output.

The interconnection agreement will be with TVA / KUB and will be separate and independent from the contract between the City and FLS/ GES. There is a cost associated to KUB for the box and transformers, so FLS/ GES will budget for that, as well as the interconnection study. KUB will work with FLS/ GES to insure proper interconnection once the final size of the system is determined in the design phase.

FLS/ GES Knowledge of TVA and KUB Systems

Green Earth Solar has installed grid tied solar photovoltaic systems in the Knoxville Utilities Board (KUB) area, under the TVA Generation Partners Program. FLS Energy has developed a relationship with TVA and KUB towards allowing the PPA model to be applied in this region.

TVA's approval is contingent upon FLS Energy's ability to work within the confines of the Generation Partners Program contract and Participation Agreement to facilitate with the Power Distributor. All financial transactions must be consistent with TVA's Generation Partners Program contract, and FLS Energy's PPA agreement with the site owner must be completely independent of the TVA contract agreement. Technical requirements of TVA's GPP include: equipment in compliance with environmental regulations and national standards, certified by a licensed electrician, and meeting all applicable codes. FLS Energy not only meets these parameters in our installations, but also includes the time cost of application for all required permits in our project quotes.

FLS/ GES will work with the Knoxville Utility Board to ensure all project specifications meet requirements for grid interconnection - including Application For Interconnection of Distributed Generation, having general liability insurance requirements in place, participating in KUB's project Study Process, signing an Interconnection Agreement, submitting a Certificate of Completion for a Tier 2 project when complete and having the installation inspected by City or State Electrical Inspectors. Initial contacts for this project will be Steve Noe, KUB Environmental Stewardship, Brian Headrick, KUB Community Relations and Graylan Gibson, KUB New Service.

It is noted that KUB's interconnection procedures require KUB review and approval prior to the purchase of solar equipment. After approval, KUB will assist with a site visit to determine best location of electric meters. When the solar PV installation has passed municipal inspection, KUB will install the meters.

FLS Energy will take the lead to communicate updates on this process through written documents and meetings with the City of Knoxville, TVA, KUB, and the Convention Center management (SMG), as well as any other interested stakeholders.

FLS/ GES Experience with Solar Site Assessments

Site assessment is a critical step in the development of a solar system. FLS Energy's engineers carefully evaluate each location for structural integrity, roof layout, sun exposure, shade analysis, and many other criteria. We are diligent to clearly understand the client's needs and objectives for each particular site, including coordination with local planning boards.

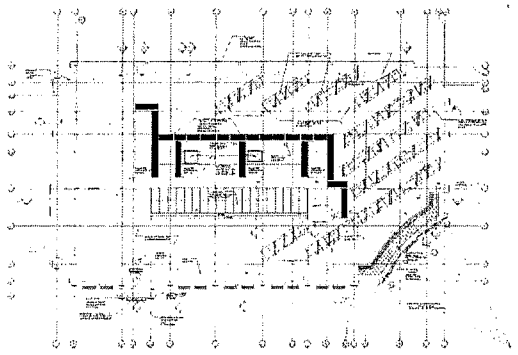
Pending approval after initial site visits, FLS/ GES is able to install (at no additional cost) a ballasted PV system that will require no drilling into the roof of the Convention Center.

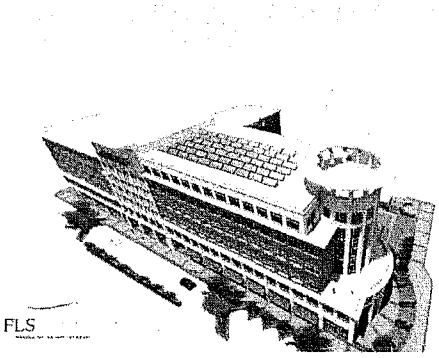
High Quality Reports and Documentation

FLS Energy is one of the largest, most respected solar energy providers in the Southeast. We have built our client base upon well functioning systems that meet our clients' renewable energy needs. Before designing a solar energy system, FLS/ GES performs an extensive site visit and monitoring of current energy demands.

Our team is committed to producing high quality documentation for its projects. Submission of detailed reports, designs, cost breakdown, and system performance verification is an integral part of our work. The information contained in these documents is distributed to both regulatory agencies and the client in a well-coordinated process, so that all parties are aware of project requirements and expected next steps.

FLS/ GES understands the requirements of system integration on every scale and is committed to the highest quality craftsmanship in the design and installation of its solar energy systems.





ARRA Reporting Compliance

For the Knoxville Convention Center project, FLS/ GES will comply with all reporting requirements in timely and accurate reports. Expected ARRA reporting data elements include: payment amounts and expenditures, project status, kWh production, jobs created, and similar information for subcontractors.

FLS Energy has been awarded grant funding through the NC Green Business Fund, which is supported by ARRA funding. We have completed an interim report and are currently preparing our final report – both of which comply with ARRA reporting standards.

All funds received from the City of Knoxville for this project will be kept separate, as per ARRA requirements listed in the RFQ (section IX, II, p.29)

Compliance with All Federal, State, and Local Laws & Regulations

FLS Energy and Green Earth Services will comply with the Davis-Bacon Act and follow federal, state, and local laws and regulations regarding contracting and labor standards. Both companies adhere to all federal, state, and local laws, regulations, and codes. Correct permits, licenses, building code requirements, insurance, bonds, and safety measures are always in place before a project is undertaken.

FLS Energy TN Sales & Use Account # 105548847
Knoxville Business License # 47379
Knox County Business License # 0216085/ 99011

FLS Energy TN General Contractor's License # 00062564 - Unlimited

Green Earth Solar - TN General Contractor's License # 00045538 w/ limit of $800,000

Safety

Beyond adherence to legal project safety standards, FLSE's in-house safety program including:

- Ongoing OSHA compliant program with updates from US Compliance systems
- Weekly tailgate meetings with on various safety topics
- Safety handbook for all installers
- Monthly safety meetings with more in-depth safety discussions

Liability Insurance Coverage

FLSE has a $5,000,000 commercial general liability policy and a $1,000,000 auto liability policy.

Bonding Information

FLS Energy is capable of providing a payment and performance bond equal to 100% of the contract amount, with a 3% bond premium.

Bonding Company

The Bond Exchange
Contact: John Dufresne
Address: 8601 McAlpine Park Drive, Suite 100-C, Charlotte NC 28212
Phone: (704) 366-6847
Rating: A
Authorized to do business in TN

Bonding Agent and Bonding Capacity

First Citizens Insurance
Contact: Dana Rucker
Address: 128 S Tryon Street, Charlotte NC 28202
Phone: (704) 338-3836
Aggregate Bonding Capacity: $1.4 million
Single Project Bonding Capacity: $1.2 million
Current Bond Capacity Available: $1.2 million

Compliance with the Buy American Act

FLS Energy and Green Earth Solar comply with the Buy American Act, FAR Clause 52.225-21, Required Use of American Iron, Steel, and Other Manufactured Goods - Construction Materials (March 2009). All of our products are USA-made. Any subcontractors and vendors used for this project will also adhere to the provisions of this Act. An update of the requirements is available at http://www1.eere.energy.gov/recovery/pdfs/eere_ba_solar_public_interest_waiver.pdf

Public Relations and Reporting of Progress

FLS Energy has an in-house marketing department. Our team manages press releases, news conferences, news article postings to our website, media relations, FLS Energy Twitter feed, and a quarterly newsletter. FLS Energy has contacts within the renewable energy news industry, as well as regional and national press contacts. We are happy to assist our clients with writing press releases and media pieces to promote solar energy projects.

Additional public relations efforts that are expected to be a part of the Knoxville Convention Center PV project include: ongoing meetings, presentations, reports, and documentation of progress to the public as well as to the involved participants. FLS Energy will follow Knoxville's Sustainability Coordinator's recommendations for publicity updates. We will also work with the Southern Alliance for Clean Energy (SACE) and the Knoxville Solar Cities board to coordinate reporting of progress to the public.

Services at Project Completion

Commissioning Inspection

This is an internal quality assurance procedure designed to verify that the system is installed according to design specifications, and that it will meet our rigorous standards for performance over the entire projected system life. The commissioning inspection consists of a multi-point inspection, thorough array and system testing, and initial system performance verification.

Monitoring, Verification, Data Collection, and Reporting

Once operational, FLS Energy monitors its systems to ensure quality and proper functioning. We are required to report our systems' data to the utility to which the system is tied, and submit annual reports to the State's Utility Commission.

FLS Energy will also meet the monitoring requirements as set forth in Knoxville's RFQ, including recording and storing hourly data for AC-kWh output from each inverter, and AC-kWh output from the entire solar array.

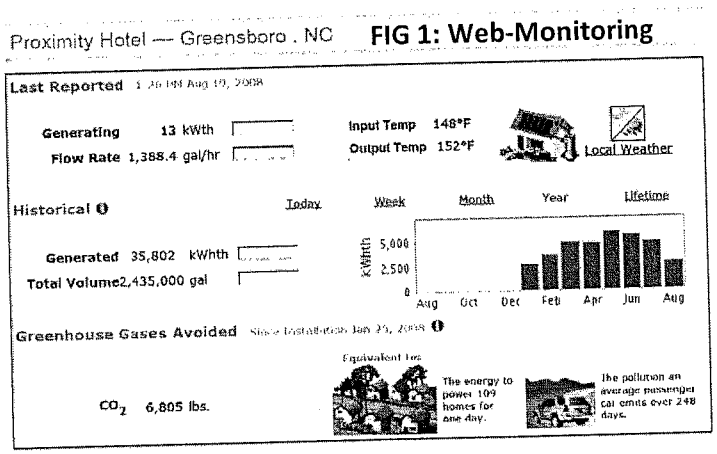


FIG 1: Web-Monitoring

FL S Energy meters its solar energy systems to assure that they are performing as intended and to verify the kWh production. We can utilize a web-based monitoring service to provide easy access to energy production data on a daily, weekly and monthly basis. A client can include a link on its website to show its employees or the whole world how much clean, renewable energy its facilities are generating each day. Fig. 1 (p. 19) is an example screenshot of a web based monitoring system used at the Proximity Hotel in Greensboro, North Carolina.

Facility Staff Training

FLS Energy Customer Service personnel conduct an on-site training session for the facility's staff at the completion of the system installation. Staff members are trained on system design and operation, safety precautions, and routine minor maintenance procedures. For projects developed in partnership with the City of Knoxville, FLS Energy can also provide instructional opportunities for recent graduates of Pellissippi State's solar installation training program.

System Maintenance

During a PPA term, FLS Energy is responsible for all maintenance, insurance, and needed repairs to the solar array. Once the system is owned, FLS Energy provides a scheduled maintenance arrangement at a nominal cost.

FLS Energy – Photovoltaic Purchase Agreement

FLS Energy designs and installs cutting edge solar technology at very cost-effective rates, establishing local municipalities as leaders in the field of generating clean, renewable energy.

Monetizing Tax Credits

Federal tax credits are a major public incentive to encourage organizations to develop solar energy systems for their facilities. However, public and non-profit organizations do not have the type of tax liabilities that are off-set by solar tax credits and therefore gain no financial benefit from the credits if they purchase the equipment.

By using our Photovoltaic Purchase Agreement (PPA) model, FLS Energy would own the solar facility for an initial term of seven (7) years and would claim the tax credit. Our company has investment partners who will provide a significant amount of the funds necessary to develop a solar project in order to access the tax credits. With the investment from project partners, FLS Energy can design and install a solar energy system at minimal upfront cost to the client. FLS Energy will assume all maintenance responsibilities for the equipment and system, and fully insure the equipment. We will assure that the roof warranties are preserved.

Knoxville Convention Center Project

FLS Energy offers a PPA for financing a 90 kW photovoltaic energy system with approximately 55% of the project development costs ($250,000) as an upfront contribution from the City of Knoxville. Benefits for the municipality include an annual roof lease payment, to be paid by FLS Energy to the City of Knoxville, beginning in year one (1). This model includes a seven (7) year PPA term, with an ongoing option to renew in five (5) year increments. These figures are estimates and open to negotiation (Table 1, page 21).

TABLE 1: Financed 90 kW PV System Option – Knoxville Convention Center

System Size	*Annual FLS Energy project revenue after O&M, debt service, and payment to project investors*	Annual Roof Lease Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 6	Yr 7
90 kW system	$17,500	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000

Note: 25 year warrantee on panels, expected life-span is longer.

Assuming TVA's Generation Partners Program incentives continue beyond the current ten year program, and are renewed at an equal or better rate - the City of Knoxville could expect to earn a higher annual income, once the system is owned. This would allow Knoxville to get a greater return on its investment in subsequent years.

Project Scope of Work for Photovoltaic System

With an upfront contribution of $250,000 FLS Energy would be able to install a 90 kW photovoltaic solar energy system for the City of Knoxville - totaling 383 Suniva monocrystalline panels at 235 watts each. Suniva manufactures some of the best warranteed and most efficient panels on the market. Roof and mounting specifications may be modified, pending final design.

Photovoltaic Purchase Agreement – 90 kW PV Solar Energy System

Using our PPA model, FLS Energy is able to finance 45% of the costs for developing a 90 kW solar energy (PV) project for the City of Knoxville. Through the PPA, FLS Energy owns the solar PV system on the roof and sells the energy and Renewable Generation Credits (RGCs) directly to TVA. The Convention Center will receive an annual Generation Partner credit to its utility bill, estimated at $26,000 per year. As long as FLS Energy owns the equipment, this credit will be reimbursed to FLS Energy by the City of Knoxville. FLS Energy will pass on some of the revenue from the sale of energy and RGCs to the City of Knoxville in the form of a roof-lease payment, as presented in Table 2.

TABLE 2: Financed 90 kW PV System for Knoxville Convention Center

System Size	90 kW
Modules	383 Suniva panels, 235 watts each
Roof Space	9,943 ft2
Annual System Output	118,240 kW hours
Upfront Contribution from City of Knoxville	$ 250,000
Annual Roof Lease Payment from FLS Energy to City of Knoxville	$ 10,000, beginning in year one (1)

FLS Energy's PPA model allows the City of Knoxville to install a premium PV system at a greatly reduced rate, and FLS Energy is responsible to maintain the system at no additional cost for at least the seven year contract term. At the end of the seven year PPA, Knoxville will have the option to renew the lease agreement with FLS Energy; purchase the PV system at market value; or discontinue the PPA lease agreement, in which case FLS Energy would remove all solar energy equipment from the site at no additional cost.

If the City of Knoxville renews the PPA agreement, it will continue receiving the roof lease payment from FLS Energy. If the City of Knoxville chooses to purchase the PV system, it will continue as a Generation Partner with TVA and will retain all ongoing Generation Credits for the PV system's production. If purchased by the City after the PPA term, IRS regulations require FLS Energy to sell the PV system at fair market value. The system will be appraised at the time of sale, and price estimate cannot be guaranteed. If both parties do not agree on respective appraised values, an independent third appraisal will provide a value for the system.

'No Additional Cost' Option

As a way of eliminating the budgetary expense of the purchase option at end of the PPA term, FLS Energy can offer an alternative plan to offset the purchase cost. Upon request from the City of Knoxville, FLS Energy can put the roof lease funds into an escrow account as a dedicated reserve. If the appraisal in year seven (7) turns out to be lower than the amount of money in the reserve fund, the City of Knoxville would receive the difference from FLS Energy and own the system. If the appraisal comes in higher than the funds in reserve, Knoxville could add more money to purchase the system, or could continue the PPA program until the appraised value is met by additional roof lease payments.

Warranties

FLS/ Suniva Photovoltaic Panels

Suniva photovoltaic panels have an outstanding reputation for longevity and performance.

The Suniva warranty is provided by Suniva's module assembly partner, Titan Energy Systems.

Titan warrants that for five (5) years from the date of delivery, its Photovoltaic modules ("PV modules") shall be free from defects in materials and workmanship under normal application, installation, use and service conditions.

Titan additionally warrants that for twelve (12) years from date of delivery to the Customer any PV module(s) shall exhibit a power output of at least 90% of the Minimum Peak Power.

Titan additionally warrants that for twenty-five (25) years from date of delivery to the Customer any PV module(s) shall exhibit a power output of at least 80% of the Minimum Peak Power.

Sunny Boy (2) SMA 42kW Sunny Tower Inverters

SMA Factory Warranty

10 Year Warranty

A ten year warranty applies to the following products:
SB 700-US, SB 2000HF-US, SB 2500HF-US, SB 3000HF-US, SB 3000-US, SB 3800-US, SB 4000-US, SB 5000-US, SB 6000-US, SB 7000-US, SB 8000-US, SB 8000TL-US, SB 9000TL-US, SB 10000TL-US, Sunny Tower 36/42/48, WB 3000-US, WB 5000-US, WB 6000-US, WB 7000-US, WB 8000-US purchased after November 1, 2009.

Estimated replacement cost for 2 Sunny Tower 42's: $25,300 each. Expected lifespan is at least 15 years; cost to replace each inverter approximately equals the expected Generation Partner income for one year.

Other Components

Other component manufacturers have various warranty periods, the terms of which will be supplied as part of the contract closeout process.

FLS Energy Workmanship Warranty

For FLS Energy financed systems, FLS Energy provides a seven year guarantee on the performance of the solar energy system. FLS Energy monitors the energy generation from the system to verify performance and assumes all responsibilities for work on the facilities during the PPA term.

Expectations and Process Steps

1. FLS Energy is available to answer questions about the technology and system costs
2. FLS/ GES will monitor upcoming grant availability to determine if additional funding may be applied to this project
3. If site change is required due to NEPA requirements, FLS/ GES will assist in new site selection and clearance process
4. FLS Energy will do preliminary design work pre-contract
5. FLS/ GES negotiates custom integration with KUB and TVA
6. Under contract, FLS Energy will complete a detailed design
7. FLS Energy creates engineering reports
8. FLS/ GES assists with permit applications
9. FLS/ GES schedules system installation at earliest timeframe
   (2 month permitting and installation schedule)

Suniva

"Powered by Suniva" photovoltaic modules

Suniva, Inc., in conjunction with its module assembly partner, Titan Energy Systems, is pleased to offer the market's first photovoltaic module powered exclusively by Suniva 156mm monocrystalline photovoltaic cells.

Module Specification: Modules shall have specifications as set forth in ***Appendix A: Module Specifications***, and will be guaranteed to be comprised of Suniva 156mm monocrystalline silicon photovoltaic cells, designed and manufactured at Suniva's facility in Norcross, Georgia.

Power Classification per panel	230w, 235w
Cell Classification	Suniva 156mm pseudosquare monocrystalline ARTisun series, 2 bus bar (see: ***Appendix B: Suniva Cell Specification***)
Certification	IEC 61215:2005 (TUV) IEC 61730 (TUV) U.L. (pending)
Power Tolerance	0 to +4.99wp. Power classification represents a minimum output

Warranty: Product warranty is provided by SUNIVA's module assembly partner, Titan Energy Systems. 100% Product Guarantee for 5 years. A Limited Performance Guarantee of power output of 90% for 12 years and 80% for 25 years is also provided.

About Suniva:

- Manufacturer of high-efficiency monocrystalline photovoltaic cells, utilizing low-cost screen printing-based manufacturing techniques.
- Founded by Dr. Ajeet Rohatgi, one of the world's leading photovoltaic researchers:
  - Founder – Georgia Tech photovoltaic Program (1985)
  - Cofounded, with US Department of Energy, the first University Center of Excellence in PV Research (1992)
  - Multiple awards:
    - Westinghouse Engineering Achievement Award ('85)
    - IEEE Cherry Award ('03)
    - NREL Rappaport Award ('03)
    - GT Outstanding Research Program Development Award ('07)
    - 5 most influential in Renewable Energy ('08) (*Institutional Investor*)
    - White House Clean Energy Innovator Honoree ('09)
    - U.S. EPA Climate Protection Award Winner ('09)
    - Over 15 world-record cells, over 400 publications and 11 patents.

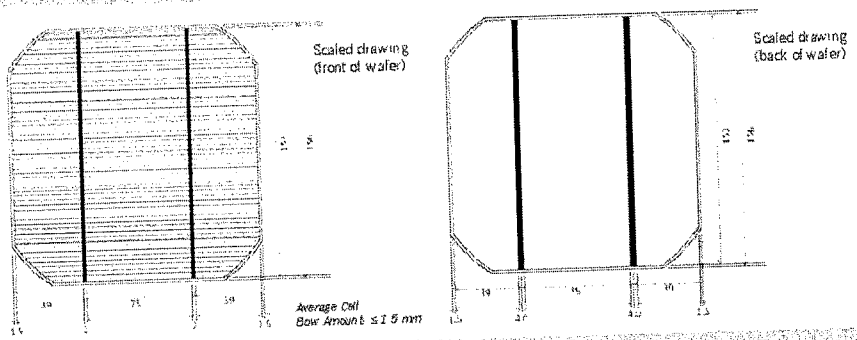
www.suniva.com

Suniva

- Incorporated 2007, commercial scale manufacturing commenced October 2008.
- Spin-off from Georgia Tech UCEP (est. 1992), a premier global PV research facility.
- 96mw production capability active; over 175MW production capability by Spring 2010.
- 17.4+% conversion efficiency in production now; over 20% in laboratory (certified by US Department of Energy National Renewable Energy Laboratory).

Suniva

Reference Dimensions: ARTisun® Series 156.17X.2 Monocrystalline Photovoltaic Cells



Typical Cell Electrical Properties[1]

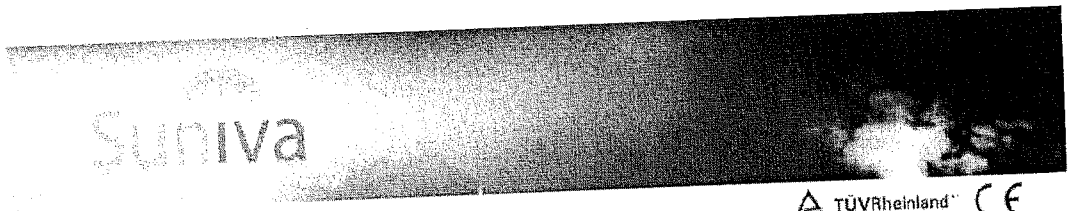
Model	ARTisun 156-16.8	ARTisun 156-17.0	ARTisun 156-17.2	ARTisun 156-17.4	ARTisun 156-17.6	ARTisun 156-17.8
Efficiency Eff (%)	16.7-16.9	16.9-17.1	17.1-17.3	17.3-17.5	17.5-17.7	17.7-17.9
Power P_{pm} (W)	3.99-4.04	4.04-4.09	4.09-4.13	4.13-4.18	4.18-4.23	4.23-4.27
Max. Power Current I_{pm} (A)	7.90	7.93	7.96	7.99	8.02	8.05
Short Circuit Current I_{sc} (A)	8.50	8.52	8.55	8.57	8.59	8.61
Max Power Voltage V_{pm} (V)	0.509	0.513	0.515	0.519	0.524	0.528
Open Circuit Voltage V_{oc} (V)	0.623	0.625	0.627	0.628	0.628	0.629

[1] All electrical parameters valid under Standard Testing Conditions (STC), Intensity - 1000 W/m², Spectrum - AM1.5 Global, Temperature - 25 °C

Wafer and Cell Specifications & Geometry

Parameter	Value
Crystal Growth Technique	Czochralski
Crystal Type	Monocrystalline
Crystal Orientation	<100>
Dopant Species	Boron, P Type
Wafer Shape	Pseudo-square
Wafer Size	156.0 ± 0.5mm cut from 200 diameter ± 0.5 mm
Wafer Area	239 cm²
Wafer Thickness	200 ± 30 microns
Cell Configuration	Front and Rear screen print, Aluminum Back Surface Field (BSF)
Cell Visual Appearance	Uniform dark blue (Silicon Nitride AR coating with fine pyramidal texture)

SUN156.17++.2/06-09



Electrical Data (nominal)

The electrical data apply to standard test conditions (STC):
Irradiance at the module level of 1000 W/m2 with spectrum AM 1.5G and a cell temperature of 25°C.

Power Classification (max.)	Pmax (W)	230	235
Voltage at max. power point	Vmp(V)	29.37	29.77
Current at max. power point	Imp(A)	7.90	7.96
Open-circuit voltage	Voc(V)	37.38	37.62
Short circuit current	Isc(A)	8.50	8.55

The rated power may only vary by -0wp / +4.99wp and all other electrical parameters by ± 5%.

Dimensions and Weights	ART240-60-2
Cells / Module	60
Module Dimensions (mm)	1660 x 990
Module Thickness (mm)	42
Approximate Weight (Kg)	18.50

Characteristic Data

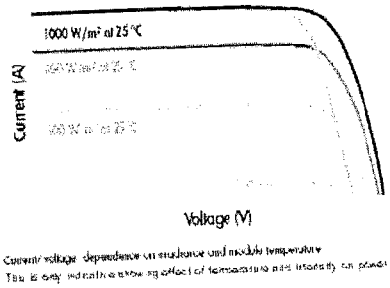
Type of Solar Cell	High Efficiency Single Crystalline cells of 156x156mm
Frame	Silver Anodized Aluminum Alloy
Glass	3.2mm tempered
Connection	IP65 Junction Box with 4 terminals
Cable Entry	Prepared for cable glands (M 12)
Connections (Optional)	4mm²-Lapp-cable with MC / Tyco Connectors

Cell Temperature Coefficients

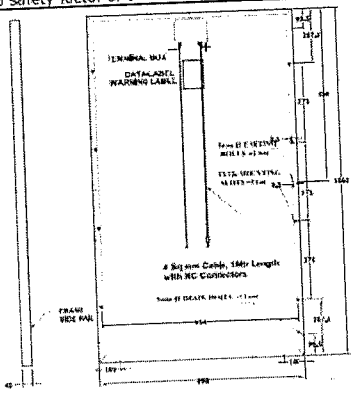
Voltage	β (Uoc)	-2.1mV/°C
Current	α (Isc)	2.5mA/°C
Power	γ (Pmax)	-0.4%°C

Limits

Max. System Voltage	1000 VDC (IEC), 600 VDC (UL)
Operating Module Temperature	-40 °C to +90 °C
Storm Resistance	Wind speed of 130Km/h and safety factor of 3



Current-voltage dependence on irradiance and module temperature
This is only indicative to show significant effect of temperature and intensity on power



** Suniva reserves to change the data at any point of time.

Suniva is proud to be the **ONLY** high-efficiency, monocrystalline photovoltaic cell manufacturer to be 100% based in the United States, fully employing American workers.

Suniva's Solar Cells are **100%-designed and manufactured in the United States**, using all or substantially all components and materials made in the USA. All components are materially transformed in US-only factories

Suniva's Solar Cells comply with the American sourcing requirements of the Buy American Act (BAA), Section 1605 of the American Recovery and Reinvestment Act of 2009 (ARRA) and FTC "Made in the USA" guidelines.

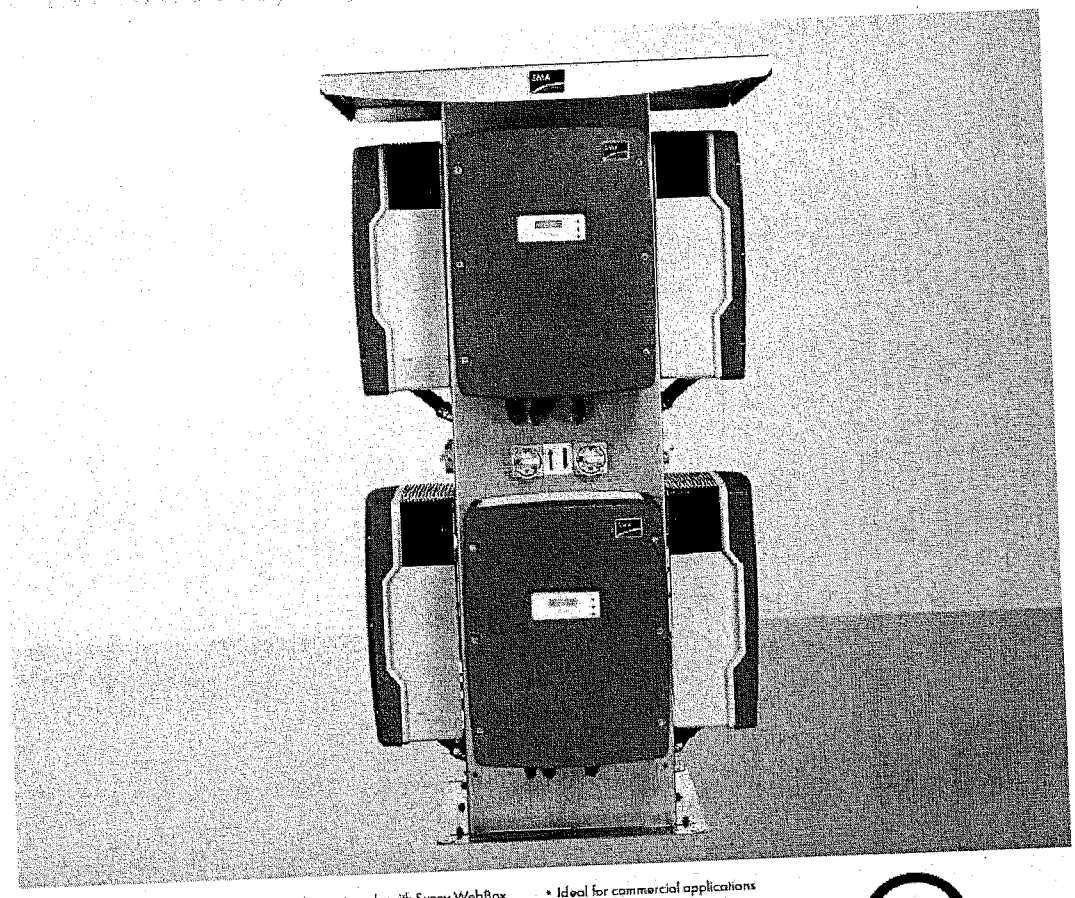
Powered by Suniva partner modules are the **highest US-content modules on the market today**, containing over 90% US-produced and sourced content –including Suniva cells, US-made glass, backsheets and junction boxes, and are assembled in either US trade-ally countries or the United States

Certified by Underwriters Laboratory to UL 1703

Suniva Headquarters: Atlanta, Georgia
Company developed based on Georgia Tech – DOE partnership:
University Center of Excellence
Incorporated: 2007
Employees: Approximately 100
Investor Backing: Warburg-Pincus, New Enterprise Associates (NEA), Goldman Sachs, H.I.G. Ventures, Advanced Equities, and others
Funding: $130M

Top-Tier Customers: Solon AG, Titan Energy Systems, EPC's, Utility-scale Plants
High-Efficiency Cells: 17.8+% in production now; over 20% in laboratory; roadmap to over 20% in high-volume production by 2011
Suniva Manufacturing Capacity: 100 MW

SMA



- 10 year standard warranty
- Prewired at factory for 3-phase utility interconnection
- Integrated load-break rated lockable AC/DC disconnect switch
- Internet-ready with Sunny WebBox
- Improved CEC efficiency
- Integrated fused series string combiner
- Sealed electronics enclosure & Opticool™
- Ideal for commercial applications
- Rugged stainless steel outdoor-rated enclosure
- UL 1741/IEEE-1547 compliant

c UL us

SUNNY TOWER 36 / 42 / 48

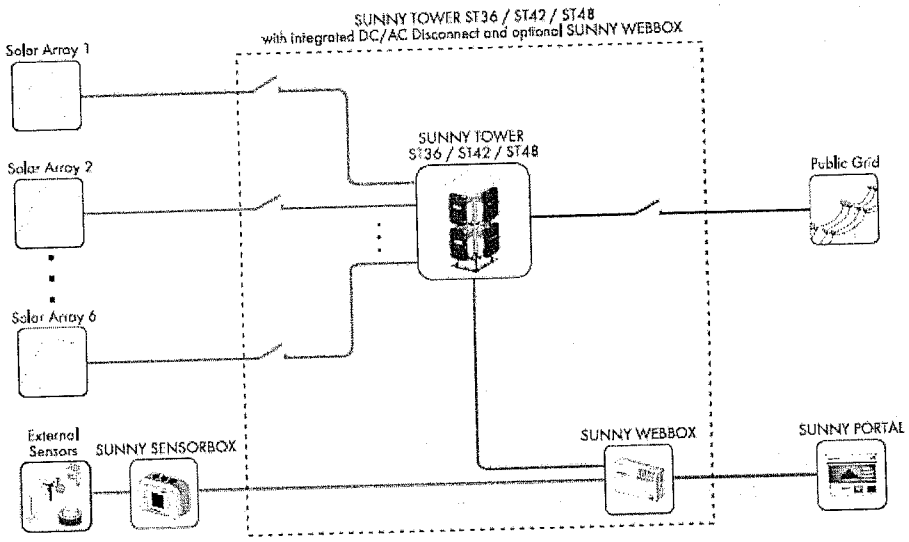
The flexible solution for commercial PV systems

SMA brings you the best in commercial inverter solutions: the Sunny Tower. Designed with the installer in mind, we've combined ease of installation, lowest specific cost ($/watt), and the highest efficiency to maximize rebates and power production while minimizing your payback period. The Sunny Tower combines all the advantages of string inverters with the installation advantages of central inverters. The Sunny Tower offers you the flexibility and reliability you've come to expect from SMA.

Technical Data

	Sunny Tower with 6 Sunny Boy 6000US	Sunny Tower with 6 Sunny Boy 7000US	Sunny Tower with 6 Sunny Boy 8000US
Recommended Maximum PV Power (Module STC)	45.0 kW	52.5 kW	60 kW
DC Maximum Voltage	600 V	600 V	600 V
Peak Power Tracking Voltage	250 – 480 V	250 – 480 V	300 – 480 V
DC Maximum Input Current	150 A	180 A	180 A
Number of Fused String Inputs	24 x 15 A (AC / DC disconnect)	24 x 15 A (AC / DC disconnect)	24 x 15 A (AC / DC disconnect)
PV Start Voltage (Adjustable)	300 V	300 V	365 V
AC Nominal Power / Maximum Power	36.0 kW / 36.0 kW	42.0 kW / 42.0 kW	48.0 kW / 48.0 kW
AC Maximum Output Current (3-Phase Only)	100 A, 87 A, 44 A	117 A, 101 A, 51 A	N/A, 117 A, 100 A
(per phase @ 208 V, 240 V, 277 V)			
AC Nominal Voltage Range (3-Phase Only)	187 – 229 V @ 208 V Delta or WYE 211 – 264 V @ 240 V Delta 244 – 305 V @ 277 V WYE	187 – 229 V @ 208 V Delta or WYE 211 – 264 V @ 240 V Delta 244 – 305 V @ 277 V WYE	N/A @ 208 V 211 – 264 V @ 240 V Delta 244 – 305 V @ 277 V WYE
AC Frequency: nominal / range	60 Hz / 59.3 – 60.5 Hz	60 Hz / 59.3 – 60.5 Hz	60 Hz / 59.3 – 60.5 Hz
Power Factor (Nominal)	0.99	0.99	0.99
Peak Inverter Efficiency	97.0%	97.1%	96.5%
CEC Weighted Efficiency	95.5% @ 208 V, 240 V 96.0% @ 277 V	95.5% @ 208 V 96.0% @ 240 V, 277 V	N/A @ 208 V 96.0% @ 240 V, 277 V
Dimensions: W / H / D in inches	43.3 / 70.5 / 39	43.3 / 70.5 / 39	43.3 / 70.5 / 39
Weight: Tower / 6 Inverters / Total Shipping	330 lbs / 846 lbs / 1388 lbs	330 lbs / 846 lbs / 1388 lbs	330 lbs / 888 lbs / 1430 lbs
Ambient Temperature Range	-13 to 113 °F	-13 to 113 °F	-13 to 113 °F
Power consumption at night	0.6 W	0.6 W	0.6 W
Topology	LF transformer	LF transformer	LF transformer
Cooling Concept	OptiCool™, forced active cooling	OptiCool™, forced active cooling	OptiCool™, forced active cooling
Mounting Location: indoor / outdoor (NEMA 3R)	●/●	●/●	●/●
LCD Display	●	●	●
Communication: RS485 / wireless	○/○	○/○	○/○
Warranty: 10-year	●	●	●
Compliance: IEEE-929, IEEE-1547, UL 1741, UL 1998, FCC Part 15 A & B	●	●	●
Type Designation	ST36	ST42	ST48

NOTE: US inverters ship with gray lids.
● Standard ○ Optional
Data at nominal conditions



Tel. +1 916 625 0870
Toll Free +1 888 4 SMA USA
www.SMA-America.com

SMA America, LLC

SOLAR POWER PRODUCTION AGREEMENT

THIS SOLAR POWER PRODUCTION AGREEMENT, effective as of _____ ___, 2011 (the "*Effective Date*"), by and between **FLS SOLAR 60, LLC**, a North Carolina limited liability company ("*FLS*"), and the **CITY OF KNOXVILLE**, a municipal corporation existing under the laws of the state of Tennessee ("*City*").

RECITALS:

WHEREAS, FLS desires to install a Solar Photovoltaic Facility at the Site; and

WHEREAS, the City has entered into the Interconnection Agreement and the Generation Partners Agreement with KUB, pursuant to which KUB, the Utility and the City desire that FLS generate Electrical Output and RECs from the Solar PV Facility, and FLS desires to produce Electrical Output and RECs from the Solar PV Facility;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Definitions. In addition to other terms defined elsewhere in this Agreement, the following terms shall have the following meanings.

(a) "*Affiliate*" means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with such Person. For purposes of this definition, "*control*" means the power, directly or indirectly, to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

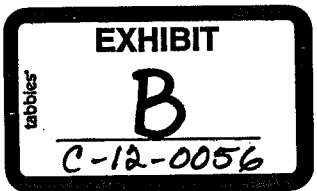
(b) "*Code*" means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

(c) "*Commercial Operation*" means the condition existing when (i) the System is mechanically complete and operating as specified in **Exhibit A**, and (ii) Electrical Output is delivered to the Delivery Point.

(d) "*Delivery Point*" means the delivery point on the Site that connects to the electrical grid.

(e) "*Electrical Output*" means the total quantity of all actual net energy generated by the System (measured in kWhs) and delivered in accordance with **Section 10** to the Delivery Point, in any given period of time. Electrical Output does not include the Environmental Incentives or Environmental Attributes.

(f) "*Environmental Attributes*" means the characteristics of electricity generation by the System that have intrinsic value, separate and apart from the Electrical Output, arising from the perceived environmental benefits of the System of the Electrical Output, including all environmental and other attributes that differentiate the System or the Electrical Output from energy generated by fossil-fuel based generation units, fuels or resources, or



characteristics of the System that may result in the avoidance of environmental impacts on air, soil or water, such as the absence of emission of any oxides of nitrogen, sulfur or carbon or of mercury, or other gas or chemical, soot, particulate matter or other substances attributable to the System.

(g) "*Environmental Incentives*" means all rights, credits (including tax credits), rebates, benefits, reductions, offsets and allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising under federal, state or local law, international treaty, trade association membership or the like, arising from the Environmental Attributes of the System or the Electrical Output or otherwise from the development or installation of the System or the production, sale, purchase, consumption or use of the Electrical Output. "Environmental Incentives" include green tags, RECs, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentive programs offered by the Utility or other incentive programs offered by the State of Tennessee, the right to claim any available Tennessee state income tax credits and the right to claim federal income tax credits under Sections 48 and 50 of the Code and Section 1.48-4 of the Treasury Regulations or an equivalent 1603 grant.

(h) "*Estimated Annual 1st Year Production*" means the total estimated annual production of the System for the first year after the Commercial Operation Date as shown on **Exhibit A**.

(i) "*Generation Partners Agreement*" means that certain Generation Partners Expanded Pilot Participation Agreement between the City and KUB, dated on or about September 7, 2010.

(j) "*Interconnection Agreement*" means that certain Interconnection and Parallel Operation Agreement For Renewable Generation Operating Under Generation Partners Program, between the City and KUB, dated on or about September 8, 2010.

(k) "*kWh*" means kilowatt-hour.

(l) "*KUB*" means the Knoxville Utilities Board, a Board created and existing under the Charter of the City.

(m) "*Person*" means any individual, partnership, joint venture, limited liability company, corporation, trust or other entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so requires.

(n) "*REC*" means the set of non-energy attributes, including any and all "renewable energy certificates", directly attributable to the amount of Electrical Output generated from the System.

(o) "*Reporting Rights*" means the right of FLS to report to any federal, state, or local agency, authority or other party, including under Section 1605(b) of the Energy Policy Act of 1992 and provisions of the Energy Policy Act of 2005, or under any present or future domestic, international or foreign emissions trading program, that FLS owns the Environmental

Attributes and the Environmental Incentives associated with the Electrical Output, except for the RECs.

(p) "*Site*" means the City's facility at 301 Church Avenue, Knoxville, Tennessee 37902.

(q) "*Site Agreement*" means the Solar PV Facility System Site Lease Agreement, dated _____, 20___, by and between the parties.

(r) "*Solar PV Facility*" or "*System*" means the solar electrical generation equipment, controls, meters, switches, connections, conduit, wires and other associated equipment to be installed by FLS or its Affiliate(s) on certain buildings located on the Site in accordance with the terms of the Site Agreement for the purposes of producing electricity under this Agreement, which electricity will be distributed on the electrical grid and will not be used for on-site use.

(s) "*TRA*" means the Tennessee Regulatory Authority.

(t) "*Utility*" means the Tennessee Valley Authority, it successors and or assigns.

2. Commercial Operation. FLS shall use commercially reasonable efforts to cause the System to achieve Commercial Operation on or before_____, 2011. The date upon which Commercial Operation is achieved is the "*Commercial Operation Date*." Beginning on the Commercial Operation Date, and continuing for the term of this Agreement, the City shall cause KUB and the Utility to accept delivery from FLS, and FLS shall deliver to KUB and/or the Utility, the entire Electrical Output generated by the System.

3. The term of this Agreement (the "*Initial Term*") shall commence upon the execution of this Agreement and, unless sooner terminated in accordance with the terms hereof, shall expire at 2400 hours on the date seven (7) years following the Commercial Operation Date; *provided, however*, that payment for the generation of the Electrical Output shall commence on the Commercial Operation Date.

4. Purchase Option and Renewal Terms. At the end of the Initial Term (and any Renewal Term), this Agreement will terminate unless:

(a) the City elects to purchase the Solar PV System at its fair market value consistent with the terms of the attached Exhibit D, in which case the term of this Agreement shall extend until the Closing Date (as defined in Exhibit C); or

(b) FLS provides written notice at least six (6) months prior to the end of the Initial Term or any subsequent Renewal Term that FLS desires to extend this Agreement for an additional five (5) years and the City accepts the extension in writing within thirty (30) days (each, a "Renewal Term").

Unless otherwise agreed to by the parties in writing, upon the renewal of this Agreement, the terms and conditions of this Agreement shall remain in effect.

4. Termination by FLS. Commencing on the fifth (5^{th}) anniversary of the Commercial Operation Date and at all times thereafter, FLS shall have the unilateral and unrestricted right to terminate this Agreement by providing written notice to the City at least six (6) months prior to the desired date of termination. The City's option to purchase the System shall accelerate to the date of such termination.

5. Production Consideration. The City shall pay FLS an amount equal to the greater of (i) the energy charge in the retail rate schedule, as it may be modified, changed, replaced or adjusted from time to time, plus the Premium Rate (as defined in the Generation Partners Agreement) per kWh generated by the System, and (ii) the amount of all credits, discounts, rebates, allowances, reductions, incentives, payments (cash or otherwise), benefits, offsets, entitlements and all other economic incentives and remuneration (cash or non-cash) received by the City from either or both KUB and the Utility (collectively, the "*Credits*") under or in connection with the Generation Partners Agreement or the program represented thereby or any successor program thereto with respect to the Electrical Output generated by the System and the associated RECs (the "*Credit Price*"; and together with the Unit Price, the "*Production Consideration*"). The projected annual kWh generation is shown on **Exhibit A**.

6. Statements and Payment. FLS shall deliver a monthly statement (the "*FLS Statement*") to the City, setting forth, for the immediately preceding monthly reporting period, (a) a report of all Electrical Output generated during such period, (b) a calculation of the Unit Price based on the Electrical Output generated during such period, (b) taxes payable, if any, pursuant to **Section 9** for such period and (c) interest payable, if any, under this Section. The City shall deliver to FLS a monthly statement (the "*City Statement*") of all Credits, within ten (10) days following its receipt from KUB or the Utility of such Credits. The parties' intent is to make the monthly reporting period coincide with the same monthly period on which the statements from KUB or the Utility to the City are based. The City shall pay the Production Consideration, without offset, within fifteen (15) days following the later of the (i) City's receipt of the FLS Statement, and (ii) date on which the City Statement is required to be delivered to FLS. The City shall pay the Production Consideration by wire transfer, ACH payment or check. Any past due amount shall bear interest at the annual rate of eight percent (8%). The foregoing reporting obligations and payments shall commence with the first monthly reporting period following the Commercial Operation Date. The Parties acknowledge that consistent with Paragraph 19, the FLS Statement will be generated based on data gathered from an FLS installed and maintained meter and that in the instances of any variance in excess of 10%, the FLS Statement shall control.

7. Adjustments; Disputes. Either party may, in good faith, dispute the correctness of any statement or any adjustment to any statement rendered within twelve (12) months of the date the statement or adjustment was rendered. In the event a party disputes all or a portion of a statement, or any other claim or adjustment arises, the undisputed portion shall be paid when due (or promptly refunded or credited against future payments), and written notice shall be given to the other party of the dispute. The parties shall use good faith, reasonable and diligent efforts to resolve the dispute within a reasonable period of time of up to thirty (30) days from the date of such notice. If the dispute is not so resolved, the parties may pursue all rights available to them.

Interest at the rate of eight percent (8%) per annum shall accrue and be payable on any finally determined adjustment, commencing on the thirtieth (30th) day following its original due date.

8. Taxes. In the event that any taxes are assessed against the generation, delivery, sale or consumption of the Electrical Output, the City shall either pay or reimburse FLS for all such amounts, including any taxes assessed thereon, except any income taxes imposed on FLS based on such sales.

9. Delivery; Title. FLS shall not be responsible for (i) delivery of Electrical Output beyond the Delivery Point, and (ii) any installation and operation of equipment on the outbound side of the Delivery Point necessary for acceptance and use of the Electrical Output by the City, KUB and/or the Utility. Title and risk of loss of the Electrical Output shall pass from FLS to the City (and/or KUB and the Utility) upon delivery of the Electrical Output at the Delivery Point. The City shall accept, or shall cause KUB and/or the Utility to accept delivery of, the Electrical Output at the Delivery Point.

10. Operation and Maintenance. Subject to the obligations and responsibilities of the City under this Agreement and the Site Agreement, FLS shall, at all times during the term of this Agreement, cause the System to be operated and maintained without cost to the City, in compliance with all applicable laws, regulations and governmental permits. The City shall have no responsibility for the operation or maintenance of the System other than using commercially reasonable efforts to protect the System against vandalism and other destruction. Neither the City nor any party related thereto shall have the right or be deemed to operate the System for purposes of Section 7701(e)(4)(A)(i) of the Code. The City shall maintain the area in the immediate vicinity of the System in a reasonably neat and clean condition.

11. Ownership; Risk of Loss. The System shall at all times be the sole property of FLS. The City shall have no ownership interest in the System and FLS shall bear all risk of loss with respect to the System, except for losses arising from a breach of this Agreement by the City or for negligent or willful acts or omissions of the City or its agents or employees. The System (and all component parts thereof) is and shall remain tangible personal property and shall not constitute a fixture. To the extent that, notwithstanding the intent and agreement of the parties, all or any part of the System shall be determined to constitute a fixture, the City irrevocably disclaims any interest whatsoever in the System or such part thereof as a fixture.

12. Solar Resources. The City shall use commercially reasonable efforts to not cause or permit any interference with the System's insolation and access to sunlight, as such exists as of the date of this Agreement.

13. Removal of the System. If the System must be moved to, or replaced at, an alternate location at the Site, the alternate location is subject to the approval of the party not requesting the relocation thereof, and such approval shall not be unreasonably withheld or delayed. The party requiring such relocation or replacement shall be responsible for all associated costs of removal and reinstallation. If the City requires movement or replacement, for the period of time during which the System is not in Commercial Operation due to such relocation, the City shall pay to FLS, in addition to other amounts set forth in this Section, a monthly payment (the "*Substitute Payment*") (prorated as needed) equal to:

(a) The Unit Price of the Electrical Output and RECs, as set forth in **Section 6**, times the average daily kWh of Electrical Output for the immediately preceding twelve (12) month period as determined consistent with Paragraph 19, times the number of days comprising the period of time during which the System is not in Commercial Operation (or based on the Estimated 1st Year Production as shown on **Exhibit A**, if moved during the first twelve (12) months following Commercial Operation); *plus*

(b) The expected realizable value as determined by prevailing market indices of any Environmental Incentives and Environmental Attributes (excluding the RECs the value of which are included within the Unit Price, and including any applicable tax credits) that would have accrued to FLS for the period of time during which the System is not in Commercial Operation.

14. Intentionally Deleted.

15. Restoration of the Site upon Removal of System. Upon termination of this Agreement, FLS shall cause the removal of the System from the Site and the restoration of the Site to its condition immediately prior to the installation of the System, reasonable wear and tear excepted, by a mutually agreed upon date, but in no event later than one hundred twenty (120) days after termination, subject to the City's reimbursement of the reasonable costs of removal if removal occurs as a result of the City's default pursuant to **Section 27**. FLS shall have reasonable access to the Site to remove the System and to restore the Site.

16. Intentionally Deleted.

17. Environmental Attributes and Incentives. Except as set forth below, FLS shall own, and may assign or sell in its sole discretion, all right, title and interest associated with any Environmental Attributes and Environmental Incentives resulting from the development and installation of the System and the production, sale, purchase or use of the Electrical Output, including all Reporting Rights. The City shall not take any action or suffer any omission at the Site that would have the effect of impairing the value to FLS of the Environmental Attributes and Environmental Incentives. FLS shall consult with the City as necessary to prevent an impairment of the value of Environmental Attributes and Environmental Incentives. Notwithstanding the foregoing, FLS shall transfer to the City, for further transfer to KUB and/or the Utility, all RECs generated by the operation of the System during the term of this Agreement.

18. Metering. FLS shall install and maintain a standard revenue quality meter at the System. The meter shall measure the kWhs of the System on a continuous basis. FLS shall be responsible for maintaining the metering equipment in good working order and, if the City so requests, for testing at the City's cost once per calendar year and certifying the results of such testing to the City. FLS shall maintain all metered data and shall provide to City a report of the Site's metered energy, as read and collected on a monthly basis. FLS shall preserve all data compiled hereunder for a period of at least two (2) years following the compilation of such data. FLS acknowledges that KUB or the Utility may also install its own meter at the Site. During the term of the Interconnection Agreement and the Generation Partners Agreement, the data collected and provided by the KUB/Utility meter shall control, unless a variance of ten percent

(10%) or more between the meters exists, in which case the FLS meter shall control to the extent of such excess variance.

19. Generation Partners Agreement. The City agrees that it shall not terminate, or allow the termination of, the Generation Partners Agreement, and shall remain a customer of the Utility, so long as this Agreement is in effect. The City acknowledges that this Agreement has been entered into, in substantial part, due to the effectiveness of the Generation Partners Agreement, and the City agrees to administer and enforce the Generation Partners Agreement in a manner consistent with the preservation of this Agreement. Failure to maintain the Generation Partners Agreement in full force and effect shall constitute a material default of this Agreement by the City, unless such failure results in substantial part from the acts or omissions of FLS

20. Representations and Warranties. Each party represents and warrants to the other party that:

(a) It is duly organized, validly existing and in good standing under the laws of the state of its formation and has all requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby.

(b) The execution and delivery of this Agreement and the performance of its obligations have been duly authorized by all necessary action.

(c) This Agreement is its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject, however, to the effect (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity.

(d) No governmental approval (other than any governmental approvals which have been previously obtained or disclosed in writing to the other party) is required in connection with its due authorization, execution and delivery of this Agreement or its performance.

(e) Neither the effectiveness nor its performance of this Agreement conflicts with, breaches or violates its organizational documents, TRA rules or regulations or applicable law.

21. Liens. The City shall not, directly or indirectly, with respect to the System, and FLS shall not, directly or indirectly, with respect to the Site, cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialmen's liens), charge, security interest, encumbrance or claim on or with respect to the System or any interest therein or the Site or any interest therein, respectively. Each party shall promptly cause any such lien for which it is responsible to be discharged and released of record without cost to the other party, and shall indemnify the other party against all costs and expenses (including reasonable attorneys' fees) incurred in connection therewith.

22. Indemnification. The parties (each, in such case, an "*Indemnifying Party*") shall, to the extent permitted by law, indemnify, defend and hold the other party and its Affiliates,

employees, directors, officers, managers, members, shareholders and agents harmless from and against any and all third party claims, suits, damages, losses, liabilities, expenses and costs (including reasonable attorneys' fees), to the extent caused by the Indemnifying Party's (i) breach of any obligation, representation or warranty contained herein and/or (ii) gross negligence or willful misconduct. Further, the City hereby makes a non-exclusive assignment to FLS of all rights of indemnity to which the City is entitled under the Interconnection Agreement, the Generation Partners Agreement and any other agreement from either KUB or the Utility with respect to the Site and the System.

23. Insurance. Each party shall maintain such insurance as may be required by that certain Agreement between the parties, date as hereof, governing a grant made by the City to FLS.

24. Waiver of Claims. Notwithstanding **Section 23**, should any damage or impairment to the System result from fire or other peril, FLS agrees that all of its personal property, including the System, in or on the Site shall be at the risk of FLS only, and that the City shall not be liable for damage thereto under any circumstances. Should any damage or impairment to the Site, including any buildings located thereon or personal property (excluding the System) of the City located therein, result from fire or other peril the City agrees that all such real and personal property shall be at the risk of the City only, and that FLS shall not be liable for damage thereto under any circumstances. The parties for themselves and for their insurance carriers agree that each party is responsible for its own coverage for casualties and waive all claims against each other, including all rights of subrogation.

25. Damage to System. If the System is (i) materially damaged or destroyed, or suffers any other material loss or (ii) condemned, confiscated or otherwise taken, in whole or in material part, or the use thereof is otherwise diminished so as to render impracticable or unreasonable the continued production of Electrical Output, to the extent there are sufficient insurance or condemnation proceeds available to FLS, FLS may, at its cost unless such damage or diminution in value is caused by the City, either cause (A) the System to be rebuilt and placed in Commercial Operation at the earliest practical date or (B) terminate this Agreement.

26. Events of Default. An event of default (an "*Event of Default*")shall exist with respect to a party if (i) such party fails to pay any amount within thirty (30) days after receipt of written notice that such amount is due; (ii) except as otherwise set forth in clause (i) above, such party is in breach of any material representation or warranty set forth herein or fails to perform any material obligation set forth in this Agreement and such breach or failure is not cured within 30 days after written notice from the non-defaulting party; (iii) such party admits in writing its inability to pay its debts generally as they become due; (iv) such party becomes subject to the federal bankruptcy laws or any other similar law, and in the case of an involuntary filing, such petition is not dismissed within 90 days; (v) such party makes an assignment for the benefit of creditors; and (vi) a receiver is appointed for such party and such proceeding is not terminated within 90 days. In addition to the above, it shall be an Event of Default if at any time the City orders FLS off of the Site, materially breaches the Interconnection Agreement and or the Generation Partners Agreement and such breach or failure is not cured within 30 days after notice from FLS, KUB or TVA.

27. Termination. Upon an Event of Default by one party, the other party shall have the right, but not the obligation, to terminate or suspend this Agreement with respect to all obligations arising after the effective date of such termination or suspension (other than payment obligations relating to obligations accruing prior to such termination or suspension). The parties agree that notwithstanding any other agreement to the contrary, upon the occurrence of an Event of Default that leads to termination, the non-defaulting party may pursue all remedies available to it at law, in equity or under this Agreement, including consequential damages such as lost profits and recapture of any tax credits or grants.

(a) In either case, the defaulting party shall reimburse the non-defaulting party for the non-defaulting party's reasonable expenses and costs relating to such default (including reasonable attorneys' fees).

28. **LIMITATION OF LIABILITY. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, THE RIGHTS OF THE NON-DEFAULTING PARTY AND THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN THIS AGREEMENT, AS THE SOLE AND EXCLUSIVE FULL, AGREED UPON AND LIQUIDATED DAMAGES, AND NOT AS A PENALTY, AND ALL OTHER DAMAGES OR REMEDIES ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED, OR IF A REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY NONEXCLUSIVE, THE NON-DEFAULTING PARTY SHALL HAVE THE RIGHT TO EXERCISE ALL RIGHTS AND REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY.**

29. Force Majeure. In the event that either party is delayed in or prevented from performing or carrying out its obligations under this Agreement by reason of Force Majeure, such circumstance shall not constitute an Event of Default, and such party shall not be liable to the other party for or on account of any loss, damage, injury or expense resulting from, or arising out of, such delay or prevention; *provided, however*, that the party encountering such delay or prevention shall use commercially reasonable efforts to remove the causes thereof. As used herein, the term "*Force Majeure*" shall mean (i) sabotage, riots or civil disturbances, (ii) acts of God, (iii) acts of the public enemy, (iv) terrorist acts affecting the Site, (v) volcanic eruptions, earthquake, hurricane, flood, ice storms, explosion, fire, lightning, landslide or a similar cataclysmic occurrence, (vi) a requirement by TRA that the System discontinue operation for any reason, (vii) appropriation or diversion of solar Electrical Output by sale or order of any governmental authority having jurisdiction thereof, or (viii) any other action by any governmental authority which prevents or prohibits the parties from carrying out their respective obligations under this Agreement.

30. Publicity. The parties share a common desire to generate favorable publicity regarding the System and their association with it. The parties agree that they will, from time to time, issue press releases regarding the System and they shall cooperate with each other in connection therewith, including promptly reviewing and approving all proposed press releases. The City shall have the right to publicize that it is serving as a "solar host" for the System and to display photographs of the System in its advertising and promotional materials; *provided*, that any such materials identify FLS as the owner and developer of the System. The System shall be

named **"FLS Energy at Knoxville Convention Center."** All signage, publicly distributed materials and other public communications shall include a statement that FLS owns and operates the System.

31. No Waiver. Any waiver at any time by a party of its rights under this Agreement shall not be deemed to be a waiver with respect to any subsequent default or other matter. Any waiver under this Agreement must be in writing.

32. Records. Each party shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Each party shall have the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

33. Notices. Any notice or other communications hereunder shall be in writing and shall be deemed to have been given (unless otherwise set forth herein), if delivered in person, deposited with an overnight express agency, fees prepaid, or mailed by United States express, certified or registered mail, postage prepaid, return receipt requested, at the following addresses, or to such other address as shall be later provided in writing by one party to the other:

If to FLS:
FLS Solar 60, LLC
239 Amboy Road
Asheville, NC 28806
Attention: Michael Shore
Phone: (828) 350-3993
Fax: (828) 350-3997

If to City:
The City of Knoxville
P.O. Box 1631
Knoxville, TN 37901
Attention: Boyce Evans
Purchasing Agent

and

Susanna Sutherland Bass
Program Manager, Sustainability
P.O. Box 1631
Knoxville, TN 37901

34. Confidentiality. Subject to the provisions of the Tennessee Public Records Act, TENN. CODE ANN. §10-7-503, *et seq.*, all non-public information (including the terms of this Agreement and, in particular, the Unit Price and the calculation thereof) provided by either party to the other or which is identified by the disclosing party in writing as confidential or proprietary information shall be treated in a confidential manner and shall not be disclosed to any Person without the prior written consent of the disclosing party. The foregoing requirement shall not apply to any data or documentation which is (i) required to be disclosed pursuant to state or federal law, an order or requirement of a regulatory body or a court; (ii) disclosed by a party to an Affiliate of such party or in connection with an assignment permitted by **Section 35**; or (iii), public knowledge as of the time of disclosure without the fault of the disclosing party.

35. Assignment. Neither party shall assign this Agreement or any of its rights hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, FLS may upon written notice, without the need for consent from the City, (a) transfer, pledge or assign this Agreement (i) as security for any financing or (ii) to an affiliated special purpose entity created for financing or tax credit purposes related to the System; *provided, however*, that any such assignee shall agree to be bound by the terms and conditions hereof; (b) transfer or assign this Agreement to any Person succeeding to all or substantially all of the assets of FLS; *provided, however*, that any such assignee shall agree to be bound hereby; or (c) assign its rights under this Agreement to a Person in a merger, acquisition or divestiture transaction; *provided, however*, that any such assignee shall agree to be bound by the terms and conditions hereof and, in the case of (b) and (c) above, the assignor shall be relieved of all liability herein.

36. Set-Off. All outstanding obligations to make, and rights to receive, payment under this Agreement may be offset against each other.

37. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assigns. The parties intend and agree that the obligations of the City under this Agreement shall be binding on any and all successive owners of the Site during the term of this Agreement.

38. Amendments. No modification of this Agreement shall be effective except by a written instrument executed by the parties.

39. Counterparts. Any number of counterparts of this Agreement may be executed and each shall have the same force and effect as the original.

40. Merger. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof, and supersedes any other agreements, written or oral, between the parties concerning such subject matter.

41. Survival. All provisions hereof that expressly or by implication come into or remain in effect following the termination of this Agreement, or which require performance subsequent to termination, shall survive termination. The provisions of the Agreement relating to (a) confidentiality, (b) publicity, (c) limitations on liability, and (d) indemnification from one party to the other party shall survive termination.

42. Governing Law. This Agreement shall be governed by the laws of the State of Tennessee.

43. Further Assurances. Upon request, each party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary or desirable to carry out the terms and intent hereof.

44. No Partnership. This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the parties. Neither party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other party.

40. Severability. If any part or provision of this Agreement is held invalid or unenforceable under applicable law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining parts and provisions of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Agreement as of the day and year written above.

FLS:

FLS SOLAR 60, LLC

By: FLS Energy, Inc., Managing Member

By: _____
Michael Shore, President

CITY:

THE CITY OF KNOXVILLE

By: _____
DANIEL T. BROWN, Mayor

APPROVED AS TO FORM:

_____
DEBRA C. POPLIN
Law Director

FUNDS CERTIFIED:

_____
JAMES YORK
Finance Director

Exhibit A

Estimated Annual Production for First Year

Location	Estimated Annual 1st Year Production	Number and Type of Module
	kWh	

Exhibit B

Intentionally Deleted

Exhibit C

PURCHASE OPTION

THIS PURCHASE OPTION (the "Option") is made and entered into effective the ____ day of _____, 20___, by and between FLS Solar 60, LLC, a North Carolina limited liability company ("SELLER") and [INSERT FULL LEGAL NAME], a [STATE] [BUSINESS ENTITY] ("BUYER").

WITNESSETH:

That for and in consideration of the option money paid by Buyer to FLS in the amount of Ten and 00/100 Dollars ($10.00) (the "Option Money"), the receipt and sufficiency of which are hereby acknowledged, FLS does hereby give and grant unto Buyer the right and option to purchase from FLS that certain System as defined in that certain Solar Power Production Agreement between FLS Solar 60, LLC and Buyer, of even date herewith (the "SPPA").

The terms and conditions of the Option are as follows:

1. Term. The Option shall become effective on the Commercial Operation Date, and shall terminate on the last day of the Initial Term or any Renewal Term, provided however, the Closing shall take place no earlier than the seven year anniversary of the Commercial Operation Date, unless otherwise provided for in the SPPA and no later than ninety (90) days after the last day of the Initial Term or any applicable Renewal Term (the "Option Term"). The Option may be exercised only by the giving of written notice of exercise to FLS by Buyer, which notice shall be in accordance with the provisions of **Section 9**. If the Option is not validly and timely exercised by Buyer, and the consummation of the Closing has not occurred prior to the earlier of (i) the date specified by Buyer in its notice or (ii) the end of the Option Term, all rights of Buyer to purchase the System hereunder shall cease and terminate and the Option Money shall be retained by FLS.

2. Option Money. The Option Money shall not be credited against the Buyout Price of the System.

3. Terms and Conditions of Buyer's right to exercise Option. Buyer may only exercise the Option provided it has complied with all the terms and conditions of the SPPA. If Buyer fails to comply with any of the terms and conditions of the SPPA or the Option, the Option shall automatically terminate and FLS shall retain the Option Money paid.

4. Buyout Price. If Buyer validly exercises the Option hereunder and consummates the Closing on or prior to the termination of the Option Term, the buyout price shall be the then fair market value of the System (the "Buyout Price"). Buyer shall pay FLS the Buyout Price, as determined pursuant to the procedures set forth on the attached **Schedule 2**.

5. Closing. Subject to the provisions of **Sections 1 and 2,** the consummation of the purchase and sale of the System (the "Closing") shall take place on a business day occurring on a date (the "Closing Date") selected by Buyer in its exercise of the Option no later than the expiration of the Option Term, at the offices of Blanco Tackabery & Matamoros, P.A. in Winston-Salem, North Carolina, or on such other date or at such other place as the Parties may agree in writing.

6. Title. The System shall be conveyed by a bill of sale in the form attached as **Schedule 1**.

7. Closing Costs. All funds due under the SPPA must be paid at Closing. FLS shall pay the cost of preparing the bill of sale and its counsel fees. Buyer shall pay for any necessary equipment examination, any desired engineering reports, necessary fees, its counsel fees and for any other due diligence desired by Buyer. Any ad valorem taxes, if any, shall be prorated at Closing and any sales tax shall be paid by Buyer.

8. Closing Documents. FLS will execute, acknowledge and deliver to Buyer the bill of sale, a lien affidavit as Buyer's title insurer may require to insure against any possible unfiled and unpaid laborer's or materialmen's liens, a closing statement, and any other customary or reasonable documentation Buyer may require or request.

9. Notices. Any notice or other communications hereunder shall be in writing and shall be deemed to have been given (unless otherwise set forth herein), if delivered in person, deposited with an overnight express agency, fees prepaid, or mailed by United States express, certified or registered mail, postage prepaid, return receipt requested, to the Parties at the following addresses, or to such other address as shall be later provided in writing by one party to the other:

If to FLS:

FLS Solar 60, LLC
239 Amboy Road
Asheville, NC 28806
Attention: Michael Shore
Phone: (828) 350-3993
Fax: (828)-350-3997

If to Buyer:

_____
_____
_____
_____
Phone: _____
Fax: _____

With a copy to:
Blanco Tackabery & Matamoros, P.A.
(110 S. Stratford Rd, 5th Floor)

P.O. Drawer 25008
(Winston-Salem, NC 27104)
Winston-Salem, NC 27114
Attn: Zoë Gamble Hanes

10. Risk of Loss. During all periods prior to the Closing Date, FLS shall be responsible for causing the maintenance of liability insurance with respect to the System consistent with the SPPA. Should any damage or impairment to the System result from fire or other insured peril FLS agrees that all personal property, including the System, in or on the Site shall be at the risk of FLS only and that Buyer shall not be liable for damage thereto under any circumstances. Prior to the Closing Date, neither Buyer nor any of its mortgagees shall have any right, title or interest with respect to the System and or any insurance proceeds with respect thereto, except as provided herein and in the SPPA.

11. Entire Agreement. The Option together with the SPPA contains the entire agreement of the Parties and there are no representations, inducements or other provisions other than those expressed in writing. All changes, additions or deletions to the Option must be in writing and signed by each party. Any and all references to FLS or Buyer shall be deemed to include their respective successors, heirs or assigns.

12. Governing Law. This Agreement shall be governed by Tennessee law.

13. Time is of the Essence. Time is of the essence in connection with every provision of the Option.

14. Terms. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the SPPA.

15. AS IS. In the event Buyer exercises the Option and consummates the acquisition of the System, the conveyance thereof by FLS shall be "AS IS, WHERE IS, WITH ALL FAULTS" and all warranties of quality, fitness and merchantability shall be excluded.

[SEPARATE SIGNATURE PAGE ATTACHED]

IN TESTIMONY WHEREOF, the Parties hereto have set their hands and seal this the day and year first above written.

SELLER:

FLS SOLAR 60, LLC (SEAL)

By: FLS Energy, Inc., Managing Member

By: _____
Michael Shore, President

BUYER:

(Affix Corporate Seal)

CITY OF KNOXVILLE

By: _____
DANIEL T. BROWN, Mayor

APPROVED AS TO FORM:

_____
DEBRA C. POPLIN
Law Director

FUNDS CERTIFIED:

_____
JAMES YORK
Finance Director

SCHEDULE 1

BILL OF SALE

THIS BILL OF SALE (this "Bill of Sale") is executed as of the _____ day of _____, 20___, by FLS Solar 60, LLC, a North Carolina limited liability company ("FLS"), in favor of [INSERT FULL LEGAL NAME], a [STATE] [BUSINESS ENTITY] ("Buyer").

1. System. The "System" shall have the meaning ascribed to it in that certain Solar Power Purchase Agreement dated as of _____, 20___, by and between FLS Solar 60, LLC and Buyer (the "SPPA") and as further described on **Exhibit A** attached to this Bill of Sale.

2. Sale. For good and valuable consideration received by FLS, the receipt and sufficiency of which are hereby acknowledged, FLS hereby sells, assigns and transfers the System to Buyer. FLS makes no warranties or representations as to the System. The System is transferred "AS IS, WHERE IS, WITH ALL FAULTS" and ALL WARRANTIES OF QUALITY, FITNESS AND MERCHANTABILITY ARE HEREBY EXCLUDED.

3. Environmental Attributes and Environmental Incentives. As of the effective date of this Bill of Sale, all right, title and interest associated with any and all Environmental Attributes and Environmental Incentives resulting from the production, sale, purchase or use of the Electrical Output including, without limitation shall transfer to Buyer:

(a) all Environmental Incentives and all Environmental Attributes; and

(b) the Reporting Rights and the exclusive rights to claim that: (i) the Electrical Output was generated by the System; (ii) Buyer shall be entitled to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing.

4. Limited Liability. By accepting this Bill of Sale, Buyer agrees that it will look only to the proceeds of the System for the performance or liability for nonperformance of any and all obligations of FLS hereunder, it being expressly understood and agreed that neither FLS nor any shareholder, member, officer or director thereof or any other person or entity shall have any personal liability or obligation of any kind or nature whatsoever under this Bill of Sale.

5. Terms. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the SPPA.

[SEPARATE SIGNATURE PAGE ATTACHED]

IN WITNESS WHEREOF, FLS has executed this Bill of Sale as of the day and year first above written.

SELLER:

FLS SOLAR 60, LLC (SEAL)

By: FLS Energy, Inc., Managing Member

By: DO NOT EXECUTE UNTIL SALE
Michael Shore, its President

Accepted By:

_____

By: _____

Name: _____

Its: _____

SCHEDULE 2

APPRAISAL EXHIBIT

(a) Appraisal Process. If FLS and Buyer fail to agree on the fair market value of the System within ten (10) days of exercise of the Option, at any time following the expiration of such time limit either FLS or Buyer may invoke the process described in this Appraisal Exhibit (the "Appraisal Process") by sending written notice as described in the Purchase Option to the other party, in which case the determination of fair market value in accordance with this Appraisal Exhibit shall be final and binding on all Parties to the Agreement (the "Fair Market Value").

(i) Appraised Value. Any Appraiser hired pursuant to the Appraisal Process described herein shall base the appraisal of the then fair market value of the System on the value of the equipment and any remaining value which may result from any potential rental income stream, income from the sale of the Electrical Output, income from any Environmental Attributes or Environmental Incentives or any other potential cash flow generated by the System; all in accordance with the best appraisal techniques then recognized as available for property of such type.

(ii) First Appraisal. FLS shall, within sixty (60) days of either party invoking the Appraisal Process, send written notice to the Buyer setting forth the name and address of FLS's selected appraiser (the "First Appraiser"). Any appraiser selected pursuant to this Appraisal Exhibit must be a certified appraiser, who is unrelated to the principals of FLS, and who shall furnish the appraisal to Buyer and FLS within thirty (30) days of being selected. The Buyer shall, if dissatisfied with the First Appraiser's appraisal, have ten (10) days following Buyer's receipt of the First Appraiser's appraisal to select a second appraiser with the above stated required qualifications by sending to FLS written notice setting forth the name and address of the appraiser (the "Second Appraiser"). If a Second Appraiser is not selected within the ten (10) day time period, the First Appraiser's appraisal amount shall be binding upon both Parties, in which case the Appraisal Process shall be concluded and the Fair Market Value and the Buyout Price of the System shall be the amount set forth in the First Appraiser's appraisal.

(iii) Second Appraisal. If the Buyer selects a Second Appraiser, the Second Appraiser shall submit the Second Appraiser's appraisal to Buyer and FLS within thirty (30) days of being retained. If the amounts of the two appraisals shall be within Four Thousand Dollars ($4,000) of each other (as to the Fair Market Value), the average of the two (2) appraisals shall be the Fair Market Value to serve as the Buyout Price, and the Appraisal Process shall be concluded. In the event the two appraisals are more than Four Thousand Dollars ($4,000) apart, as to the Fair Market Value, then the two (2) appraisers shall, as soon as reasonably possible,

select a third appraiser (the "Third Appraiser"), who must have qualifications similar to the above.

(iv) Third Appraisal. If a Third Appraiser is selected, as above stated, the Third Appraiser shall have disclosed to him or her the appraisal reports of the first two appraisers, and the results of the first two appraisals. The Third Appraiser shall perform sufficient appraisal work to enable the Third Appraiser to furnish to Buyer and FLS such appraiser's opinion as to the correct Fair Market Value, and such number shall be the Buyout Price. Upon the Third Appraiser's submission to FLS and Buyer of his or her report, the Appraisal Process shall be concluded.

(b) Costs of Appraisal Process.

(i) General Rules. FLS shall bear the cost of the First Appraiser. The Buyer shall bear the cost of the Second Appraiser. The Parties shall equally share in the cost of the Third Appraiser.

ROOF LEASE AND EASEMENT AGREEMENT
(Solar Photovoltaic Facility)

THIS ROOF LEASE AND EASEMENT AGREEMENT (the "*Lease*") is dated as of _____ ___, 2011 ("*Effective Date*"), by and between the City of Knoxville, a Tennessee municipal corporation ("*Landlord*"), and FLS Solar 60, LLC, a North Carolina limited liability company ("*Tenant*").

RECITALS:

A. Landlord is the owner of certain real property and improvements located in _____, Knoxville, TN being more particularly described on the attached **Exhibit A** (the "*Property*").

B. Landlord owns a building upon the Property, which is commonly referred to as Knoxville Convention Center (the "*Building*"), which contains approximately _____ square feet of rooftop space (with approximate rooftop dimensions of __ feet by ___ feet) (the "*Rooftop*").

C. Tenant desires to install a solar photovoltaic electricity generating system, inclusive of the Equipment (the "*System*"), on the Rooftop and in and around the Building, for the production of electricity and connection to the electricity transmission grid system (the "*Grid*").

D. Landlord and Tenant entered into that certain Solar Power Production Agreement dated as of the date hereof (the "*SPPA*").

E. Landlord desires to lease a _____ (___) square foot portion of the Rooftop, as more fully depicted on the attached **Exhibit B** (which Exhibit may be attached during the Initial Term if not available as of the Effective Date), and grant to Tenant certain easement rights set forth herein, and Tenant desires to lease such part of the Rooftop from Landlord and accept such easement rights, for the purposes expressed herein.

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

1. Fundamental Terms.

(a) Term.

(i) Initial Term. This Agreement shall be effective as of the Effective Date and the initial term shall be automatically conterminous with the Initial Term of the Grant Agreement and the SPPA, which is seven years following the Commercial Operation Date (the "Initial Term"). Landlord and Tenant agree that the commencement of any Renewal Term under the SPPA shall automatically cause the commencement of a coterminous renewal term of this Agreement (a "Renewal Term"; the "Initial Term together with any Renewal Term

are collectively referred to herein as the "Term") upon the same terms and conditions as the Initial Term.

(ii) **Special Termination Date**. If the Commercial Operation Date has not occurred by the second (2^{nd}) anniversary of the Effective Date, this Lease shall automatically terminate and the parties shall be released from further liability hereunder.

(b) **Rent**. Tenant shall pay Landlord commencing on the first day of the first anniversary of the Commercial Operation Date and continuing throughout the remainder of the Term, the annual sum of Ten Thousand Dollars and 00/100 ($10,000.00) ("*Rent*"). Rent shall be paid annually, in arrears, on the first day of each relevant anniversary of the Commercial Operation Date.

(c) **Use**. Tenant shall use the Leased Premises and the Easements solely for the purpose of installing, operating, maintaining, repairing and replacing the System.

(d) **Addresses**.

(i) To Landlord: The City of Knoxville
P.O. Box 1631
Knoxville, Tennessee 37901
Attn: Boyce Evans
Purchasing Agent

and

Susanna Sutherland
Program Manager, Sustainability
P.O. Box 1631
Knoxville, Tennessee 37901

(ii) To Tenant: FLS Solar 60, LLC
2389 Amboy Road
Asheville, North Carolina 28806
(828) 350-3993
(828) 350-3997 (fax)

with a copy to:

Blanco Tackabery & Matamoros, P.A.
110 S. Stratford Rd, 5^{th} Floor
(P.O. Drawer 25008)
Winston-Salem, NC 27104
(Winston-Salem, NC 27114)
Attn: Zoë Gamble Hanes

2. **Definitions.** In addition to the terms defined elsewhere in this Lease, all otherwise undefined terms shall have the meanings ascribed to them in the SPPA.

3. **Conditions Precedent**. The parties acknowledge and agree that the following are conditions precedent to the effectiveness of this Lease as to Tenant:

(a) **Due Diligence/Engineering Studies**. Tenant's receipt of satisfactory due diligence inspections, reports and studies relative to the Leased Premises, the Building and the System, including (i) a report from a licensed engineer that the Rooftop will support the aggregate weight of the Rooftop Equipment, and (ii) certifications on title to, and the zoning of, the Property. All costs of due diligence activities shall be Tenant's responsibility.

(b) **Financing**. Obtaining (i) suitable and acceptable financing for the purchase and installation of the System, and (ii) receipt of $250,000 in grant proceeds from the Landlord.

(c) **Power Purchase and Related Agreements**. Obtaining a finalized Interconnection Agreement and Generation Partners Agreement, fully executed SPPA and any other agreements necessary for operation of the System. Landlord shall provide reasonable cooperation to Tenant in this regard, to the extent required as the owner of the Leased Premises, including executing any documents, instruments and agreements which are in form and content acceptable to Landlord, to further the development, installation and operation of the System.

(d) **Permits**. Obtaining all permits, contracts and agreements required for ownership, installation, operation and maintenance of the System.

(e) **Regulatory Approval**. Obtaining all necessary authorizations, certifications and licenses from the TRA and all other Persons for the operation of the System and the sale and delivery of Electrical Output therefrom.

(f) **Installation Agreements**. Entering into acceptable agreement(s) for the installation of the System.

(g) **SNDA(s)**. The delivery to Tenant of acceptable subordination non-disturbance and attornment agreements ("SNDA") from all mortgagees with regard to the Property.

Tenant shall use commercially reasonable efforts to attempt to satisfy the foregoing conditions as promptly as possible following the Effective Date. If the foregoing conditions are not satisfied or waived by Tenant prior to the second (2^{nd}) anniversary of the Effective Date, either party may terminate this Lease, and neither party shall have any liability to the other except for those terms hereof which by their express terms or by practical implication survive the expiration or termination of this Lease.

4. **Grant**. Landlord leases to Tenant, and Tenant leases from Landlord, the following (collectively, the "*Leased Premises*"):

(a) **Rooftop**. A _____ (_____) square foot portion of the Rooftop, as more fully depicted (or to be depicted) on the attached **Exhibit B**, for Tenant to install, operate,

inspect, maintain, repair and replace solar power generating panels and any additional equipment necessary to generate, monitor and transmit solar electrical power (the "*Rooftop Equipment*");

(b) Building Exterior. A portion of the Property and the Building exterior walls, as more fully depicted (or to be depicted) on the attached **Exhibit B**, for Tenant to install, operate, inspect, maintain, repair and replace certain connecting equipment, including cables, network connections. data acquisition system and telecommunications system electrical wiring, wire management systems, electric meters, power distribution boxes and connecting hardware as necessary to connect the Rooftop Equipment with the Inverters, and as necessary to connect the Inverters with the Transformer, and any additional equipment necessary to generate and transmit solar power (the "*Connecting Equipment*");

(c) Property. A portion of the Property, as more fully depicted (or to be depicted) on the attached **Exhibit B**, for Tenant to install, operate, inspect, maintain, repair and replace one or more inverters and any additional equipment necessary to generate and transmit solar power (the "*Inverters*") (the Rooftop Equipment, Connecting Equipment and Inverters are collectively, the "*Equipment*"); and

(d) Transformer(s). To the extent of Landlord's rights therein, any electric transformer in or on the Building, on the Property, or used by or connected to the Building (collectively, the "*Transformer*"), for Tenant to connect thereto to transmit electricity generated by the System to the Grid.

5. Grant of Easements. In addition to the Leased Premises leased in **Section 4**, Landlord grants to Tenant, for the Term, the following easements and other rights (collectively, the "*Easements*"):

(a) Access. Such non-exclusive easements for ingress, egress and regress over the Property and the Building as are reasonably necessary to enable Tenant to have vehicular and pedestrian access to the System for the purposes of installation, operation, inspection, maintenance, repair and replacement thereof.

(b) Solar. Any obstruction by Landlord or others to the free and unobstructed flow of sunlight to the Rooftop Equipment is prohibited throughout the entire area of the Property. Notwithstanding the foregoing, Tenant shall not require the removal of any trees, structures and improvements located on the Property as of the date of this Lease. Landlord shall not erect or plant, and shall use reasonable efforts to not allow any other Person to erect or plant, any trees, structures or improvements on the Property that exceed, or could reasonably be expected to exceed at maturity, the height of the Building and which may, in Tenant's reasonable judgment, obstruct or interfere with the receipt of sunlight by the Rooftop Equipment.

6. Installation and Location of the System.

(a) Access and Cooperation. As of the Effective Date, Tenant, and such Persons as may be involved with Tenant in the installation, permitting, licensing, regulation, use or operation of the System (collectively, the "*Tenant Parties*"), shall have access to the

Building and the Property as set forth in **Section 11**. Landlord shall, at no cost to it, reasonably cooperate to assist Tenant in its efforts to obtain all permits, licenses and approvals necessary to install and operate the System, as well as to obtain any certifications, approvals and/or inspections by any necessary Person, including the TRA and the Utility; *provided however*, Landlord shall not be required to execute any document that would impose any financial liabilities or obligations on it. Landlord further agrees to reasonably cooperate, including executing a connection or similar agreement, which is satisfactory to Landlord, with the Utility or any other Person intending to purchase the Electrical Output.

(b) Placement of System Components. The Rooftop shall be delivered to Tenant in a clean, ready to install, condition. The System shall be installed and/or placed on those portions of the Leased Premises as depicted (or to be depicted) on the attached **Exhibit B**. The Equipment shall be installed only in the locations and by methods that have been approved in advance by Landlord, as more particularly set forth herein. Except as otherwise set forth in this Lease, Tenant shall have no right to access or utilize any other parts of the Building or the Property. Tenant may relocate, with Landlord's prior written consent, which consent shall not be unreasonably withheld, such portions of the System as are reasonably necessary to achieve optimal solar power generation. Installation of the System shall be done in such a manner as to not result in the imposition or creation of any lien against the Property. Furthermore, the Tenant Parties shall have access to and use of the Building's electrical systems and high speed internet as reasonably necessary to allow Tenant to monitor the System; *provided, however*, Tenant shall provide the requirements for such access and use to Landlord prior to installation of any Equipment and the parties shall mutually agree to the methods by which Tenant shall utilize said electrical systems and high speed internet.

(c) Roof Matters.

(i) Roof Warranty. During the Initial Term, the parties shall use commercially reasonable efforts to determine whether the proposed location of, and subsequent installation of, the System will void Landlord's roof warranty, if any. If, after using such efforts, the parties are unable to agree upon a location for any part of the Equipment, or if the installation of the Equipment will void Landlord's roof warranty, either party may terminate this Lease, and neither party shall have any further liability hereunder.

(ii) Approval by Roofing Contractor. The installation of all Rooftop Equipment (including any repair or reinstallation), at Landlord's option, shall be approved in advance by Landlord's roofing contractor (the "*Roofing Contractor*"). The Roofing Contractor shall, at Landlord's option, be present at each such installation, repair or reinstallation. Following the installation of the Rooftop Equipment, at Landlord's option, the Roofing Contractor shall be requested to certify to Landlord that the roof warranty for the Building has not been voided or lessened in any way due to the installation of the Rooftop Equipment. Tenant shall be responsible for all reasonable costs associated with such certification.

7. General Requirements for Use. Tenant's use of the Leased Premises shall comply with the following requirements: (i) it shall be in full accordance with the terms of this Lease and all applicable laws, rules and regulations; (ii) Landlord shall approve the location and method of installation of all Equipment; (iii) no piece of Equipment shall void Landlord's roof

warranty and all such Equipment may be certified by Landlord's Roofing Contractor, at Landlord's option, in accordance with **Section 6(c)**, with any such certification costs to be at Tenant's expense); and (iv) it shall not interfere in any way with the conducting of Landlord's and any other tenant's, occupant's or user's business on or at the Property.

8. Enhancements and Upgrades. Tenant shall have the right during the Term to enhance, upgrade and alter the System as Tenant may see fit to maximize the generation of solar power therefrom.

9. Achievement of Commercial Operation Date. Tenant shall use good faith, diligent efforts to satisfy all requirements to achieve the Commercial Operation Date as promptly as reasonably possible and shall promptly deliver to Landlord written notification of the Commercial Operation Date in order to establish the actual and precise dates of the Term.

10. Payment of Rent. The Rent shall be payable to Landlord at Landlord's address specified in **Section 1(e)(i)**. If Tenant shall fail to pay the Rent within ten (10) business days of the due date, Tenant shall pay a late payment charge equal to four percent (4%) of any Rent not paid when due. Additionally, any Rent which is not paid within thirty (30) days of its due date shall bear interest at the annual rate of eight percent (8%) from the due date until paid. Any payment by Tenant or acceptance by Landlord of a lesser amount than that which is due shall be treated as a payment on account. Landlord may accept any payment for a lesser amount, notwithstanding any endorsement or statement thereon or therewith without prejudice to any other rights or remedies which Landlord may have against Tenant.

11. Access. At all times during the Term, Tenant shall have twenty-four (24) hours-a-day, seven (7) days-a-week access to the Leased Premises for emergency purposes. Except in cases of emergency, however, Tenant shall provide Landlord with at least twenty-four (24) hours prior notice of the need to access the Leased Premises, shall schedule such access at times approved by Landlord and shall not materially or unreasonably interfere with Landlord's business at the Property.

12. Interference. During the Term, Landlord shall not, directly or indirectly, cause or allow any of the following:

(a) Holes to be drilled in, or penetrations of, the Rooftop Equipment;

(b) Placement of any equipment, structure or improvements on or over the Rooftop Equipment;

(c) Placement of any equipment, structure or improvements in a location that materially and adversely interferes with the Rooftop Equipment's exposure to sunlight;

(d) Interference in any material and adverse way with the System's ability to generate solar power;

(e) Any of the Equipment to become subject to any lien, mortgage, deed of trust, security agreement, mechanics lien or other encumbrance;

(f) The Rooftop to be maintained, altered, modified, repaired, replaced or compromised in such a way that it can no longer support the Rooftop Equipment; and

(g) The Transformer to be maintained, altered, modified, repaired, replaced, compromised or removed in such a way that it can no longer transmit any and all Electrical Output when the System is operating at full capacity.

13. Maintenance; Repair; Replacement; Reinstallation.

(a) Maintenance of the System. Tenant shall operate and maintain the Equipment in good working order, in a safe and clean manner, and in accordance with all applicable laws, rules and regulations. In the event the Equipment is damaged or destroyed at any time during the Term, Tenant shall have the right to repair, replace or reinstall the Equipment or any portion thereof at times approved by Landlord, which approval shall not be unreasonably withheld or delayed, and in a manner which complies with the terms of this Lease. If the Equipment is damaged or destroyed as a direct result of the willful misconduct of Landlord, its agents, employees, contractors, authorized representatives or invitees, Landlord shall be liable for the full cost of any repair, replacement or reinstallation necessitated thereby, to the extent allowed by the Tennessee Governmental Tort Liability Act, TENN. CODE ANN. § 29-20-101, *et seq.*.

(b) Maintenance of the Property. Landlord shall maintain the (i) Property, including the Building, in good condition, reasonable wear and tear excepted, and (ii) area in the immediate vicinity of the System in a reasonably neat and clean condition. In the event of any roof puncture, leak, malfunction or any other event which is proximately caused by the System and requires repairs to the Property, including the Building, Landlord shall immediately notify Tenant and Tenant shall be responsible for any and all necessary repairs. In no event shall Landlord attempt to move, repair, replace or maintain any part of the System.

If Landlord requires the temporary removal of any part of the System to properly maintain the Rooftop, Landlord shall give Tenant prior written notice of such need at least one hundred twenty (120) days before the desired date of removal (except in the case of an emergency where Landlord shall endeavor to provide as much prior notice to Tenant as is reasonable under the circumstances), and Landlord shall (i) be responsible for all associated costs of removal and reinstallation of the System, and (ii) a Substitute Payment as provided for in the SPPA. Landlord may not require the temporary removal of any part of the System for greater than thirty (30) consecutive days.

(c) Security. Landlord shall provide and take reasonable measures for security of the System to the same extent and degree that Landlord monitors and provides security for the Building.

(d) Damage. If the Leased Premises are substantially damaged by fire or other peril (an "*Event*"), Tenant may by written notice to Landlord, given not later than thirty (30) days after the date of such Event, terminate this Lease, in which event Rent paid for the period beyond the date of the Event shall be promptly refunded to Tenant. In the event Landlord desires to restore the Building, Landlord shall advise Tenant of such intention, in writing, not less than ninety (90) days after the Event, and Landlord's good faith estimate of the

period of time Landlord anticipates for the completion of such repairs. Tenant shall have the option of terminating this Lease and removing any of the Equipment which it deems to be salvageable, or continuing this Lease as of the date the Building is finally restored and final inspections are approved. In any event, Tenant shall make this election within thirty (30) days after receipt of Landlord's notice as set forth above. During such period that Tenant is unable to reasonably operate the System due to an Event, Rent shall abate and shall not recommence until the Building and the System are restored, if at all, and the System is generating and transmitting electricity at its capacity prior to the Event in a safe operating condition, *provided* that Tenant shall use good faith, diligent efforts to have the System functioning at pre-Event capacity as promptly as is commercially possible.

(e) Removal. Tenant shall have the right, in its sole discretion, to remove all or a portion of the Equipment at any time during the Term, or upon the termination or expiration of this Lease, and such removal shall not constitute a default hereunder or be deemed a termination hereof. Any such removal shall be in accordance with **Section 18**.

14. Taxes.

(a) Tenant Responsibility. Tenant shall pay any personal property tax or any other taxes or fees which are in any way attributable to or assessed on the Equipment or its installation or placement on or within the Leased Premises. Landlord shall use commercially reasonable efforts to cooperate with Tenant in Tenant's efforts to ensure that Tenant does not have to pay both (i) an increase in real property taxes on the Property because of the installation of the System, and (ii) personal property taxes on the Equipment.

(b) Landlord Responsibility. Landlord shall pay all ad valorem taxes and any other taxes or fees which are in any way attributable to or assessed on the Property.

15. Insurance; Waiver of Subrogation and Claims.

(a) Tenant's Coverage. Tenant shall maintain throughout the Term, at its sole cost and expense, (i) personal property insurance insuring the Equipment against All Direct Risk Physical Loss, in an amount not less than its insurable replacement cost value, (ii) commercial general liability insurance with coverage and limits of not less than that set forth in the SPPA, and (iii) if Tenant has employees, workers compensation insurance that meets the statutory requirements of the State. Tenant agrees to give Landlord prompt notice of any accidents or occurrences subject to coverage by its insurance. Upon the Effective Date and, if Landlord so requests, annually thereafter, Tenant shall provide Landlord with a certificate of insurance evidencing the maintenance of the insurance coverage(s) required in this Section. Landlord shall be named an additional insured on the GL Policy only. Any insurance maintained by Tenant other than the GL Policy is for the exclusive benefit of Tenant and shall not in any manner inure to the benefit of Landlord. To the extent permitted by its insurance companies, Tenant agrees to have its insurance policies endorsed to provide thirty (30) days advance notice to Landlord prior to termination of, or material change in, coverage.

(b) Landlord's Coverage. Landlord shall maintain, throughout the Term, at its sole cost and expense (i) a policy or policies of fire and extended coverage insurance covering the Property and Landlord's property located thereon, including and any buildings

located on the Property with full replacement coverage, for the benefit of Landlord and any beneficiary of any Deed of Trust on the fee simple title to the Property, as their interests may appear and (ii) commercial general liability insurance with coverage and limits of not less than that set forth in the SPPA. Landlord shall be named an additional insured on the commercial general liability insurance only. Within thirty (30) days after the Effective Date, and, if Tenant so requests, annually thereafter, Landlord shall provide Tenant with a certificate of insurance evidencing the maintenance of the insurance coverage required in this Section. Landlord agrees to have its insurance policy endorsed to provide thirty (30) days advance notice to Tenant prior to termination of, or material change in, coverage. Any other insurance maintained by Landlord is for the exclusive benefit of Landlord and shall not in any manner inure to the benefit of Tenant. Landlord shall not insure the System

(c) Waiver of Claims. Should the System or any part thereof be damaged or destroyed by fire or other peril, Tenant agrees that the System shall be at the risk of Tenant only and that Landlord shall not be liable for any damage thereto under any circumstances. Should the Property, including the Building or any personal property (excluding the System), be damaged or destroyed by fire or other peril, Landlord agrees that the Property and all such personal property shall be at the risk of Landlord only and that Tenant shall not be liable for any damage thereto under any circumstances. The parties agree that if the System, the Property or any other personal property located thereon are damaged or destroyed by fire or other peril, the rights, if any, of either party against the other with respect to such damage or destruction are waived. Each party, for itself and for its insurance carrier(s), agrees that each party is responsible for its own coverage of its property, and each waive all claims against each other for damage to its property, including all rights of subrogation.

16. Indemnification. The indemnification provisions of the SPPA shall control.

17. Character of the Equipment. The System, including all of its Equipment, is and shall remain Tenant's property. The System, including all of its Equipment, is and shall remain personal property regardless of its use or manner of attachment to the Building or the Leased Premises, and shall not constitute a fixture. To the extent that, notwithstanding the intent and agreement of the parties, if all or any part of the System shall be determined to constitute a fixture, Landlord irrevocably disclaims any interest whatsoever in such assets as fixtures. Except as expressly set forth in this Lease, Landlord shall have no right, title or interest in any part of the System, and no right to purchase or otherwise acquire title to or ownership thereof, and Landlord expressly disclaims any right, title or interest in or to the System, whether arising by lien, by operation of law or otherwise.

18. Removal. At least fourteen (14) days prior to the end of the Term, Tenant shall remove the Equipment and restore and repair the Leased Premises to its condition as of the Effective Date, ordinary and reasonable wear and tear excepted.

19. Subordination. Subject to the conditions contained in this Section, Tenant's rights under this Lease shall be subject to any mortgage, deed of trust or other security interest which is now or may subsequently be placed upon the Property by Landlord. Tenant shall, if requested by Landlord, execute a separate agreement reflecting such subordination, and shall be obligated to execute such documentation as may reasonably facilitate Landlord's sale or refinancing of the Property, including estoppel certificates and subordination or attornment

agreements. Notwithstanding the foregoing, Tenant's obligation to subordinate to any mortgagee or beneficiary under any existing or future deed of trust and to attorn to any subsequent landlord pursuant to a foreclosure thereunder is conditioned upon such mortgagee or beneficiary agreeing to recognize Tenant as tenant under this Lease, and to not disturb Tenant's rights and occupancy under this Lease, so long as Tenant is not in default hereunder beyond the expiration of any applicable period of grace.

20. Quiet Enjoyment. Landlord agrees that, at all times during the Term, Tenant shall peaceably and quietly have, hold and enjoy the Leased Premises and all of its other rights set forth herein, including the Easements, and Tenant's rights hereunder shall not be disturbed by Landlord so long as Tenant is not in default hereunder beyond the expiration of any applicable period of grace.

21. Default by Tenant. Any one or more of the following events shall constitute an "Event of Default":

(a) Monetary Default. The failure of Tenant to pay any Rent or other sum of money when the same is due hereunder, and such payment remains outstanding fifteen (15) days following the giving of written notice of such default by Landlord to Tenant.

(b) Non-Monetary Default. The failure of Tenant to perform or observe any other covenant or agreement on Tenant's part to be performed or observed under this Lease, which failure is not cured within thirty (30) days after the giving of written notice of such default by Landlord to Tenant, unless such default is of such a nature that it cannot reasonably be cured within such grace period, in which case no Event of Default shall exist if Tenant has commenced the appropriate actions to cure such default within the grace period and continues to diligently prosecute such curative actions.

(c) Abandonment. The vacation or abandonment of the Leased Premises by Tenant at any time during the Term for a period of one hundred twenty (120) days or more.

(d) Financial Impairment. The sale of the System or a material part thereof under attachment, execution or similar legal process, or the admission in writing by Tenant of its inability to pay its debts when due or the making by Tenant of an assignment for the benefit of creditors, or the appointment of a receiver for the business or property of Tenant, unless such appointment shall be vacated within sixty (60) days of its entry.

(e) Bankruptcy. The filing of a voluntary or involuntary petition proposing the adjudication of Tenant as bankrupt or insolvent under any state or federal bankruptcy or insolvency law, or an arrangement by Tenant with its creditors, unless, in the case of a petition filed by a Person other than Tenant, such petition is withdrawn or dismissed within sixty (60) days following the date of its filing.

22. Lender's Right to Cure. Tenant shall provide Landlord with written notice identifying any Person (a "*Lender*") who is given a lien on, or security interest in, or who is the lessor under any capital or operating lease(s) with respect to, any part of the System. Following receipt of such notice, Landlord shall provide notice of all Event(s) of Default to the Lender(s), and any Lender shall have the right, but not the obligation, to cure all such Event(s) of Default

within the applicable grace period set forth in this Lease, which grace period shall be measured from the date of Lender's receipt of Landlord's notice of default, and Landlord shall accept all such curative actions by any Lender as if Tenant had effected such cure. In the event a Lender is required to (i) foreclose on the System or any part thereof, or (ii) take legal action to gain possession of the System or any part thereof to cure any such Event of Default, the applicable grace period shall be extended by a reasonable amount of time as is necessary for Lender to obtain legal possession and control thereof.

23. Default by Landlord. The failure of Landlord to perform or observe any covenant or agreement on Landlord's part to be performed or observed under this Lease, which failure is not cured within thirty (30) days after the giving of written notice of such default by Tenant to Landlord, shall constitute an event of default hereunder by Landlord, unless such default is of such a nature that it cannot reasonably be cured within such grace period, in which case no event of default shall exist if Landlord has commenced the appropriate actions to cure such default within the grace period and continues to diligently prosecute such curative actions.

24. Remedies. In the event Landlord breaches this Agreement (including any applicable cure provisions), Tenant may terminate this Agreement and remove all of the equipment constituting the System. In the event Tenant breaches this Agreement (including any applicable cure provisions), Landlord may terminate this Agreement and Tenant shall remove all of the equipment constituting the System.

25. Eminent Domain. If all or any part of the Property is taken by eminent domain or under the threat thereof (a "*Taking*"), and if such Taking, in Tenant's reasonable determination, renders the Leased Premises unsuitable for Tenant's continued use, Tenant shall have the right to terminate this Lease. The parties shall each be entitled to pursue their own separate awards with respect to such Taking, based on their respective interests; *provided* that Tenant shall make no claim for the value of the unexpired Term and Landlord shall make no claim with respect to the value, or loss of use, of the System.

26. Landlord's Representations, Warranties and Acknowledgments.

(a) Ownership; Liens. Landlord owns good and sufficient title and interest to the Property and, with the exception of those matters listed on **Exhibit C**, there are no liens, security interests, mortgages, deeds of trust or other encumbrances, judgments or impediments of title against the Property affecting Landlord's title to the same, and there are no covenants, easements or restrictions which prevent the use of the Leased Premises by Tenant as set forth herein.

(b) Power and Authority. Landlord has all requisite power and authority to enter into this Lease, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Lease and the performance of Landlord's obligations hereunder have been duly authorized by all necessary action.

(c) Validity. This Lease is a legal, valid and binding obligation of Landlord, enforceable against Landlord in accordance with its terms, subject, however, to (i) bankruptcy and other similar laws of general application affecting the rights and remedies of creditors, and (ii) the application of general principles of equity.

(d) No Violations. Neither the execution and delivery of this Lease by Landlord, nor compliance by Landlord with any of its terms, conflicts with, breaches or contravenes the provisions of Landlord's organizational documents, or any agreement, judgment, order, license or permit to which Landlord is a party or to which Landlord is subject.

(e) Environmental. There is no asbestos, oil, petroleum or other hydrocarbons, urea formaldehyde, PCBs, hazardous or nuclear waste, toxic chemicals and substances or other hazardous materials (collectively, "*Hazardous Materials*"), as defined in applicable environmental laws, contaminating the Property, nor have any Hazardous Materials been released, stored or improperly disposed of on the Property during its ownership, and Landlord agrees that, except in strict compliance with applicable environmental laws, it shall not knowingly permit any unlawful release, storage or contamination of Hazardous Materials during the Term. If requested by Tenant, Landlord shall provide Tenant with all necessary and reasonable assistance required for purposes of determining the existence of Hazardous Materials on the Property.

(f) Electrical Output. Landlord acknowledges that (i) Tenant shall not sell any of the Electrical Output to Landlord, and (ii) Landlord will not receive nor may it use any of the Electrical Output.

27. Assignment. This Agreement may be sold, assigned, subleased or transferred by Tenant without approval or consent of the Landlord to Tenant's principal, affiliates, subsidiaries of its principal or to any entity which is controlled by FLS Energy, Inc. or any entity which acquires all or substantially all of Tenant's assets in the market in which the Property is located by reason of a merger, acquisition or other business reorganization. As to other Parties, this Agreement may not be sold, assigned or transferred without the written consent of the Landlord, which consent will not be unreasonably withheld or delayed

28. No Liens. Tenant shall not allow any form of lien to be placed on the Property as a result of its acts or omissions for any reason. If Tenant allows any lien to be filed against the Property, Tenant shall discharge such lien within thirty (30) days of actual knowledge thereof.

29. Notices. All notices, demands, requests, consents, approvals and other communications (a "*Notice*") required or permitted to be given pursuant to this Lease shall be in writing, signed by the notifying party, or an agent of or attorney for the notifying party, and shall be deemed to have been given (i) on the date of delivery if given by personal delivery, (ii) on the date of confirmed transmission if given by telecopier, (iii) one (1) business day after deposit with a nationally recognized overnight courier service or overnight express mail, and (iv) two (2) business days after posting if sent by registered or certified mail postage prepaid return receipt requested, and addressed to the parties as set forth in **Section 1(e).** The address to which any Notice shall be delivered to any party may be changed by a properly given Notice hereunder.

30. Memorandum of Lease. The parties agree to execute and record a Memorandum of Lease with the Register of Deeds for the County in which the Property is

located, which shall, among other matters, describe the (i) Leased Premises and the Easements, and (ii) Term.

31. **Confidentiality**. Subject to the provisions of the Tennessee Public Records Act, TENN. CODE ANN. §10-7-503, *et seq.*, all non-public information (including the economic and material terms of this Lease) provided by either party to the other, or which is identified by the providing party as confidential or proprietary information, shall be treated in a confidential manner and shall not be disclosed to any other Person without the prior written consent of the providing party.

32. **Miscellaneous Provisions**.

(a) **Entire Lease**. This Lease contains all of the representations, warranties and agreements of the parties with respect to the subject matter hereof, and supersedes any other prior agreements, written or oral, between the parties concerning such subject matter.

(b) **Modification**. No modification, waiver or amendment of this Lease shall be effective unless in writing and signed by the party to be charged.

(c) **Waivers**. The waiver by a party of any provision of this Lease shall not operate or be construed as a waiver of any other provision or of the subsequent application of such provision (unless affected by the preceding waiver). No waiver shall be implied by delay or any other act or omission of a party.

(d) **Governing Law**. This Lease shall be subject to and governed by the laws of the State.

(e) **Set-Off**. All outstanding obligations to make, and rights to receive, payment under or in connection with this Lease may be offset against each other.

(f) **Severability**. If any provision of this Lease is found to be void or invalid, such finding shall not affect the remaining provisions of this Lease, which shall continue in full force and effect. The parties agree that if any provisions are deemed not enforceable, they shall be deemed modified to the minimum extent necessary to render them enforceable.

(g) **Draftsmanship**. This Lease has been negotiated by the parties and, as such, shall not be construed against the drafting party. All questions of interpretation shall be interpreted in accordance with the fair meaning thereof.

(h) **Successors and Assigns**. This Lease and the Easements shall run with the land, and shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

(i) **Third Party Beneficiaries**. Nothing in this Lease shall provide any benefit to any third Person or entitle any third Person to any claim, cause of action, remedy or right of any kind.

(j) **No Partnership**. This Lease is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the parties. Neither party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other party.

(k) **Attorney's Fees**. The prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorneys' fees and court costs, including all costs of appeal, if any.

(l) **Counterparts**. This Lease may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

(m) **Survival**. Any provision(s) of this Lease that expressly or by implication comes into or remains in full force following the termination or expiration of this Lease shall survive the termination or expiration of this Lease.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed as of the date written above.

LANDLORD:

THE CITY OF KNOXVILLE

By: _____
DANIEL T. BROWN, Mayor

TENANT:

FLS Solar 60, LLC

By: FLS Energy, Inc., Managing Member

By: _____
Michael Shore, President

APPROVED AS TO FORM:

_____
DEBRA C. POPLIN
Law Director

FUNDS CERTIFIED:

_____
JAMES YORK
Finance Director

EXHIBIT A

Legal Description of the Property

EXHIBIT B

Site Plan of the Leased Premises

EXHIBIT C

List of the Mortgages/Liens Affecting the Property

Maintenance Plan

Vendor shall provide the personnel required for the maintenance and repair of the System and shall perform such maintenance and repairs for the Warranty Periods set forth in the executed maintenance contract.

1. **Scope of service to be provided by Vendor**

1.1 Inspection and maintenance work will be carried out in accordance with manufacturers' specifications.

The following tasks will be carried out:

Maintenance & Inspection: (all visual inspections are performed on components/items that are visually accessible without disassembly or excavation, except as may be required per the manufacturer's specifications).

- Visual condition of the disconnects, fuses and safety elements in the PV generator
- connection cabinets of the individual sections of the PV generators
- Visual condition of the coupling cabinets
- Visual condition of the PV modules and wiring/cabling
- Cleaning the PV modules of dirt deposits
- Visual condition of the operating equipment (wires, PV generator connection cabinets, DC circuit-breaker, etc.)
- Visual condition of the fastening of the PV modules and wiring
- Visual condition cable runs inside and outside the inverter
- Thermal imaging of all switch-cabinets with a thermal imaging camera
- Visual condition of the structure
- Performance of all Operations and Maintenance (O&M) service activities as specified by the applicable equipment manufacturer

1.3 The inspection and maintenance work on the PV system will be carried out by Vendor in accordance with equipment requirements, but at least semi-annually. Vendor will carry out these activities, to the extent commercially feasible, at times of low grid feeding. A record will be made of the inspection and maintenance, and will be delivered to client within thirty (30) days after the maintenance is performed.

1.4 Any repairs required within the scope of the Maintenance Plan are carried out at Vendor's own expense unless reimbursed by a third party. Vendor will carry out any maintenance measures immediately so that stoppage times for the PV outdoor facilities are minimized. Damaged/defective PV modules will be reported to client promptly for delivery of replacements. Vendor will replace damaged/defective modules as part of this plan.

1.5 The care of the natural environment and environmental balance areas e.g. grass cutting, repair of erosion damage, etc. is excluded from this plan. Unsatisfactory site conditions will be included as part of the inspection report.

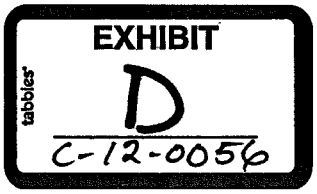


Exhibit E

Purchase Option

THIS PURCHASE OPTION (the "Option") is made and entered into effective the ____ day of _____, 20___, by and between FLS Solar 14, LLC, a North Carolina limited liability company ("Seller") and the City of Knoxville, a municipal corporation organized and existing under the laws of the State of Tennessee (the "City"").

WITNESSETH:

That for and in consideration of the option money paid by the City to Seller in the amount of Ten and 00/100 Dollars ($10.00) (the "Option Money"), the receipt and sufficiency of which are hereby acknowledged, Seller does hereby give and grant unto the City the right and option to purchase from Seller that certain Solar PV Facility as defined in that certain Solar Photovoltaic System Agreement between FLS Solar 15, LLC and the City, of even date herewith.

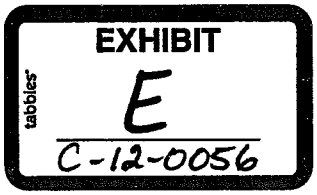
The terms and conditions of the Option are as follows:

1. Term. The Option shall become effective on the Commercial Operation Date, and shall terminate on the last day of the Initial Term or any Renewal Term, provided however, the Closing shall take place no earlier than the Seven (7) year anniversary of the Commercial Operation Date and no later than ninety (90) days after the last day of the Initial Term or any applicable Renewal Term (the "Option Term"). The Option may be exercised only by the giving of written notice of exercise to Seller bythe City, which notice shall be in accordance with the provisions of Section 9 of this Option. If the Option is not validly and timely exercised by the City, and the consummation of the Closing has not occurred prior to the earlier of (i) the date specified by the City in its notice or (ii) the end of the Option Term, all rights of the City to purchase the Solar PV Facility hereunder shall cease and terminate and the Option Money shall be retained by Seller.

2. Option Money. The Option Money shall not be credited against the Buyout Price of the Solar PV Facility.

3. Terms and Conditions of the City's right to exercise Option. The City may only exercise the Option if it has complied with all the terms and conditions of the Solar PV System Agreement and the Solar PV SiteLease Agreement. If the City fails to comply with any of the terms and conditions of said Agreements or the Option, the Option shall automatically terminate and Seller shall retain the Option Money paid.

4. Buyout Price. If the City validly exercises the Option and consummates the Closing on or prior to the termination of the Option Term, the buyout price shall be the then fair market value of the Solar Photovoltaic Facility (the "Buyout Price"). The City shall pay Seller the Buyout Price, as determined pursuant to the procedures set forth on the attached **Schedule 2**.



5. Closing. Subject to the provisions of Sections 1 and 2 of this Option, the consummation of the purchase and sale of the Solar PV Facility (the "Closing") shall take place on a Business Day occurring on a date (the "Closing Date") selected by Buyer in its exercise of the Option no later than the expiration of the Option Term, at the offices of Blanco Tackabery & Matamoros, P.A. in Winston-Salem, North Carolina, or on such other date or at such other place as the Parties may agree in writing.

6. Title. The Solar Photovoltaic Facility shall be conveyed by a bill of sale in substantially the same form attached as **Schedule 1**.

7. Closing Costs. All funds due under the Solar PV Agreement must be paid at Closing. Seller shall pay the cost of preparing the bill of sale and its counsel fees. The City shall pay for any necessary equipment examination, any desired engineering reports, necessary fees, its counsel fees and for any other due diligence desired by the City. Any ad valorum taxes, if any, shall be prorated at Closing and any sales tax shall be paid by the City.

8. Closing Documents. Seller will execute, acknowledge and deliver to the City the bill of sale, a lien affidavit as Buyer's title insurer may require to insure against any possible unfiled and unpaid laborer's or materialmen's liens, a closing statement, and any other customary or reasonable documentation the City may require or request.

9. Notices. Any notice or other communications hereunder shall be in writing and shall be deemed to have been given (unless otherwise set forth herein), if delivered in person, deposited with an overnight express agency, fees prepaid, or mailed by United States express, certified or registered mail, postage prepaid, return receipt requested, to the Parties at the following addresses, or to such other address as shall be later provided in writing by one Party to the other:

If to Seller:

FLS Solar I5, LLC
239 Amboy Road
Asheville, NC 28806
Attention: Michael Shore
Phone: (828) 350-3993
Fax: (828)-350-3997

With a copy to:
Blanco Tackabery & Matamoros, P.A.
(110 S. Stratford Rd, 5th Floor)
P.O. Drawer 25008
(Winston-Salem, NC 27104)
Winston-Salem, NC 27114
Attn: Zoë Gamble Hanes

If tothe City:

City of Knoxville
P.O. Box 1631
Knoxville, Tennessee 37901
Attn: Purchasing Agent
Phone: (865) 215-2070

With a copy to:
City of Knoxville Law Department
P.O. Box 1631
Knoxville, Tennessee 37901
Attn: Law Director

10. Risk of Loss. During all periods prior to the Closing Date, Seller shall be responsible for causing the maintenance of liability insurance with respect to the Solar PV Facility consistent with the Site Lease Agreement. Should any damage or impairment to the Solar PV Facility result from fire or other insured casualty Seller agrees that all personal property, including the Solar PV Facility, in or on the Site shall be at the risk of Seller only and that the City shall not be liable for damage thereto under any circumstances. Prior to the Closing Date, neither the City nor any of its mortgagees shall have any right, title or interest with respect to the Solar PV Facility and or any insurance proceeds with respect thereto, except as provided herein and in the Site Lease Agreement.

11. Entire Agreement. The Option together with the Solar PV System Agreement contains the entire agreement of the Parties and there are no representations, inducements or other provisions other than those expressed in writing. All changes, additions or deletions to the Option must be in writing and signed by each Party. Any and all references to Seller or the City shall be deemed to include their respective successors, heirs or assigns.

12. Governing Law. This Agreement shall be governed by Tennessee law.

13. Time is of the Essence. Time is of the essence in connection with every provision of the Option.

14. AS IS. In the event the City exercises the Option and consummates the acquisition of the Solar PV Facility, the conveyance thereof by Seller shall be "AS IS, WHERE IS, WITH ALL FAULTS" and all warranties of quality, fitness and merchantability shall be excluded.

[SEPARATE SIGNATURE PAGE ATTACHED]

IN TESTIMONY WHEREOF, the Parties hereto have set their hands and seal this the day and year first above written.

SELLER:

FLS OWNER II, LLC (SEAL)

By: FLS Energy, Inc., Managing Member

By: _____
Michael Shore, President

CITY OF KNOXVILLE:

(Affix Corporate Seal)

By: _____
Daniel T. Brown, Mayor

SCHEDULE 1

BILL OF SALE

THIS BILL OF SALE (this "Bill of Sale") is executed as of the _____ day of _____, 20___, by FLS Solar 15, LLC, a North Carolina limited liability company ("Seller"), in favor of the City of Knoxville, a municipal corporation organized and existing under the laws of the State of Tennessee (the "City").

1. Solar Photovoltaic (PV) Facility. The "Solar Photovoltaic (PV) Facility" shall have the meaning ascribed to it in that certain Solar Photovoltaic Agreement dated as of _____, 2010, by and between FLS Solar 15, LLC and the City and as further described on **Exhibit A** attached to this Bill of Sale.

2. Sale. For good and valuable consideration received by Seller, the receipt and sufficiency of which are hereby acknowledged, Seller hereby sells, assigns and transfers the Solar PV Facility tothe City. Seller makes no warranties or representations as to the Solar PV Facility. The Solar PV Facility is transferred "AS IS, WHERE IS, WITH ALL FAULTS" and ALL WARRANTIES OF QUALITY, FITNESS AND MERCHANTABILITY ARE HEREBY EXCLUDED.

3. Environmental Attributes and Environmental Incentives. As of the effective date of this Bill of Sale, all right, title and interest associated with any and all Environmental Attributes and Environmental Incentives resulting from the production, sale, purchase or use of the PV Output including, without limitation shall transfer to the City:

(a) all Environmental Incentives and all Environmental Attributes; and

(b) the Reporting Rights and the exclusive rights to claim that: (i) the Solar Output was generated by the Solar PV Facility; (ii) the City shall be entitled to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing.

4. Limited Liability. By accepting this Bill of Sale, the City agrees that it will look only to the proceeds of the Solar Photovoltaic Facility for the performance or liability for nonperformance of any and all obligations of Seller hereunder, it being expressly understood and agreed that neither Seller nor any shareholder, member, officer or director thereof or any other person or entity shall have any personal liability or obligation of any kind or nature whatsoever under this Bill of Sale.

5. Terms. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Site Lease Agreement.

[SEPARATE SIGNATURE PAGE ATTACHED]

IN WITNESS WHEREOF, Seller has executed this Bill of Sale as of the day and year first above written.

SELLER:

FLS SOLAR 15, LLC (SEAL)

By: FLS Energy, Inc., Managing Member

By:_____
Michael Shore, FLS President

Accepted By:

CITY OF KNOXVILLE

By: _____
Daniel T. Brown, Mayor

SCHEDULE 2
APPRAISAL EXHIBIT

(a) Appraisal Process. If Seller and the City fail to agree on the fair market value of the Solar Photovoltaic Facility within ten (10) days of exercise of the Option, at any time following the expiration of such time limit either Seller or the City may invoke the process described in this Appraisal Exhibit (the "Appraisal Process") by sending written notice as described in the Purchase Option to the other Party, in which case the determination of fair market value in accordance with this Appraisal Exhibit shall be final and binding on all Parties to the Agreement (the "Fair Market Value").

(i) Appraised Value. Any Appraiser hired pursuant to the Appraisal Process described herein shall base the appraisal of the then fair market value of the Solar PV Facility on the value of the equipment and any remaining value which may result from any potential rental income stream, income from the sale of the Solar Output, income from any Environmental Attributes or Environmental Incentives or any other potential cashflow generated by the Solar PV Facility; all in accordance with the best appraisal techniques then recognized as available for property of such type.

(ii) First Appraisal. The Seller shall, within sixty (60) days of either Party invoking the Appraisal Process, send written notice to the the City setting forth the name and address of the Seller's selected appraiser (the "First Appraiser"). Any appraiser selected pursuant to this Appraisal Exhibit must be a certified appraiser, who is unrelated to the principals of Seller, and who shall furnish the appraisal to the City and Seller within thirty (30) days of being selected. The City shall, if dissatisfied with the First Appraiser's appraisal, have ten (10) days following the City's receipt of the First Appraiser's appraisal to select a second appraiser with the above stated required qualifications by sending to the Seller written notice setting forth the name and address of the appraiser (the "Second Appraiser"). If a Second Appraiser is not selected within the ten (10) day time period, the First Appraiser's appraisal amount shall be binding upon both Parties, in which case the Appraisal Process shall be concluded and the Fair Market Value and the Buyout Price of the Solar PV Facility shall be the amount set forth in the First Appraiser's appraisal.

(iii) Second Appraisal. If the City selects a Second Appraiser, the Second Appraiser shall submit the Second Appraiser's appraisal to the City and Seller within thirty (30) days of being retained. If the amounts of the two appraisals shall be within Four Thousand Dollars ($4,000.00) of each other (as to the Fair Market Value), the average of the two (2) appraisals shall be the Fair Market Value to serve as the Buyout Price, and the Appraisal Process shall be concluded. In the event the two appraisals are more than Four Thousand Dollars ($4,000.00) apart, as to the Fair Market Value, then the two (2) appraisers shall, as soon as reasonably possible, select a third appraiser (the "Third Appraiser"), who must have qualifications similar to the above.

(iv) Third Appraisal. If a Third Appraiser is selected, as above stated, the Third Appraiser shall have disclosed to him or her the appraisal reports of the first two appraisers, and the results of the first two appraisals. The Third Appraiser shall perform sufficient appraisal work to enable the Third Appraiser to furnish to City and Seller such appraiser's opinion as to the correct Fair Market Value, and such number shall be the Buyout Price. Upon the Third Appraiser's submission to Seller and the City of his or her report, the Appraisal Process shall be concluded.

(b) Costs of Appraisal Process.

(i) General Rules. The Seller shall bear the cost of the First Appraiser. The City shall bear the cost of the Second Appraiser. The Parties shall equally share in the cost of the Third Appraiser.

EXHIBIT F

CERTIFICATION OF SUB-RECIPIENT REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

FLS certifies to the best of its knowledge and belief, that it and its principals:

(Initial Each)

_____1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

_____2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

_____3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and

_____4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

If the primary participant (potential third party contractor) is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.

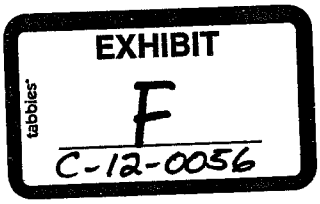
THE SUB-RECIPIENT _____ CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION.

_____
Signature/Authorized Certifying Official

_____
Title

Subscribed and sworn to before me this ____day of _____, 20____.

_____
Notary Public
My Commission expires:_____



CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION--LOWER TIER COVERED TRANSACTIONS

The potential lower tier participant _____certifies, by submission of this proposal, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Note: **If the potential lower tier participant is unable to certify the above-listed certification, such prospective participant shall attach an explanation to this proposal.**

_____
Signature/Authorized Certifying Official

_____
Title

Subscribed and sworn to before me this _____day of _____, 20_____.

_____
Notary Public
My Commission expires: _____

EXHIBIT G C-12-0056 tabbies

NOTICE

THIS ENTITY IS A RECIPIENT OF AMERICAN RECOVERY AND REINVESTMENT ACT FUNDS. IF YOU HAVE KNOWLEDGE OF ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE:

1-800-232-5454

EXHIBIT H
Reporting Data Elements to be Reported to the City of Knoxville Monthly

The following provides a description of all data elements to be reported in the monthly reports to the City. A depiction of the actual report formats with the data elements is provided in Exhibit I of this Agreement and FLS shall to contact the City's Purchasing Division in order to receive the report format in an excel template that can be filled out. The Purchasing Division can be reached at 865-215-2648 or 865-215-2070.

Sub-Recipient DUNS #. The sub-recipient DUNS number, the sub-recipient organization's 9-digit Data Universal Numbering System (DUNS) number, or Central Contractor Registration plus 4 extended Duns number.

Sub-Recipient Number. Award number or other identifying number assigned by the recipient entity (City of Knoxville).

Sub-Recipient Name. Legal name of the sub-recipient as registered in the CCR database (www.ccr.gov)

Sub-Recipient Address. Physical location as listed in the CCR database. For congressional district, use the format: 2 character state abbreviation – 3 character district number. For example, CA-005 for California's 5th district, NC-13 for North Carolina's 13th district, etc.

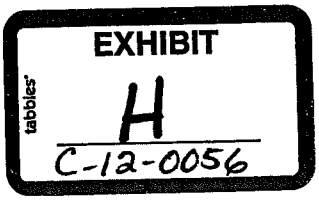
Sub-Recipient Type. Select from the following list: County Government; City or Township Government; Special District Government; Regional Organization; Independent School District; Public/State Controlled Institution of Higher Education; Nonprofit with 501C3 IRS Status (Other than Institution of Higher Education); Nonprofit without 501C3 IRS Status (Other than Institution of Higher Education); Private Institution of Higher Education; Individual; For-Profit Organization (Other than Small Business); Small Business. Hispanic-serving Institution; Historically Black Colleges and Universities (HBCUs); Other.

Subcontract Amount Disbursed: Cumulative amount of cash disbursed to the sub-recipient as of the reporting period end date.

Subcontract Value. Total Amount of sub-recipient agreement (Ultimate Contract/Award Value). The anticipated total amount of cash to be disbursed to the sub-recipient by the expiration date of the agreement.

Sub-Award Date. The date the sub-recipient agreement was signed (mm/dd/yyyy).

Sub-Award Project/Grant Period. The project/grant period established in the sub-recipient award document during which sponsorship begins and ends. For multi-year awards for a project/grant period (e.g., 5 years) that are funded in increments known as budget periods or funding periods, provide the total project/grant period, not the individual budget period or funding period.



Sub-Recipient Place of Performance. City, state, congressional district, and country. Physical location of primary place of performance.

Sub-Recipient Area of Benefit. The state, county, city, school district, etc., that is receiving the benefit of the ARRA funds being utilized in the sub-recipient agreement.

Project Title: Brief descriptive title of the project or activity funded in whole or in part with ARRA funds.

Project Description: Brief narrative describing overall purpose and expected outcomes/results of the project and first-tier sub-award(s), including significant deliverables and units of measure.

Amount expended: Cumulative amount of ARRA funds received from the City of Knoxville that were expended for the project(s) or activity(s) provided for in the sub-recipient agreement. Report should be prepared on a cash basis. Expenditures are defined as: 1) the sum of cash disbursements for direct charges for property and services; 2) the amount of indirect expense charged; 3) the value of third-party in-kind contributions applied; and 4) the amount of cash advance payments and payments made to subcontractors and sub-awardees.

Project Status: Cumulative completion status of the project or activity. Evaluation based on progress reports and other relevant non-financial performance information. For example, "project or activity is 15% complete."

Job Creation/Retention Narrative & Number: Narrative description of the employment impact of ARRA funded work. Must be cumulative for each month and expressed in terms of "full time equivalents" (FTEs). As a minimum, the narrative must address impact on sub-recipient's workforce and, if known, the impact on workforces of the sub-recipient's contractors and sub-contractors. The minimum requirements are brief descriptions of types of jobs created and jobs retained. Descriptions may rely on job titles, labor categories, or sub-recipient's existing practice for describing jobs, so long as the terms are widely understood.

Job Creation/Retention Number. The estimate of number of jobs created and retained must include any new positions created and any existing filled positions that were retained to support or carry out ARRA projects/activities managed directly by the sub-recipient and, if known, by the sub-recipient's contractors or sub-contractors. The terms "jobs created" and "jobs retained" are defined in FAR 52.204-1. The number shall be expressed as ''full-time equivalent'' (FTE), calculated

The formula for calculating FTE's is stated below

$$\frac{\text{Cumulative ARRA funded hours worked (Qtr 1...n)}}{\text{Cumulative hours in a full Time Schedule (QTR 1...n)}} = \text{FTE}$$

An example of calculating FTE's is also provided at Exhibit B

Sub-Recipient Officer Names and Compensation for the Five Most Highly Compensated Officers of the Sub-Recipient's Organization. Names and total compensation of the five most highly compensated officers of the sub-recipient entity if: (1) the recipient in its preceding fiscal year received (a) 80 percent or more of its annual gross revenues in Federal awards and (b)

$25,000,000 or more in annual gross revenues from Federal awards; and (2) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986 [26 USC § 6104]. ''Total compensation'' means the cash and non-cash dollar value earned by the executive during the sub-recipient's past fiscal year of the following (for more information, see 17 CFR 229.402(c)(2)): (i) Salary and bonus; (ii) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R; (iii) Earnings for services under non-equity incentive plans. Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees; (iv) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans; (v) Above market earnings on deferred compensation which are not tax qualified; (vi) Other compensation. For example, severance, termination payments, value of life insurance paid on behalf of the employee, prerequisites or property if the value fort he executive exceeds $10,000.

Sub-Recipient Officer Total Compensation (top five as described above). Annual salaries of the five most highly compensated officers of the sub-recipient entity in terms of "total annual compensation."

Sub-Recipient's Contractor Reporting Information. Sub-recipients who provide the City's ARRA funds to contractors and/or sub-contractors shall require those contractors and/or sub-contractors to provide report (as a minimum) the following information. This is in addition to any and all information the sub-recipient may require of its contractors and/or sub-contractors in order to compile its report for the City of Knoxville:

Sub-Recipient's Vendor/Contractor

1. DUNS or Name & zip code of HQ
2. Any and all reporting requirements directed by the sub-recipient

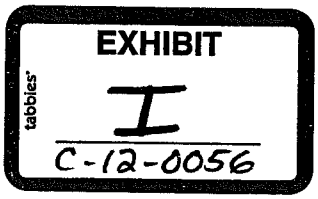
Vendors

Reporting Information
Award Number

No.	Subaward Number	Vendor DUNS Number	Vendor Name	Vendor HQ Zip Code + 4	Product and Service Description	Payment Amount	Project Status
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							

Job Creation/Retention Data		
No.	Number of Jobs Created	Description of Jobs Created
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		

Job Creation/Retention Data		
No.	Number of Jobs Retained	Description of Jobs Retained
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		



DEPARTMENT OF ENERGY
SPECIAL TERMS AND CONDITIONS

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1. RESOLUTION OF CONFLICTING CONDITIONS

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to the DOE Award Administrator for guidance.

2. AWARD AGREEMENT TERMS AND CONDITIONS

This award/agreement consists of the Assistance Agreement, plus the following:

a. Special Terms and Conditions.
b. Attachments:

Attachment Number	Title
1.	Statement of Project Objectives
2.	Federal Assistance Reporting Checklist and Instructions
3.	Budget Pages (SF 424A)

c. Program regulations, if applicable.
d. DOE Assistance Regulations, 10 CFR Part 600 at http://ecfr.gpoaccess.gov.
e. Application/proposal as approved by DOE.
f. National Policy Assurances to Be Incorporated as Award Terms in effect on date of award at http://management.energy.gov/business_doe/1374.htm.

3. ELECTRONIC AUTHORIZATION OF AWARD DOCUMENTS

Acknowledgement of award documents by the Recipient's authorized representative through electronic systems used by the Department of Energy, specifically FedConnect, constitutes the Recipient's acceptance of the terms and conditions of the award. Acknowledgement via FedConnect by the Recipient's authorized representative constitutes the Recipient's electronic signature.

4. PAYMENT PROCEDURES - ADVANCES THROUGH THE AUTOMATED STANDARD APPLICATION FOR PAYMENTS (ASAP) SYSTEM

a. Method of Payment. Payment will be made by advances through the Department of Treasury's ASAP system.

b. Requesting Advances. Requests for advances must be made through the ASAP system. You may submit requests as frequently as required to meet your needs to disburse funds for the Federal share of project costs. If feasible, you should time each request so that you receive payment on the same day that you disperse funds for direct project costs and the proportionate share of any allowable indirect costs. If same-day transfers are not feasible, advance payments must be as close to actual disbursements as administratively feasible.

c. Adjusting payment requests for available cash. You must disburse any funds that are available from repayments to and interest earned on a revolving fund, program income,

rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from DOE.

d. Payments. All payments are made by electronic funds transfer to the bank account identified on the ASAP Bank Information Form that you filed with the U.S. Department of Treasury.

5. CEILING ON ADMINISTRATIVE COSTS

a. Local government and Indian Tribe Recipients may not use more than 10 percent of amounts provided under this program, or $75,000, whichever is greater (EISA Sec 545 (b)(3)(A)), for administrative expenses, excluding the costs of meeting the reporting requirements under Title V, Subtitle E of EISA. These costs should be captured and summarized for each activity under the Projected Costs Within Budget: Administration.

b. Recipients are expected to manage their administrative costs. DOE will not amend an award solely to provide additional funds for changes in administrative costs. The Recipient shall not be reimbursed on this project for any final administrative costs that are in excess of the designated 10 percent administrative cost ceiling. In addition, the Recipient shall neither count costs in excess of the administrative cost ceiling as cost share, nor allocate such costs to other federally sponsored project, unless approved by the Contracting Officer.

6. LIMITATIONS ON USE OF FUNDS

a. By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, for gambling establishments, aquariums, zoos, golf courses or swimming pools.

b. Local government and Indian tribe Recipients may not use more than 20 percent of the amounts provided or $250,000, whichever is greater (EISA Sec 545 (b)(3)(B)), for the establishment of revolving loan funds.

c. Local government and Indian tribe Recipients may not use more than 20 percent of the amounts provided or $250,000, whichever is greater (EISA Sec 545 (b)(3)(C)), for subgrants to nongovernmental organizations for the purpose of assisting in the implementation of the energy efficiency and conservation strategy of the eligible unit of local government or Indian tribe.

7. REIMBURSABLE FRINGE BENEFITS COSTS

a. The Recipient is expected to manage their final negotiated project budgets, including their fringe benefit costs. DOE will not amend an award solely to provide additional funds for changes in the fringe benefit costs or for changes in rates used for calculating these costs. DOE recognizes that the inability to obtain full reimbursement for fringe

benefit costs means the Recipient must absorb the underrecovery. Such underrecovery may be allocated as part of the Recipient's cost share.

a. If actual allowable fringe benefit costs are less than those budgeted and funded under the award, the Recipient may use the difference to pay additional allowable direct costs during the project period. If at the completion of the award the Government's share of total allowable costs (i.e., direct and indirect), is less than the total costs reimbursed, the Recipient must refund the difference.

8. REOPENER CLAUSE – PENDING INDIRECT RATES

a. At the time the total budget cost for this award was established, agreement could not be reached on indirect rates. However, agreement was reached on a total estimated budget cost that includes a dollar amount for indirect costs and this amount is subject to adjustment in accordance with the provisions of this term and other administrative provisions of the award.

b. Within 30 days from the award date shown in Block 27 of the AssistanceAgreement, you shall submit an indirect rate proposal to the contracting officer and cognizant auditor for determination of a provisional billing rate.

c. If the approved provisional billing rates result in amounts for indirect costs that are substantially lower the amount budgeted, you agree to commence negotiations to revise the budget and the total estimated cost for this award.

d. Should you fail to submit the information in paragraph (b), or should there be no agreement as to the amount of the adjustment contemplated by this term, then the Contracting Officer may make a unilateral determination and modify the award accordingly.

9. USE OF PROGRAM INCOME

If you earn program income during the project period as a result of this award, you may add the program income to the funds committed to the award and used to further eligible project objectives.

10. STATEMENT OF FEDERAL STEWARDSHIP

DOE will exercise normal Federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

11. SITE VISITS

DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. You must provide, and must require your subawardees to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

12. REPORTING REQUIREMENTS

a. Requirements. The reporting requirements for this award are identified on the Federal Assistance Reporting Checklist, DOE F 4600.2, attached to this award. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies.

b. Additional Recovery Act Reporting Requirements are found in the Provision below labeled: "REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT."

13. PUBLICATIONS

a. You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.

b. An acknowledgment of DOE support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment: "This material is based upon work supported by the Department of Energy [National Nuclear Security Administration] [add name(s) of other agencies, if applicable] under Award Number(s) [enter the award number(s)]."

Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement,

recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

14. FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

You must obtain any required permits and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

15. LOBBYING RESTRICTIONS

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

16. STAGED DISBURSEMENT

a. The total funding allocation for this award, shown in Block 12 of the Assistance Agreement, will be obligated in full with this action; however, funds will be released according to a staged disbursement schedule. All funds must be expended within 36 months of the effective date of the award.

1. The initial disbursement of funds will include 50% of the total funding allocation, identified on Page 2 of the Assistance Agreement, which will be released to the Recipient to begin work on the approved activities listed in the Statement of Project Objectives. If conditions are included in the terms and conditions of this award, upon satisfying the conditions, the Contracting Officer will lift the funding restrictions associated with the conditions and release the remainder of the initial disbursement of funds.

2. Project performance will be monitored and corrective action taken, as necessary to ensure acceptable performance under this award. After one or more progress reviews, in which the Recipient must demonstrate that it has made satisfactory progress on its activities; expended funds appropriately; complied with reporting requirements; and created jobs, the Contracting Officer will approve the release of the remaining balance of the total funding allocation.

b. No additional funds will be disbursed to the Recipient for payment, and DOE does not guarantee or assume any obligation to reimburse costs incurred by the Recipient, until the requirements of each progress review are met. Failure by the Recipient to demonstrate acceptable performance under this award will be deemed a noncompliance pursuant to 10 CFR 600. If a noncompliance occurs, the Contracting Officer may unilaterally terminate or suspend this award and deobligate the amounts obligated. In such case, the Recipient shall not be reimbursed for costs incurred at the Recipient's risk, as described above.

17. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS

You are restricted from taking any action using Federal funds, which would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE providing either a NEPA clearance or a final NEPA decision regarding this project. DOE has made a conditional NEPA determination for this award, and funding for certain activities or tasks under this award is contingent upon the final NEPA determination.

Activity #1 – Energy Efficiency and Conservation Strategy

DOE has made a final NEPA Determination for this activity, which is categorically excluded from further NEPA review.

Activity #2 – Green Building Incentive Program
Activity #3 – Sub-Grant to the Knoxville-Knox County Community Action Committee's Weatherization Program
Activity #4 – Energy Efficiency and Renewable Energy Investments in City Facilities via Ameresco Contract

Prohibited actions include: construction, removal, installation or disposal activities, until such time that you comply with the Waste Stream Clause and Historic Preservation Clause. This restriction does not preclude you from: (1) purchasing any necessary equipment or related materials; or (2) conducting assessments, studies and other related administrative work. Recipient shall ensure the safety and structural integrity of any repair, replacement, construction, and or alteration performed under this project.

Activity #5 – Offer Contractor Training Workshops on the ICC's Energy Conservation Code and Earthcraft

DOE has made a final NEPA Determination for this activity, which is categorically excluded from further NEPA review.

Activity #6 – Transition to Single-Stream, Curbside Recycling Program

DOE has made a final NEPA Determination for this activity, which is categorically excluded from further NEPA review.

Activity #7 – Solar PV installation at Convention Center through Third-Party Financing

This activity requires further NEPA review prior to the release of any federal funding. Please provide to DOE specific information describing this project.

If you move forward with activities that are not authorized for Federal funding by the DOE Contracting Officer in advance of the final NEPA decision, you are doing so at risk of not receiving Federal funding and such costs may not be recognized as allowable cost share.

If this award includes construction activities, you must submit an environmental evaluation report/evaluation notification form addressing NEPA issues prior to DOE initiating the NEPA process.

18. HISTORIC PRESERVATION

Prior to the expenditure of Federal funds to alter any structure or site, the Recipient is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. In order to fulfill the requirements of Section 106, the recipient must contact the State Historic Preservation Officer (SHPO), and, if applicable, the Tribal Historic Preservation Officer (THPO), to coordinate the Section 106 review outlined in 36 CFR Part 800. SHPO contact information is available at the following link: http://www.ncshpo.org/find/index.htm. THPO contact information is available at the following link: http://www.nathpo.org/map.html .

Section 110(k) of the NHPA applies to DOE funded activities. Recipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

Recipients should be aware that the DOE Contracting Officer will consider the recipient in compliance with Section 106 of the NHPA only after the Recipient has submitted adequate background documentation to the SHPO/THPO for its review, and the SHPO/THPO has provided written concurrence to the Recipient that it does not object to its Section 106 finding or determination. Recipient shall provide a copy of this concurrence to the Contracting Officer.

19. WASTE STREAM

Prior to the expenditure of Federal funds to dispose of sanitary or hazardous waste, the Recipient is required to provide documentation to the Project Officer demonstrating that it has prepared a disposal plan for sanitary or hazardous waste generated by the proposed activities. Sanitary or hazardous waste includes, but is not limited to, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, asbestos, etc.

The DOE Contracting Officer shall consider compliance with this clause complete only after the Recipient has submitted adequate documentation to DOE for its review, and DOE has provided written approval to the Recipient of its proposed plan to dispose of its sanitary or hazardous waste.

20. DECONTAMINATION AND/OR DECOMMISSIONING (D&D) COSTS

Notwithstanding any other provisions of this Agreement, the Government shall not be responsible for or have any obligation to the Recipient for (i) Decontamination and/or Decommissioning (D&D) of any of the Recipient's facilities, or (ii) any costs which may be

incurred by the Recipient in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of the Agreement.

21. SUBCONTRACT/SUBGRANT APPROVALS

a. In the original application, subcontractors/subgrantees were not identified by the recipient, with the exception of the following subcontractors:

Activity # 3 - Sub-Grant to Knoxville-Knox County Community Action Committee's Weatherization Program ($200,000);
Activity #4 - Energy Efficiency and Renewable Energy Investments in City Facilities via Ameresco Contract ($256,518); and
Activity #5 - Offer Contractor Training Workshops on Earthcraft ($18,000).

These above are approved, and funds are released in the amount of $474,518.

In order to receive reimbursement for the costs associated with the unidentified subcontractors/activities listed in the approved Statement of Project Objectives (SOPO), each subcontract/subgrant must be approved by the DOE Contracting Officer. The following activities included unidentified subcontractors/subgrantees:

Activity #5 - Offer Contractor Training Workshops on the ICC's Energy Conservation Code ($18,000); and
Activity #7 – Solar PV Installation at Convention Center through Third-Party Financing ($225,000).

b. Upon the recipient's selection of the subcontractors/subgrantees, and within 180 days of the award date in Block 27 of the Assistance Agreement Cover Page, the recipient shall provide the following information for each, regardless of dollar amount:
   - Name
   - DUNS Number
   - Award Amount
   - Statement of work including applicable activities
   - EF-1 for all proposed activities

c. In addition to the information in paragraph b. above, for each subcontract/subgrant that has an estimated cost greater than 25% of the Total Allocation or $1,000,000, whichever is less, the recipient must submit a Statement of Objectives, SF424A Budget Information – Nonconstruction Programs, and PMC 123.1 Cost Reasonableness Determination for Financial Assistance. The DOE Contracting Officer may require additional information concerning these subcontract(s)/subgrant(s) prior to providing written approval.

d. No funds shall be expended on the subcontracts supporting the activities listed in the approved SOPO where the subcontractor has not been identified, until DOE approval is provided. DOE does not guarantee or assume any obligation to reimburse costs incurred

by the Recipient or subcontractor for these activities, until approval is provided in writing by the Contracting Officer.

e. Upon written approval by the Contracting Officer, the Recipient may then receive payment for the activities listed in the approved SOPO for allowable costs incurred in accordance with the payment provisions contained in the Special Terms and Conditions of this agreement.

22. SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (May 2009)

Preamble

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act) was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipients shall use grant funds in a manner that maximizes job creation and economic benefit.

The Recipient shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in Act itself and as discussed below.

Recipients should begin planning activities for their first tier subrecipients, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related guidance. For projects funded by sources other than the Recovery Act, Contractors must keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning specific procedural requirements for the new reporting requirements. The Recipient will be provided these details as they become available. The Recipient must comply with all requirements of the Act. If the recipient believes there is any inconsistency between ARRA requirements and current award terms and conditions, the issues will be referred to the Contracting Officer for reconciliation.

Definitions

For purposes of this clause, Covered Funds means funds expended or obligated from

appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the grant, cooperative agreement or TIA and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to covered funds -- the contractor, subcontractor, grantee, or recipient, as the case may be, if the contractor, subcontractor, grantee, or recipient is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving covered funds; or with respect to covered funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

Recipient means any entity that receives Recovery Act funds directly from the Federal government (including Recovery Act funds received through grant, loan, or contract) other than an individual and includes a State that receives Recovery Act Funds.

Special Provisions

A. Flow Down Requirement

Recipients must include these special terms and conditions in any subaward.

B. Segregation of Costs

Recipients must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects.

C. Prohibition on Use of Funds

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

D. Access to Records

With respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, any representative of an appropriate inspector general appointed

under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized --

(1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to, and involve transactions that relate to, the subcontract, subcontract, grant, or subgrant; and

(2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

E. Publication

An application may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the applicant does not want disclosed to the public or used by the Government for any purpose other than the application. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies:

Notice of Restriction on Disclosure and Use of Data
The data contained in pages ---- of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant.

Information about this agreement will be published on the Internet and linked to the website www.recovery.gov, maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

F. Protecting State and Local Government and Contractor Whistleblowers.

The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to:

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grant jury, the head

of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross management of an agency contract or grant relating to covered funds;
- a gross waste of covered funds;
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Nonenforceability of Certain Provisions Waiving Rights and remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.).

G. Reserved

H. False Claims Act

Recipient and sub-recipients shall promptly refer to the DOE or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has submitted a false claim under the False Claims Act or has

committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

I. Information in Support of Recovery Act Reporting

Recipient may be required to submit backup documentation for expenditures of funds under the Recovery Act including such items as timecards and invoices. Recipient shall provide copies of backup documentation at the request of the Contracting Officer or designee.

J. Availability of Funds

Funds obligated to this award are available for reimbursement of costs until 36 months after the award date.

K. Additional Funding Distribution and Assurance of Appropriate Use of Funds

Certification by Governor – For funds provided to any State or agency thereof by the American Reinvestment and Recovery Act of 2009, Pub. L. 111-5, the Governor of the State shall certify that: 1) the state will request and use funds provided by the Act; and 2) the funds will be used to create jobs and promote economic growth.

Acceptance by State Legislature -- If funds provided to any State in any division of the Act are not accepted for use by the Governor, then acceptance by the State legislature, by means of the adoption of a concurrent resolution, shall be sufficient to provide funding to such State.

Distribution -- After adoption of a State legislature's concurrent resolution, funding to the State will be for distribution to local governments, councils of government, public entities, and public-private entities within the State either by formula or at the State's discretion.

L. Certifications

With respect to funds made available to State or local governments for infrastructure investments under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, the Governor, mayor, or other chief executive, as appropriate, certified by acceptance of this award that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Recipient shall provide an additional certification that includes a description of the investment, the estimated total cost, and the amount of covered funds to be used for posting on the Internet. A State or local agency may not receive infrastructure investment funding from funds made available by the Act unless this certification is made and posted.

23. REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT

(a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The reports are due no later than ten calendar days after each calendar quarter in which the Recipient receives the assistance award funded in whole or in part by the Recovery Act.

(c) Recipients and their first-tier subrecipients must maintain current registrations in the Central Contractor Registration (*http://www.ccr.gov*) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (*http://www.dnb.com*) is one of the requirements for registration in the Central Contractor Registration.

(d) The recipient shall report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at *http://www.FederalReporting.gov* and ensure that any information that is pre-filled is corrected or updated as needed.

24. NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

*Special Note: Definitization of the Provisions entitled, "REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009" and "REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS) – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009" will be done upon definition and review of final activities.

25. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

(a) *Definitions.* As used in this award term and condition—

(1) *Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been—

(i) Processed into a specific form and shape; or

(ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(2) *Public building and public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

(3) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Domestic preference.* (1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows:

To Be Determined

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that—

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of Section 1605 of the Recovery Act* . (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance

with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) *Data.* To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost (dollars)*
Item 1:			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
Item 2:			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____

List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.

Include other applicable supporting information.

*Include all delivery costs to the construction site.

26. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS) – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

(a) *Definitions.* As used in this award term and condition—

Designated country — (1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom;

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or

(3) A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

Designated country iron, steel, and/or manufactured goods — (1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

Domestic iron, steel, and/or manufactured good — (1) Is wholly the growth, product, or manufacture of the United States; or

(2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

Foreign iron, steel, and/or manufactured good means iron, steel and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

Manufactured good means a good brought to the construction site for incorporation into the building or work that has been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

Public building and *public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties,

breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Iron, steel, and manufactured goods.* (1) The award term and condition described in this section implements—

(i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of $7,443,000 or more.

(2) The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this section.

(3) The requirement in paragraph (b)(2) of this section does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows:

To Be Determined

(4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this section if the Federal Government determines that—

(i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.* (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(4) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods other than designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.

(d) *Data.* To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost (dollars)*
Item 1:			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
Item 2:			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____

List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.

Include other applicable supporting information.

*Include all delivery costs to the construction site.

27. WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of $2,000 for construction, alteration or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

28. RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING SUBRECIPIENTS

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 "Uniform Administrative Requirements for Grants and Agreements" and OMB Circular A–102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A–102 is available at *http://www.whitehouse.gov/omb/circulars/a102/a102.html.*

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF–SAC) required by OMB Circular A–133. OMB Circular A–133 is available at *http://www.whitehouse.gov/omb/circulars/a133/a133.html.* This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF–SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF–SAC.

(c) Recipients agree to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) Recipients agree to require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

29. DAVIS-BACON ACT REQUIREMENTS

Note: Where necessary to make the context of these articles applicable to this award, the term "Contractor" shall mean "Recipient" and the term "Subcontractor" shall mean "Subrecipient or Subcontractor" per the following definitions.

Recipient means the organization, individual, or other entity that receives an award from DOE and is financially accountable for the use of any DOE funds or property provided for the performance of the project, and is legally responsible for carrying out the terms and conditions of the award.

Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations).

Davis-Bacon Act

(a) Definition.--"Site of the work"--

(1) Means--

(i) The primary site of the work. The physical place or places where the construction called for in the award will remain when work on it is completed; and

(ii) The secondary site of the work, if any. Any other site where a significant portion of the building or work is constructed, provided that such site is--

(A) Located in the United States; and

(B) Established specifically for the performance of the award or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided--

(i) They are dedicated exclusively, or nearly so, to performance of the award or project; and

(ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraph (a)(1)(i), or the "secondary site of the work" as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal award or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a award.

(b) (1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the award was performed at that site and shall be incorporated without any adjustment in award price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this article; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the article entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this article) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(c) (1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the award shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (c)(2) and (c)(3) of this article shall be paid to all workers performing work in the classification under this award from the first day on which work is performed in the classification.

(d) Whenever the minimum wage rate prescribed in the award for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor

shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

Rates of Wages - Prior Approval for Proceeding with Davis-Bacon Construction Activities

If the Recipient determines at any time that any construction, alteration, or repair activity as defined by 29 CFR 5.2(j) (http://cfr.vlex.com/vid/5-2-definitions-19681309) will be performed during the course of the project, the Recipient shall request approval from the Contracting Officer prior to commencing such work. If the Contracting Officer concurs with the Recipient's determination, the Recipient must receive Contracting Officer approval to proceed with such activity, and must comply with all applicable Davis-Bacon requirements, prior to commencing such work. A modification to the award which incorporates the appropriate Davis-Bacon wage rate determination(s) will constitute the Contracting Officer's approval to proceed. If the Contracting Officer does not concur with the Recipient's determination, the Contracting Officer will so notify the Recipient in writing.

SPECIAL TERMS AND CONDITIONS

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1. RESOLUTION OF CONFLICTING CONDITIONS

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to the DOE Award Administrator for guidance.

2. AWARD AGREEMENT TERMS AND CONDITIONS

This award/agreement consists of the Assistance Agreement, plus the following:

a. Special Terms and Conditions.
b. Attachments:

Attachment Number	Title
1.	Statement of Project Objectives
2.	Federal Assistance Reporting Checklist and Instructions
3.	Budget Pages (SF 424A)

c. Program regulations, if applicable.
d. DOE Assistance Regulations, 10 CFR Part 600 at http://ecfr.gpoaccess.gov.
e. Application/proposal as approved by DOE.
f. National Policy Assurances to Be Incorporated as Award Terms in effect on date of award at http://management.energy.gov/business_doe/1374.htm.

3. ELECTRONIC AUTHORIZATION OF AWARD DOCUMENTS

Acknowledgement of award documents by the Recipient's authorized representative through electronic systems used by the Department of Energy, specifically FedConnect, constitutes the Recipient's acceptance of the terms and conditions of the award. Acknowledgement via FedConnect by the Recipient's authorized representative constitutes the Recipient's electronic signature.

4. PAYMENT PROCEDURES - ADVANCES THROUGH THE AUTOMATED STANDARD APPLICATION FOR PAYMENTS (ASAP) SYSTEM

a. Method of Payment. Payment will be made by advances through the Department of Treasury's ASAP system.

b. Requesting Advances. Requests for advances must be made through the ASAP system. You may submit requests as frequently as required to meet your needs to disburse funds for the Federal share of project costs. If feasible, you should time each request so that you receive payment on the same day that you disperse funds for direct project costs and the proportionate share of any allowable indirect costs. If same-day transfers are not feasible, advance payments must be as close to actual disbursements as administratively feasible.

c. Adjusting payment requests for available cash. You must disburse any funds that are available from repayments to and interest earned on a revolving fund, program income,

rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from DOE.

d. Payments. All payments are made by electronic funds transfer to the bank account identified on the ASAP Bank Information Form that you filed with the U.S. Department of Treasury.

5. CEILING ON ADMINISTRATIVE COSTS

a. Local government and Indian Tribe Recipients may not use more than 10 percent of amounts provided under this program, or $75,000, whichever is greater (EISA Sec 545 (b)(3)(A)), for administrative expenses, excluding the costs of meeting the reporting requirements under Title V, Subtitle E of EISA. These costs should be captured and summarized for each activity under the Projected Costs Within Budget: Administration.

b. Recipients are expected to manage their administrative costs. DOE will not amend an award solely to provide additional funds for changes in administrative costs. The Recipient shall not be reimbursed on this project for any final administrative costs that are in excess of the designated 10 percent administrative cost ceiling. In addition, the Recipient shall neither count costs in excess of the administrative cost ceiling as cost share, nor allocate such costs to other federally sponsored project, unless approved by the Contracting Officer.

6. LIMITATIONS ON USE OF FUNDS

a. By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, for gambling establishments, aquariums, zoos, golf courses or swimming pools.

b. Local government and Indian tribe Recipients may not use more than 20 percent of the amounts provided or $250,000, whichever is greater (EISA Sec 545 (b)(3)(B)), for the establishment of revolving loan funds.

c. Local government and Indian tribe Recipients may not use more than 20 percent of the amounts provided or $250,000, whichever is greater (EISA Sec 545 (b)(3)(C)), for subgrants to nongovernmental organizations for the purpose of assisting in the implementation of the energy efficiency and conservation strategy of the eligible unit of local government or Indian tribe.

7. REIMBURSABLE FRINGE BENEFITS COSTS

a. The Recipient is expected to manage their final negotiated project budgets, including their fringe benefit costs. DOE will not amend an award solely to provide additional funds for changes in the fringe benefit costs or for changes in rates used for calculating these costs. DOE recognizes that the inability to obtain full reimbursement for fringe

benefit costs means the Recipient must absorb the underrecovery. Such underrecovery may be allocated as part of the Recipient's cost share.

a. If actual allowable fringe benefit costs are less than those budgeted and funded under the award, the Recipient may use the difference to pay additional allowable direct costs during the project period. If at the completion of the award the Government's share of total allowable costs (i.e., direct and indirect), is less than the total costs reimbursed, the Recipient must refund the difference.

8. REOPENER CLAUSE – PENDING INDIRECT RATES

a. At the time the total budget cost for this award was established, agreement could not be reached on indirect rates. However, agreement was reached on a total estimated budget cost that includes a dollar amount for indirect costs and this amount is subject to adjustment in accordance with the provisions of this term and other administrative provisions of the award.

b. Within 30 days from the award date shown in Block 27 of the AssistanceAgreement, you shall submit an indirect rate proposal to the contracting officer and cognizant auditor for determination of a provisional billing rate.

c. If the approved provisional billing rates result in amounts for indirect costs that are substantially lower the amount budgeted, you agree to commence negotiations to revise the budget and the total estimated cost for this award.

d. Should you fail to submit the information in paragraph (b), or should there be no agreement as to the amount of the adjustment contemplated by this term, then the Contracting Officer may make a unilateral determination and modify the award accordingly.

9. USE OF PROGRAM INCOME

If you earn program income during the project period as a result of this award, you may add the program income to the funds committed to the award and used to further eligible project objectives.

10. STATEMENT OF FEDERAL STEWARDSHIP

DOE will exercise normal Federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

11. SITE VISITS

DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. You must provide, and must require your subawardees to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

12. REPORTING REQUIREMENTS

a. Requirements. The reporting requirements for this award are identified on the Federal Assistance Reporting Checklist, DOE F 4600.2, attached to this award. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies.

b. Additional Recovery Act Reporting Requirements are found in the Provision below labeled: "REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT."

13. PUBLICATIONS

a. You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.

b. An acknowledgment of DOE support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment: "This material is based upon work supported by the Department of Energy [National Nuclear Security Administration] [add name(s) of other agencies, if applicable] under Award Number(s) [enter the award number(s)]."

Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement,

recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

14. FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

You must obtain any required permits and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

15. LOBBYING RESTRICTIONS

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

16. STAGED DISBURSEMENT

a. The total funding allocation for this award, shown in Block 12 of the Assistance Agreement, will be obligated in full with this action; however, funds will be released according to a staged disbursement schedule. All funds must be expended within 36 months of the effective date of the award.

1. The initial disbursement of funds will include 50% of the total funding allocation, identified on Page 2 of the Assistance Agreement, which will be released to the Recipient to begin work on the approved activities listed in the Statement of Project Objectives. If conditions are included in the terms and conditions of this award, upon satisfying the conditions, the Contracting Officer will lift the funding restrictions associated with the conditions and release the remainder of the initial disbursement of funds.

2. Project performance will be monitored and corrective action taken, as necessary to ensure acceptable performance under this award. After one or more progress reviews, in which the Recipient must demonstrate that it has made satisfactory progress on its activities; expended funds appropriately; complied with reporting requirements; and created jobs, the Contracting Officer will approve the release of the remaining balance of the total funding allocation.

b. No additional funds will be disbursed to the Recipient for payment, and DOE does not guarantee or assume any obligation to reimburse costs incurred by the Recipient, until the requirements of each progress review are met. Failure by the Recipient to demonstrate acceptable performance under this award will be deemed a noncompliance pursuant to 10 CFR 600. If a noncompliance occurs, the Contracting Officer may unilaterally terminate or suspend this award and deobligate the amounts obligated. In such case, the Recipient shall not be reimbursed for costs incurred at the Recipient's risk, as described above.

17. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS

You are restricted from taking any action using Federal funds, which would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE providing either a NEPA clearance or a final NEPA decision regarding this project. DOE has made a conditional NEPA determination for this award, and funding for certain activities or tasks under this award is contingent upon the final NEPA determination.

Activity #1 – Energy Efficiency and Conservation Strategy

DOE has made a final NEPA Determination for this activity, which is categorically excluded from further NEPA review.

Activity #2 – Green Building Incentive Program
Activity #3 – Sub-Grant to the Knoxville-Knox County Community Action Committee's Weatherization Program
Activity #4 – Energy Efficiency and Renewable Energy Investments in City Facilities via Ameresco Contract

Prohibited actions include: construction, removal, installation or disposal activities, until such time that you comply with the Waste Stream Clause and Historic Preservation Clause. This restriction does not preclude you from: (1) purchasing any necessary equipment or related materials; or (2) conducting assessments, studies and other related administrative work. Recipient shall ensure the safety and structural integrity of any repair, replacement, construction, and or alteration performed under this project.

Activity #5 – Offer Contractor Training Workshops on the ICC's Energy Conservation Code and Earthcraft

DOE has made a final NEPA Determination for this activity, which is categorically excluded from further NEPA review.

Activity #6 – Transition to Single-Stream, Curbside Recycling Program

DOE has made a final NEPA Determination for this activity, which is categorically excluded from further NEPA review.

Activity #7 – Solar PV installation at Convention Center through Third-Party Financing

This activity requires further NEPA review prior to the release of any federal funding. Please provide to DOE specific information describing this project.

If you move forward with activities that are not authorized for Federal funding by the DOE Contracting Officer in advance of the final NEPA decision, you are doing so at risk of not receiving Federal funding and such costs may not be recognized as allowable cost share.

The Contractor acknowledges the City's obligations under the grant from DOE and agrees to comply w/ same as applicable.

If this award includes construction activities, you must submit an environmental evaluation report/evaluation notification form addressing NEPA issues prior to DOE initiating the NEPA process.

18. HISTORIC PRESERVATION

Prior to the expenditure of Federal funds to alter any structure or site, the Recipient is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. In order to fulfill the requirements of Section 106, the recipient must contact the State Historic Preservation Officer (SHPO), and, if applicable, the Tribal Historic Preservation Officer (THPO), to coordinate the Section 106 review outlined in 36 CFR Part 800. SHPO contact information is available at the following link: http://www.ncshpo.org/find/index.htm. THPO contact information is available at the following link: http://www.nathpo.org/map.html .

Section 110(k) of the NHPA applies to DOE funded activities. Recipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

Recipients should be aware that the DOE Contracting Officer will consider the recipient in compliance with Section 106 of the NHPA only after the Recipient has submitted adequate background documentation to the SHPO/THPO for its review, and the SHPO/THPO has provided written concurrence to the Recipient that it does not object to its Section 106 finding or determination. Recipient shall provide a copy of this concurrence to the Contracting Officer.

19. WASTE STREAM

Prior to the expenditure of Federal funds to dispose of sanitary or hazardous waste, the Recipient is required to provide documentation to the Project Officer demonstrating that it has prepared a disposal plan for sanitary or hazardous waste generated by the proposed activities. Sanitary or hazardous waste includes, but is not limited to, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, asbestos, etc.

The DOE Contracting Officer shall consider compliance with this clause complete only after the Recipient has submitted adequate documentation to DOE for its review, and DOE has provided written approval to the Recipient of its proposed plan to dispose of its sanitary or hazardous waste.

20. DECONTAMINATION AND/OR DECOMMISSIONING (D&D) COSTS

Notwithstanding any other provisions of this Agreement, the Government shall not be responsible for or have any obligation to the Recipient for (i) Decontamination and/or Decommissioning (D&D) of any of the Recipient's facilities, or (ii) any costs which may be

incurred by the Recipient in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of the Agreement.

21. SUBCONTRACT/SUBGRANT APPROVALS

a. In the original application, subcontractors/subgrantees were not identified by the recipient, with the exception of the following subcontractors:

Activity # 3 - Sub-Grant to Knoxville-Knox County Community Action Committee's Weatherization Program ($200,000);
Activity #4 - Energy Efficiency and Renewable Energy Investments in City Facilities via Ameresco Contract ($256,518); and
Activity #5 - Offer Contractor Training Workshops on Earthcraft ($18,000).

These above are approved, and funds are released in the amount of $474,518.

In order to receive reimbursement for the costs associated with the unidentified subcontractors/activities listed in the approved Statement of Project Objectives (SOPO), each subcontract/subgrant must be approved by the DOE Contracting Officer. The following activities included unidentified subcontractors/subgrantees:

Activity #5 - Offer Contractor Training Workshops on the ICC's Energy Conservation Code ($18,000); and
Activity #7 – Solar PV Installation at Convention Center through Third-Party Financing ($225,000).

b. Upon the recipient's selection of the subcontractors/subgrantees, and within 180 days of the award date in Block 27 of the Assistance Agreement Cover Page, the recipient shall provide the following information for each, regardless of dollar amount:
   - Name
   - DUNS Number
   - Award Amount
   - Statement of work including applicable activities
   - EF-1 for all proposed activities

c. In addition to the information in paragraph b. above, for each subcontract/subgrant that has an estimated cost greater than 25% of the Total Allocation or $1,000,000, whichever is less, the recipient must submit a Statement of Objectives, SF424A Budget Information – Nonconstruction Programs, and PMC 123.1 Cost Reasonableness Determination for Financial Assistance. The DOE Contracting Officer may require additional information concerning these subcontract(s)/subgrant(s) prior to providing written approval.

d. No funds shall be expended on the subcontracts supporting the activities listed in the approved SOPO where the subcontractor has not been identified, until DOE approval is provided. DOE does not guarantee or assume any obligation to reimburse costs incurred

by the Recipient or subcontractor for these activities, until approval is provided in writing by the Contracting Officer.

e. Upon written approval by the Contracting Officer, the Recipient may then receive payment for the activities listed in the approved SOPO for allowable costs incurred in accordance with the payment provisions contained in the Special Terms and Conditions of this agreement.

22. SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (May 2009)

Preamble

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act) was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipients shall use grant funds in a manner that maximizes job creation and economic benefit.

The Recipient shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in Act itself and as discussed below.

Recipients should begin planning activities for their first tier subrecipients, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related guidance. For projects funded by sources other than the Recovery Act, Contractors must keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning specific procedural requirements for the new reporting requirements. The Recipient will be provided these details as they become available. The Recipient must comply with all requirements of the Act. If the recipient believes there is any inconsistency between ARRA requirements and current award terms and conditions, the issues will be referred to the Contracting Officer for reconciliation.

Definitions

For purposes of this clause, Covered Funds means funds expended or obligated from

appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the grant, cooperative agreement or TIA and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to covered funds -- the contractor, subcontractor, grantee, or recipient, as the case may be, if the contractor, subcontractor, grantee, or recipient is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving covered funds; or with respect to covered funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

Recipient means any entity that receives Recovery Act funds directly from the Federal government (including Recovery Act funds received through grant, loan, or contract) other than an individual and includes a State that receives Recovery Act Funds.

Special Provisions

A. Flow Down Requirement

Recipients must include these special terms and conditions in any subaward.

B. Segregation of Costs

Recipients must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects.

C. Prohibition on Use of Funds

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

D. Access to Records

With respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, any representative of an appropriate inspector general appointed

under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized --

(1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to, and involve transactions that relate to, the subcontract, subcontract, grant, or subgrant; and

(2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

E. Publication

An application may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the applicant does not want disclosed to the public or used by the Government for any purpose other than the application. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies:

Notice of Restriction on Disclosure and Use of Data
The data contained in pages ---- of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant.

Information about this agreement will be published on the Internet and linked to the website www.recovery.gov, maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

F. Protecting State and Local Government and Contractor Whistleblowers.

The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to:

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grant jury, the head

of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross management of an agency contract or grant relating to covered funds;
- a gross waste of covered funds;
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Nonenforceability of Certain Provisions Waiving Rights and remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.).

G. Reserved

H. False Claims Act

Recipient and sub-recipients shall promptly refer to the DOE or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has submitted a false claim under the False Claims Act or has

committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

I. Information in Support of Recovery Act Reporting

Recipient may be required to submit backup documentation for expenditures of funds under the Recovery Act including such items as timecards and invoices. Recipient shall provide copies of backup documentation at the request of the Contracting Officer or designee.

J. Availability of Funds

Funds obligated to this award are available for reimbursement of costs until 36 months after the award date.

K. Additional Funding Distribution and Assurance of Appropriate Use of Funds

Certification by Governor – For funds provided to any State or agency thereof by the American Reinvestment and Recovery Act of 2009, Pub. L. 111-5, the Governor of the State shall certify that: 1) the state will request and use funds provided by the Act; and 2) the funds will be used to create jobs and promote economic growth.

Acceptance by State Legislature -- If funds provided to any State in any division of the Act are not accepted for use by the Governor, then acceptance by the State legislature, by means of the adoption of a concurrent resolution, shall be sufficient to provide funding to such State.

Distribution -- After adoption of a State legislature's concurrent resolution, funding to the State will be for distribution to local governments, councils of government, public entities, and public-private entities within the State either by formula or at the State's discretion.

L. Certifications

With respect to funds made available to State or local governments for infrastructure investments under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, the Governor, mayor, or other chief executive, as appropriate, certified by acceptance of this award that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Recipient shall provide an additional certification that includes a description of the investment, the estimated total cost, and the amount of covered funds to be used for posting on the Internet. A State or local agency may not receive infrastructure investment funding from funds made available by the Act unless this certification is made and posted.

23. REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT

(a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The reports are due no later than ten calendar days after each calendar quarter in which the Recipient receives the assistance award funded in whole or in part by the Recovery Act.

(c) Recipients and their first-tier subrecipients must maintain current registrations in the Central Contractor Registration (*http://www.ccr.gov*) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (*http://www.dnb.com*) is one of the requirements for registration in the Central Contractor Registration.

(d) The recipient shall report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at *http://www.FederalReporting.gov* and ensure that any information that is pre-filled is corrected or updated as needed.

24. NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

*Special Note: Definitization of the Provisions entitled, "REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009" and "REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS) – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009" will be done upon definition and review of final activities.

25. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

(a) *Definitions.* As used in this award term and condition—

(1) *Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been—

(i) Processed into a specific form and shape; or

(ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(2) *Public building and public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

(3) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Domestic preference.* (1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows:

To Be Determined

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that—

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of Section 1605 of the Recovery Act* . (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance

with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) *Data.* To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost (dollars)*
Item 1:			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
Item 2:			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____

List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.

Include other applicable supporting information.

*Include all delivery costs to the construction site.

26. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS) – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

(a) *Definitions.* As used in this award term and condition—

Designated country — (1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom;

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or

(3) A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

Designated country iron, steel, and/or manufactured goods — (1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

Domestic iron, steel, and/or manufactured good — (1) Is wholly the growth, product, or manufacture of the United States; or

(2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

Foreign iron, steel, and/or manufactured good means iron, steel and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

Manufactured good means a good brought to the construction site for incorporation into the building or work that has been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

Public building and *public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties,

breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Iron, steel, and manufactured goods.* (1) The award term and condition described in this section implements—

(i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of $7,443,000 or more.

(2) The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this section.

(3) The requirement in paragraph (b)(2) of this section does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows:

To Be Determined

(4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this section if the Federal Government determines that—

(i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.* (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(4) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods other than designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.

(d) *Data.* To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost (dollars)*
Item 1:			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
Item 2:			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____

List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.

Include other applicable supporting information.

*Include all delivery costs to the construction site.

27. WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of $2,000 for construction, alteration or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

28. RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING SUBRECIPIENTS

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 "Uniform Administrative Requirements for Grants and Agreements" and OMB Circular A–102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A–102 is available at *http://www.whitehouse.gov/omb/circulars/a102/a102.html.*

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF–SAC) required by OMB Circular A–133. OMB Circular A–133 is available at *http://www.whitehouse.gov/omb/circulars/a133/a133.html.* This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF–SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF–SAC.

(c) Recipients agree to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) Recipients agree to require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

29. DAVIS-BACON ACT REQUIREMENTS

Note: Where necessary to make the context of these articles applicable to this award, the term "Contractor" shall mean "Recipient" and the term "Subcontractor" shall mean "Subrecipient or Subcontractor" per the following definitions.

Recipient means the organization, individual, or other entity that receives an award from DOE and is financially accountable for the use of any DOE funds or property provided for the performance of the project, and is legally responsible for carrying out the terms and conditions of the award.

Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations).

Davis-Bacon Act

(a) Definition.--"Site of the work"--

(1) Means--

(i) The primary site of the work. The physical place or places where the construction called for in the award will remain when work on it is completed; and

(ii) The secondary site of the work, if any. Any other site where a significant portion of the building or work is constructed, provided that such site is--

(A) Located in the United States; and

(B) Established specifically for the performance of the award or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided--

(i) They are dedicated exclusively, or nearly so, to performance of the award or project; and

(ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraph (a)(1)(i), or the "secondary site of the work" as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal award or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a award.

(b) (1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the award was performed at that site and shall be incorporated without any adjustment in award price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this article; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the article entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this article) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(c) (1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the award shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (c)(2) and (c)(3) of this article shall be paid to all workers performing work in the classification under this award from the first day on which work is performed in the classification.

(d) Whenever the minimum wage rate prescribed in the award for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor

shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

Rates of Wages - Prior Approval for Proceeding with Davis-Bacon Construction Activities

If the Recipient determines at any time that any construction, alteration, or repair activity as defined by 29 CFR 5.2(j) (http://cfr.vlex.com/vid/5-2-definitions-19681309) will be performed during the course of the project, the Recipient shall request approval from the Contracting Officer prior to commencing such work. If the Contracting Officer concurs with the Recipient's determination, the Recipient must receive Contracting Officer approval to proceed with such activity, and must comply with all applicable Davis-Bacon requirements, prior to commencing such work. A modification to the award which incorporates the appropriate Davis-Bacon wage rate determination(s) will constitute the Contracting Officer's approval to proceed. If the Contracting Officer does not concur with the Recipient's determination, the Contracting Officer will so notify the Recipient in writing.