

Meeting Date: 5/7/2013

Report Type: Staff/Discussion

Report ID: 2013-00349



City Council Report

915 I Street, 1st Floor

www.CityofSacramento.org

Title: Approval of Negative Declaration and Ground Lease and License for a Solar Facility at Sutter's Landing Park

Location: 20 28th Street, Sacramento, District 3

Issue: Conergy, Inc. seeks to install a solar facility at this site and a negative declaration is required to install this facility, per the California Environmental Quality Act (CEQA).

Recommendation: Pass 1) a Resolution approving a Mitigated Negative Declaration and Mitigation Reporting Program for the Conergy Solar Project; and 2) a Resolution authorizing the City Manager or the City Manager's designee to execute a 20-year ground lease and license agreement with Conergy, Inc. for a 1.5 megawatt solar installation at Sutter's Landing Park.

Contact: Steve Harriman, Integrated Waste General Manager, (916) 808-4949, General Services Department

Presenter: Steve Harriman, Integrated Waste General Manager, (916) 808-4949, General Services Department

Department: General Services

Division: Solid Waste Admin Services

Dept ID: 13001711

Attachments:

01-Description/Analysis

02-Resolution Authorizing Ground Lease

03-Exhibit A Project Description

04-Exhibit B Ground Lease

05-Exhibit C CBRE Opinion of Market Value

06-Resolution Adopting the Mitigated Neg Declaration

07-Exhibit A - Mitigation Reporting Program

08-Exhibit B, Part 1 - Master Response to Comments

09-Exhibit B, Part 2 - Response from LEA

10-Exhibit B, Part 3 - Response from State Clearinghouse

11-Exhibit B, Part 4 - Comments from Bob Horowitz

12-Exhibit B, Part 5 - Comments from Brian Collett

13-Exhibit B, Part 6 - Comments from Dale T. Steele

14-Exhibit B, Part 7 - Comments from David Moffatt

James Sanchez, City Attorney

Shirley Concolino, City Clerk

Russell Fehr, City Treasurer

John F. Shirey, City Manager

- 15-Exhibit B, Part 8 - Comments from Friends of Sutter Landing Park
- 16-Exhibit B, Part 9 - Comments from Friends of Sutter Landing Park
- 17-Exhibit B, Part 10 - Comments from Julie Murphy
- 18-Exhibit B, Part 11 - Response to Agency Comments
- 19-Exhibit B, Part 12 - Comments from David Moffatt and Steve Larson
- 20-Exhibit B, Part 13 - Comments from SABA
- 21-Exhibit B, Part 14 - Comments from FATRAC

City Attorney Review

Approved as to Form
Lan Wang
5/1/2013 2:49:04 PM

City Treasurer Review

Reviewed for Impact on Cash and Debt
John Colville
4/19/2013 12:59:32 PM

Approvals/Acknowledgements

Department Director or Designee: Reina Schwartz - 4/30/2013 3:57:02 PM



Description/Analysis

Issue Detail: The proposed project includes installation of a 1.5 megawatt (MW) photovoltaic solar facility for a 20-year lease and license term. The project site is located on property owned by the City at Sutter's Landing Park. Development and operation of the solar facility by Conergy, Inc. is pursuant to a lease and license agreement with the City.

Conergy, Inc. has secured a U.S. Dept. of Energy grant of \$1.6 million through the Sacramento Municipal Utility District's (SMUD) Community Renewable Energy Deployment (CRED) program to offset the cost of the solar installation. SMUD guarantees purchase of the solar energy produced by the project. The deadline for the facility to be operational, and for the project to be considered complete in order to make use of the grant funds is September 1, 2013. To meet this deadline, project construction will need to begin no later than June 1, 2013.

Numerous project design options have been explored. The largest area for solar panels (3.7 acres) is to be located on the large unused asphalt area of approximately 8.5 acres in size immediately west of the dog park. This project design minimizes environmental impacts to wildlife habitat. There will also be single solar panels installed in the dog park to provide added shade for users and a "carport" structure covered with panels that entirely covers the asphalt parking lot east of 28th Street.

Following is a summary of the key business points proposed for the lease agreement between Conergy, Inc. and the City:

- Conergy, Inc. will sell the facility to an investor within 60 days of completion, and the lease and license agreement will be assigned to the investor.
- Conergy, Inc. will be responsible for operation, maintenance and security of the facility for the 20-year lease term.
- The City will receive an annual lease payment that cannot be re-negotiated during the term.
- The annual lease payment to the City will be six percent of the gross revenue generated from the facility. Based upon current estimates, this will generate approximately \$15,000 per year in revenue to the City.

The annual electricity production and purchase price is predetermined over the term of the lease via a contract with SMUD, the energy purchaser. The projected lease revenue is also projected to be relatively level over the term of the lease.

The lease requires the investor to remove all equipment at the end of the lease term at no cost to the City, or allow (an option) the City to purchase the equipment for the purchase price of the greater \$580,000 or at fair market value.

The Mitigated Negative Declaration (MND) is required by CEQA to ensure that impacts to the environment are kept to a minimum during the course of this project. CEQA also

requires that the Sacramento City Council adopt the MND.

Policy Considerations: The primary purpose of the project is to generate energy from a renewable source, which is consistent with City plans and policies on sustainability and climate change. By having the project in a City park, it provides added benefit for public access and education, helping to demonstrate the City's commitment to sustainability in a unique location. The "story" of solid waste generation and management (the closed landfill), natural resource protection and enhancement (the American River Parkway) and the Park's unique history back to California Indian settlements can also be told.

The 2003 Sutter's Landing Park Master Plan designates the large asphalt area immediately west of the dog park for "Active Recreation Court/Field Areas"; to date, such amenities have not been designed or constructed in this area, and some have been constructed elsewhere in the Park. The use of park property for an energy producing use on an interim basis is consistent with the Park Master Plan, assuming the solar facilities do not remain permanently. At the end of the lease term, the asphalt area can be used for development of other recreation amenities/uses once the solar facilities are removed and the area is returned to its pre-project state.

The details of locating solar panels in the dog park for added shade and power generation, and over the parking lot adjacent to the bocce courts, are not addressed at the Park Master Plan level. The facilities/amenities in a Park Master Plan can be moved around within the park site as funding is secured and implementation details are developed. In addition, new uses can be introduced without formal amendment of the Park Master Plan, so long as there is adequate room for uses designated in the Plan to be developed such that no approved uses are being eliminated. The project will prevent other park development from taking place on the asphalt area for the term of the ground lease.

Pursuant to Sacramento City Code section 3.68.110 (F), it is in the best interest of the city to enter into the proposed lease and license agreement without bidding because the City executed an Exclusive Right to Negotiate with Conergy that expires on May 19, 2013 and based on the other above policy considerations.

Economic Impacts: None

Environmental Considerations: The design of the project has been modified to address concerns that the solar panels may adversely affect the Swainson's Hawk as it forages for food at the 28th Street Landfill, as well as ensure that it will not adversely affect drivers with a bright glare when passing by the project on the Business 80 freeway.

California Environmental Quality Act (CEQA): The initial study prepared for the proposed project identified potentially significant effects of the Project. Revisions to the Project made by or agreed to by the Project applicant before the proposed MND and initial study were released for public review were determined by the City's Environmental Planning Services to avoid or reduce the potentially significant effects to a less than significant level, and, therefore, there was no substantial evidence that the Project as revised and conditioned may have a significant effect on the environment.

A MND for the Project was then completed, noticed and circulated in accordance with the requirements of CEQA, the State CEQA Guidelines, and the Sacramento Local Environmental Procedures. On February 22, 2013 a Notice of Intent to Adopt the MND (NOI) was circulated for public comments for 30 days. The close of the comment period was March 29, 2013. The NOI was sent to those public agencies that have jurisdiction by law with respect to the proposed project and to other interested parties and agencies, including property owners within 500 feet of the boundaries of the proposed project. The comments of such persons and agencies were sought. On February 22, 2013, the NOI was published in the Daily Recorder, a newspaper of general circulation, and the NOI was posted in the office of the Sacramento County Clerk and at the State's Office of Planning and Research.

Staff received ten comment letters regarding the project during the public review period. The comments are generally related to land use and biological resources. One comment letter from the Sacramento County Environmental Management Department commented on the project's compliance with the Final Post Closure Land Use Plan. The comments include suggestions to clarify how compliance will be achieved. Minor revisions to the IS/draft MND and mitigation measures have been added to address these suggestions. The new information added to the MND merely clarifies and makes insignificant modifications to the MND.

Comment letters and response to comments are provided in Attachment 2. The comments raised do not change the environmental determination made in the initial study and draft MND. The Environmental Services Manager has determined that adoption of the Mitigated Negative Declaration and Mitigation Monitoring Program are appropriate actions under CEQA. The Initial Study/draft Mitigated Negative Declaration for the Conergy Solar Project is available at the Community Development Department's webpage located at the following link:

<http://www.cityofsacramento.org/dsd/planning/environmental-review/eirs/>

Sustainability: The project is consistent with the City's Sustainability Master Plan by developing a green energy source on City property that is currently underutilized. All park development will make use of recycled materials and "green" products such as efficient irrigation systems, low water use plantings, added shade, solar power, and interpretive elements to educate visitors on ecology and sustainability principles. A source of renewable energy is proposed that will also be highly visible and have public education benefits. It is the only such facility ever proposed for a Sacramento park.

Commission/Committee Action: On March 7, 2013, the Sacramento Parks & Recreation Commission approved a motion to support the project as proposed. Also, the park's Master Plan diagram is to be updated to show the dog park in its current location, with the proposed solar farm on 3.7 acres of the asphalt area west of the dog park. In later 2013, staff will return to the Commission with proposed active recreation uses on the remainder of the asphalt area. City staff also worked extensively with concerned

conservation groups, holding two community meetings to supplement the Parks and Recreation Commission meeting on March 7, 2013.

Rationale for Recommendation: The solar installation benefits include shade in the parking lot and dog park, a funding source for development of future park amenities, and educational opportunities on sustainable energy production for park visitors.

Financial Considerations: Project construction will be funded by Conergy and the Department of Energy grant; ongoing maintenance will be the responsibility of Conergy. Annual lease payments made to the City for use of park property will be six percent of gross revenues, or approximately \$15,000 per year, over a fixed lease term of 20 years, which will be used by the Parks and Recreation Department (General Fund, Fund 1001) for future projects at Sutter's Landing Park.

Emerging Small Business Development (ESBD): No goods or services are being purchased as a result of this report.



RESOLUTION NO.

Adopted by the Sacramento City Council

AUTHORIZING THE CITY MANAGER OR THE CITY MANAGER'S DESIGNEE TO EXECUTE A 20-YEAR GROUND LEASE AND LICENSE WITH CONERGY, INC. FOR A SOLAR FACILITY AT SUTTER'S LANDING PARK

BACKGROUND

- A. In 2010, the City executed an exclusive right to negotiate with Conergy, Inc. for the construction of a solar facility at Sutter's Landing Park.
- B. Conergy, Inc. has secured a U.S. Dept. of Energy grant through the Sacramento Municipal Utility District's Community Renewable Energy Deployment (CRED) program for \$1.6 million to offset the cost of the solar installation. Without the grant there is not deal – there are no other solar developers that can make this deal work without the grant. See Exhibit C hereto.
- C. Conergy, Inc. will pay the City six percent of gross revenue generated by the project from the sale of energy to the Sacramento Municipal Utility District. This will generate an estimated \$15,000 in annual revenue. The proposed rent is market. See Exhibit C hereto.
- D. The lease and license agreement requires Conergy, Inc. to either remove the solar equipment from Sutter's Landing Park at no cost to the City at the end of the lease term, or sell the equipment to the City for the purchase price of the greater of \$580,000, or at fair market value. The option to purchase belongs to the City.
- E. The solar installation benefits include shade in the parking lot and dog park, a funding source for development of future park amenities, and educational opportunities on sustainable energy production for park visitors.
- F. Pursuant to Sacramento City Code section 3.68.110 (F), it is in the best interest of the city to enter into the proposed lease and license agreement without bidding based on the above, including, but not limited to, because the City executed an Exclusive Right to Negotiate with Conergy that expires on May 19, 2013.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The City Manager or the City Manager's designee is authorized in the best interests of the City to execute the attached 20-year ground lease and license agreement between the City and Conergy, Inc. for a solar facility at Sutter's Landing Park, and allocate net lease revenue to the City Parks and Recreation Department for development projects at Sutter's Landing Park.

Section 2. Exhibits A – C are part of this resolution.

Exhibits:

Exhibit A: Project Description

Exhibit B: Lease and License Agreement

Exhibit C: CBRE Opinion of Market Value



EXHIBIT A: Project Description

Project Location

The project site is located at the northern end of 28th Street, in the northeast area of downtown Sacramento, in the Sutter's Landing Park. The proposed solar arrays will be installed on both sides of 28th Street, west of the classified waste management units (WMUs A and B) at the site. The arrays would be sited on portions of the unclassified fill areas.

The site is bordered by the American River (over 1,500 feet) to the north, Southern Pacific Railroad tracks to the south, and industrial properties to the west. Surrounding land uses include recreational uses to the north, residential uses further to the south and east, and the remainder of the Sutter's Landing Park to the east.

All solar work and installations would occur on parcel APN 003-0010-001-0000 (approximately 31 acres). This parcel includes the existing dog park; paved parking area, the baler building with the enclosed skateboard park; basketball courts and bocce courts.

Proposed Project Components

The proposed project includes construction and operation of a 1.5 megawatt (MW) photovoltaic solar facility. The proposed project includes both ground-mounted solar modules and modules mounted on columns. Solar modules would consist of a collection of solar photovoltaic panels, each of which measures 5'4" x 3'3" x 1.8". Modules would be mounted on shade structures on columns with a 20-degree tilt. The tilt would direct the module's surface generally to the south to obtain the highest exposure to the sun.

Construction and Operation

The proposed project will be constructed and operated in accordance with the City of Sacramento's Post Closure Land Use Plan (PCLUP). The PCLUP has been prepared in accordance with California Code of Regulations (CCR) Title 27, Section 21190 et seq. The City of Sacramento is the owner of the site and is the Responsible Party (RP) for implementation of this PCLUP and the most recent 28th Street Landfill Post Closure Maintenance Plan and Amendments. The PCLUP will be implemented in compliance with Central Valley Regional Water Quality Control Board (RWQCB) regulations.

Each of the three array areas has its unique design and construction constraints due to the landfill cover materials on which it is located. Arrays 1 and 2 would require minor excavation and site preparation for the foundations. Array 3 would be located on existing asphalt paving, and would not require excavation. No grading

of the site would occur in connection with the installations, and minor excavation and site preparation would be required only for concrete foundations for the solar panels proposed on columns.

Array 1 would be located in the parking area and would include 1,540 modules on columns in a portion of the compost/parking area of West Site as shown on Figure 3. The cover system in this area consists of 2 to 4 inches of asphalt over 6 to 18 inches of aggregate base. Under the aggregate base are 3 to 18 feet of soil cover and 12 to 32.5 feet of landfill debris. Beneath the landfill debris are native sand and gravel layers typically encountered from 32 to 43.5 feet below ground surface. The concrete support footings for these arrays will extend approximately three feet below the surface of the asphalt and will be placed on compacted soil cover. Asphalt would be sealed against the concrete base of the footings in this area.

Array 2 would include 140 modules and would be mounted on columns within the Dog Park. The dog park area is not paved and has a soil cover. The underlying strata are 3 to 18 feet of soil cover and 12 to 32.5 feet of landfill debris. The debris underlying this area consists of layers of street cleaning debris. Beneath the landfill debris are native sand and gravel layers typically encountered from 32 to 43.5 feet below ground surface. The concrete support footings for these arrays would extend approximately three feet below the surface of the ground and would be placed on compacted soil cover. A soil bentonite mixture would be compacted to seal against the concrete base of the footings in this area.

Array 3 would be located on the paved area west of the Dog Park and would include 4,508 ground-mounted modules. There are no current park activities located in this area. Modules in Array 3 would be mounted on aluminum racks that support 28 panels mounted in a portrait configuration, and stepped back 100 feet from an elderberry bush to avoid impacts to the federally protected Valley Elderberry Longhorn Beetle. The area is covered with asphalt paving, used as the landfill cap. The underlying strata are 3 to 18 feet of soil cover and 12 to 32.5 feet of landfill debris. The debris underlying this area consists of layers of street cleanings, municipal sludge, and garbage fill. Array 3 would be completely enclosed with a fence consistent with the Dog Park perimeter fence, 6 ft. in height.

The construction period is anticipated to be four months, beginning in June and completed by the end of August. Development of the project site would require delivery of the solar modules and racks, construction of shade structures, installation of the solar modules and completion of electrical connections. Work would begin with foundation and trenching layout at all three array areas. Placement of rebar, columns, concrete, conduits and backfill would follow. Once poured concrete has cured the structural beams and supporting structure for the solar modules would be installed followed by installation of the modules and all electrical wiring.

Solar modules and racks would be delivered in semitrailer trucks, and maneuvered on site with gas-powered vehicles. Semi-trucks and trailers would make regular deliveries to the project site. Concrete ballasts and racks would be transferred from

trailers to the staging area, delivered to the installation site and assembled on the site. Modules would be delivered in the same manner, and installed. Access to the site for installation, maintenance and removal would be via existing roadways at the site. No new roads would be constructed.

Minor maintenance around the base would be required for the column-mounted solar modules. No landscaping would be required for the ground-mounted modules on the paved area. Ground-mounted solar panels would be installed in rows with adequate space to allow passage of a pickup or small maintenance vehicle. Operation of the solar facility requires periodic inspection by Conergy for purposes of security and repairs, if needed. The solar facility would not require any outside sources of energy, or generators on the site as part of its operation. The modules would be cleaned periodically with water. Racks holding the solar modules would be regularly inspected.

Site Security

The park currently has an on-site security guard who patrols the park 24 hours a day, seven days a week. The gates would continue to be locked at 5:00 p.m. Ground-mounted solar facilities on the paved area west of the dog park (Array 3) would be enclosed with a fence to prevent entry by unauthorized persons. Modules mounted elsewhere on the site would be mounted on top of shade structures or similarly enclosed with a fence for security purposes. The solar arrays would be bolted to the support structures and would not be easily removed. The electrical wiring would be below grade to the maximum extent possible without disturbing the landfill cap. The control/power cabinets would be locked. Security of the solar array installations would be the responsibility of City of Sacramento; and the site would be inspected on a regular basis. Any repairs to the fencing or other structures in support of the solar facility will be made within a reasonable amount of time, as specified in the lease agreement.

Lease Agreement

The project site is located on property owned by the City of Sacramento. Development and operation of the solar facility by Conergy, Inc. would be pursuant to a lease agreement with the City of Sacramento. The City of Sacramento would serve as the Responsible Party for the implementation, monitoring of all mitigation measures and permit requirements, and repairs necessary to the facility. At the conclusion of the lease, all solar modules and other related project infrastructure may be removed and the project site and be returned to its original condition, at the City's discretion.

Entitlements and Permits

City Action

- Lease approval for operation of the solar facility (City Council)
- Approval of the Mitigated Negative Declaration (City Council)
- Adoption of the Mitigation Monitoring Plan (City Council)

- Building permits (Community Development Department, Building Division)

Resource Agencies

- CalRecycle, with authority as delegated to the County of Sacramento Environmental Management Department (Local Enforcement Agency): Approval of the amendments to the Post-Closure Maintenance Plan
- Regional Water Quality Control Board
- Sacramento Metropolitan Air Quality Management District

Final Closure and Post Closure Maintenance Plan (FCPMP)

Post closure maintenance requirements as well as the financial assurance requirements for the site are contained in the 1991 Final Closure and Post Closure Maintenance Plans and subsequent Amendments. The Landfill Facility No. is 34-AA-0018. The Waste Discharge Number is WDR No. R5-2004-0039. CalRecycle and the Regional Water Quality Control Board are Responsible Agencies under CEQA, and will use the City's environmental document for permitting purposes.

The Final Closure Land Use Plan for the landfill addresses elements of the plan affected by the project. Such elements would include, for example, identification and description of the landfill units affected; proposed modifications to the cover design; construction reporting; financial assurances; cover settlement surveys/monitoring, plans for cover maintenance and repairs; facility operations; drainage controls; protection of landfill gas and groundwater monitoring systems; facility access; and change in land use.



City of Sacramento

Tax ID # if applicable:

Requires Council Approval:

No YES

Meeting: 5/7/13

Real Estate

Other Party Signature Needed

Recording Requested

General Information

Type: Real Property Lease	PO Type:	Attachment: Original No.: 1
Not to Exceed:		Original Doc Number:
Other Party: Conergy		Certified Copies of Document::
Project Name: Ground Lease and Licence Agreement for Solar Facility at 28th Street Landfill		Deed: <input type="checkbox"/> None <input type="checkbox"/> Included <input type="checkbox"/> Separate
Project Number:	Bid Transaction #:	E/SBE-: %

Department Information

Department: **General Services** Division: **Recycling & Solid Waste**
 Project Mgr: **Steve Harriman**
 Contract Services: **Chris Thoma** Director: **Reina J. Schwartz**
 Phone Number: **(916) 808-4833** Dept ID: **13001771**
 Comment:

Review and Signature Routing

Department	Signature or Initial	Date
Project Mgr:	<i>SA</i>	4/24/13
Contract Services:	<i>CT</i>	04/25/13

City Attorney	Signature or Initial	Date
City Attorney:	<i>RW</i>	4/25/13

Send Interoffice Mail to Reina J. Schwartz (12500)

Notify for Pick Up

Authorization	Signature or Initial	Date
Reina J. Schwartz Director, General Services:		
City Mgr: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		

For City Clerk Processing

Finalized:
Initial:
Date:

Imaged:
Initial:
Date:

Received:
(City Clerk Stamp Here)

Contract Cover/Routing Form: Must Accompany ALL Contracts; however, is not part of the Contract. (Approved On-Call Contractors – Orange*) (01-01-09)

Resolution No. / Date

GROUND LEASE AND LICENSE AGREEMENT

THIS GROUND LEASE AND LICENSE AGREEMENT (this "Agreement"), dated effective as of the date executed by the City as shown on the signature page hereto (the "Effective Date"), is between the CITY OF SACRAMENTO, a municipal corporation (the "City"), and CONERGY PROJECTS, INC., a California corporation ("Conergy"). The City and Conergy are sometimes referred to herein collectively, as the "Parties" and individually, as a "Party."

RECITALS

A. Conergy is in the business of developing, erecting, and operating solar energy conversion systems and power generation facilities for the production of electrical energy for sale to utility companies, power marketers, power exchanges, and other users.

B. Conergy desires to construct, maintain, and operate a 1.5 megawatt (MW) photovoltaic solar facility (the "Conergy Solar Project") in the City of Sacramento. The location of the Conergy Solar Project shall be the northern end of 28th Street, in the northeast area of downtown Sacramento, in the Sutter's Landing Park. The Conergy Solar Project includes both ground-mounted solar modules and modules mounted on columns.

C. In order go forward with the Conergy Solar Project, Conergy desires to lease and license certain portions of real property owned by the City, further identified currently as Assessor Parcel Number (APN) 003-0010-001, shown on the diagram attached hereto and incorporated herein as Exhibit A to this Agreement (hereinafter, the "West Site"). The lease and license are required for the construction, maintenance, and operation of three solar arrays ("Array 1," "Array 2", and "Array 3"). These three arrays are depicted on Exhibit B, figure 1 – Location map (depicting project site), and Exhibit C, figure 2 – Site plan and solar array layout (showing location of all three arrays marked in red), attached hereto and incorporated by reference to this Agreement. The West Site includes approximately 48 acres. In addition, Conergy desires to license certain portions of real property owned by the City, further identified currently as APNs 003-0010-001, 003-0042-002, and 003-0050-016, shown on the diagrams attached hereto and incorporated herein as Exhibits J and K, for the transmission of electricity generated by the Conergy Solar Project.

D. The West Site is a closed landfill which is subject to settling and shifting subsoils. Conergy is aware of the soil conditions and will construct the Conergy Solar Project in such a manner as to compensate for subsoil movement. Further, Conergy is aware the landfill was actively mined for methane. Although the methane capture has ended due to diminished methane production, off-gas combustible gases exist subsurface and may escape above the surface from time to time. Except as set forth herein, the City makes no representation as to health or safety concerns related to use of the West Site and Conergy represents that it has no expectations that the City will safeguard it, its improvements, or its employees or any other person.

E. Array 1 will be located in an asphalt paved parking lot of the West Site and will include 1,540 modules on columns. Array 1 is more particularly described on Exhibit D, figure 3 (describing carport solar array), attached hereto and incorporated by reference to this Agreement. Array 2 will include 140 modules mounted on columns within a City dog park at the West Site. Array 2 is more particularly described on Exhibit E attached hereto and incorporated by reference to this Agreement. Array 3 will be located on a paved area of the West Site west of said City dog park and will include 4,508 ground-mounted modules. Array 3 is more particularly described on Exhibit F (describing ground mounted panels), attached hereto and incorporated by reference to this Agreement.

F. With regard to the license set forth in Sections 22 through 25 of this Agreement that covers Arrays 1 and 2 (the "License"), the intention of the Parties is to create a license coupled with an interest. With regard to the lease set forth in Sections 15, 16, 18 and 20 of this Agreement that covers Array 3 (the "Lease"), the intention of the Parties is to create a leasehold interest.

G. The construction period of the Conergy Solar Project is anticipated to be four months, beginning in May 2013 and completed by the end of August 2013. Development of the project site requires delivery of the solar

modules and racks, construction of shade structures, installation of the solar modules, and completion of electrical connections to the SMUD (Sacramento Municipal Utility District) substation.

GENERAL PROVISIONS

1. **Term of this Agreement.** The term of this Agreement shall commence on the Effective Date and continue for twenty (20) years thereafter unless terminated earlier as provided in this Agreement; provided, however, that: (a) the Power Purchase Agreement to be entered into between Conergy and SMUD (Sacramento Municipal Utility District) (the "PPA") has been fully executed by the parties thereto; and (b) the term of this Agreement shall not expire prior to the expiration or earlier termination of the PPA.

Notwithstanding the foregoing, if the operations date has not occurred by December 31, 2013, then this Agreement, thereafter, may be terminated by the City, upon ninety (90) days prior written notice to Conergy, provided that Conergy has not commenced construction of the Conergy Solar Project on the West Site and does not, during such ninety (90) day period, commence construction of the Conergy Solar Project and thereafter diligently pursue such construction to completion. The right of the City to terminate this Agreement pursuant to this Section 1 shall be the City's sole and exclusive remedy in the event Conergy elects not to construct the Conergy Solar Project on the West Site, notwithstanding Section 12 of this Agreement.

As used herein, "commencement of construction" shall mean, without limitation, the siting of earthmoving or construction equipment for the purpose of construction, installation, or placement of the Conergy Solar Project, the grading of roads or pads or the boring of holes or digging of trenches for foundations for the Conergy Solar Project or the start of vertical construction, installation, or placement of the Conergy Solar Project.

As used herein, the "operations date" shall mean the date the Conergy Solar Project is installed on the West Site and begin delivering electricity to a third party power purchaser, which is currently anticipated to be SMUD (Sacramento Municipal Utility District).

2. **Rent.**

- A. **Percentage Rent.**

- (1) Conergy shall pay to the City each Fiscal Year (defined in subsection (6), below) or partial Fiscal Year during the term of this Agreement, six percent (6%) of Conergy's gross income from operation of the Conergy Solar Project.
- (2) Gross income consists of the total, as determined under the cash method of accounting, of the following:
 - (a) Gross proceeds for the sale of electricity;
 - (b) All other income derived from the lease and license of the West Site.
- (3) On or before July 1 of each Fiscal Year during the term of this Agreement, beginning in the first full Fiscal Year during which the Conergy Solar Project has been installed on the West Site and has begun delivering electricity to a third party power purchaser, Conergy shall, without notice or demand from the City, deliver to the City in the manner prescribed in this Agreement for giving notices, a statement prepared in accordance with generally accepted accounting principles consistently applied and by a Certified Public Accountant reasonably acceptable to the City showing the gross income and deductions as provided in subsections (1) through (3) of this Section 2.B. for the preceding Fiscal Year (defined in subsection (6), below) and shall simultaneously pay the percentage rent due the City under this Agreement for that Fiscal Year. Payment shall be made in United States currency, or by check or other

order as is then customary in business transactions and is otherwise acceptable to the City in its reasonable discretion. Delivery by mail or other means shall be deemed made in accordance with the definition of delivery set forth in this Agreement.

- (4) Conergy shall keep accurate records of the gross income and deductions as provided in subsections (1) through (3) of this Section 2.B. All records relating to the management, operation, maintenance, repair, construction, or alteration of, or addition to the West Site shall be kept at the principal business office of Conergy for not less than ten (10) years after delivery of the required annual report. The City shall have the right, at its own cost, at any reasonable time, from time to time after giving prior written notice to Conergy, to do or cause to be done any of the following: audit the records or cause an audit of the records to be made; make abstracts from the records; make copies of any or all of the records; or examine and make copies of any or all subleases. Conergy shall make all records specified in the notice available at the time specified in the notice, if reasonable, and at the place where the records are to be kept in accordance with this Section. If the audit discloses that the gross income was understated, Conergy shall immediately pay the additional Percentage Rent to the City, together with interest on the additional amount from the date it was due at a rate equal to ten percent (10%) per annum, and in addition, if the error was in excess of five percent (5%), Conergy shall pay the City's reasonable audit costs.
- (5) For purposes of computing and paying Percentage Rent under this Agreement, a "Fiscal Year" shall be considered to begin on the first day of July of the year in which the Conergy Solar Project has been installed on the West Site and has begun delivering electricity to a third party power purchaser. Any given Fiscal Year (i.e. twelve-month period) begins on the first day of July and ends on the last day of June. Partial years preceding the first Fiscal Year and following the last full Fiscal Year of the term of this Agreement, for purposes of computing and paying Percentage Rent, shall be included in and with the nearest whole Fiscal Year.

B. Time and Place for Payment of Rent.

All Percentage Rent shall be paid at the times set forth in Section 2.A. of this Agreement. All rent required under this Agreement shall be paid to the City at Revenue Division, 915 I Street, Sacramento, California 95814, or any other place or places that the City may designate by written notice to Conergy. If Conergy fails to make any payment to the City required of it under this Agreement when due, interest shall accrue on the overdue amount, from the date overdue until the date paid, at a rate equal to ten percent (10%) per annum.

3. **No Partnership or Joint Venture.** Nothing in this Agreement shall be construed to render either Party in any way or for any purpose a partner, joint venturer, or associate in any relationship with the other Party, nor shall this Agreement be construed to authorize either Party to act as agent for the other.
4. **Compliance with Laws.** Conergy shall, at Conergy's own cost and expense, comply with all statutes, ordinances, regulations, and requirements of all governmental entities, both federal and state and county or municipal, including those requiring capital improvements to the West Site, relating to Conergy's use and occupancy of the West Site, whether those statutes, ordinances, regulations, and requirements are now in force or are subsequently enacted. Such statutes, ordinances, regulations, and requirements include, but are not limited to, CEQA (California Environmental Quality Act), NEPA (National Environmental Protection Act), the Sacramento Local Environmental Regulations (Resolution 91-892) adopted by the City of Sacramento, the City of Sacramento's Post Closure Land Use Plan (PCLUP), prepared in accordance with California Code of Regulations (CCR) Title 27, Section 21190 et seq., 1991 Final Closure and Postclosure Maintenance Plans and subsequent Amendments (Landfill Facility No. 34-AA-0018), WDR Order

No. R5-2004-0039, including the April 2000 Standard Provisions, and the City of Sacramento's Solar Improvements, Final Post Closure Land Use Plan (PCLUP), 28th Street Landfill.

If any license, permit, or other governmental authorization is required for the lawful use or occupancy of the West Site, Conergy shall procure and maintain it throughout the term of this Agreement. The judgment of any court of competent jurisdiction, or the admission by Conergy in a proceeding brought against Conergy by any government entity, that Conergy has violated any such statute, ordinance, regulation, or requirement shall be conclusive as between the City and Conergy and shall constitute grounds for termination of this Agreement by the City by sixty (60) days prior written notice of such termination delivered to Conergy.

5. **Prohibited Uses.** Conergy shall not use or permit the West Site or any portion of the West Site to be improved, developed, used, or occupied in any manner or for any purpose that is in any way in violation of any valid law, ordinance, or regulation of any federal, state, county, or local governmental agency, body, or entity. Furthermore, Conergy shall not maintain, commit, or permit the maintenance or commission of any nuisance as now or hereafter defined by any statutory or decisional law applicable to the West Site or any part of the West Site.

6. **Taxes and Utilities.**

A. **Conergy to Pay Taxes.**

Conergy shall, in addition to other sums to be paid under this Agreement, pay to the County of Sacramento all personal property taxes which shall be levied against the personal property of Conergy. Conergy is also responsible for the payment of possessory interest tax. Pursuant to Section 107.6 of the California Revenue and Taxation Code, there may be a possessory interest tax levied by virtue of the Lease. Conergy shall be billed and shall pay the possessory interest tax directly to the County Assessor's Office.

B. **Payment Before Delinquency.**

Any and all taxes and assessments and installments of taxes and assessments required to be paid by Conergy under this Agreement shall be paid by Conergy at least three (3) days before each such tax, assessment, or installment of tax or assessment becomes delinquent. On the written request of the City, Conergy shall deliver to the City a copy of the official receipt evidencing the payment of any taxes, assessments, and other charges required under this Section 6.

C. **Tax Returns and Statements.**

Conergy shall, as between the City and Conergy, have the duty of attending to, preparing, making, and filing any statement, return, report, or other instrument required by law in connection with the taxes to be paid by Conergy under this Section 6.

D. **Tax Hold-Harmless Clause.**

Conergy shall indemnify and hold the City and the City's property, including the West Site and any improvements now or subsequently located on the West Site, free and harmless from any liability, loss, or damage resulting from any taxes, assessments, or other charges required by this Section to be paid by Conergy and from all interest, penalties, and other sums imposed thereon and from any sales or other proceedings to enforce collection of any such taxes, assessments, or other charges.

E. **Utilities.**

Conergy shall pay or cause to be paid, and hold the City and the City's property including the West Site, free and harmless from, all charges for the furnishing of gas, water, electricity, telephone service, and other public utilities to the West Site during this Agreement's term.

F. Payment by the City.

If Conergy fails to pay within the time specified in this Section any taxes, assessments, or other charges required by this Section to be paid by Conergy, the City may, without notice to or demand on Conergy, pay, discharge, or adjust that tax, assessment, or other charge for the benefit of Conergy. In that event, Conergy shall promptly on written demand of the City reimburse the City for the full amount paid by the City in paying, discharging, or adjusting that tax, assessment, or other charge together with interest thereon at the then-maximum legal rate from the date of payment by the City until the date of repayment by Conergy. If this Section does not specify the time within which Conergy must pay any charge required by this Section, Conergy shall pay that charge before it becomes delinquent.

7. Construction by Conergy.

A. Private Improvements.

Conergy shall, at Conergy's sole cost and expense, construct or cause to be constructed on the West Site the Conergy Solar Project in the manner and according to the terms and conditions specified in this Section. This Agreement shall not be construed as a development agreement within the meaning of Government Code sections 65864 et seq.

B. Requirement of the City's Written Approval.

Subject to Section 7.C., no structure or other improvement of any kind shall be constructed on the West Site unless and until the plans, specifications, and proposed location of that structure or improvement have been approved in writing by the City. Furthermore, no structure or other improvement shall be constructed on the West Site that does not comply with plans, specifications, and locations approved in writing by the City.

C. Preparation and Submission of Plans.

Conergy shall, at Conergy's own cost and expense, engage a licensed architect or engineer to prepare plans and specifications for the Conergy Solar Project and shall submit the following to the City for approval:

- (1) Within fifteen (15) days after execution of this Agreement, two copies of the following:
 - (a) Drawings and materials in the form of plans, elevations, sections, and rendered perspectives sufficient to convey the architectural design of the Conergy Solar Project to the City; and
 - (b) A statement of estimated construction costs for the Conergy Solar Project prepared by the engaged architect or engineer.
- (2) Within fifteen (15) days after approval by the City of the items specified in subsection (1) of this Section and the obtaining by Conergy of any variance permits, use permits, or rezoning required for the Conergy Solar Project, two copies of the following:
 - (a) Detailed working drawings, plans, and specifications for the Conergy Solar Project; and
 - (b) A revised statement of estimated construction costs for the Conergy Solar Project prepared by the engaged architect or engineer.

D. The City's Approval or Rejection of Plans.

Within ten (10) days after receipt by the City of any of the documents submitted to the City for approval under this Section, the City shall either approve those documents by endorsing the City's approval on each such document and returning one set of the documents to Conergy, or the City shall give written notice to Conergy of any objections the City may have to those documents. The City's failure to give written notice to Conergy within that ten-day period of any objections the City may have to the documents shall constitute approval of the documents by the City. Within ten (10) days after service on Conergy of the written notice of the City's objections, Conergy may deliver corrective amendments to the documents to the City and the City shall, within ten (10) days after receiving the corrective amendments, serve written notice on Conergy of the City's approval or rejection of the documents as so amended. Failure of the City to serve written notice on Conergy within that ten-day period after receipt of the corrective amendments shall constitute approval by the City of the documents so amended. Notwithstanding the City's approval of Conergy's plans under this Section or Section 7.E., Conergy shall at its sole and exclusive expense obtain all necessary entitlements and permits as required in Section 14.J. The City's General Services Department shall make all reasonable efforts to assist Conergy in obtaining such entitlements and permits from the City's Community Development Department.

E. Changes in Plans.

After approval by the City of the documents described in subsection D of this Section pertaining to the Conergy Solar Project, any substantial change in the plans or specifications for the Conergy Solar Project shall be approved by the City. For purposes of this subsection, "substantial change" means one that materially changes the exterior appearance of the Conergy Solar Project or one that results in an increase in construction costs of Two Hundred Thousand Dollars (\$200,000) or more. The City's failure to give written notice to Conergy of any objections the City may have to any proposed changes within ten (10) days after a written statement of the proposed changes has been given to the City by Conergy shall constitute the City's approval of the changes. Minor changes in work or materials not constituting a substantial change need not be approved by the City but a copy of the altered plans and specifications reflecting those changes shall be given to the City.

F. All Work on Written Contract.

All work required in the construction of the Conergy Solar Project, including any site preparation work, landscaping work, and utility installation work, as well as actual construction work on the Conergy Solar Project, shall be performed only by competent contractors licensed under the laws of the State of California and shall be performed in accordance with written contracts with those contractors. Each such contract shall provide that the final payment under the contract due to the contractor shall be in an amount equaling at least ten percent (10%) of the full amount payable under the contract and shall not be paid to contractor until whichever of the following last occurs:

- (1) The expiration of 35 days from the date of recording by Conergy as owner of a Notice of Completion of the Conergy Solar Project, Conergy agreeing to record that Notice of Completion promptly within the time specified by law for the recording of that notice; or
- (2) The settlement and discharge of all liens of record claimed by persons who supplied either labor or materials for the construction of the Conergy Solar Project.

G. Performance and Lien Bonds.

Each contractor engaged by Conergy to perform any services for construction of the Conergy Solar Project, including any construction, site preparation, utility installation, landscaping, or parking lot construction services, shall furnish to Conergy, who shall deliver copies of both of the following to

the City, at the contractor's own expense at the time of entering a contract with Conergy for those services:

- (1) A bond issued by a corporate surety authorized to issue surety insurance in California in an amount equal to ten percent (10%) of the contract price payable under the contract securing the faithful performance by the contractor of its contract with Conergy; and
- (2) A bond issued by a corporate surety authorized to issue surety insurance in California in an amount equal to ten percent (10%) of the contract price payable under the contract securing the payment of all claims for the performance of labor or services on, or the furnishing of materials for, the performance of the contract.

H. Compliance With Law and Standards.

Conergy shall construct the Conergy Solar Project, perform all work on the West Site, and erect all structures or other improvements on the West Site in accordance with all valid laws, ordinances, regulations, and orders of all federal, state, county, or local governmental agencies or entities having jurisdiction over the West Site; provided, however, that any structure or other improvement erected on the West Site, including the Conergy Solar Project, shall be deemed to have been constructed in full compliance with all such valid laws, ordinances, regulations, and orders when a valid final Certificate of Occupancy entitling Conergy to occupy and use the structures or other improvements have been duly issued by proper governmental agencies or entities. All work performed on the West Site under this Agreement, or authorized by this Agreement, shall be done in a good workmanlike manner and only with new materials of good quality and high standard.

I. Time for Completion.

Conergy shall cause construction of the Conergy Solar Project to be commenced no later than two hundred ten (210) days after approval by the City of the documents described in subsection C (2) of this Section, shall then cause construction of the Conergy Solar Project to be diligently pursued without unnecessary interruption, and shall cause it to be completed and ready for use not later than one hundred eighty (180) days after commencement of its construction. Conergy shall be excused for any delays in construction or commencement of construction caused by the act of the City, the act of any agent of the City, the act of any governmental authority, the act of any public enemy, acts of God, the elements, war, war defense conditions, litigation, strikes, walkouts, or other causes beyond Conergy's control in accordance with Section 14.A.

J. Mechanics' Liens.

At all times during the term of this Agreement, Conergy shall keep the West Site and all improvements now or hereafter located on the West Site free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the West Site by or on behalf of Conergy. If Conergy fails to pay and discharge or cause the West Site to be released from any such lien or claim of lien within thirty (30) days after service on Conergy of written request from the City to do so, the City may, but shall not be obligated to, pay, adjust, compromise, and discharge any such lien or claim of lien on any terms and in any manner that the City may deem appropriate. In that event, Conergy shall, on or before the first day of the next calendar month following notice of any such payment by the City, reimburse the City for the full amount paid by the City in paying, adjusting, compromising, and discharging that lien or claim of lien, including any reasonable attorneys' fees or other costs expended by the City, together with interest at the then-maximum legal rate from the date of payment by the City to the date of repayment by Conergy.

8. Repairs and Restoration.

A. Requirements of Governmental Agencies.

At all times during the term of this Agreement, for those portions of the West Site that are subject to the Lease or the License, Conergy, at Conergy's own cost and expense, shall do all of the following:

- (1) Make all alterations, additions, or repairs to the West Site or the improvements on the West Site required as a result of the Conergy Solar Project by any valid law, ordinance, statute, order, or regulation now or hereafter made or issued by any federal, state, county, local, or other governmental agency or entity;
- (2) Observe and comply with all valid laws, ordinances, statutes, orders, and regulations now or hereafter made or issued respecting the West Site or the improvements on the West Site by any federal, state, county, local, or other governmental agency or entity; and
- (3) Contest if Conergy, in Conergy's sole discretion, desires by appropriate legal proceedings brought in good faith and diligently prosecuted in the name of Conergy, or in the names of Conergy and the City when appropriate or required, the validity or applicability to the West Site, as a result of the Conergy Solar Project, of any law, ordinance, statute, order, or regulation now or hereafter made or issued by any federal, state, county, local, or other governmental agency or entity; provided, however, that any such contest or proceeding, though maintained in the names of Conergy and the City and shall be without cost to the City.

B. Conergy's Duty to Restore Premises.

If at any time during this Agreement's term, any improvements made by Conergy now or hereafter on the West Site are destroyed in whole or in part by fire, theft, the elements, or any other cause not the fault of the City, this Agreement shall continue in full force and effect and Conergy, at Conergy's own cost and expense, shall repair and restore the damaged improvements. Any restoration by Conergy shall comply with original plans for the improvements described in Section 7 of this Agreement, except as may be modified by Conergy to comply with the terms of any sublease of the improvements, or except as may be otherwise modified by Conergy and approved in writing by the City. The work of repair and restoration shall be commenced by Conergy within sixty (60) days after the damage or destruction occurs and shall be completed with due diligence not later than sixty (60) days after the work is commenced, provided that Conergy shall give priority to and promptly remedy any unsafe condition at the West Site resulting from such damage or destruction. In all other respects, the work of repair and restoration shall be done in accordance with the requirements for original construction work on the West Site set forth in Section 7 of this Agreement. Conergy's obligation for restoration described in this subsection shall exist whether or not funds are available from insurance proceeds.

C. Option to Terminate Agreement for Destruction.

Notwithstanding subsection B of this Section, Conergy shall have the right to terminate this Agreement if, during the last five (5) years of the Agreement's term, the improvements are damaged or destroyed by a casualty for which Conergy is not required under this Agreement to carry insurance and the cost to repair or restore the damaged or destroyed improvements exceeds fifty percent (50%) of the Fair Market Value (as defined in Section 14.P(2)) of the improvements immediately before the damage or destruction.

D. Application of Insurance Proceeds.

Any and all fire or other insurance proceeds that become payable at any time during the term of this Agreement because of damage to or destruction of any improvements on the West Site shall be paid to Conergy and applied by Conergy toward the cost of repairing and restoring the damaged or destroyed improvements in the manner required by subsection B of this Section, or, if this Agreement is terminated under subsection C of this Section, applied by Conergy toward payment of the Encumbrance(s) (defined in Section 17.A.).

9. Indemnity; Hazardous Materials; Loss and Damage; Insurance.

A. Conergy shall indemnify, defend and hold the City harmless from and against any third party claim to the extent such claim arises from the negligent acts or omissions or willful misconduct of Conergy or any of its employees or agents in the performance of this Agreement.

B. Conergy shall not violate any federal, state or local law, ordinance, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local law, ordinance, or regulation brought onto the West Site by Conergy in its construction, reconstruction, maintenance, use or removal of the Conergy Solar Project. Conergy shall not introduce or use any such substance on the West Site in violation of any applicable law. Conergy shall be responsible for the complete cost of removal and/or remediation of any such substance introduced by Conergy as may be required by any applicable federal, state, or local law or regulation.

C. Conergy shall be responsible for any damage or loss to the City's present or future facilities, to the extent directly contributed to or caused by Conergy's operation or performance under this Agreement, including, but not limited to, any damage or loss due to Conergy's deposit of hazardous substance, hazardous material, or hazardous wastes including, but not limited to, petroleum onto the West Site.

D. During the term of this Agreement, and until final completion and acceptance of any work required by this Agreement, Conergy shall maintain in full force and effect at its own cost and expense the following insurance coverage:

(1) Minimum Scope & Limits of Insurance Coverage:

- (a) General Liability Insurance is required providing coverage at least as broad as ISO GL Form 00 01 on an occurrence basis for bodily injury including death of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000). The policy shall include coverage for premises, operations, products and completed operations and contractual liability for the term of the policy. The policy shall include a fire legal liability limit of \$50,000 for a small leased space or \$250,000 for a large leased space.
- (b) All Risk Property Insurance including coverage for special perils is required all improvements, fixtures and equipment. All property insurance must be for replacement value and name the City as loss payee.
- (c) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars

G. Verification of Coverage.

Conergy shall provide initial insurance documents to the City representative upon request, prior to execution of this Agreement. The initial insurance documents are attached as Exhibit H. All future insurance renewal documents shall be sent to:

EBIX BPO
212 Kent Street
Portland, MI, 48875
Phone: (517) 647-1700
Fax: (517) 647-7900
Email: CertsOnly@periculum.com

The City of Sacramento may withdraw its offer or cancel this Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement. Failure to provide insurance certificates and endorsements and keep such certificates and endorsements current will be considered a material breach by Conergy of this Agreement.

10. Condemnation.

A. Total Condemnation.

If, during the term of this Agreement, fee title to all of the West Site or to all of the improvements, or the entire leasehold estate of Conergy is taken under the power of eminent domain by any public or quasi-public agency or entity (a "Total Taking"), this Agreement shall terminate as of 12:01 A.M. on whichever of the following occurs first: (1) the date legal title becomes vested in the agency or entity exercising the power of eminent domain, or (2) the date actual physical possession is taken by the agency or entity exercising the power of eminent domain. Thereafter, both the City and Conergy shall be released from all obligations under this Agreement, except those specified in subsection D of this Section.

B. Partial Taking-Improvements.

If the rentable or usable portion of the improvements taken by eminent domain results in a net loss of five percent (5%) or more of the area of the West Site that can, after considering any replacement rentable space that can be lawfully constructed on the remaining portion of the West Site, be devoted to rentable or usable space as compared with the area devoted to that rentable or usable space immediately before the taking, Conergy may terminate this Agreement in the manner prescribed by subsection C of this Section.

C. Termination for Partial Taking.

Conergy may terminate this Agreement for the reasons stated in subsection B of this Section by serving written notice of termination on the City within ninety (90) days after Conergy has received from the City or from the condemning authority written notice of an intended taking that sets forth the extent and scope of the intended taking. If Conergy elects to terminate this Agreement, the effective date of termination shall be the earlier of (1) the date of termination specified in Conergy's notice to the City or (2) the date the condemning authority takes physical possession of the portion of the West Site taken by eminent domain. On termination of this Agreement under this Section, all subleases and subtenancies in or on the West Site or any portion or portions of the West Site created by Conergy under this Agreement shall also terminate and the West Site shall be delivered to the City free and clear of all such subleases and subtenancies; provided, however, that the City may, at the City's option, by mailing written notice to any subtenant, allow the subtenant to attorn to the City and continue its occupancy on the West Site as a tenant or licensee, as the case may be, of the

City. Subject to Section 14.T., on termination of this Agreement under this subsection, both the City and Conergy shall be released from all obligations to the other under this Agreement except those specified in subsection D of this Section.

D. Condemnation Award.

All compensation awarded upon such condemnation, except such compensation as shall be specifically awarded to Conergy for loss of or damages to fixtures owned by Conergy, or business interruption or moving expenses, shall go to the City and Conergy shall have no claim thereto and Conergy irrevocably assigns and transfers to the City any and all rights to all other compensation or damages to which Conergy may become entitled during the term hereof by reason of condemnation.

E. Rent Abatement for Partial Taking.

If title and possession of only a portion of the West Site is taken under the power of eminent domain by any public or quasi-public agency or entity during the term of this Agreement and Conergy does not or cannot under subsection C of this Section terminate this Agreement, then this Agreement shall terminate as to the portion of the West Site taken under eminent domain as of 12:01 A.M. on whichever of the following first occurs: the date title is taken, or the date actual physical possession of the portion taken by eminent domain is taken, by the agency or entity exercising the eminent domain power. Furthermore, the rent payable under this Agreement shall, as of that time, be reduced in the same proportion that the value of the portion of the West Site taken by eminent domain bears to the full value of the West Site at that time; provided, however, that Conergy shall, subject to the provisions of subsection B of this Section, replace any improvements or facilities with equivalent new facilities on the remaining portion of the West Site and do all other acts at Conergy's own cost and expense required by the eminent domain taking to make the remaining portion of the fit for the uses specified in this Agreement.

F. Voluntary Conveyance in Lieu of Eminent Domain.

A voluntary conveyance by the City of title to all or a portion of the West Site to a public or quasi-public agency or entity in lieu of and under threat by that agency or entity to take it by eminent domain proceedings shall be considered a taking of title to all or any portion of the West Site under the power of eminent domain subject to the provisions of this Section.

11. Assignment, Subleasing, and Sublicensing.

A. No Assignment Without the City's Consent.

Conergy may assign this Agreement or any interest in this Agreement, including the leasehold and license, subject to the prior written consent of the City. The City shall not unreasonably withhold or delay its consent, and shall grant consent if the proposed assignee is financially qualified and has sufficient experience in the operation and management of the Conergy Solar Project to perform all the agreements, undertakings, and covenants of this Agreement and all other agreements entered into by Conergy which relate to the management, operation, maintenance, construction, and restoration of the improvements and the property. To assist the City in determining whether or not the proposed assignee is so qualified, Conergy shall furnish to the City at no expense to the City, before that assignment, detailed and complete financial statements of the proposed assignee, audited by a certified public accountant reasonably satisfactory to the City (if the proposed transferee causes its statements to be so audited in its normal course of business), together with detailed and complete information about the business of the proposed assignee, including its experience in operating solar facilities, the use to be made of the property and improvements by the proposed assignee, projections by the proposed assignee of the sources of funds to be used to repay any indebtedness of Conergy

that the proposed assignee will assume or take subject to, or agree to pay to Conergy, and other claims on and requirements for those funds, together with any other information as the City may reasonably require to assist the City in determining whether or not the proposed assignee is so qualified. The City shall have thirty (30) days after receipt of the information described above to notify Conergy of whether it consents or does not consent to the proposed assignment; provided, however, that to the extent review and approval by counsel to the City is required, the City shall have a reasonable amount of time beyond the 30-day period for such review and approval, such additional period not to exceed ninety (90) days following receipt by the City of the information described in this Section 11.A. Absent any such notification by the City during the 30-day period or such longer period as allowed under this Section 11.A., if applicable, the City shall be conclusively deemed to have consented to the assignment. Consent by the City to one assignment shall not be deemed to be consent to any subsequent assignment. Any assignment made contrary to the terms of this subsection shall be null and void unless otherwise permitted by Section 11 of this Agreement.

B. Encumbrances and Subsequent Transfers.

Notwithstanding the restrictions of this Section 11, Conergy may without the prior written consent of the City transfer and assign all Conergy's interest under this Agreement, including the License and the Lease, to a Lender under an Encumbrance (as defined in Section 17.A.). Any transfer, conveyance, or assignment resulting from a foreclosure or acceptance of a deed in lieu of foreclosure by any Lender (as defined in Section 17.A.), or any transfer, conveyance, or assignment by any Lender following its acquisition of the Lease and the leasehold estate of Conergy created by the Lease as a result of foreclosure or acceptance of a deed in lieu of foreclosure shall not require the prior consent of the City. Any foreclosure or acceptance of a deed in lieu of foreclosure by any Lender resulting in such a foregoing transfer, conveyance, or assignment of the Lease and leasehold estate shall also transfer, convey, or assign the License to said same Lender and shall not require the prior consent of the City.

C. No Sublease or Sublicense Without The City's Consent.

Conergy may sublease or sublicense all or any portion of the West Site from time to time, and at all times during the term of this Agreement, subject to the prior written consent of the City, which consent shall not unreasonably withhold; provided, however, that the following conditions are met:

- (1) The term of any sublease or sublicense shall not extend beyond the term of this Agreement;
- (2) Any and all subleases and sublicenses shall be expressly made subject to all of the terms, covenants, and conditions of this Agreement; and
- (3) Any subtenant or sublicensee shall be required to attorn to the City in the event of Conergy's default under this Agreement.

D. Subordination Agreements.

The City shall fully cooperate with and assist Conergy in (1) obtaining a subordination agreement, non-disturbance agreement or other appropriate agreement from each party holding a lien (recorded or unrecorded) or in possession of the West Site that might interfere with Conergy's rights under this Agreement. For purposes of this Agreement, a "non-disturbance agreement" is an agreement between Conergy and the holder of such a lien providing that the holder of the lien shall not disturb Conergy's possession or rights under this Agreement or terminate this Agreement so long as the City is not entitled to terminate this Agreement under the provisions of this Agreement. The City shall not grant, create, allow or suffer any such lien or other encumbrance on title to the West Site.

12. **Default and Remedies.**

A. **Continuation of Agreement in Effect.**

If Conergy breaches this Agreement and abandons the West Site before the natural expiration of the Agreement's term, the City may, subject to its obligation to mitigate its damages, continue this Agreement in effect by not terminating Conergy's right to possession of the West Site under the Lease and the License, in which event the City shall be entitled to enforce all the City's rights and remedies under this Agreement, including the right to recover the rent specified in this Agreement as it becomes due under this Agreement.

B. **Termination, Unlawful Detainer, Ejectment, and Trespass.**

In the event of a Conergy default under this Agreement and Conergy's failure to cure such default in accordance with Section 12.C., the City may terminate this Agreement by written notice to Conergy and may also do the following:

- (1) Bring an action to recover the following from Conergy:
 - (a) The worth at the time of award of the unpaid rent that had been earned at the time of termination of this Agreement;
 - (b) The worth at the time of award of the amount by which the unpaid rent that would have been earned after termination of this Agreement until the time of award exceeds the amount of rental loss that Conergy proves could have been reasonably avoided;
 - (c) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss that Conergy proves could be reasonably avoided; and
 - (d) Any other amount necessary to compensate the City for all detriment proximately caused by Conergy's failure to perform Conergy's obligations under this Agreement.
- (2) Bring an action, in addition to or in lieu of the action described in subsection (B) (1) this Section, to reenter, regain possession, and for damages in the manner provided by the laws of unlawful detainer, the laws of tort, or any other applicable law of the State of California then in effect.

C. **Breach and Default by Conergy.**

All covenants and agreements contained in this Agreement are declared to be conditions to this Agreement and to the Lease and License herein. If Conergy fails to perform any covenant, condition, or agreement contained in this Agreement and the default is not be cured within sixty (60) days after written notice of the default is served on Conergy by the City, then Conergy shall be in default under this Agreement. In addition to Conergy's failure to perform any covenant, condition, or agreement contained in this Agreement within the cure period permitted by this subsection, the following shall constitute a default by Conergy under this Agreement:

- (1) The appointment of a receiver to take possession of the leased or licensed portions of the West Site or improvements thereon, or of Conergy's interest in, to, and under this Agreement, the leasehold estate or of Conergy's operations on the West Site for any

reason, including, without limitation, assignment for benefit of creditors or voluntary or involuntary bankruptcy proceedings, when not released within sixty (60) days;

- (2) An assignment by Conergy for the benefit of creditors; or the voluntary filing by Conergy or the involuntary filing against Conergy of a petition, other court action, or suit under any law for the purpose of (a) adjudicating Conergy a bankrupt, (b) extending time for payment, (c) satisfaction of Conergy's liabilities, or (d) reorganization, dissolution, or arrangement on account of, or to prevent, bankruptcy or insolvency; provided, however, that in the case of an involuntary proceeding, if all consequent orders, adjudications, custodies, and supervisions are dismissed, vacated, or otherwise permanently stayed or terminated within ninety (90) days after the filing or other initial event, then Conergy shall not be in default under this subsection; and
- (3) The subjection of any right or interest of Conergy to or under this Agreement to attachment, execution, or other levy, or to seizure under legal process when the claim against Conergy is not released within ninety (90) days.

D. Cumulative Remedies.

The remedies given to the City in this Section of this Agreement shall not be exclusive but shall be cumulative with and in addition to all remedies now or hereafter allowed by law and elsewhere provided in this Agreement.

E. Waiver of Breach.

The waiver by the City of any breach by Conergy of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach by Conergy of either the same or a different provision of this Agreement.

F. Surrender of Premises.

On expiration or earlier termination of this Agreement, Conergy shall surrender the West Site and all improvements in or on the West Site to the City in as good, safe, and clean condition as practicable, reasonable wear and tear excepted. Unless otherwise directed by the City in writing or otherwise mutually agreed upon by the Parties, within ninety (90) days of the date termination of this Agreement, at Conergy's sole cost and expense, Conergy shall remove all of its improvements from the West Site, including the Conergy Solar Project, and shall restore the City's property to its original condition prior to the installation of the improvements, normal wear and tear excepted. In the event that the West Site is damaged by Conergy in the process of removal, such damage shall be repaired forthwith by Conergy at its sole cost and expense.

Without limiting the provisions of this subsection, such removal and repair shall include, but not limited to:

- (1) Removal of all above surface facilities and improvements and other personal property owned, located, installed or constructed by or on behalf of Conergy thereon;
- (2) Removal of all concrete footings, foundations, and other fixtures of Conergy to a depth of two (2) feet below the surface grade;
- (3) Covering up all pit holes, trenches, borings, and excavations made by or on behalf of Conergy on the West Site (or applicable portion thereof);

- (4) Leaving the surface of the West Site (or applicable portion thereof) free from debris arising from the foregoing or from the operations or activities of Conergy;
- (5) Otherwise restoring any portion of the West Site (or applicable portion thereof) disturbed by Conergy to a condition reasonably similar to its original condition, normal wear and tear excepted, consistent with the uses permitted by this Agreement;
- (6) Reclamation shall include, as reasonably required, repair or replacement of damaged drainage tile, leveling, terracing, mulching, and other reasonably necessary measures to prevent soil erosion; and
- (7) The City shall provide Conergy with reasonable access to the West Site during the performance of such removal, repair, and other work by Conergy for a period of three (3) months following the termination or expiration of this Agreement. During such period, Conergy shall not be required to pay the amounts set forth in Section 2 of this Agreement or other rent. If Conergy fails to remove any the Conergy Solar Project within three (3) months following the termination or expiration of this Agreement, or such longer period as the City may provide by extension, the City may do so, in which case Conergy shall reimburse the City for the reasonable and documented costs of removal, repair, and/or restoration incurred by the City, net of any amounts reasonably recoverable by the City with respect to the salvage value of any such facilities, improvements, or personal property.

G. Breach by the City.

In the event that the City fails to comply with or perform any or all of the obligations, covenants, warranties or agreements to be performed, honored or observed by the City hereunder, or interferes with Conergy's use of the West Site in accordance with the terms of this Agreement, which default continues for more than thirty (30) days after Conergy's delivery of written notice to the City specifying such breach, Conergy may exercise any right or remedy available to Conergy at law or in equity, including but not limited to obtaining an injunction or terminating this Agreement. The remedies given to Conergy in this Section 12.G. of this Agreement shall not be exclusive but shall be cumulative with and in addition to all remedies now or hereafter allowed by law and elsewhere provided in this Agreement. The waiver by Conergy of any breach by the City of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach by the City of either the same or a different provision of this Agreement.

13. Warrants, Representations, Covenants; Assumption of Risks by Conergy.

A. The City warrants and representations.

In addition to any representations and warranties made elsewhere in this Agreement by the City, including in Exhibit I, the City warrants and represents that, as of the Effective Date of this Agreement and as of closing of Escrow:

- (1) The City is the fee owner of the West Site, the West Site is free and clear of all liens, encumbrances, easements, leases, mortgages, deeds of trust, security interests, fractured interests, mineral, oil or gas rights, options to purchase or lease, claims and disputes, and there are no tenants on or other parties in possession of the West Site, and the City is authorized to enter into and perform the obligations of this Agreement, including those contained in, and the granting of, the Lease and the License, in accordance with the terms hereof.

- (2) To its actual knowledge, and without a search of all the City records, the City is not subject to any contract or agreement which would prevent the consummation of this Agreement, or cause it to be in default under such contract or agreement.
- (3) To its actual knowledge, and without a search of official court or other tribunal records, there is no action, suit, or proceedings (including but not limited to eminent domain proceedings) which have been instituted or threatened, which would materially affect the West Site or the right to construct improvements thereon, at law or in equity, or before any federal, state or municipal governmental department, commission, board, bureau, agency, or instrumentality.
- (4) **CONDITIONS OF THE PROPERTY; INSPECTIONS AND STUDIES.** The West Site is a portion of a closed landfill. Subject to and except for subsections A (1) – A (3) of this Section and Exhibit I, the City provides no warranty or representations as to the condition or suitability of the West Site, the presence of hazardous materials, or as to any other matter whatsoever, it being understood that, except for those subsections, the City is leasing and licensing portions of the West Site to Conergy on an “**AS IS**” basis. Conergy may conduct due diligence on the West Site to determine: the environmental condition of the West Site, as to which Conergy shall conduct such tests and analyses as it deems appropriate for the presence of hazardous materials; the economic feasibility of the Conergy Solar Project; the feasibility of obtaining financing for the Conergy Solar Project; the feasibility of obtaining any and all required land use entitlements necessary for Conergy’s intended use of the West Site and for the design and construction of all the improvements including, without limitation, any restrictions relating to size or nature of facilities; property lines and boundaries; the availability and adequacy of utilities and infrastructure, public and private; neighborhood concerns; and geological conditions, as applicable. Conergy shall, within and prior to commencement of the term of this Agreement, provide written notice to the City of its approval or disapproval of the condition of the West Site, other than the condition of title which is covered by Section 15.B., below. In the event that Conergy either fails to give such written notice, or gives written notice of disapproval, this Agreement shall terminate without further liability of either Party; provided, however, that Conergy shall pay all costs of its investigation, and shall indemnify and defend the City therefrom without regard to the termination of this Agreement. City agrees to provide to Conergy reasonable access to the West Site for the purposes of allowing Conergy to conduct such testing and studies as it deems appropriate, subject to Conergy’s execution of such agreements relating to access and indemnification as may be required by the City. Conergy shall provide the City, at no cost to City, with a copy of any report generated by or on behalf of Conergy in connection with the physical or environmental condition of the West Site.

B. Conergy warrants, representations, and assumption of risks.

Conergy warrants, and represents that, as of the Effective Date of this Agreement and as of closing of Escrow:

- (1) Conergy is authorized to enter into and perform the obligations of this Agreement.
- (2) To its actual knowledge, and without a search of all Conergy’s records, Conergy is not subject to any contract or agreement which would prevent the consummation of this Agreement, or cause it to be in default under such contract or agreement.

- (3) To its actual knowledge, and without a search of official court or other tribunal records, there is no action, suit, or proceedings (including but not limited to eminent domain proceedings) which have been instituted or threatened, which would materially affect Conergy's ability to perform its obligations hereunder or construct the Conergy Solar Project, at law or in equity, or before any federal, state or municipal governmental department, commission, board, bureau, agency, or instrumentality.
- (4) **Assumption of risks.** Conergy agrees to assume all risk of damage to the Conergy Solar Project and to any other property of Conergy or any other property under the control or custody of Conergy while upon the West Site, caused by or contributed to in any way by Conergy's construction, reconstruction, operation, maintenance or repair activities on the West Site, or its use of pipelines, other facilities, improvements or roadways located on the West Site, present or future.

Moreover, Conergy **acknowledges and agrees** that, with the exception of subsections A (1) – A (3) of Section 13.A and Exhibit I, the City has not made, does not make, and specifically negates and disclaims any representations or warranties of any kind or character whatsoever, whether express or implied, oral or written, past or present (relative to the execution of this Agreement), with regard in any way to the transactions described herein, each of which is material and is being relied upon by Conergy and the truth and accuracy of which shall constitute a condition precedent to the City's obligations hereunder.

No person acting on behalf of the City is authorized to make any representations or warranties of any kind or character whatsoever, with the exception of those set forth in subsections A (1) – A (3) of Section 13.A and Exhibit I, whether express or implied, oral or written, past, present or future, with regard to the West Site, including without limitation: (i) its value; (ii) its nature, condition or quality (including, without limitation, its water, soil and geology); (iii) its compliance with any laws, rules, ordinances or regulations of any applicable governmental authority or body; (iv) its suitability for activities which Conergy may desire to conduct thereon; (v) its suitability for the development, remodeling or improvements desired by Conergy, or the ability of Conergy to develop, remodel, or improve the West Site for the Conergy Solar Project; (vi) the income to be derived from the West Site or the Conergy Solar Project; (vii) the habitability, merchantability, profitability, or fitness for a particular purpose of the West Site; (viii) the environmental condition of the West Site; and (ix) the quality, state of repair or lack of repair of any improvements on the West Site.

- (5) **Special Provisions Relating to Hazardous Materials.** In view of Conergy's ability to ascertain the nature and extent of any risks associated with the conditions of the West Site in the context of its control of its due diligence investigation, the Parties hereby agree to the provisions of Exhibit I, attached hereto and incorporated herein, entitled "Hazardous Materials Disclosure and Release."

C. **No Interference.**

The City's activities and any grant of rights that the City makes to any person or entity, whether located on the West Site or elsewhere, shall not, currently or prospectively, interfere with: the construction, installation, maintenance or operation of the Conergy Solar Project, access over the West Site to the Conergy Solar Project; any development activities (as described in Section 16.C. and 23.C.); or the undertaking of any other activities permitted hereunder. Without limiting the

generality of the foregoing, the City shall not engage in any activity that might cause a decrease in the output or efficiency of the Conergy Solar Project.

14. **Other Provisions.**

A. **Force Majeure.**

Except as otherwise expressly provided in this Agreement, if the performance of any act required by this Agreement to be performed by either the City or Conergy is prevented or delayed by reason of “force majeure,” including any act of God, strike, lockout, labor trouble, inability to secure materials, restrictive governmental laws or regulations, or any other cause (except financial inability) not the fault of the Party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused. However, nothing contained in this Section shall excuse the prompt payment of rent by Conergy as required by this Agreement or the performance of any act rendered difficult or impossible solely because of the financial condition of the Party required to perform the act.

Notwithstanding the above, the term “force majeure” shall also include the termination of the PPA with respect to the West Site, even though such action may be deemed to be within the control of Conergy. In the event the PPA covering the output of the Conergy Solar Project terminates, Conergy may at its option immediately terminate this Agreement by written notice delivered to the City.

B. **Notices to the City.**

Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to the City by Conergy or any Lender described in Section 17 of this Agreement, shall be in writing and shall be deemed duly served and given when personally delivered to the City, or, in lieu of personal service, when delivered by reputable overnight courier, or three (3) days following deposit with the U.S. mail, registered or certified, return receipt requested and postage prepaid, addressed to the City as follows:

City of Sacramento
Department of General Services
Facilities and Real Property Management Division
c/o Facilities Manager
5730 24th Street, Building 4
Sacramento, CA 95822

The City may change the City's address for the purpose of this section by giving written notice of that change to Conergy in the manner provided in subsection C of this Section 14; Conergy shall then transmit a copy of that notice to any Lender described in Section 17 of this Agreement.

C. **Notices to Conergy.**

Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to Conergy by the City shall be in writing and shall be deemed duly served and given when personally delivered to any managing employee of Conergy, or, in lieu of personal service, when delivered by reputable overnight courier, or three (3) days following deposit with the U.S. mail, registered or certified, return receipt requested and postage prepaid, addressed to Conergy as follows:

Conergy Projects, Inc.
3947 Lennane Drive, Suite 275
Sacramento, CA 95834
Attn: Director of Project Management

Conergy may change its address for the purpose of this section by giving written notice of that change to the City in the manner provided in subsection B of this Section 14.

D. Governing Law.

This Agreement, and all matters relating to this Agreement, including the leasehold and license, shall be governed by the laws of the State of California.

E. Binding on Heirs and Successors.

This Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and permitted assigns of the Parties, but nothing in this Section 14.E. shall be construed as a consent by the City to any assignment of this Agreement or any interest in the Agreement, including the Leasehold and the License, by Conergy except as provided in Section 11 of this Agreement.

F. Partial Invalidity.

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect unimpaired by the holding.

G. Sole and Only Agreement.

This Agreement constitutes the sole and only agreement between the City and Conergy respecting the West Site, the leasing of the West Site to Conergy, the licensing of the West Site to Conergy, the construction of the Conergy Solar Project on the West Site, and the terms set forth in this Agreement, and correctly sets forth the obligations of the City and Conergy to each other as of the Effective Date. Any agreements or representations respecting the West Site, its leasing to Conergy by the City, its licensing to Conergy, or any other matter discussed in this Agreement not expressly set forth in this Agreement are null and void.

H. Time of Essence.

Time is expressly declared to be of the essence of this Agreement.

I. Waste; Quiet Enjoyment.

The City covenants and agrees that Conergy, upon paying all applicable charges due and owing from time to time provided for in this Agreement and upon observing and keeping all of the covenants, agreements, and provisions of this Agreement on its part to be observed and kept, shall lawfully and quietly hold, occupy, and enjoy the portions of the West Site covered by the Lease and the License during the term of this Agreement, without hindrance by or from anyone claiming by, through or under the City. Conergy shall not commit, or suffer to be committed, any waste upon the West Site, or any nuisance or other act or thing which may disturb the City's use of the Sutter's Landing Park or those portions of the West Site not covered by the Lease and the License.

J. Entitlements.

Conergy, as a condition of Agreement, shall at its sole and exclusive expense, obtain all necessary local land use entitlements, building permits, and other city, county, state or federal permits as may be necessary to construct, install, maintain, repair, replace, and operate the Conergy Solar Project. The provisions of this Agreement shall not be construed as a waiver of any required entitlement, permit, or fee, or any procedure required to obtain any such entitlement or permit. By executing this Agreement, Conergy warrants and represents that it has obtained or will obtain, as applicable, all necessary local land use entitlements, building permits, and other city, county, state or federal permits to construct, install, maintain, repair, replace, and operate and remove the Conergy Solar Project.

K. Certain Notifications.

The City shall promptly notify Conergy in writing of, and shall deliver to Conergy, immediately upon receipt, copies of any notices or communications received by the City relating to: (a) compliance with or violation of laws, ordinances, statutes, orders and regulations applicable to the Conergy Solar Project, the West Site, or Conergy's development activities set forth in Section 16.C. and Section 23.C. of this Agreement; (b) compliance with or violation of laws, ordinances, statutes, orders and regulations relating to hazardous materials on the West Site; (c) the filing or threatened filing of any construction or mechanic's lien against the solar facilities or any interest in the West Site, whether or not arising through Conergy; and (d) any litigation or other proceeding filed or threatened in relation to the Conergy Solar Project, Conergy's development activities on the West Site, this Agreement, or any interest of the City or Conergy in the West Site or hereunder.

L. Real Estate Broker Fees.

No brokers' commission, finders' fees, or other charges are due any broker, agent, or other party in connection with either Party's execution of this Agreement, or if any are now due or shall become due in the future, then the applicable Party shall promptly pay the same from its own funds.

M. Construction of Language.

In all cases the language in all parts of this Agreement shall be construed simply, according to its fair meaning and not strictly for or against the City or Conergy.

N. Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

O. Exhibits.

All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

P. Ownership of Improvements; Option to Purchase by the City.

- (1) **Title.** Title to all improvements, including the Conergy Solar Project, to be constructed on the West Site under this Agreement shall be deemed personal property, and not a fixture of the West Site, and owned by Conergy. The City shall have no ownership or other interest in the Conergy Solar Project, or any profits derived therefrom, and Conergy may mortgage, sell, lease or remove the Conergy Solar Project in accordance with the terms hereof. Except for rent as described in

Section 2, the City shall not be entitled to any payments, credits, benefits, emissions reductions, offsets, incentives, grants or allowances of any kind, howsoever entitled, attributable to the Conergy Solar Project or the electric energy, capacity or other generator-based products produced therefrom, all of which shall accrue solely to the benefit of Conergy. The City shall have no ownership or other interest in any scientific or engineering data at any point in time or for any duration of time collected at the Conergy Solar Project or on the West Site. Such scientific or engineering data is the sole and exclusive property of Conergy. Possession of such data by the City shall not constitute ownership of such data.

- (2) **Option to purchase.** Conergy hereby grants to the City an option to purchase the Conergy Solar Project. The City may exercise this option by written notice delivered to Conergy at any time on or after the commencement of the nineteenth (19th) year of the term of this Agreement, but at least one hundred eighty (180) days in advance of the expiration of the term of this Agreement, provided the City is not in default under this Agreement, for the purchase price of the greater of Five Hundred Eighty Thousand Dollars (\$580,000) or the Fair Market Value of the Conergy Solar Project, provided that any purchase and sale made under this Section 14.P(2) shall be made “as-is” with no warranties of any kind. For purposes of this Agreement, “Fair Market Value” means the price that would be paid in an arm’s length, free market transaction, for cash, between an informed, willing seller and an informed, willing buyer (who is neither a lessee in possession nor a used equipment or scrap dealer), neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age and performance of the Conergy Solar Project and advances in solar technology, provided that installed equipment shall be valued on an installed basis and costs of removal from a current location shall not be a deduction from the valuation. Within sixty (60) days of its receipt of notice that the City intends to exercise its option to purchase the Conergy Solar Project, Conergy shall give the City its appraisal of the Fair Market Value of the Conergy Solar Project. The City may, but is not obligated to, accept such appraisal. If the City does not accept such appraisal within ten (10) days of receiving the appraisal from Conergy, the Parties shall meet to discuss the appraisal. If they are unable to reach agreement within sixty (60) days of the City’s receipt of the appraisal from Conergy, the appraisal procedure set forth below shall be undertaken. Notwithstanding this Section 14.P(2), in the event that Conergy enters into a sale/leaseback transaction in connection with funding the installation of the Conergy Solar Project, the process of determining the Fair Market Value of the Conergy Solar Project set forth herein shall be undertaken consistently with the terms of such transaction so that the process for determining Fair Market Value under this Agreement shall be the same as provided in the agreements for such sale/leaseback transaction. If the Parties are unable to agree on the appraisal provided to the City by Conergy, the Parties shall, within ten (10) business days of the end of the 60-day period described in above, select an independent appraiser who shall be a neutral, disinterested party, who has never been an officer, director, manager, employee or attorney of either Party or any of its affiliates (the “Independent Appraiser”). If the Parties do not agree upon the appointment of an Independent Appraiser within such ten (10) business day period, then at the end of such period, the Parties shall notify each other in writing of their respective designation of three proposed Independent Appraisers. Each Party shall, within five (5) business days of receipt of such notice, strike two (2) of the proposed Independent Appraisers designated by the other Party, and shall provide notice thereof to the other Party. The remaining two (2) proposed Independent Appraisers shall, within two (2) business days of each Party’s notice, select a third Independent Appraiser (who may be one of the five (5) Independent Appraisers originally

designated by the Parties or another Independent Appraiser) and such third Independent Appraiser shall perform the duties of the Independent Appraiser as set forth herein. Such selection shall be final and binding on the Parties. If no agreement is made as to the selection of an Independent Appraiser, either Party may apply for the judicial appointment of such Independent Appraiser. Conergy and the City shall each be responsible for payment of one-half (1/2) of the costs and expenses of the Independent Appraiser. The Independent Appraiser shall, within twenty (20) business days of appointment, make a preliminary determination of the Fair Market Value of the Conergy Solar Project (the "Preliminary Determination"). Upon making such Preliminary Determination, the Independent Appraiser shall provide the Preliminary Determination to Conergy and the City, together with all supporting documentation that details the calculation of the Preliminary Determination. Conergy and the City shall have the right to object to the Preliminary Determination within ten (10) business days of receiving such Preliminary Determination, which objections shall be reasonably considered by the Independent Appraiser. Within ten (10) business days after the expiration of such objection period, the Independent Appraiser shall issue to Conergy and the City a final determination (the "Final Determination"), which shall specifically address the objections received by the Independent Appraiser and whether such objections were taken into account in making the Final Determination. Except in the case of fraud or manifest error, the Final Determination of the Independent Appraiser shall be the Fair Market Value.

- (3) **Further Assurance.** Conergy agrees to execute, acknowledge, and deliver to the City any instrument requested by the City as necessary in its opinion to perfect its right, title, and interest to the improvements and the West Site.

Q. Agreement a Public Record.

This Agreement is a public record. As such, it is a matter of public record and shall be regarded as a public record and will be fully disclosed upon receipt of a request for public disclosure; provided, however, that if any information is set apart and clearly marked as "Trade Secret" or "Proprietary" when it is provided to the City, the City will give notice to Conergy of the request for disclosure to allow Conergy to seek judicial protection from disclosure. Failure by Conergy to take timely steps to seek judicial protection from disclosure shall constitute a complete waiver by Conergy of any rights regarding the information designated as "Trade Secret" or "Proprietary" and such information may be disclosed by the City. Under no circumstances will City have any obligations to seek judicial protection from disclosure of this Agreement or from disclosure of any other information.

The City has no liability for any disclosure, unless such disclosure is made in violation of a court order obtained by Conergy or pertains to information marked as "Trade Secret" or "Proprietary" for which the City failed to give the above notice."

R. Initial One-Time Payment.

Conergy shall make an initial one-time payment of twenty five thousand dollars (\$25,000.00) to the City by no later than October 1, 2013 as additional consideration for this Agreement in addition to the rents to be paid and covenants to be performed by Conergy under this Agreement. These funds will be used by the City to design and construct public education/interpretive elements associated with the solar installations.

S. License for Electrical Connections; Transmission

For the Conergy Solar Project, Conergy shall have the right under the license to trench for electrical connections through the northern 50' of the parcels currently known as Assessor Parcel Nos. 003-0042-002 and 003-0050-016 plus within the 28th Street Right of Way thru parcels currently known as Assessor Parcels Nos. 003-0010-001 and 003-0050-016 and to connect to their electrical facilities within 150' east of the 28th street Right of Way and 150' north of the southern boundary of Assessor Parcel No. 003-0010-001. The relevant utility corridors and the location of the POI (Power-On/Off Interrupt), Transformer, and Subpanel under license are depicted in Exhibits J and K hereto. This license shall be irrevocable for the term of the PPA and this Agreement.

T. Survival.

All provisions of this Agreement that would reasonably be deemed to survive the expiration or any termination hereof, shall survive any termination or expiration of this Agreement.

LEASE OF PROPERTY

15. Lease of Property and Term of Lease.

A. Agreement to Lease.

For and in consideration of the rents to be paid and covenants to be performed by Conergy under this Agreement, the City hereby leases, demises, lets and warrants to Conergy, and Conergy hereby leases, hires and takes from the City, a certain portion of the West Site, a certain parcel of land, further identified as Assessor Parcel Number (APN) 003-0010-001, situated in the City of Sacramento, County of Sacramento, State of California, in the Sutter's Park Landing, together with the right to all rents, royalties, credits and profits derived from solar and other energy generation upon, over and across the West Site, on the terms provided herein. The leased portion of the West Site is depicted on Exhibit F attached hereto and incorporated by reference. Conergy is *only* leasing a portion of the West Site and not any of the other portions of the parcel, APN 003-0010-001.

B. Status of Title.

Title to the leasehold estate created by this Agreement is subject to all exceptions, easements, rights, rights-of-way, and other matters of record set forth on the Preliminary Title Report issued by _____, dated _____, 2013, a copy of which is attached as Exhibit G.

16. Use of Premises. Conergy shall not change the use of the West Site under lease without first obtaining the written consent of the City. Conergy shall use the West Site solely for the purposes described in this Section 16:

A. Construction, maintenance, and operation of a photovoltaic solar facility, including 4,508 ground-mounted solar modules. Modules in this array, Array 3 – see Exhibit F hereto – shall be mounted on aluminum racks that support 28 panels mounted in a portrait configuration, and stepped back 100 feet from an elderberry bush to avoid impacts to the federally protected Valley Elderberry Longhorn Beetle. Array 3 shall be completely enclosed with a cyclone fence that matches the fencing, as it now exists and as it may be remodeled from time to time, around the City dog park at the West Site.

B. Conergy shall have the exclusive right to use the leased portions of the West Site in accordance herewith and to the unobstructed receipt of and access to sunlight across the leased portions of the West Site for solar energy purposes, to convert all of the solar resources of the leased portions of the West Site.

- C. Conergy may undertake the following development activities on the leased portion of the West Site:
- (1) Determining the feasibility of solar energy conversion and power generation on the leased portions of the West Site, including studies of available sunlight;
- D. The Parties recognize that power generation technologies are improving and that it is possible that Conergy may (although Conergy is not required to) from time to time replace existing solar facilities on the leased portions of the West Site with newer (and potentially larger) facilities which have increased energy capture and efficiency, and Conergy shall have the right to construct such replacements subject to the following conditions:
- (1) Conergy shall, prior to the commencement of any such replacements, at Conergy's sole cost and expense, furnish to the City a surety company performance and completion bond in form and substance acceptable to the City, issued by a surety company acceptable to the City, naming the City and any first lien institutional leasehold mortgagee as the obligees thereunder, guaranteeing the completion of construction of such changes or alterations in accordance with the approved plans and specifications within a reasonable time, subject to force majeure (as described in Section 14.A.), free and clear of all mechanic's liens or liens of a similar nature.
 - (2) No such replacements shall commence until Conergy shall have given the City twenty (20) days prior written notice of such work in order that the City may post and/or file notices of non-responsibility or notices of a similar nature, and for review of compliance with CEQA and other applicable laws, see Section 4 of this Agreement. Such compliance may include, but not limited to, the preparation of a new Mitigated Negative Declaration for the Conergy Solar Project.
 - (3) Notwithstanding any other Section or provision of this Agreement, under no circumstances shall Conergy commence constructing replacements until served with written notice of City's approval of the plans and specifications. Failure of the City to serve written notice on Conergy after receipt of Conergy's notice of replacements shall not constitute approval by the City of the replacements.
- E. The Parties agree that any obstruction to the receipt of and access to sunlight throughout the leased portions of the West Site is prohibited, whether such obstruction is on the leased portions of the West Site or on adjoining property owned by the City. The City shall not cause any such obstruction.

F. **Clearance rights.**

Conergy shall have the right to trim, cut down, and remove all trees (whether natural or cultivated), brush, vegetation and fire and electrical hazards now or hereafter existing on the leased portions of the West Site which might obstruct receipt of or access to sunlight or endanger the Conergy Solar Project or Conergy's development activities under this Section 16, as determined by Conergy, subject to consent of the City and all applicable laws and regulations

G. **Subjacent and lateral support.**

The City shall not excavate, nor permit excavation, so near the sides of or underneath the Conergy Solar Project as to undermine or otherwise adversely affect its stability.

H. Utility lines.

Conergy shall have the right across adjoining property owned by the City for the installation, maintenance, repair, and use of utility lines and equipment, including, without limitation, for water, natural gas, and electrical transmission.

I. Signage.

Conergy shall have the rights to place signs or advertising related to solar energy on the Conergy Solar Project.

17. Encumbrance.

A. Conergy's Right to Encumber.

Conergy may, at any time and from time to time during the term of this Agreement, encumber to any institutional lender regulated by state or federal authority (referred to in this Agreement as "Lender"), by deed of trust or mortgage or other security instrument, all of Conergy's interest under this Agreement (referred to in this Agreement as a "Encumbrance") for any purpose or purposes without the consent of the City. However, no Encumbrance incurred by Conergy in accordance with this Section shall, and Conergy shall not have power to incur any encumbrance that shall, constitute in any way a lien or encumbrance on the City's fee interest in the West Site. Any Encumbrance shall be subject to all covenants, conditions, and restrictions set forth in this Agreement and to all rights and interests of the City, except as is otherwise provided in this Agreement. Conergy shall give the City prior written notice of any Encumbrance, together with a copy of the deed of trust, mortgage, or other security interest evidencing the Encumbrance.

B. Notice to and Service on Lender.

The City shall mail to any Lender who has given the City written notice of its name and address, a duplicate copy of any and all notices the City may from time to time give to or serve on Conergy in accordance with or relating to this Agreement, including but not limited to any notice of default, notice of termination, or notice regarding any matter on which the City may predicate or claim a default. Any notices or other communications permitted by this or any other Section of this Agreement or by law to be served on or given to Lender by the City shall be deemed duly served on or given to Lender when deposited in the United States mail, first-class postage prepaid, addressed to Lender at the last mailing address for Lender furnished in writing by Lender to the City.

C. No Modification Without Lender's Consent.

For as long as there is any Encumbrance in effect, Conergy and the City hereby expressly stipulate and agree that they will not modify this Agreement in any way nor cancel this Agreement by mutual agreement without the written consent of Lender having that Encumbrance.

D. Right of Lender to Realize on Security.

A Lender with an Encumbrance shall have the right at any time during the term of this Agreement and the existence of the encumbrance to do both of the following:

- (1) Any act or thing required of Conergy under this Agreement, and any such act or thing done and performed by Lender shall be as effective to prevent a forfeiture of Conergy's rights under this Agreement as if done by Conergy; and

- (2) Realize on the security afforded by the leasehold estate by foreclosure proceedings, accepting an assignment in lieu of foreclosure, or other remedy afforded in law or in equity or by the security instrument evidencing the Encumbrance (referred to in this lease as "the Security Instrument"), and
 - (a) To transfer, convey, or assign the title of Conergy to the leasehold estate and/or the License created by this Agreement to any purchaser at any foreclosure sale, whether the foreclosure sale is conducted under court order or a power of sale contained in the Security Instrument, or to an assignee under an assignment in lieu of foreclosure; and
 - (b) To acquire and succeed to the interest of Conergy under this Agreement by virtue of any foreclosure sale, whether the foreclosure sale is conducted under a court order or a power of sale contained in the Security Instrument, or by virtue of an assignment in lieu of foreclosure.

The Lender or any person or entity acquiring the leasehold estate or the License shall be liable to perform Conergy's obligations under this Agreement only during the period, if any, in which that entity or person has ownership of the leasehold estate or possession of the West Site.

E. Right of Lender to Cure Defaults.

For as long as there is in effect any Encumbrance, before the City may terminate this Agreement because of any default under or breach of this Agreement by Conergy, the City must give written notice of the default or breach to Lender and afford Lender the opportunity after service of the notice to do one of the following:

- (1) Cure the breach or default within sixty (60) days after expiration of the time period granted to Conergy under this Agreement for curing a default, when the default can be cured by the payment of money to the City or some other person;
- (2) Cure the breach or default within sixty (60) days after expiration of the time period granted to Conergy under this Agreement for curing a default, when the breach or default must be cured by something other than the payment of money and can be cured within that time; or
- (3) Cure the breach or default in any reasonable time that may be required when something other than money is required to cure the breach or default and cannot be performed within sixty (60) days after expiration of the time period granted to the Conergy under this Agreement for curing a default, provided that acts to cure the breach or default are commenced within that time period after service of notice of default on Lender by the City and are thereafter diligently continued by Lender.

F. Foreclosure in Lieu of Curing Default.

Notwithstanding any other provision of this Agreement, a Lender under an Encumbrance may forestall termination of this Agreement by the City for a default under or breach of this Agreement by Conergy by commencing proceedings to foreclose the Encumbrance. The proceedings so commenced may be for foreclosure of the Encumbrance by order of court or for foreclosure of the Encumbrance under a power of sale contained in the Security Instrument. The proceedings shall not, however, forestall termination of this Agreement by the City for the default or breach by Conergy unless all of the following conditions are met:

- (1) The proceedings are commenced within thirty (30) days after service on Lender of the notice described in Section 17.E. of this Agreement;
- (2) The proceedings are, after having been commenced, diligently pursued in the manner required by law to completion; and
- (3) Lender keeps and performs all of the terms, covenants, and conditions of this Agreement requiring the payment or expenditure of money by Conergy until the foreclosure proceedings are complete or are discharged by redemption, satisfaction, payment, or conveyance of the leasehold estate or the License to Lender.

G. Assignment Without Consent on Foreclosure.

A transfer of Conergy's leasehold interest or the License under this Agreement to any of the following shall not require the prior consent of the City:

- (1) A purchaser at a foreclosure sale of the Encumbrance, whether the foreclosure sale is conducted under court order or a power of sale in the instrument creating the encumbrance, provided Lender under the Encumbrance gives the City written notice of the transfer, including the name and address of the purchaser and the effective date of the transfer;
- (2) An assignee of the leasehold estate of Conergy or the License under an assignment in lieu of foreclosure, provided Lender under the Encumbrance gives the City written notice of the transfer, including the name and address of the assignee and the effective date of the assignment; or
- (3) A purchaser or assignee of the purchaser at a foreclosure sale of the Encumbrance or of the assignee of the leasehold estate of Conergy or the License acquired under an assignment in lieu of foreclosure provided the purchaser or assignee delivers to the City its written agreement to be bound by all of the provisions of this Agreement.

H. New Agreement to Lender.

Notwithstanding any other provision of this Agreement, if this Agreement terminates because of any default under or breach of hereof by Conergy, the City agrees to enter into a new lease and license for the respective portions of the West Site described in this Agreement with Lender under an Encumbrance, as Conergy, provided all of the following conditions are satisfied:

- (1) A written request for the new agreement is served on the City by Lender within thirty (30) days after service on Lender of the notice described in Section 17.E. of this Agreement;
- (2) The new agreement:
 - (a) Is for a term ending on the same date the term of this Agreement would have ended had this Agreement not been terminated;
 - (b) Provides for the payment of rent at the same rate that would have been payable under this Agreement during the remaining term of this Agreement had this Agreement not been terminated; and

- (c) Contains the same terms, covenants, conditions, and provisions as are contained in this Agreement (except those that have already been fulfilled or are no longer applicable);
- (3) Lender, on execution of the new agreement by the City, shall pay any and all sums that would at the time of the execution of the new agreement be due under this Agreement but for their termination and shall otherwise fully remedy, or agree in writing to remedy, any other defaults under or breaches of this lease committed by Conergy that can be remedied;
- (4) Lender, on execution of the new agreement, shall pay all reasonable costs and expenses, including reasonable attorneys' fees and court costs, incurred in terminating this Agreement, recovering possession of the West Site from Conergy or the representative of Conergy, and preparing the new agreement;
- (5) The new agreement shall be subject to all existing subleases and sublicenses between Conergy and subtenants and sublicensees, provided that for any sublease and any sublicense, the subtenant and sublicensee agrees in writing to attorn to Lender (or its assignee); and
- (6) The new agreement shall be assignable by Lender in accordance with Section 11.

I. No Merger of Estates.

For as long as any Encumbrance is in existence, there shall be no merger of the leasehold estate created by this Agreement, the License (if applicable) and the fee estate of the City in the West Site merely because the estates have been acquired or become vested in the same person or entity, unless Lender otherwise consents in writing.

J. Lender as Assignee of Lease.

No Lender under any Encumbrance shall be liable to the City as an assignee of this Agreement unless and until Lender acquires all rights of Conergy under this Agreement through foreclosure, an assignment in lieu of foreclosure, or as a result of some other action or remedy provided by law or by the instrument creating the Encumbrance.

K. Lender as Including Subsequent Security Holders.

Except for purposes of Section 17.H., the term "Lender" as used in this Agreement shall mean not only the institutional lender that loaned money to Conergy and is named as beneficiary, mortgagee, secured party, or security holder in the Security Instrument creating any Encumbrance, but also all subsequent purchasers or assignees of the leasehold interest or the License secured by the Encumbrance.

L. Two or More Lenders.

In the event two or more Lenders each exercise their rights under this Agreement and there is a conflict that renders it impossible to comply with all requests of Lenders, the Lender whose Encumbrance would have senior priority in the event of a foreclosure shall prevail.

18. **Maintenance by Conergy.** At all times during the term of this Agreement Conergy shall, at Conergy's own cost and expense, keep and maintain the leased portion of the West Site, all improvements, and all appurtenances (including landscaped areas) now or hereafter on the leased portion of the West Site in a first-class condition, in good order and repair, and in a safe and clean

condition. Additionally, at Conergy's own cost and expense, Conergy's maintenance obligations shall also include all of the following:

- A. Fencing: Conergy to use similar vinyl coated chain link fencing material for the security of Array 3 and to maintain security fencing in good condition throughout the term of the Agreement. If damaged, the fencing shall be repaired within a 48 hour notice to Conergy. If Conergy's fails to respond within 48 hours, the City will dispatch its crews or contractors to repair fence and invoice Conergy the cost thereof. Conergy grants the City, at its own cost and expense, the right to make artistic additions to the fencing and/or perimeter of the Conergy Solar Project, provided that these additions do not in any way affect Conergy's ability to maintain and keep its facility secure nor affect Conergy's permitted use under this Agreement.
- B. Annual maintenance of the aggregate-base access road, including re-grading and shaping to assure a uniform roadway cross-section and proper drainage and re-graveling on an annual basis.
- C. Conergy to provide sufficient security features to keep the Conergy Solar Project safe and secure, including, but not limited to, motion lights, and motion or infrared triggered flash cameras fed to remote viewing location.

This contract requirement is not intended to protect any individuals or their property or otherwise establish or create a special relationship with any particular class or group of persons, including, but not limited to, Conergy, its employees, or any member of the public. This contract requirement neither creates nor imposes any duty to protect on the part of the City nor any of its departments, divisions, officials, agents, employees, vendors, or contractors. The obligation of complying with the requirement is placed solely upon Conergy. Nothing in this Agreement or this Section shall be interpreted as requiring or promising any response by security guards or public safety officers.

- D. When servicing the Arrays, Conergy and its contractors will park their service vehicles within the fenced solar enclosure or on the public parking lot and not block public access to the rest of the property facility.
- E. Conergy will check in with the security guard at the City Corporation Yard in the Sutter's Park Landing and show appropriate identification before performing maintenance or site visits.
- F. Conergy is not allowed to construct below grade under the ground based solar array or penetrate the asphalt cap on the West Site by any means.
- G. Upon written notice from the City of needed repairs to the asphalt cap, Conergy shall at its own costs and expense remove and replace portions of Array 3 as needed to permit the City, its employees, agents, consultants, contractors, or representatives to repair the cap. The costs of repairing the cap shall be borne by the City. .

19. **Estoppel Certificates.**

A. **Conergy certificates.**

Conergy agrees at any time and from time to time upon not less than twenty (20) days prior notice by the City to execute, acknowledge, and deliver to City a statement in writing certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications that this Agreement is in full force and effect as modified and stating the modifications), and the dates to

which any applicable charges have been paid, and stating whether or not to the actual knowledge of the signer of such statement Conergy is then in default or may be in default with notice or the passage of time, or both, in keeping, observing or performing any term, covenant, agreement, provision, condition, or limitation contained in this Agreement, and, if in default, specifying each such default, it being intended that any such statement delivered pursuant to this Section may be relied upon by the City or any prospective purchaser of the fee interest in the West Site but reliance on such statement may not extend to any default as to which the signer shall have had no actual knowledge.

B. The City certifies.

The City agrees at any time and from time to time upon not less than twenty (20) days prior notice by Conergy or any a Lender under an Encumbrance (as defined in Section 17.A. of this Agreement) to execute, acknowledge, and deliver to Conergy a statement in writing certifying that this Agreement is unmodified and in full force and effect (or if there shall have been modifications that this Agreement is in full force and effect as modified and stating the modifications) and the dates to which any applicable charges have been paid, and stating whether or not to the actual knowledge of the signer of such statement Conergy is then in default or may be with notice or the passage of time, or both, in keeping, observing or performing any term, covenant, agreement, provision, condition or limitation contained in this Agreement and, if Conergy shall be in default, specifying each such default of which the signer may have knowledge, it being intended that such statement delivered pursuant to this Section may be relied upon by any prospective transferee of Conergy's interest in this Agreement and the improvements or any a Lender under an Encumbrance, but reliance on such certificate may not extend to any default as to which the signer shall have had no actual knowledge.

20. **Inspections by the City.** Conergy shall permit the City or the City's agents, representatives, or employees to enter the leased portions of the West Site at all reasonable times upon written notice for the purpose of inspecting the leased portions of the West Site to determine whether Conergy is complying with the terms of this Agreement and for the purpose of doing other lawful acts that may be necessary to protect the City's interest in the leased portions of the West Site. Such written notice shall specify the date, approximate time, and purpose of the entry. Without limiting the foregoing, Conergy shall also:

- A. Provide the City, its agents, representatives, and employees with keys for the gate leading to Array 3;
- B. Twenty-four hours shall be presumed to be reasonable notice in absence of evidence to the contrary;
- C. Written notice of the City's intent to enter the leased portions of the West Site be mailed to Conergy via first-class U.S. mail, postage prepaid, and such mailing of the notice at least six days prior to an intended entry is presumed reasonable notice in absence of evidence to the contrary; and
- D. In lieu of service via first-class U.S. mail, postage prepaid, written notice of the City's intent to enter the leased portions of the West Site may also be personally delivered to Conergy, or any agent, representative, or employee of Conergy.

21. **Memorandum of Agreement for Recording.** Neither the City nor Conergy shall record this Agreement or the Lease without the written consent of the other, such consent not be unreasonably withheld, delayed or conditioned. However, the City and Conergy shall, at the request of either at any time during the term of this Agreement, execute a memorandum or "short form" of this Agreement for purposes of, and in a form suitable for, recordation and such recordation shall not

require the consent of either Party. The memorandum or "short form" of this Agreement shall describe the Parties, set forth a description of the West Site, specify the term of this Agreement, incorporate this Agreement by reference, set forth the permitted uses of the West Site as set forth in Sections 16 and 23 hereof and any restrictions on the use of the West Site as set forth herein, including any restrictions on obstruction of sunlight to the Conergy Solar Project, and include any other provisions required by Lender(s).

LICENSE AGREEMENT

Sutter's Landing Park
(a portion of the West Site)

22. **Description of Premises.** In the Sutter's Landing Park, the City is the owner of that certain parcel of land, which is known as the West Site, situated in the City of Sacramento, County of Sacramento, State of California, further identified as Assessor Parcel Number (APN) 003-0010-001, see Exhibit A hereto. The City hereby grants to Conergy, and Conergy hires from the City, a license covering a certain portion of the West Site consisting of an asphalt area and a dog park for the construction, maintenance, and operation of a photovoltaic solar facility, including two solar arrays (Array 1 and Array 2), which license shall be irrevocable for the term of the PPA and this Agreement.
23. **Use of Premises.** Conergy shall not change the use of the portion of the West Site under license without first obtaining the written consent of the City. Conergy shall use the licensed portions of the West Site solely for the purposes described below in this Section:
- A. Construction, maintenance, and operation of a photovoltaic solar facility, including:
- (1) Array 1 will be located in a parking area of the West Site and will include 1,540 modules on columns. Array 1 is more particularly described on Exhibit D hereto. The cover system in this area consists of 2 to 4 inches of asphalt over 6 to 18 inches of aggregate base. Under the aggregate base are 3 to 18 feet of soil cover and 12 to 32.5 feet of landfill debris. Beneath the landfill debris, native sand and gravel layers are typically encountered from 32 to 43.5 feet below ground surface. The concrete support footings for this Array will extend approximately three feet below the surface of the asphalt and will be placed on compacted soil cover. Asphalt would be sealed against the concrete base of the footings in this area.
 - (2) Array 2 will include 140 modules and be mounted on columns within the City's dog park. The dog park area is not paved and has a soil cover. The underlying strata are 3 to 18 feet of soil cover and 12 to 32.5 feet of landfill debris. The debris underlying this area consists of layers of street cleaning debris. Beneath the landfill debris, native sand and gravel layers are typically encountered from 32 to 43.5 feet below ground surface. The concrete support footings for this Array will extend approximately three feet below the surface of the ground and would be placed on compacted soil cover. A soil bentonite mixture will be compacted to seal against the concrete base of the footings in this area. Modules shall be mounted on shade structures on columns with a 20-degree tilt. The tilt would direct the module's surface generally to the south to obtain the highest exposure to the sun. See Exhibit E attached, figure 4 – site layout and 60% plans.
- B. Conergy shall have the exclusive right to use the licensed portions of the West Site and the unobstructed receipt of and access to sunlight across the West Site for solar energy purposes, to convert all of the solar resources of the West Site.

C. Development Activities:

- (1) Determining the feasibility of solar energy conversion and power generation on the licensed portions of the West Site, including studies of available sunlight;

D. The Parties recognize that power generation technologies are improving and that it is possible that Conergy may (although Conergy is not required to) from time to time replace existing solar facilities on the licensed portions of the West Site with newer (and potentially larger) facilities which have increased energy capture and efficiency, and Conergy shall have the right to construct such replacements subject to the following conditions:

- (1) Conergy shall, prior to the commencement of any such replacements, at Conergy's sole cost and expense, furnish to the City a surety company performance and completion bond in form and substance acceptable to the City, issued by a surety company acceptable to the City, naming the City and any first lien institutional leasehold mortgagee as the obligees thereunder, guaranteeing the completion of construction of such changes or alterations in accordance with the approved plans and specifications within a reasonable time, subject to force majeure (as described in Section 14.A.), free and clear of all mechanic's liens or liens of a similar nature.
- (2) No such replacements shall commence until Conergy shall have given the City twenty (20) days prior written notice of such work in order that the City may post and/or file notices of non-responsibility or notices of a similar nature, and for review of compliance with CEQA and other applicable laws, see Section 4 of this Agreement. Such compliance may include, but not limited to, preparation of a new Mitigated Negative Declaration for the Conergy Solar Project.
- (3) Notwithstanding any other Section or provision of this Agreement, under no circumstances shall Conergy commence constructing replacements until served with written notice of City's approval of the plans and specifications. Failure of the City to serve written notice on Conergy after receipt of Conergy's notice of replacements shall not constitute approval by the City of the replacements.

E. The Parties agree that any obstruction to the receipt of and access to sunlight throughout the licensed portions of the West Site is prohibited or on adjoining property owned by the City. The City shall not cause any such obstruction.

F. Clearance rights.

Conergy shall have the right to trim, cut down, and remove all trees (whether natural or cultivated), brush, vegetation and fire and electrical hazards now or hereafter existing on the licensed portions of the West Site which might obstruct receipt of or access to sunlight or interfere with or endanger the solar facilities or Conergy's development activities, as determined by Conergy, subject to consent of the City and all applicable laws and regulations

G. Subjacent and lateral support.

The City shall not excavate, nor permit excavation, so near the sides of or underneath the Conergy Solar Project as to undermine or otherwise adversely affect its stability.

H. **Utility lines.**

Conergy shall have the right across property owned by the City for the installation, maintenance, repair, and use of utility lines and equipment, including, without limitation, for water, natural gas, and electrical transmission.

I. **Signage.**

Conergy shall have the rights to place signs or advertising related to solar energy on the Conergy Solar Project.

24. **Maintenance by Conergy.** At all times during the term of this Agreement, Conergy shall, at its own cost and expense, keep and maintain the licensed portions of the West Site, all improvements, and all appurtenances (including landscaped areas) now or hereafter on the licenses portions of the West Site in a first-class condition, in good order and repair, and in a safe and clean condition. Additionally, at Conergy's own cost and expense, Conergy's obligations shall also include all of the following:
- (A) Raised array over the dog park and parking lot to be kept free of trash, graffiti, and debris throughout the term of this Agreement.
 - (B) Conergy shall annually inspect and adjust the solar arrays over the parking lot and dog park to adjust for settling of the system due to subsurface settling.
25. **Entry by the City and the Public.** The City and the public shall have unrestricted access the City dog park area, and the compost/parking area of the West Site.

[Signature page follows.]

IN WITNESS WHEREOF, the City of Sacramento and Conergy Projects, Inc. have executed this Agreement to be effective as of the Effective Date.

CONERGY:

Conergy Projects, Inc.,
a California corporation

By: 
Ian Pinchuk
Vice President

Dated: April 24, 2013

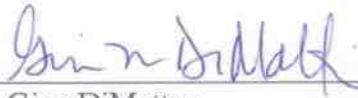
CITY:

City of Sacramento,
a municipal corporation

By: _____
Print Name: John Dangberg
Title: Assistant City Manager
For: John F. Shirey, City Manager

Dated: _____

And

By: 
Gina DiMatteo
Treasurer

Dated: April 24, 2013

APPROVED AS TO FORM:

By: _____
Senior Deputy City Attorney

RECOMMENDED FOR APPROVAL

By: _____

ATTEST:

By: _____
City Clerk

Attachments

- Exhibit "A" – Map from Parcel Viewer
- Exhibit "B" – Location Map (depicting project site)
- Exhibit "C" – Figure 2, Site Plan and Solar Array Layout
- Exhibit "D" – Figure 3 (describing array 1, carport solar array)
- Exhibit "E" – Figure 4 – Site layout and 60% plans (describing array 2, dog park array)
- Exhibit "F" – Figure 5 (describing array 3, ground mounted panels)
- Exhibit "G" – Preliminary Title Report
- Exhibit "H" – Insurance Documentation
- Exhibit "I" – Hazardous Materials Disclosure and Release
- Exhibit "J" – Utility Corridors (and location of the POI, Transformer, and Subpanel) (depicted in red)
- Exhibit "K" – Utility Corridors (depicted with dotted lines) (and location of the POI, Transformer, and Subpanel)

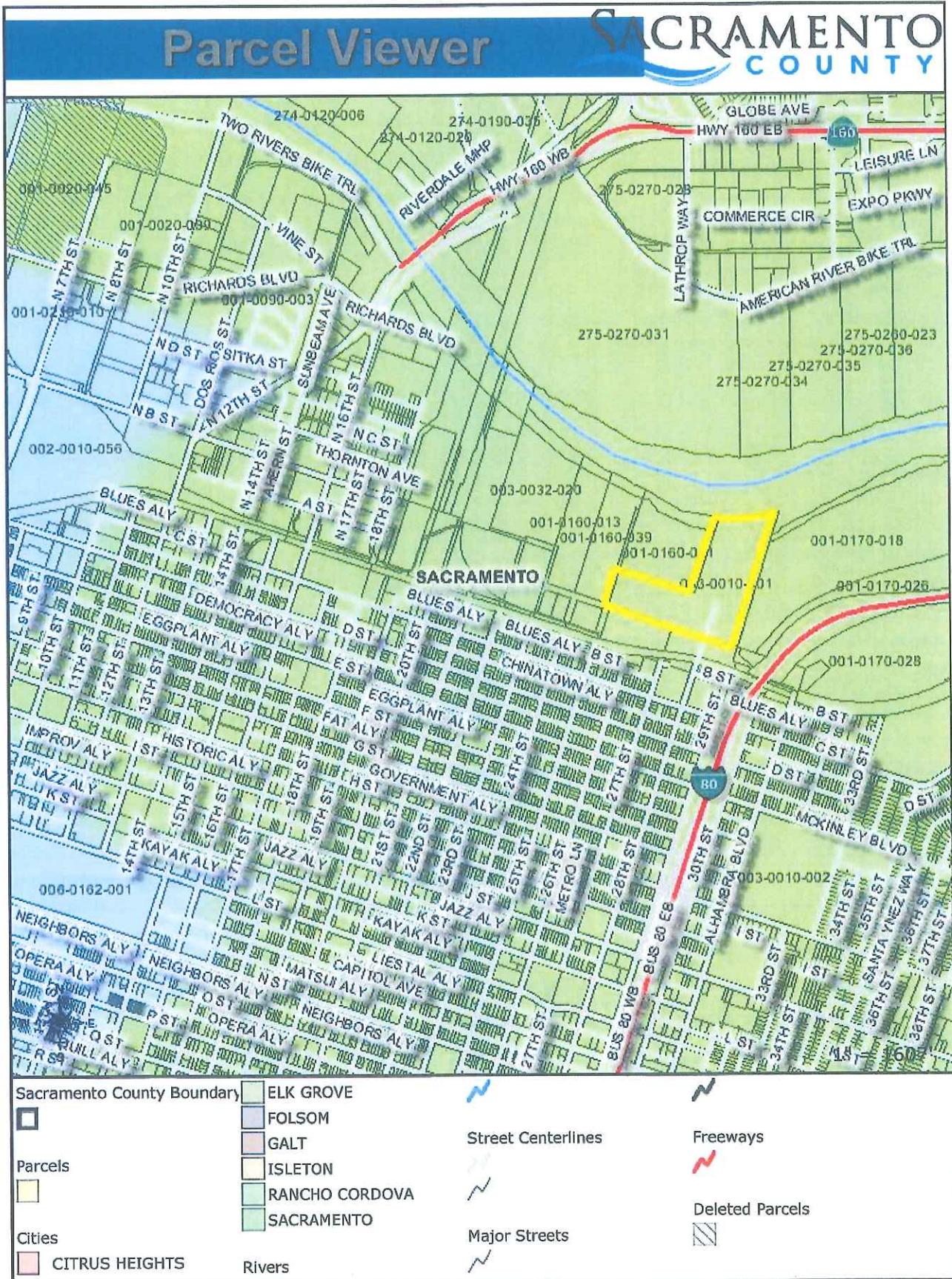
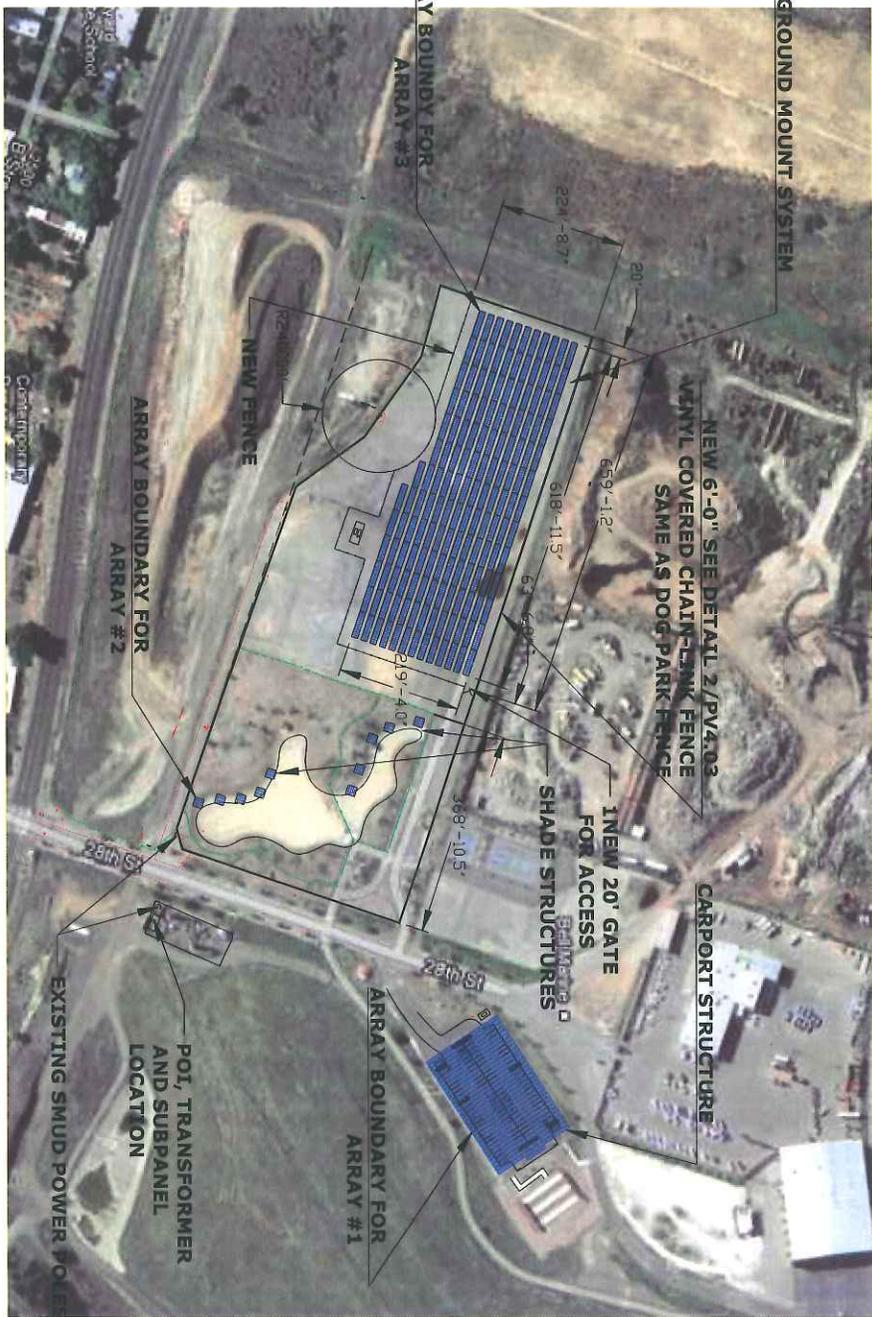


EXHIBIT C



(TYP)

1 OVERALL SITE PLAN
SCALE: 1" = 100'-0"



ENGINEERS STAMP:

GENERAL NOTES:

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NO.	DESCRIPTION	DATE
1	ISSUED FOR PERMITTING	04/15/13
2	REVISED	04/15/13
3	REVISED	04/15/13
4	REVISED	04/15/13
5	REVISED	04/15/13
6	REVISED	04/15/13
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9	REVISED	04/15/13
10	REVISED	04/15/13

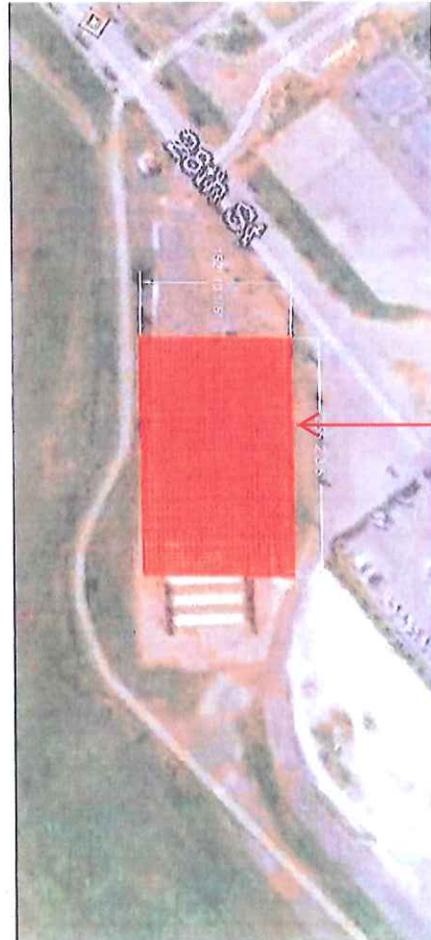
COMBINE PROJECTS, INC.
3817 LAKEMAN BLVD.
SACRAMENTO, CALIFORNIA 95833
TEL: 916-486-8511 FAX: 916-486-8514

CONFIDENTIAL
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OVERALL SITE PLAN WITH IMAGE

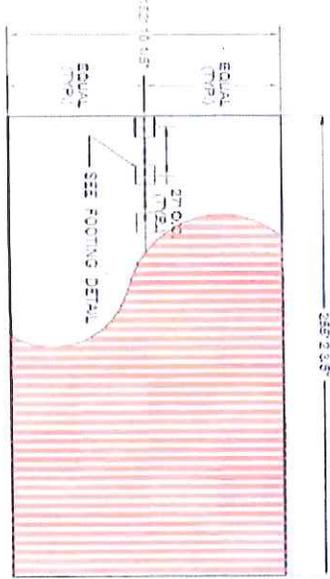
DATE	PROJECT	SCALE	SHEET
D	PV 200 IM	1" = 100'-0"	8
DATE	SCALE	SHEET	
		8	13

EXHIBIT D



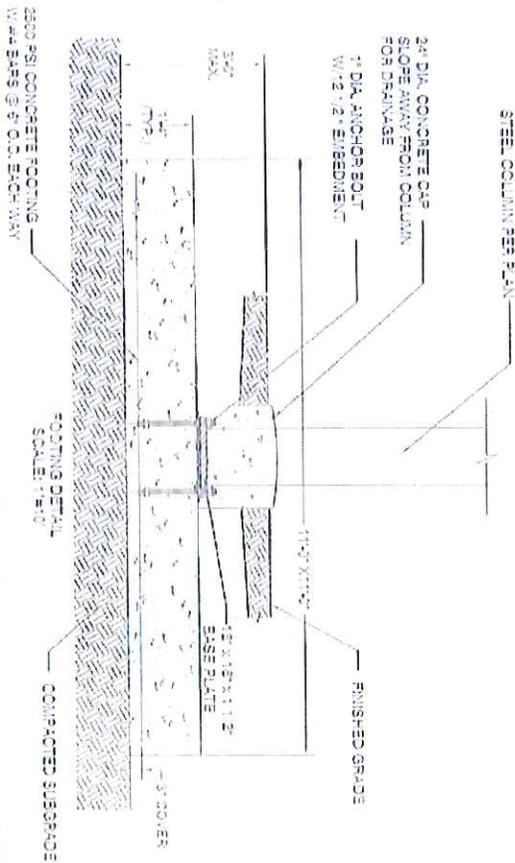
Array 1

NOTE:
THIS DRAWING IS BASED ON CONVEYANCE PERCENT PLANS.

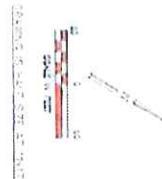


CONCRETE FOOTING PLAN DETAIL
SCALE: 1"=3'-0"

PLAN VIEW
SCALE: 1"=3'-0"



STEEL COLUMN PIER PLAN



SCS ENGINEERS
ENVIRONMENTAL CONSULTANTS

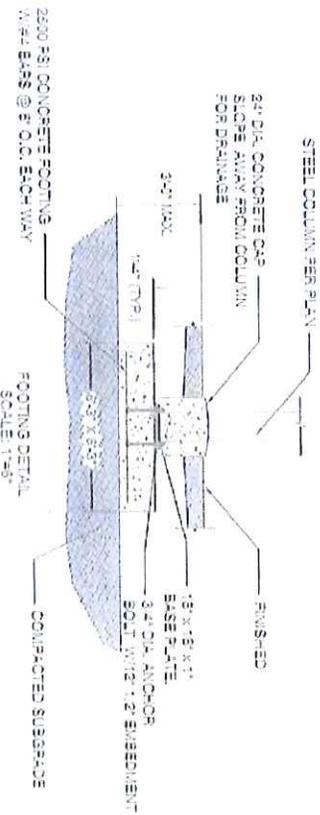
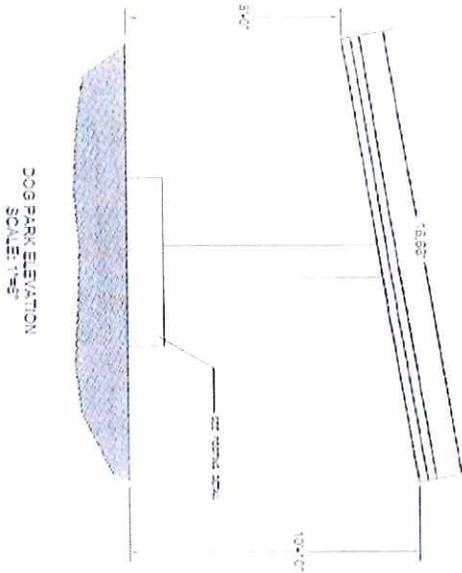
2500 STREET LEVEL, SUITE 100
SACRAMENTO, CALIFORNIA 95811
TEL: (916) 441-1111
FAX: (916) 441-1112
WWW.SCS-ENGINEERS.COM

SHEET TITLE	NO.	REVISION	DATE
PIER, SECTION AND DETAILS	1		
PROJECT TITLE	2500 STREET LEVEL, SUITE 100, SACRAMENTO, CA		

EXHIBIT E



PLAN VIEW
SCALE 1/8"=1'-0"



NOTE: THIS DRAWING IS BASED ON CONCRETE 30 PERCENT PLANS.

SCS ENGINEERS
ENVIRONMENTAL CONSULTANTS

2074 H STREET, SUITE 100
SACRAMENTO, CALIFORNIA 95811
TEL: (916) 441-1111 FAX: (916) 441-1112
WWW.SCS-ENGINEERS.COM

DATE: 11/11/11
SCALE: AS SHOWN
PROJECT NO: 11-001

SHEET TITLE
PLAN, SECTION AND DETAIL

PROJECT TITLE
2301 STREET LIGHTS
CITY OF SACRAMENTO
SACRAMENTO, CA

NO.	REVISION	DATE
1		
2		
3		
4		
5		

EXHIBIT “G”

Preliminary Title Report

[to be provided]

EXHIBIT “H”

Insurance Documentation

[to be provided]

EXHIBIT "I"

Hazardous Materials Disclosure and Release

The City represents and warrants that it has disclosed to Conergy any and all information which the City has in its possession regarding the potential presence and location of asbestos, PCB transformers, other toxic, hazardous or contaminated substances and Hazardous Materials (as defined below), and underground gas, garbage, other landfill debris in, on, or about the West Site. The City represents, warrants, and covenants that to the best of its knowledge, as of the Effective Date and closing of escrow, no part of the West Site will be in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to the environmental conditions on, under or about the West Site, including, not limited to, hazardous waste, soil and groundwater conditions (collectively, "Environmental Laws"). The City represents and warrants that it will not engage in or permit any activities on or about the West Site that cause or result in any release or disturbance of Hazardous Materials on or under the West Site.

Additionally, the City has not received any notice from the United States Environmental Protection Agency or any other federal, state, county or municipal entity or agency that regulates Hazardous Materials or public health risks or other environmental matters or any other private party or person claiming any violation of, or requiring compliance with, any Environmental Laws or demanding payment or contribution for any Hazardous Materials or Hazardous Materials Activity in, on, under, upon or affecting the West Site. The City represents and warrants that to the best of its knowledge, there is no proceeding or inquiry by any governmental authority (including, without limitation, the State of California Department of Toxic Substances Control and the Sacramento County Environmental Management Agency) with respect to the presence of such Hazardous Materials on or under the West Site.

However, the City does not warrant that the known contamination in the West Site, including, without limitation, underground landfill gas, is not present on, or has not migrated to, the leased or licensed portions of the West Site.

The City's Post Closure Land Use Plan (PCLUP), prepared in accordance with California Code of Regulations (CCR) Title 27, Section 21190 et seq., 1991 Final Closure and Postclosure Maintenance Plans and subsequent Amendments (Landfill Facility No. 34-AA-0018), WDR Order No. R5-2004-0039, including the April 2000 Standard Provisions, and the City of Sacramento's Solar Improvements, and the City's Final Post Closure Land Use Plan (PCLUP), 28th Street Landfill, are all publicly available and have been disclosed to Conergy.

In the event that after closing of escrow, Conergy discovers that the leased or licensed portions of the West Site contains Hazardous Materials and is in violation of any law, ordinance or regulation, City shall NOT be obligated to undertake and prosecute to completion such procedures as may be necessary to correct such violation(s) at its cost and expense. At its sole discretion and expense, Conergy may elect to engage an environmental consulting firm to conduct an environmental audit to ascertain whether or not the West Site complies with current federal, state and local environmental laws, ordinances and regulations prior to the closing of escrow.

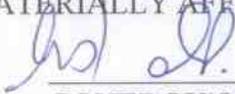
- 1. Natural Hazards Disclosures.** As of the closing of escrow, to the extent permitted by law, Conergy shall be deemed to have knowingly, voluntarily and intentionally waived the right to the disclosures ("Natural Hazards Disclosures") set forth in: (i) California Government Code Section 8589.3 (a special flood area); (ii) California Government Code Section 8589.4 (dam failure inundation area); (iii) California Government Code Section 51183.5 (earthquake fault zone); (iv) California Public Resources Code Section 2621.9 (seismic hazard zone); (v) California Public Resources Code Section 4136 (wildland fire area); and (vi) California Public Resources Code Section 2694 (high fire severity area). This waiver by Conergy includes, to the extent permitted by law, any remedies Conergy may have for City's nondisclosure of the Natural Hazards Disclosures. At its sole discretion and expense, Conergy may elect to engage a consulting firm to conduct a natural hazards audit to ascertain whether or not the West Site is subject to any natural hazards.

2. Release and Disclosure Release.

(a) Except for the representations and warranties expressly made by the Parties in this Agreement and the obligations expressly assumed hereunder by each Party or as otherwise expressly provided herein, each Party hereto and any one claiming by, through or under such Party, hereby fully and irrevocably releases the other Party and each of its representatives, agents, employees, attorneys, affiliates, successors and assigns, and all persons, firms, or entities acting on their behalf, from claims against the other Party or any of their representatives, agents, employees, attorneys and affiliates, successors and assigns, for the costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to the condition of the West Site relating in any way to or arising out of any right, claim, contribution or other recovery action arising under Environmental Laws or from the Hazardous Materials or Natural Hazards including floods, which are or may be located on, at or about the West Site as of the closing of escrow.

As further consideration and inducement for this Agreement, Conergy agrees that with regard to the release made in Section 2(a) of this Exhibit I all its rights under section 1542 of the California Civil Code are hereby expressly waived arising from or related to the condition of the West Site relating in any way to or arising out of any right, claim, contribution or other recovery action arising under Environmental Laws or from the Hazardous Materials (defined below), or from Natural Hazards including floods, which are or may be located on, at or about the West Site as of the closing of escrow. The section reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.



CONERGY'S INITIALS

CITY'S INITIALS

(b) **Disclosure.** IN ACCORDANCE WITH CALIFORNIA HEALTH AND SAFETY CODE SECTION 25359.7, CITY STATES THAT THERE MAY HAVE BEEN RELEASES OF HAZARDOUS MATERIALS ON OR BENEATH THE PROPERTY AND THERE COULD BE RESIDUAL CONTAMINATION ON THE PROPERTY. CITY ACKNOWLEDGES THAT THE DISCLOSURE STATUTES (HEREINAFTER DEFINED) PROVIDE THAT AN OWNER OF REAL PROPERTY MUST MAKE CERTAIN DISCLOSURES REGARDING CERTAIN NATURAL HAZARDS POTENTIALLY AFFECTING THE PROPERTY, AS MORE PARTICULARLY PROVIDED THEREIN. AS USED IN THIS AGREEMENT, "DISCLOSURE STATUTES" MEANS, COLLECTIVELY CALIFORNIA GOVERNMENT CODE SECTIONS 8589.3, 8589.4 AND 51183.5, CALIFORNIA PUBLIC RESOURCES CODE SECTIONS 2621.9, 2694 AND 4136, AND CALIFORNIA HEALTH & SAFETY CODE SECTION 25359.7. CONERGY HEREBY AGREES AS FOLLOWS WITH RESPECT TO THE DISCLOSURE STATUTES: (i) THAT THE DISCLOSURES, REPRESENTATIONS AND WARRANTIES PROVIDED IN THIS SECTION, INCLUDING, WITHOUT LIMITATION, THOSE CONTAINED IN SECTION 22(h), (i) AND (j) AS SET FORTH ABOVE SHALL BE DEEMED TO SATISFY ALL OBLIGATIONS AND REQUIREMENTS OF THE CITY UNDER THE DISCLOSURE STATUTES; (ii) THAT THE CITY SHALL NOT BE LIABLE FOR ANY ERROR OR INACCURACY IN, OR OMISSION FROM, ANY REPORTS OR DOCUMENTS PROVIDED TO CONERGY; (iii) THAT THE NATURAL HAZARD REPORT, IF ANY, SHALL NOT BE DEEMED TO CONSTITUTE A REPRESENTATION OR WARRANTY BY THE CITY AS TO THE PRESENCE OR ABSENCE IN, AT OR AROUND THE WEST SITE OF THE CONDITIONS THAT ARE THE SUBJECT OF THE DISCLOSURE STATUTES; AND (iv) CITY REPRESENTS AND WARRANTS THAT IT HAS NO ACTUAL KNOWLEDGE OF INFORMATION THAT CONTRADICTS THE INFORMATION IN THE

REPORTS AND DOCUMENTS PROVIDED BY CITY TO CONERGY OR OBTAINED BY CONERGY AND PROVIDED TO CITY FOR REVIEW PRIOR TO CLOSING OF ESCROW.

(c) **Definition.** FOR THE PURPOSES OF THIS AGREEMENT “HAZARDOUS MATERIAL(S)” MEANS ANY CHEMICAL, SUBSTANCE, MATERIAL, CONTROLLED SUBSTANCE, OBJECT, CONDITION, WASTE, LIVING ORGANISM OR COMBINATION THEREOF WHICH IS OR MAY BE HAZARDOUS TO HUMAN HEALTH OR SAFETY OR TO THE ENVIRONMENT DUE TO ITS IGNITIBILITY, CORROSIVITY, REACTIVITY, EXPLOSIVITY, TOXICITY, CARCINOGENICITY, MUTAGENICITY, PHYTOTOXICITY, REPRODUCTIVE TOXICITY, INFECTIOUSNESS, RADIOACTIVITY, OR OTHER HARMFUL OR POTENTIALLY HARMFUL PROPERTIES OR EFFECTS, INCLUDING, WITHOUT LIMITATION, PETROLEUM AND PETROLEUM PRODUCTS, ASBESTOS, RADON, POLYCHLORINATED BIPHENYLS (PCBs), AND ALL OF THOSE CHEMICALS, SUBSTANCES, MATERIALS, CONTROLLED SUBSTANCES, OBJECTS, CONDITIONS, WASTES, LIVING ORGANISMS OR COMBINATIONS THEREOF WHICH ARE NOW, OR BECOME IN THE FUTURE, LISTED, DEFINED, OR REGULATED IN ANY MANNER BY ANY ENVIRONMENTAL LAW BASED UPON, DIRECTLY OR INDIRECTLY, SUCH PROPERTIES OR EFFECTS.

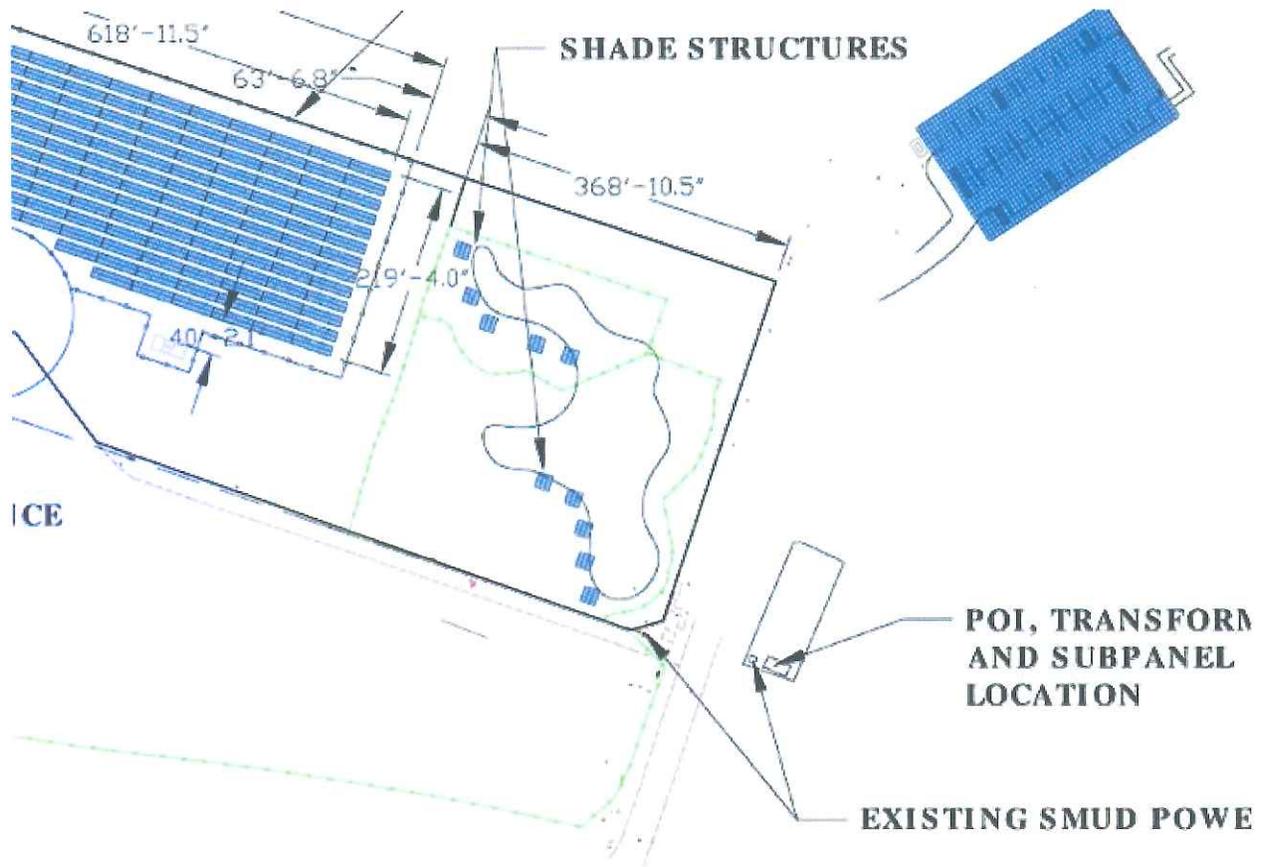
FOR THE PURPOSES OF THIS AGREEMENT “ENVIRONMENTAL LAWS” MEANS ANY AND ALL FEDERAL, STATE, LOCAL OR OTHER GOVERNMENTAL ENVIRONMENTAL, HEALTH OR SAFETY RELATED LAWS, REGULATIONS, STANDARDS, DECISIONS OF THE COURTS, ORDINANCES, RULES, CODES, ORDERS, DECREES, DIRECTIVES, GUIDELINES, PERMITS OR PERMIT CONDITIONS, CURRENTLY EXISTING AND AS AMENDED, ENACTED, ISSUED OR ADOPTED IN THE FUTURE, WHICH, DUE TO THE PRESENCE OR POTENTIAL PRESENCE OF HAZARDOUS MATERIAL(S), ARE OR BECOME APPLICABLE TO: (i) THE PROPERTY (THE WEST SITE); OR (ii) PERSONS OR ENTITIES WHO OWN, OCCUPY, USE, VISIT OR WORK ON THE PROPERTY.

ENVIRONMENTAL LAWS INCLUDE, BUT ARE NOT LIMITED TO, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (42 USCA 9601 ET SEQ.) (“CERCLA”) THE RESOURCE CONSERVATION AND RECOVERY ACT (42 USCA 6901 ET SEQ.), THE CALIFORNIA HAZARDOUS WASTE CONTROL LAWS (CALIFORNIA HEALTH & SAFETY CODE SECTIONS 25100 ET SEQ.) AND THE CALIFORNIA PORTER COLOGNE ACT (CALIFORNIA WATER CODE 13000 ET SEQ.).

Exhibit J



EXHIBIT K





Mike Kimball
Managing Director

CBRE, Inc.

CBRE

11150 Santa Monica Boulevard
Suite 1600
Los Angeles, CA 90025

310 405 8904 Tel
310 405 8950 Fax

www.cbre.com

EXHIBIT C: CBRE Opinion of Market Value for Solar Ground Rent

March 22, 2013

Mr. Bill Sinclair
Program Manager, City of Sacramento
5730 24th St, Building 4, Sacramento, CA 95822
Phone: 916.808.1905
Email: bsinclair@cityofsacramento.org

Re: CBRE Opinion of Market Value for Solar Ground Rent

Dear Bill,

After reviewing the Sutter's Landing Park solar project information we were provided, and having multiple conversations with Conergy, it is CBRE's opinion that the ground rent amount proposed by Conergy is market. If the City is comfortable with the language in the ground lease, economics aside, then it is CBRE's recommendation that the City proceed forward with the solar project. Please note that CBRE's opinion of market ground rent value is strictly our opinion and should not be considered to be a property appraisal.

CBRE has been active, both as a consultant and solar developer, in the US solar PV market for the last 4 years. We have been involved with over 100 MWs of rooftop and ground mount solar PV projects in 8 states. We believe the ground rent proposed by Conergy is market for the following main reasons: 1) the location of the project on a landfill increases both design cost and ongoing maintenance costs, 2) the portion of the project over covered parking and the dog park increases design and material cost, 3) the low PPA rate and 0% escalator with SMUD, and 4) Conergy started working on this project in 2009 so there is significant sunk cost for the developer.

It is CBRE's understanding that the \$1,632,000 grant is specific to this project/Conergy only, and the project has to be completed this year to receive the grant. If the City were to try to do this project at a later time with another developer it is CBRE's understanding that the \$1,632,000 grant would not be available. Without the grant there is no deal – there are no solar developers that can make this deal work without the grant. The high level economic model on page 2 further illustrates why CBRE feels that the ground rent is market. Please contact me at 818-624-6070 should you have any questions.

Sincerely,

Mike Kimball
Managing Director
CBRE

Key Assumptions													
Project Size	1,500 kWdc	Site Rent	6% of PPA Revenue	Production in Yr-1	1,590,000	6% of PPA Revenue	1,590,000	PPA rate with SMUD	0.50%	Depreciation Basis	4,505,000	PPA rate escalation with SMUD	0.118 per kWh
PPA term	20 years	After-Tax IRR	7.40%	Residual value	795,000	Investor Target After-Tax IRR	7.50%	Electricity Output (kWh)	2,296,000	PPA Rate (\$/kWh)	0.118	PPA Revenue	270,928
Year	Electricity Output (kWh)	PPA Rate (\$/kWh)	PPA Revenue	Residual Value	O&M, Insurance, Warranty, G&A	Ground Rent	Pre-Tax Economics	Depreciation	Taxable Income	Taxes	ITC and After-Tax Value of Grant	After-Tax Cash Flow	
0											2,582,000	-2,718,000	
1	2,296,000	0.118	270,928		-63,000	-16,256	191,672	-2,703,000	-2,511,328	-954,305		1,145,977	
2	2,284,520	0.118	269,573		-64,260	-16,174	189,139	-720,800	-531,661	-202,031		391,170	
3	2,273,040	0.118	268,219		-65,545	-16,093	186,580	-432,480	-245,900	-93,442		280,022	
4	2,261,560	0.118	266,864		-66,856	-16,012	183,996	-259,488	-75,492	-28,687		212,683	
5	2,250,080	0.118	265,509		-68,193	-15,931	181,386	-259,488	-78,102	-29,679		211,065	
6	2,238,600	0.118	264,155		-69,557	-15,849	178,748	-129,744	49,004	18,622		160,127	
7	2,227,120	0.118	262,800		-70,948	-15,768	176,084		176,084	66,912		109,172	
8	2,215,640	0.118	261,446		-72,367	-15,687	173,392		173,392	65,889		107,503	
9	2,204,160	0.118	260,091		-73,815	-15,605	170,671		170,671	64,855		105,816	
10	2,192,680	0.118	258,736		-75,291	-15,524	167,921		167,921	63,810		104,111	
11	2,181,200	0.118	257,382		-76,797	-15,443	165,142		165,142	62,754		102,388	
12	2,169,720	0.118	256,027		-78,333	-15,362	162,333		162,333	61,686		100,646	
13	2,158,240	0.118	254,672		-79,899	-15,280	159,493		159,493	60,607		98,886	
14	2,146,760	0.118	253,318		-81,497	-15,199	156,621		156,621	59,516		97,105	
15	2,135,280	0.118	251,963		-83,127	-15,118	153,718		153,718	58,413		95,305	
16	2,123,800	0.118	250,608		-84,790	-15,037	150,782		150,782	57,297		93,485	
17	2,112,320	0.118	249,254		-86,485	-14,955	147,813		147,813	56,169		91,644	
18	2,100,840	0.118	247,899		-88,215	-14,874	144,810		144,810	55,028		89,782	
19	2,089,360	0.118	246,544		-89,980	-14,793	141,772		141,772	53,873		87,899	
20	2,077,880	0.118	245,190	795,000	-91,779	-14,711	933,699		933,699	354,806		578,894	



RESOLUTION NO. 2013-

Adopted by the Sacramento City Council

ADOPTING THE MITIGATED NEGATIVE DECLARATION AND THE MITIGATION REPORTING PROGRAM FOR THE CONERGY SOLAR PROJECT

BACKGROUND

A. On April 30, 2013, the City Council conducted a public hearing, for which notice was given, and considered evidence concerning the Conergy Solar Project ("Project").

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The City Council finds as follows:

A. The Project initial study identified potentially significant effects of the Project. Revisions to the Project made by or agreed to by the Project applicant before the proposed mitigated negative declaration and initial study were released for public review were determined by City's Environmental Planning Services to avoid or reduce the potentially significant effects to a less than significant level, and, therefore, there was no substantial evidence that the Project as revised and conditioned would have a significant effect on the environment. A Mitigated Negative Declaration (MND) for the Project was then completed, noticed and circulated in accordance with the requirements of the California Environmental Quality Act (CEQA), the State CEQA Guidelines and the Sacramento Local Environmental Procedures as follows:

1. On February 22, 2013, a Notice of Intent to Adopt the MND (NOI), dated February 22, 2013, was circulated for public comments for 30 days, with an extension to March 29, 2103. The NOI was sent to those public agencies that have jurisdiction by law with respect to the proposed project and to other interested parties and agencies, including property owners within 500 feet of the boundaries of the proposed project. The comments of such persons and agencies were sought.

2. On February 22, 2013, the NOI was published in the Daily Recorder, a newspaper of general circulation, and the NOI was posted in the office of the Sacramento County Clerk.

3. The Initial Study was revised after public notice of its availability; however, none of the conditions requiring recirculation (CEQA Guidelines section 15073.5(b)) is applicable to the project. The mitigation measures were replaced with either equal or more effective measures pursuant to Section 15074.1 of the CEQA Guidelines, revisions to the project do not result in new avoidable significant effects, and the new information added to the Negative Declaration makes insignificant modifications.

Section 2. The City Council has reviewed and considered the information contained in the MND, including the initial study, the revisions and conditions incorporated into the Project, and the comments received during the public review process and the hearing on the Project. The City Council has determined that the MND constitutes an adequate, accurate, objective and complete review of the environmental effects of the proposed project.

Section 3. As a result of the public review process, the City determined that certain mitigation measures identified in the MND were undesirable. Per CEQA Guidelines section 15074.1, the City deleted those mitigation measures in the MND and substituted other measures which the City determined are either equivalent or more effective.

This public hearing is the hearing required by CEQA Guidelines section 15074.1(b)(1).

The new mitigation measures are either equivalent to or more effective in mitigating or avoiding potential significant effects and that none of the measures would cause any potentially significant effect on the environment (CEQA Guidelines section 15074.1(b)(2)).

Section 4. Based on its review of the MND and on the basis of the whole record, the City Council finds that the MND reflects the City Council's independent judgment and analysis and that there is no substantial evidence that the Project will have a significant effect on the environment.

Section 5. The City Council adopts the MND for the Project.

Section 6. Pursuant to CEQA section 21081.6 and CEQA Guidelines section 15074, and in support of its approval of the Project, the City Council adopts a Mitigation Monitoring Program to require all reasonably feasible mitigation

measures be implemented by means of Project conditions, agreements, or other measures, as set forth in the Mitigation Monitoring Program.

Section 7. Upon approval of the Project, the City Manager shall file or cause to be filed a Notice of Determination with the Sacramento County Clerk and, if the project requires a discretionary approval from any state agency, with the State Office of Planning and Research, pursuant to section 21152(a) of the Public Resources Code and section 15075 of the State EIR Guidelines adopted pursuant thereto.

Section 8. Pursuant to Guidelines section 15091(e), the documents and other materials that constitute the record of proceedings upon which the City Council has based its decision are located in and may be obtained from, the Office of the City Clerk at 915 I Street, Sacramento, California. The City Clerk is the custodian of records for all matters before the City Council.

Section 9. Exhibits A and B are part of this resolution.

Table of Contents:

Exhibit A – Mitigation Reporting Program

Exhibit B – Comments and Responses (Parts 1 – 14)



EXHIBIT A: Mitigation Reporting Program

Conergy Solar at Sutter's Landing Park Project Mitigation Reporting Program

In January 1989, Assembly Bill 3180 went into effect requiring the City to monitor all mitigation measures applicable to this project and included in the Mitigated Negative Declaration. For this project, mitigation reporting will be performed by the City of Sacramento Department of General Services in accordance with the monitoring and reporting program developed by the City to implement AB 3180.

This Mitigation Reporting Program is being prepared for the Community Development Department, Environmental Planning Services, 300 Richards Boulevard, 3rd Floor, Sacramento, CA 95811, pursuant to the California Environmental Quality Guidelines, Section 21081.

Project Name: Conergy Solar at Sutter's Landing Park Project

Project Description: The project site is located at the northern end of 28th Street, in the northeast area of downtown Sacramento, in the Sutter's Landing Park.

The proposed project includes installation of solar modules, operation of the modules to produce and sell electricity, and removal of the modules at the conclusion of the lease term. The solar facility would be designed to generate 1.5 megawatts alternating current. The project site is located on property owned by the City of Sacramento. Operation of the solar facility by Conergy, Inc. would be pursuant to a lease agreement with the City of Sacramento.

The proposed project includes the installation of solar modules on the ground and on shade structures. The ground-mounted modules would be located on a paved portion of the park site that immediately west of the existing Dog Park. Column-mounted structures would be located within the Dog Park and in other paved areas of the park site.

**MITIGATION REPORTING PROGRAM CHECKLIST FOR THE
 Conergy Solar at Sutter's Landing Park Project**

Mitigation Measure	Reporting Milestone	Reporting / Responsible Party	VERIFICATION OF COMPLIANCE	
			Initials	Date
<p>Air Quality</p> <p>AQ-1: Water all exposed surfaces two times daily. Exposed surfaces include, but are not limited to soil piles, graded area, unpaved parking areas, staging areas, and access roads. <i>Water to be applied as minimally as possible to prevent ponding of water in areas over fill.</i></p> <p>AQ-2: Cover or maintain at least two feet of free board space on haul trucks transporting soil, sand, or other loose material on the site. Any haul trucks that would be traveling along freeways or major roadways should be covered.</p> <p>AQ-3: use wet power vacuum street sweepers to remove any visible track out mud or dirt onto adjacent public roads at least once a day. Use of dry power sweeping is prohibited.</p> <p>AQ-4: Limit vehicle speeds on unpaved roads to 15 mph</p> <p>AQ-5: All roadways, driveways, sidewalk, parking lots to be paved should be completed as soon as possible. In addition, building pages should be laid as soon as possible after grading unless seeding or soil binders are used.</p> <p>AQ-6: Minimize idling time either by shutting equipment off when not or reducing the time of idling to 5 minutes [required by California Code of Regulations, Title 13, sections 2449 9d)(3) and 2485]. Provide clear signage that posts this requirement for workers at the entrances to the site.</p> <p>AQ-7: Maintain all construction equipment in proper working condition according to manufacturer's specifications. The equipment must be checked by a certified mechanic and determine to be running in proper condition before it is operated.</p>	During construction	Conergy, Inc. and Department of General Services		

Mitigation Measure	Reporting Milestone	Reporting / Responsible Party	VERIFICATION OF COMPLIANCE	
			Initials	Date
<p>Biological Resources:</p> <p>BIO 1: Final design of the proposed project shall avoid removal of elderberry shrubs within stems at least one inch diameter at ground level (dgl). The following measures will avoid or reduce impacts to VELB to less than significant:</p> <p>A qualified biologist shall conduct an elderberry stem survey of all elderberry shrubs within 100 feet of the proposed project footprint, in accordance with the Conservation Guidelines for the Valley Elderberry Longhorn Beetle (Conservation Guidelines; USFWS, 1999b). An Effects Analysis report should be submitted to the USFWS and the City of Sacramento to document the avoidance and minimization measures identified in the Conservation Guidelines.</p> <p>Complete avoidance measures include:</p> <p>The proposed project shall be designed to avoid the installation of equipment within 20 feet of any elderberry shrub with stems measuring at least one inch dgl.</p> <p>Temporary construction fencing shall be placed around the driplines of any elderberry shrubs with stems measuring at least one inch dgl prior to commencement of construction activities to ensure that no elderberry shrub is inadvertently removed. A biologist should be present during the installation of the construction fencing.</p> <p>In all locations where the proposed project would occur within 100 feet of elderberry shrubs with stems measuring at least one inch dgl, high visibility construction fencing shall be placed at the edge of the construction footprint to denote the limit of disturbance and beginning of the avoidance areas. The construction barriers and fencing shall not be removed until construction activities within 100 feet of VELB habitat have been completed.</p> <p>Signs shall be erected every 50 feet along the edge of avoidance areas with the following information: "This area is habitat of the valley elderberry longhorn beetle, a threatened species, and must not be disturbed. This species is protected by the FESA, as amended. Violators are subject to prosecution, fines, and imprisonment." The signs shall be clearly readable from a distance of 20 feet, and shall be maintained for the duration of construction.</p> <p>A qualified biologist shall conduct an environmental awareness training to instruct all construction</p>	Before and during construction	Conergy, Inc. and Department of General Services		

Mitigation Measure	Reporting Milestone	Reporting / Responsible Party	VERIFICATION OF COMPLIANCE	
			Initials	Date
<p>personnel crews about the status of the VELB and the need to protect its elderberry host plant. The training should include identification of special status species, required practices before the start of construction, general measures that are being implemented to conserve these species as they relate to the proposed pipelines, penalties for noncompliance, and boundaries of the survey area and of the permitted disturbance zones. Supporting materials containing training information should be prepared and distributed. Upon completion of training, all construction personnel should sign a form stating that they have attended the training and understand all the conservation measures. Training should be conducted in languages other than English, as appropriate. Proof of this instruction should be kept on file with the contractor. The City shall provide the USFWS with a copy of the training materials and copies of the signed forms by project staff indicating that training has been completed within 30 days of the completion of the first training session. The contractor should train and provide training materials to any new crew members that were not present at the environmental awareness training conducted by the biologist. Copies of signed forms should be submitted monthly as additional training occurs for new employees.</p> <p>Staging areas shall be located at least 100 feet from elderberry shrubs with stems at least one inch dgl. Temporary stockpiling of excavated or imported material should occur only in approved construction staging areas.</p> <p>Standard precautions shall be employed by the construction contractor to prevent the accidental release of fuel, oil, lubricant, or other hazardous materials.</p> <p>A litter control program shall be instituted. The contractor shall provide closed garbage containers for the disposal of all food-related trash items (e.g., wrappers, cans, bottles, food scraps). All garbage shall be removed daily.</p> <p>Roadways and areas disturbed by project activities within 100 feet of elderberry shrubs shall be watered at least twice a day to minimize dust emissions.</p> <p>The following mitigation measures shall be implemented to minimize adverse effects to VELB habitat within 20 feet of construction activities:</p> <ol style="list-style-type: none"> a. A biologist shall monitor all construction activities occurring within 20 feet of the elderberry shrubs to ensure that none are harmed. b. The contractor shall ensure that dust control measures (e.g., watering) are implemented in the vicinity of the elderberry shrubs. To further minimize adverse effects associated 				

Mitigation Measure	Reporting Milestone	Reporting / Responsible Party	VERIFICATION OF COMPLIANCE	
			Initials	Date
<p>with dust accumulation, the elderberry shrubs will be covered by a protective cloth (i.e., burlap or weed matting) during all ground-disturbing activities occurring within 20 feet of the elderberry shrubs. The cloth should be removed daily and immediately after ground-disturbing activities are completed.</p> <p>c. Excluding ongoing maintenance activities within the project site, insecticides, herbicides, fertilizers, or other chemicals that might harm VELB or the elderberry shrub shall not be used in association with the proposed project within 20 feet of the elderberry shrubs.</p> <p>d. The following measures shall be implemented following the completion of construction activities:</p> <p>e. Any disturbed areas shall be revegetated and restored to pre-project conditions immediately.</p> <p>f. The City shall provide a written report to the USFWS documenting the results of mitigation and describing how the construction areas are to be restored, protected, and maintained after construction is completed.</p> <p>BIO 2: The following mitigation shall be required to avoid or reduce impacts to a less than significant level:</p> <p>Prior to any construction activities that occur within the nesting season (March 1 and September 15), a qualified biologist shall conduct surveys for active Swainson's hawk nests in the project site and within 0.25 miles of the project site where legally permitted. The biologist shall use binoculars to visually determine whether Swainson's hawk nests occur beyond the 0.25-mile survey area if access is denied on adjacent properties. If no active Swainson's hawk nests are identified on or within 0.25 miles of construction activities, a letter report summarizing the survey results shall be submitted to the City within 30 days following the survey, and no further mitigation for nesting habitat is recommended.</p> <p>If active Swainson's hawk nests are found within 0.25 miles of construction activities, the biologist shall contact the City within one day following the preconstruction survey to report the findings. No intensive disturbances (e.g., heavy equipment operation associated with construction, use of cranes or draglines, new rock crushing activities) or other project-related activities that could cause nest abandonment or forced fledging, shall be initiated within .25 miles (buffer zone as defined in the CDFG Staff Report) of an active nest between February 15 and September 15 or until the nestlings have fledged. Should a reduced buffer be necessary, then the CDFG shall be</p>				

Mitigation Measure	Reporting Milestone	Reporting / Responsible Party	VERIFICATION OF COMPLIANCE	
			Initials	Date
<p>consulted to develop take avoidance measures, and implement a monitoring and reporting program prior to any construction activities occurring within 0.25 miles of the nest.</p> <p>BIO 3: The following mitigation is required to avoid or reduce impacts to a less than significant level:</p> <p>A qualified biologist shall conduct a preconstruction survey within 30 days prior to construction activities occurring within potential nesting or wintering habitat for burrowing owl, including the nonnative grassland areas that occur within the project site. In accordance with the CDFG burrowing owl survey protocol, the survey area shall extend 500-feet from construction areas (CDFG, 1995) where legally permitted. The biologist shall use binoculars to visually determine whether burrowing owls occur beyond the construction areas if access is denied on adjacent properties. If no burrowing owls or their sign are detected in the vicinity of the project site during the preconstruction survey, a letter report documenting survey methods and findings shall be submitted to the City and the CDFG within 30 days following the survey, and no further mitigation is required.</p> <p>If unoccupied burrows are detected during the non-breeding season (September through January 31), the City shall be contacted within one day following the preconstruction survey to report the findings. The City shall collapse the unoccupied burrows, or otherwise obstruct their entrances to prevent owls from entering and nesting in the burrows.</p> <p>If occupied burrowing owl burrows are detected, impacts on burrows shall be avoided by providing a buffer of 160 feet during the non-breeding season (September 1 through January 31) or 250 feet during the breeding season (February 1 through August 31). The size of the buffer area may be adjusted if a qualified biologist or the CDFG determine the burrowing owl would not likely be affected by the proposed project. Project activities shall not commence within the buffer area until a qualified biologist confirms that the burrow is no longer occupied. If the burrow is occupied by a nesting pair, a minimum of 7.5 acres of foraging habitat contiguous to the burrow shall be maintained until the breeding season is finished.</p> <p>If impacts to occupied burrows are unavoidable, onsite passive relocation techniques approved by the CDFG shall be used to encourage burrowing owls to move to alternative burrows outside of the project site. The onsite passive relocation shall not be located in an area where they may cause damage to the landfill cover. No occupied burrows shall be disturbed during the nesting season unless a qualified biologist verifies through non-invasive methods that juveniles from the occupied burrows are foraging independently and are capable of independent survival. Mitigation for foraging habitat for relocated pairs shall follow the guidelines provided in <i>the</i></p>				

Mitigation Measure	Reporting Milestone	Reporting / Responsible Party	VERIFICATION OF COMPLIANCE	
			Initials	Date
<p><i>California Burrowing Owl Survey Protocol and Mitigation Guidelines</i> (California Burrowing Owl Consortium, 1993). The mitigation for foraging habitat for relocated pairs range from 7.5 to 19.5 acres per pair.</p> <p>BIO 4: The following mitigation measures are required to avoid impacts to nest sites for migratory birds and other birds of prey:</p> <p>A preconstruction survey shall be conducted by a qualified biologist for nesting birds of prey and migratory birds within 2 weeks prior to commencement of construction activities that occur between March 1 and September 15. The qualified biologist shall document and submit the results of the preconstruction survey in a letter to the CDFG and the City within 30 days following the survey. The letter shall include: a description of the methodology including dates of field visits, the names of survey personnel, and a list of references cited and persons contacted, and a map showing the location(s) of any bird nests observed on the project site. If no active nests are identified during the preconstruction survey, then no further mitigation is recommended so long as construction activities commence within 14 days of the preconstruction survey. An additional preconstruction survey would be recommended within 14 days of the anticipated construction commencement should construction be delayed beyond the 14 days of the previous preconstruction survey.</p> <p>If any active nests are identified during the preconstruction survey within the project site, a buffer zone shall be established around the nests, in coordination with CDFG. A qualified biologist shall monitor nests weekly during construction to evaluate potential nesting disturbance by construction activities. The biologist shall delimit the buffer zone with construction tape or pin flags within 50 feet of the active migratory nest or within 100 feet of an active raptor nest (excluding an active Swainson's hawk nest or an occupied burrowing owl burrow) and maintain the buffer zone until the end of the breeding season or until the young have successfully fledged. If establishing the 50- or 100-foot buffer zone is impractical, then a qualified shall monitor any construction activity occurring within the buffer zone on a daily basis. The biologist should have the authority to halt construction activities within the buffer zone should the disturbance have the potential to result in nest abandonment or forced fledging.</p>				

Mitigation Measure	Reporting Milestone	Reporting / Responsible Party	VERIFICATION OF COMPLIANCE	
			Initials	Date
<p>Cultural Resources:</p> <p>CR-1 In the event that any prehistoric subsurface archeological features or deposits, including locally darkened soil ("midden"), that could conceal cultural deposits, animal bone, obsidian and/or mortars are discovered during construction-related earth-moving activities, all work within 50 meters of the resources shall be halted, and the City shall consult with a qualified archeologist to assess the significance of the find. Archeological test excavations shall be conducted by a qualified archeologist to aid in determining the nature and integrity of the find. If the find is determined to be significant by the qualified archeologist, representatives of the City and the qualified archeologist shall coordinate to determine the appropriate course of action. All significant cultural materials recovered shall be subject to scientific analysis and professional museum curation. In addition, a report shall be prepared by the qualified archeologist according to current professional standards.</p> <p>CR-2 If a Native American site is discovered, the evaluation process shall include consultation with the appropriate Native American representatives.</p> <p>If Native American archeological, ethnographic, or spiritual resources are involved, all identification and treatment shall be conducted by qualified archeologists, who are certified by the Society of Professional Archeologists (SOPA) and/or meet the federal standards as stated in the Code of Federal Regulations (36 CFR 61), and Native American representatives, who are approved by the local Native American community as scholars of the cultural traditions.</p> <p>In the event that no such Native American is available, persons who represent tribal governments and/or organizations in the locale in which resources could be affected shall be consulted. If historic archeological sites are involved, all identified treatment is to be carried out by qualified historical archeologists, who shall meet either Register of Professional Archeologists (RPA), or 36 CFR 61 requirements.</p> <p>CR-3 If a human bone or bone of unknown origin is found during construction, all work shall stop in the vicinity of the find, and the County Coroner shall be contacted immediately. If the remains are determined to be Native American, the coroner shall notify the Native American Heritage Commission, who shall notify the person most likely believed to be a descendant. The most likely descendant shall work with the contractor to develop a program for re-interment of the human remains and any associated artifacts. No additional work is to take place within the immediate vicinity of the find until the identified</p>	During construction	Conergy, Inc. and Department of General Services		

Mitigation Measure	Reporting Milestone	Reporting / Responsible Party	VERIFICATION OF COMPLIANCE	
			Initials	Date
appropriate actions have taken place.				
<p>Geology and Soils</p> <p>GEO 1: The final cover, including perimeter access road, will be routinely evaluated and inspected quarterly for any evidence of:</p> <ul style="list-style-type: none"> • Soil erosion • Settlement and subsidence • Exposed refuse • Cracks • Ponded water • Vegetation stress • Odor • Slope failure • Leachate seeps 	During and after construction	Conergy, Inc. and Department of General Services		

Mitigation Measure	Reporting Milestone	Reporting / Responsible Party	VERIFICATION OF COMPLIANCE	
			Initials	Date
<p>Deficiencies such as cracks, erosion damage, or settlement in the final cover will be evaluated regarding their extent and depth. The evaluation will include determining the severity of the problem, prioritizing their repair, and determining the best method of repair. Repairs and restoration will be consistent with the final cover construction specifications.</p> <p>Column Supports – If cracks or damage occur around the column supports, the asphalt seal will be re-established by removing and replacing asphalt and soil that are damaged or settled.</p> <p>Ground Supported – If settlement or damage to the cover occurs beneath a pavement supported solar arrays, the support structure and arrays will be temporarily moved out of the way until repairs are complete and then returned to their proper location.</p> <p>Areas that have ponded water or have settled will be filled with clean onsite soil, free of deleterious material. After filling and re-grading, the areas will be resurfaced.</p> <p>Should a failure in the cover area occur, the area will be closed off to prevent damage to equipment or harm to individuals. A licensed civil engineer will be notified to assess the failure and recommend appropriate corrective action. Specific corrective action will depend on the extent, nature, and location of the failure. Corrective action measures will be developed by the civil engineer.</p> <p>A record of final cover maintenance activities will be kept by the City. The record will include the date, location, and extent and nature of the maintenance activity. Regulatory agencies will be notified as required by the site's permit and approvals.</p> <p>Grass control will not be associated with Array No. 1 in the Parking Area and Array No. 3 in the Compost Area. For Array 2, grass will be controlled by periodic mowing beneath the solar arrays. Array 2 will be best maintained by using a manual weed trimming type of device that allows selective grass removal in planter areas and near the support footings of the solar arrays. Annual mowing in early summer after plants turn brown is recommended at minimum.</p>				

Mitigation Measure	Reporting Milestone	Reporting / Responsible Party	VERIFICATION OF COMPLIANCE	
			Initials	Date
<p>Hydrology and Water Quality</p> <p>HYDRO 1: The final drainage system will be inspected and evaluated on an ongoing basis for:</p> <ul style="list-style-type: none"> • Evidence of erosion • Standing water • Formation of gullies • Settlement, blockage, and damage to drainage channels, structures, swales, and culverts <p>Damage to the drainage system will be addressed prior to the wet season once damage is identified. If damage is identified during the wet season, then repairs will be made as soon as access with equipment is possible. The reason for the damage will be determined, if possible.</p> <p>Permanent repairs and restoration will be made consistent with final closure construction specifications. Temporary repairs may be utilized until permanent repairs can be scheduled. Culverts and inlet and outlet structures will be cleaned of sediment regularly before their flow capacities are impaired. Drainage inlet gratings will be kept free of debris, and drainage channels will be maintained to permit free flow.</p> <p>Results of the inspection and summary of maintenance performed will be compiled and included in the quarterly monitoring report following the inspection.</p>	<p>During and after construction</p>	<p>Conergy, Inc. and Department of General Services</p>		



EXHIBIT B: Comments and Responses, Part 1

Response to Comments Received on the MND:

Land Use

The Sutter's Landing Park (SLP) Master Plan, adopted in 2003, is a long term plan for the development of SLP. Recognizing that SLP has historically been used for landfill operations, the current and future uses of the park are limited to activities that do not conflict with the Post Closure Land Use Plan requirements imposed by CalRecycle and Regional Water Quality Control Board. At the same time, the city envisions SLP to be an asset to the city as a potential regional destination when the landfill areas have been fully reclaimed (by approximately 2030) and ingress/egress issues have been resolved. Interim improvements consistent with the SLP Master Plan have been made to the park since its adoption, and the Department of Parks and Recreation continues to seek funding for further development of the park under current landfill constraints. Areas that remain underutilized for public recreation are actively used for maintenance activities required for the landfill cap as set forth in the 1991 Final Closure and Post Closure Maintenance Plans and subsequent Amendments.

Long term development of the west side of the Park according the adopted Park Master Plan call for active recreation, dog park, and additional parking. The dog park area was installed in a location not specifically called out in the Master Plan for the dog park due to site constraints and timing of funding opportunities. However, now that the stockpile area has been graded it is available for potential recreation uses. A separate planning effort and subsequent environmental review will be performed for future uses of the stockpile site.

The area west of the dog park is currently vacant and has been maintained as an asphalt cap for the previous landfill operations. The area is still settling and requires regular filling of depressions to avoid water ponding. This area was identified for the largest portion of the solar arrays (4 acres) because of constraints due to active settling and lack of funding available for active recreational uses at the site. The installation of the solar arrays in this area backs up to existing industrial uses and does not displace existing recreation. The potential for active recreation in this area in the future is still anticipated when funding is made available. The use of park property for an energy producing use on an interim basis is not inconsistent with the Park Master Plan, assuming the solar facilities do not remain permanently. At the end of the lease term, the asphalt area can be used for development of other recreation amenities/uses once the solar facilities are removed.

The solar facility design will be blended with other uses in final design approvals provided by the City Parks and Recreation Department.

The environmental document for the proposed Conergy project is a Mitigated Negative Declaration and is not required under CEQA to analyze site Alternatives, as would be prepared in an Environmental Impact Report (Section 15126.6).

Biological Resources of the Stockpile Area

Comments were received regarding the eight-acre site along the north side of the railroad tracks. This parcel has been used since 1994 as an active stockpile site for clay and dirt used in the landfill cover operations, and for dirt that was used in the

environmental cleanup of the Dellar property to the northwest of the site. Following removal of the stockpiled dirt the site was graded to drain in compliance with the requirements of CalRecycle and the Regional Water Quality Control Board.

The stockpile site was part of a larger solar project proposal that was eventually withdrawn, and was the location originally proposed by the applicant in this project. The City conducted a review for biological resources at the stockpile site as part of the stockpile operations, and to ensure that the stockpile work did not adversely affect sensitive biological resources.

The City is aware of differences of opinion regarding the value of the stockpile site as habitat. The Department of Fish and Wildlife and frequent users of the park have asserted that the site could provide foraging habitat for Swainson's hawk and other raptors from the American River Parkway. Before the City could make a determination on the degree of impact of the project on biological resources at the stockpile area, the project applicant decided to move the solar arrays to the west side of the dog park. Any action on the stockpile from a separate project would be required to undergo separate environmental review and consideration.

Financing and Maintenance Responsibilities of the Solar Array

The City of Sacramento is the Responsible Party for the continued maintenance of the 28th Street Landfill/Sutter's Landing Park under its obligation for the Post Closure Maintenance Plan required by the Sacramento County Environmental Management Department. The solar arrays will be maintained by the applicant, Conergy. Any additional maintenance and security of the park as a result of the solar arrays will be financed by Conergy and overseen by the city. Please see the lease agreement terms and conditions.

Design Considerations of the Solar Array

Comments were received regarding the design of the solar arrays. This is not an environmental issue, but one that would need to be coordinated with the Department of Parks and Recreation.

Sacramento County Environmental Management Department

The Sacramento County Environmental Management Department serves as the Local Enforcement Agency (LEA) under delegation from CalRecycle for enforcement of Title 27 regulations. Clarifications have been made to the text of the environmental document to respond to the comments of the LEA as they relate to site security and do not require recirculation of the document.

EXHIBIT B: Comments and Responses, Part 2

Countywide Services Agency

Environmental Management
Department

Environmental Compliance Division
Elise Rothschild, Chief



Bradley J. Hudson, County Executive
Ann Edwards, Chief Deputy County Executive
Val F. Siebal, Department Director

County of Sacramento

March 29, 2013

Dana Allen, Associate Planner
City of Sacramento
Community Development Department
300 Richards Blvd.
Sacramento, CA 95811

Dear Ms. Allen:

SUBJECT: LEA COMMENTS ON MITIGATED NEGATIVE DECLARATION FOR SACRAMENTO CITY (28TH STREET) LANDFILL PHOTOVOLTAIC PROJECT – SWIS# 34-AA-0018

Background

The City of Sacramento Community Development Department, Environmental Planning Services, prepared a Mitigated Negative Declaration (MND) for a solar photovoltaic project proposed for the Sacramento City 28th Street landfill.

The Environmental Management Department, as the Local Enforcement Agency (LEA) for the California Department of Resources, Recycling and Recovery (CalRecycle), has reviewed the MND and provides the following comments, which follow earlier comments provided by the LEA to city staff regarding the Notice of Preparation, the Draft Initial Study, and the Post Closure Land Use Plan for the project, in addition to verbal comments provided.

LEA Comments

- 1) Part 10 of the MND concludes that the project will not result in any additional demand for police services noting that there is fencing around the landfill site, 24 hour site security provided by a security contractor, and locked gates at night. As noted in previous comment letters and on quarterly landfill inspection reports, however, site security, particularly trespassing and vandalism, have been on-going problems at this facility despite these measures which are currently in place. Holes found cut through the fences and indications of homeless encampments and belongings on the landfill property are common. It is also noted that there is no mention of the security cameras committed to in the January 8, 2013 Final Post Closure Land Use Plan.

Without additional, effective security measures, the LEA is concerned that the presence of metals and other enticing targets for thieves, as a result of the project, could likely result in increased trespassing,

vandalism and theft at the site. The site operator, the City, must ensure site security per 27CCR, sections 20530 and 21135.

- 2) Section II - Project Description, page 6, states that any repairs to fencing or other structures in support of the solar facility will be made within a reasonable amount of time, as specified in the lease agreement. Since the lease agreement does not appear to be included with the MND, and the terms are not specified, the LEA cannot say whether or not the agreed-to timeframe is adequate to make repairs to the site fencing for the purpose on-site security.
 - 3) Part 2 (Biological Resources) states on page 33 that occupied burrowing owl burrows will not be disturbed and in some instances, passive relocation measures approved by the CDFG shall be used. Regarding this matter, please be advised that the operator must maintain the integrity of the landfill cover, as required by 27CCR, section 21090, and as specified in the site's closure plan and the Final Post Closure Land Use Plan. The burrows should be discouraged and should not be relocated to other waste management units where they may cause damage to the landfill cover.
 - 4) Part 1 (Air Quality) states on page 21 that mitigation measures include watering exposed surfaces twice per day during construction to control dust and on page 59, solar panel washing is described that would occur approximately four times per year and would require approximately 1 acre foot of water per year. The LEA understands that these are necessary activities but points out that excess water that ponds and soaks into the ground can impact buried waste and increase methane production. Therefore, the LEA cautions that water should be applied in a manner that minimizes volume and promotes proper drainage to prevent ponding of water in areas over fill.
 - 5) Part 4 (Geology and Soils) notes on page 39 that the proposed project will result in activity and land use that will have an effect on the landfill cover maintenance for the site. Mitigation measures involving quarterly inspection are proposed but there is no mention of the monthly inspections for the first year that are committed to in the Final Post Closure Land Use Plan. This should be corrected.
 - 6) Part 4 (Geology and Soils) Note: Work was performed on the asphalt cover in the area proposed for Array 3 by the operator during the Fall of 2012 but was not finished. Depressed areas were filled with asphalt grindings and cracks were sealed but as of the last LEA inspection on February 5, 2013, the grindings had not been covered with asphalt and sealed, as planned. This work should be completed before Array 3 is installed. The LEA notes that even with the completion of these repairs, the asphalt in this area is old and in declining condition and will need ongoing maintenance and repair.
 - 7) Part 6 (Hazards) states on page 43 that the landfill gas migration
-

monitoring system will be inspected on an ongoing basis consistent with the requirements of 27 CCR, section 20933. In as much as inspection is here intended to refer to maintenance of the system, please be advised that section 20933 only refers to gas monitoring frequencies. Suggest reference to other sections such as 21160, 21180, or 21190.

Contact

If you have any questions regarding this letter, please contact John Lewis at (916) 876-7279.

Sincerely,



John Lewis
Environmental Specialist III
Solid Waste Program

JL:LT:jm

c: Gino Yekta, CalRecycle
John Moody, RWQCB

EXHIBIT B: Comments and Responses, Part 3



STATE OF CALIFORNIA
GOVERNOR'S OFFICE of PLANNING AND RESEARCH
STATE CLEARINGHOUSE AND PLANNING UNIT



EDMUND G. BROWN JR.
GOVERNOR

KEN ALEX
DIRECTOR

March 26, 2013

Dana Allen
City of Sacramento
300 Richards Boulevard
Sacramento, CA 95811

Subject: Conergy Solar Project
SCH#: 2012052049

Dear Dana Allen:

The State Clearinghouse submitted the above named Mitigated Negative Declaration to selected state agencies for review. The review period closed on March 25, 2013, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.

Sincerely,

A handwritten signature in black ink that reads "Scott Morgan".

Scott Morgan
Director, State Clearinghouse

**Document Details Report
State Clearinghouse Data Base**

SCH# 2012052049
Project Title Conergy Solar Project
Lead Agency Sacramento, City of

Type MND Mitigated Negative Declaration
Description The proposed project includes installation of solar modules, operation of the modules to produce and sell electricity, and removal of the modules at the conclusion of the lease term. The solar facility would be designed to generate 1.4 megawatts alternating current.

Lead Agency Contact

Name Dana Allen
Agency City of Sacramento
Phone (916) 808-2762
email
Address 300 Richards Boulevard
City Sacramento
Fax
State CA **Zip** 95811

Project Location

County Sacramento
City Sacramento
Region
Lat / Long
Cross Streets 28th Street/C Street
Parcel No. 003-0042-002,003-0050-016,003-0010-001
Township **Range** **Section** **Base**

Proximity to:

Highways Bus. 80
Airports
Railways UPRR
Waterways American River
Schools
Land Use A-open space

Project Issues Geologic/Seismic; Recreation/Parks; Toxic/Hazardous; Wetland/Riparian; Wildlife; Archaeologic-Historic

Reviewing Agencies Resources Agency; Department of Conservation; Department of Fish and Wildlife, Region 2; Office of Historic Preservation; Department of Parks and Recreation; Department of Water Resources; California Highway Patrol; Caltrans, District 3 S; Regional Water Quality Control Bd., Region 5 (Sacramento); California Energy Commission; Native American Heritage Commission; Public Utilities Commission

Date Received 02/22/2013 **Start of Review** 02/22/2013 **End of Review** 03/25/2013

EXHIBIT B: Comments and Responses, Part 4



March 22, 2013

Dear Dana Allen,

This letter is in response to the Mitigated Negative Declaration that was generated for a proposed Solar Park at Sutter's Landing.

On November 20th, 2012, you met with Brooks Larson and David Moffat to hear a proposal to build a pump track (modified BMX style dirt track,) at Sutter's Landing. The city representatives included Steve Cohn, JP Tindell and Sue Brown. After that meeting the city re-directed the track to the old compost pad adjacent and west of the dog park. Around March 5th, the pump track proponents were told the solar project was moved to this area due to the fact a Biological Opinion asserted that the original area where the solar project was going to be built demonstrates foraging habitat for the Swanson's Hawk. That differed with the opinion of the City-hired biologist.

The solar project is a worthy endeavor for the city. So is the pump track. One biological opinion paid for by a group with a very narrow interest should not trump the needs of the general public for low-carbon power and for recreation, nor deprive the city of much needed revenue. Swainson's hawks tend to nest around farm fields; preying on rodents burrowing around an old landfill may not be healthy for them. Although preventing vermin from ruining the landfill cap is important, the city cannot rely upon hawks which may or may not be present for that service. Moreover, there is plenty of additional, higher quality habitat up and down the river and specifically, directly across the river from this site.

I support the pump track group's recommendations:

- 1. Require the "take" of Active Recreation require mitigation as with habitat take.**

2. **Require mitigation in the form of raising the panels to allow access under solar facility to build or include Active Recreation.**

3. **If panels cannot be raised, provide land at a 1:1 ratio in close proximity to where the take is occurring to provide Active Recreation opportunities and activate the area around the park.**

Thank you for your efforts on behalf of the city and its citizens. Please do what you can to accommodate the pump track. The city needs more healthy activity for local youth. A pump track is a perfect fit for Sutter's Landing.

Sincerely,

Bob Horowitz
1240 Dolores Way
Sacramento, CA 95816

Cc: Steve Cohn

EXHIBIT B: Comments and Responses, Part 5



March 29, 2013
Dana Allen, Associate Planner
Community Development Department
City of Sacramento
300 Richards Blvd., 3rd Floor
Sacramento, CA 95811

RE: Sutter's Landing Park: Conergy Solar Project

Dear Ms. Allen,

I appreciate the opportunity to comment regarding the City and Conergy's proposal for the Solar Array project at the Sacramento Sutter Landing Park (SLP). I am a landscape architect with considerable background in park planning and design and I understand that creating a park typically involves an exercise of careful evaluation of potential uses, site constraints and opportunities and then the juxtapositioning of those possible uses with regard to the sensitivity of the site to reach an optimum blend and park configuration. As a more recent resident in the Mid-Town area, much of the planning process for the SLP had occurred before my arrival. I assume that the prepared SLP master plan (attached for reference) went through such a process.

With that as a historical context of the present SLP, I am both surprised and somewhat dismayed with the Conergy proposal as it appears to be inconsistent with the City's master plan and not only presents a conflicting use but also effectively permanently displaces the intended uses for the area it is now being proposed for. The 3.8 acre area selected for the solar array facility is shown as an "active use" area of the park including recreational fields and ball courts as illustrated on the master plan diagram (attached). Without opening a discussion about whether a solar panel energy collection system belongs in a park in the first place, this displacement of uses is not addressed in the Negative Dec nor is there any explanation for not abiding by what the master plan originally intended for that location.

It has been my experience that a master plan is analogous to a contract with the community and is intended to convey the vision for future uses of a resource and the detailed components of that vision. In making a master plan there is thus a commitment that if the site is subject to new considerations, those new ideas should be vetted and evaluated in a public forum to continue that good faith contract with the affected community. Although there could be interpretive and educational values to having the solar panels within the park, the nature and

scale of these structures as described at the recent Park and Recreation Commission are industrial in character that must be both fence enclosed and protected with a security watch for the duration of their placement. When probed at the Parks Commission session as to why the panels could not be an integrated element (i.e. panels as part of a roof structure or shade elements) the Commission was told that these design measures were cost prohibitive.

In my opinion, the City is not getting any significant benefit out of this proposal and by accepting the proposed location for the panels, and allowing what seems to be the flawed decision-making that led to the proposed placement location, it sets a terrible precedent for the Sutter Landing Park and gives the impression of the SLP site as being more like its previous morph as the "dump" it was once called! - a place where otherwise incompatible uses can be "dumped" AND done so without regard to its own master plan and coherent planning and design process.

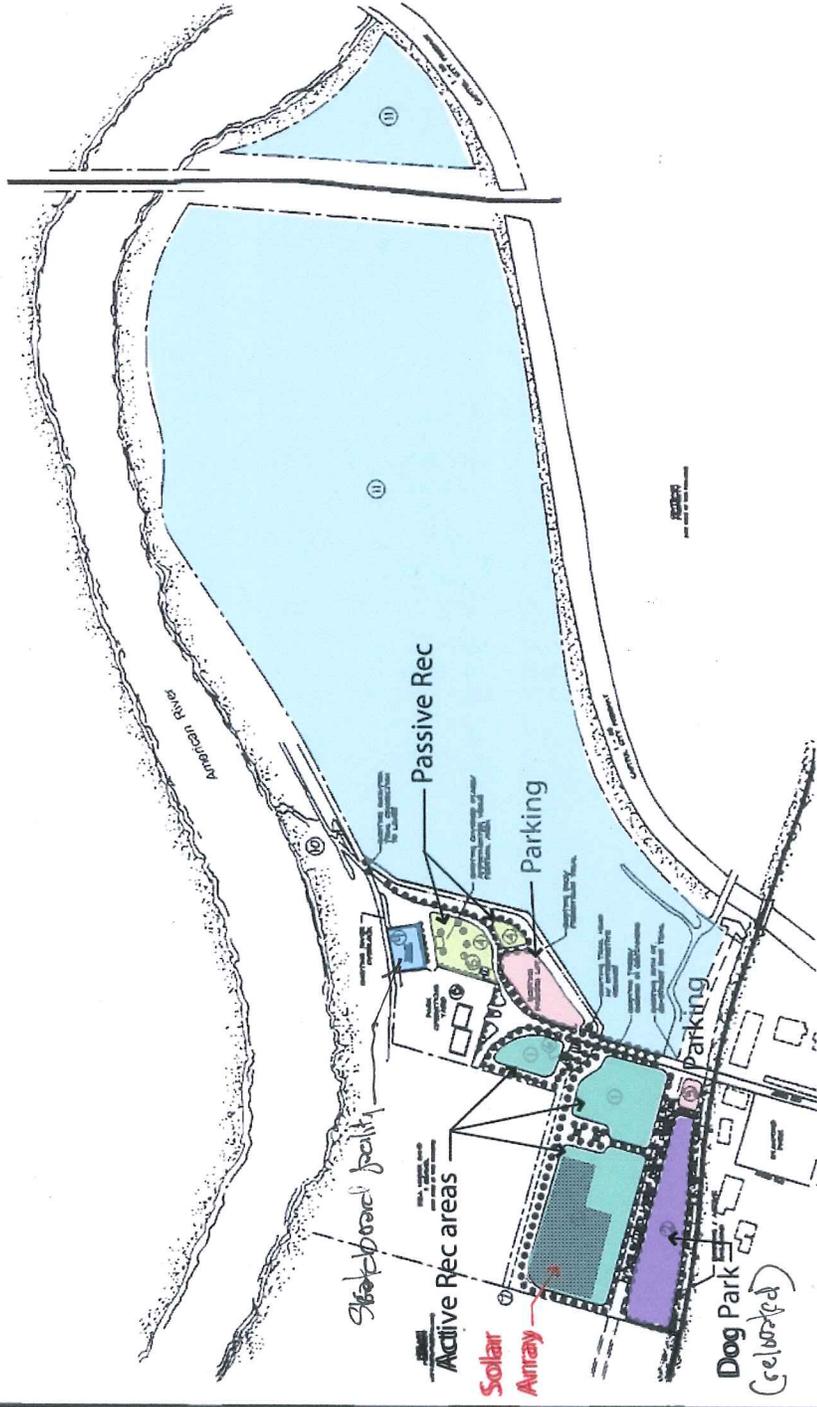
Sincerely,

A handwritten signature in black ink, appearing to read "Brian R. Collett". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Brian R. Collett

PROPOSED
RECREATION CAMPUS LEGEND

1. ACTIVE RECREATION COURT / FIELD AREAS
BASKETBALL
BIKE BIKING
ROLLER HOCKEY
SAND VOLLEYBALL
SKATEPARK
SOCCER / FIELD SPORTS
VELODROME
2. DOG PARK AREA
3. NEW PARKING AREA
4. PASSIVE RECREATION COURT AREAS
BOCCIE BALL
GAME TABLES / SHUFFLE BOARD
GIANT CHESS / BOARD GAMES
WALKING PUZZLE / TABLES
5. RESTROOM
6. CONCESSION / RESTROOM
RECREATION STATION
7. CONNECTION TO TWO RIVERS
BIKE TRAIL
8. PARK OPERATIONS/
RECREATION OFFICES
OPTIONAL FUTURE DEVELOPMENT
9. EXISTING BALER BUILDING
LIGHTED / COVERED
RECREATION AREA
10. FUTURE RIVER
ACCESS IN/ COUNTY
BIKE / HIKING TRIALS
HAND CARRY BOAT LAUNCH
(CANOES / KAYAKS / RAFTS)
PICNIC AREA
11. FUTURE NATURAL AREAS
DISC GOLF
HIKING TRAILS
HISTORICAL / NATURAL
INTERPRETIVE SIGNAGE
MOUNTAIN BIKING
VIEWING/ OVERLOOK AREAS



OVERALL MASTER PLAN FOR:
SUTTER'S LANDING PARK

163 acres

R2003-858 Dec. 9, 2003

CITY OF SACRAMENTO
DEPARTMENT OF PARKS AND RECREATION
SEPTEMBER 2005

LANDSCAPE ARCHITECT/PROJECT MANAGER, NOT TATIAN
DRAWN BY: TICHOMI, ROSALIE

0 100 200 400 600 800
NORTH

EXHIBIT B: Comments and Responses, Part 6

March 29, 2013

Ms. Dana Allen, Associate Planner
Community Development Department
City of Sacramento
300 Richards Blvd., 3rd Floor
Sacramento, CA 95811



RE: Sutter's Landing Park: Conergy Solar Project MND Comments

Dear Ms. Allen:

I live directly adjacent to Sutter's Landing Park (Park) and enjoy it on a nearly daily basis. I have a deep commitment to establishing a regional park at Sutter's Landing that provides park amenities for the public while protecting, maintaining, and enhancing the natural resource values there. Correctly done, I think it is possible to site a solar facility within a regional park and maintain appropriate recreation, open space, and natural habitat values. As proposed, however, this project does not accomplish that.

I have worked with the City to obtain the \$1.5 million dollar grant for Park improvements and, more recently, to appropriately site the solar project proposed by Conergy. I appreciate the City's earlier decision not to place the project on the landfill mound, an area well documented to be important foraging habitat (see [Friends of the River Banks species list](#) here), as well as a corridor for a wide diversity of wildlife [as shown in the aerial photo at this link](#). (Fig. 1)

I, along with others in Friends of Sutter's Landing (FOSL), worked with the City and Conergy to identify an area of the Park where the solar panels wouldn't impact the natural resource values or the aesthetics of the Park. We recommended that the solar panels be placed on existing structures in the Park, over parking areas and the dog park to provide shade, as well as along the railroad tracks, an area already impacted by recent removal of a large dirt stockpile and compaction. Done appropriately, this proposal could include trails for recreation, interpretive signs, and maintain habitat values and a corridor through the area [as shown on the figure at this link](#). The City cleared that area to provide fill cover for the adjacent Dellar property, and then compacted the area in preparation for the solar panels. However, after doing that work, a decision was made to move the solar panels to the more central paved area west of the dog park in the Park. This decision was made, according to City staff, to avoid the need to mitigate for raptor foraging habitat and the wildlife corridor provided by the RR parcel. Instead of avoiding the habitat values there, the City damaged them by this action. This is not acceptable and I object to this move, which now impacts two areas of the Park and is not addressed in the Mitigated Negative Declaration (MND). Based on recent discussions with City staff it now appears likely that the RR/former stockpile area will be considered for establishing a bmx bike course rather than restoring habitat values there. These actions need to be accounted for in the environmental document for the solar project that triggered them, not postponed to some future date.

This project is estimated to provide approximately \$300,000 to the City over 20 years. That is \$15,000 per year. However, the City is also now expected to provide security and maintenance for the facility. How much will that cost? In addition, the City has already spent money to facilitate the project, prepping the area near the railroad tracks as well as staff time to work on the project, before moving the proposed solar site onto the blacktop. Besides the impact to the Park, present and future, I question the fiscal wisdom of this solar project as proposed, which appears to have the potential to be a financial drain to the City rather than a revenue source.

The look of the solar project is a concern. Although there has been some talk of “decorating” the area, it is too easy to imagine that for security and costs reasons this area will be surrounded by a fence and barbed wire. Since the City is to be responsible for security, any additional decoration would fall to the taxpayers. With the solar project currently proposed for the middle of the blacktop, this fenced-off area will be right in the middle of land that could be used for park-type purposes, an industrial island and eyesore.

There is a Master Plan in place for the Park but it is not being followed; instead, there has been a piecemeal approach with disparate projects placed on Park land without a larger vision. That is not the way to achieve a world-class regional park. Local groups have worked on a vision for the area and would like to work with the City and community members and organizations to revisit the Master Plan and define a larger vision before proceeding with projects that will impact the future potential of this Park.

Sacramento residents made it clear they want the City to prioritize natural parklands when the City surveyed voters. According to the City’s own report:

“The top priority (for voters) was large habitat areas for walking and hiking, where interpretive and educational programs can take place...Second priority is to develop parklands and areas along the American Riverbank.” (2006 public opinion survey commissioned by the City of Sacramento for the City’s Parks and Recreation Master Plan)

The City currently has very few park lands that meet these needs along the south side of the American River Parkway. Sutter’s Landing provides the only feasible area along the south side of the river where the City can add park lands that meet the top two priorities expressed by the City’s residents.

Sutter’s Landing Park is a work in progress. There are many challenges to achieving the world-class “Gateway to the American River Parkway” that has been envisioned. The area is precious. Putting an industrial array of solar panels right in the middle of the park is counter to the goals of a public park. It will preclude any other uses of that area for 20+ years, and set an industrial tone for the Park. The MND does not include any discussion or consideration of alternative sites for the proposed project. Why?

I do recognize the importance of having clean renewable energy resources, including solar, in addition to supporting improvements to the Park that restore the natural and recreational values of this critical riverside area. I also believe that appropriately located and designed solar energy projects can be compatible additions to the park if they are non-disruptive of the park’s wildlife, habitat, and aesthetic values, and the revenues generated go to park enhancements and operations. However, the current proposal for the solar project does not meet these multi-purpose requirements and, while solar installations can be sited in many places, it is not that easy to create new river habitat or large parkland areas.

I am disappointed that the City did not move forward with the solar project design recommended that would have significantly greater benefits for park visitors and less negative impact to the Park.

I request the City to take the following actions as part of this proposed project:

1. The City should update Master Plan for Sutter’s Landing Park, in collaboration between the City and community. This should be done regardless of the status of the proposed

solar project.

Sutter's Landing Park has the potential to be one of the most acclaimed regional parks in Northern California. Realizing this potential will require an updated vision that also considers acquisition of additional lands adjacent to the existing park and the park's role as a major gateway to the American River Parkway. Furthermore, the temporary master plan that was adopted for the park is out-of-date and does not meet the goals identified by Sacramento's residents as articulated in the City's poll.

Before considering additional development projects in the park, the City should engage residents and community groups in a planning exercise to envision a larger and more integrated park design and update the Sutter's Landing Park Master Plan.

2. The City should be transparent about the solar project financing so the public can better understand whether the City is getting a fair deal in committing its park resources for this purpose. The value of these existing park lands if they were to be acquired elsewhere for recreation should be discussed as well. Also, revenues generated for the City should be committed to enhancing and operating Sutter's Landing Park.

The finances for the solar project and the relative share of revenues that will be received by the developer and by the City have not been made public. The City should complete its financial due diligence about the project and provide the information to the public.

3. Conergy or SMUD should pay for all security and maintenance to protect the solar installations and add, not detract, from the security at the Park. These costs should not impact the budget for the Park and the ability to restore and enhance existing values there.

The "Initial Study/Mitigated Negative Declaration" (page 6) states: "Security of the solar array installations would be the responsibility of the City of Sacramento, and the site would be inspected on a regular basis. Any repairs to the fencing or other structures in support of the solar facility will be made within a reasonable amount of time, as specified in the lease agreement." It is apparent from the level of disturbance to existing fencing at the park and around the former landfill that this will be a considerable cost over time.

The City of Sacramento does not have sufficient resources to adequately patrol and operate the park at the current time. Diverting the very limited City staff time and funding to provide security for the Conergy installation reduces the amount of time that City staff can focus on park and landfill closure needs. Furthermore, this language also implies potential liability for the City with respect to repairing fences and any damage that may be caused to the solar installations. The City should require Conergy or SMUD to provide or pay for the needed security to protect the site rather than taxpayers. Furthermore, the City should not be liable for the costs of repairing the fences and the installation.

4. The City should engage the public in the final design and educational components for the solar project, as well as for the area south of the blacktop area and the dog park and north of the railroad tracks.

The proposed project is at risk of having a very industrial look that would not be appropriate for a park location or the existing viewshed at the Park. I strongly encourage the City to involve the public, including organizations and river parkway design experts,

in making sure the fencing, solar array design, and educational information is appropriate for the site and advances the park experience for visitors. The area between the project site and RR tracks was greatly altered by the drainage control and solar project site preparation work conducted there. Restoration of this site is needed to return foraging and wildlife movement values to this area.

In addition, if the solar project goes forward as currently proposed I suggest the following to help ensure the design of any system you approve is as appropriate for the site as possible, especially recognizing the installation will be in the park for the next 20 years:

5. Adopt a more compact alignment of the solar panels that results in less park space being consumed while generating the same amount of clean energy.

The project design presented to the Parks and Recreation Commission included significantly more space between the rows of solar panels as compared to the previous designs. By moving the panels closer together, the City can conserve park space for other uses without reducing the amount of electricity that would be generated by the project.

6. Increase the amount of shade over the dog park by moving additional solar panels into this area.

Park visitors would benefit if additional solar panels were moved into the dog park creating larger areas of concentrated shade. The current array is insufficient. Providing more significant benefits to park users would require moving only a small percentage of the solar panels to this area and configuring most of the panels together to provide larger elevated shade structures for both the small and large dog parks.

7. Establish one or two picnic areas that would be shaded by elevated solar panels.

Sutter's Landing Park includes very few areas with any shade outside of the American River Parkway's riparian habitat. By moving and elevating a small percentage of the solar panels to appropriate locations, the City can create needed shaded areas for picnic tables and other amenities for visitors to enjoy. Potential locations include: the area to the immediate west of the dog park; area near the parking lot where solar panels will be installed, and in the large open space area to the south of the Skateboard park.

I would also like to add the following additional comments:

- The City's contract should require Conergy to remove the installation after the 20-year lease period and restore the site to park uses.
- The Initial Study/MND appropriately recognizes that "Sutter's Landing Park is situated within the American River riparian zone and serves as important wildlife habitat within the City of Sacramento. It is in one of the richest areas for raptors on the American River Parkway, especially for Swainson's hawk..." (page 25)
- Future city documents should acknowledge that the previous soil stockpile and adjacent areas to the south of the solar project site were used for foraging by raptors including White-tailed kites and other species. I have personally observed White-tailed kites and other raptors using this resource regularly.

- Future city documents should also indicate that the Northern harrier, a raptor and species of special concern, also regularly uses Sutter's Landing Park for foraging and potentially nesting habitat.
- Finally, the text on page 28 of the Initial Study/MND should be revised to indicate that Swainson's hawks nest along the American River Parkway very near Sutter's Landing Park and use the park for foraging habitat. The text on page 28 incorrectly indicates the nearest nesting site is 2.5 miles away. These habitat facts are documented in the City's 28th Street Landfill Tree Removal Mitigation Committee report which is available on the City's website. Future City documents should also use the correct information about Swainson's hawks.

Thank you for the opportunity to comment on the Conergy Solar Project and on the "Initial Study/MND for this project.

Sincerely,

Dale T. Steele
301 27th Street
Sacramento, Ca 95816

Hyperlinked attachments referenced in this letter:

Friends of the River Banks link to photos and species list of wildlife observed at Sutter's Landing Park (<http://www.friendsoftheriverbanks.org/whats-there.html>)

Oblique aerial photo showing Sutter's Landing Park
(<https://www.evernote.com/shard/s233/sh/2ee749de-110f-4e19-a191-48572f5446c6/0740db469d729ebd19ceec6d5067cd9f6>)

Aerial photo showing alternative location for solar array & associated park enhancement features
(<https://www.evernote.com/shard/s233/sh/0564048f-a74f-4612-8355-25a02571fba2/bec4273351c0835e7cff4651aebc2ff2>)

Figure 1

Note: The former stockpile area labeled before provided foraging habitat and served as a wildlife corridor connecting the east and west areas of the park before recent ground disturbance by city/Dellar activities

Shared by daletsteele

SuttersLandingReferenceOblique-20130218-104415.jpg

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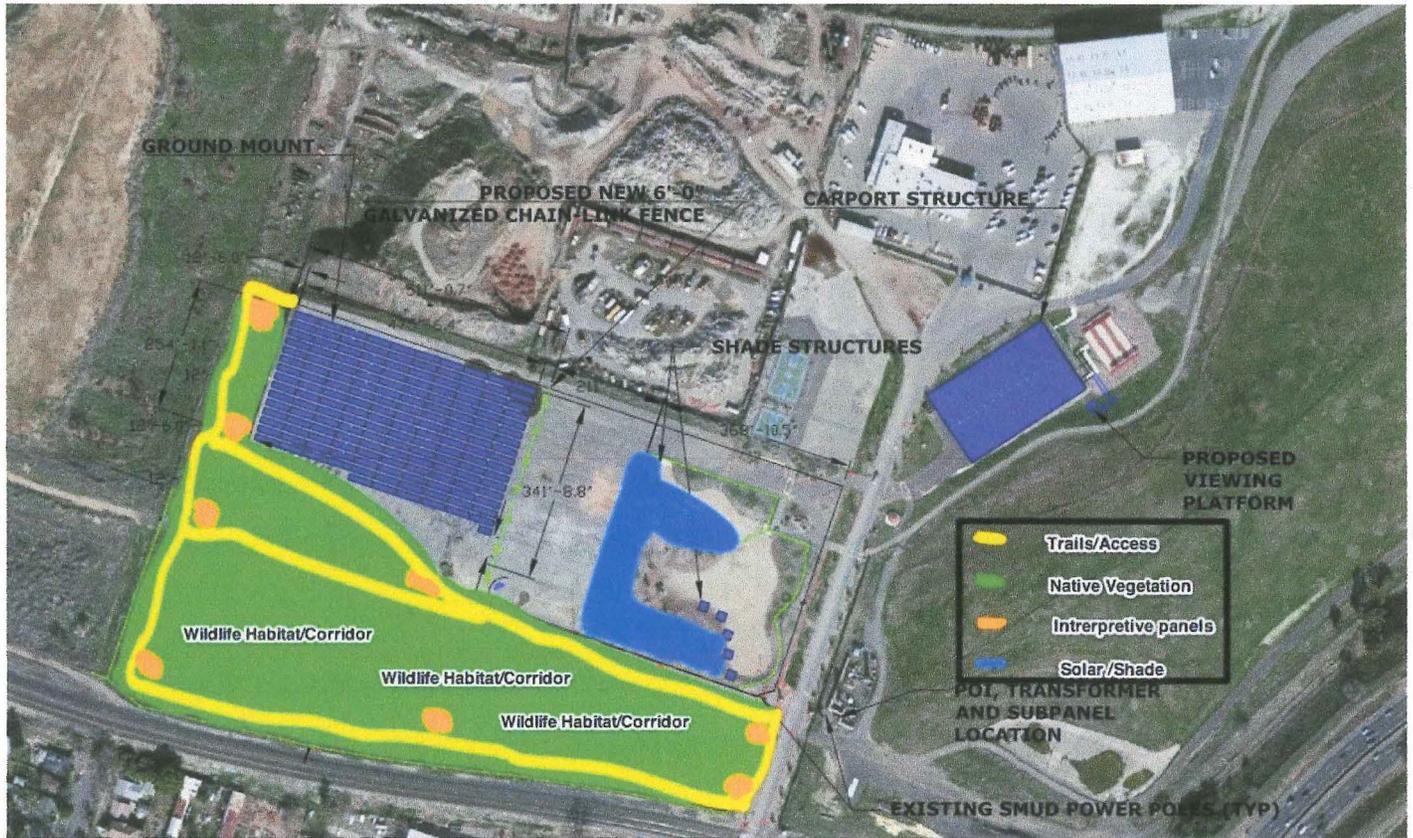
Figure 2

Shared by daletsteele

Note: The former stockpile area could be restored to provide recreation, foraging & corridor habitat for wildlife. A variation of what is shown below could place solar panels along the RR tracks and restore these habitat features between Solar and paved area/Dog Park.

FOSLRevisedSolarHabitatProposal-20130218-101801.jpg

Updated Feb 18, 2013



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Evernote makes it easy to remember things big and small from your everyday life using your computer, tablet, phone and the web.

Wildlife Species Observed at Sutter's Landing Regional Park

Last Updated February 23, 2012

Friends of the River Banks

(81 Birds, 15 Mammals, 6 Reptiles, and 3 Amphibians)

Anseriformes - Screamers, Swans, Geese, and Ducks

Anatidae - Ducks, Geese, and Swans

Canada Goose *Branta canadensis*

Wood Duck *Aix sponsa*

Mallard *Anas platyrhynchos*

Bufflehead *Bucephala albeola*

Common Goldeneye *Bucephala clangula*

Barrow's Goldeneye *Bucephala islandica*

Common Merganser *Mergus merganser*

Galliformes - Gallinaceous Birds

Odontophoridae - New World Quail

California Quail *Callipepla californica*

Phasianidae - Partridges, Grouse, Turkeys, and Old World Quail

Wild Turkey *Meleagris gallopavo* - 1

Podicipediformes - Grebes

Podicipedidae - Grebes

Pied-billed Grebe *Podilymbus podiceps*

Phalacrocoracidae - Cormorants

Double-crested Cormorant *Phalacrocorax auritus*

Ardeidae - Herons, Bitterns, and Allies

Great Blue Heron *Ardea herodias*

Great Egret *Ardea alba*

Accipitriformes - Hawks, Kites, Eagles, and Allies

Cathartidae - New World Vultures

Turkey Vulture *Cathartes aura*

Pandionidae - Ospreys

Osprey *Pandion haliaetus*

Accipitridae - Hawks, Kites, Eagles, and Allies

White-tailed Kite *Elanus leucurus*

Northern Harrier *Circus cyaneus*
Cooper's Hawk *Accipiter cooperii*
Red-shouldered Hawk *Buteo lineatus*
Swainson's Hawk *Buteo swainsoni*

Falconiformes - Caracaras and Falcons

Falconidae - Caracaras and Falcons
American Kestrel *Falco sparverius*
Merlin *Falco columbarius*
Peregrine Falcon *Falco peregrinus*

Gruiformes - Rails, Cranes, and Allies

Rallidae - Rails, Gallinules, and Coots
American Coot *Fulica americana*

Charadriiformes - Shorebirds, Gulls, Auks, and Allies

Charadriidae - Lapwings and Plovers
Killdeer *Charadrius vociferus*

Scolopacidae - Sandpipers, Phalaropes, and Allies

Spotted Sandpiper *Actitis macularius*

Laridae - Gulls, Terns, and Skimmers

Ring-billed Gull *Larus delawarensis*
California Gull *Larus californicus*

Columbiformes - Pigeons, and Doves

Columbidae - Pigeons and Doves
Rock Pigeon *Columba livia* - I
Mourning Dove *Zenaida macroura*

Strigiformes - Owls

Tytonidae - Barn Owls
Barn Owl *Tyto alba*

Strigidae - Typical Owls

Great Horned Owl *Bubo virginianus*

Apodiformes - Swifts, and Hummingbirds

Apodidae - Swifts
White-throated Swift *Aeronautes saxatalis*

Trochilidae - Hummingbirds

Black-chinned Hummingbird *Archilochus alexandri*
Anna's Hummingbird *Calypte anna*

Coraciiformes - Rollers, Motmots, Kingfishers, and Allies

Alcedinidae - Kingfishers

Belted Kingfisher *Ceryle alcyon*

Piciformes - Puffbirds, Jacamars, Toucans, Woodpeckers, and Allies

Picidae - Woodpeckers and Allies

Nuttall's Woodpecker *Picoides nuttallii*

Downy Woodpecker *Picoides pubescens*

Northern Flicker *Colaptes auratus*

Passeriformes - Passerine Birds

Tyrannidae - Tyrant Flycatchers

Black Phoebe *Sayornis nigricans*

Say's Phoebe *Sayornis saya*

Ash-throated Flycatcher *Myiarchus cinerascens*

Western Kingbird *Tyrannus verticalis*

Laniidae - Shrikes

Loggerhead Shrike *Lanius ludovicianus*

Corvidae - Crows and Jays

Western Scrub-Jay *Aphelocoma californica*

Yellow-billed Magpie *Pica nuttalli*

American Crow *Corvus brachyrhynchos*

Hirundinidae - Swallows

Tree Swallow *Tachycineta bicolor*

Violet-green Swallow *Tachycineta thalassina*

Northern Rough-winged Swallow *Stelgidopteryx serripennis*

Cliff Swallow *Petrochelidon pyrrhonota*

Barn Swallow *Hirundo rustica*

Paridae - Chickadees and Titmice

Oak Titmouse *Baeolophus inornatus*

Aegithalidae - Long-tailed Tits and Bushtits

Bushtit *Psaltriparus minimus*

Sittidae - Nuthatches

White-breasted Nuthatch *Sitta carolinensis*

Troglodytidae - Wrens

Bewick's Wren *Thryomanes bewickii*

House Wren *Troglodytes aedon*

Regulidae - Kinglets

Ruby-crowned Kinglet *Regulus calendula*

Sylviidae - Sylviid Warblers

Wrentit *Chamaea fasciata*

Turdidae - Thrushes

Western Bluebird *Sialia mexicana*

American Robin *Turdus migratorius*

Mimidae - Mockingbirds and Thrashers

Northern Mockingbird *Mimus polyglottos*

Sturnidae - Starlings

European Starling *Sturnus vulgaris* - I

Motacillidae - Wagtails and Pipits

American Pipit *Anthus rubescens*

Bombycillidae - Waxwings

Cedar Waxwing *Bombycilla cedrorum*

Ptilogonatidae - Silky-flycatchers

Phainopepla *Phainopepla nitens*

Parulidae - Wood-Warblers

Orange-crowned Warbler *Oreothlypis celata*

Yellow-rumped Warbler *Setophaga coronata*

Emberizidae - Emberizids

Spotted Towhee *Pipilo maculatus*

California Towhee *Melospiza crissalis*

Lincoln's Sparrow *Melospiza lincolni*

White-crowned Sparrow *Zonotrichia leucophrys*

Golden-crowned Sparrow *Zonotrichia atricapilla*

Cardinalidae - Cardinals and Allies

Lazuli Bunting *Passerina amoena*

Icteridae - Blackbirds

Red-winged Blackbird *Agelaius phoeniceus*

Western Meadowlark *Sturnella neglecta*

Brewer's Blackbird *Euphagus cyanocephalus*

Fringillidae - Fringilline and Cardueline Finches and Allies

House Finch *Carpodacus mexicanus*
Lesser Goldfinch *Spinus psaltria*

American Goldfinch *Spinus tristis*

Passeridae - Old World Sparrows

House Sparrow *Passer domesticus* - I

The sequence of birds on this list has been updated to follow the 7th edition of the *A.O.U Check-List of North American Birds*, and supplements.

**Mammals, Reptiles, and Amphibians Observed at Sutter's Landing
Regional Park**

**Last Updated February 23, 2012
Friends of the River Banks**

River Otter
California Sea Lion
California Ground Squirrel
Coyote
Black-tailed Jackrabbit
Beaver
Pocket Gopher
Eastern Fox Squirrel
Cottontail Rabbit
Bat sps
Striped Skunk
Raccoon
Black-tailed Deer
Western Gray Squirrel
California Meadow Vole
Western Pond Turtle
Red-eared Slider
Gopher Snake
Alligator Lizard
Western Fence Lizard
Common King Snake
Slender Salamander
Bull Frog
Chorus Frog

EXHIBIT B: Comments and Responses, Part 7



To:
Mr. J.P. Tindell,
City of Sacramento,
Park Planning and Development Manager

March 14, 2012

I am a resident of River Park here in Sacramento. I have an interest in the fate of Sutter's Landing and various components of the Master Plan. I am contacting you regarding a plan I came across that proposes to develop a portion of Sutter's Landing with photovoltaic panels, dubbing it a "photovoltaic park," Solar Photovoltaic Park at Sutter's Landing. I noticed there was a project presentation on February 22, 2011.

I'd like to go on record by stating that I am concerned that the proposed "photovoltaic park" does not constitute what one might consider to be defined as the intended use of a park or open space. I'd like some clarity on how this designation "photovoltaic park" falls into the category of a "park."

I want to preface my concerns by indicating my support for the use and need of photovoltaic arrays. I do think they have utility in many circumstances, but not at the expense of open space, especially in an urban area that should embrace, preserve, or otherwise cherish what little open space is available to those that reside here.

In reading the Master Plan for Sutter's Landing, Supplemental Agreement: Sutter's Landing Regional Park (L18167100), dated April 21, 2009. I saw no mention of including solar panels as a use within the park boundaries. A use I did notice, in Sector 12, if you will, includes Mountain Biking. This is an activity, with some imagination, that would be perfectly suited for this site. I've included a link that describes a similar park in Boulder Colorado that built a bike park with the assistance from IMBA (International Mountain Bike Association).

<http://www.vitalmtb.com/videos/member/IMBA-Valmont-Bike-Park-Video,8067/sspomer,2>

As I'm sure you are aware, Sacramento, and the greater region, has a very healthy and active cycling community. If done properly, this area (Sector 12) could be a regional destination. A destination that would bring some degree of economic growth – there is no other amenity like what I am advocating within the greater Sacramento Region.

In closing, I'd like to say that I plan on following the development of this unique piece of land. Sector 12 of Sutter's Landing provides a rare opportunity to significantly enhance and anchor an already special park system. Developing for use by bikes will help take pressure off of the bike trail and offer a healthy alternative to young people looking to express themselves in an individual manner.

Thank you for your time and I hope to hear back from you soon.

Sincerely,

David Moffatt

Cc Steven Cohn

EXHIBIT B: Comments and Responses, Part 8



Friends of Sutter's Landing Park

March 21, 2013

Ms. Dana Allen, Associate Planner
Community Development Department
City of Sacramento
300 Richards Blvd., 3rd Floor
Sacramento, CA 95811

RE: Sutter's Landing Park: Conergy Solar Project

Dear Ms. Allen:

Friends of Sutter's Landing Park (FOSL) is a community-based organization of Sacramento area residents with a deep commitment to establishing a regional park that will serve as a beautiful *Gateway to the American River Parkway* that current and future generations can enjoy. We appreciate the City's decision to not place the solar project on sensitive natural resources that provide wildlife foraging habitat and a movement corridor, although we believe there were superior options available in project design and placement.

Sacramento residents made it clear they want the City to prioritize natural parklands when the City surveyed voters. According to the City's own report:

"The top priority (for voters) was large habitat areas for walking and hiking, where interpretive and educational programs can take place...Second priority is to develop parklands and areas along the American Riverbank." (2006 public opinion survey commissioned by the City of Sacramento for the City's Parks and Recreation Master Plan)

The City currently has very few park lands that meet these needs along the south side of the American River Parkway. Sutter's Landing provides the only feasible area along the south side of the river where the City can add parklands that meet the top two priorities expressed by the City's residents.

FOSL also recognizes the societal importance of clean renewable energy resources, including solar, in addition to supporting improvements to the park that restore the natural and recreational values of this critical riverside area. FOSL also believes that appropriately located and designed solar energy projects can be compatible editions to the park if they are non-disruptive of the park's wildlife, habitat, and aesthetic values and the revenues generated go to park enhancements and operations.

While we were disappointed that the City did not move forward with the solar project design that we recommended that would have significantly greater benefits for park visitors, we are still committed to working with the City to help ensure the design of the system you approve

is as appropriate for the site as possible, recognizing the installation will be in the park for the next twenty years.

In the spirit of improving this project and to advance the park values, we respectfully request the City to take the following actions:

1. Adopt a more compact alignment of the solar panels that results in less park space being consumed while generating the same amount of clean energy.

The project design presented to the Parks and Recreation Commission included significantly more space between the rows of solar panels as compared to the previous designs. By moving the panels closer together, the City can conserve park space for other uses without reducing the amount of electricity that would be generated by the project.

2. Increase the amount of shade in the dog park by moving additional solar panels into this area.

Park visitors would benefit if additional solar panels were moved into the dog park creating larger areas of concentrated shade. The current array is insufficient. Providing more significant benefits to park users would require moving only a small percentage of the solar panels to this area and configuring most of the panels together to provide larger elevated shade structures for both the small and large dog parks.

3. Establish one or two picnic areas that would be shaded by elevated solar panels.

Sutter's Landing Park includes very few areas with any shade outside of the American River Parkway's riparian habitat. By moving and elevating a small percentage of the solar panels to appropriate locations, the City can create needed shaded areas for picnic tables and other amenities for visitors to enjoy. Potential locations include: the area to the immediate west of the dog park; area near the parking lot where solar panels will be installed, and in the large open space area to the south of the Skateboard park.

4. The City should be transparent about the project financing so the public can better understand whether the City is getting a fair deal in committing its park resources for this purpose. Furthermore, revenues generated for the City should be committed to enhancing and operating Sutter's Landing Park.

The finances for the project and the relative share of revenues that will be received by the developer and by the City have not been made public. This City should complete its financial due diligence about the project and provide the information to the public.

5. Conergy should be required to pay for security to protect the solar installations and add, not detract, from the security at the Park.

The "Initial Study/Mitigated Negative Declaration" (page 6) states: "Security of the solar array installations would be the responsibility of the City of Sacramento, and the site

would be inspected on a regular basis. Any repairs to the fencing or other structures in support of the solar facility will be made within a reasonable amount of time, as specified in the lease agreement.”

The City of Sacramento does not have sufficient resources to adequately patrol and operate the park at the current time. Diverting the very limited City staff time and funding to provide security for the Conergy installation reduces the amount of time that City staff can focus on park and landfill closure needs. Furthermore, this language also implies potential liability for the City with respect to repairing fences and any damage that may be caused to the solar installations. The City should require Conergy to provide or pay for the needed security to protect the site rather than taxpayers. Furthermore, the City should not be liable for the costs of repairing the fences and the installation.

6. The City should engage the public in the final design and educational components for the solar project, as well as for the area south of the blacktop area and the dog park and north of the railroad tracks.

The project risks having a very industrial look that would not be appropriate for a park location. We strongly encourage the City to involve the public including FOSL, other organizations, and river parkway design experts in making sure the fencing, solar array design, and educational information is appropriate for the site and advances the park experience for visitors. The area between the project site and RR tracks was greatly altered by the drainage control and solar project site preparation work conducted there. Restoration of this site is needed to return foraging and wildlife movement values to this area.

7. The City should conduct additional planning before considering additional development projects in the park.

Sutter’s Landing Park has the potential to be one of the most acclaimed regional parks in Northern California. Realizing this potential will require an updated vision that also considers acquisition of additional lands adjacent to the existing park and the park’s role as a major gateway to the American River Parkway. Furthermore, the temporary master plan that was adopted for the park is out-of-date and does not meet the goals identified by Sacramento’s residents as articulated in the City’s poll.

Before considering additional development projects in the park, the City should engage residents and community groups in a planning exercise to envision a larger and more integrated park design and update the Sutter’s Landing Park master plan.

We would like to add the following additional comments:

- The City’s contract should require Conergy to remove the installation after the 20-year lease period and restore the site to park uses.
- The Initial Study/Mitigated Negative Declaration appropriately recognizes that “Sutter’s Landing Park is situated within the American River riparian zone and serves as important

wildlife habitat within the City of Sacramento. It is in one of the richest areas for raptors on the American River Parkway, especially for Swainson's hawk..." (page 25)

- Future city documents should acknowledge that the previous dirt stock pile and adjacent areas to the south of the solar project site were used for foraging by raptors including the White-tailed kites and other species. FOSL members personally observed White-tailed kites and other raptors using this resource.
- Future city documents should also indicate that the Northern harrier, a species of special concern, also uses Sutter's Landing Park for foraging and potentially nesting habitat.
- Finally, the text on page 28 of the Initial Study/Mitigated Negative Declaration should be revised to indicate that Swainson's hawks nest along the American River Parkway very near Sutter's Landing Park and use the park for foraging habitat. The text on page 28 incorrectly indicates the nearest nesting site is 2.5 miles away. These habitat values are documented in the City's 28th Street Landfill Tree Removal Mitigation Committee report which is available on the City's website. Future City documents should also use the correct information about Swainson's hawks.

Thank you for the opportunity to comment on the Conergy Solar Project and on the "Initial Study/Mitigated Negative Declaration for this project.

Sincerely,

A handwritten signature in cursive script that reads "Lori Ward".

Friends of Sutter's Landing Park

EXHIBIT B: Comments and Responses, Part 9



Friends of Sutter's Landing Park

March 27, 2013
Dana Allen, Associate Planner
Community Development Department
City of Sacramento
300 Richards Blvd., 3rd Floor
Sacramento, CA 95811

RE: Sutter's Landing Park: Conergy Solar Project

Dear Ms. Allen,

Friends of Sutter's Landing Park (FOSL) is a group of local citizens who have a sincere interest in the American River, its habitat and the ways in which the lands of Sutter's Landing Park (SPL) are utilized. To our group, Sutter's Landing Park is a treasure which calls for a powerful vision and sound policy to carry out this vision. The park land's proximity to the American River and its habitat values offer a unique opportunity for a regional park in the heart of the Central City.

FOSL has a list of questions we would like to ask the City in light of the information that was revealed at the City Parks and Recreation Commission's recent community forum and in the MND for the Conergy solar array project proposal for Sutter's Landing Park.

Our group was surprised to learn that the proposed 20-year solar project may bring little or no financial benefit to the City or the park (an estimated \$300,000 in total revenues over 20 years, or \$15,000 annually). In fact, the costs (which have yet to be disclosed) to maintain, repair, and provide security to the property over the project's 20-year duration may exceed the revenues, thus resulting in a net financial loss to the City.

Our first question is: During these financially troubling times, why would the City support the proposed solar array if the project could lose the City and its tax-payers money?

The City recently paid approximately \$2 million for 0.9 acres of land at 19th and Q Streets, which the City plans to convert to park use.

Our second question is: How does it make sound budgetary sense for the City to spend \$2 million to acquire 0.9 acres to expand park land within the central city, then turn around and eliminate 3.8 acres of existing park land to support a project that could lose the City money? (Using the same valuation formula, the City would be decommissioning \$8.4 million in park land).

As we understand, SMUD would continue to meet its green energy supply requirements without the energy that would be produced by the proposed SLP solar project.

Our third question is: Is the SLP solar project crucial in any way to SMUD's green energy supply needs?

The essence of green energy is to conserve and protect natural resources. Urban solar energy production is most beneficial when it is incorporated on top of existing structures, such as rooftops, when it can cover black top that is otherwise useless, or when it can provide multi-purpose benefits, such as shelter and shade for a parking lot or a picnic area. Our group wholeheartedly supports these types of responsible green projects. Unfortunately, only a very small percentage of the proposed solar panels at SLP would be raised and used to create shade for the parking lot, picnic tables and dog park. This portion of the proposal demonstrates sound, practical solar panel utilization and would provide an excellent opportunity for the City of Sacramento and SMUD to promote their green energy programs. An opportunity exists here to promote public awareness and education with regard to global warming and responsible ways in which we can reduce our carbon footprint.

The great majority of the solar panels would not be raised, however, and would remove 3.8 acres of park land from recreational use. If the 3.8 acre portion of the proposal were a golden example of natural resource conservation and utilization, we would understand why the City would want to support it. Eliminating 3.8 acres from the center of a regional park does not conserve natural resources, it accomplishes the exact opposite. The single-use solar panel portion of the current proposal is a counterproductive approach to green energy production.

Our fourth question is: Since Sutter's Landing Park is not only a closed landfill, but is slated as a regional park adjacent to the American River Parkway, how does it make sound environmental sense to proceed with the single-use solar panel portion of the project, which would eliminate 3.8 acres of this valuable park land, making it unusable for the region's residents for at least the next 20 years?

As the Two Rivers' Bike Trail continues to expand, SLP will soon become Sacramento's new **Gateway to the American River Parkway**. With more than 8 million visitor days per year (more than Yosemite!), the American River Parkway is considered one of Sacramento's greatest treasures. The main attractions of the Parkway are the beauty and life of the river and the natural environment that surrounds it.

*Our fifth question is: Why does the City believe that the currently-proposed single-use solar power generation facility would be consistent with the look, feel and usage that the park's visitors will expect from Sacramento's **Gateway to the American River Parkway**?*

During the community forum at the City Parks and Recreation Commission meeting, the Commission questioned why the solar project was relocated from a peripheral area of the park next to the railroad tracks to a central area specifically designated for recreational

use in the City's Master Plan for SLP. The Commission communicated that it preferred not to lose 3.8 acres of centrally-located park land to a solar power generation facility and suggested that the City revisit and revise its Master Plan.

Our sixth question is: Why is the City, in contradiction to its own Master Plan for SLP, willing to sacrifice 3.8 acres of park land to a solar power generation facility when there appears to be little or no financial, environmental, recreational or aesthetic benefit to be gained?

Our final question is: How would the City, its residents, and the future Gateway to the American River Parkway benefit from the solar project at Sutter's Landing Park as currently proposed?

We would appreciate your answers to these questions so as to shed light on your reasons for supporting this project as it is currently proposed. We are confused and need clarification. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Lori Ward".

Lori Ward
Friends of Sutter's Landing Park

EXHIBIT B: Comments and Responses, Part 10

Dana Allen

From: Julie Murphy <julieamurphy28@gmail.com>
Sent: Friday, March 29, 2013 3:15 PM
To: Dana Allen
Subject: Sutter's Landing Park: Conergy Solar Project Mitigated Negative Declaration ("MND") Comments



March 29, 2013

dallen@cityofsacramento.org

Ms. Dana Allen, Associate Planner
Community Development Department
City of Sacramento
300 Richards Blvd., 3rd Floor
Sacramento, CA 95811

RE: Sutter's Landing Park: Conergy Solar Project Mitigated Negative Declaration ("MND") Comments

Dear Ms. Allen:

I live in the neighborhood adjacent to Sutter's Landing Park (Park) called Marshall School/New Era Park and enjoy visiting Sutter's Landing Park on a regular basis. My neighbors and I share a deep commitment to establishing a regional park at Sutter's Landing that provides park amenities for the public while protecting, maintaining, and enhancing the natural resource values there. Correctly done, I think it is possible to site a solar facility within a regional park and maintain appropriate recreation, open space, and natural habitat values. As proposed, however, this project does not accomplish that.

This project is estimated to provide approximately \$300,000 to the City over 20 years. That is \$15,000 per year. However, the City is also now expected to provide security and maintenance for the facility. How much will that cost?

In addition, the City has already spent money to facilitate the project, prepping the area near the railroad tracks as well as staff time to work on the project, before moving the proposed solar site onto the blacktop. Besides the impact to the Park, present and future, I question the fiscal wisdom of this solar project as proposed, which appears to have the potential to be a financial drain to the City rather than a revenue source.

The look of the solar project is a concern. Although there has been some talk of "decorating" the area, it is too easy to imagine that for security and costs reasons this area will be surrounded by a fence and barbed wire. Since the City is to be responsible for security, any additional decoration would fall to the taxpayers. With the solar project currently proposed for the middle of the blacktop, this fenced-off area will be right in the middle of land that could be used for park-type purposes, an industrial island and eyesore.

There is a Master Plan in place for the Park but it is not being followed; instead, there has been a piecemeal approach with disparate projects placed on Park land without a larger vision. That is not the way to achieve a world-class regional park. Local groups have worked on a vision for the area and would like to work with the City and community members and organizations to revisit the Master Plan and define a larger vision before proceeding with projects that will impact the future potential of this Park.

Sacramento residents made it clear they want the City to prioritize natural parklands when the City surveyed voters. According to the City's own report:

“The top priority (for voters) was large habitat areas for walking and hiking, where interpretive and educational programs can take place...Second priority is to develop parklands and areas along the American Riverbank.” (2006 public opinion survey commissioned by the City of Sacramento for the City’s Parks and Recreation Master Plan)

The City currently has very few park lands that meet these needs along the south side of the American River Parkway. Sutter’s Landing provides the only feasible area along the south side of the river where the City can add park lands that meet the top two priorities expressed by the City’s residents.

Sutter’s Landing Park is a work in progress. There are many challenges to achieving the world-class “Gateway to the American River Parkway” that has been envisioned. The area is precious. Putting an industrial array of solar panels right in the middle of the park is counter to the goals of a public park. It will preclude any other uses of that area for 20+ years, and set an industrial tone for the Park. The MND does not include any discussion or consideration of alternative sites for the proposed project. I find this troubling and would like to request further exploration of the issue.

I do recognize the importance of having clean renewable energy resources, including solar, in addition to supporting improvements to the Park that restore the natural and recreational values of this critical riverside area. I also believe that appropriately located and designed solar energy projects can be compatible additions to the park if they are non-disruptive of the park’s wildlife, habitat, and aesthetic values, and the revenues generated go to park enhancements and operations. However, the current proposal for the solar project does not meet these multi-purpose requirements and, while solar installations can be sited in many places, it is not that easy to create new river habitat or large parkland areas.

I am disappointed that the City did not move forward with the solar project design recommended that would have significantly greater benefits for park visitors and less negative impact to the Park.

I request the City to take the following actions as part of this proposed project:

1. The City should update Master Plan for Sutter’s Landing Park, in collaboration between the City and community. This should be done regardless of the status of the proposed solar project.

Sutter’s Landing Park has the potential to be one of the most acclaimed regional parks in Northern California. Realizing this potential will require an updated vision that also considers acquisition of additional lands adjacent to the existing park and the park’s role as a major gateway to the American River Parkway. Furthermore, the temporary master plan that was adopted for the park is out-of-date and does not meet the goals identified by Sacramento’s residents as articulated in the City’s poll.

Before considering additional development projects in the park, the City should engage residents and community groups in a planning exercise to envision a larger and more integrated park design and update the Sutter’s Landing Park Master Plan.

2. The City should be transparent about the solar project financing so the public can better understand whether the City is getting a fair deal in committing its park resources for this purpose. The value of these existing park lands if they were to be acquired elsewhere for recreation should be discussed as well. Also, revenues generated for the City should be committed to enhancing and operating Sutter’s Landing Park.

The finances for the solar project and the relative share of revenues that will be received by the developer and by the City have not been made public. The City should complete its financial due diligence about the project and provide the information to the public.

3. Conergy or SMUD should pay for all security and maintenance to protect the solar installations and add, not detract, from the security at the Park. These costs should not impact the budget for the Park and the ability to restore and enhance existing values there.

The "Initial Study/Mitigated Negative Declaration" (page 6) states: "Security of the solar array installations would be the responsibility of the City of Sacramento, and the site would be inspected on a regular basis. Any repairs to the fencing or other structures in support of the solar facility will be made within a reasonable amount of time, as specified in the lease agreement." It is apparent from the level of disturbance to existing fencing at the park and around the former landfill that this will be a considerable cost over time.

The City of Sacramento does not have sufficient resources to adequately patrol and operate the park at the current time. Diverting the very limited City staff time and funding to provide security for the Conergy installation reduces the amount of time that City staff can focus on park and landfill closure needs. Furthermore, this language also implies potential liability for the City with respect to repairing fences and any damage that may be caused to the solar installations. The City should require Conergy or SMUD to provide or pay for the needed security to protect the site rather than taxpayers. Furthermore, the City should not be liable for the costs of repairing the fences and the installation.

4. The City should engage the public in the final design and educational components for the solar project, as well as for the area south of the blacktop area and the dog park and north of the railroad tracks.

The proposed project is at risk of having a very industrial look that would not be appropriate for a park location or the existing viewshed at the Park. I strongly encourage the City to involve the public, including organizations and river parkway design experts, in making sure the fencing, solar array design, and educational information is appropriate for the site and advances the park experience for visitors. The area between the project site and RR tracks was greatly altered by the drainage control and solar project site preparation work conducted there. Restoration of this site is needed to return foraging and wildlife movement values to this area.

In addition, if the solar project goes forward as currently proposed I suggest the following to help ensure the design of any system you approve is as appropriate for the site as possible, especially recognizing the installation will be in the park for the next 20 years:

5. Adopt a more compact alignment of the solar panels that results in less park space being consumed while generating the same amount of clean energy.

The project design presented to the Parks and Recreation Commission included significantly more space between the rows of solar panels as compared to the previous designs. By moving the panels closer together, the City can conserve park space for other uses without reducing the amount of electricity that would be generated by the project.

6. Increase the amount of shade over the dog park by moving additional solar panels into this area.

Park visitors would benefit if additional solar panels were moved into the dog park creating larger areas of concentrated shade. The current array is insufficient. Providing more significant benefits to park users would require moving only a small percentage of the solar panels to this area and configuring most of the panels together to provide larger elevated shade structures for both the small and large dog parks.

7. Establish one or two picnic areas that would be shaded by elevated solar panels.

Sutter's Landing Park includes very few areas with any shade outside of the American River Parkway's riparian habitat. By moving and elevating a small percentage of the solar panels to appropriate locations, the City can create needed shaded areas for picnic tables and other amenities for visitors to enjoy. Potential locations include: the area to the immediate west of the dog park; area near the parking lot where solar panels will be installed, and in the large open space area to the south of the Skateboard park.

I would also like to add the following additional comments:

- The City's contract should require Conergy to remove the installation after the 20-year lease period and restore the site to park uses.
- The Initial Study/MND appropriately recognizes that "Sutter's Landing Park is situated within the American River riparian zone and serves as important wildlife habitat within the City of Sacramento. It is in one of the richest areas for raptors on the American River Parkway, especially for Swainson's hawk..." (page 25)
- Future city documents should acknowledge that the previous soil stockpile and adjacent areas to the south of the solar project site were used for foraging by raptors including White-tailed kites and other species. I have personally observed White-tailed kites and other raptors using this resource regularly.
- Future city documents should also indicate that the Northern harrier, a raptor and species of special concern, also regularly uses Sutter's Landing Park for foraging and potentially nesting habitat.
- Finally, the text on page 28 of the Initial Study/MND should be revised to indicate that Swainson's hawks nest along the American River Parkway very near Sutter's Landing Park and use the park for foraging habitat. The text on page 28 incorrectly indicates the nearest nesting site is 2.5 miles away. These habitat facts are documented in the City's 28th Street Landfill Tree Removal Mitigation Committee report which is available on the City's website. Future City documents should also use the correct information about Swainson's hawks.

Please add my name and address to any future information routings regarding this project. Thank you for the opportunity to comment on the Conergy Solar Project and on the "Initial Study/MND" for this project.

Very truly yours,

Julie Murphy
2731 G Street
Sacramento, CA 95816

Hyperlinked attachments referenced in this letter:

Friends of the River Banks link to photos and species list of wildlife observed at Sutter's Landing Park <http://www.friendsoftheriverbanks.org/whats-there.html>)

Oblique aerial photo showing Sutter's Landing Park (<https://www.evernote.com/shard/s233/sh/2ee749de-110f-4e19-a191-48572f5446c6/0740db469d729ebd19cec6d5067cd9f6>)

Aerial photo showing alternative location for solar array & associated park enhancement features (<https://www.evernote.com/shard/s233/sh/0564048f-a74f-4612-8355-25a02571fba2/bec4273351c0835e7cff4651aebc2ff2>)

EXHIBIT B: Comments and Responses, Part 11

Environmental Consultants
and Contractors

3117 Fite Circle
Suite 108
Sacramento, CA 95827

916 361-1297
FAX 916 361-1299
www.scsengineers.com

SCS ENGINEERS



April 12, 2013

File No. 01197137.05; Task 10

Mr. John Lewis
Environmental Management Department
County of Sacramento
10590 Armstrong Avenue
Mather, California 95655

Subject: Amendment to 1993 Closure and Postclosure Maintenance Plan
Solar Improvements at 28th Street Landfill
Sacramento, California

Dear Mr. Lewis:

SCS Engineers (SCS) has prepared responses to draft agency comments (attached) on the Amendment to 1993 Closure and Postclosure Maintenance Plan that were received by the City of Sacramento (City) for the proposed Solar Improvements at the 28th Street Landfill, located in Sacramento, California. A letter was received from the Sacramento County Environmental Management Department, Local Enforcement Agency (LEA) for the subject landfill (April 11, 2013). This letter and accompanying revised documents (Track-Change Version April 12, 2013) are in response to the comments contained in the letters. Each of the agency's comments is listed below in *Italics* with the corresponding SCS response.

SCS and the City understand that an update of the Post Closure Maintenance Plan (PCMP) needs to be prepared separately from these revisions by July 1, 2013. The update of the PCMP will incorporate the Final Solar Land Use Plan as approved by the reviewing agencies.

1) The amendment notes on page 8 and elsewhere throughout the document that the Sacramento County Solid Waste Management District will take ownership of the property after closure and be responsible for post closure maintenance, monitoring, and inspection. This contradicts the statement in the January, 2013 Final Post Closure Land Use Plan (FPCLUP) that the City is the owner and RP and is at odds with the LEA's information regarding the site. Related statements are noted on pages 10, 11, 12, and 13. This information should be corrected now.

Answer. The cited references in the Amendment to the 1993 Closure and Postclosure Maintenance Plan have been corrected in track-change format in the Amendment text, revision April 12, 2013.

2) Several paragraphs are noted on pages 6, 7, and 9 of the plan that describe outdated activities on areas of the site to the west of 28th Street where the solar project is proposed to be installed, such as references to composting activities which no longer take place.



Information that is clearly outdated or incorrect that pertain to areas where the solar arrays are proposed should be updated/corrected now.

Answer. The above corrections to the text of the Amendment to the 1993 Closure and Postclosure Maintenance Plan have been made in track-change format, revision April 12, 2013.

3) A presumably new paragraph relating to the postclosure costs associated with the solar project is noted on page 16 that is not highlighted in track-change format. All changes made to the document should be flagged for review.

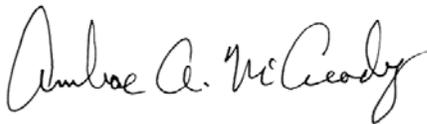
Answer. All changes to the Amendment 1993 Closure and Postclosure Maintenance Plan are now in track-change format, revision April 12, 2013.

3) Appendix O contains the Final Post Closure Land Use Plan (FPCLUP) for the solar project. The LEA already reviewed and provided comments on this document in a letter dated December 7, 2012 and the plan was revised per LEA and other agency comments. The revised FPCLUP was dated January 8, 2013. It is noted, however, that the amendment's table of contents refers to a February 8, 2013 FPCLUP. If the date is in error, it should be corrected. If further revisions have been made to the FPCLUP, however, all changes must be made in track-change format and the document must be re-submitted for LEA review.

Answer. The date of January 8, 2013 is the correct date. There have been several changes to the FPCLUP resulting from the above comments from the LEA that have been made in track-change format. See Appendix O of the Amendment to the 1993 Closure and Postclosure Maintenance Plan, revision April 12, 2013.

We trust that these responses to LEA and agency comments are satisfactory. If there are questions, please call the undersigned.

Sincerely,



Ambrose A. McCready, P.E.
Project Manager
SCS ENGINEERS

Enclosures

- LEA draft Comment Letter 4/11/13
- Amendment to 1993 Closure and Postclosure Maintenance Plan Vols. 1 to 4 (revision April 12, 2013)



Countywide Services Agency

Environmental Management
Department

Environmental Compliance Division
Elise Rothschild, Chief

County of Sacramento

Bradley J. Hudson, County Executive
Bruce Wagstaff, Agency Administrator
Val F. Siebal, Department Director

April __, 2013

Ambrose McCready
SCS Engineers
3117 Fite Circle, Suite 108
Sacramento, CA 95827

Dear Mr. McCready:

SUBJECT: LEA COMMENTS ON AMENDMENT TO OCTOBER 1993 FINAL CLOSURE AND POSTCLOSURE PLAN FOR SACRAMENTO CITY (28TH STREET) LANDFILL PHOTOVOLTAIC PROJECT – SWIS# 34-AA-0018

Background

The Environmental Management Department, is the Local Enforcement Agency (LEA) for the California Department of Resources, Recycling and Recovery (CalRecycle). SCS Engineers, a consultant for the city of Sacramento, submitted an amendment to the October 1993 Final Closure and Postclosure Plan for the City of Sacramento 28th Street Sanitary Landfill to the LEA on March 22, 2013, on behalf of The City of Sacramento, the owner and responsible party (RP) for the site. The amendment is specific to the solar photovoltaic project proposed for the site.

The LEA has reviewed the Plan and provides the following comments, which accompany comments on the Mitigated Negative Declaration in a separate letter for the proposed project and follows earlier comments provided by the LEA to city staff regarding the Notice of Preparation, the Draft Initial Study, and the Post Closure Land Use Plan for the project, in addition to verbal comments provided during meetings with city staff.

LEA Comments

The amendment is only intended to address changes associated with the solar project but the overall plan is old and out of date in many respects. The overall Plan is required by 27 CCR, section 21865 to be updated by July 1, 2013. Although challenging, the LEA has attempted to focus only on items that bear directly upon the solar project in this review with the intention of performing a more comprehensive review after the overall plan is updated.

- 1) The amendment notes on page 8 and elsewhere throughout the document that the Sacramento Regional County Solid Waste Management District will take ownership of the property after closure and be responsible for post closure maintenance, monitoring, and inspection. This contradicts the statement in the January, 2013 Final Post Closure Land Use Plan (FPCLUP) that the city is the owner and

RP and is at odds with the LEA's information regarding the site. Related statements are noted on pages 10, 11, 12, and 13. This information should be corrected now.

- 2) Several paragraphs are noted on pages 6,7, and 9 of the plan that describe outdated activities on areas of the site to the west of 28th Street where the solar project is proposed to be installed, such as references to composting activities which no longer take place. Information that is clearly outdated or incorrect that pertain to areas where the solar arrays are proposed should be updated/corrected now.
- 3) A presumably new paragraph relating to the postclosure costs associated with the solar project is noted on page 16 that is not highlighted or in track-change format. All changes made to the document should be flagged for review.
- 4) Appendix O contains the Final Post Closure Land Use Plan (FPCLUP) for the solar project. The LEA already reviewed and provided comments on this document in a letter dated December 7, 2013 and the plan was revised per LEA and other agency comments. The revised FPCLUP was dated January 8, 2013. It is noted, however, that the amendment's table of contents refers to a February 8, 2013 PCLUP. If the date is in error, it should be corrected. If further revisions have been made to the FPCLUP, however, all changes must be made in track-change format and the document must be re-submitted for LEA review.

Contact

If you have any questions regarding this letter, please contact John Lewis at (916) 876-7279.

Sincerely,

John Lewis
Environmental Specialist III
Solid Waste Program

JL:

C: Gino Yekta, CalRecycle
John Moody, Regional Water Quality Control Board
Steve Harriman, City of Sacramento Department of Utilities
Dana Allen, Environmental Planning Services, City of Sacramento

EXHIBIT B: Comments and Responses, Part 12

Comments to Conenergy Solar Project at Sutter's Landing – MND (February 21, 2013)



March 20, 2013

Dear Dana Allen,

This letter is in response to the Mitigated Negative Declaration that was generated for a proposed Solar Park at Sutter's Landing

On November 20th, 2012, Brooks Larson and I met with the city to present a proposal to build a pump track (modified BMX style dirt track, if you will) at Sutter's Landing. The city representatives included Steve Cohn, JP Tindell and Sue Brown. After that meeting the city approved our proposal in principle. The city did, however, re-direct our original proposed location (area adjacent and south of the skate park) to the asphalt area (Area 2 on the Master Plan – adjacent and west of the dog park). We ran with this notion, and we subsequently updated our proposal to include this area. A few months later and around March 5th, we were to present our proposal to the Parks Commission, we were informed by JP Tindell - Parks Manager and one of the persons we met with who directed us to the asphalt area, that the asphalt area is now the subject of placing the Solar Park Project on it.

The solar project was moved to this area due to the fact that it was determined by a Fish and Game biologist (their Biological Opinion), that the original area where the solar project was going to be built (Area 2 on the Master Plan) demonstrates foraging habitat for the Swanson's Hawk. Again, that is one biologist opinion, which differs from the opinion of the City hired biologist. It is our understanding that in fearing the potential need to have to mitigate impacts to this area, Conenergy, proposer of the solar park project, approached the city with the idea of moving the project to the asphalt area - current MND that this message addresses.

OK, so, now those of us who are proposing our pump track are now reeling from this announcement and revised MND. Now our energy has been re-directed from moving forward on the pump track proposal, to basically opposing the solar project. And to be fair, we are more concerned about the fact that the MND does not address the need to mitigate impacts to Active Recreation (All Area 1 locations are designated as Active Recreation in the Master Plan for this park), a designation that our proposal falls into.

With all that said, we are inserting our concerns/comments about the "take" of Active Recreation. Our argument is why the take of Active Recreation is considered temporary by the city - the lease by the solar project from the city is 20 years. Apparently, if the impact is temporary, then mitigating those impacts is not required. Although the take of "foraging habitat" is considered a take by DFG regardless of the same 20 year lease. This appears to be a double standard.

Summary of our comments:

- 1. Require the "take" of Active Recreation require mitigation as with habitat take.**

2. **Require mitigation in the form of raising the panels to allow access under solar facility to build or include Active Recreation - lots of potential here for a cool project. Could be a good project to apply for various grants - Federal, State, Local, etc. Suggestions at the Park Commission meet on March 5th, 2013 suggested just that. The suggestion was made that any proceeds raised by the lease of the land for the solar project be used to offset the cost of raising the panels.**

3. **If panels cannot be raised, provide land at a 1:1 ratio in close proximity (inside Sutter's Landing Park) to where take is occurring to provide Active Recreation opportunities.**

These are our most pressing issues that we feel are in need of addressing. We have reached out and have received support from organizations such as Folsom Auburn Trails Action Coalition (FATRAC) and Sacramento Area Bicycle Advocates (SABA).

In the end, the hope is to create a dialog that generates ideas and solutions that benefit all parties involved. It would be a shame that we as responsible adults forgo our children's potential experiences for the sake of unsubstantiated entrenched ideals. I feel there is an opportunity to create a unique and worthwhile project that will continue to showcase the regions devotion to both parks and its youth.

Thanks again for your time and interest. Let us know if you have any questions.

Sincerely,

David Moffatt

Husband, Father, Landscape Architect, QSD

Steve "Brooks" Larson

Husband, Father, Educator

"Great Spirits have always found violent opposition from mediocre minds..."

-Albert Einstein



EXHIBIT B: Comments and Responses, Part 13

SACRAMENTO AREA
BICYCLE ADVOCATES

909 12th St, Ste. 116
Sacramento, CA 95814

sacbike.org
saba@sacbike.org
916 444-6600



April 18, 2013

Dana Allen, Associate Planner
City of Sacramento
Community Development Department
300 Richards Boulevard
Sacramento, CA 95811

Dear Ms. Allen,

I'm writing on behalf of the Sacramento Area Bicycle Advocates to express our concern about the city's proposal to deviate from its master plan for the Sutter's Landing Park by replacing a proposed BMX pump track with the proposed Conergy solar panel array.

The master plan designates this parcel for active recreation. The proposed pump track is consistent with this designation and the goals of the master plan as well as the 2005 Feasibility Report for the City of Sacramento's Parks and Recreation Department. The proposed Conergy installation at this location would significantly impact bike recreation at the park.

I understand proponents of the pump track have proposed solutions that would allow for both uses on this parcel, including installing the solar panels at a height so that the pump track activities could take place under them. Alternatively, we hope the city would be open to revisiting other possible locations at Sutter's Landing for the pump track.

With plans to extend the Two Rivers Bike Trail from the Highway 160 bridge east to Sutter's Landing, finding a solution that accommodates a pump track at Sutter's Landing will greatly enhance the value of the region's ongoing investments in bicycling infrastructure. SABA is ready to help in whatever way we can. Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jim Brown'.

Jim Brown
Executive Director
916-444-6600
jim@sacbike.org



----- Original Message -----

Subject: Sutter's Landing Park Project

Date: Wed, 27 Mar 2013 13:36:39 -0700

From: Jim Haagen-Smit <jimwhs@gmail.com>

To: dallen@cityofsacramento.org

Hello Dana Allen,

These comments are submitted in connection with the mitigated negative declaration for the Conergy Solar at Sutter's Landing Park Project. FATRAC submits the comments as an area bicycle club which volunteers with land managers to design and maintain bicycle trails for the community's benefit. FATRAC is interested in a bike park project currently being proposed by River Park residents of Sacramento for Sutter's Landing Park. This pump track project is consistent with the recreational component and goals of both the Sutter's Landing Master Plan and 2005 Feasibility Report for the City of Sacramento's Parks and Recreation Department.

From reading the mitigated negative declaration for the Conergy solar project, recreation at Sutter's Landing is significantly impacted. Without some mitigation the solar project could be inconsistent with the master plan. It is our understanding that the proponents of the pump track have proposed solutions so that perhaps both the solar energy project as well as the bicycle project could both move forward; a win-win for the City. Proposals include installing the solar panels at a height so that the pump track activities could take place under them, much like shade structures for patios or other uses. If that is not feasible, it might make more sense to allow installation of the pump track in a nearby space at Sutter's Landing.

It is clear from the Sutter's Landing Master Plan and Feasibility Report that recreation was a major goal. If a competing project significantly changes such a valuable goal, the community should be compensated. If the projects could be adjusted to a certain extent, perhaps both could fit and match city goals. FATRAC thanks you for working diligently on providing the Sacramento residents with an excellent set of projects. If you have any questions, please let me know.

Jim Haagen-Smit
Advocacy Coordinator
FATRAC