



Office of the City Manager

ACTION CALENDAR
September 23, 2008

To: PK Honorable Mayor and Members of the City Council

From: PK Phil Kamlarz, City Manager

Submitted by: Christine Daniel, Deputy City Manager, City Manager's Office

Subject: Contracts: Sustainable Energy Financing District; Bond Purchase and Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute contracts, in substantially the form as attached to this report, with Renewable Funding, LLC to: (1) purchase the bonds necessary to fund the pilot program and (2) provide administrative services for the pilot program.

CURRENT SITUATION AND ITS EFFECTS

On November 6, 2007 the City Council approved the concept of the "Sustainable Energy Financing District" by which the City would help property owners finance solar installations and energy efficiency improvements by creating a special tax that is paid through their individual property tax bills. Only property owners who choose to use this method of financing for such improvements would pay the special tax.

On May 6, 2008 the City Council approved an amendment to the Berkeley Municipal Code (BMC) and created the Special Tax Financing Law (new BMC Chapter 7.98). The Special Tax Financing Law was created under the City's Charter authority and incorporates by reference the provisions of the Mello-Roos Act. It includes the legal authority to finance solar and energy efficiency improvements for private property, which is not currently allowed under the Mello-Roos Act. The Special Tax Financing Law is the implementing legislation that allows for the creation of the Sustainable Energy Financing District.

On July 22, 2008 the Council adopted a Resolution of Intention to Establish the Sustainable Energy Financing District and a Resolution of Intention to Incur Bonded Indebtedness for the District. Following, those actions on September 16, 2008 the City Council conducted a public hearing on the formation of the District. Upon conclusion of the hearing and in the absence of any protests against establishment of the District, the Council adopted a Resolution forming the District. The Council also adopted a Resolution establishing the maximum bonded indebtedness for the District (\$80 million) and adopted the first reading of an ordinance authorizing the City to levy special taxes

on those properties that become part of the program. The second reading of that ordinance is scheduled for September 23, 2008 and, barring any challenges, will become effective thirty days later.

The Sustainable Energy Financing District is a city-wide special tax district (the "District") (as set forth in the Boundary Map recorded with the County). The District would enable property owners to install solar systems and make energy efficiency improvements to their buildings and to pay for the improvements over 20 years through a special tax levy on their property tax bills. No property owner would have a levy against their property unless the property owner chose to opt-in to the District and to use the funding available through the District to have work done on their property. Those property owners who opt-in to the district would pay only for the cost of their own project and their share of the fees associated with the administration of the program.

The financing mechanism is based on similar special tax financing authorized under the Mello-Roos Community Facilities Act of 1982 and, functionally, is no different than the assessment districts previously formed by the City to finance utility undergrounding. Community Facilities Districts are used state-wide to build a host of necessary public improvements and have become an important component of local government finance. The Sustainable Energy Finance District proposed here is a new approach to that type of financing and essentially allows private property owners to use their property tax bills as a financing tool in order to install energy efficient improvements on their own property.

As noted in several of the reports that have been before the Council on this matter, a critical aspect of the development of this program has been to create a financing structure that yields sufficient revenue to make principal and interest payments to the investors, as well as the necessary administrative costs of the program, while at the same time remaining competitive with other available funding mechanisms for solar installation. Since the concept for this program was approved by the Council in November 2007, staff and the City's outside consultants have met with a variety of possible financial partners who could provide funding for the program. Initially staff met with several commercial banks which had expressed interest in the program. Unfortunately none of those institutions were able to offer competitive terms, including comprehensive support for program administration. Staff also met with community based banks which were extremely interested, but ultimately also unable to offer appropriate terms. Finally, a couple of private investment firms expressed interest in buying the bonds issued by the new Special Tax District.

As staff began fleshing out the concept and developing more detail about the program, it became clear that it entailed a certain level of complexity of administration. Additionally, since this is a new financing method, there is a level of uncertainty about the market as it relates to both participants and bond investors. Thus, in its final negotiations with financial partners, staff determined that the best approach would be a pilot program to test out both the financing method and the administration of it. The pilot,

as described further below, will include funding up to \$1.5 million, as well as an online application process offered by our recommended vendor. At the conclusion of the pilot, staff will return to the Council with an evaluation of the program and, if necessary, suggestions for any needed modifications prior to exploring the next phase of funding. Because of the high level of interest in the program, staff will continue to have discussions with possible financial partners for the next phase of funding as the pilot unfolds.

BACKGROUND

Based on all of the proposals received since January of this year, and all of the discussions undertaken with the various entities, staff recommends that the City enter into a bond purchase agreement and a services contract with Renewable Funding, LLC for the pilot program.

Renewable Funding LLC Project Team: Renewable Funding is a limited liability company founded by Stephen Compagni Portis who is the chairman of the firm. Mr. Portis is a Berkeley native with a background in investment banking including closing more than 50 equity and debt transactions with invested capital in excess of \$1 billion. He has served in operational roles at VX Capital Partners LLC, Leveraged Equity Management, Inc., Kettle Restaurants and Yellow Giant Corporation. He is currently a Visiting Scholar at UC Berkeley where he is a member of the Renewable and Appropriate Energy Laboratory (RAEL)

Renewable Funding, LLC (“Renewable”) has partnered with several entities in its proposal to the City for this program. Renewable has proposed to purchase the bonds issued to finance the projects, as well as to administer the application process, primarily through a web-based application and account management system it has already developed. One California Bank has offered to provide a line of credit for Renewable to draw upon to purchase the bonds, and the underwriting firm of Stone & Youngberg LLC has agreed to re-market the small, project-based bonds once aggregated into a larger bond issuance. Renewable has also retained the services of two firms to assist with the graphic user interface for the program website and the website technical programming and development; these firms are Ten-Fold and Trelon respectively.

Financial Proposal/Bond Purchase Agreement: Renewable has offered to purchase up to \$1,500,000 in bonds issued by the City for the Sustainable Energy Financing District. The interest rate for each bond will be fixed for 20 years at the rate applicable at the time the bond is purchased. The rate is proposed to be set monthly and will equal the greater of 6.75% or the 10-year U.S. Treasury Bond plus 3.25%. For the pilot program, Renewable has agreed that if the interest rate moves less than 10 basis points since the most recent rate re-set, then the rate would not change. Renewable will draw down on its line of credit with One California Bank to purchase these bonds, however, their offer to purchase up to \$1.5 million is irrevocable and not contingent on the availability of that

line of credit. Renewable will guarantee their commitment to purchase the \$1.5 million of bonds by way of cash collateral or another type of security.

Renewable has agreed to purchase bonds with face values ranging from \$5,000 to \$37,500. The sale of each bond to Renewable will generate funds which will then be paid to the property owner once the property owner has completed their installation (a conceptual flow chart of the process is included as an attachment). Renewable has proposed that once \$500,000 of these individual bonds have been issued, they may request aggregation into a single large bond for remarketing through Stone & Youngberg LLC. Should no investor be interested in purchasing these larger bonds at an appropriate interest rate, Renewable can either (i) continue to hold them and will receive debt service payments from the special taxes levied on each participating property owner or (ii) sell the bonds at a loss. In any event, Renewable, not the City, is taking the financial risk on the resale value of the bonds.

City staff has estimated that the average photovoltaic system in Berkeley cost \$28,077 with an average California Solar Initiative rebate of \$6,108. A hypothetical financing structure for an average system (\$28,077-\$6,108) is set forth below. The Projected Annual Special Tax is the information that will appear in the Rate Supplement that the taxpayer will receive and will be noted as the Total Maximum Special Tax. As noted above, the actual interest rate a property owner will pay will be determined at the time the property owner opts in to the special tax district.

Hypothetical Financing for \$28,077 Solar System

Project Financing Amount:	\$22,569	
Estimated Financing Rate:	6.75%	
Program Costs to be Amortized:	\$600	<i>Administration Fees</i>
Term of Repayment:	20 years	<i>Paid Through Annual Special Tax</i>
Annual Special Tax Charges:	4.5% of Special Tax	<i>County and Program Administration</i>
Projected Annual Special Tax:	\$2,089/Year	<i>Equates to \$182/month</i>

Staff recommends the Council authorize the City Manager to execute a Bond Purchase Agreement with Renewable Funding, LLC as set forth above.

Program Administration/Services Agreement: Renewable has also offered to administer the pilot program for the City. Renewable has already developed a web site for the application process and is proposing a nominal application fee of \$25 for the initial program. In addition to the web-site, Renewable is proposing to provide customer service support by telephone and daily office hours. They are also offering to participate in community workshops and other public information sessions. Renewable is not requesting any additional compensation beyond the application fee for administering the

program. Their proposed application process is as follows (a separate section of this report, below, includes staff's recommended process for ensuring geographical equity during the initial application process):

- A property owner applies on-line and pays the \$25 reservation fee
- Renewable checks the following information submitted by the applicant
 - Applicant name and contact information
 - Property owner(s) name, address, and telephone numbers
 - Initial Bid Amount on Solar Installation
 - Contractor Name that Provided Initial Bid
 - Property verifications and disclosures
 - Agreement to program terms and conditions

Approved applicants will receive a letter and an email confirming their funding reservation. The reservation fee will be refunded to any applicant not approved for funding, and the reason(s) for denial will be provided. Approved applicants must complete the installation of their improvements within 270 days of approval of their application. Once the property owner has completed the installation of their project, the property owner will submit a funding request on-line, not to exceed \$37,500. At that time, the property owner will be informed of the current interest rate for the program.

The property owner must then submit all of the documentation necessary to complete the process and annex the property owner's property into the Sustainable Energy Financing District. This will cause the City to impose the special tax lien on their property. This documentation will include:

- Copy of final invoice from installer, including as built system size per California Solar Initiative (CSI) criteria
- CSI Reservation Rebate Letter with Reservation #
- Copy of City building permit final inspection
- Authorization to release CSI information
- PG&E service identification number and authorization to release PG&E billing data to the City and/or its contractors for the period 18 months prior to installation to 18 months after installation
- Signed Program Terms and Disclosures
- Signed Unanimous Consent and Liability Release

In addition to final documents, the City will verify each property's compliance with RECO/CECO before funding can be released.

Renewable will accept all of that documentation and provide it to the City for processing and recordation. The City will then record the notice of special tax lien against the property. Once that has occurred, Renewable will provide funding to the property owner in the amount requested and the property owner will use those funds to pay the property

owner's installer. Renewable (or whoever subsequently purchases the bonds) will be repaid that amount, plus interest over a twenty-year period, from the special taxes imposed on the participating properties. The City is responsible for annually imposing the special taxes on the properties so that the bonds get repaid.

Staff recommends that the Council authorize the City Manager to execute a Services Agreement with Renewable Funding, LLC for administration of this program as described above.

Equitable Distribution of Application Opportunities: Staff recommends that the initial application period allow for an equal number of applications in each of the 8 Council Districts for a period of two weeks. Once that two week period concludes, if the total number of applications in a district has not been exhausted, then the opportunity will be offered on a City-wide basis based on a waiting list that Renewable will develop as applications are submitted during the first two weeks. Staff suggests that the waiting list be based on date and time of application without regard to District.

In order to ensure that adequate funding is available for interested property owners, staff suggests that the initial two week period allow for 5 applications in each of the 8 Council Districts, for a total of 40 applications. If each of those 40 installations uses the maximum available funding of \$37,500, that would use up the entire \$1,500,000 that Renewable has committed for the program.

Renewable will track all funding reservations and stop accepting applications once forty applications have been accepted. Applicants who do not make the cut-off for the initial round of funding will be notified by letter or email that they will receive a notice of the next round of funding when it is available.

Community Workshops: Since the concept for this program was announced last fall, staff has received inquiries from a number of community members who are interested in participating. In order to make sure that everyone who is interested understands the application process and program requirements prior to the date that applications will be accepted, staff is scheduling a series of workshops to explain the program and answer any questions interested property owners might have. There will also be a workshop conducted for solar photovoltaic installers who have also expressed interest in understanding the program. Additionally, staff will send emails to everyone who has indicated an interest and will make information available on the City's website. The date for accepting applications will be set sometime after the workshops are completed so that interested owners will have sufficient time to prepare to apply.

FISCAL IMPACTS OF RECOMMENDATION

The proposed Bond Purchase Agreement with Renewable provides that the City will create a debt service reserve fund from its available surplus funds that is the equivalent

of 6.5% of the aggregate principal amount of the outstanding bonds for the Sustainable Energy Financing District. The Agreement also provides that should the reserve fund be used to cover any tax delinquencies, the fund will be replenished from available surplus funds. The total \$1.5 million in funding requires a set aside of \$97,500. This will be noted in the City's financial statements as a committed reserve and held in trust for the benefit of the bondholders. If, in the unusual circumstance, a delinquency needs to be paid from these funds, that amount will be recovered when the County forecloses on the overall property tax delinquency.

RATIONALE FOR RECOMMENDATION

The Sustainable Energy Financing District and the funding plan described in this report should solve many of the financial hurdles facing property owners who are interested in installing a solar photovoltaic system on their property. First, there is little upfront cost to the property owner. Second, the installation costs are repaid through a voluntary tax on the property over time. Third, the financing costs are competitive with other financing methods. Fourth, the special tax is transferable between owners. Finally, the installation of more solar photovoltaic systems throughout Berkeley will contribute to the reduction of greenhouse gas emissions in the community, consistent with the goals of Measure G as adopted by the Berkeley voters.

ALTERNATIVE ACTIONS CONSIDERED

Other financing partners were considered but ultimately not recommended for this pilot program.

CONTACT PERSON

Christine Daniel, Deputy City Manager, City Manager's Office, 510-981-7000

Attachments:

- Resolution authorizing execution of a Bond Purchase Agreement and Services Agreement with Renewable Funding, LLC
- Exhibit A: Draft Bond Purchase Agreement
- Exhibit B: Draft Services Agreement

**IN THE CITY COUNCIL OF THE CITY OF BERKELEY
STATE OF CALIFORNIA**

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF CERTAIN AGREEMENTS WITH
RENEWABLE FUNDING, LLC**

**City of Berkeley
Special Tax District No. 2008-1
(Sustainable Energy Financing District)**

WHEREAS, the City Council has conducted proceedings under and pursuant to Chapter 7.98 of the Berkeley Municipal Code (the "Code"), which Code incorporates the Mello-Roos Community Facilities Act of 1982, as amended, to form "City of Berkeley Special Tax District No. 2008-1 (Sustainable Energy Financing District)" (the "Special Tax District"); and

WHEREAS, the City formed the Special Tax District in connection with establishing a program, commonly known as Berkeley FIRST, to finance and refinance the acquisition, installation and improvement of energy efficiency and renewable energy improvements to or on real property and in buildings, whether such real property or buildings are privately or publicly owned; and

WHEREAS, after extensive discussions with industry professionals with respect to administration of the Berkeley FIRST program and with the bond investor community, staff has recommended to the City Council that the City enter into (i) a bond purchase agreement (the "Bond Purchase Contract") with Renewable Funding, LLC ("Renewable"), pursuant to which Renewable would agree to purchase up to \$1,500,000 of bonds secured by special taxes levied in the Special Tax District and (ii) a services contract (the "Services Contract") with Renewable pursuant to which Renewable would administer the pilot phase of the Berkeley FIRST program on behalf of the City; and

WHEREAS, the City Council now wishes to authorize execution and delivery of the Bond Purchase Contract and the Services Contract;

NOW, THEREFORE, the City Council of the City of Berkeley finds and resolves that:

Section 1. Authorities Granted. The City Manager, or such other official of the City as may be designated by the City Manager (an "Authorized Officer") is hereby authorized and directed to execute and deliver the Bond Purchase Contract and the Services Contract in substantially the forms on file with the City Clerk, together with such additions or changes as are approved by such Authorized Officer upon

consultation with the City Attorney, the City’s bond counsel and the City’s financial advisor. The approval of such additions or changes shall be conclusively evidenced by the execution and delivery by an Authorized Officer of the Bond Purchase Contract and the Services Contract.

Section 2. Issuance of Bonds. This resolution does not authorize the issuance of bonds for the Special Tax District. Bonds shall be issued only following approval by this City Council of a fiscal agent agreement or trust indenture detailing the terms of the bonds.

Section 3. Effectiveness. This resolution shall take effect from and after its adoption.

PASSED AND ADOPTED this 23rd day of September, 2008, by the following votes:

AYES: Councilmembers: _____

NOES: Councilmembers: _____

ABSTAIN: Councilmembers: _____

ABSENT: Councilmembers: _____

Mayor

ATTEST:

City Clerk

EXHIBIT A

BOND PURCHASE CONTRACT

**Not to Exceed
\$1,500,000 principal amount
CITY OF BERKELEY
SPECIAL TAX DISTRICT NO. 2008-1
(SUSTAINABLE ENERGY FINANCING DISTRICT)
SPECIAL TAX BONDS**

THIS PURCHASE CONTRACT (this "**Purchase Contract**") is made and entered into as of _____, 2008 (the "**Effective Date**"), by and between the City of Berkeley (the "**Issuer**"), for and on behalf of the City of Berkeley Special Tax District No. 2008-1 (Sustainable Energy Financing District) (the "**District**"), and Renewable Funding, LLC (the "**Bond Purchaser**");

RECITALS

WHEREAS, on July 22, 2008, the City Council (the "**City Council**") of the Issuer adopted (i) Resolution No. 64,163–N.S., entitled "Resolution of Intention to Establish Special Tax District" (the "**Resolution of Intention to Form**"), stating its intention to establish the District, pursuant to Chapter 7.98 of the Berkeley Municipal Code (the "**Code**"), which Code incorporates the Mello-Roos Community Facilities Act of 1982, as amended, sections 53311, et. seq., of the California Government Code (the "**Act**"), and (ii) Resolution No. 64,164–N.S., entitled "Resolution of Intention to Incur Bonded Indebtedness the "**Resolution of Intention to Incur Debt**"), stating its intention to incur bonded indebtedness for the District in an amount not to exceed \$80,000,000; and

WHEREAS, the Resolution of Intention stated the intention of the City Council to undertake the proceedings to form the District under the alternate procedures established by Section 7.98.160 of the Code, pursuant to which a special tax district may initially consist solely of territory proposed for annexation to the special tax district in the future, with the condition that a parcel or parcels within that territory may be annexed to the special tax district and subjected to the special tax (each, a "**Taxable Parcel**") only with the unanimous approval (each, a "**Unanimous Approval**") of the owner or owners of such parcel or parcels (each, a "**Taxable Parcel Owner**") at the time that such parcel or those parcels are annexed; and

WHEREAS, on September 16, 2008, the City Council held noticed public hearings as required by the Code on the issues of (i) the determination to proceed with the formation of the District and the method of apportionment of the special tax to be levied within the District to finance a portion of the costs of the facilities and (ii) the issuance of not to exceed \$80,000,000 of bonded indebtedness for the District; and

WHEREAS, on September 16, 2008, the City Council adopted (i) Resolution No. ____, entitled "Resolution of Formation of Special Tax District" (the "**Resolution of Formation**"), which established the District, authorized the levy of a special tax with the District and defined the facilities to be financed by the District, being the acquisition, installation and improvement of energy efficiency and renewable energy improvements to or on real property and in buildings, whether such real property or buildings are privately or publicly owned (the "**Facilities**"), and (ii) Resolution No. ____, entitled "Resolution Determining the Necessity to Incur Bonded Indebtedness" (the "**Resolution of Necessity**"), which determined the necessity to incur bonded indebtedness in the District, respectively; and

WHEREAS, on September 23, 2008, the City Council adopted Ordinance No. ____, entitled "An Ordinance of the City Council of the City of Berkeley Levying Special Taxes within City of Berkeley Special Tax District No. 2008-1 (Sustainable Energy Financing District)" (the "**Ordinance**"); and

WHEREAS, the City Council adopted Resolution No. ____, entitled "_____" (the "**Bond Resolution**"); together, the Resolution of Intention to Form, the Resolution of Intention to Incur Debt, the Resolution of Necessity, the Bond Resolution and the Resolution of Formation are referred to in this Purchase Contract as the "**Resolutions**") authorizing the issuance of up to \$1,500,000 principal amount of bonds (the "**Aggregate Principal Amount**") by the Issuer for the District (the "**Bonds**"), a fiscal agent agreement relating to the Bonds (the "**Fiscal Agent Agreement**") and this Purchase Contract;

WHEREAS, the Bond Purchaser wishes to purchase the Bonds from the Issuer, and the Issuer wishes to sell the Bonds to the Bond Purchaser, and this Purchase Contract sets forth the terms under which the Bonds will be sold by the Issuer to the Bond Purchaser.

AGREEMENT

Section 1. Definitions. Terms not otherwise defined in this Purchase Contract shall have the same meanings as set forth in the Fiscal Agent Agreement.

Section 2. Agreement to Purchase. During the term of this Purchase Contract, being the period beginning on the Effective Date and continuing through the first anniversary of the Effective Date (the "**Term**"), upon the terms and conditions and in reliance upon the respective representations, warranties and covenants herein, the Bond Purchaser hereby agrees to purchase from the Issuer, and the Issuer hereby agrees to sell to the Bond Purchaser, the Aggregate Principal Amount of the Bonds at a purchase price (the "**Purchase Price**") equal to the par amount of the Bonds.

On the date hereof, subject to the prior approval of the Issuer, which approval may be withheld in the Issuer's sole and absolute discretion, the Bond Purchaser shall undertake one of the following measures as security for its obligation to purchase the Bonds in the Aggregate Principal Amount:

(i) Provide the Issuer for the benefit of the District with an irrevocable letter of credit from a financial institution with a long-term credit rating or claims paying ability at the time of issuance of such letter of credit equal to "A" or higher assigned by Moody's and "A" or higher assigned by Standard & Poor's with a stated amount equal to the Aggregate Principal Amount of the Bonds (the "**Letter of Credit**"). In the event the Bond Purchaser fails to purchase Bonds as required under this Purchase Contract, the Issuer may draw upon such letter of credit to fund the Bond Purchaser's purchase of the Bonds. On each date that the Bond Purchaser purchases Bonds under this Purchase Contract, the Issuer shall authorize a reduction of the stated amount such that the new stated amount of the Letter of Credit is equal to the result of subtracting the principal amount of Bonds purchased by the Bond Purchaser from the Aggregate Principal Amount.

(ii) Deposit \$1,500,000 of cash or securities (which securities shall be subject to the prior written approval of the Issuer) into an account held by an escrow agent (the "**Escrow Agent**") for the benefit of the Issuer (the "**Escrow Account**"). Interest earnings on cash or securities in the Escrow Account shall accrue to the benefit of the Bond Purchaser. In the event the Bond Purchaser fails to purchase Bonds as required under this Purchase Contract, the Escrow Agent shall withdraw amounts from the Escrow Account and transfer them to the Issuer to fund the Bond Purchaser's purchase of the Bonds. On each date that the Bond Purchaser purchases Bonds under this Purchase Contract, the Escrow Agent shall transfer to the Bond Purchaser an amount from the Escrow Account such that the amount remaining in the Escrow Account is equal to the result of subtracting the principal amount of Bonds purchased by the Bond Purchaser from the Aggregate Principal Amount.

(iii) Provide the Issuer for the benefit of the District with any other form of security that is in form and substance acceptable to the Issuer.

The Bonds may be transferred by the Bond Purchaser, subject to the restrictions set forth in Section 5 of this Purchase Contract and in the Fiscal Agent Agreement. The Fiscal Agent Agreement will provide that, upon the request of the Bond Purchaser, the Fiscal Agent will exchange outstanding Bonds owned by the Bond Purchaser for Bonds of larger denominations in order to facilitate the sale of Bonds by the Bond Purchaser in the denominations described in Section 5.

Section 3. Description of Bonds; Security for the Bonds. The Bonds will be issued pursuant to the Code, the Bond Resolution and the Fiscal Agent Agreement. The proceeds of the sale of the Bonds will be used by the Issuer to finance and refinance the Facilities.

The Bonds will be issued in denominations of any dollar amount equal to or greater than \$5,000 and less than \$37,500. The Issuer and the Bond Purchaser expect that a separate Bond will be issued to finance the Facilities for each Taxable Parcel.

The maturity date of each Bond shall be not later than 20 years from the September 1 immediately following the Bond's issuance. The interest rate on each Bond will be a fixed interest rate equal to the greater of (a) 6.75% or (b) the "10-Year Treasury Rate" (as defined in the following sentence) plus 3.25%. The "10-Year Treasury Rate" for each calendar year quarter during the Term of this Agreement shall be equal to the interest rate on the 10-year U.S. Treasury Bond at the close of business on the last Friday of the preceding calendar year quarter. Provided, however, if the interest rate on the 10-year U.S. Treasury Bond at the close of business on the last Friday of a calendar year quarter is not more than .10% greater than the "10-Year Treasury Rate" for such calendar year quarter, then the 10-Year Treasury Rate for the immediately succeeding calendar quarter shall be the same as the 10-Year Treasury Rate for the current calendar quarter. For purposes of illustration, if the 10-Year Treasury Rate for the fourth calendar quarter of 2008 is 3.0% and the interest rate on the 10-year U.S. Treasury Bond at the close of business on the final Friday of the fourth calendar year quarter of 2008 (which is the date of determination of the 10-Year Treasury Rate for the first calendar year quarter of 2009) is 3.10%, then the 10-Year Treasury Rate for the first calendar year quarter of 2009 shall be 3.0%.

The fiscal agent (the "**Fiscal Agent**") under the Fiscal Agent Agreement will be the corporate trust department of a state bank or national banking association identified by the Issuer.

The Special Taxes to provide a source of payment for the Bonds (the "**Special Taxes**") will be levied pursuant to the Resolution of Formation, the Ordinance and Unanimous Approvals executed by Taxable Parcel Owners. The Bonds will be paid from Special Tax Revenues (as defined in the Fiscal Agent Agreement) received by the Issuer and moneys held in certain funds and accounts established under the Fiscal Agent Agreement. The rate and method of apportionment of the Special Taxes in the District shall be according to (i) the Method of Apportionment approved by the City Council pursuant to the Resolution of Formation and (ii) rate supplements approved by Taxable Parcel Owners pursuant to Unanimous Approvals (the "**Rate and Method**"). The Special Taxes shall be secured by a lien on the Taxable Parcels established by recordation of a notice of special tax lien (each a "**Notice of Special Tax Lien**") as an encumbrance on each of the Taxable Parcels in the real property records of Alameda County (the "**County**").

The Fiscal Agent Agreement will permit issuance of additional bonds secured by a pledge of Special Tax Revenues on a parity with the Bonds, subject to satisfaction of the conditions set forth in the Fiscal Agent Agreement

As permitted by Section 7.98.190 of the Code, the Issuer will agree in the Fiscal Agent Agreement to advance available surplus funds in the amount of any delinquent special

taxes as an advance recoverable upon payment of delinquent special taxes. "Available surplus funds" shall mean any surplus moneys held by the Issuer at the end of each fiscal year in excess of the amounts required to pay lawful municipal obligations of the Issuer for that fiscal year, all as determined by the City Council in its sole discretion, whose determination shall be final and binding.

The Issuer will establish a debt service reserve fund for the Bonds pursuant to the Fiscal Agent Agreement in an amount equal to 6.5% of the aggregate principal amount of outstanding Bonds, and will agree to replenish such debt service reserve fund from available surplus funds if and to the extent the reserve fund is drawn upon as a result of special tax delinquencies. The Reserve Fund may be held by the Issuer.

Section 4. Representations and Warranties of the Issuer. The Issuer represents and warrants to the Bond Purchaser as follows:

(a) The Issuer is duly organized and validly existing under the laws of the State of California (the "**State**").

(b) The City Council, as the legislative body of the District, has the full legal right, power and authority to adopt the Resolutions and the Ordinance, and the Issuer has the full legal right, power and authority for and on behalf of the District (i) to enter into this Purchase Contract and the Fiscal Agent Agreement (collectively, the "**Issuer Documents**"), (ii) upon satisfaction of the conditions in this Purchase Contract and the Fiscal Agent Agreement, to issue, sell and deliver the Bonds to the Bond Purchaser as provided herein, (iii) to secure the Bonds in the manner contemplated in the Fiscal Agent Agreement and (iv) to carry out and consummate all other transactions on its part contemplated by the Issuer Documents, and the Issuer and the City Council have complied with all provisions of applicable law, including the Code, in all matters relating to such transactions.

(c) The Issuer has duly authorized (i) the execution and delivery by the Issuer for and on behalf of the District of the Bonds and the execution, delivery and due performance by the Issuer of its obligations under the Issuer Documents and (ii) the taking of any and all such action as may be required on the part of the Issuer to carry out, give effect to and consummate the transactions on its part contemplated by such instruments. All consents or approvals necessary to be obtained by the Issuer in connection with the foregoing have been received, and the consents or approvals so received are still in full force and effect.

(d) The Resolutions and the Ordinance have been duly adopted by the City Council, acting as legislative body of the District, at meetings that were called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout, and the Resolutions and the Ordinance are in full force and effect and have not been amended or repealed; and the Fiscal Agent Agreement, when executed and delivered by the Issuer and the other party thereto (if any), will constitute a legal, valid and binding

obligation of the Issuer for and on behalf of the District enforceable against the Issuer in accordance with its terms, except as enforceability thereof may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally.

(e) When delivered to the Bond Purchaser, the Bonds will have been duly authorized by the City Council and duly executed, issued and delivered by the Issuer and will constitute legal, valid and binding obligations of the Issuer for and on behalf of the District enforceable against the Issuer in accordance with their respective terms, except as enforceability thereof may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally, and will be entitled to the benefit and security of the Fiscal Agent Agreement.

(f) Neither the adoption of the Resolutions or the Ordinance, the execution and delivery of the Issuer Documents, nor the consummation of the transactions on the part of the Issuer contemplated herein or therein or the compliance by the Issuer with the provisions hereof or thereof will conflict with, or constitute on the part of the Issuer, a violation of, or a breach of or default under, (i) any material indenture, mortgage, commitment, note or other agreement or instrument to which the Issuer is a party or by which it is bound, (ii) any provision of the State Constitution or (iii) any existing law, rule, regulation, ordinance, judgment, order or decree to which the Issuer (or the members of the City Council or any of its officers in their respective capacities as such) is subject, that would have a material adverse affect on the ability of the Issuer to perform its obligations under the Issuer Documents.

(g) Other than the Fiscal Agent Agreement, the Issuer has not entered into any contract or arrangement of any kind that might give rise to any lien or encumbrance on the Special Taxes.

(h) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending with respect to which the Issuer or the District has been served with process or threatened, which in any way questions the powers of the City Council or the Issuer referred to in paragraph (b) above, or the validity of any proceeding taken by the City Council in connection with the issuance of the Bonds, or wherein an unfavorable decision, ruling or finding could materially adversely affect the transactions contemplated by the Issuer Documents, or which, in any way, could adversely affect the validity or enforceability of the Resolutions, the Ordinance, the Issuer Documents or the Bonds, or, to the knowledge of the Issuer, which in any way questions the exclusion from gross income of the recipients thereof of the interest on the Bonds for federal income tax purposes or in any other way questions the status of the Bonds under State tax laws or regulations.

(i) Any certificate signed by an official of the Issuer authorized to execute such certificate and delivered to the Bond Purchaser in connection with the transactions contemplated by the Issuer Documents shall be deemed a representation and warranty by the Issuer to the Bond Purchaser as to the truth of the statements therein contained.

(j) The Bonds will be paid from Special Tax Revenues (as defined in the Fiscal Agent Agreement) received by the Issuer and moneys held in certain funds and accounts established under the Fiscal Agent Agreement. The Fiscal Agent Agreement creates a valid pledge of, and first lien upon the Special Tax Revenues deposited thereunder, and the moneys in certain funds and accounts established pursuant to the Fiscal Agent Agreement, subject in all cases to the provisions of the Fiscal Agent Agreement permitting the application thereof for the purposes and on the terms and conditions set forth therein.

(k) The Special Taxes may lawfully be levied in accordance with the Ordinance and the Rate and Method, and, when levied, will be secured by a lien on the Taxable Parcels on which they are levied pursuant to the applicable Notices of Special Tax Lien.

Section 5. Representations and Warranties of the Bond Purchaser. The Bond Purchaser represents and warrants to the Issuer as follows:

(a) The Bond Purchaser is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it was incorporated or formed and has the full legal right, power and authority to execute this Purchase Contract and to purchase the Bonds as provided herein.

(b) The Bond Purchaser is an "accredited investor" (an "**Accredited Investor**") as such term is defined in Rule 501(a) of Regulation D promulgated under the United States Securities Act of 1933, as amended.

(c) The Bond Purchaser has sufficient knowledge and experience in financial and business matters, including the purchase and ownership of municipal bonds and other tax-exempt obligations similar to the Bonds, to be capable of evaluating the merits and risks of an investment in the Bonds, and the Bond Purchaser is able to bear the economic risks of such an investment.

(d) The Bond Purchaser recognizes that an investment in the Bonds involves significant risks, that there is no established market for the Bonds and that none is likely to develop and, accordingly, that the Bond Purchaser must bear the economic risk of an investment in the Bonds for an indefinite period of time.

(e) The Bond Purchaser understands and agrees that, unless the City is provided an opinion of nationally-recognized bond counsel to the effect that a

re-sale or transfer of bonds other than as set forth in this Section 5(e) will be compliant with federal securities laws, it may resell or otherwise transfer all or any part of the Bonds only in denominations of not less than \$100,000, upon approval by the City Council and delivery by the Issuer to an underwriter or placement agent acceptable to the Issuer of (A) an official statement relating to the Bonds and complying with federal securities law and (B) an undertaking by the Issuer and any other obligated person required to comply with Rule 15c2-12, and otherwise upon compliance with all respects with the provisions of the Fiscal Agent Agreement regarding such sale or transfer.

(f) The Bond Purchaser understands and acknowledges that, subject to satisfaction of certain conditions set forth in the Fiscal Agent Agreement, the Issuer may issue subsequent series of bonds secured by Special Tax Revenues in the District on a parity with the Bonds.

(g) The Bond Purchaser (i) has conducted its own independent inquiry, examination and analysis with respect to the District and the Bonds, (ii) has had an opportunity to ask questions of and receive answers from the Issuer regarding the District, the Bonds (including the security therefor) and the matters, transactions and documents relating to the foregoing, (iii) has been provided by the Issuer with all documents and information regarding the District, the Bonds (including the security therefor) and the matters, transactions and documents relating to the foregoing that it has requested, and (iv) the Bond Purchaser has been provided with information sufficient to allow the Bond Purchaser to make an informed decision to purchase the Bonds.

(h) The Bond Purchaser (i) is not relying upon the Issuer, or any of its affiliates, officers, employees or agents, for advice as to the merits and risks of investment in the Bonds, and (ii) has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision.

(i) The Bond Purchaser understands and acknowledges (i) that the offering of the Bonds is not subject to the requirements of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 (“**Rule 15c2-12**”), (ii) that the Issuer has not prepared or caused to be prepared, and is not delivering, a deemed final official statement with respect to the Bonds and has not undertaken to provide to or for the benefit of holders of the Bonds financial or operating data or any other information with respect to the District or the Bonds on an ongoing basis.

(j) The Bond Purchaser is able to bear the economic risk of the investment represented by its purchase of the Bonds.

(k) The Bond Purchaser acknowledges that Jones Hall, A Professional Law Corporation (“**Bond Counsel**”) is acting as bond counsel to the Issuer, that

Bond Counsel has no attorney-client relationship with the Bond Purchaser, and that the Bond Purchaser has sought legal advice from its own counsel to the extent it concluded legal advice was necessary.

Section 6. Closings. At such times and dates during the Term of this Purchase Contract as shall have been mutually agreed upon by the Issuer and the Bond Purchaser, but in no event later than five days after Issuer has complied with Section 8 hereof and requested the Bond Purchaser to purchase Bonds, the Issuer will deliver or cause to be delivered Bonds to the Bond Purchaser in definitive form duly executed and authenticated by the Fiscal Agent together with the other documents mentioned in Section 8 hereof; and the Bond Purchaser will accept such delivery and pay the Purchase Price of the Bonds by delivering to the Fiscal Agent for the account of the Issuer a check payable in federal funds or making a wire transfer in federal funds payable to the order of the Fiscal Agent.

The activities relating to the final execution and delivery of the Bonds and the Fiscal Agent Agreement and the payment therefor and the delivery of the certificates, opinions and other instruments as described in Section 8 of this Purchase Contract shall occur at the offices of Bond Counsel. The payment for the Bonds and simultaneous delivery of the Bonds to the Bond Purchaser is herein referred to as the "**Closing.**" The Bonds will be delivered as fully registered, book-entry-only Bonds. The Bonds will be registered in the name of Cede & Co., as nominee of The Depository Trust Company.

Section 7. Termination.

(a) The Bond Purchaser shall have the right to cancel its obligations to purchase the Bonds if during the Term of this Purchase Contract:

(i) either federal or state legislation shall have been enacted causing interest on obligations of the general character of the Bonds, to be includable in California personal income, and such legislation, in the Bond Purchaser's reasonable opinion, materially adversely affects the market price of the Bonds; or

(ii) legislation shall have been enacted, or actively considered for enactment with an effective date prior to the Closing, or a decision by a court of the United States shall have been rendered, the effect of which is that the Bonds, including any underlying obligations, or the Fiscal Agent Agreement, as the case may be, is not exempt from the registration, qualification or other requirements of the Securities Act of 1933, as amended and as then in effect, the Securities Exchange Act of 1934, as amended and as then in effect, or the Trust Indenture Act of 1939, as amended and as then in effect; or

(iii) there shall have occurred any outbreak of hostilities or any national or international calamity or crisis, including a financial crisis, the effect of which on the financial markets of the United States is such as, in the reasonable judgment of the Bond Purchaser, would materially adversely affect the market for or market price of the Bonds; or

(iv) an amendment to the federal or State constitution shall be enacted or action taken by any federal or State court, legislative body, regulatory body or other authority materially adversely affecting the validity or enforceability of the Special Tax or the ability of the Issuer to issue the Bonds and levy the Special Tax as contemplated by the Fiscal Agent Agreement and the Rate and Method.

(b) The Issuer shall have the right to cancel this Purchase Contract if during the Term of this Purchase Contract:

(i) the Bond Purchaser does not purchase Bonds within five days after Issuer has complied with Section 8 hereof with respect to such Bonds and requested the Bond Purchaser to purchase such Bonds; or

(ii) the Personal Services Contract between the Issuer and the Bond Purchaser relating to administration of the Berkeley FIRST program (the "**Service Contract**") terminates; or

(iii) the Bond Purchaser fails to deliver, in connection with issuance of Bonds, a certificate in the form of Exhibit D dated as of the Closing Date.

Section 8. Issuer's Closing Conditions. The obligation of the Bond Purchaser to purchase the Bonds shall be subject (a) to the performance by the Issuer of its obligations to be performed by it hereunder at and prior to the Closing, (b) to the accuracy as of the date hereof and as of the time of the Closing of the representations and warranties of the Issuer herein, and (c) to the following conditions, including the delivery by the Issuer of such documents as are enumerated herein in form and substance satisfactory to the Bond Purchaser:

(a) At the time of Closing, (i) this Purchase Contract and the Fiscal Agent Agreement shall be in full force and effect and shall not have been amended, modified or supplemented except as may have been agreed to by the Bond Purchaser, and (ii) the Issuer shall have duly adopted and there shall be in full force and effect such resolutions and ordinances (including, but not limited to, the Resolutions and the Ordinance) as, in the opinion of Bond Counsel, shall be necessary in connection with the transactions contemplated hereby.

(b) Receipt of the Bonds, executed by the Issuer and authenticated by the Fiscal Agent, at or prior to the Closing. The terms of the Bonds, when delivered, shall in all instances be as described in Fiscal Agent Agreement.

(c) At or prior to the Closing, the Bond Purchaser shall receive the following documents in such number of counterparts as shall be agreeable to the Issuer:

(i) A final approving opinion of Bond Counsel dated the date of Closing in the form attached to this Purchase Contract as Exhibit A.

(ii) In connection with the first Closing only, (A) certified copies of the Resolutions and the Ordinance and (B) an executed copy of the Fiscal Agent Agreement.

(iii) With respect to each Taxable Parcel, evidence of (A) execution of a Unanimous Approval and (B) recordation in the real property records of the County of Alameda of Notices of Special Tax Lien in the form required by the Code.

(iv) A certificate, in form and substance as set forth in Exhibit B, of the Issuer, dated as of the Closing Date.

(v) With respect to each Taxable Parcel: (A) evidence that the Issuer has performed the final building permit inspection of the Facilities being financed with the Bonds, (B) evidence that the Taxable Parcel is RECO-compliant, (C) a copy of a final invoice from an installer that qualifies under the State of California's California Solar Initiative ("CSI"), and (D) a copy of a CSI rebate reservation.

(vi) A certificate of the Fiscal Agent in form and substance as set forth in Exhibit C.

(vii) Such additional legal opinions, certificates, proceedings, instruments and other documents as the Bond Purchaser or Bond Counsel may reasonably request to evidence compliance by the Issuer with legal requirements, the truth and accuracy, as of the time of Closing, of the respective representations of the Issuer herein contained and the due performance or satisfaction by the Issuer at or prior to such time of all agreements then to be performed and all conditions then to be satisfied.

Section 9. Expenses. The Issuer shall pay or cause to be paid all reasonable expenses incident to the performance of its obligations under this Purchase Contract, including, but not limited to, delivery of the Bonds, costs of printing the Bonds, fees and disbursements of Bond Counsel, any financial advisor and other consultants engaged by the Issuer, including the fees and expenses of the special tax consultant, the California Debt Investment and Advisory Commission fee and fees of the Fiscal Agent.

The Bond Purchaser shall pay all expenses incurred by it in connection with its purchase of the Bonds, including fees and expenses of its counsel, if any. In addition, the Bond Purchaser shall pay all expenses relating to its resale or transfer of the Bonds, including any costs incurred by the Issuer in connection with the resale or transfer.

Section 10. Notice. Any notice or other communication to be given to the parties to this Purchase Contract may be given by delivering the same in writing at the following addresses

City of Berkeley

2180 Milvia Street

Berkeley, CA 94704
Attn: City Manager

With a copy to the City Attorney

Renewable Funding

[to come]

Section 11. Benefit of this Purchase Contract. This Purchase Contract is made solely for the benefit of the Issuer and the Bond Purchaser (including the successors or assigns of the Bond Purchaser) and no other person, including any purchaser of the Bonds, shall acquire or have any right hereunder or by virtue hereof.

Section 12. Governing Law. This Purchase Contract shall be governed by and construed in accordance with the laws of the State of California.

Section 13. Counterpart. This Purchase Contract may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Issuer and the Bond Purchaser have caused this Purchase Contract to be signed in their name by authorized representatives, all as of the Effective Date.

CITY OF BERKELEY, for and on behalf of
City of Berkeley Special Tax District No.
2008-1 (Sustainable Energy Financing
District)

By: _____
Authorized Representative

RENEWABLE FUNDING, LLC

By: _____
Authorized Representative

EXHIBIT B

PERSONAL SERVICES CONTRACT

THIS CONTRACT is entered into on _____, 20__ (the "Effective Date") between the CITY OF BERKELEY ("City"), a Charter City organized and existing under the laws of the State of California, and RENEWABLE FUNDING, LLC ("Contractor"), a _____ limited liability company doing business at _____, who agree as follows:

1. **SCOPE OF SERVICES**

Contractor agrees to perform all services described in Exhibit A, in accordance with its stated terms and conditions. Exhibit A is attached to and made a part of this Contract.

2. **PAYMENT**

For services referred to in Section 1, Contractor will be compensated in the form of a \$25 reservation fee to be paid by property owners in the City that have been approved for financing under the Berkeley FIRST program.

3. **TERM**

a. This Contract shall begin on the Effective Date and end on the twenty-first monthly anniversary of the Effective Date, which is the expected duration of the pilot phase of the Berkeley FIRST program (the "Pilot Phase").

b. Either party may terminate this Contract for default upon five (5) days' written notice to the other if the other party has substantially failed to fulfill any of its obligations under this Contract in a timely manner. City may terminate this Contract upon termination of the Purchase Contract dated __, 2008 between the City and Contractor relating to issuance of bonds for the Berkeley FIRST program. Except as provided in this Contract, in no event shall City be liable for costs incurred by or on behalf of Contractor after the effective date of a notice of termination.

c. A written notice is deemed served when a party sends the notice in an envelope addressed to the other party to this Contract and deposits it with the U.S. Postal Service, first class mail, postage prepaid. For purposes of this Contract, all notices to City shall be addressed as follows:

City Manager
City of Berkeley
2180 Milvia Street
Berkeley, California 94704

For purposes of this Contract, all notices to Contractor shall be addressed as follows:

Renewable Funding, LLC
[Contractor Business Name]
[Contractor Street Address]

[Contractor City, State Zip]

4. **INDEMNIFICATION**

a. Contractor, for itself and its heirs, successors and assigns, agrees to release, defend, indemnify and hold harmless City, its officers, agents, volunteers and employees from and against any and all claims, demands, liability, damages, lawsuits or other actions, including, but not limited to, personal injury or death or property damage arising out of or in any way connected with Contractor's operations under this Contract, or with the performance of this Contract by Contractor or its officers, employees, partners, directors, subcontractors or agents.

b. City, for itself and its heirs, successors and assigns, agrees to release, defend, indemnify and hold harmless Contractor, its officers, agents, volunteers and employees from and against any and all claims, demands, liability, damages, lawsuits or other actions, including, but not limited to, personal injury or death or property damage arising out of or in any way connected with City's operations under this Contract, or with the performance of this Contract by City or its officers, employees, partners, directors, subcontractors or agents.

5. **INSURANCE**

a. Contractor shall maintain at all times during the performance of this Contract a commercial general liability insurance policy with a minimum occurrence coverage in the amount of \$1,000,000 (one-million dollars); an automobile liability insurance policy in the minimum amount of \$500,000 (five-hundred thousand dollars). All insurance shall name the City, its officers, agents, volunteers and employees as additional insureds and shall provide primary coverage with respect to the City.

All insurance policies shall: 1) provide that the insurance carrier shall not cancel, terminate or otherwise modify the terms and conditions of said policies except upon thirty (30) days written notice to the City's Contract Administrator; 2) be evidenced by the original Certificate of Insurance, specifying the required coverage and the insurance carrier's standard additional insured form endorsement; and 3) be approved as to form and sufficiency by the City's Contract Administrator. **The original insurance certificates and all extensions to the insurance certificates should be sent to the address identified below and include the CMS#.**

b. If the commercial general liability insurance referred to above is written on a Claims Made Form then, following termination of this Contract, coverage shall survive for a period of not less than five years. Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this Contract.

c. If Contractor employs any person, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to the City. The workers' compensation insurance shall: 1) provide that the insurance carrier shall not cancel, terminate or otherwise modify the terms and conditions of said insurance except upon thirty (30) days written notice to the City's Contract Administrator; 2) provide for a waiver of any right of subrogation against City to the extent permitted by law; and 3) shall be approved as to form and sufficiency by the Contract Administrator.

d. Contractor shall forward all insurance documents to:

Department Name: _____

CMS# _____

Department Address: _____

6. **CONFORMITY WITH LAW AND SAFETY**

a. Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the scope of services, including all provisions of the Occupational Safety and Health Act of 1979 as amended, all California Occupational Safety and Health Regulations, and all other applicable federal, state, municipal and local safety regulations. All services performed by Contractor must be in accordance with these laws, ordinances, codes and regulations. Contractor shall release, defend, indemnify and hold harmless City, its officers, agents, volunteers and employees from any and all damages, liability, fines, penalties and consequences from any noncompliance or violation of any laws, ordinances, codes or regulations.

b. If a death, serious personal injury or substantial property damage occurs in connection with the performance of this Contract, Contractor shall immediately notify the City’s Risk Manager by telephone. If any accident occurs in connection with this Contract, Contractor shall promptly submit a written report to City, in such form as the City may require. This report shall include the following information: 1) name and address of the injured or deceased person(s); 2) name and address of Contractor’s subcontractor, if any; 3) name and address of Contractor’s liability insurance carrier; and 4) a detailed description of the accident, including whether any of City’s equipment, tools or materials were involved.

c. If a release of hazardous materials or hazardous waste that cannot be controlled occurs in connection with the performance of this Contract, Contractor shall immediately notify the Berkeley Police Department and the City’s Health Protection office.

d. Contractor shall not store hazardous materials or hazardous waste within the City of Berkeley without a proper permit from the City.

7. **MATERIAL SAFETY DATA SHEETS**

a. To comply with the City’s Hazard Communication Program, Contractor agrees to submit Material Safety Data Sheets (MSDS) for all “hazardous substances” Contractor intends to use in the performance of work under this Contract in any City facility. “Hazardous substances” are defined as those substances so designated by the Director of Industrial Relations pursuant to the Hazardous Substances Information and Training Act (Labor Code sec. 6360 *et seq.*). The MSDS for all products must be submitted to the City before commencing work. The MSDS for a particular product must be reviewed and approved by the City’s Risk Manager before Contractor may use that product.

b. City will inform Contractor about hazardous substances to which it may be exposed while on the job site and protective measures that can be taken to reduce the possibility of exposure.

8. **OWNERSHIP OF DOCUMENTS**

a. When this Contract is terminated, Contractor agrees to return to City all documents, drawings, photographs and other written or graphic material, however produced, that it received from City, its contractors or agents, in connection with the performance of its services under this Contract. All materials shall be returned in the same condition as received.

b. If this Contract has terminated prior to the end of the Pilot Phase, but only for the duration of the Pilot Phase and only for the purpose of enabling the City to administer the Pilot Phase, Contractor grants City a royalty-free, exclusive and irrevocable license to reproduce, publish, use and to authorize others to do so, all original computer programs, writing, sound recordings, pictorial reproductions, diagrams, charts, computations, drawings and other works of similar nature produced in the course of the performance of this Contract.

c. Contractor may retain and use copies of its work without limitation, except that Contractor shall not publish any material in which the City's name or information relating to the Berkeley FIRST program is included without the prior written agreement of the City. This paragraph 8(c) shall not limit Contractor's right to publish information about its expertise in managing programs similar to the Berkeley FIRST program if reference is not made to the City or the Berkeley FIRST program, nor shall this paragraph prohibit Contractor from republishing articles regarding the Berkeley FIRST program already published in the news media.

9. **NON-DISCRIMINATION**

Contractor hereby agrees to comply with the provisions of Berkeley Municipal Code ("B.M.C.") Chapter 13.26 as amended from time to time. In the performance of this Contract, Contractor agrees as follows:

a. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

b. Contractor shall permit the City access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the opinion of the City, are necessary to monitor compliance with this non-discrimination provision. In addition, Contractor shall fill-out, in a timely fashion, forms supplied by the City to monitor this non-discrimination provision.

10. **INDEPENDENT CONTRACTOR**

a. Contractor shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which Contractor performs the services required of Contractor by the terms of this Contract. Contractor shall be liable for its acts and omissions, and those of its employees and its agents. Nothing contained herein shall be construed as creating an employment, agency or partnership relationship between City and Contractor.

b. Direction from City regarding the subject of this Contract shall be construed as providing for direction as to policy and the result of Contractor's Work only and not as to the means or methods by which such a result is obtained.

c. Except as expressly provided in this Contract, nothing in this Contract shall operate to confer rights or benefits on persons or entities not party to this Contract.

d. Payment of any taxes, including California Sales and use Taxes, levied upon this Contract, the transaction, or the services or goods delivered pursuant hereto, shall be the obligation of Contractor.

11. **CONFLICT OF INTEREST PROHIBITED**

a. In accordance with Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, neither Contractor nor any employee, officer, director, partner or member of Contractor, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a City board, committee or commission member, who has directly or indirectly influenced the making of this Contract.

b. In accordance with Government Code section 1090 and the Political Reform Act, Government Code section 87100 *et seq.*, no person who is a director, officer, partner, trustee, employee or consultant of the Contractor, or immediate family member of any of the preceding, shall make or participate in a decision made by the City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Contractor.

c. Interpretation of this section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code section 87100 *et seq.*, its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64.

12. **NUCLEAR FREE BERKELEY**

Contractor agrees to comply with B.M.C. Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

13. **OPPRESSIVE STATES CONTRACTING PROHIBITION**

a. In accordance with Resolution No. 59,853-N.S., Contractor certifies that it has no contractual relations with, and agrees during the term of this Contract to forego contractual relations to provide personal services to, the following entities:

- (1) The governing regime in any Oppressive State.
- (2) Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- (3) Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of its contract with the City), for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

b. For purposes of this Contract, the Tibet Autonomous Region and the provinces of Abo, Kham, and U-Tsang shall be deemed oppressive states.

c. Contractor's failure to comply with this section shall constitute a default of this Contract and City may terminate this Contract pursuant to Section 3. In the event that the City terminates Contractor due to a default under this provision, City may deem Contractor a non-responsible bidder for not more than five (5) years from the date this Contract is terminated.

14. **RECYCLED PAPER FOR WRITTEN REPORTS**

If Contractor is required by this Contract to prepare a written report or study, Contractor shall use recycled paper for said report or study when such paper is available at a cost of not more than ten percent more than the cost of virgin paper, and when such paper is available at the time it is needed. For the purposes of this Contract, recycled paper is paper that contains at least 50% recycled product. If recycled paper is not available, Contractor shall use white paper. Written reports or studies prepared under this Contract shall be printed on both sides of the page whenever practical.

15. **BERKELEY LIVING WAGE ORDINANCE**

a. Contractor hereby agrees to comply with the provisions of the Berkeley Living Wage Ordinance, B.M.C. Chapter 13.27. If Contractor is currently subject to the Berkeley Living Wage Ordinance, as indicated by the Living Wage Certification form, attached hereto, Contractor will be required to provide all eligible employees with City mandated minimum compensation during the term of this Contract, as defined in B.M.C. Chapter 13.27, as well as comply with the terms enumerated herein. Contractor expressly acknowledges that, even if Contractor is not currently subject to the Living Wage Ordinance, cumulative contracts with City may subject Contractor to the requirements under B.M.C. Chapter 13.27 in subsequent contracts.

b. If Contractor is currently subject to the Berkeley Living Wage Ordinance, Contractor shall be required to maintain monthly records of those employees providing service under the Contract. These records shall include the total number of hours worked, the number of hours spent providing service under this Contract, the hourly rate paid, and the amount paid by Contractor for health benefits, if any, for each of its employees providing services under the Contract. These records are expressly subject to the auditing terms described in Section 16.

c. If Contractor is currently subject to the Berkeley Living Wage Ordinance, Contractor shall include the requirements thereof, as defined in B.M.C. Chapter 13.27, in any and all subcontracts in which Contractor engages to execute its responsibilities under this Contract. All subcontractor employees who spend 25% or more of their compensated time engaged in work directly related to this Contract shall be entitled to a living wage, as described in B.M.C. Chapter 13.27 and herein.

d. If Contractor fails to comply with the requirements of this Section, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Contractor's failure to comply with this Section shall constitute a material breach of the Contract, upon which City may terminate this Contract pursuant to

Section 3. In the event that City terminates Contractor due to a default under this provision, City may deem Contractor a non-responsible bidder for not more than five (5) years from the date this Contract is terminated.

In addition, at City's sole discretion, Contractor may be responsible for liquidated damage in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Contractor's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damage set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Contractor's breach. City may deduct any assessed liquidated damages from any payments otherwise due Contractor.

16. **BERKELEY EQUAL BENEFITS ORDINANCE**

a. Contractor hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Contractor is currently subject to the Berkeley Equal Benefits Ordinance, as indicated by the Equal Benefits Certification form, attached hereto, Contractor will be required to provide all eligible employees with City mandated equal benefits, as defined in B.M.C. Chapter 13.29, during the term of this contract, as well as comply with the terms enumerated herein.

b. If Contractor is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Contractor agrees to provide the City with all records the City deems necessary to determine compliance with this provision. These records are expressly subject to the auditing terms described in Section 17 of this contract.

c. If Contractor fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Contractor's failure to comply with this Section shall constitute a material breach of the Contract, upon which City may terminate this contract pursuant to Section 3. In the event the City terminates this contract due to a default by Contractor under this provision, the City may deem Contractor a non-responsible bidder for not more than five (5) years from the date this Contract is terminated.

In addition, at City's sole discretion, Contractor may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Contractor's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Contractor's breach. City may deduct any assessed liquidated damages from any payments otherwise due Contractor.

17. **AUDIT**

Pursuant to Section 61 of the Berkeley City Charter, the City Auditor's Office may conduct an audit of Contractor's financial, performance and compliance records maintained in connection with the operations and services performed under this Contract. In the event of such audit, Contractor agrees to provide the City Auditor with reasonable access to Contractor's employees and make all such financial, performance and compliance records available to the Auditor's Office. City agrees to provide Contractor an opportunity to discuss and respond to any findings before a final audit report is filed.

18. **SETOFF AGAINST DEBTS**

Contractor agrees that City may deduct from any payments due to Contractor under this Contract any monies that contractor owes City under any ordinance, contract or resolution for any unpaid taxes, fees, licenses, unpaid checks or other amounts.

19. **CONFIDENTIALITY OF INFORMATION**

Contractor understands and agrees that, in the performance of the services under this Contract or in the contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Contract. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent consultant would use to protect its own proprietary data.

20. **GOVERNING LAW**

This Contract shall be deemed to have been executed in Alameda County. The formation, interpretation and performance of this Contract shall be governed by the laws of the State of California, excluding its conflict of laws rules. Venue for all litigation relative to the formation, interpretation and performance of this Contract shall be in Alameda County, California.

21. **AMENDMENTS**

The terms and conditions of this Contract shall not be altered or otherwise modified except by a written amendment to this Contract executed by City and Contractor.

22. **ENTIRE CONTRACT**

a. The terms and conditions of this Contract, all exhibits attached and any documents expressly incorporated by reference represent the entire Contract between the parties with respect to the subject matter of this Contract. This Contract shall supersede any and all prior contracts, oral or written, regarding the subject matter between City and Contractor. No other contract, statement, or promise relating to the subject matter of this Contract shall be valid or binding except by a written amendment to this Contract.

b. If any conflicts arise between the terms and conditions of this Contract and the terms and conditions of the attached exhibits or any documents expressly incorporated, the terms and conditions of this Contract shall control.

23. **SEVERABILITY**

If any part of this Contract or the application thereof is declared invalid for any reason, such invalidity shall not affect the other provisions of this Contract which can be given effect without the invalid provision or application, and to this end the provisions of this Contract are declared to be severable.

24. **WAIVER**

Failure of City to insist on strict performance shall not constitute a waiver of any of the provisions of this Contract or a waiver of any other default of Contractor.

25. **ASSIGNMENT**

Contractor may not assign this Contract without the prior written consent of the City, except that Contractor may assign its right to any money due or to become due hereunder.

26. **EFFECT ON SUCCESSORS AND ASSIGNS**

This Contract shall be binding on and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto.

27. **CONSULTANTS TO SUBMIT STATEMENTS OF ECONOMIC INTEREST**

The City's Conflict of Interest Code, Resolution No. 60,788-N.S., as amended, requires consultants who make a governmental decision or act in a staff capacity as defined in 2 Cal. Code of Regs. §18700, as amended from time to time, to disclose conflicts of interest by filing a Statement of Economic Interest (Form 700). Consultants agree to file such statements with the City Clerk at the beginning of the contract period and upon termination of the Contractor's service.

28. **SECTION HEADINGS**

The sections and other headings of this Contract are for convenience of reference only and shall be disregarded in the interpretation of this Contract.

29. **CITY BUSINESS LICENSE, PAYMENT OF TAXES, TAX I.D. NUMBER**

Contractor has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, Contractor is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. Contractor shall pay all state and federal income taxes and any other taxes due. **Contractor certifies under penalty of perjury that the taxpayer identification number written below is correct.**

Business License Number _____
B.M.C. § _____
Taxpayer ID Number _____

IN WITNESS WHEREOF, City and Contractor have executed this Contract as of the date written on the first paragraph of this Contract.

FOR CITY OF BERKELEY

Signed by:

Countersigned by:

City Manager

City Auditor

Approved as to form by:

Attested by:

City Attorney for City of Berkeley
6/01

City Clerk

EXHIBIT A

SCOPE OF SERVICES

As described below, Contractor will build and maintain a dedicated on-line application processing, disbursement and customer education system for the Berkeley FIRST program and provide daily customer service support at an office and by telephone.

Contractor will provide a comprehensive application processing service for the Berkeley FIRST program including a website built specifically for user ease and administrative simplicity. The website will give applicants program information and allow them to apply on-line, as well as check their application status. It will offer the City and its consultants the ability to access detailed data and reports regarding the program in real time.

All information collected from applicants or interested parties ("Personal Information") will be maintained in a secure and confidential fashion by Contractor. Contractor may make copies of Personal Information only as reasonably necessary to perform its obligations described in this Exhibit A. No Personal Information may be shared by Contractor with any entity other than the City and its consultants without written authorization from the applicant or interested party. Contractor shall only use Personal Information for the purpose of carrying out its obligations described in this Exhibit A. Contractor shall destroy all Personal Information relating to an application that was not approved within 90 days of rejecting the application. Upon termination of the Personal Services Contract, Contractor agrees to return all Personal Information, including any copies made by the recipient, within 30 days after City requests such return, or to destroy all such Personal Information.

Customer Education and Information: The website will show property owners how the Berkeley FIRST program works, how to apply, and will provide information on costs and obligations resulting from participation in the program. The website will offer a calculator allowing property owners to determine their actual property tax payments given their project cost and current interest rates. Property owners can sign up at the website for regular program updates to stay informed on program developments. The website will include links to the California Solar Initiative (CSI) and relevant City of Berkeley pages. The website will include the following information:

- Program information, Steps and Timelines
- Current interest rate and annual payments
- Frequently Asked Questions
- Eligibility criteria
- Eligible Energy Systems
- Information needed to apply
- Updates on the program
- Links to CSI and the City pages

On-line application processing: During an initial two-week (14-calendar day) application period, all applications submitted will be placed on a waitlist. Completed applications shall be date and time stamped based on the date and time applications are electronically received by the Contractor. Following the two-week period, the contractor will allocate applications and reservations for funding based on council district and the date/time stamp. Up to five (5) applications will be assigned to each of the 8 council districts with a maximum funding amount of \$37, 500 per an application. If all forty (40) reservation slots have not been filled after the two-week period, the Contractor will approve reservations based on the date/time stamp without regard to district. Only one reservation slot will be allowed per an Assessor's Parcel Number (APN).

The website will provide an on-line application form that will take most property owners less than 10 minutes to complete. The application will require the property owner to submit the following in order to be considered complete:

- Applicant name and contact information
- Property owner(s) name, address, and telephone numbers
- Initial Bid Amount on Solar Installation
- Contractor Name that Provided Initial Bid
- Property verifications and disclosures
- Agreement to program terms and conditions
- Credit card information for reservation fee*

*A reservation fee will not be collected from applicants during the two-week period since Contractor will need to manually allocate the applicants according to council districts and date/time stamps. Those applicants accepted will be notified, and they will have 7 calendar days to pay their fee in order to get a reservation for funding. If an applicant fails to pay their fee in the 7 calendar days, he/she will forfeit her reservation and his/her spot will be allocated to another applicant.

Upon payment of the reservation fee, Contractor will review the public records of the applicant's property in order to qualify them for funding within 7 calendar days.

Contractor will examine the application and property records to screen for compliance with terms and conditions of the program. Contractor will examine the following to look for evidence the property does not comply with terms and conditions:

- Application
- Council District
- Reservation fee
- Legal ownership
- Notices of Default
- Property tax payment
- Tax and other liens
- Other elements as necessary

If the applicant is not qualified for funding, the applicant's reservation fee will be refunded.

The pilot program is limited to \$1,500,000 in funding, which is forty (40) applicants with a maximum funding amount of \$37,500. If the forty (40) applications are not allocated during the initial two-week period, the Contactor will continue to collect applications through the website. The website will automatically stop collecting reservation fees and allocating reservations when, in Contractor's determination, the amount of available applications has been reached.

Applicants who do not make the cut-off will receive an email indicating that they will be notified when the next phase of funding is available. Applicants who do not make the cut-off will not be charged a reservation fee. Contractor will create and maintain a list of all applicants who do not make the cut-off and make that list available to the City.

Following the initial two-week application period and payment of the reservation fee, the maximum time an applicant should anticipate before receiving approval for funding is 7 calendar days.

Disbursement processing: Once an application has been approved and funding reserved, applicants are allowed 270 calendar days to complete installation of their systems and receive final inspection from the Building and Safety Division. Once installation is completed, applicants can submit funding requests up to \$37,500 through the on-line system. The Contractor will collect the following information from the property at the time of their request:

- Name of Installer
- Final Installer Invoice Amount Net CSI Rebate
- Total Amount of Funding Requested (in case that it is less than final invoice)

Contractor will inform applicants of the currently applicable interest rate at the time of their funding request. Contractor will provide applicants with a uniquely created Adobe pdf file containing the necessary legal documents, principal and interest for each tax payment, and a checklist for documentation that they must submit along with their Unanimous Consent for their property to be annexed to the Special Tax District. Final documents will include:

- Copy of final invoice from installer, including as built system size per CSI criteria
- California Solar Initiative (CSI) Reservation Rebate Letter with Reservation #
- Copy of City building permit final inspection
- Authorization to release CSI information
- PG&E service identification number and authorization to release PG&E billing data to the City and/or its contractors for the period 18 months prior to installation to 18 months after installation
- Signed Program Terms and Disclosures
- Signed Unanimous Consent and Liability Release

In addition to final documents, the City of Berkeley will verify each property's compliance with RECO/CECO before funding can be released.

In order to facilitate this process, Contractor will provide the City of Berkeley with a list of the property owners / properties approved for funding. The City of Berkeley will then check RECO/CECO compliance for the property. For any property that is not RECO/CECO compliant, Contractor will send a notification instructing the property owner to complete RECO/CECO compliance before requesting funding. The City of Berkeley will provide Contractor with a City staff contact that can assist property owners with RECO/CECO compliance as well as detailed information that Contractor can share with property owners on RECO/CECO.

The property owner will have 14 calendar days to submit hardcopies their final documentation to the contractor. If documentation is not received within 14 calendar days, the property owner will need to resubmit their funding request at which time their interest rate may be reset.

Within 3 business days of receiving documentation, Contractor will review for completeness and submit the appropriate paperwork to the City for placement of the Special Tax Lien, including the form for the Notice of a Special Tax Lien. Placement of the lien will take approximately 5 business days. After placement of the lien and issuance of the bond, the City will provide Contractor with authorization to release funding to the property owner. Upon authorization, the Contractor will provide a check to the property owner for the payment amount requested within 3 business days. Based on the current timeline, the property owner should expect to receive a check for funding approximately 12 business days after submitting their documentation to Contractor.

Customer Service and City Support:

Contractor will provide dedicated staff to handle the application process and customer inquiries.

Contractor will respond to all inquiries within 24 hours and will be on-call to work with City staff and consultants to remedy problems.

Contractor will staff phones and computers for regular and extended daily office hours, provide a telephone number and offer on-line customer service support.

Contractor will participate in community meetings and public information sessions as requested by the City.

Contractor will document all procedures and coordinate with the City on development of program policies.

Contractor will provide the City access to real-time data about the program through the website.

Contractor will provide regular reports to the City and when the pilot program is completed, Contractor will provide final report to the City covering all aspects of the program.

Contractor will provide the City or its contractors with originals of the PG&E billing data release authorizations.

