



REPORT TO CITY COUNCIL

Approved by:

Handwritten signature of Keith Helmuth in blue ink.

Keith Helmuth, Department Director

Handwritten signature of Arnaldo Rodriguez in blue ink.

Arnaldo Rodriguez, City Manager

Council Meeting of: September 18, 2019

Agenda Number: B-5

SUBJECT: Consideration of a Resolution Approving Purchase Agreement with Sunnova Energy Corporation (SEC) for the Acquisition of a Solar Panel System, in the Amount of \$31,712 Required to Complete the Right of Way Acquisition for the Olive Avenue Widening and Reconstruction Project and Authorizing the Mayor to Execute the Purchase Agreement

RECOMMENDATION:

Staff recommends that the City Council (Council) adopt a resolution approving the Purchase Agreement with Sunnova Energy Corporation in the amount of \$ 31,712.04.

SUMMARY:

The agreement is required to close escrow for the purchase of land, dwelling, and improvements necessary for Right-of-Way (ROW). The solar system on the dwelling is owned by SEC and they have required a buyout under the terms in the Lease Agreement. Regional Surface Transportation Program (RSTP) funds are included in the FY 2019/20 Budget for ROW acquisition.

DISCUSSION:

The acquisition of the entire parcel of land at the Southeast corner of Olive Avenue and Knox Street was necessary to widen and reconstruct these streets. The acquisition from the owner included land, dwelling, and improvements at a cost of \$357,000. This amount is currently in escrow. The appraised value of the land, dwelling, and improvements did not include the solar system. It is important to approve this agreement to ensure the right-of-way project can be completed.

The SEC Lease Agreement is a 25 years lien on this property and the agreement includes an option to purchase the solar system upon termination of the lease in lieu of making payments for the next 20 years. The purchase amount is based on the prorated value of the remainder of the lease as specified in the lease agreement. Also, the solar system can be removed from the dwelling and becomes the property of the City.

The \$31,712.04 for payment to SEC will be processed through escrow by Chicago Title.

FINANCIAL IMPACT:

There will be no impact to the City's General Fund for the ROW acquisition and eligible relocation expenses costs for this project. (RSTP) funds were used for right-of-way acquisition and relocation costs and these funds are included in the City's 2019/20 Budget, Account No: 41315320-7050.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

Strategy 126 – The Project supports this strategy for providing clean, attractive streets that are safe and aesthetically pleasing.

Strategy 138 – The Project supports this strategy to establish and enforce ADA standards throughout the community.

ALTERNATIVES:

None as City is bound by the contents of the SEC Lease Agreement.

ATTACHMENTS:

1. Resolution

Attachment 1

Resolution

RESOLUTION NO. 19-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA APPROVING A PURCHASE AGREEMENT WITH SONNOVA ENERGY CORPORATION FOR THE ACQUISITION OF A SOLAR PANEL SYSTEM, IN THE AMOUNT OF \$31,712.04 REQUIRED TO COMPLETE THE RIGHT OF WAY ACQUISITION FOR THE OLIVE AVENUE WIDENING AND RECONSTRUCTION PROJECT AND AUTHORIZING THE MAYOR TO EXECUTE THE PURCHASE AGREEMENT

WHEREAS, the City Council of the City of Madera has approved the Olive Avenue Widening and Reconstruction Project between Gateway Drive and Knox Street and Knox Street between Neplus Way and Olive Avenue (Project);

WHEREAS, the acquisition of land and improvements, adjacent to Olive Avenue and Knox Street, is necessary for the widening and reconstruction of the Project;

WHEREAS, the Purchase Agreement for a Solar Panel System is required to close escrow and complete the acquisition of land and improvements that is necessary for right of way to construct the Project; and

WHEREAS, in April 1996, the City of Madera adopted a Mitigated Negative Declaration for the East Olive Avenue Plan Line and Building Set Back Project (East Olive Avenue Plan Line) for the widening of Olive Avenue to a 100 foot right of way arterial standard street. The Mitigated Negative Declaration was certified based on an Initial Study in conformance with the California Environmental Quality Act (CEQA). The Addendum to the Mitigated Negative Declaration for the widening of East Olive Avenue to 100 feet right of way arterial standard was approved by the Madera Planning Commission on November 10, 2015.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF MADERA hereby resolves, finds, determines and orders as follows:

1. The above recitals are true and correct.
2. The City Council of the City of Madera approves the Purchase Agreement, a copy of which is attached hereto as Exhibit A and incorporated by reference.
3. The Finance Director is authorized to make the payment in the amount of \$31,712.04 to Chicago Title Company.
4. The Mayor is authorized to execute the Agreement.
5. This resolution is effective immediately upon adoption.

* * * * *

EXHIBIT A

Purchase Agreement



PURCHASE AGREEMENT

This Purchase Agreement (“Agreement”) is entered into between Sunnova Energy Corporation (“Sunnova”) and its partners, subcontractors, affiliated entities, assigns and their representatives, directors, officers, agents, employees and attorneys (“Released Parties”) and the City of Madera (“Buyer”) (collectively “Parties”), regarding purchase of the Solar Panel System (“System”) installed at the property located at 1280 East Olive Avenue, Madera, CA 93638 (“Property”) under Contract Id. No. 00EG18.

In consideration of the mutual promises and the respective agreements and conditions contained herein, and intending to be legally bound, the Parties agree as follows:

1. Sunnova installed the System on the Property pursuant to the Solar Services Agreement (“SSA”) between Sunnova and the Property’s previous owners. The Buyer recently purchased the home.
2. The Buyer will pay \$31,712.04 (“Purchase Amount”) to Sunnova to terminate the SSA and purchase the System.
3. The SSA entered into between the Customer and Sunnova will be cancelled and neither the Customer, the Buyer, nor Sunnova will have any remaining duties or responsibilities under the SSA, including, but not limited to, any production guarantees or limited warranties.
4. The UCC-1 Fixture Filing related to the System will be removed and terminated upon execution of the Agreement and receipt of the Purchase Amount.
5. For consideration of the Purchase Amount and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sunnova does hereby sell, assign, transfer, and convey to the Buyer all of Sunnova’s rights, title and interest in and to the System, free and clear of all security interests, mortgages, pledges, liens or other encumbrances, and the Buyer do hereby receive and accept such assignment of the System.
6. Sunnova represents and warrants that it is the sole owner of the System subject to this Agreement and has good and marketable title thereto, free and clear of all liens, claims, security interests, pledges, encumbrances, and equities of every kind. There are no options, warrants, subscriptions, commitments, or rights of any person to acquire the System. Sunnova has all requisite entity power and authority to execute and deliver this Agreement and the transactions contemplated hereby and to perform its obligations hereunder.
7. The Purchase Amount does not include the cost to remove the System from the Property.
8. BUYER REPRESENTS AND WARRANTS THAT BUYER HEREBY ACCEPTS THE SYSTEM IN IN ITS PRESENT STATUS, CONDITION AND STATE OF REPAIR, “AS



IS” AND “WHERE IS” WITH ALL FAULTS OR DEFECTS (KNOWN OR UNKNOWN, LATENT, DISCOVERABLE OR UNDISCOVERABLE) AND WITHOUT RELYING UPON ANY REPRESENTATION OR WARRANTY (EXPRESS OR IMPLIED) OF SUNNOVA OR ANY OF THE RELEASED PARTIES. SUNNOVA HAS NOT MADE AND DOES NOT HEREBY MAKE AND HEREBY SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE SYSTEM, ITS CONDITION, AND ITS INSTALLATION (INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR WARRANTY REGARDING DESIGN, QUALITY OF CONSTRUCTION, CAPACITY, CONDITION, STATE OF REPAIR, WORKMANSHIP, MERCHANTABILITY, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, SUITABILITY OR PERFORMANCE) AND THE BUYER HAS NOT RELIED ON ANY SUCH REPRESENTATIONS OR WARRANTIES BY SUNNOVA OR ANY OF THE RELEASED PARTIES.

- 9. THE BUYER INTENDS THAT THE FOREGOING RELEASE SHALL BE EFFECTIVE AS A BAR TO ALL ACTIONS, CAUSES OF ACTION, CLAIMS, DEMANDS AND RECOVERIES OF WHATSOEVER CHARACTER, NATURE AND KIND, WITHOUT REGARD TO THE CAUSE OR CAUSES THEREOF, INCLUDING, WITHOUT LIMITATION, FRAUD, VIOLATION OF LAW, BREACH OF DUTY, COMMON LAW, EQUITY, STATUTORY RIGHT, STRICT LIABILITY, UNDUE INFLUENCE, DURESS, NEGLIGENCE, GROSS NEGLIGENCE OR ANY OTHER CAUSE OF ACTION, THEORY OF LEGAL LIABILITY, OR OTHER THEORY RELATING TO THE SSA, THE PROPERTY, OR THE SYSTEM, INCLUDING, BUT NOT LIMITED TO, THOSE RELATING TO OR BASED ON THE NEGLIGENCE OR GROSS NEGLIGENCE OF THE RELEASED PARTIES, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT AND/OR CONCURRENT, ACTIVE OR PASSIVE.**

- 10. THE BUYER COVENANTS AND AGREES NOT TO BRING ANY CLAIM, ACTION, LAWSUIT OR PROCEEDING AGAINST THE RELEASED PARTIES, DIRECTLY OR INDIRECTLY, REGARDING THE MATTERS RELEASED HEREIN. THIS RELEASE MAY BE PLED AS A FULL AND COMPLETE DEFENSE TO ANY CLAIM, ACTION, LAWSUIT OR OTHER PROCEEDING BASED ON ANY CLAIM REGARDING THE MATTERS RELEASED HEREIN.**

- 11. The Buyer expressly acknowledges and agrees that the Released Claims shall extend to claims that the Buyer does not know or suspect to exist at the time of the release, including without limitation, those which, if known, might have affected the decision to enter into the release or to object or not to object to this Agreement (“Unknown Claims”). The Buyer agrees to waive and does hereby waive and relinquish to the fullest extent permitted by law, any and all provisions, rights, and benefits conferred by any law of the United States or any state or territory of the United States, or principle of common law, which governs or limits a person’s release of unknown claims. Further, with respect to any and all of the Released Claims, including any**



and all Unknown Claims, the Buyer shall be deemed to waive and does hereby waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, which provides 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

The Buyer also shall be deemed to waive and does hereby waive any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code § 1542. The Buyer acknowledges and agrees that it may discover facts in addition to or different from those that the Buyer now knows or believes to be true with respect to the Released Claims, but that it is the Buyer's intention to fully, finally, and forever settle and release with prejudice any and all Released Claims, including any and all Unknown Claims, hereby known or unknown, suspected or unsuspected, which now exist, heretofore existed, or may hereafter exist, and without regard to the subsequent discovery or existence of such additional or different facts. The Buyer acknowledges and agrees that the inclusion of Unknown Claims in the definition of Released Claims was separately bargained for and was relied upon by each Party in entering into this Agreement.

12. The Agreement shall be interpreted under and shall be construed in accordance with the laws of the State of California. The Agreement shall be binding upon, and inure to the benefit of, the Property and the Parties and each of their respective partners, heirs, executors, successors, assignees or administrators as applicable.
13. The Buyer further represents and warrants that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Agreement.
14. The Agreement is a compromise and settlement of the dispute between the Parties regarding the System and the Agreement and nothing in this Agreement shall be treated as an admission of liability by any Party.
15. The Buyer acknowledges and agrees that the commitments of release and indemnity above constitute an integral part of the Agreement and recognize the right of the Released Parties to take whatever means are necessary to enforce those provisions, including obtaining emergency, temporary, and/or permanent injunctive relief, in addition to, and not in lieu of, such other remedies as may be available to the Released Parties.
16. If any provision herein is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be severed herefrom. The Agreement shall be construed and



enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, and the remaining provisions hereof shall remain in full force and effect.

- 17. All agreements, covenants, representations and warranties, express and implied, oral and written, of the Parties to this Agreement concerning its subject matter are contained herein. The Parties represent and acknowledge that in executing this Agreement, they do not rely and have not relied upon any other agreement, covenant, representation, statement or warranty, express or implied, oral or written, whether made by the Parties, or any other person or entity, with regard to the subject matter, basis or effect of this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties concerning the subject matter of this Agreement are merged herein. This is an integrated agreement.
- 18. The Parties acknowledge that this Agreement has been reviewed and has been approved as to its form and content. The Parties agree that this Agreement is to be construed and interpreted without regard to the identity of the Party drafting this Agreement.
- 19. Each of the Parties covenants, agrees, represents and warrants that the persons executing this Agreement are authorized and empowered to enter into and execute this Agreement for and on behalf of the person or entity they represent.

The Parties have read the above document and understand and agree to the terms thereof.

Andrew J. Medellin
Mayor

Date

Roger Boneno
Vice President, Pricing and Market Analytics

Date