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*The City That Soars!*

## REQUEST FOR COUNCIL ACTION

<b>Meeting Date</b>	May 2, 2018
<b>Agenda Item</b>	Policy D1
<b>Attachment</b>	Draft Resolution
<b>Submitted By</b>	Sack Thongvanh, City Administrator

<b>Item</b>	Falcon Heights Restoration and Unity Day
<b>Description</b>	<p><b>Submitted by Council Melanie Leehy</b></p> <p><b>Falcon Heights Restoration &amp; Unity Days – Summary of Objective</b></p> <p>This resolution serves to follow through with work that was initiated last year by former Council Member, Tony Fischer. I, Melanie Leehy, was asked to assist in the creation of the document. Now this year, as an elected official I am desirous to see the completion and approval of this document.</p> <p>I believe that this document will become a component of healing, grant respect to Philando Castile’s family, while at the same time serve to improve the quality community engagement within Falcon Heights by its residents, businesses, and guests.</p> <p>It set about to shift a day of tragedy and provide a redemptive focus of the two days by which all of us can benefit. The first of the two days, Restoration Day is more about taking personal action and steps to build or restore relationships. This could be in the form of meeting a neighbor, mending a strained friendship or relationship, or even actively pursuing conversation with someone that a person would not naturally interact. Think of how on Earth Day individuals set a side time as a family or neighborhood to actively steward the land.</p> <p>Here we as a city will be acknowledging the importance of stewarding healthy relationships. The second day has a focus that demonstrates healing has begun, connectedness is taking place, and thus the city as a whole demonstrates a measure of cooperative growth in inclusion and engagement. This could be a day for simple parties on the block, or even city-wide gatherings. These two days will be promoted through standard city communication tools that could also provide suggested topics for discussion, and activities.</p>
<b>Budget Impact</b>	N/A

<b>Attachment(s)</b>	· Draft Resolution
<b>Action(s) Requested</b>	N/A



## **Falcon Heights Restoration & Unity Days – Summary of Objective**

This resolution serves to follow through with work that was initiated last year by former Council Member, Tony Fischer. I, Melanie Leehy, was asked to assist in the creation of the document. Now this year, as an elected official I am desirous to see the completion and approval of this document.

I believe that this document will become a component of healing, grant respect to Philando Castile's family, while at the same time serve to improve the quality community engagement within Falcon Heights by its residents, businesses, and guests.

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**CITY OF FALCON HEIGHTS  
COUNCIL RESOLUTION**

May XX, 2018

No. 18-XX

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**PROCLAMATION OF FALCON HEIGHTS RESTORATION AND UNITY DAYS**

**WHEREAS**, Philando Castile was a valued and loved member of his family and community; and

**WHEREAS**, Philando Castile was a young man with a full life ahead of him; and

**WHEREAS**, Philando Castile was killed I Falcon Heights on July 6, 2016; and

**WHEREAS**, there remains distrust in the community; and

**WHEREAS**, that as members if this society, we each carry the responsibility to positively work to eliminate injustices in today’s world and the legacies of past injustices; and

**WHEREAS**, there will not be peace without the pursuit of justice; and

**WHEREAS**, segregation of our communities across color is the greatest obstacle to becoming a unified community in this nation.

**WHEREAS**, Philando Castile will not be forgotten, that from this day forward. July 6 will be observed as restorative, a day to remember how important it is that each of use cross traditional “borders” between communities, a day to meet someone and get to know someone different than us. A day to listen to someone’s story that is different from our own. A day to take steps of humility and forgiveness in efforts to restore connectedness. A day to build a broader and stronger community in service to those too long suffering and in service to a stronger nation and thus be called Restoration Day.

The work of restoration has begun, may it be that from this day forward, July 7<sup>th</sup> will be observed as an opportunity to express unity, and thus be called Unity Day

**WHEREAS**, let us be the ones to take the opportunity to move forwards becoming one individual nation , with life, liberty and justice for all peoples.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF** Falcon Heights, Minnesota that this Council proclaim July 6<sup>th</sup> as Restoration Day and July 7<sup>th</sup> as Unity Day.

Moved by:

Approved by: \_\_\_\_\_

Peter Lindstrom  
Mayor

LINDSTROM           \_\_\_  In Favor  
GUSTAFSON  
BROWN THUNDER   \_\_\_  Against  
MELANIE LEEHY  
MARK MIAZGA

Attested by: \_\_\_\_\_

Sack Thongvanh  
City Administrator

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*The City That Soars!*

## REQUEST FOR COUNCIL ACTION

<b>Meeting Date</b>	May 2, 2018
<b>Agenda Item</b>	Policy D2
<b>Attachment</b>	Flyer
<b>Submitted By</b>	Sack Thongvanh, City Administrator

<b>Item</b>	Supporting Solar Twin Cities for Volume Purchasing
<b>Description</b>	<p>The Falcon Heights Environment Commission listen to a presentation by Solar Twin Cities about an opportunity for residents to participate in a volume purchasing process for installing solar on their home or business.</p> <p>The City of Minnetonka, City of Woodbury, City of Oakdale, Southeast Como Improvement Association and Center for Energy and Environment (CEE) have partnered with the Midwest Renewable Energy Association (MREA) an Non-Profit to coordinate a solar group buy in the Greater Minneapolis-St. Paul area. The advantage of a group buy is the power of volume purchasing, which can significantly reduce the up-front costs of installing solar on your home or business.</p> <p><b>PROCESS:</b></p> <ol style="list-style-type: none"> <li>1. The MREA will issue a competitive Request for Proposals –select a single installer.</li> <li>2. Participants have until August 31, 2018 to decide whether to “go solar”.</li> <li>3. Solar Installer selected spring 2018.</li> </ol> <p>For additional information, please visit the following website:  <a href="https://www.growsolar.org/solar-twin-cities/">https://www.growsolar.org/solar-twin-cities/</a></p>
<b>Budget Impact</b>	Minimum impact on the budget and staff time.
<b>Attachment(s)</b>	<ul style="list-style-type: none"> <li>· Solar Twin Cities Flyer</li> </ul>
<b>Action(s) Requested</b>	N/A

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# Solar Twin Cities

## GROUP PURCHASING PROGRAM

Home and business owners in the Twin Cities have an opportunity to take advantage of record low solar pricing through a limited-time solar group purchase program. Solar Twin Cities is a solar group buy program that can help residents invest in lower cost solar installations through the power of volume-purchasing. Through the program the Midwest Renewable Energy Association (MREA) and Center for Energy and Environment (CEE) are hosting 15-20 FREE one-hour educational events all around the Twin Cities. These events educate homeowners and small business owners on energy efficiency, the basics of solar energy, relevant incentives, financing options, and are the first step to participate in the program.



## “SOLAR POWER HOUR” KICKOFF EVENT!



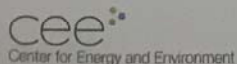
Thursday, May 3, 2018 at 7:00 P.M.  
Insight Brewing: 2821 E Hennepin Ave, Minneapolis  
Come early and connect with MREA and Partners!  
Free and open to the public!

**KICKOFF  
EVENT ON  
MAY 3<sup>RD</sup> AT  
INSIGHT  
BREWING!**

View the full schedule at [SolarTwinCities.org](http://SolarTwinCities.org).

All educational *Solar Power Hours* are free and open to the public.

BROUGHT TO YOU BY:



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*The City That Soars!*

## REQUEST FOR COUNCIL ACTION

<b>Meeting Date</b>	May 2, 2018
<b>Agenda Item</b>	Policy D3
<b>Attachment</b>	Agreements
<b>Submitted By</b>	Sack Thongvanh, City Administrator

<b>Item</b>	City Hall Solar Panels										
<b>Description</b>	<p>In 2011, the City of Falcon Heights entered into a Sale, Leaseback, and Put and Call Agreement with Energy Alternatives Solar, LLC.</p> <p>Dakota Electric purchased the right from Energy Alternatives Solar and the City has paid the lease agreement of \$530/month.</p> <p><b>From 2011:</b> Energy Alternatives' proposal includes:</p> <table> <tr> <td>Total Project Cost:</td> <td>\$321,600.00</td> </tr> <tr> <td>Monthly Lease Payment (City pays to Energy Alternatives):</td> <td>\$530.00</td> </tr> <tr> <td>Total Lease payments by city over 72 month period:</td> <td>\$38,160.00</td> </tr> <tr> <td>Proposed city buyout after year six:</td> <td><u>\$12,720.00</u></td> </tr> <tr> <td><b>Total out-of-pocket cost to city:</b></td> <td><b>\$50,880.00</b></td> </tr> </table> <p>Greg Miller, President and CEO of Dakota Electric Association submitted a termination agreement prior to the Put Call date of November 1, 2018. The put/call aspect of the sales contract calls for a final payment of \$12,720 which equal two years of payment of \$530/month.</p> <p>Mr. Miller has offered a reduction to \$6,000, a saving of \$6,720. In addition, the City would have \$530/month the quicker we can execute the agreement.</p> <p>Staff are currently reviewing the Energy Performance Guarantee that states a minimum savings of \$4,114 worth of electricity will be produced by the panels.</p>	Total Project Cost:	\$321,600.00	Monthly Lease Payment (City pays to Energy Alternatives):	\$530.00	Total Lease payments by city over 72 month period:	\$38,160.00	Proposed city buyout after year six:	<u>\$12,720.00</u>	<b>Total out-of-pocket cost to city:</b>	<b>\$50,880.00</b>
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Total Lease payments by city over 72 month period:	\$38,160.00										
Proposed city buyout after year six:	<u>\$12,720.00</u>										
<b>Total out-of-pocket cost to city:</b>	<b>\$50,880.00</b>										
<b>Budget Impact</b>	The impact would be \$6,000 to the budget, but an elimination of lease payment of \$530/month. This is a potential saving of \$3,180 if we can execute the termination agreement in May.										

<b>Attachment(s)</b>	<ul style="list-style-type: none"><li>· Sale Agreement</li><li>· Leaseback Agreement</li><li>· Power Plus Agreement</li><li>· Put and Call Agreement</li><li>· Termination Agreement</li></ul>
<b>Action(s) Requested</b>	Staff is looking for direction on how proceed. If the Council agrees, I will forward the termination agreement to the City Attorney for review.

**Energy Alternatives Solar, LLC**

**Sales Agreement**

**City of Falcon Heights**

## **Steps to Solar PV Sale, Lease, Operation, Savings, & Transfer**

### **Step #1 – Construction**

- a) EA Solar builds and installs the solar PV System for the City.

### **Step #2 – Sale and Leaseback (day 1)**

- a) EA Solar sells the solar PV System to the City for \$329,500 and the City is the "physical owner" as required by Xcel Energy.
- b) EA leases the solar PV System back from the City under a capital lease for 20 years, and EA Solar becomes the "tax owner" in compliance with IRS requirements and receives the tax benefits.
- c) EA Solar pays the City all the lease payments in advance which equal the sales price less any grant funds received by the City.
- d) The City has zero initial cash out-of-pocket, other than the pass through of grant funds received, if any.

### **Step #3 – Operating (Power Plus) Agreement (6 years)**

- a) The City signs a 6-year operating agreement with EA Solar in which EA Solar operates, maintains, insures and repairs the System. The City receives the full electrical output of the system to reduce its monthly power bill from Xcel Energy.
- b) After 6 years, the Agreement renews annually up to a 20-year term.

### **Step #4 – Put and Call Agreement (following year 6)**

- a) At the end of year 6, EA Solar has 6 months to execute the "Put", and require the City to buy out the remainder of the Operating Agreement for the System for a predetermined price. The City then has full ownership and full benefit of the System for the remainder of its 25-year life.
- b) If EA Solar does not execute the "Put", the City has 12 months to execute the "Call", and require EA Solar to sell the System to the City at fair market value.
- c) In any event, it is the intention of both parties that the City will ultimately own the system following year 6.

### **Step #5 – Energy Performance Guarantee**

- a) Per MN Statute, EA Solar must guarantee that the power cost savings generated by the System, will exceed all payments the City expends towards the System.

Power cost savings for the City are estimated at \$125,171

The City's operating and buyout payments to EA Solar total \$50,880

**Energy Alternatives Solar, LLC**

**Sales Agreement**

THE PARTIES named below have executed this Agreement effective December 1, 2011 and hereby agree to the terms contained below and in any attachments made a part of this Agreement.

**BUYER:**

City of Falcon Heights  
2077 W Larpenteur Ave.  
Falcon Heights, MN 55113

**SELLER:**

Energy Alternatives Solar, LLC  
17685 Juniper Path, Suite 301  
Lakeville, MN 55044

By:



Signature

Justin Miller

Print Name

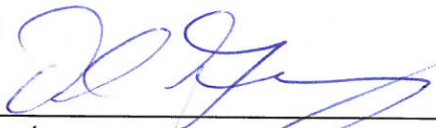
City Administrator

Title

11/22/11

Date

By:



Signature

Dale Gundberg

Print Name

President

Title

11-29-11

Date

**Equipment Sales Price:** Per Schedule(s) A.

**Equipment:** Per Schedule(s) A.

**Equipment Location:** Per Schedule(s) A.

**Sales Terms.** This Sales Agreement for the equipment listed herein is executed concurrently with a Leaseback Agreement between the Parties wherein the Seller will lease the Equipment from the Buyer under the terms and conditions specified in the Leaseback Agreement which is made a part hereof.

The Equipment Sales Price is to be paid by Buyer to Seller upon the execution of this Agreement and the Leaseback Agreement.

1. Representations. The Parties acknowledge that:

- a. Seller warrants that all Equipment installed by Seller is of good quality and services performed by Seller in the construction and installation of the Equipment are of good workmanship, consistent with generally accepted industry standards; and
- b. This Agreement and all schedules and attachments shall have been duly entered into, delivered and the Parties intend that these shall constitute legal, valid, and binding obligations of Buyer and Seller, enforceable in accordance with their terms when executed by Buyer and Seller; and
- c. No director, officer or employee of Buyer or Seller shall be liable for the obligations of Buyer or Seller hereunder except for acts which constitute fraud or willful misconduct of such director, officer or employee; and
- d. Seller represents that all Xcel Energy rebates contemplated by this Agreement and the Power Plus Agreement are valid upon performance of these Agreements by the Parties, and providing the Buyer is not in default, that Buyer will be held harmless by Seller and Buyer shall incur no additional cost under these Agreements if the Xcel Energy rebates are not obtained in the amounts contemplated; and
- e. Pursuant to Minnesota Statutes §574.26, subd. 2, Seller shall provide construction performance and payment bonds for the work performed at each of the project sites set forth in this Agreement and such bonds shall be from a surety and on such terms as are acceptable to Buyer.

**Energy Alternatives Solar, LLC****Schedule A**

This Schedule A is a part of that Sales Agreement executed by Buyer & Seller effective December 1, 2011.

**Buyer**

City of Falcon Heights  
2077 W Larpenteur Ave.  
Falcon Heights, MN 55113

**Seller**

**Energy Alternatives Solar, LLC**  
**17685 Juniper Path, Suite 301**  
**Lakeville, MN 55044**

**Equipment Location**

Falcon Heights City Hall  
2077 W Larpenteur Ave.  
Falcon Heights, MN 55113

**Equipment Sales Price**

\$ 329,500.00

(sales tax exempt in MN)

**Equipment - Solar Panels**

Manufacturer	<u>TenKsolar</u>
Model Number	<u>RAIS 130</u>
Panel Rating	<u>130 watts</u>
Reflector Rating	<u>60 watts</u>
Panel Output	<u>48 Volts DC</u>
Number of Panels	<u>224</u>
Number of Reflectors	<u>224</u>
Manufacturer's Warranty	<u>25 Years</u>
Total DC Output	<u>39.92 kW</u>

**Equipment - Inverters**

Manufacturer / Model	<u>Sunergy</u>	<u>ELV208</u>
kW Rating / Units	<u>5.0 kW (8 units)</u>	
Voltage Input	<u>48 volts DC</u>	
Voltage Output	<u>208 volts AC</u>	
Manufacturer's Warranty	<u>10 years</u>	

**Equipment - Mounting Structure**

Manufacturer	<u>TenKsolar</u>
Material	<u>Aluminum I-Beam</u>
Ballasting	<u>Concrete block</u>
Wind Rating	<u>90 MPH</u>
Location	<u>Roof Mounted</u>

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**Energy Alternatives Solar, LLC**

**Leaseback Agreement**

**City of Falcon Heights**

# Energy Alternatives Solar, LLC

# Leaseback Agreement

Lessor and Lessee have executed this Agreement effective December 1, 2011 and hereby agree to the terms contained below and in any attachments made a part of this Agreement.

This Lease and the attachments hereto constitute the entire Agreement of the Parties with respect to the leasing of the Equipment and the other subject matter of this Lease. This Lease supersedes all prior written and/or oral understandings or agreements with respect to the subject matter hereof, and no change, modification, addition or termination of this Lease shall be enforceable unless in writing and signed by Lessor and Lessee.

**Lessor:**

City of Falcon Heights  
2077 W Larpentour Ave.  
Falcon Heights, MN 55113

**Lessee:**

Energy Alternatives Solar, LLC  
17685 Juniper Path, Suite 301  
Lakeville, MN 55044

**By:**

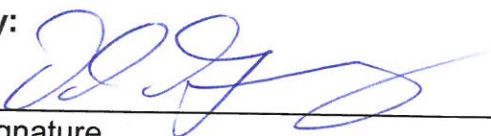
  
\_\_\_\_\_  
Signature

Justin Miller  
\_\_\_\_\_  
Print Name

City Administrator  
\_\_\_\_\_  
Title

11/22/11  
\_\_\_\_\_  
Date

**By:**

  
\_\_\_\_\_  
Signature

Dale Gundberg  
\_\_\_\_\_  
Print Name

President  
\_\_\_\_\_  
Title

11-29-11  
\_\_\_\_\_  
Date

In consideration of the mutual covenants herein contained, the parties hereby agree as follows:

- 1. LEASE OF EQUIPMENT.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor subject to the terms of this Agreement ("Lease" or "Lease Agreement"), the Equipment ("Equipment") described in Schedule(s) A ("Schedule(s) A") executed by Lessor and Lessee and made a part hereof. Each such Schedule A when executed by the Parties shall be deemed to be a part of this Lease. All schedules, addenda or other attachments to this Lease executed by Lessor and Lessee are hereby incorporated herein and made a part hereof.
- 2. PROPERTY STATUS.** The Equipment is, and shall at all times remain, personal property, notwithstanding that the Equipment or any part thereof shall now be or

hereafter become in any manner affixed or attached to real property or any improvements thereof.

3. **OWNERSHIP.** While Lessor shall have legal title to the Equipment, the Equipment shall be and remain a capital asset of Lessee at all times. Lessee shall be exclusively entitled to all federal and state investment tax credits and accelerated income tax depreciation application to the Equipment. Subject to an event of default by Lessee, Lessor agrees to assign all state and utility rebates to Lessee, or to immediately pay such rebates to Lessee should the rebates be received by Lessor.
4. **LEASE TERMS AND DEFINITIONS.** Lessee agrees to pay Lessor rentals for the Equipment leased under this Lease as set forth in Schedule A. All rentals shall be payable as described to Lessee at Lessor's mailing address set forth in such Schedule A, or to such person and such other place as Lessor may from time to time designate in writing. The "Scheduled Lease Term" and "Scheduled Lease Commencement Date" shall be as set forth in Schedule A. The Scheduled Lease Term as set forth in Schedule A shall constitute the Lease Term ("Lease Term") for the Equipment. This lease cannot be canceled or terminated except as expressly provided herein.
5. **MAINTENANCE AND OPERATION.** Lessee, at its expense, shall keep the Equipment in good repair, condition and working order, in compliance with normal and prudent industry practices. Lessee shall pay the costs related to Equipment repairs and replacements.
6. **INSURANCE.**
  - a. *Liability Insurance* - Lessee shall at its own expense acquire and maintain, during the term hereof, comprehensive public liability insurance including coverage for any bodily injury, death or property damage which may be caused by or related to the Equipment or its operation, in an amount not less than One Million Dollars (\$1,000,000.00) or in such amount as the Lessor may reasonably require during the Lease Term.
  - b. *Property Insurance* - Lessee, at its expense, shall acquire and maintain, during the term hereof, all risk property insurance, in amounts and under coverages to provide for rebuilding, repairing or replacing the Equipment in the event of any damage, destruction, loss or theft of the Equipment and shall provide Lessor with a certificate of insurance evidencing coverages in amounts approved by the Lessor.
7. **REPRESENTATIONS OF LESSOR.** Lessor acknowledges that:
  - a. Lessee, its agents and assigns, shall upon 24 hours notice to Lessor, unless an emergency exists requiring immediate access to the Equipment, and have full access upon the real property where the Equipment is located

("Property") to inspect, repair, rebuild, disassemble, or remove the Equipment without further notice, or further permission, charge for, or obligation to any person or entity referred to in the attached Severance Agreement ("Severance") and in the event of default and failure to cure within a reasonable time by Lessor in the performance of any of Lessor's obligations and liabilities to Lessee. Lessee or its agents or assigns may remove the Equipment or any part thereof from the Property without objection, delay, hindrance or interference by Lessor, and in such case, Lessor will no claim or demand whatsoever against the Equipment.

8. **REPRESENTATIONS OF LESSEE.** Lessee acknowledges that:  
This lease and all schedules and attachments shall have been duly entered into, delivered and shall constitute legal, valid and binding obligations of Lessee, enforceable in accordance with their terms when executed by Lessor and Lessee.
9. **NOTICES.** All notices or communications under this Lease shall be in writing, shall be delivered by Federal Express or equivalent commercial courier or mailed to the Parties at the addresses set out for them in this Lease, and any notice so addressed and mailed by registered mail or hand delivered and left with a responsible person shall be deemed to have been given when so mailed or delivered.
10. **EVENTS OF DEFAULT.** The following shall constitute events of default:
  - a. Lessor substantially ceases or suspends its business at the Service Address specified in Schedule A, admits in writing its inability to pay its debts as they mature; or bankruptcy, reorganization or other proceedings for the relief of debtors or benefit of creditors shall be instituted by or against Lessor; or
  - b. Lessor fails to perform or materially breaches any of the covenants herein and shall continue to fail to observe or perform the same for a period of ten (10) days after written notice thereof by Lessee; or
  - c. Lessor creates, incurs or suffers to exist any mortgage, lien or other encumbrance or attachment of any kind whatsoever upon or affecting the Equipment or this lease or any of Lessee's interests thereunder and fails to remove such lien or encumbrance within a reasonable time after notice; or
  - d. Any representation or warranty made by Lessor herein or in any document or certificate furnished to Lessee proves to be incorrect in any material respect when made; or
  - e. The dissolution of Lessor as a business entity; or
  - f. Lessee fails to perform any material obligation set forth in this Lease Agreement or related scheduled and attachments forming the totality of this

transaction and fails to cure such default within a reasonable time after written notice of default from Lessor. Provision of the direct current electrical output set forth in the Agreement due to defective Equipment or negligent operation is a material obligation.

**11. REMEDIES UPON DEFAULT.** Upon the occurrence of any event of default that is not cured within the specified and reasonable time after notice, and at any time thereafter, Lessee may do any one or more of the following with or without terminating this Lease and without limitation on other remedies that may be available to the non-defaulting Party:

- a. Take immediate possession of any and all Equipment with notice;
- b. Sell or lease the Equipment or otherwise dispose, hold or use such Equipment at the non-defaulting Party's sole discretion;
- c. Upon notice to the defaulting Party, terminate this Lease.

**12. ENFORCEABILITY/CAPTIONS.** If any part, term or provision of this Lease is held by any court to be unenforceable or prohibited by law, the rights and obligations of the Parties shall be construed and enforced with that part, term or provision limited so as to make it enforceable to the greatest extent allowed by law, or if it is totally unenforceable, as if this Lease did not contain that particular part, term or provision. The headings in this Lease have been included for ease of reference only and shall not be considered in the construction and interpretation of this Lease. This Lease shall in all respects be governed by and construed in accordance with the laws of the State of Minnesota.

### **13. CHANGE OF PROPERTY OWNERSHIP**

- a. This Lease shall inure to the benefit of Lessee, its successors and assigns, and all obligations of Lessor shall bind its permitted successors and assigns. Except pursuant to rights set forth in paragraph 11 above, Lessor may not sell, assign or otherwise transfer all or any part of Lessor's interest in the real property located at the Service Address specified in Schedule A prior to the expiration of the Scheduled Lease Term, or earlier termination of this Lease, without the written prior consent of Lessee, which consent shall be granted provided that Lessor arranges for the assignment and assumption of the Lessor's obligations under this Lease by an assignee acceptable to Lessee in its sole discretion.
- b. If Lessor sells, assigns or otherwise transfers its interest in the real property located at the Service Address without Lessee's prior written consent, any purported conveyance of the Equipment by Lessor to a third party shall be void and of no force or effect, and Lessee may exercise its remedies under paragraph 11 of this Agreement.

- c. No director, officer or employee of Lessor or Lessee shall be liable for the obligations of Lessor or Lessee hereunder except for acts which constitute fraud or willful misconduct of such director, officer or employee.
- d. Notwithstanding anything apparently contrary in this Agreement, Lessee's Energy Performance Guarantee to Lessor as set forth in the Power Plus Agreement, Schedule A, shall remain in full force and effect following execution of the Put and Call Agreement incorporated herein.



**Leaseback Agreement  
Schedule A**

**Energy Alternatives Solar, LLC**

This Schedule A and its Addendum(s), when executed by both Lessor and Lessee shall be made a part of that Leaseback Agreement dated December 1, 2011 ("Agreement") between Lessor and Lessee.

**Lessor**

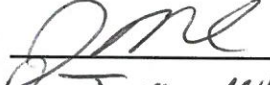
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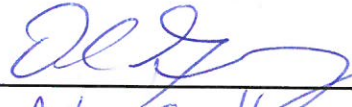
**Lessee**

Energy Alternatives Solar, LLC  
17685 Juniper Path, Suite 301  
Lakeville, MN 55044

**Equipment Location**

Falcon Heights City Hall  
2077 W Larpenteur Ave.  
Falcon Heights, MN 55113

By:   
Printed Name Justin Miller  
Title City Administrator  
Date 11/30/11

By:   
Printed Name Dale Gundberg  
Title President  
Date 11-29-11

**Equipment - Solar Panels**

Manufacturer	<u>TenKsolar</u>
Model Number	<u>RAIS 130</u>
Panel Rating	<u>130 watts</u>
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**Equipment - Inverters**

Manufacturer / Model	<u>Sunergy</u>	<u>ELV208</u>
kW Rating / Units	<u>5.0 kW (8 units)</u>	
Voltage Input	<u>48 volts DC</u>	
Voltage Output	<u>208 volts AC</u>	
Manufacturer's Warranty	<u>10 years</u>	

**Equipment - Mounting Structure**

Manufacturer	<u>TenKsolar</u>
Material	<u>Aluminum I-Beam</u>
Ballasting	<u>Concrete block</u>
Wind Rating	<u>90 MPH</u>
Location	<u>Roof Mounted</u>

**Lease Terms**

Scheduled Lease Commencement Date	<u>June 1, 2012</u>
Scheduled Lease Term	<u>240</u> mo.
Lease Payment	<u>\$ 1,372.92</u> mo.
Total Lease Payments	<u>\$ 329,500.00</u>

Lessee will pay all Lease Payments to Lessor in advance on the date of execution of this Lease Agreement. Lessee will record this Equipment as a Capital Asset and will be exclusively entitled to any and all federal and state investment tax credits and accelerated income tax basis depreciation applicable to the Equipment. Lessor agrees to assign all state and utility rebates to Lessee, or to immediately pay such rebates to Lessee should the rebates be received directly by Lessor.

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**Energy Alternatives Solar, LLC**

**Power Plus Agreement**

**City of Falcon Heights**

# Energy Alternatives Solar, LLC

# Power Plus Agreement

Energy Alternatives Solar, LLC ("EA Solar") and Customer have executed this Agreement effective December 1, 2011, and hereby agree to the terms herein below and any schedules and attachments made a part of this Agreement.

This Agreement and the attachments hereto constitute the entire Agreement of the Parties with respect to the use of the Equipment and other subject matter of this Agreement. This Agreement supersedes all prior written and/or oral understandings or agreements with respect to the subject matter hereof, and no change, modification, addition or termination of this Agreement shall be enforceable unless in writing and signed by the Parties.

**Customer:**

City of Falcon Heights  
2077 W Larpenteur Ave.  
Falcon Heights, MN 55113

**EA Solar:**

Energy Alternatives Solar, LLC  
17685 Juniper Path, Suite 301  
Lakeville, MN 55044

By:

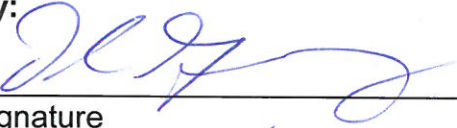
  
\_\_\_\_\_  
Signature

Justin Miller  
\_\_\_\_\_  
Print Name

City Administrator  
\_\_\_\_\_  
Title

11/22/11  
\_\_\_\_\_  
Date

By:

  
\_\_\_\_\_  
Signature

Dale Gunberg  
\_\_\_\_\_  
Print Name

President  
\_\_\_\_\_  
Title

11-29-11  
\_\_\_\_\_  
Date

In consideration of the mutual covenants hereinafter contained, the Parties hereby agree as follows:

- 1. USE OF EQUIPMENT.** Subject to the terms of this Agreement, Customer may use the equipment ("Equipment") described in Schedule(s) A ("Schedule(s) A") executed by EA Solar and Customer and made a part hereof. Each such Schedule A when executed by the parties shall be deemed to be a part of this Agreement. All Schedules, addenda or other attachments to this Agreement executed by EA Solar and Customer are hereby incorporated herein and made a part hereof.
- 2. PROPERTY STATUS.** The Equipment is, and shall at all times be and remain, personal property, notwithstanding that the Equipment or any part thereof shall now be or hereafter become in any manner affixed or attached to real property or any improvements thereof.

3. **OWNERSHIP.** The Equipment shall remain a capital asset of EA Solar at all times, and EA Solar will be exclusively entitled to all federal and state investment tax credits and accelerated income tax depreciation applicable to the Equipment. Subject to default remedies of paragraph 11 of the Leaseback Agreement, Customer agrees to assign all state and utility rebates to EA Solar, or to immediately pay such rebates to EA Solar should the rebates be received directly by Customer.
4. **TERMS AND DEFINITIONS.** Customer agrees to pay EA Solar a monthly fee for the Equipment used under this Agreement as set forth in Schedule(s) A. All charges shall be payable at EA Solar's mailing address set forth in such Schedule(s) A, or to such other person or at such other place as EA Solar may from time to time designate in writing. The "Scheduled Term" and "Scheduled Commencement Date" shall be set forth in Schedule(s) A. The Scheduled Term as set forth in Schedule(s) A, shall constitute the Term ("Term") for the Equipment. This Agreement cannot be canceled or terminated except as expressly provided herein. At the conclusion of the Scheduled Term, Customer is deemed to have continued the Agreement on a year-to-year basis for not more than an aggregate term of 20 years, unless Customer notifies EA Solar in writing 90 days prior to the end of the Scheduled Term that it desires to terminate the Agreement.

Upon termination of the Agreement prior to the end of the Scheduled Term, for any reason other than the exercise of the Put and Call Agreement incorporated herein, EA Solar shall bill to Customer and Customer shall pay to EA Solar, the amount of unrecoverable site installation costs as specified in Schedule(s) A:

5. **MAINTENANCE AND OPERATION.** EA Solar, at its expense, shall keep the Equipment in good repair, condition and working order, in compliance with normal and prudent industry practices. EA Solar shall pay the costs related to the Equipment repairs and replacements.
6. **INSURANCE.**
  - a. *Liability Insurance* - EA Solar shall at its own expense acquire and maintain, during the term hereof, comprehensive public liability insurance including coverage for any bodily injury, death, or property damage which may be caused by or related to the Equipment or its operation, in an amount not less than One Million Dollars (\$1,000,000.00).
  - b. *Property Insurance* - EA Solar shall at its own expense acquire and maintain, during the term hereof, all risk property insurance, in amounts and under coverages to provide for rebuilding, repairing or replacing the Equipment in the event of any damage, destruction, loss or theft of the Equipment, and provide a certificate of insurance to Customer evidencing coverages satisfactory to Customer.
7. **REPRESENTATION OF EA SOLAR.** EA Solar acknowledges that:

- a. The Equipment is of a size, design, capacity, description and manufacture selected by EA Solar;
- b. EA Solar warrants that all services performed by EA Solar hereunder will be of good workmanship, consistent with general industry standards; and
- c. EA Solar will make a good faith effort to repair the Equipment in a timely manner, should it become inoperable.

**8. REPRESENTATIONS OF CUSTOMER.** Customer acknowledges that:

- a. This Agreement is executed by a person with authority to enter into contracts on behalf of Customer after approval by Customer's city council;
- b. The Customer intends that this Agreement and all schedules and attachments shall have been duly entered into, delivered and shall constitute legal, valid and binding obligations of Customer, enforceable in accordance with their terms when executed by EA Solar and Customer; and
- c. EA Solar, and its agents and assigns, upon 24 hours notice unless an emergency exists, shall have full access upon the real property where the Equipment is located ("Property") to inspect, repair, rebuild, disassemble, or remove the Equipment without further notice, to or further permission of, charge for, or obligation to, any person or entity referred to in the attached Severance Agreement ("Parties"), and in the event of default by Customer in the payment or performance of any of Customer's obligations and liabilities to EA Solar, EA Solar or its agents or assigns may remove the Equipment or any part thereof from the Property without objection, delay, hindrance or interference by the Parties, and in such case, the Parties will make no claim or demand whatsoever against the Equipment.

**9. NOTICES.** All notices or communications under this Agreement shall be in writing, shall be delivered by Federal Express or equivalent commercial courier or mailed to the parties at the addresses set out for them in this Agreement, and any notice so addressed and mailed by registered mail or hand delivered and left with a responsible person shall be deemed to have been given when so mailed or delivered.

**10. EVENTS OF DEFAULT.** The following shall constitute Events of Default:

- a. The defaulting party substantially ceases or suspends its business or operation of solar systems at the Service Address specified in Schedule A, admits in writing its inability to pay its debts as they mature; or bankruptcy, reorganization or other proceedings for the relief of debtors or benefit of creditors shall be instituted by or against the defaulting party; or
- b. The defaulting party shall fail to pay all or any part of the charges or any other payment when due and payable; or

- c. Customer shall fail to perform or shall materially breach any of the covenants herein and shall continue to fail to observe or perform the same for a period of ten (10) days after written notice thereof by the non-defaulting party; or
- d. Without EA Solar's consent, Customer sublets any Equipment and EA Solar is not in default; or
- e. Customer creates, incurs or suffers to exist any mortgage, lien or other encumbrance or attachment of any kind whatsoever upon or affecting the Equipment or this Agreement or any of EA Solar's interests thereunder and fails to remove such lien or encumbrance within a reasonable time after notice; or
- f. Any representation or warranty made by either Party herein or in any document of certificate furnished to the other Party proves to be incorrect in any material respect when made; or
- g. The dissolution of EA Solar as a business entity.

11. **REMEDIES FOR DEFAULT.** Upon occurrence of any Event of Default and at any time thereafter, the non-defaulting Party may do any one or more of the following with or without terminating this Agreement and without limitation on other remedies that may be available to the non-defaulting Party:

- a. Take possession of any and all Equipment with notice;
- b. Sell or lease the Equipment or otherwise dispose, hold or use such Equipment at the non-defaulting Party's sole discretion;
- c. Demand payment of all additional costs incurred by the non-defaulting Party in the course of correcting any material default.

12. **ENFORCEABILITY.** If any part, term, or provision of this Agreement is held by any court to be unenforceable or prohibited by law, the rights and obligations of the parties shall be construed and enforced with that part, term, or provision limited so as to make it enforceable to the greatest extent allowed by law, or if it is totally unenforceable, as if this Agreement did not contain that particular part, term, or provision.

13. **GOVERNING LAW.** This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed, interpreted and enforced in all respects in accordance with the laws of the State of Minnesota.

14. **ENTIRE AGREEMENT.** Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and any representation, inducement, promise or agreement between the parties with respect to the subject matter of this Agreement that is not embodied herein shall be null and void and of no further force or effect.

15. **AMENDMENT.** This Agreement may not be modified, amended or otherwise altered except by written agreement executed by the parties.

16. **COUNTERPARTS.** This Agreement and any amendments hereof may be executed in counterpart, each of which when so executed and delivered shall be an original, and all of which together shall constitute one instrument. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought.



**Energy Alternatives Solar, LLC**

This Schedule A and its Addendum(s), when executed by both Customer and EA Solar shall be made a part of that Power Plus Agreement dated December 1, 2011 ("Agreement") between Customer and EA Solar.

**Customer (and billing address)**

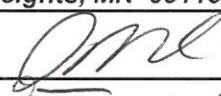
City of Falcon Heights  
2077 W Larpenteur Ave.  
Falcon Heights, MN 55113

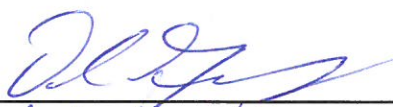
**EA Solar**

**Energy Alternatives Solar, LLC**  
**17685 Juniper Path, Suite 301**  
**Lakeville, MN 55044**

**Equipment Location**

Falcon Heights City Hall  
2077 W Larpenteur Ave.  
Falcon Heights, MN 55113

By:   
Printed Name Justin Miller  
Title City Administrator  
Date 11/30/11

By:   
Printed Name Dale Gundersen  
Title President  
Date 11-29-11

**Equipment - Solar Panels**

Manufacturer	<u>TenKsolar</u>
Model Number	<u>RAIS 130</u>
Panel Rating	<u>130 watts</u>
Reflector Rating	<u>60 watts</u>
Panel Output	<u>48 Volts DC</u>
Number of Panels	<u>224</u>
Number of Reflectors	<u>224</u>
Manufacturer's Warranty	<u>25 Years</u>
Total DC Output	<u>39.92 kW</u>

**Equipment - Inverters**

Manufacturer / Model	<u>Sunergy</u>	<u>ELV208</u>
kW Rating / Units	<u>5.0 kW (8 units)</u>	
Voltage Input	<u>48 volts DC</u>	
Voltage Output	<u>208 volts AC</u>	
Manufacturer's Warranty	<u>10 years</u>	

**Equipment - Mounting Structure**

Manufacturer	<u>TenKsolar</u>
Material	<u>Aluminum I-Beam</u>
Ballasting	<u>Concrete block</u>
Wind Rating	<u>90 MPH</u>
Location	<u>Roof Mounted</u>

**Terms**

Scheduled Term 72 mo.

Scheduled Commencement Date June 1, 2012

**Energy Performance Guaranty**

EA Solar guarantees that the Equipment shall provide a minimum average annual value of \$ 4,910 in annual utility savings to Customer for the term of the Power Plus Agreement beginning with the final completion of the Equipment and on a year to year basis thereafter, until such time as the Customer's total payments for the cost use of of the Equipment of \$ 50,880 is paid for by the utility savings produced by the Energy System as required by Minnesota Statutes Section 471.345, Subd. 13. Annual utility savings shall be calculated as the metered kWh Equipment output times the aggregate of all charges on Customer's utility bill based upon a kWh rate, plus the Equipment's DC Output times a factor of 25% times the aggregate of all monthly charges on Customer's utility bill based upon a kW rate. To further comply with Section 471.345 subd. 13, EA Solar agrees to pay Customer the difference between the cost of the use of the Equipment and the actual cumulative savings as calculated above, if after twenty (20) years, the savings fail to at least equal the \$ 50,880 cost of using the Equipment.

**Fixed Dollar Payment**

Customer will pay monthly to EA Solar on the first  
day of each month, the amount of

\$ 530.00

**Unrecoverable Site Installation Costs**

Per the Agreement, upon termination of the Agreement prior to the end of the Scheduled Term, for any reasons other than 1) a EA Solar initiated termination, or 2) a Customer initiated Buyout Option in accordance with Schedule A, then EA Solar shall bill to Customer and Customer shall pay to EA Solar, the amount of unrecoverable site installation costs as specified in Schedule A, Table 1.

Years Since In-Service Date	Unrecoverable Site Installation Costs
0	\$ 26,360
1	\$ 21,088
2	\$ 15,816
3	\$ 10,544
4	\$ 5,272



**Energy Alternatives Solar, LLC**

**Put & Call Agreement**

**City of Falcon Heights**

# Energy Alternatives Solar, LLC

# Put and Call Agreement

**THIS PUT AND CALL AGREEMENT** (this **"Agreement"**), is made as of December 1, 2011, by and among the City of Falcon Heights (the **"City"**) and Energy Alternatives Solar, LLC, a Minnesota limited liability company (**"EA Solar"**).

**WHEREAS**, EA Solar is the lessee of an Energy System and associated rights under that certain Lease Agreement of even date herewith (collectively the **"Interest"**); and

**WHEREAS**, the parties hereto now desire to enter into this Put and Call Agreement to set forth the terms and conditions upon which EA Solar has an option to put the Interest to the City and upon which the City has an option to call the Interest from EA Solar.

**NOW, THEREFORE**, in consideration of the foregoing, of mutual promises of the parties hereto and of other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereby agree as follows:

**Section 1. Put of Interest.** Following the sixth anniversary of the Commencement Date as defined in the Lease and for a period of six months thereafter, (the **"Put Period"**), EA Solar shall have the right and option to require the City to purchase all (but not less than all) of its Interest (the **"Put"**), by delivering written notice thereof to the City. EA Solar may exercise the Put by delivering notice of such exercise in writing to the City during the Put Period. If exercised, EA Solar shall be obligated to sell, and the City shall be obligated to purchase, all of the Interest then owned by EA Solar. The purchase price for the Interest shall be an amount equal to two years worth of lease payments for the PV system as determined by the Facility Lease Agreement as well as any taxes. (the **"Put Price"**). The Put Price shall be paid by the City to EA Solar in cash on the Put Closing Date. The date of the Put closing (the **"Put Closing Date"**) will be thirty (30) calendar days following the notice of exercise of the Put, or such earlier date as the City and EA Solar shall agree in writing.

**Section 2. Call of EA Solar's Interest.** The City shall have the right and option (**"Call"**) to purchase all, but not less than all of the Interest for one (1) year following the last day of the Put Period. If exercised, EA Solar shall be obligated to sell, and the City shall be obligated to purchase, all of the Interest. The date of the Call closing shall be thirty (30) calendar days following delivery of the notice of exercise of the Call, or such other date as the City and EA Solar may agree upon in writing. The purchase price for the Interest pursuant to this Section 2 shall be an amount equal to the fair market value (the **"Fair Market Value Price"**) of such Interest (as determined by the parties and if no agreement is reached then by an appraisal of an independent qualified appraiser, selected by the City). All costs relating to an appraisal shall be born by EA Solar. The purchase price pursuant to this Section 2 shall be payable by the City to EA Solar in cash on the Call closing date. The Fair Market Value Price shall be determined by valuing the estimated cash flow and capital proceeds to be received during the remaining term of the Interest, using actual income and expenses for the prior calendar year, as updated through the month prior to the month of closing.

Title to the Interest shall not vest in the City until payment in full of the applicable purchase price.

**Section 4. Representations and Warranties of EA Solar.** EA Solar represents and warrant to the City as follows:

(a) EA Solar has authority to enter into this Agreement and carry out the transaction contemplated hereunder.

(b) The execution, delivery, and performance by EA Solar of this Agreement have been duly authorized by all necessary corporate action of EA Solar.

(c) EA Solar has, and will have at the time of any assignment to the City hereunder, and will convey to the City, good title to the Interest free of any encumbrances, liens or interests whatever, and will indemnify the City for any such interests.

**Section 5. Notice.** All notices and other communication permitted or required hereunder shall be in writing and shall be delivered as provided in the Lease.

**Section 6. Governing Law.** This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed, interpreted and enforced in all respects in accordance with the laws of the State of Minnesota.

**Section 7. Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and any representation, inducement, promise or agreement between the parties with respect to the subject matter of this Agreement that is not embodied herein shall be null and void and of no further force or effect.

**Section 8. Amendment.** This Agreement may not be modified, amended or otherwise altered except by written agreement executed by EA Solar and the City.

**Section 9. Counterparts.** This Agreement and any amendments hereof may be executed in counterpart, each of which when so executed and delivered shall be an original, and all of which together shall constitute one instrument. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought.

**Section 10. Time is of the Essence.** Time is of the essence with respect to all of the terms of this Agreement.


**Section 11. Fees.** Except as otherwise set forth herein, each party shall pay its own fees and expenses in connection with the exercise of the Put or the Call, as applicable.

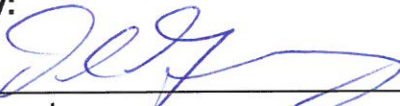
**Section 12. General.** This Agreement shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto.

**IN WITNESS WHEREFORE,** the undersigned have executed this Put and Call Agreement as of the day and year first above written.

**City:**  
City of Falcon Heights  
2077 W Larpenteur Ave.  
Falcon Heights, MN 55113

**EA Solar:**  
Energy Alternatives Solar, LLC  
17685 Juniper Path, Suite 301  
Lakeville, MN 55044

**By:**  
  
\_\_\_\_\_  
Signature  
Justin Miller  
\_\_\_\_\_  
Print Name  
City Administrator  
\_\_\_\_\_  
Title  
11/22/11  
\_\_\_\_\_  
Date

**By:**  
  
\_\_\_\_\_  
Signature  
Dale Gundberg  
\_\_\_\_\_  
Print Name  
President  
\_\_\_\_\_  
Title  
11-29-11  
\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: City Attorney  
Date: \_\_\_\_\_

## BILL OF SALE, TERMINATION AND RELEASE AGREEMENT

**THIS BILL OF SALE, TERMINATION AND RELEASE AGREEMENT** (this "Agreement") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2018 (the "Effective Date"), by and between Energy Alternatives Solar, LLC, a Minnesota limited liability company ("EA Solar"), and City of Falcon Heights ("Falcon Heights").

**WHEREAS**, EA Solar and Falcon Heights entered into that certain Sales Agreement ("Sales"), that certain Facility Lease Agreement ("Lease"), that certain Power Plus Agreement ("Power Plus"), and that certain Put & Call Agreement ("Put & Call"), all dated as of or effective January 1, 2012 (the Sales, Lease, Power Plus and Put & Call, as any of these agreements may have been amended, being collectively referred to as the "Agreements"), relating to certain solar panels and corollary equipment, a listing of which is attached hereto as **Exhibit A** and incorporated by reference herein (the "Equipment"), installed at Falcon Heights City Hall with an address of 2077 Larpenteur Avenue West, Falcon Heights, Minnesota 55113-5594 (the "Location"); and

**WHEREAS**, EA Solar and Falcon Heights wish to terminate the Agreements and provide for disposition of the Equipment at the Location, and resolve all claims that either EA Solar or Falcon Heights may have against the other party under the Agreements.

**NOW, THEREFORE**, in consideration of Falcon Heights paying EA Solar the sum of Six Thousand and No/100 Dollars (\$6,000.00) and in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Transfer of Ownership of Equipment.** As of the Effective Date, EA Solar transfers to Falcon Heights all of EA Solar's right, title, and interest in and to the Equipment and in and to any and all remaining federal and state investment tax credits and accelerated income tax depreciation applicable to the Equipment and all state and utility rebates.

2. **Termination of Agreements.** As of the Effective Date, the Lease, the Power Plus and the Put & Call are terminated and of no further force or effect.

3. **Mutual Release of Claims.** Except as specifically set forth herein, as of the Effective Date, EA Solar and Falcon Heights release each other from any and all claims, obligations and liabilities which either party had, has, or may have in the future against the other party arising out of or relating to the Agreements.

4. **Indemnification of Falcon Heights.** EA Solar shall defend, indemnify and hold harmless Falcon Heights against any and all claims, obligations, losses, damages, expenses or liabilities (including fees and expenses of counsel) for third party initiated claims, causes of action, violations, penalties or other costs of any kind arising out of EA Solar actions or inactions relating to its ownership or operation of the Equipment prior to the Effective Date ("EA Action"). Falcon Heights shall promptly notify EA Solar of any such EA Action and tender defense of the EA Action to EA Solar. EA Solar shall be afforded the opportunity, at EA Solar's own expense, to participate in its own defense against third parties with respect thereto. If EA Solar does not accept the defense of any such breach, Falcon

Heights may defend such EA Action and EA Solar shall reimburse Falcon Heights for reasonable attorney's fees and costs that Falcon Heights incurs in defending same, on a monthly basis upon Falcon Heights's submittal of an invoice describing the fees and costs. If EA Solar accepts the tender, Falcon Heights may, but is not obligated to, at Falcon Heights's cost, retain additional counsel to represent Falcon Heights.

5. Indemnification of EA Solar. Falcon Heights shall defend, indemnify and hold harmless EA Solar against any and all claims, obligations, losses, damages, expenses or liabilities (including fees and expenses of counsel) for third party initiated claims, causes of action, violations, penalties or other costs of any kind arising out of Falcon Heights actions or inactions relating to its ownership or operation of the Equipment on or subsequent to the Effective Date ("Falcon Heights Action"). EA Solar shall promptly notify Falcon Heights of any such Falcon Heights Action and tender defense of the Falcon Heights Action to Falcon Heights. Falcon Heights shall be afforded the opportunity at Falcon Heights's own expense to participate in its own defense against third parties with respect thereto. If Falcon Heights does not accept the defense of any such breach, EA Solar may defend such Falcon Heights Action and Falcon Heights shall reimburse EA Solar for reasonable attorney's fees and costs that EA Solar incurs in defending same, on a monthly basis upon EA Solar submittal of an invoice describing the fees and costs. If Falcon Heights accepts the tender, EA Solar may, at EA Solar's cost, retain additional counsel to represent EA Solar.

6. Authority to Execute Agreement. Each of EA Solar and Falcon Heights hereby represent and warrant to the other party that it is fully authorized to execute and perform this Agreement.

7. Enforceability. If any part, term, or provision of this Agreement is held by any court to be unenforceable or prohibited by law, the rights and obligations of the parties shall be construed and enforced with that part, term, or provision limited so as to make it enforceable to the greatest extent allowed by law, or if it is totally unenforceable, as if this Agreement did not contain that particular part, term, or provision.

8. Governing Law. This Agreement, and the rights and obligations of the parties hereunder, shall be governed by, and construed, interpreted and enforced in all respects in accordance with the laws of the State of Minnesota.

9. Benefit. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns.

10. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and any representation, inducement, promise or agreement between the parties with respect to the subject matter of this Agreement that is not embodied herein shall be null and void and of no further force or effect.

11. Amendment. This Agreement may not be modified, amended or otherwise altered except by written agreement executed by the parties.

12. Counterparts. This Agreement and any amendments hereof may be executed in counterparts, each of which when so executed and delivered shall be an original, and all of which together shall constitute one instrument. In proving this Agreement, it shall not be necessary to produce

or account for more than one such counterpart signed by the party against whom enforcement is sought.

13. Enforcement Expenses. EA Solar shall be entitled to recover all expenses associated with enforcement of this Agreement from Falcon Heights, including, but not limited to, attorneys' fees, costs and disbursements, in the event of any breach of this Agreement by Falcon Heights.

**IN WITNESS WHEREOF**, the parties have executed this Agreement to be effective as of the date first written above.

**FALCON HEIGHTS:**  
**CITY OF FALCON HEIGHTS**

**EA SOLAR:**  
**ENERGY ALTERNATIVES SOLAR, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: President

**APPROVED AS TO FORM**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: City Attorney  
Date: \_\_\_\_\_

**EXHIBIT A**

**EQUIPMENT**

**Equipment Sales Price:** (sales tax exempt in Minnesota) \$321,600.

**Equipment Generator:** tenKsolar  
Model Number: RAIS 130  
kw rating : 5.0 kw (8)

Reflector Panel Rating: 60 watts  
Output: 48 volts DC  
Number of Panels: 222  
Number of Reflectors: 222  
Total DC output: 39.96 kw  
Manufacturer's Warranty: 25 years

**Equipment Switch gear:** Manufacturer:  
Sunergy ELV208  
Panel Rating: 130 watts  
Voltage Input: 48 volts DC  
Voltage Output: 208 volts AC  
Manufacturer's Warranty: 10 years

**Equipment Enclosure:**  
Manufacturer: tenKsolar  
Material: Aluminum  
Ballasting: Concrete block/cable  
Wind Rating: 90 mph  
Tilt Angle: 45 degrees