



**AGENDA**  
**NEWMAN CITY COUNCIL**  
**SPECIAL MEETING AUGUST 12, 2014**  
**CITY HALL CONFERENCE ROOM, 6:30 P.M., 938 FRESNO STREET**

- 1. Call To Order.**
- 2. Roll Call.**
- 3. Items From The Public.**
- 4. Adjourn To Closed Session**
  - a. Conference With Legal Counsel, Potential Litigation Pursuant To California - Government Code Section 54956.9(d)(2), (1 Case).**
  - b. Return To Open Session.**
- 5. Adjournment.**



**AGENDA**  
**NEWMAN CITY COUNCIL**  
**REGULAR MEETING AUGUST 12, 2014**  
**CITY COUNCIL CHAMBERS, 7:00 P.M., 938 FRESNO STREET**

1. **Call To Order.**
2. **Pledge Of Allegiance.**
3. **Invocation.**
4. **Roll Call.**
5. **Declaration Of Conflicts Of Interest.**
6. **Ceremonial Matters.**
7. **Items from the Public - Non-Agenda Items.**
8. **Consent Calendar**
  - a. Waive All Readings Of Ordinances And Resolutions Except By Title.
  - b. Approval Of Warrants. ([View Warrant Register](#))
  - c. Approval Of Minutes Of The July 22, 2014 Meeting. ([View Minutes](#))
9. **Public Hearings**
  - a. Second Reading And Adoption Of Ordinance No. 2014- , Amending Title 1 Administrative, Amending Chapter 1.09 Purchasing System, Of The Newman City Code And Authorize Staff To Publish A Summary Of Said Ordinance. ([View Report](#))
  - b. Adopt Resolution No. 2014- , A Resolution Approving A Power Purchase Agreement With SolarCity Corporation And Authorizing The City Manager To Execute Said Agreement For A Solar Project At The Waste Water Treatment Plant. ([View Report](#))
10. **Regular Business**
  - a. Report On Potential Ordinance Changes To Title 3, Business Regulations, Chapter 3.03 Peddlers And Solicitors. ([View Report](#))
11. **Items From District Five Stanislaus County Supervisor.**
12. **Items From The City Manager And Staff.**
13. **Items From City Council Members.**
14. **Adjournment.**

## Calendar of Events

August 9 - Outdoor Movie Night - *The Lego Movie* - Sherman Park - 8:00 P.M.

August 12 - City Council - 7:00 P.M.

August 14 - Recreation Commission - Cancelled.

August 21 - 2014 Healthier Choices Summit And Biggest Loser Contest - 11:30 A.M.

August 21 - Planning Commission - Cancelled.

August 26 - City Council - 7:00 P.M.

August 24 - September 1 - Fall Festival.

September 1 - Labor Day Holiday - City Offices Closed.

September 2 - NCLUSD Board Meeting - 6:00 P.M.

September 6 - Youth Soccer Season Begins.

September 9 - City Council - 7:00 P.M.

September 11 - Recreation Commission - 7:00 P.M.

September 16 - Two-On-Two Meeting With The School Board - 4:00 P.M.

September 18 - Planning Commission - 7:00 P.M.

September 23- City Council - 7:00 P.M.



## ACH Register for Council July 29, 2014

Vendor	Vendor No	Account No	Invoice No	Description	Amount	ACH Check
SJVA	SJV01	10-00-2260	August 2014	Health Insurance premium/August 2014	\$ 16,764.22	TRUE
					\$ <b>16,764.22</b>	<b>Total</b>
					\$ 16,764.22	<b>Grand Total</b>



## AP Check Register

### August 8, 2014 FY 14-15

Vendor	Fund-Dept-Acct	Check #	Amount	Check date	Description
Advanced Building Cleaners, Inc.	10-33-6200	105887	\$ 3,634.02	8/8/2014	Power sweeping service/July 2014
		<b>105887 Total</b>	<b>\$ 3,634.02</b>		
Amaral Olivia	10-00-5521	105888	\$ 55.00	8/8/2014	Refund Pioneer Park rent/cancelled use/Amaral
		<b>105888 Total</b>	<b>\$ 55.00</b>		
AUS Sacramento MC Lockbox	10-33-6200	105889	\$ 60.30	8/8/2014	Uniform cleaning/mat rental/towels/July 2014
AUS Sacramento MC Lockbox	10-44-6200	105889	\$ 40.20	8/8/2014	Uniform cleaning/mat rental/towels/July 2014
AUS Sacramento MC Lockbox	60-50-6200	105889	\$ 60.30	8/8/2014	Uniform cleaning/mat rental/towels/July 2014
AUS Sacramento MC Lockbox	63-56-6200	105889	\$ 40.20	8/8/2014	Uniform cleaning/mat rental/towels/July 2014
AUS Sacramento MC Lockbox	10-22-6200	105889	\$ 25.84	8/8/2014	Uniform cleaning/mat rental/towels/July 2014
AUS Sacramento MC Lockbox	10-07-6200	105889	\$ 96.80	8/8/2014	Uniform cleaning/mat rental/towels/July 2014
AUS Sacramento MC Lockbox	10-21-6200	105889	\$ 79.72	8/8/2014	Uniform cleaning/mat rental/towels/July 2014
		<b>105889 Total</b>	<b>\$ 403.36</b>		
Arevalo Ana	10-45-6722	105890	\$ 27.99	8/8/2014	Reimbursement for Fit Kids supplies
		<b>105890 Total</b>	<b>\$ 27.99</b>		
AT&T MOBILITY	10-21-6420	105891	\$ 404.94	8/8/2014	Mobile access in patrol units 6-3-14 to 7-2-14
		<b>105891 Total</b>	<b>\$ 404.94</b>		
AT&T	10-21-6420	105892	\$ 136.53	8/8/2014	Emergency dispatch line @ PD 6-20-14 to 7-19-14
AT&T	10-14-6420	105892	\$ 5.73	8/8/2014	Analog line @ city hall 6-13-14 to 7-12-14
AT&T	60-50-6420	105892	\$ 5.74	8/8/2014	Analog line @ city hall 6-13-14 to 7-12-14
AT&T	63-56-6420	105892	\$ 5.73	8/8/2014	Analog line @ city hall 6-13-14 to 7-12-14
AT&T	10-21-6420	105892	\$ 17.98	8/8/2014	Landline phones 6-13-14 to 7-12-14
AT&T	10-14-6420	105892	\$ 46.93	8/8/2014	Landline phones 6-13-14 to 7-12-14
AT&T	10-07-6665	105892	\$ 15.23	8/8/2014	Landline phones 6-13-14 to 7-12-14
AT&T	63-56-6420	105892	\$ 46.63	8/8/2014	Landline phones 6-13-14 to 7-12-14
AT&T	60-50-6420	105892	\$ 16.71	8/8/2014	Landline phones 6-13-14 to 7-12-14
AT&T	10-21-6420	105892	\$ 336.23	8/8/2014	T1 line @ PD 6-20-14 to 7-19-14
		<b>105892 Total</b>	<b>\$ 633.44</b>		
AVID TRAFFIC SUPPLIES	10-33-6300	105893	\$ 1,127.37	8/8/2014	5 gallons low VOC street paint
		<b>105893 Total</b>	<b>\$ 1,127.37</b>		
Baker Supplies and Repairs	10-44-6200	105894	\$ 145.24	8/8/2014	Trimmer service kit/throttle trigger and cable
Baker Supplies and Repairs	10-44-6200	105894	\$ 153.15	8/8/2014	Replaced car and airfilter housing/Stihl line trimmer
Baker Supplies and Repairs	10-44-6200	105894	\$ 99.09	8/8/2014	Replaced primer bulb/blade/spark plug
		<b>105894 Total</b>	<b>\$ 397.48</b>		
BERTOLOTTI DISPOSAL	10-41-6200	105895	\$ 61,133.74	8/8/2014	Garbage service/July 2014
		<b>105895 Total</b>	<b>\$ 61,133.74</b>		
B G AUTO	10-22-6530	105896	\$ 223.43	8/8/2014	12-volt battery for rescue #80
		<b>105896 Total</b>	<b>\$ 223.43</b>		
CAL TRAFFIC SIGNS	10-33-6300	105897	\$ 643.34	8/8/2014	20 Stop signs



## AP Check Register

### August 8, 2014 FY 14-15

Vendor	Fund-Dept-Acct	Check #	Amount	Check date	Description
		<b>105897 Total</b>	<b>\$ 643.34</b>		
CALIFORNIA CONSULTING, LL	10-02-6200	105898	\$ 1,000.00	8/8/2014	Grant writing monthly retainer/August 2014
CALIFORNIA CONSULTING, LL	60-50-6200	105898	\$ 1,000.00	8/8/2014	Grant writing monthly retainer/August 2014
CALIFORNIA CONSULTING, LL	63-56-6200	105898	\$ 1,000.00	8/8/2014	Grant writing monthly retainer/August 2014
		<b>105898 Total</b>	<b>\$ 3,000.00</b>		
CARTER JEFF	68-68-7722	105899	\$ 100.00	8/8/2014	Parking lot rent/August 2014
		<b>105899 Total</b>	<b>\$ 100.00</b>		
CBA (CALIFORNIA BENEFITS)	10-00-1110	105900	\$ 8,500.00	8/8/2014	Pre-paid dental-vision deposit
		<b>105900 Total</b>	<b>\$ 8,500.00</b>		
CBA (ADMIN FEES)	10-00-2261	105901	\$ 234.00	8/8/2014	Dental-vision admin fees/August 2014
		<b>105901 Total</b>	<b>\$ 234.00</b>		
CENTRAL SANITARY SUPPLY	10-44-6660	105902	\$ 203.50	8/8/2014	Glass cleaner/paper towel rolls/canliners/pinesol disinfectant
CENTRAL SANITARY SUPPLY	10-44-6670	105902	\$ 101.74	8/8/2014	
CENTRAL SANITARY SUPPLY	10-07-6300	105902	\$ 50.88	8/8/2014	
CENTRAL SANITARY SUPPLY	10-21-6300	105902	\$ 50.87	8/8/2014	
CENTRAL SANITARY SUPPLY	10-07-6665	105902	\$ 25.44	8/8/2014	
CENTRAL SANITARY SUPPLY	10-22-6300	105902	\$ 25.44	8/8/2014	
CENTRAL SANITARY SUPPLY	10-44-6300	105902	\$ 25.43	8/8/2014	
CENTRAL SANITARY SUPPLY	10-46-6300	105902	\$ 25.41	8/8/2014	
		<b>105902 Total</b>	<b>\$ 508.71</b>		
Cerna Denyse	10-00-2840	105903	\$ 200.00	8/8/2014	Refund Memorial Bldg deposit/Cerna
		<b>105903 Total</b>	<b>\$ 200.00</b>		
Challenger Teamwear	10-45-6735	105904	\$ 1,187.65	8/8/2014	Youth soccer uniforms
		<b>105904 Total</b>	<b>\$ 1,187.65</b>		
COELHO CARL J. (CHUCK)	10-22-6690	105905	\$ 50.00	8/8/2014	
		<b>105905 Total</b>	<b>\$ 50.00</b>		
COMCAST CABLE	60-50-6200	105906	\$ 38.53	8/8/2014	High speed internet/sewer
COMCAST CABLE	63-56-6200	105906	\$ 38.55	8/8/2014	High speed internet/water
COMCAST CABLE	10-21-6200	105906	\$ 38.53	8/8/2014	High speed internet/PD
COMCAST CABLE	10-21-6300	105906	\$ 105.73	8/8/2014	Trouble call @ PD
		<b>105906 Total</b>	<b>\$ 221.34</b>		
CROP PRODUCTION SERVICES	10-33-6270	105907	\$ 638.02	8/8/2014	30 gals Gly Star Plus/weed spraying
CROP PRODUCTION SERVICES	60-50-6300	105907	\$ 435.54	8/8/2014	10 gals Amine/4 gals Activator/WWTP
CROP PRODUCTION SERVICES	60-50-6230	105907	\$ 3,035.90	8/8/2014	Zeal and Phase LPI for corn @WWTP
CROP PRODUCTION SERVICES	60-50-6230	105907	\$ 2,234.82	8/8/2014	Poast/Herbimax/Ultra Pro for WWTP
		<b>105907 Total</b>	<b>\$ 6,344.28</b>		
E&M ELECTRIC, INC.	10-33-6200	105908	\$ 414.78	8/8/2014	Demo of old wall pack lights & replaced 2 new wall packs @ downt
		<b>105908 Total</b>	<b>\$ 414.78</b>		
ECONOMIC TIRE SHOP	10-44-6530	105909	\$ 180.16	8/8/2014	2 new tires/mower trailer



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Vendor	Fund-Dept-Acct	Check #	Amount	Check date	Description
ECONOMIC TIRE SHOP	10-44-6530	105909	\$ 180.96	8/8/2014	2 new tires/mower trailer
		<b>105909 Total</b>	<b>\$ 361.12</b>		
Elizondo Rick	10-45-6722	105910	\$ 480.00	8/8/2014	Fit Kids instructor/Elizondo
		<b>105910 Total</b>	<b>\$ 480.00</b>		
Equarius, Inc	63-56-6300	105911	\$ 2,044.83	8/8/2014	10 T-10 water meters delivered
		<b>105911 Total</b>	<b>\$ 2,044.83</b>		
FIRST BAPTIST CHURCH	10-00-2841	105912	\$ 25.00	8/8/2014	Refund of fireworks booth deposit/FBC
		<b>105912 Total</b>	<b>\$ 25.00</b>		
GARTON TRACTOR	10-44-6530	105913	\$ 563.01	8/8/2014	Replaced blades on Kubota mower and serviced unit
		<b>105913 Total</b>	<b>\$ 563.01</b>		
Guzman Pablo	10-00-2840	105914	\$ 143.98	8/8/2014	Partial refund of Memorial Bldg deposit/Guzman
		<b>105914 Total</b>	<b>\$ 143.98</b>		
HARD DRIVE GRAPHICS	10-21-6300	105915	\$ 64.58	8/8/2014	2 Ladies Polo for J. Jackson
		<b>105915 Total</b>	<b>\$ 64.58</b>		
HOLLAND (NT) MICHAEL	60-50-6300	105916	\$ 12.09	8/8/2014	Reimbursement for 3 Samsung cell phones
HOLLAND (NT) MICHAEL	63-56-6300	105916	\$ 12.09	8/8/2014	Reimbursement for 3 Samsung cell phones
HOLLAND (NT) MICHAEL	10-00-2257	105916	\$ 439.00	8/8/2014	Reimbursement for annual life insurance premium/Holland
		<b>105916 Total</b>	<b>\$ 463.18</b>		
HOUSE STEPHANIE	10-45-6735	105917	\$ 3.00	8/8/2014	Reimbursement of fuses for air pump
HOUSE STEPHANIE	10-45-6724	105917	\$ 13.44	8/8/2014	Reimbursement of supplies purchased for movie night.
HOUSE STEPHANIE	10-45-6724	105917	\$ 142.10	8/8/2014	Reimbursement of supplies purchased for movie night.
HOUSE STEPHANIE	10-45-6735	105917	\$ 9.07	8/8/2014	Reimbursement for bottled water for soccer
		<b>105917 Total</b>	<b>\$ 167.61</b>		
HUB INTERNATIONAL OF CA I	10-00-2845	105918	\$ 254.02	8/8/2014	Liability insurance payable/July 2014
		<b>105918 Total</b>	<b>\$ 254.02</b>		
IDEXX LABORATORIES, INC.	63-56-6300	105919	\$ 331.81	8/8/2014	Water testing supplies
		<b>105919 Total</b>	<b>\$ 331.81</b>		
INFOSEND, INC	60-50-6200	105920	\$ 958.62	8/8/2014	Utility bill and late notice mailing/July 2014
INFOSEND, INC	63-56-6200	105920	\$ 958.61	8/8/2014	Utility bill and late notice mailing/July 2014
		<b>105920 Total</b>	<b>\$ 1,917.23</b>		
IRRIGATION DESIGN & CONST	10-33-6270	105921	\$ 183.23	8/8/2014	25 Tyvek coveralls/weed spraying
IRRIGATION DESIGN & CONST	10-33-6270	105921	\$ 109.24	8/8/2014	Solo 4 gallon backpack sprayer/weed spraying
		<b>105921 Total</b>	<b>\$ 292.47</b>		
KAISER PERMANENTE	10-00-2260	105922	\$ 3,256.27	8/8/2014	Health insurance premium/Sept 2014
		<b>105922 Total</b>	<b>\$ 3,256.27</b>		
Maier Mike	60-50-6300	105923	\$ 12.09	8/8/2014	Reimbursement for 3 Samsung phones
Maier Mike	63-56-6300	105923	\$ 12.09	8/8/2014	Reimbursement for 3 Samsung phones
		<b>105923 Total</b>	<b>\$ 24.18</b>		
MEDINA AUTO REPAIR	63-56-6530	105924	\$ 44.27	8/8/2014	Oil & filter change on Ford F150



## AP Check Register

### August 8, 2014 FY 14-15

Vendor	Fund-Dept-Acct	Check #	Amount	Check date	Description
MEDINA AUTO REPAIR	60-50-6530	105924	\$ 248.22	8/8/2014	Installed flywheel on 1997 Chevy Pickup
MEDINA AUTO REPAIR	10-33-6530	105924	\$ 82.74	8/8/2014	Installed flywheel on 1997 Chevy Pickup
MEDINA AUTO REPAIR	10-44-6530	105924	\$ 82.74	8/8/2014	Installed flywheel on 1997 Chevy Pickup
MEDINA AUTO REPAIR	63-56-6225	105924	\$ 254.95	8/8/2014	Installed new battery/air compressor oil/jack hammer
		<b>105924 Total</b>	<b>\$ 712.92</b>		
MENEZES SALES	60-50-6150	105925	\$ 200.00	8/8/2014	Steel-toed work boots for L. Perry
MENEZES SALES	60-50-6150	105925	\$ 200.00	8/8/2014	Steel-toed work boots for I. Escatel
MENEZES SALES	60-50-6150	105925	\$ 200.00	8/8/2014	Steel-toed work boots for C. Vargas
		<b>105925 Total</b>	<b>\$ 600.00</b>		
NEWMAN SMOG AND LUBE	10-21-6530	105926	\$ 80.00	8/8/2014	Mounted and balanced tires/PD
NEWMAN SMOG AND LUBE	10-21-6530	105926	\$ 123.75	8/8/2014	Oil and filter change/PD
		<b>105926 Total</b>	<b>\$ 203.75</b>		
NEWMAN ACE HARDWARE/JACT,	63-56-6300	105927	\$ 33.87	8/8/2014	Bubble wrap/tape/couplingchain saw links
NEWMAN ACE HARDWARE/JACT,	60-50-6300	105927	\$ 222.22	8/8/2014	12 piece nut driver/trash bags/scraper blades/canopy/hole saw
NEWMAN ACE HARDWARE/JACT,	69-47-6300	105927	\$ 257.86	8/8/2014	light bulbs/misc pvc/
NEWMAN ACE HARDWARE/JACT,	10-44-6300	105927	\$ 426.55	8/8/2014	pik stik/grafitti rmvr/halogen bulbs/gas can/pruner/Stihl attach
NEWMAN ACE HARDWARE/JACT,	10-21-6300	105927	\$ 20.97	8/8/2014	Fly paper/trach bags
NEWMAN ACE HARDWARE/JACT,	10-33-6300	105927	\$ 58.71	8/8/2014	PVC plug/couplings/tubing/brushes/rule tape/
NEWMAN ACE HARDWARE/JACT,	10-07-6665	105927	\$ 6.45	8/8/2014	Pop-up sprinkler
NEWMAN ACE HARDWARE/JACT,	10-21-6308	105927	\$ 12.87	8/8/2014	Bleach
NEWMAN ACE HARDWARE/JACT,	10-46-6300	105927	\$ 4.83	8/8/2014	Door stop
NEWMAN ACE HARDWARE/JACT,	61-55-7505	105927	\$ 2.80	8/8/2014	Misc screws, nuts & fastners
NEWMAN ACE HARDWARE/JACT,	60-50-6530	105927	\$ 2.23	8/8/2014	vinyl tubing
		<b>105927 Total</b>	<b>\$ 1,049.36</b>		
NORMAC, INC.	69-47-6300	105928	\$ 7.84	8/8/2014	Toro plunger
NORMAC, INC.	10-44-6300	105928	\$ 198.46	8/8/2014	20 rotors
NORMAC, INC.	69-47-6300	105928	\$ 10.94	8/8/2014	1 solenoid
NORMAC, INC.	69-47-6300	105928	\$ 338.48	8/8/2014	55 pop-up sprinklers/50 extensions/125 nozzles
NORMAC, INC.	69-47-6300	105928	\$ (3.23)	8/8/2014	Credit returns on 25 sprinklers/re-purchased 35 new ones
NORMAC, INC.	69-47-6300	105928	\$ (28.78)	8/8/2014	Returned 1 O ring/1 Toro plunger/1 Toro solenoid
		<b>105928 Total</b>	<b>\$ 523.71</b>		
OHS BAND BOOSTERS	10-00-2841	105929	\$ 25.00	8/8/2014	Refund of fireworks booth deposit/OHS band boosters
		<b>105929 Total</b>	<b>\$ 25.00</b>		
OPERATING ENGINEERS/	10-00-2260	105930	\$ 723.00	8/8/2014	Health insurance premium/Sept 2013
		<b>105930 Total</b>	<b>\$ 723.00</b>		
P G & E	10-07-6410	105931	\$ 2,262.28	8/8/2014	Gas and electric usage 6-17-14 to 7-16-14
P G & E	10-22-6410	105931	\$ 512.20	8/8/2014	Gas and electric usage 6-17-14 to 7-16-14
P G & E	10-33-6410	105931	\$ 4,931.03	8/8/2014	Gas and electric usage 6-17-14 to 7-16-14
P G & E	10-44-6410	105931	\$ 673.12	8/8/2014	Gas and electric usage 6-17-14 to 7-16-14



## AP Check Register

### August 8, 2014 FY 14-15

Vendor	Fund-Dept-Acct	Check #	Amount	Check date	Description
P G & E	10-45-6410	105931	\$ 567.74	8/8/2014	Gas and electric usage 6-17-14 to 7-16-14
P G & E	10-46-6410	105931	\$ 673.83	8/8/2014	Gas and electric usage 6-17-14 to 7-16-14
P G & E	10-44-6660	105931	\$ 1,332.95	8/8/2014	Gas and electric usage 6-17-14 to 7-16-14
P G & E	10-07-6665	105931	\$ 191.56	8/8/2014	Gas and electric usage 6-17-14 to 7-16-14
P G & E	10-44-6670	105931	\$ 431.76	8/8/2014	Gas and electric usage 6-17-14 to 7-16-14
P G & E	60-50-6410	105931	\$ 23,787.26	8/8/2014	Gas and electric usage 6-17-14 to 7-16-14
P G & E	62-60-6411	105931	\$ 349.33	8/8/2014	Gas and electric usage 6-17-14 to 7-16-14
P G & E	62-60-6412	105931	\$ 1,474.17	8/8/2014	Gas and electric usage 6-17-14 to 7-16-14
P G & E	63-56-6410	105931	\$ 26,945.44	8/8/2014	Gas and electric usage 6-17-14 to 7-16-14
P G & E	69-47-6410	105931	\$ 3,329.42	8/8/2014	Gas and electric usage 6-17-14 to 7-16-14
P G & E	73-70-6651	105931	\$ 281.29	8/8/2014	Gas and electric usage 6-17-14 to 7-16-14
P G & E	73-70-6672	105931	\$ 1,663.06	8/8/2014	Gas and electric usage 6-17-14 to 7-16-14
P G & E	10-21-6510	105931	\$ 35.53	8/8/2014	Natural gas pumped at CNG station 6-12-14 to 7-14-14
P G & E	10-33-6510	105931	\$ 106.59	8/8/2014	Natural gas pumped at CNG station 6-12-14 to 7-14-14
P G & E	10-44-6510	105931	\$ 71.06	8/8/2014	Natural gas pumped at CNG station 6-12-14 to 7-14-14
P G & E	60-50-6510	105931	\$ 35.53	8/8/2014	Natural gas pumped at CNG station 6-12-14 to 7-14-14
P G & E	63-56-6510	105931	\$ 35.53	8/8/2014	Natural gas pumped at CNG station 6-12-14 to 7-14-14
		<b>105931 Total</b>	<b>\$ 69,690.68</b>		
PIONEER DRUG	63-56-6300	105932	\$ 6.44	8/8/2014	Bleach
		<b>105932 Total</b>	<b>\$ 6.44</b>		
R-SAFE SPECIALTY	10-07-6300	105933	\$ 6.97	8/8/2014	Safety glasses/Oliver
R-SAFE SPECIALTY	10-44-6300	105933	\$ 6.96	8/8/2014	Safety glasses/Oliver
		<b>105933 Total</b>	<b>\$ 13.93</b>		
RALEY'S IN STORE CHARGE	10-14-6300	105934	\$ 4.84	8/8/2014	Sugar cubes/coffee mate/sweetener
RALEY'S IN STORE CHARGE	60-50-6300	105934	\$ 4.84	8/8/2014	Sugar cubes/coffee mate/sweetener
RALEY'S IN STORE CHARGE	63-56-6300	105934	\$ 4.84	8/8/2014	Sugar cubes/coffee mate/sweetener
RALEY'S IN STORE CHARGE	10-46-6300	105934	\$ 14.78	8/8/2014	Raley's spoons/foam cups/ice
RALEY'S IN STORE CHARGE	60-50-6690	105934	\$ 5.49	8/8/2014	Mustard
RALEY'S IN STORE CHARGE	63-56-6690	105934	\$ 5.49	8/8/2014	Mustard/rotisserie chicken
		<b>105934 Total</b>	<b>\$ 40.28</b>		
Rivas Dino	10-00-2840	105935	\$ 200.00	8/8/2014	Cancelled Memorial Bldg use/refund deposit/Rivas
Rivas Dino	10-00-5510	105935	\$ 350.00	8/8/2014	Cancelled Memorial Bldg use/refund rent/Rivas
		<b>105935 Total</b>	<b>\$ 550.00</b>		
Rodriguez Luis	10-45-6722	105936	\$ 480.00	8/8/2014	Fit Kids instructor/Rodriguez
		<b>105936 Total</b>	<b>\$ 480.00</b>		
SAFE-T-LITE	10-33-6300	105937	\$ 240.84	8/8/2014	20 traffic safety cones/4 smoke safety glasses
		<b>105937 Total</b>	<b>\$ 240.84</b>		
SAN JOAQUIN VALLEY AIR	63-56-6675	105938	\$ 240.00	8/8/2014	Annual permit fee for generator @ well 1R
SAN JOAQUIN VALLEY AIR	63-56-6675	105938	\$ 479.00	8/8/2014	Annual permit fee for generator @ well 8



## AP Check Register

### August 8, 2014 FY 14-15

Vendor	Fund-Dept-Acct	Check #	Amount	Check date	Description
		<b>105938 Total</b>	<b>\$ 719.00</b>		
SimplexGrinnell. LP	10-07-6200	105939	\$ 872.00	8/8/2014	Annual fire alarm inspection @ city hall
		<b>105939 Total</b>	<b>\$ 872.00</b>		
GORDON B. FORD	10-15-6680	105940	\$ 84.43	8/8/2014	Unsecured tax roll for 2013/1147 R Street
GORDON B. FORD	10-15-6680	105940	\$ 143.00	8/8/2014	Unsecured tax roll for 2012/1147 R Street
GORDON B. FORD	10-15-6680	105940	\$ 499.93	8/8/2014	Unsecured tax roll for FY 14-15/934 Fresno Street
GORDON B. FORD	10-15-6680	105940	\$ 464.22	8/8/2014	Unsecured tax roll for FY 14-15/1406 Main St
GORDON B. FORD	10-15-6680	105940	\$ 154.73	8/8/2014	Unsecured tax roll for FY 14-15/930 Fresno St
GORDON B. FORD	10-15-6680	105940	\$ 59.52	8/8/2014	Unsecured tax roll for FY 14-15/936 Fresno St
GORDON B. FORD	10-15-6680	105940	\$ 1,022.31	8/8/2014	Unsecured tax roll for FY 14-15/1404 Main St
GORDON B. FORD	10-15-6680	105940	\$ 47.62	8/8/2014	Unsecured tax roll for FY 14-15/1147 R Street
		<b>105940 Total</b>	<b>\$ 2,475.76</b>		
STAN CNTY CLERK RECORDER	10-00-2630	105941	\$ 15.00	8/8/2014	Release of lien for 1930 and 1936 Pine Street
		<b>105941 Total</b>	<b>\$ 15.00</b>		
STAPLES ADVANTAGE	10-14-6300	105942	\$ 4.85	8/8/2014	3 reams copy paper
STAPLES ADVANTAGE	60-50-6300	105942	\$ 4.85	8/8/2014	3 reams copy paper
STAPLES ADVANTAGE	63-56-6300	105942	\$ 4.86	8/8/2014	3 reams copy paper
STAPLES ADVANTAGE	10-14-6300	105942	\$ 22.85	8/8/2014	Stapler/steno books/dust destroyer/colored paper
STAPLES ADVANTAGE	60-50-6300	105942	\$ 22.85	8/8/2014	Stapler/steno books/dust destroyer/colored paper
STAPLES ADVANTAGE	63-56-6300	105942	\$ 22.86	8/8/2014	Stapler/steno books/dust destroyer/colored paper
STAPLES ADVANTAGE	63-56-6300	105942	\$ 14.30	8/8/2014	Stapler/steno books/dust destroyer/colored paper
		<b>105942 Total</b>	<b>\$ 97.42</b>		
Stonebarger Greg	63-56-6150	105943	\$ 150.66	8/8/2014	Reimbursement for steel-toed work boots/Stonebarger
		<b>105943 Total</b>	<b>\$ 150.66</b>		
Summers Engineering, Inc	10-00-2840	105944	\$ 100.00	8/8/2014	Refund Memorial Bldg deposit/San Joaquin Valley Drainage
		<b>105944 Total</b>	<b>\$ 100.00</b>		
SUN VALLEY PORTABLES	69-47-6200	105945	\$ 155.73	8/8/2014	Portable restroom rental & service/July 2014
		<b>105945 Total</b>	<b>\$ 155.73</b>		
TelePacific Communications	10-21-6420	105946	\$ 207.18	8/8/2014	Telephone service 8/1/14 to 8/31/14/long distance fees7/1-7/31
TelePacific Communications	10-45-6420	105946	\$ 105.16	8/8/2014	Telephone service 8/1/14 to 8/31/14/long distance fees7/1-7/31
TelePacific Communications	60-50-6420	105946	\$ 105.16	8/8/2014	Telephone service 8/1/14 to 8/31/14/long distance fees7/1-7/31
TelePacific Communications	10-14-6420	105946	\$ 105.16	8/8/2014	Telephone service 8/1/14 to 8/31/14/long distance fees7/1-7/31
TelePacific Communications	63-56-6420	105946	\$ 105.16	8/8/2014	Telephone service 8/1/14 to 8/31/14/long distance fees7/1-7/31
		<b>105946 Total</b>	<b>\$ 627.82</b>		
T.H.E. OFFICE CITY	63-56-6300	105947	\$ 26.85	8/8/2014	5 document frames
T.H.E. OFFICE CITY	10-14-6300	105947	\$ 15.37	8/8/2014	Custom preinks stamp
T.H.E. OFFICE CITY	60-50-6300	105947	\$ 15.37	8/8/2014	Custom preinks stamp
T.H.E. OFFICE CITY	63-56-6300	105947	\$ 15.38	8/8/2014	Custom preinks stamp
T.H.E. OFFICE CITY	10-14-6300	105947	\$ 1.49	8/8/2014	Pen holders



## AP Check Register

### August 8, 2014 FY 14-15

Vendor	Fund-Dept-Acct	Check #	Amount	Check date	Description
T.H.E. OFFICE CITY	60-50-6300	105947	\$ 1.49	8/8/2014	Pen holders
T.H.E. OFFICE CITY	63-56-6300	105947	\$ 1.48	8/8/2014	Pen holders
T.H.E. OFFICE CITY	63-56-6300	105947	\$ 21.48	8/8/2014	4 document holders
		<b>105947 Total</b>	<b>\$ 98.91</b>		
TOSTA BARBARA J.	10-45-6725	105948	\$ 165.00	8/8/2014	Young at heart instructor/July 2014
		<b>105948 Total</b>	<b>\$ 165.00</b>		
Trujillo Antonio	10-00-2840	105949	\$ 193.98	8/8/2014	Refund partial deposit/Trujillo
		<b>105949 Total</b>	<b>\$ 193.98</b>		
BRADFORD JEREMY	63-00-2010	105950	\$ 46.22	8/8/2014	Refund Check
		<b>105950 Total</b>	<b>\$ 46.22</b>		
LOPES JR. FRANK	63-00-2010	105951	\$ 90.76	8/8/2014	Refund Check
		<b>105951 Total</b>	<b>\$ 90.76</b>		
LEACH PATRICK	63-00-2010	105952	\$ 7.10	8/8/2014	Refund Check
		<b>105952 Total</b>	<b>\$ 7.10</b>		
VIEYRA CARMEN	63-00-2010	105953	\$ 27.86	8/8/2014	Refund Check
		<b>105953 Total</b>	<b>\$ 27.86</b>		
THE CHURCH OF JESUS CHRIST OF LDS	63-00-2010	105954	\$ 104.72	8/8/2014	Refund Check
		<b>105954 Total</b>	<b>\$ 104.72</b>		
UNDERGRND SERV ALERT, INC	63-56-6200	105955	\$ 166.20	8/8/2014	Annual membership
		<b>105955 Total</b>	<b>\$ 166.20</b>		
UNIVAR USA, INC	63-56-6300	105956	\$ 503.90	8/8/2014	170 gals sodium hypochlorite delivered @ well#8
UNIVAR USA, INC	63-56-6300	105956	\$ 211.91	8/8/2014	82 gals sodium hypochlorite delivered @ wel l#5
UNIVAR USA, INC	63-56-6300	105956	\$ 198.95	8/8/2014	52 gals sodium hypochlorite delivered @ wel l#6
UNIVAR USA, INC	63-56-6300	105956	\$ 165.38	8/8/2014	64 gals sodium hypochlorite delivered @ wel l#5
UNIVAR USA, INC	63-56-6300	105956	\$ 105.95	8/8/2014	41 gals sodium hypochlorite delivered @ wel l#6
UNIVAR USA, INC	63-56-6300	105956	\$ 447.04	8/8/2014	148 gals sodium hypochlorite delivered @ wel l #8
		<b>105956 Total</b>	<b>\$ 1,633.13</b>		
USA BLUEBOOK	63-56-6300	105957	\$ 58.12	8/8/2014	Reagent refilll DPD #11 tablets
		<b>105957 Total</b>	<b>\$ 58.12</b>		
Valley Tire Sales	10-21-6530	105958	\$ 1,024.47	8/8/2014	8 new tires/PD
		<b>105958 Total</b>	<b>\$ 1,024.47</b>		
VALLEY PARTS SERVICE	60-50-6530	105959	\$ 80.20	8/8/2014	Air and oil filters/dexron
VALLEY PARTS SERVICE	10-21-6530	105959	\$ 16.96	8/8/2014	2 pair wiper blades
VALLEY PARTS SERVICE	10-33-6530	105959	\$ 6.76	8/8/2014	2 brake lenses
VALLEY PARTS SERVICE	63-56-6530	105959	\$ 10.50	8/8/2014	Tire foam/penetrating oil
VALLEY PARTS SERVICE	10-21-6530	105959	\$ 26.91	8/8/2014	Washer fluid/Napa motor oil
		<b>105959 Total</b>	<b>\$ 141.33</b>		
VARGAS GEORGE	10-22-6690	105960	\$ 50.00	8/8/2014	
		<b>105960 Total</b>	<b>\$ 50.00</b>		



## AP Check Register

### August 8, 2014 FY 14-15

Vendor	Fund-Dept-Acct	Check #	Amount	Check date	Description
Westside Niners	10-00-2841	105961	\$ 25.00	8/8/2014	Refund firework booth deposit/Westside Niners
		<b>105961 Total</b>	<b>\$ 25.00</b>		
WEST SIDE AERIAL APPLICAT	60-50-6230	105962	\$ 1,089.00	8/8/2014	Aerial application 66 acres of corn @ WWTP
		<b>105962 Total</b>	<b>\$ 1,089.00</b>		
WEST SIDE HEALTHCARE TASKFORCE	10-01-6620	105963	\$ 1,000.00	8/8/2014	Annual dues Westside Health Care Task Force
		<b>105963 Total</b>	<b>\$ 1,000.00</b>		
		<b>Grand Total</b>	<b>\$ 185,829.26</b>		



## AP Check Register

### August 7, 2014 FY 13-14

Vendor	Fund-Dept-Acct	Check #	Amount	Check date	Description
B G AUTO	60-50-7010	105964	\$ 193.72	8/7/2014	3 rounded 2 step sides for new PU @ WWTP
		<b>105964 Total</b>	<b>\$ 193.72</b>		
Central Valley Toxicology, Inc.	10-21-6200	105965	\$ 73.00	8/7/2014	Abuse screen/drug confirmation level
		<b>105965 Total</b>	<b>\$ 73.00</b>		
Challenger Teamwear	10-45-6722	105966	\$ 440.00	8/7/2014	Soccer camp fees
		<b>105966 Total</b>	<b>\$ 440.00</b>		
Churchwell White, LLP	10-15-6200	105967	\$ 279.00	8/7/2014	Professional services/May 2014/PD vs. officer
Churchwell White, LLP	10-15-6200	105967	\$ 1,871.00	8/7/2014	Monthly legal retainer/May 2014
Churchwell White, LLP	10-15-6200	105967	\$ 2,752.88	8/7/2014	Monthly legal retainer/June 2014/incidental expenses
		<b>105967 Total</b>	<b>\$ 4,902.88</b>		
City of Turlock	10-15-6200	105968	\$ 1,000.00	8/7/2014	Legal monthly retainer June 2014
		<b>105968 Total</b>	<b>\$ 1,000.00</b>		
Housing authority of County of Stanislaus	15-48-7901	105969	\$ 97.00	8/7/2014	Loan servicing fee 5/14/14 to 6/14/14/account closing
		<b>105969 Total</b>	<b>\$ 97.00</b>		
INFOSEND, INC	60-50-6200	105970	\$ 951.35	8/7/2014	Utility bill and late notice/June 2014
INFOSEND, INC	63-56-6200	105970	\$ 951.34	8/7/2014	Utility bill and late notice/June 2014
		<b>105970 Total</b>	<b>\$ 1,902.69</b>		
MEDINA AUTO REPAIR	69-47-6530	105971	\$ 35.12	8/7/2014	Blower motor resister installed on 2005 Chevy PU
MEDINA AUTO REPAIR	10-33-6530	105971	\$ 35.11	8/7/2014	Blower motor resister installed on 2005 Chevy PU
MEDINA AUTO REPAIR	10-44-6530	105971	\$ 35.11	8/7/2014	Blower motor resister installed on 2005 Chevy PU
MEDINA AUTO REPAIR	69-47-6530	105971	\$ 13.27	8/7/2014	Oil and filter change out/ 2005 Chevy PU
MEDINA AUTO REPAIR	10-33-6530	105971	\$ 13.27	8/7/2014	Oil and filter change out/ 2005 Chevy PU
MEDINA AUTO REPAIR	10-44-6530	105971	\$ 13.26	8/7/2014	Oil and filter change out/ 2005 Chevy PU
MEDINA AUTO REPAIR	60-50-6530	105971	\$ 240.67	8/7/2014	Fuel pump and filter/towing/1997 Chevy PU
MEDINA AUTO REPAIR	10-33-6530	105971	\$ 80.23	8/7/2014	Fuel pump and filter/towing/1997 Chevy PU
MEDINA AUTO REPAIR	10-44-6530	105971	\$ 80.22	8/7/2014	Fuel pump and filter/towing/1997 Chevy PU
MEDINA AUTO REPAIR	60-50-6530	105971	\$ 21.29	8/7/2014	Oil and filter change/1997 Chevy PU
MEDINA AUTO REPAIR	10-33-6530	105971	\$ 7.10	8/7/2014	Oil and filter change/1997 Chevy PU
MEDINA AUTO REPAIR	10-44-6530	105971	\$ 7.10	8/7/2014	Oil and filter change/1997 Chevy PU
MEDINA AUTO REPAIR	69-47-6530	105971	\$ 28.29	8/7/2014	Installed new tailgate handle on 2005 Chevy PU
MEDINA AUTO REPAIR	10-44-6530	105971	\$ 28.29	8/7/2014	Installed new tailgate handle on 2005 Chevy PU
MEDINA AUTO REPAIR	10-33-6530	105971	\$ 28.28	8/7/2014	Installed new tailgate handle on 2005 Chevy PU
MEDINA AUTO REPAIR	63-56-6530	105971	\$ 196.37	8/7/2014	Installed door latch/pin/bushing kit/2000 Chevy PU
		<b>105971 Total</b>	<b>\$ 862.98</b>		
North Star Engineering Group, Inc	18-32-7739	105972	\$ 14,911.05	8/7/2014	Professional services rendered/June 2014/Inyo & Hwy 33
		<b>105972 Total</b>	<b>\$ 14,911.05</b>		
O'Dell Engineering	17-44-7521	105973	\$ 10,627.80	8/7/2014	Professional services 6-2-14 to 7-6-14/Skate Park
		<b>105973 Total</b>	<b>\$ 10,627.80</b>		



## AP Check Register

### August 7, 2014 FY 13-14

Vendor	Fund-Dept-Acct	Check #	Amount	Check date	Description
CITY OF PATTERSON	10-03-6200	105974	\$ 660.00	8/7/2014	Video reimbursement/June 2014
CITY OF PATTERSON	10-22-6200	105974	\$ 250.00	8/7/2014	Fire data input/May 2014
		<b>105974 Total</b>	<b>\$ 910.00</b>		
P G & E	10-21-6510	105975	\$ 7.06	8/7/2014	Natural gas pumped @ CNG station 6-6-12 to 6-12-14
P G & E	10-33-6510	105975	\$ 21.21	8/7/2014	Natural gas pumped @ CNG station/6-6-14 to 6-12-14
P G & E	10-44-6510	105975	\$ 14.12	8/7/2014	Natural gas pumped @ CNG station/6-6-14 to 6-12-14
P G & E	60-50-6510	105975	\$ 7.06	8/7/2014	Natural gas pumped @ CNG station/6-6-14 to 6-12-14
P G & E	63-56-6510	105975	\$ 7.06	8/7/2014	Natural gas pumped @ CNG station/6-6-14 to 6-12-14
		<b>105975 Total</b>	<b>\$ 56.51</b>		
Stanislaus County Auditor-Controller	10-21-6615	105976	\$ 40,626.00	8/7/2014	FY 13-14 SR 911 true-up
Stanislaus County Auditor-Controller	10-21-6615	105976	\$ 1,870.00	8/7/2014	FY 13-14 JPA approved purchases
		<b>105976 Total</b>	<b>\$ 42,496.00</b>		
STANTEC CONSULTING SERVICE, Inc	60-50-6200	105977	\$ 564.50	8/7/2014	FY 13-14 Water and wastewater on-call
		<b>105977 Total</b>	<b>\$ 564.50</b>		
True Blue Veterinary Group	10-21-6208	105978	\$ 100.00	8/7/2014	Ovarian hysterectomy-Solis
True Blue Veterinary Group	10-21-6208	105978	\$ 100.00	8/7/2014	Ovarian hysterectomy-Maldonado
True Blue Veterinary Group	10-21-6208	105978	\$ 855.00	8/7/2014	Monthly animal control contract/May 2014
True Blue Veterinary Group	10-21-6208	105978	\$ 75.00	8/7/2014	Neuter-Unknown (brought in by Jessica)
True Blue Veterinary Group	10-21-6208	105978	\$ 75.00	8/7/2014	Neuter
True Blue Veterinary Group	10-21-6207	105978	\$ 227.27	8/7/2014	Yearly exam abd vaccinations on K-9 dog Sam
		<b>105978 Total</b>	<b>\$ 1,432.27</b>		
		<b>Grand Total</b>	<b>\$ 80,470.40</b>		



## Manual Check Register

### August 7, 2014 FY 13-14

Vendor	Fund-Dept-Acct	Amount	Check #	Check Date	Description
BUSINESS CARD	10-21-6300	\$ 161.93	105885	7/31/2014	Zipr-weld evidence imprint rolls/pd
BUSINESS CARD	10-21-6630	\$ 43.29	105885	7/31/2014	Supplies for city softball game/pd
BUSINESS CARD	10-21-6530	\$ 12.00	105885	7/31/2014	Car washes/pd
BUSINESS CARD	10-21-6300	\$ 70.92	105885	7/31/2014	Dash Medical gloves/pd
BUSINESS CARD	10-21-6200	\$ 10.00	105885	7/31/2014	Schedule bas for 7-19-14 to 8-19-14 20 licenses/pd
BUSINESS CARD	10-21-6300	\$ 41.99	105885	7/31/2014	PowerPak modular cheek piece/pd
BUSINESS CARD	10-21-6620	\$ 14.54	105885	7/31/2014	Supplies for Senior Day/pd
BUSINESS CARD	10-21-6690	\$ 26.90	105885	7/31/2014	Lunch meeting with MPDy/pd
BUSINESS CARD	10-21-6620	\$ 23.19	105885	7/31/2014	Supplies for Senior Day/pd
BUSINESS CARD	10-21-6690	\$ 2.00	105885	7/31/2014	Parking for meeting on SR911/pd
BUSINESS CARD	10-21-6308	\$ 66.54	105885	7/31/2014	Trifectant tablets/pd
BUSINESS CARD	10-21-6300	\$ 44.13	105885	7/31/2014	Evidence tubes/pd
BUSINESS CARD	10-21-6300	\$ 64.53	105885	7/31/2014	Plastic 175-ft cart hose reel/pd
BUSINESS CARD	10-21-6300	\$ 33.28	105885	7/31/2014	8" service kit for H-161 impulse sealer with cutter/pd
BUSINESS CARD	10-45-6722	\$ 109.24	105885	7/31/2014	Supplies for Fit Kids
BUSINESS CARD	10-45-6739	\$ 20.42	105885	7/31/2014	Supplies for teen center
BUSINESS CARD	10-45-6722	\$ 11.59	105885	7/31/2014	Supplies for Fit kids
BUSINESS CARD	10-45-6722	\$ 33.29	105885	7/31/2014	Supplies for Basketball camp
BUSINESS CARD	10-45-6722	\$ 60.97	105885	7/31/2014	Supplies for Fit Kids
BUSINESS CARD	10-45-6722	\$ 11.45	105885	7/31/2014	Supplies for Fit Kids
		<b>\$ 862.20</b>	<b>105885 Total</b>		
		<b>\$ 862.20</b>	<b>Grand Total</b>		



## Manual Check Register

### August 8, 2014 FY 14-15

Vendor	Fund-Dept-Acct	Amount	Check #	Check Date	Description
CWEA	60-50-6690	\$ 55.00	105886	8/8/2014	CWEA training registration/Millan/Garcia
		<b>\$ 55.00</b>	<b>105886 Total</b>		
HOUSE STEPHANIE	10-45-6724	\$ 109.84	105979	8/8/2014	Reimbursement for Movie Night snack bar/House
		<b>\$ 109.84</b>	<b>105979 Total</b>		
		<b>\$ 164.84</b>	<b>Grand Total</b>		



**MINUTES**  
**NEWMAN CITY COUNCIL**  
**SPECIAL MEETING JULY 22, 2014**  
**CITY HALL CONFERENCE ROOM, 6:30 P.M., 938 FRESNO STREET**

1. **Call To Order** - Mayor Katen 6:32 P.M.
2. **Roll Call** - **PRESENT:** Davis, Hutchins And Mayor Katen.  
**ABSENT:** Candea and Martina.
3. **Items From The Public** - None.
4. **Adjourn To Closed Session** - 6:33 P.M.
  - a. Conference With Labor Negotiator - Agency Negotiator: Michael E. Holland - Employee Organization: Operating Engineers Local #3 Police Bargaining Unit - G.C. 54957.6.
  - b. Conference With Legal Counsel, Potential Litigation Pursuant To California -Government Code Section 54956.9(d)(2), (1 Case).
  - c. Return To Open Session - 6:47 P.M.

Mayor Katen Reported That The Council Would Be Considering Action On Item 8.d., Which Is Related To Closed Session Item 4.a. Katen Also Noted That Closed Session Item 4.b. Would Be Continued Until The Next Council Meeting.

**5. Adjournment.**

**ACTION:** On Motion By Davis Seconded By Hutchins, The Meeting Was Adjourned At 6:48 P.M. By The Following Vote: AYES: Davis, Hutchins And Mayor Katen; NOES: None; ABSENT: Candea, Martina; NOT PARTICIPATING: None.



**MINUTES**  
**NEWMAN CITY COUNCIL**  
**REGULAR MEETING JULY 22, 2014**  
**CITY COUNCIL CHAMBERS, 7:00 P.M., 938 FRESNO STREET**

1. **Call To Order** - Mayor Katen 7:01 P.M.
2. **Pledge Of Allegiance.**
3. **Invocation** – Council Member Hutchins.
4. **Roll Call - PRESENT:** Davis, Hutchins, Candea, Martina And Mayor Katen.  
**ABSENT:** None.
5. **Declaration Of Conflicts Of Interest** – None.
6. **Ceremonial Matters** – None.
7. **Items from the Public - Non-Agenda Items** – None.
8. **Consent Calendar**
  - a. Waive All Readings Of Ordinances And Resolutions Except By Title.
  - b. Approval Of Warrants.
  - c. Approval Of Minutes Of The July 8, 2014 Meeting.
  - d. Adopt Resolution No. 2014-44, A Resolution Ratifying Memorandum Of Understanding Between The City Of Newman And The Operating Engineers Local No. 3 Safety Bargaining Group.
  - e. Consider Approval Of The HOME Sub-Recipient Agreement For Fiscal Year 2014-2015.
9. **Public Hearings** - None.
10. **Regular Business**
  - a. First Reading And Introduction Of Ordinance No. 2014- , Amending Title 1 Administrative, Amending Chapter 1.09 Purchasing System, Of The Newman City Code.

**ACTION:** On Motion By Martina Seconded By Candea, Ordinance No. 2014- , Amending Title 1 Administrative, Amending Chapter 1.09 Purchasing System, Of The Newman City Code Was Introduced By Council Member Martina, And Had Its First Reading By Title Only, By The Following Vote: AYES: Davis, Hutchins, Candea, Martina And Mayor Katen; NOES: None; ABSENT: None; NOT PARTICIPATING: None.

- b. Designation Of Voting Delegate And Alternate Voting Delegate For The League Of California Cities Annual Conference.

**ACTION:** On Motion By Hutchins Seconded By Davis, Mayor Katen Was Designated The Voting Delegate For The 2014 League Of California Cities Annual Conference By The Following Vote: AYES: Davis, Hutchins, Candea, Martina And Mayor Katen; NOES: None; ABSENT: None; NOT PARTICIPATING: None.

- c. Consider Agreement For Renewal And Participation In The Stanislaus Operational Area Organization.

**ACTION:** On Motion By Candea Seconded By Martina, The City Council Authorized The City Manager To Enter Into An Agreement With Stanislaus County Board Of Supervisors And Each Of The Nine Cities Within The County For The Establishment Of And Participation In The Stanislaus Operational Area Organization By The Following Vote: AYES: Davis, Hutchins, Candea, Martina And Mayor Katen; NOES: None; ABSENT: None; NOT PARTICIPATING: None.

## **11. Items From District Five Stanislaus County Supervisor.**

Supervisor DeMartini Informed The Council About The Proposed High Power Transmission Line Project Along I-5 From Tracy To The San Luis Reservoir. DeMartini Reminded Everyone About The West Side Health Summit On August 21<sup>st</sup> And Encouraged Everyone To Send In Their Biggest Loser Team Rosters As Soon As Possible. He Concluded By Noting That The Next West Side Healthcare Taskforce Meeting Would Be In Gustine On August 7<sup>th</sup>.

## **12. Items From The City Manager And Staff.**

City Manager Holland Noted That The Appraisal Of Lucas/Dunkley Property Was In Process. Holland Reported That Staff Was Currently Working With Legal Counsel Regarding Water Rights Related To The Creation Of A Low Impact Development Project That Would Be Used To Clean And Recycle Water. He Mentioned That He And The Mayor Had Recently Met With The Alliance And Indicated That They Will Be More Active On The West Side. Holland Pointed Out That The Last Movie Night Of The Year, *Lego Movie*, Would Be Held On August 9<sup>th</sup>. He Reminded Candidates For City Council That August 8<sup>th</sup> Was The Deadline To Return Candidate Nomination Papers. Holland Mentioned That Flyers Had Been Disseminated Downtown Encouraging People To Come Down To Main Street On The Morning Of August 18<sup>th</sup> To Cheer On Garret Spaulding As He Passes Through Town On His Way To Having His Wish Granted By The Make-A-Wish Foundation.

Chief Richardson Briefly Reviewed Crime Statistical Data And Noted That Crime Rates Have Dropped For A 5<sup>th</sup> Consecutive Year.

Public Works Director Kim Reviewed A Presentation That Illustrated That The City Of Newman's Past And Current Water Use And Noted That Water Usage Is Down During The Current Drought Conditions.

City Planner Ocasio Noted The City Staff Had Submitted An Active Transportation Grant Application To StanCOG For Pedestrian Railroad Crossing Improvements.

Recreation Coordinator House Reviewed A Presentation Pertaining To The Proposed Skate Plaza Project.

### **13. Items From City Council Members.**

Council Member Hutchins Mentioned That The Under Age Twelve Boys Baseball All-Star Team Had Recently Won A Second Tournament.

Council Member Martina Inquired About The Status Of The New Code Enforcement Officer.

Chief Richardson Noted That A Candidate For The Code Enforcement Officer Position Was In Background.

Council Member Martina Asked For An Update Status Of The L.J. Newman Memorial Center Renovations.

City Planner Ocasio Noted That The Project Will Be Going To Bid Soon.

Council Member Martina Questioned Who Is Responsible For Issuing Fines Related To Water Restrictions.

Public Works Director Kim Indicated That The State May Begin Issuing Fines For Water Related Violators.

Mayor Katen Noted That He Liked The Skate Plaza Plans And That He Thinks It's A Great Idea. Katen Mentioned That Carlos Yamzon Executive Director Of StanCOG had Invited Him To Attend A Valley Vision Trip To Washington D.C. He Indicated That He Would Be Attending The California League Of Cities Annual Conference. Katen Concluded By Stating That The City Employee Luncheon Was A Great Event And That He Was Glad He Had Attended.

### **14. Adjournment.**

**ACTION:** On Motion By Hutchins Seconded By Candea, The Meeting Was Adjourned At 7:39 P.M. By The Following Vote: AYES: Davis, Hutchins, Candea, Martina And Mayor Katen; NOES: None; ABSENT: None; NOT PARTICIPATING: None.

**SECOND READING OF ORDINANCE NO. 2014- AMENDING TITLE 1 ADMINISTRATIVE,  
CHAPTER 1.09 CITY PURCHASING SYSTEM-OF THE NEWMAN CITY CODE**

**RECOMMENDATION:**

It is recommended that City Council:

- (1) Hold a Public Hearing and accept any comments offered by the Public; and
- (2) Adopt Ordinance No. 2014- , amending Title 1 Administrative, Chapter 1.09 City Purchasing System and authorize Staff to publish a summary of said ordinance.

**BACKGROUND:**

On April 22, 1958, City Council adopted Ordinance No. 205 related to the Purchasing Code. Currently, the City still utilizes the aforementioned purchasing system.

Staff has undertaken the task of analyzing the existing policies and procedures of several comparable local cities to assess the need for updating the City's existing Purchasing Code. The City's existing Purchasing Code doesn't have exemptions from bidding procedure reflecting the special circumstances such as specialized Operations and Maintenance (O&M) services or an emergency. An added provision associated with exemptions in the current Purchasing Code will provide clear guidance and instructions for City staff to utilize the purchasing system in a more comprehensive manner.

In an effort to improve operational efficiency, staff recommends a provision related to exemptions from bidding procedure be added to reflect changing economic conditions and rising costs of O&M of the city facilities.

*During the July 22, 2014 City Council meeting, the Council unanimously voted to introduce this Ordinance and waive the first reading except by title.*

**ANALYSIS:**

In accordance with the current city code, purchases and contracts for supplies and equipment of estimated value great than \$20,000 shall be by written contract with the lowest responsible bidder pursuant to the procedure prescribed in the Newman City Code Chapter 1.09 City Purchasing System.

In order to improve the City's existing Purchasing Code and reflect changing economic conditions and rising costs of O&M of the city facilities, several comparable local cities' Purchasing Codes have been checked, and the City attorney has also reviewed the current City Code and provided input. Therefore, City staff recommends adding the following provision:

Exemptions from Bidding Procedure – Bidding procedures are not required under the following circumstances regardless of the amount involved:

- A. When an emergency requires that an order be placed with the nearest available source of supply;
- B. When the commodity can be obtained from only one vendor;
- C. For contracts involving the obtaining of professional or specialized skill, such as, but not limited to, services rendered by attorneys, engineers, accountants, and specialized consultants;
- D. Where calling for bids on a competitive basis in the opinion of the Purchasing Officer is undesirable, impossible, unavailing, or incongruous;
- E. When engaged in joint purchasing plans with the State and/or other units of government that have been approved by the Council; or

**Agenda Item: 9.a.**

- F. When the Council shall have adopted a resolution by at least four (4) affirmative votes determining that the best interests of the City are served without compliance with the bid procedure prescribed by this Chapter.

If approved, exemptions from bidding procedure under the said certain circumstances will allow City staff to enter into service agreements and purchase goods and services more efficiently.

*Reminder: The proposed language was developed with the assistance of the City Attorney and is based upon the standards utilized by the City of Turlock.*

**FISCAL IMPACT:**

None

**CONCLUSION:**

The proposed changes have been developed with the assistance of the City Attorney and her experience in the City of Turlock. The revisions are designed to provide staff exemptions from the bidding process under specific conditions and help create a more simplified/efficient process under extenuating circumstances. Therefore, Staff recommends that City Council (1) Conduct a Public Hearing and accept comment(s) from members of the public, (2) Approve Ordinance No. 2014- , amending Title 1 Administrative , Chapter 1.09 City Purchasing System and authorize Staff to publish a summary of said ordinance.

**ATTACHMENTS:**

1. Ordinance No. 2014- amending Title 1 Administrative, Chapter 1.09 City Purchasing System
2. Attachment A – Title 1 Administrative, Chapter 1.09 City Purchasing System with revisions

Respectfully submitted,



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Michael Holland  
City Manager

**ORDINANCE NO. 2014-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWMAN, CALIFORNIA,  
AMENDING TITLE 1 ADMINISTRATIVE, CHAPTER 1.09 CITY PURCHASING SYSTEM-  
OF THE NEWMAN CITY CODE**

WHEREAS, Newman City staff have undertaken an analysis of the need to update existing Municipal Code provisions related to the purchasing system including a review of the policies and procedures of several comparable municipalities; and

WHEREAS, an addition to the purchasing system is needed to reflect changing economic conditions and rising costs of operations and maintenance of the city facilities; and

WHEREAS, an addition to the purchasing system is needed to provide clear guidance for staff to utilize the purchasing system in a more comprehensive manner; and

WHEREAS, City Attorney has reviewed and provided input regarding the proposed change; and

WHEREAS, the City of Newman held a Public Hearing on August 5, 2014 as noticed, to allow the City Council to hear and consider all protests and objections concerning the proposed City Purchasing System ordinances; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newman DOES HEREBY RESOLVE as follows:

1. The above recitals are all true and correct.
2. That Title 1 of the Newman City Code be amended as stated in Attachment "A", attached hereto and made a part hereof by this reference.
3. All other sections and provisions of Title 1 shall remain in full force and effect.
4. This Ordinance shall take effect 30 days after the date of its adoption, and prior to the expiration of 15 days from the passage thereof shall be published at least once in the West Side Index, a newspaper of general circulation, published and circulated in the City of Newman and thenceforth and thereafter the same shall be in full force and effect.

Introduced at a regular meeting of the City Council of the City of Newman held on the 22<sup>nd</sup> day of July, 2014 by Council Member Martina and adopted at a regular meeting of said City Council held on the 12<sup>th</sup> day of August, 2014 by the following vote:

AYES:  
NOES:  
ABSENT:

APPROVED:

ATTEST:

\_\_\_\_\_  
Mayor of the City of Newman

\_\_\_\_\_  
Deputy City Clerk of the City of Newman

**ATTACHMENT "A"**  
**CITY OF NEWMAN MUNICIPAL CODE**  
**Chapter 1.09**  
**CITY PURCHASING SYSTEM**

Revised sections are highlighted and underlined.

Sections:

- 1.09.010 Adoption of purchasing system.
- 1.09.020 Purchasing Officer.
- 1.09.030 Exemptions from centralized purchasing.
- 1.09.040 Purchase procedures.
- 1.09.050 Encumbrance of funds.
- 1.09.060 Formal contract procedure.
- 1.09.070 Open market procedure.
- 1.09.080 Inspection and testing.
- 1.09.090 Exemptions from bidding procedure

**1.09.010 Adoption of purchasing system.**

In order to establish efficient procedures for the purchase of supplies and equipment, to secure for the City supplies and equipment at the lowest possible cost commensurate with quality needed, to exercise positive financial control over purchases, to clearly define authority for the purchasing function and to assure the quality of purchases, a purchasing system is hereby adopted.

**1.09.020 Purchasing Officer.**

There is hereby created the position of Purchasing Officer. He/she shall be appointed by the City Manager. The duties of Purchasing Officer may be combined with those of any other office or position. The Purchasing Officer shall have authority to:

- A. Purchase or contract for supplies and equipment required by any using agency in accordance with purchasing procedures prescribed by this chapter, such administrative regulative regulations as the Purchasing Officer shall adopt and such other rules and regulations as shall be prescribed by the City Council.
- B. Negotiate and recommend execution of contracts for the purchase of supplies and equipment.
- C. Act to procure for the City the needed quality in supplies and equipment at least expense to the City.
- D. Discourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases.
- E. Prepare and recommend to the City Council rules governing the purchase of supplies and equipment for the City.

F. Prepare and recommend to the City Council revisions and amendments to the purchasing rules.

G. Keep informed of current developments in the field of purchasing, prices, market conditions and new products.

H. Prescribe and maintain such forms as are reasonably necessary to the operation of this chapter and other rules and regulations.

I. Supervise the inspection of all supplies and equipment purchased to insure conformance with specifications.

J. Recommend the transfer of surplus or unused supplies and equipment between departments as needed and the sale of all supplies and equipment which cannot be used by any agency or which have become unsuitable for City use.

K. Maintain a bidders' list, vendors' catalog file and records needed for the efficient operation of the Purchasing Department. (Ord. 2006-4 § 1(1), 8-22-2006)

#### **1.09.030 Exemptions from centralized purchasing.**

The Purchasing Officer may authorize, in writing, any department to purchase or contract for specified supplies and equipment independently of the Purchasing Department, but he shall require that such purchases or contracts shall be made in conformity with the procedures established by this chapter, and shall further require periodic reports from the agency on the purchases and contracts made under such written authorization. (Ord. 2006-4 § 1(2), 8-22-2006)

#### **1.09.040 Purchase procedures.**

A. Requisitions. Using departments shall submit requests for supplies and equipment to the Purchasing Officer by standard requisition forms.

B. Bidding. Purchases of supplies and equipment shall be by bid procedures pursuant to NCC 1.09.060 and 1.09.070, unless exempted therefrom pursuant to NCC 1.09.090.

C. Purchase Orders. Purchases of supplies and equipment shall be made only by purchase order when purchases exceed \$500.00 per order. Purchase orders should be created prior to order placement. (Ord. 2007-4 § 1, 6-26-2007; Ord. 2006-4 § 1(3), 8-22-2006)

#### **1.09.050 Encumbrance of funds.**

Except in cases of emergency, the Purchasing Officer shall not issue any purchase order for supplies or equipment unless there exists an unencumbered appropriation in the fund account against which said purchase is to be charged. (Ord. 205, 4-22-1958)

#### **1.09.060 Formal contract procedure.**

Except as otherwise provided herein, purchases and contracts for supplies and equipment of estimated value greater than \$20,000 shall be by written contract with the lowest responsible bidder pursuant to the procedure prescribed herein.

A. Notice Inviting Bids. Notices inviting bids shall include a general description of the articles to be purchased, shall state where bid blanks and specifications may be secured, and the time and place for opening bids.

1. Published Notice. Notice inviting bids shall be published at least 10 days before the date of opening of the bids. Notice shall be published at least once in a newspaper of general circulation, printed and published in the City, or if there is none, it shall be posted in at least three public places for posting public notices.

2. Bidders' List. The Purchasing Officer shall also solicit sealed bids from all responsible prospective suppliers whose names are on the bidders' list or who have requested their names to be added thereto.

3. Bulletin Board. The Purchasing Officer shall also advertise pending purchases by a notice posted on a public bulletin board in the City Hall.

B. Bidder's Security. When deemed necessary by the Purchasing Officer, bidder's security may be prescribed in the public notices inviting bids. Bidders shall be entitled to return of bid security; provided, that a successful bidder shall forfeit his bid security upon refusal or failure to execute the contract within 10 days after the notice of award of contract has been mailed, unless the City is responsible for the delay. The City Council may, on refusal or failure of the successful bidder to execute the contract, award it to the next lowest bidder; the amount of the lowest bidder's security shall be applied by the City to the difference between the low bid and the second lowest bid, and the surplus, if any, shall be returned to the lowest bidder.

C. Bid Opening Procedure. Sealed bids shall be submitted to the Purchasing Officer and shall be identified as bids on the envelope. Bids shall be opened in public at the time and place stated in the public notices. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than 30 calendar days after the bid opening.

D. Rejection of Bids. In its discretion, the City Council may reject any and all bids presented and re-advertise for bids.

E. Award of Contracts. Contracts shall be awarded by the City Council to the lowest responsible bidder except as otherwise provided herein in this Chapter.

F. Tie Bids. If two or more bids received are for the same total amount or unit price, quality and service being equal and if the public interest will not permit the delay of re-advertising for bids, the City Council may accept the one it chooses or accept the lowest bid made by negotiation with the tie bidders at the time of the bid opening.

G. Performance Bonds. The City Council shall have authority to require a performance bond before entering a contract in such amount as it shall find reasonably necessary to protect the best interests of the City. If the City Council requires a performance bond, the form and amount of the bond shall be described in the notice inviting bids.

H. Local Business Preference. In evaluating competitive bids, the Council shall determine the lowest responsible bidder, and any local bidder may be granted a preference in an amount equal to one percent of the lowest responsible bid, if that low bid has been submitted by a nonlocal bidder. If, after the deduction of the one percent preference from a local bidder's bid, it is equal to or less than the lowest bid, the bid should be awarded to the local bidder. (Ord. 2006-4 § 1(4), 8-22-2006; Ord. 77-25, 9-1977; Ord. 205, 4-22-1958)

#### **1.09.070 Open market procedure.**

Purchases of supplies and equipment of an estimated value in the amount of \$20,000 or less may be made by the Purchasing Officer in the open market without observing the procedure prescribed by NCC 1.09.060, unless exempted therefrom pursuant to NCC 1.09.090.

A. Minimum Number of Bids. Open market purchases shall, wherever possible, be based on at least three bids, and shall be awarded to the lowest responsible bidder.

B. Notice Inviting Bids. The Purchasing Officer shall solicit bids by written requests to prospective vendors, by telephone, and by public notice posted on a public bulletin board in the City Hall.

C. Written Bids. Sealed written bids shall be submitted to the Purchasing Officer who shall keep a record of all open market orders and bids for a period of one year after the submission of bids or the placing of orders. These records, while so kept, shall be open to public inspection. (Ord. 2006-4 § 1(5), 8-22-2006; Ord. 77-25, 9-1977; Ord. 205, 4-22-1958)

#### **1.09.080 Inspection and testing.**

The Purchasing Officer shall inspect supplies and equipment delivered to determine their conformance with the specifications set forth in the order or contract. The Purchasing Officer shall have authority to require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with specifications. (Ord. 205, 4-22-1958)

#### **1.09.090 Exemptions from bidding procedure.**

Bidding procedures are not required under the following circumstances regardless of the amount involved:

A. When an emergency requires that an order be placed with the nearest available source of supply;

B. When the commodity can be obtained from only one vendor;

C. For contracts involving the obtaining of professional or specialized skill, such as, but not limited to, services rendered by attorneys, engineers, accountants, and specialized consultants;

D. Where calling for bids on a competitive basis in the opinion of the Purchasing Officer is undesirable, impossible, unavailing, or incongruous;

E. When engaged in joint purchasing plans with the State and/or other units of government that have been approved by the Council; or

F. When the Council shall have adopted a resolution by at least four (4) affirmative votes determining that the best interests of the City are served without compliance with the bid procedure prescribed by this Chapter.

**HOLD A PUBLIC HEARING AND APPROVE A RESOLUTION AUTHORIZATING THE CITY  
MANAGER TO EXECUTE A POWER PURCHASE AGREEMENT WITH SOLARCITY  
CORPORATION FOR THE SOLAR PROJECT AT THE WASTE WATER TREATMENT PLANT**

**RECOMMENDATION:**

It is recommended that City Council:

1. Hold a public hearing regarding entering into a 20-year solar power service agreement.
2. Adopt Resolution No. 2014- , Approving a 20-year Solar Power Purchase Agreement (PPA) with SolarCity Corporation (SolarCity) and Authorize the City Manager to execute the PPA and associated documents.

**BACKGROUND:**

Energy costs are continually increasing from year to year. These increases in costs, over the long term, can cause an increase in utility service rates to our residents. In an effort to reduce and control these costs over the long term, the City has reviewed two feasibility studies on Solar Power.

Of the two studies, City staff has found that SolarCity's 20-year Power Purchase Agreement (PPA) program was the better option. As part of the feasibility study, SolarCity completed an audit of the City's energy use at the Waste Water Treatment Plant (WWTP) and provided the City with a detailed energy saving plan.

SolarCity is a large, publicly traded company dealing primarily in residential and commercial sized solar energy systems and has a successful history with other public agencies. The proposed solar project presents the City with an opportunity to support clean energy production; which is an excellent pairing with our farming operations at our City's Wastewater facility.

**ANALYSIS:**

The proposed solar project has several benefits to the City:

- The project is environmentally friendly; shows the City is working towards using clean energy.
- The solar panel system generates low cost electricity during PG&E's highest peak-rate periods.
- The City's Wastewater Treatment Plant daytime electrical costs will be at a fixed low rate (\$0.11 kWh) for 20-years; while PG&E's costs will most likely continue to rise over time.
- The City will not own the solar panel system and will not be responsible for any costs associated with the operation and maintenance of the panels or equipment.
- The PPA includes a Performance Guarantee Agreement; which guarantees a proposed saving regardless of weather conditions and/or system underperformance issues during the contract period.

The City currently spends approximately \$234k/yr. on energy at the WWTP. The proposed project would provide the City an excellent opportunity to realize energy savings estimated at \$100k in the first year. As PG&E's rates rise in the future, our rates will remain fixed and the savings will be greater.

Under this agreement, the City will purchase all the electricity generated from the solar panels at \$0.11/kWh. We will use what we need at our WWTP and any excess electricity will be metered and sent to the power grid; where PG&E will credit us at a higher rate for any excess power produced. This is a common practice.

The City will bear no capital cost for design and installation of the solar panel system.

At the end of the contract period, the City has several options including: extending the agreement, buying out SolarCity at the fair market value, or having SolarCity remove the solar facility, at no cost to the City.

The PPA has been reviewed and approved by the City Attorney.

**FISCAL IMPACT:**

Total expected Sewer Operations Fund saving during the 20-year contract term is over \$4.4 Million.

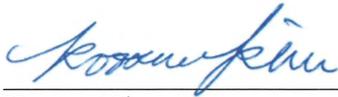
**CONCLUSION:**

The City currently owns electrical and clean burning CNG vehicles and has an award winning sewer reclamation facility at our Waste Water Treatment plant. The proposed Power Purchase Agreement provides the City another excellent opportunity to show our efforts to be environmentally friendly, while realizing a real cost savings and keeping our utility rates low as possible.

**ATTACHMENTS:**

1. Resolution No. 2014- , Approving a 20-year Power Purchase Agreement (PPA) with SolarCity for the Solar Project and authorize the City Manager to execute Associated Documents
2. SolarCity Power Purchase Agreement (Exhibit A)

Respectfully Submitted,



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Koosun Kim  
Director of Public Works

**REVIEWED/CONCUR:**



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Michael E. Holland  
City Manager

**RESOLUTION NO. 2014-**

**A RESOLUTION APPROVING A POWER PURCHASE AGREEMENT WITH SOLARCITY CORPORATION AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT FOR A SOLAR PROJECT AT THE WASTE WATER TREATMENT PLANT**

WHEREAS, the CITY OF NEWMAN, herein after referred as "CITY" and SOLARCITY CORPORATION, herein after referred as "SOLARCITY" have recognized an opportunity on energy cost savings and other benefits from entering into energy service agreement for the proposed solar project at the CITY'S Waste Water Treatment Plant (WWTP); and

WHEREAS, the City held a public hearing on August 12, 2014; allowing the Council to hear and consider all protests and objections concerning the proposed solar project; and

WHEREAS, City staff reviewed two feasibility studies for solar projects and found SolarCity's 20-year Power Purchase Agreement (PPA) program is the most economically feasible option; and

WHEREAS, the City desires to approve the PPA, attached as Exhibit A to this resolution, which would be executed for the solar project; and

WHEREAS, the proposed PPA would authorize the City to purchase all the solar energy generated by the project at the fixed rate (\$0.11 kWh) for the entire term of the contract; and

WHEREAS, the fixed rate cost of the energy would be less than the anticipated cost of other energy that would have been consumed in the absence of these purchases; and

WHEREAS, the City will bear no upfront capital cost for design and installation of the solar system under the proposed PPA; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newman that;

1. Approve a 20-year Power Purchase Agreement (PPA) with SolarCity for the solar project
2. Authorize the City Manager to execute the PPA and associated documents

The foregoing resolution was introduced at a regular meeting of the City Council of the City of Newman held on the 12th day of August, 2014 by \_\_\_\_\_, who moved its adoption, which motion was duly seconded and it was upon roll call carried and the resolution adopted by the following roll call vote:

AYES:  
NOES:  
ABSENT:

APPROVED:

\_\_\_\_\_  
Mayor of the City of Newman

ATTEST:

\_\_\_\_\_  
Deputy City Clerk of the City of Newman



**Solar Power Purchase Agreement (Commercial CA)**

This Solar Power Purchase Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by both Parties and approved by the City Council for the City of Newman (the “**Effective Date**”).

<b>Purchaser:</b>		<b>Seller:</b>	
Name and Address	<b>City of Newman</b> 938 Fresno Street Newman, CA 95360 Attention: Koosun Kim, Public Works Director	Name and Address	<b>SolarCity Corporation</b> 3055 Clearview Way San Mateo, CA 94402 Attention: Legal Department
Phone	(209) 862-4448	Phone	(650) 638-1028
Fax		Fax	(650) 560-6460
E-mail	kkim@cityofnewman.com	E-mail	Contracts@solarcity.com
Facility Ownership	Purchaser owns the Facility		<b>Contractor’s License Numbers</b> CA: CSLB 888104
Project Name	Newman SB 594 Solar Project		

This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electric energy from the solar panel system described in **Exhibit 2** (the “**System**”) and installed at the Purchaser’s facility described in **Exhibit 2** (the “**Facility**”).

The exhibits listed below are incorporated by reference and made part of this Agreement.

- Exhibit 1      Pricing Attachment
- Exhibit 2      System Description, Delivery Point and Premises
- Exhibit 3      Credit Information
- Exhibit 4      General Terms and Conditions (*Revised January 17, 2013*)

**Purchaser: City of Newman**

**SolarCity Corporation**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**Exhibit 1**  
**Pricing Attachment**

1. **Term:** Twenty (20) years, beginning on the Commercial Operation Date.
2. **Additional Terms:** Up to two (2) Additional Terms of five (5) years each.
3. **Environmental Incentives and Environment Attributes Accrue to Seller.**
4. **Contract Price:**

<b>Contract Year</b>	<b>\$/kWh</b>
1	\$0.1100
2	\$0.1100
3	\$0.1100
4	\$0.1100
5	\$0.1100
6	\$0.1100
7	\$0.1100
8	\$0.1100
9	\$0.1100
10	\$0.1100
11	\$0.1100
12	\$0.1100
13	\$0.1100
14	\$0.1100
15	\$0.1100
16	\$0.1100
17	\$0.1100
18	\$0.1100
19	\$0.1100
20	\$0.1100

Includes ACH invoicing. If manual invoicing is required, a \$25 handling charge will be added to each invoice.

5. **Condition Satisfaction Date:** 180 days after the Effective Date
6. **Anticipated Commercial Operation Date:** 270 days after the Effective Date
7. **Outside Commercial Operation Date:** 365 days after the Effective Date
8. **Purchase Option**

<b>End of Contract Year</b>	<b>Option Price*</b>
Buyout after year 6	\$1,860,976
Buyout after year 10	\$1,632,731
Buyout after year 20	Fair Market Value

9. **Termination Value:**

<b>Contract Year</b>	<b>Termination Value</b>
1	\$3,309,984
2	\$2,937,164
3	\$2,448,719
4	\$2,059,228
5	\$1,728,142
6	\$1,390,135
7	\$1,275,247
8	\$1,206,462
9	\$1,134,901
10	\$1,060,422
11	\$982,874
12	\$902,102
13	\$817,941
14	\$730,218
15	\$638,752
16	\$543,353
17	\$443,820
18	\$339,945
19	\$231,505
20	\$118,272

10. **Rebate Variance:** All prices in this Agreement are calculated based on an upfront rebate of \$0. If the actual rebate is lower than calculated, prices will be adjusted pro-rata to reflect the actual rebate received.

**Exhibit 2**

**System Description, Delivery Point and Premises**

1. **System Location (Premises):** 2600 Hills Ferry Road, Newman, California 95360
2. **System Size (DC kW):** 746.7 kW
3. **Expected First Year Energy Production (kWh):** 1,241,762
4. **Expected Structure:** Ground Mount
5. **Expected Module(s):**

<u>Manufacturer/Model</u>	<u>Quantity</u>
Trina Solar:TSM-300PD14	2,489

6. **Expected Inverter(s):**

<u>Manufacturer/Model</u>	<u>Quantity</u>
SolarMax-18MT3 A	32

7. **Includes:**

SolarCity Limited Warranty, installation of a solar energy system (includes: design, engineering, permitting, installation, monitoring, rebate application and paperwork processing for solar energy system), **prevailing wage construction**, and fencing to be erected around the System. SolarCity acknowledges that the System will be located in a 100-year flood plain and has taken that fact into account in its design.

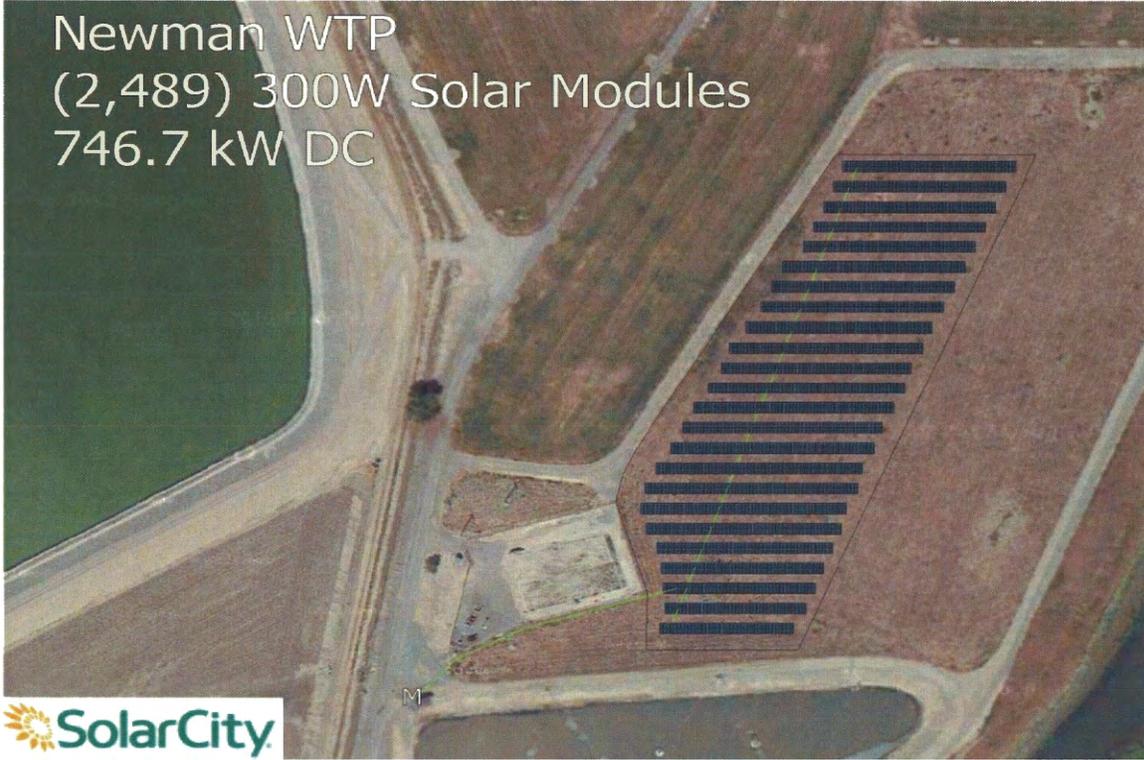
8. **Excludes:**

Unforeseen groundwork (including, but not limited to, excavation/circumvention of underground obstacles), upgrades or repair to customer or Utility electrical infrastructure, payment bonds, performance bonds, tree removal, tree trimming, mowing. “Utility” means the entity authorized to provide Purchaser with retail electric service.

9. **Delivery Point and Premises:** SolarCity shall attach a schematic that contains the:

- (i) Facility;
- (ii) array;
- (iii) Delivery Point; and
- (iv) access points needed to install and service System (bldg access, electrical room, stairs etc.).

Newman WTP  
(2,489) 300W Solar Modules  
746.7 kW DC



**Exhibit 3**

**Credit Information**

Promptly following the execution of this Agreement Purchaser shall supply SolarCity with the following credit information:

<b>APPLICANT'S INFORMATION</b>							
<b>Name</b> City of Newman					<b>Tax ID</b>		
<b>Previous &amp; Other Names</b>					<b>Website</b>		
<b>Corporate Address</b> 938 Fresno Street							
<b>City, State, Zip Code</b> Newman, California 95360							
<b>Phone Number</b> (209) 862-4448				<b>Fax Number</b>			
<b>Entity Type</b> <b>Check One:</b>	<b>S-Corp</b>	<b>C-Corp</b>	<b>Partnership</b>	<b>Sole Prop</b>	<b>LLC</b>	<b>LLP</b>	<b>Other</b>
<b>Property Address for Solar Installation</b> 2600 Hills Ferry Road, Newman			<b>State</b> California	<b>Zip Code</b> 95360	<b>Owner Occupied?</b> YES		
<b>Property Type</b>		<b>Insurance Agent Name</b>	<b>Agent's Phone</b>	<b>Name of Landlord if Not Owner Occupied</b>			
<b>Information Requested: Please submit the information required below via electronic format to <a href="mailto:commericalcredit@solarcity.com">commericalcredit@solarcity.com</a>.</b>							
<u>Corporate Records</u>  <input type="checkbox"/> Copy of Articles of Incorporation, Partnership Agreement, Fictitious Name Statement or Organizational Formation Documents (if applicable).							
<u>Financial Statements</u>  <input type="checkbox"/> Last three (3) years of CPA audited, reviewed, compiled statements (Balance Sheet, Income Statement, Cash Flow).							
SolarCity may request that you provide additional documentation to complete the credit evaluation process. SolarCity will notify you if additional information is required.							

The above information and any information attached is furnished to SolarCity and its affiliates ("Lender") in connection with the Application of credit for which you may apply or credit you may guarantee. You acknowledge and understand that the Lender is relying on this information in deciding to grant or continue credit or to accept a guarantee of credit. You represent, warranty and certify that the information provided herein is true, correct and complete. The Lender is authorized to make all inquires deemed necessary to verify the accuracy of the information contained herein and to determine your creditworthiness. You authorize any person or consumer-reporting agency to give the Lender any information it may have about you. You authorize the Lender to answer questions about its credit experience with you. Subject to any non-disclosure agreement between you and Lender, this form and any other information given to the Lender shall be the Lender's property.

If your application for business credit is denied you have the right to a written statement of the specific reason for the denial. To obtain the statement, please contact SolarCity at (650) 638-1028, San Mateo, CA 94402. You must contact us within 60 days from date you are notified of our decision. We will send you a written statement of reasons for the denial within 30 days of receiving your request.

NOTICE: The Federal Equal Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status or age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance programs; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Office of the Comptroller of the Currency, Customer Assistance Unit, 1301 McKinney Street, Suite 3450, Houston, Texas 77010-9050. SolarCity is an equal opportunity lender.

Signature

Title

Date

## Exhibit 4

### **Solar Power Purchase Agreement General Terms and Conditions**

*Revised January 17, 2013*

1. **Definitions and Interpretation:** Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and (d) the words “include,” “includes” and “including” mean include, includes and including “without limitation.” The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
  
2. **Purchase and Sale of Electricity.** Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electric energy generated by the System during the Initial Term and any Additional Term (as defined in **Exhibit 1**, and collectively the “Term”). Electric energy generated by the System will be delivered to Purchaser at the delivery point identified on **Exhibit 2** (the “Delivery Point”). Purchaser shall take title to the electric energy generated by the System at the Delivery Point, and risk of loss will pass from Seller to Purchaser at the Delivery Point. Purchaser may purchase electric energy for the Facility from other sources if the Purchaser's electric requirements at the Facility exceed the output of the System.
  
3. **Term and Termination.**
  - a. **Initial Term.** The initial term (“Initial Term”) of this Agreement shall commence on the Commercial Operation Date (as defined below) and continue for the length of time specified in **Exhibit 1**, unless earlier terminated as provided for in this Agreement. The “Commercial Operation Date” is the date Seller gives Purchaser written notice that the System is mechanically complete and capable of providing electric energy to the Delivery Point. Upon Purchaser’s request, Seller will give Purchaser copies of certificates of completion or similar documentation from Seller’s contractor and the interconnection or similar agreement with the Utility. This Agreement is effective as of the Effective Date and Purchaser’s failure to enable Seller to provide the electric energy by preventing it from installing the System or otherwise not performing shall not excuse Purchaser’s obligations to make payments that otherwise would have been due under this Agreement.
  
  - b. **Additional Terms.** If Purchaser has not exercised its option to purchase the System by the end of the Initial Term, either Party may give the other Party written notice of its desire to extend this Agreement on the terms and conditions set forth herein for the number and length of additional periods specified in **Exhibit 1** (each an “Additional Term”). Such notice shall be given, if at all, not more than one hundred twenty (120) and not less than sixty (60) days before the last day of the Initial Term or the then current Additional Term, as applicable. The Party receiving the notice requesting an Additional Term shall respond positively or negatively to that request in writing within thirty (30) days after receipt of the request. Failure to respond within such thirty (30) day period shall be deemed a rejection of the offer for an Additional Term. If both Parties agree to an Additional Term, the Additional Term shall begin immediately upon the conclusion of the Initial Term or the then current term on the same terms and conditions as set forth in this Agreement. If the Party receiving the request for an Additional Term rejects or is deemed to reject the first Party’s offer, this Agreement shall terminate at the end of the Initial Term (if the same has not been extended) or the then current Additional Term.
  
4. **Billing and Payment.**
  - a. **Monthly Charges.** Purchaser shall pay Seller monthly for the electric energy generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in **Exhibit 1** (the “Contract Price”). The monthly payment for such energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of energy generated during the applicable month, as measured by the System meter.
  
  - b. **Monthly Invoices.** Seller shall invoice Purchaser monthly, either manually or through ACH. Such monthly invoices shall state (i) the amount of electric energy produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement and (iii) the total amount due from Purchaser.

- c. **Taxes.** Purchaser shall either pay or reimburse Seller for any and all taxes assessed on the generation, sale, delivery or consumption of electric energy produced by the System or the interconnection of the System to the Utility's electric distribution system, including property taxes on the System; provided, however, Purchaser will not be required to pay or reimburse Seller for any taxes during periods when Seller fails to deliver electric energy to Purchaser due to the action or omission of Seller. For purposes of this Section 4(d), "Taxes" means any federal, state and local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges, but shall not include any income taxes or similar taxes imposed on Seller's revenues due to the sale of energy under this Agreement, which shall be Seller's responsibility.
- d. **Payment Terms.** All amounts due under this Agreement shall be due and payable net thirty (30) days from receipt of invoice. Any undisputed portion of the invoice amount not paid within the thirty (30) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) over the Prime Rate (but not to exceed the maximum rate permitted by law).

## 5. **Environmental Attributes and Environmental Incentives.**

Unless otherwise specified on Exhibit 1, Seller is the owner of all Environmental Attributes and Environmental Incentives and is entitled to the benefit of all Tax Credits, and Purchaser's purchase of electricity under this Agreement does not include Environmental Attributes, Environmental Incentives or the right to Tax Credits or any other attributes of ownership and operation of the System, all of which shall be retained by Seller. Purchaser shall cooperate with Seller in obtaining, securing and transferring all Environmental Attributes and Environmental Incentives and the benefit of all Tax Credits, including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Attributes, Environmental Incentives and Tax Credits. Purchaser shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. If any Environmental Incentives are paid directly to Purchaser, Purchaser shall immediately pay such amounts over to Seller. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, Purchaser, if engaged in commerce and/or trade, shall submit to Seller for approval any press releases regarding Purchaser's use of solar or renewable energy pursuant to this Agreement and shall not submit for publication any such releases without the written approval of Seller. Approval shall not be unreasonably withheld, and Seller's review and approval shall be made in a timely manner to permit Purchaser's timely publication.

"**Environmental Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives and Tax Credits. Purchaser and Seller shall file all tax returns in a manner consistent with this Section 5. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, investment credits, emissions allowances, green tags, tradeable renewable credits and Green-e® products.

"**Environmental Incentives**" means any and credits, rebates, subsidies, payments or other incentives that relate to self-generation of electricity, the use of technology incorporated into the System, environmental benefits of using the System, or other similar programs available from the Utility, any other regulated entity, the manufacturer of any part of the System or any Governmental Authority.

"**Governmental Authority**" means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including the Federal Energy Regulatory Commission or the California Public Utilities Commission), or any arbitrator with authority to bind a party at law.

"**Tax Credits**" means any and all (i) investment tax credits, (ii) production tax credits and (iii) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of energy from the System.

6. **Conditions to Obligations.**

a. **Conditions to Seller's Obligations.**

Seller's obligations under this Agreement are conditioned on the completion of the following conditions to Seller's reasonable satisfaction on or before the Condition Satisfaction Date:

- i. Completion of a physical inspection of the Facility and the property upon which the Facility is located (the "Premises") including, if applicable, geotechnical work, and real estate due diligence to confirm the suitability of the Facility and the Premises for the System;
- ii. Approval of (A) this Agreement and (B) the Construction Agreement (if any) for the System by Seller's Financing Parties. "Construction Agreement" as used in this subsection means an agreement between SolarCity and a subcontractor to install the System;
- iii. Confirmation that Seller will obtain all applicable Environmental Incentives and Tax Credits;
- iv. Receipt of all necessary zoning, land use and building permits;
- v. Execution of all necessary agreements with the Utility for interconnection of the System to the Utility's electric distribution system; and
- vi. Prior to Seller commencing construction and installation of the System, Purchaser shall give Seller proof of insurance for all insurance required to be maintained by Purchaser under this Agreement.

b. **Conditions to Purchaser's Obligations.**

- i. Purchaser's obligations under this Agreement are conditioned on the occurrence of the Commercial Operation Date for the System on or before the Outside Commercial Operation Date (See **Exhibit 1**).

c. **Failure of Conditions.**

If any of the conditions listed in subsections a or b above are not satisfied by the applicable dates specified in those subsections, the Parties will attempt in good faith to negotiate new dates for the satisfaction of the failed conditions. If the parties are unable to negotiate new dates then the Party that has not failed to meet an obligation may terminate this Agreement upon ten (10) days written notice to the other Party without liability for costs or damages or triggering a default under this Agreement.

7. **Seller's Rights and Obligations.**

a. **Permits and Approvals.** Seller, with Purchaser's reasonable cooperation, shall use commercially reasonable efforts to obtain, at its sole cost and expense:

- i. any zoning, land use (including the California Environmental Quality Act) and building permits required to construct, install and operate the System; and
- ii. any agreements and approvals from the Utility necessary in order to interconnect the System to the Utility's electric distribution system.

Purchaser shall cooperate with Seller's reasonable requests to assist Seller in obtaining such agreements, permits and approvals.

b. **Standard System Repair and Maintenance.** Seller shall construct and install the System at the Facility in accordance with applicable, prudent solar power generation practices and applicable law. During the Term, Seller will operate and perform all routine and emergency repairs to, and maintenance of, the System at its sole cost and expense, except for any repairs or maintenance resulting from Purchaser's negligence, willful misconduct or breach of this Agreement or the Site Lease (if applicable). Seller monitors the system throughout the Term and compares actual output to expected output. Seller will provide routine, preventative and corrective maintenance and cleaning as necessary to keep the system performing in accordance with prudent, applicable solar power generation practices.

Seller shall not be responsible for any work done by others on any part of the System unless Seller authorizes that work in advance in writing. Seller shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper environmental controls or improper operation or maintenance of the System by anyone other than Seller or Seller's contractors. If the System requires repairs for which Purchaser is responsible, Purchaser shall pay Seller for diagnosing and correcting the problem at Seller or Seller's contractors' then current standard rates. Seller shall provide Purchaser with reasonable notice prior to accessing the Facility to make standard repairs.

- c. **Non-Standard System Repair and Maintenance.** If Seller incurs incremental costs to maintain the System due to conditions at the Facility or due to the inaccuracy of any information provided by Purchaser and relied upon by Seller, the pricing, schedule and other terms of this Agreement will be equitably adjusted to compensate for any work in excess of normally expected work required to be performed by Seller. In such event, the Parties will negotiate such equitable adjustment in good faith.
- d. **Breakdown Notice.** Seller shall notify Purchaser within twenty-four (24) hours following Seller's discovery of (i) any material malfunction in the operation of the System or (ii) an interruption in the supply of electrical energy from the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Purchaser shall notify Seller immediately upon the discovery of an emergency condition affecting the System.
- e. **Suspension.** Notwithstanding anything to the contrary herein, Seller shall be entitled to suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System and such suspension of service shall not constitute a breach of this Agreement; provided, that Seller shall use commercially reasonable efforts to minimize any interruption in service to the Purchaser.
- f. **Use of Contractors and Subcontractors.** Seller shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement. However, Seller shall continue to be responsible for the quality of the work performed by its contractors and subcontractors. If a list of pre-approved contractors and subcontractors is desired, such list shall be scheduled on an appendix to this Exhibit. All contractors and subcontractors, other than those that may be scheduled on an appendix to this Exhibit, shall be subject to Purchaser's prior written consent, not to be unreasonably withheld and shall be obligated to comply with this Agreement to extent this Agreement applies to the performance of such contractors' and subcontractors' work.
- g. **Liens and Payment of Contractors and Suppliers.** Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement and shall keep the Facility free and clear of any liens related to such charges, except for those liens which Seller is permitted by law to place on the Facility following non-payment by Purchaser of amounts due under this Agreement. Seller shall indemnify Purchaser for all claims, losses, damages, liabilities and expenses (including reasonable attorneys' fees) resulting from any liens filed against the Facility or the Premises in connection with such charges; provided, however, that Seller shall have the right to contest any such lien, so long as it provides a statutory bond or other reasonable assurances of payment that either remove such lien from title to the Facility and the Premises or that assure that any adverse judgment with respect to such lien will be paid without affecting title to the Facility and the Premises.
- h. **Separate Warranty.**
  - i. The Limited Warranty that SolarCity will provide to Purchaser is a separate contract from this Agreement. No rights provided to Purchaser by the Limited Warranty may be asserted under this Agreement. No warranty is made in this Agreement. Therefore, any warranty claim must be made independently of this Agreement under the Limited Warranty and will not affect Purchaser's obligations under this Agreement.
  - ii. NO WARRANTY OR REMEDY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY UNDER THIS AGREEMENT. The remedies set forth in this Agreement shall be Purchaser's sole and exclusive remedies for any claim or liability arising out of or in connection with this Agreement, whether arising in contract, tort (including negligence), strict liability or otherwise.

## 8. Purchaser's Rights and Obligations.

- a. **Facility Access Rights.** Purchaser grants to Seller and to Seller's agents, employees and contractors an irrevocable non-exclusive license running with the Premises (the "**License**") for access to, on, over, under and across the Premises for the purposes of (a) installing, constructing, operating, owning, maintaining, accessing, removing and replacing the System; (b) performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement; and (c) installing, using and maintaining electric lines and equipment, including inverters and meters, necessary to interconnect the System to Purchaser's electric system at the Facility and/or to the Utility's electric distribution system or that otherwise may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance or repair of the System. Seller shall notify Purchaser prior to entering the Facility except in situations where there is imminent risk of damage to persons or property. The term of the License shall continue until the date that is one hundred and twenty (120) days following the date of expiration or termination of this Agreement (the "**License Term**"). During the License Term, Purchaser shall ensure that Seller's rights under the License and Seller's access to the Premises are preserved and protected and shall not interfere with or permit any third parties to interfere with such rights or access. The grant of the License shall survive termination of this agreement by either Party. Purchaser agrees that Seller, upon request to Purchaser, may record a memorandum of license in the land records respecting the License in form and substance reasonably acceptable to the Parties. Subject to Seller's rights under this Agreement, Purchaser retains the right to use and access the Premises and to inspect the System provided that Purchaser provides Seller with reasonable (not less than two (2) business days) prior notice of Purchaser's desire to inspect the System and all such inspections, use and access (1) do not adversely affect Seller's activities or the System, and (2) comply with Seller's safety protocols relative to the System.
- b. **OSHA Compliance.** Both parties shall ensure that all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws or codes are adhered to in their performance under this Agreement.
- c. **Maintenance of Facility.** Purchaser shall, at its sole cost and expense, maintain the Facility in good condition and repair. Purchaser will ensure that the Facility remains interconnected to the local utility grid at all times and will not permit cessation of electric service to the Facility from the local utility. Purchaser is fully responsible for the maintenance and repair of the Facility's electrical system and of all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall properly maintain in full working order all of Purchaser's electric supply or generation equipment that Purchaser may shut down while utilizing the System. Purchaser shall promptly notify Seller of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System.
- d. **No Alteration of Facility.** Purchaser shall not make any alterations or repairs to the Facility which may adversely affect the operation and maintenance of the System without Seller's prior written consent. If Purchaser wishes to make such alterations or repairs, Purchaser shall give prior written notice to Seller, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone), and give Seller the opportunity to advise Purchaser in making such alterations or repairs in a manner that avoids damage to the System, but, notwithstanding any such advice, Purchaser shall be responsible for all damage to the System caused by Purchaser or its contractors. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs, such work and any replacement of the System after completion of Purchaser's alterations and repairs, shall be done by Seller or its contractors at Purchaser's cost. All of Purchaser's alterations and repairs will be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits.
- e. **Outages.** Purchaser shall be permitted to be off line for a total of forty-eight (48) day light hours (each, a "**Scheduled Outage**") per calendar year during the Term, during which days Purchaser shall not be obligated to accept or pay for electricity from the System; provided, however, that Purchaser must notify Seller in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of a Scheduled Outage. In the event that Scheduled Outages exceed a total of forty-eight (48) day light hours per calendar year or there are unscheduled outages, in each case for a reason other than a Force Majeure event, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during such excess Scheduled Outages or unscheduled outages and shall invoice Purchaser for such amount and any associated lost or recaptured Environmental Incentives and lost sales (and penalties payments associated with the same) of associated Environmental Attributes in accordance with Section 4. For avoidance of doubt, the forty-eight (48) hour period shall include all Scheduled Outage hours allowed under any of the terms of this Agreement, including those undertaken pursuant to Section 8(d).

- f. **Liens.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Purchaser shall immediately notify Seller in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, shall promptly cause the same to be discharged and released of record without cost to Seller, and shall indemnify Seller against all costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim.
- g. **Security.** Purchaser shall be responsible for using commercially reasonable efforts to maintain the physical security of the Facility and the System against known risks and risks that should have been known by Purchaser. Purchaser will not conduct activities on, in or about the Premises or the Facility that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.
- h. **Insolation.** Purchaser understands that unobstructed access to sunlight ("**Insolation**") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not in any way cause and, where possible, shall not in any way permit any interference with the System's Insolation. If Purchaser becomes aware of any activity or condition that could diminish the Insolation of the System, Purchaser shall notify Seller immediately and shall cooperate with Seller in preserving the System's existing Insolation levels. The Parties agree that reducing Insolation would irreparably injure Seller, that such injury may not be adequately compensated by an award of money damages, and that Seller is entitled to seek specific enforcement of this Section 7.h.i(h) against Purchaser.
- i. **Data Line.** Seller shall monitor and record the electric energy generated by the System using Seller-provided cellular service. If such cellular service is unavailable, Seller shall provide a high speed internet data line during the Term to enable Seller to record the electric energy generated by the System. Purchaser shall ensure that data line has connectivity during the term. If for any reason Seller is unable to obtain data using the data line Seller may reasonably estimate the amount of electric energy that was generated and invoice Purchaser for such amount in accordance with Section 4.
- j. **Breakdown Notice.** Purchaser shall notify Seller within twenty-four (24) hours following the discovery by it of (A) any material malfunction in the operation of the System; or (B) any occurrences that could reasonably be expected to adversely affect the System. Purchaser shall notify Seller immediately upon (A) an interruption in the supply of electrical energy from the System; or (B) the discovery of an emergency condition respecting the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.

9. **Change in Law.**

"**Change in Law**" means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation; (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date of this Agreement (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority which in the case of any of (i), (ii) or (iii), establishes requirements affecting owning, supplying, constructing, installing, operating or maintaining the System, or other performance of the Seller's obligations hereunder and which has a material adverse effect on the cost to Seller of performing such obligations; provided, that a change in federal, state, county or any other tax law after the Effective Date of this Agreement shall not be a Change in Law pursuant to this Agreement.

If any Change in Law occurs that has a material adverse effect on the cost to Seller of performing its obligations under this Agreement, then the Parties shall, within thirty (30) days following receipt by Purchaser from Seller of notice of such Change in Law, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller shall have the right to terminate this Agreement without further liability to either Party except with respect to payment of amounts accrued prior to termination.

10. **Relocation of System.**

If Purchaser ceases to conduct business operations at and/or vacates the Facility or is prevented from operating the System at the Facility prior to the expiration of the Term, Purchaser shall have the option to provide Seller with a mutually agreeable

substitute premises located within the same Utility district as the terminated System or in a location with similar Utility rates and Insolation. Purchaser shall provide written notice at least sixty (60) days but not more than one hundred eighty (180) days prior to the date that it wants to make this substitution. In connection with such substitution, Purchaser shall execute an amended agreement that shall have all of the same terms as this Agreement except for the (i) Effective Date; (ii) License, which will be amended to grant rights in the real property where the System relocated to; and (iii) Term, which will be the remainder of the Term of this Agreement and such amended agreement shall be deemed to be a continuation of this Agreement without termination. Purchaser shall also provide any new Purchaser, owner, lessor or mortgagee consents or releases required by Seller or Seller's Financing Parties in connection with the substitute facility. Purchaser shall pay all costs associated with relocation of the System, including all costs and expenses incurred by or on behalf of Seller in connection with removal of the System from the Facility and installation and testing of the System at the substitute facility and all applicable interconnection fees and expenses at the substitute facility, as well as costs of new title search and other out-of-pocket expenses connected to preserving and refinancing the security interests of Seller's Financing Parties in the System. Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during the period of time the System is not in operation due to the relocation and shall invoice Purchaser for such amount and any associated lost or recaptured Environmental Incentives and lost sales (and penalties payments associated with the same) of associated Environmental Attributes in accordance with Section 4. Seller shall remove the System from the vacated Facility prior to the termination of Purchaser's ownership, lease or other rights to use such Facility. Seller will not be required to restore the Facility to its prior condition but shall promptly pay Purchaser for any damage caused by Seller during removal of the System, but not for normal wear and tear. If the substitute facility has inferior Insolation as compared to the original Facility, Seller shall have the right to make an adjustment to Exhibit 1 such that Purchaser's payments to Seller are the same as if the System were located at the original Facility. If Purchaser is unable to provide such substitute facility and to relocate the System as provided, any early termination will be treated as a default by Purchaser.

**11. Removal of System at Expiration.**

Upon the expiration or earlier termination of this Agreement (provided Purchaser does not exercise its purchase option), Seller shall, at its expense, remove all of its tangible property comprising the System from the Facility on a mutually convenient date, but in no event later than ninety (90) days after the expiration of the Term. Excluding ordinary wear and tear, the Facility shall be returned to its original condition including the removal of System mounting pads or other support structures. In no case shall Seller's removal of the System affect the integrity of Purchaser's roof, which shall be as leak proof as it was prior to removal of the System and shall be flashed and/or patched to existing roof specifications. Seller shall leave the Facility in neat and clean order. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser shall have the right, at its option, to remove the System to a public warehouse and restore the Facility to its original condition (other than ordinary wear and tear) at Seller's cost. Purchaser shall provide sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during System removal.

**12. Measurement.**

Electricity delivered to the Facility shall be measured by the SolarGuard monitoring system installed and maintained by Seller as part of the System. Seller shall make the foregoing measurements available to Purchaser,

**13. Default, Remedies and Damages.**

a. **Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below shall be deemed a "**Defaulting Party**" and each event of default shall be a "**Default Event**":

- (1) failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the other Party (the "**Non-Defaulting Party**") of such failure to pay ("**Payment Default**");
- (2) failure of a Party to substantially perform any other material obligation under this Agreement within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that such thirty (30) day cure period shall be extended (but not beyond ninety (90) days) if and to the extent reasonably necessary to cure the Default Event, if (i) the Defaulting Party initiates such cure with the thirty (30) day period and continues such cure to completion and (ii) there is no material adverse affect on the Non-Defaulting Party resulting from the failure to cure the Default Event;

- (3) if any representation or warranty of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
- (4) Purchaser loses its rights to occupy and enjoy the Premises;
- (5) a Party, or its guarantor, becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect (or, if any such actions are initiated by a third party, such action(s) is(are) not dismissed within ninety (90) days); or
- (6) Purchaser prevents Seller from installing the System or otherwise failing to perform in a way that prevents the delivery of electric energy from the System. Such Default Event shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement.

**b. Remedies.**

- (1) **Remedies for Payment Default.** If a Payment Default occurs, the Non-Defaulting Party may suspend performance of its obligations under this Agreement. Further, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including an action for damages and termination of this Agreement, upon an additional five (5) days prior written notice to the Defaulting Party following the Payment Default.
- (2) **Remedies for Other Defaults.** On the occurrence of a Default Event other than a Payment Default, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including an action for damages and termination of this Agreement or suspension of performance of its obligations under this Agreement, upon an additional five (5) days prior written notice to the Defaulting Party following the occurrence of the Default Event. Nothing herein shall limit either Party's right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event. If Purchaser terminates this contract without cause prior to System Installation a \$5,000 design cancellation fee shall also apply in addition to any other remedy available to Seller.
- (3) **Damages Upon Termination by Default.** Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party, the Defaulting Party shall pay a Termination Payment to the Non-Defaulting Party determined as follows (the "**Termination Payment**"):
  - A. **Purchaser.** If Purchaser is the Defaulting Party and Seller terminates this Agreement, the Termination Payment to Seller shall be equal to the sum of (i) the termination value set forth in **Exhibit 1** (the "**Termination Value**") for such Contract Year, (ii) removal costs as provided in **Section 13(b)(3)(C)** and (iii) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Seller. The Parties agree that actual damages to Seller in the event this Agreement terminates prior to the expiration of the Term as the result of an Default Event by Purchaser would be difficult to ascertain, and the applicable Termination Value set forth in **Exhibit 1** is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement. The Termination Payment shall not be less than zero..
  - B. **Seller.** If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser shall be equal to the sum of (i) the present value (using a discount rate of 9.5%) of the excess, if any, of the reasonably expected cost of electric energy from the Utility over the Contract Price for the reasonably expected production of the System for the remainder of the Initial Term or the then current Additional Term, as applicable; (ii) all costs reasonably incurred by Purchaser in re-converting its electric supply to service from the Utility; (iii) any removal costs incurred

by Purchaser, and (iv) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The Termination Payment shall not be less than zero.

C. Obligations Following Termination. If a Non-Defaulting Party terminates this Agreement pursuant to this Section 13(b), then following such termination, Seller shall, at the sole cost and expense of the Defaulting Party, remove the equipment (except for mounting pads and support structures) constituting the System. The Non-Defaulting Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event.

14. **Representations and Warranties.**

a. **General Representations and Warranties.** Each Party represents and warrants to the other the following:

- (1) Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and shall not violate any law; and this Agreement is valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).
- (2) Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.
- (3) Each Party shall comply with applicable law with respect to the use hazardous substances and neither Party shall store hazardous substances on the Premises; provided that the Parties agree that the use of hazardous substances in accordance with applicable law with respect the System does not constitute "storage" of same for purposes of applicable law.
- (4) Neither the execution and delivery of this Agreement by such Party nor the performance by such Party of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which such Party is a party or by which such Party (or, in the case of Purchaser only, the Facility) is bound.
- (5) Each Party shall use reasonable efforts to provide information to the other Party that is accurate in all material respects in connection with this Agreement.

b. **Purchaser's Representations and Warranties.** Purchaser represents and warrants to Seller the following:

- (1) License. Purchaser has title to or a leasehold or other property interest in the Premises. Purchaser has the full right, power and authority to grant the License contained in Section 8(a). Such grant of the License does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Facility and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Facility. If Purchaser does not own the Premises or Facility, Purchaser has obtained all required consents from the owner of the Premises and/or Facility to grant the License and enter into and perform its obligations under this Agreement.
- (2) Intentionally omitted.
- (3) Accuracy of Information. All information provided by Purchaser to Seller, as it pertains to the Facility's physical configuration, Purchaser's planned use of the Facility, and Purchaser's estimated electricity requirements, is accurate in all material respects.
- (4) Purchaser Status. Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.

- (5) No Pool Use. No electricity generated by the System will be used to heat a swimming pool.

15. **System and Facility Damage and Insurance.**

a. **System and Facility Damage.**

- (1) **Seller's Obligations.** If the System is damaged or destroyed (including as a result of third party theft or vandalism) other than by Purchaser's gross negligence or willful misconduct, Seller shall promptly repair and restore the System to its pre-existing condition; provided, however, that if more than fifty percent (50%) of the System is destroyed during the last five (5) years of the Initial Term or during any Additional Term, Seller shall not be required to restore the System, but may instead terminate this Agreement, unless Purchaser agrees (i) to pay for the cost of such restoration of the System or (ii) to purchase the System "AS-IS" at the greater of (A) then current fair market value of the System and (B) the sum of the amounts described in Section 13.b(3)A(i) (using the date of purchase to determine the appropriate Contract Year) and Section 13.b(3)A(iii).
- (2) **Purchaser's Obligations.** If the Facility is damaged or destroyed by casualty of any kind or any other occurrence other than Seller's gross negligence or willful misconduct, such that the operation of the System and/or Purchaser's ability to accept the electric energy produced by the System are materially impaired or prevented, Purchaser shall promptly repair and restore the Facility to its pre-existing condition; provided, however, that if more than 50% of the Facility is destroyed during the last five years of the Initial Term or during any Additional Term, Purchaser may elect either (i) to restore the Facility or (ii) to pay the Termination Payment and all other costs previously accrued but unpaid under this Agreement and thereupon terminate this Agreement.

b. **Insurance Coverage.** At all times during the Term, Seller and Purchaser shall maintain the following insurance:

- i. **Seller's Insurance.** Seller shall maintain (i) property insurance on the System for the replacement cost thereof, (ii) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (iii) employer's liability insurance with coverage of at least \$1,000,000 and (iv) workers' compensation insurance as required by law.
- ii. **Purchaser's Insurance.** Purchaser shall maintain commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

c. **Policy Provisions.** All insurance policies provided hereunder shall (i) contain a provision whereby the insurer agrees to give the party not providing the insurance thirty (30) days (ten (10) days in the event of non-payment of premiums) written notice before the insurance is cancelled, or terminated, (ii) be written on an occurrence basis, (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other party.

d. **Certificates.** Upon the other Party's request each Party shall deliver the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.

e. **Deductibles.** Unless and to the extent that a claim is covered by an indemnity set forth in this Agreement, each Party shall be responsible for the payment of its own deductibles.

**16. Ownership; Option to Purchase.**

- a. **Ownership of System.** Throughout the Term, Seller shall be the legal and beneficial owner of the System at all times, including all Environmental Attributes, and the System shall remain the personal property of Seller and shall not attach to or be deemed a part of, or fixture to, the Facility or the Premises. Each of the Seller and Purchaser agree that the Seller is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Purchaser covenants that it will use commercially reasonable efforts to place all parties having an interest in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on the Facility or the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Purchaser shall provide a disclaimer or release from such lienholder. If Purchaser is the fee owner of the Premises, Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Facility is located. If Purchaser is not the fee owner, Purchaser will obtain such consent from such owner. For the avoidance of doubt, in either circumstance Seller shall file such disclaimer. Upon request, Purchaser agrees to deliver to Seller a non-disturbance agreement in a form reasonably acceptable to Seller from the owner of the Facility (if the Facility is leased by Purchaser), any mortgagee with a lien on the Premises, and other Persons holding a similar interest in the Premises. To the extent that Purchaser does not own the Premises or Facility, Purchaser shall provide to Seller immediate written notice of receipt of notice of eviction from the Premises or Facility or termination of Purchaser's lease of the Premises and/or Facility.
- b. **Option to Purchase.** At the end of the sixth (6th) and tenth (10th) Contract Years and at the end of the Initial Term and each Additional Term, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller on any such date for a purchase price equal to the Fair Market Value of the System. The "**Fair Market Value**" of the System shall be determined by mutual agreement of Purchaser and Seller; provided, however, if Purchaser and Seller cannot agree to a Fair Market Value within thirty (30) days after Purchaser has exercised its option, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System on an installed basis and shall set forth such determination in a written opinion delivered to the Parties; provided that in no event shall the Fair Market Value be less than the aggregate of the amounts calculated under Sections 13(b)(3)(A)(ii) and (iv) as of the date of System title transfer. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. Purchaser must provide a notification to Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable, and the purchase shall be complete prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable. Upon purchase of the System, Purchaser will assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, and Seller shall have no further liabilities or obligations hereunder.

**17. Indemnification and Limitations of Liability.**

- a. **General.** Each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party and the directors, officers, shareholders, partners, members, agents and employees of such other Party, and the respective affiliates of each thereof (collectively, the "**Indemnified Parties**"), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "**Liabilities**") resulting from any third party actions relating to the breach of any representation or warranty set forth in Section 14 and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnified Party. This Section 17(a) however, shall not apply to liability arising from any form of hazardous substances or other environmental contamination, such matters being addressed exclusively by Section 17(c).
- b. **Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a "**Claim**"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and

reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 17(b) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no liability under this Section 17(b) for any Claim for which such notice is not provided if that the failure to give notice prejudices the Indemnifying Party.

c. **Environmental Indemnification.** Seller shall indemnify, defend and hold harmless all of Purchaser's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 17(c)(i)) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors or agents. Purchaser shall indemnify, defend and hold harmless all of Seller's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Seller or any of its contractors or agents. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill or release of any Hazardous Substance.

i. **"Hazardous Substance"** means any chemical, waste or other substance (a) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to the environment, health, safety or welfare, (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.

d. **Limitations on Liability.**

i. **No Consequential Damages.** Neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder even if advised of such.

ii. **Actual Damages.** Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the total payments made (or, as applicable, projected to be made) by Purchaser under this Agreement. The provisions of this Section (17)(d)(ii) shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise. Any action against Seller must be brought within one (1) year after the cause of action accrues.

18. **Force Majeure.**

a. **"Force Majeure"** means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence); and failure of equipment not utilized by or under the control of the Party claiming Force Majeure.

b. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time

for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. The Term shall be extended day for day for each day performance is suspended due to a Force Majeure event.

- c. Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement for amounts delivered to Purchaser or otherwise shall not be excused by a Force Majeure event that impacts Purchaser's ability to make payment.
- d. If a Force Majeure event continues for a period of one hundred (180) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, the Party not claiming the Force Majeure shall have the right to terminate this Agreement without fault or further liability to either Party (except for amounts accrued but unpaid) upon notice to the other Party, which notice shall specify a date not more than 20 days from the date of such notice on which such termination will be effective. No termination payment shall be due or owing under Article 13 for terminations pursuant to this Section 18(d).

## 19. Assignment and Financing.

- a. **Assignment.** This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Seller may, without the prior written consent of Purchaser, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement to any Financing Party, (ii) directly or indirectly assign this Agreement to an affiliate of Seller, (iii) assign this Agreement to any entity through which Seller is obtaining financing or capital for the System and (iv) assign this Agreement to any person succeeding to all or substantially all of the assets of Seller (provided that Seller shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of Seller's obligations hereunder by the assignee). Purchaser's consent to any other assignment shall not be unreasonably withheld if Purchaser has been provided with reasonable proof that the proposed assignee (x) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by this Agreement and (y) has the financial capability to maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.
- b. **Financing.** The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from lenders or third parties (including tax equity or similar investors) ("**Financing Parties**") in connection with the installation, construction, ownership, operation and maintenance of the System. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties; provided, that such changes do not alter the fundamental economic terms of this Agreement. The Parties also agree that Seller may assign this Agreement to the Financing Parties as collateral, and in connection with any such assignment, Purchaser agrees to execute a consent to assignment in customary form and reasonably acceptable to the Financing Parties.

## 20. Confidentiality and Publicity.

- a. **Confidentiality.** If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System or of Purchaser's business ("**Confidential Information**") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of this Agreement. Notwithstanding the above, a Party may provide such Confidential Information to its, officers, directors, members, managers, employees, agents, contractors and consultants (collectively, "**Representatives**"), and affiliates, lenders, and potential assignees of this Agreement (provided and on condition that such potential assignees be bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information), in each case whose access is reasonably necessary to the negotiation and

performance of this Agreement. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of this Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Section 20(a), except as set forth in Section 20(b). All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Section 20(a) by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of a breach of the provision of this Section 20(a). To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 20(a), but shall be in addition to all other remedies available at law or in equity.

- b. **Permitted Disclosures.** Notwithstanding any other provision in this Agreement, neither Party shall be required to hold confidential any information that (i) becomes publicly available other than through the receiving Party, (ii) is required to be disclosed to a Governmental Authority or otherwise under applicable law (including the California Public Records Act) or pursuant to a validly issued subpoena (but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement to the extent permitted by applicable law), (iii) is independently developed by the receiving Party or (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall cooperate with the other Party in efforts to limit the disclosure to the maximum extent permitted by law.

21. **Goodwill and Publicity.** Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall use reasonable efforts to coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement. Purchaser shall notify Seller of Purchaser's intention to issue any official Press Release that discusses, identifies or includes Seller or this Agreement or the substance thereof of the System, which notice shall include the draft of the Press Release that Purchaser intends to issue. The term "Press Release" means any public document prepared by Purchaser or on behalf of (including by its employees or contractors) to be submitted to the media regarding this Agreement or the System, as applicable; provided, however, that Purchaser's responses to requests under the FOIA, internal staff reports, and/or informal responses to questions from other municipalities not released directly to the media shall not constitute a Press Release. Purchaser shall provide the Press Release notice to Seller not less than ten (10) days before the date on which Purchaser intends to issue same. Seller shall have seventy two (72) hours from its receipt of Purchaser's notice to review and comment upon such draft. Purchaser shall use reasonable efforts to consider Seller's reasonable comments and incorporate them into the draft before issuing same. To the extent that Purchaser materially changes any draft Press Release subsequent to providing the required notice to Seller, Purchaser shall re-notify Seller of such change and provide Seller with the updated draft and an additional opportunity to review and comment on same in accordance with this Section 21. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and Environmental Incentives and any related reporting rights.

22. **General Provisions**

- a. **Choice of Law.** The law of the state where the System is located shall govern this Agreement without giving effect to conflict of laws principles.
- b. **Arbitration and Attorneys' Fees.** Any dispute arising from or relating to this Agreement shall be arbitrated in Sacramento, California. The arbitration shall be administered by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures, and judgment on any award may be entered in any court of competent jurisdiction. If the Parties agree, a mediator may be consulted prior to arbitration. The prevailing party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys' fees and costs.
- c. **Notices.** All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to

the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either party may specify in writing. Each party shall deem a document faxed, emailed or electronically sent in PDF form to it as an original document.

- d. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, Section 4 (Representations and Warranties), Section 7(h)(No Warranty), Section 15(b) (Insurance Coverage), Section 17 (Indemnification and Limits of Liability), Section 20 (Confidentiality and Publicity), Section 22(a) (Choice of Law), Section 22 (b) (Arbitration and Attorneys' Fees), Section 22(c) (Notices), Section 22 (g) (Comparative Negligence), Section 22(h) (Non-Dedication of Facilities), Section 22(j) (Service Contract), Section 22(k) (No Partnership) Section 22(l) (Full Agreement, Modification, Invalidity, Counterparts, Captions) and Section 22(n) (No Third Party Beneficiaries).
- e. **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Right of Waiver.** Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time; provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.
- g. **Comparative Negligence.** It is the intent of the Parties that where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.
- h. **Non-Dedication of Facilities.** Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller shall have the right to terminate this Agreement without further liability, and Seller shall remove the System in accordance with Section 11 of this Agreement.
- i. **Estoppel.** Either Party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

- j. **Service Contract.** The Parties intend this Agreement to be a “service contract” within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.
- k. **No Partnership.** No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.
- l. **Full Agreement, Modification, Invalidation, Counterparts, Captions.** This Agreement, together with any Exhibits, completely and exclusively states the agreement of the parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
- m. **Forward Contract.** The transaction contemplated under this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.
- n. **No Third Party Beneficiaries.** Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.

*End of Exhibit 4*



**Solar Power Purchase Limited Warranty Agreement (Commercial)**

This Solar Power Purchase Limited Warranty Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Seller below (the “**Effective Date**”).

<b>Purchaser:</b>		<b>Seller:</b>	
Name and Address	<b>City of Newman</b> 938 Fresno Street Newman, CA 95360 Attention: Koosun Kim, Public Works Director	Name and Address	<b>SolarCity Corporation</b> 3055 Clearview Way San Mateo, CA 94402 Attention: Legal Department
Phone	(209) 862-4448	Phone	(650)638-1028
Fax		Fax	(650)638-1029
Email	kkim@cityofnewman.com	Email	contracts@solarcity.com
Facility Ownership	Purchaser owns the Facility		<b>Contractor’s License Numbers</b> <b>CA: CSLB 888104</b>
Project Name	Newman SB 594 Solar Project		

This Limited Warranty Agreement (this “**Agreement**”) is SolarCity Corporation’s (“**SolarCity**”) agreement to provide installation and other services for the solar panel system(s) (the “**System**”) it will use to sell electric energy to you (the “**Purchaser**”) and to provide a warranty for the System. A description of the System that will be used to sell you electricity is set forth in the Solar Power Purchase Agreement (the “**PPA**”) that you executed with SolarCity. The System will be professionally installed by SolarCity at the address you listed in the PPA. We will refer to the installation location as the “**Premises**” or your “**Facility**.”

When you choose SolarCity, you can be assured that we will stand behind our System and installation with industry-leading warranties. We will professionally install your solar system in a good and workman-like manner and honor our commitment to you to keep your System in good working order. Read below for full details on SolarCity’s Installation Warranty, Use Warranty, Roof Warranty, and Repair Promise. Capitalized terms not otherwise defined herein shall have the meaning set forth in your PPA.

**1. SOLARCITY’S STANDARDS**

For the purpose of this Agreement the standards for SolarCity’s performance will be (i) normal professional standards of performance within the solar photovoltaic power generation industry in the relevant market; and (ii) Prudent Electrical Practices “**Prudent Electrical Practices**” means those practices, as changed from time to time, that are engaged in or approved by a significant portion of the solar energy electrical generation industry operating in the United States to operate electric equipment lawfully and with reasonable safety, dependability, efficiency and economy. For purposes of this Agreement, SolarCity’s performance shall include necessary roof preparation for the installation of the System.

## **2. LIMITED WARRANTIES**

### **(A) LIMITED WARRANTIES**

SolarCity warrants the System as follows:

#### **i. Installation Warranty**

SolarCity will professionally install the System in a good and workman-like manner according to our commitments to you in Section 1. This installation warranty will run for one (1) year following the completion of the System installation.

#### **ii. Use Warranty**

Under normal use and service conditions, the System will be free from defects in workmanship or defects in, or a breakdown of, materials or components during the Warranty Period (as defined below);

#### **iii. Roof Warranty**

If SolarCity penetrates the Facility roof in performing the Installation Services, SolarCity will warrant roof damage it causes as a direct result of these roof penetrations. This roof warranty will run the longer of (A) one (1) year following the completion of the System installation; and (B) the length of any existing installer warranty on the Facility's roof; and

#### **iv. Repair Promise**

During the Warranty Period, SolarCity will repair or replace any defective part, material or component or correct any defective workmanship, at no cost or expense to Purchaser (including all labor costs), when Purchaser submits a valid claim to SolarCity under this Agreement. If we damage your Facility, Property or belongings we will repair the damage we cause or pay you for the damage we cause. SolarCity may use new or reconditioned parts when making repairs or replacements. SolarCity may also, at no additional cost to Purchaser, upgrade or add to any part of the System to ensure that it performs according to the guarantees set forth in this Agreement.

This Agreement will continue from the date SolarCity starts installing the System at your Facility through the longer of (i) the PPA Term (as that term is defined in the PPA); and (ii) ten (10) years (the "Warranty Period") except for the warranties specified in Section 2 (A)(i) and (iii) above, which may have shorter periods. If Purchaser has assumed an existing PPA, then this Agreement will cover Purchaser for the remaining balance of the original Warranty Period.

### **(B) MAINTENANCE AND OPERATION**

#### **i. General**

During the Warranty Period, SolarCity will operate and perform all routine and emergency repairs to and maintenance of the System. SolarCity will provide Purchaser with a copy of SolarCity's Solar Operation and Maintenance Guide. This guide provides Purchaser with System operation and maintenance instructions answers to frequently asked questions, troubleshooting tips and service information.

#### **ii. SolarGuard**

During the Warranty Period, SolarCity will provide Purchaser, at no additional cost, the SolarGuard Monitoring Service ("SolarGuard"). SolarGuard is a proprietary monitoring system designed and installed by SolarCity that

captures and displays historical energy generation data over an Internet connection and consists of hardware located on site and software hosted by SolarCity. The SolarGuard service requires a high speed Internet line to operate. Therefore, during the Warranty Period, Purchaser agrees to maintain the communication link between SolarGuard, the System and the Internet. Purchaser agrees to maintain and make available, at Purchaser's cost, a functioning indoor Internet connection with one available wired Ethernet port and standard AC power outlet within eighty (80) feet of the System's AC/DC inverter(s). This communication link must be a 10/100 Mbps Ethernet connection that supports common internet protocols (TCP/IP and DHCP).

### **(C) MAKING A CLAIM; TRANSFERRING THIS WARRANTY**

#### **i. Claims Process**

Purchaser can make a claim by:

- a) Emailing SolarCity at the email address below;
- b) Writing us a letter and sending it overnight mail with a well-known service; or
- c) Sending us a fax at the number below.

#### **ii. Transferable Limited Warranty**

SolarCity will accept and honor any valid and properly submitted Warranty claim made during the Warranty Period by any person to whom Purchaser properly transfers the PPA.

### **(D) EXCLUSIONS AND DISCLAIMER**

The Warranty does not apply to any repair, replacement or correction required due to the following:

- i. someone other than SolarCity or its approved service providers installed, removed, re-installed or repaired the System;
- ii. Destruction or damage to the System or its ability to safely produce energy not caused by SolarCity or its approved service providers while servicing the System (e.g., a tree falls on the System);
- iii. Purchaser's failure to perform, or breach of, Purchaser's obligations under the PPA (such as if Purchaser modifies or alters the System);
- iv. Purchaser's breach of this Agreement including being unavailable to provide access or assistance to SolarCity in diagnosing or repairing a problem or failing to maintain the System as stated in the Solar Operation and Maintenance Guide;
- v. any Force Majeure Event (as defined below);
- vi. a power or voltage surge caused by someone other than SolarCity including a grid supply voltage outside of the standard range specified by the Utility;
- vii. Any System failure not caused by a System defect (e.g., such as making roof repairs); or
- viii. Theft of the System.

This Agreement gives you specific rights, and Purchaser may also have other rights which vary from state to state. This Agreement does not warrant any specific electrical performance of the System, other than that described above.

The promises in this warranty are the only express warranties made by SolarCity with respect to the System. SolarCity hereby disclaims, and any beneficiary of this Agreement hereby waives any warranty with respect to any cost savings from using the System.

### **3. ADDITIONAL SERVICES**

#### **(A) SCOPE OF ADDITIONAL SERVICES**

Purchaser agrees that if (i) the System needs any repairs that are not the responsibility of SolarCity under this Agreement, (ii) the System needs to be removed and re-installed to facilitate remodeling of the Facility or (iii) the System is being relocated to another Facility pursuant to the PPA (collectively, items (i) - (iii) are

“Additional Services”), Purchaser will have SolarCity, or another similarly qualified service provider, at Purchaser’s expense, perform such repairs, removal and reinstallation, or relocation on a time and materials basis.

**(B) APPROVED SERVICE PROVIDERS**

Purchaser’s retention of a third party to perform Additional Services that is not qualified to perform such Additional Services will void the Warranty. To prevent voiding the Warranty, Purchaser should obtain the written consent of SolarCity prior to engaging a third party to perform Additional Services.

If Purchaser engages a third party service provider to perform Services without the prior consent of SolarCity, Purchaser does so at the risk that SolarCity will subsequently determine such service provider was not qualified to perform the Additional Services.

**(C) PRICING ON ADDITIONAL SERVICES**

Performance of Additional Services by SolarCity will be on a time and materials basis at SolarCity’s then current standard rates.

**4. FORCE MAJEURE**

If SolarCity is unable to perform all or some of its obligations under this Agreement because of a Force Majeure Event, SolarCity will be excused from whatever performance is affected by the Force Majeure Event, provided that:

1. SolarCity, as soon as is reasonably practical, gives Purchaser notice describing the Force Majeure Event;
2. SolarCity’s suspension of its obligations is of no greater scope and of no longer duration than is required by the Force Majeure Event; and
3. No SolarCity obligation that arose before the Force Majeure Event that could and should have been fully performed before such Force Majeure Event is excused as a result of such Force Majeure Event.

“Force Majeure Event” means any event, condition or circumstance beyond the control of and not caused by SolarCity’s fault or negligence. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any governmental authority (provided that such order has been resisted in good faith by all reasonable legal means) the failure to act on the part of any governmental authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products; and failure of equipment not utilized by SolarCity or under its control.

**5. LIMITATIONS ON LIABILITY**

**(A) NO CONSEQUENTIAL DAMAGES**

In no event shall either party or its agents or subcontractors be liable to the other for special, indirect, punitive, exemplary, incidental or consequential damages of any nature. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation may not apply in such states.

## **(B) LIMITATION OF DURATION OF IMPLIED WARRANTIES**

Any implied warranties, including the implied warranties of fitness for particular purpose and merchantability arising under state law, shall in no event extend past this Agreement. Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply in such states.

## **(C) LIMIT OF LIABILITY**

Notwithstanding any other provision of this Agreement to the contrary, SolarCity's total liability arising out of or relating to this Agreement shall in no event:

- i. For System Failure or Replacement: exceed the total of the Purchaser's payments during the previous twelve (12) month period; and
- ii. For damages to your Facility, Property or belongings: exceed three million dollars (\$3,000,000).

## **6. NOTICES**

### **TO SOLARCITY:**

SolarCity Corporation  
3055 Clearview Way  
San Mateo, CA 94402  
Attention: Contracts  
Telephone: (650)638-1028  
Facsimile: (650)638-1029  
Email: [contracts@solarcity.com](mailto:contracts@solarcity.com)

### **TO PURCHASER:**

At the Building address in  
the PPA or any subsequent  
billing address Purchaser gives SolarCity.

All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and shall be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the party identified in this Agreement at the address set forth above or such other address as either party may specify in writing. Each party shall deem a document faxed or sent by electronic mail to it as an original document.

## **7. APPLICABLE LAW/ARBITRATION**

The laws of the state where the Facility is located shall govern this Agreement without giving effect to conflict of laws principles. All claims, disputes and other matters in question, arising out of, or relating to, this Agreement or the breach thereof shall be decided by binding arbitration. Each arbitration, including the selecting of the arbitrator will be administered by JAMS under its Commercial Arbitration Rules. Arbitration will be governed by the Federal Arbitration Act (Title 9 of the U.S. Code). Either party can initiate an arbitration proceeding by filing the necessary forms with JAMS. Venue for any arbitration brought under this Agreement shall be proper in the State of California, County of Sacramento. Each party shall bear its own costs and expenses, including attorneys' fees, with respect to any arbitration. The arbitrator shall have the authority to award any legal or equitable remedy or relief that a court could order or grant. The arbitrator, however, is not authorized to change or alter the terms of this Agreement or to make any award that would extend to any transaction other than this Agreement.

**8. ASSIGNMENT AND TRANSFER OF THIS AGREEMENT**

SolarCity may assign its rights or obligations under this Agreement to a third party without your consent, provided that any assignment of SolarCity's obligations under this Agreement shall be to a party qualified to perform such obligation. This Agreement protects only the party that hosts the System. Purchaser's rights and obligations under this Agreement will be automatically transferred to any party to whom Purchaser properly transfers the PPA.

**9. ENTIRE AGREEMENT; CHANGES**

This Agreement contains the parties' entire agreement regarding the matters set forth herein. SolarCity's obligations under this Agreement are separate and distinct from the obligations of the Seller or its assigns under the PPA. No breach of this Agreement shall affect Purchaser's obligations under the PPA. The PPA may be assigned to a third party without assignment of SolarCity's obligations under this Agreement. Any change to this Agreement must be in writing and signed by both Parties. If any portion of this Agreement is determined to be unenforceable, the remaining provisions shall be enforced in accordance with their terms or shall be interpreted or re-written so as to make them enforceable. Provisions that should reasonably be considered to survive termination of this Agreement shall survive.

**City of Newman**

**SolarCity Corporation**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_





**Performance Guarantee Agreement (PPA)**

This Performance Guarantee Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Seller below (the “**Effective Date**”).

<b>Purchaser:</b>		<b>Seller:</b>	
Name and Address	<b>City of Newman</b> 938 Fresno Street Newman, CA 95360 Attention: Koosun Kim, Public Works Director	Name and Address	<b>SolarCity Corporation</b> 3055 Clearview Way San Mateo, CA 94402 Attention: Contracts
Phone	(209) 862-4448	Phone	(650) 638-1028
Fax		Fax	(650) 560-6460
E-mail	kkim@cityofnewman.com	E-mail	contracts@solarcity.com
Project Name	Newman SB 594 Solar Project		

This Agreement sets forth the terms and conditions of a performance guarantee provided by Seller in conjunction with that certain Solar Power Purchase Agreement by and between Seller and Purchaser dated the same date as this Agreement (the “**PPA**”). All capitalized terms used hereunder shall have the meanings given such terms in the PPA. The term of this Agreement shall be concurrent with the term of the PPA. This Agreement will be updated as necessary by mutual written agreement of the Parties to reflect the as-built specifications of the System.

1. **Warranty.** Seller guarantees that during the term of the PPA the System will generate the guaranteed kilowatt-hours (kWh) (“**Guaranteed kWh**”) of energy set forth as follows:

A. If at the end of each successive sixty (60) month anniversary of the Commercial Operation Date the cumulative Actual kWh (defined below) generated by the System is *less* than the Guaranteed kWh, then Seller will send Purchaser a refund check equal to the difference between the Guaranteed kWh and the cumulative Actual kWh multiplied by the Guaranteed Energy Price per kWh (defined below). Seller will make that payment within thirty (30) days after the end of the relevant calendar year.

B. If at the end of each successive sixty (60) month anniversary of the Commercial Operation Date the Actual kWh is *greater* than the Guaranteed kWh during any sixty (60) month period, this surplus will be carried over and will be used to offset any deficits that may occur in the next true up period.

C. “**Guaranteed kWh**”:

<b>True Up Term Years</b>	<b>Guaranteed kWh</b>
Years 1-5	6,147,032
Years 6-10	5,994,885
Years 11-15	5,846,504
Years 16 -20	5,701,796

D. “**Actual kWh**” means the AC electricity produced by the System in kilowatt-hours measured and recorded by Seller during each successive sixty (60) month anniversary of the Commercial Operation Date. To measure the Actual kWh we will use the SolarGuard™ Monitoring Service or to the extent such services are not available, Seller will estimate the Actual kWh by reasonable means.

E. **“Guaranteed Energy Price per kWh”** means the dollar value per kWh as calculated in the table below:

True Up Term	Guaranteed Energy Price per kWh
Years 1-5	\$0.05
Years 6-10	\$0.06
Years 11-15	\$0.07
Years 16 - 20	\$0.08

2. **Exclusions.** The Warranty does not apply to any repair, replacement or correction required due to the following:

- A. someone other than Seller or its approved service providers installed, removed, re-installed or repaired the System;
- B. Destruction or damage to the System or its ability to safely produce energy not caused by Seller or its approved service providers while servicing the System (e.g., a tree falls on the System);
- C. Purchaser’s failure to perform, or breach of, Purchaser’s obligations under the PPA (such as if Purchaser modifies or alters the System);
- D. Purchaser’s breach of this Agreement including being unavailable to provide access or assistance to Seller in diagnosing or repairing a problem or failing to maintain the System as stated in the Solar Operation and Maintenance Guide;
- E. any Force Majeure Event (as defined below);
- F. a power or voltage surge caused by someone other than Seller including a grid supply voltage outside of the standard range specified by the Utility;
- G. Any System failure not caused by a System defect (e.g., such as making roof repairs); or
- H. Theft of the System.

Seller hereby disclaims, and any beneficiary of this Agreement hereby waives any warranty with respect to any cost savings from using the System.

3. **Force Majeure.** If Seller is unable to perform all or some of its obligations under this Agreement because of a Force Majeure Event, Seller will be excused from whatever performance is affected by the Force Majeure Event, provided that:

- A. Seller, as soon as is reasonably practical, gives Purchaser notice describing the Force Majeure Event;
- B. Seller’s suspension of its obligations is of no greater scope and of no longer duration than is required by the Force Majeure Event; and
- C. No Seller obligation that arose before the Force Majeure Event that could and should have been fully performed before such Force Majeure Event is excused as a result of such Force Majeure Event.

“Force Majeure Event” means any event, condition or circumstance beyond the control of and not caused by Seller’s fault or negligence. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any governmental authority (provided that such order has been resisted in good faith by all reasonable legal means) the failure to act on the part of any governmental authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products; and failure of equipment not utilized by Seller or under its control.

4. **Notices.** All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and shall be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the party identified in this Agreement at the address set forth above or such other address as either party may specify in writing. Each party shall deem a document faxed or sent by electronic mail to it as an original document.

5. **Applicable Law, Arbitration.** The laws of the state where the Facility is located shall govern this Agreement without giving effect to conflict of laws principles. All claims, disputes and other matters in question, arising out of, or relating to, this Agreement or the breach thereof shall be decided by binding arbitration. Each arbitration, including the selecting of the arbitrator will be administered by JAMS under its Commercial Arbitration Rules. Arbitration will be governed by the Federal Arbitration Act (Title 9 of the U.S. Code). Either party can initiate an arbitration proceeding by filing the necessary forms with JAMS. Venue for any arbitration brought under this Agreement shall be proper in the State of California, County of Sacramento. Each party shall bear its own costs and expenses, including attorneys' fees, with respect to any arbitration. The arbitrator shall have the authority to award any legal or equitable remedy or relief that a court could order or grant. The arbitrator, however, is not authorized to change or alter the terms of this Agreement or to make any award that would extend to any transaction other than this Agreement.

6. **Assignment and Transfer of this Agreement.** Seller may assign its rights or obligations under this Agreement to a third party without your consent, provided that any assignment of Seller's obligations under this Agreement shall be to a party qualified to perform such obligation. This Agreement protects only the party that hosts the System. Purchaser's rights and obligations under this Agreement will be automatically transferred to any party to whom Purchaser properly transfers the PPA.

7. **Entire Agreement, Changes.** This Agreement contains the parties' entire agreement regarding the matters set forth herein. Seller's obligations under this Agreement are separate and distinct from the obligations of the Seller or its assigns under the PPA. No breach of this Agreement shall affect Purchaser's obligations under the PPA. The PPA may be assigned to a third party without assignment of Seller's obligations under this Agreement. Any change to this Agreement must be in writing and signed by both Parties. If any portion of this Agreement is determined to be unenforceable, the remaining provisions shall be enforced in accordance with their terms or shall be interpreted or re-written so as to make them enforceable. Provisions that should reasonably be considered to survive termination of this Agreement shall survive.

City of Newman

SolarCity Corporation

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**REPORT ON PEDDLERS AND SOLICITORS (NMC §3.03)**

**RECOMMENDATION:**

Provide staff direction regarding Newman Municipal Code (NMC) §3.03

**BACKGROUND:**

On November 9, 1937, the Newman City Council introduced Ordinance 130, making it a misdemeanor for peddlers or solicitors to enter upon premises without invitation. Said Ordinance was modeled after the Town of Green River, Wyoming ordinance prohibiting uninvited door-to-door solicitors. The Green River Ordinance was the model for similar ordinances enacted by over 400 cities in the late 1930's.

Ordinance 130 is now referred to as NMC §3.03.100.B [Entry on premises prohibited.]

*The practice of going in and upon private residences in the City by solicitors, peddlers, hawkers, itinerant merchants and transient vendors of merchandise not having been requested or invited so to do by the owner or occupant of said private residences for the purpose of soliciting orders for the sale of goods, wares and merchandise, and/or for the purpose of disposing of and/or peddling or hawking the same, is hereby prohibited, declared to be a nuisance and punishable as such as a misdemeanor. (Ord. 130, 11-23-1937)*

On June 18, 2014, Solar City contacted the City of Newman inquiring about an amendment or exemption to the aforementioned code section on the grounds that “[Newman] citizens [are] at a distinct disadvantage” in acquiring solar power services from their company. Mr. Boden Holland appeared before the City Council on June 24, 2014 to further discuss SolarCity’s request. City staff and legal counsel were directed to review said Ordinance and report back to the Council.

On July 8, 2014, City staff presented three options regarding door to door solicitation. The City Council directed staff to provide options regarding the revision of NMC §3.03.

**ANALYSIS:**

Case law regarding door to door solicitation has been evolving since the inception of Green River Ordinances.

As discussed during the July 8, 2014 Council Meeting, staff identified a number of code revision options as well as potential new regulations on door to door solicitation. The following is a discussion of:

1. Vendor Registration and/or Inspection

Currently, NMC §3.03.020 and 040 require the application and issuance of a Peddlers and Solicitors License as well as a Health Certificate (if a food vendor). Required information includes name, address, age, occupation, company name and address, description of items to be sold, delivery method(s) and a recent photograph. The Code does not currently require an inspection of vendors (excluding food) and would need to be revised to include said requirement. Inspections may be on: delivery vehicles, signage, inventory and/or advertisements.

Pros: The utilization of this option would not require a major revision to the Code unless the requirement of an inspection is added. If added, the new Ordinance would need to address what would be inspected, how often, by whom and establish processing timelines.

Cons: Some courts believe that requiring a solicitor to register or obtain an additional permit may constitute a violation of the First Amendment. A potential solution to this would be to include whether the business is a door to door solicitor on the City issued Business license as opposed to a separate permit.

2. Solicitation Time Limits (i.e. 8:00am to 8:00pm)

A common option that municipalities have utilized when regulating door to door solicitors is the adoption of time limits. These limits may include exact times or dawn to dusk which varies from season to season.

**Agenda Item: 10.a.**

Pros: The adoption of time limits provides solicitors with exact timeframes they can operate door to door. It also provides assurance to the public that they should not be disturbed after a certain time and if they are, the solicitor could be cited, fined, etc.

Cons: The 1980's saw a number of challenges to time limit ordinances; certain Courts have determined that these types of Ordinances are not narrowly tailored, potentially discriminatory and violate First and Fourteenth Amendment rights.

3. Required Identification Badges

NMC §3.03.080 requires that each licensed peddler be issued a numbered badge.

Pros: The badge provides a method in which licensed peddlers can be identified easily; thus ensuring the public that the solicitor has completed all City required processes.

Cons: The requirement of a badge can be likened to that of an additional licensing requirement; see number one above.

4. Clarification of §3.03.100.A. regarding "No Solicitors" signage

NMC §3.03.100.A states

*"It shall be unlawful for any peddler or person pretending to be a peddler for the purpose of selling or pretending to sell or peddle any goods, wares, merchandise or any article, material or substance, or any solicitor or any person pretending to be a solicitor for the purpose of soliciting orders for any article, material or substance of whatsoever kind, to ring the bell or knock at the door of any residence or dwelling whereon a sign bearing the words "No Peddlers," or words of similar import, is painted or affixed so as to be exposed to public view, or to peddle or pretend to peddle, or to solicit or pretend to solicit orders of any goods, wares or merchandise or any article, material or substance in any building whereon or wherein a sign bearing the words "No Peddlers," or words of similar import, is painted so as to be exposed to public view."*

This type of ordinance has been upheld repeatedly in the courts and does not require direct revision. However, sub section B of the same chapter prohibits door to door solicitation unless specifically invited to do so; current case law is not supportive of this section.

Pros: The prohibition of soliciting a resident with a "No Solicitors" or "No Peddlers" sign is a clear and acceptable method of protecting public privacy and safety. The onus is placed upon the resident who does not want to be disturbed and thus removes liability and responsibility from the municipality.

Cons: NMC §3.03.100.B, requiring solicitor invitation has not been upheld in different courts

5. Vendor Background Checks

NMC §3.03.040 requires that the Police Chief conduct an investigation to determine that the solicitor "is of good moral character". At the time of adoption (1932) this was usually completed in house. With current technology, a background check (i.e. Live Scan) would be completed. Per the Police Department, Live Scan results can take anywhere from one day to one month, depending on DOJ and FBI processing times; this varied response time can be problematic.

Pros: Live Scan services provide valuable information about potential solicitors, providing law enforcement a potential method to prevent criminals from soliciting door to door (i.e. outstanding warrants, sex offender, etc.)

Cons: In 2000, a district court determined that record checks created a restraint on free speech.

6. Revise violation to include Administrative Citation as opposed to a misdemeanor only (NMC §3.03.120)

Pros: By including an Administrative Citation option in the Ordinance, the City has an additional enforcement tool. By including both citation and misdemeanor options, law enforcement would have the most flexibility in enforcing the code.

Cons: None.

7. "No Solicitation" Placard Program

This option is consistent with number 4 above and supported by case law. It goes further by providing the public with an option of procuring a "No Solicitation" or "No Peddler" placard from the City at no cost.

Pros: Allows the public to obtain a placard at no cost and can also be tied into number 8 below.

Cons: Would be a small cost to the City in terms of materials and staff time.

8. Do Not Disturb Registry

This option would provide residents with the opportunity to be included in a City-wide "Do Not Disturb" registry. A number of California cities utilize this option, including: Claremont, Hillsborough and Newport Beach.

Pros: Also called No Solicitation/Do Not Knock Registries and/or Do Not Solicit/No Knock Lists, this type of ordinance has also been upheld by case law (given that it too puts the onus on the resident and not the municipality).

Cons: This option would require more staff time on an ongoing basis due to collecting registry entries, updating registry lists and providing information to vendors. The ordinance would also need to be crafted in a manner that clearly spells out registry processes such as registration expiration, update intervals, etc.

Upon reviewing the numerous cases regarding solicitors, five common themes have often been referenced by the courts:

First Amendment Rights, Narrowly Tailored, Due Process Rights, Reasonable Fit and Non Discriminatory. A method of determining whether an ordinance is consistent with these themes is the Hudson test:

1. Is the expression protected by the First Amendment? For commercial speech to come within that provision, it at minimum must concern Lawful activity and not be misleading.
2. Is the assertive governmental interest substantial?
3. Does the regulation directly advance the governmental interest asserted?
4. Is the regulation more extensive than is necessary to serve that interest?

**FISCAL IMPACT:**

Potential increased staff time and/or material costs depending on which ordinance revision is pursued.

**CONCLUSION:**

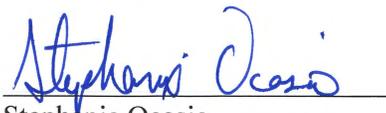
Staff has conferred with legal counsel about the best course of action regarding the Ordinance revision and case law for said revisions has been reviewed. It is important to note that should a revision be adopted where case law is unresponsive, that the City may be subject to challenge.

Therefore, it is staff's recommendation that NMC §3.03 be revised to comply with case law and updated to include a City placard program and "Do Not Disturb" registry. Staff respectfully requests the Council's direction regarding which revisions (if any) should be initiated.

**ATTACHMENTS:**

1. Exhibit A – NMC §3.03 Peddlers and Solicitors

Respectfully submitted,



Stephanie Ocasio  
City Planner

**REVIEWED/CONCUR**



Michael Holland  
City Manager

perform the functions incident to the administration and operation of the taxes imposed by this chapter, the provisions of Ordinances 182 and 183 shall not be deemed to have been suspended, but shall be deemed to have been in full force and effect at the rate of one percent continuously from and after 1957. Upon the ceasing of the State Board of Equalization to perform the functions incident to the administration and operation of the taxes imposed by this chapter, the provisions of Ordinances 182 and 183 shall again be in full force and effect at the rate of one percent. Nothing in this chapter shall be construed as relieving any person of the obligation to pay to the City any sales or use tax accrued and owing by reason of the provisions of Ordinances 182 and 183 in force and effect prior to and including 1957. (Ord. 201, 1957)

### Chapter 3.03

#### PEDDLERS AND SOLICITORS

##### Sections:

- 3.03.010 License required.
- 3.03.020 Application for license.
- 3.03.030 Health certificates required, food vendors.
- 3.03.040 Police Chief investigation.
- 3.03.050 Bond required.
- 3.03.060 License fees.
- 3.03.070 Issuance of license.
- 3.03.080 Badge.
- 3.03.090 Conditions of license.
- 3.03.100 Entry on premises prohibited.
- 3.03.110 Revocation of license.
- 3.03.120 Violation, penalty.

##### **3.03.010 License required.**

No person except a person having a fixed place of business as provided in Chapter 3.01 NCC shall engage in the business of hawking, peddling or vending, at retail, any goods, wares, merchandise, pictures, foodstuffs, services or advertising from door to door, or from or upon or with a pushcart or vehicle, either by sample or by taking or soliciting orders for immediate delivery, or for delivery in the future, without first obtaining a license as hereinafter provided; provided, that this chapter shall not apply to minors under the age of 15 years peddling, vending or soliciting the sale or subscription of magazines or newspapers; nor shall it apply to peddlers, solicitors or agents of trade supply houses calling upon specified trades. (Ord. 115, 1-12-1932)

##### **3.03.020 Application for license.**

A. Any person desiring to obtain a license to engage in the business of hawking and peddling, or vending, shall make an application therefor to the City Clerk upon a blank form furnished by the City Clerk. The application for a license shall contain the following items, together with such additional information as the City Clerk may require:

1. Full name, permanent address, local address, the age and occupation of the applicant at the time of filing the application.
2. The name of the person, firm or corporation represented, if any, together with the address of the central or district office.
3. A list or general description of the article or articles to be sold or offered for sale.

4. The proposed method of delivery to buyers, whether by weight, package or otherwise, and whether the delivery will be made personally or by mail or in what manner.

B. Each applicant shall file with the application two copies of a recent photograph. Disposition of photographs shall be made as hereinafter provided. (Ord. 96-3, 5-28-1996; Ord. 115, 1-12-1932)

### **3.03.030 Health certificates required, food vendors.**

Each applicant who proposed to vend anything to be used as food shall file a certificate from the Health Officer stating that the applicant is free from communicable, contagious, infectious, loathsome or dangerous disease. Each certificate shall be granted only after a careful examination by a licensed physician of good repute residing within the City, said examination to include all tests and other measures necessary to establish the fact that the individual is free from such disease. The Health Officer may accept a certified statement from a physician residing elsewhere in this State when, in his judgment, the qualifications of the physician and the nature of the examination meet the requirements of this section. Such certificate shall bear a date within six months prior to the date of filing the application. The Health Officer shall not be required to make such examination except upon payment of his customary fees therefor. (Ord. 115, 1-12-1932)

### **3.03.040 Police Chief investigation.**

The City Clerk shall also require that the applicant shall establish his identity with the Chief of Police; that he shall submit a certificate from the Chief of Police stating that the applicant has definitely demonstrated by reference or otherwise, that he is of good moral character. The Chief of Police shall, in such cases, take and keep records of the fingerprints of the applicant, and such other identification as he shall deem necessary. (Ord. 115, 1-12-1932)

### **3.03.050 Bond required.**

The application shall be accompanied by a bond to the City approved as to form and surety by the City Clerk in the penal sum of \$100.00 with sufficient surety or sureties or sufficient collateral security, conditioned for the due observance during the time of the license of any and all ordinances which are now in force or may be hereafter adopted by the Council. In the case of hawkers and peddlers who demand, accept or receive payment or deposits of

money in advance of final delivery, such bond shall be further conditioned for making final delivery of goods, wares or merchandise ordered or service to be performed in accordance with the terms of such order, or failing therein, that the advance payment on such order be refunded. Any person aggrieved by the action of any such licensed hawker and peddler shall have a right by action on the bond for recovery of money or damages, or both. Such bond shall remain in full force and effect, and in the case of a cash deposit, such deposit shall be retained by the City for a period of 90 days after the expiration of any such license, or after the termination of any action upon such bond or deposit, of which the Clerk shall have been notified, unless sooner released by the City Clerk. (Ord. 115, 1-12-1932)

### **3.03.060 License fees.**

A. For each license issued under the provisions of this chapter, the applicant shall pay the appropriate fee as set forth under NCC 3.01.180.

B. Those exempt from paying a license fee are:

1. Veterans exempted by State law will not be required to pay a fee, but must fulfill the other requirements of this chapter.

2. Peddlers, solicitors and hawkers engaged in interstate commerce and who are by law exempt from payment of license fees by virtue of the fact that they are engaged in interstate commerce shall not be required to pay the license fees provided by this chapter, but shall be required to comply with all of the other provisions thereof, and they shall in addition thereto supply the City Clerk with an affidavit establishing their right to exemption from the payment of fees hereunder.

C. The City Clerk shall collect the appropriate fee before issuing the license, except as otherwise provided. (Ord. 96-3, 5-28-1996; Ord. 115, 1-12-1932)

### **3.03.070 Issuance of license.**

A. Upon receipt of the application, together with the accompanying documents, and the appropriate fees, and being satisfied that the applicant is of good moral character, the City Clerk shall issue a license in writing to such applicant, in compliance with the following requirements:

1. No license shall be granted to any minor.

2. The license shall be issued in duplicate and the duplicate shall be filed in the office of the Clerk.

3. One of the photographs submitted by the licensee shall be firmly affixed to each copy and stamped with the Clerk's seal.

4. Each licensee, upon receipt of said license, and in the presence of the City Clerk, shall affix his signature upon the license, accepting the license under all the conditions, and agreeing to the suspension and revocation of said license, should any of said conditions or regulations be violated.

5. No licensee shall alter, remove or obliterate any entry made upon such license, or deface such license in any way. Each license shall be personal and not assignable or transferable, nor shall any license be used by any person other than the licensee.

The violation of any of the provisions of this subsection shall be considered grounds for the summary suspension and revocation of the license, in addition to the criminal penalties provided therefor.

6. Each licensee shall carry his license at all times while he is engaged in the conduct of the business of hawking and peddling. Such licensee shall exhibit his license upon the request of any officer of the City or of any police officer or of any other citizen. Refusal to exhibit a license shall be prima facie evidence of failure to obtain a license.

B. The City Clerk shall notify the Chief of Police of all licenses issued under the terms of this chapter, and shall render a report thereof regularly to the City Council. (Ord. 115, 1-12-1932)

### **3.03.080 Badge.**

A. Each person licensed under this chapter shall obtain from the City Clerk a numbered badge of metal or other suitable material bearing the year issued and the words, "Licensed Peddler, City of Newman." Each licensee shall wear said badge in a conspicuous place upon the upper part of the front of his outer garment at all times when he is engaged in the conduct of the business of hawking, peddling or soliciting.

B. No licensee shall wilfully alter or deface any badge issued under the terms of this section.

### **3.03.090 Conditions of license.**

The following conditions and regulations shall also apply to the exercise of the privileges granted by licenses issued under the provisions of this chapter, in addition to those set forth herein or elsewhere in this City Code:

A. No licensee shall shout or call his wares in a loud, boisterous or unseemly manner, or to the disturbance of citizens or dwellers in the City nor shall any licensee use any horn or bell or other noise-making device to call attention to his wares.

B. Every licensee, upon the request of any police officer or other officer of the City, shall sign his name for comparison with the signature upon the license application.

C. Any licensee who solicits orders for future delivery shall write each order at least in duplicate, plainly stating the quantity of each article or commodity ordered, the price to be paid therefor, the total amount ordered, the amount paid or deposited and the amount to be paid on or after delivery. One copy shall be given to the customer.

D. No licensee shall stop or remain in any one place upon the streets, alleys or public places in the City longer than necessary to make a sale to a customer wishing to buy, except by permission of the Police Department, nor shall any licensee stop or remain upon any private property within the City without the consent of the owner thereof or some person having authority to grant such permission.

### **3.03.100 Entry on premises prohibited.**

A. It shall be unlawful for any peddler or person pretending to be a peddler for the purpose of selling or pretending to sell or peddle any goods, wares, merchandise or any article, material or substance, or any solicitor or any person pretending to be a solicitor for the purpose of soliciting orders for any article, material or substance of whatsoever kind, to ring the bell or knock at the door of any residence or dwelling whereon a sign bearing the words "No Peddlers," or words of similar import, is painted or affixed so as to be exposed to public view, or to peddle or pretend to peddle, or to solicit or pretend to solicit orders of any goods, wares or merchandise or any article, material or substance in any building whereon or wherein a sign bearing the words "No Peddlers," or words of similar import, is painted so as to be exposed to public view.

B. The practice of going in and upon private residences in the City by solicitors, peddlers, hawkers, itinerant merchants and transient vendors of merchandise not having been requested or invited so to do by the owner or occupant of said private residences for the purpose of soliciting orders for the sale of goods, wares and merchandise, and/or for the purpose of disposing of and/or peddling or hawking the same, is hereby prohibited, declared to be a nuisance and punishable as such as a misdemeanor. (Ord. 130, 11-23-1937; Ord. 115, 1-12-1932)

### **3.03.110 Revocation of license.**

A. Any police officer shall have power to suspend and take up the license and badge issued

under the terms of this chapter, of any licensee found violating any of the express terms under which the said license was granted and accepted, or any ordinance of the City. Such suspension shall be reported at once to the Chief of Police and by him to the Clerk.

B. In case the license is revoked for violation of the express conditions and regulations under which it was granted, the full amount of the fee paid therefor shall be forfeited to the City, and no licensee shall have a right to refund of any part of said fee. (Ord. 115, 1-12-1932)

### **3.03.120 Violation, penalty.**

Any person who engages in the business of hawking, peddling, vending or soliciting, according to the provisions of this chapter, without a license, or who shall violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor<sup>1</sup>. (Ord. 77-25, 9-1977; Ord. 115, 1-12-1932)

## **Chapter 3.04**

### **PAWNBROKERS, SECONDHAND DEALERS**

#### Sections:

- 3.04.010 License required.
- 3.04.020 Records kept.
- 3.04.030 Pawn procedures.
- 3.04.040 Exemptions to license requirements.
- 3.04.050 Terms defined.

#### **3.04.010 License required.**

It shall be unlawful for any person to engage in or conduct, manage or carry on, within the City, the business of pawnbroker or secondhand dealer, without first applying for and receiving a proper license from the City.

#### **3.04.020 Records kept.**

Every person dealing in secondhand goods, wares, merchandise or articles of any description, other than furniture and household goods, either as pawnbroker or secondhand dealer, shall keep or cause to be kept at the place of business a well-bound book containing a record of each article pawned, purchased, exchanged or otherwise taken into possession. Such record shall be legibly entered at the time of the transaction and shall show the hour and day when each article was so received, its exact and complete description, the amount loaned thereon or paid therefor, together with the signature and description of the person or persons and the license number of any automobile they are in, if any, so pawning, selling, exchanging or otherwise delivering such property. The record of each transaction must be numbered and a tag corresponding to said number must be firmly attached to all articles pawned, purchased, exchanged or otherwise taken into possession.

#### **3.04.030 Pawn procedures.**

All articles pawned, purchased, exchanged or otherwise taken into possession shall be held for a period of 20 days from date of receipt, intact in a particular location in the place of business designated for that purpose, before being placed on exhibition, sold, exchanged, removed from the place of business where received, or delivered to any person, or otherwise disposed of. All articles so received and the records pertaining thereto shall, upon demand, be exhibited to any sheriff, police officer, constable or other peace officer, and shall not, in any manner, be concealed.

1. See NCC 1.04.010.