

RESOLUTION NO. 11-84

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
LANCASTER, CALIFORNIA, APPROVING THE FORM OF
AND AUTHORIZING THE EXECUTION OF A PROPERTY
LEASE WITH THE LANCASTER POWER AUTHORITY

WHEREAS, the City of Lancaster ("City") is a municipal corporation and charter city, organized and existing under the Constitution and laws of the State of California; and

WHEREAS, the Lancaster Power Authority ("Authority") is a joint powers authority organized pursuant to Title 1, Division 7, Chapter 5 of the Government Code of the State of California; and

WHEREAS, the City has established the Authority to act as the Lancaster Municipal Utility for the purpose of owning and operating alternative energy generating facilities in order to decrease the community's reliance on non-reusable energy sources; and

WHEREAS, the Authority has initiated multiple solar energy projects throughout the City; and

WHEREAS, for the purpose of furthering the City's desire to increase reliance on renewable energy sources, the Authority intends to enter into agreements for the construction of certain solar generating facilities ("Systems").

NOW, THEREFORE, BE IT RESOLVED BY THE LANCASTER REDEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Property Lease, in substantially the form submitted at this meeting and made a part hereof as though set forth in full herein, be and the same is hereby approved. The Chairman and the Executive Director of the Agency are hereby authorized and directed to execute and deliver the Property Lease in the form presented at this meeting with such changes, insertions and omissions as may be requested by Legal Counsel and approval by the Chairman, said execution being conclusive evidence of such approval.

Section 2. The Chairman of the Agency, the Executive Director of the Agency, the Finance Director, the Agency Secretary, and any other proper officer of the Agency, acting singly, be and each of them hereby is authorized and directed to execute and deliver any and all documents and instruments, including any agreements with the Agency relating to the Systems, and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by Property Lease.

Section 3. This Resolution shall take effect immediately upon its adoption.

PASSED, APPROVED and ADOPTED this _____ day of _____, 2011 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

GERI BRYAN, CMC
City Clerk
City of Lancaster

R. Rex Parris
Mayor
City of Lancaster

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss
CITY OF LANCASTER)

CERTIFICATION OF RESOLUTION
CITY OF LANCASTER

I, _____, _____ City of Lancaster, CA, do hereby certify that this is a true and correct copy of the original Resolution No. 11-84, for which the original is on file in my office.

WITNESS MY HAND AND THE SEAL OF THE CITY OF LANCASTER, on this _____ day of _____, _____.

(seal)

PROPERTY LEASE
by and between
CITY OF LANCASTER
and
LANCASTER POWER AUTHORITY

Effective _____, 2011

PROPERTY LEASE

This Property Lease is effective as of _____, 2011, by and between the CITY OF LANCASTER, a Municipal Corporation and Charter City, duly organized and existing under and by virtue of the laws and constitution of the State, as lessor ("City"), and the LANCASTER POWER AUTHORITY, a joint powers authority, duly organized and existing under the laws of the State, as lessee ("Authority").

WITNESSETH:

WHEREAS, the City has entered into this Property Lease ("Property Lease") with the Authority for the purpose of leasing the property described in Exhibit A hereto ("Property"), to the Authority, as lessee hereunder; and

WHEREAS, the Authority intends to lease the Property to renewable energy third parties ("Parties") pursuant to the terms of that certain Renewable Generating Facility Site Ground Lease, dated the date hereof, between the Authority and Parties ("Lease"); and

WHEREAS, by resolution of the City has agreed to execute this Property Lease and to deliver it upon performance and compliance by the Authority and Parties of all terms or conditions of the Option Agreement and Lease;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other valuable consideration, it is hereby mutually agreed as follows:

Section 1. Definitions. Unless the context otherwise requires, the capitalized terms herein which are not defined herein shall have the meanings specified in the Lease.

Section 2. Lease of the Property. The City hereby leases to the Authority, and the Authority hereby leases from the City, the Property, on the terms and conditions hereinafter set forth.

Section 3. Term. The term ("Term") of this Property Lease shall commence on the Effective Date and shall continue in full force and effect for a term of twenty (20) years from the date of commercial operation of the Renewable Generating Facility, but in no event shall the term extend beyond 35 years without the mutual agreement of City and Authority.

Section 4. Rental. The Authority, or any assignee or successor in interest of the Authority under this Property Lease, shall pay upon execution and delivery of this Property Lease to the City as and for rental hereunder, advanced rental for the entire term in the amount of \$1.00. The Authority hereby waives any right that it may have under the laws of the State of California to receive a rebate of any rent paid hereunder in full or in part in the event there is a substantial interference with the use and right of possession by the Authority or its sublessee of the Property or any portion thereof as a result of material damage, destruction or condemnation.

Section 5. Title. The City covenants and warrants that it holds fee simple title to the Property free and clear of any liens therein.

Section 7. Representations, Warranties and Covenants. The City represents and warrants that it is the owner in fee of the Property. The Authority covenants that it shall not encumber the Property except for Permitted Encumbrances (as such term is defined in the Lease).

Section 8. Actions on Termination. The Authority agrees, upon the termination of this Property Lease, to quit and surrender the Property in the same good order and condition as it was in at the time the Property became subject to this Property Lease, reasonable wear and tear excepted, and agrees that any improvements and structures then existing on the Property at the time of the termination of this Property Lease shall remain thereon and all title thereto and interest therein shall vest in the City free and clear of any interest of the Authority for no additional consideration.

Section 9. Quiet Enjoyment. The Authority at all times during the term of this Property Lease shall peaceably and quietly have, hold and enjoy all of the Property, without suit, trouble or hindrance from the City, subject to (a) the rights granted to the City under the Lease, (b) the Authority's compliance with the terms and provisions hereof, and (c) only Permitted Encumbrances (as such term is defined in the Lease).

Section 10. Right of Entry. The City reserves the right for any of its duly authorized representatives, or the duly authorized representatives of any assignee of the City hereunder, to enter any part of the Property during reasonable business hours (and in emergencies at all times) (a) to inspect the same, (b) for any purpose connected with the City's or the Authority's rights or obligations under this Property Lease, (c) to make any repairs, improvements, or changes necessary for the preservation thereof, and (d) for all other lawful purposes.

Section 11. Waiver of Personal Liability. All liabilities hereunder on the part of the Authority shall be solely liabilities of the Authority as a separate legal entity, and the City hereby releases each and every member and officer of the Authority of and from any personal or individual liability under this Property Lease. No member, officer, or employee of the Authority shall at any time or under any circumstances be individually or personally liable hereunder for anything done or omitted to be done by the Authority hereunder.

Section 12. Default. In the event any of the following occur:

(a) the Authority shall be in default in the performance of any obligation on its part to be performed under the terms of this Property Lease, which default continues for thirty (30) days following written notice to the Authority and demand for correction thereof by the City; or

(b) (i) the Authority's interest in this Property Lease or any part thereof is assigned or transferred without the written consent of the City, either voluntarily or by operation of law or otherwise, except as provided in Section 8 hereof, or (ii) any proceeding under the United States Bankruptcy Code or any federal or state bankruptcy, insolvency or similar law or any law providing for the appointment of a receiver, liquidator, trustee or similar official of the Authority or of all or substantially all of its assets is instituted by or with the consent of the Authority, or is instituted without its consent and is not permanently stayed or dismissed within thirty (30) days, or (iii) the Authority offers to the Authority's creditors to effect a composition or extension of time to pay the Authority's debts, or asks, seeks or prays for a reorganization or to effect a plan or reorganization or for readjustment of the Authority's debts, or (iv) the Authority shall, in connection with any proceedings related to bankruptcy, insolvency, liquidation, winding up or similar events, make a general assignment or any assignment for the benefit of the Authority's creditors; the City may

exercise any and all remedies granted by law provided that the City may not terminate this Property Lease and shall exercise only remedies providing for specific performance hereunder

Section 13. Taxes. The City covenants and agrees to pay any and all assessments of any kind or character and also all taxes, including possessory interest taxes, levied or assessed upon the Property.

Section 14. Eminent Domain. In the event the whole or any part of the Property is taken by eminent domain proceedings, the interest of the Authority shall be recognized and is hereby determined to be the amount of the then unpaid Lease Payments due the Authority under the Lease, and the balance of the award, if any, shall be paid to the City.

Section 15. Partial Invalidity. If any one or more of the terms, provisions, covenants or conditions of this Property Lease shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Property Lease shall be affected thereby, and each provision of this Property Lease shall be valid and enforceable to the fullest extent permitted by law. If for any reason it is held by a court of competent jurisdiction that any of the covenants and conditions of the Authority hereunder are unenforceable for the full term hereof, then and in such event this Property Lease is and shall be deemed to be a lease from year-to-year, and all of the rental and other terms, provisions, and conditions of this Property Lease, except to the extent that such terms, provisions, and conditions are contrary to or inconsistent with such holding, shall remain in full force and effect.

Section 16. Applicable Law. This Property Lease shall be governed by and construed in accordance with the laws of the State.

Section 17. No Waiver of Default. Failure of the City to take advantage of any default on the part of the Authority shall not be, or be construed as, a waiver thereof, nor shall any custom or practice which may grow up between the parties in the course of administering this Property Lease be construed to waive or to lessen the right of the City to insist upon performance by the Authority of any term, covenant or condition hereof, or to exercise any rights given the City on account of such default. A waiver of a particular default shall not be deemed to be a waiver of the same or any subsequent default. The acceptance of rent hereunder shall not be, nor be construed to be, a waiver of any term, covenant or condition of this Property Lease.

Section 18. Representatives. Whenever under the provisions of this Property Lease the approval of the Authority or the City is required, or the Authority or the City is required to take some action at the request of the other, such approval or such request shall be given for the Authority by an Authorized Representative of the Authority and for the City by an Authorized Representative of the City, and any party hereto shall be authorized to rely upon any such approval or request.

Section 19. Notices. All notices or other communications hereunder shall be sufficiently given and shall be deemed to have been received five days after deposit in the United States mail in registered or certified form, postage prepaid:

If to the City: City of Lancaster
44933 North Fern
Lancaster, California 93534
Attention: City Manager

If to the Authority: Lancaster Power Authority
c/o City of Lancaster
44933 North Fern
Lancaster, California 93534
Attention: Executive Director

The Authority and the City, by notice given hereunder, may designate different addresses to which subsequent notices or other communications will be sent.

Section 20. Captions. The captions or headings in this Property Lease are for convenience only and in no way define, limit or describe the scope or intent of any provision or section of this Property Lease.

Section 21. Execution in Counterparts. This Property Lease may be executed in any number of counterparts, each of which shall be deemed to be an original but all together shall constitute but one and the same instrument.

Section 22. Amendment. The terms of this Property Lease shall not be waived, altered, modified, supplemented or amended in any manner whatsoever, except by written instrument signed by the Authority and the City.

IN WITNESS WHEREOF, the parties have caused this Property Lease to be executed by their duly authorized officers on the date and year first above written.

CITY OF LANCASTER, as Lessor

By: _____
Mark V. Bozigian, City Manager

ATTEST:

Geri K. Bryan, City Clerk

APPROVED AS TO FORM:

David R. McEwen, City Attorney

LANCASTER POWER AUTHORITY, as Lessee

By: _____
Mark V. Bozigian, Executive Director

ATTEST:

Geri K. Bryan, Authority Secretary

APPROVED AS TO FORM:

David R. McEwen, Legal Counsel

EXHIBIT A

DESCRIPTION OF THE PROPERTY

3107-010-901: Parcel 1 of Tract No. 24689 in the City of Lancaster, County of Los Angeles, State of California, Recorded in Map Book 661 Page 31 in the office of said County

3107-024-900: The South 5 Acres Of the East 10 Acres of the North $\frac{1}{2}$ of the West $\frac{1}{2}$ of Lot 1 in the NW $\frac{1}{4}$ of Section 6, T7N, R12W, SBM

3107-024-901: The North $\frac{1}{2}$ of the East $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Lot 1 in the NW $\frac{1}{4}$ of Section 6, T7N, R12W, SBM

3110-001-907: That portion of the West $\frac{1}{2}$ of the West $\frac{1}{2}$ of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 25 T7N, R13W SBM, EXCEPT the Southerly 100 feet of said West $\frac{1}{2}$

3114-012-904: The North $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Section 8, T7N, R12W, SBM EXCEPT the Westerly 2,320 feet of said North $\frac{1}{2}$

3118-005-900: The East $\frac{1}{2}$, of the West $\frac{1}{2}$, of the West $\frac{1}{2}$, of the North $\frac{1}{2}$, of the North $\frac{1}{2}$, of Lot 1 of the NW $\frac{1}{4}$ OF Section 4, T 7N, R12W, SBM

3118-005-901: The West $\frac{1}{2}$, of the West $\frac{1}{2}$, of the West $\frac{1}{2}$, of the South $\frac{1}{2}$, of the North $\frac{1}{2}$, of Lot 1 of the NW $\frac{1}{4}$ of Section 4, T7N, R12W, SMB.

3118-005-904: The East $\frac{1}{2}$, of the East $\frac{1}{2}$, of the West $\frac{1}{2}$, of the North $\frac{1}{2}$, of the North $\frac{1}{2}$, of Lot 2 of the NW $\frac{1}{4}$ of Section 4, T7N, R12W, SBM.

3118-005-905: The West $\frac{1}{2}$ of the East $\frac{1}{2}$ of the NW $\frac{1}{4}$, of the NW $\frac{1}{4}$ Lot 2 of Section 4, T7N, R12W, SBM

3126-031-901: Lot 23 of Tract No. 32548, in the City of Lancaster, County of Los Angeles, State of California, as per Map filed in Book 968, Pages 1 through 5, inclusive of maps, in the office of the County Recorder of said County,

EXCEPT the following portion of said Lot 21

Beginning at the SW Corner of said Lot 21, Thence along the property lines of said Lot N0°11'47"W, 310 feet; Thence 89°52'56"E, 355 feet; Thence N0°11'47"W, 187.10 feet; Thence N89°52'56"E, 257.25 feet; Thence leaving said property lines, S0°17'06"E, 497.65 feet to the Southerly line of said Lot; Thence S89°52'56"W, 612.02 feet to the Point of Beginning

3126-031-902: That Portion of Lot 23 of Tract No. 32548, in the City of Lancaster, County of Los Angeles, State of California, as per Map filed in Book 968, Pages 1 through 5, inclusive of maps, in the office of the County Recorder of said County, more particularly described as follows:

Beginning at the SW Corner of said Lot 21, Thence along the property lines of said Lot N0°11'47"W, 310 feet; Thence 89°52'56"E, 355 feet; Thence N0°11'47"W, 187.10 feet; Thence N89°52'56"E, 257.25 feet; Thence leaving said property lines, S0°17'06"E, 497.65 feet to the Southerly line of said Lot; Thence S89°52'56"W, 612.02 feet to the Point of Beginning

EXHIBIT A

DESCRIPTION OF THE PROPERTY

(continued)

3137-008-900: The West ½ of the SW ¼ of the SW ¼ Of SE ¼ AND The West ½ of the West ½ of the East ½ of the SW ¼ of the SW ¼ of SE ¼ Of Section 3, T7N, R12W, SBM

3170-008-901: The Westerly 650 feet of the South half of the SE ¼ of Section 30, T7N, R11W, SBM.

3170-008-907: That Portion of the SE ¼ of the SW ¼ of Section 30, T7N, R11W, SBM, described as follows:

Beginning at the South ¼ corner of Section 30, thence S89°21'39"W along the southerly line of said SE ¼, 1336.44 feet to the SW corner of said SE ¼; thence N00°29'10"W along the westerly line of said SE ¼, 605.97 feet; thence leaving said line, N89°26'00"E 422.45 feet; thence S00°34'00"E 110.00 feet; thence N89°25'00"E 170.78 feet; thence S00°34'00"E 10.64 feet; thence N89°26'00"E 104.70 feet; thence S00°34'00"E 141.36 feet; thence N89°26'00"E 427.00 feet; thence N00°34'00"W 99.36 feet to the Beginning of a Tangent Curve concave to the SW having a radius of 13.00 feet; thence northwesterly along the arc of said curve 20.42 feet through a Central Angle of 90°00'00"; thence N00°24'00"W 58.00 feet; thence N89°41'18"E 72.00 feet; thence N89°26'00"E 150.79 feet to the East line of said ¼ corner; thence S00°33'06"E along the easterly line of said SE ¼, 512.30 feet to the Point of Beginning.

3170-008-908: That Portion of the SE ¼ of the SW ¼ of Section 30, T7N, R11W, SBM, EXCEPT the following described Portion:

Beginning at the South ¼ corner of Section 30, thence S89°21'39"W along the southerly line of said SE ¼, 1336.44 feet to the SW corner of said SE ¼; thence N00°29'10"W along the westerly line of said SE ¼, 605.97 feet; thence leaving said line, N89°26'00"E 422.45 feet; thence S00°34'00"E 110.00 feet; thence N89°25'00"E 170.78 feet; thence S00°34'00"E 10.64 feet; thence N89°26'00"E 104.70 feet; thence S00°34'00"E 141.36 feet; thence N89°26'00"E 427.00 feet; thence N00°34'00"W 99.36 feet to the Beginning of a Tangent Curve concave to the SW having a radius of 13.00 feet; thence northwesterly along the arc of said curve 20.42 feet through a Central Angle of 90°00'00"; thence N00°24'00"W 58.00 feet; thence N89°41'18"E 72.00 feet; thence N89°26'00"E 150.79 feet to the East line of said ¼ corner; thence S00°33'06"E along the easterly line of said SE ¼, 512.30 feet to the Point of Beginning.

3170-008-909: Parcel 3 of Parcel Map 22061 in the City of Lancaster, County of Los Angeles, State of California, recorded in Parcel Map Book 239 pages 28 and 29 of the office of the recorder of said county.

3170-008-910: Parcel 4 of Parcel Map 22061 in the City of Lancaster, County of Los Angeles, State of California, recorded in Parcel Map Book 239 pages 28 and 29 of the office of the recorder of said county.