



# City of Santa Barbara

City Clerk's Office

[www.SantaBarbaraCA.gov](http://www.SantaBarbaraCA.gov)

735 Anacapa Street  
P.O. Box 1990  
Santa Barbara, CA  
93102-1990  
Tel.: 805.564.5309  
Fax: 805.897.2623

**DATE:** November 15, 2007

**TO:** E.I. Solutions, Inc.  
130 W. Union Street  
Pasadena, CA 91103

**ATTN:** Carrie Norton, Director of Business Development

**FROM:** Starla Lago, Records Technician *SL*

Enclosed for your records is a fully executed duplicate original of the following agreement between the City of Santa Barbara and the addressee listed above.

**Agreement Number:** 22,568

Proposal Guaranty Deposit Agreement between City and Tioga for the Design, Construction, Ownership, Maintenance, and Operation of a Solar Electrical System at 630 Garden Street and 635 Laguna Street.

Enclosures

c: Bill Ferguson, Water Resources Supervisor/mh



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Fax: 805.897.2623

**DATE:** November 15, 2007

**TO:** Tioga Energy, Inc.  
2755 Campus Drive, Suite 145  
San Mateo, CA 94403

**ATTN:** Matt Lugar, Vice President, Sales & Marketing

**FROM:** Starla Lago, Records Technician

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**Agreement Number:** 22,568 *S*

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Enclosures

c: Bill Ferguson, Water Resources Supervisor/mh

City of Santa Barbara  
Corporation Yard Solar Electric Project

Proposal Guaranty Deposit Agreement

No. 22,560

This Proposal Guaranty Deposit Agreement is made and entered into this 22<sup>nd</sup> day of October, 2007, by and between the City of Santa Barbara, a California municipal corporation ("City") and E.I. Solutions, Inc. ("EIS") and Tioga Solar II, LLC, a Delaware limited liability company ("Tioga"), together "Proposers."

Whereas, Proposers have cooperated to develop and submit to the City a proposal ("Proposal") to design, construct, own, operate, and maintain a solar electric generating facility ("Facility") at City's Corporation Yard and to sell electrical energy to the City under a Power Purchase Agreement ("PPA") in response to City's Request For Proposals for the Corporation Yard Solar Electric Project ("RFP") and related addenda, and;

Whereas, City and Tioga have entered into said PPA, which PPA identifies EIS as the proposed installer of the Facility, and;

Whereas, Proposers have fully investigated the proposed project as described in the PPA and are committed to complete the design and construction of the Facility in conformance with the terms and conditions of the PPA, and;

Whereas, Proposers and City agree that Proposers may be unable to successfully design and construct the Facility in conformance with the terms and conditions of the PPA, in which event City risks incurring certain expenses, and;

Whereas, Proposers and City agree that at the time of the execution of this agreement, it is impractical, if not impossible, to reasonably ascertain the expenses and the monetary value of lost opportunities to purchase solar energy from an entity that is eligible to receive incentive payments under the Self Generation Incentive Program as reserved by the City (collectively "Expenses") in the event Proposers are unable to successfully design and construct the Facility in conformance with the terms and conditions of the PPA, and;

Whereas, Proposers and City desire that Proposers provide to the City a cash deposit to be used by City to compensate it for Expenses incurred by City in the event Proposers are unable to successfully design and construct the Facility in conformance with terms and conditions of the PPA.

NOW, THEREFORE, Proposers and City agree as follows:

1. Proposers shall pay to City, within five (5) days from the date first written above, the amount of fifty thousand dollars (\$50,000) as a Proposal Guaranty Deposit ("Deposit") to secure Tioga's obligations to diligently pursue the design and construction of the Facility in conformance with the terms and conditions of the PPA during the period from the date of this agreement until such time as the Construction Guaranty is provided to the City pursuant to the PPA.

2. The Deposit is the property of the City, except the Deposit shall be refunded to Proposers within thirty (30) days from the date of occurrence of any of the following:

- a. City or Tioga terminates the PPA pursuant to the terms and conditions of Sections 4(b) or 4(c) of the PPA .
- b. There is a filing of a referendum on the City's adoption of the ordinance authorizing the PPA during the 30-day referendum period.
- c. The PPA is terminated as provided in the PPA as a result of the discovery of hazardous materials during construction of the Facility.
- d. Tioga provides the Construction Guaranty in favor of City pursuant to the PPA.

3. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile signatures are sufficient for purposes of execution of this Agreement, and a hard copy shall be forwarded to the City within 3 days of execution.

IN WITNESS WHEREOF, the Parties have executed this Proposal Guaranty Deposit Agreement as of the day and year first written above.

**Proposers:**

E.I. Solutions, Inc.

Tioga Solar II, LLC

City:

By Paul Casey  
Paul Casey, Acting Public Works Director

By \_\_\_\_\_

By \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk

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

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

Approved as to Form:

Approved as to Content:

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

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

By Stephen P. Wiley  
Stephen P. Wiley  
City Attorney

By William P. McTomney  
William P. McTomney  
P.W. Administrative Officer

City of Santa Barbara  
Corporation Yard Solar Electric Project

Proposal Guaranty Deposit Agreement

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IN WITNESS WHEREOF, the Parties have executed this Proposal Guaranty Deposit Agreement as of the day and year first written above.

**Proposers:**

E.I. Solutions, Inc.

By: 

Name: John M. Markovich

Title: EVP & CFO

Tioga Solar II, LLC

By: 

Name: Paul Detering

Title: CEO

**City:**

By: \_\_\_\_\_

Paul Casey, Acting Public Works Director

ATTEST: \_\_\_\_\_

City Clerk

Approved as to Form: \_\_\_\_\_

By: \_\_\_\_\_

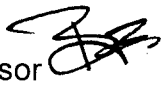
Stephen P. Wiley  
City Attorney

Approved as to Content: \_\_\_\_\_

William P. McTomney  
P.W. Administrative Officer



**City of Santa Barbara  
Public Works Department**

**Date:** November 12, 2007  
**To:** Starla Lago, City Clerk's Office  
**From:** Bill Ferguson, Water Resources Supervisor   
(805) 564-5571  
**Subject:** Status of Agreements

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Hi Starla-

Regarding two agreements approved by Council recently:

- Corporation Yard Solar Project – Proposal Guaranty Deposit Agreement: Per our prior discussion, I am attaching three originals with wet ink signatures by both E.I. Solutions and Tioga Energy, to allow you to finish processing this agreement. I am happy to send out the copies to E.I. Solutions and Tioga Energy if you like. Otherwise, here are addresses you can use:

Carrie Norton, Director of Business Development  
E.I. Solutions, Inc.  
130 W. Union Street  
Pasadena, CA 91103

Matt Lugar, Vice President, Sales & Marketing  
Tioga Energy, Inc.  
2755 Campus Drive, Suite 145  
San Mateo, CA 94403

The two remaining originals should go to them. We will take a copy.

- Integrated Regional Water Management Plan MOU: This was sent to David McDermott some time ago. He recalls signing and sending along. Do you know the status of it?

Thanks for you help. Please call if you have questions.

Bill

Attachments