



SAN JOSE UNIFIED  
SCHOOL DISTRICT

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*“Inspiring and Preparing for Success”*

# **Public-Private Partnerships (P3s) and Solar Energy: Power Purchase Agreements and Similar Contracts**

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**California Debt & Investment Advisory Commission**

October 8, 2009

Steve Adamo, Director of Construction  
San Jose Unified School District



- **SJUSD's History of Solar "Dream"**
  - Highly Motivated Board
  - Didn't pencil out
- **What changed?**
  - Changed/Improved Technologies
  - Costs reduced
  - Incentives, Tax Credits



- **How did SJUSD get their Project “Off the Ground”**
  - Student Body Interest
  - Found Partners (found each other)
- **Critical Responsibility of Public Entity**
  - Staff Buy-In, Ownership
  - Support of All Divisions



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# Thank You

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# Outline

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- ❑ The “Energy Efficiency” Statute
- ❑ What is a PPA?
- ❑ What is a “Direct Purchase” Solar Agreement?
- ❑ Seven Steps to Going Solar
- ❑ Evaluating Terms of Any Agreement

# The Energy Efficiency Statute

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- ❑ Government Code section 4217.10, et seq., permits public agencies to award contracts to construct “facilities” that will:
  - “develop energy conservation,” or “cogenerate energy,” or be an “alternative energy supply source”
- ❑ The statute “shall be construed to provide the greatest possible flexibility to public agencies in structuring agreements” (Gov. Code, §4217.18.)
- ❑ These contracts can be let without bidding: “[T]he public agency may request proposals from qualified persons” (Gov. Code §4217.16.)
- ❑ Prior to entering into a PPA, the public agency’s Board must hold a public hearing and make findings related to cost savings (Gov. Code, §4217.12.)

# The Energy Efficiency Statute

## Findings

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- “The anticipated cost ... under the [PPA] will be less than the anticipated ... cost to the public agency of [the] ... energy ... in the absence of [PPA]” (Gov. Code, §4217.12(a)(1).)
- Requires fiscal / financial analysis and projection tied with an energy consumption and production analysis and projection
  - Find a neutral entity to provide the public agency’s analysis, even if it is a re-check of a potential designer/builder’s analysis
- There is no statutory time frame for the “anticipated cost” to be less
  - How many years does a public agency have to “pay for” the purchase? 5? 10? 15? 20? 30?

# What is a Power Purchase Agreement?

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- Public agency contracts with an entity to design and build power generating facilities (e.g., solar panels and inverter system)
  - Designer/builder (or more likely a 3<sup>rd</sup> party financing entity) pays for it, owns it, and sells the power to the public agency
    - This owner of the system qualifies for and gets benefit of the Federal Investment Tax Credit
      - These credits reduce designer/builder's construction cost and should reduce public agency's ultimate cost for the facilities

# What is a Power Purchase Agreement?

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- ❑ Public agency pays for the energy with funds it previously would have paid to its utility provider
- ❑ Most deals structured with a starting rate per kilowatt hour with an annual fixed escalation
  - What if cost of energy from the utility increases at a lower rate than your PPA's escalation?
- ❑ Average 20-year agreement
  - It is not uncommon for agreements of this length to get “lost” in public agencies
- ❑ Technology changes may change system economics

# What is a Power Purchase Agreement?

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- ❑ Public agency provides a lease or easement of property to the owner of the solar facilities
  - Will require title review
    - ❑ If there are current encumbrances, the owner of the solar facilities has to OK being subordinate to existing encumbrances
      - E.g, if the facilities have been used as collateral for Certificates of Participation (COPs)
  - We suggest leases, but most owners of solar facilities seek an easement

# What is a “Direct Purchase” Solar Agreement?

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- ❑ Public agency contracts with an entity to design and build power generating facilities
  - Public agency pays for it, owns it, and uses the power
- ❑ This is really a design/build contract
- ❑ Gaining popularity because of bond authorization programs in the American Recovery and Reinvestment Act of 2009 (ARRA) for those Public agencies that received:
  - Comprehensive Renewable Energy Bonds (CREBs)
  - Qualified School Construction Bonds (QSCBs)
  - Others
- ❑ Does not qualify for or get benefit of Federal Investment Tax Credit

# Seven Steps to Going Solar

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1. Reduce energy usage
2. RFP for and contract for a “solar assessment” of your site(s)
3. Prepare a cost model to purchase the system or to enter into a PPA
4. RFP for the design and construction of solar power system
5. Hire a financing consultant to evaluate the costs, cost savings, projections, credits, rebates, incentives, etc.
  - a. Do this during steps 3 and 4.
6. Then comes the easy part:
  - a. Negotiate agreement
  - b. Make Board findings
  - c. Design/Builder designs, constructs and commissions the system
  - d. Power is generated and you pay power bills
  - e. Ensure insolation
7. Receive bankruptcy notice from the power company who owns your facility 😊

# Key Agreement Provisions That Will Require Negotiation

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- ❑ Standard “legal” terms & “public works” terms
  - Indemnity, termination, definition of “completion”
  - Payment Bond, Performance Bond, Insurance, Prevailing Wage, etc.
- ❑ Limitation of liability
  - Neither designer/builder nor finance entity should be able to tie its liability to the size of the solar facilities
- ❑ Ownership of Renewable Energy Credits (RECs)
- ❑ If use Federal funding sources, include terms required by American Recovery and Reinvestment Act of 2009 (ARRA) or other federal regulations, including:
  - Davis Bacon (Prevailing wage/labor requirements)
  - “Buy American” provisions

# Key Agreement Provisions That Will Require Negotiation

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- ❑ Energy production guarantee
  - The higher, the better for the public agency
  - This is over and above manufacturers' warranties
  - This is a guarantee of the design as well as the performance of the equipment
- ❑ Scope, scope, and scope
  - Detailed drawings and description of all work to be performed, including appurtenant structures, replacement hardscape/softscape, intrusions, trenching, conduit placement, fencing, etc.
- ❑ Monitoring and reporting of power generated
  - Kiosks at the sites?
  - Integration with Facilities/Operations Department
- ❑ Maintenance requirement is required by one or more of the following:
  - A component of the CSI,
  - A condition of any guarantee
  - A requirement of the “owner” of the system under a PPA

# Thank You

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