



Travis County Commissioners Court Agenda Request

Meeting Date: 12/20/2011, 9:00 AM, Voting Session

Prepared By/Phone Number: Katie Petersen Gipson, Planning and Budget Office, 854-9346

Elected/Appointed Official/Dept. Head: Leroy Nellis, Acting County Executive Planning and Budget

Commissioners Court Sponsor: Judge Biscoe

AGENDA LANGUAGE:

Approve contract amendment with FRV AE Solar, LLC for change in ownership and relocation of headquarters

BACKGROUND/SUMMARY OF REQUEST AND ATTACHMENTS:

This is an amendment of an economic development agreement with FRV Solar AR, LLC whose parent company is selling their interest to Austin Solar, LLC.

STAFF RECOMMENDATIONS:

PBO recommends approval. The new parent company will fulfill the same obligations as the previous owner.

ISSUES AND OPPORTUNITIES:

N/A

FISCAL IMPACT AND SOURCE OF FUNDING:

There is no impact to the requirements and obligations of the existing agreement. The only items that are changing are the parent company and the relocation of headquarters from downtown Austin to the site of the solar facility.

REQUIRED AUTHORIZATIONS:

Planning and Budget Office

Leroy Nellis

County Judge's Office

Cheryl Aker

**AMENDMENT OF AGREEMENT AND
APPROVAL OF CHANGE IN OWNERSHIP BETWEEN TRAVIS COUNTY AND
FRV AE SOLAR, LLC**

PARTIES

This Amendment ("Amendment") of Agreement is entered into by the following Parties: Travis County, a political subdivision of the State of Texas ("County") and FRV AE Solar , LLC, a limited liability Delaware company ("FRV"). The effective date of this Amendment (the "Amendment Effective Date") shall be the date that this Amendment is executed by the Parties.

RECITALS

County and FRV entered into an agreement to provide for economic incentives in the form of property tax rebates ("Agreement").

Under the Agreement, FRV agreed to construct a new 30 Megawatt Solar Farm which would generate clean renewable energy and maintain regional offices in Travis County.

The Agreements provides for changes by written document signed by both Parties; and the Parties desire to amend the Agreement to reflect mutually agreed to changes.

NOW, THEREFORE, in consideration of the mutual benefits received by these changes, and other good and adequate consideration as specified herein, the Parties agree to amend the Agreement as follows:

ARTICLE I. - CHANGE IN OWNERSHIP

1.0 CHANGE IN OWNERSHIP

1.1 **Notice.** Pursuant to Section 5.7.1 of the Agreement ("Change in Ownership"), FRV provided County with written notice dated September 2, 2011, of the change in ownership of FRV's ultimate parent, Fotowatio Renewable Ventures, Inc. under a Stock Sale Agreement dated August 3, 2011, by and among MEMC Holdings Corporation ("Purchaser"), MEMC Electronic Materials, Inc., Fotowatio Renewable Ventures, S.L., and Fotowatio S.L., which transferred 100% of the stock of Fotowatio Renewable Ventures, Inc. to Purchaser.

1.2 Pursuant to Section 5.7.1 of the Agreement ("Change in Ownership"), this Amendment serves as written notice that FRV's direct parent, RV Solar Development Company, LLC, intends to sell the equity interest in FRV to Austin Solar LLC.

2.0 APPROVAL

2.1 **Transfer of Rights and Obligations.** The Parties agree that, regardless of the transfers of ownership and/or equity interest set forth in this Amendment, FRV remains the project company that owns the project which is the subject of the Agreement and remains solely responsible for all rights, duties, obligations and responsibilities under the Agreement. FRV remains responsible for all performance under the Agreement and remains responsible for the day-to-day function of the Agreement obligations.

2.2 **Approval of Change in Ownership.** County approves the change in ownership referred to in Sections 1.1 and 1.2. This Amendment satisfies the notice requirement in Section 5.7.1.

3.0 OBLIGATIONS

3.1 **No Change in Terms.** The Parties agree that the consent to the change in ownership contained in this Amendment does not increase the financial obligations of County or decrease or change the requirements or obligations of FRV as set forth in the original Agreement.

ARTICLE II - CHANGE IN TERMS

4.0 REGIONAL HEADQUARTERS

4.1 **Facility.** The Parties agree that, under the terms of the Agreement, FRV is obligated to construct, operate and maintain the Facility (a 30 Megawatt Solar Farm located at 18580 FM 969, Manor, Texas) and to establish a regional headquarters ("Regional Headquarters"). For the purposes of this Amendment, "Regional Headquarters" shall mean where the Facility is located.

4.2 **Headquarters.** At the time of the execution of the Agreement, the Regional Headquarters was operating from offices located at 100 Congress Avenue, Suite 2034, Austin, Texas, as set forth in Section 5.1.1(b)(i-1) of the Agreement.

4.3 **Re-location of Regional Headquarters.** The Parties agree to amend all applicable terms of the Agreement to reflect the Regional Headquarters being established at the site of the Facility at the address set forth in Section 4.1 of this Amendment.

4.4 **Jobs Requirements.** The Parties agree that nothing in the changes made in this Amendment changes any of the requirements for jobs to be established at the Facility (2-3 FTEs) and the Headquarters (1-2 FTEs), as to the definition of FTE, the number of positions to be created and maintained, the dates by which those jobs must be created and any and all other requirements related to such jobs. The change in terms is limited to the location of the FTEs which will now be at the Facility.

5.0 INCORPORATION

5.1 County and FRV hereby incorporate the Agreement into this Amendment. Except for the changes made in this Amendment, County and FRV hereby ratify all the terms and conditions of the Agreement as amended. The Agreement with the changes made in this Amendment constitutes the entire agreement between the Parties and supersedes any prior undertaking or written or oral agreements or representations between the Parties. All provisions in the Agreement not specifically amended herein remain the same and in full force and effect.

TRAVIS COUNTY

BY: _____

Samuel T. Biscoe
Travis County Judge

Date: _____

FRV AE Solar, LLC

BY: _____

Authorized FRV Representative

Printed Name: _____

Title: _____

Date: _____