

LOCATION AGREEMENT

between

THE CITY OF ONTARIO
a California municipal corporation

and

PERSEID SOLAR INC.
A Delaware corporation

May 4, 2010

This LOCATION AGREEMENT ("Agreement") is entered into between THE CITY OF ONTARIO, a California municipal corporation ("City") and PERSEID SOLAR INC. ("Perseid"). The City and Perseid, are sometimes each, individually, referred to in this Agreement as a "Party" and, collectively, as the "Parties." The City and Perseid, enter into this Agreement with reference to the following facts ("Recitals"):

RECITALS

WHEREAS, Perseid intends to lease certain real property in the City of Ontario, County of San Bernardino ("Property"); and

WHEREAS, Perseid desires to operate a PV Solar panel Manufacturing facility on the Property ("Project"); and

WHEREAS, Perseid expects to generate significant Sales and service-related revenues as a result of the Project, all of which will result in the generation of significant new local sales tax revenues; and

WHEREAS, Perseid has agreed to operate the Project within the City for a period of Twenty (20) years after establishment of the Project; and

WHEREAS, Perseid has agreed not to operate another sales office in California or enter into another sales tax revenue sharing agreement in California during the term of this Agreement; and

WHEREAS, Perseid is not subject to California Government Code Section 53084.5 because Perseid is not maintaining a physical presence in another local agency; and

WHEREAS, the City, in consideration of the new and additional local sales tax revenues, property taxes, employment benefits, and other tangible and intangible benefits to be received by City arising from the completion of the Project and the operation of the Project within the City as described in this Agreement, desires to provide certain payments to Perseid as an incentive for completing the development of the Project and operating the Project within the City; and

WHEREAS, the operation of the Project will provide significant public benefits to the City because, among other matters, additional sales tax revenues generated by such activities represent a significant source of new and additional public revenue for the City, which may be used by the City for the funding of necessary public services and facilities, including public safety services and facilities. The City has further determined that the guaranteed operation of the Project serves the additional public purpose of fostering a business and civic environment which may attract additional businesses and investment in the community due to the availability of the increased public and private services and economic activity resulting there from.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH IN THIS AGREEMENT, THE CITY AND PERSEID AGREE AS FOLLOWS:

1. **Incorporation of Recitals.** The Recitals of fact set forth above are true and correct and are incorporated into this Agreement in their entirety by this reference.

2. Effective Date of this Agreement.

2.1 This Agreement is dated May 4, 2010 for reference purposes only. This Agreement will not become binding on either of the Parties unless and until the first date on which all of the following occur, if at all ("Effective Date"):

2.1.1 Perseid has approved this Agreement, this Agreement has been executed by Perseid's authorized representative(s), and Perseid has delivered three (3) fully executed copies of this Agreement to the City;

2.1.2 This Agreement is approved by the City Council of the City at a public meeting of the City and such approval is evidenced by a resolution adopted by the City Council of the City; and

2.1.3 This Agreement is executed by the authorized representative(s) of the City and delivered to Perseid.

2.2 If all conditions precedent to the Effective Date are not satisfied on or before, **April 30, 2011** then no part of this Agreement shall become binding on or enforceable against any Party and any prior signatures or approvals of this Agreement by either the City or Perseid shall be void and of no force or effect.

3. Representations and Warranties of the City.

3.1 The City represents and warrants to Perseid that, to the City's actual current knowledge:

3.1.1 The City's entry into this Agreement and/or the performance of the City's obligations under this Agreement does not violate any contract or agreement to which the City is a party;

3.1.2 There are no pending claims or lawsuits against the City that will delay or prevent the performance of the City's obligations under this Agreement;

3.1.3 The City has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement; and in making the Covenant Payments herein for provided, the City will not be in violation of any spending or debt restrictions arising under Article XIIB of the California Constitution.

3.2 The representations and warranties of the City set forth in this Section 3 are material consideration to Perseid and the City acknowledges that Perseid is relying upon the representations of the City set forth in this Section 3 in undertaking its obligations under this Agreement.

3.3 As used in this Agreement, the term "City's actual current knowledge" shall mean, and shall be limited to, the actual current knowledge of Chris Hughes (City Manager) as of the Effective Date, without having undertaken any independent inquiry or investigation for the

purposes of making such representation or warranty and without any duty of inquiry or investigation.

4. Representations and Warranties of Perseid.

4.1 Perseid represents and warrants to the City that, to Perseid's actual current knowledge:

4.1.1 Perseid is a Delaware corporation, in good standing to do business in the State of California and in the City;

4.1.2 The individual(s) executing this Agreement on behalf of Perseid is/are authorized to execute this Agreement on behalf of Perseid;

4.1.3 Perseid's entry into this Agreement and/or the performance of Perseid's obligations under this Agreement do not violate any contract, agreement or other legal obligation of Perseid;

4.1.4 Perseid is not subject to California Government Code Section 53084.5 because Perseid is not maintaining a physical presence in another local agency;

4.1.5 There are no pending lawsuits or other actions or proceedings which would delay, prevent or impair the timely performance of Perseid's obligations under this Agreement; and

4.1.6 Perseid has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement, and the execution, delivery and performance of this Agreement have been duly authorized by Perseid and no other action by Perseid is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth in this Agreement.

4.2 The representations and warranties of Perseid set forth in this Section are material consideration to the City and Perseid acknowledges that the City is relying upon the representations of Perseid set forth in this Section 4 in undertaking its obligations under this Agreement.

4.3 As used in this Agreement, the term "Perseid's actual current knowledge" shall mean, and shall be limited to, the actual current knowledge of Koorosh Arfaian (Perseid CEO) as of the date of the making of the representation or warranty, without having undertaken any independent inquiry or investigation for the purpose of making such representation or warranty and without any duty of inquiry or investigation.

5. **Definitions.** All initially capitalized terms used in this Agreement shall have the meanings set forth below or, if not set forth below, where such terms first appear in this Agreement.

5.1 **"BOE"** means the State of California Board of Equalization and any successor agency.

5.2 **“CEQA”** means and refers to the California Environmental Quality Act, California Public Resources Code Sections 21000, *and et seq.*

5.3 **“City”** means and refers to the City of Ontario, a California municipal corporation.

5.4 **“City Attorney”** means and refers to the City Attorney of the City of Ontario, California.

5.5 **“City Council”** means and refers to the City Council of the City of Ontario, California.

5.6 **“City Manager”** means and refers to the City Manager of the City of Ontario, California.

5.7 **“Covenant Payment(s)”** means and refers to payments made to Perseid in accordance with Section 9 of this Agreement.

5.8 **“Effective Date”** shall have the meaning ascribed to the term in Section 2 of this Agreement.

5.9 **“Eligibility Period”** means and refers to the [Twenty] consecutive twelve (12) month periods commencing on the first calendar day of Project Operating Year 1 and ending on the last calendar day of Project Operating Year [Twenty].

5.10 **“Enforced Delay”** means and refers to delays or defaults in performance due to war; acts of terrorism; insurrection; any form of labor dispute; lockouts; riots; floods; earthquakes; fires; acts of God; acts of a public enemy; referenda; acts of governmental authorities (except that the failure of the City to act as required under this Agreement shall not excuse its performance); moratoria; epidemics; quarantine restrictions; and freight embargoes.

5.11 **“[INSERT NAME OF BUSINESS]”** means and refers to Perseid, and includes any affiliate or subsidiary of Perseid, any purchasing company established by and under the control of Perseid, and any permitted nominee, assignee or successor to Perseid’s rights, powers and responsibilities.

5.12 **“Local Sales Tax Revenues”** means the net Sales Tax received by the City from the BOE pursuant to the application of the Sales Tax Law (as such statutes may hereafter be amended, substituted, replaced, re-numbered, moved or modified by any successor law) attributable to Project Activities in a particular Project Operating Year. Local Sales Tax Revenues shall not include: (i) Penalty Assessments, (ii) any Sales Tax levied by, collected for or allocated to the State of California, the County of San Bernardino, or a district or any entity (including an allocation to a statewide or countywide pool) other than City, (iii) any administrative fee charged by the BOE, (iv) any Sales Tax subject to any sharing, rebate, offset or other charge imposed pursuant to any applicable provision of federal, state or local (except City’s) law, rule or regulation, (v) any Sales Tax attributable to any transaction not consummated within the Eligibility Period, or (vi) any Sales Tax (or other funds measured by Sales Tax) required by the State of California to be paid over to another public entity (including the State) or

set aside and/or pledged to a specific use other than for deposit into or payment from the City's general fund.

5.13 **"Maintenance Deficiency"** means and refers to an occurrence of an adverse condition on any area of the Property that is subject to public view in contravention of the general maintenance standard described in Section 13.

5.14 **"Negotiation Period"** means and refers to a period of no less than thirty (30) calendar days.

5.15 **"Notice of Appeal"** shall have the meaning ascribed to the term in Section 9.3.

5.16 **"Notice of Determination"** shall have the meaning ascribed to the term in Section 9.2.

5.17 **[INTENTIONALLY OMITTED]**

5.18 **"Penalty Assessments"** means and refers to penalties, assessments, collection costs and other costs, fees or charges resulting from late or underpaid payments of Sales Tax and which are levied, assessed or otherwise collected from Perseid.

5.19 **"Prohibited Financial Assistance"** means and refers to any direct or indirect payment, subsidy, rebate or other similar or dissimilar monetary or non-monetary benefit, including, without implied limitation, payment of land subsidies, relocation expenses, financial incentives, public financing, property or sales tax relief or rebates, relief from public improvement obligations, and payment for public improvements to or for the benefit of Perseid by any public or private person or entity.

5.20 **"Project"** means and refers to Perseid's establishment and operation of a PV Solar Manufacturing facility on the Property.

5.21 **"Project Activities"** means and refers to sales, manufacturing and distribution activities of Perseid officers, directors, employees, agents or consultants which result in the sale or lease of any tangible personal property and which are subject to the payment of local sales and use taxes pursuant to the Sales Tax Law.

5.22 **"Project Opening Date"** means and refers to the date on which the Project first opens for business to the public.

5.23 **"Project Operating Quarter"** means and refers, individually, to each of 80 (eighty) consecutive ninety-one (91) day periods following the Project Opening Date, with the first Project Operating Quarter commencing on the first day of the BOE-designated reporting cycle immediately following the Project Opening Date and with each such ninety-one (91) day period referred to in this Agreement in consecutive numerical order as "Project Operating Quarter 1," "Project Operating Quarter 2," etc.

5.24 **"Project Operating Year"** means and refers, individually, to each of 20 (twenty) consecutive three hundred sixty-five (365) day periods following the Project Opening Date, with

the first Project Operating Year commencing on the first day of the BOE-designated reporting cycle immediately following the Project Opening Date and with each such three hundred sixty-five (365) day period referred to in this Agreement in consecutive numerical order as Project Operating Year 1, Project Operating Year 2, etc.

5.25 **“Sales Tax”** means all sales and use taxes levied under the authority of the Sales Tax Law attributable to Project Activities, excluding Sales Tax which is to be refunded to Perseid because of an overpayment of Sales Tax.

5.26 **“Sales Tax Law”** means (i) California Revenue and Taxation Code Section 7200 et seq., and any successor law thereto, (ii) any legislation allowing City or other public agency with jurisdiction in City to levy any form of local Sales Tax on the operations of Perseid, and (iii) regulations of the BOE and other binding rulings and interpretations relating to (i) and (ii) hereof.

5.27 **“Term”** means and refers to the period commencing on the Effective Date and ending on the last day of the Eligibility Period, unless sooner terminated pursuant to this Agreement.

6. Restrictions on Assignment and Change in Control.

6.1 The qualifications and identity of Perseid are of particular concern to the City. The City would not enter into this Agreement were it not for the qualifications and identity of Perseid. Perseid shall promptly notify the City in writing of any and all changes whatsoever in the identity of the business entities or individuals either comprising or in control of Perseid, as well as any and all material changes in the interest or the degree of control of Perseid by any such person, of which information Perseid or any of its principals, shareholders, members, officials or officers are notified or may otherwise have knowledge or information. This Agreement may be terminated by the City if there is any significant or material change, whether voluntary or involuntary, in membership, ownership, management or control of either Perseid (other than such changes occasioned by (i) the death or incapacity of any individual, (ii) changes for estate planning purposes which do not effect an actual change of ultimate control prior to the death of the individual whose estate is being dealt with, or (iii) employee stock option exercises which, when considered in the aggregate with all prior stock option exercises, do not result in more than a twenty-five percent (25%) change in control), that have not been approved by the City Manager (or designee) in his or her reasonable discretion prior to the time of such change, or the City may seek other appropriate relief; provided, however, that (A) the City shall first notify Perseid in writing of its intention to terminate this Agreement or to exercise any other remedy, and (B) Perseid shall have twenty (20) calendar days following receipt of such written notice to commence and thereafter diligently and continuously proceed to cure the default of Perseid and submit evidence of the initiation and satisfactory completion of such cure to the City, in a form and substance reasonably satisfactory to the City.

6.2 Perseid shall not sell, assign, convey, create any trust estate with respect to or otherwise transfer, assign or encumber (all of the foregoing, collectively, “Transfer”) any of their rights or interests in this Agreement, provided that “Transfer” shall not be deemed to include an

assignment or other transfer of this Agreement between the entities included in the definition of Perseid. Any actual or attempted Transfer shall be a Default of Perseid.

7. **Persied Covenant to Establish and Open the Project.** Perseid covenants and agrees for itself, its successors and assigns, for the sole and exclusive benefit of the City, that, promptly following receipt of all necessary City and other governmental approvals for the establishment of the Project, Perseid shall establish the Project and open it for business to the general public, all in conformity with all applicable laws. Perseid shall cause the occurrence of the Project Opening Date to occur on or before April 30, 2011. The City, acting by and through its City Manager, may extend the Project Opening Date for up to an additional ninety (90) calendar days in the City Manager's sole discretion.

8. **Perseid Tax Information.** Perseid acknowledges and agrees that the Sales Tax reporting and payment information related to Sales Taxes may become a public record as a result of the covenants of Perseid contained in Section 12 and the Covenant Payments to be made by the City to Perseid (as further described in Section 9). Perseid hereby authorizes the City to use the Sales Tax reporting and payment information to allow the City to perform its obligations under this Agreement and to disclose such information when, in the City Attorney's reasonable opinion, such disclosure is required by law.

9. **Determination of Local Sales Tax Revenues and Covenant Payments.** In consideration for Perseid's obligations set forth in this Agreement, and subject to satisfaction of all conditions precedent thereto, the City shall, for each Project Operating Quarter during the Eligibility Period, pay to Perseid an amount equal to one half of the Local Sales Tax Revenues received by the City in such Project Operating Quarter ("**Covenant Payment**").

9.1 **State of California Legislation Impact on Covenant Payment.** Without limiting the generality of the foregoing paragraph, Perseid acknowledges that the State of California legislature has in the past adopted certain legislation which diverted to the State of California a portion of the Local Sales Tax Revenues which would otherwise be payable to the City. Perseid acknowledges that it is possible that the State of California legislature may enact similar legislation in the future which would cause a corresponding reduction of and/or delay in the payment of the Local Sales Tax Revenues and that such reduction will cause the City a corresponding reduction and/or delay in the payment of the Covenant Payments due to Perseid during such time as such legislation is in effect. Furthermore, Perseid acknowledges that it is possible that the legislation described above, or some variant thereof, may be enacted and effective during one or more subsequent times during the Eligibility Period and may materially and negatively impact the amount of Local Sales Tax Revenues and, accordingly, the Covenant Payments. The City does not make any representation, warranty or commitment concerning the future actions of the State of California legislature with respect to the allocation of Local Sales Tax Revenues to the City. Perseid agrees that it is undertaking its obligations under this Agreement after having considered, and is expressly assuming the risk of, the possibility of the enactment of such legislation. The City acknowledges that the State of California legislature may provide for the payment to City of other revenues for the purpose of offsetting any losses in Local Sales Tax Revenues resulting from the enactment of legislation of the type described in this paragraph. City agrees that, should the California legislature provide for such offsetting revenues, then for purposes of this Agreement and the computation of any Covenant Payments

which may become due to Perseid hereunder, City will consider any such offsetting revenues which are (i) indexed to Sales Tax and offset the loss of Sales Tax revenues to the City on a dollar for dollar basis, (ii) actually received by the City, and (iii) not subject to any restrictions on use beyond those which are otherwise generally applicable to sales tax revenues received by California municipalities, to be Local Sales Tax Revenues within the meaning of this Agreement.

9.2 City's Notice of Determination of Project Operating Quarter Local Sales Tax Revenues and Covenant Payment. Within thirty (30) calendar days following the end of each Project Operating Quarter within the Eligibility Period, Perseid shall submit to City: (i) certified copies of Perseid's quarterly reports to the BOE which set forth the amount of Sales Tax paid to the BOE during the prior Project Operating Quarter in connection with Project Activities, and (ii) any and all bills, invoices, schedules, vouchers, statements, receipts, cancelled checks, and any other documents evidencing the amount of Sales Tax paid by Perseid during such Project Operating Quarter, certified as accurate and complete by an authorized official of Perseid. Within one hundred twenty (120) calendar days following its receipt of the foregoing information from Perseid, the City will determine the Local Sales Tax Revenues applicable to Project Operating Quarter and the Covenant Payment due and provide Perseid with written notice of the City's determination ("**Notice of Determination**"), together with reasonable supporting documents and calculations.

9.3 Perseid Notice of Appeal: Negotiation Period. Notwithstanding any other provision of law, including, without implied limitation, any statutes of limitation provided therefore in the California Government Code or the California Code of Civil Procedure, the City's determination of the matters set forth in the Notice of Determination shall be deemed final, conclusive, and non-appealable unless, within thirty (30) calendar days from the receipt of the Notice of Determination by Perseid, Perseid notifies the City in writing that Perseid appeals one or more of the matters set forth in the Notice of Determination, which notice must specifically identify the matter appealed and all of the bases for such appeal ("**Notice of Appeal**"). Any matter set forth in the Notice of Determination that is not appealed in the manner and within the time limits set forth above, shall be final and conclusive as against Perseid and all others claiming by or through Perseid. The provisions of this Section 9.3 shall be strictly construed and Perseid waives, to the maximum legal extent, any statutory or judicially created right to institute any administrative or judicial proceeding to contest any matter set forth in a Notice of Determination that is not timely appealed in strict accordance with this Section. If Perseid does not file a Notice of Appeal, the City shall tender the Covenant Payment due within forty-five (45) calendar days from the issuance of the Notice of Determination by Perseid. If Perseid files a timely Notice of Appeal with the City, the City and Perseid shall negotiate in good faith to resolve their dispute for a Negotiation Period. If, by the end of the Negotiation Period, the City and Perseid are unable to resolve the dispute set forth in the Notice of Appeal, each of them may exercise any judicial remedy available to them pursuant to this agreement for the resolution of such dispute; provided, however, that any provision of law to the contrary notwithstanding, such judicial remedy must be instituted (defined as the filing of an action in a court of competent jurisdiction in strict accordance with the terms of this Agreement) within ninety (90) calendar days following the end of the Negotiation Period or be barred forever. In connection therewith, the City and Perseid irrevocably consent to the appointment of a referee to

resolve such dispute in accordance with California Code of Civil Procedure Section 638, et seq., and to pay equal amounts of the cost of such referee.

9.4 No Accrual of Interest on Disputed Covenant Payment(s). The City and Perseid agree that any disputed amount shall not accrue interest during the pendency of any Negotiation Period or subsequent legal proceeding (including any appeals filed in connection therewith), unless the court makes a determination upon recommendation of the referee that the City acted in bad faith with regard to the dispute, in which case, any amount ultimately adjudged to be owing by the City shall be deemed to have accrued interest at the rate of four percent (4%) simple interest per annum, commencing on the ninetieth (90th) calendar day following the end of the Negotiation Period and continuing thereafter until paid. Perseid hereby waives, to the maximum legal extent, the right to the imposition of any different rate of interest in accordance with any provision of law.

9.5 Covenant Payment Paid From Any Source of City Funds. Any Covenant Payment due under Section 9 may be payable from any source of any legally available funds of the City. The City covenants to reasonably consider such actions as may be necessary to include all payments owed hereunder in each of its annual budgets during the Eligibility Period and to reasonably consider the necessary annual budgetary appropriations for all such payments.

9.6 Making Covenant Payment Is A Contingent Obligation of City. The City's obligations under Section 9 are contingent on a year to year basis and, for each Project Operating Year within the Eligibility Period, the City's obligations to make any payments to Perseid under this Agreement are expressly contingent upon Perseid, for the entirety of such Project Operating Year, completely fulfilling their material obligations under this Agreement. If for any reason Perseid fails to authorize the release or use of Sales Tax information in a manner satisfactory to the BOE or provide any information reasonably required by the City to perform the City's obligations under this Agreement, the City shall have no obligation to make any Covenant Payment to Perseid for the period during which such information is unavailable to the City or the City is not legally authorized to use such information for the purposes of performing its obligations under this Agreement. Additionally, during any period in which the Sales Tax information of Perseid is unavailable to the City or the City is not legally authorized to use such information for the purposes of performing its obligations under this Agreement, Covenant Payments shall be deemed suspended.

9.7 Covenant Payment Calculated on Quarterly Basis. The City and Perseid agree that the calculation and determination of all financial components of the Parties' rights and obligations under this Agreement shall be computed on a Project Operating Quarter to Project Operating Quarter basis. Revenues generated in one Project Operating Year may not be carried forward or back to any prior or future Project Operating Year, it being the express understanding of the Parties that for each Project Operating Year the financial obligations of the Parties and satisfaction of the conditions precedent to such obligations shall be determined and made independently of any other Project Operating Year.

9.8 BOE Determination of Improperly Allocated Local Sales Tax Revenues. If, at any time during or after the Eligibility Period of this Agreement, the BOE determines that all or any portion of the Local Sales Tax Revenues received by the City were improperly allocated

and/or paid to the City, and if the BOE requires repayment of, offsets against future sales tax payments, or otherwise recaptures from the City those improperly allocated and/or paid Local Sales Tax Revenues, then Perseid, shall, within thirty (30) calendar days after written demand from the City, repay all Covenant Payments (or applicable portions thereof) theretofore paid to Perseid which are attributable to such repaid, offset or recaptured Local Sales Tax Revenues. If Perseid fails to make such repayment within thirty (30) calendar days after the City's written demand, then Perseid shall be in breach of this Agreement and such obligation shall accrue interest from the date of the City's original written demand at the then-maximum legal rate imposed by the California Code of Civil Procedure on prejudgment monetary obligations, compounded monthly, until paid. This Section 9.8 shall survive the expiration or termination of this Agreement. Further, if at any time, the BOE fails or refuses to remit to the City all or any portion of any Local Sales Tax Revenues applicable to any time period during the Eligibility Period, then such Local Sales Tax Revenues retained by the BOE shall not be considered in calculating any Covenant Payment under this Agreement, unless and until such retained Local Sales Tax Revenues are paid to the City, provided such payment occurs during the Eligibility Period or within six (6) months following the end of the Eligibility Period.

10. Perseid Covenants Not to Accept Prohibited Financial Assistance. Perseid covenants to the City that during the Term, Perseid will not directly or indirectly solicit, accept or enter into any agreement concerning any Prohibited Financial Assistance from any other public or private person or entity, to the extent such Prohibited Financial Assistance is given for the purpose of causing or would result in: (i) the relocation of the point of sale for Project Activities from the City, (ii) a material (i.e., five percent (5%) or greater) reduction in the amount of Local Sales Tax Revenues which would be generated from the Project Activities in the absence of such an agreement, or (iii) any event of Default by Perseid. Failure of Perseid to comply with the covenant of this Section 10 shall be deemed to be a material breach of this Agreement by Perseid and the City shall be entitled to pursue any remedy or damages available under this Agreement, at law, or in equity for such breach.

11. Perseid Covenants to Maintain Property on Tax Rolls during the Eligibility Period. Perseid covenants to the City that, throughout the Term, Perseid shall cause the Property to remain on the County of San Bernardino, California, secured real property tax rolls, shall pay all property tax bills with respect to the Property and all improvements thereon on or before the last calendar day for the timely payment of each property tax installment on each December 10 and April 10, and shall timely pay all supplemental tax bills regarding such property issued by the County of San Bernardino, California. Perseid further covenants to the City that, throughout the Term, Perseid shall not use or otherwise sell, transfer, convey, assign, lease, leaseback or hypothecate the Property or any portion thereof to any entity or party, or for any use of the Property, that is partially or wholly exempt from the payment of real property taxes or that would cause the exemption of the payment of all or any portion of real property taxes otherwise assessable regarding the Property, without the prior written consent of the City, given or withheld in the City's sole and absolute discretion. Failure of Perseid to comply with the covenant of this Section 11 shall be deemed to be a material breach of this Agreement by Perseid and the City shall be entitled to pursue any remedy or damages available under this Agreement, at law, or in equity for such breach.

12. **Continuous Operation and Designation Covenant.** Perseid covenants to the City to cause the Project to be open for business to the general public and to continuously operate the Project on the Property throughout the entirety of the Eligibility Period. For purposes of this Section 12 “continuously operate” means the Project shall not cease to operate for a period of ninety (90) consecutive calendar days. Perseid shall, in all reports to the BOE, designate the City as the “point of sale” for all Project Activities occurring on the Property. Perseid shall, for the full Eligibility Period, at its sole cost and expense, maintain all permits, contractual arrangements, licenses, and registrations necessary for Perseid to lawfully conduct Project Activities and to designate the City as the “point of sale” in all reports and returns submitted to the BOE. Failure of Perseid to comply with the covenant of this Section 12 shall be deemed to be a material breach of this Agreement by Perseid and the City shall be entitled to pursue any remedy or damages available under this Agreement, at law, or in equity for such breach.

13. **Covenant to Maintenance Condition of the Property.** Perseid covenants to the City that areas of the Property that are subject to public view (including all existing improvements, paving, walkways, landscaping, exterior signage and ornamentation) shall be maintained in good repair and a neat, clean and orderly condition, ordinary wear and tear excepted. Graffiti, as this term is defined in Government Code Section 38772, that has been applied to any exterior surface of a structure or improvement on the Property that is visible from any public right-of-way adjacent or contiguous to the Property, shall be removed within seventy two (72) hours following its placement by either painting over the evidence of such vandalism with a paint that has been color-matched to the surface on which the paint is applied, or by removal with solvents, detergents or water, as appropriate. Failure of Perseid to comply with the covenant of this Section 13 shall be deemed to be a material breach of this Agreement by Perseid and the City shall be entitled to pursue any remedy or damages available under this Agreement, at law, or in equity for such breach.

14. **Covenant Not to Discriminate.** Perseid covenants to the City that they will not discriminate against any employee or applicant for employment because of sex, marital status, race, color, religion, creed, national origin, or ancestry, and that they will comply with all applicable local, state and federal fair employment laws and regulations. Perseid further covenants and agrees that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Perseid itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sublessee or vendees of the Property. Failure of Perseid to comply with the covenant of this Section 14 shall be deemed to be a material breach of this Agreement by Perseid and the City shall be entitled to pursue any remedy or damages available under this Agreement, at law, or in equity for such breach.

15. **Payment of Prevailing Wages.**

15.1 Perseid acknowledges that the City has made no representation, express or implied, to Perseid or any person associated with Perseid regarding whether or not laborers employed relative to the installation of the Project, if any, must be paid the prevailing per diem wage rate for their labor classification, as determined by the State of California, pursuant to

Labor Code Sections 1720, *et seq.* Perseid agrees with the City that Perseid shall assume the responsibility and be solely responsible for determining whether or not laborers employed relative to any construction pertaining to the Project must be paid the prevailing per diem wage rate for their labor classification, as determined by the State of California, pursuant to Labor Code Sections 1720, *et seq.*

15.2 Perseid, on behalf of itself, its successors, and assigns, waives and releases the City from any right of action that may be available to any of them pursuant to Labor Code Sections 1726(c) and 1781. Perseid acknowledges the protections of Civil Code Section 1542 relative to the waiver and release contained in this Section 15.2, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

BY INITIALING BELOW, PERSEID KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF THIS SECTION 15:

Initials

Additionally, Perseid shall indemnify, defend with counsel acceptable to the City and hold harmless the City against any claims pursuant to Labor Code Sections 1726(c) and 1781 arising from this Agreement or the installation of the Project on the Property, in accordance with the terms of Section 16 of this Agreement.

Notwithstanding any other provision of this Agreement, the City shall not be under any duty to monitor or ensure the compliance of Perseid with any State of California labor laws, including, without limitation, prevailing wage laws.

16. **Indemnification.** To the fullest extent permitted by law, Perseid shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of Perseid, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys fees and other related costs and expenses.

17. **Defense of this Agreement.** Perseid acknowledges that the City is a "public entity" as defined under applicable California law. Therefore, the City must satisfy the requirements of certain California statutes relating to the actions of public entities, including, without limitation, CEQA. Also, as a public body, the City's action in approving this Agreement may be subject to proceedings to invalidate this Agreement, injunctive relief or damages. Perseid assumes the risk of delays and damages that may result to Perseid from any third-party legal actions related to the

City's approval of this Agreement or the pursuit of the activities contemplated by this Agreement, even in the event that an error, omission or abuse of discretion by the City is determined to have occurred. If a third-party files a legal action regarding the City's approval of this Agreement or the pursuit of the activities contemplated by this Agreement, the City may terminate this Agreement on thirty (30) days' written notice to Perseid of the City's intent to terminate this Agreement, referencing this Section 17 without any further obligation to perform the terms of this Agreement and without any liability to Perseid resulting from such termination, unless Perseid unconditionally agrees to indemnify and defend the City against such third-party legal action, as provided hereinafter in this Section 17. Within thirty (30) days of receipt of the City's notice of intent to terminate this Agreement, as provided in the preceding sentence, Perseid may offer to defend the City in the third-party legal action and pay all of the court costs, attorneys' fees, monetary awards, sanctions, attorney fee awards, expert witness and consulting fees, and the expenses of any and all financial or performance obligations resulting from the disposition of the legal action. Any such offer from Perseid must be in writing and in a form reasonably acceptable to the City. Nothing contained in this Section 17 shall be deemed or construed to be an express or implied admission that the City is or may be liable to Perseid or any other person or entity for alleged damages from any alleged or established failure of the City to comply with any statute, including, without limitation, CEQA.

18. **No Effect on City's Legislative Authority.** Nothing in this Agreement shall limit or restrict the authority of the City Council to take any other actions with respect to the Property and/or Perseid without notice to or consent from Perseid, except as may otherwise be expressly provided by applicable law.

19. **Non-liability of the City or City Officials and Employees.** No council member, officer, official, contractor, consultant, attorney or employee of the City shall be personally liable to Perseid, any voluntary or involuntary successors or assignees, or any lender or other party holding an interest in the Property, in the event of any default or breach by the City, or for any amount which may become due to Perseid or to its successors or assignees, or on any obligations arising under this Agreement.

20. **Conflict of Interests.** No council member, official, officer, contractor, consultant, attorney or employee of the City shall have any personal interest, direct or indirect, in this Agreement nor shall any such council member, official, officer, or employee participate in any decision relating to this Agreement which affects his/her personal interests or the interests of any corporation or partnership in which he/she is directly or indirectly interested.

21. **Defaults - General.** Subject to any extensions of time provided for in this Agreement for event of enforced Delay, the occurrence of any of the following shall constitute a "Default."

21.1 The failure by any Party to perform any obligation of such Party under this Agreement for the payment of money, if such failure is not cured within ten (10) days after the non-performing Party's receipt of written notice from the injured Party that such obligation was not performed when due; or

21.2 The failure by any Party to perform any of its obligations set forth in this Agreement other than obligations subject to subsection 21.1, if such failure is not cured within

thirty (30) days after the non-performing Party's receipt of written notice from the injured Party that such obligation was not performed when due or, if such failure is of a nature that cannot reasonably be cured within thirty (30) days, the failure by such Party to commence such cure within thirty (30) days after receipt of such notice and to, thereafter, diligently prosecute such cure to completion; or

21.3 Any representation or warranty by a Party set forth in this Agreement proves to have been false or misleading in any material respect when made and said Party does not take the necessary action, following notice pursuant to subsection 21.2, to remedy said misrepresentation or breach of warranty within the time period set forth in subsection 21.2, such that the original representation or warranty becomes truthful and accurate.

21.4 Any failure or delays by any Party in asserting any of their rights and/or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by any Party in asserting any of their rights and/or remedies shall not deprive any Party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert or enforce any such rights or remedies.

22. **City Offset Remedy.** In addition to those rights and remedies provided by Section 21, the City's rights and remedies for a Default by Perseid include the right to off-set any amount of money due to Perseid from City following the notice and opportunity to cure provided in Section 21, against any Covenant Payment(s) due or becoming due to Perseid.

23. **Legal Actions.** In addition to any other rights or remedies, but subject to the other terms and conditions of this Agreement, any Party may institute legal action to cure, correct or remedy any Default by the other Party, to recover general or consequential damages for any default, or to obtain any other remedy available to that Party under this Agreement or at law or in equity.

24. **Governing Law.** The procedural and substantive laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to its conflicts of laws principles.

25. **Rights and Remedies are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties under this Agreement are cumulative and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by another Party.

26. **Notices, Demands and Communications between the Parties.**

26.1 Any and all notices, demands or communications submitted by a Party to the other Party pursuant to or as required by this Agreement shall be proper, if in writing and dispatched by messenger for immediate personal delivery, by a nationally recognized overnight courier service or by registered or certified United States mail, postage prepaid, return receipt requested, to the principal office of the Party, as designated in subsection 26.2. Such written notices, demands and communications may be sent in the same manner to such other addresses as the Party may from time to time designate. Any such notice, demand or communication shall be deemed to be received by the addressee, regardless of whether or when any return receipt is

received by the sender or the date set forth on such return receipt, on the day that it is dispatched by messenger for immediate personal delivery, on the date of delivery by a nationally recognized overnight courier service or three (3) calendar days after it is placed in the United States mail, as provided in this subsection 26.1.

26.2 The following are the authorized addresses for the submission of notices, demands or communications to the Parties:

To Perseid:

Perseid Solar Inc.
3350 Shelby Street - Suite 200
Ontario, CA 91764
Attn: Koorosh Arfaian

To the City:

City of Ontario
303 East "B" Street
Ontario, California 91764
Attention: City Manager

With courtesy copy to:

Best Best & Krieger LLP
3500 Porsche Way
Suite 200
Ontario, CA 91764
Attention: John Brown

Notwithstanding the foregoing, for the purpose of this Agreement, any and all notices, demands or communications submitted by Perseid to the City pursuant to or as required by this Agreement shall be deemed to be from Perseid. Conversely, any and all notices, demands or communications submitted by the City to Perseid shall be deemed to be submitted by the City to Perseid.

27. **Attorneys' Fees.** In the event of the bringing of an arbitration, action or suit by a Party to this Agreement against the other Party to this Agreement by reason of any breach of any of the covenants or agreements or any intentional inaccuracies in any of the representations and warranties on the part of the Party arising out of this Agreement or any other dispute between the Parties concerning this Agreement, then, in that event, the prevailing party in such action or dispute, whether by final judgment or arbitration award, shall be entitled to have and recover of and from the other Party or Parties all costs and expenses of suit or claim, including reasonable attorneys' fees. Any judgment, order or award entered in any final judgment or award shall contain a specific provision providing for the recovery of all costs and expenses of suit or claim, including reasonable attorneys' fees (collectively, the "Costs") incurred in enforcing, perfecting and executing such judgment or award. For the purposes of this Section 27, Costs shall include, without implied limitation, reasonable attorneys' and experts' fees, costs and expenses incurred in the following: (i) post judgment motions and appeals, (ii) contempt proceedings, (iii) garnishment, levy and debtor and third party examination; (iv) discovery; and (v) bankruptcy litigation. This Section 27 shall survive any termination of this Agreement.

28. **Jurisdiction and Venue.** Any legal action or proceeding concerning this Agreement shall be filed and prosecuted in the appropriate state or federal court in the State of California. All Parties to this Agreement irrevocably consent to the personal jurisdiction of that court. Venue shall be in San Bernardino County.

29. **Interpretation.** The Parties acknowledge that this Agreement is the product of arms-length negotiation and drafting and that each of the Parties have been represented by legal counsel in the negotiation and drafting of this Agreement. Accordingly, any rule of construction that the ambiguities in a document shall be construed against the drafter of that document shall have no application to the interpretation and enforcement of this Agreement. In any action or proceeding to interpret or enforce this Agreement, the finder of fact may refer to any extrinsic evidence not in direct conflict with any specific provision of this Agreement to determine and give effect to the intention of the Parties.

30. **Counterpart Originals; Integration; Amendments.** This Agreement may be executed in duplicate originals, each of which is deemed to be an original, but all of which taken together shall constitute one and the same instrument. This Agreement and the Exhibits attached to this Agreement represent the entire understanding of the Parties and supersede all negotiations, letters of intent, memoranda of understanding or previous agreements between the Parties with respect to all or any part of the subject matter of this Agreement. This Agreement may not be amended except by a written instrument executed by both Parties. The City Manager is authorized, with the consent of the City Attorney, to make minor, non-substantive amendments to this Agreement on behalf of the City without the need for formal City Council approval.

31. **No Waiver.** Failure to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions of this Agreement shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers under this Agreement at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

32. **Time is of the Essence/Force Majeure.** Time is of the essence in the performance of the Parties' obligations under this Agreement. In addition to specific provisions of this Agreement providing for extensions of time, times for performance under this Agreement shall be extended by an Enforced Delay, provided, however, that the Party claiming the extension notify the other Party of the nature of the matter causing the Enforced Delay within thirty (30) days from the occurrence thereof; and, provided further, that the extension of time shall be only for the period of the Enforced Delay.

32.1 ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, PERSEID EXPRESSLY ASSUMES THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES AND/OR MARKET DEMAND/CONDITIONS AND WAIVES, TO THE GREATEST LEGAL EXTENT, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE, OR SIMILAR THEORIES.

32.2 PERSEID EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF PERSEID SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY OF THE OBLIGATIONS, COVENANTS, CONDITIONS AND REQUIREMENTS OF THIS AGREEMENT. PERSEID EXPRESSLY ASSUMES THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE EFFECTIVE DATE.

_____ Initials

33. **No Third Party Beneficiaries.** The performance of the Parties' respective obligations under this Agreement is not intended to benefit any party other than the City and Perseid, except as may be expressly provided otherwise in this Agreement. No person or entity not a signatory to this Agreement shall have any rights or causes of action against any Party to this Agreement as a result of that Party's performance or non-performance under this Agreement.

34. **No Effect on Eminent Domain Authority.** Nothing in this Agreement shall be deemed to limit, modify, or abridge or affect in any manner whatsoever the City's eminent domain powers with respect to the Property, the Project or any other improvements on the Property.

35. **Tax Consequences.** Perseid acknowledges that it may experience tax consequences as a result of its receipt of the payments provided for in this Agreement and agrees that it shall bear any and all responsibility, liability, costs, and expenses connected in any way therewith.

36. **Warranty against Payment of Consideration for Agreement.** Perseid warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement. Third parties, for the purposes of this Section 36, shall not include persons to whom fees are paid for professional services if rendered by attorneys, consultants, accountants, engineers, architects and the like when such fees are considered necessary by Perseid.

[Signatures on Following Pages]

SIGNATURE PAGE
TO
LOCATION AGREEMENT
()

CITY:

THE CITY OF ONTARIO
a California municipal corporation

By: _____


Chris Hughes
City Manager

ATTEST:


City Clerk

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP

By: _____

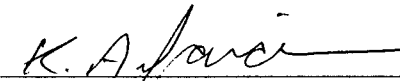

City Attorney

PERSEID:

Perseid Solar Inc.
A Delaware Corporation

Dated: 4-15-2010

By: _____


Koorosh Arfaian

Its: _____

CEO