

## CITY COUNCIL

For City Clerk's Use:

☐

APPROVED

☐

DENIED

Reso No. \_\_\_\_\_

File No. \_\_\_\_\_

Ord No. \_\_\_\_\_

Agenda Item No.: 23

Date: March 24, 2010

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Richard Walker, Deputy Utilities Manager/Water

**SUBJECT:** SolarBee Mixers - Sole Source PSA

RECOMMENDATION:

It is requested that Council adopt Resolution No. 2010-44 authorizing the Mayor and City Clerk to execute a Public Service Agreement with SolarBee, Inc., to install energy efficient solar powered mixers at Lake Wohlford and Lake Dixon, as a part of the Energy Efficiency-Conservation Block Grant (CBG).

FISCAL ANALYSIS:

This project will cost \$387,492 and will be paid jointly through the Energy Efficiency CBG fund (\$352,492) and the Utility fund (\$35,000).

CORRELATION TO THE CITY COUNCIL ACTION PLAN:

N/A

PREVIOUS ACTION:

At the November 18, 2009, meeting, Council approved the acceptance of grant funds through the Energy Efficiency CBG program. The City was approved for \$1,273,300 in total funding and the solar powered mixers project was one of the approved projects.

BACKGROUND:

As a part of the research done for the grant application, staff was asked to evaluate available technological improvements applicable to the Energy Efficiency CBG program. Utility staff identified the SolarBee solar powered mixing system as an opportunity to save the City approximately 100% of the energy costs over the existing aeration compressors presently installed at Lake Wohlford and Lake Dixon. Studies show that these mixers will provide a vast improvement to the single air line mixing currently done at the lakes. Better mixing will result in lower chemical costs and much

improved lake water quality. This information was submitted to the work group and the project was selected to be a part of the grant program.

After completing the research on solar powered mixing systems it has been determined, pursuant to section 10-103B of the City's municipal code, that SolarBee, Inc. meets the qualifications to be a sole source purchase. The mixing system is one of the most advanced systems available, and will provide the best energy savings possible.

Attached is a Public Service Agreement for SolarBee, Inc., to install the new energy efficient mixers at Lake Wohlford and Lake Dixon. Staff recommends that the Council approve the PSA and adopt Resolution No. 2010-44.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Walker', followed by a long horizontal flourish.

Richard Walker

## RESOLUTION NO. 2010-44

A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF ESCONDIDO, CALIFORNIA,  
AUTHORIZING THE MAYOR AND THE CITY  
CLERK TO EXECUTE, ON BEHALF OF THE  
CITY, A PUBLIC SERVICES AGREEMENT  
WITH SOLARBEE, INC.

WHEREAS, on March 24, 2009, Council authorized the Utilities Department to enter into a Public Services Agreement with SolarBee, Inc., in the amount of \$387,492; and

WHEREAS, funding for the Public Services Agreement will come from the Energy Efficiency and Conservation Block Grant Program and the City of Escondido Utilities Fund; and

WHEREAS, Council was advised that the grant funds would be used for SolarBee solar mixers for Lake Wohlford and Lake Dixon; and

WHEREAS, SolarBee, Inc., has installed similar solar powered mixers for two neighboring jurisdictions, the City of San Diego (17 units – sole sourced) and Camp Pendleton MCB, and has been deemed to be the most appropriate supplier of solar powered mixers for the City of Escondido; and

WHEREAS, the City Council desires at this time, and deems it to be in the best public interest to execute a Public Services Agreement ("Agreement") with SolarBee, Inc., for the installation of SolarBee solar powered mixers in Lake Wohlford and Lake Dixon.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

1. That the above recitations are true.
2. That the Mayor and the City Clerk are hereby authorized to execute, on behalf of the City, an Agreement with SolarBee, Inc., for the installation of SolarBee solar powered mixers in Lake Wohlford and Lake Dixon.
3. A copy of the proposed Agreement is attached to this Resolution as Exhibit "1," and is incorporated by this reference.



CITY OF ESCONDIDO  
PUBLIC SERVICES AGREEMENT

This Agreement is made this 15th day of March 2010.

Between: CITY OF ESCONDIDO  
a Municipal Corporation  
201 N. Broadway  
Escondido, California 92025  
Attn: Richard Walker  
760-839-5460  
("CITY")

And: Solar Bee  
3225 Highway 22  
Dickinson, ND 58601  
Attn: Joel Bleth  
701-225-4495  
("CONTRACTOR")

WHEREAS, the CITY and CONTRACTOR desire to enter into this Agreement for the performance of services;

NOW, THEREFORE, it is mutually agreed as follows:

1. Description of Services. CONTRACTOR will furnish all of the services described in "Attachment A," which is attached and incorporated by this reference. CONTRACTOR agrees to diligently perform such services to their completion, with professional quality and technical accuracy.
2. Compensation. The CITY will pay and CONTRACTOR will accept in full payment for the above work, the sum of \$387,492. Any breach of this Agreement will relieve CITY from the obligation to pay CONTRACTOR, if CONTRACTOR has not corrected the breach after CITY provides notice and a reasonable time to correct it.
3. Term and Time of Performance. CONTRACTOR must start working within one (1) week from City's notice to begin. CONTRACTOR must diligently perform and complete the work by July 1, 2010. Extension of terms or time of performance may be made only upon the City's written consent.
4. Scope of Compensation. CONTRACTOR will be responsible for performance of the tasks specified in the Description of Services in "Attachment A." No compensation will be provided for any other tasks without specific prior written consent from the CITY.
5. Performance. CONTRACTOR must faithfully perform in a proficient manner, to the satisfaction of the CITY, all the work or services described in the Description of Services, above.

6. City Property. All original documents, drawings, electronic media, and other material prepared by CONTRACTOR under this Agreement immediately becomes the exclusive property of the CITY, and may not be used by CONTRACTOR for any other purpose without prior written consent of the CITY.

7. Insurance Requirements.

- a. The CONTRACTOR shall secure and maintain at its own cost, for all operations, the following insurance coverage, unless reduced by the City Attorney:
- (1) General liability insurance. Occurrence basis with minimum limits of \$1,000,000 each occurrence, \$2,000,000 General Aggregate, and \$1,000,000 Products/Completed Operations Aggregate; and
  - (2) Automobile liability insurance of \$1,000,000 combined single-limit per accident for bodily injury and property damage, unless waived as provided in 7(b) below; and
  - (3) Workers' compensation and employer's liability insurance as required by the California Labor Code, as amended, or certificate of sole proprietorship; and
  - (4) Errors and Omissions professional liability insurance with minimum coverage of \$1,000,000.
- b. It is the parties' understanding that the use of a motor vehicle is not a primary subject of this Agreement. CONTRACTOR acknowledges that operating a motor vehicle is outside the scope of this Agreement and occurs only at the convenience of CONTRACTOR. A waiver of automobile liability insurance is only effective if both sets of initials appear below, otherwise such insurance is required.

Acknowledged by CONTRACTOR \_\_\_\_\_

Waiver appropriate by CITY \_\_\_\_\_

- c. Each insurance policy required above must be acceptable to the City Attorney.
- (1) Each policy must provide for written notice within no more than thirty (30) days if cancellation or termination of the policy occurs. Insurance coverage must be provided by an A.M. Best's A- rated, class V carrier or better, admitted in California, or if non-admitted, a company that is not on the Department of Insurance list of unacceptable carriers.
  - (2) All non-admitted carriers will be required to provide a service of suit endorsement in addition to the additional insured endorsement.
  - (3) Both the General Liability and the Automobile Liability policies must name the CITY specifically as an additional insured under the policy on a separate endorsement page. The endorsement must be ISO Form CG2010 11/85 edition or its equivalent for General Liability endorsements and CA 20-01 for Automobile Liability endorsements.
  - (4) The General Liability policy must include coverage for bodily injury and property damage arising from CONTRACTOR's work, including its on-going operations and products-completed operations hazard.
  - (5) The General Liability policy must be primary and noncontributory and any insurance maintained by CITY is excess.
- d. In executing this Agreement, CONTRACTOR agrees to have completed insurance documents on file with the CITY within fourteen (14) days after the date of execution.

Failure to comply with insurance requirements under this Agreement will be a material breach of this Agreement, resulting in immediate termination at CITY's option.

8. Indemnification. CONTRACTOR (which in this paragraph 8 includes its agents, employees and subcontractors, if any) agrees to indemnify, defend, and hold harmless the CITY from all claims, lawsuits, damages, judgments, loss, liability, or expenses, including attorneys' fees, for any of the following:

- a. Any claim of liability arising out of the negligence or any acts or omissions of CONTRACTOR in the performance of this Agreement;
- b. Any personal injuries, property damage or death that CONTRACTOR may sustain while using CITY-controlled property or equipment, while participating in any activity sponsored by the CITY, or from any dangerous condition of property; or
- c. Any injury or death which results or increases by any action taken to medically treat CONTRACTOR.

Stormwater Indemnification. CONTRACTOR shall further indemnify, defend, and hold harmless CITY and its officers, employees, and agents from and against any and all liabilities, claims, actions, causes of action, proceedings, suits, administrative proceeds, damages, fines, penalties, judgments, orders, liens, levies, costs and expenses of whatever nature, including reasonable attorney's fees and disbursements, arising out of any violation, or claim of violation of the San Diego Municipal Storm Water Permit (Order No. R9-2007-0001), as amended or renewed, of the California Regional Water Quality Control Board Region 9, San Diego, which CITY might suffer, incur, or become subject by reason of or occurring as a result of or allegedly caused by the construction of the Project or the Improvements.

9. Anti-Assignment Clause. Since the CITY has relied on the particular skills of CONTRACTOR in entering this Agreement, CONTRACTOR may not assign, delegate, or sublet any duty or right under this Agreement, or any portion of the Description of Services. Any such purported assignment, delegation, or subletting will void this entire Agreement, unless the CITY has previously approved such action in writing.

10. Costs and Attorney's Fees. In the event that legal action is required to enforce the terms and conditions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and costs.

11. Independent Contractor. CONTRACTOR is an independent contractor and no agency or employment relationship is created by the execution of this Agreement.

12. Merger Clause. This Agreement and its Attachments, if any, are the entire understanding of the parties, and there are no other terms or conditions, written or oral, controlling this matter. In the event of any conflict between the provisions of this Agreement and any of its Attachments, the provisions of this Agreement must prevail.

13. Anti-Waiver Clause. None of the provisions in this Agreement will be waived by CITY because of previous failure to insist upon strict performance, nor will any provision be waived because any other provision has been waived by CITY, in whole or in part.

14. Severability. The invalidity in whole or in part of any provision of this Agreement will not void or affect the validity of any other provisions of this Agreement.

15. Choice of Law. This Agreement is governed by the laws of the State of California. Venue for all actions arising from this Agreement must be exclusively in the state or federal courts located in San Diego County, California.
16. Multiple Copies of Agreement/Counterparts. Multiple copies and/or counterparts of this Agreement may be executed, including duplication by photocopy or by computerized scanning device. Each duplicate will be deemed an original with the same effect as if all the signatures were on the same instrument. However, the parties agree that the Agreement on file in the office of the Escondido City Clerk is the copy of the Agreement that shall take precedence should any differences exist among copies or counterparts of the document.
17. Provisions Cumulative. The foregoing provisions are cumulative and in addition to and not in limitation of any other rights or remedies available to the CITY.
18. Notices to Parties. Any statements, communications or notices to be provided pursuant to this Agreement must be sent to the attention of the persons indicated below. Each party agrees to promptly send notice of any changes of this information to the other party.
19. Business License. The CONTRACTOR is required to obtain a City of Escondido Business License prior to execution of this Agreement.
20. Compliance with Applicable Laws, Permits and Licenses. CONTRACTOR shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, and rules in effect during the term of this Agreement. This shall include, but not limited to, all California Labor Code laws regarding payment of prevailing wages and all OSHA regulations. CONTRACTOR shall obtain any and all licenses, permits, and authorizations necessary to perform the services set forth in this Agreement. Neither CITY, nor any elected nor appointed boards, officers, officials, employees, or agents of CITY, shall be liable, at law or in equity, as a result of any failure of CONTRACTOR to comply with this section.
21. Prevailing Wages. If applicable, pursuant to Section 1770 et seq. of the Labor Code, CONTRACTOR agrees that a prevailing rate and scale of wages, in accordance with applicable State and Federal Law, will be paid in the carrying out of this Agreement. CONTRACTOR shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, and rules pertaining to the payment of prevailing wages. The prevailing rate and scale to be paid shall be the same as the 'General Prevailing Wage Rates' approved by the Department of Industrial Relations as of the date of the execution of this Agreement. Said rates and scales are herein referred to and adopted in this Agreement as though fully and completely set forth herein, and said scale as adopted by the Department is made a part of this Agreement by reference. Copies of the prevailing rate of per diem wages are available on the Intranet at (<http://www.dir.ca.gov/DLSR>). Neither CITY, nor any elected nor appointed boards, officers, officials, employees, or agents of CITY, shall be liable, at law or in equity, as a result of any failure of CONTRACTOR to comply with this section.
22. Immigration Reform and Control Act of 1986. CONTRACTOR shall keep itself informed of and comply with the Immigration Reform and Control Act of 1986. CONTRACTOR affirms that as a licensed Contractor and employer in the State of California, all new employees must produce proof of eligibility to work in the United States within the first three days of employment and that only employees legally eligible to work in the United States will be employed on this public project. CONTRACTOR agrees to comply with such provisions before commencing and continuously throughout the performance of this Agreement.



IN WITNESS WHEREOF, the parties below are authorized to act on behalf of their organizations, and have executed this Agreement as of the date set forth below.

CITY OF ESCONDIDO

Date: \_\_\_\_\_

\_\_\_\_\_  
Lori Holt Pfeiler  
Mayor

Date: \_\_\_\_\_

\_\_\_\_\_  
Marsha Whalen  
City Clerk

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Contractor name and address)

Date: \_\_\_\_\_

\_\_\_\_\_  
(Contractor signature)

\_\_\_\_\_  
Title

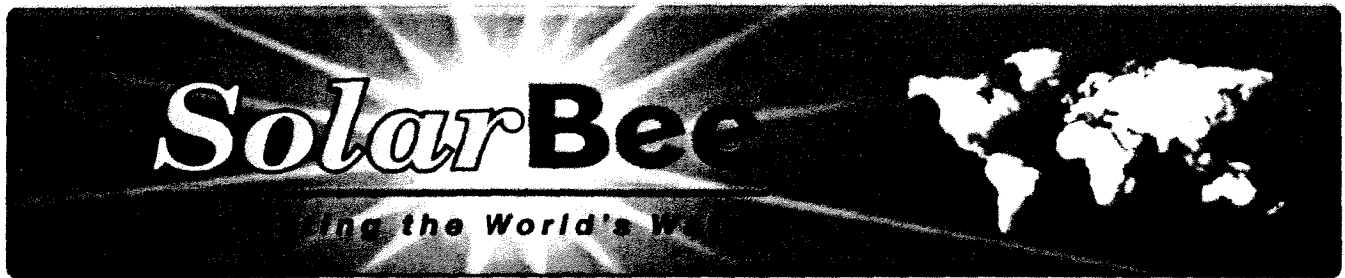
(The above signature must be notarized)

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY  
JEFFREY R. EPP, City Attorney

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

THE CITY OF ESCONDIDO DOES NOT DISCRIMINATE AGAINST QUALIFIED PERSONS WITH DISABILITIES.



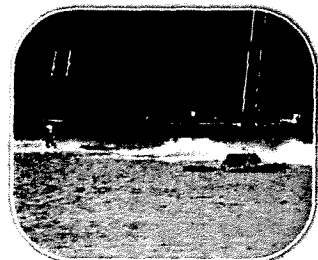
*Proposal for*  
**City of Escondido, California**



*Photo Source: Google Earth*

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SolarBee, Inc. • 3225 Highway 22 • Dickinson, ND 58601  
Tel: (701) 225-4495 • Toll Free: (866) 437-8076 • Fax: (701) 225-0002



**Date:** February 23, 2010

**To: Mr. Richard Walker, Deputy Utilities Manager/Water**  
Public Works Department, Lakes, Water & Wastewater Divisions  
City of Escondido  
3440 E. Valley Pkwy  
Escondido, CA 92027

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**From:** Sandy Walker - SolarBee California Regional Manager

## **1.0 PROJECT DESCRIPTION**

### **1.1 Reservoir Names:**

Lake Wohlford and Dixon Lake

### **1.2 Address or Location of Reservoirs:**

Lake Wohlford: 25453 Lake Wohlford Rd. • Escondido, CA 92027 (GPS Coordinates: Latitude:

33°10'21.79"N, Longitude: 116°59'51.03"W)

Dixon Lake: 1700 North La Honda Driver • Escondido, CA 92027 (GPS Coordinates: Latitude:

33°09'36.74"N, Longitude: 117°02'46.91"W)

### **1.3 Description of Reservoirs:**

Lake Wohlford is a 180-acre raw water storage reservoir with a maximum depth of 50 feet.

Dixon Lake is a 75-acre raw water storage reservoir with a maximum depth of 80 feet.

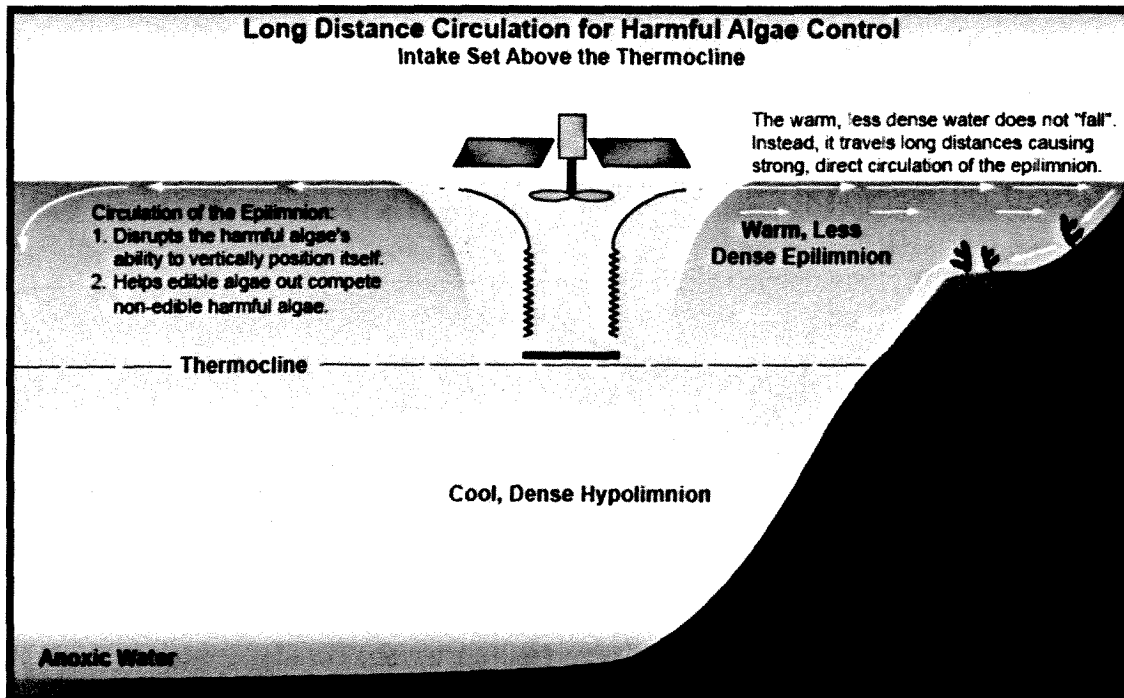
### **1.4 SolarBee Objectives, the Problems to Solve:**

Epilimnetic deployment - Primary Objectives: To provide long-distance circulation in order to control harmful blue-green algae blooms, reduce taste and odor issues, improve fish habitats, and improve overall water quality.

### **1.5 Quantity of SolarBees Recommended, Brief Description of Features and Recommended Deployment Method:**

Lake Wohlford: We recommend the installation of five (5) SB10000 v18 machines, each with 10 feet of hose.

Dixon Lake: We recommend the installation of two (2) SB10000 v18 machines, each with 10 feet of hose.



SB10000 v18: 10,000 gpm (14.4 MGD) total flow leaving the machine, near-laminar flow output for long-distance circulation, 316-stainless steel and non-corrosion polymer construction, 25-year life high-efficiency brushless electric motor designed to provide day and night operation with a solar-charged battery power system, digital control system for intelligent power management with factory programmed reverse functions and anti-jam routines specific to this application, SCADA outputs, three (3) 80-watt solar panels, 36" diameter intake hose, marker light kit, anchoring system and bird deterrent.

(Please see attached summary specification sheets and drawings)

NOTE: Please see Aerial Photographs section below for aerial view of reservoir.

Water Quality Profile Testing: As part of our standard operating procedures, the factory Field Services Team representatives will conduct vertical profiles with a YSI multi-parameter submersible probe, and at each test point measure dissolved oxygen, pH, temperature and specific conductance at every foot from the surface down to a depth of 25 feet, and at 5-foot intervals thereafter. A Secchi depth measurement will also be made at each test location. GPS coordinates are recorded for each machine and test point location.

Factory Delivery and Field Services: SolarBee, Inc. will send a team of trained factory representatives to deliver equipment, to perform on-site final assembly, placement and startup functions, and to train the customer's personnel on SolarBee operation and maintenance.

## 2.0 INVESTMENT OPTIONS

### 2.1 Equipment Purchase

Equipment Description		Total Investment
Seven (7) SB10000 v18 machines per above, delivery, on-site final assembly, placement and startup functions:		\$ 359,195.00
Sales or other taxes, if applicable (taxable goods only):	8.75%	\$ 28,028.00
Total Project Investment:		\$ 387,223.00

## 3.0 ADDITIONAL PROVISIONS

### 3.1 Purchase of the SolarBee circulation equipment in this quotation is an "Equipment Purchase," not a "Construction Project":

SolarBee circulation equipment is portable, and can be easily relocated or removed entirely from the premises at any time. They do not become an integral part of any building or other structure, and never become part of "real estate". Therefore, to purchase SolarBee circulation equipment, the city or other organization purchasing SolarBees should use the same procedure as for purchasing other portable equipment, such as a forklift, a drill press, or an office desk. SolarBee reserves the right not to accept an order if the purchase is incorrectly characterized as a "construction" project. SolarBee, Inc. has not found any state or other jurisdiction where construction or contractor statutes apply to portable equipment that is sold by a factory, with on-site final assembly and startup performed by factory personnel.

### 3.2 Assumptions:

This quotation may be based on worksheets and calculations that have been provided to the customer, either previously or else attached to this quotation. The customer should bring to our attention any discrepancies in data used for these calculations.

### 3.3 Quotation Validity Term:

This quotation replaces all prior quotations for this project. It is valid until replaced by a subsequent quotation, or else for 60 days, whichever occurs first.

### 3.4 Delivery Time:

Delivery time varies, but is usually within 4-8 weeks from order date.

### 3.5 Payment Terms:

For governmental entities, and for homeowners associations that have pre-approved credit, payment is due 20 days after invoice date, and invoicing occurs when the goods leave the factory. For private individuals, payment is due by credit card or cashier's check before the goods leave the factory.

### 3.6 Currency:

All prices shown are in U.S. Dollars, and all payments made must be in U.S. Dollars.

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### **3.7 Add for Taxes, Governmental Fees, and Special Insurance Requirements:**

Except as indicated above, no taxes, tariffs or other governmental fees are included in the quote shown above, nor are there any costs added for special insurance coverage the customer may require. It is the customer's responsibility to pay all local, state, and federal taxes, including, sales and use taxes, business privilege taxes, and fees of all types relating to this sale, whether they are imposed on either SolarBee, Inc. or the customer, or whether these taxes and fees are learned about after the customer orders the equipment. The customer's purchase order should indicate any taxes or fees due on equipment and/or services, and whether the customer will pay them directly to the governing body or include the tax payment with the purchase and SolarBee, Inc. will submit them to the governing body.

Regarding insurance, SolarBee, Inc. maintains adequate liability and workman's compensation insurance to generally comply with its requirements for doing business in all fifty U.S states, and will provide at no charge certificates of insurance when requested. However, if additional insurance or endorsements beyond the company's standard policy are required by the customer, then the costs of those additional provisions and/or endorsements will be invoiced to the customer after the costs become known.

### **3.8 Maintenance and Safety:**

The customer agrees to follow proper maintenance instructions regarding the equipment as contained in the safety manual that accompanies the equipment or sent to the customer's address. On freshwater lakes or ponds in areas where freezing weather occurs, the customer should not run SolarBee circulators in winter where human, pet, or other traffic may occur; in those cases, the circulators should be turned off or removed to prevent creating a hole in the ice. In all water bodies, the customer is responsible to make sure that the circulators are used in a manner that keeps the reservoir safe for people that may use it.

### **3.9 Government Regulatory Compliance:**

In all reservoir systems the customer must comply with all applicable governmental regulations. In freshwater lakes, there may be local, state, and/or federal (such as the USCG and USACE in the US) guidelines and regulations pertaining to safety, proper placement, marking, and maintaining of aids to navigation, and aids to the ecology such as the SolarBee. It is the customer's sole responsibility to inquire about governmental regulations and ensure that SolarBees are deployed and maintained so as to remain in compliance with these regulations and guidelines, and to hold SolarBee, Inc. harmless from any liability caused by non-compliance with these regulations and guidelines.

### **3.10 SolarBee Limited Replacement Warranty:**

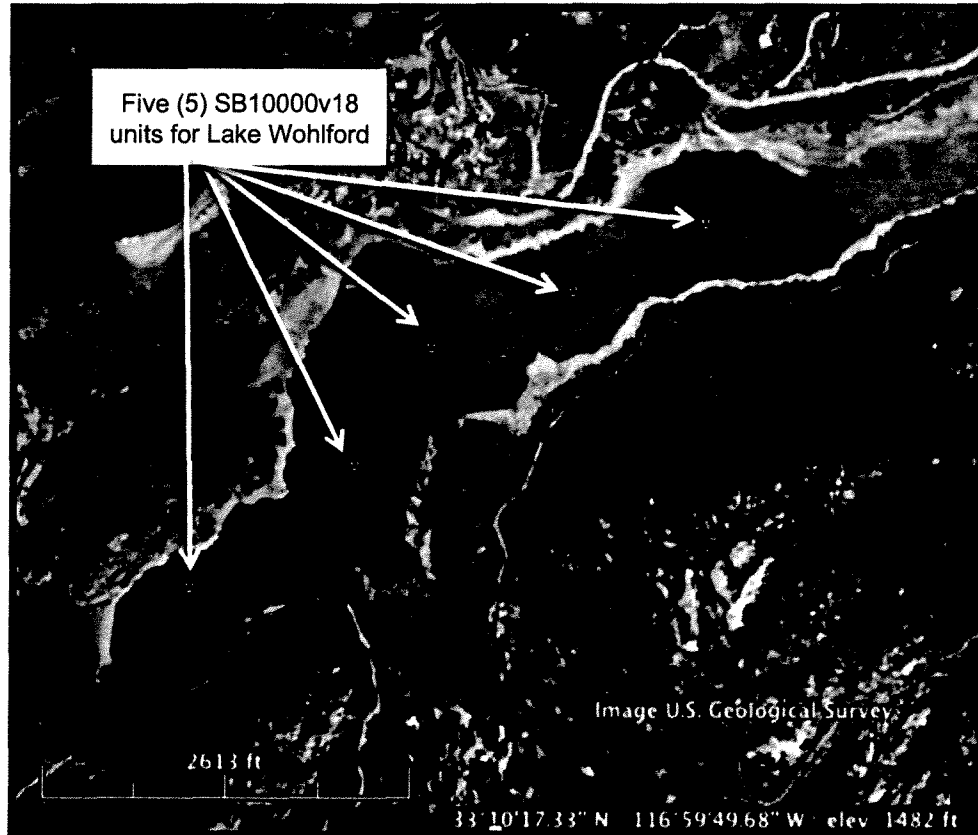
All new and factory-refurbished SolarBee equipment is warranted to be free of defective parts, materials, and workmanship for a period of 2 years from the date of installation. In addition, the SolarBee brushless motor is warranted for a period of 5 years (or 44,000 hours) from the date of installation. Photovoltaic modules (solar panels) carry manufacturer warranties, some ranging up to 25 years (see manufacturers warranty for details). This warranty is valid only for SolarBee equipment used in accordance with the owner's manual, and consistent with any initial and ongoing factory recommendations. This warranty is limited to the repair or replacement of defective components; the first 2 years the warranty also includes both parts and labor. In lieu of sending a factory service crew to the site for minor repairs, SolarBee, Inc. may choose to send the replacement parts to the owner postage paid and pay the owner a reasonable labor allowance to install the parts. There are no other warranties of any type, express or implied, and there is no liability for consequential damages of any type. Please consult your state law regarding this warranty as various states may have legal provisions affecting the scope of this warranty.

### 3.11 Method of acceptance of this quotation:

To accept this quotation, please issue a purchase order to SolarBee, Inc., 3225 Hwy. 22, Dickinson, ND 58601. The purchase order can be mailed, or it can be faxed to 701-225-0002 at the home office. The purchase order should refer to the date of this quotation, and will be assumed to include this entire quotation by reference.

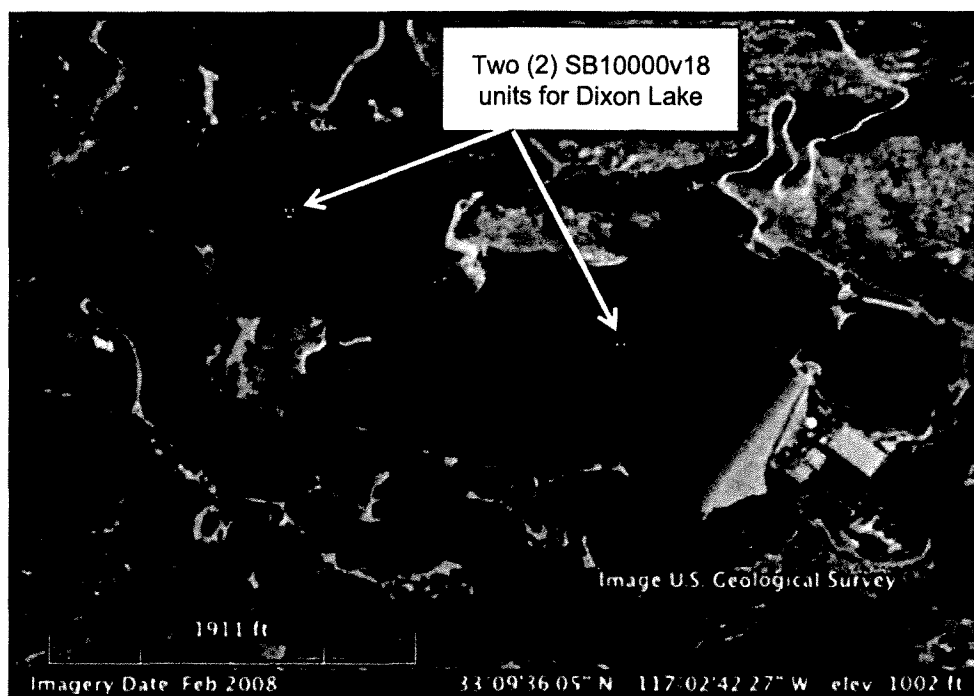
## 4.0 AERIAL PHOTOGRAPHS

SB10000 v18 machines are not drawn to scale, and final placement locations will be determined prior to installation.



Lake Wohlford photo source: Google Earth

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Dixon Lake photo source: *Google Earth*