



AGENDA

NOVEMBER 4, 2014

REGULAR MEETING
CITY COUNCIL
CITY OF YUBA CITY

5:00 P.M. – CLOSED SESSION: BUTTE ROOM
6:00 P.M. – REGULAR MEETING: COUNCIL CHAMBERS

MAYOR	• Kash Gill
VICE MAYOR	• John Dukes
COUNCILMEMBER	• John Buckland
COUNCILMEMBER	• Tej Maan
COUNCILMEMBER	• Craig Starkey
CITY MANAGER	• Steven Kroeger
CITY ATTORNEY	• Timothy Hayes

1201 Civic Center Blvd
Yuba City CA 95993

Wheelchair Accessible



*If you need assistance in order to attend the City Council meeting, or if you require auxiliary aids or services, e.g., hearing aids or signing services to make a presentation to the City Council, the City is happy to assist you. Please contact City offices at 530/822-4817 at least 72 hours in advance so such aids or services can be arranged. **City Hall TTY: 530-822-4732***

**AGENDA
REGULAR MEETING OF THE CITY COUNCIL
CITY OF YUBA CITY
COUNCIL CHAMBERS
NOVEMBER 4, 2014
5:00 P.M. – CLOSED SESSION
6:00 P.M. – REGULAR MEETING**

Materials related to an item on this Agenda submitted to the Council after distribution of the agenda packet are available for public inspection in the City Clerk's office at 1201 Civic Center Blvd., Yuba City, during normal business hours. Such documents are also available on the City of Yuba City's website at www.yubacity.net subject to staff's availability to post the documents before the meeting.

Closed Session—Butte Room

Public Comment: Any member of the public wishing to address the City Council on any item listed on the closed session agenda will have an opportunity to present testimony to the City Council prior to the City Council convening into closed session. Comments from the public will be limited to three minutes. No member of the public will be allowed to be present once the City Council convenes into closed session. Contact the City Clerk in advance of the closed session either in person at City Hall, by phone 822-4817, or email tlocke@yubacity.net to allow for time for testimony.

- A. Confer with labor negotiator Steve Kroeger regarding negotiations with the following associations: Yuba City Firefighters Local 3793 Yuba City Fire Management, First Level Managers, and Public Employees Local No. 1, pursuant to Section 54957.6 of the Government Code
- B. Confer with legal counsel regarding potential litigation pursuant to Government Code Section 54956.9(d)(4) – one potential case.

Regular Meeting—Council Chambers

Call to Order

Roll Call: _____ Mayor Gill
 _____ Vice Mayor Dukes
 _____ Councilmember Buckland
 _____ Councilmember Maan
 _____ Councilmember Starkey

Invocation

Pledge of Allegiance to the Flag

Presentations and Proclamations

- 1. **Proclamation to Jim Frost for Retirement from the Public Works Department**

Public Communication

You are welcome and encouraged to participate in this meeting. Public comment is taken on items listed on the agenda when they are called. Public comment on items not listed on the agenda will be heard at this time. Comments on controversial items may be limited and large groups are encouraged to select representatives to express the opinions of the group.

2. Written Requests

Members of the public submitting written requests, at least 24 hours prior to the meeting, will be normally allotted five minutes to speak.

3. Appearance of Interested Citizens

Members of the public may address the City Council on items of interest that are within the City's jurisdiction. Individuals addressing general comments are encouraged to limit their statements to three minutes.

Public Hearing

4. Energy Service Contract with OpTerra Energy Services for Energy Related Improvements to City Facilities

Recommendation: a. Adopt a resolution authorizing the City Manager to execute an Energy Service Contract with OpTerra Energy Services for energy related improvements to City facilities, following approval by the City Attorney.

b. Adopt a resolution authorizing the City Manager to execute an Equipment Lease/Purchase Agreement, an Escrow Agreement and any ancillary documents with Bank of America for funding the associated energy related improvements, following approval by the City Attorney.

Ordinance

5. Ordinance Prohibiting Camping on Private Property within City Limits of Yuba City

Recommendation: Introduce a Revised Ordinance, to prohibit camping on private property in the City of Yuba City, conduct a public hearing and waive the first reading.

Consent Calendar

All matters listed under Consent Calendar are considered to be routine and can be enacted in one motion. There will be no separate discussion of these items prior to the time that Council votes on the motion unless members of the City Council, staff or public request specific items to be discussed or removed from the Consent Calendar for individual action.

6. Minutes of October 21, 2014

Recommendation: Approve the City Council Meeting Minutes of October 21, 2014.

7. Fiscal Year 2014-15 Waste Tire Enforcement Grant Application

Recommendation: Adopt a Resolution authorizing Yuba County, as the Lead Agency of the Yuba-Sutter Local Enforcement Agency, to perform Waste Tire Enforcement activities on behalf of the City of Yuba City and submit a Collaborative Application for the Waste Tire Enforcement Grant to CalRecycle for Fiscal Year 2014-15

8. Proposed City Facility Holiday Closure

Recommendation: Approve the Resolution authorizing the closure of City Hall and other select offices for the holiday period beginning Monday, December 22, 2014 through Friday, December 26, 2014.

General Items

9. Feather River Parkway Phase II – Addendum to Revised Initial Study and Mitigated Negative Declaration

Recommendation: Adopt the addendum to the Revised Initial Study and Mitigated Negative Declaration for the Feather River Parkway Phase II Project.

10. First Level Managers' Letter of Understanding (LOU)

Recommendation: a. Adopt a Resolution approving a two year Letter of Understanding with the First Level Manager group.

b. Approve a supplemental appropriation of \$32,600 to the FY 2014/2015 adopted budget.

Business from the City Council

11. Ad Hoc Committee Recommendations Regarding Business Incentives and Lloyd Wise Company Nissan Dealership

Recommendation: Discuss and review recommendations as proposed by the Ad Hoc Committee

12. City Council Reports

- Councilmember Buckland
- Councilmember Maan
- Councilmember Starkey
- Vice Mayor Dukes
- Mayor Gill

Adjournment



Proclamation

of the City Council

**JIM FROST
CUSTODIAL SUPERVISOR**

***In recognition of your retirement from the
Yuba City Public Works Department***

WHEREAS, Jim Frost is retiring from employment with the City of Yuba City with 24 years of dedicated service on November 7, 2014; and

WHEREAS, Jim Frost began his full time career at the City as a Custodian I in the Administrative Services Department, promoted to the position of Lead Custodian in January of 2001, then to his current position of Custodial Supervisor in October of 2013; and

WHEREAS, Jim Frost spent all 24 years of his career with the City maintaining City buildings and facilities; and

WHEREAS, Jim Frost's knowledge and expertise in maintaining the City's buildings and facilities proved to be invaluable and he could always be counted on to share that knowledge with his fellow employees; and

WHEREAS, Jim Frost was always willing to respond and assist staff with any situation or task that would arise, twenty four hours a day, seven days a week, three hundred and sixty five days a year; and

WHEREAS, Jim Frost has responded to literally hundreds of building alarm calls at all hours of the day and night; and

WHEREAS, Jim Frost has always been a conscientious, dedicated and loyal employee of the City of Yuba City Public Works Department and has earned the respect of employees and citizens alike;

NOW, THEREFORE, BE IT RESOLVED, that I Kash Gill, Mayor of the City of Yuba City, and on behalf of the entire City Council, do hereby commend Jim's outstanding and loyal service, and sincerely urge all residents of the City of Yuba City to join with me in recognizing Mr. Jim Frost for all of his contributions to the Yuba City community for the past 24 years.

Done on this 4th day of November, 2014 in the City of Yuba City, County of Sutter, State of California.

CITY OF YUBA CITY

Written Requests

Members of the public submitting written requests at least 24 hours prior to the meeting will normally be allotted 5 minutes to speak.

Procedure

When requesting to speak, please indicate your name and the topic and mail to:

City of Yuba City
Attn: City Clerk
1201 Civic Center Blvd
Yuba City CA 95993

Or email to:

Terrel Locke, City Clerk tlocke@yubacity.net

The Mayor will call you to the podium when it is time for you to speak.

CITY OF YUBA CITY

Appearance of Interested Citizens

Members of the public may address the City Council on items of interest that are within the City's jurisdiction. Individuals addressing general comments are encouraged to limit their statements.

Procedure

Complete a Speaker Card located in the lobby and give to the City Clerk. When a matter is announced, wait to be recognized by the Mayor. Comment should begin by providing your name and place of residence. A three minute limit is requested when addressing Council.

- For Items on the Agenda

Public comments on items on the agenda are taken during Council's consideration of each agenda item. If you wish to speak on any item appearing on the agenda, please note the number of the agenda item about which you wish to speak. If you wish to speak on more than one item, please fill out a separate card for each item.

- Items not listed on the Agenda

Public comments on items not listed on the agenda will be heard during the Public Communication portion of the meeting.

CITY OF YUBA CITY
STAFF REPORT

Date: November 4, 2014
To: Honorable Mayor & Members of the City Council
From: Public Works Department
Presentation by: Diana Langley, Public Works Director

Summary

Subject: Energy Service Contract with OpTerra Energy Services for Energy Related Improvements to City Facilities

Recommendation: a. Adopt a resolution authorizing the City Manager to execute an Energy Service Contract with OpTerra Energy Services for energy related improvements to City facilities, following approval by the City Attorney.

b. Adopt a resolution authorizing the City Manager to execute an Equipment Lease/Purchase Agreement, an Escrow Agreement, and any ancillary documents with Bank of America for funding the associated energy related improvements, following approval by the City Attorney.

Fiscal Impact: Project has the potential to result in approximately \$6 Million in savings to the City.

Purpose:

To implement energy conservation measures at various City facilities to reduce energy costs.

Background:

In July 2013, Chevron Energy Solutions (Chevron) approached City staff about developing an energy efficiency project in Yuba City. Chevron staff toured many of the City's facilities and determined that there are opportunities for energy conservation projects that will be beneficial to the City and result in a net savings. After initial assessment, it was determined that potential projects included indoor/outdoor lighting modifications at all City buildings, solar hot water heating at Gauche Aquatic Park, HVAC retro-commissioning at the Police Station and City Hall, Energy Management System replacement at the Police Station, and installation of premium efficiency motors.

On March 4, 2014, City Council authorized the execution of a Program Development Agreement (Agreement) with Chevron to perform an investment grade audit, design and engineering, competitively bid the project, evaluate grants and incentives, and finalize the financial model.

During the next few months, Chevron completed the tasks associated with the Agreement, and on August 19, 2014, a recommendation was provided to the City Council for an energy and infrastructure improvement project for Yuba City. The recommended project included the following:

- solar hot water heating at Gauche Aquatic Park
- installation of solar photovoltaic panels at Gauche Aquatic Park and the Water Treatment Plant

- indoor/outdoor lighting modifications at most of the City buildings
- air handler upgrades, compressor replacement and window film installation at City Hall
- energy management system replacements at City Hall and the Police Department
- retrofit one pump at Gauche Aquatic Park and one pump at the Water Treatment Plant
- replace the breathable air compressor at Fire Station #1

Council directed staff to bring a contract to proceed with the improvements to Council for consideration.

Analysis:

Since the time that the proposed project was brought to Council in August, Chevron Energy Solutions was transferred to OpTerra Energy Services (OpTerra). The representatives are the same, allowing for continuity of the project.

Over the last few weeks, staff has been working with OpTerra to finalize the scope of work and financing for the project. The scope remains the same as noted above with the exception that the breathable air compressor at Fire Station #1 has been removed. The replacement of the air compressor does not result in energy savings.

For the financing, OpTerra provided many options to the City. With the assistance of the City's financial advisor, NHA Advisors, staff is recommending financing through Bank of America with the following terms:

- Tax-Exempt Lease Purchase
- Finance Term = 16 years
- Interest Rate = 2.89%
- Zero cash up front from the City

In addition, OpTerra is guaranteeing the savings for 16 years.

Fiscal Impact:

The construction cost is just under \$5 Million, excluding interest or closing costs associated with financing the project. The projected net savings over 30 years is approximately \$6 Million. Attached is a financial analysis of the Bank of America financing proposal.

Alternatives:

1. Modify or reduce the scope of the project.
2. Do not proceed with the project.

Recommendation:

- a. Adopt a resolution authorizing the City Manager to execute an Energy Service Contract with OpTerra Energy Services for energy related improvements to City facilities, following approval by the City Attorney.
- b. Adopt a resolution authorizing the City Manager to execute an Equipment Lease/Purchase Agreement, an Escrow Agreement, and any ancillary documents with Bank of America for funding the associated energy related improvements, following approval by the City Attorney.

Prepared by:

[/s/ Diana Langley](#)

Diana Langley
Public Works Director

Submitted by:

[/s/ Steve Kroeger](#)

Steven C. Kroeger
City Manager

Reviewed by:

Finance

[RB](#)

City Attorney

[TH](#)

Attachments:

1. Program Scope
2. Summary of proposed projects broken down by funding source
3. Financial Proforma
4. OpTerra Energy Services Contract
5. Bank of America Equipment Lease/Purchase Agreement

ATTACHMENT 1

PROGRAM SCOPE

ATTACHMENT 2

SUMMARY OF PROPOSED PROJECTS BROKEN DOWN BY FUNDING SOURCE

General Fund:

Facility	Project Cost (\$)	Projected PG&E Incentives (\$)	Projected Annual Energy Savings (\$)	Project Annual O&M Savings (\$)	Break-even Point (Years)
Blackburn Talley Sports Complex	44,449	1,125	6,762	792	5
Gauche Aquatic Park	1,133,429	76,825	70,319	3,004	14
Greenwood Park	2,625	25	149	47	11
Hillcrest Park	4,375	41	249	78	10
Maple Park	1,554	52	290	28	4
Northridge Park	4,433	88	509	79	7
Regency Park	11,374	108	647	203	11
Sam Brannan Park	28,238	632	3,756	503	6
Shanghai Garden Park	20,123	191	1,144	358	11
Southside Park	1,331	27	170	24	6
Veterans Park	3,406	141	658	61	4
City Hall	497,748	27,143	47,123	3,600	8
Fire Station #1	45,673	1,514	4,779	814	7
Fire Station #2	27,262	930	2,854	486	7
Fire Station #3	55,382	1,433	5,457	987	8
Fire Station #4	64,131	904	2,260	1,142	14
Fire Station #7	30,564	860	2,584	544	8
Police Station	273,752	3,890	8,710	3,730	16
Senior Center	38,936	784	610	694	24
Corporation Yard	181,977	5,151	15,579	3,242	9
Total:	2,470,762	121,864	174,609	20,416	

Water Fund:

Facility	Project Cost (\$)	Projected PG&E Incentives (\$)	Projected Annual Energy Savings (\$)	Project Annual O&M Savings (\$)	Break-even Point (Years)
Harter Pump Station	6,114	283	823	109	6
Rowe Avenue Reservoir	3,418	162	618	61	5
Sam Brannan Reservoir	3,418	200	647	61	4
Sanborn Pump Station	4,076	188	515	73	6
Water Treatment Plant	2,189,193	3,472	100,826	2,148	16
Total:	2,206,219	4,305	103,429	2,452	

Wastewater Fund:

Facility	Project Cost (\$)	Projected PG&E Incentives (\$)	Projected Annual Energy Savings (\$)	Project Annual O&M Savings (\$)	Break-even Point (Years)
Wastewater Treatment Plant	290,235	11,512	15,920	5,170	11

Total All Funding Sources:

	Project Cost (\$)	Projected PG&E Incentives (\$)	Projected Annual Energy Savings (\$)	Project Annual O&M Savings (\$)	Break-even Point (Years)
Total All Facilities:	4,967,214	137,682	293,957	28,037	12

ATTACHMENT 3
FINANCIAL PROFORMA

ATTACHMENT 4

OPTERRA ENERGY SERVICES CONTRACT

ATTACHMENT 5

BANK OF AMERICA EQUIPMENT LEASE/PURCHASE AGREEMENT

Program Scope



Energy and Infrastructure Improvement Program – Yuba City		Solar PV	Solar Hot Water Heating	Indoor Lighting	Outdoor Lighting	Air Handler Upgrades	EMS Installation	Pump Retrofits
Building Name	Address							
Water Reclamation Plant	302 Burns Drive			X	X			
Water Treatment Plant	701 Northgate Drive	X		X	X			X
Gauche Aquatic Park	C Street and Wilbur Avenue	X	X		X			X
Police Station	1545 Poole Boulevard			X	X		X	
City Hall	1201 Civic Center Blvd.			X	X	X	X	
Fire Station #1	824 Clark Avenue			X	X			
Fire Station #2	1641 Gray Avenue			X	X			
Fire Station #3	795 Lincoln Road			X	X			
Fire Station #4	150 Ohleyer Road			X	X			
Fire Station #7	2855 Butte House Road			X	X			
Corporation Yard	1185 Market Street			X	X			
Senior Center	777 Ainsley Avenue			X	X			
Pumping Stations	Various				X			
Parks	Various				X			
Reservoirs	Various				X			

Financial Analysis: 16-Year Tax-Exempt Lease Purchase



City of Yuba City Comprehensive Energy Services Program Project Cash Flow Analysis										
16-Year Tax-Exempt Lease Purchase										
Program Fee										\$4,967,214
City Contribution										\$0
Construction Period Interest										\$108,707
Amount to be Financed										\$5,075,921
Finance Term										16
Annual Interest Rate										2.89%
Annual Escalation of Electricity Cost										4.50%
Annual Escalation of Natural Gas Cost										3.00%
Annual Escalation of O&M Cost										3.00%
Year	Projected Electricity Savings	Projected Natural Gas Savings	Incentives	Projected O&M Savings	Total Program Savings	Lease Payment	M&V Cost	Solar Maintenance Cost	Total Program Costs	Net Savings
Year 1	\$279,650	\$14,307	\$137,682	\$28,037	\$459,675	\$403,270	\$22,058	\$12,712	\$438,040	\$21,635
Year 2	\$291,541	\$14,736	\$0	\$28,878	\$335,155	\$277,486	\$22,940	\$13,093	\$313,520	\$21,635
Year 3	\$303,939	\$15,178	\$0	\$29,744	\$348,862	\$289,882	\$23,858	\$13,486	\$327,226	\$21,635
Year 4	\$316,867	\$15,634	\$0	\$30,637	\$363,137	\$302,799	\$24,812	\$13,891	\$341,502	\$21,635
Year 5	\$330,347	\$16,103	\$0	\$31,556	\$378,005	\$316,258	\$25,804	\$14,307	\$356,370	\$21,635
Year 6	\$344,402	\$16,586	\$0	\$32,502	\$393,490	\$357,118	\$0	\$14,737	\$371,855	\$21,635
Year 7	\$359,058	\$17,083	\$0	\$33,477	\$409,618	\$372,804	\$0	\$15,179	\$387,983	\$21,635
Year 8	\$374,339	\$17,596	\$0	\$34,482	\$426,417	\$389,147	\$0	\$15,634	\$404,781	\$21,635
Year 9	\$390,274	\$18,124	\$0	\$35,516	\$443,913	\$406,175	\$0	\$16,103	\$422,278	\$21,635
Year 10	\$406,889	\$18,667	\$0	\$36,582	\$462,138	\$423,916	\$0	\$16,586	\$440,503	\$21,635
Year 11	\$424,214	\$19,227	\$0	\$37,679	\$481,120	\$442,401	\$0	\$17,084	\$459,485	\$21,635
Year 12	\$442,280	\$19,804	\$0	\$38,810	\$500,893	\$461,662	\$0	\$17,596	\$479,258	\$21,635
Year 13	\$461,118	\$20,398	\$0	\$39,974	\$521,490	\$481,730	\$0	\$18,124	\$499,854	\$21,635
Year 14	\$480,761	\$21,010	\$0	\$41,173	\$542,944	\$502,641	\$0	\$18,668	\$521,309	\$21,635
Year 15	\$501,244	\$21,640	\$0	\$42,408	\$565,293	\$524,430	\$0	\$19,228	\$543,658	\$21,635
Year 16	\$522,603	\$22,290	\$0	\$43,681	\$588,573	\$547,133	\$0	\$19,805	\$566,938	\$21,635
Year 17	\$544,876	\$22,958	\$0	\$44,991	\$612,825	\$0	\$0	\$20,399	\$20,399	\$592,426
Year 18	\$568,101	\$23,647	\$0	\$46,341	\$638,089	\$0	\$0	\$21,011	\$21,011	\$617,078
Year 19	\$592,321	\$24,357	\$0	\$47,731	\$664,408	\$0	\$0	\$21,641	\$21,641	\$642,767
Year 20	\$617,576	\$25,087	\$0	\$49,163	\$691,826	\$0	\$0	\$22,291	\$22,291	\$669,536
Year 21	\$289,456	\$0	\$0	\$0	\$289,456	\$0	\$0	\$22,959	\$22,959	\$266,496
Year 22	\$300,969	\$0	\$0	\$0	\$300,969	\$0	\$0	\$23,648	\$23,648	\$277,321
Year 23	\$312,940	\$0	\$0	\$0	\$312,940	\$0	\$0	\$24,358	\$24,358	\$288,582
Year 24	\$325,387	\$0	\$0	\$0	\$325,387	\$0	\$0	\$25,088	\$25,088	\$300,299
Year 25	\$338,329	\$0	\$0	\$0	\$338,329	\$0	\$0	\$25,841	\$25,841	\$312,488
Year 26	\$351,786	\$0	\$0	\$0	\$351,786	\$0	\$0	\$26,616	\$26,616	\$325,170
Year 27	\$365,779	\$0	\$0	\$0	\$365,779	\$0	\$0	\$27,415	\$27,415	\$338,364
Year 28	\$380,327	\$0	\$0	\$0	\$380,327	\$0	\$0	\$28,237	\$28,237	\$352,090
Year 29	\$395,455	\$0	\$0	\$0	\$395,455	\$0	\$0	\$29,084	\$29,084	\$366,371
Year 30	\$411,184	\$0	\$0	\$0	\$411,184	\$0	\$0	\$29,957	\$29,957	\$381,227
Totals	\$12,024,010	\$384,431	\$137,682	\$753,361	\$13,299,484	\$6,498,854	\$119,472	\$604,779	\$7,223,105	\$6,076,379



**Energy Services Contract
Yuba City and OpTerra Energy Services**

OpTerra ES Project #: _____
OpTerra ES Contract #: _____

ENERGY SERVICES CONTRACT

DRAFT DATED 19 October 2014

This **ENERGY SERVICES CONTRACT** (this "Contract") is made and entered into as of ____ September 2014 (the "Contract Effective Date") by and between **OpTerra Energy Services, Inc.**, a Delaware corporation ("OpTerra Energy Services"), and the **City of Yuba City** ("Yuba City") and together with OpTerra Energy Services the "Parties" and each of Yuba City and OpTerra Energy Services a "Party").

CONTRACT RECITALS

WHEREAS, Yuba City owns and/or operates certain public facilities specifically described in Attachment D (the "Facilities") and Yuba City wishes to reduce the Facilities' energy consumption and costs and improve the Facilities' energy quality and reliability; and

WHEREAS, OpTerra Energy Services is a full-service energy services company with the technical capabilities to provide services to Yuba City including identifying supply-side and/or demand-side energy conservation measures ("ECMs"), engineering, procurement, construction management, installation, construction and training; and

WHEREAS, Yuba City executed a Program Development Agreement with the predecessor-in-interest of OpTerra Energy Services to perform an integrated energy assessment and to present Yuba City with a report (the "Report") and a recommended energy plan to implement certain ECMs; and

WHEREAS, on 19 August 2014 the Report was delivered, on an arms' length basis, to personnel of Yuba City with requisite technical training and experience, for those personnel to make judgments and determinations as to the desired scope of work; and

WHEREAS, in the Report, potential energy and operational savings opportunities at Yuba City's Facilities and estimated program costs to implement the recommended ECMs were identified and overall potential energy cost and consumption savings for implementing the ECM recommendations were presented; and

WHEREAS, Yuba City has accepted the recommended ECMs and determined that the anticipated cost to Yuba City to implement the recommended ECMs will be less than the anticipated cost to Yuba City for thermal, electrical, and other energy, together with anticipated operational, maintenance and other costs, that would have been consumed by Yuba City in the absence of the recommended ECMs in compliance with California Government Code §§4217.10 through 4217.18; and

WHEREAS, pursuant to California Government Code §4217.12, Yuba City's City Council held a regularly scheduled public hearing on 4 November 2014, of which two weeks advance public notice was given regarding this Contract and its subject matter, and

WHEREAS, Yuba City's City Council has determined that entering into this energy services contract to implement the ECM recommendations is in the best interests of Yuba City and that California Government Code §4217.10 *et seq.* allows Yuba City to enter into this Contract; and

WHEREAS, by adoption of Resolution No. _____ at the above-referenced meeting, Yuba City approved this Contract and authorized its execution.

NOW, THEREFORE, Yuba City and OpTerra Energy Services hereby agree as follows:

ARTICLE 1. DEFINITIONS

For purposes of this Contract and its Attachments, defined terms will have the following meanings:

"Abnormally Severe Weather Conditions" means typhoons, hurricanes, tornadoes, lightning storms and other climatic and weather conditions that are abnormally severe for the period of time when, and the area where, such storms or conditions occur, in each case occurring at a property, the access roads to a property, or any other

location where Work or Professional Services are then being performed. The term “Abnormally Severe Weather Conditions” specifically includes rain, snow or sleet in excess of one hundred fifty percent (150%) of the median level over the preceding ten (10) year period for the local geographic area and time of year in which such rain, snow or sleet accumulates.

“**Act**” is defined in ARTICLE 14.

“**Affiliate**” means any Person that directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified. For purposes of this definition, control of a Person means the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise; ownership of fifty percent (50%) or more of the voting securities of another Person creates a rebuttable presumption that such Person controls such other Person.

“**Applicable Law**” means any statute, law, treaty, building code, rule, regulation, ordinance, code, enactment, injunction, writ, order, decision, authorization, judgment, decree, protocol, procedure or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, as may be in effect at the time the Work or Professional Services are undertaken.

“**Applicable Permits**” means all permits and approvals required to be issued by any Governmental Authority in connection with the Professional Services or the building, installation and start-up of the Work as of the Contract Effective Date.

“**Application for Payment**” means a monthly progress payment as described in Section 8.01 or an invoice for materials stored off-site as described in Section 8.02.

“**Arbitral Panel**” is defined in Section 19.04(ii).

“**Arbitration Rules**” is defined in Section 19.04(ii).

“**Attachment**” means the following attachments to this Contract, each of which is an “Attachment:”

Attachment A	Form of Performance Bond
Attachment B	Form of Payment Bond
Attachment C	List of Incentives
Attachment D	Yuba City’s Facilities & Existing Equipment
Attachment E	Standards of Occupancy and Control
Attachment F	Scope of Work
Attachment G	Scope of Monitoring Installation
Attachment H	Scope of M&V Services
Attachment I	Scope of Maintenance Services
Attachment J	Scope of Work for Lighting Retrofit

“**Beneficial Use**” means when major new equipment and systems included in the Scope of Work are properly installed, inspected, operational, and are capable of being used for their intended purpose. Criteria for Beneficial Use of equipment / systems will be established as defined in Attachment F.

“**Business Day**” means any calendar day other than a Saturday, a Sunday or a calendar day on which banking institutions in San Francisco, California, are authorized or obligated by law or executive order to be closed.

“**CEQA**” means the California Environmental Quality Act, codified at California Public Resource Code § 21000 *et seq.*, and the applicable state and local guidelines promulgated thereunder.

“**Certificate of Beneficial Use**” means the certificate, issued by OpTerra Energy Services to Yuba City and subcontractor(s), which identifies when Yuba City took Beneficial Use of the Work or any portion thereof. A Certificate of Beneficial Use may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work.

“**Certificate of Final Completion**” means the certificate issued by OpTerra Energy Services to Yuba City, in accordance with Section 6.03. A Certificate of Final Completion may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work.

“Certificate of Substantial Completion” means the certificate issued by OpTerra Energy Services to Yuba City, in accordance with Section 6.02. A Certificate of Substantial Completion may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work.

“Change” means any addition to, deletion from, suspension of, or other modification to the quality, function, or intent of the Work or Professional Services.

“Change in Law” means any of the following events or circumstances occurring after the Contract Effective Date: (i) an amendment, modification, interpretation, construction, enforcement standard, supplement or other change in or repeal of an existing Applicable Law; or (ii) an enactment or making of a new Applicable Law (excluding a change in any income or franchise tax law, worker’s compensation, payroll or withholding tax law).

“Change Order” means a written document, signed by both OpTerra Energy Services and Yuba City, authorizing OpTerra Energy Services to perform a Change. The Change Order modifies the Scope of Work and should identify: (i) the applicable Change; (ii) any additional compensation to be paid to OpTerra Energy Services to perform such Change; and (iii) any extension of time to complete the Project.

“Construction” means any and all Work to be performed that involves construction, alteration, repair, installation or removal of equipment, addition to, subtraction from, improving, moving, wrecking or demolishing any building, parking facility, excavation, or other structure or improvement, or any part thereof.

“Construction Documents” means the final designs, drawings, specifications and submittals that are used for Construction, and any Change Orders affecting those documents, that describe the technical requirements for the installation of all the materials and equipment pursuant to this Contract.

“Construction Period” means the period beginning with the first day of the month in which material or equipment is first installed at the Facilities and continuing until the M&V Commencement Date.

“Contract” is defined in the Preamble, and includes all Attachments hereto (all of which are incorporated herein by this reference), as well as all Change Orders, amendments, restatements, supplements and other modifications hereto.

“Contract Amount” means Four Million Nine Hundred Sixty-Seven Thousand Two Hundred Fourteen Dollars (\$4,967,214), which is inclusive of the assessment fee for the Report and the mobilization fee, as set forth in Section 8.01, but exclusive of any fees for Professional Services.

“Contract Bonds” is defined in Section 11.03.

“Contract Effective Date” is defined in the Preamble.

“Delay” means any circumstances involving delay, disruption, hindrance or interference affecting the time of performance of the Work or the Professional Services.

“Dispute” is defined in Section 19.02.

“DOE Guidelines” is defined in Section 13.01.

“ECM” is defined in the Recitals.

“EMS” means an energy management system.

“Energy Delivery Point” means, for each Generating Facility, the point at which Utility meter energy is being delivered, as designated in the Interconnection Agreement.

“Energy Savings Term” (if any) is defined in Attachment H.

“Energy Usage Data” is defined in Section 2.06.

“Event of Default” is defined in ARTICLE 16.

“Excusable Event” means an act, event, occurrence, condition or cause beyond the control of OpTerra Energy Services, including, but not limited to, the following: (i) any act or failure to act of, or other Delay caused by any Yuba City Person; (ii) the failure to obtain, or delay in obtaining, any Interconnection Agreement, Applicable Permit, or approval of a Governmental Authority (including due to failure to make timely inspection), or Delays caused by Changes and/or modifications to the Scope of Work required by a Governmental Authority, other than a failure caused by the action or inaction of OpTerra Energy Services; (iii) changes in the design, scope or schedule of the Work required by any Governmental Authority or Yuba City Person; (iv) undisclosed or unforeseen conditions encountered at the Project Location, including discovery or existence of Hazardous Substances; (v) the failure to obtain, or delay in obtaining, approval of any Governmental Authority for design and installation of any portion of the Work, including any further or subsequent approval required with respect to any Change, other than a failure caused by the action or inaction of OpTerra Energy Services; (vi) information

provided to OpTerra Energy Services by any Yuba City Person or Utility is later found to be inaccurate or incomplete; (vii) any Change in Law; (viii) Delay caused by pending arbitration; (ix) acts of God; (x) acts of the public enemy or terrorist acts; (xi) relocation or construction of transmission facilities or the shutdown of such facilities for the purpose of necessary repairs; (xii) work by Utility; (xiii) flood, earthquake, tornado, storm, fire, explosions, lightning, landslide or similar cataclysmic occurrence; (xiv) sabotage, vandalism, riots or civil disobedience; (xv) labor disputes or strikes; (xvi) labor or material shortages, delay in manufacturing and deliveries of equipment; (xvii) Abnormally Severe Weather Conditions; (xviii) an annual level of direct beam solar resource availability that is less than or equal to 90% of historical averages as measured by long-term weather data (minimum 5 years) collected at the applicable Facility and/or other reliable calibrated and appropriate weather station representative of such Facility; (xix) requirement by Utility that any Generating Facility discontinue operation; (xx) any action by a Governmental Authority that prevents or inhibits the Parties from carrying out their respective obligations under this Contract (including an unstayed order of a court or administrative agency having the effect of subjecting the sales of energy output to federal or state regulation of prices and/or services); or (xxi) any Utility power outage at a Facility.

“**Facilities**” is defined in the Recitals.

“**Final Completion**” means the stage in the progress of the Work at which the Construction Work as identified in the Scope of Work, or a designated portion thereof, has been completed and commissioned, including completion of all Punch List items, completion of all required training, and delivery to Yuba City of the final documentation (as-built drawings, operation and maintenance manuals, warranty documentation and final submittals).

“**Generating Facility**” means each of the photovoltaic, solar powered generating facilities located at the sites listed in Attachment H, and includes all associated photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wires and other equipment that may be necessary to connect the Generating Facility to the applicable Energy Delivery Point.

“**Governmental Authority**” means any federal, state, regional, town, county, city, municipal or local government agency, department or regulatory body having jurisdiction under Applicable Law over the matter in question.

“**Greenhouse Gas**” is defined in Section 13.01.

“**Hazardous Substances**” means (i) any hazardous, toxic, or dangerous wastes, substances, chemicals, constituents, contaminants, pollutants, and materials and any other carcinogenic, liquids, corrosive, ignitable, radioactive, reactive, toxic, or otherwise hazardous substances or mixtures (whether solids, liquids, gases) now or at any time subject to regulation, control, remediation, or otherwise addressed under Applicable Laws; (ii) any “hazardous substance” as defined by the Resource, Conservation and Recovery Act of 1976 (42 U.S.C. §6901 *et seq.*), as amended, and regulations promulgated thereunder; (iii) any “hazardous, toxic or dangerous waste, substance or material” specifically defined as such in 42 U.S.C. §9601 *et seq.*), as amended and regulations promulgated thereunder; and (iv) any hazardous, toxic or dangerous waste, substance, or material as defined in any so-called “superfund” or “superlien” law.

“**Incentive Funds**” is defined in Section 8.06.

“**Installation**” means the setting up, construction, and placement of any equipment or materials in the manner it will be operated, in accordance with the Scope of Work and in accordance with all Applicable Laws.

“**Instruments of Service**” is defined in Section 10.01(c).

“**Interconnection Agreement**” means the Interconnection Agreement to be entered into between Yuba City and the Utility with respect to the Generating Facilities.

“**Interconnection Facilities**” is defined in Section 18.02.

“**Interest**” means interest calculated at the lesser of (i) the prime rate plus two percent (2%) or (ii) the maximum rate permitted by Applicable Law. The “prime rate” will be the “Prime Rate” of interest per annum for domestic banks as published in The Wall Street Journal in the “Money Rates” section.

“**Losses**” is defined in Section 11.01.

“**M&V Commencement Date**” means the first day of the month immediately following the later of (i) OpTerra Energy Services’ receipt of the fully signed Certificate of Final Completion, and (ii) OpTerra Energy Services’ receipt of the full Contract Amount.

“**M&V Services**” (if any) are defined in Attachment H.

“**Maintenance Services**” (if any) are defined in Attachment I.

“**Measurement Period**” means each one-year period following the M&V Commencement Date.

“**NEC**” means the National Electric Code.

“**Notice to Proceed**” is defined in Section 2.05.

“**OpTerra Energy Services**” is defined in the Preamble.

“**OpTerra Energy Services Warranty**” is defined in Section 9.01.

“**Party**” and “**Parties**” are defined in the Preamble.

“**Person**” means any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, other business organization, trust, union, association or Governmental Authority.

“**Professional Services**” means professional services (such as Maintenance Services and M&V Services, if any) provided by OpTerra Energy Services to Yuba City under this Contract.

“**Project**” means the entirety of Work to be performed by OpTerra Energy Services pursuant to the Scope of Work, and any Change Orders.

“**Project Location**” means the area or areas where the Project materials and equipment and any other energy related equipment, as described in the Scope of Work, are installed, and the general area where the Work is performed.

“**Punch List**” means, with respect to any portion of the Work, a list of minor corrective items which need to be completed or corrected in order to complete such portion of the Work, but do not impair Yuba City’s ability to beneficially operate and utilize such portion of the Work.

“**Report**” is defined in the Recitals.

“**Retained Items**” is defined in Section 10.02.

“**Retention**” is defined in Section 8.03.

“**Schedule of Values**” is defined in Section 8.01.

“**Scope of Work**” means the Work set forth in Attachments F and G, as modified by any Change Order.

“**Substantial Completion**” means the stage in the progress of the Work at which the Work, or a designated portion thereof, is sufficiently complete, in conformance with the Scope of Work, the Construction Documents and any Change Orders, so that Yuba City can take Beneficial Use thereof.

“**Surety**” means the surety supplying the Contract Bonds, which must be an “admitted surety insurer,” as defined by California Code of Civil Procedure §995.120, authorized to do business in the State of California, and reasonably satisfactory to Yuba City.

“**Utility**” is defined in Section 18.02.

“**Work**” means the Work to be done by OpTerra Energy Services pursuant to the Scope of Work, subject to any Change Orders.

“**Yuba City**” is defined in the Preamble.

“**Yuba City Persons**” means Yuba City, its agents, employees, subcontractors, architects, general contractors, lease/leaseback contractors or other Persons acting on behalf of Yuba City or for whom Yuba City is responsible.

ARTICLE 2. TERM; PERFORMANCE OF THE WORK

Section 2.01 Contract Term. The term of this Contract commences on the Contract Effective Date and ends on the last day of the Energy Savings Term, unless terminated earlier as provided in this Contract.

Section 2.02 Performance of Work. The Work and Professional Services to be performed hereunder will be provided in accordance with the terms of this Contract and the applicable standard of care. OpTerra Energy Services will perform its obligations under this Contract (i) using the degree of skill and care that is required by current, good and sound professional procedures and practices, and (ii) in conformance with (x) generally accepted professional standards prevailing at the time the Work is performed, (y) the covenants, terms and conditions of this Contract, and (z) applicable laws, codes, rules and regulations, including, without limitation, the applicable provisions of the California Building Code. OpTerra Energy Services represents and warrants that it is fully experienced in projects of the nature and scope of the Work and Professional Services, and that it is properly qualified, licensed and equipped to supply and perform the Work and Professional Services. The Work completed herein must meet the approval of Yuba City, such approval to be granted or denied in accordance with the requirements set forth in this

Contract, and will be subject to Yuba City's general right of inspection and supervision to secure the satisfactory completion thereof in accordance with this Contract.

Section 2.03 Scope of Work.

- (a) The Scope of Work may not exceed that set forth in Attachments F and G, except pursuant to a Change Order.
- (b) The Professional Services may not exceed those set forth in Attachments H, I and J, except pursuant to a Change Order.

Section 2.04 Project Schedule. After the Contract Effective Date, OpTerra Energy Services will develop, with input from Yuba City, a master project schedule using Microsoft Project®. OpTerra Energy Services will establish a weekly construction meeting at which time the Work of the previous week will be reviewed and a two-week look ahead will be coordinated. The project schedule will be updated monthly.

Section 2.05 Notice to Proceed. Within ten (10) days after Yuba City has closed the financing referenced in Section 2.07, Yuba City will issue to OpTerra Energy Services a written Notice to Proceed ("Notice to Proceed"). OpTerra Energy Services will begin Work within thirty (30) calendar days after OpTerra Energy Services' receipt of the Notice to Proceed. If Yuba City fails to issue the Notice to Proceed within twenty (20) calendar days after the financing has closed, OpTerra Energy Services will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount as a result of such delay.

Section 2.06 Yuba City's Energy and Operational Records and Data. If OpTerra Energy Services requests, Yuba City will provide to OpTerra Energy Services, within thirty (30) calendar days after such request, Yuba City's Energy Usage Data for the twelve (12) months preceding the Contract Effective Date, and will make commercially reasonable efforts to provide the Energy Usage Data for the thirty-six (36) months preceding the Contract Effective Date. "Energy Usage Data" means all of Yuba City's records and complete data concerning energy usage, energy-related maintenance, and other related costs for the Facilities, and including, without limitation, utility records; occupancy information; descriptions of any past, present or anticipated changes in a building's structure or its heating, cooling, lighting or other systems or energy requirements; descriptions of all energy consuming or saving equipment used in the Facilities; applicable building drawings, specifications, existing AutoCAD files, operation and maintenance manuals, and as-builts; bills and records relating to operation and maintenance of systems and equipment within the Facilities, and a description of operation and management procedures currently utilized. Yuba City agrees that OpTerra Energy Services may rely on the foregoing data as being accurate in all respects. If OpTerra Energy Services requests, Yuba City will also provide to OpTerra Energy Services, within thirty (30) calendar days after such request, any prior energy audits of the Facilities, and copies of Yuba City's financial statements and records related to energy usage and operational costs for said time period at the Facilities, and will authorize its agents and employees to provide and freely discuss such records and to make themselves available for consultations and discussions with authorized representatives, employees, subcontractors, and agents of OpTerra Energy Services.

Section 2.07 Finance Contingency. It is acknowledged and agreed by the Parties that the continued existence of this Contract is expressly contingent upon Yuba City closing financing that will allow it to make the payments to OpTerra Energy Services required by this Contract. Upon execution of this Contract, Yuba City will have thirty (30) calendar days to close such financing. If the financing is not closed within this time, for any reason, either Party may by written notice to the other Party declare this Contract to be null and void; and the Contract will be null and void as of the other Party's receipt of this notice. It is acknowledged and agreed that OpTerra Energy Services will have no obligation to commence performance of the Work unless and until the financing has been closed.

Section 2.08 Proof of Financial Arrangements. Prior to the commencement of the Work, Yuba City will provide OpTerra Energy Services proof that financial arrangements have been made to fulfill Yuba City's obligations under this Contract. Yuba City's requirement to furnish such proof to OpTerra Energy Services is a condition precedent to commencement of the Work. After commencement of the Work, OpTerra Energy Services may request such proof if (1) Yuba City fails to make payments to OpTerra Energy Services as this Contract requires; (2) a Change in the Work materially changes the Contract Amount; or (3) OpTerra Energy Services has other reasonable concerns regarding Yuba City's ability to fulfill its payment obligations under this Contract when due. Yuba City will furnish such proof as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After Yuba City furnishes any such proof, Yuba City will not materially vary such financial arrangements without prior consent of OpTerra Energy Services. If Yuba City fails to provide OpTerra Energy Services with such proof within ten (10) calendar days of receiving a demand from OpTerra Energy Services, OpTerra Energy Services will be entitled to suspend its performance under this Contract until such proof is received.

ARTICLE 3. PROJECT IMPLEMENTATION - GENERAL

Section 3.01 Permits and Approvals. Yuba City will cooperate fully with and assist OpTerra Energy Services in obtaining all Applicable Permits required under this Contract. OpTerra Energy Services is responsible for obtaining (but not paying for) Applicable Permits, except those Applicable Permits to be issued by Yuba City itself. Yuba City will be responsible for obtaining and paying for all other permits or approvals that may be required, including annual operating permits and any approvals or exemptions required by CEQA, as applicable. Yuba City is also responsible for all fees associated with plan checks (including expedited plan checks), permits, inspections and utility interconnection(s), including any additional Scope of Work that may be required by the Utilities as part of the Interconnection Agreement(s).

Section 3.02 Coordination. Yuba City will be responsible for coordinating the activities of OpTerra Energy Services and OpTerra Energy Services' subcontractors and suppliers with those of Yuba City Persons.

Section 3.03 Project Meetings/Status Updates. During the course of the Work, OpTerra Energy Services will periodically meet with Yuba City to report on the general status and progress of the Work. OpTerra Energy Services may (but is not required to) make food and beverage items of nominal value available to Yuba City and Yuba City's employees and agents at such meetings, which if offered will be deemed part of the Scope of Work and included in the Contract Amount.

Section 3.04 Project Location Access. Yuba City hereby grants to OpTerra Energy Services, without cost to OpTerra Energy Services, all rights of ingress and egress at the Project Location, necessary for OpTerra Energy Services to perform the Work and provide all services contemplated by this Contract. OpTerra Energy Services will provide twenty-four-hour advance notice to Yuba City for access to any Yuba City Facilities. All persons entering the Project Location, including Yuba City and its employees and agents, must follow OpTerra Energy Services' safety procedures. OpTerra Energy Services may (but is not required to) make transportation available to Yuba City and Yuba City's employees and agents between and within Project Locations, which if offered will be deemed part of the Scope of Work and included in the Contract Amount.

Section 3.05 Consents; Cooperation. Whenever a Party's consent, approval, satisfaction, or determination will be required or permitted under this Contract, and this Contract does not expressly state that the Party may act in its sole discretion, such consent, approval, satisfaction, or determination will not be unreasonably withheld, qualified, conditioned, or delayed, whether or not such a "reasonableness" standard is expressly stated in this Contract. Whenever a Party's cooperation is required for the other Party to carry out its obligations hereunder, each Party agrees that it will act in good faith and reasonably in so cooperating with the other Party or its designated representatives or assignees or subcontractors. Each Party will furnish decisions, information, and approvals required by this Contract in a timely manner so as not to delay the other Party's performance under this Contract.

Section 3.06 Independent Contractor. The Parties hereto agree that OpTerra Energy Services, and any agents and employees of OpTerra Energy Services, its subcontractors and/or consultants, is acting in an independent capacity in the performance of this Contract, and not as a public official, officer, employee, consultant, or agent of Yuba City for purposes of conflict of interest laws or any other Applicable Law.

ARTICLE 4. FINAL DESIGN PHASE – CONSTRUCTION DOCUMENTS / EQUIPMENT PROCUREMENT

Section 4.01 General Provisions.

- (a) After the Contract Effective Date, OpTerra Energy Services will proceed with the preparation of any necessary designs, drawings, and specifications related to the Scope of Work.
- (b) After completion of the design phase and approval of the final plans and specifications by Yuba City, OpTerra Energy Services will order the equipment identified in the Scope of Work, and any other necessary materials and supplies in order to meet the project schedule.
- (c) Yuba City will designate a single-point representative with whom OpTerra Energy Services may consult on a reasonable, regular basis and who is authorized to act on Yuba City's behalf with respect to the Project design. Yuba City's representative will render decisions in a timely manner with regard to any documents submitted by OpTerra Energy Services and to other requests made by OpTerra Energy Services in order to avoid delay in the orderly and sequential progress of OpTerra Energy Services' design services.
- (d) Within ten (10) Business Days after OpTerra Energy Services' request, Yuba City will:
 - (i) furnish all surveys or other information in Yuba City's possession that describe the physical characteristics, legal limitations, and utility locations in and around the Project Location;

- (ii) disclose any prior environmental review documentation and all information in its possession concerning subsurface conditions, including without limitation the existence of any known Hazardous Substances, in or around the general area of the Project Location;
 - (iii) supply OpTerra Energy Services with all relevant information in Yuba City's possession, including any as-built drawings and photographs, of prior construction undertaken at the Project Location;
 - (iv) obtain any and all easements, zoning variances, planning approvals, including any resolution of any environmental impact issues, and any other legal authorization regarding utilization of the Project Location for the execution of the Work; and
 - (v) obtain any and all title reports for those Project Locations reasonably requested by OpTerra Energy Services.
- (e) All information furnished pursuant to this Section 4.01 will be supplied at Yuba City's expense, and OpTerra Energy Services will be entitled to rely upon the accuracy and completeness of all information provided. If OpTerra Energy Services is adversely affected by any failure to provide, or delay in providing, the information specified in Section 4.01(d), OpTerra Energy Services will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount.
- (f) If any information disclosed under this Section 4.01 gives rise to a Change to the Work or an Excusable Event, OpTerra Energy Services will notify Yuba City. The Parties will meet and confer with respect to those Changes, and OpTerra Energy Services will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount. If the Parties, however, are unable to agree on whether Yuba City's disclosed information gives rise to a Change to the Work or an Excusable Event, those disputes are to be resolved in accordance with ARTICLE 19.
- (g) OpTerra Energy Services contemplates that it will not encounter any Hazardous Substances at the Project Location, except as has been disclosed as a pre-existing condition by Yuba City prior to the execution of this Contract. However, any disclosure of Hazardous Substances that will affect the performance of the Work after the execution of this Contract will constitute a valid basis for a Change Order.

Section 4.02 Review of Construction Documents. OpTerra Energy Services will prepare and submit all drawings and specifications to Yuba City for review. Yuba City will review the documents and provide any comments in writing to OpTerra Energy Services within ten (10) Business Days after receipt of the documents. OpTerra Energy Services will incorporate appropriate Yuba City comments into the applicable drawings and specifications. OpTerra Energy Services reserves the right to issue the drawings and specifications in phases to allow Construction to be performed in phases. If Yuba City fails to provide written comments within the ten (10) Business Day period, Yuba City will be deemed to have no comments regarding the documents.

Section 4.03 Permits. The respective obligations of the Parties in obtaining permits are as specified in Section 3.01. Yuba City will agree to any nonmaterial changes to the designs, drawings, and specifications required by any Governmental Authority. The Contract Amount must be increased by any additional cost incurred by OpTerra Energy Services due to a Change required by a Governmental Authority and the time required to complete the Work must be increased by the number of additional days required to complete the Work because of a Change imposed by a Governmental Authority.

Section 4.04 Changes During Final Design Phase. If during the design phase any Yuba City Person requests Changes and/or modifications to the Work and/or an Excusable Event occurs, OpTerra Energy Services will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount. Valid bases for additional compensation and/or time extension include, but are not limited to: (i) any Yuba City Person requests changes and/or modifications to the Project Scope of Work during the Project design phase; (ii) any Yuba City Person causes delays during OpTerra Energy Services' design work; (iii) the discovery of subsurface or other site conditions that were not reasonably anticipated or disclosed as of the Contract Effective Date; (iv) the discovery of Hazardous Substances at or impacting the Project Location; (v) changes to the Scope of Work required to obtain Applicable Permits; (vi) damage to any equipment or other Work installed by OpTerra Energy Services caused by the act or omission of any Yuba City Person; (vii) changes and/or modifications to Scope of Work ordered by any Governmental Authority; and (viii) any other condition that would not reasonably have been anticipated by OpTerra Energy Services, that modifies and/or changes the Scope of Work, that increases the agreed-upon Contract Amount or increases the time needed to complete the Work.

ARTICLE 5. CONSTRUCTION PHASE

Section 5.01 General Provisions. Upon securing the requisite Applicable Permits pursuant to Section 3.01, and completion of Construction Documents, OpTerra Energy Services will commence the construction of the Project in accordance with the Construction Documents. The construction will be performed in accordance with all

Applicable Laws and Applicable Permits, by OpTerra Energy Services and/or one or more licensed subcontractors qualified to perform the Work.

Section 5.02 OpTerra Energy Services' Responsibilities During Construction Phase.

- (a) As an independent contractor to Yuba City, OpTerra Energy Services will provide, or cause to be provided by its subcontractor(s), all labor, materials, equipment, tools, transportation, and other facilities and services necessary for the proper execution, construction, and completion of the Work. OpTerra Energy Services will purchase in advance all necessary materials and supplies for the construction of the Project in order to assure the prompt and timely delivery of the completed Work pursuant to the project schedule. OpTerra Energy Services will also be responsible for all means, methods, techniques, sequences, and procedures required by the Construction Documents.
- (b) OpTerra Energy Services will make commercially reasonable efforts to coordinate construction activities and perform the Work to minimize disruption to Yuba City's operations at the Project Location. OpTerra Energy Services will provide at least thirty (30) calendar days' written notice to Yuba City of any planned power outages that will be necessary for the construction. OpTerra Energy Services will cooperate with Yuba City in scheduling such outages, and Yuba City agrees to provide its reasonable approval of any scheduled outage.
- (c) OpTerra Energy Services will initiate and maintain a safety program in connection with its Construction of the Project. OpTerra Energy Services will take reasonable precautions for the safety of, and will provide reasonable protection to prevent damage, injury, or loss to: (i) employees of OpTerra Energy Services and subcontractors performing Work under this Contract; (ii) OpTerra Energy Services' property and other materials to be incorporated into the Project, under the care, custody, and control of OpTerra Energy Services or its subcontractors; and (iii) other property at or adjacent to the Project Location not designated for removal, relocation, or replacement during the course of construction. OpTerra Energy Services will not be responsible for Yuba City's employees' safety unless OpTerra Energy Services' negligence in the performance of its Work is the proximate cause of the employee's injury.
- (d) OpTerra Energy Services will provide notice to Yuba City of scheduled test(s) of installed equipment, if any, and Yuba City and/or its designees will have the right to be present at any or all such tests conducted by OpTerra Energy Services, any subcontractor, and/or manufacturers of the equipment.
- (e) Pursuant to California Labor Code §6705, if the Work is a public work involving an estimated expenditure in excess of \$25,000 and includes the excavation of any trench or trenches five (5) feet or more in depth, OpTerra Energy Services will, in advance of excavation, submit to Yuba City and/or a registered civil or structural engineer, employed by Yuba City, to whom authority to accept has been delegated, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches, which provisions will be no less effective than the current and applicable CAL-OSHA Construction Safety Orders. No excavation of such trench or trenches may be commenced until this detailed plan has been accepted by Yuba City or by the person to whom authority to accept has been delegated by Yuba City. Pursuant to California Labor Code §6705, nothing in this Section 5.02(e) imposes tort liability on Yuba City or any of its employees.
- (f) Pursuant to California Public Contract Code §7104, if the Work is a public work involving digging trenches or other excavations that extend deeper than four (4) feet below the surface of the ground:
 - (i) OpTerra Energy Services will promptly, and before the following conditions are disturbed, notify Yuba City, in writing, of any:
 - 1) Material that OpTerra Energy Services believes may be material that is hazardous waste, as defined in California Health and Safety Code §25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law;
 - 2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to OpTerra Energy Services before the Contract Effective Date;
 - 3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.
 - (ii) Yuba City will promptly investigate the conditions and, if it finds that the conditions do materially so differ or do involve hazardous waste, and cause a decrease or increase in OpTerra Energy Services' cost of, or the time required for, performance of any part of the Work will issue a Change Order under the procedures described in this Contract.

- (iii) If a dispute arises between Yuba City and OpTerra Energy Services, whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in OpTerra Energy Services' cost of, or time required for, performance of any part of the Work, OpTerra Energy Services will not be excused from any scheduled completion date provided for by this Contract but will proceed with all Work to be performed under this Contract. OpTerra Energy Services will retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the Parties.

Section 5.03 Yuba City's Responsibilities During Construction Phase.

- (a) Yuba City will designate a single-point representative authorized to act on Yuba City's behalf with respect to Project construction and/or equipment installation. Yuba City may from time to time change the designated representative and will provide written notice to OpTerra Energy Services of such change. Any independent review of the construction will be undertaken at Yuba City's sole expense, and will be performed in a timely manner so as to not unreasonably delay the orderly progress of OpTerra Energy Services' Work.
- (b) Yuba City will provide a temporary staging area for OpTerra Energy Services, or its subcontractors, to use during the construction phase to store and assemble equipment for completion of the Work, if needed. Yuba City will provide sufficient space at the Facilities for the performance of the Work and the storage, installation, and operation of any equipment and materials and will take reasonable steps to protect any such equipment and materials from harm, theft and misuse. Yuba City will provide access to the Facilities, including parking permits and identification tags, for OpTerra Energy Services and subcontractors to perform the Work during regular business hours, or such other reasonable hours as may be requested by OpTerra Energy Services and acceptable to Yuba City. Yuba City will also either provide a set or sets of keys to OpTerra Energy Services and its subcontractors (signed out per Yuba City policy) or provide a readily available security escort to unlock and lock doors. Yuba City will not unreasonably restrict OpTerra Energy Services' access to Facilities to make emergency repairs or corrections as OpTerra Energy Services may determine are needed.
- (c) Yuba City will maintain the portion of the Project Location that is not directly affected by OpTerra Energy Services' Work. Yuba City will keep the designated Project Location and staging area for the Project free of obstructions, waste, and materials within the control of Yuba City.
- (d) Yuba City will obtain any required environmental clearance from, and any special permits required by, any federal, state, and local jurisdictions, including but not limited to any clearances required under CEQA, prior to scheduled construction start date.
- (e) Yuba City will prepare the Project Location for construction, including, but not limited to, clearance of all above and below ground obstructions, such as vegetation, buildings, appurtenances, and utilities. Subsurface conditions and obstacles (buried pipe, utilities, etc.) that are not otherwise previously and accurately documented by Yuba City and such documentation made available to OpTerra Energy Services are the responsibility of Yuba City. If OpTerra Energy Services encounters such unforeseen conditions in the performance of the Work, OpTerra Energy Services will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount.
- (f) Yuba City will remove any Hazardous Substances either known to Yuba City prior to the commencement of the Work or encountered by OpTerra Energy Services during the construction of the Project, if necessary in order for the Work to progress safely, that were not knowingly released or brought to the site by OpTerra Energy Services. OpTerra Energy Services will respond to the discovery of Hazardous Substances at or around the Project Location during the course of OpTerra Energy Services' construction in accordance with Section 5.06.
- (g) Yuba City will coordinate the Work to be performed by OpTerra Energy Services with its own operations and with any other construction project that is ongoing at or around the Project Location, with the exception that OpTerra Energy Services will coordinate the Interconnection Facilities work, if any, which will be performed by the local utility.
- (h) Yuba City will, and will cause Yuba City Persons to, allow OpTerra Energy Services and its subcontractors access to and reasonable use of necessary quantities of Yuba City's water and other utilities, including electrical power, as needed for the construction of the Work, at no cost to OpTerra Energy Services.
- (i) Yuba City will, and will cause Yuba City Persons to, provide OpTerra Energy Services and/or its subcontractors with reasonable access to the Project Location to perform the Work, including without limitation and at no extra cost to OpTerra Energy Services, access to perform Work on Saturdays, Sundays, legal holidays, and non-regular working hours.

- (j) Yuba City will also do the following:
- (i) Attend the regularly scheduled progress meetings. Participate as needed regarding scheduling of the Work.
 - (ii) When requested by OpTerra Energy Services, participate in the job inspection walk-through with OpTerra Energy Services to determine Substantial Completion or Beneficial Use of major equipment, and will sign the Certificate(s) of Substantial Completion.
 - (iii) Perform a final walk-through of the Project and, upon receipt of the operation and maintenance manuals and as-built drawings, sign the Certificate of Final Completion for the related Work.
 - (iv) Upon the completion of the entire Scope of Work listed in Attachment C, including training, if any, and submission of close-out documents, sign a Certificate of Final Completion for the entire Project.

Section 5.04 Changes.

- (a) Change Orders Generally. Changes and/or modifications to the Scope of Work will be authorized by a written Change Order. The Change Order should state the change and/or modification to the Scope of Work, any additional compensation to be paid, and any applicable extension of time. OpTerra Energy Services may, at its election, suspend performance of that portion of the Work affected by any proposed Change until a written Change Order with respect to the Changed or modified Work has been signed by both Yuba City and OpTerra Energy Services. OpTerra Energy Services will use its reasonable efforts to continue other portions of the Work not affected or impacted by such proposed Change until such time as the applicable Change Order is resolved. In addition, if any Yuba City Person requests a proposal from OpTerra Energy Services for a Change and Yuba City subsequently elects to not proceed with such Change, Yuba City agrees that a Change Order will be issued to reimburse OpTerra Energy Services for any costs reasonably incurred for estimating services, design services, and/or preparation of the proposal requested by such Yuba City Person.
- (b) Change Orders Requiring Additional Compensation. If during construction any Yuba City Person requests changes and/or modifications to the Work, and/or there are Excusable Events, Yuba City will pay the extra costs caused by such modifications and/or changes and/or Excusable Event and OpTerra Energy Services will be entitled to additional compensation for the following reasons, that include, but are not limited to: (i) any Yuba City Person requests changes and/or modifications to the Scope of Work during the construction phase of the Project; (ii) any Yuba City Person causes delays during OpTerra Energy Services' construction work; (iii) discovery of subsurface or other site conditions that were not reasonably anticipated or disclosed prior to the commencement of the Work; (iv) discovery of Hazardous Substances at or impacting the Project Location; (v) changes and/or modifications to the Scope of Work required to obtain required permits and approvals as required by any Governmental Authority; (vi) damage to any equipment or other Work installed by OpTerra Energy Services caused by the act or omission of any Yuba City Person; (vii) changes and/or modifications to Scope of Work ordered by any Governmental Authority; and (viii) any other condition that would not reasonably have been anticipated by OpTerra Energy Services, that modifies and/or changes the Scope of Work or the Contract Amount.
- (c) Change Orders Requiring Additional Time. If during construction any Yuba City Person requests changes and/or modifications to the Scope of Work and/or an Excusable Event occurs, the Parties agree that an equitable extension of time to complete the Work may be necessary. Prior to any extension of time, OpTerra Energy Services will use commercially reasonable efforts to make up such delays, including authorizing overtime payments; *provided* that Yuba City has issued a Change Order authorizing any such overtime payment and has specifically agreed to pay all costs, including administrative charges and expenses, associated therewith.
- (d) Method for Adjustment. An increase or decrease in the Contract Amount and/or time resulting from a Change in the Work and/or Excusable Event must be determined by one or more of the following methods:
- (i) unit prices set forth in this Contract or as subsequently agreed;
 - (ii) a mutually accepted, itemized lump sum; or
 - (iii) costs calculated on a basis agreed upon by Yuba City and OpTerra Energy Services plus a fee (either a lump sum or a fee based on a percentage of cost) to which the Parties agree.
- (e) Disagreements. If there is a disagreement between Yuba City and OpTerra Energy Services as to whether OpTerra Energy Services is entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount, those disputes are to be resolved in accordance with the provisions of ARTICLE 19. Pending the resolution of any such dispute, OpTerra Energy Services may suspend Work.

Section 5.05 Minor Changes to Scope of Work. OpTerra Energy Services has the authority to make minor changes that do not change the total Contract Amount and are consistent with the intent of the Construction Documents, without prior notice to Yuba City. OpTerra Energy Services will either promptly inform Yuba City, in writing, of any minor changes made during the implementation of the Project, or make available to Yuba City at the site a set of as-built drawings that will be kept current to show those minor changes.

Section 5.06 Hazardous Substances.

- (a) OpTerra Energy Services will promptly provide written notice to Yuba City if OpTerra Energy Services observes any Hazardous Substance, as defined herein, at or around the Facilities during the course of construction or installation of any equipment which have not been addressed as part of the Scope of Work. OpTerra Energy Services will have no obligation to investigate the Facilities for the presence of Hazardous Substances prior to commencement of the Work unless otherwise specified in the Scope of Work. Yuba City will be solely responsible for investigating Hazardous Substances and determining the appropriate removal and remediation measures with respect to the Hazardous Substances. Yuba City will comply with all Applicable Laws with respect to the identification, removal and proper disposal of any Hazardous Substances known or discovered at or around the Facilities, and in such connection will execute all generator manifests with respect thereto. OpTerra Energy Services will comply with all Applicable Laws in connection with the use, handling, and disposal of any Hazardous Substances in the performance of its Work. In connection with the foregoing, Yuba City will provide OpTerra Energy Services, within ten (10) Business Days of the execution of this Contract, a written statement that represents and warrants (i) whether or not, to its knowledge, there are Hazardous Substances either on or within the walls, ceiling or other structural components, or otherwise located in the Project Location, including, but not limited to, asbestos-containing materials; (ii) whether or not, to its knowledge, conditions or situations exist at the Facilities which are subject to special precautions or equipment required by federal, state, or local health or safety regulations; and (iii) whether or not, to its knowledge, there are unsafe working conditions at the Facilities.
- (b) Yuba City will indemnify, defend, and hold OpTerra Energy Services harmless from and against any and all Losses that in any way result from, or arise under, such Yuba City owned or generated Hazardous Substances, except for liabilities due to the negligence or willful misconduct of OpTerra Energy Services, or its subcontractors, agents or representatives, in the handling, disturbance or release of Hazardous Substances. This indemnification will survive any termination of this Contract.

Section 5.07 Pre-Existing Conditions. Certain pre-existing conditions may be present within the Facilities that (i) are non-compliant with applicable codes, (ii) may become non-compliant with applicable codes upon completion of OpTerra Energy Services' Work, (iii) may cause OpTerra Energy Services' completed Work to be non-compliant with applicable codes, (iv) may prevent Yuba City from realizing the full benefits of OpTerra Energy Services' Work, (v) may present a safety or equipment hazard, or (vi) are otherwise outside the scope of OpTerra Energy Services' Work. Regardless of whether or not such conditions may have been readily identifiable prior to the commencement of Work, OpTerra Energy Services will not be responsible for repairing such pre-existing conditions unless such responsibility is expressly provided for in the Scope of Work or an approved Change Order. OpTerra Energy Services, in its sole discretion, may determine whether it will bring said pre-existing conditions into compliance by agreeing to execute a Change Order with Yuba City for additional compensation and, if appropriate, an extension of time.

ARTICLE 6. PROJECT COMPLETION

Section 6.01 Occupancy or Use of Work. Yuba City may take occupancy or use of any completed or partially completed portion of the Work at any stage, whether or not such portion is Substantially Complete, *provided* that such occupancy or use is authorized by Governmental Authority and, *provided further*, that Yuba City assumes responsibility for the security of, insurance coverage for, maintenance, utilities for, and damage to or destruction of such portion of the Work. If Substantial Completion of a portion of the Construction Work is not yet achieved, occupancy or use of such portion of the Work will not commence until Yuba City's insurance company has consented to such occupancy or use. When occupancy or use of a portion of the Work occurs before Substantial Completion of such portion, Yuba City and OpTerra Energy Services will accept in writing the responsibilities assigned to each of them for title to materials and equipment, payments and Retention with respect to such portion.

Section 6.02 Substantial Completion / Reduction of Retention. When OpTerra Energy Services considers the Work, or any portion thereof, to be Substantially Complete, OpTerra Energy Services will supply to Yuba City a written Certificate of Substantial Completion with respect to such portion of the Work, including a Punch List of items and the time for their completion or correction. Yuba City will within ten (10) Business Days of receipt of the Certificate of Substantial Completion, review such portion of the Work for the sole purpose of determining that it is Substantially Complete, and sign and return the Certificate of Substantial Completion to OpTerra Energy Services acknowledging and agreeing: (i) that such portion of the Work is Substantially Complete; (ii) the date of such

Substantial Completion; (iii) that from the date of Substantial Completion Yuba City will assume responsibility for the security of, insurance coverage for, maintenance, utilities for, and damage to or destruction of such portion of the Work. Yuba City agrees that approval of a Certificate of Substantial Completion will not be unreasonably withheld, delayed or conditioned.

Section 6.03 Final Completion. When OpTerra Energy Services considers the entirety of the Work to be Finally Complete, OpTerra Energy Services will notify Yuba City that the Work is fully complete and ready for final inspection. Yuba City will inspect the Work to verify the status of Final Completion within ten (10) Business Days after its receipt of OpTerra Energy Services' certification that the Work is complete. If Yuba City does not verify the Final Completion of the Work within this period, the Work will be deemed fully completed. When Yuba City agrees that the Work is fully completed, OpTerra Energy Services will issue a Certificate of Final Completion, which Yuba City must sign. Yuba City agrees that its signing of the Certificate of Final Completion will not be unreasonably withheld, delayed or conditioned. At that time, Yuba City will pay OpTerra Energy Services any remaining Contract Amount due and any outstanding Retention being withheld by Yuba City, in accordance with Section 8.03. Yuba City may give OpTerra Energy Services written notice of acceptance of the Work and will promptly record a notice of completion or notice of acceptance in the office of the county recorder in accordance with California Civil Code §9204.

Section 6.04 Transfer of Title; Risk of Loss. Title to all or a portion of the Project equipment, supplies and other components of the Construction Work will pass to Yuba City upon the earlier of (i) the date payment for such Project equipment, supplies or components is made by Yuba City and (ii) the date any such items are incorporated into the Project Location. OpTerra Energy Services will retain care, custody and control and risk of loss of such Project equipment, supplies and components until the earlier of Beneficial Use or Substantial Completion. Transfer of title to Yuba City will in no way affect Yuba City's and OpTerra Energy Services' rights and obligations as set forth in other provisions of this Contract. Except as provided in this Section 6.04, after the date of Substantial Completion, OpTerra Energy Services will have no further obligations or liabilities to Yuba City arising out of or relating to this Contract, except for the obligation to complete any Punch List items, the obligation to perform any warranty service under Section 9.01, and obligations which, pursuant to their terms, survive the termination of this Contract.

ARTICLE 7. SUBCONTRACTORS

Section 7.01 Authority to Subcontract. OpTerra Energy Services may delegate its duties and performance under this Contract, and has the right to enter into agreements with any subcontractors and other service or material providers as OpTerra Energy Services may select in its discretion to perform the Work. OpTerra Energy Services will not be required to enter into any subcontracts with parties whom OpTerra Energy Services has not selected or subcontractors whom OpTerra Energy Services has objection to using.

Section 7.02 Prompt Payment of Subcontractors. OpTerra Energy Services will promptly pay, when due, all amounts payable for labor and materials furnished in the performance of this Contract and will endeavor to prevent any lien or other claim under any provision of Applicable Law from arising against any Yuba City property, against OpTerra Energy Services' rights to payments hereunder, or against Yuba City.

Section 7.03 Relationship. Nothing in this Contract constitutes or will be deemed to constitute a contractual relationship between any of OpTerra Energy Services' subcontractors and Yuba City, or any obligation on the part of Yuba City to pay any sums to any of OpTerra Energy Services' subcontractors.

Section 7.04 Prevailing Wages. All employees of OpTerra Energy Services and OpTerra Energy Services' subcontractors performing Work at the Project Location will be paid the per diem prevailing wages for the employee's job classification in the locality in which the Work is performed, in accordance with the requirements of California Labor Code §1771. In accordance with California Labor Code §§1773 and 1773.2, Yuba City will obtain from the Director of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work, in the locality in which the Work is to be performed, for each craft, classification or type of worker needed to execute the Work at the Project Location, and will cause copies of such determinations to be kept on file at its principal office and posted at each Project Location. Yuba City will promptly notify OpTerra Energy Services of any changes to any such prevailing wage determination.

ARTICLE 8. PAYMENTS

Section 8.01 Monthly Progress Payments. Upon execution of this Contract, OpTerra Energy Services will invoice Yuba City for the assessment fee for the Report in the amount of Twenty-Five Thousand Dollars (\$25,000) plus a mobilization fee in the amount of Nine Hundred Sixty-Eight Thousand Four Hundred Forty-Three Dollars (\$968,443). These amounts must be paid to OpTerra Energy Services within thirty (30) calendar days of Yuba City's receipt of an invoice for those amounts. In addition, as the Work progresses, OpTerra Energy Services will submit to Yuba City its applications for monthly payments based on the progress made on the Project through the

date on which OpTerra Energy Services submits such Application for Payment. Within twenty-one (21) calendar days from the Contract Effective Date, OpTerra Energy Services will prepare and submit to Yuba City a schedule of values apportioned to the various divisions or phases of the Work ("Schedule of Values"). Each line item contained in the Schedule of Values will be assigned a value such that the total of all items equals the Contract Amount. All Applications for Payment will be in accordance with the Schedule of Values.

Section 8.02 Materials Stored Off-Site. In addition to the monthly progress payments specified in Section 8.01, OpTerra Energy Services may invoice Yuba City for materials purchased in advance and not stored at the Project Location. Each such Application for Payment will be accompanied by proof of off-site material purchases, evidence that the materials have been delivered to a warehouse reasonably acceptable to Yuba City and evidence of appropriate insurance coverage. OpTerra Energy Services will furnish to Yuba City written consent from the Surety approving the advance payment for materials stored off site. Yuba City will pre-pay one hundred percent (100%) of OpTerra Energy Services' Application for Payment for the materials delivered, less Retention as indicated in Section 8.03. OpTerra Energy Services will protect stored materials from damage. Damaged materials, even though paid for, will not be incorporated into the Work.

Section 8.03 Retention. Yuba City, or its designee, must approve and pay each Application for Payment, less a retention amount ("Retention") of five percent (5%) in accordance with California Public Contract Code §7201, within thirty (30) calendar days after its receipt of the Application for Payment; *provided, however*, that there is to be no Retention with respect to the design and engineering and any fee for the Report. A failure to approve and pay an Application for Payment in a timely manner is a material default by Yuba City under this Contract. Yuba City may make progress payments in full without Retention at any time after fifty percent (50%) of the Work has been completed, as permitted pursuant to California Public Contract Code §9203. Upon Substantial Completion, the Retention must be reduced to two percent (2%) of the Contract Amount, and OpTerra Energy Services may invoice and Yuba City will pay this amount. Yuba City will pay OpTerra Energy Services the remaining two percent (2%) Retention amount upon achieving Final Completion. In lieu of Retention being held by Yuba City, OpTerra Energy Services may request that securities be substituted or Retention be held in an escrow account pursuant to California Public Contract Code §22300.

Section 8.04 Final Payment. The final Application for Payment may be submitted after Final Completion. The final payment amount must also include payment to OpTerra Energy Services for any remaining Retention withheld by Yuba City.

Section 8.05 Disputed Invoices/Late Payments. Yuba City may in good faith dispute any Application for Payment, or part thereof, within fifteen (15) calendar days after the date the Application for Payment was received by Yuba City. If Yuba City disputes all or a portion of any Application for Payment, Yuba City will pay the undisputed portion when due and provide OpTerra Energy Services a written notice and explanation of the basis for the dispute and the amount of the Application for Payment being withheld related to the dispute. Yuba City will be deemed to have waived and released any dispute known to it with respect to a bill if such notice and written explanation is not provided within fifteen (15) calendar days after the date the Application for Payment was received by Yuba City. If any amount disputed by Yuba City is finally determined to be due to OpTerra Energy Services, either by agreement between the Parties or as a result of dispute resolution pursuant to ARTICLE 19 below, it will be paid to OpTerra Energy Services within ten (10) Business Days after such final determination, plus Interest from the date billed or claimed until such amount is paid.

Section 8.06 Rebate Programs. OpTerra Energy Services will assist Yuba City in the preparation and submission to the applicable agencies of applications and documentation necessary for the energy efficiency rebate, incentive, and/or loan program(s) shown on Attachment C. OpTerra Energy Services makes no guarantee that Yuba City will receive funding from any energy efficiency rebate, incentive, and/or loan program(s), including those listed on Attachment C (collectively, "Incentive Funds"), or any portion thereof; OpTerra Energy Services expressly disclaims any liability for Yuba City's failure to receive any portion of the Incentive Funds, and Yuba City acknowledges and agrees that OpTerra Energy Services will have no liability for any failure to receive all or any portion of the Incentive Funds. Procurement, or lack thereof, of the Incentive Funds will not alter the Contract Amount of this Contract or the payment timeline associated with payment of the Contract Amount.

ARTICLE 9. WARRANTY / LIMITATION OF LIABILITY

EXCEPT FOR THE WARRANTIES PROVIDED IN THIS ARTICLE 9, OPTERRA ENERGY SERVICES MAKES NO WARRANTIES IN CONNECTION WITH THE WORK PROVIDED UNDER THIS CONTRACT, WHETHER EXPRESS OR IMPLIED IN LAW, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES AGAINST INTELLECTUAL PROPERTY INFRINGEMENT. YUBA CITY WILL HAVE NO REMEDIES AGAINST EITHER OPTERRA ENERGY SERVICES OR ANY OPTERRA ENERGY SERVICES SUBCONTRACTOR OR VENDOR FOR ANY DEFECTIVE MATERIALS OR EQUIPMENT INSTALLED, EXCEPT FOR THE REPAIR OR REPLACEMENT OF SUCH MATERIALS OR

EQUIPMENT IN ACCORDANCE WITH THE WARRANTIES INDICATED BELOW. SPECIFICALLY, NEITHER OPTERRA ENERGY SERVICES, NOR OPTERRA ENERGY SERVICES' SUBCONTRACTORS OR VENDORS, WILL BE LIABLE TO YUBA CITY FOR LOSS OF PROFITS OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY.

Section 9.01 OpTerra Energy Services warrants to Yuba City that material and equipment furnished under this Contract will be of good quality and new, unless otherwise specifically required or permitted by this Contract. OpTerra Energy Services further warrants that its workmanship provided hereunder, including its subcontractors' workmanship, will be free of material defects for a period of one (1) year from the date of Substantial Completion as indicated on the executed Certificate of Substantial Completion, or the date of Beneficial Use as indicated on the executed Certificate of Beneficial Use ("OpTerra Energy Services Warranty"). Notwithstanding the preceding sentence, the date the OpTerra Energy Services Warranty commences with respect to a specific piece or pieces of equipment may be further defined in Attachment F.

Section 9.02 Equipment and material warranties that exceed the OpTerra Energy Services Warranty period will be provided directly by the equipment and/or material manufacturers and such warranties will be assigned directly to Yuba City, after the one (1) year period. During the OpTerra Energy Services Warranty period, OpTerra Energy Services will be Yuba City's agent in working with the equipment and material manufacturers in resolving any equipment or material warranty issues. Any material defects that are discovered within the OpTerra Energy Services Warranty period, OpTerra Energy Services, or OpTerra Energy Services' subcontractors, will correct its defects, and/or OpTerra Energy Services will work with the equipment or material manufacturer as Yuba City's agent to facilitate the manufacturer's correction of the equipment or material defect. Such warranty services will be performed in a timely manner and at the reasonable convenience of Yuba City. If a warranty issue arises on any equipment or material installed after the OpTerra Energy Services Warranty period, and the equipment or material has a warranty period that exceeds one (1) year, Yuba City will contact the manufacturer directly to resolve such warranty issues and Yuba City acknowledges that the manufacturer will have sole responsibility for such issues.

Section 9.03 The warranties in this ARTICLE 9 expressly exclude any remedy for damage or defect caused by improper or inadequate maintenance of the installed equipment by service providers other than OpTerra Energy Services or its subcontractors, corrosion, erosion, deterioration, abuse, modifications or repairs not performed by an authorized OpTerra Energy Services subcontractor, improper use or operation, or normal wear and tear under normal usage. Unless otherwise specified, all warranties hereunder, including without limitation those for defects, whether latent or patent, in design, engineering, or construction, will terminate one (1) year from the date of Substantial Completion or Beneficial Use; and thereafter, OpTerra Energy Services will have no liability for breach of any warranty or for any latent or patent defect of any kind pursuant to California Code of Civil Procedure §§337.15 and 338.

Section 9.04 Yuba City and OpTerra Energy Services have discussed the risks and rewards associated with this Project, as well as the Contract Amount to be paid to OpTerra Energy Services for performance of the Work. Yuba City and OpTerra Energy Services agree to allocate certain of the risks so that, to the fullest extent permitted by Applicable Law, OpTerra Energy Services' total aggregate liability to Yuba City and all third parties is limited to fifty percent (50%) of the Contract Amount for any and all injuries, damages, claims, losses, expenses, or claim expenses (including attorney's fees) arising out of this Contract from any cause or causes. Such causes include, but are not limited to, negligence, errors, omissions, strict liability, breach of contract, or breach of warranty.

ARTICLE 10. OWNERSHIP OF CERTAIN PROPERTY AND EXISTING EQUIPMENT

Section 10.01 Ownership of Certain Proprietary Property Rights.

- (a) Ownership: Except as expressly provided in this Contract, Yuba City will not acquire, by virtue of this Contract, any rights or interest in any formulas, patterns, devices, software, inventions or processes, copyrights, patents, trade secrets, other intellectual property rights, or similar items of property which are or may be used in connection with the Work. OpTerra Energy Services will own all inventions, improvements, technical data, models, processes, methods, and information and all other work products developed or used in connection with the Work, including all intellectual property rights therein.
- (b) License: Solely in connection with the Facilities, OpTerra Energy Services grants to Yuba City a limited, perpetual, royalty-free, non-transferrable license for any OpTerra Energy Services intellectual property rights necessary for Yuba City to operate, maintain, and repair any modifications or additions to Facilities, or equipment delivered, as a part of the Work.
- (c) Ownership and Use of Instruments of Service. All data, reports, proposals, plans, specifications, flow sheets, drawings, and other products of the Work (the "Instruments of Service") furnished directly or indirectly, in writing or otherwise, to Yuba City by OpTerra Energy Services under this Contract will remain OpTerra Energy Services' property and may be used by Yuba City only for the Work. OpTerra Energy Services will

be deemed the author and owner of such Instruments of Service and will retain all common law, statutory and other reserved rights, including copyrights. The Instruments of Service may not be used by Yuba City or any Yuba City Person for future additions or alterations to the Project or for other projects, without the prior written agreement of OpTerra Energy Services. Any unauthorized use of the Instruments of Service will be at Yuba City's sole risk and without liability to OpTerra Energy Services. If Yuba City uses the Instruments of Service for implementation purposes, including additions to or completion of the Project, without the written permission of OpTerra Energy Services, Yuba City agrees to waive and release, and indemnify and hold harmless, OpTerra Energy Services, its subcontractors, and their directors, employees, subcontractors, and agents from any and all Losses associated with or resulting from such use.

Section 10.02 Ownership of any Existing Equipment. Ownership of any equipment and materials presently existing at the Facilities at the time of execution of this Contract will remain the property of Yuba City even if such equipment or materials are replaced or their operation made unnecessary by work performed by OpTerra Energy Services. If applicable, OpTerra Energy Services will advise Yuba City in writing of all equipment and materials that will be replaced at the Facilities and Yuba City will, within five (5) Business Days of OpTerra Energy Services' notice, designate in writing to OpTerra Energy Services which replaced equipment and materials should not be disposed of off-site by OpTerra Energy Services (the "Retained Items"). Yuba City will be responsible for and designate the location and storage for the Retained Items. OpTerra Energy Services will be responsible for the disposal of replaced equipment and materials, except for the Retained Items. OpTerra Energy Services will use commercially reasonable efforts to remove the Retained Items in such a manner as to avoid damage thereto, or if it is unreasonable to avoid damage altogether, to minimize the damage done. OpTerra Energy Services will not be responsible for the removal and/or disposal of any Hazardous Substances except as required by the Scope of Work.

ARTICLE 11. INDEMNIFICATION / INSURANCE / BONDS

Section 11.01 Indemnification. To the full extent permitted by Applicable Laws, each Party will indemnify, hold harmless, release and defend the other Party, its officers, employees, and agents from and against any and all actions, claims, demands, damages, disabilities, fines, penalties, losses, costs, expenses (including consultants' and attorneys' fees and other defense expenses) and liabilities of any nature ("Losses") that may be asserted by any person or entity, to the extent arising out of that Party's performance or activities hereunder, including the performance or activities of other persons employed or utilized by that Party in the performance of this Contract, excepting liabilities to the extent due to the negligence or willful misconduct of the indemnified party. This indemnification obligation will continue to bind the Parties after the termination of this Contract.

Section 11.02 Waiver of Consequential Damages and Limitation of Liability. The liability of a defaulting Party will be limited to direct, actual damages. Neither Party shall be liable to the other Party for any special, indirect, incidental or consequential damages whatsoever, whether in contract, tort (including negligence) or strict liability, including, but not limited to, operational losses in the performance of business such as lost profits or revenues or any increase in operating expense. Additionally, each Party waives any claims for negligence against the other Party to the greatest extent permitted by Applicable Law.

Section 11.03 Insurance.

- (a) OpTerra Energy Services shall maintain at its sole cost and expense and keep in force during the term of this Contract, the following insurance coverages:
- (i) Workers' Compensation Insurance with statutory limits as required by the laws of any and all states in which OpTerra Energy Services' employees are located and Employer's Liability insurance on an "occurrence" basis with a limit of \$1,000,000.
 - (ii) Commercial General Liability Insurance at least as broad as CG 00 01, covering premises and operations and including, but not limited to, product and completed operations, personal and advertising injury and contractual liability coverage with a per occurrence limit of \$2,000,000 covering bodily injury and property damage; General Aggregate limit of \$2,000,000; Products and Completed Operations Aggregate limit of \$2,000,000; and Personal & Advertising Injury limit of \$2,000,000, written on an occurrence form.
 - (iii) Automobile Liability Insurance at least as broad as CA 00 01 with Code 1 (any auto), covering use of all owned, non-owned, and hired automobiles with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage liability.
 - (iv) Professional Liability Insurance covering liability imposed by law or contract arising out of an error, omission or negligent act in the performance, or lack thereof, of professional services and any physical property damage, bodily injury or death resulting therefrom, with a limit of \$1,000,000 per claim and in the aggregate. The insurance shall include a vicarious liability endorsement to indemnify, defend, and hold harmless Yuba City for claims arising out of covered

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professional services and shall have an extended reporting period of not less than two years. That policy retroactive date coincides with or precedes Consultant's start of work (including subsequent policies purchased as renewals or replacements).

- (b) If the policy is terminated for any reason during the term of this Contract, OpTerra Energy Services shall either purchase a replacement policy with a retroactive date coinciding with or preceding the retroactive date of the terminating policy, or shall purchase an extended reporting provision of at least two (2) years to report claims arising from work performed in connection with this Contract and a replacement policy with a retroactive date coinciding with or preceding the expiration date of the terminating policy.
- (c) If this Contract is terminated or not renewed, OpTerra Energy Services shall maintain the policy in effect on the date of termination or non-renewal for a period of not less than two (2) years therefrom. If that policy is terminated for any reason during the two (2) year period, OpTerra Energy Services shall purchase an extended reporting provision at least covering the balance of the two (2) year period to report claims arising from work performed in connection with this Contract or a replacement policy with a retroactive date coinciding with or preceding the retroactive date of the terminating policy.
- (d) All policies of insurance shall provide for the following:
 - (i) Name Yuba City, members of the City Council of Yuba City, its officers, agents and employees as additional insureds, except with respect to Workers' Compensation and Professional Liability, and only to the extent of the indemnification obligations of this Contract.
 - (ii) Be primary and non-contributory with respect to all obligations assumed by OpTerra Energy Services pursuant to this Contract or any other services provided. Any insurance carried by Yuba City shall not contribute to, or be excess of insurance maintained by OpTerra Energy Services, nor in any way provide benefit to OpTerra Energy Services, its affiliates, officers, directors, employees, subsidiaries, parent company, if any, or agents.
 - (iii) Be issued by insurance carriers with a rating of not less than A VII, as rated in the most currently available "Best's Insurance Guide."
 - (iv) Include a severability of interest clause and cross-liability coverage where Yuba City is an additional insured.
 - (v) Provide a waiver of subrogation in favor of Yuba City, members of the City Council of Yuba City, its officers, agents and employees, but only to the extent of the indemnification obligations of this Contract.
 - (vi) Provide defense in addition to limits of liability.
- (e) Upon execution of this Contract and each extension of the term thereafter, OpTerra Energy Services shall cause its insurers to issue certificates of insurance evidencing that the coverages and policy endorsements required under this Contract are maintained in force and that not less than thirty (30) days written notice shall be given to Yuba City prior to any material modification, cancellation, or non-renewal of the policies. Certificates shall expressly confirm at least the following: (i) Yuba City's additional insured status on the general liability, and auto liability policies; (ii) and the waiver of subrogation applicable to the workers' compensation and professional liability policies. OpTerra Energy Services shall also furnish Yuba City with endorsements effecting coverage required by this insurance requirements clause. The endorsements are to be signed by a person authorized by the Insurer to bind coverage on its behalf. The certificate of insurance and all required endorsements shall be delivered to Yuba City's address as set forth in the Notices provision of this Contract.
- (f) All endorsements are to be received and approved by the County of Sutter before work commences. However, failure to do so shall not operate as a waiver of these insurance requirements.
- (g) Unless otherwise agreed by the Parties, OpTerra Energy Services shall cause all of its subcontractors to maintain the insurance coverages specified in this Insurance section and name OpTerra Energy Services as an additional insured on all such coverages. Evidence thereof shall be furnished as Yuba City may reasonably request.
- (h) The coverage types and limits required pursuant to this Contract shall in no way limit the liability of OpTerra Energy Services.

Section 11.04 Performance and Payment Bonds. Prior to commencing Work under this Contract, OpTerra Energy Services will furnish a performance bond in the form of Attachment A in an amount equal to one hundred percent (100%) of the Contract Amount, and a payment bond in the form of Attachment B to guarantee payment of all claims for labor and materials furnished, in an amount equal to one hundred percent (100%) of the

Contract Amount (collectively, the "Contract Bonds"). The Contract Bonds are not being furnished to cover the performance of any Professional Services, including any energy guaranty or guaranteed savings under this Contract.

ARTICLE 12. CONFLICTS OF INTEREST

Conflicts of interest relating to this Contract are strictly prohibited. Except as otherwise expressly provided herein, neither Party nor any director, employee or agent of any Party shall give to or receive from any director, employee or agent of any other Party any gift, entertainment or other favor of significant value, or any commission, fee or rebate in connection with this Contract. Likewise, neither Party nor any director, employee or agent of any Party, shall without prior notification thereof to all Parties enter into any business relationship with any director, employee or agent of another Party or of any Affiliate of another Party, unless such person is acting for and on behalf of the other Party or any such Affiliate. A Party shall promptly notify the other Parties of any violation of this ARTICLE 12 and any consideration received as a result of such violation shall be paid over or credited to the Party against whom it was charged. Any representative of any Party, authorized by that Party, may audit the records of the other Parties related to this Contract, including the expense records of the Party's employees involved in this Contract, upon reasonable notice and during regular business hours, for the sole purpose of determining whether there has been compliance with this ARTICLE 12.

ARTICLE 13. DOE GUIDELINES; ENERGY POLICY ACT

Section 13.01 As authorized by §1605(b) of the Energy Policy Act of 1992 (Pub. L. No. 102-486) the U.S. Department of Energy has issued, and may issue in the future, guidelines for the voluntary reporting of Greenhouse Gas emissions ("DOE Guidelines"). "Greenhouse Gases" means those gases and other particles as defined in the DOE Guidelines. Yuba City hereby assigns and transfers to OpTerra Energy Services, and its Affiliates and assigns, any Greenhouse Gas emission reduction credits that result from the Work.

Section 13.02 As authorized by §1331 of the Energy Policy Act of 2005 (Pub. L. No. 109-58) Yuba City agrees that for the Work, OpTerra Energy Services will be the "designer" as that term is identified in Internal Revenue Bulletin 2008-14, Notice 2008-40, and OpTerra Energy Services will have the exclusive right to report to any federal, state, or local agency, authority or other party any tax benefit associated with the Work. Upon Final Completion, Yuba City agrees to execute a written allocation including a declaration related to Internal Revenue Code §179D. OpTerra Energy Services will prepare the declaration and all accompanying documentation. OpTerra Energy Services will be designated the §179D beneficiary.

ARTICLE 14. MUNICIPAL ADVISOR

THE PARTIES ACKNOWLEDGE AND AGREE THAT OPTERRA ENERGY SERVICES IS NOT A MUNICIPAL ADVISOR AND CANNOT GIVE ADVICE TO YUBA CITY WITH RESPECT TO MUNICIPAL SECURITIES OR MUNICIPAL FINANCIAL PRODUCTS ABSENT YUBA CITY BEING REPRESENTED BY, AND RELYING UPON THE ADVICE OF, AN INDEPENDENT REGISTERED MUNICIPAL ADVISOR. OPTERRA ENERGY SERVICES IS NOT SUBJECT TO A FIDUCIARY DUTY WITH REGARD TO YUBA CITY OR THE PROVISION OF INFORMATION TO YUBA CITY. YUBA CITY WILL CONSULT WITH AN INDEPENDENT REGISTERED MUNICIPAL ADVISOR ABOUT THE FINANCING OPTION APPROPRIATE FOR YUBA CITY'S SITUATION.

ARTICLE 15. TRADE SECRETS

If any materials or information provided by OpTerra Energy Services to Yuba City under this Contract are designated by OpTerra Energy Services as a "trade secret" or otherwise designated by OpTerra Energy Services as exempt from disclosure under the Public Records Act (California Government Code §6250 *et seq.*, the "Act") and if a third party makes a request for disclosure of the materials under the Act, as soon as practical (but not later than five (5) calendar days) after receipt of such request, Yuba City will notify OpTerra Energy Services of such request and advise OpTerra Energy Services whether Yuba City believes that there is a reasonable possibility that the materials may not be exempt from disclosure. Within ten (10) calendar days after a third party's request for disclosure of materials under the Act, OpTerra Energy Services will (i) authorize Yuba City to release the documents or information sought; or (ii) if OpTerra Energy Services reasonably believes that the information is exempt from disclosure, advise Yuba City not to release the materials.

ARTICLE 16. EVENTS OF DEFAULT

Section 16.01 Events of Default by OpTerra Energy Services. Each of the following events or conditions will constitute an "Event of Default" by OpTerra Energy Services:

- (i) any substantial failure by OpTerra Energy Services to perform or comply with this Contract, including a material breach of any covenant contained herein, and such failure continues for thirty

(30) calendar days after notice to OpTerra Energy Services demanding that such failure to perform be cured; *provided* that (y) such failure to perform will not be deemed a default hereunder if it is excused by a provision of this Contract, and (z) if such cure cannot be effected in thirty (30) calendar days, OpTerra Energy Services will be deemed to have cured the default upon the commencement of a cure within thirty (30) calendar days and diligent subsequent completion thereof; or

- (ii) any representation or warranty furnished by OpTerra Energy Services in this Contract which was false or misleading in any material respect when made.

Section 16.02 Events of Default by Yuba City. Each of the following events or conditions will constitute an "Event of Default" by Yuba City:

- (i) any substantial failure by Yuba City to perform or comply with this Contract, including a material breach of any covenant contained herein, and such failure continues for thirty (30) calendar days after notice to Yuba City demanding that such failure to perform be cured; *provided* that (y) such failure to perform will not be deemed a default hereunder if it is excused by a provision of this Contract; and (z) if such cure cannot be effected in thirty (30) calendar days, Yuba City will be deemed to have cured the default upon the commencement of a cure within thirty (30) calendar days and diligent subsequent completion thereof; or
- (ii) any representation or warranty furnished by Yuba City in this Contract which was false or misleading in any material respect when made; or
- (iii) except as provided in Section 8.05, any failure by Yuba City to pay any amount to OpTerra Energy Services which is not paid within ten (10) calendar days after written notice from OpTerra Energy Services that the amount is past due.

ARTICLE 17. REMEDIES UPON DEFAULT

Section 17.01 Termination for Cause. If there is an Event of Default by either Party under this Contract, unless such Event of Default has been cured within the applicable time periods for a cure set forth in ARTICLE 16, the non-defaulting Party may terminate this Contract by providing three (3) Business Days' written notice to the defaulting Party in the case of a monetary default and ten (10) Business Days' written notice to the defaulting Party in the case of a non-monetary default. Upon termination of this Contract, each Party will promptly return to the other all papers, materials, and property of the other held by such Party in connection with this Contract. Each Party will also assist the other in the orderly termination of this Contract and the transfer of all aspects hereof, tangible and intangible, as may be necessary for the orderly, non-disrupted business continuation of each Party. If this Contract is so terminated, OpTerra Energy Services will be entitled to payment for Work satisfactorily performed, earned profit and overhead, and costs incurred in accordance with this Contract up to the date of termination.

Section 17.02 Remedies Upon Default by OpTerra Energy Services. If an Event of Default by OpTerra Energy Services occurs, Yuba City will be entitled to obtain any available legal or equitable remedies through arbitration proceedings instituted pursuant to ARTICLE 19, including, without limitation, terminating this Contract, or recovering amounts due and unpaid by OpTerra Energy Services and/or damages, which will include Yuba City's reasonable, actual, direct out-of-pocket losses incurred by reason of such Event of Default and any cost of funding; loss of anticipated payment obligations; and any payment or delivery required to have been made on or before the date of the Event of Default and not made, including interest on any sums due, and losses and costs incurred as a result of terminating this Contract and all costs and expenses reasonably incurred in exercising the foregoing remedies.

Section 17.03 Remedies upon Default by Yuba City. If an Event of Default by Yuba City occurs, OpTerra Energy Services will be entitled to obtain any available legal or equitable remedies through arbitration proceedings instituted pursuant to ARTICLE 19 including, without limitation, terminating this Contract or recovering amounts due and unpaid by Yuba City, and/or damages which will include OpTerra Energy Services' reasonable, actual, direct out-of-pocket losses incurred by reason of such Event of Default and any cost of funding; loss of anticipated payment obligations; and any payment or delivery required to have been made on or before the date of the Event of Default and not made, including Interest on any sums due, and losses and costs incurred as a result of terminating this Contract and all costs and expenses reasonably incurred in exercising the foregoing remedies.

ARTICLE 18. CONDITIONS BEYOND CONTROL OF THE PARTIES

Section 18.01 Excusable Events. If any Party is delayed in, or prevented from, performing or carrying out its obligations under this Contract by reason of any Excusable Event, such circumstance will not constitute an Event of Default, and such Party will be excused from performance hereunder and will not be liable to the other Party for or on account of any loss, damage, injury or expense resulting from, or arising out of, such delay or prevention.

Notwithstanding the foregoing, no Party will be excused from any payment obligations under this Contract as a result of an Excusable Event.

Section 18.02 Utility Work. Yuba City expressly understands and agrees that Excusable Event may occur due to Interconnection Facilities work that may need to be performed by the local electric utility (“Utility”) in order for OpTerra Energy Services to fully implement the Project. “Interconnection Facilities” means any distribution or transmission lines and other facilities that may be required to connect equipment supplied under this Contract to an electrical distribution/transmission system owned and maintained by the Utility. Any Interconnection Facilities work that may be required will be performed by the Utility under the Interconnection Agreement.

ARTICLE 19. GOVERNING LAW AND RESOLUTION OF DISPUTES

Section 19.01 Governing Law. This Contract is governed by and must be interpreted under the laws of the State where the Work is performed, without regard to the jurisdiction’s choice of law rules.

Section 19.02 Initial Dispute Resolution. If a dispute arises out of or relates to this Contract, the transaction contemplated by this Contract, or the breach of this Contract (a “Dispute”), either Party may initiate the dispute resolution process set forth in this ARTICLE 19 by giving notice to the other Party. The Parties will endeavor to settle the Dispute as follows:

- (i) *Field Representatives’ Meeting*: Within fifteen (15) Business Days after notice of the Dispute, OpTerra Energy Services’ senior project management personnel will meet with Yuba City’s project representative in a good faith attempt to resolve the Dispute.
- (ii) *Management Representatives’ Meeting*: If OpTerra Energy Services’ and Yuba City’s project representatives fail to meet, or if they are unable to resolve the Dispute, senior executives for OpTerra Energy Services and for Yuba City, neither of whom have had day-to-day management responsibilities for the Project, will meet, within thirty (30) calendar days after notice of the Dispute, in an attempt to resolve the Dispute and any other identified disputes or any unresolved issues that may lead to a dispute. If the senior executives of OpTerra Energy Services and Yuba City are unable to resolve a Dispute or if a senior management conference is not held within the time provided herein, either Party may submit the Dispute to mediation in accordance with Section 19.03.

Section 19.03 Mediation. If the Dispute is not settled pursuant to Section 19.02, the Parties will endeavor to settle the Dispute by mediation under the Commercial Mediation Procedures of the American Arbitration Association. Mediation is a condition precedent to arbitration or the institution of legal or equitable proceedings by either Party. Once one Party files a request for mediation with the other Party and with the American Arbitration Association, the Parties agree to conclude the mediation within sixty (60) calendar days after filing the request. Either Party may terminate the mediation at any time after the first session, but the decision to terminate must be delivered in person by the Party’s representative to the other Party’s representative and the mediator. If the Dispute is not resolved by mediation within sixty (60) calendar days after the date of filing of the request for mediation, then the exclusive means to resolve the Dispute is final and binding arbitration, as described in Section 19.04. Either Party may initiate arbitration proceedings by notice to the other Party and the American Arbitration Association.

Section 19.04 Arbitration Proceedings. The following provisions apply to all arbitration proceedings pursuant to this ARTICLE 19:

- (i) The place of arbitration will be the American Arbitration Association office closest to where the Work was performed.
- (ii) One arbitrator (or three arbitrators if the monetary value of the Dispute is more than \$2,000,000) (the “Arbitral Panel”) will conduct the arbitral proceedings in accordance with the Commercial Arbitration Rules and Mediation Procedures (Excluding the Procedures for Large, Complex Commercial Disputes) of the American Arbitration Association currently in effect (“Arbitration Rules”). To the extent of any conflicts between the Arbitration Rules and the provisions of this Contract, the provisions of this Contract prevail.
- (iii) The Parties will submit true copies of all documents considered relevant with their respective statement of claim or defense, and any counterclaim or reply. In the discretion of the Arbitral Panel, the production of additional documents that are relevant and material to the determination of the Dispute may be required.
- (iv) The Arbitral Panel does not have the power to award, and may not award, any punitive, indirect or consequential damages (however denominated). All arbitration fees and costs are to be shared equally by the parties, regardless of which Party prevails. Each Party will pay its own costs of legal representation and witness expenses.

- (v) The award must be in the form of a reasoned award.
- (vi) The Dispute will be resolved as quickly as possible. The Arbitral Panel will endeavor to issue the arbitration award within six (6) months after the date on which the arbitration proceedings were commenced.
- (vii) The award will be final and binding and subject to confirmation and enforcement proceedings in any court of competent jurisdiction.

Section 19.05 Multiparty Proceeding. Either Party may join third parties whose joinder would facilitate complete resolution of the Dispute and matters arising from the resolution of the Dispute.

Section 19.06 Lien Rights. Nothing in this ARTICLE 19 limits any rights or remedies not expressly waived by OpTerra Energy Services that OpTerra Energy Services may have under any lien laws or stop notice laws.

ARTICLE 20. REPRESENTATIONS AND WARRANTIES

Each Party warrants and represents to the other that:

- (i) it has all requisite power and authority to enter into this Contract, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (ii) the execution, delivery, and performance of this Contract have been duly authorized by its governing body, or are in accordance with its organizational documents, and this Contract has been duly executed and delivered for it by the signatories so authorized, and constitutes its legal, valid, and binding obligation;
- (iii) the execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under, its organizational documents or any contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; and
- (iv) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any Applicable Laws, awards or permits which would materially and adversely affect its ability to perform hereunder.

ARTICLE 21. NOTICE

Any notice required or permitted hereunder will be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

TO OPTERRA ENERGY SERVICES: OpTerra Energy Services, Inc.
345 California Street, 19th Floor
San Francisco, CA 94104-2624
Attention: Patrick Yost, Project Manager

With a COPY TO: Legal Department
OpTerra Energy Services, Inc.
150 East Colorado Boulevard, Suite 360
Pasadena, CA 91105-3711
Tel: (626) 304-4700
Fax: (626) 304-4701
Attention: Contract Administrator

TO YUBA CITY: City of Yuba City
1201 Civic Center Boulevard
Yuba City, CA 95993
Tel: (530) 822-4792
Attention: Diana Langley, Director of Public Works

ARTICLE 22. CONSTRUCTION OF CONTRACT

This Contract is the result of arms-length negotiations between two sophisticated parties and ambiguities or uncertainties in it will not be construed for or against either Party, but will be construed in a manner that most accurately reflects the intent of the Parties as of the Contract Effective Date. Each of the Parties acknowledges and agrees that neither Party has provided the other with any legal, accounting, regulatory, financial, or tax advice with respect to any of

the transactions contemplated hereby, and each Party has consulted its own legal, accounting, regulatory, financial and tax advisors to the extent it has deemed appropriate.

ARTICLE 23. ASSIGNMENT; BINDING EFFECT

Section 23.01 Except as expressly permitted by this ARTICLE 23, this Contract may not be assigned by either Party without the express written consent of the other Party, which consent shall not be unreasonably withheld or delayed. OpTerra Energy Services, its successors and permitted assigns may assign this Contract and all related contracts without the consent of Yuba City (i) to an Affiliate; or (ii) pursuant to a merger, consolidation, transfer of substantially all its assets, or by operation of law. OpTerra Energy Services, its successors and permitted assigns may also assign its rights, but not its obligations, under this Contract and all related contracts without the consent of Yuba City to (x) a lender providing financing to OpTerra Energy Services, its successors or permitted assigns, or (y) a special purpose entity that is an Affiliate of or is controlled by such lender.

ARTICLE 24. NO WAIVER

The failure of OpTerra Energy Services or Yuba City to insist upon the strict performance of this Contract will not constitute or be construed as a waiver or relinquishment of either Party's right to thereafter enforce the same in accordance with this Contract in the event of a continuing or subsequent default on the part of OpTerra Energy Services or Yuba City.

ARTICLE 25. SEVERABILITY

If any clause or provision of this Contract or any part thereof becomes or is declared by a court of competent jurisdiction invalid, illegal, void, or unenforceable, this Contract will continue in full force and effect without said provisions; *provided* that no such severability will be effective if it materially changes the benefits or obligations of either Party hereunder.

ARTICLE 26. HEADINGS

Headings and subtitles used throughout this Contract are for the purpose of convenience only, and no heading or subtitle will modify or be used to interpret the text of any section.

ARTICLE 27. COUNTERPARTS; INTEGRATION

This Contract may be executed in counterparts (and by different Parties hereto in different counterparts), each of which will constitute an original, but all of which when taken together will constitute a single contract. This Contract constitutes the entire contract among the Parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Delivery of an executed counterpart of a signature page of this Contract by email or fax will be effective as delivery of a manually executed counterpart of this Contract.

[the Parties' signatures appear on the following page]

**Energy Services Contract
Yuba City and OpTerra Energy Services**

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Contract by their duly authorized officers as of the Contract Effective Date.

OPTERRA ENERGY SERVICES:
OpTerra Energy Services, Inc.

YUBA CITY:
City of Yuba City

By: _____
Name:
Title:

By: _____
Name:
Title:

ATTACHMENT A
FORM OF PERFORMANCE BOND
PERFORMANCE BOND

Bond No.:

KNOW ALL MEN BY THESE PRESENTS: that
(Here insert full name and address or legal title of Contractor)

as Principal, hereinafter called Contractor, and
(Here insert full name and address or legal title of Surety)

as Surety, hereinafter called Surety, are held and firmly bound unto
(Here insert full name and address or legal title of Owner)

as Obligee, hereinafter called Owner, in the amount of Dollars (\$),

for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Contractor has by written agreement dated , entered into a contract with Owner for
(Here insert full name, address and description of project)

in accordance with Drawings and Specifications prepared by
(Here insert full name, address and legal title to Architect)

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

PERFORMANCE BOND

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor promptly and faithfully performs said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect; subject, however, to the following conditions:

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor is, and is declared by Owner to be, in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly

1) Complete the Contract in accordance with its terms and conditions, or

2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or

contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, means the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

Any claim or suit under this bond must be instituted before the issuance of the Certificate of Substantial Completion as defined in the Contract.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of the Owner.

Signed and sealed this day of , 20 .

_____	}	(Principal)	_____
(Witness)		(Title)	
_____	}	(Surety)	(Seal)
(Witness)		(Title)	

ATTACHMENT B

FORM OF PAYMENT BOND

LABOR AND MATERIAL PAYMENT BOND

Bond No.:

THIS BOND IS ISSUED SIMULTANEOUSLY WITH PERFORMANCE BOND IN FAVOR OF THE OWNER CONDITIONED ON THE FULL AND FAITHFUL PERFORMANCE OF THE CONTRACT

KNOW ALL MEN BY THESE PRESENTS: that
(Here insert full name and address or legal title of Contractor)

as Principal, hereinafter called Principal, and,
(Here insert full name and address or legal title of Surety)

as Surety, hereinafter called Surety, are held and firmly bound unto
(Here insert full name and address or legal title of Owner)

as Obligee, hereinafter called Owner, for the use and benefit of claimants as hereinbelow defined, in the amount of _____ Dollars (\$ _____)
(Here insert a sum equal to at least one-half of the contract price)

for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Principal has by written agreement dated _____ 20____, entered into a contract with Owner for (here insert full name, address and description of project)

in accordance with Drawings and Specifications prepared by _____, which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

LABOR AND MATERIAL PAYMENT BOND

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal promptly makes payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as any person named in California Civil Code section 9100.
2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant, as herein defined, who has not been paid in full, may, within the time period set forth in California Civil Code section 9558, sue on this bond, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
 - a. Unless claimant has given written notice in accordance with California Civil Code sections 9300 *et seq.*
 - b. After the time period set forth in California Civil Code section 9558. It is understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
 - c. Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated, or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.
4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of any stop notices or mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such stop notice or lien be presented under and against this bond.

Signed and sealed this day of 20 .

(Witness)	}	(Principal)	(Title)
(Witness)	}	(Surety)	(Title)



**ATTACHMENT C
LIST OF INCENTIVES**

1. California Solar Initiative Thermal Rebate Program

http://www.pge.com/en/myhome/saveenergymoney/solar/csithermal.page?WT.mc_id=Vanity_csithermal

ATTACHMENT D

YUBA CITY'S FACILITIES & EXISTING EQUIPMENT

The following Yuba City Facilities are included under the Scope of Work listed below:

Facility	Address	Square Feet
Wastewater Treatment Plant	302 Burns Drive, Yuba City, CA 95991	21,050
Water Treatment Plant	701 Northgate Drive, Yuba City, CA 95991	31,122
Gauche Aquatic Park	421 C Street, Yuba City, CA 95991	9,100
City Hall	1201 Civic Center Blvd., Yuba City, CA 95993	20,900
Police Station	1545 Poole Boulevard, Yuba City, CA 95993	23,526
Corporation Yard	1185 Market Street, Yuba City, CA 95991	42,126
Senior Center	777 Ainsley Avenue, Yuba City, CA 95991	12,100
Fire Station #1	824 Clark Avenue, Yuba City, CA 95991	6,235
Fire Station #2	795 Lincoln Road, Yuba City, CA 95991	3,075
Fire Station #3	1641 Gray Avenue, Yuba City, CA 95991	6,100
Fire Station #4	150 Ohleyer Road, Yuba City, CA 95993	10,000
Fire Station #7	2855 Butte House Road, Yuba City, CA 95993	5,700
Parks & Exterior Locations		
Blackburn Talley Sports Complex	300 Burns Drive, Yuba City, CA 95991	n/a
Greenwood Park	Greenwood Way & Coats Drive, Yuba City, CA	n/a
Harter Pump Station	Harter Rd & Oro Grande, Yuba City, CA	n/a
Hillcrest Park	900 McCall Ave, Yuba City, CA 95991	n/a
Maple Park	Ainsley Ave between Orange St & Maple St, Yuba City, CA	n/a
Northridge Park	Clark Ave at Northridge Drive, Yuba City, CA	n/a
Regency Park	Corner of Stabler Ln & Parc West Drive, Yuba City, CA	n/a
Rowe Ave Reservoir	Rowe Ave between Percy Ave & Plumas Blvd, Yuba City, CA	n/a
Sam Brannan Park	806 Gray Ave, Yuba City, CA 95991	n/a
Sam Brannan Reservoir	806 Gray Ave, Yuba City, CA 95991	n/a
Sanborn Pumping Station	Lincoln Rd & Ohleyer Rd, Yuba City, CA	n/a
Shanghai Garden Park	Corner of Garden Highway & Shanghai Bend Rd, Yuba City, CA	n/a
Southside Park	On Wilbur Ave between Moore Ave & Wilson Ave, Yuba City, CA	n/a
Veterans Park	Bridge St & Second St, Yuba City, CA	n/a

The existing equipment is that which is listed in OpTerra Energy Services' Report.

ATTACHMENT E

STANDARDS OF OCCUPANCY & CONTROL

The following standards are a guideline used to evaluate the energy conservation measures in this program. It is understood that existing and installed equipment may not allow for exact times and temperatures to be met, but every effort will be made to meet the below standards as closely as the equipment allows.

HVAC Standards of Control - Yuba City

Building	Equipment	EXISTING							PROPOSED, PER THE CUSTOMER CONTRACT STANDARDS OF CONTROL						
		Start	Stop	Days	Heating		Cooling		Start	Stop	Days	Heating		Cooling	
					Occu- pied	Unoccu- pied	Occu- pied	Unoccu- pied				Occu- pied	Unoccu- pied		
City Hall	All	7:00 AM	7:00 PM	MTWRF	72	64	74	82	7:00 AM	7:00 PM	MTWRF	70	64	74	82

Lighting Standards of Control - Yuba City

Building	Annual Hours of Operation
Interior Lighting	
Wastewater Treatment Plant	Varies, see Attachment J for all hours
Water Treatment Plant	Varies, see Attachment J for all hours
Gauche Aquatic Park	Varies, see Attachment J for all hours
City Hall	Varies, see Attachment J for all hours
Police Station	Varies, see Attachment J for all hours
Corporation Yard	Varies, see Attachment J for all hours
Senior Center	Varies, see Attachment J for all hours
Fire Station #1	Varies, see Attachment J for all hours
Fire Station #2	Varies, see Attachment J for all hours
Fire Station #3	Varies, see Attachment J for all hours
Fire Station #4	Varies, see Attachment J for all hours
Fire Station #7	Varies, see Attachment J for all hours
Exterior Lighting	
Blackburn Talley Sports Complex	Photocell 4,100 hours/yr
Greenwood Park	Photocell 4,100 hours/yr
Harter Pump Station	Photocell 4,100 hours/yr
Hillcrest Park	Photocell 4,100 hours/yr
Maple Park	Photocell 4,100 hours/yr
Northridge Park	Photocell 4,100 hours/yr
Regency Park	Photocell 4,100 hours/yr
Rowe Ave Reservoir	Photocell 4,100 hours/yr
Sam Brannan Park	Photocell 4,100 hours/yr
Sam Brannan Reservoir	Photocell 4,100 hours/yr
Sanborn Pumping Station	Photocell 4,100 hours/yr
Shanghai Garden Park	Photocell 4,100 hours/yr
Southside Park	Photocell 4,100 hours/yr
Veterans Park	Photocell 4,100 hours/yr

ATTACHMENT F

SCOPE OF WORK

Energy Conservation Measures to Be Implemented

ECM #	Description
1	Interior/Exterior Building & Park Lighting Retrofits
2	City Hall HVAC Retrofits – Multi-zone to VAV Conversion, Energy Management System, Compressor Replacement, Aspen Air Filters and Window Film
3	Police Station – Energy Management System Installation
4	Gauche Aquatic Park - Pool Pump VFD Retrofit
5	Gauche Aquatic Park – Solar Thermal System
6	Water Treatment Plant – Lift Pump Motor Replacement

Solar Generating Facilities to be Installed

Facility	Address	Est. kWdc
Gauche Aquatic Park	701 Northgate Drive, Yuba City, CA 95991	151
Water Treatment Plant	421 C Street, Yuba City, CA 95991	511

ECM #1 – Interior/Exterior Building & Park Lighting Retrofits

Scope of Work:

See Attachment J, which sets forth in detail the type and number of lighting installations or retrofits to be performed per site. The lighting installations/retrofits listed directly below are merely a summary of the overall ECM #1 work to be performed; the detailed scope is set forth in Attachment J. This scope is intended to meet the latest Title 24 requirements.

- Install new or retrofit lighting fixtures as identified in Attachment J:
 - a. Interior Retrofit
 - i. **High Efficiency light emitting diode (LED) Upgrades** – The 32-34 watt T8 lamps and ballasts will be replaced with new generation LED replacement lamps and drivers or new LED fixtures per Attachment J.
 - ii. **LED Recessed-Can Retrofit** – Recessed-can fixtures will be retrofitted with new generation LED replacement lamps and drivers per Attachment J.
 - iii. **Lighting Controls** – Install occupancy sensors and dimming controls required by Title 24.
 - b. Exterior Retrofit
 - i. **LED Lighting for Exterior Applications** – Replace high pressure sodium (HPS) and metal halide (MH) lamps on Yuba City buildings and parks with LED lamp technology as set forth in Attachment J.
 - ii. **Lighting Controls** – Install occupancy sensors and dimming controls required by Title 24.

ECM #2 – City Hall HVAC Retrofits

The general scope of the HVAC retrofit project for the City Hall Building is to convert the existing multi-zone heating and air conditioning system (AC-1) to Variable Air Volume. In order to accomplish this retrofit the existing energy management system will need to be replaced. In addition to the VAV retrofit the two (2) existing 30-ton reciprocating compressors will be replaced with two (2) new Copeland scroll 30-ton compressors. Also, the existing filtration will be removed and replaced with ASPEN Air 2" polarized media filters.

Scope of Work:

Convert constant volume multi-zone systems to variable air volume (VAV) with new EMS controls. This measure includes the following:

1. Provide and install a new Automated Logic or equal energy management system to replace the existing City Hall EMS system. . The new EMS will be the same manufacturer that will be installed at the Police Station per ECM #3. The EMS will include a Windows based graphical interface. The new EMS will have the following capabilities:

Zone Control:

- Room Temperature, Set Point, Override
- Damper Command

AC-1 Control:

- Unit Start/Stop
- Supply and Return Fan Start/Stop, Status
- Static Pressure setpoint
- Cooling Command (2 Stage)
- Heating Command
- Gas Heat Valve Command
- Return Air Temperature
- Mixed Air Temperature
- Hot Deck Temperature
- Cold Deck Temperature
- Outside Air Temperature
- Zones (1-12) damper position
- Zones (1-12) CFM
- Return Air damper control
- Outside Air damper control
- Filter Status
- Smoke Alarm

2. Provide and install a variable frequency drive (VFD) with integral bypass on AC-1's supply fan. The existing return fan VFD will be connected to the new EMS.
 - a. The supply fan VFD will vary the fan speed based on the static pressure setpoint (adjustable) in the hot and cold plenums.
 - b. The return fan VFD will vary speed to maintain equal building pressurization in the winter and slightly positive pressure in the summer relative to the outside.
3. Provide and install an electronically controlled damper and air flow sensor in the ductwork serving each of the twelve (12) zones downstream of the existing multi-zone dampers.
 - a. The damper will be controlled by the local zone thermostat.
 - b. The static pressure in the hot and cold plenums of the multi-zone air handler will vary as a result of the stroking of the zone VAV dampers.
 - c. Electronic control of the zone VAV dampers will enable the EMS to determine the individual zone damper positions.
 - d. The static pressure setpoint will be reset based on the individual zone damper positions, which will enable the fans to operate at lower speeds.
 - e. Install a new supply air temperature sensor in each of the twelve (12) zones downstream of the new volume damper.
4. Remove local zone thermostats and replace with the new EMS.
5. Control the existing multi-zone damper actuators with the new EMS.
 - a. The existing mixing dampers Belimo actuators will be electrically operated by means of the new EMS controls.
 - b. Electronic control and dedicated actuators for each zone will enable the implementation of snap acting zone control and elimination of the mixing of the hot and cold air streams.
 - c. Damper position will be determined by a call for either heating or cooling by the zone thermostat.
6. Commission controls system, including post retrofit air balance of entire HVAC system.
7. Provide commissioning and air balance report at completion of project.
8. Provide as-built drawings and Operations & Maintenance Manuals upon project completion.
9. Provide 4 hours of basic operators training to Yuba City staff to operate the system.

Provide and install new Aspen Air filtration System:

1. Remove and dispose of the existing filters.
2. Modify the existing filter box in the air handler to accommodate new 2" Aspen Air Filters.
3. Provide and install an electrical transformer and wiring to connect the 24 VAC power to the filter panels.
4. Include one spare set of filters.

Replace Compressors:

1. Capture and remove the refrigerant in the existing DX cooling system.
2. Disconnect, remove and dispose of the two (2) existing reciprocating compressors.
3. Provide and install two (2) new magnetic scroll compressor(s) totaling at least 60 tons of cooling capacity.
 - a. Include necessary electrical connections and controls.
 - b. Complete necessary refrigerant piping to connect the new compressors to the existing DX cooling coils.
 - c. Pressure test the refrigerant piping in accordance with ASHRAE guidelines.
 - d. Evacuate and charge the system with the appropriate refrigerant.
 - e. Start up and test the system to ensure proper operation.

ECM #3 – Police Station – Energy Management System Installation

Scope of Work:

1. Provide and install an Automated Logic or equal EMS to control the twelve (12) rooftop packaged units (AC-1 through AC-12) and one (1) Mitsubishi split system. The EMS will be accessible through a Windows based graphical interface located at City Hall.
2. Replace local zone thermostats and temperature sensors with Automated Logic RS Plus type thermostats.
3. Control the existing rooftop packaged units and any existing VVT dampers with the new EMS.
4. If possible, the existing wiring from the HVAC equipment to their associated thermostats is to be re-used. If existing wiring cannot be reused, then it will be replaced according to the manufacturer's recommendations.
5. Complete commissioning of control system, including post retrofit air balance of entire HVAC system.
6. Provide commissioning and air balance report at completion of project.
7. Provide as-built drawings and Operations & Maintenance Manuals upon project completion.
8. Provide 4 hours of basic operators training to Yuba City staff to operate the system.

ECM #4 – Gauche Aquatic Park - Pool Pump VFD Retrofit

Scope of Work:

1. Provide and install a new variable frequency drive with integral bypass for the existing 25-hp pool circulation pump (Pump #1).
2. Provide and install an ultrasonic flow meter suitable for chlorinated pool water applications.
3. Include required electrical modifications and connections.
4. Include controls connections and required programming for a functioning system.
5. Provide start-up and commissioning services.
6. Provide as-built drawings and Operations & Maintenance manuals upon project completion.
7. Provide training to allow Yuba City staff to operate the system.

ECM #5 – Gauche Aquatic Park – Solar Thermal System

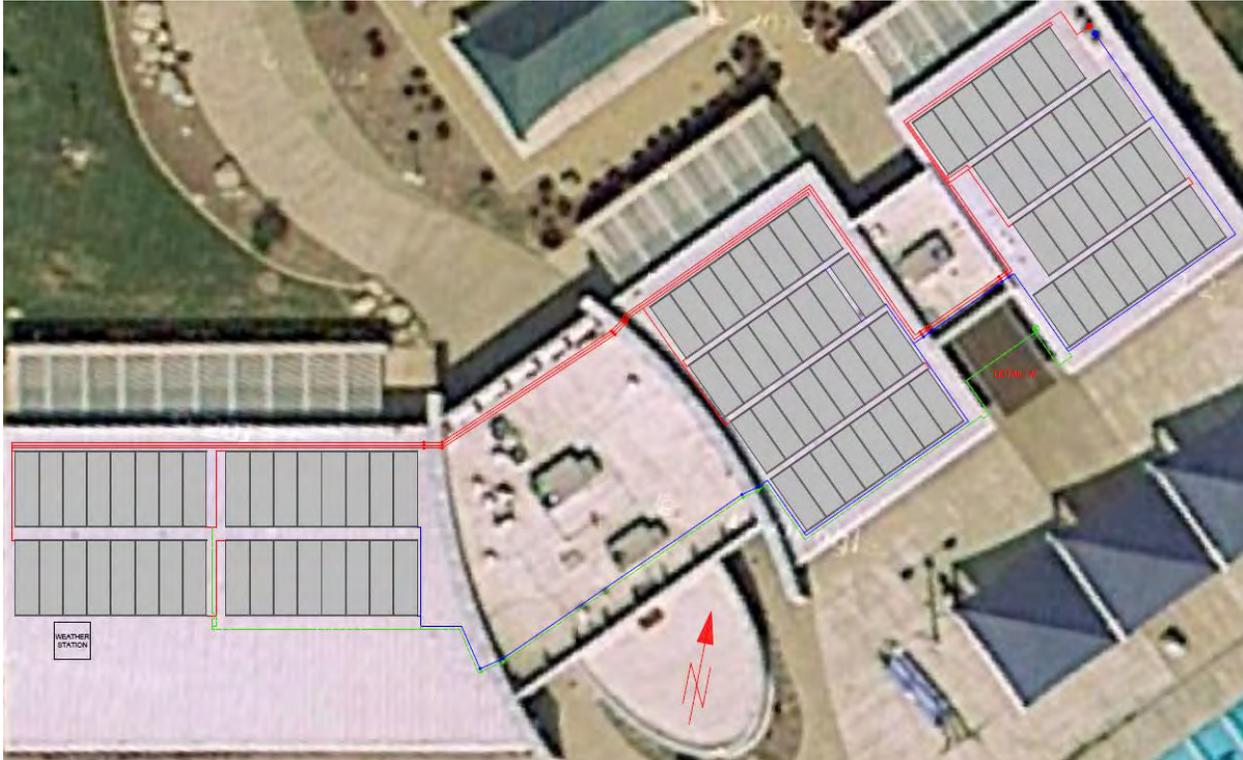
Scope of Work:

The solar thermal system will include the following:

1. Prepare and submit design drawings for Yuba City approval.
2. Prepare final layout drawings for Yuba City review.
3. Rebate administrative services for the purpose of submitting application and documentation for PG&E California Solar Initiative (CSI) Rebate Program incentive.
4. Provide and install sixty-one (61) - 42 square feet and thirty-two (32) - 50 square feet unglazed solar collectors on the roof of the Gauche Aquatic Park main building. Collectors will have at least a 10 year manufacturer's warranty to meet the requirements of the CSI solar thermal rebate program requirements. The collectors will be mounted to the existing standing-seam metal roof to fully support the collectors while minimizing any penetrations in the existing rooftop.
5. Provide and install pumps, piping, valves, and control system for a fully operational system. Yuba City will provide an area in the pool mechanical room for the installation of the solar thermal circulation pump and required equipment pad.
6. The point of connection to the main pool circulation loop will be made in the pool equipment room. The system will be a drain back system therefore storage tanks are not included as part of this system.
7. Penetrations in the rooftop and existing walls that are required will be repaired and made water tight.
8. Provide start-up and commissioning services.
9. Provide as-built drawings and Operations & Maintenance manuals upon project completion.

9. Provide training to allow Yuba City staff to operate controls system.

Preliminary Solar Thermal Layout



Gauche Aquatic Park – Rooftop Solar Thermal

ECM #6 – Water Treatment Plant – Lift Pump Motor Replacement

Scope of Work

1. Remove and dispose of the existing lift pump motor.
2. Provide and install a new NEMW premium efficiency motor (minimum 93.0%)
3. Includes electrical work and rigging to disconnect and reconnect the motor.
4. Provide start-up to ensure pump is operating correctly.

ECM #7&8 – Solar Generating Facilities

Scope of Work

Scope of work will include:

1. Prepare and submit design drawings to Yuba City for approval and to local utility for interconnection permits.
2. Prepare final layout drawings for Yuba City review.
3. Provide geotechnical evaluations necessary for design requirements.
4. Provide utility interconnection drawings and application management services.
5. Provide and coordinate installation of the NGOM and NEM metering.
6. Procure materials and equipment necessary for construction.
7. Provide labor, supervision, and coordination with Yuba City for the installation of photovoltaic modules and supporting structures, electrical distribution and control systems.
8. Install inverters and all necessary electrical equipment and conduits to connect to the electrical switchgear or meter. Electrical shut-downs are anticipated at each site. Time of shutdown will be coordinated with Yuba City and PG&E and may include weekends.
9. Provide and install ground-mounted solar panels at the Water Treatment Plant site
10. Provide and install solar canopy structure at the Gauche Aquatic Park, which can allow parking below and traffic circulation between canopies. The canopy structure design will include OpTerra Energy Services' standard, painted, canopy structure height and pier depth of eight feet deep and assumes no de-watering, benching, shoring, or casing.

11. Install new lighting fixtures mounted under new canopies in parking lots.
12. Provide project management and construction management, including process to acquire the encroachment permit necessary to bore conduits across C Street to connect the Gauche Aquatic Park system to the electrical switchgear in the pool building.
13. Provide as-built drawings and Operations & Maintenance manuals upon project completion.
14. Provide tree and lighting removal, as required
15. Provide miscellaneous backfill and restoration of landscaping in areas of work
16. Start-up, test, and commission the systems in accordance with design plan and applicable industry standards.

Assumptions, Exceptions, Exclusions:

1. Cost for ADA accessibility upgrades to existing buildings or parking lots for path of travel, if required, is not included and will be calculated based upon final design.
2. Remediation and/or removal of hazardous materials, hazardous wastes, or spoils are not included. CEQA or other environmental studies, if required, will be the responsibility of Yuba City.
3. Public Hearings, if required, will be the responsibility of Yuba City
4. Access to areas of construction will be blocked to public during construction for safety.

Project Schedule

OpTerra Energy Services will incorporate in the Project Schedule reasonable allowances for:

1. Securing permits and approvals, and required inspections.
2. Operations that cannot be suspended.
3. Delivery of materials and equipment.
4. Weather delays for conditions normal during the construction period.
5. Coordination necessary to connect the Water Treatment Plant system to the future 12kV switchgear to be installed by others.

Preliminary Photovoltaic Layouts



Gauche Aquatic Park



Water Treatment Plant

General Project Exclusions and Clarifications:

1. Plan check fees are excluded.
2. Inspector costs are excluded.
3. OpTerra Energy Services has assumed construction will be allowed to proceed smoothly and in a continuous flow. No allowance has been made to demobilize and remobilize resources due to schedule interruptions.
4. Removal and disposal of Hazardous Substances, including asbestos containing materials, to be by Yuba City (except as noted above). If OpTerra Energy Services encounters material suspected to be hazardous, OpTerra Energy Services will notify Yuba City representative and stop further work in the area until the material is removed.
5. OpTerra Energy Services will require the assistance of Yuba City personnel to secure the Project Location and to provide traffic redirection during rigging operations, and during the move-in and move-out of large equipment.
6. No allowance has been made for structural upgrades to existing structures, except as specifically set forth in this Scope of Work.
7. No allowance has been made for screening of new or existing equipment, except as specifically set forth in this Scope of Work.
8. No temporary heating or cooling services have been included in the Contract Amount. OpTerra Energy Services will attempt to phase construction in such a way as to avoid complete interruptions of service.
9. OpTerra Energy Services standard construction means and methods will be used.
10. Yuba City will provide access to the Facilities, laydown areas at the work sites, and a reasonable number of parking spaces for OpTerra Energy Services and OpTerra Energy Services' subcontractor vehicles in parking lots at the Facilities.
11. Work will be performed during normal work hours; no overtime hours are included in the Contract Amount. The lighting retrofit work will be performed so as not to unreasonably interfere with the building schedule and if necessary, will take place during off hours.
12. The Scope of Work assumes that unless specifically identified otherwise, all existing systems are functioning properly and are up to current codes. OpTerra Energy Services will not be responsible for repairs or upgrades

- to existing systems that are not functioning properly or compliant with current codes. No allowances have been made to bring existing systems up to code.
13. No allowance has been made to repair or replace damaged or inoperable existing equipment that is not specifically being replaced under the Scope of Work. When such items are discovered, OpTerra Energy Services will immediately notify Yuba City representative.
 14. No allowance has been made for underground obstructions or unsuitable soil conditions encountered during trenching or other excavation.
 15. Smoke detectors and fire alarm system work is excluded.
 16. The PV shade structure is not weather tight and will not provide shelter from rain.
 17. Water hose bibs for washing the panels are excluded.
 18. Decorative fascia along the perimeter of the panels and decorative covering underneath the panels are excluded.
 19. Parking lot repairs are excluded, except to the extent of damage caused by OpTerra Energy Services or its subcontractors.
 20. Repair or replacement of existing housekeeping pads, concrete pads, or base repair of existing walkway lighting are excluded, except as specifically set forth in this Scope of Work.
 21. Painting, unless specified, is excluded.
 22. With respect to lighting equipment maintenance and/or lamp and ballast retrofitting, Yuba City will properly ground lighting fixtures before OpTerra Energy Services commences work in compliance with applicable codes.
 23. With respect to installation of new lighting fixture installations, prior to commencement of the lighting fixture installation, Yuba City will provide an existing or new grounding conductor or solidly grounded raceway with listed fittings at the lighting fixture junction box that is properly connected to the facility grounding electrode system in compliance with the latest NEC requirements. This Scope of Work includes, if applicable, properly terminating the lighting fixtures to the existing grounding conductor or to the existing solidly grounded raceway with listed fittings at the lighting fixture junction box.
 24. Where this Scope of Work includes pulling new wiring for lighting fixtures from an existing lighting panel, a grounding conductor must be included in the lighting circuits. Yuba City is responsible for providing an existing or new grounding conductor terminal bar at the lighting panel that is properly connected to the Facility grounding electrode system in compliance with the latest NEC guidelines.
 25. With respect to projects with new equipment connecting to the Facility's existing electrical distribution system, OpTerra Energy Services will not be responsible for the electrical integrity of the existing electrical system, e.g., the condition and proper termination of current-carrying, grounded, and grounding conductors, bus taps, protective elements, the proper protection of existing wire through knockouts, or missing components. Yuba City is responsible for providing and maintaining the facility's electrical distribution system that meets the latest NEC guidelines.
 26. OpTerra Energy Services is not responsible for repairing or replacing existing damaged, blocked, or leaky ductwork, or cleaning dirt or mildew.
 27. OpTerra Energy Services will not be responsible for existing damaged pipes, valves, and related parts and components.
 28. Existing pneumatic control systems that remain in place must be properly maintained (use of air dryer, clean filter, etc.) by Yuba City such that oil or moisture does not reach the control and operating devices.
 29. Unless specifically included in this Scope of Work, existing valves, dampers, linkages, and piping specialties to which new controls/building automation system are being connected are to be in proper functioning condition. If existing device is found to be improperly functioning, Yuba City may repair or compensate OpTerra Energy Services for repair/replacement of the device.

OpTerra Energy Services Beneficial Use and Warranty criteria for specific pieces of equipment:

1. PUMP –The OpTerra Energy Services Warranty commences immediately upon the occurrence of two weeks of uninterrupted supply of GPM flows within 10% of design values. "Uninterrupted operation" is defined as: no involuntary shutdowns due to mechanical difficulties. Flows will be established by a test and balance report created by OpTerra Energy Services. OpTerra Energy Services will provide written notice to Yuba City of the date the OpTerra Energy Services Warranty commences.
2. MOTORS/VFDs/COMPRESSORS – The OpTerra Energy Services Warranty commences immediately upon the occurrence of uninterrupted operation for a duration as necessary, with a maximum of 2 weeks, for OpTerra Energy Services to determine proper operation. OpTerra Energy Services will provide written notice to Yuba City of the date the OpTerra Energy Services Warranty commences.
3. ENERGY MANAGEMENT SYSTEM – The OpTerra Energy Services Warranty commences immediately upon the occurrence of two weeks of uninterrupted operation of controlled equipment while providing reasonable comfort. "Uninterrupted operation" is defined as: no involuntary shutdowns due to control problems. "Reasonable comfort" is defined as: maintaining occupied spaces controlled by the system within +/- 4 degrees of setpoint. Comfort performance will be established by EMS trend logs or by manual spot checks of temperatures by a OpTerra Energy Services employee. OpTerra Energy Services will provide written notice to Yuba City of the date the OpTerra Energy Services Warranty commences.

4. SOLAR SYSTEM – The OpTerra Energy Services Warranty commences immediately when the Generating Facility is capable of generating expected energy and the Utility is ready to issue the permission-to-operate letter.

Tentative work scopes to receive Substantial & Final Completion:

Scope of Work	Location	Total Qty of SC	Total Qty of FC
ECM 1 – Building & Park Lighting	City-wide	1; for entire ECM	1; for entire ECM
ECM 2 - City Hall HVAC Retrofits	City Hall	1; for entire ECM	1; for entire ECM
ECM 3 Police Station – Energy Management System Installation	Police Station	1; for entire ECM	1; for entire ECM
ECM 4 - GAP Pool Pump VFD Retrofit	Gauche Aquatic Park	1; for entire ECM	1; for entire ECM
ECM 5 - GAP Solar Thermal System	Gauche Aquatic Park	1; for entire ECM	1; for entire ECM
ECM 6 – WTP Lift Pump Motor Replacement	Water Treatment Plant	1; for entire ECM	1; for entire ECM
ECM 7 – GAP Solar PV	Gauche Aquatic Park	1: for entire ECM	1: for entire ECM
ECM 8 – WTP Solar PV	Water Treatment Plant	1: for entire ECM	1: for entire ECM

DRAFT

ATTACHMENT G
MONITORING INSTALLATION SCOPE OF WORK

Overview of DAS Network Installation and Equipment Requirements

OpTerra Energy Services will provide a revenue-grade billing, data acquisition system (DAS). This will provide readily available access to various internal and external information collected on the distributive generation (i.e., solar PV) plant at the Water Treatment Plant and Gauche Aquatic Park.

OpTerra Energy Services DAS Monitoring Installation:

- Supply and install hardware specific to the DAS system.
- Supply and install, terminate, label, and test all Data Point of Connection (DPOC) communication cabling from each DAS node to the predetermined and respective DPOC(s); in accordance with Yuba City's specifications.
- Test and verify Yuba City/Facility network connectivity.
 - a. TCP/IP internal addressing and verification
- Supply, install, and configure a Modbus based digital Net Energy Meter (NEM).
- Connect the data portion of digital NEM(s) to their respective DPOC(s).
- Supply, install, and configure a Modbus based digital Net Generation Output Meter (NGOM).
- Perform the physical installation, labeling, testing and certification testing of each data circuit from the digital NEM(s) to their respective DPOC(s).
- Provide basic system training to designated Yuba City/Facility maintenance staff.

Yuba City/Facility Responsibilities:

- Provide four (4) external static IP addresses, subnet mask default gateway, and DNS-information to allow remote access to DAS panel(s).
- Provide network connectivity to each DAS panel location.
- Provide OpTerra Energy Services five (5) Business Days prior notification of any IP addressing scheme changes or changes made to restrict network access to ensure maximum uptime is maintained.

ATTACHMENT H
M&V SERVICES

EQUIPMENT AND FACILITIES COVERED

OpTerra Energy Services will perform measurement and verification services (“M&V Services”) as set forth in this Attachment H with respect to Yuba City’s property at the Project Locations described in Table H-1.

I. Definitions:

Capitalized terms used in this Attachment H and not defined in the Contract, have the meanings set forth below:

“**Accumulated Savings**” means, as of any date of determination, the cumulative total of Excess Savings.

“**Actual Energy Rate**” means, for any Measurement Period, utility rates calculated by OpTerra Energy Services using actual utility billing information supplied by Yuba City for that Measurement Period.

“**Annual M&V Fee**” means a fee payable annually in advance by Yuba City to OpTerra Energy Services, in consideration of the provision of up to five (5) years of M&V Services. The Annual M&V Fee for the first Measurement Period will be Twenty-Two Thousand Fifty-Eight Dollars (\$22,058). The Annual M&V Fee will be increased annually thereafter at the rate of four percent (4%) per annum, each increase to be effective on the first day of the corresponding Measurement Period.

“**Assessment Work**” means work required to assess the effect on EC Savings for any significant changes to the Facilities (including, but not limited to, building additions, new buildings, and new or changed HVAC equipment).

“**Average Energy Unit Savings**” means, with respect to any number of consecutive Measurement Periods, the arithmetic mean of the Energy Unit Savings for such number of Measurement Periods.

“**Base Energy Rate**” means the dollars per energy unit for each building and/or each ECM, set forth in this Attachment H, Section (III), and used by OpTerra Energy Services to calculate the EC Savings.

“**Baseline**” means the energy use established by OpTerra Energy Services from time to time for each building in the Facilities, taking into consideration Energy Use Factors for such buildings.

“**EC Savings**” means the savings in units of dollars (\$) calculated by OpTerra Energy Services in the manner set forth in this Attachment H, Section (III), achieved through the reduction in consumption or demand through implementation of the Work.

“**Energy Rate Factors**” means factors identified by OpTerra Energy Services which may affect utility rates from the local utility companies.

“**Energy Savings Report**” is defined in this Attachment H, Section (II)(D).

“**Energy Savings Term**” means the period beginning on the first day of the Construction Period and ending on the earlier of: (i) the day immediately preceding the sixteenth (16th) anniversary of the M&V Commencement Date; (ii) the termination of the Contract; (iii) the termination by Yuba City of the M&V Services in accordance with this Attachment H, Section (II)(G); or (iv) the failure by Yuba City to pay the Annual M&V Fee in accordance with this Attachment H, Section (II)(H)(i).

“**Energy Unit Savings**” means the savings in units of energy, power, water, etc., calculated by OpTerra Energy Services in the manner set forth in this Attachment H, Section (III), achieved through the reduction in consumption or demand through implementation of the Work.

“**Energy Use Factors**” means factors identified by OpTerra Energy Services which may affect the Baselines or energy use for the Facilities, including but not limited to: hours and levels of occupancy; adjustments in labor force; building use and operational procedures; temperature, humidification, and ventilation levels; installed lighting and scheduled use; building construction and size; general level of repair and efficiency of heating and air conditioning equipment and other energy-using equipment; and amount of heating and air conditioning and other energy-using equipment.

“**Energy Use Savings**” means, for any Measurement Period, those savings, having units of dollars (\$), achieved for such Measurement Period through reductions in energy use, energy demand, water use, and the use of other commodities.

“**Excess Savings**” means the excess of EC Savings over Guaranteed Savings, calculated in the manner set forth in this Attachment H, Section (II)(I)(iv).

“**Guarantee Payment**” means, for any Measurement Period, either: (i) a cash payment by OpTerra Energy Services to Yuba City in an amount equal to the Guarantee Shortfall for that Measurement Period pursuant to this Attachment H, Section (II)(A)(ii); or (ii) additional energy services or energy saving retrofits requested by Yuba City with an agreed value equal to the Guarantee Shortfall for that Measurement Period pursuant to this Attachment H, Section (II)(A)(iii).

“**Guarantee Shortfall**” means an amount calculated in accordance with this Attachment H, Section (II)(I)(v).

“**Guaranteed Savings**” means, for any Measurement Period, the dollar amount set forth below for such Measurement Period, as the same may be adjusted from time to time by OpTerra Energy Services for changes in Energy Rate Factors, Energy Use Factors and consequential revisions to the relevant Baseline:

Measurement Period	Guaranteed Savings
1	\$281,429
2	\$293,220
3	\$305,509
4	\$318,317
5	\$331,666
6	\$345,580
7	\$360,082
8	\$375,197
9	\$390,952
10	\$407,373
11	\$424,489
12	\$442,330
13	\$460,926
14	\$480,311
15	\$500,516
16	\$521,577

“**IPMVP**” means the International Performance Measurement and Verification Protocol prepared by Efficiency Valuation Organization.

“**Projected Energy Savings**” means those Energy Unit Savings which OpTerra Energy Services anticipates will be realized from the installation and continued operation of the Work, as set forth in this Attachment H, Section (III).

“**Savings Guarantee**” is defined in this Attachment H, Section (II)(A)(i).

II. Terms & Conditions

A. Guaranteed Savings.

- i. Savings Guarantee. In consideration of the payment of the Annual M&V Fee, and upon the terms and subject to the conditions set forth herein, OpTerra Energy Services warrants that Yuba City will realize total EC Savings during the Energy Savings Term of not less than the total Guaranteed Savings (the “Savings Guarantee”), as the same may be adjusted from time to time for changes in Energy Rate Factors, Energy Use Factors and consequential revisions to the relevant Baseline.
- ii. Guarantee Payment. For any Measurement Period in which there is a Guarantee Shortfall, OpTerra Energy Services will pay to Yuba City, within thirty (30) calendar days after the acceptance by Yuba City of the Energy Savings Report for such Measurement Period, the Guarantee Payment for that Measurement Period.
- iii. Services or Retrofits in Lieu of Guarantee Payment. If in the judgment of Yuba City, Yuba City would benefit from additional energy services or energy saving retrofits, Yuba City and OpTerra Energy Services may mutually agree that OpTerra Energy Services will provide such services or retrofits in lieu of the Guarantee Payment for such Measurement Period. For the purposes of this Contract, such services or retrofits will have a deemed value equal to the Guarantee Shortfall for that Measurement Period.
- iv. Excess Savings. For any Measurement Period in which there are Excess Savings, Yuba City will repay to OpTerra Energy Services, to the extent of such Excess Savings, any Guarantee Payments previously paid by OpTerra Energy Services to Yuba City and not previously repaid to OpTerra Energy

Services by Yuba City, and the Excess Savings for such Measurement Period will be reduced by the amount of such repayment. If OpTerra Energy Services has provided services or retrofits in lieu of the Guarantee Payment for a prior Measurement Period, such that the Guarantee Payment for such Measurement Period cannot be repaid by Yuba City, then in lieu of such repayment Excess Savings will be increased by the deemed value of such services or retrofits.

- v. Excusable Events. If OpTerra Energy Services is delayed in, or prevented from, accurately calculating the actual EC Savings for any day of any Measurement Period by reason of any event beyond its control, such circumstance will not constitute a default, and OpTerra Energy Services will be excused from performing the M&V Services while such event is continuing. During such event, Projected Energy Savings for the month(s) in which such event is continuing will be used in lieu of actual data; *provided* that if three (3) or more years of post M&V Commencement Date data are available for such month(s), the historical average of such data for such month(s) will be used in lieu of Projected Energy Savings.
- vi. Average Energy Unit Savings. For any Measurement Period beginning with the fifth (5th) Measurement Period, upon completion of that Measurement Period's Energy Savings Report, OpTerra Energy Services has the right to calculate the Average Energy Unit Savings which have occurred over all previous Measurement Periods. The Average Energy Unit Savings will be applied to all subsequent Measurement Periods to determine the Energy Unit Savings for each remaining Measurement Period. After applying such Average Energy Unit Savings for each subsequent Measurement Period and calculating the resulting EC Savings, if the *sum* of (i) such calculated EC Savings for any future Measurement Period *plus* (ii) the Annual M&V Fee for such Measurement Period is greater than the Guaranteed Savings for that Measurement Period, then such excess will be Excess Savings and the Savings Guarantee will have been met for that Measurement Period. If such *sum* of (i) calculated EC Savings for any future Measurement Period *plus* (ii) the Annual M&V Fee for such Measurement Period is less than the Guaranteed Savings for that Measurement Period, then OpTerra Energy Services will apply Accumulated Savings then outstanding to determine whether there is a Guarantee Shortfall for that Measurement Period. If a Guarantee Shortfall is calculated to exist for a future Measurement Period, OpTerra Energy Services may, in its sole discretion, pay to Yuba City, not later than the ninetieth (90th) day of such future Measurement Period, the net present value of the Guarantee Shortfall for any or all of such future Measurement Period(s). Net present value will be determined using a discount rate of ten percent (10%).

B. Changes in Energy Use Factors.

- i. Adjustments to Baselines. Yuba City will notify OpTerra Energy Services in writing within ten (10) Business Days of any change in any Energy Use Factor. In addition, data collected by OpTerra Energy Services during or before the Energy Savings Term may indicate a change in the energy use pattern at the Facilities or any portion thereof and require a change to one or more Baselines. OpTerra Energy Services will determine the effect that any such change will have on EC Savings and present to Yuba City a written analysis of the effects of such changes. OpTerra Energy Services will also make corresponding revisions to the Baselines and/or EC Savings that it deems appropriate in its reasonable discretion.
- ii. Adjustments to Guaranteed Savings. If a change in any Energy Rate Factor or Energy Use Factor results in a reduction of EC Savings, then the Guaranteed Savings for the corresponding Measurement Period(s) will be decreased by the same amount. OpTerra Energy Services will notify Yuba City, in writing, of all such changes.
- iii. Changes to Facilities. Yuba City or OpTerra Energy Services may from time to time propose to make changes to the Facilities for the express purpose of increasing EC Savings or addressing events beyond its control. It is agreed that these changes will only be made with the written consent of both Parties, which will not be unreasonably withheld. The Baseline will not be adjusted to reflect any changes agreed to under this Attachment H, Section (II)(B)(iii).
- iv. Baseline Adjustment. If OpTerra Energy Services proposes changes to the Facilities that would not unreasonably interfere with the conduct of Yuba City's business or cause Yuba City to incur additional costs, and Yuba City does not consent to the changes, then OpTerra Energy Services will adjust the Baselines upward by the amount of savings projected from the changes.
- v. Projected Energy Savings. During the Energy Savings Term, when the ultimate effect of the Work on EC Savings cannot be accurately determined due to pending construction or changes to the Scope of Work, Projected Energy Savings for the Facilities will be used until the effect of the changes can be determined by OpTerra Energy Services.

- vi. Assessment Work. OpTerra Energy Services has the right to charge Yuba City for Assessment Work, which will be billed at current OpTerra Energy Services engineering rates and will be paid by Yuba City within thirty (30) calendar days after receiving OpTerra Energy Services' invoice. Before initiating Assessment Work, OpTerra Energy Services will notify Yuba City in writing of the intent and estimated cost associated with the Assessment Work. Yuba City will, within forty-five (45) calendar days, give OpTerra Energy Services written permission to proceed or, alternatively at no charge to OpTerra Energy Services, to stipulate that the Projected Energy Savings for the portion of the Facility in question be used for the purpose of meeting the Savings Guarantee for such Measurement Period and thereafter. If OpTerra Energy Services does not receive written notice within forty-five (45) calendar days, the Projected Energy Savings for the portion of the Facility in question will be used until such time as Yuba City approves the Assessment Work.
- vii. Changes in Energy Use Factors. If Yuba City fails to notify OpTerra Energy Services of changes in Energy Use Factors or fails to supply OpTerra Energy Services in a timely manner with information that is requested by OpTerra Energy Services for the calculation of EC Savings, the Energy Unit Savings for the relevant Measurement Period will be deemed equal to the corresponding Projected Energy Savings for such period. If information for the relevant Measurement Period is supplied at a later date, the Energy Unit Savings will be modified only if and to the extent that the calculated savings for such period exceed the Projected Energy Savings for such period.
- viii. Change Order – Savings Effect. OpTerra Energy Services will calculate the energy impact of any Change Orders.
- ix. Changes in Savings Calculations. Any changes made by OpTerra Energy Services to the savings calculations will be presented to Yuba City in advance. Yuba City will have thirty (30) calendar days to challenge or question the changes in writing.
- x. Inspection of Facilities. Yuba City agrees that OpTerra Energy Services will have the right, with or without prior notice, to inspect the Facilities to determine if Yuba City has consistently complied with its obligations as set forth above. If any inspection discloses that Yuba City has failed, on or prior to the date of such inspection, to be in compliance with any of its obligations, then the Guaranteed Savings will be assumed to have been achieved for the portion of the Energy Savings Term during which such failure will have existed.
- xi. Interference. Yuba City may not cause, and will take all commercially reasonable steps to prevent any third party from causing, any overshadowing, shading or other interference with the solar insolation that falls on the Generating Facility. Upon discovering, or otherwise becoming aware of, any actual or potential overshadowing, shading or other interference with insolation, Yuba City will promptly notify OpTerra Energy Services. If an unforeseeable overshadowing or shading condition not caused by OpTerra Energy Services or its subcontractors exists and continues for five (5) Business Days or more, Yuba City agrees that the Guaranteed Savings for such Generating Facility will be reduced based upon such shading condition, and OpTerra Energy Services may present Yuba City with a proposed reduction to the Guaranteed Savings reflecting such overshadowing, shading or other interference.

C. Yuba City Maintenance. Beginning at Beneficial Use or Substantial Completion for any portion of the Work, Yuba City will maintain such portion of the Work and upon Final Completion will maintain the Project, in accordance with the maintenance schedules and procedures recommended by OpTerra Energy Services and by the manufacturers of the relevant equipment.

D. Energy Savings Report. Annually during the first five (5) Measurement Periods of the Energy Savings Term, OpTerra Energy Services will submit to Yuba City an energy savings report containing a precise calculation of the EC Savings during the applicable Measurement Period (an "Energy Savings Report"). OpTerra Energy Services will use its best efforts to submit such Energy Savings Report within ninety (90) calendar days after receipt of all needed information for a Measurement Period, unless additional information is needed to accurately calculate the EC Savings, in which case Yuba City will be notified of such a situation within the ninety (90) calendar-day period.

E. On-Site Measurements. Yuba City irrevocably grants to OpTerra Energy Services the right, during the Energy Savings Term, to monitor EC Savings and energy management performance by conducting on-site measurements, including, but not limited to, reading meters and installing and observing on-site monitoring equipment. OpTerra Energy Services will not exercise such right in a manner that unreasonably interferes with the business of Yuba City as conducted at the Facilities as of the date hereof. Yuba City will cooperate fully with the exercise of such right by OpTerra Energy Services pursuant to this Attachment H, Section (II)(E). Yuba City will further cooperate with OpTerra Energy Services' performance of the M&V Services by providing utility information, changes in Energy Use Factors, and/or additional information as reasonably requested by OpTerra Energy Services.

F. Internet Communication Path. At OpTerra Energy Services' request, to facilitate OpTerra Energy Services' monitoring of the Work, Yuba City will open an internet communication path between Yuba City's energy management system(s) and OpTerra Energy Services' office in Overland Park, Kansas. Yuba City will provide, at Yuba City's expense, all networking, telecommunication, encryption, and security hardware and/or software OpTerra Energy Services deems necessary to achieve such communication path, as well as any similar hardware, software, or encryption devices necessary for use at OpTerra Energy Services' office. OpTerra Energy Services will provide Yuba City with the precise locations for network communication ports within Yuba City's Facilities. Yuba City agrees not to charge OpTerra Energy Services to install or maintain such communication paths.

G. Termination of Guaranteed Savings. If (i) Yuba City notifies OpTerra Energy Services in writing of its intent to terminate the M&V Services, (ii) the Contract is terminated by OpTerra Energy Services for default by Yuba City or by Yuba City for any reason permitted by the Contract or (iii) Yuba City fails to maintain the Project in accordance with this Attachment H, Section (II)(C), or is in default of any of its other obligations under this Attachment H, the obligation of OpTerra Energy Services to prepare and deliver the Energy Savings Report and to make a Guarantee Payment will also be terminated. If such termination occurs on a date other than the last day of a Measurement Period, OpTerra Energy Services will have no obligation to make a Guarantee Payment or to prepare and deliver an Energy Savings Report for such Measurement Period.

H. Annual M&V Fee.

- i. Invoicing and Payment. The Annual M&V Fee for the first Measurement Period will be invoiced by OpTerra Energy Services to Yuba City in a lump sum on the M&V Commencement Date. All subsequent Annual M&V Fees will be invoiced by OpTerra Energy Services on the first day of the corresponding Measurement Period. Yuba City, or its designee, will pay OpTerra Energy Services such Annual M&V Fee, without any retention amount withheld, within thirty (30) calendar days after its receipt of the corresponding invoice. Unless Yuba City gives OpTerra Energy Services prior written notice of its intent to terminate the M&V Services, any failure to timely pay the Annual M&V Fee in accordance with this Attachment H, Section (II)(H) will be a material default by Yuba City under the Contract, and OpTerra Energy Services, in addition to any other legal, contractual and equitable remedies available to it, will have no obligation thereafter to perform M&V Services or to make Guarantee Payments.
- ii. Any amount not paid when due will, from and after the due date, bear Interest. Accrued and unpaid Interest on past due amounts (including Interest on past due Interest) will be due and payable upon demand.
- iii. Not Refundable. The Annual M&V Fee is not refundable for any reason.

I. Calculations.

- i. Calculation of Accumulated Savings. Accumulated Savings will be increased, for any Measurement Period, by the amount of Excess Savings during such Measurement Period, and will be decreased, for any Measurement Period, by the *difference*, to the extent positive, between (i) the Guaranteed Savings for such Measurement Period *minus* (ii) the EC Savings for such Measurement Period. For the avoidance of doubt, Accumulated Savings will not be reduced below zero.
- ii. Calculation of EC Savings. EC Savings for any Measurement Period will be equal to the Energy Use Savings, as adjusted for changes in Energy Use Factors during such Measurement Period. EC Savings achieved during the Construction Period will be included in the EC Savings for the first Measurement Period.
- iii. Calculation of Energy Use Savings. Energy Use Savings will be calculated by OpTerra Energy Services as the *product* of (i) the Energy Unit Savings *multiplied by* (ii) the greater of (a) the applicable Base Energy Rate or (b) the applicable Actual Energy Rate.
- iv. Calculation of Excess Savings. From and after the M&V Commencement Date, Excess Savings will be calculated by OpTerra Energy Services as the *difference*, to the extent positive, between (i) the EC Savings for the relevant Measurement Period *minus* (ii) the Guaranteed Savings for such Measurement Period. During the Construction Period, Excess Savings will be calculated by OpTerra Energy Services in the manner set forth in this Attachment H, Section (III). For the avoidance of doubt, Excess Savings will not be reduced below zero.
- v. Calculation of Guarantee Shortfall. The Guarantee Shortfall, for any Measurement Period, will be calculated by OpTerra Energy Services as the *difference*, to the extent positive, between (i) the Guaranteed Savings for such Measurement Period *minus* (ii) the sum of (a) EC Savings for such Measurement Period plus (b) Accumulated Savings then outstanding.

III. Methodologies & Calculations

The following details the methodologies and calculations to be used in determining the Energy Unit Savings under this Contract.

Table H-2 Measurement and Verification Methods

ECM #	Description	Location	M&V Method
1	Interior/Exterior and Park Lighting Upgrades	City-wide	Option A
2	City Hall AC-1 Retrofits	City Hall	Stipulated
3	EMS Installation	Police Station	Stipulated
4	Variable Flow Pool Pump Retrofit	Gauche Aquatic Park	Stipulated
5	Rooftop Solar Thermal	Gauche Aquatic Park	Stipulated
6	Pump Motor Efficiency Project	WTP & Pump Stations	Stipulated
7	151kW Photovoltaic – Option 1	Gauche Aquatic Park	Option B
8	510kW Photovoltaic – Raised Ground Mount	WTP	Option B

1. M&V Option A: This option allows for the energy savings to be predicted, measured, and agreed upon between Yuba City and OpTerra Energy Services. One time measurements and stipulated parameters are used to quantify savings that are stipulated for the term of the Contract.
 - a. OpTerra Energy Services will supply a one-time report to Yuba City detailing the measurements and calculation of savings. If the calculated savings fall short of those expected, OpTerra Energy Services will have the opportunity to remedy the short fall and re-measure and calculate the results. Such work will be done at OpTerra Energy Services' expense and will not be unreasonably denied by Yuba City, as long as such work does not interfere with Yuba City's use of the Facilities. These calculated savings will be defined as Energy Unit Savings and will be agreed to occur each Measurement Period. During the Construction Period, the Energy Unit Savings will be calculated by adding the savings measured for the whole months between Substantial Completion or Beneficial Use of the ECM and the M&V Commencement Date.
 - b. Scope of Work
The Energy Savings generated from the installation of the lighting ECMs will be measured and verified using IPMVP Option A. These savings will be measured and calculated by the following method:
 1. The reduction in units of electric demand (kW) from the installation of the lighting ECMs is to be measured directly using a calibrated true-RMS watt meter or stipulated based on the following parameters. Existing and to-be-installed fixture types will be grouped project-wide, based on the type of fixture (i.e., type of lamp, number of lamps and ballast type) and the assumed wattage. All lamps without ballasts (incandescent), along with exit signs, will be stipulated at their manufacturer's rated wattage. Groups of fixtures with ballasts will be measured in the following manner.
 - a. For groups with 600 or more fixtures, seven (7) or more instantaneous measurements of single fixtures or circuits containing only one type of fixture will be taken. The average wattage per fixture will be calculated and be the measured wattage for that fixture type.
 - b. For groups with 300 or more fixtures but fewer than 600, five (5) or more instantaneous measurements of single fixtures or circuits containing only one type of fixture will be taken. The average wattage per fixture will be calculated and be the measured wattage for that fixture type.
 - c. For groups with 100 or more fixtures but fewer than 300, three (3) or more instantaneous measurements of single fixtures or circuits containing only one type of fixture will be taken. The average wattage per fixture will be calculated and be the measured wattage for that fixture type.
 - d. For groups with 99 or fewer fixtures or where measurements are not physically possible, the measured wattage will be stipulated for that group to equal the wattage defined in Attachment J, showing the existing fixture codes, quantities, and manufacturer's rated wattage for these type fixtures.
 2. Assumptions: The annual unit consumption savings (kWh) for each retrofit will be calculated by multiplying the demand savings as calculated above by the Occupied Annual Hours, where the Occupied Annual Hours have been agreed upon and stipulated to by Yuba City and are presented

in *Table H-2* . The Energy Unit Savings (kWh) will be the sum of the calculated annual unit consumption savings for each retrofit.

Table H-3 Occupied Annual Hours of Operation

Facility Name	Area Description	(E)Usage
Blackburn Talley Sport Complex	Athletic Field Light Poles	4,100
Blackburn Talley Sport Complex	Parking Lot	4,100
Blackburn Talley Sport Complex	Restrooms	4,100
Blackburn Talley Sport Complex	Restrooms & Snackstand	4,100
Blackburn Talley Sport Complex	Snackstand	4,100
City Hall	Copy by 43	1,600
City Hall	Exterior	2,190
City Hall	Exterior	4,100
City Hall	Hallway close to 25	3,200
City Hall	Interior	1,000
City Hall	Interior	1,600
City Hall	Interior	2,800
City Hall	Interior	3,200
City Hall	Interior	3,666
City Hall	Interior	4,100
Corp Yard	Interior	1,000
Corp Yard	Interior	2,000
Corp Yard	Interior	2,250
Corp Yard	Interior	3,700
Corp Yard	Interior	4,000
Corp Yard	Interior	8,760
Corp Yard	Main Building	4,100
Corp Yard	Shed 1	2,000
Corp Yard	Shed 1	4,100
Corp Yard	Shed 2	2,000
Corp Yard	Shed 2	4,100
Corp Yard	Shed 3	2,000
Corp Yard	Shed 3	4,100
Corp Yard	Shed 4	2,000
Corp Yard	Shed 4	4,100
Corp Yard	Shed 5	2,000
Corp Yard	Shed 5	4,100
Corp Yard	Vehicle maintenance	2,000
Corp Yard	Vehicle maintenance	2,500
Corp Yard	Vehicle maintenance	4,100
Fire House 1	Day room	50
Fire House 1	Fire station reception	400
Fire House 1	Firehouse	4,100
Fire House 1	Garage door	4,100
Fire House 1	Gymnasium	400
Fire House 1	Hallway 1	4,100
Fire House 1	Ice room	50
Fire House 1	IT Room	100
Fire House 1	Janitor	100
Fire House 1	Mail room	4,100
Fire House 1	Office 1	4,100
Fire House 1	Office 2	4,100

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Facility Name	Area Description	(E)Usage
Fire House 1	Office 3	4,100
Fire House 1	Sleeping quarters	4,100
Fire House 1	Storage	4,100
Fire House 1	Tower	4,100
Fire House 1	Vehicle Bay	4,100
Fire House 1	Vehicle Bay	8,760
Fire House 1	Water heater	100
Fire House 1	Workshop	4,100
Fire House 2	Bath 1	4,100
Fire House 2	Electric room	400
Fire House 2	Firehouse 2 reception	4,100
Fire House 2	Locker room	4,100
Fire House 2	Main Building	4,100
Fire House 2	Men's room	4,100
Fire House 2	Sleeping	4,100
Fire House 2	Vehicle Bay	4,100
Fire House 2	Workshop	4,100
Fire House 3	Bed 1	3,600
Fire House 3	Bed 2	3,600
Fire House 3	Bed 3	3,600
Fire House 3	Day room	3,600
Fire House 3	Firehouse 3 Reception	3,600
Fire House 3	Hallway 1	3,600
Fire House 3	Janitorial	3,600
Fire House 3	Locker room	4,100
Fire House 3	Main	4,100
Fire House 3	Men's	3,600
Fire House 3	Office 1	3,600
Fire House 3	Telephone	3,600
Fire House 3	Vehicle Bay	3,600
Fire House 3	Women's	1,000
Fire House 3	Women's	3,600
Fire House 3	Workshop	3,600
Fire Station #4	Bedroom	2,000
Fire Station #4	Captain's Office	1,600
Fire Station #4	Exercise Room	2,250
Fire Station #4	Exterior	4,100
Fire Station #4	Hallway	1,000
Fire Station #4	Hallway	2,800
Fire Station #4	IDF	1,600
Fire Station #4	Kitchen	2,000
Fire Station #4	Laundry	1,000
Fire Station #4	Living Room	2,000
Fire Station #4	Mechanical Room	400
Fire Station #4	Medical Storage	1,000
Fire Station #4	Men's Restroom	1,000
Fire Station #4	Office	1,600
Fire Station #4	Ready Room	2,800
Fire Station #4	Restroom	2,600
Fire Station #4	Storage	400
Fire Station #4	Vehicle Bay	500

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Facility Name	Area Description	(E)Usage
Fire Station #4	Vehicle Bay	2,000
Fire Station #4	Women's Restroom	1,000
Fire Station #7	Bedroom	2,000
Fire Station #7	Exercise Room	2,000
Fire Station #7	Exterior	4,100
Fire Station #7	Kithchen	2,000
Fire Station #7	Living Room	2,000
Fire Station #7	Men's Restroom	2,000
Fire Station #7	Storage	2,000
Fire Station #7	Vehicle Bay	8,760
Fire Station #7	Women's Restroom	2,000
Gauche Aquatic Park	Exterior	1,600
Gauche Aquatic Park	Exterior	4,100
Gauche Aquatic Park	Main & Aux Parking Lots	4,100
Gauche Aquatic Park	Pathway	4,100
Greenwood Park	Pathway	4,100
Harter	Exterior	4,100
Hillcrest Park	Pathway	4,100
Maple Park	Area	4,100
Northridge Park	Pathway	4,100
Northridge Park	Playground	4,100
Police	Exterior	4,100
Police	Interior	400
Police	Interior	1,000
Police	Interior	1,200
Police	Interior	1,600
Police	Interior	2,000
Police	Interior	2,250
Police	Interior	2,600
Police	Interior	2,800
Police	Interior	3,200
Police	Interior	3,500
Police	Interior	3,800
Police	Interior	4,100
Police	Interior	8,760
Regency Park	Pathway	4,100
Rowe Ave Reservoir	Area	4,100
Rowe Ave Reservoir	Mechanical Room	1,600
Sam Brannan Park	Pathway	4,100
Sam Brannan Park	Pathway/Parking Lot	4,100
Sam Brannan Park	Restrooms	4,100
Sam Brannan Park	Tennis Courts	4,100
Sam Brannan Reservoir	Area	4,100
Sam Brannan Reservoir	Mechanical Room	1,800
Sanborn	Exterior	4,100
Senior center	Concierge	3,500
Senior center	Electrical	1,800
Senior center	Event foyer	3,500
Senior center	Event room left	8,760
Senior center	Event space left	1,800
Senior center	Exterior	4,100

**Energy Services Contract
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Facility Name	Area Description	(E)Usage
Senior center	Front desk	3,500
Senior center	Game room	1,800
Senior center	Game room	8,760
Senior center	Hallway	1,800
Senior center	Kitchen hallway	1,800
Senior center	Kitchen hallway	8,760
Senior center	Large event room	1,800
Senior center	Large event room	8,760
Senior center	Men's	1,800
Senior center	Pool room	1,800
Senior center	Pottery room	1,800
Senior center	Reading room	1,800
Senior center	Reception	3,500
Senior center	Reception	8,760
Senior center	Small Kitchen	1,800
Senior center	Storage	1,800
Senior center	Stove	1,800
Senior center	Women's	1,800
Senior center	Women's	1,800
Shanghai Garden Park	Pathway	4,100
Southside Park	Playground	4,100
Veterans Park	Area	4,100
Veterans Park	Flagpole	4,100
WTP	Backwash	4,100
WTP	Break room	2,800
WTP	Carbon room	1,000
WTP	Chief plant operator	2,800
WTP	Conference Room	150
WTP	Control room	4,000
WTP	Electrical Room	500
WTP	Entrance	2,800
WTP	Exterior pump area	4,100
WTP	Flag area	4,100
WTP	Fluoride feed	4,100
WTP	IT Room	100
WTP	Lab	2,800
WTP	Lab office	2,800
WTP	Lab Reception	2,800
WTP	Lab Reception	2,800
WTP	Lime room	1,000
WTP	Maintenance room 1	3,500
WTP	Maintenance room 2	3,500
WTP	Maintenance Supervisor	2,800
WTP	Men's 2	1,000
WTP	Men's room	1,000
WTP	Parking area	4,100
WTP	Plant Supervisor	2,800
WTP	Senior Engineer	2,800
WTP	Shop Area	500
WTP	Treatment deck	4,100
WTP	Treatment deck 2	4,100

Facility Name	Area Description	(E)Usage
WTP	Unisex	1,000
WTP	Utility room	2,800
WWTP	Exterior	2,190
WWTP	Exterior	4,100
WWTP	Exterior	8,760
WWTP	Interior	1,000
WWTP	Interior	2,250
WWTP	Interior	2,800
WWTP	Interior	4,100
WWTP	Interior	8,760
WWTP Admin	Breakroom	2,000
WWTP Admin	Conference	2,000
WWTP Admin	Copy Room	1,600
WWTP Admin	Hallway	2,800
WWTP Admin	Laboratory	2,800
WWTP Admin	Laundry	1,000
WWTP Admin	Mailroom	2,800
WWTP Admin	Mechanical Room	4,100
WWTP Admin	Men's	2,600
WWTP Admin	Men's Locker	2,600
WWTP Admin	Office	1,600
WWTP Admin	Storage	4,100
WWTP Admin	Women's	2,600
WWTP Lab	Breakroom	2,000
WWTP Lab	Freezer	1,000
WWTP Lab	Hallway	2,800
WWTP Lab	IT Room	1,000
WWTP Lab	Laboratory	2,250
WWTP Lab	Men's	2,600
WWTP Lab	Office	1,600
WWTP Lab	Women's	2,600

3. Post-retrofit measurements will be performed one time, after the retrofit is complete. Post-retrofit ECM performance is assumed to be consistent for the duration of the Energy Savings Term.
4. EC Savings achieved from the lighting ECMs are calculated by the following equation:

$$\text{EC Savings} = \text{Energy Unit Savings} \times \text{Base Energy Rate}$$

Table H-4 Projected Annual Savings for ECM-1

Facility	Projected Annual Electric Savings (kWh)
City-wide	650,583

2. M&V Option B: Energy savings performance of Scope of Work are measured and verified at the end-use site. Option B techniques are designed for projects where long-term continuous measurement of performance is desired and warranted. Under Option B, while some parameter may be stipulated or measured once then stipulated, some individual loads are continuously monitored to determine performance; and this measured performance is compared with an equipment-use Baseline to determine the Energy Unit Savings.
 - a. OpTerra Energy Services will supply a one-time report to Yuba City detailing any initial measurements taken to establish usage Baselines or other parameters. Ongoing post-retrofit measurements will be compared to the Baselines, and the quantified Energy Unit Savings will be calculated and presented in ongoing reports. During the Construction Period, the Energy Unit Savings will be calculated by adding the savings measured for the whole months between Substantial Completion or Beneficial Use of the EC Measure and the M&V Commencement Date.

- b. **Scope of Work**
No baseline measurements are necessary because pre-retrofit PV production is zero. Kilowatt-hours produced by the PV system will be measured using automated metering. Measured interval production kilowatt-hours will be compared against production shown on the monthly utility bills and any differences will be reconciled. Projected kWh production is shown in the table below, and is projected to degrade by 0.5% per year.
- c. **Assumptions:** Once Work is Substantially Complete, these savings will be measured and verified monthly for the Energy Savings Term.
- d. **Baselines and Projected Savings:** EC Savings will be determined by multiplying the Energy Unit savings by the applicable Base Energy Rate. EC Savings will be calculated and presented in ongoing reports. During the Construction Period, the EC Savings will be calculated by adding the production measured for the period between Substantial Completion of the EC Measure and the M&V Commencement Date.

Table H-5 Projected Annual Production for ECM-9 and ECM-10

Location	Projected Annual Electric Production (kWh)
Gauche Aquatic Park	195,411
WTP	777,362

- 3. **Stipulated Savings:** When the cost, complexity, or uncertainty of savings measurements are high as compared to the projected savings, Yuba City and OpTerra Energy Services may agree to stipulate the projected Energy Unit Savings as being achieved, without any measurements being taken.
 - a. For the Stipulated Option, the Energy Unit Savings presented below will be agreed to occur each Measurement Period. During the Construction Period, the Energy Unit Savings will be calculated by adding the savings projected for the whole months between Substantial Completion or Beneficial Use of the EC Measure and the M&V Commencement Date.

Table H-6 Projected Annual Production for Stipulated ECMs

ECM	Projected Annual Electric Savings (kWh)	Projected Annual Gas Savings (Therms)
ECM-2 City Hall AC-1 Retrofit	141,640	5,249
ECM-3 EMS Installation	0	0
ECM-4 Variable Flow Pool Pump Retrofit	22,343	0
ECM-5 Rooftop Solar Thermal	0	9,963
ECM-6 Pump Motor Efficiency Project	5,940	0

- 4. **Base Energy Rates:** EC Savings will be calculated using the Base Energy Rates.
The Base Energy Rates listed here are to be increased each Measurement Period on a cumulative basis by four and one-half percent (4.5%) for electricity, and increased each Measurement Period on a cumulative basis by three percent (3%) for natural gas beginning on the first anniversary of the M&V Commencement Date and continuing on the first day of each Measurement Period thereafter.

Table H-7 Base Energy Rates

ECM #	Description	Electric \$ per kWh	Gas \$ per Therm
1	Interior/Exterior and Park Lighting Upgrades	0.172	N/A
2	City Hall AC-1 Retrofits	0.172	0.940
3	EMS Installation	N/A	N/A

ECM #	Description	Electric \$ per kWh	Gas \$ per Therm
4	Variable Flow Pool Pump Retrofit	0.174	N/A
5	Rooftop Solar Thermal	0.174	0.940
6	Pump Motor Efficiency Project	0.143	N/A
7	151kW Photovoltaic – Option 1	0.190	N/A
8	510kW Photovoltaic – Raised Ground Mount	0.114	N/A

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ATTACHMENT I
MAINTENANCE SERVICES

EQUIPMENT AND FACILITIES COVERED

OpTerra Energy Services will perform preventive maintenance services (“Maintenance Services”) as set forth in this Attachment I with respect to Generating Facilities being constructed on Yuba City’s property at the following Project Locations:

Facility	Address
Gauche Aquatic Park	701 Northgate Drive, Yuba City, CA 95991
Water Treatment Plant	421 C Street, Yuba City, CA 95991

I. Definitions

Capitalized terms used in this Attachment I and not defined in the Contract, have the meanings set forth below:

“**Annual Maintenance Fee**” means a fee payable annually in advance by Yuba City to OpTerra Energy Services, in consideration of the performance of up to five (5) years of Maintenance Services. The Annual Maintenance Fee for the first Measurement Period will be Twelve Thousand Seven Hundred Twelve Dollars (\$12,712). The Annual Maintenance Fee will be increased annually thereafter at the rate of three percent (3%) per annum, each increase to be effective on the first day of the corresponding Measurement Period.

II. Term

So long as Yuba City pays to OpTerra Energy Services the Annual Maintenance Fee, OpTerra Energy Services will provide the Maintenance Services, as described herein, up to 5 years from the M&V Commencement Date on an annualized basis. At the end of this term, Yuba City may:

- a. Enter into another agreement with OpTerra Energy Services to perform Maintenance Services
- b. Enter into an agreement with another service provider
- c. Self-perform preventive maintenance

III. Annual Maintenance Fee; Reporting

The Annual Maintenance Fee for the first Measurement Period will be invoiced by OpTerra Energy Services to Yuba City in a lump sum on the M&V Commencement Date. All subsequent Annual Maintenance Fees will be invoiced by OpTerra Energy Services on the first day of the corresponding Measurement Period. Yuba City, or its designee, will pay OpTerra Energy Services such Annual Maintenance Fee, without any retention amount withheld, within thirty (30) calendar days after its receipt of the corresponding invoice. Any failure to timely pay the Annual Maintenance Fee in accordance with this Attachment I will be a material default by Yuba City, and OpTerra Energy Services, in addition to any other legal, contractual and equitable remedies available to it, will have no obligation thereafter to provide Maintenance Services.

Any amount not paid when due will, from and after the due date, bear Interest. Accrued and unpaid Interest on past due amounts (including Interest on past due Interest) will be due and payable upon demand.

The Annual Maintenance Fee is not refundable for any reason.

Upon completion of any maintenance or repair work, OpTerra Energy Services will update service logs detailing the work performed, location and any notes relevant to safe and efficient operations. These service logs will be compiled and submitted to Yuba City on a quarterly basis.

If OpTerra Energy Services is no longer the provider of Maintenance Services, Yuba City’s new provider will maintain similar service logs. OpTerra Energy Services will have reasonable access to inspect service logs to determine that adequate Maintenance Services are being performed.

IV. Preventive Maintenance Services Provided

OpTerra Energy Services will provide the following Maintenance Services during the term for the Solar Photovoltaic systems:

- a. Inspection: Inspect PV modules, combiner boxes, inverters, isolation transformers, and PV service roof penetrations and support structure on an annual basis.
- b. Testing: Perform voltage testing, amperage testing, and infrared scans of inverters, combiner boxes, disconnects and switchgear on a semi-annual basis.
- c. Monitoring: Monitor system performance on a daily basis.
- d. Cleaning:
 - i. Remove dust, dirt, and debris from outside cabinets of combiner boxes, inverters, transformers, and disconnect switches on an annual basis.
 - ii Wash PV modules and remove accumulated dust and debris on an annual basis.

OpTerra Energy Services will provide the following Maintenance Services during the term for the Solar Thermal system:

- a. Inspection: Inspect solar collectors, pump, pipes, valves and service roof penetrations and support structure on an annual basis for leaks or other damage.
- b. Testing: Perform testing on all temperature sensors.
- c. Winterize: Drain down solar thermal collectors and piping to protect from freezing in November of each year when system operation is no longer optimal. System will be filled and placed back in operation in late February or March of each year.

IV. Repair Services

- a. Covered Equipment: Components of the Generating Facilities installed under this Attachment I include:
 - 1. Inverters
 - 2. Photovoltaic Panels
 - 3. Combiner Boxes
 - 4. Disconnect Switches
 - 5. AC and DC Power Wire
 - 6. Meters integral with Inverters
 - 7. Solar Thermal Collectors
 - 8. Solar Thermal Circulation Pump
- b. Exclusions:
 - 1. Array structure
 - 2. Lighting
 - 3. Roofing
 - 4. Paint or finish
 - 5. Concrete
 - 6. Asphalt
 - 7. Bollards
 - 8. Conduit
 - 9. Data acquisition systems
 - 10. Meters
 - 11. Data acquisition communication wire
- c. If a Generating Facility is damaged due to an Excusable Event, Yuba City's negligence, or any other event beyond the control of OpTerra Energy Services, OpTerra Energy Services will provide repairs as required to restore the Generating Facilities to normal operating parameters or to replace deteriorated, damaged, parts and equipment. Yuba City will compensate OpTerra Energy Services for such repairs/replacement on a time and material basis, with OpTerra Energy Services providing back-up cost detail for actual, reasonable costs including reimbursable expenses, multiplied by 1.15.
- d. "Repairs" will include any of the following as necessary: Procuring parts or materials, removing damaged or out-of-specifications parts or materials, installing repaired or replacement parts or materials, and testing.

V. Services And Equipment To Be Covered By Yuba City

OpTerra Energy Services' obligations under this Attachment I are expressly conditioned upon Yuba City's payment of the Annual Maintenance Fee and providing and being responsible for the following, without cost to OpTerra Energy Services:

- a. The Generating Facilities described herein will be made available to OpTerra Energy Services as of the Effective Date of the Contract.
- b. Operate and maintain security systems associated with Generating Facilities.

- c. Yuba City will be responsible for maintenance of all landscaping in and around Generating Facilities including tree trimming.
- d. Allowing OpTerra Energy Services and its personnel access as necessary to the Generating Facilities, and any related areas that may be reasonably necessary for performance of the Maintenance Services, including reasonable work, parking, and equipment staging areas.
- e. Allowing OpTerra Energy Services and its personnel to access electrical power and other utilities then existing at the Generating Facilities as necessary for OpTerra Energy Services to satisfy its obligations under the Contract, all free of charge to OpTerra Energy Services.
- f. Yuba City will be responsible pursuant to Applicable Law for the remediation of any known Hazardous Substances encountered by OpTerra Energy Services during the performance of the Maintenance Services which Hazardous Substances were not deposited by OpTerra Energy Services, including any backfill with clean soil as may be reasonably required.
- g. Yuba City will insure the Generating Facilities against loss due to acts of God and the public enemy; flood, earthquake, tornado, storm, fire; civil disobedience, sabotage, and vandalism.
- h. OpTerra Energy Services will have no obligation to provide the Maintenance Services to the extent such provision of Maintenance Services is materially adversely affected by Yuba City's failure to satisfy the conditions set forth in this Attachment I.

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ATTACHMENT J
SCOPE OF WORK FOR LIGHTING RETROFIT

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**EQUIPMENT LEASE/PURCHASE AGREEMENT
(ESCROW ACCOUNT)
(CALIFORNIA ABATEMENT)**

This Equipment Lease/Purchase Agreement (the “*Agreement*”) dated as of _____, and entered into between [Banc of America Public Capital Corp, a Kansas corporation][Banc of America Leasing & Capital, LLC][Bank of America, National Association, a national banking association] (“*Lessor*”), and _____, a body corporate and politic existing under the laws of the State of _____ (“*Lessee*”).

WITNESSETH:

WHEREAS, Lessee desires to lease and acquire from Lessor certain Equipment (as such term is defined herein), subject to the terms and conditions hereof;

WHEREAS, Lessee is authorized under the constitution and laws of the State to enter into this Agreement for the purposes set forth herein;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

ARTICLE I

Section 1.01. Definitions. The following terms will have the meanings indicated below unless the context clearly requires otherwise:

“*Acquisition Amount*” means \$_____. The Acquisition Amount is the amount represented by Lessee to be sufficient, together with other funds of Lessee (if any) that are legally available for the purpose, to acquire and install the Equipment.

“*Acquisition Period*” means the period ending five (5) business days prior to _____.

“*Agreement*” means this Equipment Lease/Purchase Agreement, including the exhibits hereto, together with any amendments and modifications to the Agreement pursuant to Section 13.04.

“*Code*” means the Internal Revenue Code of 1986, as amended. Each reference to a Section of the Code herein shall be deemed to include the United States Treasury Regulations proposed or in effect thereunder.

“*Commencement Date*” means the date when Lessee’s obligation to pay rent commences hereunder, which shall be the date on which the Acquisition Amount is deposited with the Escrow Agent.

“*Contract Rate*” means the rate identified as such in the Payment Schedule.

“*Equipment*” means the property listed in the Equipment Schedule and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to Section 8.01 or Article V. Whenever reference is made in this Agreement to Equipment, such reference shall be deemed to include all such replacements, repairs, restorations, modifications and improvements of or to such Equipment.

“*Equipment Costs*” means the total cost of the Equipment, including related costs such as freight, installation and taxes, capitalizable costs, and costs of issuance incurred in connection with the acquisition and/or financing of the Equipment.

“*Equipment Schedule*” means the equipment schedule attached hereto as Exhibit A and made a part hereof.

“*Escrow Account*” means the account established and held by the Escrow Agent pursuant to the Escrow Agreement, if any.

“*Escrow Agreement*” means the Escrow and Account Control Agreement in form and substance acceptable to and executed by Lessee, Lessor and the Escrow Agent, pursuant to which an Escrow Account is established and administered.

“*Escrow Agent*” means the Escrow Agent identified in the Escrow Agreement, and its successors and assigns.

“*Event of Default*” means an Event of Default described in Section 12.01.

“*Lease Term*” shall begin on the Commencement Date and end on _____.

“*Lessee*” means the entity referred to as Lessee in the first paragraph of this Agreement.

“*Lessor*” means (a) the entity referred to as Lessor in the first paragraph of this Agreement or (b) any assignee or transferee of any right, title or interest of Lessor in and to this Agreement, including the Equipment, the Rental Payments and other amounts due hereunder, pursuant to Section 11.01, or the Escrow Account, but does not include any entity solely by reason of that entity retaining or assuming any obligation of Lessor to perform hereunder.

“*Material Adverse Change*” means any change in Lessee’s creditworthiness that could have a material adverse effect on (i) the financial condition or operations of Lessee, or (ii) Lessee’s ability to perform its obligations under this Agreement

“*Payment Schedule*” means the payment schedule attached hereto as Exhibit B and made a part hereof.

“*Prepayment Price*” means the amount that Lessee shall pay to Lessor to prepay the obligations hereunder as provided in the Payment Schedule.

“*Rental Payments*” means the basic rental payments payable by Lessee hereunder pursuant to Section 4.01, consisting of a principal component and an interest component.

“*State*” means the State of California.

“*Taxable Rate*” means an interest rate equal to the Contract Rate plus a rate sufficient such that the total interest to be paid on any payment date would, after such interest was reduced by the amount of any Federal, state or local income tax (including any interest, penalties or additions to tax) actually imposed thereon, equal the amount of interest otherwise due to Lessor.

“*Vendor*” means the manufacturer, installer or supplier of the Equipment or any other person as well as the agents or dealers of the manufacturer, installer or supplier with whom Lessor arranged Lessee’s acquisition, installation, maintenance and/or servicing of the Equipment.

“*Vendor Agreement*” means any contract entered into by Lessee and any Vendor for the acquisition, installation, maintenance and/or servicing of the Equipment.

ARTICLE II

Section 2.01. Representations and Covenants of Lessee. Lessee represents, covenants and warrants for the benefit of Lessor on the date hereof as follows:

(a) Lessee is [the State] [a political subdivision of the State within the meaning of Section 103(c) of the Code, duly organized and existing under the constitution and laws of the State], with full power and authority to enter into this Agreement and the transactions contemplated hereby and to perform all of its obligations hereunder.

(b) Lessee has duly authorized the execution and delivery of this Agreement and the Escrow Agreement by proper action of its governing body at a meeting duly called, regularly convened and attended throughout by the requisite quorum of the members thereof, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Agreement and the Escrow Agreement.

(c) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the date hereof.

(d) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic.

(e) Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the acquisition by Lessee of the Equipment.

(f) During the Lease Term, the Equipment will be used by Lessee only for the purpose of performing essential governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee’s authority. Lessee does not intend to sell or otherwise dispose of the Equipment or any interest therein prior to the last Rental Payment (including all Renewal Terms) scheduled to be paid hereunder.

(g) Lessee has kept, and throughout the Lease Term shall keep, its books and records in accordance with generally accepted accounting principles and practices consistently applied, and shall deliver to Lessor (i) annual audited financial statements (including (1) a balance sheet, (2) statement of revenues, expenses and changes in fund balances for budget and actual, (3) statement of cash flows, and (4) footnotes, schedules and attachments to the financial statements) within 210 days of its fiscal year end, (ii) such other financial statements and information as Lessor may reasonably request, and (iii) upon Lessor's request, its annual budget for any prior or current fiscal year or the following fiscal year. The financial statements described in subsection (g) shall be accompanied by an unqualified opinion of Lessee's auditor. Credit information relating to Lessee may be disseminated among Lessor and any of its affiliates and any of their respective successors and assigns.

(h) Lessee has an immediate need for the Equipment and expects to make immediate use of the Equipment. Lessee's need for the Equipment is not temporary and Lessee does not expect the need for any item of the Equipment to diminish during the Lease Term.

(i) The payment of the Rental Payments or any portion thereof is not directly or indirectly (x) secured by any interest in property used or to be used in any activity carried on by any person other than a state or local governmental unit or payments in respect of such property; or (y) on a present value basis, derived from payments (whether or not to Lessee) in respect of property, or borrowed money, used or to be used in any activity carried on by any person other than a state or local governmental unit. Lessee shall not permit the Federal government to guarantee any Rental Payments. The Equipment will not be used, directly or indirectly, in any activity carried on by any person other than a state or local governmental unit. No portion of the Acquisition Amount will be used, directly or indirectly, to make or finance loans to any person other than Lessee. Lessee has not entered into any management or other service contract with respect to the use and operation of the Equipment.

(j) There is no pending litigation, tax claim, proceeding or dispute that may adversely affect Lessee's financial condition or impairs its ability to perform its obligations under this Agreement or the Escrow Agreement. Lessee will, at its expense, maintain its legal existence and do any further act and execute, acknowledge, deliver, file, register and record any further documents Lessor may reasonably request in order to protect Lessor's first priority security interest in the Equipment and the Escrow Account and Lessor's rights and benefits under this Agreement and the Escrow Agreement.

(k) Lessee is the fee owner of the real estate where the Equipment is and will be located and has good and marketable title thereto, and there exists no mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever on or with respect to such real estate.

(l) No lease, rental agreement, lease-purchase agreement, payment agreement or contract for purchase to which Lessee has been a party at any time has been terminated by Lessee as a result of insufficient funds being appropriated in any fiscal year. No event has occurred which would constitute an event of default under any debt, revenue bond or obligation which Lessee has issued during the past ten (10) years.

ARTICLE III

Section 3.01. Lease of Equipment. Subject to the terms of this Agreement, Lessor agrees to provide the Acquisition Amount to acquire the Equipment. Lessor hereby demises, leases, transfers and lets to Lessee, and Lessee hereby acquires, rents and leases from Lessor, the Equipment.

Section 3.02. Continuation of Lease Term. Lessee intends, subject to Section 3.03, to continue the Lease Term and to pay the Rental Payments under the Lease. Lessee affirms that sufficient funds are available for its current fiscal year to pay any Rental Payments when due during the current fiscal year, and Lessee reasonably believes that an amount sufficient to make all Rental Payments during the entire Lease Term can be obtained from legally available funds of Lessee.

Section 3.03. Abatement. During any period in which, by reason of material damage or destruction or taking under the power of eminent domain (or sale to any entity threatening the use of such power) or material title defect with respect to any Equipment, there is substantial interference with the beneficial use and enjoyment by Lessee of such Equipment, the Rental Payments due under the Lease shall be abated in the same proportion (including in whole) that the portion of such Equipment that is unavailable for Lessee's beneficial use and enjoyment bears to all of the Equipment. Lessee shall immediately notify Lessor upon the occurrence of any event causing substantial interference with Lessee's beneficial use and enjoyment of any Equipment, and such notice shall be provided prior to the abatement of any Rental Payments under this Agreement. The amount of Rental Payments abated under this Agreement shall be such that the remaining Rental Payment obligation for each rental period represents fair consideration for the beneficial use and enjoyment of the portions of the Equipment that are not affected by such interference. Such abatement shall commence on the date that Lessee's beneficial use and enjoyment of the affected Equipment is restricted because of such interference and end on the earlier of (i) the date on which the beneficial use and enjoyment thereof are restored to Lessee, or (ii) the date on which Lessee either (x) replaces the affected Equipment, (y) uses the proceeds of insurance or condemnation award to pay the applicable Prepayment Price therefor or (z) uses legally available funds as provided in Section 7.03 to pay the applicable Prepayment Price therefor if no insurance proceeds or condemnation award are available for purposes of the foregoing clause (y); *provided, however*, that the provisions of this Agreement, including (but not limited to) dates on which Rental Payments are due, shall be extended for a period equal to the period the obligation to make Rental Payments was abated. Notwithstanding any such interference with Lessee's beneficial use and enjoyment of a portion of the Equipment, this Agreement shall continue in full force and effect with respect to any remaining Equipment. Lessee hereby waives the benefits of California Civil Code Sections 1932(1), 1932(2) and 1933(4) and any and all other rights to terminate the Lease by virtue of any interference with the use and possession of the Equipment.

Section 3.04. Conditions to Lessor's Performance.

(a) As a prerequisite to the performance by Lessor of any of its obligations under this Agreement, Lessee shall deliver to Lessor the following:

(i) An Escrow Agreement in the form set forth in Exhibit I hereto, satisfactory to Lessor and executed by Lessee and the Escrow Agent;

(ii) A certified copy of a resolution, ordinance or other official action of Lessee's governing body, substantially in the form attached hereto as Exhibit C-1, authorizing the execution and delivery of this Agreement and the Escrow Agreement and performance by Lessee of its obligations under this Agreement and the Escrow Agreement;

(iii) A Certificate executed by the Clerk or Secretary or other comparable officer of Lessee, in substantially the form attached hereto as Exhibit C-2, completed to the satisfaction of Lessor;

(iv) An opinion of counsel to Lessee in substantially the form attached hereto as Exhibit D and otherwise satisfactory to Lessor;

(v) Evidence of insurance as required by Section 7.02 hereof;

(vi) All documents, including financing statements, affidavits, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate at that time pursuant to Section 6.02;

(vii) A waiver or waivers of interest in the Equipment, satisfactory to Lessor, from any mortgagee or any other party having an interest in the real estate on which the Equipment will be located and/or landlord of the real estate on which the Equipment will be located;

(viii) If Lessee has designated this Agreement as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code, a certificate substantially in the form attached hereto as Exhibit G executed by an authorized official of Lessee;

(ix) A copy of a fully completed and executed Form 8038-G;

(x) A certified copy of any Surety Bond satisfying the conditions set forth in Section 7.04, or, at Lessor's sole discretion, such Surety Bonds may be provided after the Commencement Date, provided however, that no "Disbursement Request" pursuant to the Escrow Agreement shall be authorized by Lessor until such Surety Bonds satisfying the conditions set forth in Section 7.04 have been delivered to Lessor; and

(xi) Such other items reasonably required by Lessor.

(b) In addition, the performance by Lessor of any of its obligations under this Agreement and the Escrow Agreement shall be subject to: (i) no Material Adverse Change in the financial condition of Lessee since the date of this Agreement, and (ii) no Event of Default having occurred and continuing.

(c) Subject to satisfaction of the foregoing, Lessor will deposit the Acquisition Amount with the Escrow Agent.

ARTICLE IV

Section 4.01. Rental Payments. Subject to Section 3.03, Lessee shall promptly pay Rental Payments, in lawful money of the United States of America, to Lessor on the dates and in such amounts as provided in the Payment Schedule. Interest on the Acquisition Amount shall begin to accrue as of the Commencement Date. Lessee shall pay Lessor a charge on any Rental Payment not paid on the date such payment is due at a rate equal to the Contract Rate plus 5% per annum or the maximum amount permitted by law, whichever is less, from such date.

Section 4.02. Interest and Principal Components. A portion of each Rental Payment is paid as, and represents payment of, interest, and the balance of each Rental Payment is paid as, and represents payment of, principal as more fully detailed on the Payment Schedule.

Section 4.03. Rental Payments to Constitute a Current Expense of Lessee. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments shall constitute a current expense of Lessee payable solely from its general fund or other funds that are legally available for that purpose and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of Lessee.

Section 4.04. Rental Payments to be Unconditional. Except as provided in Section 3.03, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained in this Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation any failure of the Equipment, any defects, malfunctions, breakdowns or infirmities in the Equipment, disputes with the Vendor of any Equipment or Lessor, failure of the Vendor under any Vendor Agreement to perform any of its obligations thereunder for whatever reason, including bankruptcy, insolvency, reorganization or any similar event with respect to the Vendor under any Vendor Agreement, or any accident, condemnation or unforeseen circumstances.

Section 4.05. Tax Covenants.

(a) Lessee agrees that it will not take any action that would cause the interest component of Rental Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes, nor will it omit to take or cause to be taken, in timely manner, any action, which omission would cause the interest component of

Rental Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes.

(b) In the event that Lessee does not spend sufficient moneys in the Escrow Account within six (6) months after the date the deposit is made pursuant to Section 3.04(c), Lessee will, if required by Section 148(f) of the Code to pay rebate: (i) establish a Rebate Account and deposit the Rebate Amount (as defined in Section 1.148-3(b) of the Federal Income Tax Regulations) not less frequently than once per year after the Commencement Date; and (ii) rebate to the United States, not less frequently than once every five (5) years after the Commencement Date, an amount equal to at least 90% of the Rebate Amount and within 60 days after payment of all Rental Payments or the Prepayment Price as provided in Section 10.01(a) hereof, 100% of the Rebate Amount, as required by the Code and any regulations promulgated thereunder. Lessee shall determine the Rebate Amount, if any, at least every year and upon payment of all Rental Payments or the Prepayment Price and shall maintain such determination, together with any supporting documentation required to calculate the Rebate Amount, until six (6) years after the date of the final payment of the Rental Payments or the Prepayment Price.

Section 4.06. Event of Taxability. Upon the occurrence of an Event of Taxability, the interest component of Rental Payments and any charge on Rental Payments or other amounts payable based on the Contract Rate shall have accrued and be payable at the Taxable Rate retroactive to the date as of which the interest component is determined by the Internal Revenue Service to be includible in the gross income of the owner or owners thereof for federal income tax purposes, and Lessee will pay such additional amount as will result in the owner receiving the interest component at the Taxable Rate.

For purposes of this Section, “*Event of Taxability*” means a determination that the interest component is includible for federal income tax purposes in the gross income of the owner thereof due to Lessee’s action or failure to take any action.

Section 4.07. Mandatory Prepayment. Any funds not applied to Equipment Costs and remaining in the Escrow Account on the earlier of (a) the expiration of the Acquisition Period and (b) the date on which Lessee executes an Acceptance Certificate (in the form attached hereto as Exhibit E), shall be applied by Lessor on any Rental Payment date to all or a portion of the Rental Payment due and owing in the succeeding twelve (12) months and any remaining amounts shall be applied by Lessor as prepayment to the remaining principal balance owing hereunder in the inverse order of Rental Payment dates.

Section 4.08. Covenant to Budget and Appropriate. Lessee hereby covenants to take such action as is necessary under the laws applicable to Lessee to budget for and include and maintain funds sufficient and available to discharge its obligation to meet all Rental Payments in each of its fiscal years during the Lease Term.

The covenants on the part of Lessee herein contained shall be deemed to be and shall be construed to be ministerial duties imposed by law and it shall be the duty of each and every public official of Lessee to take such action and do such things as are required by law in the

performance of the official duty of such officials to enable Lessee to carry out and perform the covenants and agreements in this Agreement agreed to be carried out and performed by Lessee.

Section 4.09. Substitution of Equipment under Certain Circumstances. In the event of damage to or destruction of all or a portion of the Equipment due to earthquake or other uninsured casualty for which the proceeds of rental interruption insurance are not available, Lessee shall promptly after the occurrence of such event and without any further authorization substitute and add as Equipment under this Agreement other real or personal property of Lessee that is unimpaired and unencumbered, the fair rental value of which shall be at least equal to the Rental Payments due during each fiscal year for the remainder of the term of this Agreement.

ARTICLE V

Section 5.01. Delivery, Installation and Acceptance of Equipment.

(a) Lessee shall order the Equipment, cause the Equipment to be delivered and installed at the location specified in the Equipment Schedule and pay any and all delivery and installation costs and other Equipment Costs in connection therewith. When the Equipment has been delivered and installed, Lessee shall promptly accept such Equipment and evidence said acceptance by executing and delivering to Lessor an Acceptance Certificate in the form attached hereto as Exhibit E.

(b) Lessee shall deliver to Lessor original invoices (and proof of payment of such invoices) and bills of sale (if title to such Equipment has passed to Lessee) relating to each item of Equipment accepted by Lessee.

Section 5.02. Quiet Enjoyment of Equipment. So long as Lessee is not in default hereunder, neither Lessor nor any entity claiming by, through or under Lessor, shall interfere with Lessee's quiet use and enjoyment of the Equipment during the Lease Term.

Section 5.03. Location; Inspection. Once installed, no item of the Equipment will be moved or relocated from the location specified for it in the Equipment Schedule without Lessor's prior written consent, which consent shall not be unreasonably withheld. Lessor shall have the right at all reasonable times during regular business hours to enter into and upon the property where the Equipment is located for the purpose of inspecting the Equipment.

Section 5.04. Use and Maintenance of the Equipment. Lessee shall not install, use, operate, or maintain the Equipment (or cause the Equipment to be installed, used, operated or maintained) improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated hereby. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative, or judicial body, including, without limitation, all anti-money laundering laws and regulations; *provided* that Lessee may contest in good faith the validity or application of any such law,

regulation or ruling in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest of Lessor in and to the Equipment or its interest or rights hereunder.

Lessee agrees that it will maintain, preserve, and keep the Equipment in good repair and working order, in a condition comparable to that recommended by the manufacturer. Lessor shall have no responsibility to maintain, repair or make improvements or additions to the Equipment. In all cases, Lessee agrees to pay any costs necessary for the manufacturer to re-certify the Equipment as eligible for manufacturer's maintenance upon the return of the Equipment to Lessor as provided for herein.

Lessee shall not alter any item of Equipment or install any accessory, equipment or device on an item of Equipment if that would impair any applicable warranty, the originally intended function or the value of that Equipment. All repairs, parts, accessories, equipment and devices furnished, affixed to or installed on any Equipment, excluding temporary replacements, shall thereupon become subject to the security interest of Lessor.

ARTICLE VI

Section 6.01. Title to the Equipment. During the Lease Term, and so long as Lessee is not in default under Article XII hereof, all right, title and interest in and to each item of the Equipment shall be vested in Lessee immediately upon its acceptance of each item of Equipment, subject to the terms and conditions of this Agreement. Lessee shall at all times protect and defend, at its own cost and expense, its title in and to the Equipment from and against all claims, liens and legal processes of its creditors, and keep all Equipment free and clear of all such claims, liens and processes. Upon payment of all amounts due and owing under this Agreement in accordance with Section 10.01 (including upon payment of all Rental Payments and other amounts payable under this Agreement), Lessor shall release its security interest in and to the Equipment under the Agreement, as is and where is, without warranty of any kind other than as to the absence of liens created by or through Lessor, and shall execute and deliver to Lessee such documents as Lessee may reasonably request to evidence the release of Lessor's security interest in the Equipment subject to this Agreement.

Section 6.02. Security Interest. As additional security for the payment and performance of all of Lessee's obligations hereunder, Lessee hereby grants to Lessor a first priority security interest constituting a first lien on (a) the Equipment, (b) moneys and investments held from time to time in the Escrow Account and (c) any and all proceeds of any of the foregoing. Lessee authorizes Lessor to file (and Lessee agrees to execute, if applicable) such notices of assignment, chattel mortgages, financing statements and other documents, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain Lessor's security interest in the Equipment, the Escrow Account and the proceeds thereof, including such financing statements with respect to personal property and fixtures under Article 9 of the California Commercial Code and treating such Article 9 as applicable to entities such as Lessee.

Section 6.03. Personal Property, No Encumbrances. Lessee agrees that the Equipment is deemed to be and will remain personal property, and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Equipment or any

part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. Lessee shall not create, incur, assume or permit to exist any mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever on any of the real estate where the Equipment is or will be located or enter into any agreement to sell or assign or enter into any sale/leaseback arrangement of such real estate without the prior written consent of Lessor; provided, that if Lessor or its assigns is furnished with a waiver of interest in the Equipment acceptable to Lessor or its assigns in its discretion from any party taking an interest in any such real estate prior to such interest taking effect, such consent shall not be unreasonably withheld.

ARTICLE VII

Section 7.01. Liens, Taxes, Other Governmental Charges and Utility Charges. Lessee shall keep the Equipment free of all levies, liens, and encumbrances except those created by this Agreement. The parties to this Agreement contemplate that the Equipment will be used for a governmental or proprietary purpose of Lessee and that the Equipment will therefore be exempt from all property taxes. If the use, possession or acquisition of any Equipment is nevertheless determined to be subject to taxation, Lessee shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to such Equipment. Lessee shall pay all utility and other charges incurred in the use and maintenance of the Equipment. Lessee shall pay such taxes or charges as the same may become due; *provided* that, with respect to any such taxes or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during the Lease Term. During the Lease Term, Lessor will not claim ownership of the Equipment for the purposes of any tax credits, benefits or deductions with respect to the Equipment.

Section 7.02. Insurance. Lessee shall during the Lease Term maintain or cause to be maintained (a) casualty insurance naming Lessor and its assigns as loss payee and additional insured and insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State, and any other risks reasonably required by Lessor, in an amount at least equal to the greater of (i) the then applicable Prepayment Price of the Equipment or (ii) the replacement cost of the Equipment; (b) liability insurance naming Lessor and its assigns as additional insured that protects Lessor from liability with limits of at least \$ 1,000,000 per occurrence/\$3,000,000 in the aggregate for bodily injury and property damage coverage, and excess liability umbrella coverage of at least \$5,000,000, and in all events in form and amount satisfactory to Lessor; (c) worker's compensation coverage as required by the laws of the State and (d) rental interruption insurance naming Lessor as loss payee, with coverage equal to the maximum total Rental Payments payable by Lessee under the Lease for any consecutive 24-month period and insuring against abatement of Rental Payments payable by Lessee resulting from Lessee's loss of beneficial use or enjoyment of the Equipment or any substantial portion thereof and caused by any and all other perils either insured or uninsured; *provided* that, with Lessor's prior written consent, Lessee may self-insure against the risks described in clauses (a) and/or (b). In the event Lessee is permitted, at Lessor's sole discretion, to self-insure as provided in this Section, Lessee shall provide to Lessor a self-insurance letter in substantially the form attached hereto as Exhibit F. Lessee shall furnish to Lessor evidence of such insurance or self-insurance coverage throughout the Lease Term. Lessee shall not cancel or modify such insurance or self-insurance coverage in any way that

would affect the interests of Lessor without first giving written notice thereof to Lessor at least 30 days in advance of such cancellation or modification.

Section 7.03. Risk of Loss. Whether or not covered by insurance or self-insurance, Lessee hereby assumes all risk of loss of, or damage to and liability related to injury or damage to any persons or property arising from the Equipment from any cause whatsoever, and no such loss of or damage to or liability arising from the Equipment shall relieve Lessee of the obligation to make the Rental Payments or to perform any other obligation under this Agreement. Whether or not covered by insurance or self-insurance, Lessee hereby agrees to reimburse Lessor (to the fullest extent permitted by applicable law, but only from legally available funds) for any and all liabilities, obligations, losses, costs, claims, taxes or damages suffered or incurred by Lessor, regardless of the cause thereof and all expenses incurred in connection therewith (including, without limitation, counsel fees and expenses, and penalties connected therewith imposed on interest received) arising out of or as a result of (a) entering into of this Agreement or any of the transactions contemplated hereby, (b) the ordering, acquisition, ownership use, operation, condition, purchase, delivery, acceptance, rejection, storage or return of any item of the Equipment, (c) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury to or death to any person, and/or (d) the breach of any covenant of Lessee under or in connection with this Agreement or any material misrepresentation provided by Lessee under or in connection with this Agreement. The provisions of this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

Section 7.04. Surety Bonds; Lessee to Pursue Remedies Against Contractors and Sub-Contractors and Their Sureties. Lessee shall secure from each Vendor directly employed by Lessee in connection with the acquisition, construction, installation, improvement or equipping of the Equipment, a payment and performance bond ("Surety Bond") executed by a surety company authorized to do business in the State, having a financial strength rating by A.M. Best Company of "A-" or better, and otherwise satisfactory to Lessor and naming Lessor as a co-obligee in a sum equal to the entire amount to become payable under each Vendor Agreement. Each bond shall be conditioned on the completion of the work in accordance with the plans and specifications for the Equipment and upon payment of all claims of subcontractors and suppliers. Lessee shall cause the surety company to add Lessor as a co-obligee on each Surety Bond, and shall deliver a certified copy of each Surety Bond to Lessor promptly upon receipt thereof by Lessee. Any proceeds from a Surety Bond shall be applied first to amounts due Lessor under this Agreement, and any remaining amounts shall be payable to Lessee.

In the event of a material default of any Vendor under any Vendor Agreement in connection with the acquisition, construction, maintenance and/or servicing of the Equipment or in the event of a material breach of warranty with respect to any material workmanship or performance guaranty with respect to the Equipment, Lessee will promptly proceed to exhaust its remedies against the Vendor in default. Lessee shall advise Lessor of the steps it intends to take in connection with any such default. Any amounts received by Lessee in respect of damages, refunds and adjustments or otherwise in connection with the foregoing shall be paid to Lessor and applied against Lessee's obligations hereunder.

Section 7.05. Advances. In the event Lessee shall fail to keep the Equipment in good repair and working order, Lessor may, but shall be under no obligation to, maintain and repair the Equipment and pay the cost thereof. All amounts so advanced by Lessor shall constitute additional rent for the Lease Term, and Lessee covenants and agrees to pay such amounts so advanced by Lessor with interest thereon from the date advanced until paid at a rate equal to the Contract Rate plus 5% per annum or the maximum amount permitted by law, whichever is less.

ARTICLE VIII

Section 8.01. Damage, Destruction and Condemnation. If, prior to the termination of the Lease Term, (a) the Equipment or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Equipment or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, (i) Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award or sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment and any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee or (ii) Lessee shall exercise its option to prepay the obligations hereunder in accordance with Section 10.01(b).

If Lessee elects to replace any item of the Equipment (the “*Replaced Equipment*”) pursuant to this Section, the replacement equipment (the “*Replacement Equipment*”) shall be new or of a quality, type, utility and condition at least as good as the Replaced Equipment, shall be of equal or greater value than the Replaced Equipment and shall provide at least the same level of energy and/or operational savings expected in the aggregate from the Replaced Equipment prior to such casualty, destruction or condemnation. Lessee shall grant to Lessor a first priority security interest in any such Replacement Equipment. Lessee shall represent, warrant and covenant to Lessor that each item of Replacement Equipment is free and clear of all claims, liens, security interests and encumbrances, excepting only those liens created by or through Lessor, and shall provide to Lessor any and all documents as Lessor may reasonably request in connection with the replacement, including, but not limited to, documentation in form and substance satisfactory to Lessor evidencing Lessor’s security interest in the Replacement Equipment. Lessor and Lessee hereby acknowledge and agree that any Replacement Equipment acquired pursuant to this paragraph shall constitute “*Equipment*” for purposes of this Agreement. Lessee shall complete the documentation of Replacement Equipment on or before the next Rental Payment date after the occurrence of a casualty event, or be required to exercise its option to prepay the obligations hereunder with respect to the damaged equipment in accordance with Section 10.01(b).

For purposes of this Article, the term “*Net Proceeds*” shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award or sale under threat of condemnation after deducting all expenses, including attorneys’ fees, incurred in the collection thereof.

Section 8.02. Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 8.01, Lessee shall either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds, or (b) pay or cause to be paid to Lessor the amount of the then applicable Prepayment Price for the Equipment, and, upon such payment, the Lease Term shall terminate and Lessor's security interest in the Equipment shall terminate as provided in Section 6.01 hereof. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after purchasing such Equipment shall be retained by Lessee. If Lessee shall make any payments pursuant to this Section, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article IV.

ARTICLE IX

Section 9.01. Disclaimer of Warranties. Lessor makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for use of the Equipment, or any other warranty or representation, express or implied, with respect thereto and, as to Lessor, Lessee's acquisition of the Equipment shall be on an "as is" basis. In no event shall Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement, the Equipment or the existence, furnishing, functioning or Lessee's use of any item, product or service provided for in this Agreement.

Section 9.02 Vendor's Agreements; Warranties. Lessee covenants that it shall not in any material respect amend, modify, rescind or alter any Vendor Agreement without the prior written consent of Lessor. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee shall not be in default under this Agreement, to assert from time to time whatever claims and rights (including without limitation warranties) relating to the Equipment that Lessor may have against Vendor. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the applicable Vendors of the Equipment, and not against Lessor. Any such matter shall not have any effect whatsoever on the rights and obligations of Lessor hereunder, including the right to receive full and timely Rental Payments. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties relating to the Equipment.

ARTICLE X

Section 10.01. Prepayment Option. Lessee shall have the option to prepay or satisfy all its obligation hereunder, at the following times and upon the following terms:

- (a) From and after the date specified (if any) in the Payment Schedule (the "*Prepayment Option Commencement Date*"), on the Rental Payment dates specified in the Payment Schedule, upon not less than 30 days' prior written notice, and upon payment in full of the Rental Payments then due and all other amounts then owing under

this Agreement plus the then applicable Prepayment Price, which may include a prepayment premium on the unpaid balance as set forth in the Payment Schedule; or

(b) In the event of substantial damage to or destruction or condemnation of substantially all of the Equipment, on the day specified in Lessee's notice to Lessor of its exercise of the prepayment option (which shall be the earlier of the next Rental Payment date or 60 days after the casualty event) upon payment in full to Lessor of the Rental Payment then due plus the then applicable Prepayment Price (or, in the event such prepayment occurs on a date other than a Rental Payment date, the sum of (i) the Prepayment Price set forth on the Payment Schedule relating to the Rental Payment immediately prior to the date of such prepayment plus (ii) accrued interest on the Outstanding Balance set forth on the Payment Schedule relating to the Rental Payment immediately prior to the date of such prepayment, plus all other amounts then owing hereunder; or

(c) Upon the expiration of the Lease Term, upon payment in full of all Rental Payments then due and all other amounts then owing hereunder to Lessor.

After payment of the applicable Prepayment Price and all other amounts owing hereunder, Lessor's security interests in and to such Equipment will be terminated and Lessee will own the Equipment free and clear of Lessor's security interest in the Equipment.

ARTICLE XI

Section 11.01. Assignment by Lessor.

(a) Lessor's right, title and interest in and to this Agreement, the Rental Payments and any other amounts payable by Lessee hereunder, the Escrow Agreement, its security interest in the Equipment and Escrow Account, and all proceeds therefrom may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor, without the necessity of obtaining the consent of Lessee; *provided*, that any such assignment, transfer or conveyance to a trustee for the benefit of owners of certificates of participation shall be made in a manner that conforms to any applicable State law. Nothing in this Section 11.01 shall be construed, however, to prevent Lessor from executing any such assignment, transfer or conveyance that does not involve funding through the use of certificates of participation within the meaning of applicable State law, including any such assignment, transfer or conveyance as part of a multiple asset pool to a partnership or trust; *provided* such certificates are sold only on a private placement basis (and not pursuant to any "public offering") to a purchaser(s) who represents that (i) such purchaser has sufficient knowledge and experience in financial and business matters to be able to evaluate the risks and merits of the investment, (ii) such purchaser understands that neither this Agreement nor certificates will be registered under the Securities Act of 1933, (iii) such purchaser is either an "accredited investor" within the meaning of Regulation D under the Securities Act of 1933, or a qualified institutional buyer within the meaning of Rule 144A, and (iv) it is the intention of such purchaser to acquire such certificates (A) for investment for its own account or (B) for resale in a transaction exempt from registration under the Securities Act of 1933; *provided further*, that in any event, Lessee shall not be required

to make Rental Payments, to send notices or to otherwise deal with respect to matters arising under this Agreement with or to more than one individual or entity.

(b) Unless to an affiliate controlling, controlled by or under common control with Lessor, no assignment, transfer or conveyance permitted by this Section 11.01 shall be effective until Lessee shall have received a written notice of assignment that discloses the name and address of each such assignee; *provided*, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, trust certificates or partnership interests with respect to the Rental Payments payable under this Agreement, it shall thereafter be sufficient that Lessee receives notice of the name and address of the bank or trust company as trustee or paying agent. During the Lease Term, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees designated in such register. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right Lessee may have against Lessor or the Vendor. Assignments in part may include without limitation assignment of all of Lessor's security interest in and to the Equipment and all rights in, to and under this Agreement related to such Equipment, and all of Lessor's security interest in and to the Escrow Account, or all rights in, to and under the Escrow Agreement.

(c) If Lessor notifies Lessee of its intent to assign this Agreement, Lessee agrees that it shall execute and deliver to Lessor a Notice and Acknowledgement of Assignment substantially in the form of Exhibit H attached hereto within five (5) business days after its receipt of such request.

Section 11.02. Assignment and Subleasing by Lessee. **None of Lessee's right, title, and interest in, to and under this Agreement or any portion of the Equipment or the Escrow Agreement or the Escrow Account may be assigned, encumbered or subleased by Lessee for any reason, and any purported assignment, encumbrance or sublease without Lessor's prior written consent shall be null and void.**

ARTICLE XII

Section 12.01. Events of Default Defined. Any of the following events shall constitute an "Event of Default" under this Agreement:

(a) Failure by Lessee to (i) pay any Rental Payment or other payment required to be paid under this Agreement within 10 days after the date when due as specified herein or (ii) maintain insurance as required herein;

(b) Failure by Lessee to observe and perform any covenant, condition or agreement contained in this Agreement on its part to be observed or performed, other than as referred to in subparagraph (a) above, for a period of 30 days after written notice specifying such failure and requesting that it be remedied is given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; *provided* that, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold

its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;

(c) Any statement, representation or warranty made by Lessee in or pursuant to this Agreement or its execution, delivery or performance shall prove to have been false, incorrect, misleading, or breached in any material respect on the date when made;

(d) Any default occurs under any other agreement for borrowing money, lease financing of property or otherwise receiving credit under which Lessee is an obligor, if such default (i) arises under any other agreement for borrowing money, lease financing of property or provision of credit provided by Lessor or any affiliate of Lessor, or (ii) arises under any obligation under which there is outstanding, owing or committed an aggregate amount in excess of \$100,000.00;

(e) Lessee shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors or (iv) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization, moratorium or insolvency proceeding; or

(f) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator for the Lessee or of all or a substantial part of the assets of Lessee, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 30 consecutive days.

Section 12.02. Remedies on Default. Whenever any Event of Default exists, Lessor shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

(a) By written notice to Lessee, Lessor may without terminating this Agreement, take whatever action at law or in equity may appear necessary or desirable to collect each Rental Payment payable by Lessee and other amounts payable by Lessee hereunder as they become due and payable;

(b) With or without terminating the Lease Term, Lessor may enter the premises where the Equipment is located and retake possession of such Equipment or require Lessee at Lessee's expense to promptly return any or all of such Equipment to the possession of Lessor at such place within the United States as Lessor shall specify, and sell or lease such Equipment or, for the account of Lessee, sublease such Equipment, continuing to hold Lessee liable, but solely from legally available funds, for the difference between (i) the Rental Payments payable by Lessee and other amounts hereunder or the Equipment that are payable by Lessee to the end of the Lease Term, and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of Lessor in exercising its remedies hereunder , including without limitation all

expenses of taking possession, storing, reconditioning and selling or leasing such Equipment and all brokerage, auctioneer's and attorney's fees), subject, however, to the provisions of Section 3.03; *provided*, that in no event shall Lessee be liable in any fiscal year for any amount in excess of the Rental Payments shown for such year in the Payment Schedule. The exercise of any such remedies respecting any such Event of Default shall not relieve Lessee of any other liabilities hereunder or the Equipment;

(c) Lessor may terminate the Escrow Agreement and apply any proceeds in the Escrow Account to the Rental Payments due hereunder;

(d) Lessor may take whatever action at law or in equity may appear necessary or desirable to enforce its rights under this Agreement or the Escrow Agreement or as a secured party in any or all of the Equipment or the Escrow Account; and

(e) By action pursuant to the California Code of Civil Procedure, or as otherwise provided by law, obtain the issuance of a writ of mandamus enforcing, for each fiscal year *seriatim* during the entire balance of the remaining Lease Term, subject to Section 3.03, the duty of Lessee to appropriate and take all other administrative steps necessary for the payment of Rental Payments and other amounts due hereunder.

Section 12.03. No Remedy Exclusive; No Acceleration. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity; *provided* that Lessor shall have no right to accelerate any Rental Payment or otherwise declare any Rental Payment or other amount payable not then in default to be immediately due and payable. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice other than such notice as may be required in this Article.

ARTICLE XIII

Section 13.01. Notices. All notices, certificates or other communications under this Agreement shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, or delivered by overnight courier, or sent by facsimile transmission (with electronic confirmation) to the parties hereto at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto shall designate in writing to the other for notices to such party) and to any assignee at its address as it appears on the registration books maintained by Lessee.

Section 13.02. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

Section 13.03. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 13.04. Amendments, Changes and Modifications. This Agreement may only be amended by Lessor and Lessee in writing.

Section 13.05. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 13.06. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

Section 13.07. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

[Remainder of Page Intentionally Left Blank]

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be executed in their names by their duly authorized representatives as of the date first above written.

LESSOR:
Banc of America Public Capital Corp
Banc of America Leasing & Capital, LLC
Bank of America, National Association
11333 McCormick Road
Hunt Valley II
M/C MD5-032-07-05
Hunt Valley, MD 21031
Attention: Contract Administration
Fax No.: (443) 541-3057

LESSEE:

Attention: _____
Fax No.: _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

(Seal)

Attest:

By: _____
Name: _____
Title: _____

Counterpart No. ____ of ____ manually executed and serially numbered counterparts. To the extent that this Agreement constitutes chattel paper (as defined in the Uniform Commercial Code), no security interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

List of Exhibits

- Exhibit A -- Equipment Schedule
- Exhibit B -- Payment Schedule
- Exhibit C-1 -- Form of Authorizing Resolution
- Exhibit C-2 -- Form of Incumbency and Authorization Certificate
- Exhibit D -- Form of Opinion of Counsel Form
- Exhibit E -- Form of Acceptance Certificate
- Exhibit F -- Form of Self-Insurance Certificate
- Exhibit G -- Form of Bank Qualification Certificate
- Exhibit H -- Form of Notice and Acknowledgement of Assignment
- Exhibit I -- Form of Escrow and Account Control Agreement

EXHIBIT A

EQUIPMENT SCHEDULE

Location of Equipment:

Equipment Description (Scope of Work):

EXHIBIT B

PAYMENT SCHEDULE

Rental Payment Date	Rental Payment Amount	Interest Portion	Principal Portion	Outstanding Balance	Prepayment Price (including prepayment premium, if applicable)

Contract Rate. The Contract Rate is _____% per annum.

Prepayment Option Commencement Date. For purposes of Section 10.01 of the Agreement, the Prepayment Option Commencement Date is _____.

LESSOR:
Banc of America Public Capital Corp
Banc of America Leasing & Capital, LLC
Bank of America, National Association

LESSEE:
[_____]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT C-1

FORM OF AUTHORIZING RESOLUTION

A RESOLUTION OF THE GOVERNING BODY OF [_____] ,
AUTHORIZING THE EXECUTION AND DELIVERY OF AN EQUIPMENT
LEASE/PURCHASE AGREEMENT WITH RESPECT TO THE ACQUISITION,
PURCHASE, FINANCING AND LEASING OF CERTAIN EQUIPMENT FOR
THE PUBLIC BENEFIT; AUTHORIZING THE EXECUTION AND DELIVERY
OF DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND
AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO
THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY
THIS RESOLUTION.

WHEREAS, [_____] (the “Lessee”), a body politic and corporate duly organized and existing as a political subdivision, municipal corporation or similar public entity of the State of _____, is authorized by the laws of the State of _____ to purchase, acquire and lease personal property for the benefit of the Lessee and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the Lessee desires to purchase, acquire and lease certain equipment with a cost not to exceed \$ _____ constituting personal property necessary for the Lessee to perform essential governmental functions (the “Equipment”); and

WHEREAS, in order to acquire such equipment, the Lessee proposes to enter into that certain Equipment Lease/Purchase Agreement (the “Agreement”) with Banc of America Public Capital Corp (or one of its affiliates)(the “Lessor”), the form of which has been presented to the governing body of the Lessee at this meeting; and

WHEREAS, the governing body of the Lessee deems it for the benefit of the Lessee and for the efficient and effective administration thereof to enter into the Agreement and the documentation relate to the financing of the Equipment for the purchase, acquisition and leasing of the equipment to be therein described on the terms and conditions therein provided;

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED by the governing body of Lessee as follows:

Section 1. Approval of Documents. The form, terms and provisions of the Agreement are hereby approved in substantially the forms presented at this meeting, with such insertions, omissions and changes as shall be approved by the _____ of the Lessee or other members of the governing body of the Lessee executing the same, the execution of such documents being conclusive evidence of such approval; and the _____ of the Lessee is hereby authorized and directed to execute, and the _____ of the Lessee is hereby authorized and directed to attest and countersign, the Agreement and any

related Exhibits attached thereto and to deliver the Agreement (including such Exhibits) to the respective parties thereto, and the _____ of the Lessee is hereby authorized to affix the seal of the Lessee to such documents.

Section 2. Other Actions Authorized. The officers and employees of the Lessee shall take all action necessary or reasonably required by the parties to the Agreement to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of Acceptance Certificates and any tax certificate and agreement, as contemplated in the Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Agreement.

Section 3. No General Liability. Nothing contained in this Resolution, the Agreement nor any other instrument shall be construed with respect to the Lessee as incurring a pecuniary liability or charge upon the general credit of the Lessee or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Lessee or any charge upon its general credit or against its taxing power, except to the extent that the Rental Payments payable under the Agreement are special limited obligations of the Lessee as provided in the Agreement.

Section 4. Appointment of Authorized Lessee Representatives. The _____ and _____ of the Lessee are each hereby designated to act as authorized representatives of the Lessee for purposes of the Agreement until such time as the governing body of the Lessee shall designate any other or different authorized representative for purposes of the Agreement.

Section 5. Designation for Purposes of Section 265(b)(3) of the Internal Revenue Code of 1986. The governing body of the Lessee hereby designates the Agreement as a “qualified tax-exempt obligation” for purposes and within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

Section 6. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 7. Repealer. All bylaws, orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

Section 8. Effective Date. This Resolution shall be effective immediately upon its approval and adoption.

ADOPTED AND APPROVED by the governing body of the Lessee this _____ day of _____.

[_____] ,
as lessee

[SEAL]

By: _____
Printed Name: _____
Title: _____

ATTEST:

By: _____
Printed: Name: _____
Title: _____

EXHIBIT C-2

FORM OF INCUMBENCY AND AUTHORIZATION CERTIFICATE

The undersigned, a duly elected or appointed and acting _____
[Secretary] [City Clerk] [County Clerk] of _____ (“Lessee”)
certifies as follows:

A. The following listed persons are duly elected or appointed and acting officials of Lessee (the “*Officials*”) in the capacity set forth opposite their respective names below and that the facsimile signatures are true and correct as of the date hereof;

B. The Officials are duly authorized, on behalf of Lessee, to negotiate, execute and deliver the Equipment Lease/Purchase Agreement dated as of _____ by and between Lessee and [Banc of America Public Capital Corp] [Banc of America Leasing & Capital, LLC][Bank of America, National Association](“*Lessor*”), the Escrow and Account Control Agreement dated as of _____ among Lessor, Lessee and _____, as Escrow Agent, and all documents related thereto and delivered in connection therewith (collectively, the “*Agreements*”), and the Agreements are each the binding and authorized agreements of Lessee, enforceable in all respects in accordance with their respective terms.

Name of Official	Title	Signature
_____	_____	_____
_____	_____	_____
_____	_____	_____

Dated: _____ By: _____
Name: _____
Title: _____

(The signer of this Certificate cannot be listed above as authorized to execute the Agreements.)

EXHIBIT D

FORM OF OPINION OF COUNSEL TO LESSEE
(to be typed on letterhead of counsel)

[Closing Date]

Banc of America Public Capital Corp
Banc of America Leasing & Capital, LLC
Bank of America, National Association
11333 McCormick Road
Mail Code: MD5-032-07-05
Hunt Valley, MD 21031
Attn: Contract Administration

Re: Equipment Lease/Purchase Agreement, dated as of _____,
between **[Banc of America Public Capital Corp][Banc of America Leasing &
Capital, LLC][Bank of America, National Association]**, as Lessor, and
_____, as Lessee

Ladies and Gentlemen:

As legal counsel to _____ (“*Lessee*”), I have examined (a) an executed counterpart of a certain Equipment Lease/Purchase Agreement, dated as of _____, and Exhibits thereto by and between **[Banc of America Public Capital Corp][Banc of America Leasing & Capital, LLC][Bank of America, National Association]** (“*Lessor*”) and Lessee (the “*Agreement*”), which, among other things, provides for the lease of certain property (the “*Equipment*”) and a certain Escrow and Account Control Agreement among Lessor, Lessee, and _____ as Escrow Agent, dated _____ (the “*Escrow Agreement*”), (b) an executed counterpart of the ordinances or resolutions of Lessee which with respect to the transaction contemplated by the Agreement, the Escrow Agreement, and documents related thereto and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions. The Agreement, the Escrow Agreement and the documents relating thereto are referred to collectively as the “*Transaction Documents*.”

Based on the foregoing, I am of the following opinions:

1. Lessee is a body corporate and politic, duly organized and existing under the laws of the State, and [has a substantial amount of the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, and (c) police power][is a political subdivision of a state within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the “*Code*”) and the obligations of Lessee under the Agreement will constitute an obligation of

Lessee within the meaning of Section 103(a) of the Code, notwithstanding Section 103(b) of the Code].

2. Lessee has the requisite power and authority to lease and acquire the Equipment and to execute and deliver the Transaction Documents and to perform its obligations under the Transaction Documents.

3. The Transaction Documents have been duly authorized, approved, executed and delivered by and on behalf of Lessee and the Transaction Documents are legal, valid and binding obligations of Lessee enforceable in accordance with their respective terms.

4. The authorization, approval, execution and delivery of the Transaction Documents and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, public bidding laws and all other applicable state or federal laws.

5. There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Transaction Documents or the security interest of Lessor or its assigns, as the case may be, in the Equipment, the Escrow Account or other collateral thereunder.

6. The portion of rental payments designated as and constituting interest paid by Lessee and received by Lessor is excluded from Lessor's gross income for federal income tax purposes under Section 103 of the Code and is exempt from State of _____ personal income taxes; and such interest is not a specific item of tax preference or other collateral for purposes of the federal individual or corporate alternative minimum taxes.

All capitalized terms herein shall have the same meanings as in the Transaction Documents unless otherwise provided herein. Lessor and its successors and assigns, and any counsel rendering an opinion on the tax-exempt status of the interest components of the Rental Payments, are entitled to rely on this opinion.

Sincerely,

EXHIBIT E

FORM OF ACCEPTANCE CERTIFICATE

Banc of America Public Capital Corp
Banc of America Leasing & Capital, LLC
Bank of America, National Association
11333 McCormick Road
Mail Code: MD5-032-07-05
Hunt Valley, MD 21031
Attn: Contract Administration

Re: Equipment Lease/Purchase Agreement, dated as of _____,
between [Banc of America Public Capital Corp][Banc of America Leasing
& Capital, LLC][Bank of America, National Association], as Lessor, and
_____, as Lessee

Ladies and Gentlemen:

In accordance with the Equipment Lease/Purchase Agreement (the "*Agreement*"), the undersigned Lessee hereby certifies and represents to, and agrees with Lessor as follows:

1. All of the Equipment (as such term is defined in the Agreement) has been delivered, installed and accepted on the date hereof.
2. Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.
3. Lessee is currently maintaining the insurance coverage required by Section 7.02 of the Agreement.
4. Lessee hereby reaffirms that the representations, warranties and covenants contained in the Agreement are true and correct as of the date hereof.
5. No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Agreement) exists at the date hereof.
6. No Material Adverse Change has occurred since the date of the execution and delivery of the Agreement.

Date: _____

LESSEE:

By: _____

Name: _____

Title: _____

(Seal)

EXHIBIT F

FORM OF SELF INSURANCE CERTIFICATE

Banc of America Public Capital Corp
Banc of America Leasing & Capital, LLC
Bank of America, National Association
11333 McCormick Road
Mail Code: MD5-032-07-05
Hunt Valley, MD 21031
Attn: Contract Administration

Re: Equipment Lease/Purchase Agreement, dated as of _____,
(the "Agreement") between Banc of America Public Capital Corp[Banc of
America Leasing & Capital, LLC][Bank of America, National
Association], as Lessor, and _____, as Lessee

In connection with the above-referenced Agreement, _____
(the "Lessee"), the Lessee warrants and represents to Banc of America Public Capital Corp
[Banc of America Leasing & Capital, LLC][Bank of America, National Association] the
following information. The terms capitalized herein but not defined herein shall have the
meanings assigned to them in the Agreement.

1. The Lessee is self-insured for damage or destruction to the Equipment. The dollar
amount limit for property damage to the Equipment under such self-insurance program is
\$_____. [The Lessee maintains an umbrella insurance policy for claims in excess
of Lessee's self-insurance limits for property damage to the Equipment which policy has a dollar
limit for property damage to the Equipment under such policy of \$_____.]

2. The Lessee is self-insured for liability for injury or death of any person or damage
or loss of property arising out of or relating to the condition or operation of the Equipment. The

dollar limit for such liability claims under the Lessee's self-insurance program is \$_____. [The Lessee maintains an umbrella insurance policy for claims in excess of Lessee's self-insurance limits for liability which policy has a dollar limit for liabilities for injury and death to persons as well as damage or loss of property arising out of or relating to the condition or operation of the Equipment in the amount of \$_____.

[3]. The Lessee maintains a self-insurance fund. Monies in the self-insurance fund [are/are not] subject to annual appropriation. The total amount maintained in the self-insurance fund to cover Lessee's self-insurance liabilities is \$_____. [Amounts paid from the Lessee's self-insurance fund are subject to a dollar per claim of \$_____.]

[3]. The Lessee does not maintain a self-insurance fund. The Lessee obtains funds to pay claims for which it has self-insured from the following sources:_____. Amounts payable for claims from the such sources are limited as follows:_____

4. Attached hereto are copies of certificates of insurance with respect to policies maintained by Lessee.

LESSEE:

By: _____

Name: _____

Title: _____

EXHIBIT G

FORM OF BANK QUALIFICATION CERTIFICATE

The undersigned, a duly authorized official of _____ (the “Lessee”) certifies in connection with the Equipment Lease/Purchase Agreement dated as of _____ (the “Agreement”) between Banc of America Public Capital Corp [Banc of America Leasing & Capital, LLC][Bank of America, National Association] and Lessee as follows:

1. The obligations evidenced by the Agreement are not “private activity bonds” as defined in Section 141 of the Internal Revenue Code of 1986, as amended (the “Code”);

2. The Lessee hereby designates the principal components of the Rental Payments payable under the Agreement as “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code;

3. The reasonably anticipated amount of tax-exempt obligations (other than private activity bonds, treating qualified 501(c)(3) bonds as not being private activity bonds) which will be issued by the Lessee (and all entities treated as one issuer with the Lessee, and all subordinate entities whose obligations are treated as issued by the Lessee) during the current calendar year will not exceed \$10,000,000; and

4. Not more than \$10,000,000 of obligations issued by the Lessee during the current calendar year have been designated for purposes of Section 265(b)(3) of the Code.

LESSEE:

DATE: _____

By: _____

Name: _____

Title: _____

EXHIBIT H

FORM OF NOTICE AND ACKNOWLEDGEMENT OF ASSIGNMENT

DATED _____

BANC OF AMERICA PUBLIC CAPITAL CORP [Banc of America Leasing & Capital, LLC][Bank of America, National Association] (“Assignor”) hereby gives notice that it has assigned and sold to _____ (“Assignee”) all of Assignor’s right, title and interest in, to and under the Equipment Lease/Purchase Agreement (the “Agreement”) dated as of _____, between Assignor and _____ (“Lessee”), together with all exhibits, schedules, addenda and attachments related thereto, and all certifications and other documents delivered in connection therewith, the Rental Payments and other amounts due under the Agreement, all of Assignor’s right, title and interest in the Equipment (as defined in the Agreement), and all of Assignor’s right, title and interest in, to and under the Escrow and Account Control Agreement dated _____ (the “Escrow Agreement”) by and among Lessee, Assignor and _____, as Escrow Agent, together with the Escrow Account related thereto (collectively, the Assigned Property”).

1. Pursuant to the authority of Resolution _____ adopted on _____, Lessee hereby [consents to and] acknowledges the effect of the assignment of the Assigned Property and absolutely and unconditionally agrees to deliver to Assignee all Rental Payments and other amounts coming due under the Agreement in accordance with the terms thereof on and after the date of this Acknowledgment.

2. Lessee hereby agrees that: (i) Assignee shall have all the rights of Lessor under the Agreement and all related documents, including, but not limited to, the rights to issue or receive all notices and reports, to give all consents or agreements to modifications thereto, to receive title to the Equipment in accordance with the terms of the Agreement, to declare a default and to exercise all remedies thereunder; and (ii) except as provided in Section 3.03 of the Agreement, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained in the Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense.

3. Lessee agrees that, as of the date of this Notice and Acknowledgment of Assignment (this “Acknowledgement”), the following information about the Agreement is true, accurate and complete:

Number of Rental Payments Remaining	–	_____
Amount of Each Rental Payment	–	\$ _____
Total Amount of Rents Remaining	–	\$ _____
Frequency of Rental Payments	–	_____
Next Rental Payment Due	–	_____
Funds Remaining in Escrow Account	–	\$ _____

4. The Agreement remains in full force and effect, has not been amended and no Event of Default (or event which with the passage of time or the giving of notice or both would constitute a default) has occurred thereunder.

5. Any inquiries of Lessee related to the Agreement and any requests for disbursements from the Escrow Account, if applicable, and all Rental Payments and other amounts coming due pursuant to the Agreement on and after the date of this Acknowledgment should be remitted to Assignee at the following address (or such other address as provided to Lessee in writing from time to time by Assignee):

ACKNOWLEDGED AND AGREED:

LESSEE: _____

By: _____

Name: _____

Title: _____

ASSIGNOR: BANC OF AMERICA PUBLIC CAPITAL CORP

Banc of America Leasing & Capital, LLC

Bank of America, National Association

By: _____

Name: _____

Title: _____

EXHIBIT I

[Form of] Escrow and Account Control Agreement

This Escrow and Account Control Agreement (this “Agreement”), dated as of _____, by and among Bank of America, National Association, a national banking association (together with its successors and assigns, hereinafter referred to as “Lessor”), _____, a political subdivision of the State of _____ (hereinafter referred to as “Lessee”) and Bank of America, National Association, a national banking association organized under the laws of the United States of America “Escrow Agent”).

Reference is made to that certain **Equipment Lease/Purchase Agreement** dated as of _____ between Lessor and Lessee (hereinafter referred to as the “Lease”), covering the acquisition and lease of certain Equipment described therein (the “Equipment”). It is a requirement of the Lease that the Acquisition Amount (\$_____) be deposited into a segregated escrow account under terms satisfactory to Lessor, for the purpose of fully funding the Lease, and providing a mechanism for the application of such amounts to the purchase of and payment for the Equipment.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Creation of Escrow Account.

(a) There is hereby created an escrow fund to be known as the “_____ Escrow Account” (the “Escrow Account”) to be held by the Escrow Agent for the purposes stated herein, for the benefit of Lessor and Lessee, to be held, disbursed and returned in accordance with the terms hereof.

(b) Lessee may, from time to time, provide written instructions for Escrow Agent to use any available cash in the Escrow Account to purchase any money market fund or liquid deposit investment vehicle that Escrow Agent from time to time makes available to the parties hereto. Such written instructions shall be provided via delivery to Escrow Agent of a signed and completed Escrow Account Investment Selection Form (such form available from Escrow Agent upon request). All funds invested by Escrow Agent at the direction of Lessee in such short-term investments shall be deemed to be part of the Escrow Account and subject to all the terms and conditions of this Agreement. If any cash is received for the Escrow Account after the cut-off time for the designated short-term investment vehicle, the Escrow Agent shall hold such cash uninvested until the next Business Day. In the absence of written instructions designating a short-term investment for cash, cash in the Escrow Account shall remain uninvested. Escrow Agent shall have no obligation to pay interest on cash in respect of any period during which it remains uninvested. Lessee shall be solely responsible for ascertaining that all proposed investments and reinvestments are Qualified Investments and that they comply with federal, state and local laws, regulations and ordinances governing investment of such funds and for providing appropriate notice to the Escrow Agent for the reinvestment of any maturing

investment. Accordingly, neither the Escrow Agent nor Lessor shall be responsible for any liability, cost, expense, loss or claim of any kind, directly or indirectly arising out of or related to the investment or reinvestment of all or any portion of the moneys on deposit in the Escrow Account, and Lessee agrees to and does hereby release the Escrow Agent and Lessor from any such liability, cost, expenses, loss or claim. Interest on the Escrow Account shall become part of the Escrow Account, and gains and losses on the investment of the moneys on deposit in the Escrow Account shall be borne by the Escrow Account. The Escrow Agent shall have no discretion whatsoever with respect to the management, disposition or investment of the Escrow Account. The Escrow Agent shall not be responsible for any market decline in the value of the Escrow Account and has no obligation to notify Lessor and Lessee of any such decline or take any action with respect to the Escrow Account, except upon specific written instructions stated herein. For purposes of this agreement, "Qualified Investments" means any investments which meet the requirements of [*state law citation*].

(c) Unless the Escrow Account is earlier terminated in accordance with the provisions of paragraph (d) below, amounts in the Escrow Account shall be disbursed by the Escrow Agent in payment of amounts described in Section 2 hereof upon receipt of written instruction(s) from Lessor, as is more fully described in Section 2 hereof. If the amounts in the Escrow Account are insufficient to pay such amounts, Lessee shall deposit into the Escrow Account any funds needed to complete the acquisition of the Equipment. Any moneys remaining in the Escrow Account on or after the earlier of (i) the expiration of the Acquisition Period and (ii) the date on which Lessee executes an Acceptance Certificate shall be applied as provided in Section 4 hereof.

(d) The Escrow Account shall be terminated at the earliest of (i) the final distribution of amounts in the Escrow Account or (ii) written notice given by Lessor of the occurrence of a default or termination of the Lease due to non-appropriation.

(e) The Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument nor as to the identity, authority, or right of any person executing the same; and its duties hereunder shall be limited to the receipt of such moneys, instruments or other documents received by it as the Escrow Agent, and for the disposition of the same in accordance herewith. Notwithstanding and without limiting the generality of the foregoing, concurrent with the execution of this Agreement, Lessee and Lessor, respectively, shall deliver to the Escrow Agent an authorized signers form in the form of Exhibit A-1 (Lessee) and Exhibit A-2 (Lessor) attached hereto. Notwithstanding the foregoing sentence, the Escrow Agent is authorized to comply with and rely upon any notices, instructions or other communications believed by it to have been sent or given by the parties or by a person or persons authorized by the parties. The Escrow Agent specifically allows for receiving direction by written or electronic transmission from an authorized representative with the following caveat, Lessee and Lessor agree to indemnify and hold harmless the Escrow Agent against any and all claims, losses, damages, liabilities, judgments, costs and expenses (including reasonable attorneys' fees) (collectively, "Losses") incurred or sustained by the Escrow Agent as a result of or in connection with the Escrow Agent's reliance upon and compliance with instructions or

directions given by written or electronic transmission given by each, respectively, provided, however, that such Losses have not arisen from the gross negligence or willful misconduct of the Escrow Agent, it being understood that forbearance on the part of the Escrow Agent to verify or confirm that the person giving the instructions or directions, is, in fact, an authorized person shall not be deemed to constitute gross negligence or willful misconduct.

In the event conflicting instructions as to the disposition of all or any portion of the Escrow Account are at any time given by Lessor and Lessee, the Escrow Agent shall abide by the instructions or entitlement orders given by Lessor without consent of the Lessee.

(f) Unless the Escrow Agent is guilty of gross negligence or willful misconduct with regard to its duties hereunder, Lessee agrees to and does hereby release and indemnify the Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Escrow Agent under this agreement; and in connection therewith, does to the extent permitted by law indemnify the Escrow Agent against any and all expenses; including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim.

(g) If Lessee and Lessor shall be in disagreement about the interpretation of the Lease, or about the rights and obligations, or the propriety of any action contemplated by the Escrow Agent hereunder, the Escrow Agent may, but shall not be required to, file an appropriate civil action including an interpleader action to resolve the disagreement. The Escrow Agent shall be reimbursed by Lessee for all costs, including reasonable attorneys' fees, in connection with such civil action, and shall be fully protected in suspending all or part of its activities under the Lease until a final judgment in such action is received.

(h) The Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection with the opinion of such counsel. The Escrow Agent shall otherwise not be liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind unless caused by its willful misconduct.

(i) Lessee shall reimburse the Escrow Agent for all reasonable costs and expenses, including those of the Escrow Agent's attorneys, agents and employees incurred for non-routine administration of the Escrow Account and the performance of the Escrow Agent's powers and duties hereunder in connection with any Event of Default under the Lease, or in connection with any dispute between Lessor and Lessee concerning the Escrow Account.

(j) The Escrow Agent or any successor may at any time resign by giving mailed notice to Lessee and Lessor of its intention to resign and of the proposed date of resignation ("the Effective Date"), which shall be a date not less than 60 days after such notice is delivered to an express carrier, charges prepaid, unless an earlier resignation date and the appointment of a successor shall have been approved by the Lessee and Lessor. After the Effective Date, the Escrow Agent shall be under no further obligation except to hold the Escrow Account in accordance with the terms of this Agreement, pending receipt of written instructions from Lessor regarding further disposition of the Escrow Account.

(k) The Escrow Agent shall have no responsibilities, obligations or duties other than those expressly set forth in this Agreement and no implied duties responsibilities or obligations shall be read into this Agreement.

2. Acquisition of Property.

(a) Acquisition Contracts. Lessee will arrange for, supervise and provide for, or cause to be supervised and provided for, the acquisition of the Equipment, with moneys available in the Escrow Account. Lessee represents the estimated costs of the Equipment are within the funds estimated to be available therefor, and Lessor makes no warranty or representation with respect thereto. Lessor shall have no liability under any of the acquisition or construction contracts. Lessee shall obtain all necessary permits and approvals, if any, for the acquisition, equipping and installation of the Equipment, and the operation and maintenance thereof. Escrow Agent shall have no duty to monitor or enforce Lessee's compliance with the foregoing covenant.

(b) Authorized Escrow Account Disbursements. It is agreed as between Lessee and Lessor that Disbursements from the Escrow Account shall be made for the purpose of paying (including the reimbursement to Lessee for advances from its own funds to accomplish the purposes hereinafter described) the cost of acquiring the Equipment.

(c) Requisition Procedure. No disbursement from the Escrow Account shall be made unless and until Lessor has approved such requisition. Prior to disbursement from the Escrow Account there shall be filed with the Escrow Agent a requisition for such payment in the form of Disbursement Request attached hereto as Schedule 1, stating each amount to be paid and the name of the person, firm or corporation to whom payment thereof is due and the manner of disbursement (check or wire). The Escrow Agent is authorized to obtain and rely on confirmation of such Disbursement Request and payment instructions by telephone call-back to the person or persons designated for verifying such requests on Exhibit A-2 (such person verifying the request shall be different than the person initiating the request). The Lessor and Lessee hereby confirm that any call-back performed by Escrow Agent to verify a disbursement instruction before release, shall be made to Lessor only and Escrow Agent shall have no obligation to call-back Lessee.

Each such requisition shall be signed by an authorized representative of Lessee (an "Authorized Representative") and by Lessor, and shall be subject to the following conditions, which Escrow Agent shall conclusively presume have been satisfied at such time as a requisition executed by Lessee and Lessor is delivered to it:

1. Delivery to Lessor of an executed Disbursement Request in the form attached hereto as Schedule 1 certifying that:
 - (i) an obligation in the stated amount has been incurred by Lessee, and that the same is a proper charge against the Escrow Account for costs relating to the Equipment identified in the Lease, and has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof); (ii) the

Authorized Representative has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made; (iii) such requisition contains no item representing payment on account, or any retained percentages which Lessee is, at the date of such certificate, entitled to retain (except to the extent such amounts represent a reimbursement to Lessee); (iv) the Equipment is insured in accordance with the Lease; (v) no Event of Default (nor any event which, with notice or lapse of time or both, would become an Event of Default) has occurred and is continuing; (vi) such disbursement shall occur during the Acquisition Period; (vii) the representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date hereof; and (viii) no Material Adverse Change has occurred since the date of the execution and delivery of the Lease.

2. Delivery to Lessor invoices (and proofs of payment of such invoices, if Lessee seeks reimbursement) and bills of sale (if title to such Equipment has passed to Lessee) therefor as required by Section 3.04 of the Lease and any additional documentation reasonably requested by Lessor; and
3. The disbursement shall occur during the Acquisition Period.

Lessee and Lessor agree that their execution of the form attached hereto as Schedule 1 and delivery of the executed form to Escrow Agent confirms that all of the requirements and conditions with respect to disbursements set forth in this Section 2 have been satisfied.

3. Deposit to Escrow Account. Upon satisfaction of the conditions specified in Section 3.04 of the Lease, Lessor will cause the Acquisition Amount to be deposited in the Escrow Account. Lessee agrees to pay any costs with respect to the Equipment in excess of amounts available therefor in the Escrow Account.

4. Excessive Escrow Account. Upon receipt of written instructions from Lessor including a representation that one of the following conditions has been satisfied (upon which representation Escrow Agent shall conclusively rely, any funds remaining in the Escrow Account on or after the earlier of (a) the expiration of the Acquisition Period and (b) the date on which Lessee executes an Acceptance Certificate, or upon a termination of the Escrow Account as otherwise provided herein, shall be distributed by the Escrow Agent to the Lessor in order for the Lessor to apply such funds to amounts owed by Lessee under the Lease in accordance with Section 4.07 of the Lease.

5. Security Interest. The Escrow Agent and Lessee acknowledge and agree that the Escrow Account and all proceeds thereof are being held by Escrow Agent for disbursement or return as set forth herein. Lessee hereby grants to Lessor a first priority perfected security interest in the Escrow Account, and all proceeds thereof, and all investments made with any amounts in the Escrow Account. If the Escrow Account, or any part thereof, is converted to investments as set forth in this agreement, such investments shall be made in the name of Escrow Agent and the Escrow Agent hereby agrees to hold such investments as bailee for Lessor so that

Lessor is deemed to have possession of such investments for the purpose of perfecting its security interest.

6. Control of Acquisition Account. In order to perfect Lessor's security interest by means of control in (i) the Escrow Account established hereunder, (ii) all securities entitlements, investment property and other financial assets now or hereafter credited to the Escrow Account, (iii) all of Lessee's rights in respect of the Escrow Account, such securities entitlements, investment property and other financial assets, and (iv) all products, proceeds and revenues of and from any of the foregoing personal property (collectively, the "Collateral"), Lessor, Lessee and Escrow Agent further agree as follows:

(a) All terms used in this Section 6 which are defined in the Commercial Code of the state of _____¹ ("Commercial Code") but are not otherwise defined herein shall have the meanings assigned to such terms in the Commercial Code, as in effect on the date of this Agreement.

(b) Escrow Agent will comply with all entitlement orders originated by Lessor with respect to the Collateral, or any portion of the Collateral, without further consent by Lessee.

(c) Provided that account investments shall be held in the name of the Escrow Agent, Escrow Agent hereby represents and warrants (a) that the records of Escrow Agent show that Lessee is the sole owner of the Collateral, (b) that Escrow Agent has not been served with any notice of levy or received any notice of any security interest in or other claim to the Collateral, or any portion of the Collateral, other than Lessor's claim pursuant to this Agreement, and (c) that Escrow Agent is not presently obligated to accept any entitlement order from any person with respect to the Collateral, except for entitlement orders that Escrow Agent is obligated to accept from Lessor under this Agreement and entitlement orders that Escrow Agent, subject to the provisions of paragraph (e) below, is obligated to accept from Lessee.

(d) Without the prior written consent of Lessor, Escrow Agent will not enter into any agreement by which Escrow Agent agrees to comply with any entitlement order of any person other than Lessor or, subject to the provisions of paragraph (e) below, Lessee, with respect to any portion or all of the Collateral. Escrow Agent shall promptly notify Lessor if any person requests Escrow Agent to enter into any such agreement or otherwise asserts or seeks to assert a lien, encumbrance or adverse claim against any portion or all of the Collateral.

(e) Except as otherwise provided in this paragraph (e) and subject to Section 1(b) hereof, Lessee may affect sales, trades, transfers and exchanges of Collateral within the Escrow Account, but will not, without the prior written consent of Lessor, withdraw any Collateral from the Escrow Account. Escrow Agent acknowledges that Lessor reserves the right, by delivery of written notice to Escrow Agent, to prohibit Lessee from effecting any withdrawals (including withdrawals of ordinary cash dividends and interest income), sales, trades, transfers or exchanges of any Collateral held in the Escrow Account. Further, Escrow Agent hereby agrees to comply with any and all written instructions delivered by Lessor to Escrow Agent (once it has had a reasonable opportunity to comply therewith) and has no obligation to, and will not,

¹ State where lessee is located.

investigate the reason for any action taken by Lessor, the amount of any obligations of Lessee to Lessor, the validity of any of Lessor's claims against or agreements with Lessee, the existence of any defaults under such agreements, or any other matter.

(f) Lessee hereby irrevocably authorizes Escrow Agent to comply with all instructions and entitlement orders delivered by Lessor to Escrow Agent.

(g) Escrow Agent will not attempt to assert control, and does not claim and will not accept any security or other interest in, any part of the Collateral, and Escrow Agent will not exercise, enforce or attempt to enforce any right of setoff against the Collateral, or otherwise charge or deduct from the Collateral any amount whatsoever.

(h) Escrow Agent and Lessee hereby agree that any property held in the Escrow Account shall be treated as a financial asset under such section of the Commercial Code as corresponds with Section 8-102 of the Uniform Commercial Code, notwithstanding any contrary provision of any other agreement to which Escrow Agent may be a party.

(i) Escrow Agent is hereby authorized and instructed, and hereby agrees, to send to Lessor at its address set forth in Section 8 below, concurrently with the sending thereof to Lessee, duplicate copies of any and all monthly Escrow Account statements or reports issued or sent to Lessee with respect to the Escrow Account.

7. Information Required Under USA PATRIOT ACT. The parties acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on October 1, 2003 (Section 326 of the USA PATRIOT Act) all financial institutions are required to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. The parties to this Agreement agree that they will provide to the Escrow Agent such information as it may request, from time to time, in order for the Escrow Agent to satisfy the requirements of the USA PATRIOT Act, including but not limited to the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

8. Miscellaneous. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease. This agreement may not be amended except in writing signed by all parties hereto. This agreement may be executed in one or more counterparts, each of which shall be deemed to be an original instrument and each shall have the force and effect of an original and all of which together constitute, and shall be deemed to constitute, one and the same instrument. Notices hereunder shall be made in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class postage prepaid, or delivered to an express carrier, charges prepaid, or sent by facsimile with electronic confirmation, addressed to each party at its address below.

Notices and other communications hereunder may be delivered or furnished by electronic mail provided that any formal notice be attached to an email message in PDF format and provided further that any notice or other communication sent to an e-mail address shall be

deemed received upon and only upon the sender's receipt of affirmative acknowledgement or receipt from the intended recipient. For purposes hereof no acknowledgement of receipt generated on an automated basis shall be deemed sufficient for any purpose hereunder or admissible as evidence of receipt. **It is understood that Bank of America, National Association is party to this Agreement in two separate and distinct capacities, Lessor and Escrow Agent, with its responsibilities in each respective capacity being administered in separate and distinct locations. It is understood and agreed that for no purpose shall notice to Bank of America, National Association in one such capacity hereunder constitute notice to Bank of America, National Association in its other capacity hereunder. NOTE: USE THIS LANGUAGE ONLY WHEN THE LESSOR IS BANK OF AMERICA.**

If to Lessor: Bank of America, National Association
11333 McCormick Road
Mail Code: MD5-032-07-05
Hunt Valley, MD 21031
Attn: Contract Administration
Fax: (443) 541-3057

If to Lessee: _____

Attn: _____
Fax: _____

If to Escrow Agent
Bank of America, National Association
Global Custody and Agency Services
135 S. LaSalle Street
IL4-135-05-07
Chicago, Illinois 60603
Attention: [•]
Telephone: (312) [•]-[•]
Fax: (312) 992-9833
Email address

9. Lessee and Lessor understand and agree that they are required to provide the Escrow Agent with a properly completed and signed Tax Certification (as defined below) and that the Escrow Agent may not perform its duties hereunder without having been provided with such Tax Certification. As used herein "Tax Certification" shall mean an IRS form W-9 or W-8 as described above. The Escrow Agent will comply with any U.S. tax withholding or backup withholding and reporting requirements that are required by law. With respect to earnings allocable to a foreign person, the Escrow Agent will withhold U.S. tax as required by law and report such earnings and taxes withheld, if any, for the benefit of such foreign person on IRS Form 1042-S (or any other required form), unless such earnings and withheld taxes are exempt from reporting under Treasury Regulation Section 1.1461-1(c)(2)(ii) or under other applicable

law. With respect to earnings allocable to a United States person, the Escrow Agent will report such income, if required, on IRS Form 1099 or any other form required by law. The IRS Forms 1099 and/or 1042-S shall show the Escrow Agent as payor and [Lessee] as payee.

Lessee and Lessor agree that they are not relieved of their respective obligations, if any, to prepare and file information reports under Code Section 6041, and the Treasury regulations thereunder, with respect to amounts of imputed interest income, as determined pursuant to Code Sections 483 or 1272. The Escrow Agent shall not be responsible for determining or reporting such imputed interest.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of [] and the parties hereto consent to jurisdiction in the State of [] and venue in any state or Federal court located in the City of [].

11. Any bank or corporation into which the Escrow Agent may be merged or with which it may be consolidated, or any bank or corporation to whom the Escrow Agent may transfer a substantial amount of its escrow business, shall be the successor to the Escrow Agent without the execution or filing of any paper or any further act on the part of any of the parties, anything herein to the contrary notwithstanding. Any bank or corporation into which the Lessor may be merged or with which it may be consolidated, or any bank or corporation to whom the Lessor may transfer a substantial amount of its business, shall be the successor to the Lessor without the execution or filing of any paper or any further act on the part of any of the parties, anything herein to the contrary notwithstanding.

12. This Agreement may be amended, modified, and/or supplemented only by an instrument in writing executed by all parties hereto.

13. No party hereto shall assign its rights hereunder until its assignee has submitted to the Escrow Agent (i) Patriot Act disclosure materials and the Escrow Agent has determined that on the basis of such materials it may accept such assignee as a customer and (ii) assignee has delivered an IRS Form W-8 or W-9, as appropriate, to the Escrow Agent which the Escrow Agent has determined to have been properly signed and completed.

14. Escrow Agent will treat information related to this Agreement as confidential but, unless prohibited by law, Lessee and Lessor authorize the transfer or disclosure of any information relating to the Agreement to and between the subsidiaries, officers, affiliates and other representatives and advisors of Escrow Agent and third parties selected by any of them, wherever situated, for confidential use in the ordinary course of business, and further acknowledge that Escrow Agent and any such subsidiary, officer, affiliate or third party may transfer or disclose any such information as required by any law, court, regulator or legal process.

Lessor will treat information related to this Agreement as confidential but, unless prohibited by law, Escrow Agent and Lessee authorize the transfer or disclosure of any information relating to the Agreement to and between the subsidiaries, officers, affiliates, other representatives and advisors of Lessor and debt and equity sources and third parties selected by any of them, and to their prospective assignees wherever situated, for confidential use in the ordinary course of

business, and further acknowledge that Lessor and any such subsidiary, officer, affiliate, debt and equity source or third party or prospective assignee may transfer or disclose any such information as required by any law, court, regulator or legal process.

Lessee will treat the terms of this Agreement as confidential except on a "need to know" basis to persons within or outside Lessee's organization (including affiliates of such party), such as attorneys, accountants, bankers, financial advisors, auditors and other consultants of such party and its affiliates, except as required by any law, court, regulator or legal process and except pursuant to the express prior written consent of the other parties, which consent shall not be unreasonably withheld;

In Witness Whereof, the parties have executed this Escrow and Account Control Agreement as of the date first above written.

Bank of America, National Association
as Lessor

as Lessee

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Bank of America, National Association
As Escrow Agent

By: _____

Name: _____

Title: _____

SCHEDULE 1
to the Escrow and Account Control Agreement

FORM OF DISBURSEMENT REQUEST

Re: **Equipment Lease/Purchase Agreement** dated as of _____ by and between Bank of America, National Association, as Lessor and _____, as Lessee (the "Lease") (Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease.)

In accordance with the terms of the Escrow and Account Control Agreement, dated as of _____ (the "Escrow Account and Account Control Agreement") by and among Bank of America, National Association ("Lessor"), _____ ("Lessee") and Bank of America, National Association, (the "Escrow Agent"), the undersigned hereby requests the Escrow Agent pay the following persons the following amounts from the Escrow Account created under the Escrow Account and Account Control Agreement for the following purposes:

Disbursement Amounts:

Payee's Name and Address (if disbursement via wire, must include wire transfer instructions)	Invoice Number	Dollar Amount	Purpose

(i) (a) Each obligation specified in the table herein titled as "Disbursement Amounts" has been incurred by Lessee in the stated amount, (b) the same is a proper charge against the Escrow Account for costs relating to the Equipment identified in the Lease, and (c) has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof).

(ii) Each item of Equipment relating to an obligation specified in the table herein titled as "Disbursement Amounts" has been delivered, installed and accepted by Lessee. Attached hereto is the original invoice with respect to such obligation.

(iii) The undersigned, as Authorized Representative, has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made.

(iv) This requisition contains no item representing payment on account, or any retained percentages which Lessee is, at the date hereof, entitled to retain (except to the extent such amounts represent a reimbursement to Lessee).

(v) The Equipment is insured in accordance with the Lease.

(vi) No Event of Default, and no event which with notice or lapse of time, or both, would become an Event of Default, under the Lease has occurred and is continuing at the date hereof.

(vii) The disbursement shall occur during the Acquisition Period.

(viii) The representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date hereof.

(ix) No Material Adverse Change has occurred since the date of the execution and delivery of the Lease.

Dated: _____

By: _____
Name: _____
Title: _____

Disbursement of funds from the Escrow Account in accordance with the foregoing Disbursement Request hereby is authorized

BANK OF AMERICA, NATIONAL ASSOCIATION
as Lessor under the Lease

By: _____
Name:
Title:

[AN "EXHIBIT A-1" MUST BE COMPLETED AND EXECUTED AT TIME OF EXECUTION OF THE AGREEMENT]

EXHIBIT A-1

FORM OF INCUMBENCY AND AUTHORIZATION CERTIFICATE

The undersigned, a duly elected or appointed and acting _____
[Secretary] [City Clerk] [County Clerk] of _____ ("*Lessee*")
certifies as follows:

A. The following listed persons are duly elected or appointed and acting officials of Lessee (the "*Officials*") in the capacity set forth opposite their respective names below and that the facsimile signatures are true and correct as of the date hereof;

B. The Officials are duly authorized, on behalf of Lessee, to negotiate, execute and deliver the **Equipment Lease/Purchase Agreement** dated as of _____ by and between Lessee and Bank of America, National Association ("*Lessor*"), the Escrow and Account Control Agreement dated as of _____ among Lessor, Lessee and Bank of America, National Association, as Escrow Agent, and all documents related thereto and delivered in connection therewith (collectively, the "*Agreements*"), and the Agreements each are the binding and authorized agreements of Lessee, enforceable in all respects in accordance with their respective terms.

Name of Official	Title	Signature
_____	_____	_____
_____	_____	_____
_____	_____	_____

Dated: _____

By: _____

Name: _____

Title: _____

(The signer of this Certificate cannot be listed above as authorized to execute the Agreements.)

[AN "EXHIBIT A-2" MUST BE COMPLETED AND EXECUTED AT TIME OF EXECUTION OF THE AGREEMENT]

EXHIBIT A-2

Escrow and Account Control Agreement dated as of _____ by and among Bank of America, National Association, Lessor, _____, Lessee and Bank of America, National Association, Escrow Agent

Certificate of Authorized Representatives – [Lessor]

Name: Terri Preston

Name: Nancy Nusenko

Title: Vice President

Title: Senior Operations Consultant

Phone: 443-541-3642

Phone: 443-541-3646

Facsimile: 443-541-3057

Facsimile: 443-541-3057

E-mail: Terri.preston@baml.com

E-mail: Nancy.a.nusenko@baml.com

Signature: _____

Signature: _____

Fund Transfer / Disbursement Authority Level:

- Initiate
- Verify transactions initiated by others

Fund Transfer / Disbursement Authority Level:

- Initiate
- Verify transactions initiated by others

Name: _____

Name: Arlene Sobieck

Title: _____

Title: Senior Operations Consultant

Phone: _____

Phone: 443-541-3643

Facsimile: _____

Facsimile: 443-541-3057

E-mail: _____

E-mail: Arlene.sobieck@baml.com

Signature: _____

Signature: _____

Fund Transfer / Disbursement Authority Level:

- Initiate
- Verify transactions initiated by others

Fund Transfer / Disbursement Authority Level:

- Initiate
- Verify transactions initiated by others

The Escrow Agent is authorized to comply with and rely upon any notices, instructions or other communications believed by it to have been sent or given by the person or persons identified above including without limitation, to initiate and verify funds transfers as indicated.

Bank of America, National Association

By: _____

Name:

Title:

Date: _____

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY
AUTHORIZING THE CITY MANAGER TO ENTER INTO AN ENERGY SERVICES
CONTRACT WITH OPTERRA ENERGY SERVICES, INC., FOR THE
IMPLEMENTATION OF ENERGY RELATED IMPROVEMENTS AND FINDS THAT IT
IS IN THE BEST INTEREST OF THE CITY TO ENTER INTO SUCH CONTRACT**

WHEREAS, California Government Code Section 4217.10 to 4217.18, authorizes the City Council to enter into an Energy Services Contract for the implementation of energy related improvements if the City Council finds that it is in the best interest of the City to enter into such Energy Services Contract; and

WHEREAS, the anticipated cost to the City for thermal or electrical energy or conservation services provided by the energy conservation facility under the contract will be less than the anticipated marginal cost to the City of thermal, electrical, or other energy that would have been consumed by the City in the absence of those purchases.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Yuba City finds that:

1. It is in the best interest of the City of Yuba City to enter into an Energy Services Contract with OpTerra Energy Services, Inc. for the implementation of certain energy related improvements to City facilities.
2. The anticipated cost to the City of Yuba City for thermal or electrical energy or conservation services provided by the energy conservation facility under the contract will be less than the anticipated marginal cost to the City of the thermal, electrical, or other energy that would have been consumed by the City in the absence of those purchases.
3. The City Manager is authorized to execute the Energy Services Contract by and between the City of Yuba City and OpTerra Energy Services, Inc., for the implementation of certain energy related improvements to City facilities in accordance with these findings and California Government Code Section 4217.10 to 4217.18.

The foregoing resolution was duly and regularly introduced, passed, and adopted by the City Council of the City of Yuba City at a regular meeting thereof held on the 4th day of November, 2014.

AYES:

NOES:

ABSENT:

Kash Gill, Mayor

ATTEST:

Terrel Locke, City Clerk

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY AUTHORIZING THE EXECUTION AND DELIVERY OF AN EQUIPMENT LEASE/PURCHASE AGREEMENT WITH RESPECT TO THE ACQUISITION, PURCHASE, FINANCING AND LEASING OF CERTAIN EQUIPMENT FOR THE PUBLIC BENEFIT; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION

WHEREAS, the City of Yuba City (the "Lessee"), a municipal corporation of the State of California, is authorized by the laws of the State of California to purchase, acquire and lease personal property for the benefit of the Lessee and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the Lessee desires to purchase, acquire and lease certain equipment with a cost not to exceed \$ 4,967,214 constituting personal property necessary for the Lessee to perform essential governmental functions (the "Equipment"); and

WHEREAS, in order to acquire such equipment, the Lessee proposes to enter into that certain Equipment Lease/Purchase Agreement (the "Agreement") with Banc of America Public Capital Corp (or one of its affiliates)(the "Lessor"), the form of which has been presented to the City Council of the Lessee at this meeting; and

WHEREAS, the City C of the Lessee deems it for the benefit of the Lessee and for the efficient and effective administration thereof to enter into the Agreement and the documentation related to the financing of the Equipment for the purchase, acquisition and leasing of the equipment to be therein described on the terms and conditions therein provided;

NOW THEREFORE, BE IT IS AND HEREBY RESOLVED by the City Council of Lessee as follows:

Section 1. Approval of Documents. The form, terms and provisions of the Agreement are hereby approved in substantially the forms presented at this meeting, with such insertions, omissions and changes as shall be approved by the City Attorney of the Lessee members of the City Council of the Lessee executing the same, the execution of such documents being conclusive evidence of such approval; and the City Manager of the Lessee is hereby authorized and directed to execute, and the City Clerk of the Lessee is hereby authorized and directed to attest and countersign, the Agreement and any related Exhibits attached thereto and to deliver the Agreement (including such Exhibits) to the respective parties thereto, and the City Clerk of the Lessee is hereby authorized to affix the seal of the Lessee to such documents.

Section 2. Other Actions Authorized. The officers and employees of the Lessee shall take all action necessary or reasonably required by the parties to the Agreement to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of Acceptance Certificates and any tax certificate and agreement, as contemplated in the Agreement) and

to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Agreement.

Section 3. No General Liability. Nothing contained in this Resolution, the Agreement nor any other instrument shall be construed with respect to the Lessee as incurring a pecuniary liability or charge upon the general credit of the Lessee or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Lessee or any charge upon its general credit or against its taxing power, except to the extent that the Rental Payments payable under the Agreement are special limited obligations of the Lessee as provided in the Agreement.

Section 4. Appointment of Authorized Lessee Representatives. The City Manager of the Lessee is hereby designated to act as authorized representative of the Lessee for purposes of the Agreement until such time as the City Council of the Lessee shall designate any other or different authorized representative for purposes of the Agreement.

Section 5. Designation for Purposes of Section 265(b)(3) of the Internal Revenue Code of 1986. The City of Yuba City of the Lessee hereby designates the Agreement as a “qualified tax-exempt obligation” for purposes and within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

Section 6. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 7. Repealer. All bylaws, orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

Section 8. Effective Date. This Resolution shall be effective immediately upon its approval and adoption.

The foregoing resolution was duly and regularly introduced, passed, and adopted by the City Council of the City of Yuba City at a regular meeting thereof held on the 4th day of November, 2014.

AYES:

NOES:

ABSENT:

Kash Gill, Mayor

Attest:

Terrel Locke, City Clerk

CITY OF YUBA CITY
STAFF REPORT

Date: November 4, 2014
To: Honorable Mayor and Members of the City Council
From: Administration
Presentation By: Darin Gale, Economic Growth & Public Affairs Manager

Summary

Subject: Ordinance prohibiting camping on private property within the City limits of Yuba City

Recommendation: Introduce a Revised Ordinance, to prohibit camping on private property in the City of Yuba City, conduct a public hearing and waive the first reading

Fiscal Impact: No costs are associated with the implementation of the proposed ordinance

Purpose:

To prohibit camping on private property without written consent of property owner within the City limits of Yuba City

Background:

Over the past year, the City has been implementing a Clean & Safe Program. These efforts included a variety of actions that include the following: a citywide shopping cart clean-up and retrieval program, adoption of Anti-Aggressive Panhandling Ordinance and No Camping on Public Property Ordinance and focused enforcement of other vagrancy related issues. Through each of these coordinated efforts the City has sought to enhance the quality of life for its residents.

Analysis:

Currently, the City does not have an ordinance addressing camping on private property. As a result, the City is not able to remove or issue citations to a person camping on private property without a trespassing complaint first being filed by the private property owner. In order to improve the City's Clean & Safe efforts, staff drafted new language to the City's Camping Ordinance which would prohibit camping on private property without written consent of the property owner. The following language is proposed to be added to the City's Camping Ordinance:

Section 5-20.050 Camping on Private Property.

- a) It is unlawful to camp upon any private property within the city.

b) Exceptions. This section shall not apply to persons camping with the written consent of the owner, provided that such written consent is in their possession at the time and is shown upon demand of any peace officer.

The above language and other references to No Camping on Private Property would be included in the City's Camping Ordinance. This will provide City staff the needed language to enforce vagrancy issues associated with camping on private property and continue the City's Clean & Safe efforts.

Fiscal Impact:

No costs are associated with the implementation of the proposed ordinance.

Alternatives:

Do not adopt the ordinance or provide staff with direction for modifying the proposed ordinance.

Recommendation:

Amend the City's Camping Ordinance to prohibit camping on private property in the City of Yuba City, conduct a public hearing and waive the first reading

Prepared By:

/s/ Darin Gale

Darin E. Gale
Economic Growth & Public Affairs

Submitted By:

/s/ Steve Kroeger

Steven C. Kroeger
City Manager

Reviewed By:

Finance

RB

City Attorney

TH

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF YUBA CITY
REPEALING AND REENACTING CHAPTER 20 OF TITLE 5 TO THE YUBA CITY
MUNICIPAL CODE REGARDING CAMPING IN THE
CITY OF YUBA CITY**

THE CITY COUNCIL OF THE CITY OF YUBA CITY DOES HEREBY ORDAIN AS
FOLLOWS:

Section 1. Chapter 20 of Title 5 of the Yuba City Municipal Code is hereby repealed.

Section 2. Chapter 20 of Title 5 is hereby added to the Yuba City Municipal Code to read as follows:

CHAPTER 20

CAMPING IN YUBA CITY

Sections:

5-20.010	Purpose
5-20.020	Definition
5-20.030	Prohibition
5-20.040	Exception(s)
5-20.050	Camping on Private Property
5-20.060	Violation

Section 5-20.010 Purpose.

Public property and public right of ways within the city should be readily accessible and available to residents and the public at large. The use of these areas for camping purposes or storage of personal property interferes with the rights of others to use the areas for which they were intended. Such activity can constitute a public health and safety hazard that adversely impacts the neighborhoods, commercial property and general welfare of the city.

Camping on private property without the consent of the owner and without proper sanitary measures adversely affects private property rights as well as public health, safety, and welfare.

City services can be utilized to clean up campsites on public and private property. These clean ups can expose city workers and citizens to hazardous conditions including human infectious waste and other hazardous materials. Disposal of these materials is costly and hazardous. Temporary and permanent campsites erected within the city limits are often constructed in a fashion, and/or at a location that makes access by emergency personnel difficult during times of emergency. This puts the campers, campsite visitors,

and emergency personnel at a greater risk if an injury, illness, accident or disaster should occur.

The purpose of this chapter is to prohibit, subject to certain restrictions, camping on public or private property within the city in order to maintain public or private property in a clean, sanitary and accessible condition and to adequately protect the health, safety and public welfare of the community.

Section 5-20.020 Definition.

For purposes of this chapter, camping is defined as residing in or using property for one or more nights for living accommodation purposes, such as sleeping activities, or making preparations to sleep (including the laying down of bedding for the purpose of sleeping), or storing personal belongings (including but not limited to clothing, sleeping bags, bedrolls, blankets, sheets, luggage, backpacks, kitchen utensils, cookware, and similar material), or making any fire or using any tents, regularly cooking meals, or living in a parked vehicle. These activities constitute camping when it reasonably appears, in light of all the circumstances, that a person(s) is using property, as a living accommodation for one or more nights regardless of his or her intent or the nature of any other activities in which he or she might also be engaging.

Section 5-20.030 Camping on Public Property.

It is unlawful for any person to camp in or upon any public property or public right of way within the city, unless otherwise specifically authorized by this Code or by a resolution of the City Council.

Section 5-20.040 Exception(s).

Notwithstanding the prohibition of Section 5-20.030, camping shall be allowed in the Yuba Sutter Boat Docks Recreational Vehicle Campground and Marina, located at #80 Second Street, Yuba City (Assessor's Parcel No. 03-290-006) and as may be permitted within City parks by the City's Community Services Director.

Section 5-20.050 Camping on Private Property.

- a) It is unlawful to camp upon any private property within the city.
- b) Exceptions. This section shall not apply to persons camping with the written consent of the owner, provided that such written consent is in their possession at the time and is shown upon demand of any peace officer.

Section 5-020.60 Violation.

Any person violating any provision of this chapter shall be deemed guilty of a misdemeanor and shall be subject to the penalty provisions of Chapter 2 of Title 1 of the Yuba City Municipal Code.

Section 3. This ordinance shall be effective thirty (30) days after its adoption and after it is adopted, it shall be published as provided for by law.

Introduced and read at a regular meeting of the City Council of the City of Yuba City the ____ day of _____, 2014, and adopted at a regular meeting thereof held on the ____ day of _____, 2014.

AYES:

NOES:

ABSENT:

ABSTAIN:

MAYOR

ATTEST:

Terrel Locke, City Clerk

Approved as to form:

City Attorney

**MINUTES (DRAFT)
REGULAR MEETING OF THE CITY COUNCIL
CITY OF YUBA CITY
COUNCIL CHAMBERS
OCTOBER 21, 2014
5:00 P.M. – CLOSED SESSION
6:00 P.M. – REGULAR MEETING**

Closed Session—Butte Room

- A. Conferred with labor negotiator Steve Kroeger regarding negotiations with the following associations: Yuba City Police Officers, Police Sergeants, Yuba City Firefighters Local 3793, Yuba City Fire Management, First Level Managers, and Public Employees Local No. 1, pursuant to Section 54957.6 of the Government Code.

Regular Meeting—Council Chambers

The City of Yuba City City Council meeting was called to order by Mayor Gill at 6:00 p.m.

Roll Call

Present: Councilmembers Buckland, Dukes, Maan, Starkey and Mayor Gill

Absent: None

Invocation

Councilmember Dukes gave the invocation.

Pledge of Allegiance to the Flag

Councilmember Buckland led the Pledge of Allegiance.

Presentations and Proclamations

1. **Proclamation to Marilyn A. Terry, retiring Police Records Supervisor, Yuba City Police Department**
Mayor Gill presented a proclamation to Marilyn Terry in honor of her 24 years of service to the citizens of Yuba City.
2. **Proclamation to Gisela Hamilton, 2014 Law Enforcement Volunteer of the Year**
Mayor Gill presented Police Department Volunteer Gisela Hamilton in honor of her receipt of Northern California's 2014 Law Enforcement Volunteer of the Year Award.

Public Communication

3. **Written Requests** - None

4. **Appearance of Interested Citizens**

The following person spoke:

Eric Protho, Kiley Ave, Yuba City – Recent HANDS event appreciation

Bid Award

5. Purchase of a Crane Service Truck (FB15-03)

Councilmember Starkey moved to award the purchase of one (1) 33,000 pounds gvw Crane Service Truck to Lodi Truck and Equipment of West Sacramento, CA, in the amount of \$144,963.75 by finding that it is in the best interest of the City to do so. Councilmember Dukes seconded the motion that passed with a unanimous vote.

Consent Calendar

Staff requested to have Item 8 pulled from the Consent Calendar for further discussion. Councilmember Dukes moved to adopt Items 6 and 7 as presented. Councilmember Maan seconded the motion that passed with a unanimous vote.

6. Minutes of October 7, 2014 & October 14, 2014

Approved the City Council Meeting Minutes of October 7, 2014 and October 14, 2014.

7. Professional Services Agreement with Larry Walker Associates for National Pollutant Discharge Elimination System (NPDES) Consulting Services

Awarded a professional services agreement to Larry Walker Associates of Davis, CA for consulting services associated with the administration of the City's NPDES Small MS4 Phase II Permit in the amount of \$60,000 with the finding that it is in the best interest of the City.

8. Police Officers' Association Memorandum of Understanding (MOU) and Police Sergeants' Letter of Understanding (LOU)

Councilmember Maan moved to adopt **Resolution No. 14-074** approving a two year Memorandum of Understanding with the Police Officers' Association; and adopt **Resolution No. 14-075** approving a two year Letter of Understanding with the Police Sergeants'. Councilmember Starkey seconded the motion that passed with a unanimous vote.

General Items

9. Expansion of the City's Sphere of Influence (SOI) Southern Boundary Line for New Development Opportunities

The following person spoke:

John Teague, Stewart Rd, Yuba City

Councilmember Starkey moved to authorize staff to proceed with seeking an expansion of the City's Sphere of Influence south of the City's current boundary limits to Stewart Road as shown on Exhibit A as part of the processing of the proposed Newkom Ranch Project. Councilmember Buckland seconded the motion that passed with a unanimous vote.

Business from the City Council

10. City Council Reports

- Councilmember Buckland
- Councilmember Maan
- Councilmember Starkey
- Vice Mayor Dukes
- Mayor Gill

Adjournment

Mayor Gill adjourned the Regular Meeting of the City Council of the City of Yuba City at 6:54 p.m.

Kash Gill, Mayor

Attest:

Terrel Locke, City Clerk

CITY OF YUBA CITY
STAFF REPORT

Date: November 4, 2014
To: Honorable Mayor & Members of the City Council
From: Administration
Presentation By: Terrel Locke, Assistant to the City Manager

Summary

Subject: Fiscal Year 2014-15 Waste Tire Enforcement Grant Application

Recommendation: Adopt a Resolution authorizing Yuba County, as the Lead Agency of the Yuba-Sutter Local Enforcement Agency, to perform Waste Tire Enforcement activities on behalf of the City of Yuba City and submit a Collaborative Application for the Waste Tire Enforcement Grant to CalRecycle for Fiscal Year 2014-15

Fiscal Impact: None directly to the City. The Yuba-Sutter LEA estimates receiving funding of \$80,000-\$100,000 for enforcement activities

Purpose:

Reduce the number of waste tires going to the landfill for disposal and eliminating the stockpiling of waste tires where public health and safety and the environment may be at risk.

Background:

In 1989, CalRecycle (formerly called the California Integrated Waste Management Board) certified all County Environmental Health Departments to be the Local Enforcement Agencies (LEA) to carry out solid waste permitting, inspection and enforcement activities. Sutter County and Yuba County opted to form a joint local enforcement agency with Yuba County Environmental Health Department being the lead agency. Enforcement activities include the cities of Yuba City, Live Oak, Marysville, and Wheatland, as well as Yuba and Sutter Counties.

The LEA responds to solid waste related complaints, waste tire related complaints and perform solid waste and waste tire facility inspections and enforcement activities in all these areas. These activities are different from Code enforcement activities which respective cities and counties do on their own.

Revenue for the grants is generated from a tire fee on each new tire sold in California.

Analysis:

The Yuba-Sutter LEA, through Yuba County, has one inspector dedicated to Waste Tire Enforcement activities for the bi-county region. The inspector performs 30 – 40 inspections and responds to one or two complaints per month. Inspections are performed every two to three

years on tire shops, auto repair shops, farmers, or any business that receives, sells, or stores tires. The businesses are required to keep disposal records for up to three years. The inspector verifies that the business is in compliance with state laws regarding their disposal process and how many waste and use tires are on hand. Violators are given 30 days to become compliant; if in 30 days they are still in violation, the business is referred to CalRecycle for enforcement (see attached Flow Chart).

The grant pays for the cost of the inspector and inspections at \$119 per hour, which includes personnel time, a truck and other equipment, mileage, administration and overhead costs, etc.

Fiscal Impact:

None directly to the City. Jurisdictions with populations equal or less than 900,000 are eligible to receive up to \$300,000. The Yuba-Sutter LEA usually budgets for \$80,000 to \$100,000 per grant cycle and at least 80% of this money gets spent. The Yuba-Sutter LEA received a grant of \$107,700 for Waste Tire Enforcement activities for FY 2013-14.

Alternatives:

If the City Council elects not to participate in the collaborative application with the Yuba-Sutter Local Enforcement Agency, it may result in a loss of waste tire enforcement activities within the City boundaries.

Recommendation:

Adopt a Resolution authorizing Yuba County, as the Lead Agency of the Yuba-Sutter Local Enforcement Agency, to perform Waste Tire Enforcement activities on behalf of the City of Yuba City and submit a Collaborative Application for the Waste Tire Enforcement Grant to CalRecycle for Fiscal Year 2014-15.

Attachment:

Tire Enforcement Flow Chart

Prepared By:

/s/ Terrel Locke

Terrel Locke
Assistant to the City Manager

Submitted By:

/s/ Steve Kroeger

Steven C. Kroeger
City Manager

Reviewed By:

Finance

RB

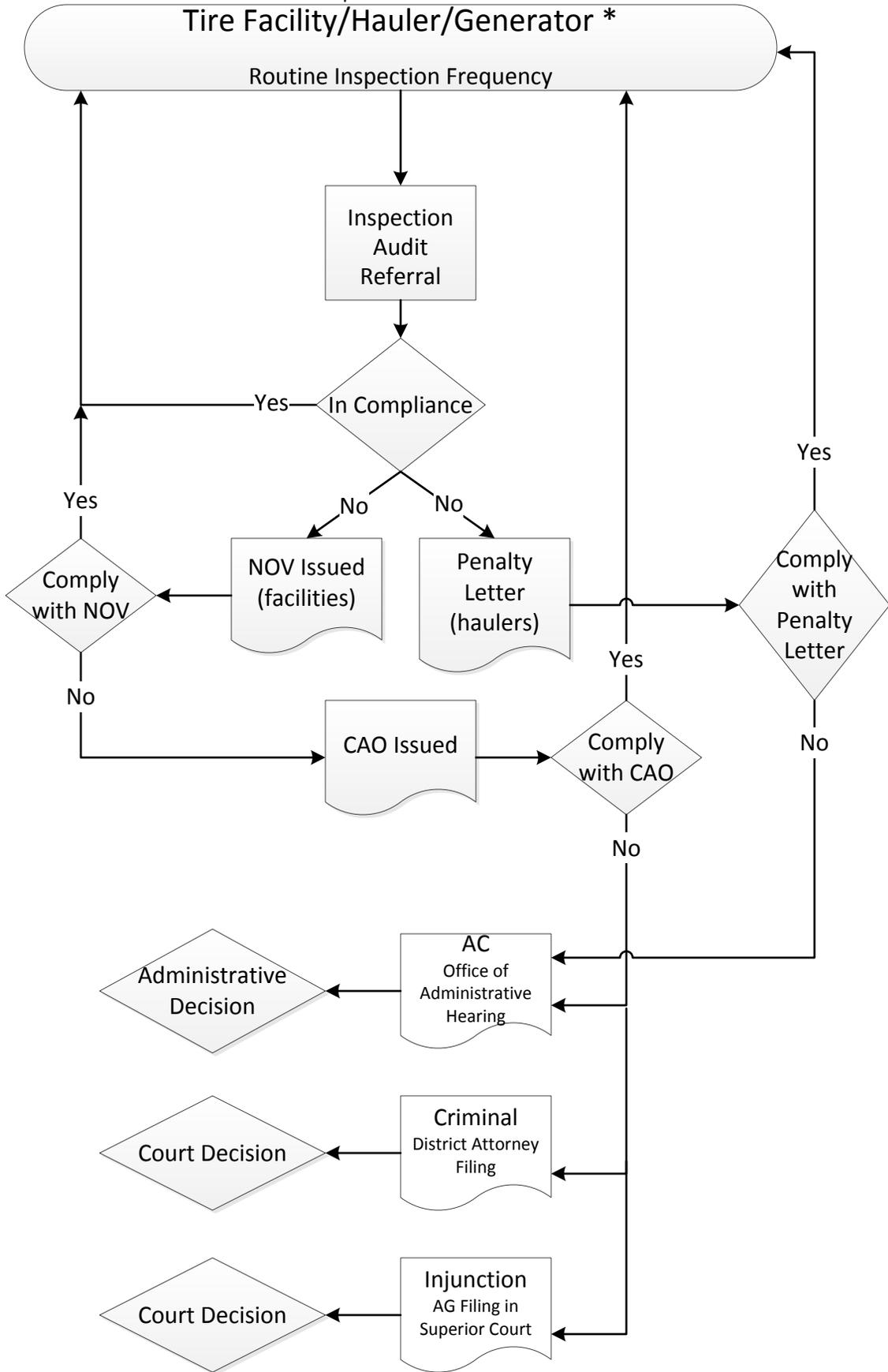
City Attorney

TH

TIRE ENFORCEMENT FLOW CHART

Text Description of Flow Chart

Tire Facility/Hauler/Generator *



*Standard Tire Enforcement Flow Chart- some enforcement actions may vary.
CAO=Cleanup & Abatement Order NOV=Notice Of Violation AC=Administrative Complaint

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY
AUTHORIZING THE COUNTY OF YUBA TO PERFORM WASTE TIRE
ENFORCEMENT ACTIVITIES ON BEHALF OF THE CITY OF YUBA CITY
AND SUBMIT A COLLABORATIVE APPLICATION FOR THE WASTE TIRE
ENFORCEMENT GRANT, FISCAL YEAR 2014-15**

WHEREAS, Public Resources Code sections 4000 et seq. authorize the Department of Resources Recycling and Recovery (CalRecycle) to administer various Grant Programs (Grant) in furtherance of the State of California's (State) efforts to reduce, recycle and reuse solid waste generated in the State, thereby preserving landfill capacity and protecting public health, health and safety and the environment; and

WHEREAS, funds are allocated and available from the CalRecycle for Grants to cities, counties, and cities and counties with regulatory authority within the city and county government to perform enforcement/compliance and surveillance activities of entities and/or individuals involved with the waste tire industry; and

WHEREAS CalRecycle has been delegated the responsibility for the administration of the Program within the State; and

WHEREAS, in furtherance of this authority CalRecycle is required to establish necessary procedures governing the application, awarding and management of the Grants; and

WHEREAS, procedures established by the State and CalRecycle require each Applicant's governing body to certify by resolution its approval of the submittal of Grant Application to CalRecycle; and

WHEREAS, the County of Yuba has agreed to perform waste tire activities on behalf of the City of Yuba City;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Yuba City hereby authorizes the County of Yuba to submit to the CalRecycle a Collaborative Application for the Waste Tire Enforcement Grant, Fiscal Year 2014-15 on its behalf.

BE IT FURTHER RESOLVED that the County of Yuba is hereby authorized and empowered to execute all Grant-related documents, including, but not limited to, Applications, Payment Requests, Agreements, and Amendments necessary to secure Grant funds and to implement and carry out the purposed specified in the Grant Application.

BE IT FURTHER RESOLVED that the County of Yuba is hereby authorized to conduct waste tire enforcement activities within the jurisdictional boundaries of the City of Yuba City during the term of Fiscal Year 2014-15 Local Government Waste Tire Enforcement Grant.

The foregoing Resolution was duly and regularly introduced, passed, and adopted by the City Council of the City of Yuba City at a regular meeting thereof held on the 4th day of November 2014.

AYES:

NOES:

ABSENT:

Kash Gill, Mayor

ATTEST:

Terrel Locke, City Clerk

CITY OF YUBA CITY
STAFF REPORT

Date: November 4, 2014
To: Honorable Mayor and Members of the City Council
From: Human Resources Department
Presentation By: Natalie Walter, Human Resources Director

Summary

Subject: Proposed City Hall Holiday Closure December 22, 2014 – December 26, 2014
Recommendation: Approve a Resolution authorizing the closure of City Hall and other select offices for the holiday period beginning Monday, December 22, 2014 through Friday, December 26, 2014
Fiscal Impact: Minimal savings due to building shutdown.

Purpose:

Approval of the closure of City Hall and other select offices for the holiday period beginning Monday, December 22, 2014 through Friday, December 26, 2014.

Background:

The holiday week starts on Monday, December 22, 2014 through Friday, December 26, 2014. This proposed period of time will be referred to as the “Holiday Closure” to minimize repeatedly listing the holiday dates throughout this staff report.

The observed Christmas holiday and the City Hall furlough schedule contribute to a shorten week for employees, see below table.

<i>Weekend</i>	← Work Week →					<i>Weekend</i>	
<i>Sunday Dec. 21</i>	Monday Dec. 22	Tuesday Dec. 23	Wednesday Dec. 24	<i>Thursday Dec. 25</i>	<i>Friday Dec. 26</i>	<i>Saturday Dec. 27</i>	<i>Sunday Dec. 28</i>
	Proposed Closure	Proposed Closure	Christmas Eve Floating Holiday (Proposed Closure)	<i>Christmas Day Holiday: City Hall Closed</i>	<i>Day Off (Furlough schedule): City Hall Closed</i>		

Normally City offices would be closed for two (2) of the above work days for the holiday and furlough schedule observances. The recommended action is to close City offices for the remaining three (3) work days which are shown in bold. For the three (3) additional Holiday Closure days, employees will use furlough bank, vacation, compensation time, or the floating holiday available for only December 24th.

Historically, the numbers of City Hall routine counter service requests or utility bill payments between Christmas and New Year’s Day are low. The 5% furlough leave bank program provides 104 hours

of leave time to employees (excluding the Fire Association and Fire Management) by the end of the Fiscal Year 14-15. This furlough time provides a good opportunity for employees to take extra time off before the end of the fiscal year while customer service demands are low.

The Holiday Closure would not impact emergency services. Also, if the City Manager were to declare an emergency (such as a flood) the Holiday Closure would be suspended and employees would be subject to emergency procedures.

Analysis:

With the tightened holiday schedule and the additional furlough leave bank time, the above described Holiday Closure would allow City employees to spend time with their families with little impact on the citizens.

The employees at City Hall who are part of the Public Employees' Union, Local 1, Confidentials, First Level Managers, Mid-Managers, and Executive Team, have agreed to close City Hall and other select offices during the Holiday Closure.

The Holiday Closure would be well advertised to the public to ensure advance and thorough notification. If approved, news releases would be sent out to the local newspapers, radio stations, and news stations. Notices of the closure would be posted at the facilities as well as on the City's website.

Fiscal Impact:

Minimal savings due to building shutdown.

Alternatives:

Do not close City Hall and other offices for the holiday period beginning Monday, December 22, 2014 through Friday, December 26, 2014.

Recommendation:

Approve a Resolution authorizing the closure of City Hall and other select offices for the holiday period beginning Monday, December 22, 2014 through Friday, December 26, 2014.

Attachments:

1. Holiday Closure Resolution
2. Holiday Closure Side Letter

Prepared By:

/s/ Natalie Walter
Natalie Walter
Human Resources Director

Submitted By:

/s/ Steve Kroeger
Steven C. Kroeger
City Manager

Reviewed By:

Human Resources
Finance
City Attorney

NW
RB
TH

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY APPROVING
THE HOLIDAY CLOSURE**

WHEREAS, the City recognizes the combination of holidays and furlough days has provided City Hall and other select buildings the opportunity to take time off over the below described holiday period with minimal impact to the public;

WHEREAS, City staff and the affected bargaining units have agreed to close City Hall from Monday, December 22, 2014 through Friday, December 26, 2014;

WHEREAS, the City Hall Holiday Closure has been successful and well received by the public since 2011;

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

Approve the attached Side Letter.

Authorize staff to make any necessary clarifying language changes to the language in the side letter as long as the changes do not modify the side letter's substantive terms or past practice.

The forgoing Resolution of the City Council of the City of Yuba City was duly introduced, passed and adopted at a regular meeting thereof held on the 4th day of November 2014.

AYES:

NOES:

ABSENT:

Kash Gill, Mayor

ATTEST:

Terrel Locke, City Clerk

**SIDE LETTER TO THE
PUBLIC EMPLOYEES UNION, LOCAL 1, MID-
MANAGERS, AND FIRST LEVEL MANAGERS**

**TO THE MEMORANDA OR LETTER OF
UNDERSTANDINGS**

FOR

CITY HALL HOLIDAY CLOSURE:

**DECEMBER 22, 2014 through
DECEMBER 26, 2014**

The purpose of this Side Letter Agreement is to provide for the closure of City Hall and other non-safety or critical City services for the holiday period from December 22, 2014 through December 26, 2014 (referred to as the "Holiday Closure"). Similar to previous years' City Hall Christmas-New Year's holiday schedule and closure, a combination of holidays and regular furlough days has provided us with an opportunity to take off time the Christmas holiday period with the use of limited leave time. The intent is to take advantage of this opportunity and serve a dual purpose of allowing employees this time off to spend with their families while providing for the use of furlough time in a manner that minimizes the inconvenience to Yuba City residents.

Representatives of the Public Employees Union, Local 1 (Local 1), First Level Managers (FLM), Mid-Managers (MM), and Confidential Employees and the City of Yuba City agree to the follow terms regarding the City Hall Holiday Closures:

A. Holiday Closure

This Agreement provides for the closure of City Hall (and other select offices) for the predetermined time period listed below. Some of these days contained within the holiday period are holidays defined by the City in accordance with the Personnel Rules and Regulations, Section 2.10, B.

i. Christmas Holiday Schedule

- Most employees are required to use at least 18.0 hours (utilizing Dec. 24th as a Floating Holiday) or 26 hours if the Floating Holiday is taken over New Year's Eve Holiday.

Weekend		Work Week					Weekend	
Sat. Dec. 20	Sun. Dec. 21	Mon. Dec. 22	Tues. Dec. 23	Wed. Dec. 24	Thurs. Dec. 25	Fri. Dec. 26	Sat. Dec. 27	Sun. Dec. 28
		Closure	Closure	Floating Holiday- Closure	Christmas Holiday- City Hall Closed	Day off (Furlough Schedule)- City Hall Closed		

ii. Other

- City Hall and other select offices (non-critical/non-safety service offices) are the only City buildings affected by the Holiday Closure. If other City departments or buildings would like to participate in the Holiday Closure, the department head is the point of contact.
- City Hall employees and other select office employees will not report to work during the designated Holiday Closure.
- The City may require or permit, at the discretion of the department head, certain employees to work a regular, partial or on-call schedule on one or more of the Holiday Closure days.

iii. Payroll

- Employees are required to account via payroll for the appropriate time associated with the Holiday Closure.

- The payroll accounting of the Holiday Closure will include use of furlough bank, vacation or compensation time. Payroll accounting for the Holiday Closure not specifically listed herein must be approved by the City Manager or designee.
- Employees required or permitted to work on a non-observed holiday (For example: December 22, 2014) of the Holiday Closure will be paid their regular salary for the hours worked, and will be required to account for all remaining Holiday Closure hours via furlough bank, vacation, or compensation time. All other time worked during the days designated as holidays by Section 2.10, B of the City's Personnel Rules and Regulations will be paid in accordance with Section 2.10, E of the Rules and Regulations.
- Employees without adequate leave accruals may borrow against future furlough accruals or go into an unpaid status only with the approval of the City Manager or designee.

iv. Miscellaneous

- The Holiday Closure shall not impact seniority, probationary periods or health or retirement benefits unless the employee is in an unpaid status.
- All subsections of Section 2.10, Holidays, of the Personnel Rules and Regulations remain in effect during the Holiday Closure. Note: In accordance with the Rules and Regulations, holidays are paid on an eight (8.0) hour basis and an eligible employee shall be entitled to holiday with pay only if the employee is in a paid status on the date immediately preceding or succeeding the holiday.
- Bargaining groups agree that policy decisions made by the City Council and discretionary decisions made by management related to this side letter and implementation of the Holiday Closure will not be subject to the City's Personnel Rules and Regulations, Section 3.09, Grievance Policy.
- If the City Manager declares an emergency (such as a flood) the Holiday Closure is suspended and all employees are subject to emergency procedures.

SIGNATURES CONTINUED ON NEXT PAGE

CITY OF YUBA CITY

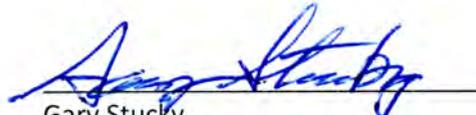
Steven C. Kroeger
City Manager

Natalie Walter
Human Resources Director

BARGAINING UNITS



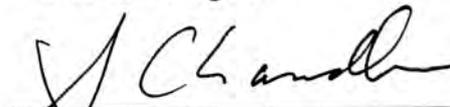
David Calonder
Local 1 President



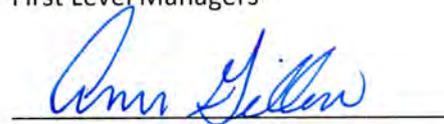
Gary Stucky
Local 1



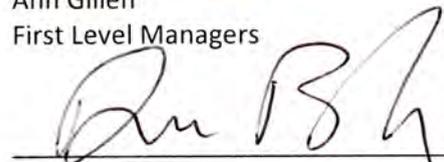
Brian Hansen
First Level Managers



Scott Chandler
First Level Managers



Ann Gillen
First Level Managers



Devin Barber
Mid-Managers

CITY OF YUBA CITY
STAFF REPORT

Date: November 4, 2014
To: Honorable Mayor & Members of the City Council
From: Public Works Department
Presentation by: Diana Langley, Public Works Director

Summary

Subject: Feather River Parkway Phase II – Addendum to the Revised Initial Study and Mitigated Negative Declaration

Recommendation: Adopt the Addendum to the Revised Initial Study and Mitigated Negative Declaration for the Feather River Parkway Phase II Project.

Fiscal Impact: There are mitigation measures associated with the Mitigated Negative Declaration. The cost to implement the mitigation measures is included in the total estimated project cost of \$1,849,000.

Purpose:

To adopt an addendum to the Revised Initial Study and Mitigated Negative Declaration for the Feather River Parkway Phase II Project to allow for the installation of a pre-fabricated concrete bathroom structure near the existing parking lot.

Background:

In 2002, the City completed the Feather River Parkway Strategic Plan in an effort to utilize approximately 172 acres of City property along the Feather River north of the Highway 20/10th Street Bridge.

In 2013, Phase 1 of the Feather River Parkway Project was completed. The project was constructed utilizing a \$1.4 Million grant from the State of California Natural Resources Agency's California River Parkways Grant program (Proposition 50) to improve approximately 80 acres through the construction of an access road, parking lot, walking and biking trails, picnic benches, a pavilion, interpretive signage, and an ADA accessible concrete river overlook.

In April 2013, the City Council accepted a \$1,743,000 grant through the "Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006", also known as Proposition 84, for Phase 2 of the Feather River Parkway Project.

The Phase 2 Project includes creation of 2.6 miles of new public trails, picnic areas, installation of a pavilion at the north end of the project, improved access to the pond located in the Phase 1 project area, interpretive signage, restoration of 2 acres of wetlands, and preservation of 10 acres of riparian woodlands (Exhibit 1).

On April 22, 2014, the City Council conducted a public hearing and adopted the Revised Initial Study and Mitigated Negative Declaration (ISMND) for the project. Since that time, the project has been expanded to incorporate the installation of a pre-fabricated concrete bathroom structure near the

existing parking lot. As this was not part of the previously adopted ISMND, an addendum is required.

Analysis:

A bathroom in the Feather River Parkway will provide convenience to patrons of the park, and will allow the park to be used for more community events such as organized run/walks. The bathroom will be locked during hours that the park is closed.

The proposed modification to install a pre-fabricated concrete bathroom is considered a minor change per California Environmental Quality Act (CEQA) guidelines. The addendum is incorporated in to the previously adopted ISMND and is attached to the staff report for reference.

Fiscal Impact:

The total estimated project cost is \$1,849,000, funded through \$1,743,000 in Proposition 84 grant funds and \$106,000 in Park Development Impact Fees.

Alternatives:

Do not pursue the installation of a bathroom in the Feather River Parkway.

Recommendation:

Adopt the Addendum to the Revised Initial Study and Mitigated Negative Declaration for the Feather River Parkway Phase II Project.

Prepared by:

/s/ Diana Langley

Diana Langley
Public Works Director

Submitted by:

/s/ Steve Kroeger

Steven C. Kroeger
City Manager

Reviewed by:

Finance

RB

City Attorney

TH



Legend

-  Raw Water Intake Project Mitigation Area
-  Existing Maintenance Access Road
-  New Bike Trail
-  New Pedestrian Path
-  Project Boundary
-  Roads/Trails
-  Bank Stabilization
-  Berm Removal
-  Picnic Areas
-  Pavillion

250 0 250 500
 Feet
 UTM NAD83 Zone 10
 1:6,000

**Figure 2: Project Site Map
 Feather River Parkway: Phase II**

EN2 Water and Energy Consulting Services
RESOURCES, INC.
 Author: Jeremy Waites Date: 7/24/2014



Install inlet/outlet protection

Bank Stabilization

Berm Removal

Low-dip crossing

New Overlook at Existing Concrete Standpipe

Optional ADA Accessible Trail

Pond and Outfall Bank Improvements

Legend

- Existing Maintenance Access Road
- New Bike Trail
- New Pedestrian Path
- - - Project Boundary
- Roads/Trails
- Optional ADA Trail
- Bank Stabilization
- Berm Removal
- New Overlook
- A Picnic Areas

250 0 250 500
Feet
UTM NAD83 Zone 10
1:5,000

**Exhibit 1 : Project Site Map
Feather River Parkway: Phase II**

EN2 Water and Energy Consulting Services
RESOURCES, INC.
Author: Jeremy Waites Date: 1/20/2014

CITY OF YUBA CITY
STAFF REPORT

Date: November 4, 2014
To: Honorable Mayor & Members of the City Council
From: Human Resources Department
Presentation By: Natalie Walter, Human Resources Director

Summary

Subject: First Level Managers' Letter of Understanding (LOU)

Recommendation: A) Adopt a Resolution approving a two year Letter of Understanding with the First Level Manager group
B) Approve a supplemental appropriation of \$32,600 to the FY 2014/2015 adopted budget

Fiscal Impact: An increase in cost of \$46,300 for FY 2014/2015 and \$64,200 for FY 2015/2016

Purpose:

To approve the First Level Managers' two year Letter of Understanding.

Background:

The City's employment agreement with the First Level Managers group expired on June 13, 2014. The previous agreement included a 10% furlough – a 5% percent furlough program began in Fiscal Year 2009/2010 and transitioned to a 10% furlough program in Fiscal Year 2011/2012. First Level Managers participated in the furlough program and received no wage adjustments in exchange for forgoing layoffs and employee reductions through Fiscal Year 2013/2014.

The City continues to face rising worker's compensation costs, increases in health care costs, and additional employee pension obligations due to restructuring of CalPERS policies which has continued the financial strain the City has been experiencing since Fiscal Year 2009/2010.

During the economic downturn, Yuba City implemented a furlough program while many other cities had employees contribute to their pensions to balance budgets. It is now recognized that restoration of service levels is important and that it is time for Yuba City to consider the now common business practice of other cities of having employees contribute toward their pensions.

Analysis:

The First Level Managers have agreed to a two year Letter of Understanding that:

1. Transitions out their furlough program by providing for a reduction to a 5% furlough in FY 14/15 and elimination of the furlough in FY 15/16.
2. Transitions in employee contributions toward CalPERS retirement benefits by providing for a 4%/3.5% of salary contribution in FY14/15 and an additional

4%/3.5% of salary contribution in FY 15/16. (resulting in an 8% or 7% contribution for miscellaneous employees based on their retirement formula)

3. Includes two (2) additional floating holidays.
4. Includes a one-time, non-PERSable distribution of \$1,000.
5. Employees will transition from paying 20% of the medical premium increase to paying 20% of the total medical premium of the lowest cost Blue Shield plan.

The complete Letter of Understanding is attached.

Fiscal Impact:

The proposed changes will result in a net increase in cost of \$46,300 for FY 2014/2015 and \$64,200 for FY 2015/2016 (breakdown of costs provided in Attachment 1).

Other year 2 costs include potential increases in the cost of health insurance and increases in CalPERS contributions per the City's actuarial report for FY 2015/2016.

The FY 2014/2015 budget adopted by the City Council on June 3, 2014 included the existing 10% furlough and the City paying 100% of the First Level Manager's share of CalPERS contributions. To effect the proposed changes, a supplemental appropriation of \$32,600 is requested as part of City Council's approval of this Letter of Understanding.

Alternatives:

Do not approve First Level Manager Letter of Understanding and provide staff direction.

Recommendation:

Adopt a Resolution approving a two year Letter of Understanding with the First Level Manager group, and approve a supplemental appropriation of \$32,600 to the FY 2014/2015 adopted budget.

Attachments:

1. Cost impact of First Level Manager Agreement Terms
2. First Level Manager LOU Resolution
3. First Level Manager LOU

Prepared By:

/s/ Natalie Walter

Natalie Walter
Human Resources Director

Submitted By:

/s/ Steve Kroeger

Steven C. Kroeger
City Manager

Reviewed By:

Finance

RB

City Attorney

TH

FLM Proposal Comparison - 2 Years (Final)

	City Proposal	FLM Proposal	Difference
FY 14/15 - Year 1			
Cost of 5% Furlough Restored	\$85,717	\$85,717	\$0
Savings from EEs Paying PERS 4% - 1st Year	(\$48,101)	(\$48,101)	\$0
One Time non-PERSable Distribution of \$1,000 per Employee	\$19,000	\$19,000	\$0
80/20 Hard vs Increase only	(\$10,325)	(\$10,325)	\$0
Year 1 Total Cost	\$46,291	\$46,291	\$0
FY 15/16 - Year 2			
Cost of 5% Furlough Restored	\$85,717	\$85,717	\$0
Savings from EEs Paying PERS 4% - 1st Year	(\$48,101)	(\$48,101)	\$0
Cost of 5% Furlough Restored	\$90,224	\$90,224	\$0
Savings from EEs Paying PERS 4% - 2nd Year	(\$53,282)	(\$53,282)	\$0
80/20 Hard vs Increase only	(\$10,325)	(\$10,325)	\$0
Year 2 Total Cost	\$64,233	\$64,233	\$0
Grand Total Cost Impact - 2 Year Total	\$110,524	\$110,524	\$0

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY
APPROVING THE FIRST LEVEL MANAGERS' LETTER OF
UNDERSTANDING**

WHEREAS, the City recognizes the First Level Managers commitment to the City and its citizens while providing outstanding and dedicated service to all;

WHEREAS, City staff and the First Level Managers have negotiated a two year Memorandum of Understanding;

WHEREAS, the City appreciates the efforts and energy the First Level Managers have put forth to negotiate this Letter of Understanding;

WHEREAS, the First Level Managers have agreed to cost share towards the CalPERS employer share in exchange for the elimination of the City furlough program while agreeing to other concessions, two floating holidays, and a one-time distribution;

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

Approve the attached First Level Managers Letter of Understanding.

Authorize staff to make any necessary clarifying language changes to the language in the FLM Letter of Understanding as long as the changes do not modify the LOU's substantive terms or past practice.

The Director of Finance is hereby authorized to make the necessary budget adjustments to implement the provisions of this resolution.

The forgoing resolution of the City Council of the City of Yuba City was duly introduced, passed and adopted at a regular meeting thereof held on the 4th day of November 2014.

AYES:

NOES:

ABSENT:

Kash Gill, Mayor

ATTEST:

Terrel Locke, City Clerk

LETTER OF UNDERSTANDING

Between

The City of Yuba City

And

The First Level Managers

July 1, 2014 through June 30, 2016

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ARTICLE 1 SALARY

1.1 Salary Increases

There shall be no salary increases for the term of agreement.

1.2 Bilingual Pay

First Level Managers who are proficient in speaking a foreign language shall receive an additional \$40.00 per pay period. The second language must be one commonly spoken in the greater Yuba City area and thus of benefit to the City in providing services to the community residents. The method of certifying proficiency and the determination of which language will be covered under this program shall be determined by the City in consultation with First Level Managers.

ARTICLE 2 PUBLIC EMPLOYEES' RETIREMENT SYSTEM

2.1 Retirement Terminology

Retirement benefits shall be provided to eligible employees in accordance with the appropriate, then existing, contract between the City and the California Public Employees' Retirement System (CalPERS).

The use of terms "classic member" and "new member" shall be as defined by CalPERS and the Public Employee Pension Reform Act of 2013 (PEPRA).

A new CalPERS member is defined as:

- An individual who becomes a member of any public retirement system for the first time on or after January 1, 2013, and has no prior membership in any other public retirement system; or
- An individual who becomes a member of any public retirement system for the first time on or after January 1, 2013, and is not eligible for reciprocity with another public retirement system; or
- An individual who established prior membership in a retirement system and after a break in service of more than six months, returns to active membership in that system with a new employer.

2.2 Classic Member Retirement Formula

A. Employees classified as classic member miscellaneous category:

- The 2.7% at 55 (8% member contribution) CalPERS formula shall be provided for classic member miscellaneous category employees hired on or before June 30, 2012. Effective July 1, 2012, 2% at 55 formula (7% member contribution) was provided for new classic member miscellaneous employees hired on or after July 1, 2012.

- B. All other current retirement benefits including the optional benefit programs in the existing contract between the City and CalPERS for miscellaneous shall remain in effect to the extent permitted by law.

2.3 “New Member” Retirement Formulas Provided by Statute

- A. Employees classified as new member miscellaneous category employees.
 - 2% at 62 retirement formula.

2.4 CalPERS Contributions by Employees

- A. Employees classified as classic miscellaneous:
 - Effective with the CalPERS contract amendment for 2014, all classic miscellaneous employees shall cost share 4% (or 3.5% for those classic members at the 2% at 55 retirement formula) towards the employer contribution rate. (Example: the intent is that if the City’s required employer contribution is 23%, the City would pay 19% and the employees would pay 4%.)
 - Effective July 1, 2015 or as soon as CalPERS approves the contract amendment, whichever occurs later, all classic miscellaneous employees shall cost share 8% (or 7% for those classic members at the 2% at 55 retirement formula) towards the employer contribution rate.
- B. New CalPERS member shall contribute towards their retirement benefits in accordance with PEPRA.
- C. All applicable contributions identified in (A) thru (B) above shall be made through payroll deduction on a pre-tax basis.

2.5 City’s Paying and Reporting the Value of the Member Contribution (Classic Only)

The City shall pay 100% of the employee's contribution to CalPERS and continue to report 100% of the employer payment of member contributions to CalPERS as additional compensation for retirement purposes only.

ARTICLE 3 FURLOUGHS

3.1 First Furlough Program

Effective in the first full pay period following the CalPERS contract amendment for cost sharing of 4% or 3.5% (miscellaneous, percentage dependent on retirement formula) of the employer contribution rate, the first furlough program (of every other Fridays off along with the extended work schedule utilized at City Hall) shall cease. Bargaining unit employees will return to a full time, 40-hour work week with their schedules assigned by their respective departments.

3.2 Second Furlough Program

- A. Effective in the first full pay period the CalPERS contract amendment for cost sharing of 8% or 7% (miscellaneous, percentage dependent on retirement formula) of the employer contribution rate, the second furlough program of banked furlough time shall cease.
- B. If the CalPERS full cost sharing amendment (7% or 8% for Miscellaneous) is not in place by July 1, 2015, furlough bank time will accumulate per pay period in 4 hour increments while the employees continue to pay for their furlough bank time in 4 hour increments. The pay period that the CalPERS contract amendment is established, the furlough bank time will cease to accumulate and the employee will no longer need to record "payment" for the furlough bank time on their time card. All accumulated furlough bank time shall be utilized by the end of the Fiscal Year 15/16.

ARTICLE 4 FLOATING HOLIDAYS

Effective with the LOU approval, two (2) floating holidays per fiscal year shall be provided which must be used during the fiscal year. These two floating holidays have no cash value and may not be carried over to a subsequent fiscal year. If any employee in this unit does not use either of both of these floating holidays during the fiscal year when the holidays are provided, the employee forfeits the unused floating holiday(s). Scheduling/approval of use of the floating holidays must be in accordance with the requirements of Rule 2.08 in the Personnel/Rules and Regulations.

ARTICLE 5 BENEFITS

5.1 Health Plans

A. Employee Contributions:

Employee contributions are on a pre-tax basis.

B. Health Care Premium Cost:

Effective with the November 15, 2014 pay period, the split is 80%/20% between the City and the employee, with the City paying 80% of the total premium cost and the employee paying 20%. The contribution shall be based on the lowest cost health plan available to the majority of City employees.

C. Cash-in-lieu Payment:

Cash-in-Lieu payments are when an employee reduces the level of health care coverage rather than entire coverage shall be as follows:

- Employees, who reduce the level of health care coverage to which they are entitled, i.e. from full family coverage to employee plus one, or employee only coverage, or from employee plus one to employee only coverage, shall be entitled to a Cash-in-Lieu benefit. The Cash-in-Lieu benefit is based upon the lowest cost health plan available to the majority of City Employees.

The employee making the election covered above, shall receive the difference between the Cash-in-Lieu benefit to which they would have been entitled had they waived coverage at their present coverage level and Cash-in-Lieu benefit for the lower level elected.

- The Cash-in-Lieu of medical insurance bonus for employees electing to forego health insurance coverage will be based on the below percentages of the current lowest cost health plan available to the majority of City employees:

Employee only:	25%
Employee plus one dependent:	25%
Family coverage:	30%

5.2 Dental and Vision Plans

The City shall pay 90% of the premium and employees shall pay 10% of the premium. Premiums will be based on periodic actuarial conducted by an outside consultant.

A. Claims Administrator

The City may change the Dental and Vision Plan claims administrator at any time.

5.3 Life Insurance

Life insurance benefit amount of twenty-five thousand dollars (\$25,000) shall be maintained for First Level Managers.

5.4 EAP – Employee Assistance Program

An EAP shall be provided to City employees, spouses and dependents. There shall be up to 3 sessions per 6 month period for a total of 6 sessions per year.

5.5 Health Benefits Committee

The First Level Managers shall designate one (1) representative to the committee. The general purpose of the committee is to address benefit plan design and cost containment. The committee consists of members from each employee association and serves in an advisory capacity to management.

5.6 Short Term Disability

- A. **Waiting Period:** A 30-calendar day waiting period must pass before benefits are payable.
- B. **Premium:** The City shall set the Short Term Disability rates based on outside actuarial; no premium cap shall exist. The City agrees to discuss any changes to the premium with the First Level Manager representative prior to taking action.
- C. **Benefit:** The benefit shall be equal to 60% of earning at time of the disabling event; no dollar cap on the benefit shall exist.

ARTICLE 6 DEFERRED COMPENSATION

First Level Managers shall receive a monthly City contribution of \$50 paid into the City of Yuba City deferred compensation plan.

ARTICLE 7 CERTIFICATIONS

The City shall pay the costs associated with obtaining and maintaining special certificates or licenses that are required by the State of California, the City of Yuba City or any governmental agency to obtain and maintain as a condition of employment. (Note: if the certificate or license is required prior to employment, the City will only reimburse post-hire expenses.)

ARTICLE 8 DEPT. OF TRANSPORTATION COMMERCIAL DRIVERS TESTING

It is mutually agreed that the Addendum to Alcohol and Drug Abuse Policy implementing the Omnibus Transportation Employee Testing Act of 1991 (Exhibit A) shall remain in effect.

ARTICLE 9 COMMERCIAL DRIVERS LICENSE EXAMINATION

Physical examinations for First Level Managers who are required to maintain a Class A or B California driver's license as a job requirement shall have the expense paid by the City. Employees may elect to go to their own personal physician or to the medical center designated by the City. Employees electing to go to their own personal physician shall be reimbursed upon submission of an itemized receipt to the Human Resources Department. The maximum amount eligible for reimbursement is the amount the City has contracted for with the designated medical center.

ARTICLE 10 VACATION LEAVE

10.1 Accrual Rate

First Level Managers shall accrue vacation leave at the rate stated in the Yuba City Rules and Regulations for all miscellaneous category employees.

10.2 Returning Former Employees

At the City Manager's discretion, First Level Management personnel who are returning, or who have returned, to City employment may be allowed to accrue vacation leave based upon the total years of service to the City or as otherwise agreed upon, under the following guidelines:

- a. They must have worked for the City at least five years previously;
- b. They must be hired into a First Level Management position upon return;
- c. The department head must make a written request to the City Manager and the City Manager must provide written instructions to Human Resources to take this action.

ARTICLE 11 CATASTROPHIC ILLNESS AND INJURY LEAVE DONATION PROGRAM

The Catastrophic Illness and Injury Leave Donation Program shall remain in effect.

ARTICLE 12 ADMINISTRATION LEAVE

12.1 Exempt Classification

Those First Level Managers, whose job classification is declared exempt from overtime under the FLSA guideline, shall receive 80 hours administrative leave with the first payroll period of each calendar year in lieu of compensatory time and overtime. Employees may use the leave subject to the approval of their department head, except that leave cannot be used prior to separation of employment in order to delay the separation date. New hires shall receive a pro-rated amount of administrative leave for their first year based upon the month of hire.

12.2 Maximum Cash Out

At the end of each calendar year, employees may cash out maximum of 40 hours to be paid in the first pay period of the succeeding calendar year, and/or (2) may carry over their unused balance up to 40 hours. Any additional employee requests are subject to approval of the department head or designated representative.

12.3 Maximum Carry Over

Employees shall be allowed to carry over unused administrative leave to the next calendar year, subject to a maximum carryover balance of 80 hours.

12.4 Additional Allotment

At the discretion of the City Manager, an additional allotment of administrative leave not to exceed 40 hours per year may be approved. Requests for additional leave allocation must be based on an excessive number of hours worked beyond normal management expectations during the calendar year to date of the request. Requests for additional leave must be resubmitted by the department head to the City Manager each year, if needed.

12.5 Separation of Employment

In the event of separation of employment, employees will be paid for unused administrative leave up to the maximum balance allowed Section 12.3 above.

ARTICLE 13 COMPENSATORY TIME

13.1 Maximum Accumulation

Compensatory time for non-exempt First Level Managers may be accumulated to a maximum of eighty (80) hours.

13.2 Maximum Cash Out

Upon written request, First Level Managers shall be paid for up to 40 hours, per fiscal year, of recorded compensatory time. Payment will be at the earliest payroll period. The City, at its option, may pay out up to 40 accrued hours of compensatory time at the end of any fiscal year. Any additional employee requests are subject to the approval of the department head or designated representative.

ARTICLE 14 ONE-TIME NON-PERSABLE STIPEND

In the first full pay period following City Council ratification of this Agreement, all members active on payroll on the day of City Council ratification shall receive a one-time, non-PERSable stipend of \$1,000 and shall be in a separate check from the regularly reoccurring payroll check.

This one-time stipend is not intended to be, and does not meet the definition of, special compensation outlined in the California Code of Regulations § 571(a) and therefore is not reportable compensation to CalPERS. It is, however, subject to applicable payroll taxes and withholdings.

ARTICLE 15 COUNSELING MEMORANDUM

The attached policy on Counseling Memos (Exhibit C) shall remain in effect.

ARTICLE 16 WATER CERTIFICATE PAY, CALLBACK AND STAND BY

16.1 Water Certificate Pay

The City's water distributions system is classified as a D4 system. Due to this D4 system classification, the Chief Operator is required to have a minimum of a D4 certificate and shift operators are required to have a minimum of a D3 certificate. To meet the intent of this drinking water regulation, the City must have employees working in water distribution who possess water distribution certifications. Water Distribution Certificate pay is for employees who work with or have the potential to work with the City's water system and possess D-1 through D-4 certification.

For this section, FLMs who are assigned to work in water distribution are referred to as "Water employees". FLMs who are not assigned to the area of water distribution are referred to as "Non-Water employees".

The chart is how water distribution certificate pay is applied to Water and Non-Water FLMs. Total amount of certification pay cannot under any circumstances exceed 10% of the employees' salary (this includes bilingual pay).

Water Distribution (i.e. Maintenance Supervisor-Water/Sewer)	Non-Water (i.e. Maintenance Supervisor-Streets): If multiple certification, only receive \$50 per month (cap).
\$50 per month (D-1)	\$50 per month (D-1)
2.5% of salary per month (D-2)	\$50 per month (non-cumulative) (D-2)
2.5% of salary per month (cumulative =	\$50 per month (non-cumulative) (D-3)

5%) (D-3)	
2.5% of salary per month (cumulative = 7.5%) (D-4)	N/A

Water Treatment Plant FLMs shall receive certificate pay for treatment (T-1 through T-4) or distribution (D1 through D-4) certification. The distribution and treatment certificates are not paid on an individual basis; whichever certification is higher is the certificate that will determine the level of pay. Total amount of certification pay cannot under any circumstances exceed 10% of the employees' salary (this includes bilingual pay).

Water Treatment Plant FLMs: receive certificate pay for T-1 through T-4 or D-1 through D-4, whichever is higher.
\$50 per month (D-1 or T-1)
2.5% of salary per month (D-2 or T-2)
2.5% of salary per month (cumulative = 5%) (D-3 or T-3)
2.5% of salary per month (cumulative = 7.5%) (D-4 or T-4)

16.2 Callback and Stand-by Time

This section addresses the Public Works First Level Supervisor assigned to supervise the Water Distribution staff on stand-by for after hours and weekend/holidays for a seven day period.

- A. There are two types of stand-by time: General and Water Distribution. The General stand-by employee is responsible for any after hour's calls except for Water Distribution related calls. The Water Distribution First Level Supervisor stand-by employee is the designated Chief Operator for the water system and must respond to water distribution calls while on stand-by duty.
- B. Stand-by pay shall be \$2.45 per hour for all hours occurring between the end of the shift and the beginning of the next regular shift. A rotation stand-by list will be created and posted in January each year. Only the First Level Supervisor assigned to Water Distribution will be eligible for stand-by pay on an "as needed basis". On an "as needed basis" is dependent upon the number of qualified D-3 or D-4 certified maintenance workers in the stand-by rotation. If needed, the Water Distribution First Level Supervisor must work on stand-by for water calls until it is determined that sufficient maintenance workers staffing levels exist to respond to water stand-by calls.
- C. The Water Distribution First Level Supervisor is allowed to trade stand-by weeks or individual days to stand-by eligible maintenance workers with written notice to their supervisor for approval at least two (2) days in advance of their scheduled stand-by week. The Water Distribution First Level Supervisor is provided a designated take home vehicle for the purpose of responding to call-outs. Take home vehicles will not be driven for any purpose other than driving to and from service calls and traveling to and from work. Employees required to use their personal vehicle while on stand-by shall receive the current IRS mileage rate for personal vehicle mileage while responding to callouts. Personal vehicle usage must have pre-approval of insurance coverage in accordance with the City's policy. When the Water Distribution First Level Supervisor is called back to work he shall receive a minimum two (2) hours at time and one-half the employee's regular rate of pay. Multiple call-outs within a two (2) hour minimum period are not separately compensable. If continuous

work hours exceed the two (2) hour minimum, the actual time worked is paid at time and one-half the employees' regular pay. The stand-by pay is from portal to portal or when call is received from dispatch until the employee has returned to their residence.

16.3 Personnel Eligibility for Water Distribution Stand-by

- A. The First Level Supervisor for Water Distribution stand by shall have a valid California Water Distribution D-4 or higher certification.
- B. The Water Distribution First Level Supervisor must have a minimum of a Class A California Driver's License.
- C. The Water Distribution First Level Supervisor must be within 45 minutes response time using an internet mapping site.
- D. The Water Distribution First Level Supervisor while on stand-by must remain physically able to respond within 45 minutes to the incident and refrain from the use of alcohol, medications or substances that may interfere with their ability to effectively respond to any call for service.

16.4 Assignment Period

A typical stand-by period shall be one week beginning on Thursday at conclusion of the workday and continuing to the following Thursday at conclusion of the workday.

16.5 Assignment Limits

The First Level Supervisor assigned to water distribution will be limited to two weeks stand-by at a time (in a row), however the First Level Supervisor may be required to work more than two weeks in a row should extenuating circumstances occur. In the event the Water Distribution on-call covers both General and Water Distribution shifts for on-call they will not collect any additional pay.

16.6 Exceptions

- A. The First Level Supervisor is responsible for finding qualified substitutes when necessary due to illness or a family emergency. When a substitute is found the stand-by employee must notify a supervisor and police dispatch.
- B. Stand-by is typically filled by a voluntary basis. In the event no employees volunteer to cover stand-by, the Department Director or designee will choose from the qualified personnel listing. The stand-by employee substituting for the First Level Supervisor is required to have a Water Distribution D-3 or D-4 Certification.

ARTICLE 17 INTEREST BASED PROBLEM SOLVING

17.1 Philosophy

The employees and the City utilized the Interest Based Problem Solving Process philosophy to negotiate this contract. This contract represents the results of open, honest sharing of information and concerns related to issues for the employees and the City. Based on the philosophy of using this process, the employees and the City agree and understand that this is a living contract and agree to meet and discuss any items within this agreement that become of concern to either party during the course of this agreement.

17.2 Modifications

This Agreement constitutes the full Agreement between the City of Yuba City and the First Level Management Employees Association and may not be modified without the mutual consent of both parties.

ARTICLE 18 TERM OF AGREEMENT

The term of this agreement shall be July 1, 2014 through June 30, 2016.

Date:

Date:

CITY OF YUBA CITY

FIRST LEVEL MANAGERS

Steven C. Kroeger, City Manager

Brian Hansen, IT Analyst



Robin Bertagna, Finance Director

Scott Chandler, IT Supervisor



Natalie Walter, HR Director

Ann Gillen, Recreation Supervisor

THE CITY OF YUBA CITY

Addendum to Alcohol and Drug Abuse Policy Implementing the Omnibus Transportation Employee Testing Act of 1991

The purpose of this policy is to assure worker fitness for duty and to protect our employees and the public from risks posed by the use of alcohol and controlled substances. This policy is also intended to comply with all applicable Federal regulations governing workplace anti-drug programs in the transportation industry. The Federal Highway Administration (FHWA) of the Department of Transportation has enacted 49 CFR Part 382 that mandates urine drug testing and breathalyzer alcohol testing for safety-sensitive positions and prevents performance of safety-sensitive functions when there is a positive test result. The Department of Transportation has also enacted 49 CFR Part 40 that sets standards for the collection and testing of urine breath specimens. In addition, the Department of Transportation has enacted 49 CFR Part 29, "The Drug-Free Workplace Act of 1988," which requires the establishment of drug free workplace policies and the reporting of certain drug-related offenses to the Department of Transportation. The policy incorporates those requirements of safety-sensitive employees and others when so noted.

THE CITY OF YUBA CITY recognizes that the use of alcohol and/or controlled substances in the workplace is not conducive to safe working conditions. In order to promote a safe, healthy and productive work environment for all employees, it is the objective if the City to have a work force that is free from the influence of alcohol and controlled substances.

A. Applicability

This policy applies to all safety-sensitive employees, volunteers, and contractors when they are on City property or when performing any City related business. It applies to off-site lunch periods and breaks when a safety-sensitive employee is scheduled to return to work. Visitors, vendors, and contracted employees are governed by this policy while on City premises, and they will not be permitted to conduct business if found to be in violation of this policy.

A safety-sensitive position is defined as any position requiring the use of a Class "A" or Class "B" commercial driver license. Fire safety employees will be subject to the policy in accordance with State and Federal laws. A safety-sensitive employee is considered to be performing a safety-sensitive function during any period in which that employee is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

This policy addendum coexists with the current Alcohol and Drug Abuse Policy except where it is intended by Federal regulations to super ceded the policy, as specified herein.

B. PROHIBITED SUBSTANCES

"Prohibited substances" addressed by this policy including the following:

Drugs:

Marijuana, amphetamines, opiates, phencyclidine (PCP) and cocaine.

Alcohol:

This use of beverages or substances, including any medication, containing alcohol such that it is present in the body at a level in excess of that stated in Department of Transportation guidelines while actually performing, ready to perform, or immediately available to perform any City business is prohibited. "Alcohol" is defined as: the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol, including methyl or isopropyl alcohol.

C. PROHIBITED CONDUCT**Manufacture. Trafficking. Possession. And Use**

Any safety-sensitive employee engaging in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance or alcohol on City premises, in City vehicles or while conducting City business off the premises is absolutely prohibited. Violation will result in removal from safety-sensitive duty and referral to a Substance Abuse Professional (SAP).

Impaired/Not Fit for Duty

Any safety-sensitive employee who is reasonably suspected of being impaired, under the influence of a prohibited substance, or not fit for duty shall be removed from safety-sensitive job duties and be required to undergo a reasonable suspicion controlled substance or alcohol test. Employees failing to pass this reasonable suspicion controlled substance or alcohol test shall remain off duty and be referred to a Substance Abuse Professional (SAP). A controlled substance or alcohol test is considered positive (failed) if the individual is found to have a quantifiable presence of a prohibited substance in the body above the minimum thresholds defined in the Department of Transportation guidelines.

Alcohol Use

No safety-sensitive employee may report for duty or remain on duty when his/her ability to perform assigned functions is adversely affected by alcohol or when his/her breath alcohol concentration is 0.04 or greater. No safety-sensitive employee shall use alcohol while on duty or while performing safety-sensitive functions. No safety-sensitive employee shall use alcohol within four hours of reporting for duty nor during hours that he/she is on call. Violation of this provision is prohibited and will subject the employee to removal from safety-sensitive duty and referral to a Substance Abuse Professional (SAP).

Compliance with Testing Requirements

All safety-sensitive employees are subject to controlled substance testing and breath alcohol testing. Any safety-sensitive employee who refuses to comply with a request for testing, who provides false information in connection with a test or who attempts to falsify test results through tampering, contamination, adulteration, or substitution shall be considered as having a positive test result and shall be removed from duty immediately and referred to a Substance Abuse Professional (SAP). Refusal to submit to a test can include an inability to provide a urine specimen or breath sample without a valid medical explanation, as well as a verbal declaration, obstructive behavior or physical absence resulting in the inability to conduct the test. Employees who refuse the referral to the SAP shall be subject to immediate termination from their position.

Treatment/Rehabilitation Program

An employee with a controlled substance and/or alcohol problem may be afforded an opportunity for treatment in accordance with the following provisions:

Positive Controlled Substance and/or Alcohol Test: A Rehabilitation Program is available for safety-sensitive employees who have tested positive for a prohibited substance on a one-time basis only. Employees will be immediately terminated on the occurrence of a second verified positive test result within 36 months and may be terminated or offered additional rehabilitation at the City's sole discretion after 36 months. The City will immediately serve a Notice of Intended Disciplinary Action in accordance with the personnel rules. The safety-sensitive employee will pay referral to the Substance Abuse Professional (SAP) and any other recovery treatment costs. In regards to probationary employees, the City reserves sole discretion in offering a one-time opportunity for rehabilitation in lieu of immediate termination. When recommended by the Substance Abuse Professional (SAP), participation and completion of rehabilitation program within the prescribed time allowed is mandatory. Failure of a safety-

sensitive employee to attend and/or complete a prescribed program will result in termination from employment. Prior to return-to-duty testing, an employee must follow the rehabilitation program recommended by the SAP and agree to sign a Return-to Duty Agreement. Employees may use their accrued leave balances of CTO and vacation or be placed on an approved leave of absence. The Notice of Discipline documents shall specify the employee's leave status when discipline is imposed. The duration and frequency of follow-up testing will be determined by the SAP but will not be shorter than one year or longer than five years. The employee shall pay all costs associated with follow-up testing unless the City receives such services included from the program administrator Fremont-Rideout Drug Testing Services.

Voluntary Admittance: All employees who feel they have a problem with controlled substances and/or alcohol may request voluntary admission to the rehabilitation program. Requests must be submitted through the Department Head to the Director of Human Resources for review. **The safety-sensitive employee will pay rehabilitation plan development costs and any other treatment plan costs.** The City shall have sole discretion in determining any financial contribution to assist the employee. An employee failing to complete the program within the prescribed time allowed will be subject to termination from employment. An employee completing a rehabilitation program must agree to sign a Return-To-Duty Agreement, pass a return-to-duty controlled substance and/or alcohol test and be subject to unannounced follow-up testing for 36 months following return to duty. A positive result on the return-to-duty test or on the unannounced follow-up tests within a 36-month period will result in termination from employment. A positive follow-up test after 36 months may result in termination or additional rehabilitation at the City's sole discretion.

Leave Balance: Participants in a rehabilitation program may use accumulated sick leave, (provided a substance abuse professional has attested in writing for the need to use a sick leave) vacation, and CTO leave balances. Time spent in a rehabilitation program shall be counted as utilized leave time under the Federal and State Family Care Leave Act if it qualifies as a "serious health condition" under the law. Once leave balances have been exhausted, an employee will be placed on an approved leave without pay in accordance with Personnel Rule 2.11(B).

D. NOTIFYING THE CITY OF CRIMINAL DRUG CONVICTION

Pursuant to the "Drug Free Workplace Act of 1988" any employee who fails to immediately notify the City of any criminal controlled substance statute conviction shall be subject to disciplinary action, up to and including termination of employment.

E. PROPER APPLICATION OF THE POLICY

The City is dedicated to assuring fair and equitable application of the Substance Abuse Policy. Therefore, supervisors are required to administer all aspects of the policy in an unbiased and impartial manner. Any supervisor who knowingly disregards the requirements of this policy, or who

is found to deliberately misuse the policy with respect to his/her subordinates shall be subject to disciplinary action, up to and including termination.

F. TESTING FOR PROHIBITED SUBSTANCES

Analytical urine controlled substance testing and breath testing for alcohol will be conducted as required under the Department of Transportation guidelines. All safety-sensitive employees shall be subject to testing prior to employment, randomly, for reasonable suspicion, and following an accident, as defined in the Department of Transportation guidelines. In addition, all safety-sensitive employees will be tested prior to duty after failing a controlled substance and/or alcohol test. Employees who have returned to duty will be subject to unannounced follow-up tests for up to five years, as determined by a Substance Abuse Professional (SAP). Safety-sensitive employees who perform safety-sensitive functions as defined in the Department of Transportation guidelines shall also be subject to testing on a randomly selected, unannounced basis.

Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities, which have been approved by the United States Department

of Health and Human Services (DHHS). All testing will be conducted consistent with the procedures put forth in the Department of Transportation guidelines. Testing may be conducted by a mobile unit, which meets the requirements of DHHS.

The controlled substances that will be tested for include marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP). An initial controlled substance screen will be conducted on each specimen. For those specimens that are positive, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the controlled substances levels present are above the minimum thresholds established in the Department of Transportation guidelines.

Tests for alcohol concentration will be conducted utilizing an approved Evidential Breath Testing device (EBT) operated by a trained Breath Alcohol Technician (BAT). If the initial test indicated an alcohol concentration of 0.02 or greater, a confirmation test will be performed to confirm the result of the initial test. An employee who has a confirmed alcohol concentration of 0.02 but less than 0.04 will be removed from his/her position for at least twenty-four hours unless a re-test results in an alcohol concentration 0.02 or less. An alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of Department of Transportation guidelines and this policy.

Any safety-sensitive employee who has a pending or confirmed positive controlled substance or alcohol test will be removed from safety sensitive duties and/or his/her position, placed on unpaid leave, vacation, or CTO (at the employee's discretion) informed of educational and rehabilitation program available, and evaluated by a Substance Abuse Professional (SAP). Transfer of an employee to a non-safety sensitive position will be made at the sole discretion of the City.

The City affirms the need to protect individual dignity, privacy, and confidentiality throughout the testing process.

Employees in Safety-sensitive positions may be tested under any of the following circumstances:

All Applicants for safety-sensitive classifications shall undergo urine controlled substance testing prior to employment. Receipt of satisfactory test results is required prior to employment and failure of a controlled substance test will disqualify the applicant from further consideration for employment.

Reasonable Suspicion Testing

All safety-sensitive employees will be subject to urine and/or breath testing when there is a reason to believe that controlled substances or alcohol use is adversely affecting job performance. A reasonable suspicion referral for testing will be made on the basis of documented objective facts and circumstances, which are consistent with the effects of substance abuse. Examples of reasonable suspicion include, but are not limited to, the following:

1. Observation of unsatisfactory work performance or on-the-job behavior.
2. Physical signs and symptoms consistent with prohibited substance use.
3. Occurrence of a serious or potentially serious accident that may have been caused by human error.
4. Fights (to mean physical contact), assaults and flagrant disregard or violations of established safety, security, or other operation procedures.

Reasonable suspicion determinations will be made by a supervisor who is trained to detect the signs and symptoms of controlled substance and alcohol use and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to prohibited substance abuse or misuse.

Post-Accident Testing

Safety-sensitive employees will be required to undergo controlled substance and/or breath alcohol testing if they are involved in an accident with a City vehicle that results in a fatality. This includes all safety-sensitive employees who are on duty in the vehicles and any other whose performance could have contributed to the accident. In addition, a post-accident test will be conducted when the employee is cited for a moving violation and (i) any involved vehicle requires towing from the scene or (ii) any person involved requires medical treatment away from the scene of an accident.

Following the accident, the safety-sensitive employee will be tested as soon as possible, but not to exceed eight hours for alcohol and 32 hours for controlled substances. Any employee who leaves the scene of the accident without appropriate authorization prior to submission to controlled substance and alcohol testing will be considered to have refused the test and be subject to termination. Post-accident testing of safety-sensitive employees will include not only the operation personnel, but also any other covered employees whose performance could have contributed to the accident.

Random Testing

Employees working in safety-sensitive classifications will be subjected to randomly selected, unannounced testing. The random selection will be by a scientifically valid method. Each safety-sensitive employee will have an equal chance of being tested each time selections are made.

Safety-sensitive employees will be tested either just before duty, during duty, or just after the safety-sensitive employee has ceased performing his/her duty.

All safety-sensitive employees who have previously tested positive on a controlled substance or alcohol test must test negative and be evaluated and released to duty by the Substance Abuse Professional (SAP) before returning to duty. Employees will be required to undergo unannounced follow-up controlled substance and/or alcohol breath testing following returning to duty. The SAP will determine the duration and frequency. However, it shall not be less than 6 tests during the first 12 months, nor longer than 60 months in total, following return to duty.

Employee Requested Testing

Any safety-sensitive employee who questions the result of a required controlled substance test under Department of Transportation guidelines may request that an additional test be conducted. This additional test may be conducted at the same laboratory or at a different DHHS certified laboratory. The test must be conducted on the split sample that was provided at the same time as the original sample. All costs for such testing are to be paid by the employee unless the second sample test invalidated the original test. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in the Department of Transportation guidelines. The safety-sensitive employee's request for a re-test must be made to the Medical Review Officer (MRO) within 72 hours of notice of the initial test result. Requests after 72 hours will only be accepted if the delay was due to documentable facts that were beyond the control of the employee.

G. EMPLOYEE ASSESSMENT

Any safety-sensitive employee who tests positive for the presence of controlled substances or whose breath alcohol concentration is above the minimum thresholds set forth in the Department of Transportation guidelines will be assessed by a Substance Abuse Professional (SAP). The SAP will evaluate each employee to determine what assistance, if any, the employee needs in resolving problems associated with prohibited substance abuse or misuse.

If a safety-sensitive employee is returned to duty following rehabilitation, he/she must agree to and sign a Return-To-Duty Agreement, pass a return-to-duty controlled substance and/or alcohol test and be subject to unannounced follow-up tests for a period of one to five years, as determined by the SAP. Referral to the Substance Abuse Professional (SAP) and any other recover treatment costs will be borne by the safety-sensitive employee. Employee will be immediately terminated on the occurrence of a second verified positive test result within 36 months and may be terminated or offered additional rehabilitation at the City's sole discretion after 36 months.

H. CONTINUOUS COMPLIANCE REQUIREMENTS

The City shall apply and interpret this policy to maintain required compliance with applicable Federal laws and regulations, including subsequent amendments and interpretive rulings.

I. CONTACT PERSON

Any questions regarding this policy should be directed to the following City representative:

Title: Director of Human Resources
Address: 1201 Civic Center Boulevard, Yuba City, CA 95993
Telephone: (530) 822-4610

ACCIDENT – an unintended happening or mishap where there is a loss of human life (regardless of fault), bodily injury or property damage totaling \$4,400 or more.

ALCOHOL – the intoxicating agent in a beverage alcohol, ethyl alcohol or other low molecular weight alcohol including methyl or isopropyl alcohol.

ALCOHOL CONCENTRATION – the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this regulation. For example, 0.02 means 0.02 grams of alcohol in 210 liters of expired deep lung air.

ALCOHOL USE – consumption of any beverage, mixture, or preparation, including any medication containing methyl alcohol. Since ingestion of a given amount of alcohol produces the same alcohol concentration in an individual whether the alcohol comes from a mixed drink or cough syrup, the Department of Transportation prohibits the use of any substance containing alcohol, such as prescription or over-the-counter medication or liquor filled chocolates. Prescription medications containing alcohol may have a greater impairing affect due to the presence of other elements (e.g., antihistamines).

BREATH ALCOHOL TECHNICIAN (BAT) – a person trained to proficiency in the operation of the Evidential Breath Testing (EBT) device that the technician is using in the alcohol testing procedures. BAT's are the only qualified personnel to administer the EBT tests.

CHAIN OF CUSTODY – the procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of collection to final disposition.

COLLECTION SITE – a place designated by the City where individuals present themselves for the purpose of providing a specimen of either urine and/or breath.

COMMERCIAL MOTOR VEHICLE – a motor vehicle, or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle: (1) has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross weight rating of more than 10,000 pounds; or (2) has a gross vehicle weight rating of 26,001 or more pounds; or (3) is designated to transport 16 or more passengers, including the driver; or (4) is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which requires the motor vehicle to be placarded under the Hazardous Materials Regulations.

CITY – THE CITY OF YUBA CITY

CITY TIME – any period of time in which the safety-sensitive employee is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

CONFIRMATION TEST – for alcohol testing means a second test, following a screening test with a result of 0.02 or greater, which provides quantitative data of alcohol concentration. For controlled substances testing this means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy. (Gas

chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method of cocaine, marijuana, opiates, amphetamines and phencyclidine).

CONTROLLED SUBSTANCE (DRUG) TEST – a method of detecting and measuring the presence of alcohol and other controlled substances, whether legal or illegal, in a person's body. A controlled

substance test may either be an initial test or confirmation test. An initial controlled substance test is designed to identify specimens having concentrations of a particular class of drug above a specified concentration level. It eliminates negative specimens from further consideration.

Controlled substances will be tested under the Department of Health and Human Services guidelines. **The primary (initial or screening) controlled substance test thresholds for a verified positive test result are those that are equal to or greater than:**

Marijuana Metabolites	50 ng/ml
Cocaine Metabolites	300 ng/ml
Phencyclidine (PCP)	25 ng/ml
Opiates Metabolites (1)	300 ng/ml
Amphetamines	1,000 ng/ml

(1) 25 ng/ml if immunoassay

A confirmation drug testing is a second analytical procedure to detect the presence of a specific drug or its metabolite. The confirmation procedure is conducted independent of the initial test and uses a different technique and chemical principle in order to confirm reliability and accuracy. **The confirmatory controlled substance test thresholds for a verified positive test result are those that are equal to or greater than:**

Marijuana Metabolite (THC) (1)	15 ng/ml
Cocaine Metabolite (2)	150 ng/ml
Phencyclidine (PCP)	25 ng/ml
Opiates	
Morphine	300 ng/ml
Codeine	300 ng/ml
Amphetamines	
Amphetamine	500 ng/ml
Methamphetamine (3)	500 ng/ml

(1) Delta-9-tetrahydrocannabinol-9-carboxylic acid

(2) Benzoylcegonine

(3) Specimen must also contain amphetamine at a concentration greater than or equal to 200 ng/ml

DEPARTMENT OF TRANSPORTATION GUIDELINES – The controlled substance and alcohol testing rules (49CFR Part 199 (RSPA – Pipeline), Part 219 (FRA – Railroad), Part 382 (FHWA – Commercial Motor Vehicle), 654 (FTA – Mass Transit) and 14 CFR 61 (FAA – Aviation) et.al.) setting forth the procedures for controlled substance and alcohol testing (49 CFR Part 40) in all transportation industries.

DRIVER – any person who operates a commercial motor vehicle. This includes full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors who are either directly employed by or under lease to an employer or who operate a commercial motor vehicle at the direction of, or with the consent of, an employer. For the purposes of pre-employment/pre-duty testing only, the term driver includes a person applying to an employer to drive a commercial motor vehicle.

DRUG (CONTROLLED SUBSTANCE) METABOLITE – the specific substance produced when the human body metabolizes (changes) a given drug (controlled substance) as it passes through the body and is excreted in urine.

EMPLOYEE – any person who is employed by the City or who is a volunteer in a safety-sensitive position requiring a commercial driver license. A complete list of safety-sensitive employee (function and/or position) classifications is listed in Attachment B.

EVIDENTIAL BREATH TESTING DEVICE (EBT) – the device to be used for breath alcohol testing.

MEDICAL REVIEW OFFICER (MRO) – a licensed physician responsible for analyzing laboratory results generated by an employer's controlled substance (drug) testing program. The MRO is knowledgeable about substance abuse disorders and has appropriate medical training to interpret and evaluate positive test results.

PERFORMING (SAFETY SENSITIVE FUNCTION) – a safety-sensitive employee is considered to be performing a safety sensitive function and includes any period in which the safety-sensitive employee is actually performing, ready to perform, or immediately available to perform such functions.

POST-ACCIDENT ALCOHOL AND/OR CONTROLLED SUBSTANCE TESTING – conducted after accidents on employees whose performance could have contributed to the accident. For drivers this is determined by a citation for a moving traffic violation and for all fatal accidents even if the driver is not cited for a moving traffic violation. See Attachment A.

PRE-EMPLOYMENT ALCOHOL AND/OR CONTROLLED SUBSTANCE TESTING – conducted before applicants are hired or after an offer to hire, but before actually performing safety sensitive functions for the first time. Also required when employees transfer to a safety sensitive position.

PROHIBITED DRUGS (CONTROLLED SUBSTANCES) – Marijuana, Cocaine, Opiates, Amphetamines, or Phencyclidine.

PROHIBITED SUBSTANCES – means and is synonymous to drug abuse and/or alcohol misuse or abuse.

RANDOM ALCOHOL AND/OR CONTROLLED SUBSTANCE TESTING – conducted on a random unannounced basis just before, during or just after performance of safety sensitive functions.

REASONABLE SUSPICION CONTROL AND/OR CONTROLLED SUBSTANCE TESTING – conducted when a trained supervisor observes behavior or appearance that is characteristic of alcohol or controlled substance abuse.

REFUSE TO SUBMIT (TO AN ALCOHOL AND/OR CONTROLLED SUBSTANCE TEST) – a safety-sensitive employee fails to provide an adequate breath or urine sample for testing without a valid medical explanation after that safety-sensitive employee received notice of the requirement to be tested, or engages in conduct that clearly obstructs the testing process (i.e., verbal declarations, obstructive behavior or physical absence resulting in the inability to conduct the test).

REHABILITATION – The total process of restoring an employee to satisfactory work performance through constructive confrontation, referral to the SAP and participation in SAP recommendations such as education, treatment and/or support groups to resolve personal, physical or emotional/mental problems which contributed to job problems.

RETURN-TO-DUTY AND FOLLOW-UP ALCOHOL AND/OR CONTROLLED SUBSTANCE TESTING – Conducted when an individual who has violated the prohibited alcohol or controlled substance conduct standards returned to performing safety sensitive duties. Follow-up tests are unannounced and at least 6 tests must be conducted in the first 12 months after an employee

returns to duty. Follow-up testing may be extended for up to 60 months following return to duty upon the SAP recommendation.

RETURN-TO-DUTY AGREEMENT – a document agreed to and signed by the employer, safety-sensitive employee and the Substance Abuse Professional that outlines the terms and conditions under which the safety-sensitive employee may return to duty after having had a verified positive controlled substance test result or an alcohol concentration to 0.04 or greater on an alcohol test.

SAFETY-SENSITIVE EMPLOYEE (FUNCTION AND/OR POSITION) – An employee or volunteer is considered to be performing a safety-sensitive function during any period in which that employee is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions and any employee who transfers into or is assigned safety-sensitive functions.

A complete list of safety-sensitive employee (function and/or position) classifications is listed in Attachment B.

SCREENING (INITIAL) TEST – In alcohol testing, it means an analytical procedure to determine whether a safety-sensitive employee may have a prohibited concentration of alcohol in their system. In controlled substance testing, it means an immunoassay screen to eliminate negative urine specimens from further consideration.

SUBSTANCE ABUSE PROFESSIONAL (SAP) – a licensed physician (Medical Doctor or Doctor of Osteopathy), or licensed or certified psychologist, social worker (with knowledge of, and clinical experience in, the diagnosis and treatment of drug and alcohol-related disorders, the license alone does not authorize this), Certified Employee Assistance Professional (CEAP), or addiction counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC) with knowledge of, and clinical experience in, the diagnosis and treatment of alcohol and controlled substance-related disorders. The employee shall select a SAP from a list provided by the City.

SUPERVISOR – a person in authority who has had one hour of training on the signs and symptoms of alcohol abuse and an additional hour of training on the signs and symptoms of controlled substance abuse.

VEHICLE – a bus, electric bus, van, automobile, rail car, trolley bus, truck or vessel used for mass transportation.

PROCEDURES FOR REASONABLE SUSPICION TESTING

A. PROCEDURES - REASONABLE SUSPICION TESTING

1. A supervisor observes a safety-sensitive employee who may possibly be under the influence of alcohol and/or controlled substances.

Any employee may identify someone suspected of alcohol and/or controlled substance to any supervisor. Employees should realize, however, that it is against City policy to make false or malicious statements about other employees and doing so can result in disciplinary action being taken against the offending employee.

2. The supervisor is then obligated to insure that the matter is immediately investigated. If possible, two supervisors determine (independently or together) that the safety-sensitive employee in question may indeed be under the influence of alcohol and/or controlled substances.
3. When the supervisor(s) suspect and believe that the safety-sensitive employee may be under the influence of alcohol and/or controlled substances, the safety-sensitive employee is then immediately relieved from duty (with pay) and driven by City staff (or others designated) to the City specified collection site. Because of a testing facility requirement, the safety-sensitive employee in question must show proof of identification, such as a photo driver license or state-issued photo identification card.

Whenever practical, the Department Head and Human Resources Administrator should be notified in advance of the employee being taken to the collection site.

4. At the collection site, the safety-sensitive employee will be required to submit a urine sample in the event that controlled substances are suspected or a breath sample in the event that alcohol intoxication is suspected to the on-duty technician. Care will be taken to provide the safety-sensitive employee with maximum privacy without compromising the integrity of the sample.
5. The City will take precautions to prevent the safety-sensitive employee being tested from going back to work and driving their own car home. Instead, the safety-sensitive employee will be given assistance in obtaining a ride home from the collections site.
6. The safety-sensitive employee whose test results are negative (0.02 alcohol concentration or less) will be reinstated. The safety-sensitive employee whose confirmation test results indicate an alcohol concentration greater than 0.02 but less than 0.04 will not be permitted to return to duty or perform a safety-sensitive function for 24 hours after the administration of the test. The safety-sensitive employee whose confirmation test result indicates an alcohol concentration of 0.04 or greater for alcohol will be referred to a City specified outside Substance Abuse Professional (SAP) who will assess the safety-sensitive employee's condition and make a recommendation for treatment which must be followed by the safety-sensitive employee. Failure to follow the accepted recommendations or refusal to submit to return-to-duty and unannounced follow-up testing will result in the safety-sensitive employee's termination.
7. The safety-sensitive employee whose controlled substance test results are verified negative will be reinstated. The safety-sensitive employee whose controlled substance test is verified positive by the Medical Review Officer will be referred to a City specified outside Substance Abuse Professional who will assess the safety-sensitive employee's condition and make a

recommendation for treatment, which must be followed by the safety-sensitive employee. Failure to follow the accepted recommendations or refusal to submit to return-to-duty and unannounced follow-up testing will result in the safety-sensitive employee's termination.

B. PROCEDURES - RANDOM TESTING

1. The compliance company notifies the supervisor to send the safety-sensitive employee to the collection site or the mobile unit for alcohol and/or controlled substance testing.
2. The supervisor notifies the safety-sensitive employee to go to the collection site for alcohol and/or controlled substance testing immediately. Because of a testing facility requirement, the safety-sensitive employee in question must have proof of identification, such as a photo driver license or state-issued photo identification card.
3. At the collection site, the safety-sensitive employee will be required to submit a urine sample in the event that controlled substances are to be tested for, or a breath sample in the event that alcohol is being tested for to the on-duty technician. Care will be taken to provide the safety-sensitive employee with maximum privacy without compromising the integrity of the sample.
4. The safety-sensitive employee whose test results are negative (0.02 alcohol concentration or less) will be reinstated. The safety-sensitive employee whose confirmation test results indicate an alcohol concentration greater than 0.02 but less than 0.04 will not be permitted to return to duty or perform a safety-sensitive function for 24 hours after the administration of the test. The safety-sensitive employee whose confirmation test result indicates an alcohol concentration of 0.04 or greater for alcohol will be referred to a City specified outside Substance Abuse Professional (SAP) who will assess the safety-sensitive employee's condition and make a recommendation for treatment which must be followed by the safety-sensitive employee. Failure to follow the accepted recommendations or refusal to submit to return-to-duty and unannounced follow-up testing will result in the safety-sensitive employee's termination.
5. The safety-sensitive employee whose controlled substance test results are verified negative will be reinstated. The safety-sensitive employee whose controlled substance test is verified positive by the Medical Review Officer will be referred to a City specified outside Substance Abuse Professional who will assess the safety-sensitive employee's condition and make a recommendation for treatment, which must be followed by the safety-sensitive employee. Failure to follow the accepted recommendations or refusal to submit to return-to-duty and unannounced follow-up testing will result in the safety-sensitive employee's termination.

C. PROCEDURES-POST ACCIDENT

1. The safety-sensitive employee notifies a supervisor that an accident has occurred.
2. The supervisor determines that the circumstances of the accident warrant a post-accident test when a citation was issued or a fatality occurred. Thereafter, the supervisor directs the safety-sensitive employee to immediately go to the collection site for alcohol and controlled substance testing. Because of a testing facility requirement, the safety-sensitive employee in question must have proof of identification, such as a photo driver license or state-issued photo identification card.
3. At the collection site, the safety-sensitive employee **will be required to submit a urine sample for controlled substances and a breath sample for alcohol testing** to the on-duty technician. Care will be taken to provide the safety-sensitive employee with maximum

privacy without compromising the integrity of the sample.

4. The Department Head and Director of Human Resources will be notified that an accident has occurred and that the safety-sensitive employee was instructed to go to the collection site.
5. The safety-sensitive employee whose test results are negative (0.02 alcohol concentration or less) will be reinstated. The safety-sensitive employee whose confirmation test results indicate an alcohol concentration greater than 0.02 but less than 0.04 will not be permitted to return to duty or perform a safety-sensitive function for 24 hours after the administration of the test. The safety-sensitive employee whose confirmation test result indicates an alcohol concentration of 0.04 or greater for alcohol will be referred to a City specified outside Substance Abuse Professional (SAP) who will assess the safety-sensitive employee's condition and make a recommendation for treatment which must be followed by the safety-sensitive employee. Failure to follow the accepted recommendations or refusal to submit to return-to-duty and unannounced follow-up testing will result in the safety-sensitive employee's termination.
6. The safety-sensitive employee whose controlled substance test results are verified negative will be reinstated. The safety-sensitive employee whose controlled substance test is verified positive by the Medical Review Officer will be referred to a City specified outside Substance Abuse Professional who will assess the safety-sensitive employee's condition and make a recommendation for treatment, which must be followed by the safety-sensitive employee. Failure to follow the accepted recommendations or refusal to submit to return-to-duty and unannounced follow-up testing will result in the safety-sensitive employee's termination.

D. PROCEDURES - RETURN-TO-DUTY and FOLLOW-UP

1. The compliance company notifies the City to send the safety-sensitive employee to the collection site for alcohol and controlled substance testing.
2. The supervisor notifies the safety-sensitive employee to immediately go to the collection site for alcohol and controlled substance testing. Because of a testing facility requirement, the safety-sensitive employee in question must have proof of identification, such as a photo driver's license or state-issued photo identification card.
3. At the collection site, the safety-sensitive employee will be required to submit a urine sample for controlled substances and a breath sample for alcohol testing to the on-duty technician. Care will be taken to provide the safety-sensitive employee with maximum privacy without compromising the integrity of the sample.
4. The safety-sensitive employee whose confirmation test results indicate an alcohol concentration greater than 0.02 or whose controlled substance test is verified positive will be terminated.

E. PROCEDURES - CHAIN OF CUSTODY FOR CONTROLLED SUBSTANCE SPECIMENS

1. At the time a specimen is collected, the safety-sensitive employee will be given a copy of the specimen collection procedures.
2. Urine will be in a wide-mouthed clinic specimen container, which will remain in full view of the safety-sensitive employee until split, transferred to, sealed and initialed in two tamper-

resistant urine bottles.

3. Immediately after the specimens are collected, the urine bottles will, in the presence of the safety-sensitive employee, be labeled and then initialed by the employee. If the sample must be collected at the site other than the controlled substance and/or alcohol-testing laboratory, the specimens will then be placed in the transportation container. The container will be sealed in the safety-sensitive employee's presence and the safety-sensitive employee will be asked to initial or sign the container. The container will be sent to the designated testing laboratory on that day or the earliest business day by the fastest available method.
4. A chain of custody form will be completed by the on-duty technician during the specimen's collection process, attached to, and mailed with the specimen.

F. PROCEDURES - SPECIMEN COLLECTION OF STRANGE AND/OR UNRECOGNIZABLE SUBSTANCES

1. A safety-sensitive employee is observed with a strange and/or unrecognizable substance.
2. The supervisor in the presence of a witness, places the strange and/or unrecognizable substance into a clear plastic bag. The bag is sealed, labeled and signed by both the supervisor and the witness.
3. The incident report is made and signed by both the supervisor and a witness.
4. The plastic bag containing the specimen and a copy of the incident report is taken to the collection site for transportation to the laboratory for analysis.

G. PROCEDURES - ALCOHOL CONCENTRATION

1. The safety-sensitive employee and the on-duty Breath Alcohol Technician (BAT) complete the alcohol testing form to ensure that the results are properly recorded.
2. After an explanation of how the breathalyzer works, an initial breath sample is taken.
3. If the results of the initial test show an alcohol concentration of 0.02 or greater a second or confirmation test must be conducted. The confirmation test must not be conducted less than 15 minutes after, nor more than 20 minutes after the screening test.
4. The confirmation test will utilize Evidential Breath Testing devices that print out the results, date and time, a sequential test number, and the name and serial number of the Evidential Breath Testing device to ensure the reliability of the results.

SAFETY-SENSITIVE EMPLOYEE CLASSIFICATIONS AS OF AUGUST 1, 1997

Equipment Operator:

Fleet Maintenance Supervisor

Streets Maintenance Supervisor

Water/Sewer Maintenance Supervisor

Mechanic

Parks Maintenance Workers I, II, III (only those who have a Commercial Driver License)

Public Works Maintenance Workers I, II, III

Recreation Leader

Recreation Supervisor I/II

Senior Plant Maintenance Mechanic (See Note 3)

Plant Maintenance Mechanic (See Note 3)

Temporary Positions that require a commercial driver license

NOTE:

- (1) New positions requiring a commercial license will be subject to this policy.
- (2) Any employee who possesses a commercial license and makes himself or herself available to drive for the benefit of the City is also subject to this policy.
- (3) If these employees possess a commercial license.

**CITY OF YUBA CITY
CATASTROPHIC ILLNESS AND INJURY DONATION PLAN**

Purpose

To assist employees confronting personal or family catastrophic illness or injury who need the support of City employees to avoid financial hardship.

Plan Guidelines

1. Regular and probationary employees who are on an approved leave of absence (in accordance with Human Resources Rules 2.11 (B) or (D)) may receive donated hours of vacation, sick leave, or compensatory time off (CTO) from other employees.
2. Employees seeking donations of time shall submit a written request to the Human Resources Department stating the reason(s) for the request. The Director of Human Resources shall review requests. Each request shall be evaluated solely on its merits. If approved, the Director of Human Resources will initiate efforts to notify City employees of the request for the donation of hours. The name of the employee will be identified but the City will not release confidential medical information.

If disapproved, the requesting employee may seek review of the decision by the joint labor-management committee consisting of one representative from each of the following groups:

- A) Yuba City Employees Association
- B) Firefighters' Association
- C) Police Officers' Association
- D) Middle Managers Group
- E) First Level Managers Group
- F) Human Resources Department

In the event the Committee reaches a tie decision, the decision shall be made in favor of the employee.

The decision of the labor-management committee shall be final and binding, and shall not be subject to the grievance procedure.

3. To be eligible for donated leave hours, the employee must be on an approved leave of absence for their critical illness or injury or to provide required care for a family member (spouse, child, parent) who is critically ill or injured. The guidelines of the Family Care Leave (Human Resources Rule 2.11 (D)) shall be used to determine whether the critical illness or injury qualifies for the donation of leave hours. Verification of need via physician statements will normally be required. The employee must have exhausted, or is reasonably expected to exhaust, all accumulated leave hours (vacation, sick leave, CTO) in order to receive leave.

COUNSELING MEMO POLICY

When a department head becomes aware of employee conduct, which requires documentation but does not warrant formal disciplinary action, a counseling memorandum may be issued to the employee. The purpose of a counseling memo is to provide notice to the employee of a deficiency or problem observed, document infractions, and modify behavior.

Counseling memos shall be issued on a standard form used by the City. A copy of the counseling memo shall be given to the employee and a copy shall be maintained in the employee's personnel file for a period of two years. At the conclusion of two years, the employee can ask that the counseling memo be removed from the personnel file. At that time or any time thereafter that it is discovered that a counseling memo exists in the personnel file after two years, all copies shall be removed from any file maintained by the City, including the department or supervisor, and given to the employee. No future reference to the counseling memo will be made in a subsequent disciplinary process or performance evaluation. However, should an employee receive a subsequent counseling memo, or other disciplinary action within the two year period, a counseling memo shall not be discarded until a two year period has passed in which no counseling memo or disciplinary action has been issued.

During the two-year period the counseling memo may be used by a supervisor to support disciplinary action. The fact that a counseling memo has been issued shall not be referenced in a performance evaluation, however the substance of the counseling memo may be referenced in a performance evaluation if the supervisor deems it necessary.

Counseling memos used prior to the adoption of this Memorandum of Understanding are subject to this policy.

CITY OF YUBA CITY
STAFF REPORT

Date: November 4, 2014

To: Members of the City Council

From: Ad Hoc Committee – Mayor Kash Gill & Vice Mayor John Dukes

Presentation By: Darin E. Gale, Economic Development Manager

Summary

Subject: Ad Hoc Committee Recommendations regarding Business Incentives and Lloyd Wise Company Nissan Dealership

Recommendation: Discuss and review Recommendations as proposed by the Ad Hoc Committee

Fiscal Impact: None at this time.

Purpose:

To evaluate a request from Lloyd Wise Company for the City to offer business incentives to their new Nissan Dealership located in Yuba City.

Background:

On January 24 and February 1 of 2011, the City Council discussed business incentives based upon job creation or net new revenue to the City. The business incentives adopted by the Council also stated that incentives should not exceed the total cost of development impact fee (attachment A).

On August 26, 2014 the Council received a request from Lloyd Wise Company for a business incentive of \$250,000 to locate a new Nissan dealership at the former Toyota facility on Bridge Street (attachment B).

The request was not within the parameters of the existing business incentives programs (i.e., the requested incentives exceeded the total cost of development impact fees). Therefore, the matter was brought before the Council for consideration.

At the September 16, 2014 Regular Council meeting, the Council established an Ad Hoc Committee, consisting of the Mayor and Vice-Mayor, to further review the request of the Lloyd Wise Company and bring back recommendations to the full Council.

Analysis:

Incentives are used by a variety of communities to attract new job or sales tax generating businesses to locate within a jurisdiction. These incentives are normally negotiated as part of due diligence as a business considers where to invest. Incentives for new car dealers have been provided but are rare.

Below is a list of communities contacted by the Ad Hoc Committee, to gain information on the purpose for their new car dealer incentives. Each of the incentives provided by these jurisdictions were established to encourage the development of new facilities, except for the shop local program of Elk Grove.

Madera, Woodland, Vacaville, Colusa, Woodland, Davis	No Incentives Program for new car dealers
Elk Grove	Buy Local Program funded by City for \$500,000. Provided \$500,000 over three years to incentivize Ford to move from current location and \$150,000 for Mazda to build a permanent facility
Anaheim	Looking to attract new car dealers, Anaheim will provide 40% rebate of sales tax for 10 years to new or expanded dealerships
Folsom	Waived planning and building permit fees due to a \$7 million rehabilitation to existing facility
El Cajon	Invested RDA funds to assist in the development of a new KIA dealership and agreed to reimburse Honda a portion of new sales tax generation for 15 years
Sacramento County	Used RDA funds to assist with public improvements for auto mall

Per Government Code §53084 and §53084.5, a City cannot poach sales tax generating businesses from a neighboring jurisdiction. As a result the City could not provide a financial incentive to Geweke Kia or John L Sullivan to relocate to Yuba City. Additionally the City did not provide a financial incentive to Toyota, Wheeler or Ford as part of their reconstruction projects. Although financial incentives were not provided, the City did provide a streamlined application process for each project. Due to the fact the City did not provide incentives to our recent new car dealership, the committee does not recommend providing a sales tax rebate to Yuba City Nissan.

As part of this process, the Ad Hoc also met with our existing new car dealerships. At that meeting, many of the dealers expressed interest in reestablishing a New Car Dealer Association to improve regional marketing efforts. The committee agrees that such a group would be beneficial to the community and suggest that the Council consider financially supporting the new association at a future meeting.

Finally, as business incentives of other communities were reviewed, the committee noticed that many incentive programs were prescriptive and Yuba City's are very broad and open. A broad and open incentive program provides staff the ability to negotiate incentives on a case-by-case basis. The committee believe our incentives program is best but would recommend the Economic Development Commission review and provide suggested edits related to our incentive program. Through this process the City can continue to move forward in creating a strong business climate to ensure we are able to retain and expand existing businesses and attract new businesses to our Yuba City

Fiscal Impact:

None at this time.

Recommendations

1. Do not provide a sales tax rebate to Nissan in accordance with past practices
2. Consider financial support of a new car dealer association at a future Council meeting
3. Economic Development Commission to review and provide suggestions to improve our business incentive program if needed

Alternatives

1. Direct staff to prepare the appropriate AB 562 economic impact report to provide Nissan an economic incentive for council consideration at their November 18th meeting.
2. Take no action and maintain the City's current Economic Incentive Program

Attachments:

- A. 2011 Adopted Business Incentive Guidelines
- B. Yuba City Nissan Letter and Proposals (3 pages)

Prepared By:

Submitted By:

/s/ Darin Gale

/s/ Steve Kroeger

Darin E. Gale
Economic Development Manager

Steven C. Kroeger
City Manager

Reviewed By:

Finance
City Attorney

RB
TH

Attachment A

Adopted Yuba City Business Incentives Guidelines

**Yuba City Business Incentives Guidelines
To Advance Job Creation & Revenue Generation**

1. Taxes

Sales Tax	Negotiate reimbursement of a Percentage of Net New Sales Tax over a limited time period, not to exceed development fees
Transient Occupancy Tax	Negotiated based upon need and benefit to the community
Property Tax	Negotiate reimbursement of unsecured property tax increase over a limited time period, not to exceed development fees
Enterprise Zone	Actively Promote program to businesses and work at State level to protect current Enterprise Zone State Tax Credit

2. Financing Program

SCIP – State Financing Program	Actively promote program and create marketing materials to increase use of SCIP program
CFD & Mello Roos	Allow use of CFD and Mello Roos projects when feasible

3. Development

Utilities Infrastructure	Negotiate cost sharing of utilities extension for key employer based development and create impact fee deferral program Water & Sewer impact fees
Permitting	Review existing plan review periods, continue ombudsmen program and create “development team” with the appropriate staff members for future development or business inquiries
Redevelopment	Negotiable based upon cost and benefit to RDA & City
Impact Fees	Negotiate locking in of non-residential impact fees at entitlement and negotiate fees for large manufacturing or industrial job creation

4. Promotion

Sign Ordinance	Review sign ordinance and consider specific revisions for highway corridors and electronic billboards
Shop Local	Continue to work with Chamber in promoting “Think Yuba Sutter First” Campaign
CDBG Micro Loans	Create CDBG Micro Loan/Grant Program for adoption by Council and consider additional CDBG allocation depending upon success of program

Adopted 2/1/11

Attachment B

Yuba City Nissan Letter and Proposals

To Yuba City staff and Council members,
After individual meetings with both staff and the council members we are requesting an appearance during the city's September 16th, 2014 city council meeting. As a council agenda item we would like to explore and discuss in a public forum our request for new business development and move in incentives via incremental sales tax dollars generated from our automotive sales. Within the EDC's Yuba-Sutter enterprise zone, we at Lloyd Wise Company look to expand our automotive group to 1340 Bridge Street in Yuba City. Our plan is to bring the new car franchise, Nissan to your area and operate as Nissan of Yuba City. We look forward to a great partnership with your city and it's area residents and business community.

Sincerely,
Rami Gianni
President

Yuba City Proposal

3 years waived property taxes, both parcels. \$19,050.00 per year.

3 Years split sales tax.

Year one estimates @ 75%; 150,000/(112,500 - Dealer portion)

Year two @ 50%; 165,000/(82,500 - Dealer portion)

Year three @ 25%; 181,500/(43,375 - Dealer portion)

Based on 10% increase in sales tax annually.

Building permits? a site view with city would let us know what the city may be able to help with.

Without any help on permits the estimate is to possibly seek 305,400.00 in new business development credits, via sales tax credits.

Yuba City Proposal

3 years waived property taxes, both parcels. \$19,050.00 per year.

3 Years split sales tax. (pay 50% only):

Year one estimates 150,000/75,000

Year two 165,000/82,500

Year three 181,500/90,750

Based on 10% increase in sales tax annually.

Building permits? a site view with city staff would let us know what the city may be able to help with.

Without any help on permits the estimate is to possibly seek 305,400.00 in new business development credits, via sales tax credits.

CITY OF YUBA CITY

City Council Reports

- Councilmember Buckland
- Councilmember Maan
- Councilmember Starkey
- Vice Mayor Dukes
- Mayor Gill

Adjournment