



**AGENDA
OCTOBER 18, 2016
REGULAR MEETING
CITY COUNCIL
AND THE SUCESSOR AGENCY
TO THE REDEVELOPMENT AGENCY
CITY OF YUBA CITY**

6:00 P.M. – REGULAR MEETING: COUNCIL CHAMBERS

MAYOR	• John Buckland
VICE MAYOR	• Stanley Cleveland, Jr
COUNCILMEMBER	• Preet Didbal
COUNCILMEMBER	• John Dukes
COUNCILMEMBER	• Kash Gill
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 other accommodations such as signing services or interpreters to make a presentation to the City Council, the City is happy to assist you. Please contact the City offices at (530) 822-4602 at least 72 hours in advance so such aids or services can be arranged.

*The Council Chambers are equipped with auxiliary hearing devices so that no prior arrangements need to be made to attend the meeting. **City Hall TTY: 530-822-4732***

**AGENDA
REGULAR MEETING OF THE CITY COUNCIL
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CITY OF YUBA CITY
COUNCIL CHAMBERS
OCTOBER 18, 2016
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.

Regular Meeting—Council Chambers

Call to Order

Roll Call: _____ Mayor Buckland
 _____ Vice Mayor Cleveland
 _____ Councilmember Didbal
 _____ Councilmember Dukes
 _____ Councilmember Gill

Invocation

Pledge of Allegiance to the Flag

Presentations & Proclamations

1. Sikh Awareness and Appreciation Month

Public Hearing

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

Recommendation: Conduct a Public Hearing, and then

- 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 declaring the intent to be reimbursed for certain capital expenditures from the proceeds of indebtedness

Bid Opening

3. Franklin Road Improvements Project (Award) – Total Cost \$503,570

Recommendation: A. Award Contract No. 15-08 Franklin Road Improvements, to North Star Construction and Engineering, Inc. of Yuba City, CA in the amount of their bid of \$419,570

- B. Authorize the City Manager to execute the contract on behalf of the City, following approval by the City Attorney
- C. Authorize a budget transfer from Capital Improvement Project (CIP) Account No. 1027 (Traffic Signal) to CIP Account No. 1199 (Franklin Road Pedestrian Improvements) in the amount of \$154,000

4. Custodial Services Contract (FB16-10)

- Recommendation:
- A. Award a contract to Ultimate Building Maintenance (UBM) of Yuba City, CA, in the amount of \$77,100 for one (1) year of custodial services with the option of three (3) one (1) year extensions
 - B. Authorize the City Manager to approve the contract extensions

5. Purchase of one (1) Ford F350 with custom truck body (RFQ17-01)

- Recommendation:
- A. Award the purchase of one (1) Ford F350 with custom truck body to Geweke Ford of Yuba City, CA, in the amount of \$37,048.15 by finding that it is in the best interest of the City to do so
 - B. Authorize a supplemental appropriation for \$37,048.15 to account 6610-69410 for the purchase

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.

6. 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

7. 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

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.

8. Minutes of September 20, 2016

Recommendation: Approve the City Council Meeting Minutes of September 20, 2016

9. Delinquent Assessment District Installments - Judicial Foreclosure Proceedings

Recommendation: Adopt a resolution ordering the commencement of judicial foreclosure proceedings and direct the removal of \$4,610 delinquent assessment and reassessment installments from the county tax roll

10. Garden Highway Reimbursement Agreement (Heer Property, APN 53-500-005)

Recommendation: Adopt a Resolution approving the execution of a Reimbursement Agreement with the property owners of Assessor Parcel Number 53-500-005 for the installation of road frontage improvements along Garden Highway

General Items

11. Memorandum of Understanding with the Mehmet Noyan Company for the property located at Bridge and Shasta Streets (*"Feather River Mill" site*)

Recommendation: A. As the City Council, Authorize the City Manager to approve and sign on behalf of the City, an amendment to the Memorandum Of Understanding Agreement ("Agreement") to negotiate exclusively with Mr. Mehmet Noyan of the Mehmet Noyan Company with regard to the property located at the southeast corner of Bridge and Shasta Streets to be used for the future development of a mixed use project (APN 52-324-023 & 52-502-008)

B. As the Board of Directors of the Successor Agency, authorize the Executive Director to approve and sign on behalf of the Agency an amendment to the Memorandum Of Understanding Agreement ("Agreement") to negotiate exclusively with Mr. Mehmet Noyan of the Mehmet Noyan Company with regard to the property located at the southeast corner of Bridge and Shasta Streets to be used for the future development of a mixed use project (APN 52-324-023 & 52-502-008)

Business from the City Council

12. City Manager Employment Agreement

Recommendation: Adopt a Resolution authorizing the Mayor to sign the City Manager Employment Agreement between the City of Yuba City and Steven C. Kroeger from October 18, 2016 through December 31, 2019

13. Cancellation of November 15, 2016 City Council Meeting

Recommendation: Cancel the November 15, 2016 to allow for City Council Business to be conducted by incoming Councilmembers after the November 8th Municipal Election is Certified

14. City Council Reports

- Councilmember Didbal
- Councilmember Dukes
- Councilmember Gill
- Vice Mayor Cleveland
- Mayor Buckland

Adjournment



Proclamation

of the City Council

SIKH AWARENESS AND APPRECIATION MONTH NOVEMBER 2016

WHEREAS Sikhs have been living in the United States for more than 100 years; and

WHEREAS Sikhism is the fifth largest religion in the world and today, there are more than 23 million Sikhs worldwide and an estimated 250,000 Americans of Sikh origin, comprising nearly 40 percent of the nation's estimated Sikh population, residing in California alone; and,

WHEREAS Sikh Americans pursue diverse professions and walks of life, making rich contributions to the social, cultural, and economic vibrancy of the United States, and have distinguished themselves by fostering greater respect among all people through faith and service; and,

WHEREAS the City of Yuba City has a significant population of Sikhs and is committed to respecting the heritage and religions of our diverse community; and

WHEREAS the City of Yuba City is committed to educating about the world's religions, the value of religious diversity, tolerance grounded in First Amendment principles, a culture of mutual understanding, and the diminution of violence.

WHEREAS today, the City of Yuba City seeks to further the diversity of its community and afford all residents the opportunity to better understand, recognize, and appreciate the rich history and shared experiences of Sikh Americans.

NOW, THEREFORE, BE IT RESOLVED, that I, John Buckland, Mayor of the City of Yuba City and on behalf of the entire City Council, do hereby proclaim the month of November 2016 to be SIKH AWARENESS AND APPRECIATION MONTH.

Done this 18th day of October 2016, at the City of Yuba City, County of Sutter, State of California.

CITY OF YUBA CITY
STAFF REPORT

Date: October 18, 2016
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: Conduct a Public Hearing, and then

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 declaring the intent to be reimbursed for certain capital expenditures from the proceeds of indebtedness

Fiscal Impact: Project has the potential to result in \$18 Million plus in savings to the City over the 30-year life of the project. Project financing terms will be presented to Council at a future meeting.

Purpose:

To implement energy conservation measures to reduce the City's ongoing operational costs.

Background:

On November 4, 2014, the City Council authorized the execution of an Energy Service Contract with OpTerra Energy Services (OpTerra) for energy related improvements to City facilities. The scope of work included:

- 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 and compressor replacement at City Hall
- Energy management system replacements at City Hall and the Police Department
- Retrofit one pump at Gauche Aquatic Park

The improvements are expected to result in \$5.8 Million in savings over the 30-year life of the project. Financing was provided through a tax-exempt lease purchase, and OpTerra guaranteed the savings for 16 years. The project was completed in January and has performed as expected.

In July 2016, OpTerra staff contacted City staff regarding the opportunity for two additional energy conservation projects at the Wastewater Treatment Facility (WWTF) and Water Treatment Plant (WTP). The project at the WWTF includes the installation of a 2,090 kW solar photovoltaic ground mounted system located on the east side of the property (Attachment 1). This project recently became feasible due to changes in the Public Utility Commission's net metering restrictions which allow the City to increase solar production at the site. The project at the WTP includes the installation of a 750 kW/1,500 kWh battery storage system to supplement the existing solar photovoltaic system during peak loading times.

The primary benefit of the proposed project is that it is cash positive for the 30-year life of the project and is expected to result in approximately \$19 Million in net savings. In addition, there are substantial environmental benefits equivalent to removing 520 vehicles off the road annually.

Analysis:

The attached Energy Service Contract with OpTerra Energy Services has been reviewed by the City Attorney and the terms are very similar to the contract approved by City Council for the 2014 project. OpTerra will guarantee the savings during the term of the financing, which is currently estimated at 17 years. Upon approval of the contract and determination of financing, the project will take approximately one year to complete.

Fiscal Impact:

The Internal Revenue Service has a program for Clean Renewable Energy Bonds (CREBs) which may be used by certain entities to finance renewable energy projects. CREBs may be issued by government entities and the bondholder receives federal tax credits in lieu of a portion of the traditional bond interest, resulting in a lower effective interest rate for the borrower. CREBs currently have an interest rate of 2.0% to 2.5%.

Participation in the CREBs program is limited by the volume of bonds allocated by Congress for the program. Applicants must first apply to the IRS for a CREBs allocation, and then issue bonds within a specified timeframe thereafter. Staff has submitted a CREB application and awaits notice regarding an approved allocation.

In addition, Pacific Gas & Electric is a program administrator for the Self-Generation Incentive Program (SGIP) which provides incentives for the installation of qualifying technologies that meet all or a portion of the electric energy needs of a facility. If the Energy Service Contract is approved, OpTerra will pursue a \$900,000 SGIP to apply to the proposed project.

Both the CREB program and SGIP are first-come-first-served programs. If the City is unable to receive an allocation through the CREB program or obtain an incentive through the SGIP, then other financing structures will be evaluated.

Staff is working with the City's financial consultant and OpTerra to finalize the terms of the financing. The project will require a bond issuance but will not negatively impact the City's ability to finance the Priority 1 & 2 projects identified in the Water and Wastewater Rate Study as the debt service will be offset by energy cost savings. Staff will bring forward a financing proposal to Council for approval in the near future. It is necessary to authorize the energy service contract with OpTerra as soon as possible in order to get started on the paperwork to apply for the SGIP.

The construction cost is just over \$9 Million, including financing costs but excluding interest associated with financing the project. The projected net savings over 30 years is dependent upon the final financing, but is estimated to be \$18 Million plus. Attached are proformas for three potential funding scenarios.

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 declaring the intent to be reimbursed for certain capital expenditures from the proceeds of indebtedness.

Attachments:

1. WWTF Project Location Map
2. Financial Proforma with CREBs
3. Financial Proforma with CREBs and SGIP
4. Financial Proforma with Traditional Financing and SGIP
5. OpTerra Energy Services Contract

Prepared by:

/s/ Diana Langley
Diana Langley
Public Works Director

Submitted by:

/s/ Steven C. Kroeger
Steven C. Kroeger
City Manager

Reviewed by:

Finance

City Attorney

RB

OK by email

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY
AUTHORIZING THE CITY MANAGER TO ENTER INTO AN ENERGY SERVICE
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 Service 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 Service 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 Service 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 Service 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 18th day of October, 2016.

AYES:

NOES:

ABSENT:

John Buckland, Mayor

ATTEST:

Terrel Locke, Chief Deputy City Clerk

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY
DECLARING THE INTENT OF THE CITY TO BE REIMBURSED FOR CERTAIN
CAPITAL EXPENDITURES FROM THE PROCEEDS OF INDEBTEDNESS**

WHEREAS, the City of Yuba City (the "City") intends to acquire and construct certain capital facilities related to the City's wastewater and water facilities (the "Project"); and

WHEREAS, the City will pay certain Capital Expenditures (the "Expenditures") in connection with the Project prior to the issuance of one or more series of taxable or tax-exempt obligations in the expected approximate principal amount of \$10 million (the "Indebtedness") for the purpose of financing costs associated with the Project; and

WHEREAS, the City reasonably expects that certain of the proceeds of the Indebtedness will be used to reimburse the City for the Expenditures; and

WHEREAS, Section 1.150-2 of the Treasury Regulations requires the City to declare its reasonable official intent to be reimbursed for prior Capital Expenditures made for the Project with proceeds of a subsequent borrowing.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF YUBA CITY AS FOLLOWS:

The City finds and determines that the foregoing recitals are true and correct.

This declaration is made solely for purpose of establishing compliance with the requirements of Section 1.150-2 of the Treasury Regulations, and does not bind the City to make any expenditure, incur any indebtedness, or proceed with the Project.

The City declares its official intent to use proceeds of the Indebtedness to reimburse itself for Expenditures made on or after the date which is no more than 60 days prior to the date of adoption of this Resolution.

The City will make a reimbursement allocation, which is a written allocation by the City that evidences the City's use of proceeds of the Indebtedness to reimburse itself for an Expenditure, no later than eighteen (18) months after the later of the date on which the expenditure is paid or the Project is placed in service or abandoned, but in no event more than three years after the date on which the Expenditure is paid.

The City recognizes that exceptions are also available under the Treasury Regulations for certain "preliminary expenditures," costs of issuance, certain de minimus amounts, expenditures by "small issuers" (based on the year of issuance and not the year of expenditure) and expenditures for construction projects of at least five (5) years.

This Resolution shall take effect upon its adoption by this City Council.

The foregoing Resolution of the City Council of the City of Yuba City is duly introduced, PASSED AND ADOPTED at a regular meeting thereof held on this 18th day of October, 2016 by the following vote:

Ayes:

Noes:

Absent:

John Buckland, Mayor

Attest:

Terrel Locke, Chief Deputy City Clerk

2,089 KW Solar PV Ground Mounted System at the Wastewater Treatment Plant



OPTERRA
ENERGY SERVICES



City of Yuba City Phase 2 Project									
Project Cash Flow Analysis - CREBs									
Project Cost									\$8,770,545
Cash Contribution by City									\$0
Estimated Financing Costs									\$175,000
Construction Period Interest									\$135,627
Amount to be Financed									\$9,081,172
Finance Term									17
Estimated Annual Interest Rate									2.00%
Annual Escalation of Electricity Cost									4.50%
Annual Degradation of Solar Panels									0.50%
Annual Escalation of O&M Cost									3.00%
Year	Projected Electricity Savings	Incentives	Total Program Savings	Lease Payments	Inverter Replacement Cost	Measurement & Verification Cost	Solar & Battery Maintenance Cost	Total Program Costs	Net Savings
Year 1	\$623,753	\$0	\$623,753	\$635,408	\$0	\$24,255	\$69,295	\$728,958	-\$105,205
Year 2	\$649,057	\$0	\$649,057	\$635,408	\$0	\$24,983	\$70,766	\$731,157	-\$82,100
Year 3	\$675,390	\$0	\$675,390	\$635,408	\$0	\$25,732	\$72,282	\$733,422	-\$58,032
Year 4	\$702,794	\$0	\$702,794	\$635,408	\$0	\$26,504	\$73,843	\$735,755	-\$32,961
Year 5	\$731,312	\$0	\$731,312	\$635,408	\$0	\$27,299	\$75,451	\$738,158	-\$6,846
Year 6	\$760,989	\$0	\$760,989	\$635,408	\$0	\$0	\$77,107	\$712,515	\$48,475
Year 7	\$791,874	\$0	\$791,874	\$635,408	\$0	\$0	\$78,812	\$714,220	\$77,654
Year 8	\$824,015	\$0	\$824,015	\$635,408	\$0	\$0	\$80,569	\$715,977	\$108,037
Year 9	\$857,463	\$0	\$857,463	\$635,408	\$0	\$0	\$82,379	\$717,787	\$139,676
Year 10	\$892,272	\$0	\$892,272	\$635,408	\$0	\$0	\$84,243	\$719,651	\$172,621
Year 11	\$928,496	\$0	\$928,496	\$635,408	\$0	\$0	\$86,162	\$721,571	\$206,926
Year 12	\$966,195	\$0	\$966,195	\$635,408	\$0	\$0	\$88,140	\$723,548	\$242,647
Year 13	\$1,005,428	\$0	\$1,005,428	\$635,408	\$0	\$0	\$90,176	\$725,585	\$279,843
Year 14	\$1,046,258	\$0	\$1,046,258	\$635,408	\$0	\$0	\$92,274	\$727,682	\$318,575
Year 15	\$1,088,749	\$0	\$1,088,749	\$635,408	\$0	\$0	\$94,435	\$729,843	\$358,906
Year 16	\$1,132,969	\$0	\$1,132,969	\$635,408	\$0	\$0	\$96,661	\$732,069	\$400,901
Year 17	\$1,178,990	\$0	\$1,178,990	\$635,408	\$0	\$0	\$98,953	\$734,361	\$444,629
Year 18	\$1,226,884	\$0	\$1,226,884	\$0	\$0	\$0	\$101,314	\$101,314	\$1,125,570
Year 19	\$1,276,729	\$0	\$1,276,729	\$0	\$0	\$0	\$103,746	\$103,746	\$1,172,983
Year 20	\$1,328,603	\$0	\$1,328,603	\$0	\$0	\$0	\$106,251	\$106,251	\$1,222,352
Year 21	\$1,154,362	\$0	\$1,154,362	\$0	\$739,039	\$0	\$83,250	\$822,289	\$332,074
Year 22	\$1,200,277	\$0	\$1,200,277	\$0	\$0	\$0	\$85,747	\$85,747	\$1,114,530
Year 23	\$1,248,018	\$0	\$1,248,018	\$0	\$0	\$0	\$88,319	\$88,319	\$1,159,699
Year 24	\$1,297,658	\$0	\$1,297,658	\$0	\$0	\$0	\$90,969	\$90,969	\$1,206,689
Year 25	\$1,349,272	\$0	\$1,349,272	\$0	\$0	\$0	\$93,698	\$93,698	\$1,255,574
Year 26	\$1,402,940	\$0	\$1,402,940	\$0	\$0	\$0	\$96,509	\$96,509	\$1,306,431
Year 27	\$1,458,742	\$0	\$1,458,742	\$0	\$0	\$0	\$99,404	\$99,404	\$1,359,337
Year 28	\$1,516,763	\$0	\$1,516,763	\$0	\$0	\$0	\$102,386	\$102,386	\$1,414,377
Year 29	\$1,577,092	\$0	\$1,577,092	\$0	\$0	\$0	\$105,458	\$105,458	\$1,471,634
Year 30	\$1,639,821	\$0	\$1,639,821	\$0	\$0	\$0	\$108,622	\$108,622	\$1,531,199
Totals	\$32,533,167	\$0	\$32,533,167	\$10,801,939	\$739,039	\$128,773	\$2,677,221	\$14,346,971	\$18,186,195

City of Yuba City Phase 2 Project									
Project Cash Flow Analysis - CREBs & SGIP									
Project Cost									\$8,770,545
Cash Contribution by City									\$0
Estimated Financing Costs									\$175,000
Construction Period Interest									\$135,627
Amount to be Financed									\$9,081,172
Finance Term									17
Estimated Annual Interest Rate									2.00%
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Year	Projected Electricity Savings	Incentives	Total Program Savings	Lease Payments	Inverter Replacement Cost	Measurement & Verification Cost	Solar & Battery Maintenance Cost	Total Program Costs	Net Savings
Year 1	\$623,753	\$418,994	\$1,042,747	\$635,408	\$0	\$24,255	\$69,295	\$728,958	\$313,789
Year 2	\$649,057	\$83,799	\$732,856	\$635,408	\$0	\$24,983	\$70,766	\$731,157	\$1,699
Year 3	\$675,390	\$83,799	\$759,189	\$635,408	\$0	\$25,732	\$72,282	\$733,422	\$25,767
Year 4	\$702,794	\$83,799	\$786,593	\$635,408	\$0	\$26,504	\$73,843	\$735,755	\$50,838
Year 5	\$731,312	\$83,799	\$815,111	\$635,408	\$0	\$27,299	\$75,451	\$738,158	\$76,953
Year 6	\$760,989	\$83,799	\$844,788	\$635,408	\$0	\$0	\$77,107	\$712,515	\$132,273
Year 7	\$791,874	\$0	\$791,874	\$635,408	\$0	\$0	\$78,812	\$714,220	\$77,654
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Year 12	\$966,195	\$0	\$966,195	\$635,408	\$0	\$0	\$88,140	\$723,548	\$242,647
Year 13	\$1,005,428	\$0	\$1,005,428	\$635,408	\$0	\$0	\$90,176	\$725,585	\$279,843
Year 14	\$1,046,258	\$0	\$1,046,258	\$635,408	\$0	\$0	\$92,274	\$727,682	\$318,575
Year 15	\$1,088,749	\$0	\$1,088,749	\$635,408	\$0	\$0	\$94,435	\$729,843	\$358,906
Year 16	\$1,132,969	\$0	\$1,132,969	\$635,408	\$0	\$0	\$96,661	\$732,069	\$400,901
Year 17	\$1,178,990	\$0	\$1,178,990	\$635,408	\$0	\$0	\$98,953	\$734,361	\$444,629
Year 18	\$1,226,884	\$0	\$1,226,884	\$0	\$0	\$0	\$101,314	\$101,314	\$1,125,570
Year 19	\$1,276,729	\$0	\$1,276,729	\$0	\$0	\$0	\$103,746	\$103,746	\$1,172,983
Year 20	\$1,328,603	\$0	\$1,328,603	\$0	\$0	\$0	\$106,251	\$106,251	\$1,222,352
Year 21	\$1,154,362	\$0	\$1,154,362	\$0	\$739,039	\$0	\$83,250	\$822,289	\$332,074
Year 22	\$1,200,277	\$0	\$1,200,277	\$0	\$0	\$0	\$85,747	\$85,747	\$1,114,530
Year 23	\$1,248,018	\$0	\$1,248,018	\$0	\$0	\$0	\$88,319	\$88,319	\$1,159,699
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Year 25	\$1,349,272	\$0	\$1,349,272	\$0	\$0	\$0	\$93,698	\$93,698	\$1,255,574
Year 26	\$1,402,940	\$0	\$1,402,940	\$0	\$0	\$0	\$96,509	\$96,509	\$1,306,431
Year 27	\$1,458,742	\$0	\$1,458,742	\$0	\$0	\$0	\$99,404	\$99,404	\$1,359,337
Year 28	\$1,516,763	\$0	\$1,516,763	\$0	\$0	\$0	\$102,386	\$102,386	\$1,414,377
Year 29	\$1,577,092	\$0	\$1,577,092	\$0	\$0	\$0	\$105,458	\$105,458	\$1,471,634
Year 30	\$1,639,821	\$0	\$1,639,821	\$0	\$0	\$0	\$108,622	\$108,622	\$1,531,199
Totals	\$32,533,167	\$837,988	\$33,371,155	\$10,801,939	\$739,039	\$128,773	\$2,677,221	\$14,346,971	\$19,024,183

City of Yuba City Phase 2 Project									
Project Cash Flow Analysis - Traditional Financing & SGIP									
Project Cost									\$8,770,545
Cash Contribution by City									\$0
Estimated Financing Costs									\$175,000
Construction Period Interest									\$135,627
Amount to be Financed									\$9,081,172
Finance Term									17
Estimated Annual Interest Rate									2.60%
Annual Escalation of Electricity Cost									4.50%
Annual Degradation of Solar Panels									0.50%
Annual Escalation of O&M Cost									3.00%
Year	Projected Electricity Savings	Incentives	Total Program Savings	Lease Payments	Inverter Replacement Cost	Measurement & Verification Cost	Solar & Battery Maintenance Cost	Total Program Costs	Net Savings
Year 1	\$623,753	\$418,994	\$1,042,747	\$796,933	\$0	\$24,255	\$69,295	\$890,483	\$152,264
Year 2	\$649,057	\$83,799	\$732,856	\$484,843	\$0	\$24,983	\$70,766	\$580,592	\$152,264
Year 3	\$675,390	\$83,799	\$759,189	\$508,911	\$0	\$25,732	\$72,282	\$606,925	\$152,264
Year 4	\$702,794	\$83,799	\$786,593	\$533,982	\$0	\$26,504	\$73,843	\$634,329	\$152,264
Year 5	\$731,312	\$83,799	\$815,111	\$560,097	\$0	\$27,299	\$75,451	\$662,847	\$152,264
Year 6	\$760,989	\$83,799	\$844,788	\$615,418	\$0	\$0	\$77,107	\$692,524	\$152,264
Year 7	\$791,874	\$0	\$791,874	\$560,798	\$0	\$0	\$78,812	\$639,610	\$152,264
Year 8	\$824,015	\$0	\$824,015	\$591,182	\$0	\$0	\$80,569	\$671,751	\$152,264
Year 9	\$857,463	\$0	\$857,463	\$622,820	\$0	\$0	\$82,379	\$705,199	\$152,264
Year 10	\$892,272	\$0	\$892,272	\$655,765	\$0	\$0	\$84,243	\$740,008	\$152,264
Year 11	\$928,496	\$0	\$928,496	\$690,070	\$0	\$0	\$86,162	\$776,232	\$152,264
Year 12	\$966,195	\$0	\$966,195	\$725,792	\$0	\$0	\$88,140	\$813,931	\$152,264
Year 13	\$1,005,428	\$0	\$1,005,428	\$762,988	\$0	\$0	\$90,176	\$853,164	\$152,264
Year 14	\$1,046,258	\$0	\$1,046,258	\$801,719	\$0	\$0	\$92,274	\$893,994	\$152,264
Year 15	\$1,088,749	\$0	\$1,088,749	\$842,050	\$0	\$0	\$94,435	\$936,485	\$152,264
Year 16	\$1,132,969	\$0	\$1,132,969	\$884,045	\$0	\$0	\$96,661	\$980,705	\$152,264
Year 17	\$1,178,990	\$0	\$1,178,990	\$927,773	\$0	\$0	\$98,953	\$1,026,726	\$152,264
Year 18	\$1,226,884	\$0	\$1,226,884	\$0	\$0	\$0	\$101,314	\$101,314	\$1,125,570
Year 19	\$1,276,729	\$0	\$1,276,729	\$0	\$0	\$0	\$103,746	\$103,746	\$1,172,983
Year 20	\$1,328,603	\$0	\$1,328,603	\$0	\$0	\$0	\$106,251	\$106,251	\$1,222,352
Year 21	\$1,154,362	\$0	\$1,154,362	\$0	\$739,039	\$0	\$83,250	\$822,289	\$332,074
Year 22	\$1,200,277	\$0	\$1,200,277	\$0	\$0	\$0	\$85,747	\$85,747	\$1,114,530
Year 23	\$1,248,018	\$0	\$1,248,018	\$0	\$0	\$0	\$88,319	\$88,319	\$1,159,699
Year 24	\$1,297,658	\$0	\$1,297,658	\$0	\$0	\$0	\$90,969	\$90,969	\$1,206,689
Year 25	\$1,349,272	\$0	\$1,349,272	\$0	\$0	\$0	\$93,698	\$93,698	\$1,255,574
Year 26	\$1,402,940	\$0	\$1,402,940	\$0	\$0	\$0	\$96,509	\$96,509	\$1,306,431
Year 27	\$1,458,742	\$0	\$1,458,742	\$0	\$0	\$0	\$99,404	\$99,404	\$1,359,337
Year 28	\$1,516,763	\$0	\$1,516,763	\$0	\$0	\$0	\$102,386	\$102,386	\$1,414,377
Year 29	\$1,577,092	\$0	\$1,577,092	\$0	\$0	\$0	\$105,458	\$105,458	\$1,471,634
Year 30	\$1,639,821	\$0	\$1,639,821	\$0	\$0	\$0	\$108,622	\$108,622	\$1,531,199
Totals	\$32,533,167	\$837,988	\$33,371,155	\$11,565,185	\$739,039	\$128,773	\$2,677,221	\$15,110,218	\$18,260,937

ENERGY SERVICES CONTRACT

Draft of 21 September 2016

This **ENERGY SERVICES CONTRACT** (this "Contract") is made and entered into as of 18 October 2016 (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, on 6 July 2016 OpTerra Energy Services provided a recommended energy plan to implement certain ECMs (the "Report"), 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 18 October 2016, 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, approvals, inspections and certifications 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	NOT USED
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	NOT USED

“**Battery Storage System**” means each of the battery storage systems, also known as energy storage systems, located at the sites listed in Attachment H, and includes all associated battery storage (batteries), container panels, mounting assemblies, inverters, management software, electric load measuring, transformers, disconnects, switches, wires and other equipment that may be necessary to connect the Battery Storage System to the applicable Energy Delivery Point.

“**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 Eight Million Seven Hundred Seventy Thousand Five Hundred Forty-Five Dollars (\$8,770,545), which is inclusive of 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 or the Utility, 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, the Utility 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 or change in rules or regulations affecting the Project 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 or Battery Storage System 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, G and J, except pursuant to a Change Order.
- (b) The Professional Services may not exceed those set forth in Attachments H, and I, except pursuant to a Change Order.

Section 2.04 Project Schedule. After receipt of the Notice to Proceed, 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 sixty (60) 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; *provided* that Yuba City may not declare this Contract to be null and void after it has issued the Notice to Proceed. 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 Registration, Permits and Approvals.

- (a) Prior to issuing the Notice to Proceed, Yuba City must register the Project with the California Department of Industrial Relations, using Form PWC-100.
- (b) 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 inspections, certifications, 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 hiring and paying for inspectors, and for all fees associated with plan checks (including expedited plan checks), permits, inspections, certifications 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 receipt of the Notice to Proceed, 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 inspections and 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 fifteen (15) 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 inspections, including special inspections, or 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 to the extent 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 a mobilization fee in the amount of One Million Seven Hundred Fifty-Four Thousand One Hundred Nine Dollars (\$1,754,109). This amount must be paid to OpTerra Energy Services within thirty (30) calendar days of closing of financing by Yuba City. 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 OpTerra Energy Services Insurance. Needs to be reviewed by OpTerra insurance broker.

- (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 Yuba City 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, nor to cover any equipment and/or material manufacturer's warranty or other third-party warranty being assigned to Yuba City.

Section 11.05 Yuba City Insurance. Yuba City will maintain, or cause to be maintained, for the duration of this Contract, the insurance coverage outlined below, and all such other insurance as required by Applicable Law. Evidence of coverage will be provided to OpTerra Energy Services via an insurance certificate.

- (a) Commercial General Liability insurance, written on an occurrence form, with limits of:
 - * \$2,000,000 each occurrence for Bodily Injury and Property Damage; and
 - * \$4,000,000 General Aggregate
- (b) The insurance provided for above will contain waivers of subrogation rights against OpTerra Energy Services, will include OpTerra Energy Services as an additional insured, and will provide that the insurance is primary coverage with respect to all insureds.

Section 11.06 Waivers of Subrogation. The Parties waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this ARTICLE 11 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance. The Parties and their respective property damage insurers also waive all rights of subrogation against the other Party, its directors, officers, agents and employees. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

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.

500 12th Street, Suite 300
Oakland, CA 94607
Attention: Fady Ghobrial, Project Manager

With a COPY TO:

Legal Department
OpTerra Energy Services, Inc.
150 East Colorado Boulevard, Suite 360
Pasadena, CA 91105-3711
Tel: (626) 377-4948
Fax: (626) 377-5978
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

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.

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

[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:

YUBA CITY:

OpTerra Energy Services, Inc.

City of Yuba City

By: _____
Name:
Title:

By: _____
Name:
Title:

ATTACHMENT A

**BOND FORMS TO BE REVIEWED BY OPTERRA SURETY
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
BOND FORMS TO BE REVIEWED BY OPTERRA SURETY
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**

https://www.pge.com/en_US/business/solar-and-vehicles/your-options/solar-programs/self-generation-incentive-program/self-generation-incentive-program.page

DRAFT

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 Facility	302 Burns Drive, Yuba City, CA 95991	21,050
Water Treatment Plant	701 Northgate Drive, Yuba City, CA 95991	31,122

ATTACHMENT F

SCOPE OF WORK

California State Contractor's License Number 995037
California Public Works Contractor Registration Number 1000001498

Energy Conservation Measures to Be Implemented

ECM #	Description
1	Water Treatment Plant – Energy Storage
2	Wastewater Treatment Facility – Solar Photovoltaic Generation

ECM #1 – Water Treatment Plant – Energy Storage

OpTerra Energy Services will provide turnkey design, permitting, and installation for a fully operational energy storage system paired with the existing Solar PV system at site. The energy storage system will have a capacity of 750 kW/1,500 kWh. Work will include the following:

1. All engineering including structural, geotechnical evaluations, mechanical, civil, fire protection and electrical per all applicable codes.
2. Provide and install equipment, material, and labor for a complete, operational system. All equipment shall be new, UL listed material and equipment that carry the manufacturers' original warranties.
3. Provide and construct concrete pads for equipment and fencing as required.
4. OpTerra Energy Services will field test, pre-commission, and commission the system with written documentation of the testing.
5. Provide utility (PG&E) interconnection drawings and related application management services.
6. Coordinate with PG&E for electrical interconnection.
7. Coordinate with Yuba City any service shut down requirements.
8. Provide and install all signage required per PG&E requirements.
9. Coordinate with PG&E for any required infrastructure upgrades.
10. All work shall be done in a safe, workman-like manner with strict adherence to all codes, laws, and regulations including but not limited to CEC, NEC, OSHA, CALOSHA, NFPA 70E.
11. The energy storage system comes with a manufacturer's limited warranty of 20 years.
12. No structural member shall be cut, drilled nor notched without prior written authorization from the client and structural engineer.
13. All existing systems, power, data, fire alarm, telephone, bells, clocks, etc. to remain operational through construction. If shutdowns are required, it will be communicated and discussed with the plant with adequate notice.
14. All exterior conduits shall be EMT with the appropriate UL listed weather proof fittings.
15. All equipment shall meet any NEC, NEMA or IP enclosure requirements that entails with this location.
16. The Scope of Work assumes that, unless specifically identified otherwise, all electrical 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, except as noted under the Scope of Work.
17. Trenching or horizontal boring will be utilized for connecting the energy storage with electrical switchgear and Utility interconnection, but excludes excavation, installation of drainage systems, or shoring of unstable soil or substructures.
18. Perform all underground utility surveying, boring, cutting, patching, coring, trenching and backfill required to install power conduits per the details provided. Shall use horizontal boring to minimize disruption to normal site operations and cutting and patching of sidewalks and driveways.
19. Monitoring system is to be installed to monitor the power generation of the energy storage installations with centralized data collection tied into existing Independent Distribution Facility (IDF) or Main Distribution Facility (MDF) networking location.

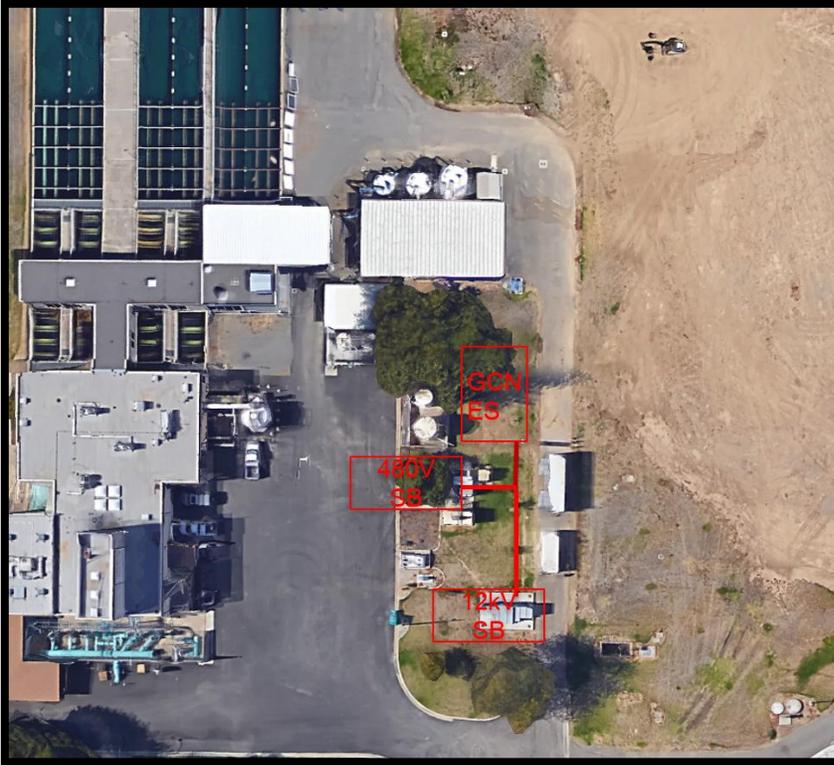


Figure 1 WTP Energy Storage Location

ECM #2 – Wastewater Treatment Facility - Solar Photovoltaic Generation

	Location	Structure type	No. of arrays	Est kWdc
1	East WWTF	Ground Mount	1	2,089

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 structural and electrical 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. Work includes trenching or horizontal boring for connecting the solar arrays with inverters, switchgear and Utility interconnection, but excludes excavation, installation of drainage systems, or shoring of unstable soil or substructures.
10. Perform all underground utility surveying, boring, cutting, patching, coring, trenching and backfill required to install power conduits per the details provided. Shall use horizontal boring to minimize disruption to normal site operations and cutting and patching of sidewalks and driveways.
11. Provide and install ground-mounted solar panels. The solar panels come with a manufacturer’s limited warranty of 25 years.
12. Provide, store and install Solar PV Inverters. The inverters come with a manufacturer’s warranty of 20 years.
13. Provide as-built drawings and Operations & Maintenance manuals upon project completion.
14. Start-up, test, and commission the systems in accordance with design plan and applicable industry standards.

15. Work with PG&E on behalf of Yuba City in negotiating utility infrastructure upgrades and associated costs as needed. Yuba City may be required to sign a letter allowing OpTerra Energy Services to work with PG&E to select the option of setting up recloser(s) to include ground fault sensing functions. The letter shall include the following language: "Yuba City would like to select the option of setting up the proposed recloser to include ground fault sensing functions. This is in lieu of utilizing a separate ground fault sensing bank to trip the proposed PV system only. Yuba City is aware of the possibility of nuisance tripping of both the PV and the facility load at the same time and it accepts this risk."



Figure 1 WWTF Solar PV Anticipated Location

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 interconnect the Energy Storage and Solar PV systems.

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. OpTerra Energy Services standard construction means and methods will be used.
9. 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.
10. Work will be performed during normal work hours; no overtime hours are included in the Contract Amount.
11. 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.
12. 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.
13. No allowance has been made for underground obstructions or unsuitable soil conditions encountered during trenching or other excavation.
14. Smoke detectors and fire alarm system work is excluded.
15. Water hose bibs for washing the panels are excluded.
16. Decorative fascia along the perimeter of the panels and decorative covering underneath the panels are excluded.
17. Repair or replacement of existing housekeeping pads, or concrete pads are excluded, except as specifically set forth in this Scope of Work.
18. Painting, unless specified, is excluded.
19. 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.

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

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.

ENERGY STORAGE - The OpTerra Energy Services Warranty commences immediately when the batteries are capable of storing and generating expected energy.

Tentative work scopes to receive Substantial & Final Completion:

Scope of Work	Location	Total Qty of SC	Total Qty of FC
ECM – 1 – Energy Storage	1 Sites	1; for entire ECM	1; for entire ECM
ECM – 2 – Solar PV	1 Site	1; for entire ECM	1; for entire ECM

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) system and Battery Storage System at the Wastewater Treatment Facility.

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 Modbus based digital Net Energy Meter(s) (NEMs).
- 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 as described in Attachment F.

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-Four Thousand Two Hundred Fifty-Five Dollars (\$24,255). The Annual M&V 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.

“**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 nineteenth (19th) 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	\$578,371
2	\$601,771
3	\$626,120
4	\$651,456
5	\$677,819
6	\$705,251
7	\$733,795
8	\$763,497
9	\$794,404
10	\$826,563
11	\$860,028
12	\$894,850
13	\$931,084
14	\$968,789
15	\$1,008,024
16	\$1,048,850
17	\$1,091,334
18	\$1,135,542
19	\$1,181,544

“**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 Excusable Event, 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, such maintenance to include maintaining all landscaping (including tree trimming) in and around the Generating Facilities..

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-1: Measurement and Verification Methods

ECM #	Description	Location	M&V Method
1	Energy Storage	Water Treatment Plant (WTP)	Option B
2	Solar Photovoltaic Generation	Wastewater Treatment Facility (WWTF)	Option B

1. 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
 - EMC 1 – Energy Storage (WTP)
 - i. Metering Plan:
Four meters will be needed to measure savings associated with this ECM. M1 – measures the electricity imported from and exported to PG&E. M2 – measures the PV Production flowing into the facility electrical distribution system. M3 – will measure the flow of electricity into and out of the energy storage system. M4 – will measure the actual energy consumed by facility electrical loads. All meters will be configured to read positive in the direction of facility load and negative away from the facility load.
 - ii. Baseline Determination:
The baseline consumption will be determined every 15 minutes and will be the consumption recorded by meter M4. The energy and demand recorded by this meter will be divided into time-of-use categories that correspond to the PG&E E-20 rate structure in effect on the date of execution of this agreement (Summer Peak kWh, Summer Partial Peak kWh, Summer off Peak kWh, Winter Partial Peak kWh, Winter Off Peak kWh, Summer Peak Demand kW, Summer Partial Peak Demand kW, Summer Maximum Demand kW, Winter Partial Peak Demand kW, and Winter Off-Peak Demand kW). In addition to the baseline energy and demand use, an operational baseline must be established which characterizes how discretionary loads in the waste water treatment process are dispatched. The table below characterizes some of these loads but additional items will be added and documented at the end of the construction period.

Load or Process	Description of Baseline Operation
Retention Basin pump operation	TBD
Aeration profile	TBD
Centrifuge Operating Schedule	TBD
Average Annual Influent MGD	TBD

Baseline facility energy use profile is also documented in PG&E interval energy consumption data which was available for the period of 6/1/15 through 5/31/16. .

- iii. Post-Retrofit Usage Determination:
Post-Retrofit usage will also be determined every 15 minutes and will be divided into the same time-of-use categories as the baseline use. The equation used to determine the Post-Retrofit use will be the sum of meters M1 and M2.
- iv. Energy Unit Savings:

Energy Unit Savings (kWh) will be calculated for each time of use category by subtracting the post-retrofit consumption from the baseline consumption within each time-of-use category, then summing for all intervals within each time-of-use category.

$$EC\ Savings = \sum_{intervals} M4 - (M1 + M2)$$

Energy Unit Savings (kW) will be calculated by selecting the maximum baseline demand measured in each month in any 15 minute interval for each time-of-use category and subtracting the post-retrofit demand measured at the same time interval for each month and each time-of-use category.

$$EC\ Savings = \sum_{Months} M4_{Max} - (M1_{at\ M4\ Max} + M2_{at\ M4\ Max})$$

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.

- v. Non-Routine Adjustments:
Non-routine baseline adjustments may be calculated when operating conditions change from those that existed during the baseline. Events where the continuously sustained peak demand duration within any time of use category increases, significant loads are shifted between peak, mid-peak, or off peak periods, backup generation is energized, or the occurrence of utility outages can all necessitate the calculation of a non-routine baseline adjustment in order to accurately reflect the savings associated with this ECM.
- vi. Yuba City Participation:
Yuba City operators are expected to cooperate with OpTerra Energy Services and adopt recommendations for timing of scheduled processes when such recommendations do not interfere with the plant operation or negatively impact effluent quality in order to maximize the savings associated with energy storage. Yuba City will have the opportunity to participate in demand response programs and is expected to consult and coordinate such participation with OES. Demand response savings will be measured and counted as EC Savings whenever it occurs. A lack of reasonable participation by the City will result in the calculation of non-routine baseline adjustments.
- vii. Energy Use Savings will be determined by multiplying the Energy Unit savings by the applicable Base Energy Rate. Energy Use Savings will be calculated and presented in ongoing reports. During the Construction Period, the Energy Use 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-2: Projected Annual Savings for ECM 1

TOU Element	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Maximum Peak Demand (kW)					86	89	0	23	69	210		
Maximum Part-Peak Demand (kW)	303	405	435	270	223	318	349	335	379	255	217	368
Maximum Demand (kW)	303	405	430	317	279	323	266	335	379	255	311	368
Peak Consumption (kWh)					18,318	18,074	23,067	14,829	16,241	20,683		
Part-Peak Consumption (kWh)	13,150	14,074	13,152	22,202	322	2,269	495	2,383	3,502	465	10,314	9,649
Off-Peak Consumption	(24,771)	(23,731)	(25,023)	(40,215)	(32,000)	(38,778)	(42,412)	(30,649)	(35,008)	(38,439)	(18,564)	(16,266)

(kWh)												
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EMC 2 – Solar Photovoltaic Generation (WTP)

- i. PV Production will be measured continuously Ongoing post-retrofit measurements comprise the Energy Unit Savings which will be 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.
- ii. 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 installed with the PV Systems. Projected kWh production is shown in the table below, and is projected to degrade by 0.5% per year.
- iii. 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-3: Projected First Year Production for ECM 2

Location/ECM	Annual Projected Production (kWh)
Solar Photovoltaic Generation - WWTF	3,261,938

2. 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%) and increased each Measurement Period on a cumulative basis beginning on the first anniversary of the M&V Commencement Date and continuing on the first day of each Measurement Period thereafter.

ECM 2 – Solar Photovoltaic Generation (WWTF):

Location/ECM	Electricity Rate (kWh)
Solar Photovoltaic Generation - WWTF	0.1541

ECM 1 – Energy Storage (WTP):

TOU Element	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Maximum Peak Demand (\$/kW)					\$1.50	\$1.50	\$1.50	\$1.50	\$1.50	\$1.50		
Maximum Part-Peak Demand (\$/kW)	\$0.030	\$0.030	\$0.030	\$0.030	\$0.50	\$0.50	\$0.50	\$0.50	\$0.50	\$0.50	\$0.030	\$0.030
Maximum Demand	\$14.44	\$14.44	\$14.44	\$14.44	\$14.44	\$14.44	\$14.44	\$14.44	\$14.44	\$14.44	\$14.44	\$14.44

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(\$/kW)												
Peak Consumption (\$/kWh)					\$0.32072	\$0.32072	\$0.32072	\$0.32072	\$0.32072	\$0.32072		
Part-Peak Consumption (\$/kWh)	\$0.09439	\$0.09439	\$0.09439	\$0.09439	\$0.14206	\$0.14206	\$0.14206	\$0.14206	\$0.14206	\$0.14206	\$0.09439	\$0.09439
Off-Peak Consumption (\$/kWh)	\$0.08053	\$0.08053	\$0.08053	\$0.08053	\$0.07445	\$0.07445	\$0.07445	\$0.07445	\$0.07445	\$0.07445	\$0.08053	\$0.08053

TOU Periods are defined as follows:

Summer Peak: 12:00 pm to 6:00 pm non-holiday weekdays.

Summer Part-Peak: 8:30 am to 12:00 pm and 6:00 pm to 9:30 pm non-holiday weekdays.

Summer Off Peak: 9:30 pm to 8:30 am non-holiday weekdays and all day Saturdays, Sundays, holidays.

Winter Part-Peak: 8:30 am to 9:30 pm non-holiday weekdays.

Winter Off Peak: 9:30 pm to 8:30 am non-holiday weekdays and all day Saturdays, Sundays, holidays.

Holidays are the date legally observed for: New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day.

**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 and Battery Storage System being constructed on Yuba City’s property at the following Project Locations:

Wastewater Treatment Facility
Water Treatment Plant

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

I. Definitions

“**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 20 years of Maintenance Services. The Annual Maintenance Fee will be as follows. The Annual Maintenance Fee will be effective on the first day of the corresponding Measurement Period.

Year	Annual Maintenance Fee
Year 1	\$69,295
Year 2	\$70,766
Year 3	\$72,282
Year 4	\$73,843
Year 5	\$75,451
Year 6	\$77,107
Year 7	\$78,812
Year 8	\$80,569
Year 9	\$82,379
Year 10	\$84,243
Year 11	\$86,162
Year 12	\$88,140
Year 13	\$90,176
Year 14	\$92,274
Year 15	\$94,435
Year 16	\$96,661
Year 17	\$98,953
Year 18	\$101,314
Year 19	\$103,746
Year 20	\$106,251

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 20 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:

Solar PV

- 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 an 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.

Battery Storage System

1. Subpanel
 - i. Visually inspect for any signs of damage, metal fatigue or vandalism
 - ii. Verify if subpanel has proper labels defining location of feed, voltage, amperage and appropriate placards
 - iii. Verify key exists
 - iv. Verify panel sheet has breakers assigned to appropriate equipment
 - v. Verify panel schedule has drawing of GreenStation™ cabinet layout w/ associated cabinet number (only applies for multiple cabinet sites)
 - vi. Verify breakers are labeled. Label/re-label as necessary
 - vii. Visually inspect condition of breakers and check for operation by toggling off then on
 - viii. Verify tamper proof sticker is placed on breakers. Apply/re-apply as necessary
 - ix. Visually inspect condition of ac disconnect, inside and outside
 - x. Verify ac disconnect has GCN label w/ site ID
 - xi. Verify tamper proof sticker is placed on ac disconnect. Apply/re-apply as necessary
 - xii. If step up transformer exists, visually inspect for any signs of damage, corrosion, or malfunction; ensure ground connections are tight and solidly connected and tighten if necessary
2. GreenStation™ Cabinet
 - i. Verify all stations are labeled
 - ii. Visually inspect DC disconnect knob for damage and ensure dial functionality
 - iii. Visually inspect exterior of cabinet for any signs of damage, metal fatigue or vandalism
 - iv. Visually inspect louvers on top hat for any signs of damage, metal fatigue or vandalism
 - v. Remove top hat & verify openings or holes are waterproof and/or watertight

- vi. Verify anchor bolts are securely fastened
- vii. Visually inspect thumb screws for aesthetic cover
- viii. Verify door, hinges, and locking mechanisms are in good working order
- ix. Visually inspect interior of cabinet for any signs of damage, metal fatigue and/or water damage and/or spots
- x. Verify fiberglass insulation and weather stripping is sticking to the door
- xi. Verify plenum is installed
- xii. Verify internal DC disconnect connections are tight and solidly connected; Torque/re-torque to 5ft-lbs
- xiii. Check continuity of all 4 to 5 c-box fuses
- xiv. Verify connections to c- box are tight and solidly connected. Reseat all connections.
- xv. Remove bottom battery and check AC connections are secure and solidly connected. Re-torque to 35in-lbs.
- xvi. Collect asset information via Device Magic

3. Batteries

- i. Visual inspection of battery management system (BMS)
- ii. Verify connections to BMS are tight and solidly connected
- iii. Visually inspect batteries for any damage, discoloration, or leakage
- iv. Verify connections for battery cables
- v. Collect asset information via Device Magic

4. IPC Converter

- i. Visually inspect inverter for signs of damage, corrosion, or potential malfunctioning
- ii. Open service cover and inspect for circuits and fuses for signs of damage, corrosion or potential malfunctioning
- iii. Measure insulation resistance between battery (+) to ground and battery (-) to ground at 1000VDC for 30 seconds

5. Ice Qube

- i. Visually inspect fans for cleanliness and proper operation
- ii. Visually inspect exhaust hose for damage and proper operation
- iii. Visually inspect AC filters and clean/change as necessary

6. Federal Pacific Transformer

- i. Visually inspect transformer for signs of damage or malfunctioning
- ii. Visually inspect connections after opening

7. GCN Controller

- i. Verify tamper proof sticker is placed on controller disconnect. Apply/re-apply as necessary
- ii. Visually inspect exterior of GCN controller for signs of damage, discoloration or malfunctioning
- iii. Confirm mini master lock is placed on lock hole
- iv. Visually inspect internal meter, modem, ethernet hub, and power supply
- v. Verify all wire connections internally are tight and solidly connected
- vi. Verify connectivity back to Network Operations Center (NOC)
- vii. Test fan functionality for each GS w/ GCN remote support
- viii. Test A/C functionality for each GS w/ GCN remote support

V. Repair Services

If a Generating Facility or Battery Storage System is damaged and requires safe-off, repair, demolition and/or reconstruction, Yuba City must contact the OpTerra Energy Services PV Operations & Maintenance Manager. In the event of damage, any component of the Generating Facility or Battery Storage System installed by OpTerra Energy Services can be repaired or reconstructed by OpTerra Energy Services at Yuba City's request. Yuba City must submit a request for quotation to the OpTerra Energy Services PV Operations & Maintenance Manager. OpTerra Energy Services will inspect the damage and provide a written quotation and complete scope of work to Yuba City to restore the Generating Facility or Battery Storage System to normal operational condition. Before proceeding with repairs, OpTerra Energy Services and Yuba City must execute a work order, on OpTerra Energy Services' form, for the agreed scope of work and quotation amount.

- Hourly technician labor rate \$150/hr.
- Materials markup 15%

VI. Warranty Services

The OpTerra Energy Services PV Operations & Maintenance Manager will also be Yuba City's point of contact for all issues related to the OpTerra Energy Services Warranty set forth in **Error! Reference source not found.** of the contract. Yuba City should refer to Article 9 of the Contract for services provided by OpTerra Energy Services to Yuba City in relation to manufacturer's warranties. The terms and conditions of the relevant manufacturer's warranties can be found in the operation and maintenance manuals delivered to Yuba City at Final Completion.

VII. 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. Making the Generating Facilities and Battery Storage System described herein available to OpTerra Energy Services as of the Contract Effective Date.
- b. Operating and maintaining security systems associated with the Generating Facilities and Battery Storage System.
- c. Maintaining all landscaping in and around Generating Facilities and Battery Storage System including tree trimming.
- d. Allowing OpTerra Energy Services and its personnel access as necessary to the Generating Facilities and Battery Storage System, 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 and Battery Storage System as necessary for OpTerra Energy Services to satisfy its obligations under the Contract.
- f. Remediating, pursuant to Applicable Law, 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. Insuring the Generating Facilities and Battery Storage System against loss due to acts of God and the public enemy; flood, earthquake, tornado, storm, fire; civil disobedience, sabotage, and vandalism.

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.

CITY OF YUBA CITY
STAFF REPORT

Date: October 18, 2016

To: Honorable Mayor & Members of the City Council

From: Public Works Department

Presented by: Benjamin Moody, Deputy Public Works Director – Engineering

Summary

Subject: Franklin Road Improvements Project (Award) – Total Cost \$503,570

Recommendation:

- A. Award Contract No. 15-08 Franklin Road Improvements, to North Star Construction and Engineering, Inc. of Yuba City, CA in the amount of their bid of \$419,570
- B. Authorize the City Manager to execute the contract on behalf of the City, following approval by the City Attorney
- C. Authorize a budget transfer from Capital Improvement Project (CIP) Account No. 1027 (Traffic Signal) to CIP Account No. 1199 (Franklin Road Pedestrian Improvements) in the amount of \$154,000

Fiscal Impact: \$503,570 – Account No. 1199 (Franklin Road Pedestrian Improvements) broken down as follows:

- \$419,570 – Contract Award Amount (1199-65501)
- \$42,000 – Construction Contingency (1199-65504)
- \$42,000 – Construction Management (1199-65503)

Purpose:

Construct pedestrian and bicycle safety improvements on Franklin Road between South Walton Avenue and Harding Road.

Background:

The City has been allocated \$368,000 in State funding through the Active Transportation Program (ATP) for the installation of a new high-visibility crosswalk system on Franklin Road at Nantucket Way; construction of new bike lanes, curb, gutter, and sidewalk on the north side of Franklin Road; and upgrades to 18 pedestrian curb ramps to meet current Americans with Disability Act (ADA) standards. The new high-visibility crosswalk system will feature rapid flashing beacons and advanced warning signs similar to the recent installation on Plumas Boulevard near Town Square and will include a refuge island in Franklin Road. The project's intention is to provide a safer path of travel for pedestrians, particularly school children traveling to nearby Andros Karperos School.

Council approved the project's plans and specifications on March 28, 2016.

Analysis:

The Franklin Road Improvements Project was advertised for bid on September 15, 2016. Plans and specifications were provided to local builder and contractor exchanges, with five (5) contractors purchasing plans and specifications for bid. On October 6th, five (5) bids were received and opened in the City Clerk's office. A list of the bids received and the engineer's estimate are shown below:

<u>Company</u>	<u>Bid Amount</u>
North Star Construction and Engineering, Inc.	\$419,570.00
FBD Vanguard Construction, Inc.	\$438,402.25
Lamon Construction Co., Inc.	\$485,569.56
Allen Gill Construction, Inc.	\$488,571.22
All-American Construction, Inc.	\$526,282.10
<i>Engineer's Estimate</i>	<i>\$419,000.00</i>

North Star Construction and Engineering, Inc. of Yuba City, CA is the low, responsive bidder. Contract administration and inspection of the project will be performed by Public Works Department staff. Project construction is expected to begin in mid-November, weather permitting.

Fiscal Impact:

The estimated total cost for the project is \$503,570, which would be funded as follows through CIP Account No. 1199 (Franklin Road Pedestrian Improvements):

State ATP funds:	\$368,000 (73%)
Local agency funds (TDA):	\$135,570 (27%)

Approximately \$350,000 is available in CIP Account No. 1199 (Franklin Road Pedestrian Improvements). Staff is requesting a budget transfer of \$154,000 from CIP Account No. 1027 (Traffic Signals) to fund the project. There is approximately \$675,000 available in CIP Account No. 1027.

The City will be required to advance funding for the entire project cost until the necessary reimbursements have been made from the State ATP.

Alternatives:

- a. Do not award the contract and reject the bids.
- b. Delay or modify recommended action.

Recommendation:

- A. Award Contract No. 15-08 Franklin Road Improvements, to North Star Construction and Engineering, Inc. of Yuba City, CA in the amount of their bid of \$419,570.
- B. Authorize the City Manager to execute the contract on behalf of the City, following approval by the City Attorney.
- C. Authorize a budget transfer from Capital Improvement Project (CIP) Account No. 1027 (Traffic Signal) to CIP Account No. 1199 (Franklin Road Pedestrian Improvements) in the amount of \$154,000.

Prepared by:

/s/ Kevin Bradford

Kevin Bradford
Senior Engineer

Submitted by:

Steven C. Kroeger

Steven C. Kroeger
City Manager

Reviewed by:

Department Head

DL

Finance

RB

City Attorney

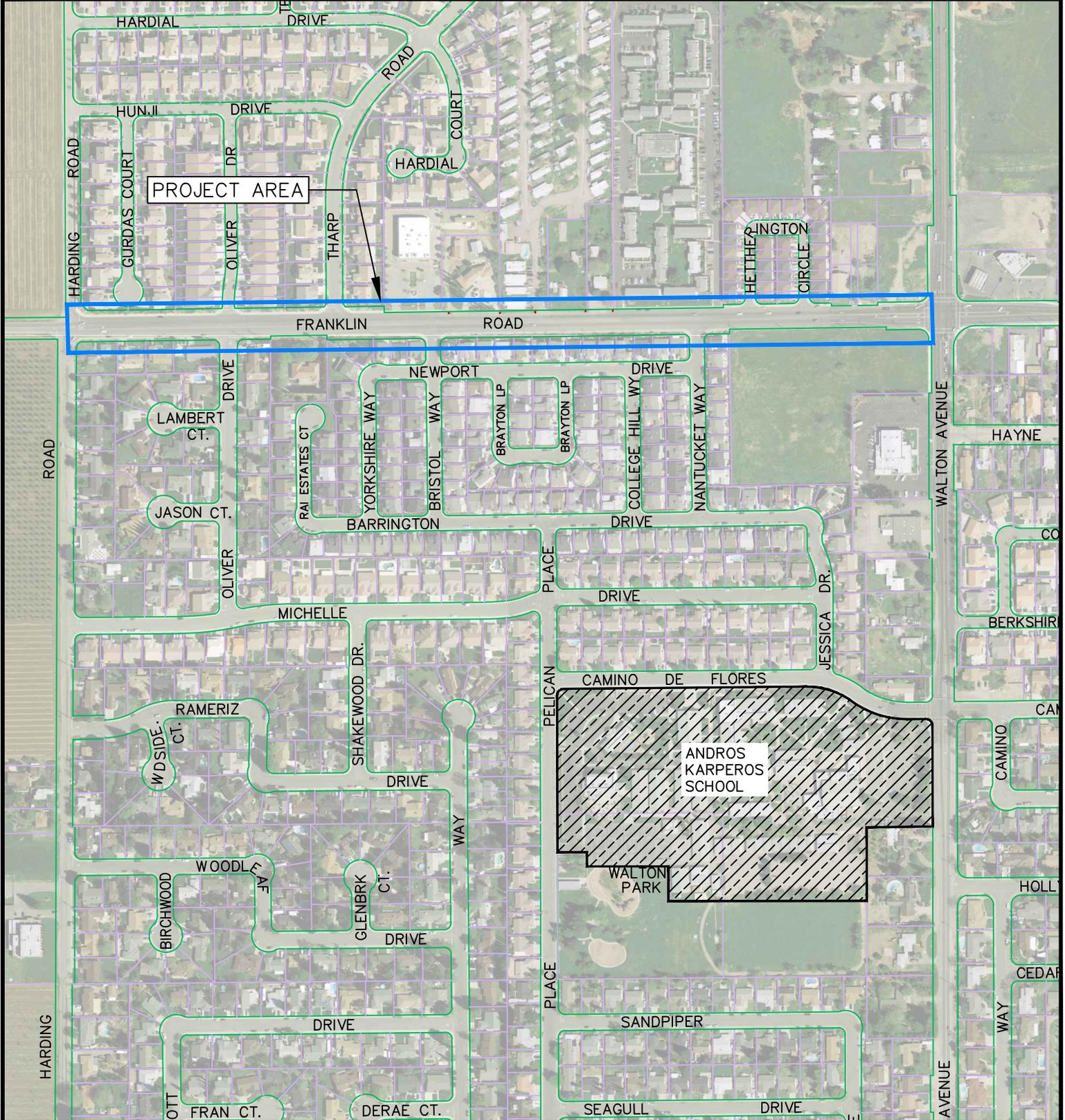
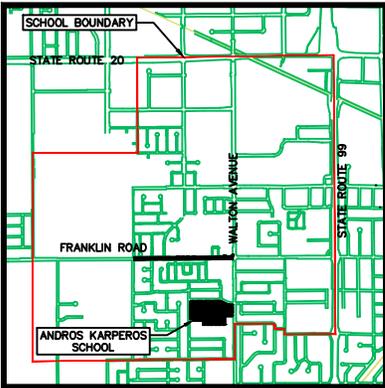
TH via email

ATTACHMENT A - VICINITY MAP

FRANKLIN ROAD IMPROVEMENTS



SCALE 1" = 400'



CITY OF YUBA CITY
STAFF REPORT

Date: October 18, 2016
To: Honorable Mayor & Members of the City Council
From: Finance Department
Presentation By: Spencer Morrison, Accounting Manager

Summary

Subject: Custodial Services Contract (FB16-10)

Recommendation: A. Award a contract to Ultimate Building Maintenance (UBM) of Yuba City, CA, in the amount of \$77,100 for one (1) year of custodial services with the option of three (3) one (1) year extensions
B. Authorize the City Manager to approve the contract extensions

Fiscal Impact: \$77,100 annually as follows:
\$36,900 Senior Center-1541-62701, Professional Services;
\$32,400 Gauche Aquatic Park-1541-62701, Professional Services
\$ 7,800 Sutter Animal Control-7410-63601, Bldg. O&M-Mtce

Purpose:

To provide custodial services to three (3) City facilities: Gauche Aquatic Park, Senior Center and Sutter Animal Control.

Background:

In June 2016, the City awarded a custodial services contract to Tony Fraga Building Services. On several occasions the Facility Maintenance Supervisors inspected each location and noticed items in the contract not being completed. At that point, there was a conversation with the contractor regarding the work not being provided and a deadline was set up to fix the issues. Three months into the contract the issues were still not rectified. The decision was made to terminate the contract in the best interest of the City.

Analysis:

Ultimate Building Maintenance (UBM) of Yuba City was the next lowest bidder. The City contacted UBM and they are willing to take over the contract and their price will remain the same as the bid price submitted. The City has previously used UBM and has been happy with the service that they provided.

Fiscal Impact:

\$77,100 annually follows:
\$ 36,900 Senior Center-1541-62701, Professional Services

\$ 32,400 Gauche Aquatic Park-1541-62701, Professional Services
\$ 7,800 Sutter Animal Control-7410-63601, Bldg. O&M-Mtce

Alternatives:

- 1) Request a new bid

Recommendation:

Award a contract to Ultimate Building Maintenance of Yuba City, CA, in the amount of \$77,100 for one (1) year of custodial services with the option of three (3) one (1) year extensions. Authorize the City Manager to approve the contract extensions.

Prepared By:

[/s/ Vicky Anderson](#)

Vicky Anderson
Administrative Analyst I

Submitted By:

[/s/ Steven C. Kroeger](#)

Steven C. Kroeger
City Manager

Reviewed By:

Finance

[/RB/](#)

Public Works

[/DL/](#)

City Attorney

[/TH/ via email](#)

CITY OF YUBA CITY
STAFF REPORT

Date: October 18, 2016
To: Honorable Mayor & Members of the City Council
From: Finance Department
Presentation By: Spencer Morrison, Accounting Manager

Summary

Subject: Purchase of one (1) Ford F350 with custom truck body (RFQ17-01)

Recommendation:

- A. Award the purchase of one (1) Ford F350 with custom truck body to Geweke Ford of Yuba City, CA, in the amount of \$37,048.15 by finding that it is in the best interest of the City to do so
- B. Authorize a supplemental appropriation for \$37,048.15 to account 6610-69410 for the purchase

Fiscal Impact: \$37,048.15 Vehicle Replacement Fund Account 6610-69410

Purpose:

Purchase of vehicle to replace vehicle 04-31 that was involved in an accident.

Background:

Vehicle 04-31 was involved in an accident with a third party. The vehicle is used in the Water Distribution Division of Public Works and is essential to continue the service the City provides therefore making the replacement necessary.

The City is working with the third party's insurance company to recover costs in the amount of \$7,864.18. The Vehicle Replacement Fund has \$33,697 available for the replacement of vehicle #04-31, and with the receipt of the insurance money will be sufficient monies available for the replacement.

Staff recommended replacement versus repairing of vehicle since the repair cost is more than the value of the vehicle and the service life of the vehicle is coming to an end.

Analysis:

The Public Works Department worked with Finance staff and Fleet Maintenance staff to ensure that the vehicle specifications meet the City's requirements. A request for quotation (RFQ) was developed and sent to sixteen (16) vendors. The following quotes were received:

<u>Vendor</u>	<u>Total Quote</u>
Geweke Ford Yuba City, CA	\$37,048.15*

Ron DuPratt Ford
Dixon, CA \$37,062.96

Downtown Ford
Sacramento, CA \$39,584.08

*awardee

Fiscal Impact:

\$37,048.15 Vehicle Replacement Fund Account 6610-69410

Alternatives:

- 1) Reject all quotes
- 2) Request new quote process
- 3) Do not purchase

Recommendation:

Award the purchase of one (1) Ford F350 with custom truck body to Geweke Ford of Yuba City, CA, in the amount of \$37,048.15 by finding that it is in the best interest of the City to do so including authorizing a supplemental appropriation for \$37,048.15 to account 6610-69410 for the purchase.

Prepared By:

[/s/ Vicky Anderson](#)

Vicky Anderson
Administrative Analyst I

Submitted By:

[/s/ Steven C. Kroeger](#)

Steven C. Kroeger
City Manager

Reviewed By:

Finance

[/RB/](#)

Public Works

[/DL/](#)

City Attorney

[/TH/ via email](#)

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, Chief Deputy 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 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.

**MINUTES (DRAFT)
REGULAR MEETING OF THE CITY COUNCIL
CITY OF YUBA CITY
COUNCIL CHAMBERS
SEPTEMBER 20, 2016
5:00 P.M. – CLOSED SESSION
6:00 P.M. – REGULAR MEETING**

Closed Session—Butte Room

- A. Annual performance evaluation of City Manager pursuant to Government Code § 54957.
- B. Conferred with legal counsel regarding existing Workers Compensation Claim of Thomas Mathews pursuant to Government Code § 54956.9(a).

Regular Meeting—Council Chambers

The City of Yuba City City Council meeting was called to order by Mayor Buckland at 6:04 p.m.

Roll Call

Present: Councilmembers Cleveland, Didbal, Dukes, Gill and Mayor Buckland

Absent: None

Invocation

Mayor Buckland requested a minute of silence in honor of the loss of the Beale AFB Pilot this morning. Councilmember Dukes gave the invocation.

Pledge of Allegiance to the Flag

Sergeant James Runyen led the Pledge of Allegiance.

Presentations & Proclamations

1. Domestic Violence Awareness Month – Casa de Esperanza

Mayor Buckland presented Rosa Zuniga of Casa De Esperanza a proclamation in honor of Domestic Violence Awareness Month

2. Emergency Preparedness Month – Fire Department

Fire Administrative Analyst Bill Fuller accepted the Proclamation on behalf of the Fire Department

3. Charles Anderson – Parks and Recreation Commissioner

Mayor Buckland presented Commissioner Charles Anderson a Proclamation in honor of his eight years of service to the Community

Public Hearing

4. Office of Traffic Safety Grant, Selective Traffic Enforcement Program

Mayor Buckland opened the public hearing, Hearing no comment, he closed the public hearing.

Councilmember Gill moved to adopt **Resolution No. 16-066** authorizing the Chief of Police to accept the 2016/2017 Office of Traffic Safety Grant titled Selective Traffic Enforcement Program in the amount of \$90,000 and approve expenditure recommendations and authorize the Finance Director to make budget adjustments as necessary. Councilmember Didbal seconded the motion that passed with a unanimous vote.

Bid Opening

5. Garden Highway Improvements – Epley Dr. to Winship Rd. (Award)

Councilmember Dukes moved to: A) Award Contract No. 12-04, Garden Highway Improvements – Epley to Winship to Lamon Construction Co., Inc., of Yuba City, CA in the amount of their total bid of \$2,107,149; B) Authorize the City Manager to execute the contract on behalf of the City, following approval by the City Attorney; and C) Authorize a supplemental appropriation of \$250,000 of unallocated Transportation Development Act road funds to account 911153 - Garden Highway Improvements. Councilmember Cleveland seconded the motion that passed with a unanimous vote.

Ordinance

6. Urban Level Flood Protection (ULOP; Senate Bill 5)

Councilmember Gill moved to adopt **Ordinance No. 009-16** amending Title 6, Chapter 9 relating to Flood Damage Prevention; Title 8, Chapter 2 relating to Tentative and Vesting Tentative Maps; Chapter 5, Zoning; Chapter 6, Condominium Conversions; Chapter 7 Planned Unit Developments; waiving the second reading. Councilmember Dukes seconded the motion that passed with a unanimous vote.

Public Communication

7. Written Requests - None

8. Appearance of Interested Citizens - None

Consent Calendar

Councilmember Gill moved to adopt the Consent Calendar as presented. Councilmember Cleveland seconded the motion that passed with a unanimous vote.

9. Minutes of September 6, 2016

Approved the City Council Meeting Minutes of September 6, 2016.

10. Biennial Review of the City of Yuba City Conflict of Interest Code

Adopted **Resolution No. 16-066** Amending the City of Yuba City Conflict of Interest Code and list Designated Positions.

11. Proposed City Hall Holiday Closure December 26, 2016 – December 30, 2016

Adopted **Resolution No. 16-067** authorizing the closure of City Hall and other select offices for the holiday period beginning Monday, December 26, 2016 through Friday, December 30, 2016.

General Items

12. Wildewood East Connection to City Water

The following person spoke:

Frank Stormer, Wildewood Boardmember

Councilmember Dukes moved to: A) Approve providing water to the Wildewood East Subdivision contingent upon the approval of a State Revolving Fund (SRF) Loan to finance a water line extension project and connection fees, annexation to the City, and Assessment District formation [Subdivision located north of Franklin Road and west of George Washington Boulevard]; and B) Authorize the Public Works Director to prepare and submit an application for a State Revolving Fund (SRF) Loan to fund the construction of water lines and connection fees in the Wildewood East Subdivision. Councilmember Didbal seconded the motion that passed with a unanimous vote.

13. Bicycle Safety Campaign Grant Application (FRAQMD Grant Application)

Councilmember Gill moved to authorize the Public Works Director to submit an application for the funding of a Bicycle Safety Campaign Project for grant funding through the Feather River Air Quality Management District. Councilmember Dukes seconded the motion that passed with a unanimous vote.

14. 5th Street Bridge Replacement Project – Authorization to Enter into a High Cost Agreement

The following person spoke:

Fotine HalikasKopriva, Downtown Business Association

Councilmember Gill moved to: A) Authorize the City Manager to enter into a High Cost Agreement with the California Department of Transportation; and B) Authorize the Finance Director to utilize citywide pooled cash to cover advancing expenditures to the contractor while awaiting reimbursement from related grant revenues. Councilmember Didbal seconded the motion that passed with a unanimous vote.

15. 5th Street Bridge Replacement Project – Authorization to Enter into a Lease Agreement with the California State Lands Commission

Councilmember Dukes moved to authorize the City Manager to enter into a lease agreement with the California State Lands Commission for removal of the existing 5th Street Bridge and construction of the new bridge. Councilmember Gill seconded the motion that passed with a unanimous vote.

16. City Participation on Regional Leadership Committee to address Homelessness

Councilmember Dukes moved to appoint Mayor Buckland to serve as the City representative on the Regional Leadership Committee with Vice-Mayor Cleveland serving as the Alternate. Councilmember Didbal seconded the motion that passed with a unanimous vote.

Business from the City Council

17. Appointments to City of Yuba City Boards and Commissions

Councilmember Gill moved to approve the City Council Screening Committee Recommendations for Appointments: Larry Robinson to the Planning Commission, Bonnie Pullen to the Parks and Recreation Commission, and Carl Hultquist to the Senior Commission. Councilmember Didbal seconded the motion that passed with a unanimous vote.

18. League of California Cities Annual Conference Resolutions

The following person spoke:

Pat Miller, Sutter County Tax Payers Association

The Mayor and City Council discussed the City of Yuba City's Position on the League of California Cities Proposed Resolution to Make Safety a Top Priority for Transportation Projects

19. City Council Reports

- Councilmember Didbal
- Councilmember Dukes
- Councilmember Gill
- Vice Mayor Cleveland
- Mayor Buckland

Adjournment

Mayor Buckland adjourned the Regular Meeting of the City Council of the City of Yuba City at 8:09 p.m. in honor of our fallen warrior Beale AFB U2 Pilot Lt. Col. Steve Eadie and his family.

John Buckland, Mayor

Attest:

Terrel Locke, Chief Deputy City Clerk

CITY OF YUBA CITY
STAFF REPORT

Date: October 18, 2016
To: Honorable Mayor & Members of the City Council
From: Finance Department
Presentation By: Spencer Morrison, Accounting Manager

Summary

Subject: Delinquent Assessment District Installments - Judicial Foreclosure Proceedings

Recommendation: Adopt a resolution ordering the commencement of judicial foreclosure proceedings and direct the removal of \$4,610 delinquent assessment and reassessment installments from the county tax roll

Fiscal Impact: Collection of \$4,610.72 in delinquent assessments, reassessments, penalties, and interest

Purpose:

To execute the City's fiscal responsibility to collect delinquent assessments on behalf of the assessment districts.

Background:

In 2000, 2002, 2003, and 2004, the City conducted proceedings under the Improvement Bond Act and the Municipal Improvement Act to create Assessment District Nos. 2000-1 (Buttes Vista), 2002-1 (Buttes Vista), 2003-1 (Tierra Buena Water), and 2004-1 (Staple/Ashley/Dennis/Cornwell), respectively. Those proceedings resulted in the City's issuance of bonds for public infrastructure improvements and levy of special assessments within the assessment districts to pay the principal and interest of said bonds. The special assessments are collected in semi-annual installments and become delinquent on December 10th and April 10th of each tax year. The City covenanted with the bondholders to commence judicial foreclosure proceedings against properties within the assessment districts for which special assessments became delinquent. In 2013, the City refunded and reassessed Assessment District Nos. 2000-1 (Buttes Vista), 2002-1 (Buttes Vista), and 2003-1 (Tierra Buena Water) pursuant to the Refunding Act of 1984 for 1915 Improvement Act Bonds and retitled the districts as reassessment districts.

Analysis:

Certain installments of assessments and reassessments levied within the above referenced districts have not been paid by the property owners when due and remain delinquent ("Delinquent Installments"). The City is obligated by bond covenants to seek collection of the Delinquent Installments via an action for judicial foreclosure pursuant to the Improvement Bond Act. Prior to filing an action for judicial foreclosure, the Improvement Bond Act requires the City to formally order the commencement of such action and remove the Delinquent Installments from the county tax roll. The attached resolution authorizes the initiation of judicial foreclosure actions against the delinquent properties located in the above referenced districts and the

removal of the Delinquent Installments from the Sutter County tax roll. The following parcels are subject to judicial foreclosure action per the recommended resolution:

Parcel	Owner's Name	Assessment/ District	Reassessment	Tax Year(s)	Installments
53-080-008	KANADA, CORY	Staple/Ashley/Dennis/Cornwell Assessment District No. 2004-1		2014/2015	1 st and 2 nd
53-080-008	KANADA, CORY	Staple/Ashley/Dennis/Cornwell Assessment District No. 2004-1		2015/2016	1 st and 2 nd
59-480-013	PHIPPS 01' TR ETAL	Buttes Vista Reassessment District No. 2000-1		2013/2014	1 st and 2 nd
59-480-013	PHIPPS 01' TR ETAL	Buttes Vista Reassessment District No. 2000-1		2014/2015	1 st and 2 nd
59-550-031	BORGEDALEN, CAROL F	Buttes Vista Reassessment District No. 2002-1		2013/2014	1 st and 2 nd
59-550-031	BORGEDALEN, CAROL F	Buttes Vista Reassessment District No. 2002-1		2014/2015	1 st and 2 nd
59-550-031	BORGEDALEN, CAROL F	Buttes Vista Reassessment District No. 2002-1		2015/2016	1 st and 2 nd
62-071-001	GOLDEN ACRES HOME CARE II, GP	Tierra Buena Water Reassessment District No. 2003-1		2014/2015	1 st and 2 nd
62-071-001	GOLDEN ACRES HOME CARE II, GP	Tierra Buena Water Reassessment District No. 2003-1		2015/2016	1 st and 2 nd

Fiscal Impact:

These proceedings are for the purpose of collecting \$4,610.72 in delinquent installments, penalties, and interest, plus all additional administrative and legal costs incurred by the assessment and reassessment districts in the execution of the resolution as directed by council, to be deposited in the respective assessment and reassessment district funds by the Finance Director.

Recommendation:

Adopt a resolution ordering the commencement of judicial foreclosure proceedings and direct the removal of delinquent assessment installments from the county tax roll.

Prepared by:

/s/ Spencer Morrison
Spencer Morrison
Accounting Manager

Submitted by:

/s/ Steven C. Kroeger
Steven C. Kroeger
City Manager

Reviewed By:

Finance
City Attorney

RB
TH via email

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY
ORDERING THE COMMENCEMENT OF JUDICIAL FORECLOSURE
PROCEEDINGS PURSUANT TO THE IMPROVEMENT BOND ACT OF 1915
TO COLLECT DELINQUENT ASSESSMENT AND REASSESSMENT
INSTALLMENTS LEVIED WITHIN STAPLE/ASHLEY/DENNIS/CORNWELL
ASSESSMENT DISTRICT NO. 2004-1, BUTTES VISTA REASSESSMENT
DISTRICT NO. 2000-1, BUTTES VISTA REASSESSMENT DISTRICT 2002-1,
AND TIERRA BUENA WATER REASSESSMENT DISTRICT NO. 2003-1 AND
DIRECTING THE REMOVAL OF DELINQUENT ASSESSMENT AND
REASSESSMENT INSTALLMENTS FROM THE COUNTY TAX ROLL**

WHEREAS, the City of Yuba City ("City") has incurred bonded indebtedness to finance public infrastructure improvements pursuant to the Improvement Bond Act of 1915 (Division 10 of the Streets and Highways Code of California) (the "Bond Act") and duly and regularly levied, by way of the Sutter County tax roll, (i) special assessments ("Assessments") pursuant to the Municipal Improvement Act of 1913 (Division 12 of the Streets and Highways Code of California) against parcels of real property within Staple/Ashley/Dennis/Cornwell Assessment District No. 2004-1 and (ii) special reassessments ("Reassessments") pursuant to the Refunding Act of 1984 for 1915 Improvement Act Bonds, (Division 11.5 of the Streets and Highways Code of California) (the "Refunding Act") against parcels of real property within Buttes Vista Reassessment District No. 2000-1, Buttes Vista Reassessment District No. 2002-1 and Tierra Buena Water Reassessment District No. 2003-1. (The foregoing assessment and reassessment districts are collectively referred herein as the "Districts"); and

WHEREAS, the City has duly recorded notices of the Assessments and Reassessments, thereby imposing liens securing each installment thereof, and interest and penalties thereon, against those parcels within the Districts set forth in said notices; and

WHEREAS, those installments of the Assessments and Reassessments set forth in Exhibit "A" attached hereto and incorporated herein by this reference have not been paid when due and remain delinquent ("Delinquent Installments"); and

WHEREAS, the City Council of the City of Yuba City ("City Council") is authorized by the Bond Act, not later than four (4) years subsequent to the last maturity of the principal of bonds secured by the Assessments and Reassessments, to order that the Delinquent Installments be collected by an action brought in the Superior Court to foreclose the liens securing those installments; and

WHEREAS, the City has covenanted with the owners of certain bonded indebtedness pursuant to the Bond Act to commence and diligently prosecute judicial foreclosure proceedings to collect Delinquent Installments ("Bond Covenant"); and

WHEREAS, the City Council has determined that the public interest and convenience, including, but not limited to, the Bond Covenant, requires the prosecution of judicial foreclosure proceedings to collect the Delinquent Installments; and

WHEREAS, pursuant to Section 8833 of the Bond Act, when a foreclosure action is ordered, the county tax collector shall be credited upon the current tax roll with the amount

charged on account of the delinquent Assessments and Reassessments to be sued on, including applicable penalties, interest, and costs, and relieved of further duty in regard thereto; and

WHEREAS, pursuant to Section 8833 of the Bond Act, a Notice of Intent to Remove Delinquent Assessment Installment from the Tax Roll (“NOI”) must be recorded prior to the removal of the Delinquent Installments from the county tax roll; and

WHEREAS, the City previously retained Willdan Financial Services, a Professional Corporation (“Financial Consultant”), to administer the Districts on the behalf of the City; and

WHEREAS, the City previously retained Stradling, Yocca, Carlson & Rauth, a Professional Corporation (“Special Counsel”), to prosecute judicial foreclosure actions on the behalf of the City; and

WHEREAS, the Financial Consultant previously recorded a NOI in the official records of Sutter County for the Delinquent Installments and requested that the Sutter County Tax Collector (“Tax Collector”) remove said installments from the county tax roll.

NOW, THEREFORE, the City Council does hereby resolve, determine, and order as follows:

SECTION 1. The Delinquent Installments shall be collected by actions brought pursuant to the Bond Act in the Superior Court of the State of California for the County of Sutter to foreclose the liens securing those installments (“Foreclosure Actions”).

SECTION 2. Special Counsel is authorized to initiate and litigate the Foreclosure Actions on behalf of the City.

SECTION 3. All costs and attorneys’ fees incurred in the collection of the Delinquent Installments shall be sought in the Foreclosure Actions pursuant to the Bond Act. Special Counsel is authorized to require the payment of costs and attorneys’ fees as a condition of any pre-judgment or post-judgment redemption.

SECTION 4. The Financial Consultant, in conjunction with Special Counsel, is directed to take the following actions pursuant to Section 8833 of the Bond Act:

- a. Record an NOI against the delinquent parcels listed in Exhibit “A”; and
- b. To present to the Tax Collector written proof of the recordation of the NOI together with a request for the Tax Collector to remove the Delinquent Installments from the tax roll; and
- c. To credit the Tax Collector upon the current tax roll with the amount charged on account for the parcels listed in Exhibit “A” (including applicable penalties, interest, and costs) and relieve the Tax Collector of further duty in regard thereto.

SECTION 5. To the extent that any of the actions set forth in Section 4 above have already been completed by the Financial Consultant, the City Council hereby ratifies such prior actions.

SECTION 6. In the event that future installments of the Assessments and Reassessments levied against parcels listed in Exhibit "A" become delinquent during the pendency of the Foreclosure Action and/or prior to the delinquent parcel's sale pursuant to judgment, Special Counsel is directed to cause those future delinquent installments to be removed from the county tax roll and collected, along with any applicable interest, penalties, costs, fees, and other charges, through the pending Foreclosure Action or modification of the judgment pursuant to Section 8830(c) of the Bond Act.

SECTION 7. The City Council hereby finds and determines that the recitals set forth above are true and correct and are incorporated herein.

SECTION 8. This resolution shall take effect immediately upon its adoption.

The foregoing resolution was **PASSED AND ADOPTED** by the Council of the City of Yuba City at a regular meeting thereof held in accordance with law on October 18, 2016.

AYES;
NOES:
ABSENT:

John Buckland, Mayor

ATTEST:

Terrel Locke
Chief Deputy City Clerk

EXHIBIT "A"

Delinquent Assessment and Reassessment Installments

Parcel	Owner's Name	Assessment/ District	Reassessment	Tax Year(s)	Installments
53-080-008	KANADA, CORY	Staple/Ashley/Dennis/Cornwell Assessment District No. 2004-1		2014/2015	1 st and 2 nd
53-080-008	KANADA, CORY	Staple/Ashley/Dennis/Cornwell Assessment District No. 2004-1		2015/2016	1 st and 2 nd
59-480-013	PHIPPS '01 TR ETAL	Buttes Vista Reassessment District No. 2000-1		2013/2014	1 st and 2 nd
59-480-013	PHIPPS '01 TR ETAL	Buttes Vista Reassessment District No. 2000-1		2014/2015	1 st and 2 nd
59-550-031	BORGEDALEN, CAROL F	Buttes Vista Reassessment District No. 2002-1		2013/2014	1 st and 2 nd
59-550-031	BORGEDALEN, CAROL F	Buttes Vista Reassessment District No. 2002-1		2014/2015	1 st and 2 nd
59-550-031	BORGEDALEN, CAROL F	Buttes Vista Reassessment District No. 2002-1		2015/2016	1 st and 2 nd
62-071-001	GOLDEN ACRES HOME CARE II, GP	Tierra Buena Water Reassessment District No. 2003-1		2014/2015	1 st and 2 nd
62-071-001	GOLDEN ACRES HOME CARE II, GP	Tierra Buena Water Reassessment District No. 2003-1		2015/2016	1 st and 2 nd

CITY OF YUBA CITY
STAFF REPORT

Date: October 18, 2016
To: Honorable Mayor & Members of the City Council
From: Public Works Department
Presentation by: Benjamin Moody, Deputy Public Works Director – Engineering

Summary

Subject: Garden Highway Reimbursement Agreement (Heer Property, APN 53-500-005)
Recommendation: Adopt a Resolution approving the execution of a Reimbursement Agreement with the property owners of Assessor Parcel Number 53-500-005 for the installation of road frontage improvements along Garden Highway
Fiscal Impact: \$124,000 – Account No. 1153 (Garden Highway Improvements). Costs to be reimbursed with development

Purpose:

To improve Garden Highway in accordance with the City's General Plan ultimate requirements and establish a Reimbursement Agreement (Agreement) for the property owner's portion of the costs.

Background:

On September 20th, 2016 City Council awarded the Garden Highway Improvements – Epley to Winship Project to Lamon Construction of Yuba City. The project includes installation of curb, gutter, and sidewalk, and reconstruction of the existing roadway between Winship Road and Lincoln Road. Additionally, a storm-drain system between Winship Road and Epley Drive will be installed to provide necessary drainage for the area.

The City has been approached by the property owners of Assessor Parcel Number 53-500-005, located at the southeast corner of Garden Highway and Winship Road. The property owners have requested that the City modify the current project scope to include work along their property frontage that would build Garden Highway to the City's General Plan ultimate width. By incorporating the work into the current project, future development costs to the property owner would be minimized and the City would benefit that the roadway would be widened to handle increased vehicle use.

Analysis:

When development occurs within the City, the City's policies require that the subject property improve the roadway to align with the ultimate design for the roadway. The proposed work would be in accordance with the City's General Plan guidelines to add an additional northbound lane on Garden Highway along the property frontage. The proposed agreement is beneficial to

the City in the fact that the roadway will be built to the ultimate design width and for the property owners in that they will not need to remove and replace the City's improvements when future development occurs. The proposed Reimbursement Agreement specifies the terms of the Agreement including costs, right-of-way dedication, and the obligation to reimburse the City when development occurs. The work is planned to be processed through a contract change order in accordance with the contract special provisions.

Fiscal Impact:

City Staff estimates the additional work to be approximately \$124,000. This work is subject to actual undetermined PG&E costs, and the actual costs for design, construction, and project management costs to facilitate the improvements. Staff will track actual costs for full reimbursement.

Construction contingency funding in the City's CIP Account 1153 (Garden Highway Improvements) is anticipated to cover the added work scope.

The City will be required to advance funding for the costs, and then will be reimbursed when development occurs.

Alternatives:

Do not approve the Reimbursement Agreement, or modify the scope and terms as deemed necessary.

Recommendation:

Adopt a Resolution approving the execution of a Reimbursement Agreement with the property owners of Assessor Parcel Number 53-500-005 for the installation of road frontage improvements along Garden Highway.

Attachments:

1. Vicinity Map
2. Project Cross Section
3. Reimbursement Agreement
4. Resolution

Prepared by:

/s/Ben Moody
Benjamin K. Moody
Deputy P. W. Director - Engineering

Submitted by:

/s/ Steven C. Kroeger
Steven C. Kroeger
City Manager

Reviewed by:

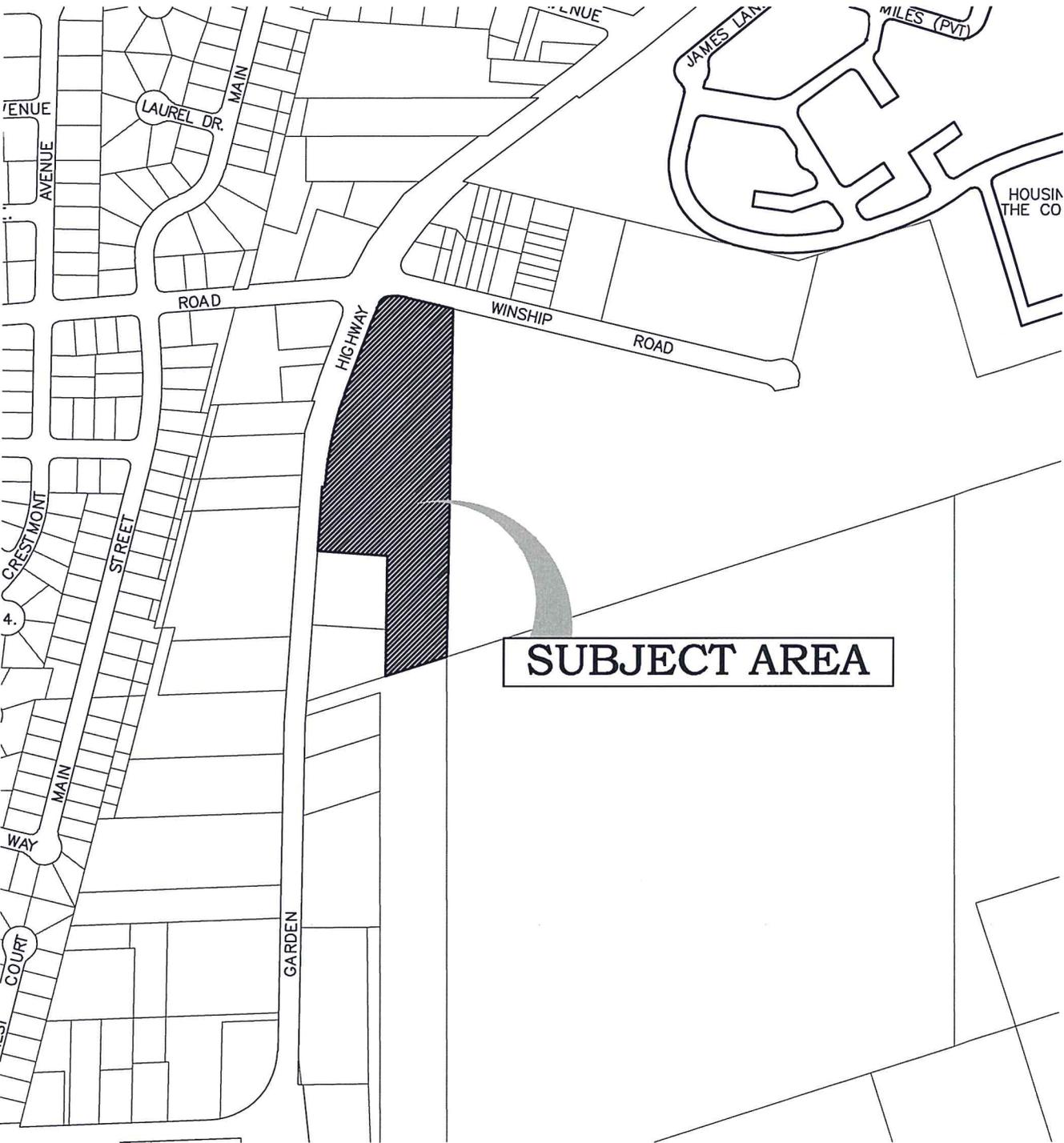
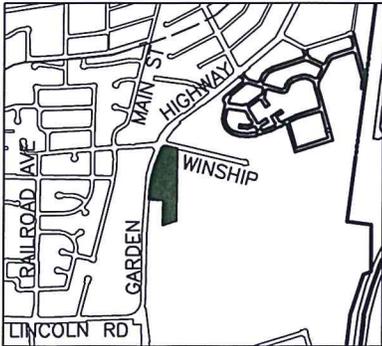
Department Head
Finance
City Attorney

DL
RB
TH via email



SCALE: 1" = 400'

GARDEN HWY - WINSHIP RD REIMBURSEMENT AGREEMENT

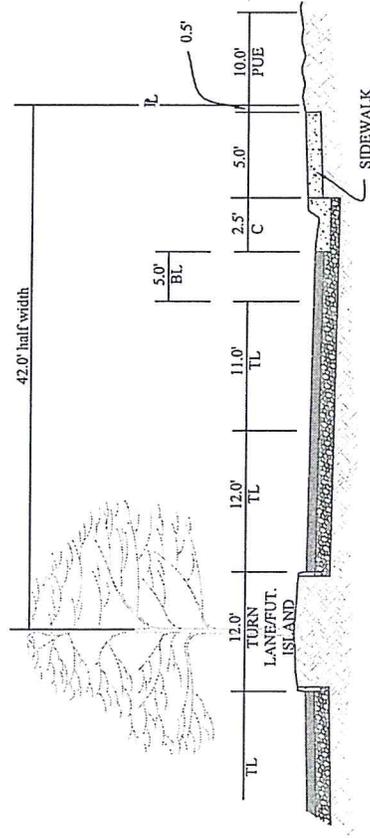


SUBJECT AREA

CITY'S RESPONSIBILITY:
 24' OF PAVED STREET
 (6' turn lane, 12' travel lane, 6' of #2 lane)
 2.5' CURB & GUTTER
 5.0' SIDEWALK

DEVELOPER'S RESPONSIBILITY:
 10' OF PAVED STREET
 (5' of #2 lane, 5' bike lane)

ROW -- Right-of-Way
 PUE -- Public Utilities Easement
 SW -- Sidewalk
 PS -- Planter Strip
 C -- Curb and Gutter
 PL -- Parking Lane
 BL -- Bike Lane
 TL -- Travel Lane
 RL -- Property Line



Garden Highway (looking north)
 adjacent to APN 53-500-005

GARDEN HIGHWAY
REIMBURSEMENT AGREEMENT

This Agreement is made and entered into this 18th day of October, 2016, by and between the City of Yuba City, hereinafter called City, and Nar Singh Heer and Rajdeep Heer, husband and wife, as Joint Tenants and Harkrishan Heer and Pinky Heer, husband and wife, as Joint Tenants, hereinafter called Developer.

WITNESSETH:

WHEREAS, it is the intention of the Developer to reimburse the City for the construction of road frontage improvements on Garden Highway and Winship Road in accordance with the City's General Plan requirements including the construction of the ultimate road width for northbound traffic, installation of commercial driveways, and provide for water and sewer service lines for future connection (Improvements); and

WHEREAS, said Improvements as shown on Drawing No. 5353-D, including any future design changes to facilitate Developer's needs, as approved by the City Engineer, adjacent to property described as Assessor Parcel Number 53-500-005 (Subject Property), approved by the City Engineer and on file in her office, is to be constructed by the City and reimbursed by Developer; and

WHEREAS, the Improvements would benefit the Subject Property.

WHEREAS, City and Developer desire to enter into this Agreement in order to provide certain reimbursement to City for the Improvements in the amounts as provided in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein, it is mutually agreed as follows:

1. Developer shall dedicate the ultimate road right-of-way width for Garden Highway, to the City, at no cost to the City.
2. City shall construct the Improvements.

3. City shall collect payment from the Developer pursuant to the Reimbursement Distribution Schedule pursuant to this Agreement.
4. Final reimbursement shall be based on actual costs for any and all work performed for the Developer to provide Improvements.
5. Reimbursement shall be triggered by any development of the Subject Property that generates traffic or a subdivision of the Subject Property.
6. The reimbursement amount shall be adjusted annually based on the Engineering News Record Construction Cost Index – as compared to September 2016.
7. At the time that reimbursement is triggered, Developer shall submit 100% payment to the City of Yuba City at 1201 Civic Center Boulevard, Yuba City, CA 95993.
8. The City will withhold approval of any future land entitlements for the Subject Property, after the Improvements have been constructed, until full reimbursement is made to the City.

It is understood and agreed by and between the parties hereto that City's obligation to construct the Improvements is expressly contingent on reimbursement from Developer to City. It is understood and agreed by and between the parties hereto that this Agreement shall be binding upon Developer and specifically made binding upon the heirs, successors, assigns, and transferees of the Developer and specifically upon the heirs, successors, assigns, grantees, lessees, and all other persons to whom Developer may convey or transfer any interest in the lands herein described, and that for this purpose the parties hereto agree that this Agreement shall be recorded in the Sutter County Recorder's office and shall constitute notice to all persons acquiring any interest in the Subject Property and binding upon all said persons, and that any and all transfers, conveyances, and/or contracts made by Developer with respect to said lands or any portion thereof shall include copies of this Agreement and shall be made a part of any such transfer, conveyance, grant, lease, or assignment.

This Agreement will not terminate and Developer shall reimburse City at time of development of Subject Property regardless of time since execution of Agreement.

In witness whereof, the parties to these presents have hereunto set their hands this year and date first above written.

CITY OF YUBA CITY, A MUNICIPAL CORPORATION

By: _____
Mayor

By: _____
City Clerk

DEVELOPER

By: _____
Nar Singh Heer

By: _____
Rajdeep Heer

By: _____
Harkrishan Heer

By: _____
Pinky Heer

Developer's Mailing Address:

Nar Heer
1325 Barry Road
Yuba City, CA 95993

REIMBURSEMENT SCHEDULE

Work Description: Widen Garden Hwy. to provide the ultimate road width (10' of additional road width), installation of (3) commercial driveways, and provide utility service connections to the property.

Garden Hwy Improvements - Drawing No. 5353-D Station 35+90 to 43+50 (760')

Item	Item Description	Estimated Quantity	Unit of Measure	Unit Price	Amount
1	Roadway Excavation	430	CY	\$ 35.00	\$ 15,050.00
2	Roadway Subgrade Reinforcement (Triax TX7 Geogrid)	850	SY	\$ 6.00	\$ 5,100.00
3	Class II Aggregate Base (CY)	290	CY	\$ 50.00	\$ 14,500.00
4	Hot Mix Asphalt (Type A)	285	TON	\$ 85.00	\$ 24,225.00
5	Minor Concrete, Heavy Duty Driveway	360	SF	\$ 10.00	\$ 3,600.00
6	12" Storm Drain Iron Pipe (Class 350)	30	LF	\$ 91.00	\$ 2,730.00
7	6" Sanitary Sewer Service Lateral (YC SS1 & SS3)	48	LF	\$ 73.00	\$ 3,504.00
8	8" Water Ductile Iron Pipe (Class 350)	133	LF	\$ 55.00	\$ 7,315.00
9	Relocate Joint Pole to back of walk (does not include potential easements)	1	LS	\$ 25,000.00	\$ 25,000.00
				Contract Items	\$ 101,024.00
10				Construction Contingency (10%)	10,102.40
				Contract Total	111,126.40
11				Preliminary Engineering Design (5%)	\$ 5,051.20
12				Project Management Construction (7.5%)	\$ 7,576.80
				Total Project Construction Cost	\$ 123,754.40

REIMBURSEMENT DISTRIBUTION SCHEDULE

ID	APN#	Address	Reimbursement Amount
1	53-500-005	South-East corner of Garden Hwy. and Winship Rd.	Items 1 through 12 \$123,754.40*

TOTAL \$123,754.40*

*The Reimbursement Amount is to be updated based on actual costs to construct the Developer Improvements.

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY
APPROVING THE EXECUTION OF THE GARDEN HIGHWAY
REIMBURSEMENT AGREEMENT**

BE IT RESOLVED AND ORDERED BY THE CITY COUNCIL OF THE CITY OF YUBA CITY AS FOLLOWS:

That the Mayor and City Clerk be, and they are hereby authorized and directed to execute on behalf of the City of Yuba City that Garden Highway Reimbursement Agreement between the City of Yuba City and the property owners of Assessor Parcel Number 53-500-005 for the installation of road frontage improvements along Garden Highway, provided said Reimbursement Agreement is executed by the property owners within two months of this Resolution.

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 18th day of October 2016.

AYES:

NOES:

ABSENT:

John Buckland, Mayor

ATTEST:

Terrel Locke, Chief Deputy City Clerk

CITY OF YUBA CITY
STAFF REPORT

Date: October 18, 2016

To: Honorable Mayor and Members of the City Council and
Chairman and Board of Directors of the Successor Agency to the
Yuba City Redevelopment Agency

From: Administration

Presentation By: Darin E. Gale, Economic Growth & Public Affairs

Summary

Subject: Memorandum of Understanding with the Mehmet Noyan Company for the property located at Bridge and Shasta Streets (“*Feather River Mill*” site)

Recommendation:

- A. As the City Council, authorize the City Manager to approve and sign on behalf of the City, a Memorandum Of Understanding Agreement (“Agreement”) to negotiate exclusively with Mr. Mehmet Noyan of the Mehmet Noyan Company with regard to the property located at the southeast corner of Bridge and Shasta Streets to be used for the future development of a mixed use project (APN 52-324-023 & 52-502-008)
- B. As the Board of Directors of the Successor Agency, authorize the Executive Director to approve and sign on behalf of the Agency a Memorandum Of Understanding Agreement (“Agreement”) to negotiate exclusively with Mr. Mehmet Noyan of the Mehmet Noyan Company with regard to the property located at the southeast corner of Bridge and Shasta Streets to be used for the future development of a mixed use project (APN 52-324-023 & 52-502-008)

Fiscal Impact: The project includes the sale of approximately 7.5 acres of Agency owned property.

Purpose:

To advance development of the property located at the southeast corner of Bridge and Shasta Street.

Background:

December 21, 2010 - City Redevelopment Agency (“Agency”) enters into an Exclusive Negotiating Agreement (ENA) with the Mehmet Noyan Company for the sale and development of approximately 7.5 acres of Redevelopment Agency property located at the

southeast corner of Bridge and Shasta Streets to be used for the future development of a mixed use project.

June 29, 2011 - Governor signs Assembly Bill 1X 26 and Assembly Bill 1X 27 which effectively abolishes Redevelopment and establishes a “winding down” process for the dissolution of all redevelopment agencies. An Oversight Board is created to oversee all aspects of the dissolution process. AB 1X26 directs the Successor Agency (City of Yuba City) to dispose of all assets and properties of the former RDA “expeditiously and in a manner aimed at maximizing value.”

June 7, 2012 – Oversight Board directs staff to finalize the terms and conditions of a Purchase and Sales Agreement with the Mehmet Noyan Company for the subject property that complies with Assembly Bill 1X 26 and Assembly Bill 1X 27.

June 27, 2012 – Governor approves AB 1484 which makes technical and substantive amendments to the (Redevelopment) Dissolution Act (aka AB 1X26). AB 1484 requires Successor Agencies to prepare a *Long Range Property Management Plan* (LRPMP) which must address how all former RDA property will be disposed and include current appraisals and qualifications for highest and best use. The LRPMP supersedes the prior action of the Oversight Board relating to the disposition of former RDA property.

November 14, 2013 - Agency/City enters into an updated Memorandum of Understanding (MOU) with the developer. Developer action is effectively held in abeyance until State approval of the *Long Range Property Management Plan* (LRPMP).

September 8, 2015 - State Department of Finance approves proposed LRPMP. Agency/City staff and developer proceed with determining the necessary work and estimated cost of environmental cleanup for the Feather Rill Mill site that is needed before any development can occur on the site.

June 2016 – State Central Valley Regional Water Quality Control Board approves Remediation Action Plan (RAP) for the site thereby allowing for environmental clean-up to occur.

Analysis:

With State approval of both the Long Range Property Management Plan and the Remediation Action Plan, the Agency may now proceed with the sale of the property. While redevelopment of this site has taken much longer than anticipated, the Mehmet Noyan Company has remained engaged and committed to seeing the project through completion. The Mehmet Noyan Company has put together a team to remediate the site and continues to partner with the City to find the right development for this key development project

The next step of the development of this site is to ensure appropriate land uses are incorporated into our General Plan, Zoning and Central City Specific Plan. These actions are in process.

Given the numerous changes over time (as detailed above), staff feels that it is most appropriate for the Agency/City to re-establish the terms and conditions of the property sale and development through an updated Memorandum of Understanding. The key deal points are as follows:

- Exclusive Negotiating Agreement for 180 Days to Draft a Development & Disposition Agreement (DDA)
- Provide Financing Plan & Partnership Structure
- Design & Layout
- Completion of Entitlements & Environmental Review
- Reimbursement to the City for Environmental Testing Cost
- One 180 Day Extension

Fiscal Impact:

The project would include the sale of approximately 7.5 acres of Agency property

Alternatives:

1. Do not approve the Memorandum of Understanding with the Mehmet Noyan Company
2. Approve the amended Memorandum of Understanding with the Mehmet Noyan for only 180 days with no extensions

Recommendation:

- A. As the City Council, authorize the City Manager to approve and sign on behalf of the City, a Memorandum Of Understanding Agreement (“Agreement”) to negotiate exclusively with Mr. Mehmet Noyan of the Mehmet Noyan Company with regard to the property located at the southeast corner of Bridge and Shasta Streets to be used for the future development of a mixed use project (APN 52-324-023)
- B. As the Board of Directors of the Successor Agency, authorize the Executive Director to approve and sign on behalf of the Agency a Memorandum Of Understanding Agreement (“Agreement”) to negotiate exclusively with Mr. Mehmet Noyan of the Mehmet Noyan Company with regard to the property located at the southeast corner of Bridge and Shasta Streets to be used for the future development of a mixed use project (APN 52-324-023) (APN 52-324-023)

Attachments:

- Memorandum of Understanding
- Feather River Mill Site

Prepared By:

/s/ Darin Gale

Darin E. Gale
Economic Growth & Public Affairs

Submitted By:

/s/ Steven C. Kroeger

Steven C. Kroeger
City Manager

Reviewed By:

Finance

RB

City Attorney

TH via email

MEMORANDUM OF UNDERSTANDING AGREEMENT

THIS MEMORANDUM OF UNDERSTANDING AGREEMENT (the "Agreement") is entered into this 18th day of October, 2016, by and between the CITY OF YUBA CITY, a public body, corporate and politic (the "City"); the SUCCESSOR AGENCY TO THE YUBA CITY REDEVELOPMENT AGENCY (the "Agency"); and Noyan Properties, L.P. (Noyan) (the "Developer"), on the terms and provisions set forth below.

THE CITY, ANGENCY, AND THE DEVELOPER HEREBY AGREE AS FOLLOWS:

I. [§100] Negotiations

A. [§101] Good Faith Negotiations

The City, Agency and the Developer, acknowledging that time is of the essence, agree for the Negotiation Period set forth below to negotiate diligently and in good faith to prepare a Disposition and Development Agreement (the "DDA") to be considered for execution between the City, Agency and the Developer, in the manner set forth herein, with respect to the development of certain real property (the "Site") located within the boundaries of the former Yuba City Redevelopment Project (the "Project"). The Site is shown on the "Map of the Site," attached hereto as Exhibit A and incorporated herein by reference. The Site is composed of certain real property currently owned by the Agency which may be conveyed to the Developer pursuant to the terms of the DDA. The City and Agency agree, for the period set forth below, not to negotiate with any other person or entity regarding development of the Site or any portion thereof. The City shall prepare the initial draft of the DDA.

Among the issues to be addressed in the negotiations of the DDA are: (1) The terms and conditions of conveyance of the Site to Developer, including the purchase price for the Site and Agency rights of reversion; (2) Developer's financing plan to develop the Site including partnership structure and planned equity investment; (3) design and aesthetic considerations of the development of the Site; (4) the Developer's development history; (5) requirements and restrictions placed on the development pursuant to the DDA; (6) Completion of entitlements including zoning, environmental review and a tentative parcel map; and review of the condition of the Site, including but not limited to the preparation of phase I and phase II environmental assessments of the Site. 7) Reimbursement to the City from the sale of the subject property for fronting environmental testing costs associated with the clean-up of the subject property.

Developer acknowledges that the Site was formerly owned by the Yuba City Redevelopment Agency and that actions by the State will require the sale of the subject property to be subject to the State's mandated *Long Range Property Management Plan* (LRPMP) process. .

B. [§102] Duration of this Agreement

The duration of this Agreement (the "Negotiation Period") shall be one hundred eighty (180) days from the approval date of this Agreement. If upon expiration of the Negotiation Period, the Developer has not signed and submitted a DDA to the City, then this Agreement shall automatically terminate unless this Agreement has been mutually extended by the City, Agency and the Developer. This Agreement can be extended for an additional 180

days at the discretion of the City Manager and Executive Director on behalf of the City and Agency, respectively. If a DDA is so signed and submitted by the Developer to the City and Agency on or before expiration of the Negotiation Period, then this Agreement and the Negotiation Period herein shall be extended without further action by the City for ninety (90) days from the date of such submittal during which time the City and Agency shall take all steps legally necessary to (1) consider the terms and conditions of the proposed DDA, (2) if appropriate, take the actions necessary to authorize the City and Agency to enter into the DDA, including but not limited to completion of compliance with the California Environmental Quality Act, and (3) execute the DDA.

If the City and Agency has not executed the DDA by such 90th day or any extension of such period, then this Agreement shall automatically terminate, unless the 90 day period has been mutually extended by the City, Agency and the Developer. The City and Agency agree to consider reasonable requests for extensions of time and shall, upon request, notify the Developer in writing of the reasons for any decision not to execute the DDA.

C. [§103] Deposit

The prior good faith refundable deposit (the "Deposit") in the amount of TEN THOUSAND DOLLARS (\$10,000) made by the Developer to the City as part of a previous Exclusive Negotiation Agreement ("ENA") shall be transferred to this Agreement. The City will return the Deposit to the Developer after the Developer provides evidence satisfactory to the City that it has incurred costs (exclusive of Developer's overhead and administration) of not less than \$100,000.00 in the performance of the City's RFQ/RFQ process for the site (the Feather River Mill project.)

In the event the Developer has not continued to negotiate diligently and in good faith, the City shall give written notice thereof to the Developer who shall then have ten (10) working days to commence negotiating in good faith. Following the receipt of such notice and the failure of the Developer to thereafter commence negotiating in good faith within such ten (10) working days; this Agreement may be terminated by the City. In the event of such termination by the City, the City shall have the right to retain the Deposit, and neither party shall have any further rights against or liability to the other under this Agreement.

In the event the City has not continued to negotiate diligently and in good faith, the Developer shall give written notice thereof to the City which shall then have ten (10) working days to commence negotiating in good faith. Following the receipt of such notice and the failure of the City to thereafter commence negotiating in good faith within such ten (10) working days; this Agreement may be terminated by the Developer. In the event of such termination by the Developer, the City shall return the Deposit, and any interest earned thereon, if applicable, and neither party shall have any further rights against or liability to the other under this Agreement.

Upon automatic termination of this Agreement at the expiration of the Negotiation Period or such extension thereof, the Deposit shall be returned to the Developer and neither party shall have any further rights against or liability to the other under this Agreement. Upon execution of a DDA by the Developer, the Deposit shall be applied toward the Deposit required under the DDA. If a DDA has been executed by the City and the Developer, the DDA shall thereafter govern the rights and obligations of the parties with respect to the development of the Site.

II. [§200] Development Concept

A. [§201] Scope of Development

The negotiations hereunder shall be based on a development concept which shall include the development on the Site of a mixed use commercial project. Design and architecture will continue to be developed during the negotiation of the DDA.

B. [§202] Developer's Findings, Determinations Studies and Reports

Upon reasonable notice, as from time-to-time requested by the City and Agency, the Developer agrees to make oral and written progress reports advising the City and Agency on all matters and all studies being made by the Developer. In the event the City, Agency and the Developer do not enter into a DDA, the Developer shall submit to the City and Agency copies of all studies and reports prepared for the proposed development of the Site by or for the Developer to the extent the Developer is legally able to do so, and the City shall have the right to the use and benefit of all such studies and reports.

III. [§300] Acquisition of the Site

The purchase price and/or other consideration to be paid by the Developer for the Site under the DDA will be established by the City and Agency after approval of the State and negotiation with the Developer. Such purchase price and/or other consideration will be based upon the approved *LRPMP* and will also include a reimbursement to the City in the amount (not to exceed \$40,000) for advancing funds for additional environmental testing costs associated with the future clean-up of the site.

IV. [§400] the Developer

A. [§401] Nature of the Developer

The Developer is a sole proprietorship.

B. [§402] Office of the Developer

The principal office of the Developer is:

685 West Alluvial Avenue, Fresno, CA 93711

C. [§403] Principal Partners of the Developer

The principal partners of the Developer are as follows:

Mehmet F. Noyan

Cathy L. Noyan

John M. Noyan

Angela L. Feiner

The Developer shall have the right to retain additional partners for the development of the property subject to the approval by the City and Agency.

D. [\$404] Full Disclosure

The Developer has made full disclosure to the City and Agency of its principals, officers, major stockholders, major partners, joint venturers, key managerial employees and other associates, and all other material information concerning the Developer and its associates. Any significant change in the principals, associates, partners, joint venturers, negotiators, and development manager, and consultants, professional and directly-involved managerial employees of the Developer is subject to the approval of the City and Agency. Notwithstanding the foregoing, the Developer reserves the right at its discretion to join and associate with other entities in joint ventures, partnerships or otherwise for the purpose of developing the Site, provided that the Developer retains management and control of such entities and remains fully responsible to the City hereunder.

V. [\$500] the Developer's Financial Capacity

A. [\$501] Financial Ability

Prior to execution of the DDA, the Developer shall submit to the City satisfactory evidence of its ability to finance and complete the acquisition and development of the Site.

B. [\$502] Construction Financing

The Developer's proposed method of obtaining construction financing for the development of the Site shall be submitted to the City concurrently with execution and delivery by the Developer of a DDA to the City for approval.

C. [\$503] Long-Term Development Financing

The Developer's proposed method of obtaining long-term development financing shall be submitted to the City concurrently with execution and delivery by the Developer of a DDA to the City for approval.

D. [\$504] Bank and Other Financial References

The Developer's bank is either Comerica Bank, Wells Fargo Bank, or others as approved by the City and Agency.

E. [\$505] Full Disclosure

The Developer will be required to make and maintain full disclosure to the City and Agency of its methods of financing to be used in the acquisition and development of the Site.

VI. [\$600] City's Responsibilities

A. [\$601] Long Range Property Management Plan

This Agreement and the DDA are subject to the provisions of the Long Range Property Management Plan approved by the State Department Of Finance.

B. [\$602] City Assistance and Cooperation

The City and Agency shall cooperate fully in providing the Developer with appropriate information and assistance for development of the Site.

C. [\$603] Environmental Documents

The City shall prepare any and all environmental documents required for the proposed development under the California Environmental Quality Act. The Developer shall cooperate with the City in preparing environmental documents by supplying necessary technical data and other related information and/or development plans concerning the proposed development on the Site. Any costs, fees and charges associated with the requirements of the California Environmental Quality Act shall be paid by the Developer, unless otherwise agreed by the both developer and City.

D. [\$604] City and Agency Public Hearing

A DDA resulting from the negotiations hereunder shall become effective only after and if the DDA has been considered and approved by the City and the Agency at a public hearing called for such purpose.

VII. [\$700] Real Estate Commissions

The City and Agency shall not be liable for any real estate commissions or brokerage fees which may arise herefrom. The City and Agency represents that it has engaged no broker, agent or finder in connection with this transaction, and the Developer agrees to hold the City and Agency harmless from any claim by any broker, agent or finder retained by the Developer.

VIII. [\$800] Limitations of this Agreement

By its execution of this Agreement, the City and Agency are not committing itself to or agreeing to undertake: (1) acquisition of land; (2) disposition of land to the Developer; or (3) any other acts or activities requiring the subsequent independent exercise of discretion by the City, the Agency or any City or department thereof.

This Agreement does not constitute a disposition of property or exercise of control over property by the City or Agency. Execution of this Agreement by the City and Agency is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by the City and Agency as to any Disposition and Development Agreement and all proceedings and decisions in connection therewith.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set opposite their signatures. The effective date of this Agreement shall be the date this Agreement is signed by the City and Agency.

###

_____, 2016

CITY OF THE CITY OF YUBA CITY, a
public body, corporate and politic

By _____
Steven C. Kroeger, City Manager
"CITY"

The Successor Agency, a public body,
corporate and politic

By _____
Steven C. Kroeger, Executive Director
"Agency"

_____, 2016

By Noyan Properties LP.

Mehmet F. Noyan
"DEVELOPER"

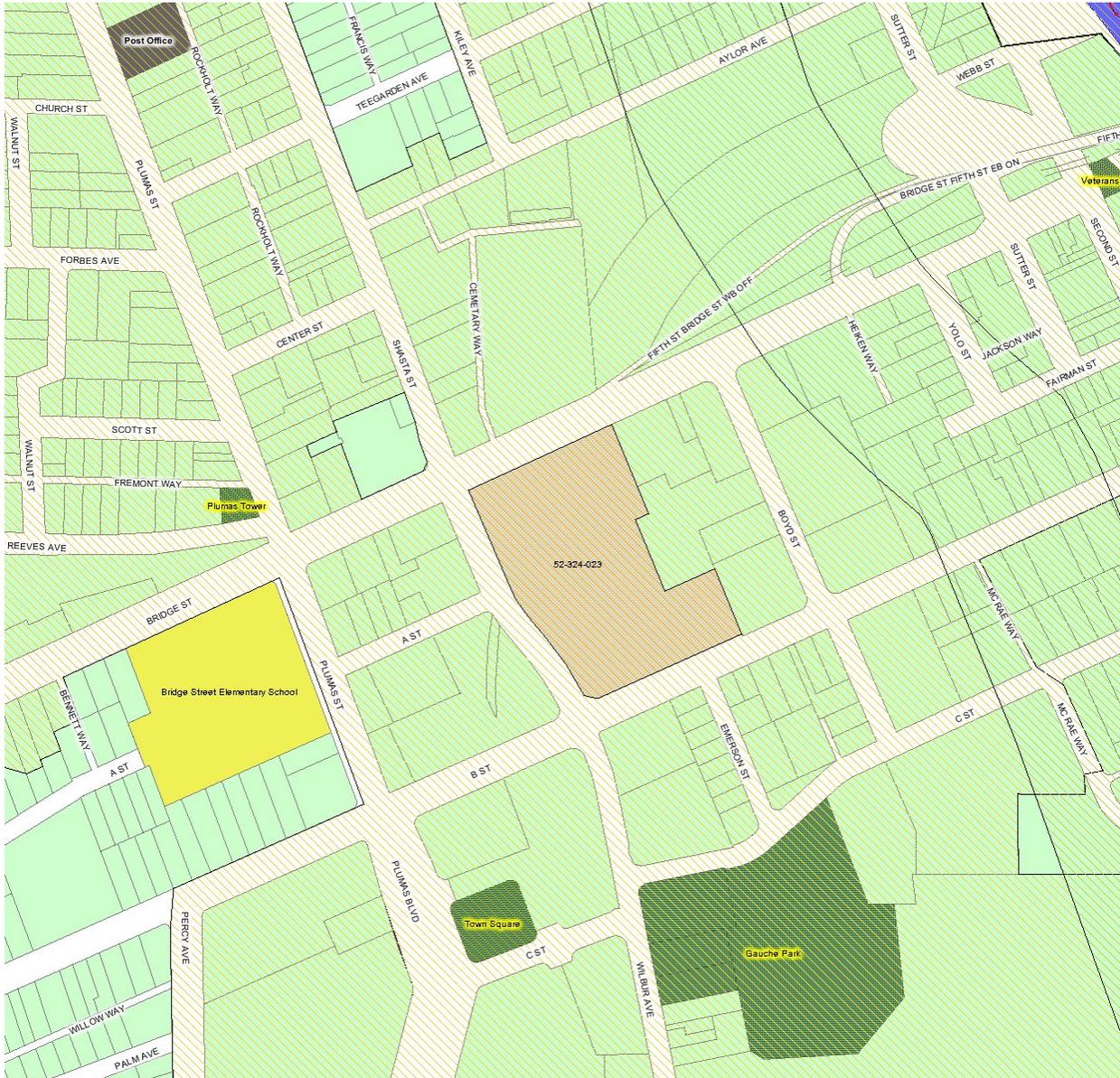
APPROVED AS TO FORM:

By _____
Tim Hayes, City Attorney



Yuba City

Feather River Mills Site



CITY OF YUBA CITY
BUSINESS FROM THE CITY COUNCIL

Date: October 18, 2016
To: Honorable Members of the City Council
Presentation By: John Buckland, Mayor

Summary

Subject: City Manager Employment Agreement
Recommendation: Adopt a Resolution authorizing the Mayor to sign the City Manager Employment Agreement between the City of Yuba City and Steven C. Kroeger from October 18, 2016 through December 31, 2019
Fiscal Impact: Additional 40 hours of Administrative Leave for 2017

Purpose:

To establish the terms and conditions of the City Manager's contract.

Discussion:

This contract is proposed to revise Mr. Kroeger's current contract that was adopted on October 6, 2015 and provided for an expiration date of December 31, 2018. The revised Agreement includes a new expiration date of December 31, 2019.

The terms of the Agreement provide for the following:

- An additional 40 hours of administrative Leave for a total of 120 hours for 2017.

Recommendation:

Adopt a Resolution authorizing the Mayor to sign the City Manager Employment Agreement between the City of Yuba City and Steven C. Kroeger from October 18, 2016 through December 31, 2019

Attachment:

Employment Agreement between Steven C. Kroeger and the City of Yuba City

Reviewed by:

City Attorney TH via email

City Manager SK

Employment Agreement between the City of Yuba City and Steven C. Kroeger

This Agreement is made and entered into on October 18, 2016, by and between the City of Yuba City, California, a general law city, (herein called "the Employer") and Steven C. Kroeger (hereinafter called "Employee") with respect to employment as the City Manager of Yuba City, California. This Agreement supersedes and replaces the previous Agreement between the City of Yuba City and Steven C. Kroeger dated October 6, 2015. This contract is not meant to supersede any State laws.

Section 1: Duties and Authority

Employer agrees to employ Steven C. Kroeger as City Manager to perform the functions and duties specified in Section 2-2.07 of the Yuba City Municipal Code. Employee shall hold the appointed office as City Manager at will and at the pleasure of the City Council and may be terminated at any time with or without cause by the City Council. Employee understands that he has no constitutionally protected property or other interest in his employment as City Manager.

Section 2: Term

The term of this Agreement shall be from October 18, 2016 through December 31, 2019, or the date of earlier termination in accordance with provisions in this Agreement. City's election not to renew the Agreement shall not entitle Employee to severance as provided in Section 8 of this Agreement. This Agreement shall automatically be renewed for one year unless notice is given at least six months before the expiration date or the Agreement is replaced and/or amended by mutual agreement of both parties in the future.

In the event the Agreement is not renewed, all compensation, benefits and requirements of the Agreement shall remain in effect until the expiration of the term of the Agreement unless Employee voluntarily resigns. The Employee acknowledges he serves in the position of City Manager at the discretion of the City Council and may be terminated at any time and prior to the expiration of the term of this Agreement. In the event that the Employee is terminated, as defined in Section 8 of this Agreement, the Employee shall be entitled to severance as provided for in Section 9 of this Agreement.

Section 3: Compensation

Base Salary: Employer agrees to pay Employee an annual base salary of \$196,636 as the City Manager.

Compensation shall be payable in installments at the same time that the other Executive Management employees of the Employer are paid.

Section 4: Health, Disability and Life Insurance Benefits

1. The Employer agrees to provide for comprehensive medical insurance and vision/dental on a pre-tax basis for the Employee and his dependents equal to that which is provided to all other Executive Management employees of the Employer.
2. The split for medical costs shall be 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 and is subject to Section 8.2.

3. Employee shall pay the same premium amount of the City's dental and vision plan as provided to all other Executive Management employees of the Employer.
4. Cash-in-lieu payments of medical insurance shall be calculated in the same manner as all other City employees.
5. Life insurance benefit amount of \$50,000 shall be maintained for Employee.

Section 5: Vacation, Leave, and Holidays

The Employee shall accrue sick leave and vacation at the rate provided to all other miscellaneous employees of the Employer.

The Employee is entitled to accrue all unused sick leave, without limit, and vacation leave accrual shall have the limits as set forth in the Personnel Rules and Regulations. In the event the Employee's employment is terminated, either voluntarily or involuntarily, the Employee shall be compensated for all accrued vacation time, all paid holidays, executive leave, and other benefits to date.

The Employee shall annually be credited with eighty (80) hours of administrative leave. For the 2017 calendar year, the Employee shall be credited with an additional forty (40) hours of administrative leave. The amount of administrative leave shall be reviewed annually.

Up to forty (40) hours of unused leave time may be converted annually to compensation at the discretion of the Employee. At the end of each calendar year, the Employee may cash out a maximum of 40 hours to be paid in the first pay period of the succeeding calendar year, and/or may carry over their unused balance up to 40 hours, subject to following limitations. Employee shall be allowed to carry over unused administrative leave to the next calendar year, subject to a maximum carry over balance of 80 hours.

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.

Holidays with pay will be provided as outlined in Section 2.10 of the City's Personnel Rules and Regulations.

Section 6: Retirement

1. The Employer agrees to enroll the Employee into the Public Employee Retirement System (PERS) and to make all the appropriate contributions on the Employee's behalf, for both the Employer and Employee share required and is subject to Section 8.2.
2. The City shall pay and report 100% of the Employer payment of member contributions (EPMC) to PERS as additional compensation for retirement purposes only and is subject to Section 8.2.
3. Employee shall cost share 8% of Employer's contribution towards PERS.
4. Employee shall receive a City contribution of two (2) percent of Employee's annual salary paid into a City of Yuba City deferred compensation plan.

The dollar value of this contribution may be used at the Employee's option, to purchase service from another qualified plan.
5. In addition to the Employer's payment to the state or local public retirement system (as applicable) referenced above, Employer agrees to execute all necessary Agreements provided by ICMA Retirement Corporation or other Section 457 deferred compensation

plan for Employee's participation in said supplementary retirement plan.

6. If the Employee retires from the City, the Employee shall have the "Employee Only" medical premium paid by the City until such time as the Employee is eligible to receive Medicare. If the Employee receives a disability retirement, this benefit is not available.

The amount of premium paid by the City will be determined each year by what the City's maximum health insurance contribution is for "Employee Only" for First Level Managers. The retiree will be responsible for paying the difference based on the City's contribution. If the retiree selects a health plan that costs less than the City's contribution, he will not be eligible to receive the cash difference. All premium contributions must be received one month in advance and it is the responsibility of the retiree to ensure that the City receives the payment. Failure to pay the retiree's contribution in a timely manner may result in the loss of the benefit.

Section 7: General Business Expenses

1. Employer agrees to budget for and to pay for professional dues and subscriptions of the Employee necessary for continuation and full participation in ICMA and one other professional organization necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer.
2. Employer agrees to budget for and to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue necessary official functions for Employer including, but not limited to, the ICMA Annual Conference, and/or the California League of Cities.
3. The Employer shall provide Employee with a cell phone required for the Employee to perform the job and to maintain communication. Usage of cell phone shall be in accordance with the City's policy on cell phone usage.
4. The Employer shall provide the Employee with an automobile allowance of \$400 per month to provide compensation for auto use within the Yuba-Sutter-Sacramento region. Mileage reimbursement will only be paid outside a 50 mile radius of Yuba City for City business. The auto allowance will be reviewed annually for adjustments based on use and cost. Any change in auto allowance rate will require an amendment to this Agreement.

Section 8: Termination

For the purpose of this Agreement, termination shall occur when:

1. The City Council, by a three-fifths vote, terminates the Employee as the City Manager at a duly authorized public meeting.
2. If the Employer reduces the base salary, compensation or any other benefit of the Employee, unless it is applied in no greater percentage than the average reduction of all Executive Management employees, such action shall constitute a breach of this Agreement and will be regarded as a termination.
3. If the Employee resigns following a formal offer to accept resignation by three members of the City Council, then the Employee may declare a termination as of the date of the resignation offer.

Section 9: Severance

Severance shall be paid to the Employee when the Employee is terminated as defined in Section 8.

If the Employee is terminated, the Employer shall provide a minimum severance payment equal to six months' salary at the current rate of pay. This severance shall be paid in lump sum unless otherwise agreed by the Employer and the Employee.

The Employee shall also be compensated for accrued sick leave in accordance with the Personnel Rules and Regulations, vacation time, all paid holidays, and administrative leave. The Employer agrees to make a contribution to the Employee's deferred compensation account, and PERS, based on the value of this compensation calculated using the rate ordinarily contributed on regular compensation. If the amount of the contribution exceeds the deferred compensation limit, the remainder shall be paid to the Employee in a lump sum as taxable compensation.

For a minimum period of six months following termination, the Employer shall pay the cost to continue the following benefits:

- a) Health insurance for the Employee and all dependents as provided in Section 4.
- b) Employer shall take all necessary actions to insure continuation of benefits and service credits to PERS for the severance period.

Employee shall not be entitled to severance pay pursuant to this section if: a) the Employee voluntarily resigns, or b) the Employee is terminated for willful misconduct, malfeasance, dishonesty for personal gain, conviction of a misdemeanor involving moral turpitude or conviction of a felony.

Pursuant to Government Code 53243.2, if the Employee is terminated, any severance or cash settlement related to the termination that the Employee receives from the City, shall be fully reimbursed to the City if the Employee is convicted of a crime involving an abuse of her office or position.

Section 10: Resignation

In the event that the Employee voluntarily resigns his/her position with the Employer, the Employee shall provide a minimum of 30 days notice unless the parties agree otherwise.

Section 11: Performance Evaluation

Employer shall annually review the performance of the Employee in September of each year starting in 2015 subject to a process, form, criteria, and format for the evaluation which shall be mutually agreed upon by the Employer and Employee. The process at a minimum shall include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to the Employee prior to October 31st of each year. Employer shall review Employee's salary and benefits as part of the performance evaluation process.

Section 12: Hours of Work

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end Employee shall be allowed to establish an appropriate work schedule.

Section 13: Outside Activities

The employment provided for by this Agreement shall be the Employee's sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the Employer and the community, the Employee may elect to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements shall not constitute interference with nor a conflict of interest with his responsibilities under this Agreement.

Section 14: Relations with City Council

As set forth in Section 2-2.08 of the Yuba City Municipal Code and the City Council's adopted "Rules of Decorum and Conduct", the City Council shall respect the City Manager's administrative authority to faithfully implement the City Council's direction. The City Council and its members shall deal with the administrative services of the City only through the City Manager and neither the City Council nor any member thereof shall give orders to any subordinates of the City Manager, except that this limitation and prohibition does not apply to the City Council's relations with the City Attorney. No individual Councilmember shall give any orders or instructions to the City Manager. The City Council shall instruct the City Manager in matters of policy. Any action, determination or omission of the City Manager shall be subject to review by the City Council.

Section 15: Indemnification

Beyond that required under Federal, State or Local Law, Employer shall defend, save harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Manager or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct. The Employee may request and the Employer shall not unreasonably refuse to provide independent legal representation at Employer's expense and Employer may not unreasonably withhold approval. Legal representation, provided by Employer for Employee, shall extend until a final determination of the legal action including any appeals brought by either party. The Employer shall indemnify Employee against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorneys fees, and any other liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his or her duties. Any settlement of any claim must be made with prior approval of the Employer in order for indemnification, as provided in this Section, to be available. Pursuant to Government Code 53243.1, if any City funds are provided for the legal criminal defense, said funds shall be fully reimbursed to the City if the Employee is convicted of a crime involving an abuse of his office or position.

Section 16: Bonding

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

Section 17: Other Terms and Conditions of Employment

The Employer, only upon Agreement with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Yuba City Municipal Code or any other law.

Section 18: Notices

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service.

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 19: General Provisions

1. This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written Agreement may amend any provision of this Agreement during the life of the Agreement. Such amendments shall be incorporated and made a part of this Agreement.
2. Binding Effect. This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.
3. Severability. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.
4. Effective Date. This Agreement shall become effective on October 18, 2016.

Dated: _____

Steven C. Kroeger
City Manager

Dated: _____

John Buckland
Mayor

Attest:

Approved as to Form:

Terrel Locke, Chief Deputy City Clerk

Timothy P. Hayes, City Attorney

CITY OF YUBA CITY
BUSINESS FROM THE CITY COUNCIL

Date: October 18, 2016
To: Honorable Members of the City Council
Report By: John Buckland, Mayor

Summary

Subject: Cancellation of November 15, 2016 City Council Meeting

Recommendation: Cancel the November 15, 2016 to allow for City Council Business to be conducted by incoming Councilmembers after the November 8th Municipal Election is Certified

Fiscal Impact: None.

Purpose:

Manage the meeting schedule of the City Council and provide notice of changes in regularly scheduled meetings.

Background:

The Yuba City Municipal Code Section 2-1.01 sets the Regular meetings of the City Council to occur on the first and third Tuesday of each month at 6:00 p.m. in the Council Chambers. Regular meetings are set by the Municipal Code, however if needed, meetings can be canceled by the Council with sufficient notice.

Discussion

Mayor Buckland is scheduled to be out of town during the week of November 15th and unable to attend the November 15th Council meeting. The General Municipal Election is being held on November 8th and two current Councilmembers are not running for re-election. The Council meeting of November 15th is recommended to be canceled to allow for the two newly elected Councilmembers to be sworn-in after the Municipal election results are certified.

Alternatives:

Do not cancel the meeting and go forward with the four current Council members.

Recommendation:

Cancel the November 15, 2016 to allow for City Council Business to be conducted by incoming Councilmembers after the November 8th Municipal Election is Certified.

CITY OF YUBA CITY

City Council Reports

- Councilmember Didbal
- Councilmember Dukes
- Councilmember Gill
- Vice Mayor Cleveland
- Mayor Buckland

Adjournment