Mayor: Alan Galbraith
Vice Mayor: Peter White
City Council: Sharon Crull
Paul Dohring
Greg Pitts

ST. HELENA CITY COUNCIL
REGULAR MEETING
NOVEMBER 10, 2015

5:15 PM SPECIAL MEETING - CLOSED SESSION
CITY HALL CONFERENCE ROOM,
1480 MAIN STREET, ST. HELENA

6:00 PM REGULAR MEETING
VINTAGE HALL BOARD ROOM – SECOND FLOOR
465 MAIN STREET, ST. HELENA

PLEASE NOTE: Any person who wishes to speak regarding an item on the agenda or make a comment under the "Oral Communication" portion of the agenda may voluntarily complete a "Speaker Card" and submit it to the City Clerk BEFORE that portion of the agenda is called. Speaker cards are available on the table in back of the room. Please observe the time limit of three minutes.

1. **PUBLIC COMMENTS PERTAINING TO THE CLOSED SESSION**

2. **CLOSED SESSION**
   a. Conference with Labor Negotiators pursuant to Government Code Section 54957.6
      City Negotiator: City Manager
      Negotiations with St. Helena Employees Association (SHEA)

3. **OPEN SESSION – COUNCIL WILL RETURN TO OPEN SESSION AND ANNOUNCE ACTIONS TAKEN IF ANY (6:00 P.M.)**

4. **PLEDGE OF ALLEGIANCE**

5. **ROLL CALL**

6. **PUBLIC FORUM:** Members of the public are entitled to speak on matters of municipal concern not on the agenda during Public Forum. Each person's comments shall be limited to 3 minutes. Each person is entitled to speak on any non-agendized item only once at any meeting. Brief questions by Councilmembers for clarifications may be posed and answered, and Councilmembers may make requests that items be placed on future agendas, but in accordance with state law, no substantive discussion or action may take place unless and until the matter properly appears on the agenda.

7. **REPORTS BY STAFF AND CITY COUNCIL, FUTURE AGENDA ITEMS, and AB 1234 REPORTS:** Reports by staff and/or Councilmembers on items of general interest. Brief questions for clarification may be posed and answered, and Councilmembers may request that items be placed on a future agenda. Except under certain circumstances, the Brown Act prohibits any other discussion or action by the City Council.

STAFF BRIEFING

8. Monthly water wise update presented by Jennifer Tuell, Water Conservation Coordinator

CONSENT ITEMS: Members of the Council or the public may ask that any items be considered individually for purposes of considering alternative action, for extended discussion, or for public comment. Unless that is done, one motion may be used to adopt all recommended actions. (Roll Call Vote)

9. Consideration and proposed approval of a resolution approving Amendment #1 with Cuesta MultiCultural Consulting for a name change from Cuesta MultiCultural Consulting to Yolanda Cuesta, as an individual
   CEQA Status: Not a CEQA Project
   Lead Staff: April Mitts, Finance Director
   Chris Kreiden, Library Director
   Recommendation: Adopt

10. Consider Letter of Support to Increase the Number of Type 47 Licenses Available to Napa County Restaurants
    CEQA Status: Not a CEQA Project
    Lead Staff: Jennifer Phillips, City Manager
    Recommendation: Provide direction

11. Consideration and proposed approval of a resolution approving an agreement with Hansford Economic Consulting to provide a Utility Rate Study for the Water and Wastewater Rates for a total not to exceed amount of $48,350
    CEQA Status: Not a CEQA Project
    Lead Staff: Jennifer Phillips, City Manager
    Recommendation: Adopt

12. Consideration and proposed approval of a resolution approving a Professional Services Agreement with Green Valley Consulting Engineering in the amount of $94,110 for the design of Holmes Tank Upgrade, Capital Improvement Project W-86

CEQA Status: Categorically Exempt, Article 19 section 15302 Replacement or Reconstruction, and Article 19 Section 15303 New Construction or Conversion of Small Structures
Lead Staff: Tobias Barr, Public Works Project Manager
Steven Palmer, PE, Public Works Director/City Engineer
Recommendation: Adopt

13. Second reading and proposed adoption by title only of the new Municipal Code Section 15.26 (Expedited Permit Process for Small Residential Rooftop Solar Systems) in order to comply with the state mandated requirements of AB 2188

CEQA Status: Exempt Pursuant to CEQA Guidelines Section 15061(b)(3)
Lead Staff: Noah Housh, Planning and Community Improvement Director
Aaron Hecock, Senior Planner
Recommendation: Adopt by title only

14. Consideration and proposed approval of a resolution approving an Employment Agreement with Christine Kreiden to serve as the City's Library Director

CEQA Status: Not a CEQA Project
Lead Staff: Jennifer Phillips, City Manager
Recommendation: Adopt

15. Consideration and proposed approval of a resolution approving of Out of State Travel for Sgt. Chris Hartley to attend FBI National Academy from January 17, 2016 through March 25, 2016

CEQA Status: Not a CEQA Project
Lead Staff: William Imboden, Acting Chief of Police
Recommendation: Adopt

16. Consideration and proposed approval of a resolution approving an agreement with The Lew Edwards Group to provide Polling and Public Outreach related to a City Charter and Real Property Transfer Tax for a total not to exceed amount of $50,000

CEQA Status: Not a CEQA Project
Lead Staff: Jennifer Phillips, City Manager
Recommendation: Adopt

NEW BUSINESS:

17. Consideration and proposed approval of a resolution of an appeal of administrative decision denying reduction of charges for replacement of a water valve for Richard Crus

CEQA Status: Not a CEQA Project
Lead Staff: April Mitts, Finance Director
Recommendation: Adopt

18. Consideration and proposed approval of a resolution providing $10,000 in financial assistance to Community Action Napa Valley in support of Napa County's homeless shelter services
    CEQA Status: Not a CEQA Project
    Lead Staff: Jennifer Phillips, City Manager
    Recommendation: Adopt

19. Consideration and proposed approval of a resolution providing City of St. Helena – SolEd Benefit Corp Solar Power Purchase Agreement Notice of Termination of Power Purchase Agreement – Power Purchase Agreement, Exhibit 4, General Terms and Conditions, Section 6(c)
    CEQA Status: Categorically exempt from environmental review per California Environmental Quality Act (CEQA) Guidelines Sections 15329 (Cogeneration Projects at Existing Facilities; generation of less than 50 megawatts of energy) and 15311 (Accessory Structures)
    Lead Staff: Jennifer Phillips, City Manager
    Recommendation: Adopt

ADJOURNMENT The next Regular City Council meeting is scheduled for November 24, 2015, at 6:00 p.m. in the Vintage Hall Board Room located at 465 Main Street.

This agenda was posted at City Hall, 1480 Main Street, and at Vintage Hall, 465 Main Street, St. Helena, California on November 5, 2015.

Cindy Black

Cindy Black, City Clerk

CHALLENGING DECISIONS OF CITY ENTITIES

The time limit within which to commence any lawsuit or legal challenge to any quasi-adjudicative decision made by the City of St. Helena is governed by Section 1094.6 of the Code of Civil Procedure, unless a shorter limitation period is specified by any other provision, including without limitation Government Code section 65009 applicable to many land use and zoning decisions, Government Code section 66499.37 applicable to the Subdivision Map Act, and Public Resources Code section 21167 applicable to the California Environmental Quality Act (CEQA). Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred. Government Code section 65009 and 66499.37, and Public Resources Code section 21167, impose shorter limitations periods and requirements, including timely service in addition to filing.

If a person wishes to challenge the above actions in court, they may be limited to raising only those issues they or someone else raised at the meeting described in this notice, or in written correspondence delivered to the City of St. Helena, at or prior to the meeting. In addition, judicial challenge may be limited or barred where the interested party has not sought and exhausted all available administrative remedies.

SUPPLEMENTAL MATERIAL RECEIVED AFTER THE POSTING OF THE AGENDA

Any supplemental writings or documents distributed to a majority of the City Council regarding any item on this Agenda, after the posting of the Agenda, will be available for public review in the City Clerk's Office located at 1480 Main Street, St. Helena, California, during normal business hours. In addition, such writings or documents will be made available on the City's web site at http://cityofsthelena.org and will be available for public review at the respective meeting.

Item No: 9

Report to the City Council
Council Meeting of November 10, 2015

Agenda Section: **Consent Calendar**

Subject: **Consideration of Approval of Amendment #1 with Cuesta MultiCultural Consulting for a Name Change from Cuesta MultiCultural Consulting to Yolanda Cuesta, as an individual.**

CEQA Status: **Not a CEQA Project**

Prepared By: **April Mitts, Finance Director**

Chris Kreiden, Library Director

Approved By: **Jennifer Phillips, City Manager**

BACKGROUND

On October 14, 2014, via Resolution 2014-72, the City Council approved the use of Tweed Trust funds for a Library Strategic Planning Project and authorized City staff to enter into a service contract with Yolanda Cuesta as consultant to this project (Attachment A). On April 28, 2015, a contract between the City of St. Helena and Yolanda Cuesta of Cuesta MultiCultural Consulting was executed (Attachment B).

DISCUSSION

On August 7, 2015, the first payment to Cuesta MultiCultural Consulting was made for $3,232.00. The consultant, Yolanda Cuesta, deposited this check into her bank and the check was not honored by her bank stating it was a third party check. Yolanda Cuesta made a request to the City of St. Helena that the original check be voided and a replacement check be made payable to "Yolanda Cuesta" as an individual instead of to payable to Cuesta MultiCultural Consulting.

In order to make the check payable to Yolanda Cuesta, as an individual, and not to Cuesta MultiCultural Consulting, a name change amendment must be made to the original contract dated April 28, 2015.

FISCAL IMPACT

None

RECOMMENDED ACTION

Staff recommends City Council approve Amendment #1 Name Change Amendment for Consulting Services (Attachment C).

ATTACHMENTS

Attachment A – Resolution 2014-72
Attachment B – Professional Services Agreement
Attachment C – Amendment #1 Name Change Amendment for Consulting Services
Attachment D – Resolution Authorizing Amendment #1 Name Change Amendment for Consulting Services

CITY OF ST. HELENA
RESOLUTION NO. 2014-72

APPROVING USE OF TWEED TRUST FUNDS FOR LIBRARY STRATEGIC PLANNING PROJECT AND MAKING ASSOCIATED BUDGET ADJUSTMENTS AND CONTRACT ARRANGEMENTS.

RECITALS

A. To continue to be relevant and effective in our community, the St. Helena Public Library needs to develop a service vision that stakes out an innovative position addressing future expectations related to customer-service quality and satisfaction.
B. Library staff has proposed engaging the services of a consultant who specializes in strategic planning for libraries using the process called Planning for Results developed by the Public Library Association.
C. A suitable consultant who has a specialty in conducting community-based needs assessments that reach all groups in diverse communities has been identified.
D. The Library Board of Trustees has recommended use of Tweed Trust funds to finance this project.

Now, therefore, the City Council of the City of St. Helena resolves as follows:

1. Adopts resolution approving use of Tweed Trust funds for Library Strategic Planning Project and making associated budget adjustments and contract arrangements.
2. Approves a budget adjustment adding $25,620 to fund 384 in the current fiscal year (14/15).
3. Authorizes City staff to enter into a service contract with Yolanda Cuesta as consultant to this project.

Approved at a regular meeting of the St. Helena City Council on October 14, 2014 by the following vote:

Ayes:	Councilmembers Pitts, White, Sculatti, Crull and Mayor Nevero
Noes:	None
Absent:	None
Abstain:	None

Approved:

Ann Nevero
Mayor

Attest:

Cindy Black
City Clerk

CITY OF ST. HELENA Incorporated March 24, 1878 Re-incorporated May 14, 1855 OF CALIFORNIA

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT, made and entered into on 4/28, 2015 by and between the City of St. Helena, located in the County of Napa, State of California (City), and Yolanda Cuesta of Cuesta MultiCultural Consulting (Consultant).

RECITALS:

A. City desires to employ Consultant to furnish professional services in connection with the project described as Library Strategic Planning Project.

B. Consultant has represented that Consultant has the necessary expertise, experience, and qualifications to perform the required duties.

NOW, THEREFORE, in consideration of the mutual premises, covenants, and conditions herein contained, the parties agree as follows:

SECTION 1 – BASIC SERVICES

Consultant agrees to perform the services set forth in **Exhibit A, "Scope of Services"** and made part of this Agreement.

SECTION 2 – ADDITIONAL SERVICES

Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to or outside of those set forth in this Agreement or **Exhibit A, "Scope of Services"**, unless such additional services and compensation are authorized in advance and in writing by the City Council or City Manager of the City.

SECTION 3 – TIME FOR COMPLETION

The time for completion of services shall be as identified in **Exhibit A, "Scope of Services"**.

SECTION 4 – COMPENSATION AND METHOD OF PAYMENT

A. Subject to any limitations set forth in this Agreement, City agrees to pay consultant the amount specified in Exhibit A, "Project Consultant Fees", attached hereto and made a part hereof. Total compensation shall not exceed $25,620.00, unless additional compensation is approved in accordance with Section 2.

B. Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories if applicable: labor (by sub-category), travel, materials, equipment, supplies, subconsultant contracts, and miscellaneous expenses. City shall independently review each invoice submitted to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. If no charges or expenses are disputed, the

invoice shall be approved and City will use its best efforts to cause Consultant to be paid within 30 days of receipt of invoice. If any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. If the City reasonably determines, in its sole judgment, that the invoiced charges and expenses exceed the value of the services performed to date and that it is probable that the Agreement will not be completed satisfactorily within the contract price, City may retain all or a portion of the invoiced charges and expenses. Within thirty (30) days of satisfactory completion of the project, City shall pay the retained amount, if any, to Consultant.

C. Payment to the Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

SECTION 5 – STANDARD OF PERFORMANCE

Consultant represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement.

SECTION 6 – INSPECTION AND FINAL ACCEPTANCE

City may inspect and accept or reject any of Consultant's work under this Agreement, either during performance or when completed. City shall reject or finally accept Consultant's work within sixty (60) days after submitted to City, unless the parties mutually agree to extend such deadline. City shall reject work by a timely written explanation, otherwise Consultant's work shall be deemed to have been accepted. City's acceptance shall be conclusive as to such work except with respect to latent defects and fraud. Acceptance of any of Consultant's work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, the sections pertaining to indemnification and insurance.

SECTION 7 – INSURANCE REQUIRED

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees, as indicated:

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:
   1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
   2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).

B. Minimum Limits of Insurance. Consultant shall maintain limits no less than:

1. General Liability: $2,000,000 per occurrence for bodily injury, personal injury and property damage including operations, products and completed operations, as applicable. If Commercial General Liability Insurance or other form with a General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: $2,000,000 per accident for bodily injury and property damage.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions of $25,000 or greater must be declared to and approved by the City.

D. Other Insurance Provisions. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its agent, officers, officials, employees, and volunteers are to be covered as additional insured as respects: liability arising out of work or operations performed by the Consultant or Consultant's subconsultants; or automobile owned, leased, hired or borrowed by the Consultant.
2. For any claims related to Consultant's conduct while performing the work of this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its agents, officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its agents, officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subsection (b) of Section 2782 of the Civil Code.

E. Waiver of Subrogation. The workers compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, its agents, officers, officials, employees and volunteers for losses paid under the terms of this policy which arises from the work performed by the named insured for the City.

F. The Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the City.

G. Verification of Coverage. Consultant shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on forms that conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

SECTION 8 – INDEMNIFICATION

A. Consultant shall indemnify and hold harmless City, its agents, officers, officials, employees, and volunteers from any and all claims, demands, suits, loss, damages, injury, and/or liability (including any and all costs and expenses in connection therewith), incurred by reason of any negligent or otherwise wrongful act or omission of Consultant, its officers, agents, employees and subcontractors, or any of them, under or in connection with this Agreement; and Consultant agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against City, its agents, officers, officials, employees and volunteers, or any of them, arising out of such negligent or otherwise wrongful act or omission, and to pay and satisfy any resulting judgments.

B. When Consultant under this Agreement is duly licensed under California Business and Professions Code as an architect, landscape architect, professional engineer, or land surveyor ("design professional"), the provisions of this section regarding Consultant's duty to defend and indemnify apply only to claims that arise out of or relate to the negligence, recklessness, or willful misconduct of the design professional.

C. If any action or proceeding is brought against Indemnitees by reason of any of the matters against which Consultant has agreed to indemnify Indemnitees as provided above, Consultant, upon notice from City, shall defend Indemnitees at Consultant's expense by counsel acceptable to City, such acceptance not to be unreasonably withheld. Indemnitees need not have first paid for any of the matters to which Indemnitees are entitled to Indemnification in order to be so indemnified. The insurance required to be maintained by Consultant shall ensure Consultant's obligations under this section, but the limits of such insurance shall not limit the liability of Consultant hereunder. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

D. The provisions of this section do not apply to claims to the extent occurring as a result of the City's sole negligence or willful acts or misconduct.

SECTION 9 – INDEPENDENT CONTRACTOR STATUS

A. Consultant is and shall at all times remain a wholly independent contactor and not an officer, employee or agent of City. Consultant shall have no authority to bind City in any manner, nor to incur an obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City.

B. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall have control over the conduct of Consultant or any of Consultant's officers, employees or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees or agents are in any manner officials, officers, employees or agents of City.

C. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

SECTION 10 – CONFLICTS OF INTEREST

A. Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the City Manager. Consultant agrees to at all times avoid conflicts with the interests of City in the performance of this Agreement.

B. City understands and acknowledges that Consultant is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant is aware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section.

SECTION 11 – OWNERSHIP OF DOCUMENTS

A. All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by Consultant in the course of providing any services pursuant to this Agreement shall become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of the Consultant. When requested by City, but no later than three years after project completion, Consultant shall deliver to City all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

B. All copyrights, patents, trade secrets, or other intellectual property rights associated with any ideas, concepts, techniques, inventions, processes, improvements, developments, works of authorship, or other products developed or created by Consultant during the course of providing services (collectively the "Work Product") shall belong exclusively to City. The Work Product shall be considered a "work made for hire" within the meaning of Title 17 of the United States Code. Without reservation, limitation, or condition, Consultant hereby assigns, at the time of creation of the Work Products, without any requirement of further consideration, exclusively and perpetually, any and all right, title, and interest Consultant may have in the Work Product throughout the world, including without limitation any copyrights, patents, trade secrets, or other intellectual property rights, all rights of reproduction, all rights to create derivative works, and the right to secure registrations, renewals, reissues, and extensions thereof.

C. Notwithstanding the foregoing, Consultant may use the Work Product or parts of the Work Product for limited marketing purposes (e.g. submission as a sample product in RFP submissions or in marketing or training materials).

SECTION 12 – CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION

A. All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the City Manager, except as may be required by law.

B. Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided consultant gives City notice of such court order or subpoena.

C. If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Consultant's conduct.

D. Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite such response.

SECTION 13 – SUSPENSION OF WORK

City may, at any time, by ten (10) days written notice suspend further performance by Consultant. All suspensions shall extend the time schedule for performance in a mutually satisfactory manner and Consultant shall be paid for services performed and reimbursable expenses incurred prior to the suspension date.

SECTION 14 – COMPLIANCE WITH LAW

Consultant shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement. Consultant shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this Agreement. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall be liable, at law or in equity, as a result of any failure of Consultant to comply with this section.

SECTION 15 – COMPLIANCE WITH CIVIL RIGHTS

During the performance of this contract, Consultant agrees as follows:

A. Equal Employment Opportunity. In connection with the execution of this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, ancestry, age, sexual orientation, physical handicap, medical condition, marital status, sex, or national origin. Such actions shall include, but not be limited to, the following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training including apprenticeship.

B. Nondiscrimination Civil Rights Act of 1964. Consultant will comply with all federal regulations relative to nondiscrimination to federally-assisted programs.

C. Solicitations for Subcontractors including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations, made by Consultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor, supplier, or lessor shall be notified by Consultant of Consultant's obligations under this Agreement and the regulations relative to nondiscrimination.

SECTION 16 – RECORDS

A. Records of Consultant's direct labor costs, payroll costs, and reimbursable expenses pertaining to this project covered by this Agreement will be kept on a generally recognized accounting basis and made available to City if and when required for a period of up to 3 years from the date of Consultant's final invoice.

B. Consultant's records and design calculations will be available for examination and audit if and as required. The cost of any reproductions shall be paid by City.

SECTION 17 – COOPERATION BY CITY

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the work as outlined in the Exhibit A, "Scope of Services", shall be furnished to Consultant in every reasonable way to facilitate, without undue delay, the work to be performed under this Agreement.

SECTION 18 – NOTICES

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by facsimile or first class mail, addressed as follows:

To City:

City Manager
1480 Main Street
St. Helena, California 94574

To Consultant:

Yolanda J. Cuesta
MultiCultural Consulting
6648 Lake Park Drive
Sacramento, CA 95831

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile, or, if mailed, three (3) days after deposit in the custody of the U.S. Postal Service.

SECTION 19 – TERMINATION

A. City may terminate this Agreement, with or without cause, at any time by giving ten (10) days written notice of termination to Consultant. If such notice is given, Consultant shall cease immediately all work in progress.

B. If either Consultant or City fail to perform any material obligation under this Agreement, then, in addition to any other remedies, either Consultant, or City may terminate this Agreement immediately upon written notice.

C. Upon termination of this Agreement by either Consultant or City, all property belonging to City which is in Consultant's possession shall be delivered to City. Consultant shall furnish to City a final invoice for work performed and expenses incurred by Consultant, prepared as set forth in this Agreement.

SECTION 20 – ATTORNEY FEES

If litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorneys' fees, costs and expenses, in addition to any other relief to which it may be entitled. In addition, any legal fees, costs and expenses incurred to enforce the provisions of this Agreement shall be reimbursed to the prevailing party.

SECTION 21 – ENTIRE AGREEMENT

This Agreement, including the attached Exhibits, is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between Consultant and City prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

SECTION 22 – SUCCESSORS AND ASSIGNS

This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties. However, this Agreement shall not be assigned by Consultant without written consent of the City.

SECTION 23 – CONTINUITY OF PERSONNEL

Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff assigned to perform the services required under this Agreement, prior to any such performance.

SECTION 24 – DEFAULT

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default and may terminate this Agreement immediately by written notice to Consultant.

SECTION 25 – WAIVER

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a wavier of any of the provisions of this Agreement.

SECTION 26 – LAW TO GOVERN; VENUE

This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Napa. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Northern District of California, in San Francisco.

SECTION 27 – SEVERABILITY

If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

SECTION 28 – SPECIAL PROVISIONS

This Agreement is subject to the following special provisions: none.

IN WITNESS WHEREOF, the parties hereto have accepted, made, and executed this Agreement upon the terms, conditions, and provisions above stated, the day and year first above written.

Consultant:

By: Yolanda J. Cuesta
Name: Yolanda J. Cuesta
Title: Consultant

City:

By: _____
Name: Jennifer Phillips
Title: City Manager

Approved as to Form:

By: _____
Name: Thomas B. Brown
Title: City Attorney

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 04/20/2015

PRODUCER: (615) 444-8859

BIS, Inc.
834 Bradshaw Road
Lebanon, Tennessee 37087

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED:
Cuesta MultiCultural Consulting
6648 Lake Park Drive
Sacramento, California 95831

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: The Hartford Insurance Company	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	✓	GENERAL LIABILITY ✓ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ✓ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ✓ POLICY ☐ PRO-JECT ☐ LOC	20 SBM RP6632	07/19/14	07/19/15	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 2,000,000 $ 300,000 $ 10,000 $ 2,000,000 $ 4,000,000 $ 4,000,000
A	✓	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ✓ HIRED AUTOS ✓ NON-OWNED AUTOS	20 SBM RP6632	07/19/12	07/19/15	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 2,000,000 $ Included $ Included $ Included
		GARAGE LIABILITY ☐ ANY AUTO				AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EA ACC AGG	$ $ $
		EXCESS/UMBRELLA LIABILITY ☐ OCCUR ☐ CLAIMS MADE ☐ DEDUCTIBLE ☐ RETENTION $				EACH OCCURRENCE AGGREGATE	$ $
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATU-TORY LIMITS ☐ OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ $ $
		OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Management consultant
City, its officers, officials, employees, designated volunteers and agents serving as independent contractors in the role of city or agency officials, are covered as additional insureds as respects: liability arising out of activities performed by or on behalf Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; and/or automobiles leased, hired or borrowed by Consultant.

CERTIFICATE HOLDER

City of St. Helena
1408 Main Street
St. Helena, CA 94574

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE: Lee Shrum

© ACORD CORPORATION 1988

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

STAFF REPORT

DATE: October 14, 2014

TO: Mayor and City Council

Item No. _____

FROM: Jennifer Baker, Library Director

RE: Resolution approving use of Tweed Trust funds for Library Strategic Planning Project and making associated budget adjustments and contract arrangements.

BACKGROUND

For the last two decades libraries around the country have been grappling with constant, ever accelerating change. Technology is changing. Library users are changing. Employees are changing. Communities are changing. The internet has already had a major impact on how people find and access information, and now the rising popularity of e-books is helping transform Americans' reading habits. In this changing landscape, public libraries are trying to adjust their services to these new realities while still serving the needs of patrons who rely on more traditional resources. While most library professionals recognize that doing things "the way we've always done them" is shortsighted and impractical in the midst of what amounts to a complete paradigm shift, many library institutions continue to be reactive rather than proactive in responding.

To continue to be relevant and effective in our community, the St. Helena Public Library needs to develop a service vision that stakes out an innovative position addressing future expectations related to customer-service quality and satisfaction. This vision needs to be clear, stimulating, future-oriented, desirable, and inspiring. Further, to achieve this vision in the face of so many challenges, we need a strategic plan and a process by which we consider the changes to our environment, and to establish and prioritize goals and objectives accordingly.

In 2011 the Library hosted a community workshop attended by over 50 invited community representatives. The result was the identification of several needs and priorities for addressing community goals through library services. The information this process provided has been invaluable in directing the development of new and improved library services in our community over the last three years. The Library is now positioned to take this process to the next level and develop a strategic plan. A formal strategic plan will help ensure we focus our resources and efforts responsibly by guiding the development of library programs and services that are in line with community aspirations.

DISCUSSION/ANALYSIS

Library staff proposes that we retain the services of a consultant who specializes in strategic planning for libraries. The process we will use with the consultant is called Planning for Results and was developed by the Public Library Association.

Planning for Results is built on three basic assumptions:

1. Excellence must be defined locally - it results when library services match community needs, interests and priorities.

2. Excellence is possible for both small and large libraries - it rests more on commitment than on unlimited resources.

3. Excellence is a moving target - even when achieved, excellence must be continually maintained.

This planning model was specifically designed for public libraries. It assures that the library plan is built to meet the needs of the community by allowing community involvement in the development of the plan. The process puts everyone in the library on the same page and allows for clearly defined goals for decision makers and staff. It enhances the library's visibility in the community as a soundly-operated agency and a worthwhile partner for joint projects along with enhancing the library's position in applying for grants from foundations or other sources. It also provides an excellent public relations opportunity.

The Library Board of Trustees supports this project and recommends use of Tweed funds to finance it.

Our recommended consultant is Yolanda Cuesta of Multicultural Consulting. Based in Sacramento, she is a certified trainer for the Public Library Association's Planning/Managing/Staffing for Results process. Her specialty is conducting community-based needs assessments that reach all groups in the community and reflect the unique diversity of each community. Additionally she is bilingual in English and Spanish and is skilled in facilitating bilingual community forums, focus groups and community leader interviews.

I was first introduced to Ms. Cuesta's work when I attended a session she presented at a national conference on planning services for culturally diverse communities. I believe it is very important to engage our local Spanish-speaking community in our needs assessment and goal setting and having an individual with such a strong background in needs assessment and strategic planning, and particularly in working with Latino communities, assist in the process will be crucial to creating a plan that values and reflects the full diversity of our community.

I have spoken with Ms. Cuesta about the possibility of expanding the scope of the library strategic planning project to encompass a more thorough and complex assessment of St. Helena's cultural needs and aspirations. She is both willing and capable of handling such a project should City Council decide to pursue Option B.

FISCAL IMPACT

Project cost of $25,620 detailed in attached proposal. Recommended to be funded through the Tweed Trust.

ATTACHMENTS

Quotes project.

RECOMMENDED COUNCIL ACTION

Adopt resolution approving use of Tweed Trust funds for Library Strategic Planning Project and making associated budget adjustments and contract arrangements.

CITY OF ST. HELENA
RESOLUTION NO. 2014-72

APPROVING USE OF TWEED TRUST FUNDS FOR LIBRARY STRATEGIC PLANNING PROJECT AND MAKING ASSOCIATED BUDGET ADJUSTMENTS AND CONTRACT ARRANGEMENTS.

RECITALS

A. To continue to be relevant and effective in our community, the St. Helena Public Library needs to develop a service vision that stakes out an innovative position addressing future expectations related to customer-service quality and satisfaction.
B. Library staff has proposed engaging the services of a consultant who specializes in strategic planning for libraries using the process called Planning for Results developed by the Public Library Association.
C. A suitable consultant who has a specialty in conducting community-based needs assessments that reach all groups in diverse communities has been identified.
D. The Library Board of Trustees has recommended use of Tweed Trust funds to finance this project.

Now, therefore, the City Council of the City of St. Helena resolves as follows:

1. Adopts resolution approving use of Tweed Trust funds for Library Strategic Planning Project and making associated budget adjustments and contract arrangements.
2. Approves a budget adjustment adding $25,620 to fund 384 in the current fiscal year (14/15).
3. Authorizes City staff to enter into a service contract with Yolanda Cuesta as consultant to this project.

Approved at a regular meeting of the St. Helena City Council on October 14, 2014 by the following vote:

Ayes:	Councilmembers Pitts, White, Sculatti, Crull and Mayor Nevero
Noes:	None
Absent:	None
Abstain:	None

Approved:

Ann Nevero
Mayor

CITY OF ST. HELENA
Incorporated March 24, 1876
Re-incorporated May 14, 1992
STATE OF CALIFORNIA

Attest:

Cindy Black
City Clerk

ST. HELENA PUBLIC LIBRARY STRATEGIC PLANNING PROJECT CONSULTANT FEES	
Project Planning 1 day @ $1500/day	$1,500
Needs Assessment • Focus Groups (5-7) 5 days @ $1500/day = $7500 • Community Forum 3 days @ $1500/day = $4500	$12,000
Strategic Planning Process • 2 Community Planning Committee Meetings (4 days@ $1500/day)= $6,000 • 1 Staff Planning Session (3 days @ $1500/day)= $4,500	$10,500
Travel Expenses (federal rates) 6 trips @ $91 mileage/trip = $546 3 nights lodging @$160 each = $480 Meals @ $66/day for 9 days = $594	$1,620
TOTAL PROJECT COSTS	$25,620

City of St. Helena Community Cultural Center Project
Strategic Planning and Community Needs Assessment Process
September, 2014; Revised December, 2014
Submitted by Yolanda Cuesta, MultiCultural Consulting

BACKGROUND

The St. Helena Public Library, the St. Helena Historical Society, the Robert Louis Stevenson Museum, the City Parks & Recreation Department, and the City Council are each exploring and/or planning expanded facilities and services at the same time:

- The St. Helena Public Library completed a visioning process in 2010 and is ready to undertake a strategic planning process to for a possible expansion of the facility and to set service goals and objectives for the next three years.
- The Robert Louis Stevenson Museum is in the initial stages of a capacity building project that will modify the current strategic plan and set directions for future expansion and growth.
- The St. Helena Historical Society, currently housed on the second floor of the library, is in need of additional space to achieve its goal of establishing the St. Helena Historical Center.
- The St. Helena Parks & Recreation Department volunteer corps has an ongoing fundraising effort to build a Community Center.
- And the City Council has expressed interest in developing an Event Center

The undeveloped City-owned property adjacent to the library offers the possibility of a coordinated joint-use complex with the potential of becoming the cultural center of the city.

GOALS OF PROJECT

- To identify the information and cultural needs, interests, and priorities of the community.
- To explore the community's perspectives on a potential Community & Cultural Center (CC Center) on existing City-owned property.
- To involve and inform the community throughout the visioning and planning process.
- To coordinate needs assessment data to guide next steps, future thinking and development for each organization and community stakeholders.

PROCESS AND MAJOR ACTIVITIES

Project Planning

Consultant will meet with the CC Center Planning Committee at the beginning of the project to review major activities, review and revise focus group and stakeholder interview process, designate roles and responsibilities and review project schedule. At least once during the

project consultant will meet with the Committee to review project and schedule and discuss and design upcoming activities. Consultant will develop meeting agendas and supporting materials, facilitate discussions, and summarize decisions and actions.

Stakeholder Interviews

Conduct interviews with 10-12 community stakeholders. The list of stakeholders to be interviewed will be developed jointly by the project consultant and the CC Center Planning Committee. Potential interviewees could include leaders of community groups and organizations, City Council members and/or key city staff, business owners, church leaders and educators. Interviews will focus on identifying broad issues, interests, and priorities for the CC Center project.
The Robert Louis Stevenson Museum (RLSM) is scheduled to conduct interviews for its capacity building project during the next several months. If the timing and schedule allows, it would be desirable to coordinate the list of people to be interviewed and/or to include 2-3 questions to gather the perspectives of the museum stakeholders on the broader CC Center project if it would not distract from the focus of the RLSM project. At the very least it would be helpful to inform the Museum interviewees about the broader CC Center concept being developed so that community members are aware of the coordination of these efforts.

The Project Consultant will develop the interview questions, conduct the interviews either face-to-face or by phone, summarize the data and coordinate the interviews with the CC Center Planning Committee.

Focus Groups

A series of 5-7 focus groups will be conducted to identify the information and cultural needs, interests, perspectives, and priorities of the community. The goal is to reach out to a broad cross section of the community particularly those segments that are often hard to reach and involve in community and civic affairs. Potential focus groups could be conducted with seniors, teens, parents, business owners, the Spanish-speaking community, teachers and educators, and community groups and organizations. The number and type of focus groups will be selected by the CC Center Planning Committee.

The Project Consultant will develop the Focus Group Discussion Guides, conduct the focus groups, summarize the data and coordinate the process with the CC Center Planning Committee.

Community Forum (Optional)

A Community Forum will be conducted to discuss with community members the goals of the CC Center project, to review the findings from the Stakeholder Interviews and Focus Groups, and to further develop the list of community needs and perspectives on the CC Center.

The Project Consultant will present the needs assessment findings, conduct the Community Forum, and summarize the results of the discussion.

CC Center Planning Committee Study Session

The Project Consultant will prepare background documents and facilitate a Study Session of the CC Center Planning Committee. The agenda will include: review of the needs assessment data, SWOT analysis of the community, discussion of priorities and strategic goals for the CC Center Project, and identification of next steps for each organization and the overall project.

Library Strategic Planning Process (Optional Services)

- **Library Strategic Planning Committee (LSPC)**

The Project Consultant will use the needs assessment data from the CC Center Project and data collected from the 2010 Library Visioning Process to lead a strategic planning process using a modified version of the Public Library's Association Strategic Planning for Results. The process will include working with a Library Strategic Planning Committee (LSPC) of 10-12 community members. The LSPC will be appointed by the Library Director and the Library Board of Trustees and will be diverse and representative of different segments of the community.

The LSPC will review needs assessment data, prioritize the community needs the library should address, and review and modify as needed the library's vision and mission statements. The Project Consultant will develop the agenda, prepare background documents, and facilitate two meeting of the Library Strategic Planning Committee. Agendas and schedule for the meetings will be planned in collaboration with the Library Director.

- **Library Staff Strategic Planning Session**

The Project Consultant will facilitate a Planning Session with staff to review the needs assessment data and the work of the LSPC to develop three to five year goals, objectives and evaluation measures for St. Helena Public Library. Agenda and schedule for the staff session will be planned in collaboration with the Library Director.

PROJECT CONSULTANT FEES	
Project Planning 3 days @ $1500/day	$4,500
Needs Assessment • Stakeholder Interviews (10-12) 5 days @ $1500/day • Focus Groups (5-7) 5 days @ $1500/day	$7,500 $7,500
CC Center Planning Committee Study Session 3 days @ $1500/day	$4,500
Travel Expenses (federal rates) 4 trips @ $91 mileage/trip = $364 3 nights lodging @$160 each = $480 Meals @ $66/day for 8 days = $528	$1500
PROJECT COSTS	**$25,500**
OPTIONAL SERVICES	
Needs Assessment Community Forum 3 days @ $1500/day Mileage & meals $160	$4,660
Library Strategic Planning Process • Planning with Library Director (1 day @ $1500/day = $1500) • 2 Community Planning Committee Meetings (4 days@ $1500/day)= $6,000 • 1 Staff Planning Session (3 days @ $1500/day)= $4,500 Travel Expenses (federal rates) 3 trips @ $91 mileage/trip = $273 1 night lodging @ $160 = $160 Meals @ $66/day for 4 days = $264	$12,000 $700
OPTIONAL SERVICE COSTS	**$17,360**
TOTAL PROJECT & OPTIONAL COSTS	**$42,860**

ST. HELENA PUBLIC LIBRARY STRATEGIC PLANNING PROJECT CONSULTANT FEES	
Project Planning 1 day @ $1500/day	$1,500
Needs Assessment • Focus Groups (5-7) 5 days @ $1500/day = $7500 • Community Forum 3 days @ $1500/day = $4500	$12,000
Strategic Planning Process • 2 Community Planning Committee Meetings (4 days@ $1500/day)= $6,000 • 1 Staff Planning Session (3 days @ $1500/day)= $4,500	$10,500
Travel Expenses (federal rates) 6 trips @ $91 mileage/trip = $546 3 nights lodging @$160 each = $480 Meals @ $66/day for 9 days = $594	$1,620
TOTAL PROJECT COSTS	**$25,620**

CULTURAL CENTER TENTATIVE PROJECT TIMELINE

October	Project Planning
November/thru December 10	Stakeholder Interviews & Focus Groups Community Forum (optional)
January	CC Center Planning Committee Study Session
February/March	Library Strategic Planning

LIBRARY STRATEGIC PLANNING PROCESS TENTATIVE TIMELINE

Jan 12 – 16/Jan 19 - 23	Project Planning Meeting
Feb 16 – 20	Planning Committee Meeting #1
Mar 2 – 13/Mar 23 - 27	Focus Groups & Community Forum
April 13 -17	Planning Committee Meeting #2
May 4 – 8	Staff Planning Session
Project Wrap-up	May 22

YOLANDA J. CUESTA

Cuesta MultiCultural Consulting
6648 Lake Park Drive/ Sacramento, Ca 95831
(916) 395-1688 voice and fax/ (916) 203-6402 cell
yjcuesta@mindspring.com
www.yolandacuesta.com

Yolanda J. Cuesta is lead consultant in Cuesta MultiCultural Consulting, a consulting firm specializing in helping libraries serve culturally diverse communities. She has over 30 years of experience as a trainer and consultant with public libraries. Ms. Cuesta's expertise is in developing strategic and long range plans for libraries; community needs assessments; analyzing library staff training needs; developing and conducting training programs; meeting facilitation; and grant writing and fundraising. Ms. Cuesta has been trained to use the Public Library Association's Strategic Planning for Results process.

Ms. Cuesta was Chief of the Library Development Services Bureau for the California State Library for 13 years. As Chief, Ms. Cuesta planned and administered innovative programs to lead California's libraries in serving their communities. These included the Partnerships for Change Program, a five-year statewide grant program to help public libraries serve their diverse communities. The program designed a comprehensive training package to help libraries plan, design and deliver community-based library services. Library staff was trained in community-based needs assessment techniques, community building and partnerships, public relations and marketing, and planning and evaluation of library services.

Other programs which Ms. Cuesta implemented as Chief included the first statewide library literacy programs, the California Literacy Campaign and the Families for Literacy Program; the first California bond program for the construction of public library facilities; and the Strategic Directions Initiative, a program which developed strategic plans for 10 rural libraries in northern California.

Ms. Cuesta supervised the implementation of Proposition 85, the first library construction bond measure. She supervised the development of regulations and the application process, participated in the review of applications and the process of making recommendations to the funding board.

Ms. Cuesta's specialty is conducting community-based needs assessments that reach all groups in the community and reflect the unique diversity of each community. She is bilingual in English and Spanish and is skilled in facilitating bilingual community forums, focus groups and community leader interviews.

Some of the agencies Ms. Cuesta has worked with include:

- Colusa County Library. Colusa, California. Facilitation of long range planning process
- Dallas Public Library. Dallas, Texas. For the management firm DMG Maximus and the architectural firm, The Hillier Group. Facilitation of community forums; member of team developing master plan for facilities and services
- North Carolina State Library. Raleigh, North Carolina Facilitation of community forums for statewide young adult services program and training in services to Hispanic communities
- Peninsula Library System. San Mateo, California. Grant writing
- San Mateo City Library. San Mateo, California. Diversity and collection development training
- Tulare County Library. Visalia, CA. Facilitation of long range planning process
- Washington State Library. Olympia, Washington. Training in long range planning
- Yolo County Library. Woodland, CA. Facilitation of long range planning process
- Las Vegas Clark County Library District. Las Vegas, NV Facilitation of community forums; member of team developing master plan for facilities and services
- Yakima Valley Library. Yakima, WA. Community needs assessment training
- Mid-Columbia Library District. Kennewick, WA Facilitation of long range planning process
- Memphis Shelby County Public Library. Memphis, TN Training in serving diverse communities
- Irving Public Library. Irving, TX Training in serving diverse communities
- Washington State Library. Olympia, WA Statewide training program in planning services to diverse communities
- Richland County Public Library. Columbia, SC Training in serving diverse communities
- Stockton San Joaquin County Library. Stockton, CA Facilitation of focus groups and community forums
- Alameda County Library. Fremont, CA. Facilitation of one-day strategic planning session with staff.
- Beaumont Library District. Beaumont, CA. Facilitation of long-range planning process.
- San Diego County Library. San Diego, CA. Facilitation of long-range planning process
- Friends and Foundation of the San Francisco Public Library. San Francisco, CA. Facilitation of grant application process
- New Mexico State Library. Santa Fe, NM. Training in serving diverse communities
- Texas State Library. Austin, TX. Training in Spanish-language collection development
- University of North Texas School of Library and Information Sciences. Web-based course on Providing Excellent Customer Service in a Multicultural Environment
- Indiana Library Federation
- Grand Island, NE Training in Serving Spanish-Speaking
- Utah State Library/Salt Lake City Public Library. Customer Service in a Multicultural Community

- Nebraska Library Association. Serving the Spanish-speaking
- Florida State Library. Public Library Director's Conference
- OCLC/WebJunction. Spanish-language Outreach Program curriculum development
- Northern Massachusetts Regional Library System. Customer Service in a Multicultural Community
- Public Library Association. CPLA Serving Diverse Populations
- Stockton San Joaquin County Library, CA. Facilitation of Strategic Planning Process
- Alameda County, CA. Library Needs Assessment
- National Family Caregivers Association, Family Caregiving 101. Project administration.
- San Antonio Public Library. TX. Training on Serving the Spanish-speaking
- Robert & Ruby Priddy Charitable Trust. AMO LEER Forum. Serving the Spanish-speaking
- King County Library System, WA. Reaching Out to Multicultural Communities Webinar
- Association of State and Cooperative Library Agencies. Creating a Latino Friendly Library Webinar
- Rancho Cucamonga, CA. TLA50 Project Community Assessment
- Multnomah County Library,OR. Latino Use of Cell Phones and Mobile Devices.
- Kings County Library, CA. Facilities Master Plan
- Scotttsdale Public Library, AZ. Children's Discovery Zone Planning.

LIBRARY EXPERIENCE

- Lead Consultant. Cuesta MultiCultural Consulting. Sacramento, California. 1997-Present.
- Seismic Project Coordinator. California State Library. Sacramento, California 1996-1997.
- Chief of Library Development Services. California State Library. Sacramento, California. 1983-1996.
- Ethnic Services Consultant. California State Library. Sacramento, California. 1974-1983.
- Special Services Coordinator. Alameda County Library. Fremont, California. 1974.
- Coordinator of Services to Mexican-Americans. El Paso Public Library. El Paso, Texas. 1970-1974.

EDUCATION

- Intercultural Communication Institute, Portland, OR
- University of Texas at Austin. M.L.S.
- University of Texas at Austin. B.A. in Elementary Education.
- Laredo Junior College. A.A.

SELECTED PROFESSIONAL ACTIVITIES

American Library Association

- ALA International Relations Committee, 2012-2014

- ASCLA Online Learning Committee, 2010-2014
- ASCLA Award Committee, 2008-2011/2012-2013
- ASCLA Board of Directors, 2007-2009
- LAMA National Meeting Task Force, 2004-2006
- ALA Chapter Relations Committee, 2002-2004
- ALA Publications Committee, 2000-2002
- ALA Nominating Committee, 2000-2001
- ALA Publications Committee, 1998-1999
- OLOS Minority Fellow Advisory Committee, 1994-1997.
- Co-Chair, President's Committee on Cultural Diversity, 1991-1993
- Office of Library Outreach Services Advisory Committee, 1990-1992

Other Business & Professional Memberships

- American Marketing Association
- American Society for Training and Development
- Society for Intercultural Education, Training and Research
- Sacramento Hispanic Chamber of Commerce
- Soroptimists of Greater Sacramento

AMENDMENT #1
NAME CHANGE AMENDMENT FOR CONSULTANT SERVICES

This Name Change Amendment made and effective this day of November 10, 2015 among Yolanda Cuesta (formerly Cuesta MultiCultural Consulting, "MCC"), hereinafter "Yolanda Cuesta," and the City of St. Helena ("City"). The City and Yolanda Cuesta are referred to herein as the Parties.

WITNESSETH:

WHEREAS, the City and MCC entered into a Consultant Services Agreement (Agreement), dated April 28, 2015, whereby MCC agreed to furnish professional services in connection with the project described as Library Strategic Planning Project;

WHEREAS, Yolanda Cuesta, as an individual, and not MCC, is the Consultant under the Agreement;

WHEREAS, other than the name change substituting Yolanda Cuesta for MCC, there is no impact on the Agreement and Yolanda Cuesta will continue to perform all obligations required of MCC under the Agreement;

WHEREAS, it is in the mutual best interests of the City and Yolanda Cuesta to amend the Agreement to reflect the name change; and

WHEREAS, both Parties agree to amend said Agreement.

NOW, THEREFORE, in consideration of the mutual premises, covenants, and conditions herein contained, the Parties agree as follows:

1. Effective November 10, 2015, MCC shall be substituted with Yolanda Cuesta, as an individual, and the Consultant under the Agreement.
2. Yolanda Cuesta, as the Consultant under the Agreement, will continue to perform all of Consultant's duties, responsibilities, and obligations under the Agreement.
3. There City hereby consents to substituting Yolanda Cuesta in place of MCC under the Agreement.
4. Where references to "Cuesta MultiCultural Consultants" in the Agreement shall be substituted and replaced with Yolanda Cuesta.
5. Except as expressly provided in the Amendment # 1, all provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have accepted, made, and executed this Agreement upon the terms, conditions, and provisions above stated, the day and year first above written.

Consultant:

By: _____

Name: _____

Title:_____

City:

By: _____

Name: Jennifer Phillips

Title: City Manager

Approved as to Form:

By: _____
Name: Thomas B. Brown
Title: City Attorney

Attachment D

CITY OF ST. HELENA

RESOLUTION NO. 2015-____

APPROVING AMENDMENT #1 WITH CUESTA MULTICULTURAL CONSULTING FOR A NAME CHANGE FROM CUESTA MULTICULTURAL CONSULTING TO YOLANDA CUESTA, AS AN INDIVIDUAL

RECITALS

1. WHEREAS, the City and MCC entered into a Consultant Services Agreement (Agreement), dated April 28, 2015, whereby MCC agreed to furnish professional services in connection with the project described as Library Strategic Planning Project;

2. WHEREAS, Yolanda Cuesta, as an individual, and not MCC, is the Consultant under the Agreement;

3. WHEREAS, other than the name change substituting Yolanda Cuesta for MCC, there is no impact on the Agreement and Yolanda Cuesta will continue to perform all obligations required of MCC under the Agreement;

4. WHEREAS, it is in the mutual best interests of the City and Yolanda Cuesta to amend the Agreement to reflect the name change; and

5. WHEREAS, both Parties agree to amend said Agreement.

RESOLUTION

NOW, THEREFORE, the City Council of the City of St. Helena resolves as follows:

1. Effective November 10, 2015, MCC shall be substituted with Yolanda Cuesta, as an individual, and the Consultant under the Agreement.

2. Yolanda Cuesta, as the Consultant under the Agreement, will continue to perform all of Consultant's duties, responsibilities, and obligations under the Agreement.

3. There City hereby consents to substituting Yolanda Cuesta in place of MCC under the Agreement.

4. Where references to "Cuesta MultiCultural Consultants" in the Agreement shall be substituted and replaced with Yolanda Cuesta.

5. Except as expressly provided in the Amendment # 1, all provisions of the Agreement shall remain in full force and effect.

Approved at a Regular Meeting of the St. Helena City Council on November 10, 2015 by the following vote:

Mayor Galbraith:

Vice Mayor White:

Councilmember Crull:

Councilmember Dohring:

Councilmember Pitts:

APPROVED:

Alan Galbraith, Mayor

ATTEST:

Cindy Black, City Clerk

Item No: 10

Report to the City Council
Council Meeting of November 10, 2015

Agenda Section: **New Business**

Subject: **Consider Letter of Support to Increase the Number of Type 47 Licenses Available to Napa County Restaurants**

CEQA Status: **Not a Project**

Prepared By: **Jennifer Phillips, City Manager**

Approved By: **Jennifer Phillips, City Manager**

DISCUSSION

The Downtown Napa Association (DNA) is leading an effort to increase the number of Type 47 (mixed drinks) licenses available to Napa County restaurants.

Since the mid-1970's, the State has historically tied the number of licenses issued to the size of county population. The cost of a State issued license is $12,000, but none are available. Napa was originally issued approximately 70 licenses, a number that according to the Department of Alcohol Beverages Control (ABC), will likely never be increased.

Seven years ago when the cost of buying a Type 47 license from someone who owned one was close to $300,000, DNA approached then State Assembly Member Janet Evans about increasing the number of Napa County licenses issued by the State. This had precedence, as two years earlier Mono County successfully made the same request of the State. Assembly Member Evans legislation passed unanimously. ABC set up a countywide lottery for 15 new licenses. Five licenses were awarded each year for three years. The licenses were exclusive to existing restaurants and could not be sold for two years.

Currently, the cost of purchasing a Type 47 license is up to $400,000. The DNA has approached Assembly Member Bill Dodd in a new effort to again increase Napa County's number of Type 47 licenses. The DNA is requesting 25 new licenses, with the intention of issuing five licenses each year for five years. In addition, the DNA is requesting that the minimum seating requirements to obtain a Type 47 license decrease from 50 to 25.

FISCAL IMPACT
None

RECOMMENDED ACTION
Consider letter of support to increase the number of Type 47 Licenses available to Napa County restaurants.

ATTACHMENTS
Letter of support to Increase the Number of Type 47 Licenses Available to Napa County Restaurants

City of St. Helena

"We will conduct city affairs on behalf of our citizens using an open and creative process."

1480 Main Street
St. Helena, CA 94574
Phone: (707) 967-2792
Fax: (707) 963-7748

www.cityofsthelena.org

November 10, 2015

Craig Smith
Executive Director
Downtown Napa Association
1290 Napa Town Center
Napa, CA 94559

Dear Mr. Smith,

On behalf of the St. Helena City Council I am writing to provide our support for your effort to increase the number of Type 47 (mixed drinks) licenses available to existing Napa County restaurants.

On November 10, 2015, the St. Helena City Council considered this matter and voted to support the Downtown Business Association initiative to increase Napa County's number of Type 47 licenses. The DNA is requesting 25 new licenses, with the intention of issuing five licenses each year for five years. In addition, the DNA is requesting that the minimum seating requirements to obtain a Type 47 license decrease from 50 to 25.

Sincerely,

Alan Galbraith
Mayor

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Item No: 11

Report to the City Council
Council Meeting November 10, 2015

Agenda Section: **Consent Item**

Subject: **Consideration of Resolution approving an agreement with Hansford Economic Consulting to provide a Utility Rate Study for the Water and Wastewater Rates for a total not to exceed amount of $48,350**

CEQA Status or Action: **None**

Prepared By: **Jennifer Phillips, City Manager**

Approved By: **Jennifer Phillips, City Manager**

DISCUSSION

The City conducted its most recent utility rate study in 2011 and as a result, water rates were increased 2.8% in 2013, and 2.5% in 2014 and 2.6% in January 2015. Wastewater rates were increased 2.8% in 2013, and 2.5% in 2014 and 2.6% in January 2015.

During the 2015 Council Goal Setting Session, the Council included reviewing rates and fees as a strategic objective for the coming year. The FY 2015-16 Adopted Budget included $50,000 for this study.

In September 2015, staff issued a Request for Proposals and on October 9, 2015, the City received four proposals. A team of managers and an outside consultant reviewed the proposals. Hansford Economic Consulting was considered the top proposer. On September 26, staff conducted an interview with Catherine Hansford and contacted references for additional feedback. Based on the proposal, consultant's relevant experience, references and interview, staff has selected Hansford Economic Consulting.

FISCAL IMPACT

Funds for this agreement in the amount of $48,350 are budgeted in the FY 2015-16 Adopted Budget under 561-43-00-21-45 Other Contract Services and 571-43-00-21-45 Other Contract Services.

RECOMMENDED ACTION

Approve the Resolution approving the Agreement with Hansford Economic Consulting for a total not to exceed amount of $48,350 and authorize the City Manager to execute the agreement on behalf of the City.

ATTACHMENTS

Attachment A - Resolution 2015-__ Approving a Consultant Services Agreement with Hansford Economic Consulting
Attachment B – Consultant Services Agreement with Hansford Economic Consulting

CITY OF ST. HELENA
RESOLUTION NO. 2015-____

RESOLUTION AUTHORIZING AN AGREEMENT WITH HANSFORD ECONOMIC CONSULTING TO PROVIDE A UTILITY RATE STUDY FOR THE WATER AND WASTEWATER RATES

RECITALS

A. The City conducted its most recent utility rate study in 2011 and as a result, water rates were increased 2.8% in 2013, and 2.5% in 2014 and 2.6% in January 2015. Wastewater rates were increased 2.8% in 2013, and 2.5% in 2014 and 2.6% in January 2015; and

B. In September 2015, staff issued an Utility Rate Study Request for Proposals; and

C. Based on the proposal, consultant's relevant experience, references and interview, staff recommends Hansford Economic Consulting.

RESOLUTION

The City Council of the City of St. Helena hereby resolves as follows:

1. Council authorizes the agreement with Hansford Economic Consulting for a total not to exceed amount of $48,350.
2. Council authorizes the City Manager to execute the agreement on behalf of the City.

Approved at a Regular Meeting of the St. Helena City Council on November 10, 2015, by the following vote:

Mayor Galbraith: _____

Vice Mayor White: _____

Councilmember Crull: _____

Councilmember Dohring: _____

Councilmember Pitts: _____

APPROVED: ATTEST:

_____ _____

Alan Galbraith, Mayor Cindy Black, City Clerk

Attachment B

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on November 10, 2015 by and between the City of St. Helena, located in the County of Napa, State of California (City), and Hansford Economic Consulting (Consultant).

RECITALS:

A. City desires to employ Consultant to furnish professional services in connection with the project described as Utility Rate Study.

B. Consultant has represented that Consultant has the necessary expertise, experience, and qualifications to perform the required duties.

NOW, THEREFORE, in consideration of the mutual premises, covenants, and conditions herein contained, the parties agree as follows:

SECTION 1 – BASIC SERVICES

Consultant agrees to perform the services and work (together, "services") set forth in **Exhibit A, "Scope of Services"** and made part of this Agreement.

SECTION 2 – ADDITIONAL SERVICES

Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to or outside of those set forth in this Agreement or **Exhibit A, "Scope of Services"**, unless such additional services and compensation are authorized in advance and in writing by the City Council or City Manager of the City.

SECTION 3 – TIME FOR COMPLETION

The time for completion of services shall be as identified in **Exhibit A, "Scope of Services"**.

SECTION 4 – COMPENSATION AND METHOD OF PAYMENT

A. Subject to any limitations set forth in this Agreement, City agrees to pay consultant the amount specified in **Exhibit B, "Cost Proposal"**, attached hereto and made a part hereof. Total compensation shall not exceed $48,350.00 unless additional compensation is approved in accordance with Section 2.

B. Consultant shall furnish to City an original invoice for all services performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories if applicable: labor (by sub-category), travel, materials, equipment, supplies, subconsultant contracts, and miscellaneous expenses. City shall independently review each invoice submitted to determine whether the services performed and expenses incurred are in compliance with the provisions of this Agreement. If no charges or expenses are disputed, the invoice shall be approved and City will use its best efforts to cause Consultant to be paid within

30 days of receipt of invoice. If any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. If the City reasonably determines, in its sole judgment, that the invoiced charges and expenses exceed the value of the services performed to date and that it is probable that the Agreement will not be completed satisfactorily within the Agreement price, City may retain all or a portion of the invoiced charges and expenses. Within thirty (30) days of satisfactory completion of the project, City shall pay the retained amount, if any, to Consultant. In no event shall City be obligated to pay late fees or interest, whether or not such requirements are contained in Consultant's invoice.

C. Payment to the Consultant for services performed pursuant to this Agreement shall not be deemed to waive any defects in services performed by Consultant.

SECTION 5 – STANDARD OF PERFORMANCE

Consultant represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement.

SECTION 6 – INSPECTION AND FINAL ACCEPTANCE

City may inspect and accept or reject any of Consultant's services under this Agreement, either during performance or when completed. City shall reject or finally accept Consultant's services within sixty (60) days after submitted to City, unless the parties mutually agree to extend such deadline. City shall reject services by a timely written explanation, otherwise Consultant's services shall be deemed to have been accepted. City's acceptance shall be conclusive as to such services except with respect to latent defects and fraud. Acceptance of any of Consultant's services by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, the sections pertaining to indemnification and insurance.

SECTION 7 – INSURANCE REQUIRED

Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services hereunder by the Consultant, its agents, representatives, or employees, as indicated:

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:
   1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
   2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
   3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

B. Minimum Limits of Insurance. Consultant shall maintain limits no less than:

1. General Liability: $1,000,000 per occurrence for bodily injury, personal injury and property damage including operations, products and completed operations, as applicable. If Commercial General Liability Insurance or other form with a General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: $1,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: $1,000,000 per accident for bodily injury or disease.

C. Professional Liability Insurance. When Consultant under this Agreement is duly licensed under California Business and Professions Code as an architect, landscape architect, professional engineer, or land surveyor ("design professional"), Consultant shall maintain at least $2,000,000 of professional liability insurance.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions of $25,000 or greater must be declared to and approved by the City.

E. Other Insurance Provisions. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its agent, officers, officials, employees, and volunteers are to be covered as additional insured as respects: liability arising out of services or operations performed by the Consultant or Consultant's subconsultants; or automobile owned, leased, hired or borrowed by the Consultant.
2. For any claims related to Consultant's conduct while performing the services of this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its agents, officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its agents, officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subsection (b) of Section 2782 of the Civil Code.

F. Waiver of Subrogation. The workers compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, its agents, officers, officials, employees and volunteers for losses paid under the terms of this policy which arises from the services performed by the named insured for the City.

G. The Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the City.

H. Verification of Coverage. Consultant shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on forms that conform to City requirements. All certificates and endorsements are to be received and approved by the City before services commence. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

SECTION 8 – INDEMNIFICATION

A. Consultant shall indemnify and hold harmless City, its agents, officers, officials, employees, and volunteers from any and all claims, demands, suits, loss, damages, injury, and/or liability (including any and all costs and expenses in connection therewith), incurred by reason of any negligent or otherwise wrongful act or omission of Consultant, its officers, agents, employees and subcontractors, or any of them, under or in connection with this Agreement; and Consultant agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against City, its agents, officers, officials, employees and volunteers, or any of them, arising out of such negligent or otherwise wrongful act or omission, and to pay and satisfy any resulting judgments.

B. When Consultant under this Agreement is a design professional, the provisions of this section regarding Consultant's duty to defend and indemnify apply only to claims that arise out of or relate to the negligence, recklessness, or willful misconduct of the design professional.

C. If any action or proceeding is brought against Indemnitees by reason of any of the matters against which Consultant has agreed to indemnify Indemnitees as provided above, Consultant, upon notice from City, shall defend Indemnitees at Consultant's expense by counsel acceptable to City, such acceptance not to be unreasonably withheld. Indemnitees need not have first paid for any of the matters to which Indemnitees are entitled to Indemnification in order to be so indemnified. The insurance required to be maintained by Consultant shall ensure Consultant's obligations under this section, but the limits of such insurance shall not limit the liability of Consultant hereunder. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

D. The provisions of this section do not apply to claims to the extent occurring as a result of the City's sole negligence or willful acts or misconduct.

SECTION 9 – INDEPENDENT CONTRACTOR STATUS

A. Consultant is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Consultant shall have no authority to bind City in any manner, nor to incur an obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City.

B. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall have control over the conduct of Consultant or any of Consultant's officers, employees or agents, except as

set forth in this Agreement. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees or agents are in any manner officials, officers, employees or agents of City.

C. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

SECTION 10 – CONFLICTS OF INTEREST

A. Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the City Manager. Consultant agrees to at all times avoid conflicts with the interests of City in the performance of this Agreement.

B. City understands and acknowledges that Consultant is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant is aware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section.

SECTION 11 – OWNERSHIP OF DOCUMENTS

A. All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents discovered or obtained by Consultant in the course of providing any services pursuant to this Agreement shall become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of the Consultant. In addition, Consultant's final work product prepared or developed in the course of providing services pursuant to this Agreement shall become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of the Consultant. Consultant's notes and drafts prepared or developed in the course of providing any services pursuant to this Agreement shall remain Consultant's sole property. When requested by City, but no later than three years after project completion, Consultant shall deliver to City all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents discovered or obtained by Consultant in the course of providing any services pursuant to this Agreement.

B. All copyrights, patents, trade secrets, or other intellectual property rights associated with any ideas, concepts, techniques, inventions, processes, improvements, developments, works of authorship, or other products developed or created by Consultant during the course of providing services (collectively the "Work Product") shall belong exclusively to City. The Work Product shall be considered a "work made for hire" within the meaning of Title 17 of the United States Code. Without reservation, limitation, or condition, Consultant hereby assigns, at the time of creation of the Work Products, without any requirement of further consideration, exclusively and perpetually, any and all right, title, and interest Consultant may have in the Work Product

throughout the world, including without limitation any copyrights, patents, trade secrets, or other intellectual property rights, all rights of reproduction, all rights to create derivative works, and the right to secure registrations, renewals, reissues, and extensions thereof.

SECTION 12 – CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION

A. All information gained or Work Product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or Work Product to persons or entities other than City without prior written authorization from the City Manager, except as may be required by law.

B. Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the services performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided consultant gives City notice of such court order or subpoena.

C. If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or Work Product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Consultant's conduct.

D. Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the services performed thereunder. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite such response.

SECTION 13 – SUSPENSION OF SERVICES

City may, at any time, by ten (10) days written notice suspend further performance by Consultant. All suspensions shall extend the time schedule for performance in a mutually satisfactory manner and Consultant shall be paid for services performed and reimbursable expenses incurred prior to the suspension date.

SECTION 14 – COMPLIANCE WITH LAW

Consultant shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement. Consultant shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this Agreement. Neither City, nor any elected or appointed

boards, officers, officials, employees or agents of City, shall be liable, at law or in equity, as a result of any failure of Consultant to comply with this section.

SECTION 15 – COMPLIANCE WITH CIVIL RIGHTS

During the performance of this Agreement, Consultant agrees as follows:

A. Equal Employment Opportunity. In connection with the execution of this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, ancestry, age, sexual orientation, physical handicap, medical condition, marital status, sex, or national origin. Such actions shall include, but not be limited to, the following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training including apprenticeship.

B. Nondiscrimination Civil Rights Act of 1964. Consultant will comply with all federal regulations relative to nondiscrimination to federally-assisted programs.

C. Solicitations for Subcontractors including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations, made by Consultant for services to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor, supplier, or lessor shall be notified by Consultant of Consultant's obligations under this Agreement and the regulations relative to nondiscrimination.

SECTION 16 – RECORDS

A. Records of Consultant's direct labor costs, payroll costs, and reimbursable expenses pertaining to this project covered by this Agreement will be kept on a generally recognized accounting basis and made available to City if and when required for a period of up to 3 years from the date of Consultant's final invoice.

B. Consultant's records and design calculations will be available for examination and audit if and as required. The cost of any reproductions shall be paid by City.

SECTION 17 – COOPERATION BY CITY

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the services as outlined in the Exhibit A, "Scope of Services", shall be furnished to Consultant in every reasonable way to facilitate, without undue delay, the services to be performed under this Agreement.

SECTION 18 – NOTICES

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by facsimile or first class mail, addressed as follows:

To City:

City Manager
1480 Main Street
St. Helena, California 94574

To Consultant:

Hansford Economic Consulting
Catherine Hansford
P.O. Box 10384
Truckee, CA 96162
530-412-3676
Catherine@hansfordecon.com

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile, or, if mailed, three (3) days after deposit in the custody of the U.S. Postal Service.

SECTION 19 – TERMINATION

A. City may terminate this Agreement, with or without cause, at any time by giving ten (10) days written notice of termination to Consultant. If such notice is given, Consultant shall cease immediately all services in progress.

B. If either Consultant or City fail to perform any material obligation under this Agreement, then, in addition to any other remedies, either Consultant, or City may terminate this Agreement immediately upon written notice.

C. Upon termination of this Agreement by either Consultant or City, all property belonging to City which is in Consultant's possession shall be delivered to City. Consultant shall furnish to City a final invoice for services performed and expenses incurred by Consultant, prepared as set forth in this Agreement.

SECTION 20 – ATTORNEY FEES

If litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorneys' fees, costs and expenses, in addition to any other relief to which it may be entitled. In addition, any legal fees, costs and expenses incurred to enforce the provisions of this Agreement shall be reimbursed to the prevailing party.

SECTION 21 – ENTIRE AGREEMENT

This Agreement, including the attached Exhibits, is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between Consultant and City prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

SECTION 22 – SUCCESSORS AND ASSIGNS

This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties. However, this Agreement shall not be assigned by Consultant without written consent of the City.

SECTION 23 – CONTINUITY OF PERSONNEL

Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff assigned to perform the services required under this Agreement, prior to any such performance.

SECTION 24 – DEFAULT

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any services performed after the date of default and may terminate this Agreement immediately by written notice to Consultant.

SECTION 25 – WAIVER

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement.

SECTION 26 – LAW TO GOVERN; VENUE

This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Napa. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Northern District of California, in San Francisco.

SECTION 27 – SEVERABILITY

If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

SECTION 28 – SPECIAL PROVISIONS

This Agreement is subject to the following special provisions: none.

IN WITNESS WHEREOF, the parties hereto have accepted, made, and executed this Agreement upon the terms, conditions, and provisions above stated, the day and year first above written.

Consultant:

By: _____
Name: _____
Title: _____

City:

By: _____
Name: Jennifer Phillips
Title: City Manager

Approved as to Form:

By: _____
Name: Thomas B. Brown
Title: City Attorney

Scope of Services and Schedule

Scope of Services

The rate studies will be built in Microsoft Excel, giving the ability to test various key assumptions such as operating reserve levels and rate structures. All assumptions used in the model will be clearly defined, and tables will be presented in an easily understandable format. A baseline scenario will be developed, which will serve to evaluate the impact of changes from alternative rate structures, changing City policies, and/or measure the impact of rate increases.

The Study will be conducted in ten tasks. Each task is detailed below.

Task 1: Project Initiation and Management

Under this task, HEC will coordinate with staff to collect the base data necessary to conduct the study. HEC will provide the City with a list of data information and needs. HEC will work with staff to ensure good quality data is used in the rate studies. Upon receipt and review of the data HEC will meet with staff to discuss key factors driving the need for rate adjustments for each utility including regulatory requirements, water supply and/use pattern changes, City policies, and legislative mandates. Financial goals and policy objectives, such as asset replacement and funding, of the City's utility enterprise funds will be reviewed as they will shape the development of the financial models and recommendations of the Study.

This task also includes time for project management from inception to completion of the Study.

Meetings: *(1) Staff meeting & tour of facilities*
Deliverables: *Data and information List*

Task 2: Cost Classification and Customer Profiling

HEC will review the current cost classifications used by the City and may make suggestions to change the methodology or may recommend continued use of the current methodology. Cost allocation is based on use characteristics of customers and will be determined by customer usage profiling. HEC will use historical demand and billing data as well as industry standard factors to provide customer usage profiles by customer type. The current rates schedules will be examined for alignment with current City goals and objectives and fit with customer usage patterns.

Meetings: *(0)*
Deliverables: *None*

Task 3: Financing Strategy

Through the capital improvements planning process the City identifies projects that will likely need to be constructed over the next five years. Under this task, HEC will summarize the CIPs as provided by the City and will present a financing strategy to ensure the facilities are completed in a timely fashion, while minimizing the impact to rate payers and the development community such that economic competitiveness is not harmed. HEC will rely on information from the City's engineers to allocate cost of the CIP between existing and future customers. The Excel models will be able to evaluate the impact of several funding options (such as low interest loans, bond sales and so forth) for capital improvements.

Meetings: *(0)*
Deliverables: *None*

Task 4: Revenue Requirement Projection

The projected revenue requirement is the revenue necessary to fully cover all expenditures net of other operating and non-operating revenues. A projection of revenue deficiency will be conducted by comparing the existing level of operating and non-operating revenues with projected annual expenditures. Operation and maintenance expenses may be projected using historical annual percentage increases, or some other index, such as a consumer price index; projection methodology will be discussed with staff. Expense item categories, such as utility costs and labor costs, will be projected independently. Projected annual costs may also include other non-operating cost considerations, such as an operating reserve, rate stabilization fund, or additional funds to meet debt service coverage requirements.

Non-operating revenues, such as interest revenue, connection charges, and other miscellaneous revenue sources, will be included as credits in the analysis so that the revenue requirement is not over-estimated.

Meetings: *(0)*
Deliverables: *None*

Task 5: Cost of Service Analysis

Once the projected revenue requirement is established, it is allocated to user groups based on cost classification (collection or treatment plant costs for wastewater, customer or demand costs for water) and customer usage characteristics (flow and load for wastewater, and water demand patterns for average and peak usage). The customer usage factors are determined based on the customer profiling exercise. HEC incorporates the effect of price-elasticity into the future water and wastewater use projection.

The cost allocation analysis leads to a calculation of monthly user rates for the enterprise funds such that they are adequately funded for existing and projected future costs and that the rates are based on the demand for service by each customer type. By establishing a basis and relation between the cost of service and the demand for service by each customer type, the requirements of Proposition 218 will be fully met.

Meetings: *(1)*
Deliverables: *Progress meeting with staff*

Task 6: Rate Design Analysis

The current rate structure will be assessed and alternative rate structures examined. New and/or alternative customer classifications, and proportion of charges collected as flat rate versus variable rate will be recommended if appropriate to fit with City objectives. The recommended rate structure will be determined with input from staff and a stakeholder group (potentially) given the City's billing system capabilities, public understanding of utility bills, and other stakeholder concerns.

Considerable time will be spent in this task evaluating the effect of different rate structures on developed policy objectives for water and wastewater, including operations, water conservation, recent legal interpretations of Proposition 218, the bill impacts to different customer groups, and the economic effect / hardship on low-income households.

Meetings: *(1)*
Deliverables: *Progress meeting with staff*

Task 7: Cash Flow Projections

Cash flows for each enterprise fund will be presented to ensure sufficiency of funding through the plan period, demonstrating adequate debt service coverage and reserve levels are met. Minimum reserve levels will be recommended for each utility.

HEC will explain how the model works to staff at an interactive meeting where the model is displayed on a large screen.

Meetings: *(1)*
Deliverables: *Model review with staff*

Task 8: Prepare Reports and Support City Implementation of Rates

HEC will prepare a joint water and wastewater rate study report unless one utility study moves ahead of the other, or it becomes impractical to put both studies in one report, in which can separate reports will be prepared. The report(s) will include the methodologies used, detailed calculations of rates, findings and recommendations. Draft and final reports of each study will be provided to the City electronically. Hard copies of the final report will be provided on request.

HEC will support the City's implementation of revised rate schedules by assisting with drafting the public hearing notice(s), conducting a public workshop, attending the public hearing(s), and reviewing drafting resolutions.

Meetings: *(3) – Public Workshop, Presentation of Report, and Public Hearing*
Deliverables: *Draft and Final Reports*

Task 9: Stakeholder Group Participation

It has been HEC's experience that the more involvement customers have in the process, the greater the likelihood of timely implementation of revised rate schedules.

Under this task a stakeholder group representing different customer classes would be formed. The stakeholder group would be apprised of project progress and be asked for input and feedback on issues that directly affect them. For example, discussion and input from this group would be particularly useful in determining the percentage of revenue requirement to be collected through fixed versus variable charges; whether new customer classes might be warranted, and in ensuring proportionality within the context of Proposition 218 is achieved.

Meetings: *(2)*
Deliverables: *Meeting materials*

Task 10: Presentations / Meetings

Materials necessary for presentations and meetings will be prepared under this task. Materials may include PowerPoint, handouts, and so forth. This scope of services provides for up to nine (9) meetings at the City over the course of the project, not necessarily in this order:

1. Data review with staff (Task 1)
2. Progress meeting with staff (Task 5)
3. Progress meeting with staff (Task 6)
4. Stakeholder meeting (Task 9)
5. Stakeholder meeting (Task 9)
6. Model review with staff (Task 7)
7. One Public Workshop (Task 8)
8. Presentation of Draft Report (task 8)
9. Public Hearing (Task 8)

Meetings: *(9) Total All Tasks*
Deliverables: *Power Point Presentations*

Schedule

The preliminary schedule provides for a draft study or studies (if water and wastewater are prepared separately) within four months. The schedule assumes that both water and wastewater studies are completed concurrently and solid engineering estimates for capital improvements are ready. Following completion of the study are the public workshop, presentation of the study to City Council for action, and a 45-day public noticing period. An aggressive timeframe would be to have rates adopted seven to eight months from commencement of work.

Cost Proposal

The estimated manpower and associated costs provided herein assume that HEC conducts the sewer and water studies concurrently and that the City reaps the benefits of efficiencies and cost savings associated with conducting the studies in this manner.

Estimated Budget

The total estimated cost for this project is **$45,910** plus **$2,440** for reimbursable expenses. The total cost proposal of **$48,350** is based on an estimate of staff time by task as shown in **Table 1** on the following page. Reimbursable expenses include any travel-related expenses such as mileage reimbursement and parking, postage or delivery charges, meals and lodging if necessary, and report printing.

Cost Estimate Assumptions

- HEC will negotiate an authorized budget with the City upon award of work.
- The cost estimate includes up to nine meetings. Additional meetings, workshops or presentations will be billed on a time and materials basis.
- Reimbursable expenses are charged with no markup and are included in monthly invoices.

Fee Schedule

Staff hourly rates are $160 per hour for Catherine Hansford and $75 per hour for clerical support and travel time. HEC hourly rates are valid until project completion.

HEC charges for services on a cost not-to-exceed basis; therefore, you will only be billed for the work completed up to the authorized budget amount. Invoices are issued monthly with a brief description of services performed in the period, and are due on receipt.

HEC reserves the right to move budget between tasks, should one task be completed under the estimated amount, and another task be completed over the estimated amount. If additional work is requested by the City that is beyond the original scope of services, HEC will request authorization for additional budget.

Table 1
Estimated Cost for St. Helena Water and Wastewater Rate Study

	Task/Item Description *Hourly Billing Rates*	HEC Hansford *$160*	HEC Admin *$75*	Total Estimated Cost
1	Project Initiation & Management	12	15	$3,050
2	Cost Classification and Customer Profiling	30	4	$5,100
3	Financing Strategy	12	6	$2,370
4	Revenue Requirement Projections	15	6	$2,850
5	Cost of Service Analysis	20	6	$3,650
6	Rate Design Analysis	28	6	$4,930
7	Cash Flow Projections	15	12	$3,300
8	Prepare Reports	22	12	$4,420
9	Stakeholder Group Participation	15	12	$3,300
10	Presentations / Meetings (9)	45	77	$12,940
	Subtotal Staff Costs	**214**	**156**	**$45,910**
	Reimbursable Costs			$2,440
	Total Cost Proposal [1]			**$48,350**

[1] HEC reserves the right to move budget between tasks as necessary to complete the scope of work up to the authorized budget amount.

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Item No: 12

Report to the City Council
Council Meeting of November 10th, 2015

Agenda Section: **Consent Calendar**

Subject: **Resolution approving a Professional Services Agreement with Green Valley Consulting Engineering in the amount of $94,110 for the design of Holmes Tank Upgrade, Capital Improvement Project W-86**

CEQA Status: **Categorically Exempt, Article 19 section 15302 Replacement or Reconstruction, and Article 19 Section 15303 New Construction or Conversion of Small Structures**

Prepared By: **Tobias Barr, Public Works Project Manager**
Steven Palmer, PE, Public Works Director/City Engineer

Approved By: **Jennifer Phillips, City Manager**

BACKGROUND

City Public Works has identified that the Holmes Tank and pump station facilities as requiring upgrades to meet Public Works Standards, avoid system failure, and provide reliable water service to the Holmes Tank Service Zone (Zone 3). Identified issues include repairing the cracking cement tank reservoir, replacing the 1 ½ inch tank supply line with an 8 inch supply line in order to supply adequate water for supply and fire flow, eliminating the Palmer Booster Station serving the Spring Mountain Pressure Zone (Pressure Zone 2) by integrating the Spring Mountain Road Pressure Zone into the Holmes Tank Service Zone, and adding backup generator power to the Holmes Pumping Station for fire and service protection during a power outage event.

Previously engineering was performed by the City in 2008, however that design showed work outside of the City property, did not address the need for backup power, and did not integrate the Spring Mountain Pressure Zone into the Holmes Tank Service Zone. By integrating the two zones, the water pressure at Spring Mountain Road Pressure Zone will also be greatly improved and meet fire flow requirements. Currently the Spring Mountain Road Pressure Zone does not have adequate fire flow and can experience issues regarding low water pressure.

DISCUSSION

Public Works staff invited consulting engineers that have existing Master Professional Services Agreements with the City to view the facilities and provide proposals for the Scope of Services document developed by Public Works Staff. Proposals were received from Coastland Civil Engineering and Green Valley Consulting Engineers; and they were reviewed by Tobias Barr, Project Manager, and Glen Wright, Interim Assistant Director of Public Works.

In the opinion of the reviewers, Green Valley Consulting Engineers was determined to be well qualified and provided the best overall consulting value to the City for the Holmes Tank Upgrade Project.

This Project is not subject to CEQA. The replacement of the Holms Pumping Station qualifies for an exemption under Article 19 section 15302 Replacement or Reconstruction and the construction related to the replacement and realignment of the Holmes Storage Tanks water supply line is exempt under Article 19 Section 15303 New Construction or Conversion of Small Structures.

FISCAL IMPACT

The Project will be funded by $94,100 from the Capital Improvement Project W-86, Holmes Tank Upgrade. The current estimated Project expenditure summary is provided in the table below.

Holmes Tank Upgrade CIP W-86	
Budget	$250,000
Green Valley Engineering Proposal	($94,100)
Remaining Budget	**$155,900**

RECOMMENDED ACTION

Adopt attached resolution authorizing the City Manager to execute a professional services agreement in the amount of $94,100 for the engineering services for the design of the Holmes Tank Upgrade CIP W-86.

ATTACHMENTS

1. Resolution
2. Professional Services Agreement
3. Location Map

CITY OF ST. HELENA

RESOLUTION NO. 2015-____

APPROVING A PROFESSIONAL SERVICE AGREEMENT WITH GREEN VALLEY CONSULTING ENGINEERS IN THE AMOUNT OF $94,100.00 FOR DESIGN OF HOMLES TANK UPGRADE PROJECT (CIP W-86)

A. The City requires consulting services for the preparation of engineering, design and bidding documents for the Holmes Tank Upgrades Project; and

B. The City Project Manager requested and Green Valley Consulting Engineers responded with a proposal for design and bid preparation services; and

C. The City Project Manager has reviewed and evaluated the proposal received and otherwise confirmed Green Valley Consulting Engineers has the skills, experience and qualifications to provide the desired services; and

D. The attached agreement established the terms and conditions under which Green Valley Consulting Engineers will provide the necessary services; and

E. The City Attorney has reviewed and approved the agreement, and

F. The agreement will be funded by $94,100.00 from the Capital Improvement Program Project Number W-86, Holmes Tank Upgrade Project.

RESOLUTION

NOW, THEREFORE, the City Council of the City of St. Helena resolves as follows:

1. Approve Professional Services Agreement with Green Valley Consulting Engineers.
2. The City Manager is authorized to execute the Professional Services Agreement with Green Valley Consulting Engineers.

Approved at a Regular Meeting of the St. Helena City Council on November 10, 2015, by the following vote:

Mayor Galbraith: _____

Vice Mayor White: _____

Councilmember Crull: _____

Councilmember Dohring: _____

Councilmember Pitts: _____

APPROVED:

Alan Galbraith, Mayor

ATTEST:

Cindy Black, City Clerk

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on November 10th, 2015 by and between the City of St. Helena, located in the County of Napa, State of California (City), and Green Valley Consulting Engineers (Consultant).

RECITALS:

A. City desires to employ Consultant to furnish professional services in connection with the project described as Holmes Tank Upgrades.

B. Consultant has represented that Consultant has the necessary expertise, experience, and qualifications to perform the required duties.

NOW, THEREFORE, in consideration of the mutual premises, covenants, and conditions herein contained, the parties agree as follows:

SECTION 1 – BASIC SERVICES

Consultant agrees to perform the services and work (together, "services") set forth in **Exhibit A, "Scope of Services"** and made part of this Agreement.

SECTION 2 – ADDITIONAL SERVICES

Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to or outside of those set forth in this Agreement or **Exhibit A, "Scope of Services"**, unless such additional services and compensation are authorized in advance and in writing by the City Council or City Manager of the City.

SECTION 3 – TIME FOR COMPLETION

The time for completion of services shall be as identified in **Exhibit A, "Scope of Services"**.

SECTION 4 – COMPENSATION AND METHOD OF PAYMENT

A. Subject to any limitations set forth in this Agreement, City agrees to pay consultant the amount specified in **Exhibit B, "Compensation"**, attached hereto and made a part hereof. Total compensation shall not exceed $94,100.00, unless additional compensation is approved in accordance with Section 2.

B. Consultant shall furnish to City an original invoice for all services performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories if applicable: labor (by sub-category), travel, materials, equipment, supplies, subconsultant contracts, and miscellaneous expenses. City shall independently review each invoice submitted to determine whether the services performed and expenses incurred are in compliance with the provisions of this Agreement. If no charges or expenses are disputed, the

invoice shall be approved and City will use its best efforts to cause Consultant to be paid within 30 days of receipt of invoice. If any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. If the City reasonably determines, in its sole judgment, that the invoiced charges and expenses exceed the value of the services performed to date and that it is probable that the Agreement will not be completed satisfactorily within the Agreement price, City may retain all or a portion of the invoiced charges and expenses. Within thirty (30) days of satisfactory completion of the project, City shall pay the retained amount, if any, to Consultant. In no event shall City be obligated to pay late fees or interest, whether or not such requirements are contained in Consultant's invoice.

C. Payment to the Consultant for services performed pursuant to this Agreement shall not be deemed to waive any defects in services performed by Consultant.

SECTION 5 – STANDARD OF PERFORMANCE

Consultant represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement.

SECTION 6 – INSPECTION AND FINAL ACCEPTANCE

City may inspect and accept or reject any of Consultant's services under this Agreement, either during performance or when completed. City shall reject or finally accept Consultant's services within sixty (60) days after submitted to City, unless the parties mutually agree to extend such deadline. City shall reject services by a timely written explanation, otherwise Consultant's services shall be deemed to have been accepted. City's acceptance shall be conclusive as to such services except with respect to latent defects and fraud. Acceptance of any of Consultant's services by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, the sections pertaining to indemnification and insurance.

SECTION 7 – INSURANCE REQUIRED

Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services hereunder by the Consultant, its agents, representatives, or employees, as indicated:

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:
   1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
   2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

B. Minimum Limits of Insurance. Consultant shall maintain limits no less than:

1. General Liability: $2,000,000 per occurrence for bodily injury, personal injury and property damage including operations, products and completed operations, as applicable. If Commercial General Liability Insurance or other form with a General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: $2,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: $2,000,000 per accident for bodily injury or disease.

C. Professional Liability Insurance. When Consultant under this Agreement is duly licensed under California Business and Professions Code as an architect, landscape architect, professional engineer, or land surveyor ("design professional"), Consultant shall maintain at least $2,000,000 of professional liability insurance.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions of $25,000 or greater must be declared to and approved by the City.

E. Other Insurance Provisions. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its agent, officers, officials, employees, and volunteers are to be covered as additional insured as respects: liability arising out of services or operations performed by the Consultant or Consultant's subconsultants; or automobile owned, leased, hired or borrowed by the Consultant.
2. For any claims related to Consultant's conduct while performing the services of this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its agents, officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its agents, officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subsection (b) of Section 2782 of the Civil Code.

F. Waiver of Subrogation. The workers compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, its agents, officers, officials, employees and volunteers for losses paid under the terms of this policy which arises from the services performed by the named insured for the City.

G. The Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the City.

H. Verification of Coverage. Consultant shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on forms that conform to City requirements. All certificates and endorsements are to be received and approved by the City before services commence. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

SECTION 8 – INDEMNIFICATION

A. Consultant shall indemnify and hold harmless City, its agents, officers, officials, employees, and volunteers from any and all claims, demands, suits, loss, damages, injury, and/or liability (including any and all costs and expenses in connection therewith), incurred by reason of any negligent or otherwise wrongful act or omission of Consultant, its officers, agents, employees and subcontractors, or any of them, under or in connection with this Agreement; and Consultant agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against City, its agents, officers, officials, employees and volunteers, or any of them, arising out of such negligent or otherwise wrongful act or omission, and to pay and satisfy any resulting judgments.

B. When Consultant under this Agreement is a design professional, the provisions of this section regarding Consultant's duty to defend and indemnify apply only to claims that arise out of or relate to the negligence, recklessness, or willful misconduct of the design professional.

C. If any action or proceeding is brought against Indemnitees by reason of any of the matters against which Consultant has agreed to indemnify Indemnitees as provided above, Consultant, upon notice from City, shall defend Indemnitees at Consultant's expense by counsel acceptable to City, such acceptance not to be unreasonably withheld. Indemnitees need not have first paid for any of the matters to which Indemnitees are entitled to Indemnification in order to be so indemnified. The insurance required to be maintained by Consultant shall ensure Consultant's obligations under this section, but the limits of such insurance shall not limit the liability of Consultant hereunder. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

D. The provisions of this section do not apply to claims to the extent occurring as a result of the City's sole negligence or willful acts or misconduct.

SECTION 9 – INDEPENDENT CONTRACTOR STATUS

A. Consultant is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Consultant shall have no authority to bind City in any manner, nor to incur an obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City.

B. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall have control over the conduct of Consultant or any of Consultant's officers, employees or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees or agents are in any manner officials, officers, employees or agents of City.

C. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

SECTION 10 – CONFLICTS OF INTEREST

A. Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the City Manager. Consultant agrees to at all times avoid conflicts with the interests of City in the performance of this Agreement.

B. City understands and acknowledges that Consultant is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant is aware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section.

SECTION 11 – OWNERSHIP OF DOCUMENTS

A. All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by Consultant in the course of providing any services pursuant to this Agreement shall become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of the Consultant. When requested by City, but no later than three years after project completion, Consultant shall deliver to City all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

B. All copyrights, patents, trade secrets, or other intellectual property rights associated with any ideas, concepts, techniques, inventions, processes, improvements, developments, works of authorship, or other products developed or created by Consultant during the course of providing services (collectively the "Work Product") shall belong exclusively to City. The Work Product shall be considered a "work made for hire" within the meaning of Title 17 of the United States Code. Without reservation, limitation, or condition, Consultant hereby assigns, at the time of creation of the Work Products, without any requirement of further consideration, exclusively and perpetually, any and all right, title, and interest Consultant may have in the Work Product throughout the world, including without limitation any copyrights, patents, trade secrets, or other

intellectual property rights, all rights of reproduction, all rights to create derivative works, and the right to secure registrations, renewals, reissues, and extensions thereof.

SECTION 12 – CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION

A. All information gained or Work Product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or Work Product to persons or entities other than City without prior written authorization from the City Manager, except as may be required by law.

B. Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the services performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided consultant gives City notice of such court order or subpoena.

C. If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or Work Product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Consultant's conduct.

D. Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the services performed thereunder. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite such response.

SECTION 13 – SUSPENSION OF SERVICES

City may, at any time, by ten (10) days written notice suspend further performance by Consultant. All suspensions shall extend the time schedule for performance in a mutually satisfactory manner and Consultant shall be paid for services performed and reimbursable expenses incurred prior to the suspension date.

SECTION 14 – COMPLIANCE WITH LAW

Consultant shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement. Consultant shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this Agreement. Neither City, nor any elected or appointed

boards, officers, officials, employees or agents of City, shall be liable, at law or in equity, as a result of any failure of Consultant to comply with this section.

SECTION 15 – COMPLIANCE WITH CIVIL RIGHTS

During the performance of this Agreement, Consultant agrees as follows:

A. Equal Employment Opportunity. In connection with the execution of this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, ancestry, age, sexual orientation, physical handicap, medical condition, marital status, sex, or national origin. Such actions shall include, but not be limited to, the following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training including apprenticeship.

B. Nondiscrimination Civil Rights Act of 1964. Consultant will comply with all federal regulations relative to nondiscrimination to federally-assisted programs.

C. Solicitations for Subcontractors including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations, made by Consultant for services to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor, supplier, or lessor shall be notified by Consultant of Consultant's obligations under this Agreement and the regulations relative to nondiscrimination.

SECTION 16 – RECORDS

A. Records of Consultant's direct labor costs, payroll costs, and reimbursable expenses pertaining to this project covered by this Agreement will be kept on a generally recognized accounting basis and made available to City if and when required for a period of up to 3 years from the date of Consultant's final invoice.

B. Consultant's records and design calculations will be available for examination and audit if and as required. The cost of any reproductions shall be paid by City.

SECTION 17 – COOPERATION BY CITY

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the services as outlined in the Exhibit A, "Scope of Services", shall be furnished to Consultant in every reasonable way to facilitate, without undue delay, the services to be performed under this Agreement.

SECTION 18 – NOTICES

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by facsimile or first class mail, addressed as follows:

To City: City Manager
1480 Main Street
St. Helena, California 94574

To Consultant: Green Valley Consulting Engineers
Attn: Liz Ellis
335 Tesconi Cir
Santa Rosa, CA 95401

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile, or, if mailed, three (3) days after deposit in the custody of the U.S. Postal Service.

SECTION 19 – TERMINATION

A. City may terminate this Agreement, with or without cause, at any time by giving ten (10) days written notice of termination to Consultant. If such notice is given, Consultant shall cease immediately all services in progress.

B. If either Consultant or City fail to perform any material obligation under this Agreement, then, in addition to any other remedies, either Consultant, or City may terminate this Agreement immediately upon written notice.

C. Upon termination of this Agreement by either Consultant or City, all property belonging to City which is in Consultant's possession shall be delivered to City. Consultant shall furnish to City a final invoice for services performed and expenses incurred by Consultant, prepared as set forth in this Agreement.

SECTION 20 – ATTORNEY FEES

If litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorneys' fees, costs and expenses, in addition to any other relief to which it may be entitled. In addition, any legal fees, costs and expenses incurred to enforce the provisions of this Agreement shall be reimbursed to the prevailing party.

SECTION 21 – ENTIRE AGREEMENT

This Agreement, including the attached Exhibits, is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between Consultant and City prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

SECTION 22 – SUCCESSORS AND ASSIGNS

This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties. However, this Agreement shall not be assigned by Consultant without written consent of the City.

SECTION 23 – CONTINUITY OF PERSONNEL

Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff assigned to perform the services required under this Agreement, prior to any such performance.

SECTION 24 – DEFAULT

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any services performed after the date of default and may terminate this Agreement immediately by written notice to Consultant.

SECTION 25 – WAIVER

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement.

SECTION 26 – LAW TO GOVERN; VENUE

This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Napa. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Northern District of California, in San Francisco.

SECTION 27 – SEVERABILITY

If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

SECTION 28 – SPECIAL PROVISIONS

This Agreement is subject to the following special provisions: none.

IN WITNESS WHEREOF, the parties hereto have accepted, made, and executed this Agreement upon the terms, conditions, and provisions above stated, the day and year first above written.

Consultant:

By: _____
Name: _____
Title: _____

City:

By: _____
Name: Jennifer Phillips
Title: City Manager

Approved as to Form:

By: _____
Name: Thomas B. Brown
Title: City Attorney

Exhibit A-1

Scope of Services

Task 1 – Meetings with City Staff

We will meet with the City to agree on the approximate proposed pipeline alignment prior to surveying the pipe alignment, as well as review the necessary pump station improvements.

We will then prepare a preliminary 30% design of the pump station and proposed alignment after which time we will meet with City staff to review and further define the scope of work needed to complete the Project. Once a final pipeline alignment has been selected, the survey will commence to prepare detailed mapping to finalize specific details such as pipe supports, ARV's, tie-in locations, etc. The surveying portion will likely occur before or after 30% design submittal meeting.

The 30% review meeting would further define the overall scope of work in more detail to include the necessary piping needed (approximate length and alignment), and other changes to the project.

Task 2 – Field Review and Background Information

We will review all of the available City information pertaining to the project including base maps, as-built drawings, and any additional pertinent information for the project. At project initiation we will perform a field review of the project site, take digital photos and observe existing conditions so during design we can refer back to identify any unusual or special condition that may affect the project design or construction, especially in regards to the Pump Station.

Critical will be contact with AT&T, PG&E, and Comcast informing them of the project and requesting their facility mapping. In addition, we will coordinate closely with Blymer and PG&E for power demand calculations and the possible transformer relocation or change out.

Task 3 – Surveying

Green Valley will conduct the topographic survey of the project area and prepare mapping for the design documents.. At a minimum, the topographic survey will include all necessary work to produce a topographic map, including features outlined in the RFP. The location of the proposed pipeline shall be agreed upon by City and Green Valley prior to surveying pipeline alignment.

Survey shall include finding available property corners and plotting approximate property lines based on best available information. A record of survey is not included in the scope of work.

We will pick up outlines of an existing septic system that is located on the proposed pump station that will potentially be abandoned per the permitting process.

Task 4 – Submittals

Following our background research, survey and field review, a 30% preliminary design will be prepared and submitted to the City for review. The 30% improvement plans will include the survey mapping and existing utility information, general alignment of the piping and location of the pump house. The 30% submittal will include the draft pump station design, pipeline alignment and details, Following City review, consultant will meet with City to review and discuss comments on the preliminary layout and design.

At the 30% stage we will also include the necessary details and specifications for the pressure grouting of cracks that are currently found in the concrete storage tank. This item will be bid as a separate item. The grouting will take place after the new inflow and outflow pipes are installed in the tank.

As the pipeline will be above ground for a portion of the run we have included a small fee for a structural engineer to prepare tie-back and pedestal details.

Deliverables: Four ½ size plan sets and an engineer's estimate of probable construction costs.

Task 5 – 90% Submittal

Following the 30% review meeting with City staff, we will prepare a 90% submittal. These plans will include all the sheets proposed for the final bid documents, including plan and profile sheets and the relevant details.

A 90% submittal will include the plans and specifications to allow for formal review and any needed permitting and right of way work. Once comments have been received, consultant will submit final plans, specs and estimate for advertising. The city reserves the right to make comments on 100% plans if necessary. Final deliverables will be in a PDF format. No meeting is planned for the 90% submittal.

Specifications will follow either CSI format (typical for pump station work) or Caltrans standards and be coordinated with the City's boilerplate front-end.

Deliverables: Four ½ size plans sets, two draft technical specifications and a preliminary estimate of probable construction costs for City review and comment. These documents will be supplied to the City in print and in PDF formats.

Task 5A – Pump Station Design

Blymer Engineers will provide the pump station design in all submittals. Efforts for the pump station design have been outlined in the RFP and are not repeated herein. We will coordinate all efforts with Blymer to incorporate the necessary information into the final set of bid documents. The pump station building will be a split face cinderblock structure with a metal roof. Their design will also incorporate an emergency generator – trailer mounted.

Task 6 – Final Bid Documents

Any comments received on our 90% submittal will be addressed and final bid documents will be prepared. The final plans, specifications and estimate will be submitted electronically to the City for a brief review prior to plotting final drawings. It is assumed that the purpose of this review is to confirm that all City comments on the 90% submittal are addressed, and that no significant revisions are requested.

Deliverables: Final bid documents will be prepared including stamped and signed drawings and camera ready specifications in a PDF format.

Task 7 – Permitting Support

Permitting will be performed by the City with support from our team in the way of exhibits, technical information, etc. We will assist as necessary to obtain the needed building permit for the pump station, typically needed calculations and foundation connection details and any electrical modifications.

Tree removal will be assisted by exhibits as required, with the same detail provided to abandon the septic system.

Task 8 – Bidding Support

We will support the City as requested in the advertising and award of the Project. We have included time to attend the pre-bid meeting and field walk with potential bidders and address RFI's that may come up. We will assist with the technical portion of any needed addenda.

Task 9 – Geotechnical Evaluation and Potholing

We will work with the City's selected geotechnical engineer to obtain and incorporate necessary information into the construction documents to allow for construction.

Task 10 – Construction Management and Inspection

Construction management and inspection is not included in this proposal. Should the City desire, Green Valley can provide a separate scope of work for construction management and inspection at the time of contract award.

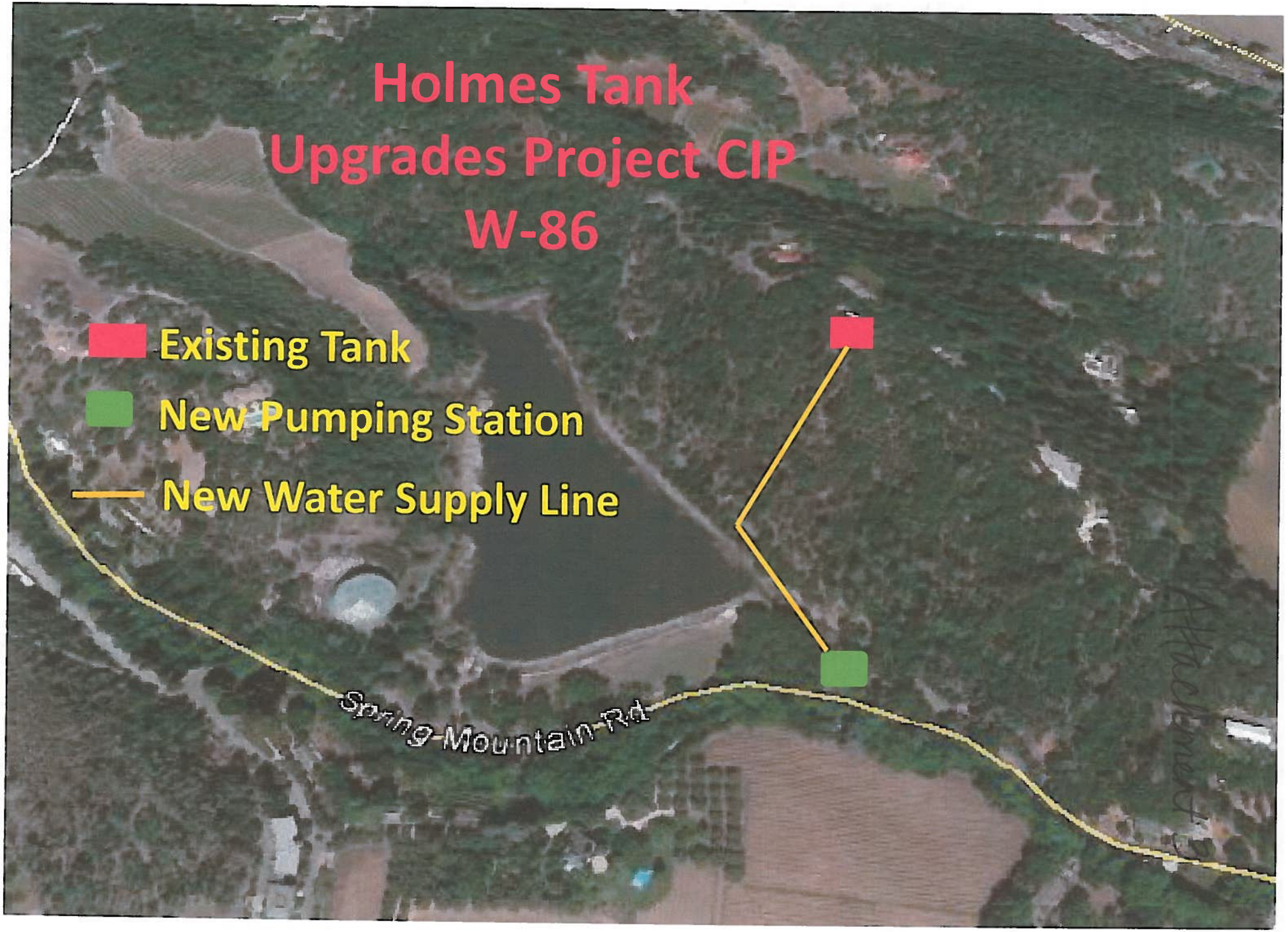
Exhibit B-1

Compensation

For the scope of work indicated in Exhibit A-1, including all caveats, Green Valley Consulting Engineers will not exceed ninety-four thousand one hundred and ten dollars ($94,110) unless additional compensation is approved in accordance with Section 2.

DESIGN FEES

TASK NUMBER	DESCRIPTION	PROPOSED HOURS PM/PE $145	Staff Engr $135	Cad $130	Survey $190	Admin $70	Subtotal	Direct Costs	Task Total Fees
Tasks 1, 2, 3	Meetings, Research and Coord., and Surveys	20	6	40	16	4	$12,230		$12,230
Task 4	30% Improvement Plans, Specifications and Estimate	12	8	40		4	$8,300	$50,000	$58,300
Task 5	90% Improvement Plans, Specifications and Estimate	16		60		4	$10,400	$1,750	$12,150
Tasks 6, 7	Final PS&E and Permitting	12	4	16		4	$4,640	$ 150	$4,790
Task 8	Bidding Support	4		6		4	$1,640	$5,000	$6,640
									$0
	Total Hours	64	18	162	16	20	$37,210	$56,900	
							Design Fee Total		*$94,110*


Holmes Tank
Upgrades Project CIP
W-86
Existing Tank
New Pumping Station
New Water Supply Line
Spring Mountain Rd

Item No: 13

Report to the City Council
Council Meeting of November 10, 2015

Agenda Section: **Consent**

Subject: **Second reading and proposed adoption of new Municipal Code Section 15.26 (Expedited Permit Process for Small Residential Rooftop Solar Systems) in order to comply with the state mandated requirements of AB 2188.**

CEQA Status: **Exempt Pursuant to CEQA Guidelines Section 15061(b)(3)**

Prepared By: **Aaron Hecock, Senior Planner**
Noah Housh, Planning and Community Improvement Director

Approved By: **Jennifer Phillips, City Manager**

DISCUSSION

In 2014, the state passed a new law, AB 2188 (Expedited Solar Permitting Act), that modifies the existing Solar Rights Act and requires each city or county to adopt an ordinance that creates an expedited, streamlined, residential solar permitting ordinance by September 30, 2015.

As amended by AB 2188, the Solar Rights Act now requires the following:

- Every city, county, or city and county shall, in consultation with the local fire department or district and the utility director, where a city, county, or city and county operate a utility, adopt an ordinance that creates an expedited, streamlined permitting process for small residential rooftop solar energy systems consistent with the goals and intent of Government Code Section 65850.5(a) on or before September 30, 2015 (see Gov't Code § 65850.5(g)(1)).

- Every city, county, or city and county shall adopt a checklist of all requirements that an applicant must comply with for a small residential rooftop solar energy system to be eligible for expedited review (see Gov't Code § 65850.5(g)(1)).

- The expedited, streamlined permitting process and checklist created must substantially conform to the recommendations for expedited permitting, including the checklist and standard plan contained in the most current version of the California Solar Permitting Guidebook ("Guidebook") adopted by the

Governor's Office of Planning and Research (OPR) (see Gov't Code § 65850.5(g)(2)).

By improving the efficiency of solar permitting statewide, AB 2188 is expected to help lower the cost of solar installations and further expand the accessibility of solar to more California homeowners who want to control their electricity bills and generate their own clean energy. In addition, making solar energy more affordable will help the state reach its renewable energy and greenhouse gas reduction goals, and create more local jobs.

As a result of the actions described above, staff has prepared a new Municipal Code Section 15.26 (Expedited Permit Process for Small Residential Rooftop Solar Systems) in order to comply with the state mandated requirements of AB 2188.

On October 27, 2015 the City Council held a public hearing, introduction and first reading by title only of the new proposed Municipal Code Section 15.26 (Expedited Permit Process for Small Residential Rooftop Solar Systems) in order to comply with the state mandated requirements of AB 2188.

FISCAL IMPACT

A small amount of staff time will be required in order to ensure that our permitting processes are in compliance with AB 2188 and Municipal Code Section 15.26.

RECOMMENDED ACTION

Per the Planning Commission's recommendation, the City Council should have the second reading and adopt by title only the proposed ordinance by for Municipal Code Section 15.26 (Expedited Permit Process for Small Residential Rooftop Solar Systems) in order to comply with the state mandated requirements of AB 2188.

ATTACHMENTS

1. Ordinance for New Municipal Code Section 15.26

Attachment 1

CITY OF ST. HELENA

ORDINANCE NO. 2015-____

ADDING NEW CHAPTER NO. 15.26 TO THE CITY OF ST. HELENA MUNICPAL CODE TO PROVIDE AN EXPEDITED, STREAMLINED PERMITTING PROCESS FOR SMALL RESIDENTIAL ROOFTOP SOLAR SYSTEMS

The City Council of the City of St. Helena does hereby ordain as follows:

SECTION 1. Compliance with CEQA. The City Council hereby finds that the action to adopt this ordinance in order to add Chapter 15.26 to the St. Helena Municipal Code is exempt from environmental review pursuant to CEQA Guidelines Section 15061(b)(3). The project involves the adoption of an ordinance required by California law, specifically Government Code section 65850.5. It can be seen with certainty that there is no possibility that the proposed Municipal Code addition made hereby will have a significant effect on the environment.

SECTION 2. Chapter 15.26, of the City of St. Helena Municipal Code, establishing an expedited, streamlined permitting process for Small Residential Rooftop Solar Systems, is hereby added to read as follows:

Chapter 15.26

EXPEDITED PERMIT PROCESS FOR SMALL RESIDENTIAL ROOFTOP SOLAR SYSTEMS

Sections

15.26.010 Purpose
15.26.020 Findings
15.26.030 Definitions
15.26.040 Applicability
15.26.050 Solar energy system requirements
15.26.060 Duties of the Building Department
15.26.070 Permit review and inspection requirements

15.26.010 Purpose.

The purpose of the chapter is to provide an expedited, streamlined solar permitting process that complies with the Solar Rights Act and AB 2188 (Chapter 521, Statutes 2014, California Government Code Section 65850.5) in order to achieve timely and cost-effective installations of small residential rooftop solar energy systems. The chapter encourages the use of solar systems by removing unreasonable barriers, minimizing costs to property owners and the City, and expanding the ability of property owners to

install solar energy systems. The chapter allows the City to achieve these goals while protecting the public health and safety.

15.26.020 Findings.

The City Council finds and determines as follows:

A. The City of St. Helena seeks to implement AB 2188 (Chapter 521, Statutes 2014) through the creation of an expedited, streamlined permitting process for small residential rooftop solar energy systems.

B. The City of St. Helena wishes to advance the use of solar energy by all of its citizens, businesses and industries.

C. The City of St. Helena seeks to meet the climate action goals set by the City and the State.

D. Solar energy creates local jobs and economic opportunity.

E. The City of St. Helena recognizes that rooftop solar energy provides reliable energy and pricing for its residents and businesses.

F. It is in the interest of the health, welfare and safety of the people of the City of St. Helena to provide an expedited permitting process to assure the effective deployment of solar technology.

15.26.030 Definitions.

As used in this chapter:

A. A "Solar Energy System" means either of the following:

1. Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.

2. Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating.

B. A "small residential rooftop solar energy system" means all of the following:

1. A solar energy system that is no larger than 10 kilowatts alternating current nameplate rating or 30 kilowatts thermal.

2. A solar energy system that conforms to all applicable state fire, structural, electrical, and other building codes as adopted or amended by the City and all state and City health and safety standards.

3. A solar energy system that is installed on a single or duplex family dwelling.

4. A solar panel or module array that does not exceed the maximum legal building height as defined by the City.

C. "Electronic submittal" means the utilization of one or more of the following:

1. Email;

2. The Internet (if available);

3. Facsimile.

D. An "association" means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.

E. A "common interest development" means any of the following:

1. A community apartment project.

2. A condominium project.

3. A planned development.

4. A stock cooperative.

F. "Specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

G. "Reasonable restrictions" on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

H. "Restrictions that do not significantly increase the cost of the system or decrease its efficiency or specified performance" means:

1. For Water Heater Systems or Solar Swimming Pool Heating Systems: an amount exceeding 10 percent of the cost of the system, but in no case more than one thousand dollars ($1,000), or decreasing the efficiency of the solar energy system by an amount exceeding 10 percent, as originally specified and proposed.

2. For Photovoltaic Systems: an amount not to exceed one thousand dollars ($1,000) over the system cost as originally specified and proposed, or a decrease in system efficiency of an amount exceeding 10 percent as originally specified and proposed.

15.26.040 Applicability.

A. This Ordinance applies to the permitting of all small residential rooftop solar energy systems in the City.

B. Small residential rooftop solar energy systems legally established or permitted prior to the effective date of this Ordinance are not subject to the requirements of this Ordinance unless physical modifications or alterations are undertaken that materially change the size, type, or components of a small rooftop energy system in such a way as to require new permitting. Routine operation and maintenance or like-kind replacements shall not require a permit.

15.26.050 Solar energy system requirements.

A. All solar energy systems shall meet applicable health and safety standards and requirements imposed by the state, City, and local fire department.

B. Solar energy systems for heating water in single-family residences and for heating water in commercial or swimming pool applications shall be certified by an accredited listing agency as defined by the California Plumbing and Mechanical Code.

C. Solar energy systems for producing electricity shall meet all applicable safety and performance standards established by the California Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

15.26.060 Duties of the Building Department.

A. All documents required for the submission of an expedited solar energy system application shall be made available on the publicly accessible City Website.

B. Electronic submittal of the required permit application and documents by [email, the Internet (if available), or facsimile] shall be made available to all small residential rooftop solar energy system permit applicants.

C. An applicant's electronic signature shall be accepted on all forms, applications, and other documents in lieu of a wet signature.

D. The City's Building Department shall adopt a standard plan or plans and a checklist of all requirements with which small residential rooftop solar energy systems shall comply to be eligible for expedited review.

E. The small residential rooftop solar system permit process, standard plan(s), and checklist(s) shall substantially conform to recommendations for expedited permitting, including the checklist and standard plans contained in the most current version of the California Solar Permitting Guidebook adopted by the Governor's Office of Planning and Research.

F. All fees prescribed for the permitting of small residential rooftop solar energy system must comply with Government Code Section 65850.55, Government Code Section 66015, Government Code Section 66016, and State Health and Safety Code Section 17951.

15.26.070 Permit review and inspection requirements.

A. The City's Building Department shall adopt an administrative, nondiscretionary review process to expedite approval of small residential rooftop solar energy systems within 30 days of the adoption on this Ordinance. The Building Department shall issue a building permit or other nondiscretionary permit within [1-3] business days of receipt of a complete application that meets the requirements of the approved checklist and standard plan. A building official may require an applicant to apply for a use permit if the official finds, based on substantial evidence, that the solar energy system could have a specific, adverse impact upon the public health and safety. Such decisions may be appealed to the Planning Commission.

B. Review of the application shall be limited to the building official's review of whether the application meets local, state, and federal health and safety requirements.

C. If a use permit is required, a building official may deny an application for the use permit if the official makes written findings based upon substantive evidence in the record that the proposed installation would have a specific, adverse impact upon public health or safety and there is no feasible method to satisfactorily mitigate or avoid, as defined, the adverse impact. Such findings shall include the basis for the rejection of the potential feasible alternative for preventing the adverse impact. Such decisions may be appealed to the City Planning Commission.

D. Any condition imposed on an application shall be designed to mitigate the specific, adverse impact upon health and safety at the lowest possible cost.

E. "A feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes, but is not limited to, any cost-effective method, condition, or mitigation imposed by the City on another similarly situated application in a prior successful application for a permit. The City shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code defining restrictions that do not significantly increase the cost of the system or decrease its efficiency or specified performance.

F. The City shall not condition approval of an application on the approval of an association, as defined in Section 4080 of the Civil Code.

G. If an application is deemed incomplete, a written correction notice detailing all deficiencies in the application and any additional information or documentation required to be eligible for expedited permit issuance shall be sent to the applicant for resubmission.

H. Only one inspection shall be required for small residential rooftop solar energy systems eligible for expedited review and the inspection shall be performed by the Building Department and/or the Fire Marshall.

I. The inspection shall be scheduled and performed in a timely manner and should include consolidated inspections if both the Building Department and Fire Marshall are to perform the inspection. To the maximum extent feasible, the inspection should be scheduled within two 2 business days of a request and the applicant requesting such an inspection should be provided with a two-hour inspection window.

J. If a small residential rooftop solar energy system fails inspection, a subsequent inspection is authorized but need not conform to the requirements of this Ordinance.

SECTION 3. Severability. The City Council hereby declares every section, paragraph, sentence, cause and phrase is severable. If any section, paragraph, sentence, clause or phrase of this Ordinance is for any reason found to be invalid or unconstitutional, such invalidity, or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses or phrases.

SECTION 4. Effective Date. This ordinance shall take effect and be in force 30 days after its adoption, and a summary of this ordinance shall be published once with the names of the members of the Council voting for and against the ordinance in the St. Helena Star, a newspaper of general circulation published in the city of St. Helena.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the St. Helena City Council on October 21, 2015, and was adopted at a regular meeting of the St. Helena City Council on the 10th day of November, 2015, by the following vote:

Mayor Galbraith: _____

Vice Mayor White: _____

Councilmember Crull: _____

Councilmember Dohring: _____

Councilmember Pitts: _____

APPROVED:

_____

Alan Galbraith, Mayor

ATTEST:

_____

Cindy Black, City Clerk

Item No: 14

Report to the City Council
Council Meeting of November 10, 2015

Agenda Section: **New Business**

Subject: **Consideration of Resolution Approving an Employment Agreement with Christine Kreiden to serve as the City's Library Director**

CEQA Status: **Not a project**

Prepared By: **Jennifer Phillips, City Manager**

Approved By: **Jennifer Phillips, City Manager**

DISCUSSION

In June 2015, Christine (Chris) Kreiden was appointed Acting Library Director. Chris has worked for the St. Helena Public Library for over 20 years and also has a Master's in Library Science Degree. During her tenure with the Library, Chris established herself as a talented and collaborative staff member. She was responsible for the Library's collections and her passion for a diverse and quality collection was highly regarded and appreciated by Library patrons.

Upon her promotion to Acting Library Director, Chris worked collaboratively with the Library Board and City Executive Staff to transparently finalize the FY 2015-16 Library Budget, provide extensive and accurate information regarding the Wood Endowment and Tweed Trust, and implement staffing and operational changes that were required as a result of budget reductions implemented as part of the FY 2015-16 budget process. During her time as Acting Library Director, Chris has earned the trust and respect of the Library Board, Friends and Foundation Board and City staff. As a result of her successes, open and collaborative leadership style and commitment to teamwork, Chris has been offered the permanent position of Library Director for the St. Helena Public Library.

FISCAL IMPACT

This position is included in the FY 2015-16 Adopted Budget.

RECOMMENDED ACTION

Approve an Employment Agreement with Chris Kreiden.

ATTACHMENTS

Attachment 1 - Resolution
Attachment 2 - Employment Agreement

CITY OF ST. HELENA
RESOLUTION NO. 2015-

APPOINTING A LIBRARY DIRECTOR
AND APPROVING AN EMPLOYMENT AGREEMENT BETWEEN
THE CITY OF ST HELENA AND CHRISTINE KREIDEN

RECITALS

A. Christine Kreiden has worked for the St. Helena Public Library for over 20 years and also has a Master's in Library Science Degree.

B. In June 2015, Christine Kreiden was appointed Acting Library Director.

RESOLUTION

NOW, THEREFORE, the City Council of the City of St. Helena hereby resolves as follows:

1. Approve and authorize the City Manager to enter into an employment agreement effective November 11, 2015, with Christine Kreiden as the Library Director of the City of St. Helena.

Approved at a Regular Meeting of the St. Helena City Council on November 10, 2015, by the following vote:

Mayor Galbraith: _____

Vice Mayor White: _____

Councilmember Crull: _____

Councilmember Dohring: _____

Councilmember Pitts: _____

APPROVED: ATTEST:

_____ _____

Alan Galbraith, Mayor Cindy Black, City Clerk

EMPLOYMENT AGREEMENT FOR LIBRARY DIRECTOR

Between

CITY OF ST. HELENA AND CHRISTINA KREIDEN

THER EMPLOYMENT AGREEMENT (the Agreement) is entered into as of November 11, 2015, between THE CITY OF ST. HELENA, a municipal corporation (City), and CHRISTINA KREIDEN (Director or Employee), collectively "the Parties."

RECITALS

WHEREAS, City desires to employ Christina Kreiden as Library Director for the City of St. Helena.

WHEREAS, Christina Kreiden desires to serve as Library Director of the City of St. Helena beginning on November 11, 2015.

WHEREAS, Christina Kreiden has the necessary education, experience, skills and expertise to serve as the City's Library Director; and

WHEREAS, the City Manager, as appointing power, and Christina Kreiden desire to agree in writing to the terms and conditions of Christina Kreiden's employment as Library Director;

NOW, THEREFORE, in consideration of the above recitals, promises and conditions contained herein, the Parties agree as follows:

AGREEMENT

1. Powers and Duties of the Library Director

(a) Director shall have the powers and shall perform the functions and duties specified in state and federal law, the St. Helena Municipal Code, and the ordinances and resolutions of City, and to perform other legally permissible and proper duties and functions as City Manager may from time to time assign.

(b) Director shall perform her duties to the best of her ability in accordance with the professional and ethical standards of the profession and shall comply with the laws of the State of California, the Municipal Code of the City, and Ordinances and Resolutions of the City, and as they may be amended.

(c) Director shall not engage in any activity which is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law. Prior to performing any services under this Agreement and annually thereafter, Employee must complete disclosure forms required by law.

(d) Director shall report to the City Manager who has authority to dismiss, discipline, and give direction to the Library Director.

(e) Director shall devote full time to the performance of her duties; the Director shall notify the City Manager of any outside employment, which employment shall not interfere with the Director's City job duties, pose a conflict of interest, or be inappropriate for a City employee.

(f) Director shall maintain a valid California Driver's License as a condition of her employment unless it is not possible because of a documented medical reason.

2. Term

This Agreement is effective November 11, 2015, and will continue in effect until terminated as provided herein.

3. At-Will Employment

(a) The Parties recognize and affirm that: (1) the Director is an "at will" employee whose employment may be terminated by the City Manager at any time with or without cause, (2) there is no express or implied promise made to the Director for any form of continued employment and (3) upon termination of this Agreement, the Director understands that she has no right to any further employment, in any capacity, with the City. This Agreement is the sole and exclusive basis for an employment relationship between the Director and the City.

(b) Termination for cause means termination based upon a breach of any of the terms of this Agreement, malfeasance of any nature occurring during the course and scope of the Employee's duties as Library Director; or a conviction, plea bargain, or personal adverse State or federal determination against Employee individually involving any felony, intentional tort, crime of moral turpitude, violation of statute or law constituting forfeiture of office, misconduct in office for personal gain, misuse of public funds for personal benefit, conflict of interest resulting in conviction, or any other incompatible activity or conflict of interest.

4. Termination of Agreement

This Agreement may be terminated as follows:

(a) **By Mutual Agreement**. The City Manager and Director may terminate this Agreement at any time by mutual written agreement.

(b) **Termination by City**. The City Manager may, in his or her sole and unrestricted discretion, terminate this Agreement with or without cause at any time upon written notice to the Director.

(c) **Severance**. If the City Manager terminates this Agreement without cause while the Director is still willing and able to perform the duties of Library Director, the Director shall be entitled to two (2) months' base salary, less applicable deductions, plus applicable accrued leaves as provided in this Agreement together with any extension of benefits required under California and federal law. No time served by the Director after notice of the termination shall be debited from the period of severance pay. However, in the event the Director is terminated for cause, the Director shall be entitled to only the compensation earned and accrued and such other termination benefits and payments as may be required by law. Director shall not be entitled to any severance benefits.

(c) **Resignation by Director**. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Director to resign at any time from her position as Library Director. Director may terminate this Agreement by submitting written notice of her resignation to City. As a courtesy, Director shall give the City thirty (30) days written notice of her intention to resign.

(d) **Rights and Remedies of Director upon Termination**. Nothing in this Agreement is intended to, or does, confer upon Director any due process right to a hearing or other administrative process pertaining to termination, before or after a decision by the City to terminate her employment, unless Director is entitled to a name clearing hearing under California or federal law. Director may appeal a determination of for cause termination to the City Council for the sole purpose of qualifying for severance pay; the City Council shall not have the authority to overturn the termination.

(e) **Resignation in Lieu of Termination**. If the Director is terminated without cause, the Director shall have the opportunity to resign in lieu of being terminated. In such an event, any public announcement issued by the City will state that the Director resigned.

(f) **Administrative Leave.** The City Manager may place the Director on administrative leave with or without pay pending investigation of any allegations of misconduct.

5. Compensation and Benefits.

(a) City agrees to pay Director for her services rendered an annual salary of $98,926, payable in installments at the same time as other employees of City are paid and subject to all applicable payroll taxes and withholdings. Such salary may be adjusted from time to time at the sole discretion of the City Manager. The Director shall be an "exempt" employee under all applicable state and federal labor laws, including, but not limited to, the Federal Labor Standards Act and the regulations of the California Industrial Welfare Commission.

(b) Performance Review. The City Manager shall evaluate the Director's performance by June 1, 2016 and at least annually thereafter.

(c) CalPERS. Employee shall be included in the City's Miscellaneous Plan with the California Public Employees' Retirement System ("CalPERS") as a Classic Member, and continue to be enrolled in the 2% at age 55, highest year average program. Employee shall contribute the total "employee contribution".

(d) The City participates in Social Security; the employee contribution (6.2%) will be deducted from the Director's gross pay.

(e) Director shall be entitled to all benefits, rights and privileges accorded to Department Heads as set forth in the St. Helena Employees' Handbook, as may be amended from time to time, except as otherwise provided in this Agreement or as they may conflict with the Director's status as an "At-will" employee. If there is any conflict between this Agreement and any resolution or policy fixing compensation and benefits for City Department Heads or other unclassified employees, this Agreement shall control.

(f) Director shall receive accruals based upon original hire date of July 1, 1996 which is (20) days paid vacation each year. The maximum vacation that may be accrued by the Director is twenty (20) days per year. The maximum amount of accrued vacation may not exceed 380 hours.

(g) Director shall receive five (5) days of paid floating holidays awarded January 1st of each full year of employment. Director shall receive five (5) days of executive leave awarded January 1st of each full year. Floating holidays and executive leave must be used in the year accrued or the time shall be forfeited. For purpose of calculating Vacation accruals and Floating Holidays; time shall be based on the Director's initial date of hire with the City.

(h) Director shall be entitled to twelve (12) days sick leave each year.

(i) Vehicle Allowance. Director will receive a Vehicle Allowance of $200 per month.

(j) Deferred Compensation. Director will receive a matching contribution of $200 per month towards her deferred compensation account.

(k) Communications. Director will have the use of a City cellular phone and iPad pursuant to policies established by the City.

(l) Professional Development and Training. City shall pay for Director's annual training and membership to essential professional associations.

(m) Hours of Work. The Director is an exempt employee but is expected to engage in those hours of work that are necessary to fulfill the obligations of the Director position. If mutually agreed to between the City Manager and the Director, the Director may have a modified work schedule, such as 4/10 or 9/80 or have the opportunity to telecommute as deemed appropriate by the City Manager.

6. Return of City Property

In the event of termination, any City equipment or property will be promptly returned to the City. In addition, any and all finished and unfinished documents, data, reports and materials are the property of the City and shall be promptly delivered to the City Manager. Director shall keep all information acquired through her position in the strictest confidence.

7. Indemnification

In accordance with the terms, conditions, and limitations of the Government Claims Act (Gov't Code §§ 810 et seq.), City shall defend, save harmless, and indemnify the Director 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 Director's duties as Library Director. City will determine whether to compromise and settle any such claim or suit and the amount of any settlement or judgment rendered thereon.

8. Attorney's Fees

In the event of any mediation, arbitration or litigation to enforce any of the provisions of this Agreement, each party shall bear its own attorney's fees and costs.

9. Jurisdiction and Venue

This Agreement shall be construed in accordance with the laws of the State of California, and the Parties agree that venue shall be in Napa County, California.

10. Notices

Any notices required by this Agreement shall be in writing and either given in person or by first class mail with postage prepaid and addressed as follows:

TO CITY: City Manager
City of St. Helena
1480 Main Street
St. Helena, CA 94574

TO EMPLOYEE: Christina Kreiden
City of St. Helena
1480 Main Street
St. Helena, CA 94574

11. Entire Agreement

This Agreement is the final expression of the complete agreement of the parties with respect to the matters specified herein and supersedes all prior oral or written understandings. However, the Agreement may be amended or altered by the City Manager at any time. Any such amendments or alterations must be in writing, signed by Director and the City Manager and approved by the City Council.

12. Severability

If any provision of this Agreement is found to be unenforceable by judgment or court order, the remainder of the Agreement shall remain in full force and effect, as if the unenforceable provision had never been included.

13. Assignment

Director may not assign or transfer any rights granted or obligations assumed under this Agreement.

14. Informed and Voluntary Agreement

Director acknowledges that she has had the opportunity to receive legal representation and advice in connection with this Agreement and that she voluntarily enters in to her Agreement fully informed about the rights and obligations she assumes and waives by entering into her Agreement.

IN WITNESS WHEREOF, City and the Library Director have entered into and executed this Agreement as of the 11th day of November 2015.

CITY OF ST. HELENA
A Municipal Corporation

By: _____
Jennifer Phillips
City Manager

LIBRARY DIRECTOR

By: _____
Christina Kreiden

Approved as to Form:

By: _____
Thomas B. Brown
City Attorney

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Item No: 15

Report to the City Council
Council Meeting of November 10, 2015

Agenda Section: **Consent Calendar**

Subject: **Consideration and proposed approval of a resolution approving of Out of State Travel for Sgt. Chris Hartley to attend FBI National Academy from January 17, 2016 through March 25, 2016**

CEQA Status: **Not a CEQA project**

Prepared By: **William Imboden, Acting Chief of Police**

Approved By: **Jennifer Phillips, City Manager**

BACKGROUND

The F.B.I. National Academy is a highly prestigious and recommended law enforcement training course. The National Academy consists of graduate level courses designed for law enforcement managers who are leaders in their organizations or whom desire to be leaders in their organization. The courses focus on leadership and management. The National Academy is a highly sought after and competitive, ten week course of instruction that requires stringent prerequisites for admission and completion. The application process is lengthy, includes applicants from around the world and only a few chosen applicants are admitted every year.

The Academy is ten weeks long and is held at the F.B.I. Academy in Quantico, Virginia. (Twelve to fifteen college units are gained from the course.)

Sergeant Hartley was recommended for the F.B.I. National Academy by then Chief Jackie Rubin approximately two years ago. The process is conducted by the F.B.I. and includes a complete background and physical. Sergeant Hartley was accepted into the January 2016 Academy Class.

DISCUSSION

Graduates of the F.B.I. National Academy course are more likely to become effective leaders in their organization and have an open line of communication with law enforcement leaders throughout the United States and around the world. The

connections and knowledge gained during the academy are an asset to the agency and the city.

Positions at the F.B.I. National Academy are extremely limited. Securing a position and sending Sgt. Hartley demonstrates a progressive mindset for the department and assists with the mentoring process.

Sgt. Hartley would be in Quantico, Virginia from January 17th, 2016 through March 25th, 2016.

FISCAL IMPACT

The Academy courses, food, lodging, and flight are covered by the Federal Government. The Chief will cover the hours missed during the ten week course at no additional cost. The only cost is approximately $500 in airfare for the Chief to attend the graduation.

RECOMMENDED ACTION

Approve Sgt. Hartley's travel to the F.B.I. National Academy and the Chief's attendance at Graduation.

ATTACHMENTS

1. Resolution

CITY OF ST. HELENA
RESOLUTION NO. 2015-____

Resolution Authorizing Approval of Out of State Travel for FBI National Academy for Sgt. Chris Hartley

RECITALS

A. The St. Helena Police Department is a progressive, forward thinking agency that likes to promote from within; and

B. The Police Department desires to mentor and develop future Management leadership from its current ranks; and

C. The F.B.I. National Academy is a prestigious institution with a world-wide reputation for preparing future leaders for advancement; and

D. The training will be entirely funded through the Federal Government; and

E. No additional funds will be required from the General Fund for this training.

.

RESOLUTION

The City Council of the City of St. Helena hereby resolves as follows:

1. The Out of State travel for the FBI National Academy for Sergeant Hartley is approved.
2. The Chief of Police is authorized to travel to the FBI Academy to attend graduation ceremonies.

Approved at a Regular Meeting of the St. Helena City Council on November 10, 2015, by the following vote:

Mayor Galbraith: _____

Vice Mayor White: _____

Councilmember Crull: _____

Councilmember Dohring: _____

Councilmember Pitts: _____

APPROVED: ATTEST:

_____ _____

Alan Galbraith, Mayor Cindy Black, City Clerk

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Item No: 16

Report to the City Council
Council Meeting November 10, 2015

Agenda Section: **Consent Item**

Subject: **Consideration of Resolution approving an agreement with The Lew Edwards Group to provide Polling and Public Outreach related to a City Charter and Real Property Transfer Tax for a total not to exceed amount of $50,000**

CEQA Status or Action: **None**

Prepared By: **Jennifer Phillips, City Manager**

Approved By: **Jennifer Phillips, City Manager**

DISCUSSION

Following a day long Goal Setting Session in February 2015, in March 2015 the City Council unanimously agreed to six initiatives to focus on in the upcoming year, all of which support the goal to Securing City's Financial Future. One of the Strategic Objectives included evaluating Long-Term Revenue Options with a direction to explore the adoption of a Property Transfer Tax, coupled with identifying the process to become a Charter City.

On September 8, 2015 the City Council affirmed its desire to initiate the process for the City of St Helena to become a charter city and explore a real property transfer tax.

In September 2015, staff issued a Request for Proposal and on October 23, 2015, the City received three proposals. A team of managers reviewed the proposals. The Lew Edwards Group was selected as the top proposer. Based on the proposal, consultant's relevant experience with both St. Helena and city charter/real property transfer tax ballot measures, staff recommends The Lew Edwards Group.

Under this initial contract, The Lew Edwards Group will provide consultant services in preparing public outreach and conducting a poll of St. Helena voters with the goal of determining the level of interest in City Charter and Real Property Transfer Tax ballot measures. This work will be completed by April 2016, at which time the City Council must decide if the City will move forward with these ballot measures.

Funds were budgeted for this agreement in the amount of $25,000 and are budgeted in the FY 2015-16 budget under 101-43-00-21-45 Other Contract Services. Additional

funds are needed and will need to be drawn from the Assigned General Fund Reserve in the amount of $25,000.

FISCAL IMPACT

Funds for this agreement in the amount of $25,000 are budgeted in the FY 2015-16 Adopted Budget under 101-43-00-21-45 Other Contract Services. A total of $25,000 will be appropriated from the Assigned General Fund Reserve.

RECOMMENDED ACTION

Approve the Resolution approving the Agreement with The Lew Edwards Group for a total not to exceed amount of $50,000 and authorizing the appropriation of $25,000 from the Assigned General Fund Reserve and authorize the City Manager to execute the agreement on behalf of the City.

ATTACHMENTS

Attachment A - Resolution 2015-__ Approving a Consultant Services Agreement with The Lew Edwards Group
Attachment B – Consultant Services Agreement with The Lew Edwards Group

CITY OF ST. HELENA
RESOLUTION NO. 2015-

Authorizing an Agreement with The Lew Edwards Group

to Provide Polling and Public Outreach related to a

City Charter and Real Property Transfer Tax

RECITALS

A. The City's long-standing commitment to both operating within its means and delivering high-quality service has necessitated the deferral of maintenance needs within the City's infrastructure (Sewer, Storm, Streets, Facilities and Parks); and

B. The Council conducted a Goal Setting Session in February 2015 and unanimously adopted six initiatives all of which support the goal to securing the City's financial future. On September 8, 2015, the City Council reaffirmed one of the Strategic Objectives included evaluating Long-Term Revenue Options with a direction to explore the adoption of a Property Transfer Tax, coupled with identifying the process to become a Charter City; and

C. In September 2015, staff issued a Request for Proposal and determined The Lew Edwards Group was the top proposer.

RESOLUTION

NOW, THEREFORE, the City Council of the City of St. Helena hereby resolves as follows:

1. Approve an agreement with The Lew Edwards Group for a total not to exceed amount of $50,000 and authorizing the appropriation of $25,000 from the Assigned General Fund Reserve and authorize the City Manager to execute the agreement on behalf of the City.

Approved at a Regular Meeting of the St. Helena City Council on November 10, 2015, by the following vote:

Mayor Galbraith: _____

Vice Mayor White: _____

Councilmember Crull: _____

Councilmember Dohring: _____

Councilmember Pitts: _____

APPROVED:

Alan Galbraith, Mayor

ATTEST:

Cindy Black, City Clerk

Item No: 17

Report to the City Council
Council Meeting of November 10, 2015

Agenda Section: **New Business**

Subject: **Appeal of Administrative Decision Denying Reduction of Charges for Replacement of a Water Valve for Richard Crus.**

CEQA Status: **Not a CEQA Project**

Prepared By: **April Mitts, Finance Director**

Approved By: **Jennifer Phillips, City Manager**

BACKGROUND

On September 9, 2015 City Clerk Black received a letter from Richard Crus requesting an appeal to an administrative decision denying a reduction in the cost for replacement of a water valve.

DISCUSSION

On July 7, 2015 the City received notification of a broken water valve located at 1276 Allyn Avenue St. Helena. City crews went to the home and found the water valve handle was sheared off at the top leaving no way to turn off the water. On July 7, 2015 a temporary valve was installed and on July 10, 2015 a new valve was installed, all repair work was done by City staff. Due to the timing of the broken water valve the water consumption amount for the leak and normal usage was reflected in two billing cycles – August 15, 2015 and September 15, 2015 for a total of $1,107.13. On September 8, 2015 Richard Crus completed an Application for Leak Adjustment, the adjustment was approved and $167.20 was credited to Mr. Crus' account.

St. Helena Municipal Code Chapter 13.04 WATER SERVICE SYSTEM Section 13.04.060 Meter General states, "Maintenance. All water meters installed by the department shall remain at all times the property of the city and shall be maintained, repaired and renewed by the department when rendered unserviceable through ordinary wear and tear and damage by the elements; provided, that where replacements, repairs or adjustments for any meter are necessary as a result of the negligence of the owner or occupant of any premises, any expense caused to the department thereby shall be charged against and collected from the owner of the premises." On August, 31, 2015, per Municipal Code, Mr. Crus was invoiced $969.84 for the cost of replacing the water valve (Attachments B & C).

On August 24, 2015, the City received a letter from Van Windens Landscaping, Inc. explaining the series of events leading to the broken water meter valve. James Van Winden stated while they were working on the irrigation system at 1276 Allyn Ave. a mainline broke. Van Winden Landscaping, Inc. then turned off the water meter and it broke in the process. In this letter James Van Winden requested the bill for the replacement of the broken water valve be distributed amongst all parties involved (Attachment D).

On September 8, 2015, the City staff sent a letter to Mr. Crus stating we had received a letter from Van Windens Landscaping, Inc. regarding the broken water valve and instructed Mr. Crus that any communication regards to an adjustment or dispute would need to come from him directly as the water account is set up in his name and the City is unable to bill a third party. The letter referenced St. Helena Municipal Code Section 13.04.060 which states that repairs or adjustments for any meter are necessary as a result of the negligence of the owner or occupant shall be charged against and collected from the owner of the premises (Attachment E).

On September 9, 2015, the City received an appeal from Mr. Crus to lower the cost of the water meter replacement (Attachment A).

On September 14, 2015, City Clerk Black responded to Mr. Crus' appeal outlining the process for appeal and the necessary payments (Attachment F).

As of September 25, 2015, all necessary payments have been made by Mr. Crus.

It is the determination of City staff that Mr. Crus is responsible for the costs to replace the water valve at 1276 Allyn Avenue. The necessary repair was a result of negligence of the owner, as Mr. Crus hired Van Windens Landscaping, Inc. to complete landscaping on the property and Van Windens Landscaping, Inc. in attempting to turn off the water meter, broke the meter valve.

FISCAL IMPACT

Granting the appeal would result in a refund to be determined by the City Council not to exceed $969.84 (the cost of the water valve replacement) payable to Richard Crus.

RECOMMENDED ACTION

Staff concludes the costs to replace the water valve is the responsibility of Mr. Crus as outlined in the St. Helena Municipal Code Chapter 13.04 WATER SERVICE SYSTEM Section 13.04.060 Meter General. Staff recommends the City Council uphold the administrative decision denying reduction in the cost of the water valve replacement.

ATTACHMENTS

Attachment A – Appeal from Richard Crus
Attachment B – Invoice Worksheet
Attachment C – Accounts Receivable History
Attachment D – Letter from Van Windens Landscaping, Inc.

Attachment E – Letter from City of St. Helena Finance Director to Richard Crus
Attachment F – Letter from City of St. Helena City Clerk to Richard Crus
Attachment G – Resolution 2015- ___ - Resolution Upholding Administrative Decision Denying Reduction of the Water Bill.

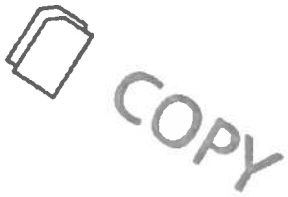
Jennifer Weeks

From: Richard Crus <rcrus@sbcglobal.net>
Sent: Wednesday, September 09, 2015 3:01 PM
To: Jennifer Weeks
Subject: Appeal of Meter Replacement Cost

In order to conserve on water my wife and I decided to have our front lawn removed and to replace it with draught tolerant plants.
We hired Van Winden Landscaping to perform the work. They removed all of the grass and proceeded to make the modifications
necessary to irrigate the new plants. We previously had grass planted in the parking strip which was watered by an automatic sprinkler
system. We decided to fill the parking strip with gravel which made the parking strip sprinkler system not needed. The Van Winden workers
were in the process of disconnecting the parking strip sprinklers when they inadvertently broke a pipe before a shut off valve. This
pipe was connected to the water line which runs from the meter to our house. When they attempted to turn off the water at the meter
the water valve handle sheared off. I contacted the water department as soon as they told me what happened and the water department
eventually got the water turned off. The water department workers told me that home owners are supposed to not turn off the water
at the meter which is something I was unaware of. Is there something that can be done to lower the cost of the water meter replacement?
I have already submitted an Application for Leak Adjustment to the city requesting a reduction of the charge for the lost water. It was
fairly expensive to tear out the lawn and put in draught tolerant plants. On top of this it could cost us about $1450 more for the water
meter repair and the lost water.

Richard Crus
1276 Allyn Ave
St. Helena, CA 94574
967-8004

INVOICE WORKSHEET



Bill To:
Customer's Name RICHARD GRUS
Address 1276 Allyn Ave.
St Helena Cal. 94574
Contact Phone

Job Address 1276 Allyn Ave. St. Helena Date 7/21/2015
Call Out Times From 7/7/2015 To 7/10/2015

Description of Work 7/7/15.Trying to fix a water leack the lanscaper tried to turn the water off at the meter and the water valve handle shiered off at the top of the valve living the service with out a way to turn the water off. The meter water valve was replaced with a new valve. 7/7/15, temporary valve was installd. 7/10/2015 the new valve was installed.

Personnel

Man Hours	Employee	For Finance Use Rate	Total
4	Ryan Matinvich Maint. 2.	44.34	177.36
5	Robert Hotten Maint. 2	53.44	267.2
1	David Hassell Chief water op	50.16	50.16
	Admin Fee	34.37%	109.08

Equipment

Hours	Equipment	Rate	Total
4	Unit 104 service truck	26.95	107.80
1	unit 105 Service truck.	26.95	26.95
1	Unit 106 Dump truck.	49.8	49.80
			0

Materials

Amount	Materials	Cost	Total
1	Lbs. of carbon dioxide CO2 ta	$26.05	$26.05
1	B9 meter box	$40.00	$40.00
1	B9 meter box lid.	$20.00	$20.00
1	90* C110 X Spad Angle stop.	$60.00	$60.00
1	C110 X FIP copler.	$16.00	$16.00
1	Brass neeple 3/4" X 3"	$6.00	$6.00
		Tax 8%	$13.44

Total Billable $ 969.84

Requesting Juan M. Diaz

Department Head

Accounts Receivable

Transaction History - Summary

User: JenniferW
Printed: 11/03/2015 - 1:40 PM
Account: 0003629 -
Customer: 005566 - Richard Crus

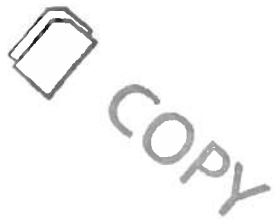
Tran Type	Invoice No	Tran Date	Post Date	Due Date	Description	Amount
Invoice	0049075	8/4/2015	8/4/2015	8/31/2015		969.84
Payment	0049075	9/16/2015	9/17/2015			969.84

Attachment C

Attachment D

Van Windens Landscaping, Inc
3101 California Blvd
707-224-1367 FAX 707-224-4659
Fully Insured and Bonded
California State Contractor License #703136
City of Napa Business License #539

August 24, 2015



City of St. Helena
1480 Main St.
St. Helena, Ca 94574

RE: Invoice #49075
Richard Crus
1276 Allyn Ave
St. Helena. CA 94574

In the process of working on an irrigation system at 1276 Allyn Ave on July 7, 2015, 2015, the mainline broke. Substandard materials were used on the irrigation system in place and consequently, the line broke. In the process of turning off the meter it broke.

Since 1961 our company has worked on irrigation and mainline systems and this has never happened. We immediately contacted the St. Helena Water department. They responded quickly and sent a crew out to repair the broken meter and value.

At no time was Mr. Crus or Van Winden Landscaping Inc. informed of a procedure for fixing the meter or told of the cost for the city to fix the meter. Mr. Crus recently received a bill from the St. Helena Water Dept. for the repair of the meter. Considering the events leading up to this, I am requesting that this bill be distributed amongst all parties involved in the unfortunate miscommunication of this matter.

I am hopeful we can discuss this matter further. I can be reached at (707) 529-5975.

Sincerely,

James Van Winden, Owner
Van Winden Landscaping Inc.

Attachment E

City of St. Helena

"We will conduct city affairs on behalf of our citizens using an open and creative process."

1480 Main Street
St. Helena, CA 94574
Phone (707) 967-2792
Fax (707) 963-7748
www.ci.st-helena.ca.us

September 8, 2015

Richard Crus
1276 Allyn Avenue
St. Helena, CA 94574

Dear Mr. Crus,

We have received a letter from Van Windens Landscaping, Inc. regarding the incident that occurred on July 7, 2015 which led to the City of St. Helena's water meter being broken (Attachment A).

Any communication in regards to an adjustment or dispute would need to come from you directly as the water account is set up in your name. Unfortunately, we can not accept the letter from Van Windens Landscaping and can not get involved in any private matters regarding compensation for the meter replacement.

St. Helena Municipal Code Chapter 13.04 WATER SERVICE SYSTEM Section 13.04.060 Meter General states, "Maintenance. All water meters installed by the department shall remain at all times the property of the city and shall be maintained, repaired and renewed by the department when rendered unserviceable through ordinary wear and tear and damage by the elements; provided, that where replacements, **repairs or adjustments for any meter are necessary as a result of the negligence of the owner or occupant of any premises, any expense caused to the department thereby shall be charged against and collected from the owner of the premises**."

Each citizen of the City of St. Helena has a right to appeal this decision by submitting a timely letter of appeal to the City Council. For your convenience a copy of the City's appeal process is listed on the following page. Please contact our City Clerk, Cindy Black, at 707-967-2792 for more information on the appeal process.

We apologize for any inconvenience this may cause you. If you have any questions, please feel free to call me at (707) 968-2745.

Sincerely,

April Mitts
Finance Director

(enclosures)

13.04.180 Appeals.

A. Procedure Generally. Any person who shall have a right to appeal as provided in any section of this chapter or Chapters 13.08 and 13.12 or who shall be dissatisfied with any determination hereafter made by the superintendent may, at any time within thirty (30) days after such determination, appeal to the city council by giving written notice to the superintendent and to the city clerk, setting forth the determination with which such person is dissatisfied. The city council may, at any time, upon its own motion, appeal from any determination made by the superintendent hereunder. In the event of any such appeal, the superintendent shall transmit to the city council a report upon the matter appealed. The city council shall cause notice to be given, at least ten (10) days prior to the time fixed for such hearing to all persons affected by such appeal, of the time and place fixed by the city council for hearing such appeal. The city council shall direct the city clerk to mail a written notice, postage prepaid, to all such persons whose addresses are known to the city council.

Attachment F

City of St. Helena

"We will conduct city affairs on behalf of our citizens using an open and creative process."

1480 Main Street
St. Helena, Ca 94574
Phone: (707) 967-2792
Fax: (707) 963-7748
www.sthelenacity.com

September 14, 2015

Via electronic mail
And First Class U.S. Mail

Richard Crus
1276 Allyn Ave
St. Helena, CA 94574
rcrus@sbcglobal.net

RE: Appeal of Water Meter Read and Damaged Water Meter Replacement Fee at 1276 Allyn Ave, St. Helena, California

Dear Mr. Crus:

This letter will acknowledge receipt of your email dated September 9, 2015, appealing the determinations of City of St. Helena water service charges and replacement of damaged water meter charges. I thank you for your appeal pursuant to Section 13.04.180 of the St. Helena Municipal Code. City staff has completed its preliminary review of your appeal and determined it is incomplete at this time. In order to make the application complete, the following must be submitted to the City at your earliest convenience:

> Payment of Disputed Charges. Pursuant to the requirements of St. Helena Municipal Code section 13.04.180(B), you must remit full payment of the disputed charges in order to proceed with an appeal (both the service charges and the damaged meter charges). After conducting the appeal hearing, if the City Council determines that you are entitled to a refund of any portion of the charges, that amount will be refunded to you.

As to the water service charges, note the City imposed the charges pursuant to the St. Helena Municipal Code, including sections 13.04.080 and 13.04.110.

As to the damaged water meter replacement charges. note that St. Helena Municipal Code section 13.04.060(B) provides that "all water meters installed by the department shall remain at all times the property of the city and shall be maintained, repaired and renewed by the department when rendered unserviceable through ordinary wear and tear and damage by the elements; provided, that where replacements, repairs or

adjustments for any meter are necessary as a result of the negligence of the owner or occupant of any premises, any expense caused to the department thereby shall be charged against and collected from the owner of the premises." [Emphasis added.]

However, you have a right to appeal these charges pursuant to St. Helena Municipal Code section 13.04.180(A), but only after payment is first made pursuant to section 13.04.180(B).

Accordingly, please remit a check made payable to the "City of St. Helena" in the amount of $1,618.67 (Water Meter Read $969.84 and Water Meter Replacement $648.83). Once we receive your payment, we will schedule this matter for a hearing before the City Council. Notice of that hearing date will be mailed to you in advance.

If you have any questions, please feel free to contact me at (707) 967-2792.

Sincerely,

Cindy Black

Cindy Black,
City Clerk

cc: Jennifer Phillips, City Manager
Thomas B. Brown, City Attorney
Steven Palmer, Public Works Director
April Mitts, Finance Director

CITY OF ST. HELENA

RESOLUTION NO. 2015-____

RESOLUTION UPHOLDING ADMINISTRATIVE DECISION DENYING REDUCTION OF CHARGES FOR REPLACEMENT OF A WATER VALVE FOR RICHARD CRUS

RECITALS

The City Council makes the following findings with respect to the administrative appeal by Richard Crus (the "Appellant" or "Mr. Crus") with respect to City staff's denial, on September 8, 2015, of their request for reduction of charges for replacement of a water valve,

A. City Council reviews appeals for billing relating to the water service system - St. Helena Municipal code Title 13, Chapter 13, Section 13.04.180;

B. The property located at 1276 Allyn Avenue (the "Property") had a broken water valve on July 7, 2015;

C. City staff placed a temporary valve on the property on July 7, 2015 and placed a permanent valve on the property on July 10, 2015;

D. City staff billed the Appellant on August 31, 2015 for the replacement of the water valve in the amount of $969.84;

E. Mr. Crus' landscaper requested the City distribute the broken water valve between all parties involved;

F. City staff sent a letter to Mr. Crus explaining the financial matter regarding the broken water valve and the replacement cost is limited to Mr. Crus and the City and it was Mr. Crus' responsibility as the property owner to pay for repairs to the water valve; and

G. Mr. Crus requested a reduction of charges for the replacement of a water valve and filed an administrative appeal.

RESOLUTION

The City Council of the City of St. Helena hereby resolves as follows: The evidence shows that Mr. Crus is responsible for the full replacement costs for the broken water valve per Municipal Code Chapter 13.04, Section 13.04.060. The City Council therefore

denies Mr. Crus' administrative appeal for a reduction of charges for replacement of water valve at 1276 Allyn Avenue.

Approved at a Regular Meeting of the St. Helena City Council on November 10, 2015, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

APPROVED:

Alan Galbraith
Mayor

ATTEST:

Cindy Black
City Clerk

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Item No: 18

Report to the City Council
Council Meeting of November 10, 2015

Agenda Section: **New Business**

Subject: **Approve Resolution 2015-__ providing $10,000 in financial assistance to Community Action Napa Valley in support of Napa County's homeless shelter services.**

CEQA Status: **Not a Project**

Prepared By: **Jennifer Phillips, City Manager**

Approved By: **Jennifer Phillips, City Manager**

DISCUSSION

The vast majority of shelter services for the homeless in Napa County is provided by Community Action Napa Valley (CANV) and has historically been funded on a one-third basis between the City of Napa, County of Napa and CANV. Vital services provided to low-income families, disadvantaged people and senior citizens in Napa Valley include food, nutrition, housing, shelter and job training. CANV operates the South Napa Shelter, Samaritan Family Shelter and the Hope Center.

Unfortunately, CANV was notified in late May 2015 that it did not receive any of the $400,000 in State Emergency Solution Grant funding for shelters for this current fiscal year. As a result of this, CANV implemented budget cuts at the shelters and reduced the shortfall to $240,000. In order to keep the shelter system operational, the City of Napa and County of Napa were asked to fund this shortfall 50/50.

In addition to financial challenges, local agencies are being impacted by the US Department of Housing and Urban Development (HUD) recent shift in priorities. HUD will be focusing federal funds toward moving more homeless people into permanent housing, then offering them social support services. This shift in priorities must be adopted by local agencies that wish to continue receiving federal funding. A housing-oriented homeless support program will require a regional and collaborative approach.

The City of St. Helena does not deliver social services and contracts with the City of Napa to serve as the City's Housing Authority. It is important for the City to be part of this regional planning effort and to support CANV during this challenging financial time. Therefore, staff recommends the City make a $10,000 financial contribution to CANV to support their vitally important shelter services.

FISCAL IMPACT

This $10,000 financial contribution is not budgeted in the FY 2015-16 Adopted Budget. Funds would be drawn from the General Fund Assigned Reserve.

RECOMMENDED ACTION

Approve Resolution 2015-___ contributing $10,000 in financial assistance to Community Action Napa Valley in support of Napa County's homeless shelter services.

ATTACHMENTS

Attachment 1 – Resolution No. 2015-__

CITY OF ST. HELENA

RESOLUTION NO. 2015-____

APPROVING FINANCIAL ASSISTANCE IN THE AMOUNT OF $10,000 TO COMMUNITY ACTION NAPA VALLEY IN SUPPORT OF NAPA COUNTY'S HOMELESS SHELTER SERVICES

A. The vast majority of shelter services for the homeless in Napa County is provided by Community Action Napa Valley (CANV). Historically shelter services has been funded on a one-third basis between the City of Napa, County of Napa and CANV; and

B. CANV operates the South Napa Shelter, Samaritan Family Shelter and the Hope Center which provides vital services to low-income families, disadvantaged people and senior citizens in Napa Valley. Services include food, nutrition, housing, shelter and job training; and

C. CANV and other local agencies are facing financial shortfall challenges with shifts in State and Federal Grant funding; and

RESOLUTION

NOW, THEREFORE, the City Council of the City of St. Helena resolves as follows:

1. The City of St. Helena acknowledges the importance of being part of this regional planning effort and to support CANV during this challenging financial time.
2. The Council authorizes a $10,000 financial contribution which is not budgeted in the FY 2015-16 Adopted Budget. Funds would be drawn from the General Fund Assigned Reserve.

Approved at a Regular Meeting of the St. Helena City Council on November 10, 2015, by the following vote:

Mayor Galbraith: _____

Vice Mayor White: _____

Councilmember Crull: _____

Councilmember Dohring: _____

Councilmember Pitts: _____

APPROVED:

Alan Galbraith, Mayor

ATTEST:

Cindy Black, City Clerk

Item No: 19

Report to the City Council
Council Meeting of November 10, 2015

Agenda Section: **New Business**

Subject: **Approve by Resolution No. ___ the City of St. Helena – SolEd Benefit Corp Solar Power Purchase Agreement Notice of Termination of Power Purchase Agreement – Power Purchase Agreement, Exhibit 4, General Terms and Conditions, Section 6(c)**

CEQA Status: **Categorically exempt from environmental review per California Environmental Quality Act (CEQA) Guidelines Sections 15329 (Cogeneration Projects at Existing Facilities; generation of less than 50 megawatts of energy) and 15311 (Accessory Structures)**

Prepared By: **Jennifer Phillips, City Manager**

Approved By: **Jennifer Phillips, City Manager**

BACKGROUND

On August 26, 2014 the City Council approved a resolution approving a Solar Power Purchase Agreement (PPA) with Sol-Ed Solar Holdings I, LLC, approving design Plans, authorizing City staff to proceed with the construction of the solar arrays at Wappo Park for the Stonebridge Wells, the Wastewater Plant and the Water Treatment Plant.

The signing of the PPA entered the City into a service contract to purchase all of the energy produced by the on-site solar system. The PPA required no capital investment. The City would not own, operate or maintain the equipment. The PPA agreement required PPA provider (system owner) to operate, maintain, guarantee system performance and cover inverter replacement costs. The three sites were proposed for installation of the arrays: Wastewater Treatment Plant, Water Treatment Plant and Wappo Park/Stonebridge Wells.

DISCUSSION

Section 6 of the PPA identifies conditions to the City's and SolEd's obligations under the Agreement and satisfaction of the "Conditions Satisfaction Date." Pursuant to Section 6(a), SolEd's obligations are conditioned on the following action items "on or before" 60 days following the Effective Date, or by December 29, 2014:

1. Completing due diligence regarding the suitability of the sites for the system. In September 2015, the City learned that SolEd intended on removing one of the three sites, Stonebridge Well at Wappo Park, due to the Native American burial grounds at the site. This has not been formally communicated nor officially confirmed by SolEd to the City, but was stated in an email dated July 22, 2015 that said the burial grounds would "likely prohibit a feasible solar project there." All three sites are a material condition to this agreement and all three sites were presented to the Council as part of this agreement. Thus, SolEd is unable to meet the condition to construct solar systems on all three sites.

2. In July 2015, the City received an email providing a Tentative Term Sheet and request for language modification. In August 2015 the City agreed to review the language but has not agreed to the proposed change. City's receipt of an executed financing commitment for the System's construction, entitled the "Financing Term Sheet."

3. Approval of the Construction Agreement for the System by SolEd's financing parties.

Within 180 days of the Effective Date, or by April 28, 2015, SolEd was to:

1. Obtain all necessary zoning, land use, and building permits to construct and operate the facility.

2. Execute all necessary agreements for the systems' utility interconnection and distribution.

3. Provide the City with proof of insurance and written confirmation in recordable form of any entity holding a lien or other encumbrance over the premise or Facility confirming recognition of SolEd's rights under this Agreement.

Section 6(b) identifies the conditions to the City's obligations under the Agreement. These include:

1. SolEd achieving the Commercial Operation Date on or before the March 2015 Anticipated Commercial Operation Date for each system, as identified in Exhibit 1, Section 7.

2. Additionally, within 180 days from the Effective Date, or April 28, 2015, the City's obligations are conditioned on the following:

    a. City receiving SolEd's Financing Term Sheet.

    b. SolEd's proof of insurance.

    c. Compliance with the California Environmental Quality Act, as applicable.

d. Approval of the Construction Agreement.

As of the date the writing of this staff report, SolEd has failed to meet the March 2015 Anticipated Commercial Operations Date. SolEd has also failed to commence construction or provide a schedule as to when SolEd anticipates achieving commercial operation of the systems. Furthermore, SolEd appears to have removed the Stonebridge/Wappo Park as a system site and will not be able to meet the condition to provide systems for all three sites as contemplated by the Agreement.

Additionally, more than five months past the 180 day Conditions Satisfaction Date, i.e., April 28, 2015, SolEd has not provided the City with a proposed Construction Agreement or the requisite proof of insurance. Only recently, the City received from SolEd an "Indicative Term Sheet," dated July 17, 2015. However, in addition to being untimely, the Indicative Term Sheet is "not intended to be, nor shall it be, construed as a binding offer or a binding agreement." Therefore, it fails to meet conditions 6(a)(ii) and 6(b)(ii) requiring a "Financing Term Sheet" representing an "executed financing commitment for the construction of the System from a Financing Party."

In addition to the above conditions, SolEd has neither provided the City with any indication as to the "Mandatory Milestone" dates identified in Exhibit 8 nor submitted any deliverables identified under "Agreement Submittals."

In other words, nearly one year after executing the Agreement, and more than five months after the Conditions Satisfaction Date, the City has no information from SolEd as to when the solar systems' construction will commence or be placed into commercial operation.

On October 5, 2015, the City sent to SolEd Benefit Corp (SolEd) Notice of SolEd's failure to meet the Conditions Satisfaction Date for multiple action items. Pursuant to the October 2014 PPA, Exhibit 4, General Terms and Conditions, Section 6(c), Failure of Conditions, the City requested SolEd meet with the City to discuss SolEd's untimely performance and failure to meet the Conditions Satisfaction Date.

Pursuant to the City's request, a meeting was held on October 15, 2015, at the St. Helena City Hall. On the City's behalf, the City Manager and Grants Manager attended the meeting. SolEd's representative attendees were David Kunhardt, CEO and Eric Blomendale.

During the meeting the parties discussed the Agreement, SolEd's untimely performance, and steps that SolEd proposed to meet its contractual obligations. SolEd concluded the meeting by representing to the City that it would provide "within a day or two," various documents to show SolEd's purported effort to remedy its failure to meet its contractual obligations under the Conditions Satisfaction Date. These included, at a minimum, a Notice to Proceed and a Schedule. Neither has been delivered. At this meeting, SolEd also informed the City it has selected a new vendor and the solar panels will be constructed in Korea. Significant contract language changes were provided to the City related to this vendor change.

As of the writing of this staff report, more than five weeks after the City's October 5, 2015 Notice and nearly four weeks after the October 15th meeting, SolEd has failed to provide any of the promised deliverables. SolEd's failure to provide these deliverables is in addition to the other deliverables and conditions precedent SolEd was required, but failed, to provide and meet as of the Conditions Satisfaction Date.

More than one year after executing the PPA, and six months after the Conditions Satisfaction Date, the City has no information from SolEd as to when the solar systems' construction will commence or be placed into commercial operation. Pursuant to the General Terms and Conditions, Exhibit 4, Section 6(c) of the Agreement, staff recommends providing SolEd a 10 day written Notice to Terminate the Agreement.

FISCAL IMPACT

Unknown due to the failure of SolEd Benefit Corp to perform under this PAA.

RECOMMENDED ACTION

Approve Resolution No. ___ authorizing the City Manager to issue SolEd Benefit Corp a Notice of Termination of Power Purchase Agreement

ATTACHMENTS

Attachment 1 - Letter of Termination from the City of St Helena to SolEd Benefit Corp
Attachment 2 – Approved City of St. Helena and SolEd Benefit Corp Solar Power Purchase Agreement
Attachment 3 – Resolution Terminating the PPA with SolEd Benefit Corp

Attachment 1

City of St. Helena

"We will conduct city affairs on behalf of our citizens using an open and creative process."

1480 Main Street
St. Helena, CA 94574
Phone: (707) 967-2792
Fax: (707) 963-7748

www.cityofsthelena.org

November 11, 2015

VIA E-MAIL AND OVERNIGHT MAIL

David Kunhardt
CEO / SolEd Benefit Corp
1115 3rd Street
P.O. Box 151731
San Rafael, CA 94915-1731
415-886-3777
david@sol-ed.com

Re: City of St. Helena – SolEd Benefit Corp Solar Power Purchase Agreement Notice of Termination of Power Purchase Agreement – Power Purchase Agreement, Exhibit 4, General Terms and Conditions, Section 6(c)

Dear Mr. Kunhardt:

On October 5, 2015, the City of St. Helena (City) sent to SolEd Benefit Corp (SolEd) Notice of SolEd's failure to meet the Conditions Satisfaction Date for multiple action items. Pursuant to the October 2014 Solar Power Purchase Agreement (Agreement), Exhibit 4, General Terms and Conditions, Section 6(c), Failure of Conditions, the City requested SolEd meet with the City to discuss SolEd's untimely performance and failure to meet the Conditions Satisfaction Date.

Pursuant to the City's request, a meeting was held on October 15, 2015, at the St. Helena City Hall. On the City's behalf, I attended the meeting along with Grants Manager Tracey Perkosky. SolEd's representative attendees were you and Eric Blomendale.

During the meeting we discussed the Agreement, SolEd's untimely performance, and steps that SolEd proposed to meet its contractual obligations. SolEd concluded the meeting by representing to the City that it would provide "within a day or two," various documents to show SolEd's purported effort to remedy its failure to meet its contractual obligations under the Conditions Satisfaction Date. These included, at a minimum, a Notice to Proceed and a Schedule. Neither has been delivered.

As of the date of this letter, more than five weeks after the City's October 5, 2015 Notice and nearly four weeks after the October 15th meeting, SolEd has failed to provide any of the promised deliverables. SolEd's failure to provide these deliverables is in addition to the other

deliverables and conditions precedent SolEd was required, but failed, to provide and meet as of the Conditions Satisfaction Date.

Section 6(c) of Exhibit 4 to the Agreement provides in pertinent part:

> *Failure of Conditions. If any of the conditions set forth in Section 6(a) or Section 6(b) are not waived or deemed satisfied by the Party benefited by such condition on or before the applicable Conditions Satisfaction Date, the Parties will meet and confer in good faith to negotiate an extension of the applicable Conditions Satisfaction Date; with each Party agreeing that it will not unreasonably withhold its approval of a proposed extension requested by the other Party. If the Parties are unable to agree upon the extension of any Conditions Satisfaction Date within twenty (20) days following the expiration of the applicable Conditions Satisfaction Date despite their good faith efforts, then the Party benefited by the condition that has not been satisfied or waived by the applicable Conditions Satisfaction Date may terminate this Agreement upon ten (10) days written notice to the other Party without liability for costs or damages or triggering a default under this Agreement other than as set forth below...*

The City entered into the Agreement with SolEd based on its representations and assurances that SolEd would fulfill its obligations under the Agreement including, without limitation, meeting all conditions provided therein. The City has waited patiently for SolEd to perform, and has met with SolEd in good faith to address SolEd's contractual compliance failures. SolEd assured the City it would provide "within a day or two" of the October 15th meeting the documentation evidencing SolEd's compliance with several of its conditions precedent. Once again, SolEd has failed to meet its contractual commitments or assurances.

More than one year after executing the Agreement, and six months after the Conditions Satisfaction Date, the City has no information from SolEd as to when the solar systems' construction will commence or be placed into commercial operation. Pursuant to the General Terms and Conditions, Exhibit 4, Section 6(c) of the Agreement, the City hereby provides SolEd of its 10 day written Notice to Terminate the Agreement.

Sincerely,

Jennifer Phillips
City Manager

c: Thomas Brown, City Attorney

Attachment 2

Solar Power Purchase Agreement

This Solar Power Purchase Agreement (this "**Agreement**") is dated as of ____October, 2014 (the "**Effective Date**"), and is witnessed, acknowledged, and executed by authorized representatives of SolEd Solar Holdings I, LLC, a California limited liability company ("**Seller**"), the managing member of which is SolEd Benefit Corp, a California Benefit Corporation, and the City of St. Helena, California, a municipality of the State of California ("**Purchaser**" and, together with Seller, each, a "**Party**" and together, the "**Parties**"), as evidenced by their signature on this cover page.

RECITALS

A. Purchaser wishes to meet its power requirements cost effectively, efficiently and in an environmentally-friendly manner;

B. Purchaser has solicited proposals from persons, firms, organizations, and/or other legal entities to provide such power from renewable resources in a cooperative/joint solicitation coordinated by the City of St. Helena;

C. Seller is in the business of designing, constructing, owning, financing and operating solar photovoltaic electric generating systems for the purpose of selling power generated by the systems to its Purchasers at the lowest practical lifetime cost of clean energy;

D. Purchaser has selected Seller and its engineering, procurement and construction firm to design, construct, own, finance and operate a solar photovoltaic generating system to be located on its property subject to the terms, conditions, covenants and provisions set forth herein;

E. Seller intends to construct, own, and operate renewable energy-powered generating facilities and desires to sell electricity produced by such generating facilities together with Environmental Attributes and Environmental Incentives to Purchaser pursuant to the terms, conditions, covenants and provisions set forth herein; and

F. Purchaser desires to purchase electricity generated by Seller's generating facility, together with all Environmental Attributes and Environmental Incentives pursuant to the terms and conditions set forth herein;

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

Purchaser:		**Seller:**	
Name and Address	City of St. Helena 1480 Main Street St. Helena, CA 94574 Attention: Jennifer Philips	**Name and Address**	SolEd Solar Holdings I, LLC, c/o SolEd Benefit Corp, Managing Member P.O. Box 151731 San Rafael, CA 94915-1731 Attention: David Kunhardt, CEO
Phone	(707) 967-2792	**Phone**	(415) 609-7893
Fax	None	**Fax**	None
E-mail	jenniferp@cityofsthelena.org	**E-mail**	david@sol-ed.com
Premises Ownership	Purchaser [x] owns [_] leases the Premises, also known as Water Treatment Plant, Wappo Park and Sewer Treatment Plant	**Additional Seller Information**	Seller is a Benefit corporation, incorporated in California in 2013, serving the mission of delivering the lowest lifetime cost of clean energy to public clients.

This Agreement sets forth the terms and conditions of the service contract for purchase and sale of (a) solar generated electric energy from the solar panel system described in **Exhibit 2** (the "**System**") and (b) car charging stations described in **Exhibit 2** (the "**Car Charging Stations**") to be installed at Purchaser's facility described in **Exhibit 2, Attachment A** (the "**Facility**"). The terms and conditions of this Agreement are provided and intended for use by public agencies affiliated or not affiliated with Purchaser, but with similar procurement and contracting regulations as those of Purchaser.

The exhibits listed below are incorporated by reference and made part of this Agreement.

Exhibit 1	**Basic Terms and Conditions**
Exhibit 2	**System Description**
Exhibit 3	**Credit Information**
Exhibit 4	**General Terms and Conditions**
Exhibit 5	**Form of Memorandum of License**
Exhibit 6-1	**Engineering and Construction Requirements**
Exhibit 6-2	**Equipment Warranties**
Exhibit 7	**Form of Attestation**
Exhibit 8	**Milestone Schedule**
Exhibit 9	**Insurance Requirements**
Exhibit 10	**Seller and Purchaser Agreed Responsibilities**

Purchaser: City of St. Helena

Signature: _____

Printed Name: Jennifer Phillips

Title: CJ Manager

Date: 10/30/14

Seller: SolEd Solar Holdings I, LLC

By: SolEd Benefit Corp, Managing Member

Signature: _____

Printed Name: David W. Kunhardt

Title: President & CEO

Date: 21 Oct 2014

Exhibit 1

Basic Terms and Conditions – Site: See Below

1. **Term:** Twenty (20) years, beginning on the Commercial Operation Date, as defined in **Exhibit 4**, Section 3(a).
2. **Additional Terms:** Up to two (2) optional Additional Terms of five (5) years each.
3. **Environment Attributes:** Accrue to Purchaser.
4. **Environmental Incentives:** If applicable, to be directly paid over, or credited to, Purchaser as soon as received.
5. **Contract Price (Discounted):**

Site	Sewer Treatment Plant	Wappo Park/ Stonebridge	Water Treatment Plant
Contract Year	$/kWh	$/kWh	$/kWh
1	0.1637	0.1799	0.1709
2	0.1678	0.1844	0.1752
3	0.1720	0.1890	0.1796
4	0.1763	0.1937	0.1841
5	0.1807	0.1986	0.1887
6	0.1852	0.2036	0.1934
7	0.1899	0.2086	0.1982
8	0.1946	0.2139	0.2032
9	0.1995	0.2192	0.2082
10	0.2045	0.2247	0.2134
11	0.2096	0.2303	0.2188
12	0.2148	0.2361	0.2242
13	0.2202	0.2420	0.2299
14	0.2257	0.2480	0.2356
15	0.2313	0.2542	0.2415
16	0.2082	0.2288	0.2173
17	0.1874	0.2059	0.1956
18	0.1686	0.1853	0.1760
19	0.1518	0.1668	0.1584
20	0.1366	0.1501	0.1426

6. **Condition Satisfaction Date:** As set forth in **Exhibit 4**, Sections 6(a) and 6(b).
7. **Anticipated Commercial Operation Date:**

Site	Sewer Treatment Plant	Wappo Park/ Stonebridge	Water Treatment Plant
Commercial Operation Date	March, 2015	March, 2015	March, 2015

8. **Purchaser Options to Purchase System.** [_] None [X] or as set forth in **Exhibit 4**, Section 16(b).

9. System Installation:

Includes:	[X] Design, engineering, permitting, interconnection application and completion, installation, prevailing wage construction, monitoring and communication, rebate and permit application and paperwork processing, and final commissioning of the completed System, complete and accurate As-Built design documents, copies of executed module, inverter, and system workmanship warranties, and Operations and Maintenance services Agreement, as described in **Exhibit 6-1** (Engineering and Construction Requirements), and additional items for which Seller has agreed to be responsible as set forth on **Exhibit 10**. [X] 10-year Limited Warranty on workmanship and inverters, 25-year Warranty on PV modules. [X] List of Approved Subcontractors [_] Any like substantive equipment, in the sole discretion of Seller. [_] State or Utility Rebate, if any. [X] Proof of lien-free construction will be provided. [X] Interactive Display for Generating Facilities. If this item is checked, the provisions of **Exhibit 4**, Section 12(b) shall apply.
Excludes:	Payment bonds, performance bond(s), tree removal and tree trimming, groundwork, upgrades or repair to the Facility or utility electrical infrastructure for which Purchaser has agreed to be responsible as set forth on **Exhibit 10**. To the extent of any conflict between this paragraph and **Exhibit 10**, the provisions of **Exhibit 10** shall govern.

Exhibit 2
System Description

1. **System Location:** Listed Below

2. **System Size (DC kW):**

Site	Sewer Treatment Plant	Wappo Park/ Stonebridge	Water Treatment Plant
System Size (kW-DC-STC)	210.6	119.04	135.85

3. **Expected Contract Quantity (kWh):**

Initial Year Expected Quantity of Energy

Site	Sewer Treatment Plant	Wappo Park/ Stonebridge	Water Treatment Plant
Month	(kWh/Month)	kWh/Month	kWh/Month
January	14,490	6,062	9,691
February	17,708	7,924	11,897
March	28,511	13,911	19,040
April	34,186	17,712	22,564
May	40,251	21,772	26,173
June	40,111	22,111	25,805
July	39,516	21,478	25,338
August	37,987	20,021	24,709
September	32,138	15,890	20,995
October	23,561	10,735	15,642
November	16,609	6,981	11,232
December	12,060	4,842	8,133

Annual Expected Quantity of Energy

Site	Sewer Treatment Plant	Wappo Park/ Stonebridge	Water Treatment Plant
Contract Year	(kWh/Year)	(kWh/Year)	(kWh/Year)
1	337,128	169,439	221,219
2	335,442	168,592	220,113
3	333,765	167,749	219,012
4	332,096	166,910	217,917
5	330,436	166,076	216,828
6	328,784	165,245	215,744
7	327,140	164,419	214,665
8	325,504	163,597	213,592
9	323,877	162,779	212,524
10	322,257	161,965	211,461
11	320,646	161,155	210,404
12	319,043	160,349	209,352
13	317,447	159,548	208,305
14	315,860	158,750	207,263
15	314,281	157,956	206,227
16	312,709	157,166	205,196
17	311,146	156,381	204,170
18	309,590	155,599	203,149
19	308,042	154,821	202,133
20	306,502	154,047	201,123

4. **Expected Structure:** [_] Ground Mount [X] Roof Mount [X] Parking Structures [X] Other: Installation of Car Charging Stations

5. **Expected Module(s):**

Site	Manufacturer/Model	Quantity
Sewage Treatment Plant	Suniva OPT 320	648
Wappo Park	Suniva OPT 320	372
Water Treatment Plant	Suniva OPT 320	418

6. **Expected Inverter(s):**

Site	Manufacturer/Model	Quantity
Sewage Treatment Plant	SMA STP20kW-TL	9
Wappo Park	SMA STP20kW-TL	5
Water Treatment Plant	SMA STP24kW-TL	5

7. **Expected Monitoring Provider:**

Site	Manufacturer/Model	Quantity
Sewage Treatment Plant	Also Energy DECK	1
Wappo Park	Also Energy DECK	1
Water Treatment Plant	Also Energy DECK	1

8. **Expected Car Charging Station Provider:**

Site	Manufacturer/Model	Quantity
Sewage Treatment Plant	TBD	TBD
Wappo Park	TBD	TBD
Water Treatment Plant	TBD	TBD

9. **Facility and System Layout:** See **Exhibit 2, Attachment A**

10. **Utility:** Pacific Gas & Electric Co. and Marin Clean Energy, as applicable

11. **Current & Proposed Utility Tariff:**

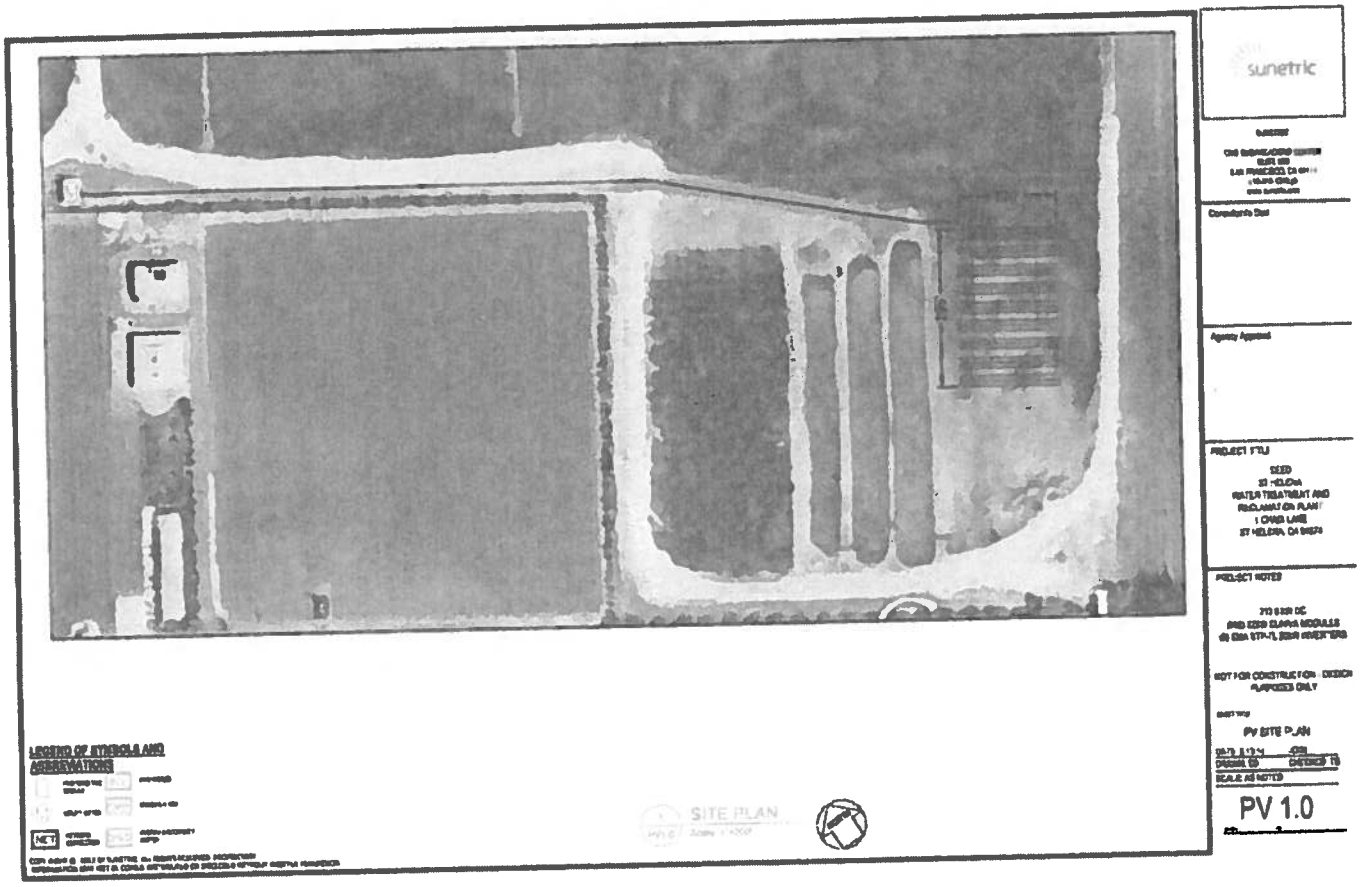
Site	Current PG&E	Proposed
Sewage Treatment Plant	A-10 TOU	A-6
Wappo Park	E-19	A-6
Water Treatment Plant	E-19	A-6

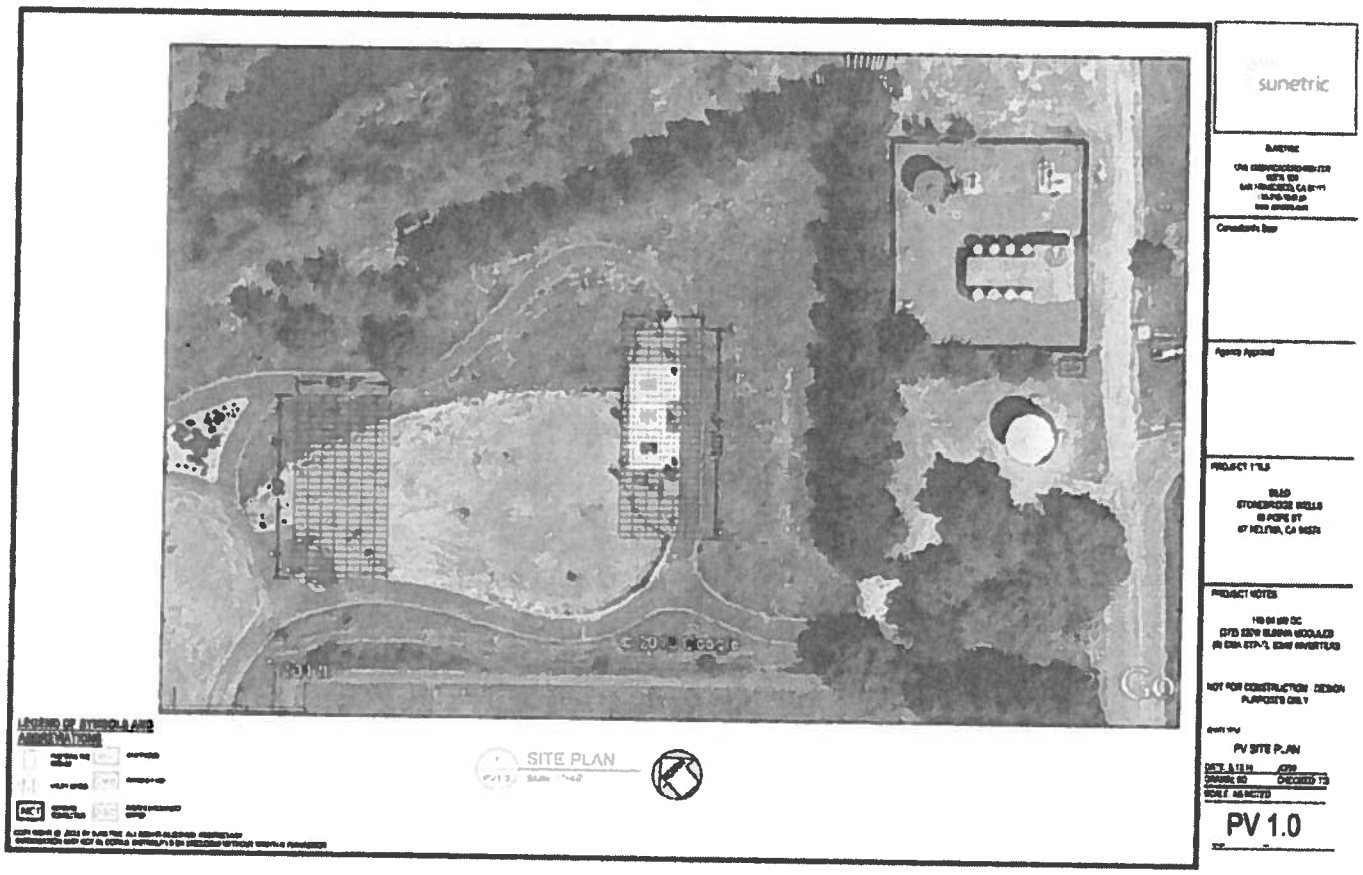
12. **Warranties:** (i) Warranty for the performance of the System set forth in Section 7(m); (ii) Warranty for meter accuracy set forth in **Exhibit 4**, Section 12(a); and (iii) Equipment warranties set forth in **Exhibit 6-2**, executed copies of which will be submitted at construction completion with As-Built documentation.

Exhibit 2
Attachment A:
Facility and System Layout

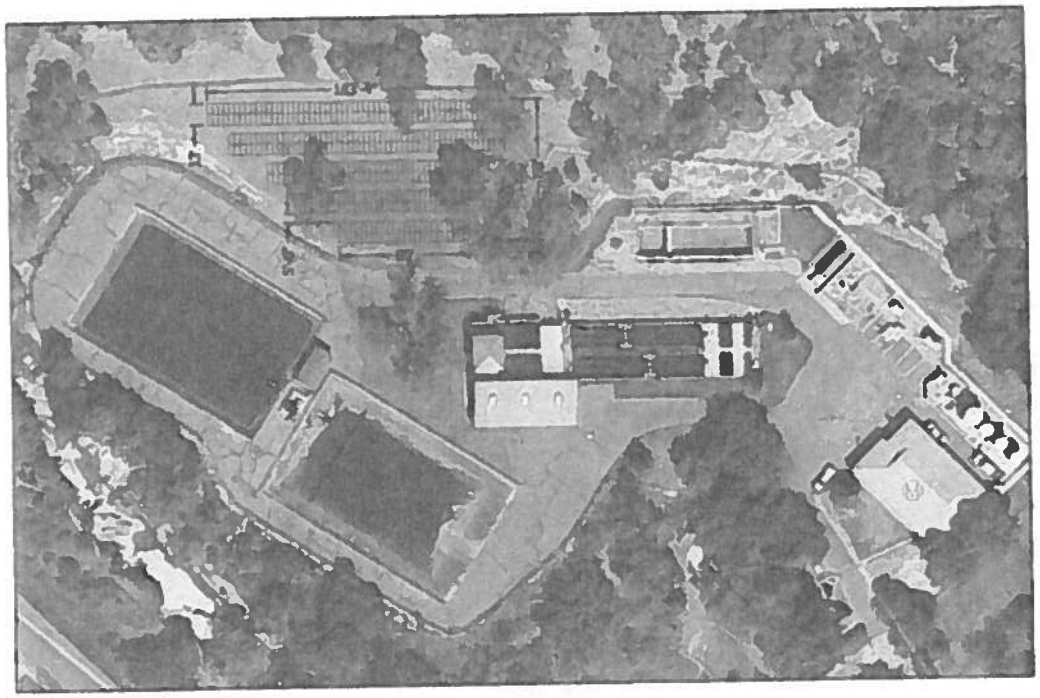
Aerial Photograph of the Facility	See below
Conceptual Drawing of the System	See below
Delivery Point	See below
Access Point(s)	Typical access for all sites will be necessary for installation and service of systems. This includes but is not limited to the following: roof access, parking lot access, electrical room access, data room access.

Sewer Treatment Plant




sunetric
SITE PLAN
PV SITE PLAN
PV 1.0

Water Treatment Plant



SITE PLAN

sunetric

PV SITE PLAN

PV 1.0

Exhibit 3
Credit Information

Promptly following the execution of this Agreement, Purchaser shall supply Seller with the following credit information:

PURCHASER INFORMATION							
Name: City of St. Helena					**Tax ID:**		
Previous & Other Names: N/A				**Website:** www.ci.st-helena.ca.us			
Office Address: 1480 Main Street							
City, State, Zip St. Helena, CA 94574							
Phone Number: (707) 967-2792			**Fax Number:** (707) 963-7745				
Entity Type Check One:	**S-Corp**	**C-Corp**	**Partnership**	**Sole Prop**	**LLC**	**LLP**	**Other** City
Property Address for Solar Installation: 1) Water Treatment Plant: 410 Crystal Springs Road; (2) Wappo Park/Stonebridge Well: 99 Pope Street; and (3) Wastewater Treatment Plant: 1 Chaix Lane			**State:** CA		**Zip Code:** 94574	**Property Owned by Applicant** ✓ **YES** **NO**	
Property Type	**Insurance Agent Name** **Mark Ferguson - REMIF**		**Agents Phone:** **707-938-2388 ex 12**		**Name of Property Owner If Not Applicant** N/A		

INFORMATION REQUESTED

Corporate Records

☐ Not Applicable

Financial Statements

☐ Public Agency Records. See audit reports.

Real Estate Documents

☐ Not Applicable

Seller may request you provide additional documentation to complete the credit evaluation process. Seller will notify you if additional information is required.

The above information and any information attached is furnished to Seller and its Financing Parties in connection with the Application of credit for which you may apply.

NOTICE: The Federal Equal Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status or age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance programs; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Office of the Comptroller of the Currency, Customer Assistance Unit, 1301 McKinney Street, Suite 3450, Houston, Texas 77010-9050. Seller is an equal opportunity service provider.

Signature: **Title:** **Date:**

Exhibit 4
Solar Power Purchase Agreement
General Terms and Conditions

1. **Definitions and Interpretation**: Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and (d) the words "include," "includes" and "including" mean include, includes and including "without limitation." The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.

2. **Purchase and Sale of Electricity**. Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electric energy generated by the System (the "**Energy**") for each Contract Year during the Initial Term and any Additional Term (as defined in **Exhibit 1**, and collectively the "**Term**"), up to 110% of Expected Contract Quantity for each Contract Year set forth on **Exhibit 2**. Purchaser shall have the option, but not the obligation, to purchase the Energy in excess of 110% of the Expected Contract Quantity. Seller will first offer any Energy beyond the 110% cap to Purchaser and, only if Purchaser does not exercise its option to purchase all or a portion of such excess Energy, Seller shall be permitted to resell the excess Energy, provided such sale is in accordance with all applicable laws. Energy generated by the System will be delivered to Purchaser at the delivery point identified on **Exhibit 2** (the "**Delivery Point**"). Purchaser shall take title to the Energy at the Delivery Point, and risk of loss will pass from Seller to Purchaser at the Delivery Point. Purchaser may purchase electric energy for the Facility from other sources if Purchaser's electric requirements at the Facility exceed the Energy generated by the System. Any delivery of Energy prior to the Commercial Operation Date shall be treated as limited amounts of test energy only and shall not indicate that the System has been put in commercial operation, and Purchaser shall not be under obligation to pay for such test energy. Seller shall deliver to Purchaser the Energy at the Delivery Point free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto, by any person. For the avoidance of doubt, Seller's obligation to deliver Energy unencumbered shall not in any way affect Seller's ability to grant a security interest in or otherwise encumber the System in accordance with the terms of this Agreement. "**Contract Year**" means the twelve month period beginning at 12:00 AM on the Commercial Operation Date or on any anniversary of the Commercial Operation Date and ending at 11:59 PM on the day immediately preceding the next anniversary of the Commercial Operation Date, provided that the first Contract Year shall begin on the Commercial Operation Date.

3. **Term and Termination**.

   a. **Initial Term**. The initial term ("**Initial Term**") of this Agreement shall commence on the Commercial Operation Date (as defined below) and continue for the length of time specified in **Exhibit 1**, unless earlier terminated as provided for in this Agreement. Following Purchaser's inspections pursuant to Section 7(c)(iii) below, the "**Commercial Operation Date**" is the date Seller gives Purchaser written notice that the System is mechanically complete and capable of providing electric energy to the Delivery Point. Such notice shall be deemed effective unless Purchaser reasonably objects within five (5) business days of the date of receipt of such notice. Upon submittal of the notice, Seller will give Purchaser copies of certificates of completion or similar documentation from Seller's contractor, including signed Building Inspection card, and the interconnection or similar agreement with the entity authorized and required under applicable law to provide electric distribution service to Purchaser at the Facility (the "**Utility**"), as set forth on **Exhibit 2**. The notice shall also include commissioning test results. This Agreement is effective as of the Effective Date and, subject to the provisions of Section 18 below, Purchaser's failure to enable Seller to provide the electric energy by preventing it from installing the System or otherwise not performing under this Agreement shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement.

   b. **Additional Terms**. Prior to the end of the Initial Term or of any applicable Additional Term, as defined below, if Purchaser has not exercised its option to purchase the System, Purchaser may give Seller written notice of its desire to extend this Agreement on the terms and conditions set forth herein for the number and length of additional periods specified in **Exhibit 1** (each such additional period, an "**Additional Term**"). Such notice shall be given, if at all, not more than three hundred sixty five (365) days and not less than ninety (90) days before the last day of the Initial Term or the then current Additional Term, as applicable. If Purchaser delivers such notice, the Parties shall promptly meet and confer to discuss and agree upon the (i) Expected Contract Quantity, (ii) Contract Price for Contract Years 2-5 of the Additional Term and (iii) Termination Payment applicable for each Contract Year of such Additional Term. The Parties agree that the Contract Price applicable during the first Contract Year of any Additional Term shall be the same as the Contract Price in effect during the last Contract Year of the Initial Term or prior Additional Term, as

applicable. If Seller and Purchaser successfully agree on such terms within sixty (60) days of the date such notice is delivered by Purchaser, Purchaser and Seller shall enter into an amendment to this Agreement which shall state the mutually agreed upon Expected Output Quantity, Contract Price and Termination Payment applicable for each Contract Year of the Additional Term and confirm that all other terms of this Agreement shall continue unchanged in full force and effect. If the Parties are unable to agree on such terms during such sixty (60) day period despite the Parties good faith efforts to reach agreement, Seller shall be deemed to have rejected the offer for an Additional Term. The Additional Term shall begin immediately upon the conclusion of the Initial Term or the then current term and this Agreement shall terminate at the end of the Initial Term (if the same has not been extended) or the then current Additional Term.

c. **Termination.**

i. Prior to Commencement of Construction. Purchaser may terminate this Agreement at any time upon written notice prior to Seller's delivery of full notice to proceed to contractor by Seller. Upon such termination, Purchaser shall reimburse Seller for all reasonable documented out-of-pocket costs incurred by Seller in connection with its diligence, investigations, and the design, engineering, permitting and procurement of materials for the System (**"Design Cancellation Payment"**) as evidenced by the submission of engineering and design drawings in accordance with the Milestone schedule on **Exhibit 8** and other reasonable supporting documentation; provided, if such termination occurs (A) prior to the date that System engineering and design drawings are 50% complete, the Design Cancellation Payment shall not exceed Five Thousand and 00/100 Dollars ($5,000), (B) prior to the date that System engineering and design drawings are 90% complete, the Design Cancellation Payment shall not exceed Nine Thousand and 00/100 Dollars ($9,000), and (C) prior to the date that System engineering and design drawings are 100% complete, the Design Cancellation Payment shall not exceed Fifteen Thousand and 00/100 Dollars ($15,000). Purchaser's payment to Seller of the Design Cancellation Payment shall be Seller's sole and exclusive remedy for such termination.

ii. Following Commencement of Construction. Purchaser may terminate this Agreement at any time after Seller's delivery of full notice to proceed to the contractor upon thirty (30) days prior written notice to Seller. In the event of termination by Purchaser after the delivery of full notice to proceed by Seller, Purchaser shall pay to Seller the applicable Termination Payment set forth in **Exhibit 4, Attachment A**, and Seller shall, at its expense, cause the applicable System to be disconnected and removed from the Facility and remediate and restore the Facility in accordance with Seller's obligations in Section 11. Notwithstanding the foregoing, Purchase shall not be obligated to pay the Termination Payment in the event Purchaser terminates this Agreement due to (i) the failure of Purchaser's Conditions Precedent pursuant to Section 6(c); (ii) Seller's Default pursuant to Section 13(b); or (iii) a Force Majeure event pursuant to Section 18(d).

4. **Billing and Payment.**

a. **Monthly Charges.** Purchaser shall pay Seller monthly for the Energy delivered to the Delivery Point at the $/kWh rate shown in **Exhibit 1** (the **"Contract Price"**) for the current Contract Year. The first Contract Year shall start on the Commercial Operation Date, and each succeeding Contract Year shall begin on the succeeding anniversary of the Commercial Operation Date. The monthly payment for such Energy will be equal to the applicable $/kWh rate multiplied by the number of kWh of Energy generated during the applicable month, as measured by the System Meter.

b. **Monthly Invoices.** Seller shall invoice Purchaser monthly, either manually or through ACH. Such monthly invoices shall state (i) the amount of Energy produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement and (iii) the total amount due from Purchaser. The Contract Price includes ACH invoicing. If manual invoicing is required, a twenty five dollar ($25) handling charge will be added to each invoice.

c. **Taxes.** Seller shall either pay or reimburse Purchaser for any and all Taxes assessed on the generation, sale, delivery or consumption of electric energy produced by the System or the interconnection of the System to the Utility's electric distribution system, including property Taxes on the System; provided, however, Seller will not be required to reimburse Purchaser or otherwise pay for (i) any Taxes during periods when Seller fails to deliver electric energy to Purchaser as a result of Purchaser's gross negligence, willful misconduct or breach of this Agreement by Purchaser or (ii) any Taxes which are imposed by any applicable law or regulation made effective after the Effective Date. Notwithstanding the foregoing, Seller shall be exempt from any tax, fee, levee or other charge now or hereafter assessed by Purchaser related to or applicable to energy use and/or sale. For purposes of this Section 4(c), **"Taxes"**

means any federal, state and local ad valorem, income, property, possessory interest, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges.

d. **Payment Terms**. All amounts due under this Agreement shall be due and payable net thirty (30) days from receipt of invoice. If payment is not received within the thirty (30) day period, the Party to whom payment is due (a "payee") shall send notice of past-due amount. After the payee sends such notice, any undisputed portion of the invoice amount not paid within the following thirty (30) day period shall accrue interest at the annual rate of the prime rate plus two percent (2%) (but not to exceed the maximum rate permitted by law).

5. **Tax Credits, Environmental Attributes and Environmental Incentives**.

a. **Ownership of Tax Credits, Environmental Attributes and Environmental Incentives**. Seller, as owner of the energy generating equipment, is the owner of all Tax Credits and other tax attributes of ownership, and Purchaser shall cooperate with Seller in perfecting such ownership. Seller acknowledges that Purchaser has made no statements, representations or warranties regarding the eligibility of the System for the Tax Credits, and Seller is not relying on any statement, representation or warranty by Purchaser or any third party with respect to the Tax Credits in entering into this Agreement. As specified on **Exhibit 1**, Purchaser is the owner of all Environmental Attributes and any applicable Environmental Incentives (as agreed by the Parties). Seller shall cooperate with Purchaser in obtaining, securing and transferring all Environmental Attributes and Environmental Incentives (as agreed by the Parties) to Purchaser. Purchaser shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller.

b. **Transfer of Environmental Attributes**. Throughout the Term, Seller shall transfer to Purchaser, and Purchaser shall receive from Seller, all rights and interest in and to the Environmental Attributes and any applicable Environmental Incentives (as agreed by the Parties), whether now existing or subsequently generated or acquired (other than by direct purchase from a third party) by Seller, or that hereafter come into existence, during the Term, as a component of the Energy purchased by Purchaser from Seller hereunder. Seller agrees to transfer and make such Environmental Attributes and any applicable Environmental Incentives (as agreed by the Parties) available to Purchaser immediately to the fullest extent allowed by applicable law upon Seller's production or acquisition of such Environmental Attributes or Environmental Incentives. Seller agrees that the Contract Price, as applicable, is the full compensation for all Environmental Attributes and any applicable Environmental Incentives (except as otherwise agreed by the Parties).

c. **No Transfer to Third Parties**. Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of any portion of the Environmental Attributes or Environmental Incentives to any person other than Purchaser.

d. **Reporting**. Seller shall take such actions as are reasonably necessary to ensure that the Environmental Attributes are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred to Purchaser, During the Term, Seller shall not report to any person that the Environmental Attributes granted hereunder to Purchaser belong to anyone other than Purchaser, and Purchaser may report under any program that such attributes purchased hereunder belong to it.

e. **Attestation**. On or shortly after the final day of each Contract Year, Seller shall document the transfer of Environmental Attributes and any applicable Environmental Incentives (as agreed by the Parties) to Purchaser under this Agreement by delivering to Purchaser an attestation of Environmental Attributes and any applicable Environmental Incentives (as agreed by the Parties) transferred under this Agreement in the preceding Contract Year. The form of attestation is set forth as **Exhibit 7**, which Form of Attestation may be updated or changed by Purchaser with Seller's prior written approval, not to be unreasonably withheld, as necessary to ensure that Purchaser receives full and complete title to, and the ability to record with WREGIS or any successor EA Agency as its own, all of the Environmental Attributes and any applicable Environmental Incentives (as agreed by the Parties) purchased hereunder.

f. **Documentation**. At Purchaser's option, the Parties, each at their own expense, shall execute all such documents and instruments in forms reasonably approved by the Parties in order to affect the transfer of the Environmental Attributes specified in this Agreement and any applicable Environmental Incentives (as agreed by the Parties) to Purchaser or its designees, as Purchaser may reasonably request. Upon notification by WREGIS or any successor EA Agency that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfer can be recorded. Each Party shall promptly give the other Party copies of all documents it submits to WREGIS or any successor EA Agency to effectuate any transfers. From and

after Seller's transfer of Environmental Attributes or any applicable Environmental Incentives (as agreed by the Parties) to Purchaser, Seller will have no obligation, risk, liability or benefit to, from or arising out of such Environmental Attributes or as a consequence of Purchaser's determination to keep, sell, or retire any such Environmental Attributes.

g. **Defined Terms**. As used in this Section 5 the following definitions shall apply:

"EA Agency" means any Governmental Authority that has responsibility for or jurisdiction over a program involving transferability of Environmental Attributes, including, for example, the Clean Air Markets Division of the United States Environmental Protection Agency, the California Resources, Conservation and Development Commission, the California Public Utilities Commission, and any successor agency thereto.

"Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (c) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives and Tax Credits. Purchaser and Seller shall file all tax returns in a manner consistent with this Section 5. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, Renewable Energy Credits or certificates, emissions reduction credits, emissions allowances, Green Tag Reporting Rights, tradeable renewable credits and Green-e® products.

"Environmental Incentives" means any and all credits, rebates, subsidies, payments or other incentives that relate to self-generation of electricity, the use of technology incorporated into the System, environmental benefits of using the System, or other similar programs available from the Utility, any other regulated entity or any Governmental Authority.

"Governmental Authority" means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including the Federal Energy Regulatory Commission or the California Public Utilities Commission), or any arbitrator with authority to bind a party at law.

"Tax Credits" means any and all (a) investment tax credits, (b) production tax credits and (c) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of energy from the System.

"WREGIS" means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

6. **Conditions to Obligations**.

a. **Conditions to Seller's Obligations**. Seller's obligations under this Agreement, to the extent first accruing and arising from and after the applicable Condition Satisfaction Date and the expiration of the time periods set forth in Section 6(c) below, are conditioned on the completion of the following conditions (collectively **"Seller's Conditions Precedent"**) to Seller's reasonable satisfaction on or before the date specified below (each a **"Condition Satisfaction Date"**):

On or before the date that is sixty (60) days following the Effective Date:

i. Completion of physical inspections of the Facility and the property upon which the Facility is located (the **"Premises"**) including, if applicable, geotechnical work, title review, inspections of electrical systems and

infrastructure, and other real estate due diligence to confirm the suitability of the Facility and the Premises for the System;

ii. Receipt of an executed financing commitment for the construction of the System from a Financing Party ("**Financing Term Sheet**");

iii. Approval of (A) this Agreement and (B) the Construction Agreement for the System by Seller's Financing Parties. "**Construction Agreement**" as used in this subsection means an agreement between Seller and any contractor or subcontractor to install the System;

On or before the date that is one hundred eighty (180) days following the Effective Date:

iv. Receipt of all necessary zoning, land use and building permits necessary to construct and operate the System; including without limitation, receipt of Purchaser's notice to proceed under CEQA (as defined below) pursuant to Section 6(b)(iv) below and a fully executed CEQA Cost Sharing Agreement (as defined below) if applicable;

v. Execution of all necessary agreements with the Utility for interconnection of the System to Facility electrical system and/or the Utility's electric distribution system; and

vi. Prior to Seller commencing construction and installation of the System, Seller shall have received (A) proof of insurance for all insurance required to be maintained by Purchaser under this Agreement, and (B) written confirmation in recordable form acceptable to Seller and Seller's Financing Parties from any person or entity holding a mortgage, lien or other encumbrance over the Premises or the Facility, as applicable, that such person will recognize Seller's rights under this Agreement for as long Seller is not in default hereunder.

The Seller's Conditions Precedent set forth in this Section 6(a) are solely for the benefit of Seller and may only be waived or deemed satisfied by Seller in Seller's sole but reasonable discretion.

b. **Conditions to Purchaser's Obligations**. Purchaser's obligations under this Agreement, to the extent first accruing and arising from and after the applicable Condition Satisfaction Date and the expiration of the time periods set forth in Section 6(c) below, are conditioned on the completion of the following conditions (collectively, the "**Purchaser's Conditions Precedent**") to Purchaser's reasonable satisfaction on or before the date specified below (each, a "**Condition Satisfaction Date**"):

Purchaser's obligations under Section 4(a) of this Agreement are conditioned upon the following:

i. The occurrence of the Commercial Operation Date on or before the Anticipated Commercial Operation Date set forth on **Exhibit 1**;

Purchaser's obligations under this Agreement other than under Section 4(a) of this Agreement are conditioned upon the following occurring on or before the date that is one hundred eighty (180) days following the Effective Date:

ii. Purchaser shall have received a copy of the Financing Term Sheet;

iii. Purchaser shall have received proof of insurance for all insurance required to be maintained by Seller under this Agreement;

iv. Purchaser shall be in compliance with the California Environmental Quality Act ("**CEQA**"), Pub. Res. Code § 21000 *et seq.* to Purchaser's reasonable satisfaction. Seller shall not have any right to install the System until Purchaser has fully complied with CEQA, issued a statement to Seller attesting to the fact that Purchaser has fully complied with CEQA as it relates to the System, and issued a notice to proceed to Seller. Purchaser expects to satisfy the CEQA requirements with a Notice of Exemption for each project. If Purchaser, in its discretion, determines that a mitigated negative declaration ("**MND**") or environmental impact report ("**EIR**") is required to comply with CEQA, then Purchaser shall, within thirty (30) days of such determination, provide Seller with a written statement detailing the reasons that Purchaser believes that MND or EIR is required to comply with CEQA, the estimated cost to comply with CEQA for the System, and a statement that it will or will not pay for the estimated cost to comply with CEQA for the applicable System. If Purchaser declines to pay for all of the estimated costs to comply with CEQA, Purchaser may negotiate

with Seller to share such costs and any agreement reached by the Parties to share such cost shall be in writing, duly executed by the Parties (a "**CEQA Cost Sharing Agreement**"); and

v. Purchaser's reasonable approval of the Construction Agreement; provided, Purchaser may only withhold its approval of the Construction Agreement if the terms and conditions of the Construction Agreement directly conflict with the terms and conditions of this Agreement.

The conditions precedent set forth in this Section 6(b) are solely for the benefit of Purchaser and may only be waived or deemed satisfied by Purchaser in Purchaser's sole but reasonable discretion.

c. **Failure of Conditions**. If any of the conditions set forth in Section 6(a) or Section 6(b) are not waived or deemed satisfied by the Party benefited by such condition on or before the applicable Conditions Satisfaction Date, the Parties will meet and confer in good faith to negotiate an extension of the applicable Conditions Satisfaction Date; with each Party agreeing that it will not unreasonably withhold its approval of a proposed extension requested by the other Party. If the Parties are unable to agree upon the extension of any Conditions Satisfaction Date within twenty (20) days following the expiration of the applicable Conditions Satisfaction Date despite their good faith efforts, then the Party benefited by the condition that has not been satisfied or waived by the applicable Conditions Satisfaction Date may terminate this Agreement upon ten (10) days written notice to the other Party without liability for costs or damages or triggering a default under this Agreement other than as set forth below. For the avoidance of doubt, if Purchaser terminates the Agreement pursuant to the terms of this Section 6(c), no Termination Payment or Design Cancellation Payment shall be payable by Purchaser hereunder. Each Party hereby covenants and agrees to use commercially reasonably and diligent efforts to cause the conditions precedent to such Party's obligations to be satisfied prior to applicable Conditions Satisfaction Date specified.

7. **Seller's Rights and Obligations**.

a. **Generally**. Seller shall develop, construct, finance, own, maintain and operate the System in accordance with this Agreement, all requirements of applicable law, all permits and governmental approvals, the Current Utility Tariff and/or Proposed Utility Tariff, as applicable, and Prudent Industry Practice. "**Prudent Industry Practice**" means those practices, methods and equipment, as changed from time to time, that: (i) when engaged in, or employed, are commonly used in the State of California in prudent electrical engineering, construction and operations to operate electricity equipment lawfully and with safety, reliability, efficiency and expedition; or (ii) in the exercise of reasonable judgment considering the facts known, when engaged in could have been expected to achieve the desired result consistent with applicable law, safety, reliability, efficiency, and expedition. Prudent Industry Practices are not limited to an optimum practice, method, selection of equipment or act, but rather are a range of acceptable practices, methods, selections of equipment or acts.

b. **Permits and Approvals**. Seller, with Purchaser's reasonable cooperation, shall use commercially reasonable efforts to obtain, maintain, comply with and, as necessary, renew and modify from time to time, at its sole cost and expense:

i. any zoning, land use and building permits required to construct, install and operate the System; and

ii. any agreements and approvals from the Utility necessary in order to interconnect the System to the Facility electrical system and/or the Utility's electric distribution system.

c. **Engineering and Construction Requirements.** All elements of design, engineering and construction of the System are Seller's responsibility. Seller shall design, engineer and construct the System in accordance with the engineering and construction requirements set forth on **Exhibit 6-1** hereto (the "**Engineering and Construction Requirements**") and timelines for milestones set forth on **Exhibit 8** (the "**Milestones**").

i. **Design Acceptance**. By the applicable Milestone date set forth on **Exhibit 8**, Seller shall provide Purchaser with a complete design and engineering plan, including blueprints, plans, engineering drawings, specifications and structural reports for the System (the "**Design Plans**") for Purchaser's review. Within thirty (30) days of receiving such plans, Purchaser shall provide Seller with (i) a letter accepting Seller's proposed Design Plans for the System, or (ii) a report explaining why the System cannot meet the structural support and weight standards that Purchaser provided to Seller; provided that if Seller does not receive a letter or a report within such thirty (30) day period, Purchaser shall be deemed to have accepted Seller's proposed Design Plans. If Purchaser delivers to Seller the report described in clause (ii) above, Seller shall revise the Design Plans so that the System meets the structural support and weigh standards of the Facility

and resubmit the Design Plans to Purchaser for approval within thirty (30) days of receipt of such report. Such resubmission shall restart the Design Plan acceptance process pursuant to this Section 7(c)(i); provided, Purchaser shall provide Seller with a letter accepting Seller's revised Design Plans for the System, or a report explaining why the System cannot meet the structural support and weight standards provided by Purchaser within fifteen (15) days of Seller's resubmittal. Notwithstanding the foregoing, Seller shall not be permitted to commence construction of the System until it has received a notice to proceed from Purchaser in accordance with Section 6(b)(iii).

ii. **Milestones**. Seller shall diligently pursue completion of all Milestones by the required dates set forth on **Exhibit 8**. The Parties agree that time is of the essence in connection with the completion of the System, and that Milestones for the development, financing and construction of the System must be achieved in a timely fashion. Upon becoming aware that Seller will, or is reasonably likely to, fail to achieve one or more Milestone(s) by the required date, for any reason including a Force Majeure Event, Seller shall so notify Purchaser in writing immediately. Such notice shall explain the cause of the delay, provide an updated date for achievement of the Milestone(s), and describe Seller's plan for meeting such Milestone(s). Seller's notice will also explain any impact such delay may have on any other Milestone, and the measures to be taken to mitigate such impact.

iii. **Mechanical Completion and Substantial Completion**. Seller shall notify Purchaser when full notice to proceed is issued to the contractor. Seller shall provide Purchaser with a copy of any certificate of mechanical completion or certificate of substantial completion from the contractor promptly following receipt thereof. Upon receipt of such certificate, Purchaser shall schedule an inspection of the System for a date, mutually agreeable to Seller and Purchaser, which is within ten (10) business days following Purchaser's receipt of the certificate of substantial completion or mechanical completion for the System. Following Purchaser's inspection of the System, Purchaser may, within five (5) business days of the inspection, prepare and provide to Seller a list of any observed defects or deficiencies in the construction work or discrepancies between installed equipment and workmanship and this Agreement or the Construction Agreement. If Seller disputes any items on Purchaser's list, the Parties shall promptly meet and confer in a good faith effort to resolve any such disputes. Seller shall be responsible for completion, correction, or otherwise addressing issues identified by Purchaser, and shall provide a written response to Purchaser setting forth the actions taken in response to such items or explaining why no action is necessary. If requested by Purchaser, Seller shall schedule and arrange a follow-up inspection for Purchaser and Seller after all items on Purchaser's list are resolved. For the avoidance of doubt, such items shall be corrected without cost to Purchaser. All items identified by Purchaser, except those items specifically excepted by mutual agreement between Purchaser and Seller, shall be completed before Seller accepts the certificate of mechanical completion or certificate of substantial completion, as applicable.

iv. **Reporting**. Seller shall provide bi-weekly (i.e. every other week) reports to Purchaser detailing the status of the design, engineering and construction of the System and Seller's progress in achieving the Milestones. Following the completion of the construction of the System, Seller shall deliver Purchaser a copy of As-Built drawings and copies of all executed warranties relating to the System. Seller will create, maintain and provide to Purchaser minutes of meetings between the representatives of Seller and Purchaser during the design, engineering and construction phase of the System. **"As-Built"** shall mean final record drawings based on redlines from the field reflecting the System as constructed.

v. **Force Majeure Event**. In the event that a Force Majeure event causes any delay in the achievement of a Milestone by the date set forth in **Exhibit 8**, such Milestone's deadline shall be extended, together with any Force Majeure event extensions for other Milestones, for a period not to exceed twelve (12) months in the aggregate. The extension of the deadline for any Milestone shall extend the deadline for all subsequent Milestones, provided that in no event shall the combined extensions for Force Majeure events for any or all of the Milestones exceed twelve (12) months. In the event the combined extensions for Force Majeure events for any or all Milestones exceeds twelve (12) months (but not prior to such time), Purchaser shall be permitted to exercise its rights pursuant to Section 18(d).

vi. **Waiver of Right**. Purchaser may, at its discretion, grant extensions for Milestones or waivers for Seller's failure to meet any of the Milestones, but in no way shall any such extension or waiver constitute a waiver of any future failures by Seller to meet other Milestones. For the avoidance of doubt, Purchaser's consent to extensions of the Milestones pursuant to Section 7(c)(v) shall not be required.

d. **Standard System Repair and Maintenance; Repair of Facility**. Seller shall construct and install the System at the Facility. During the Term, Seller will operate and perform all routine and emergency repairs to (including replacement of), and maintenance of, the System at its sole cost and expense, except for any repairs or maintenance resulting from the negligence, willful misconduct or breach of this Agreement by Purchaser, its employees, agents, contractors (other than Seller or Seller's contractors and subcontractors) or consultants (together with Purchaser, collectively, the "**Purchaser Parties**" and individually, a "**Purchaser Party**"). If the System is damaged or destroyed other than by the negligence or willful misconduct of any Purchaser Party, Seller shall promptly repair and restore the System to its pre-existing condition, subject to the provisions of this Section 7(d) and Section 15(a) below. The cost to repair, replace or restore any portion of the System due to the negligence or willful misconduct or breach of this Agreement by any Purchaser Party shall be paid by Purchaser. Seller and Purchaser shall use commercially reasonable efforts to coordinate scheduling of regular maintenance to minimize impacts to Facility operations and maximize System output of Energy during the months of May through October. Seller shall not be responsible for any work done by others on any part of the System unless Seller authorizes that work in advance in writing. Seller shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper environmental controls or improper operation or maintenance of the System by anyone other than Seller or Seller's contractors. If the System requires repairs for which Purchaser is responsible, Seller shall cause its contractor prepare a written estimate of the cost to make such repairs or replacements, calculated using standard market rates, and such repairs and replacements shall be made by Seller's contractor at Purchaser's sole cost and expense. If, based on the estimated cost of such replacement or repairs, Purchaser does not wish to have the System repaired or replaced, Purchaser may elect to terminate this Agreement pursuant to Section 3(c). Seller and any Financing Party may nullify such termination notice by written notice to Purchaser delivered on or before the expiration of such thirty (30) day period stating that Seller or the Financing Party has elected to pay for the cost of such replacement or repairs in excess of any insurance proceeds available from any insurance policy issued to Purchaser (which for purposes of clarification does not include Purchaser's self-insurance pool) by a third party insurance carrier (such carrier, a "**Third Party Insurance Carrier**" and such policy, a "**Third Party Insurance Policy**") which covers such loss or damage. Seller shall provide Purchaser with reasonable notice prior to accessing the Facility to make standard repairs. Seller shall promptly notify Purchaser of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System. Purchaser shall cooperate with Seller in good faith to cause proceeds from any Third Party Insurance Policy to be available to cover the cost of repairs to the System for which Purchaser is responsible to the extent such loss or damage is covered under the terms and conditions of such Third Party Insurance Policy.

e. **Breakdown Notice**. Seller shall notify Purchaser as soon as practicable and in any event within twenty-four (24) hours following Seller's discovery of (i) any material malfunction in the operation of the System or (ii) an interruption in the supply of electrical energy from the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.

f. **Suspension**. Notwithstanding anything to the contrary herein, Seller shall, for a total of forty-eight (48) daylight hours per calendar year during the Term, be entitled to suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System and such suspension of service shall not constitute a breach of this Agreement; provided, that Seller shall use commercially reasonable efforts to minimize any interruption in service to Purchaser. Purchaser shall not be obligated to pay for lost energy production due to (a) Seller system maintenance or repair pursuant to Section 7(d), unless such maintenance and repair is necessitated due to damage caused by the negligence, willful misconduct or breach of this Agreement by any Purchaser Party or (b) a Purchaser Scheduled Outage pursuant to Section 8(e) unless and except to the extent a Purchaser Scheduled Outage exceeds a total of forty-eight (48) daylight hours per calendar year (other than due to a Force Majeure event); provided, that Seller must notify Purchaser of any scheduled suspension at least forty-eight (48) hours in advance of the commencement of such scheduled suspension. In the event that suspensions exceed a total of forty-eight (48) daylight hours per calendar year for a reason other than a Force Majeure event or Purchaser's breach of this Agreement, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during such excess suspensions and shall pay Purchaser an amount equal to the sum of the net present value (using a discount rate of eight percent (8%)) of the excess, if any, of the reasonably expected cost of electric energy from the Utility (after taking into consideration adjustments for time of use) over the Contract Price for the reasonably expected production of the System during such excess suspensions and the payment of such amount by Seller to Purchaser shall be Purchaser's sole and exclusive remedy for such interruption.

g. **Use of Contractors and Subcontractors**. Seller shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement, provided however, that such contractors and subcontractors shall be duly licensed and shall provide any work in accordance with applicable industry standards. Notwithstanding the foregoing,

Seller shall continue to be responsible for the quality of the work performed by its contractors and subcontractors and shall require all contracts with all contractors and subcontractors to contain a provision requiring compliance by such contractor or subcontractor with this Agreement and naming Purchaser as a third party beneficiary (though Purchaser assumes no responsibility whatsoever concerning compensation or any other responsibility or liability to contractors or subcontractors). A list of pre-approved contractors and subcontractors to be used for construction of the System shall be scheduled on **Exhibit 4, Attachment B**. All contractors and subcontractors to be used for the construction of the System, other than those that may be scheduled on **Exhibit 4, Attachment B**, shall be subject to Purchaser's prior written consent, not to be unreasonably withheld.

h. **Liens and Payment of Contractors and Suppliers.** Seller shall not directly or indirectly cause, create, include, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the Facility, the Premises or any interest therein; provided, Seller shall be entitled to finance the System and assign its interest under this Agreement and the License granted hereunder pursuant to Section 19 below. Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement and shall keep the Facility free and clear of any liens related to such charges, except for those liens which Seller is permitted by law to place on the Facility following non-payment by Purchaser of amounts due under this Agreement. Seller shall promptly notify Purchaser in writing of the existence of any lien and promptly cause the same (other than Seller's liens for non-payment by Purchaser) to be discharged and released of record without cost to Purchaser. Seller shall indemnify Purchaser for all claims, losses, damages, liabilities and expenses resulting from any such liens filed against the Facility or the Premises; provided, however, that Seller shall have the right to contest any such lien, so long as it provides a statutory bond or other reasonable assurances of payment that either remove such lien from title to the Facility and the Premises or that assure that any adverse judgment with respect to such lien will be paid without affecting title to the Facility and the Premises.

i. **OSHA Compliance.** Seller shall ensure that all Occupational Safety and Health Act ("**OSHA**") requirements and other similar applicable safety laws or codes are adhered to in its performance under this Agreement.

j. **Security.** Seller shall be responsible for using commercially reasonable efforts to maintain the physical security of the System against known risks and risks that should have been known by Seller. Seller will not conduct activities on, in or about the System that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the Facility or the Premises.

k. **Records** Seller shall maintain any and all documents and records which demonstrate performance under this Agreement, and all ledgers, books of account, invoices, vouchers, cancelled checks, and other documents evidencing or relating to charges for services, or expenditures and disbursements charged to Purchaser for a minimum period of five (5) years, or for any longer period required by law, from the date of final payment to Seller pursuant to this Agreement. Any documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at any time during regular business hours, upon five (5) days prior written request by a designated representative of Purchaser. Seller shall not charge Purchaser for Purchaser's inspection of records; provided, Purchaser shall pay any copying or other reproduction costs and for the cost of any audit made at Purchaser's election. Seller shall provide copies of such documents to Purchaser for inspection at Seller's office or at such place as Seller maintains such records at a time that is mutually acceptable to Purchaser and Seller. Where Purchaser has reason to believe that any of Seller's documents relating to this Agreement may be lost or discarded due to dissolution, disbandment or termination of Seller's business, Purchaser may, by written request by any of the above-named officers, require that custody of Seller's documents be given to Purchaser. Seller shall comply with Purchaser's reasonable written request.

l. **Contractor's Warranties; Cooperation**. Subject to the Financing Party's rights pursuant to Section 19 below, if Seller fails to replace or repair the System as required pursuant to Section 7(d) above, and such failure continues for more than thirty (30) days following Purchaser's written notice to Seller, Purchaser shall have the right, at Seller's cost and expense, to enforce the terms and conditions of any warranty issued to Seller in connection with the System and Seller shall take all reasonable action necessary to enable Purchaser to enforce the terms and conditions of such warranties. Seller shall cause Purchaser to be named as an express third party beneficiary to any warranty provision pertaining to the System contained in any contract between Seller and its general contractor Sunetric and supplier Danlin Solar. Seller shall use commercially reasonable efforts to cause Purchaser to be named as an express third party beneficiary to any warranty provision pertaining to the System contained in any contract with any other subcontractor or material supplier. Seller shall, and shall cause its contractors and subcontractors to, work with Purchaser's existing roofing contractors and manufacturers to ensure original roof warranties, if applicable, stay in effect while the System is installed and operating. The Parties acknowledge that cooperation by Purchaser's existing

roofing contractors will be required to maintain original roof warranties. Should existing roofing contractors be unwilling to maintain original roof warranties, Seller will inform Purchaser of such fact in writing, and Purchaser will advise Seller on how to proceed.

m. **Energy Delivery**. Beginning on the Commercial Operation Date, the System shall produce not less than ninety percent (90%) of the applicable Expected Contract Quantity for any given Contract Year as adjusted for Abnormal Weather Conditions, measured on a rolling, three (3) year cumulative basis, unless, and then only to the extent that, the failure to satisfy the Expected Contract Quantity for a given Contract Year is due to (a) Facility failure, damage or downtime attributable to third parties (other than Seller's contractors and subcontractors); (b) general utility outages or any failure of an applicable electric grid; (c) a Force Majeure Event; or (d) Purchaser's failure to satisfy its obligations hereunder. "**Abnormal Weather Conditions**" shall mean weather conditions which were abnormal for the period of time and could not have been reasonably anticipated, as substantiated with documentation including U. S. Weather Bureau Climatological Reports for the months involved plus a report indicating the average precipitation, temperature, etc., for the past ten (10) years from the nearest reporting station, which such ten-year average will be the basis for determining the number of adverse weather days that could have been reasonably and normally anticipated by Seller. Subject to the terms and conditions of this Agreement, beginning within sixty (60) days of the third anniversary of the Commercial Operation Date and for every Contract Year thereafter, if the delivered Energy of such System for the three (3) year period prior to such anniversary does not equal or exceed ninety percent (90%) of the Expected Contract Quantity for such three (3) year period, Seller will credit Purchaser on its net invoice, an amount equal to the product of (i) the positive difference, if any, of the average price per kWh for the current Utility rate schedule (after taking into consideration adjustments for time of use) during such three (3) year period minus the Contract Price hereunder, multiplied by (ii) the difference between the Energy for such three (3) year period and ninety percent (90%) of the Expected Contract Quantity for such three (3) year period, less any credit previously given covering the same period. This performance guarantee shall remain in place for twenty (20) years from the Commercial Operation Date.

i. **Limitations**. Pursuant to this Section 7(m), the Parties recognize and agree that (a) payment or credit of amounts by Seller to Purchaser is an appropriate remedy, (b) that the amount credited or paid in any year shall not exceed an amount equal to Twenty Five Dollars ($25.00) per DC kW of System size (the "**Production Guaranty Cap**"), (c) any such payment or credit does not constitute a forfeiture or penalty of any kind, but rather constitutes anticipated costs of Purchaser under the terms of this Agreement, and (d) that such amounts shall be Purchaser's sole and exclusive remedy for any performance guarantee claim arising out of this Agreement. At the commencement of the first anniversary of the Commercial Operation Date and at the commencement of each Contract Year thereafter, the Production Guaranty Cap shall be increased by an amount equal to three percent (3%) of the Production Guaranty Cap in effect for the prior Contract Year.

8. **Purchaser's Rights and Obligations**.

a. **License to the Premises; Facility Access Rights**. Subject to Section 8(a)(i) below, during the License Term, Purchaser grants to Seller and to Seller's agents, employees, contractors and assignees an irrevocable non-exclusive license running with the Premises (the "**License**") for access to, on, over, under and across the Premises for the purposes of (i) installing, constructing, operating, owning, maintaining, accessing, removing and replacing the System and conducting inspections and studies related thereto; (ii) performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement; and (iii) installing, using and maintaining electric lines and equipment, including inverters and meters necessary to interconnect the System to Purchaser's electric system at the Facility, to the Utility's electric distribution system, if any, or for any other purpose that may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance or repair of the System.

i. **Construction License**. During the Construction License Term, Purchaser grants Seller and Seller's contractors and subcontractors a non-exclusive license to use an area of the Premises to be designated by the Purchaser and reasonably acceptable to Seller exclusively as a laydown and construction staging area and for temporary storage (the "**Construction License**"). Notwithstanding Purchaser's grant of the License, all of Seller's construction-related activities must be confined to the area granted in the Construction License. Purchaser shall have no liability whatsoever in connection with property or equipment located in the area of the Construction License, excluding damage caused by the gross negligence or intentional misconduct of any Purchaser Party, and Seller shall indemnify Purchaser for any and all claims arising from the maintenance of such property or equipment; provided, Seller shall not be obligated to indemnify Purchaser for any loss, liability or claims arising out of the gross negligence or intentional misconduct of any Purchaser Party.

ii. **License Terms**. The term of the License shall continue until the date that is one hundred and eighty (180) days following the date of expiration or termination of this Agreement (the "**License Term**"). The term of the Construction License shall continue until the date that is the final completion date pursuant to the terms of the Construction Agreement (the "**Construction License Term**"). During the License Term and the Construction License Term, Purchaser shall ensure that Seller's rights under the License and the Construction License, as applicable, and Seller's access to the Premises and the Facility are preserved and protected. Purchaser shall not interfere with nor shall permit any third parties to interfere with such rights or access.

iii. **Parking Interference**. Notwithstanding Seller's rights under the License and the Construction License, Seller shall not be permitted to occupy any portion of the Premises in a manner that would cause one or more parking spaces to be unavailable for use without the prior written consent of Purchaser, which shall not be unreasonably withheld.

iv. **Notice of Entry**. Seller shall notify Purchaser at least twenty-four (24) hours prior to entering the Facility except in situations where there is imminent risk of damage to persons or property.

v. **Memorandum**. Seller may, at its sole cost and expense, record such memorandum of License in the form of **Exhibit 5** or other form agreed by the Parties with the appropriate land registry or recorder's office.

b. **OSHA Compliance**. Purchaser shall ensure that all OSHA requirements and other similar applicable safety laws or codes are adhered to in its performance under this Agreement.

c. **Maintenance of Facility; System**. Purchaser shall, at its sole cost and expense, maintain the Facility in good condition and repair; except for any repairs or maintenance resulting from the negligence, willful misconduct or breach of this Agreement by Seller, its employees, agents, contractors or consultants (together with Seller, collectively, the "**Seller Parties**" and individually, a "**Seller Party**"). If the Facility is damaged or destroyed by casualty of any kind or any other occurrence other than the negligence or willful misconduct of any Seller Party, such that the operation of the System and/or Purchaser's ability to accept the electric energy produced by the System are impaired or prevented, Purchaser shall promptly repair and restore the Facility to its pre-existing condition, subject to the provisions of Section 15(b). The cost to repair or replace any portion of the Facility due to the negligence or willful misconduct or breach of this Agreement by any Seller Party shall be paid by Seller. Purchaser shall not be responsible for any work done by others on any part of the Facility unless Purchaser authorizes that work in advance. Purchaser will use commercially reasonable efforts to ensure that the Facility remains interconnected to the local utility grid at all times and will not intentionally permit cessation of electric service to the Facility from the local utility, except during operational testing of back-up systems, not to exceed an aggregate of three (3) days in any Contract Year. Purchaser is fully responsible for the maintenance and repair of the Facility's electrical system and of all of Purchaser's equipment that utilizes the System's outputs, except to the extent required as a result of damage caused by the negligence, intentional misconduct or breach of this Agreement by any Seller Party. Purchaser shall promptly notify Seller of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System. Nothing in this Section shall remove Seller's obligation to maintain all locations of physical attachment between Systems and their applicable Facilities, such as roof penetrations, parking lot posts, etc. Seller shall be responsible to pay for the cost of any replacement or repair to the Facility required due to any damage to the Facility caused by the negligence, willful misconduct or breach of this Agreement by any Seller Party.

d. **No Alteration of Facility**. If Purchaser wishes to make any alterations or repairs to the Facility that could adversely affect the operation and maintenance of the System, Purchaser shall give prior written notice to Seller, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone), and give Seller the opportunity to advise Purchaser in making such alterations or repairs in a manner that avoids damage to the System and interference with System operations. To the extent that temporary disconnection or removal of the System or interference with the operation of the System is necessary to perform such alterations or repairs, (i) any such disconnection, removal or other alteration of the System shall be completed by Seller's contractors or contractors approved in advance in writing by Seller, in accordance with a procedure and schedule approved in advance in writing by Seller and Purchaser at Purchaser's sole cost and expense, (ii) to the extent the outage results in Purchaser exceeding its permitted Scheduled Outages pursuant to Section 8(e) below, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during such excess Scheduled Outages and shall invoice Purchaser for such amount in accordance with Section 4, and (iii) such work and any replacement of the System after completion of Purchaser's alterations and repairs, shall be done by Seller or its contractors at Purchaser's cost. All of Purchaser's alterations and repairs will be done in a good and workmanlike manner and in compliance with all

applicable laws, codes and permits. Purchaser shall be responsible to pay for the cost of any replacement or repair to the System required due to any damage to the System caused by the negligence, willful misconduct or breach of this Agreement any Purchaser Party. In performing its obligations under this Section 8(d), Seller shall use commercially reasonable efforts to incur costs reimbursable by Purchaser at standard market rates; provided, that Seller's reimbursable costs incurred in connection with the removal and replacement of the System shall not exceed an amount equal to Four Hundred and Twenty Dollars ($420) per kW, as adjusted for inflation on the first day of each Contract Year by the Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco area published by the Bureau of Labor Statistics. For purposes of clarification, Purchaser shall be responsible for all improvements, upgrades or repairs to the Facility, and Seller shall have no obligation to perform or pay for any improvements, upgrades or repairs to the Facility, except for any repairs resulting from the negligence, willful misconduct or breach of this Agreement by a Seller Party.

e. **Outages.** Purchaser shall be permitted to be off line for a total of forty-eight (48) daylight hours (each, a "**Scheduled Outage**") per calendar year during the Term, during which days Purchaser shall not be obligated to accept or pay for electricity from the System; provided, however, that Purchaser must notify Seller in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of a Scheduled Outage. In the event that Scheduled Outages exceed a total of forty-eight (48) daylight hours per calendar year or there are unscheduled outages caused or initiated by any Purchaser Party or necessitated due to damage to the Facility or the System for which Purchaser is responsible pursuant to this Agreement, in each case for a reason other than a Force Majeure event, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during such excess Scheduled Outages or unscheduled outages and shall invoice Purchaser for such amount in accordance with Section 4.

f. **Liens.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Purchaser shall promptly notify Seller in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, and shall promptly cause the same to be discharged and released of record without expense to Seller or any Financing Party. Notwithstanding anything else herein to the contrary, pursuant to Section19(a), Seller may grant a lien on the System and may assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party, but no Financing Party lien may be placed on the Facility or the Premises of Purchaser.

g. **Security.** Purchaser shall be responsible for using commercially reasonable efforts to maintain the physical security of the Facility against known risks and risks that should have been known by Purchaser. Purchaser will not conduct activities on, in or about the Premises or the Facility that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System, with the exception of activities that are regularly conducted as part of the Facility's normal operations.

h. **Insolation.** Purchaser understands that unobstructed access to sunlight ("**Insolation**") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not in any way intentionally cause and, where reasonably possible, shall not in any way permit any material interference with the System's Insolation. If Purchaser becomes aware of any activity or condition that could materially diminish the Insolation of the System, Purchaser shall promptly notify Seller and shall reasonably cooperate with Seller in attempting to preserve the System's existing Insolation levels. Encroachment upon Insolation due to acknowledged pre-existing conditions, or due to privately-owned development or growth outside Purchaser's control, are not subject to Purchaser's obligations pursuant to this Section 8(h). Upon Seller's written request, Purchaser will reasonably cooperate with Seller, at no expense to Purchaser, to secure a solar easement from a third party for the Premises to prevent other buildings, structures or flora from overshadowing or otherwise blocking access of the sunlight to the System.

i. **Data Line.** Purchaser shall provide Seller access to a high speed internet data line during the Term to enable Seller to record the electric energy generated by the System. Seller is responsible for providing all means of connection to the identified high speed internet data line, including boring, conduit, and wire, as applicable. If Purchaser fails to provide access to such high speed internet data line, Seller may install and operate a cellular modem communications device to acquire the necessary production data at Purchaser's expense.

j. **Breakdown Notice.** Purchaser shall make reasonable attempts to notify Seller within twenty-four (24) hours following the discovery by it of (i) any material malfunction in the operation of the System; or (ii) any occurrences that could reasonably be expected to materially and adversely affect the System. Purchaser shall notify Seller as soon as possible upon the discovery of an emergency condition respecting the System. Purchaser and Seller shall each

designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.

9. Change in Law.

"**Change in Law**" means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation; (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date of this Agreement (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority which in the case of any of (i), (ii) or (iii), establishes requirements affecting owning, supplying, constructing, installing, operating or maintaining the System, or other performance of the Parties' obligations hereunder and which has a material adverse effect on the cost to Seller of performing such obligations; provided, that a change in federal, state, county or any other tax law after the Effective Date of this Agreement shall not be a Change in Law pursuant to this Agreement.

If any Change in Law occurs that has a material adverse effect on the cost to Seller of performing its obligations under this Agreement, then the Parties shall, within thirty (30) days following receipt from Seller of notice of such Change in Law, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller shall have the right to terminate this Agreement and neither Party shall have further liability to the other Party except with respect to payment of amounts accrued prior to termination. For the avoidance of doubt, if Seller terminates the Agreement pursuant to the terms of this Section 9, no Termination Payment shall be payable by Purchaser hereunder.

10. Relocation of System.

a. **System Relocation**. If Purchaser ceases to conduct operations at the Facility, or resolves to make an alternate use of some or all of the parking areas where the Facility is located, or otherwise vacates the Facility prior to the expiration of the Term, Purchaser shall have the option to provide Seller with a mutually agreeable substitute premises located within the same Utility district as the terminated System or in a location with similar Utility rates and Insolation. Purchaser shall provide written notice at least ninety (90) days but not more than one hundred eighty (180) days prior to the date that it wants to make this substitution. In connection with such substitution, Purchaser shall execute an amended agreement (a "**Relocation Amendment**") that shall have all of the same terms as this Agreement except for the (i) License and Construction License, which will be amended to grant rights in the real property where the System relocated to; and (ii) Term, which will be equal to the remainder of the Term of this Agreement. Such Relocation Amendment shall be deemed to be a continuation of this Agreement without termination. Purchaser shall also provide any new consents, estoppels, or acknowledgments reasonably required by Financing Parties and in form and substance reasonably acceptable to Purchaser in connection with the substitute premises.

b. **Costs of Relocation**. Purchaser shall pay all costs associated with relocation of the System, including all costs and expenses incurred by or on behalf of Seller in connection with removal of the System from the Facility, the repair and restoration of the Facility as pursuant to Section 11 below, all costs of engineering, design, permitting, procurement of new System components, installation and testing of the System at the substitute facility, all costs to comply with CEQA, all applicable permit and interconnection fees and expenses at the substitute facility, the costs of new title search and other out-of-pocket expenses connected to preserving and refiling the security interests of Seller's Financing Parties in the System and any costs incurred by Seller to modify financing documents or obtain any Financing Party's consent to such relocation; provided, that (i) Purchaser and Seller shall cooperate in good faith to determine such costs and expenses prior to commencing with the System relocation and (ii) such actual costs and expenses paid by Purchaser shall be reasonable, documented and submitted to Purchaser promptly after the completion of the relocation. In addition, Seller shall reasonably estimate and invoice Purchaser for the amount of electricity that would have been delivered to Purchaser during the relocation of the System and Purchaser shall pay such invoiced amounts to Seller pursuant to Section 4(d) above.

c. **Adjustment for Insolation; Termination**. Seller shall remove the System from the vacated Facility at Purchaser's sole cost, within 45 days following the full execution of the Relocation Amendment by the Parties and Purchaser's written direction to Seller to remove the System from the Facility. Seller shall restore the Facility to the condition required pursuant to Section 11 below at Purchaser sole cost and expense. If the substitute facility has inferior Insolation as compared to the original Facility, Seller shall have the right to include an adjustment to **Exhibit 1** in the Relocation Amendment, to be agreed to prior to commencing with the System relocation, such that Purchaser's payments to Seller are the same as if the System were located at the original Facility. If Purchaser is unable to provide

such substitute facility and to relocate the System as provided, the Agreement will deemed to be terminated by Purchaser pursuant to Section 3(c)(ii) and Purchaser shall promptly pay the applicable Termination Payment specified on Exhibit 4.

11. **Removal of System at Expiration**.

a. **Removal Obligations**. Upon the expiration or earlier termination of this Agreement (provided Purchaser does not exercise its purchase option), Seller shall, at its expense, remove all of its tangible property comprising the System from the Facility on a mutually convenient date, but in no event later than one hundred eighty (180) days after the expiration of the Term. The Facility shall be returned to a condition at least as good as its original condition and in compliance with then-applicable building codes; provided, that Purchaser will be responsible for any cost of restoring the Facility to then-applicable building codes in excess of the estimated cost to restore the Facility to its original condition, ordinary wear and tear, alterations made by Purchaser and unrepaired damage caused by Purchaser or third parties excluded. Seller's obligations under this Section 11 shall include the removal of System mounting pads or other support structures installed by Seller. In no case shall Seller's removal of the System affect the integrity of Purchaser's roof, which shall be as leak proof as it was prior to removal of the System and shall be flashed and/or patched to existing roof specifications and Purchaser's then-existing roof warranties. Seller shall leave the Facility in neat and clean order. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser shall have the right, at its option, to remove the System to a public warehouse and restore the Facility to its original condition (other than ordinary wear and tear) at Seller's cost. Purchaser shall provide sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during System removal.

b. **Decomissioning Fund**. No later than three hundred sixty five (365) days prior to the commencement of the sixth (6th) Contract Year, Seller shall provide Purchaser a written estimate of the cost to remove the System and restore the Facility as required pursuant to Section 11(a). The Parties shall meet and confer within thirty (30) days after such written estimate is received by Purchaser to resolve any concerns regarding such estimated cost. Seller shall provide one of the following forms of security for the cost to remove the System and restore the Facility to the required condition beginning on the first day of the sixth (6th) month of the sixth (6th) Contract Year: (i) a performance bond covering such cost, (ii) an investment or deposit account established with a financial institution reasonably satisfactory to Purchaser, or (iii) a guaranty or letter of credit issued by a financial institution reasonably satisfactory to Purchaser. If Seller elects to provide security in the form of an investment or deposit account pursuant to clause (ii) above, (a) Seller shall fund such account in 27 equal installments, with each installment to be paid once every sixth (6th) months, and (b) concurrently with the opening of such investment or deposit account, the Parties shall enter into an agreement setting forth the terms and conditions by which withdrawals of the funds on deposit in such account can be made, which terms and condition shall be consistent with the terms hereof. Such security shall secure the costs to remove the System and restore the Facility to the condition required pursuant to Section 11(a) and Seller shall not be permitted to use such security for any other purpose. For avoidance of doubt, any funds remaining after the removal of the System and restoration of the Facility are the sole property of Seller. Seller, in its sole discretion, shall determine which form of security to post, and may replace one form of security for another form of security in an equal amount from time to time. In the event of a Seller Bankruptcy Event or Seller fails to remove the System within one hundred eighty (180) days of the expiration of the term or earlier termination of this Agreement, Purchaser shall have the right to use the applicable security and funds for the sole purpose of removal of the System and restoration of the Facility to the required condition and any remaining funds shall remain the property of the Seller or the Seller's Financing Parties, as applicable.

12. **Measurement**.

a. **Meters**. The transfer of Energy from Seller to Purchaser shall be measured by a meter (a "**Meter**") at the Delivery Point, which shall be selected, provided, installed, owned, maintained, programmed, tested and operated, at Seller's sole cost and expense, by Seller or its designee. Meters and all metering activities shall comply with all applicable requirements of the Current/Proposed Utility Tariffs set forth on **Exhibit 2** and the interconnection agreement between Pacific Gas & Electric Company and Purchaser. A monitoring system with real time monitoring of the quantities and quality of Energy generated by the System shall also be installed for the System. Seller shall exercise reasonable care in the maintenance and operation of the Meters and the monitoring system and shall test and verify the accuracy of each Meter at least once every two (2) years. Seller shall inform Purchaser in advance of the time and date of these tests, and shall permit Purchaser to be present at such tests and to receive the results of such tests. Metering must have an equivalent accuracy of plus or minus two percent (2%) or better and monitoring results from Seller's Performance Monitoring and Reporting Service ("**PMRS**") that is viewable by Purchaser at all times through an online portal.

Eligible meters and PMRS providers must be listed as approved on the Go Solar California website. If testing of the metering equipment indicates that such equipment is in error by more than two percent (2%), then Seller shall promptly repair or replace such equipment. Seller shall make a corresponding adjustment to the records of the amount of electricity delivered by the Facility based on such test results for (i) the actual period of time when such error caused inaccurate Meter readings, if that period can be determined to the mutual satisfaction of the Parties, or (ii) if such period cannot be so determined, then a period equal to one-half of the period from the later of the date of the most recent test confirming accurate metering or the date the Meter was placed into service, but not to exceed twelve (12) months. After the Commercial Operation Date, Seller shall install, own and maintain, at its sole cost and expense, communications equipment and services necessary to allow remote reading of the Meters (including pursuant to the requirements of any interconnection agreement). Seller shall at its sole cost and expense, install any updates or upgrades to the Meters, and all associated measuring equipment necessary to permit an accurate determination of the quantities of Energy delivered under this Agreement, in addition to accurate weather information.

b. **Interactive Display for Generating Facilities**. At a single location of Purchaser's choice, Seller will install a single monitor for viewing by the general public consisting of a 36" flat panel screen with a computer and keyboard sufficient to view the data acquisition system ("**DAS**") monitoring of the System (the "**Interactive Display**"). The Interactive Display shall be housed in a cabinet, or on a wall, and the design, aesthetics, and cost of the Interactive Display shall be mutually agreed upon by Purchaser and Seller. Purchaser shall allow Seller to use a 120v electrical outlet and data outlet located at the mutually agreed upon location which will be within a reasonable distance of an existing 120v electrical outlet or circuit. The total installed cost to Seller of such Interactive Display shall not exceed Two Thousand and 00/100 US Dollars ($2,000). Following installation of the Interactive Display by Seller, Purchaser shall be responsible for all costs to repair, maintain and operate the hardware comprising the Interactive Display.

13. **Default, Remedies and Damages**.

a. **Default**. Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below shall be deemed a "**Defaulting Party**" and each event of default shall be a "**Default Event**":

i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within thirty (30) days following receipt of written notice from the other Party (the "**Non-Defaulting Party**") of such failure to pay ("**Payment Default**");

ii. failure of a Party to substantially perform any other material obligation under this Agreement within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that such thirty (30) day cure period shall be extended (but not beyond ninety (90) days) if and to the extent reasonably necessary to cure the Default Event, if (A) the Defaulting Party initiates such cure with the thirty (30) day period and continues such cure to completion and (B) there is no material adverse effect on the Non-Defaulting Party resulting from the failure to cure the Default Event;

iii. if any representation or warranty of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;

iv. Purchaser loses its rights to occupy and enjoy the Premises;

v. a Party, becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect; or

vi. Following the Commercial Operation Date, Seller fails to deliver at least 50% of its Expected Contract Quantity for such Contract Year, for two (2) consecutive years.

b. **Remedies**.

i. **Remedies for Payment Default**. If a Payment Default occurs, the Non-Defaulting Party may suspend performance of its obligations under this Agreement. Further, the Non-Defaulting Party may pursue any

remedy under this Agreement, at law or in equity, including an action for damages and may terminate this Agreement, upon five (5) days prior written notice to the Defaulting Party following the Payment Default.

ii. **Remedies for Other Defaults**. On the occurrence of a Default Event other than a Payment Default, the Non-Defaulting Party may pursue any remedy under this Agreement, at law or in equity, including an action for damages and may terminate this Agreement or suspend performance of its obligations under this Agreement, upon five (5) days prior written notice to the Defaulting Party following the occurrence of the Default Event. Nothing herein shall limit either Party's right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event.

iii. **Damages Upon Termination by Default**. Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party, the Defaulting Party shall pay a Termination Payment to the Non-Defaulting Party determined as follows (the "**Termination Payment**"):

A. Purchaser. If Purchaser is the Defaulting Party and Seller terminates this Agreement, the Termination Payment to Seller shall be equal to, for any given Contract Year, the amount set forth on **Exhibit 4, Attachment A** attached hereto, which annual amounts are calculated as (x) the sum of (1) reasonable compensation, on a net after tax basis assuming a tax rate of thirty five percent (35%), for (a) the loss or recapture of the investment tax credit equal to thirty percent (30%) of the System value, and (b) other financing and associated costs, (2) the net present value (using a discount rate of eight percent (8%)) of the projected payments over the Term post-termination, had the Term remained effective for the full Initial Term, (3) removal costs as provided in Section 13(b)(iii)(C) and (4) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Seller, less (y) any amount equal to the proceeds received by Seller in the sale of the System equipment and components which Seller shall use commercially reasonable efforts to consummate. The Parties agree that actual damages to Seller in the event this Agreement terminates prior to the expiration of the Term as the result of a Default Event by Purchaser would be difficult to ascertain, and the applicable Termination Payment is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement. The Termination Payment shall not be less than zero.

B. Seller. If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser shall be equal to the sum of (1) the net present value (using a discount rate of eight percent (8%)) of the excess, if any, of the reasonably expected cost of electric energy from the Utility (after taking into consideration adjustments for time of use) over the Contract Price for the reasonably expected production of the System for the remainder of the Initial Term or the then current Additional Term, as applicable, (2) all costs reasonably incurred by Purchaser in re-converting its electric supply to service from the Utility, (3) any removal costs incurred by Purchaser, and (4) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The Termination Payment shall not be less than zero.

C. Obligations Following Termination. If a Non-Defaulting Party terminates this Agreement pursuant to this Section 13(b), then following such termination, Seller shall comply with its obligations set forth in Section 11 at the sole cost and expense of the Defaulting Party. The Non-Defaulting Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event.

iv. **Purchaser's Right to Operate**. If a Seller Default Event occurs under Section 13(a), subject to the rights of the Financing Parties pursuant to Section 19 below, then Purchaser or its designee may, but shall not be obligated to, step-in and assume operational control from Seller of the System. Purchaser, its employees, contractors and designees shall have the unrestricted right to enter the System to the extent necessary to operate the System. Notwithstanding the foregoing, Seller shall not be excused from any obligation or remedy available to Purchaser as a result of the Purchaser's operation of, or election not to operate, the System. Purchaser shall pay Seller the applicable Contract Price for Energy provided hereunder, less any costs incurred by Purchaser to operate the System. Upon Purchaser's satisfaction that Seller has the ability to operate the System in accordance with this Agreement, Seller shall resume operational control. In the event Purchaser exercises its right under this section 13(b)(iv) to operate the System, the operation of the System

by Purchaser shall not void any warranty to which Purchaser is otherwise entitled provided Purchaser does not alter the System.

14. Representations and Warranties.

a. General Representations and Warranties. Each Party represents and warrants to the other the following:

i. **Due Organization, Etc.** Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and shall not violate any law or organizational document of such Party; and this Agreement is valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).

ii. **Governmental Approvals.** Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.

b. Purchaser's Representations and Warranties. Purchaser represents and warrants to Seller the following:

i. **License.** Purchaser has the full right, power and authority to grant the License contained in Section 8(a) and to enter into and perform all of Purchaser's obligations under this Agreement and any interconnection agreement entered into with the Utility. Such grant of the License and performance hereunder and under such interconnection agreement does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Facility and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Facility. If Purchaser does not own the Premises or Facility, Purchaser has obtained all required consents from the owner of the Premises and/or Facility to grant the License and enter into and perform its obligations under this Agreement.

ii. **Other Agreements.** Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser or the Facility is bound.

iii. **Accuracy of Information.** All information provided by Purchaser to Seller, as it pertains to the Facility's physical configuration, Purchaser's planned use of the Facility, and Purchaser's estimated electricity requirements, is accurate in all material respects to the extent of knowledge of the individual supplying the information.

iv. **Purchaser Status.** Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.

v. **No Pool Use.** No electricity generated by the System will be used to heat a swimming pool.

c. Seller's Representations and Warranties. Seller represents and warrants to Purchaser the following:

i. **Other Agreements.** Neither the execution and delivery of this Agreement by Seller nor the performance by Seller of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Seller is a party or by which Seller or the System is bound.

ii. **No Litigation.** There are no actions, suits, proceedings or investigations pending or, to the knowledge of Seller, threatened in writing against Seller, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a material adverse effect on the business, properties or assets or the condition, financial or otherwise, of Seller, or to result in any impairment of Seller's ability to perform its obligations under this Agreement.

iii. **Environmental Attributes**. Prior to conveyance to Purchaser, Seller holds and will hold until conveyed to Purchaser, the rights to all Environmental Attributes, which it has committed to convey to Purchaser hereunder.

iv. **Intellectual Property**. All of the intellectual property used by Seller in the conduct of its business or otherwise in its possession is either validly licensed or owned solely by Seller and Seller has the exclusive right to use and possess such intellectual property for the life thereof.

v. **Solvency**. From and after the Conditions Satisfaction Date, Seller shall have obtained financing commitments or otherwise have available to it financial resources sufficient to permit Seller to timely perform its obligations hereunder in accordance with the terms of this Agreement.

15. **System and Facility Casualty and Insurance**.

a. **System and Facility Casualty at End of Term**.

i. **System**. Notwithstanding Seller's obligations in Section 7(d), if more than fifty percent (50%) of the System is destroyed during the last five (5) years of the Initial Term or during any Additional Term, Seller shall not be required to restore the System, but may instead terminate this Agreement and pay Purchaser an amount equal to the net present value (using a discount rate of eight percent (8%)) of the excess, if any, of the reasonably expected cost of electric energy from the Utility (after taking into consideration adjustments for time of use) over the Contract Price for the reasonably expected production of the System for the remainder of the Initial Term or the then current Additional Term, as applicable, unless Purchaser agrees (A) to pay for the cost of such restoration of the System or (B) to purchase the System "AS-IS" at the Fair Market Value of the System.

ii. **Facility**. Notwithstanding Purchaser's obligations in Section 8(c), if more than 50% of the Facility is destroyed during the last five years of the Initial Term or during any Additional Term, Purchaser may elect either (A) to restore the Facility or (B) to pay the Termination Payment and all other costs previously accrued but unpaid under this Agreement and thereupon terminate this Agreement.

iii. **Responsibility for Cost to Repair and Restore**. Nothing in this Section 15(a) shall alter the obligation of either Party to pay for the cost to repair and restore any damage caused by such Party as provided in this Agreement.

b. **Insurance Coverage**. At all times during the Term, Seller and Purchaser shall maintain the following insurance:

i. **Seller's Insurance**. Seller shall obtain and maintain the policies of insurance in amounts and with coverage as set forth on **Exhibit 9**.

ii. **Purchaser's Insurance**. Purchaser shall maintain property insurance in an amount equal to the full replacement cost of the Facility and commercial general liability insurance with coverage of at least Five Million Dollars ($5,000,000) per occurrence and Ten Million Dollars ($10,000.000) annual aggregate.

c. **Policy Provisions**. All insurance policies provided by Seller hereunder shall (i) contain a provision whereby the insurer agrees to give the party not providing the insurance (a) not less than ten (10) days written notice before the insurance is cancelled, or terminated as a result of non-payment of premiums, or (b) not less than thirty (30) days written notice before the insurance is otherwise cancelled or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other party. Purchaser shall give Seller written notice of any cancellation, termination or non-renewal of insurance coverage within ten (10) days of obtaining knowledge thereof. Each Party shall ensure that the other Party is named as an additional insured on its commercial general liability policy. All Financing Parties shall be named as additional insureds on Purchaser's commercial general liability policies.

d. **Certificates**. Annually and upon request by Purchaser, Seller shall deliver to Purchaser certificates of insurance evidencing the required coverage set forth on **Exhibit 9** and a copy of the policy endorsement that adds Purchaser as an additional insured to the applicable commercial general liability insurance policy. Annually, Purchaser shall deliver to Seller a certificate of coverage provided to Seller by the California Joint Powers Risk Management Authority

("**CJPRMA**"), a California public agency risk sharing pool of which Purchaser is a member, and a copy of a certificate from Purchaser naming Seller and its Financing Parties as additional insureds to Purchaser's self-insurance pool for commercial general liability losses. Upon request by Seller, Purchaser shall deliver to Seller a copy of the memorandum of coverage provided by CJPRMA and available on its website. A Party's receipt, review or acceptance of any such certificate or memorandum shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.

e. **Deductibles.** Unless and to the extent that a claim is covered by an indemnity set forth in this Agreement, each Party shall be responsible for the payment of its own deductibles.

f. **Waiver of Subrogation.** Seller and Purchaser hereby mutually waive their respective rights of recovery against each other for any loss of, or damage to, either parties' property with respect to loss of, or damage to the extent that such loss or damage is insured by an Third Party Insurance Policy issued by a Third Party Insurance Carrier applicable to the System, Facility or other property of Seller or Purchaser. Each party shall obtain any special endorsements, if required by its Third Party Insurance Carrier, whereby the Third Party Insurance Carrier waives its rights of subrogation against the other party as required by this Section 15(f). This provision is intended to waive fully, and for the benefit of the Parties hereto, any rights and/or claims which might give rise to a right of subrogation in favor of any Third Party Insurance Carrier.

16. **Ownership; Option to Purchase.**

a. **Ownership of System.** Throughout the Term, Seller shall be the legal and beneficial owner of the System at all times (excluding all Environmental Attributes), and the System shall remain the personal property of Seller and shall not attach to or be deemed a part of, or fixture to, the Facility or the Premises. Each of Seller and Purchaser agree that Seller (or the designated assignee of Seller permitted under Section 19) is the tax owner of the System and all tax and accounting filings and reports will be filed in a manner consistent with this Agreement. It is the intent of Seller and Purchaser that the System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code and shall not be characterized, considered or deemed a fixture or affixed to or a part of the Facility or the Premises. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Purchaser shall, at Seller's cost, use commercially reasonable efforts to provide a disclaimer or release from such lienholder upon Seller's written request. If Purchaser is the fee owner of the Premises, Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the County office where real estate records are customarily filed in the jurisdiction where the Facility is located. If Purchaser is not the fee owner, Purchaser, at Seller's cost, will use commercially reasonable efforts to obtain such consent from such owner. With respect to any financing or refinancing of the System entered into by Seller after the Conditions Satisfaction Date, upon request, Purchaser agrees, at Seller's cost, to use commercially reasonable efforts to deliver to Seller a non-disturbance agreement in a form reasonably acceptable to Seller from the owner of the Facility (if the Facility is leased by Purchaser), any mortgagee with a lien on the Premises, and other Persons holding a similar interest in the Premises. To the extent that Purchaser does not own the Premises or Facility, Purchaser shall provide to Seller immediate written notice of receipt of notice of eviction from the Premises or Facility or termination of Purchaser's lease of the Premises and/or Facility.

b. **Option to Purchase.** At the end of the seventh (7th) and fifteenth (15th) Contract Years and at the end of the Initial Term and each Additional Term, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller on any such date for a purchase price equal to the Fair Market Value of the System as mutually agreed by the Parties or, if the Parties are unable to agree, the Fair Market Value of the System as determined by an appraiser. Purchaser must provide a notification to Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable, and the purchase shall be complete prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable. For a reasonable period not exceeding thirty (30) days from the date of provision of notice referred to in this Section 16(b), the Parties shall make best efforts to mutually agree on the Fair Market Value of the System. If the Fair Market Value cannot be mutually agreed upon, then the Parties shall use good faith commercially reasonable efforts to agree on the selection of a nationally recognized independent, third-party professional appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value, as of the final day of the applicable Contract Year ("**Buyout Date**"). Within thirty (30) days of the selection of such appraiser, s/he shall evaluate and determine the Fair Market Value of the applicable System as of the Buyout Date and shall submit a report on same to the Parties. The costs of the appraisal shall be shared equally between Purchaser and Seller.

c. **Definition of Fair Market Value**. "**Fair Market Value**" means the greater of: (i) the amount that would be paid in an arm's length, free market transaction, for cash, between an informed, willing seller and an informed willing Purchaser, neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age, condition and performance of the System and advances in solar technology, provided that installed equipment shall be valued on an installed basis, shall not be valued as scrap if it is functioning and in good condition, and (ii) for any given Contract Year, the present value (using a discount rate of eight percent (8%)) of all associated future income streams expected to be received by Seller arising from the operation of the System for the remaining term of the Agreement including but not limited to the expected price of electricity and Tax Credits and factoring in future costs and expenses associated with the System. If an appraiser is selected pursuant to Section 16(b), such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System based on the formulation set forth herein, and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by any such appraiser shall be binding upon the Parties in the absence of fraud or manifest error.

d. **Buyout Determination**. No later than sixty (60) days after determination of the Fair Market Value of the System, Purchaser shall confirm to Seller in writing of its intent to proceed or not to proceed with its option to purchase the System at the Fair Market Value. In the event Purchaser does not provide such written confirmation or elects not to proceed with such option, the provisions of the Agreement shall continue to apply as if Purchaser had not exercised the option to purchase the System.

e. **Buyout Obligations**. If Purchaser confirms its intent to proceed with its option to purchase as specified above, the Parties shall promptly execute all documents necessary to (A) cause title and ownership of the applicable System to pass to Purchaser on the Buyout Date, free and clear of any liens, and (B) assign all warranties for the applicable System to Purchaser. Purchaser shall pay the Fair Market Value to Seller on or about the Buyout Date, in accordance with any previous written instructions delivered to Purchaser by Seller for payments under the Agreement. Upon such execution of documents and payment of the Fair Market Value, this Agreement shall terminate automatically and Purchaser shall own the System and all Environmental Attributes, Environmental Incentives and any available Tax Credits relating to the System. For the avoidance of doubt, payment of the Fair Market Value shall be in lieu of and instead of any payments described in Section 4(a) accruing from and after the Buyout Date. Seller shall provide all necessary cooperation with Purchaser to give prompt effect to this transfer. All other personal property of Seller not included in Purchaser's purchase shall be removed by Seller from Purchaser's premises at no cost to Purchaser. Upon purchase of the System, Purchaser will assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, and Seller shall have no further liabilities or obligations hereunder.

17. **Indemnification and Limitations of Liability**.

a. **General**. Each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party and the directors, officers, shareholders, partners, members, agents and employees of such other Party, and the respective affiliates of each thereof (collectively, the "**Indemnified Parties**"), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "**Liabilities**") resulting from any third party actions relating to the breach of any representation or warranty set forth in Section 14 and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnified Party. This Section 17(a) however, shall not apply to liability arising from any form of hazardous substances or other environmental contamination, such matters being addressed exclusively by Section 17(c).

b. **Notice and Participation in Third Party Claims**. The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a "**Claim**"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 17(b) unless it has

obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall not be liable under this Section 17(b) for any Claim for which such notice is not provided to extent such failure to delivery such notice prejudices the Indemnifying Party.

c. **Environmental Indemnification**. Seller shall indemnify, defend and hold harmless all of Purchaser's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, below or near the Premises of any Hazardous Substance (as defined in Section 17(c)(i)) to the extent deposited, spilled or otherwise caused by any Seller Party. Purchaser shall indemnify, defend and hold harmless all of Seller's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, below or near the Premises of any Hazardous Substance, to the extent deposited, spilled or otherwise caused by any Purchaser Party. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises or the Premises generally or any deposit, spill or release of any Hazardous Substance.

i. "**Hazardous Substance**" means any chemical, waste or other substance (A) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to the environment, health, safety or welfare, (B) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (C) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (D) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (E) for which remediation or cleanup is required by any Governmental Authority.

d. **Limitations on Liability**.

i. No Consequential Damages. Neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder even if advised of such.

ii. Actual Damages. Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the total payments anticipated to be made by Purchaser during the Initial Term under this Agreement; provided with respect to any Claim made or Liability incurred prior to the issuance of notice to proceed, Seller's aggregate liability shall not exceed the applicable Design Cancellation Payment. Purchaser's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the Termination Payment set forth in **Exhibit 4, Attachment A** for the year in which the Claim is made (such that if a Claim is made in one year and a second Claim is made in a second year, Seller will only be entitled to recover the difference (if any) between the amount recovered on the first Claim and the Termination Payment for the year in which the second Claim is made); provided that if the Claim is made or Liability incurred prior to the issuance of notice to proceed, Purchaser's aggregate liability shall not exceed the applicable Design Cancellation Payment. The provisions of this Section (17)(d)(ii) (A) shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise, (B) shall not limit the recovery by any Party under any insurance policy, (C) prior to the issuance of notice to proceed, shall not apply to limit the liability of any Party for claims for property damage or personal injury, and (D) following the issuance of notice to proceed, shall not apply to limit the liability of any Party for third party claims for property damage or personal injury.

iii. Non-Recoverable Costs. In every instance pursuant to the terms of this Agreement where Purchaser has the option or is required to pay Seller the Termination Payment set forth in **Exhibit 4, Attachment A**, in no event shall Purchaser be liable for costs, not included in the Termination Payment set forth in **Exhibit 4, Attachment A**, incurred by Seller or any of its subcontractors after the termination date specified by Purchaser. Such non recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable.

18. **Force Majeure**.

a. **Definition of Force Majeure**. "Force Majeure" means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); theft; vandalism; collision with third party automobile, aircraft or space object (such as a meteor); sabotage; collapse of the Facility for any reason; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; hurricane; flood; lightning; acts of nature such as storms, floods, volcanic eruptions, forest fires, earthquakes; unavailability of electricity from the utility grid; failure of equipment not utilized by or under the control of the Party claiming Force Majeure; third-party challenge to the installation and operation of the System; and a budget non-appropriation event (as described in further detail in Section 18(c)). Notwithstanding the foregoing, "Force Majeure" shall specifically not include, without limitation, the failure or interruption of the production, delivery or acceptance of Electricity due to: economic hardship of either Party or insufficiency, unavailability, failure or diminishment of solar resource, except as a result of an event that would otherwise qualify as a Force Majeure event.

b. **Excuse Due to Force Majeure**. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. The Term shall be extended day for day for each day performance is suspended due to a Force Majeure event.

c. **Non Appropriation Event**. Notwithstanding anything herein to the contrary, due to the constitutional limitations on Purchaser, a Force Majeure event shall include a "budget non-appropriation event" in which Purchaser's appropriation for any year covered in this Agreement does not appropriate funds for the procurement of any utility services for Purchaser. During the continuation of a budget non-appropriation event as defined above, if Purchaser does not otherwise have other funds available to make payments otherwise due on this Agreement, Purchaser shall not be obligated to pay for (and Seller shall not be required to deliver) any services provided under this Agreement until the budget non-appropriation event has terminated. Purchaser agrees that it shall use its best efforts to seek appropriation for utility services during the term of this Agreement. If a budget non-appropriation event continues for more than 180 days, Seller (but not Purchaser) may terminate this Agreement.

d. **Termination Event**. Except as provided in Section 7(c)(v) above with respect to the extension of Milestones, if a Force Majeure event (other than a budget non-appropriate event, which is addressed in Section 18(c) above) continues for a period of one hundred eighty (180) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, the Party not claiming the Force Majeure shall have the right to terminate this Agreement without fault or further liability to either Party (except for amounts accrued but unpaid). For the avoidance of doubt, (i) if Purchaser terminates the Agreement pursuant to the terms of this Section 18(d), no Termination Payment shall be payable by Purchaser hereunder and (ii) Purchaser may not terminate this Agreement for a Force Majeure event that results in the extension of Milestones until such extensions exceed the amount permitted pursuant to Section 7(c)(v).

19. **Assignment and Financing**.

a. **Assignment; Change of Control**. This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, provided that, Seller may, without the consent of Purchaser, assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party. Seller shall give Purchaser notice of any such collateral assignment within five (5) business days of making such assignment. Purchaser's consent to any assignment shall not be unreasonably withheld if Purchaser has been provided with reasonable proof that the proposed assignee (x) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by this Agreement and (y) has the financial capability to maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement. In the event of any assignment, the assignor shall remain a primary obligor unless assignee shall expressly assume in writing all obligations under this Agreement. Any assignment of Seller's rights and/or obligations under

this Agreement shall not result in any change to Purchaser's rights and obligations under this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees. Except as provided below, any direct or indirect change of control of Seller shall be deemed an "assignment" hereunder, requiring the prior written consent of Purchaser, provided that any change of control that results (i) from a direct or indirect transfer of any membership interests in Seller or any entity of which Seller is a subsidiary to a Financing Party making a tax equity investment in the System or (ii) to an existing member of Seller or any entity which is a member of Seller, shall not constitute an "assignment" for the purposes of this Section 19 and shall not require the prior written consent of Purchaser. Seller shall give Purchaser notice of any such transfer to a Financing Party making a tax equity investment within five (5) business days of such transfer.

b. **Financing**. The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from one or more Financing Parties. "**Financing Parties**" means person or persons providing construction or permanent financing to Seller in connection with construction, ownership, operation and maintenance of the System, or if applicable, means any person to whom Seller has transferred the ownership interest in the System, subject to a leaseback of the System from such person. The term "**person**" means any natural person, unincorporated association, corporation, partnership, joint venture, limited liability company, trust, other legal entity or any Governmental Authority. Both Parties agree, at Seller's expense, in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties; provided, that such changes do not alter the fundamental economic terms of this Agreement. In connection with an assignment pursuant to Section 19(a), Purchaser agrees, at Seller's expense, to execute any consent, estoppel or acknowledgement in form and substance reasonably acceptable to Purchaser and such Financing Parties. Purchaser will agree, at Seller's expense, to make payments under this Agreement as directed by Financing Parties, to provide copies of notices under the Agreement to Financing Parties, and not to amend or terminate this Agreement without notice to Financing Parties.

c. **Successor Servicing**. The Parties further acknowledge that in connection with any construction or long term financing or other credit support provided to Seller or its affiliates by Financing Parties, that such Financing Parties may require that Seller or its affiliates appoint a third party to act as backup or successor provider of operation and maintenance services with respect to the System and/or administrative services with respect to this Agreement (the "**Successor Provider**"). Purchaser agrees to accept performance from any Successor Provider so appointed, provided that (i) such Successor Provider performs in accordance with the terms of this Agreement, and (ii) such Successor Provider (x) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by this Agreement and (y) has the financial capability to maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement.

d. **Financing Party Rights**.

i. Notice. Purchaser shall deliver to each Financing Party, concurrently with delivery thereof to Seller, a copy of every notice of default, notice of termination or intent to terminate this Agreement, and any notice delivered pursuant to Sections 13, 16 and/or 18 above. Any Financing Party shall have the right, but not the obligation, to perform any obligation of Seller under this Agreement and to cure any breach and/or Seller Default Event. Purchaser shall accept performance by or at the instigation of a Financing Party in fulfillment of Seller's obligations, for the account of Seller and with the same force and effect as if performed by Seller. No performance by or on behalf of a Financing Party shall cause it to be deemed to be in possession of the System or bound by or liable under this Agreement.

ii. No Termination; Financing Party Cure Period. Notwithstanding anything to the contrary contained herein, Purchaser agrees that it shall not terminate this Agreement for a Seller Default Event unless it has given all Financing Parties written notice in accordance with Section 19(d)(i) above and such Financing Parties fail to cure such Seller Default Event within a cure period calculated as follows: (a) for a Payment Default, the cure period set forth in Section 13(a)(i) above plus an additional thirty (30) days, and (b) for a Default Event other than a Payment Default, the cure period set forth in Section 13(a)(ii) above plus an additional sixty (60) days.

iii. Cure Requiring Possession. If a Seller Default Event under this Agreement is of such a nature that it cannot be practicably cured without first taking possession of the System or is of a nature that is not susceptible of being cured by the Financing Parties, then Purchaser shall not be entitled to terminate this Agreement by reason of such Seller Default Event if and so long as (a) the Financing Parties proceed diligently to attempt to obtain possession of the System pursuant to the rights of the Financing Parties under the financing documents and (b) upon obtaining such possession, the Financing Parties shall proceed diligently to cure

such Seller Default Event if the same is susceptible of being cured by the Financing Parties. The Parties acknowledge and agree that a Payment Default (x) is susceptible of being cured by the Financing Parties and (y) can be cured by the Financing Parties without first obtaining possession of the System.

iv. Effect of Cure. The Financing Parties shall not be required to continue to proceed to obtain possession, or to continue in possession of the System if and when such default or Default Event is cured. If the Financing Parties, or a purchaser through foreclosure under the financing documents or otherwise, shall (a) acquire title to the System and the rights under this Agreement, (b) cure all Payment Defaults and other defaults which are susceptible of being cured by the Financing Parties or such purchaser, as the case may be, and (c) assume all the obligations of Seller hereunder to the extent first accruing and arising from and after the date of such assumption, then (i) any default or Default Event of Seller which is not susceptible of being cured by the Financing Parties or such purchaser, as the case may be, shall no longer be deemed to be a default under this Agreement, and (ii) Purchaser shall recognize the Financing Parties or such purchaser, as the case may be, as if such party had been the Seller under this Agreement.

v. Exercise of Remedies. So long as the period for a Financing Party to exercise such Financing Party's cure rights for any Seller Default Event has not expired, Purchaser shall not (a) give any notice terminating or electing to terminate this Agreement, or (b) otherwise exercise any other rights or remedies under this Agreement by reason of such Seller Default Event.

vi. No Amendment. Notwithstanding anything to the contrary in this Agreement, if Seller at any time or from time to time has given Purchaser written notice of a Financing Party, then no cancellation, termination (including Seller's termination of this Agreement pursuant to any express right of termination in this Agreement or under applicable law), surrender, acceptance of surrender, abandonment, amendment, modification, or rejection of this Agreement, or subordination of this Agreement to any encumbrance on the fee estate, shall be effective or binding if done without such Financing Party's prior written consent.

Seller's Financing Parties are hereby made express third party beneficiaries of the provisions of this Section 19.

20. **California Public Records Act**. Purchaser is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If Seller proprietary information is contained in documents or information submitted to Purchaser, and Seller claims that such information falls within one or more CPRA exemptions, Seller must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information. In the event of a request for such information, Purchaser will make best efforts to provide notice to Seller prior to such disclosure. If Seller contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Marin County before Purchaser's deadline for responding to the CPRA request. If Seller fails to obtain such remedy within Purchaser's deadline for responding to the CPRA request, Purchaser may disclose the requested information. Seller further agrees that it shall defend, indemnify and hold Purchaser harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorneys' fees) that may result from denial by Purchaser of a CPRA request for information arising from any representation, or any action (or inaction), by Seller.

21. **Goodwill and Publicity**. Neither Party shall use any name, trade name, agency name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement. Neither Party shall make any press release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law) without the specific prior written consent of the other Party. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and Environmental Incentives and any related reporting rights.

22. **Miscellaneous Provisions**

a. **Choice of Law**. The law of California, the state where the System is located, shall govern this Agreement without giving effect to conflict of laws principles.

b. **Dispute Resolution and Attorneys' Fees**. Seller and Purchaser shall negotiate in good faith in the event of any

dispute arising during the performance of this Agreement. If the dispute cannot be resolved by the designated representatives of each of Seller and Purchaser after two (2) business days of negotiations, at either Party's option the dispute may be promptly escalated to negotiations among representatives of the Parties with authority to resolve the dispute ("**Decision-Makers**"). If the designated Decision-Makers are unable to resolve the dispute within five (5) business days of negotiations, either Party may require that non-binding mediation take place. In such mediation, the Decision-Makers shall meet for at least (3) hours with a mediator whom they choose together and their respective counsel. Any dispute that remains unresolved after such non-binding mediation shall be resolved in the state and federal courts located in Marin County, California. Each Party hereby submits to the personal jurisdiction of such courts and consents to service of process in connection with any action, suit or proceeding against such Party. The prevailing party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys' fees and costs.

c. **Notices**. All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either party may specify in writing. Each party shall deem a document faxed, emailed or electronically sent in PDF form to it as an original document.

d. **Cooperation**. The Parties agree to reasonably cooperate with each other in the implementation and performance of the Agreement. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under this Agreement. Seller shall cooperate with Purchaser's periodic review of Seller's performance. Such review may be conducted on a semi-annual or more frequent basis at the option and sole cost of Purchaser. Seller shall have the option to make itself available onsite to review the progress of the project and Agreement, as requested by Purchaser, upon reasonable advanced notice. Seller agrees to extend to Purchaser or his/her designees and/or designated auditor of Purchaser, the right to monitor or otherwise evaluate all work performed and all records, including service records and procedures to assure that the project is achieving its purpose, that all applicable Purchaser, state, and federal regulations are met, and that adequate internal fiscal controls are maintained. Seller shall be responsible for receiving, replying to, and complying with any audit exceptions set forth in Purchaser audits. Seller shall pay to Purchaser the full amount of any audit determined to be due as a result of Purchaser audit exceptions. This provision is in addition to other inspection and access rights specified in this Agreement.

e. **Severability**. Should any provision of this Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of this Agreement shall not be affected and shall continue in full force and effect. The Parties will, however, use their best endeavors to agree on the replacement of the void, illegal, or unenforceable provision(s) with legally acceptable clauses that correspond as closely as possible to the sense and purpose of the affected provision.

f. **Survival**. Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, Section 11 (Removal of System at Expiration), Section 13(b) (Remedies), Section 15(b) (Insurance Coverage), Section 17 (Indemnification and Limits of Liability), Section 20 (California Public Records Act), Section 22(a) (Choice of Law), Section 22(b) (Dispute Resolution and Attorneys' Fees), Section 22(c) (Notices), Section 22(j) (Comparative Negligence), Section 22(k) (Non-Dedication of Facilities), Section 22(m) (Service Contract), Section 22(n) (No Partnership), Section 22(p) (Full Agreement, Modification, Invalidity, Counterparts, Captions), Section 22(q) (Forward Contract), Section 22(r) (No Third Party Beneficiaries), Section 22(u) (Debt Liability Disclaimer), and Section 22(w) (Conflict of Interest).

g. **Further Assurances**. Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

h. **Time is of the Essence**. Time is of the essence in performance by the Parties.

i. **Right of Waiver**. Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time (other than with respect to and/or relating to the obligation to make any payment due under this Agreement); provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by

the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.

j. **Comparative Negligence**. It is the intent of the Parties that where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.

k. **Non-Dedication of Facilities**. Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller shall have the right to terminate this Agreement without further liability, and Seller shall remove the System in accordance with Section 11 of this Agreement.

l. **Estoppel**. Either Party hereto, without charge but, in the event that Seller is the requesting Party, at Seller's expense, at any time and from time to time, within five (5) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

m. **Service Contract**. The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code. Purchaser will not take the position in any public accounting or in any other filings suggesting that it is anything other than a purchase of electricity and receipt of Environmental Attributes and any applicable Environmental Incentives (as agreed by the Parties) from the System.

n. **No Partnership**. No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.

o. **Non-Exclusive Contract.** This Agreement does not establish an exclusive contract between Purchaser and Seller for the purchase of electricity or power or any services. Purchaser expressly reserves all its rights, including but not limited to, the following: the right to utilize others to provide Electricity, products, support and services beyond the System contemplated herein; the right to request proposals from others with or without requesting proposals from Seller; and the unrestricted right to bid any such product, support or service.

p. **Full Agreement, Modification, Invalidity, Counterparts, Captions**. This Agreement, together with any exhibits, attachments or schedules, completely and exclusively states the agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an

original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.

q. **Forward Contract**. The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

r. **No Third Party Beneficiaries**. Except as set forth in Section 19, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.

s. **Non-Discrimination**. Seller shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, ancestry, national origin or disability in connection with or related to the performance of its duties and obligations under this Agreement.

t. **City Business License**. Seller shall obtain and maintain and shall cause its contractors and subcontractors to obtain and maintain during the duration of this Agreement, a City of St. Helena business license as required by the St. Helena Municipal Code. Seller shall pay and shall cause its contractors and subcontractors to pay any and all state and federal taxes and any other applicable taxes. Purchaser shall not be required to pay for any Energy provided under this Agreement, until Seller has provided Purchaser with a completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification).

u. **Debt Liability Disclaimer**. Purchaser, including, but not limited to, any source of funding for Purchaser, any General Fund or any special self insurance program, is not liable for any debts, liabilities, settlements, liens, or any other obligations of Seller or its heirs, successors or assigns. Purchaser shall not be liable for and shall be held harmless and indemnified by Seller for any claims for damages arising out of any other contract to which Seller is a party, tort, action or inaction, negligent error in judgment, act of negligence, intentional tort, negligent mistakes or other acts taken or not taken by Seller, its employees, agents, servants, invitees, guests or anyone acting in concert with or on behalf of Seller. Purchaser and its agencies and divisions, including, has no obligation to defend or undertake the defense on behalf of Seller or its heirs, successors or assigns.

v. **Prevailing Wage**. Seller agrees it shall pay prevailing wages in connection with the construction and operation of the System.

w. **Conflict of Interest**. Seller warrants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required under this Agreement.

Exhibit 4
Attachment A

Termination Payment Amount

Contract Year	Sewer Treatment Plant	Wappo Park/ Stonebridge	Water Treatment Plant
Prior to Commencement of Construction	See Exhibit 4 Section 3.c.i.	See Exhibit 4 Section 3.c.i.	See Exhibit 4 Section 3.c.i.
1	1,025,339	537,745	644,868
2	927,220	486,286	583,159
3	828,058	434,280	520,792
4	727,795	381,697	457,734
5	626,376	328,507	393,948
6	532,034	279,028	334,613
7	526,643	276,201	331,223
8	508,060	266,455	319,535
9	487,569	255,709	306,648
10	465,059	243,903	292,491
11	440,781	231,170	277,222
12	413,238	216,725	259,899
13	381,652	200,159	240,033
14	347,319	182,154	218,440
15	299,165	156,899	188,155
16	250,772	131,519	157,719
17	216,868	113,738	136,395
18	186,731	97,932	117,441
19	160,021	83,924	100,642
20	136,443	71,558	85,813
After Year 20	Fair Market Value	Fair Market Value	Fair Market Value

Exhibit 4
Attachment B

Subcontractors

M Bar C Construction, Inc.
674 Rancheros Drive
San Marcos, CA 92069
Phone: 760.744.4131
Fax: 760.744.4449
www.mbarconline.com/index.html

Skyline Steel
2020 Hurley Way, Suite 150
Sacramento, CA 95825
Phone: 916.463.0105
Fax: 916.923.0446
www.skylinesteel.com/globalnav/home

Danlin Corporation
40 Mark Dr.
San Rafael, CA 94903
Phone: 415.491.4813

RBI Solar
810 N. Twin Oaks Valley Rd
Suite 135
San Marcos, CA 92069
Phone: 513-242-2051
Fax: 513-242-0816
info@rbisolar.com

End of Exhibit 4

Exhibit 5

Form of Memorandum of License

NOTICE OF GRANT OF CONTRACTUAL INTEREST

In accordance with the provisions of [ ]. notice is hereby given of that Solar Power Purchase Agreement dated as of 21 October, 2014 for purchase and sale of electrical energy (the "**Solar Agreement**"). such Solar Agreement includes the grant of License to Seller of energy, pursuant to the terms of the Solar Agreement. This notice may be executed in counterparts by the Parties to the Solar Agreement.

Parties to the Agreement:

Seller: SolEd Solar Holdings I, LLC
c/o SolEd Benefit Corp, Managing Member
P.O. Box 151731
St. Helena, CA 94915-1731
Attention: David Kunhardt, CEO

Purchaser: City of St. Helena
1480 Main Street
St. Helena CA 94574

Date of Execution of Solar Agreement: 21 October 2014

Description of Premises: See **Exhibit 5, Attachment A**

TERM OF AGREEMENT:

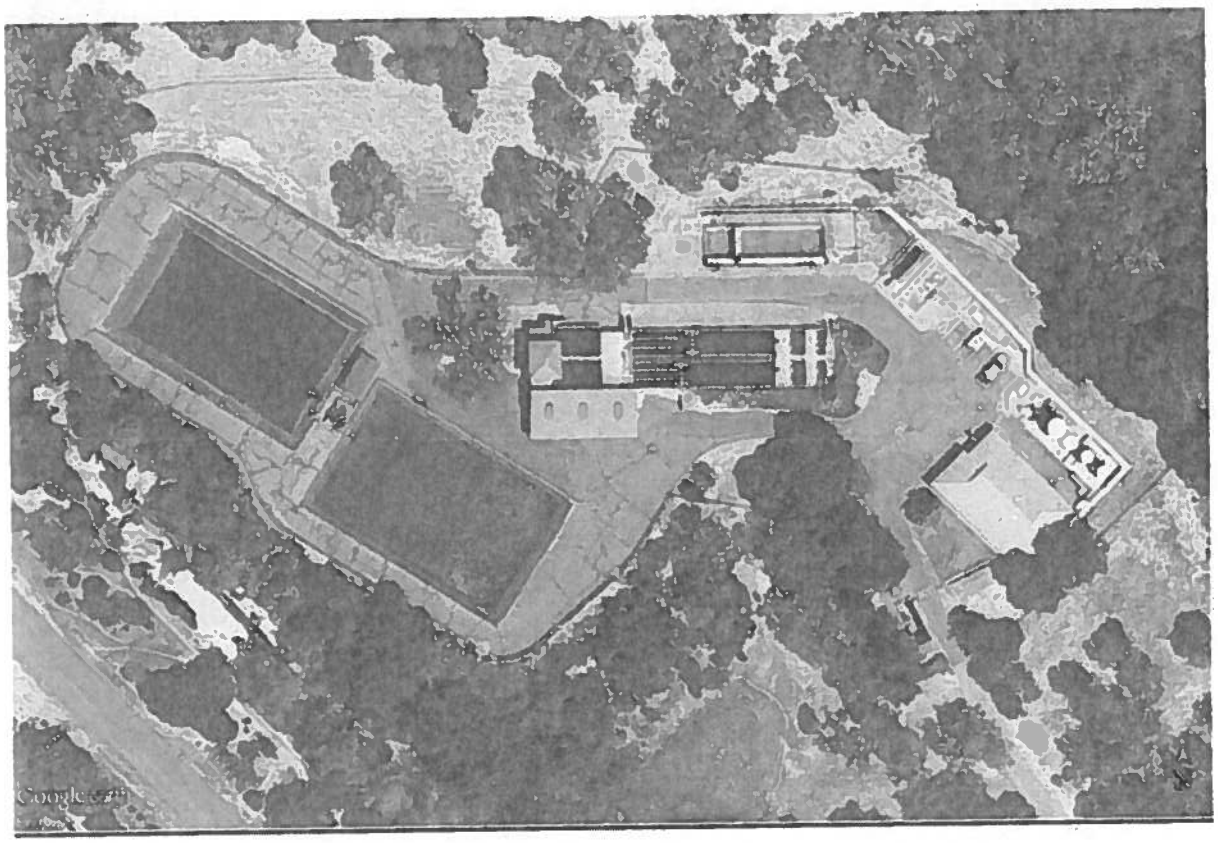
The term of the Agreement shall be until the last day of the calendar month in which the twentieth (20th) anniversary of the Commercial Operation Date (as that term is defined in the Agreement) occurs, subject to any Additional Terms or early termination pursuant to the terms of the Agreement.

[signature pages follow]

Exhibit 5
Attachment A

Description of the Premises

Site Name/Description: Water Treatment Plant
Site Address: 410 Crystal Springs Road
APN: 021-420-005
Coordinates: 38°33'15.42"N, 122°29'13.73"W
Aerial view: See below

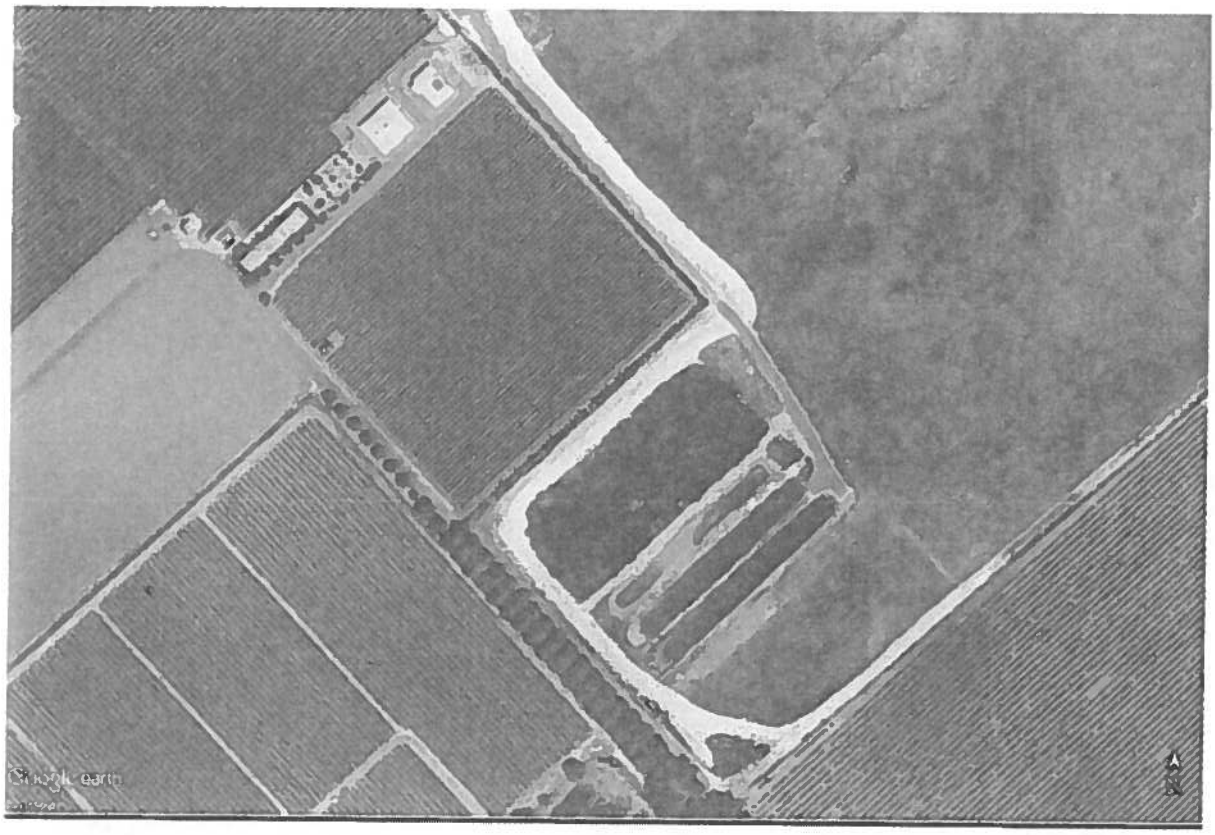


Description of the Premises

Site Name/Description: Wappo Park/Stonebridge Well
Site Address: 99 Pope Street
APN: 009-070-026 and 009-070-027
Coordinates: 38°30'36.85"N, 122°27'12.33"W
Aerial view: See below

Description of the Premises

Site Name/Description: Sewage Treatment Plant
Site Address: 1 Chaix Lane
APN: 030-240-013
Coordinates: 38°30'4.80"N, 122°26'25.31"W
Aerial view: See below



IN WITNESS WHEREOF, this Agreement has been executed and delivered under seal on this _____ day of _____, 2013.

Seller:

_____

By: _____
Print Name: _____
Title: _____

Purchaser:

_____

By: _____
Print Name: _____
Title: _____

STATE OF CALIFORNIA)
) SS.
COUNTY OF MARIN)

On before me, , Notary Public, personally appeared , personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

End of Exhibit 5

Exhibit 6-1

Design and Engineering Requirements

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1. Site Access

Seller and its EPC contractors, (together referred to as "Seller" in this Exhibit 6-1) shall conform to all Purchaser rules and requirements for accessing sites. Road usage, road closures, number of vehicles, access points, etc., may be regulated by the Purchaser. Site visits shall be approved and proper check-in requirements must be followed. Seller shall provide signage and/or electronic notification of possible operational impacts upon request by Purchaser. Unless otherwise determined by Purchaser, Seller shall be responsible for providing bathroom and storage facilities for all workers on-site, and shall be responsible for procuring, installing, securing, and removing temporary security fencing and scaffolding.

2. Project Management

2.1 Project Manager

Seller's EPC Contractor shall assign a Project Manager from their firm upon execution of the Agreement and receipt of Notice to Proceed. The Project Manager shall ensure that all contract, schedule, and reporting requirements of the Project are met and shall be the primary point of contact for the Purchaser.

2.2 Project Schedule

A Project Schedule is to be prepared and submitted to the Purchaser within 14 days of Agreement execution. The Purchaser will review and approve the Project Schedule prior to the initiation of work. Updates shall be submitted every other week, though the Purchaser may allow less frequent updates at their discretion. The submittal shall be a Critical Path Method (CPM) schedule describing all Project activities including design, equipment procurement, construction and commissioning.

2.3 Submittals

Seller shall provide the following submittals as part of the performance of the Work. The cost of developing and providing submittals shall be included in the Project price.

Agreement Submittals

Submittal	Submittal Date	Date
I. System Design		See Exhibit 8
a. System Design Documentation	At each design milestone	
b. Warranties	At Construction Documents milestone	
c. Testing Plan	At Construction Documents milestone	
d. Power production modeling	At Construction Documents milestone	
II. Procurements and Construction		
a. Safety Plan	30 days before commencement of construction	
b. As-built Documentation	After completion of Proving Period	
III. Testing		
a. Acceptance Test Results	After Acceptance Test	
b. Startup Test Results	After Startup Test	
c. Monitoring Data (Proving Period)	Continually throughout Proving Period	
d. Proving Period Report	30 days after System Startup	
IV. Training		
a. Training Materials	30 days before Training Session	
b. Monitoring Manual	30 days before Training Session	
c. Operations & Maintenance Manual	30 days before Training Session	

2.4 Solar Incentives

Seller shall submit applications for all available energy production incentives (e.g., CSI, SGIP, SREC, etc.) or, should the Purchaser already have submitted such applications, assume responsibility for all future requirements (agreements, submittals, etc.) related to these programs. This includes actions necessary to ensure compliance with the Utility net metering program and all interconnection agreements and related documents for Purchaser participation and utilization of the benefits of each applicable program. Seller shall attend all site verification visits conducted by the applicable public utility or Governmental Authority and shall assist the Purchaser in satisfying the requirements of the incentive program. Seller shall be responsible for providing updated documentation to incentive program administrators throughout the project, as required by rules of the relevant incentive programs. Incentives shall be paid to the Purchaser if the system is to be purchased and to the Seller should the system be owned by a third-party.

2.5 Interconnection

Seller shall be responsible for preparing, submitting, and procuring interconnection application to appropriate utility and department. Seller shall accept responsibility for payment for utility interconnection studies and/or project management that are not anticipated but may be required. All anticipated utility work (e.g. transformer installation, meter addition) shall be the responsibility of the Seller. At project completion, Seller shall confirm Permission To Operate with the utility, and shall verify most financially-beneficial rate schedule and billing.

Seller must comply with all interconnection requirements. Systems installed as part of this project will take advantage of Net Energy Metering (NEM), unless specified otherwise by Purchaser or its agents. Seller shall be responsible for ensuring the system design and interconnection qualifies for NEM, as applicable.

3. System Design

3.1 Design Review Process/ Phases

The Purchaser will review and approve design documentation based on the requirements as detailed in Section 3.3 of this document. Additional documents may be requested by the Purchaser as needed. The precise organization and format of the design submittals shall be agreed upon by Seller and the Purchaser prior to the first design submission. The Purchaser will review all submittals, provide written comments, and conduct Design Review Meetings for each stage of the process. Seller shall provide additional detail, as required, at each successive stage of the Design Review. Seller shall not order equipment and materials until Schematic Design submittals have been approved. Seller shall not begin construction until Construction Documents have been approved and all required permits have been obtained. The Purchaser will formally approve, in writing, each phase of the design and is the sole arbiter of whether each phase of the design has been completed. The Seller shall not enter a subsequent design phase without the approval of the Purchaser.

Seller is responsible for providing designs approved by the appropriate professional engineers registered in the State of California. Costs for engineering reviews and approvals shall be borne by the Seller. System designs must take into account Purchaser aesthetic issues and not conflict with any current Purchaser operations.

3.2 Sellers' License Classification

In accordance with the provisions of California Public Contract Code §3300, the Purchaser requires that Respondents possess, at the time of submission of a Proposal, at the time of award of the Agreement and at all time during construction activities, a General Contractor License (B), Electrical Contractor License (C-10), or Solar Contractor License (C-46). It

shall be acceptable for a Respondent that does not possess a C-10 or C-46 License to list a Subcontractor with a C-10 or C-46 License.

3.3 Design Submittals

3.3.1 Plan Set

Seller shall prepare a comprehensive submittal package for each phase of the Work that will be reviewed and approved by the Purchaser. At a minimum, each submittal package shall include the elements required to convey in sufficient detail the following for each phase of the design:

- Site Layout Drawings, with distances from roof edges and existing equipment, as applicable
- Construction Specifications (trenching, mounting, etc.)
- Equipment Layout Drawings
- Detailed Drawings
- Electrical Single-Line and Three-Line Diagrams
- Module Stringing Diagrams
- Electric Wire and Conduit Schedule
- Electrical Warning Labels & Placards Plans
- Lighting Plan (for carports, as required)
- Network Connection Diagrams
- Architectural Drawings
- Structural/Mechanical Drawings
- Geotechnical Drawings
- Manufacturer's Cut Sheets with Equipment Specifications
- Data Acquisition System (DAS) Specifications, Cut Sheets, and Data Specifications

Seller shall include adequate time for Purchaser review and approval of submittals, as well as re-submittals and re-reviews. Minimum Purchaser review time shall be ten (10) days from the date of receipt of each submittal package during each phase of the Design Review.

3.3.2 Production Modeling

Production modeling of the PV systems shall be performed using PVSYST or equivalent modeling software using TMY3 weather data for the location closest to the site. The simulations shall accurately simulate energy production for proposed system layouts, sizes, and orientation. It is critical that PV production models are accurate with all methodology and assumptions described. The Purchaser will independently verify production models are accurate to the designed systems and utilize simulation results for economic evaluations. Seller shall be responsible for updating the production models each time sufficient changes are made to the proposed system designs that will impact production.

Seller shall avoid excessive shading on modules to the extent possible. Where shading losses are encountered, Seller shall perform a shading analysis justifying the basis for their design, including any proposed tree removal, and explaining why shading does not create an adverse performance and/or economic impact.

3.4 Permits and approvals

Construction Documents must be reviewed and approved by all authorities having jurisdiction (AHJs) over the work, which may include, but are not limited to: the Purchaser, the City or County in which the work is being done, the utility, the Office of Statewide Health Planning and Development (OSHPD), and the California Solar Initiative Program Administrator. Seller shall be responsible for obtaining all approvals and shall account for permitting and inspection requirements in their system designs, project pricing, and schedule. Seller shall attend all site verification visits conducted by the applicable public utility or Governmental Authority, including any special inspections for trenching, rebar, concrete, welding, and roof attachment work, according to AHJ requirements. The Purchaser will not grant Seller relief based on Seller's incomplete or incorrect understanding of permitting and approval requirements.

3.5 Technical Requirements

3.5.1 General Considerations

All documentation and components furnished by Seller shall be developed, designed, and/or fabricated using high quality design, materials, and workmanship meeting the requirements of the Purchaser and all applicable industry codes and standards. The installations shall comply with at least, but not limited to, the latest approved versions of the International Building Code (IBC), National Electrical Code (NEC), Utility Interconnection Requirements, California Building Standards Commission Codes, and all other federal, state, and local jurisdictions having authority.

3.5.2 Electrical Design Standards

The design, products, and installation shall comply with at least, but not limited to, the following electrical industry standards, wherever applicable:

- Illumination Engineering Society of North America (IESNA) Lighting Standards
- Institute of Electrical and Electronics Engineers (IEEE) Standards
- National Electrical Manufacturers Association (NEMA)
- Underwriters Laboratories, Inc. (UL)
- National Fire Protection Association (NFPA)
- National Electrical Code (NEC)
- California Public Utility Commission (CPUC) and Utility Requirements
- American National Standards Institute (ANSI)
- Occupational Health and Safety Administration (OSHA)
- International Code Council (ICC) Codes
- California Building Standards Commission (BSC) Codes

3.5.3 Modules

In addition to the above, the PV modules proposed by Seller shall comply with at least, but not limited to, the following:

- IEEE 1262 "Recommended Practice for Qualifications of Photovoltaic Modules".
- System modules shall be UL1703 listed and CEC listed.

- Modules shall be new, undamaged, fully warranted without defect.
- If PV modules using hazardous materials are to be provided, then the environmental impact of the hazardous material usage must be disclosed, including any special maintenance requirements and proper disposal/recycling of the modules at the end of their useful life.

3.5.4 Inverters

In addition to the above, inverters proposed by Seller must comply with at least, but not limited to the following:

- Inverters shall be suitable for grid interconnection and shall be compliant with all Utility interconnection requirements.
- IEEE 929-2000 – "Recommended Practice for Utility Interface of Photovoltaic Systems".
- Inverters shall be UL 1741 and IEEE 1547 compliant.
- Inverters shall be CEC-listed with an efficiency of 95.5% or higher.
- Inverters must automatically reset and resume normal operation after a power limiting operation.
- Inverters shall be sized to provide maximum power point tracking for voltage and current range expected from PV array for temperatures and solar insolation conditions expected for Project conditions.
- Enclosures shall be rated NEMA 3R when the inverter is located outdoors. For outdoor installations in corrosive environments, NEMA 4X series 300 stainless steel enclosures must be used.
- Inverter selection shall take into account anticipated noise levels produced and minimize interference with Purchaser activities.

3.5.5 Electrical Balance of System Components

- Each proposed PV system shall include, at a minimum, one fused DC disconnect and one fused AC disconnect for safety and maintenance concerns.
- String combiner boxes shall be load-break, disconnecting types, such that opening the combiner boxes shall break the circuit between combiner box feeders and inverters.
- Seller shall utilize lightning arrestors to protect appropriate equipment from lightning strikes.
- Seller shall utilize surge suppressors to protect the appropriate equipment from electrical surges.
- All wiring materials and methods must adhere to industry-standard best practices, and all inter-module connections must require the use of a specialized tool for disconnecting.

3.5.6 Mounting Systems

The mounting systems shall be designed and installed such that the PV modules may be fixed or tracking with reliable components proven in similar projects, and shall be designed to resist dead load, live load, corrosion, UV degradation, wind loads, and seismic loads appropriate to the geographic area over the expected 25-year lifetime. Seller shall conduct an analysis, and submit evidence thereof, including calculations, of each structure affected by the performance of the scope described herein, and all attachments and amendments. The analysis shall demonstrate that existing structures are not compromised or adversely impacted by the installation of PV, equipment, or other activity related to this scope. Mounting systems must also meet the following requirements at a minimum:

- All structural components, including array structures, shall be designed in a manner commensurate with attaining a minimum 25-year design life. Particular attention shall be given to the prevention of corrosion at the connections between dissimilar metals.
- Thermal loads caused by fluctuations of component and ambient temperatures shall be accounted for in the design and selection of mounting systems such that neither the mounting system nor the surface on which it is mounted shall degrade or be damaged over time.
- Each PV module mounting system must be certified by the module manufacturer as (1) an acceptable mounting system that shall not void the module warranty, and (2) that it conforms to the module manufacturer's mounting parameters.
- For unframed modules, bolted and similar connections shall be non-corrosive and include locking devices designed to prevent twisting over the 25-year design life of the PV system.
- Seller shall utilize tamper-resistant PV module to rack fasteners for all PV module mounting.
- Final coating and paint colors shall be reviewed and approved by the Purchaser during Design Review.
- Painting or other coatings must not interfere with the grounding and bonding of the array.

3.5.7 Corrosion Control

In addition to the above, Corrosion Control proposed by Seller must comply with at least, but not limited to the following requirements:

- Fasteners and hardware throughout system shall be stainless steel or material of equivalent corrosion resistance
- Racking components shall be anodized aluminum, hot-dipped galvanized steel, or material of equivalent corrosion resistance
- Unprotected steel not to be used in any components
- Each PV system and associated components must be designed and selected to withstand the environmental conditions of the site (e.g., temperatures, winds, rain, flooding, etc.) to which they will be exposed.

3.5.8 Roofing Requirements

The installation of PV modules, inverters and other equipment shall provide adequate room for access and maintenance of existing equipment on the building roofs. A minimum of three feet of clearance will be provided between PV equipment and existing mechanical equipment and other equipment mounted on the roof. A minimum of four feet of clearance shall be provided between PV equipment and the edge of the roof. Clearance guidelines of the local fire marshal shall be followed. The installation of solar or thermal systems will be reviewed for code compliance and adherence to the *State Fire Marshal Solar Photovoltaic Installation Guideline*. The PV equipment shall not be installed in a way that obstructs air flow into or out of building systems or equipment.

Proposed roof top mounted systems may be ballasted, standing seam attachment, or penetrating systems and must meet or exceed the following requirements:

- Systems shall not exceed the ability of the existing structure to support the entire solar system and withstand increased wind uplift and seismic loads. The capability of the existing structure to support proposed solar systems shall be verified by Seller prior to design approval.
- Roof penetrations, if part of the mounting solution, shall be kept to a minimum.

- Seller shall perform all work so that existing roof warranties shall not be voided, reduced, or otherwise negatively impacted. As part of the design submittals, Seller shall include signed certificates from the roofing manufacturer stating:
    - The roofing contractor is certified installer of Complete Roofing System.
    - The manufacturer's Technical Representative is qualified and authorized to approve project.
    - Project Plans and specs meet the requirements of the warranty of the Complete Roofing System for the specified period.
    - Existing warranty incorporates the new roofing work and flashing work.
- No work shall compromise roof drainage, cause damming or standing water or cause excessive soil build-up.
- All materials and/or sealants must be chemically compatible.
- All penetrations shall be waterproofed.
- Detail(s) for the sealing of any roof penetrations shall be approved in writing to the Purchaser, as well as the manufacturer of the existing roofing system, as part of system design review and approval – prior to Seller proceeding with work. The Purchaser will make available the roofing manufacturer for each building for consultation with Seller as part of the design process.
- Any damage to roofing material during installation of solar systems must be remedied by Seller.

3.5.9 Shade Structure Requirements

Seller will be responsible for incorporating the following elements in the design and construction of the System:

- Minimum height: all shade structures shall be designed to have a minimum clear height of ten (10) feet, unless specified in a Site's Specification Sheet to be taller to accommodate larger vehicles at the site.
- All shade structures shall be installed with a fascia surrounding the exposed edge of the structure's purlins.
- Shade structures located in parking lots shall have a concrete bollards installed on support posts. The bollards shall extend up to a minimum elevation of 36" above finished grade. This requirement may be waived at the Purchaser's sole discretion.
- Shade structure columns, beams, and fascia shall be painted to match site colors or to a color of the Purchaser's approval.

Installation of shade structure PV systems shall include new high efficiency lighting as desired by Purchase-Owner. Installation of shade structure PV systems shall include the removal of existing security light poles, foundations, and fixtures that are no longer effective. Lighting systems shall also meet the following requirements:

- Lighting shall be LED lighting or other similar energy efficient lighting system.
- New parking lot fixtures shall be installed to provide parking lot illumination compliant with IESNA requirements or recommendations for illumination and safety.
- The new lighting is required to illuminate the entire parking area and adjacent pedestrian walkways affected by the removal of existing lights, not just the area under the PV modules.
- A photometric illumination plot must be submitted for each parking lot showing all existing lighting and proposed new SSS canopy lighting.
- Submit California Title 24 Outdoor Lighting calculations with all lighting drawings and show evidence of compliance.

Photocell controls shall be used in conjunction with a lighting control system for all exterior lighting and energize lighting when ambient lighting levels fall below two (2) foot-candles measured horizontally at ground level. Lighting shall also be required to operate manually without regards to photocell input. Replacement parking lot lighting shall be served from an existing parking lot lighting circuit and any existing circuits and existing control function shall be maintained, or if replaced, done so at the approval of the Purchaser.

3.5.10 Ancillary Equipment Enclosures

Seller will be responsible for incorporating the following elements in the design and construction of the System:

- Fencing: all ancillary equipment be grouped to a single location per site and shall be surrounded by a fence to prevent access by unauthorized personnel. The fence shall be a six (6) foot high chain link fence with vinyl privacy slats. This requirement may be waived at the Purchaser's sole discretion.
- Location: all ancillary equipment shall be located in a manner that minimizes its impact to normal Purchaser operations and minimizes the visual impacts to the site.

3.5.11 Placards and Signage

- Placards and signs shall correspond with requirements in the National Electric Code and the interconnecting utility in terms of appearance, wording, and placement.

- Permanent labels shall be affixed to all electrical enclosures, with nomenclature matching that found in As-Built Electrical Documents.

3.5.12 Infrastructure for Ground Mount Systems

Seller will be responsible for incorporating the following elements in the design and construction of the System:

Fencing: the site shall be surrounded by a fence to prevent unauthorized personnel from gaining access the site. The fence shall be a eight (8) foot high chain link fence with vinyl privacy slats.

Gates shall be installed to enable site access for trucks.

A pathway a minimum of ten (10) feet wide passable by a maintenance truck shall be provided within the array fence to allow for access to all equipment enclosed within the fence area.

Access to water for maintenance (module cleaning) purposes, as determined adequate by Seller and approved by the Purchaser.

Access to low voltage (120V) AC power to power maintenance equipment and miscellaneous equipment.

Seller shall install and ensure activation of sufficient security cameras on site to monitor array area, connected to the site's security system, in collaboration with the Purchaser.

Seller will be responsible for installing an acceptable surface cover material under and around the modules and throughout the site that provides appropriate weed control, erosion and dust management.

Seller will be responsible for creating an access road to any ground mount system for maintenance and fire access purposes. The access road shall be passable under all weather conditions.

3.5.13 Wiring and Cabling Runs

- Seller shall install all AC conductors in conduit.
- Direct burial wire will not be acceptable. Conduit buried underground shall be suitable for the application and compliant with all applicable codes. A tracing/caution tape must be installed in the trench over all buried conduit.

- Conduit installed using horizontal directional boring (HDB), shall include tracer tape or traceable conduit. The minimum depth of the conduit shall be per NEC 2011 Article 300.5. The Seller is responsible for demonstrating that all conduits installed utilizing horizontal boring meets the minimum depth requirement and is solely responsible for any remediation costs and schedule impacts if the specification is not met. The HDB contractor must provide documentation of final depth and routes of all conduit installed in horizontal bores.
- Conduit installed on building roofs shall not be installed near roof edges or parapets to reduce visibility. Any conduit penetrations through roof surfaces shall not be made within five (5) feet of the roof edge to reduce visibility. If conduit is installed on the exterior face of any building, it shall be painted to match the existing building color. In all cases, the visible impact of conduit runs shall be minimized and the design and placement of conduit shall be reviewed and approved by the Purchaser as part of Design Review.
- All spare conduits shall be cleaned, mandrelled, and provided with a pullwire. Spare conduits shall be required for security cameras for ground mount systems.
- All exposed conduit runs over 100-feet in length or passing over building connection points shall have expansion joints to allow for thermal expansion and building shift.
- Design Builder shall install and secure the exposed string cable homeruns along the beams or structure where the combiner box is installed.
- All exposed string wiring must be installed above the lower surface of the structural purlins and beams. Wire loops under framing members are not acceptable.
- Acceptable wire loss in DC circuits is < 1.5% and acceptable wire loss in AC circuits is < 1.5% as well.
- All cable terminations, excluding module-to-module and module-to-cable harness connections, shall be permanently labeled.
- All electrical connections and terminations shall be torqued according to manufacturer specifications and marked/sealed at appropriate torque point.

3.5.14 Grounding and Bonding

- Module ground wiring splices shall be made with irreversible crimp connectors.
- All exposed ground wiring must be routed above the lower surface of any structural framing.
- For shade structure installations, grounding electrode conductors shall be bonded to structure columns either just below grade or below the top surface of concrete bollards.

3.5.15 Monitoring System, DAS, and Reporting

Seller shall design, build, activate and ensure proper functioning of Data Acquisition Systems (DAS) that enable the Purchaser to track the performance of the PV Systems as well as environmental conditions through an online web-enabled graphical user interface and information displays. Seller shall provide equipment to connect the DAS via existing Wi-Fi network or cellular data network at all locations. The means of data connection will be determined during design. The Purchaser will pay for the cost of cellular data service if needed, but not for the modem or other equipment needed to connect to the cellular network.

The DAS(s) shall provide access to at least the following data:

- Instantaneous AC system output (kW)
- PV System production (kWh) over pre-defined intervals that may be user configured

- In-plane irradiance
- Ambient and cell temperature
- Inverter status flags and general system status information
- System availability
- Site Load information. Available load data for the meter the system is connected to shall be collected by the solar monitoring solution as part of the DAS.

Environmental data (temperatures and irradiance) shall be collected via an individual weather station installed for each site

Data collected by the DAS shall be presented in an online web interface, accessible from any computer through the Internet with appropriate security (e.g., password controlled access). The user interface shall allow visualization of the data at least in the following increments: 15 minutes, hour, day, week, month, and year. The interface shall access data recorded in a server that may be stored on-site or remotely with unfettered access by the Purchaser for the life of the Project. The online interface shall enable users to export all available data in Excel or ASCII comma-separated format for further analysis and data shall be downloadable in at least 15 minute intervals for daily, weekly, monthly and annual production.

The Monitoring system shall enable Purchaser staff to diagnose potential problems and perform remediating action. The monitoring system shall provide alerts when the system is not functioning within acceptable operating parameters. These parameters shall be defined during the design phase of the Project and specified in the DAS design document. At a minimum, Purchaser shall have the ability to compare irradiance to simultaneous power production measurements through linear regression analysis.

Additionally, Seller shall make available, at no additional cost, the following reports for a term of 5 years after Final Completion of the project:

- Monthly Production report shall be available online to the Purchaser personnel.
- System performance data shall be made available electronically to the Purchaser in a format and at a frequency to be determined during the Design Review process.
- Additional reports shall be made available to the Purchaser to assist the Purchaser in reconciling system output with utility bills and the production guarantee, as determined in the Design Review process.

A Monitoring Manual shall be provided to the Purchaser in printed or on-line form that describes how to use the monitoring system, including the export of data and the creation of custom reports.

3.6 Warranties

Seller shall provide a comprehensive ten (10) year warranty on all system components against defects in materials and workmanship under normal application, installation, and use and service conditions.

Additionally, the following minimum warranties are required:

- PV Modules: The PV modules are to be warranted against degradation of power output of greater than 10% of the original minimum rated power in the first ten (10) years and greater than 20% in the first twenty (25) years of operation.

- Inverters: Inverters shall carry a minimum 10-year warranty (direct purchase price must include a 20-year warranty).
- Meters: At minimum, meters shall have a five (5) year warranty. For meters integrated in inverters, the meter warranty period must match the inverter.
- Mounting system: twenty (20) year warranty, covering at least structural integrity and corrosion.
- Balance of system components: the remainder of system components shall carry manufacturer warranties conforming to industry standards.

All warranties must be documented, in advance and be fully transferable to Client.

All work performed by Seller must not render void, violate, or otherwise jeopardize any preexisting Purchaser facility or building warranties or the warranties of system components.

4. PROCUREMENT/CONSTRUCTION

4.1 Tree Removal

Any trees that are in the footprint of systems to be installed by the Seller shall be removed by the Seller at their expense, subject to the approval of the Purchaser. A tree shall be considered to be in the footprint of a system if its canopy would extend over any part of the system, including structural components or modules. The Purchaser will remove or prune, at its discretion, trees planted outside of the work area that shade PV systems (at present time or in the foreseeable future), provided the Seller identifies these trees during the design process. The Seller shall be responsible for any required tree remediation efforts resulting from tree removal that is deemed the Seller's responsibility.

4.2 Line Location

Seller will be responsible for locating, identifying and protecting existing underground utilities conduits, piping, substructures, etc. and ensuring that no damage is inflicted upon existing infrastructure. In addition to USA Dig and utility line-locating, a private line-locator must be used for any project requiring underground work.

4.3 Quality Control

To ensure safety and quality of the installation, Seller shall:

- Keep the Site clean and orderly throughout the duration of construction. All trash and rubbish shall be disposed of off-site by licensed waste disposal companies and in accordance with applicable Law.
- Fully comply with all applicable notification, safety and Work rules (including Purchaser safety standards) when working on or near Purchaser facilities.
- Provide all temporary road and warning signs, flagmen or equipment as required to safely execute the Work. Street sweeping services shall also be provided as required to keep any dirt, soil, mud, etc. off of roads. Comply with all state and local storm water pollution prevention (SWPP) ordinances.

4.4 Removal and Remediation

Seller shall remove all construction spoils, abandoned footings, utilities, construction equipment and other byproducts of construction. All disturbed areas including landscaping, asphalt, and concrete shall be remediated to be in equal or better condition than found. Parking lots shall be re-striped if affected by construction operations.

The site shall be left clean and free of debris or dirt that has accumulated as a result of construction operations.

5. TESTING AND COMMISSIONING

Following completion of construction, Seller shall provide the following services related to startup and performance testing of the PV systems:

- Acceptance Testing
- System Startup
- Proving Period

A detailed Testing Plan covering each of the phases above shall be submitted and approved by the Purchaser prior to substantial completion of construction. A detailed description of each phase is provided below.

5.1 Acceptance Testing

Seller shall perform a complete acceptance test for each PV System. The acceptance test procedures include component tests as well as other standard tests, inspections, safety and quality checks. All testing and commissioning shall be conducted in accordance with the manufacturer's specifications.

The section of the Testing Plan that covers Acceptance Testing shall be equivalent or superior to the CEC (California Energy Commission) "Guide to Photovoltaic (PV) System Design and Installation", Section 4 and shall cover at least the following:

- Detailed list of all items to be inspected and tests to be conducted.
- Acceptance Criteria: For each test phase, specifically indicate what is considered an acceptable test result.

The Acceptance Testing section of the Testing Plan shall include (but not be limited to) the following tests:

- String-level voltage (open circuit) and amperage (under load) testing for all PV strings. Amperage testing shall be performed concurrently with irradiance testing.
- Inverter testing for all inverters. The inverters shall be commissioned on-site by a qualified technician and shall confirm that the inverter can be operated locally per specification and that automatic operations such as wake-up and sleep routines, power tracking and fault detection responses occur as specified. Performance testing shall be performed concurrently with irradiance testing.
- Testing of all sensors of the DAS.
- Testing of the Data Presentation interface of the DAS.

After Seller conducts all Acceptance Testing based on the Testing Plan approved by the Purchaser prior to substantial completion, Seller shall submit a detailed Acceptance Test Report to the Purchaser for review.

The Acceptance Test Report shall document the results of the tests conducted following the Testing Plan, and include additional information such as the date and time each test was performed. It shall also make reference to any problem and deficiencies found during testing. If there was troubleshooting done, the Report shall describe the troubleshooting methods and strategy. Seller shall be responsible for providing the labor and equipment necessary to troubleshoot the System.

5.2 Proving Period (30 days)

Upon completion of Acceptance Testing and System Startup, and approval by the Purchaser, Seller shall monitor the system during a thirty (30) day Proving Period and submit a report for Purchaser review and approval prior to final acceptance by the Purchaser. This includes monitoring system output and ensuring the correct functioning of system components over this time. The values for the following data shall be acquired every fifteen (15) minutes over thirty (30) days:

- AC system output (kW)
- PV system production (kWh)
- In-plane irradiance
- Ambient and cell temperature
- Inverter status flags and general system status information
- System availability

Seller shall utilize calibrated test instruments and the DAS and monitoring system to collect the test data described above, which shall be made available to the Purchaser for access throughout the Proving Period. Seller shall determine through analysis of data from the Proving Period whether the PV system delivers the expected production as determined by the final approved design (i.e., Construction Documents). Actual production shall be compared against expected production using actual weather data and other system inputs (such as module cell temperature factor, module mismatch, inverter efficiency, and wiring losses) for calculating expected production. The production figures for all meters, whether existing or installed by or on behalf of the IOU or by or on behalf of the Respondent, shall be correlated during this test to verify their accuracy in measuring system production.

All data and reports required in Section 3.5.15 shall be fully functional and available to the Purchaser at the commencement of the Proving Period. Data and reporting requirements are included in the testing scope of the Proving Period and deficiencies in these areas (including missing data, inaccurate reports, and other issues that make validation of system performance inconclusive) shall be grounds for denying approval of the Proving Period Report.

If the PV system does not perform to design specifications, diagnostic testing shall be performed by Seller, deficiencies shall be identified with proposed corrective actions submitted to the Purchaser, and the Proving Period test repeated. Seller shall be responsible for providing the labor and equipment necessary to troubleshoot the system. The Proving Period Report shall be submitted after the successful completion of this phase and submitted to the Purchaser for review and approval. The report shall contain, but not be limited to, the following information; calculations shall be provided in Excel format with formulas visible to allow for peer review:

- System description
- Test period
- Test results
- Anomalies identified during test
- Corrective action performed
- Actual measured performance
- Calculations detailing expected performance under TMY conditions

5.3 Close-out Documentation Requirements

Close-Out documents prepared by Seller must include at minimum, but not limited to, the following items:

- Final As-Built Drawing Set with accurate string diagram, provided in (2) hard copy sets and an electronic copy in both DWG and PDF format (or as desired by Purchaser).
- Megger test Results

- Module flash-test results with serial numbers
- Component warranties
- Signed inspections cards from AHJ and required Special Inspections
- Interconnection agreements and Permission To Operate
- Owner's Manual

5.4 Training

The Seller shall provide four (4) hours of on-site training for Purchaser personnel in all aspects of operation, routine maintenance, and safety of the PV systems, DAS, and monitoring solution. At a minimum, training topics shall include the following:

- PV system safety, including shut-down procedures
- PV module maintenance and troubleshooting
- Inverter overview and maintenance procedures
- Calibration and adjustment procedures for the inverters and tracking systems (if any)
- DAS and monitoring solution, including standard and custom reporting

Seller shall submit a proposed Training Plan during the design process for approval and provide all training materials and manuals to support on-site training in advance of scheduled training sessions (see schedule of submittals in Section 2.3, "Submittals"). The on-site portion of the training program shall be scheduled to take place at the jobsite at a time agreeable to both the Purchaser and Seller.

6. OPERATIONS AND MAINTENANCE

Seller's EPC Contractor shall offer Operations and Maintenance services for ten (10) years with their Proposal, with an option to extend the Contract for up to an additional ten (10) years. The Operations and Maintenance agreement will be between EPC Contractor or affiliate and the System Owner and Seller of energy. The Purchaser shall not execute the Operations and Maintenance services agreement. In offering such services, the O&M Contractor shall perform all necessary preventive and corrective maintenance, which includes routine maintenance adjustments, replacements, and electrical panel/transformer/ inverter cleaning (interior and exterior). Maintenance by Seller and its contractors shall ensure that all warranties, particularly inverter warranties, are preserved. The frequency and timing of panel wash-downs shall be determined by Seller based on system monitoring data. Environmental sensors such as pyranometers shall be tested and recalibrated at least once every three (3) years.

For any maintenance visits, Seller shall give 3-day advance notification to Purchaser, and no on-site visits shall be performed without approval of the Purchaser, except in case of emergency.

Seller's contractors shall perform the following maintenance services, at a minimum, as described in the following sections:

6.1 Preventive Maintenance

Preventive Maintenance shall be performed at least annually and include:

- System testing (voltage/amperage) at inverter and string levels
- System visual inspection to include but not be limited to the list below. All discovered issues shall be resolved as needed.

- Inspect for stolen, broken or damaged PV modules, record damage and location. Report to the Purchaser and wait for the Purchaser to authorize a course of action.
- Inspect PV wiring for loose connections and wire condition.
- Inspect for wires in contact with the structure or hanging loose from racking.
- Check mechanical attachment of the PV modules to the racking.
- Check attachment of racking components to each other and the structure.
- Verify proper system grounding is in place from panels to the inverter.
- Check conduits and raceways for proper anchorage to structures.
- Inspect all metallic parts for corrosion.
- Check combiner boxes for proper fuse sizes and continuity.
- Inspect all wiring connections for signs of poor contact at terminals (burning, discoloration).
- Inspect disconnects for proper operation.
- Survey entire jobsite for debris or obstructions.
- Inspect fasteners for proper torque and corrosion.
- Inspect inverter pad for cracking or settling.
- Inspect electrical hardware for proper warning and rating labeling.
- Inspect alignment of arrays and racking to identify settling foundations or loose attachments.
- Inspect operation of tracking hinges, pivots, motors and actuators if present.
- Check for proper operation and reporting of monitoring hardware.
- Inspect sealed electrical components for condensation buildup.
- Inspect wiring and hardware for signs of damage from vandalism or animal damage.

- Routine system maintenance to include correction of loose electrical connections, ground connections, replacement of defective modules found during testing, other minor maintenance repair work.
- Module cleaning, at a frequency to be determined by the ongoing monitoring of the system such that effect on production is no more than 5%, but not less often than twice a year.
- Routine DAS maintenance to include sensor calibration and data integrity check.

6.2 Troubleshooting, Inspection and Additional Repairs

- Dispatch of field service resources within two business days of notification (via automated or manual means) for repairs as necessary to maintain system performance.
- Any corrective action required to restore the system to fully operational status shall be completed within 24 hours of the service resources arriving on-site.
- Major system repairs, not to include mid-voltage switchgear or transformers.

6.3 Customer Service Support

- Support telephone line made available to Purchaser staff to answer questions or report issues.
- Support line shall be staffed during operational hours from 8 am – 6 pm California Standard Time. During times outside of this operational period, an urgent call shall be able to be routed to a supervisor for immediate action.

6.4 Major Component Maintenance and Repair

- Inverter repair and component replacement and refurbishment as required in the event of inverter failure.
- Inverter inspection and regular servicing as required under inverter manufacturer's warranty specifications. Those include but are not limited to the following annually:
  - Check appearance/cleanliness of the cabinet, ventilation system and all exposed surfaces.
  - Inspect, clean/replace air filter elements

- Check for corrosion on all terminals, cables and enclosure.
- Check all fuses.
- Perform a complete visual inspection of all internally mounted equipment including subassemblies, wiring harnesses, contactors, power supplies and all major components.
- Check condition of all the AC and DC surge suppressors.
- Torque terminals and all fasteners in electrical power connections.
- Check the operation of all safety devices (E stop, door switches).
- Record all operating voltages and current readings via the front display panel.
- Record all inspections completed.
- Inform inverter manufacturer of all deficiencies identified.
- Oversee inverter manufacturer performance of In-Warranty replacement of failed inverter components.

- Customer advocacy with vendors.

6.5 Other System Services

- O&M Manuals – Seller shall provide three (3) copies of O&M Manuals. Updated editions of O&M Manuals shall be sent electronically to the Purchaser as they become available.
- Management of long term service and warranty agreements, ongoing.
- Seller shall log all maintenance calls and document all maintenance activities. These activities shall be presented in a report, which is to be submitted to the Purchaser upon request.

O&M services shall be priced separately from the design and construction of the PV system. Seller shall submit a detailed description of their O&M services, detailing the activities and the intervals at which they will be performed, with their Proposal.

End of Exhibit 6-1

Exhibit 6-2

Equipment Warranties

CONTRACTOR WARRANTY

Contractor warrants and guarantees to Purchaser that all of Contractor's work under this agreement will be (a) performed in a professional and workmanlike manner; (b) performed in accordance with generally accepted home improvement practices; (c) performed in accordance with the requirements of this agreement and any required governmental inspections, tests, or approvals; and (d) free from material faults and defects in workmanship ("Defects") for a period of ten (10) years after the date of completion of the Project. Contractor warrants that all materials and equipment will be new unless otherwise specified, and of good quality. All materials and equipment will be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions and specifications of the applicable supplier or manufacturer. This warranty includes diagnosis, repair and/or replacement of the System or System component, exclusive of the manufacturer's coverage. This warranty extends to the original Purchaser and to any subsequent purchasers or owners of the property during the warranty period. All work performed under warranty will be done at no cost to the Purchaser.

This warranty does not apply to:

1. Damage, malfunction, or degradation of electrical output caused by failure to properly operate or maintain the system in accordance with the printed instructions provided with the system.
2. Damage, malfunction, or degradation of electrical output caused by any repair or replacement using a part or service not provided or authorized by Contractor.
3. Damage, malfunction, or degradation of electrical output resulting from purchaser or third party abuse, accident, alteration, improper use, negligence or vandalism, or from a Force Majeure.
4. Design and manufacturing defects in the components. Any manufacturer warranty is the Purchaser's sole remedy for design defects.
5. Any or all exclusions described in the manufacturer's warranty.
6. Normal wear and tear under normal operation.

Suniva PV Panel Warranty
Exhibit 1
Limited Warranty for Products

A. Ten Year Limited Product Warranty:

1. Suniva warrants that for ten years beyond the purchase of the Products (the "Product Warranty Term"), the Products will:

   • experience no mechanical adverse effects limiting solar module stability so long as the Product is correctly installed and used in accordance with the official Suniva maintenance and installation instructions
   • contain cable and connector plugs that remain safe and operational so long as the Product is professionally installed and not permanently positioned in water. This warranty does not cover damage to the cable caused by (a) abrasion on a rough lower surface caused by insufficient fixing or running of the cable unprotected over sharp edges, or (b) animals or insects.

   The above Product warranty does not cover scratches, stains, mechanical wear, rust, mold, optical deterioration, discoloration and other cosmetic changes occurring after delivery to the extent such cosmetic changes do not result in deterioration in the Product's functional capability. Glass breakage is covered by the above warranty only so long as such damage was not caused by any cause external to the Product itself.

2. If the Products fail to conform to the above warranty during the Product Warranty Term and this has an effect on the functional capability of the Product, Suniva or its Supplier will remedy the failure by choosing one of the following options: (a) repair of the defective Product, (b) supply of replacement products, or (c) provide a financial remedy to the end user in the form of an appropriate residual value of the Products.

B. Twenty-Five Year Limited Service Warranty:

1. The effective power output of the Products will remain within a certain tolerance range of 3% within year one. The actual effective power output for each Product is identified by the factory power measurement at STC indicated in the Product invoice. End users can expect that the actual effective power output for the Products will decline by a small percentage annually over 25 years of usage (the "Service Warranty Term").
2. Suniva represents and warrants that the Products effective power output (a) will remain at or above 97% during the first year of operation, and (b) starting with the second year of Product operation will decline annually by no more than 0.7% through the end of the Service Warranty Term so that by the end of the Service Warranty Term the Product will achieve an effective power output of at least 80.2%. In the event the Product's effective power output fails to achieve the foregoing benchmarks, Suniva or its Supplier will remedy such failure by choosing to either (i) supply the end user with replacement products that comply with the foregoing performance benchmarks, (ii) repair the Products so that they comply with the foregoing benchmarks, or (iii) provide a financial remedy to the end user to compensate for the reduced Product performance. During the initial fifteen (15) years of the Service Warranty Term, Suniva will remedy a failure of the Limited Service Warranty by offering either to supply replacement products or repair the Products under options (i) or (ii) in the preceding sentence. At Suniva's discretion, following the initial fifteen (15) years of the Service Warranty Term, Suniva may also remedy the failure of the Limited Service Warranty by choosing to grant a financial remedy under option (iii) above.
3. Suniva does not warrant that any replacement products supplied under paragraph 2 above will be new products or products that are as good as new. End user acknowledges that Suniva may satisfy the replacement remedy in paragraph 2 above by supplying used and/or repaired products as replacements so long as the replacement products comply with the performance benchmarks set forth in paragraph 2.

C. Additional Warranty Conditions:

1. The Limited Service Warranty Term will not be extended even in the event of Product repair or replacement.
2. The Limited Service Warranty is subject to Suniva's confirmation of effective power output and actual power output using IEC 60904 standard test conditions. Final performance measurements shall be determined by a recognized measuring institute, a Nationally Recognized Test Lab (NRTL) such as Intertek ETL, or through Suniva's own measurements (assessment of measurement tolerances will be undertaken in accordance with EN 50380). The warranty does not include shipping costs to return Products, shipping costs for delivery of repaired or replacement products, costs of the installation or re-installation of products, or other expenses incurred by the end-customer or distributor.
3. All right, title, and ownership in and to Products that have been replaced pursuant to the above warranties revert to Suniva.
4. The warranty terms set forth in Paragraphs A and B above start on the date of original purchase of the Products.

D. Assertion of Warranty Claim:

You may assert a warranty claim under paragraphs A and B above only by (i) informing Suniva authorized Product distributor/dealer of the alleged defect in writing, or (ii) sending written notification of a warranty claim directly to Suniva at the address mentioned in paragraph G below if the distributor/dealer who sold you the Products is no longer in business. Any written notification of defect must include the date of purchase of the Products and be accompanied by the original sales receipt as evidence of the purchase. For a warranty claim to be valid, the written claim must be provided within six weeks of the occurrence of the defect. In the case of Product Warranty claims under paragraph A above, the occurrence of a defect is the first date upon which end user had knowledge of material and/or workmanship errors. In the case of Service Warranty claims under paragraph B above, the occurrence of a defect is the first date upon which end user had knowledge of reduced performance of the Products. Any return of Products shall be subject to Suniva's prior written approval.

E. Use in accordance with this Limited Warranty:

1. The above Limited Warranties are not available if the alleged defect is a result of the Product not being properly used, operated or installed. Suniva shall have no obligation to provide a remedy for a claimed defect if the defects are caused in whole or part by any cause other than the Products themselves. Such other causes may include, without limitation, the following:
   a. Delays by any party (other than Suniva) in observing the assembly, operational and maintenance instructions or information, if such delays lead to defects and/or loss in Product performance.
   b. Failure to properly exchange, repair or modify the Products. c. Misuse of the Products.
   d. Vandalism or destruction through external influences.
   e. Improper storage or transport prior to installation if such improper actions lead to defects and/or a loss in Product performance.
   f. Customer system defects or incompatibility of the customer or third party equipment with the Products if such defects or incompatibility lead to Product defects and/or a loss in Product performance.
   g. Use of Products on mobile units, automobiles, trains, or watercraft.
   h. External contaminants such as dirt or debris on the face-plate; damage from airborne contaminants.
   i. Events beyond Suniva's reasonable control (commonly known as "Force Majeure" events), such as fire, floods, explosions, rock-falls, direct or indirect lightning strikes, or other extreme weather conditions such as hail, hurricanes, whirlwinds, or sandstorms.
2. Suniva is under no obligation to provide the remedies set forth in paragraphs A and B above if the manufacturer's labels or serial numbers on the Products have been changed, deleted, peeled off or caused to be unrecognizable.

F. Exclusion of liability:
The remedies set forth in this Limited Warranty are the exclusive remedies available to the end user. Suniva shall not be liable for damage, injury or loss arising out of or related to Products except as explicitly set forth in this Limited Warranty. Under no circumstances shall Suniva be liable for incidental, consequential, special or other indirect damages in any way connected with Products. Suniva's aggregate liability, if any, shall be limited to the Product purchase price paid by the end user.

G. Warranty contact:
Any communication with Suniva under this Limited Warranty shall be at the following address: Customer Service, Suniva, Inc., 5765 Peachtree Industrial Blvd, Norcross, GA 30092 USA.

H. Choice of law:
This Limited Warranty, including without limitation the rights and responsibilities granted hereunder, shall be governed and construed in accordance with the laws of the State of Georgia, without regard to the conflicts of law provisions thereof.

I. Validity:
The following table contains the Products to which this Limited Warranty applies. This Limited Warranty shall not apply to any product not specifically listed below.

Model Family:

OPT2XX-60-4-100	OPT2XX-60-4-1B0	OPTXXX-72-4-100	MVT2XX-60-5-100
MVTXXX-72-5-100	MVX2XX-60-5-701	MVX2XX-60-5-7B1	MVX2XX-60-5-801
MVX2XX-60-5-8B1	MVXXXX-72-5-801	MVXXXX-72-5-701	

J. State Law:
This Limited Warranty expressly excludes all other express or implied warranties, including without limitation the warranties of merchantability, noninfringement, and fitness for a particular purpose. This Limited Warranty gives the end user specific legal rights. The end user may have other rights that vary from state to state. Some states do not allow limitations on implied warranties or the exclusion or limitation of damages, in which case the above limitations may not apply to you.

K. Severability:
If any provision of this Limited Warranty is held unenforceable or illegal by a court or other body of competent jurisdiction, such provisions shall be modified to the minimum extent necessary to make them enforceable or legal, as the case may be.

SMA America LLC Factory Warranty

Note: this description of SMA Solar Technology America's limited factory warranty is effective on August 1, 2013 and supersedes all prior warranty descriptions.

10 Year Warranty

A ten year warranty applies to the following products:
Sunny Mulligate-US, SB240-US, SB700-US, SB2000HF-US, SB2500HF-US, SB3000HF-US, SB3000-US, SB3800-US, SB4000-US, SB3000TL-US, SB4000TL-US, SB5000TL-US, SB5000-US, SB6000-US, SB7000-US, SB8000-US, SB6000TL-US, SB7000TL-US, SB8000TL-US, SB9000TL-US, SB10000TL-US, SB11000TL-US, STP 12000TL-US-10, STP 15000TL-US-10, STP 20000TL-US-10, STP 24000TL-US-10, WB3000-US, WB3800-US, WB4000-US, WB5000-US, WB6000-US, WB7000-US, WB8000-US

5 Year Warranty

A five year warranty applies to the following products:
SB1100U, SWR1800U, SWR2100U, SWR2500U, SB3300U, SB3800U, SB6000U, SI4248U, SI4548-US, SI6048-US, SI5048U, ST6US, SMA *Bluetooth*® Repeater, Sunny Beam with *Bluetooth*®, Sunny WebBox, Sunny WebBox with *Bluetooth*®, Sunny SensorBox, SC/SB Combiner Boxes purchased after April 1, 2005.

The SMA factory warranty provides technical support, shipping costs, and repair or replacement part costs during the warranty period. The warranty period begins 3 months after shipment from SMA America or the date of commissioning, whichever can be proven to start later, subject to the conditions listed below.

Warranty Conditions

SMA America will advance ship a new unit to the customer if the device is determined to be defective within the first 90 days after a new installation.

If a device is determined to be defective more than 3 months after installation, and during the SMA factory warranty period, one of the following services, as selected by SMA, will be performed at no charge:

1. Exchange for a refurbished device (of equivalent value according to model and age)
2. Repair the defective device at SMA's depot facility

In the case of an exchange, the remainder of the eligible warranty will be transferred to the replacement device.

If the warranty applies, and if SMA has a branch or service partner in the country where the device is operated, the transport costs are covered by SMA.

The SMA factory warranty includes a Service Call Rebate for eligible installers/dealer companies as follows:

1. Sunny Boy String Inverters and Sunny Island units are eligible for a $150 Service Call Rebate
2. Sunny Tripower Inverters are eligible for a $250 Service Call Rebate

DECK Monitoring

Warranty Information for Hardware Manufacturers

Commonly Sourced for DECK Monitoring Deployments

OLEA Kioks

Warranty:

"Olea hereby warrants that each component manufactured or supplied directly by Olea will be free of defects in material and workmanship for a period of one (1) year following the date of invoice or shipment, whichever occurs first (the "Warranty Period"). Any product invoiced but not shipped will have its Warranty Period started as of that date. During the Warranty Period, Customer shall return defective parts to Olea at Customer's expense. Olea shall repair or replace any defective component within thirty (30) days of receipt, at Olea's expense, including all return shipping expenses. Notwithstanding the foregoing, this warranty shall include, without limitation, all metal and plastic parts, fabrications, and formations whether or not a warranty is provided by the manufacturer, subcontractor, or supplier thereof. Olea does not warrant any component supplied by customer or its suppliers. Olea's warranty may be voided by misuse, accident, modification, unsuitable physical or operating environment, improper maintenance by Customer or Customer's service organizations, removal or alteration of part identification, or failure caused by a product for which Olea is not responsible."

Olea Warranty Disclaimer:

"WE DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES OF ANY NATURE EXCEPT THOSE EXPRESSLY STATED HEREIN. WE SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, NOR FOR ANY DAMAGES OR DELAYS CAUSED BY CIRCUMSTANCES BEYOND OUR CONTROL, INCLUDING, WITHOUT LIMITATION, LABOR PROBLEMS, SHORTAGE OF GOODS OR RAW MATERIALS, FIRE, FLOOD, WEATHER OR OTHER ACTS OF GOD."

[Olea offers an extended warranty option – they can be contacted at www.olea.com]

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ELO Touchscreens -

http://www.elotouch.com/HowToBuy/NorthAmerica/termcond.asp#hdwarranty

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WARRANTY

We herby guarantee that the Work preformed for the construction of:

has been performed in accordance with the Drawings and Specifications and that the Work as installed will fulfill the requirements of the Guarantee included in the Specifications. We agree to repair or replace any or all of our Work, together with any adjacent Work which may be displaced by so doing, that may provide to be defective in its workmanship or materials within a period of ONE (1) year from the date of acceptance of the above named project by the Owner, _____ without any expense whatsoever to the said Owner, ordinary wear and tear and unusual abuse or neglected excepted.

In the event of our failure to comply with the above mentioned conditions within thirty (30) days after being notified in writing by the Owner or Contractor, we collectively or separately do hereby authorize the Owner or contractor to proceed to have said defects repaired and made good at our expense and we will honor and pay the costs and charges there from upon demand.

Date:_____ Signed:_____

UNIRAC
A HILTI GROUP COMPANY

SM SOLAR MOUNT

MANUFACTURER'S LIMITED PRODUCT WARRANTY

WARRANTY

Unirac, Inc., ("Unirac") warrants to the buyer ("Buyer") at the original installation site ("Site") that any of the SolarMount components designed and manufactured by Unirac and installed at the Site ("Product") shall be free from defects in material and workmanship which substantially impair their ability to perform their intended function, as referenced in the Unirac Product Information, for a period of ten (10) years – except that any factory-applied anodized finish is warranted to be free from substantial manufacturing-related visible peeling or cracking or chalking under normal atmospheric conditions for a period of five (5) years ("Finish Warranty") – from the earlier of 1) the date the installation of the Product at the Site is substantially complete, or 2) 120 days after the purchase of the Product by the original Buyer of the Product ("Warranty Period").

WARRANTY TRANSFERENCE

Buyer may transfer this Warranty to subsequent Site owners, or if original Buyer is a contractor, to the Site owner, so long as the transferee agrees to the terms of this Limited Warranty as if it were the Buyer. Proof of purchase is required for any warranty claim.

FINISH WARRANTY LIMITATIONS

The Finish Warranty does not apply to any issues caused by foreign residue deposited on the finish, or an installation in atmospheric conditions more corrosive than normal conditions. The Finish Warranty is VOID if the practices specified by AAMA 609 & 610-02 – "Cleaning and Maintenance for Architecturally Finished Aluminum" (www.aamanet.org) are not followed.

WARRANTY LIMITATIONS

This Limited Warranty covers only the Product, and not PV modules, electrical components and or wiring used in conjunction with the Product or any other materials not provided by Unirac. Goods which may be sold by Unirac, but which are not designed or manufactured by Unirac are not warranted by Unirac, are sold only with the warranties, if any, of the original manufacturers thereof. This Limited Warranty does not cover damage to the Product that occurs during its shipment, storage, installation or use, or from force majeure acts including fire, flood, earthquake, storm, hurricane or other natural disaster, war, terrorist activities, acts of foreign enemies and criminal acts. This Limited Warranty does not cover damages or problems caused by the connection to or use of alternative materials not purchased from Unirac Price List. This Limited Warranty shall be void if A) installation of the Product is not performed in accordance with the Unirac Product Information, B) if the Product has been modified, repaired, or reworked in a manner not previously authorized by Unirac in writing, or C) the Product is installed in an environment for which it was not designed, each as determined by Unirac in its sole discretion.

WARRANTY CLAIMS

If, within the Warranty Period, the Product shall be proven at Unirac's sole discretion to be nonconforming, then Unirac shall repair or provide a replacement for the nonconforming Product, or any nonconforming part thereof, at Unirac's option. Any such repair or replacement does not cause the beginning of new warranty terms, nor shall the Warranty Period of this Limited Warranty be extended. Unirac's aggregate liability for all warranty claims shall not exceed the original Purchase Price of the nonconforming Product. Buyer shall bear all costs of shipment or transportation related to the repair or replacement of the nonconforming product. Such repair or replacement shall be Buyer's sole remedy and shall fulfill all of Unirac's obligations with respect to the Product and all warranty claims.

EXCEPT FOR THE LIMITED WARRANTY EXPRESSED ABOVE, UNIRAC MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER AND HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE.

UNIRAC SHALL NOT BE LIABLE FOR LOSS OF USE, REVENUE OR PROFIT, OR FOR DIRECT, INDIRECT, SPECIAL, PUNITIVE, LIQUIDATED, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS OR COST OF A SIMILAR TYPE, OR FOR CLAIMS BY BUYER FOR DAMAGES OF BUYER'S CUSTOMERS, CLAIMS OF THIRD PARTIES OR INJURY TO PERSONS OR PROPERTY ARISING OUT OF ANY DEFECT OR NONCONFORMITY IN THE PRODUCT COVERED BY THIS WARRANTY, EVEN IF CAUSED BY THE NEGLIGENCE OF UNIRAC, ALL SUCH DAMAGES AND EXPENSES ARE HEREBY EXCLUDED.

EFFECTIVE DATE: FEBRUARY 28, 2014

PUB140228

http://www.unirac.com/residential/unirac-warranty

End of Exhibit 6-2

Exhibit 7

Form of Attestation

Environmental Attribute Attestation

SolEd Solar Holdings I, LLC ("Seller") hereby transfers and delivers to the City of St. Helena ("Purchaser") the Environmental Attributes and Environmental Attributes Reporting Rights associated with the generation of the indicated energy (as such terms are defined in the Solar Power Purchase Agreement ("Agreement") dated _____, between Purchaser and Seller) arising from the generation of the energy by the System described below:

Facility name and location: _____

EIA ID #: _____
CEC ID#: _____
ISO Meter ID#: _____
Fuel Type: _____
Capacity (MW): _____
Commercial Operation Date: _____

Dates	MWhs generated	Dates	MWhs generated
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

In the amount of one Environmental Attribute for each megawatt hour generated; and Seller further attests, warrants and represents as follows:

1. To the best of its knowledge, the information provided herein is true and correct;
2. This transfer to Purchaser is the one and only transfer of the Environmental Attributes and associated Environmental Attributes Reporting Rights referenced herein;
3. The Solar System generated the energy in the amount indicated as undifferentiated energy; and

(Check one)

__✓__ Seller owns the System located on the Facility owned by the Purchaser.

_____ To the best of Seller's knowledge, each of the Environmental Attributes associated with the generation of the indicated energy have been generated and sold by the System.

This serves as a transfer from Seller to Purchaser all of Seller's right, title and interest in and to the Environmental Attributes associated with the generation of the energy.

Contact Person: Name: _____ Phone: _____

WITNESS MY HAND,

Seller: _____
By: _____
Title: _____
Date: _____

End of Exhibit 7

Exhibit 8

Milestone Schedule

The following Mandatory Milestones shall be reflected in the schedule required in Exhibit 6 and shall represent the dates upon which each milestone is to be achieved for the site in the Agreement.

Mandatory Milestones (Number of Days added to NTP)

Mandatory Milestone	Sewer Treatment Plant	Wappo Park	Water Treatment Plant
Design Notice to Proceed	Triggered by City Approval		
50% Schematic Design submittal	Design NTP+25	Design NTP+25	Design NTP+25
90% Design Development submittal	Design NTP+40	Design NTP+40	Design NTP+40
100% Construction Documents submittal for permitting	Design NTP+50	Design NTP+50	Design NTP+50
Approved Construction Documents – All Agency Sites	Design NTP+80	Design NTP+80	Design NTP+80
Construction Notice to Proceed	Triggered by City Approval		
Mobilization – All Agency Sites	NTP+40	NTP+40	NTP+40
Substantial Completion – All Agency Sites	NTP+70	NTP+80	NTP+70
Final Completion – All Agency Sites	NTP+90	NTP+100	NTP+90

Seller shall provide the following submittals as part of the performance of the Work. The cost of developing and providing submittals shall be included in the Project price.

Agreement Submittals

Submittal	Submittal Date	Date
I. **System Design**		
e. System Design Documentation	At each design milestone	TBD
f. Warranties	At Construction Documents milestone	TBD
g. Testing Plan	At Construction Documents milestone	TBD
h. Power production modeling	At Construction Documents milestone	TBD
II. **Procurements and Construction**		
c. Safety Plan	30 days before commencement of construction	TBD
d. As-built Documentation	After completion of Proving Period	TBD
III. **Testing**		
e. Acceptance Test Results	After Acceptance Test	TBD
f. Startup Test Results	After Startup Test	TBD
g. Monitoring Data (Proving Period)	Continually throughout Proving Period	TBD
h. Proving Period Report	30 days after System Startup	TBD
IV. Training		
d. Training Materials	30 days before Training Session	TBD
e. Monitoring Manual	30 days before Training Session	TBD
f. Operations & Maintenance Manual	30 days before Training Session	TBD

End of Exhibit 8

Exhibit 9

Insurance Requirements

1. General liability coverage of $2 million per occurrence, $4 million in aggregate.

2. Auto coverage $2 million

3. Workers compensation coverage should be per statutory requirements.

All the standard insurance language and endorsements in City of St. Helena construction contracts and agreements, protecting the City and the City Council (*to be provided* by City).

End of Exhibit 9

Exhibit 10

Seller and Purchaser Agreed Responsibilities

[Intended to cover such things as tree removal, tree trimming, painting, etc., that are not otherwise specified in the document]

Tree Removal/Trimming

Sunetric: Will remove all vegetation including trees that are within the footprint of the PV arrays.

City of St. Helena: Will remove trees identified at site walks with vendor at Wappo Park and Water Treatment Plant that shade PV array sites, and will be responsible for trimming trees that shade arrays during contract term.

End of Exhibit 10

ATTACHMENT 3

CITY OF ST. HELENA

RESOLUTION NO. 2015-____

SolEd Benefit Corp Solar Power Purchase Agreement Notice of Termination of Power Purchase Agreement

A. On August 26, 2014 the City Council approved a resolution approving a Solar Power Purchase Agreement (PPA) with Sol-Ed Solar Holdings I, LLC approving design Plans, authorizing City staff to proceed with the construction of the solar arrays at Wappo Park for the Stonebridge Wells, the Wastewater Plant and the Water Treatment Plant.

B. Section 6 of the PPA identifies conditions to the City's and SolEd's obligations under the Agreement and satisfaction of the "Conditions Satisfaction Date." Pursuant to Section 6(a), SolEd's obligations are conditioned on the following action items "on or before" 60 days following the Effective Date, or by December 29, 2014:

    1. Completing due diligence regarding the suitability of the sites for the system. In September 2015, the City learned that SolEd intended on removing one of the three sites, Stonebridge Well at Wappo Park, due to the Native American burial grounds at the site. This has not been formally communicated nor officially confirmed by SolEd to the City, but was stated in an email dated July 22, 2015 that said the burial grounds would "likely prohibit a feasible solar project there." All three sites are a material condition to this agreement and all three sites were presented to the Council as part of this agreement. Thus, SolEd is unable to meet the condition to construct solar systems on all three sites.

    2. In July 2015, the City received an email providing a Tentative Term Sheet and request for language modification. In August 2015 the City agreed to review the language but has not agreed to the proposed change. City's receipt of an executed financing commitment for the System's construction, entitled the "Financing Term Sheet."

    3. Approval of the Construction Agreement for the System by SolEd's financing parties.

C. Within 180 days of the Effective Date, or by April 28, 2015, SolEd was to:

    1. Obtain all necessary zoning, land use, and building permits to construct and operate the facility.

    2. Execute all necessary agreements for the systems' utility interconnection and distribution.

3. Provide the City with proof of insurance and written confirmation in recordable form of any entity holding a lien or other encumbrance over the premise or Facility confirming recognition of SolEd's rights under this Agreement.

D. Section 6(b) identifies the conditions to the City's obligations under the Agreement. These include:

1. SolEd achieving the Commercial Operation Date on or before the March 2015 Anticipated Commercial Operation Date for each system, as identified in Exhibit 1, Section 7.

2. Additionally, within 180 days from the Effective Date, or April 28, 2015, the City's obligations are conditioned on the following:

a. City receiving SolEd's Financing Term Sheet.

b. SolEd's proof of insurance.

c. Compliance with the California Environmental Quality Act, as applicable.

d. Approval of the Construction Agreement.

E. To date, SolEd has failed to meet the March 2015 Anticipated Commercial Operations Date. SolEd has also failed to commence construction or provide a schedule as to when SolEd anticipates achieving commercial operation of the systems. Furthermore, SolEd appears to have removed the Stonebridge/Wappo Park as a system site and will not be able to meet the condition to provide systems for all three sites as contemplated by the Agreement.

F. More than five months past the 180 day Conditions Satisfaction Date, i.e., April 28, 2015, SolEd has not provided the City with a proposed Construction Agreement or the requisite proof of insurance. Only recently, the City received from SolEd an "Indicative Term Sheet," dated July 17, 2015. However, in addition to being untimely, the Indicative Term Sheet is "not intended to be, nor shall it be, construed as a binding offer or a binding agreement." Therefore, it fails to meet conditions 6(a)(ii) and 6(b)(ii) requiring a "Financing Term Sheet" representing an "executed financing commitment for the construction of the System from a Financing Party."

G. More than one year after executing the PPA, and six months after the Conditions Satisfaction Date, the City has no information from SolEd as to when the solar systems' construction will commence or be placed into commercial operation.

RESOLUTION

NOW, THEREFORE, the City Council of the City of St. Helena resolves as follows:

1. Pursuant to the General Terms and Conditions, Exhibit 4, Section 6(c) of the Agreement, Council authorizes the City Manager to issue SolEd Benefit Corp a 10 day written Notice of Termination of Power Purchase Agreement.

Approved at a Regular Meeting of the St. Helena City Council on November 10, 2015, by the following vote:

Mayor Galbraith: _____

Vice Mayor White: _____

Councilmember Crull: _____

Councilmember Dohring: _____

Councilmember Pitts: _____

APPROVED:

_____
Alan Galbraith, Mayor

ATTEST:

_____
Cindy Black, City Clerk

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