

CALENDAR FOR THE BOARD OF DIRECTORS  
**CONTRA COSTA COUNTY FIRE PROTECTION DISTRICT**  
**BOARD CHAMBERS ROOM 107, ADMINISTRATION BUILDING, 651 PINE STREET**  
**MARTINEZ, CALIFORNIA 94553-1229**

CANDACE ANDERSEN, *CHAIR*  
MARY N. PIEPHO, *VICE CHAIR*  
JOHN GIOIA  
KAREN MITCHOFF  
FEDERAL D. GLOVER

DAVID J. TWA, CLERK OF THE BOARD AND COUNTY ADMINISTRATOR, (925) 335-1900  
JEFF CARMAN, FIRE CHIEF

PERSONS WHO WISH TO ADDRESS THE BOARD DURING PUBLIC COMMENT OR WITH RESPECT TO  
AN ITEM THAT IS ON THE AGENDA, WILL BE LIMITED TO TWO (2) MINUTES.

The Board Chair may reduce the amount of time allotted per speaker at the beginning of each item  
or public comment period  
depending on the number of speakers and the business of the day.  
Your patience is appreciated.

A closed session may be called at the discretion of the Board Chair.

Staff reports related to open session items on the agenda are also accessible on line at  
[www.co.contra-costa.ca.us](http://www.co.contra-costa.ca.us).

**ANNOTATED AGENDA and MINUTES**  
**December 6, 2016**

Present: John Gioia, Director; Candace Andersen, Director; Mary N. Piepho, Director; Karen Mitchoff,  
Director; Federal D. Glover, Director

Staff Present: David Twa, County Administrator  
Jeff Carman, Fire Chief

**1:30 P.M.** Convene and call to order.

**CONSIDER CONSENT ITEMS** (Items listed as C.1 through C.5 on the following agenda) –  
Items are subject to removal from Consent Calendar by request of any Director or on request  
for discussion by a member of the public. **Items removed from the Consent Calendar will  
be considered with the Discussion Items.**

**PRESENTATIONS**

**PR.1** PRESENTATION to recognize Director Mary Nejedly Piepho, upon her retirement as a Director of the Contra Costa County Fire Protection District, for her contributions to the residents of the Fire District and the greater fire service and Emergency Medical Services community within Contra Costa County. (Jeff Carman, Fire Chief)

***Speakers: Bill Granados, CCC Fire Protection District Advisory Commission; Erling Horn, resident of Lafayette; Vince Wells, Firefighters' Local 1230.***

**PR.2** PRESENTATION of Fire Chief Certification and Collar Brass to Assistant Fire Chief Aaron McAlister by Chief Dennis Mathisen of the Office of the State Fire Marshal. (Jeff Carman, Fire Chief)

### **DISCUSSION ITEMS**

D. 1 CONSIDER Consent Items previously removed.

***There were no items removed from consent.***

D. 2 PUBLIC COMMENT (2 Minutes/Speaker)

***There were no requests to speak at public comment.***

**D.3** CONSIDER accepting a report from the Fire Chief providing a status summary for ongoing Fire District activities and initiatives. (Jeff Carman, Fire Chief)

AYE: Director John Gioia, Director Candace Andersen, Director Mary N. Piepho,  
Director Federal D. Glover

Other: Director Karen Mitchoff (ABSENT)

**D.4** HEARING pursuant to Government Code Section § 4217 on the Energy Services Contract with OpTerra Energy Services, Inc. and CONSIDER approving and authorizing the Fire Chief, or designee, to execute an Energy Services Contract with OpTerra Energy Services, Inc., in an amount not to exceed \$4,534,787 for energy conservation measures. (Jeff Carman, Fire Chief)

***CONTINUED to January 17, 2016 at 1:30 p.m.***

AYE: Director John Gioia, Director Candace Andersen, Director Mary N. Piepho,  
Director Federal D. Glover

Other: Director Karen Mitchoff (ABSENT)

***ADJOURN***

### **CONSENT ITEMS**

C.1 ADOPT the 2017 meeting schedule for the Contra Costa County Fire Protection District Board of Directors, as well as fixing the dates for budget hearings and adoption, as recommended by the County Administrator and Fire Chief.

AYE: Director John Gioia, Director Candace Andersen, Director Mary N. Piepho, Director Karen Mitchoff, Director Federal D. Glover

C.2 APPROVE and AUTHORIZE the Fire Chief, or designee, to execute an amendment to an agreement with the Bay Area Air Quality Management District extending the term and increasing the monthly payment to operate its meteorological system on property owned by the Contra Costa County Fire Protection District. (100% Revenue)

AYE: Director John Gioia, Director Candace Andersen, Director Mary N. Piepho, Director Karen Mitchoff, Director Federal D. Glover

C.3 ADOPT Resolution No. 2016/3 to grant an exemption to Contra Costa County Salary Regulations Section 4.1, and adjust the salary step of the incumbent in the classification of Fire Training Chief (RWHA), position number 5653, from step one to step two of salary range HA5 2248 (\$11,768.38 - \$12,974.64) effective at date of promotion August 15, 2016, as requested by the Fire Chief and recommended by the County Administrator. (100% District funds)

AYE: Director John Gioia, Director Candace Andersen, Director Mary N. Piepho, Director Karen Mitchoff, Director Federal D. Glover

C.4 APPROVE and AUTHORIZE the Fire Chief, or designee, to execute an order form and terms and conditions with Kronos Incorporated for a hosted workforce management software solution in an amount not to exceed \$22,000 for the period October 1, 2016 through September 30, 2018. (100% Fire District General Operating Fund)

AYE: Director John Gioia, Director Candace Andersen, Director Mary N. Piepho, Director Karen Mitchoff, Director Federal D. Glover

C.5 APPROVE and AUTHORIZE the Fire Chief, or designee, to apply for and accept grant funding from the Federal Emergency Management Agency, U.S. Department of Homeland Security, Urban Area Security Initiative grant program in an amount not to exceed \$250,000 for the purchase of a towable emergency power generator and two stakeside Urban Search and Rescue /Hazardous Materials support vehicles. (100% Federal)

AYE: Director John Gioia, Director Candace Andersen, Director Mary N. Piepho, Director Karen Mitchoff, Director Federal D. Glover

### **GENERAL INFORMATION**

The Board meets in its capacity as the Board of Directors of the Contra Costa County Fire Protection District pursuant to Ordinance Code Section 24-2.402. Persons who wish to address the Board of Directors should complete the form provided for that purpose and furnish a copy of any

written statement to the Clerk.

Any disclosable public records related to an open session item on a regular meeting agenda and distributed by the Clerk of the Board to a majority of the members of the Board of Directors less than 72 hours prior to that meeting are available for public inspection at 651 Pine Street, First Floor, Room 106, Martinez, CA 94553, during normal business hours. All matters listed under CONSENT ITEMS are considered by the Board of Directors to be routine and will be enacted by one motion. There will be no separate discussion of these items unless requested by a member of the Board or a member of the public prior to the time the Commission votes on the motion to adopt. Persons who wish to speak on matters set for PUBLIC HEARINGS will be heard when the Chair calls for comments from those persons who are in support thereof or in opposition thereto. After persons have spoken, the hearing is closed and the matter is subject to discussion and action by the Board. Comments on matters listed on the agenda or otherwise within the purview of the Board of Directors can be submitted to the office of the Clerk of the Board via mail: Contra Costa County Fire Protection District Board of Directors, 651 Pine Street Room 106, Martinez, CA 94553; by fax: 925-335-1913.

The District will provide reasonable accommodations for persons with disabilities planning to attend Board meetings who contact the Clerk of the Board at least 24 hours before the meeting, at (925) 335-1900; TDD (925) 335-1915. An assistive listening device is available from the Clerk, Room 106. Copies of recordings of all or portions of a Board meeting may be purchased from the Clerk of the Board. Please telephone the Office of the Clerk of the Board, (925) 335-1900, to make the necessary arrangements. Applications for personal subscriptions to the Board Agenda may be obtained by calling the Office of the Clerk of the Board, (925) 335-1900. The Board of Directors' agenda and meeting materials are available for inspection at least 96 hours prior to each meeting at the Office of the Clerk of the Board, 651 Pine Street, Room 106, Martinez, California.

Subscribe to receive to the weekly Board Agenda by calling the Office of the Clerk of the Board, (925) 335-1900 or using the County's on line subscription feature at the County's Internet Web Page, where agendas and supporting information may also be viewed:

[www.co.contra-costa.ca.us](http://www.co.contra-costa.ca.us)

### **ADVISORY COMMISSION**

The Contra Costa County Fire Protection District Advisory Fire Commission is scheduled to meet next on Monday, December 12, 2016 at 7:00 p.m. at the District Training Center, 2945 Treat Blvd., Concord, CA 94518.

**AGENDA DEADLINE: Thursday, 12 noon, 12 days before the Tuesday Board meetings.**



## **Glossary of Acronyms, Abbreviations, and other Terms (in alphabetical order):**

The Contra Costa County Fire Protection District has a policy of making limited use of acronyms, abbreviations, and industry-specific language in its Board of Supervisors meetings and written materials. Following is a list of commonly used language that may appear in oral presentations and written materials associated with Board meetings:

**AB** Assembly Bill  
**ABAG** Association of Bay Area Governments  
**ACA** Assembly Constitutional Amendment  
**ADA** Americans with Disabilities Act of 1990  
**AFSCME** American Federation of State County and Municipal Employees  
**ARRA** American Recovery & Reinvestment Act of 2009  
**BAAQMD** Bay Area Air Quality Management District  
**BART** Bay Area Rapid Transit District  
**BayRICS** Bay Area Regional Interoperable Communications System  
**BGO** Better Government Ordinance  
**BOC** Board of Commissioners  
**CALTRANS** California Department of Transportation  
**CAER** Community Awareness Emergency Response  
**CAL-EMA** California Emergency Management Agency  
**CAO** County Administrative Officer or Office  
**CBC** California Building Code  
**CCCFPD (ConFire)** Contra Costa County Fire Protection District  
**CCHP** Contra Costa Health Plan  
**CCTA** Contra Costa Transportation Authority  
**CCRMC** Contra Costa Regional Medical Center  
**CCWD** Contra Costa Water District  
**CFC** California Fire Code  
**CFDA** Catalog of Federal Domestic Assistance  
**CEQA** California Environmental Quality Act  
**CIO** Chief Information Officer  
**COLA** Cost of living adjustment  
**ConFire (CCCFPD)** Contra Costa County Fire Protection District  
**CPA** Certified Public Accountant  
**CPF** – California Professional Firefighters  
**CPI** Consumer Price Index  
**CSA** County Service Area  
**CSAC** California State Association of Counties  
**CTC** California Transportation Commission  
**dba** doing business as  
**EBMUD** East Bay Municipal Utility District  
**ECCFPD** East Contra Costa Fire Protection District  
**EIR** Environmental Impact Report  
**EIS** Environmental Impact Statement  
**EMCC** Emergency Medical Care Committee  
**EMS** Emergency Medical Services

**et al.** et alii (and others)  
**FAA** Federal Aviation Administration  
**FEMA** Federal Emergency Management Agency  
**FTE** Full Time Equivalent  
**FY** Fiscal Year  
**GIS** Geographic Information System  
**HCD** (State Dept of) Housing & Community Development  
**HHS** (State Dept of ) Health and Human Services  
**HOV** High Occupancy Vehicle  
**HR** Human Resources  
**HUD** United States Department of Housing and Urban Development  
**IAFF** International Association of Firefighters  
**ICC** International Code Council  
**IFC** International Fire Code  
**Inc.** Incorporated  
**IOC** Internal Operations Committee  
**ISO** Industrial Safety Ordinance  
**JPA** Joint (exercise of) Powers Authority or Agreement  
**Lamorinda** Lafayette-Moraga-Orinda Area  
**LAFCo** Local Agency Formation Commission  
**LLC** Limited Liability Company  
**LLP** Limited Liability Partnership  
**Local 1** Public Employees Union Local 1  
**Local 1230** Contra Costa County Professional Firefighters Local 1230  
**MAC** Municipal Advisory Council  
**MBE** Minority Business Enterprise  
**MIS** Management Information System  
**MOE** Maintenance of Effort  
**MOU** Memorandum of Understanding  
**MTC** Metropolitan Transportation Commission  
**NACo** National Association of Counties  
**NEPA** National Environmental Policy Act  
**NFPA** National Fire Protection Association  
**OES-EOC** Office of Emergency Services-Emergency Operations Center  
**OPEB** Other Post Employment Benefits  
**OSHA** Occupational Safety and Health Administration  
**PARS** Public Agencies Retirement Services  
**PEPRA** Public Employees Pension Reform Act  
**RFI** Request For Information  
**RFP** Request For Proposal  
**RFQ** Request For Qualifications  
**SB** Senate Bill  
**SBE** Small Business Enterprise  
**SEIU** Service Employees International Union  
**SUASI** Super Urban Area Security Initiative  
**SWAT** Southwest Area Transportation Committee  
**TRANSPAC** Transportation Partnership & Cooperation (Central)  
**TRANSPLAN** Transportation Planning Committee (East County)

**TRE** or **TTE** Trustee

**TWIC** Transportation, Water and Infrastructure Committee

**UASI** Urban Area Security Initiative

**UCOA** United Chief Officers Association

**vs.** versus (against)

**WAN** Wide Area Network

**WBE** Women Business Enterprise

**WCCTAC** West Contra Costa Transportation Advisory Committee



Contra  
Costa  
County

To: Contra Costa County Fire Protection District Board of Directors  
From: Jeff Carman, Chief, Contra Costa County Fire Protection District  
Date: December 6, 2016

Subject: Recognition of Director Mary Nejedly Piepho

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**RECOMMENDATION(S):**

N/A

**FISCAL IMPACT:**

N/A

**BACKGROUND:**

N/A



APPROVE



OTHER



RECOMMENDATION OF CNTY ADMINISTRATOR



RECOMMENDATION OF BOARD  
COMMITTEE

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Action of Board On: **12/06/2016** ☐ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: December 6, 2016

Contact: Lewis Broschard,  
383-5002

David J. Twa, County Administrator and Clerk of the Board of Supervisors

By: , Deputy

cc:

CLERK'S ADDENDUM

*Speakers: Bill Granados, CCC Fire Protection District Advisory Commission; Erling Horn, resident of Lafayette; Vince Wells, Firefighters' Local 1230.*



**Contra  
Costa  
County**

To: Contra Costa County Fire Protection District Board of Directors  
 From: Jeff Carman, Chief, Contra Costa County Fire Protection District  
 Date: December 6, 2016

Subject: Presentation of Fire Chief Certification and Collar Brass to Assistant Fire Chief Aaron McAlister

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**RECOMMENDATION(S):**

RECOGNIZE Assistant Fire Chief Aaron McAlister on earning the Fire Chief Certification. Chief Dennis Mathisen from the Office of the State Fire Marshal will formally recognize the accomplishment by presenting Chief McAlister with his certification and collar brass.

**FISCAL IMPACT:**

No fiscal impact.

**BACKGROUND:**

Prior to joining the Contra Costa County Fire Protection District (District) in August 2016 as Assistant Fire Chief, Aaron McAlister was enrolled in the Executive Fire Officer program at the National Fire Academy. Chief McAlister has since successfully completed the program and earned the Fire Chief Certification. The District congratulates Chief McAlister on this noteworthy accomplishment and is honored that Chief Mathisen from the Office of the State Fire Marshal is able to join us today to present Chief McAlister with his certification and collar brass.

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☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD  
COMMITTEE

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Action of Board On: **12/06/2016** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: December 6, 2016

Contact: Jeff Carman, Fire Chief  
(925) 941-3318

David J. Twa, County Administrator and Clerk of the Board of Supervisors

By: , Deputy

cc:



**Contra  
Costa  
County**

To: Contra Costa County Fire Protection District Board of Directors  
 From: Jeff Carman, Chief, Contra Costa County Fire Protection District  
 Date: December 6, 2016

Subject: Fire Chief's Report - December 6, 2016

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**RECOMMENDATION(S):**

ACCEPT a report from the Fire Chief providing a status summary for ongoing Fire District activities and initiatives.

**FISCAL IMPACT:**

No fiscal impact.

**BACKGROUND:**

At the request of the Contra Costa County Fire Board of Directors, the Fire Chief is providing a report on the status and progress of the various District initiatives.

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☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD  
COMMITTEE

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Action of Board On: **12/06/2016** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, Director  
 Candace Andersen,  
 Director  
 Mary N. Piepho, Director  
 Federal D. Glover, Director

ABSENT: Karen Mitchoff, Director

Contact: Jeff Carman, Fire Chief  
 925-941-3500

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: December 6, 2016  
 , County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

cc:



## ATTACHMENTS

Fire Chief's Report - December  
2016



December 6, 2016

TO: Board of Directors

FROM: Jeff Carman, Fire Chief

RE: Fire Chief's Report

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- The Fire District held a Labor/Management Retreat on November 29 and 30 at the San Ramon Valley Conference Center.
- On November 21, the District took delivery of a new Mobile Command Vehicle. Valued at approximately \$960,000.00, the vehicle was funded by a regional FEMA Assistance to Firefighters Grant. Equipped with the latest technology and designed to complement the Sheriff's Mobile Communications Unit, which was purchased last year, this vehicle is capable of supporting extended incidents. The vehicle is also a regional asset and can be utilized by any County fire agency.
- Design documents for Fire Station 16 are still being reviewed by the City of Lafayette. There is no update available on the status of their design review process. The CEQA review is being conducted concurrently, and we expect results from that process in early December.
- The site plan for Fire Station 70 has undergone several revisions and appears to be compliant with the City of San Pablo's planning requirements. City staff have been helpful in resolving potential plan and design concerns. Fire District staff, along with County Counsel and County Public Works Real Estate Division staff, met with City of San Pablo staff to resolve the joint funding agreement. We expect the agreement to be finalized in early December and submitted to the Board for consideration in January. Floor plans and initial design layouts were shared with the FS 70 crews in mid-November, and feedback is being collected for incorporation into the final design. In early December, title reports will be requested on the new parcel located at 1800 23<sup>rd</sup> Street. The CEQA review will be initiated in late November and should take approximately five to six months to complete.
- Beginning the first week of December, the final four newly purchased fire engines will begin to arrive every other week. The final ladder truck and heavy rescue are expected to be in our possession by the end of February 2017. This summary includes all of the equipment we have on order to date. We are presently evaluating needs and recommendations for future purchases, including ladder trucks, water tenders, wildland engines, and wildland-urban interface structural firefighting engines.

- Earlier this year, the District contracted with a consultant to study our fleet maintenance shop and determine the most cost effective manner in which to maintain our fleet. This study was part of a comprehensive review initiated by the Fire District to ensure we are operating as efficiently as possible. As the study is in its final phases, District staff should receive an administrative draft by the end of November.
- Fire Station 87 in Pittsburg is being prepared for reopening on January 4, 2017. Battalion 8 (Baypoint, Pittsburg, Antioch) is our busiest battalion, and the addition of this engine company will improve response times and service within the District. The public opening of FS 87 is scheduled for January 7, 2017. Additional information is forthcoming.



Contra  
Costa  
County

To: Contra Costa County Fire Protection District Board of Directors  
From: Jeff Carman, Chief, Contra Costa County Fire Protection District  
Date: December 6, 2016

Subject: Energy Services Contract with OpTerra Energy Solutions, Inc.

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**RECOMMENDATION(S):**

1. OPEN the public hearing on the Energy Services Contract with OpTerra Energy Services, Inc.
2. RECEIVE testimony, and CLOSE the public hearing.
3. FIND that the anticipated cost to the District for thermal or electrical energy or conservation services provided by the energy conservation facility under the contract will be less than the anticipated marginal cost to the District of thermal, electrical, or other energy that would have been consumed by the District in the absence of those purchases.
4. APPROVE and AUTHORIZE the Fire Chief, or designee, to execute an Energy Services Contract with OpTerra Energy Services, Inc., a Delaware corporation, in an amount not to exceed \$4,534,787.
5. FIND that the project services to be performed under the Energy Services Contract are exempt from California Environmental Quality Act (CEQA), Class 1(d) Categorical Exemption, pursuant to CEQA Guidelines section 15301 (Existing Facilities) (d) of the CEQA Guidelines, and.

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☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD  
COMMITTEE

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Action of Board On: **12/06/2016** ☐ APPROVED AS RECOMMENDED ☒ OTHER

Clerks Notes: CONTINUED to January 17 2016 at 1:30 p.m

**VOTE OF SUPERVISORS**

AYE: John Gioia, Director  
Candace Andersen,  
Director  
Mary N. Piepho, Director  
Federal D. Glover, Director

ABSENT: Karen Mitchoff, Director

Contact: Aaron McAlister,  
925-383-5003

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: December 6, 2016

David J. Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

cc:

## RECOMMENDATION(S): (CONT'D)

6. DIRECT District staff, through the Conservation and Development Department to file a Notice of Exemption with the County Clerk.

## FISCAL IMPACT:

The total cost of the project including construction and development is \$4,418,845. The Fire District intends to use \$300,000 of available funds and finance the remainder of the project using a lease purchase arrangement over a maximum 19 year period. The lease purchase payments are projected to be fully offset by the combined program savings resulting in a net savings to the District in excess of \$50,000 annually.

In the fall of 2016 the Fire District issued an RFP for competitive financing to pay the costs of the Energy Services Contract. The Fire District has entered into negotiations with the successful proposer and the District anticipates returning to the Board within 60 days for authorization to enter into a financing agreement. The energy services contract requires financing to be in place within 60 days of executing the contract.

This contract is contingent upon the District obtaining financing that will allow it to make the payments to OpTerra Energy Services required by this contract. The Fire District will have sixty (60) calendar days after the contract effective date to obtain such financing. If the financing is not obtained within this time, for any reason, either party may declare this contract to be null and void. OpTerra Energy Services will have no obligation to commence performance of the work unless and until the financing has been obtained

## BACKGROUND:

The Fire District has identified energy efficiency and HVAC improvements as a high priority project. On May 10, 2016, the Board authorized a Program Development Agreement with OpTerra Energy Services for energy assessment services and identification of potential energy conservation measures at Fire District facilities.

Under the Program Development Agreement, the assessment has concluded the cost of the energy conservation measures will be less than amounts the District would otherwise spend on energy without the implementation of the energy conservation measures. OpTerra has designed a program to install solar panels at four locations, water conservation measures at over a dozen sites as well as upgrade HVAC equipment at 12 facilities. The solar panels will be installed on shade canopies at three locations and one ground mounted system will be installed at the District's Delta Fair site. The solar shade canopy at the training center will provide cover for training and reserve fire apparatus currently stored outside.

A project of this scope allows us to rapidly address many of our deferred HVAC maintenance needs. The installation of solar systems results in direct energy savings of \$192,000 per year. Additionally, the district will avoid some ongoing maintenance costs as well as future capital costs related to upgrading HVAC systems of approximately \$72,000 annually for a total combined savings of approximately \$264,000 per year. These savings will be used to offset the cost of financing installation of the equipment.

The project is a substantial commitment to renewable energy and is consistent with the Contra Costa County Climate Action Plan.

## CONSEQUENCE OF NEGATIVE ACTION:

The Fire District would not be able to install solar and other energy efficiency upgrades. The HVAC improvements would have to be accomplished through other unidentified means.

## CHILDREN'S IMPACT STATEMENT:

No impact.

## CLERK'S ADDENDUM

***CONTINUED to January 17, 2016 at 1:30 p.m.***

**ATTACHMENTS**

CEQA Document

ESC OpTerra

OpTerra Presentation

PUBLIC WORKS DEPARTMENT  
INITIAL STUDY OF  
ENVIRONMENTAL SIGNIFICANCE

PROJECT NUMBER: WW0902  
CP# 16-52

PROJECT NAME: Contra Costa County Fire District-Solar Panel Installation, HVAC Upgrades,  
and Energy Conservation Improvements [000-1702]

PREPARED BY: Trina R. Torres *TR* DATE: November 21, 2016

APPROVED BY: *Linda C. Co* DATE: Nov. 23, 2016

**RECOMMENDATIONS:**

☒ Categorical Exemption: 15301 [Class 1(d)]

☐ Negative Declaration

☐ Environmental Impact Report Required

☐ Conditional Negative Declaration

The project will not have a significant effect on the environment. The recommendation is based on the following: The project consists of the minor alteration of existing public structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination, pursuant to section 15301(d) of the California Environmental Quality Act (CEQA) guidelines; (d) Restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety.

What changes to the project would mitigate the identified impacts: N/A

USGS Quad Sheet: multiple	Base Map Sheet #: multiple	Parcel #: multiple
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**GENERAL CONSIDERATIONS:**

1. **Location:** The project is located at multiple Contra Costa County Fire District (District)-owned facilities. [Figures 1- 3D].
2. **Project Description:** The purpose of the project is to install photovoltaic/solar electricity generating panels, LED lighting, and supporting equipment; and, upgrade the heating, ventilation, and air conditioning (HVAC) systems; boiler replacement, water conservation equipment upgrades; and, install other energy conservation measure (ECM) improvements.
  - A. **Solar Upgrades:** The solar equipment will consist of solar panels, brackets, wiring, electric meters and other associated equipment required to provide solar-electric energy to the following four (4) District facilities [Figures: 1, 2A through 3D]:
    - 1) Fire Station (FS) #10/Training Center (Concord)
      - Removal of approximately twenty ornamental trees (raywood ash and deodor) may be necessary for the installation of the solar panels in the parking lot at this location. If trees are removed during nesting bird season (February 15-August 31), a biologist will conduct a nesting bird survey prior to tree removal. The other remaining trees will not be affected.
    - 2) FS#11 (Clayton area): Panels and support beams will be installed in the existing parking lot.
    - 3) FS#84 (Pittsburg): Panels and support beams will be installed in the existing parking lot.
    - 4) Delta Fair RES-BCT (Antioch area): This area is a vacant field. Foundations will be installed for support beams and solar panels.



# Contra Costa County

**B. HVAC Upgrades and improvements:** HVAC system upgrades will include repairing or replacing existing HVAC units, structural supports, retrofitting HVAC controls, replacing existing variable air volume boxes with new terminal boxes, and replacing existing reheat coil, boiler replacement/upgrades, as well upgrading other HVAC system equipment at the following District facilities [Figure 1]:

- 1) FS#1, FS#3, and FS#7 (Walnut Creek)
- 2) FS#10 and FS#22 (Concord)
- 3) FS#13 and FS#14 (Martinez)
- 4) FS#81 and FS#88 (Antioch)
- 5) Administration Building-Central and Communication Center (Pleasant Hill)
- 6) Investigations Building (Pittsburg)

**C. Water Conservation and other ECM improvements:** Retrofitting lavatory and kitchen sink faucets, aerators, and upgrade supporting equipment.

No real estate transactions are necessary in support of the project.

Vehicles will be diverted around the project area during construction activities.

Trees and shrubbery may need trimming in the project areas. In order to minimize damage to any nearby trees, any roots exposed during excavation will be cut cleanly.

**3. Does it appear that any feature of the project will generate significant public concern?**

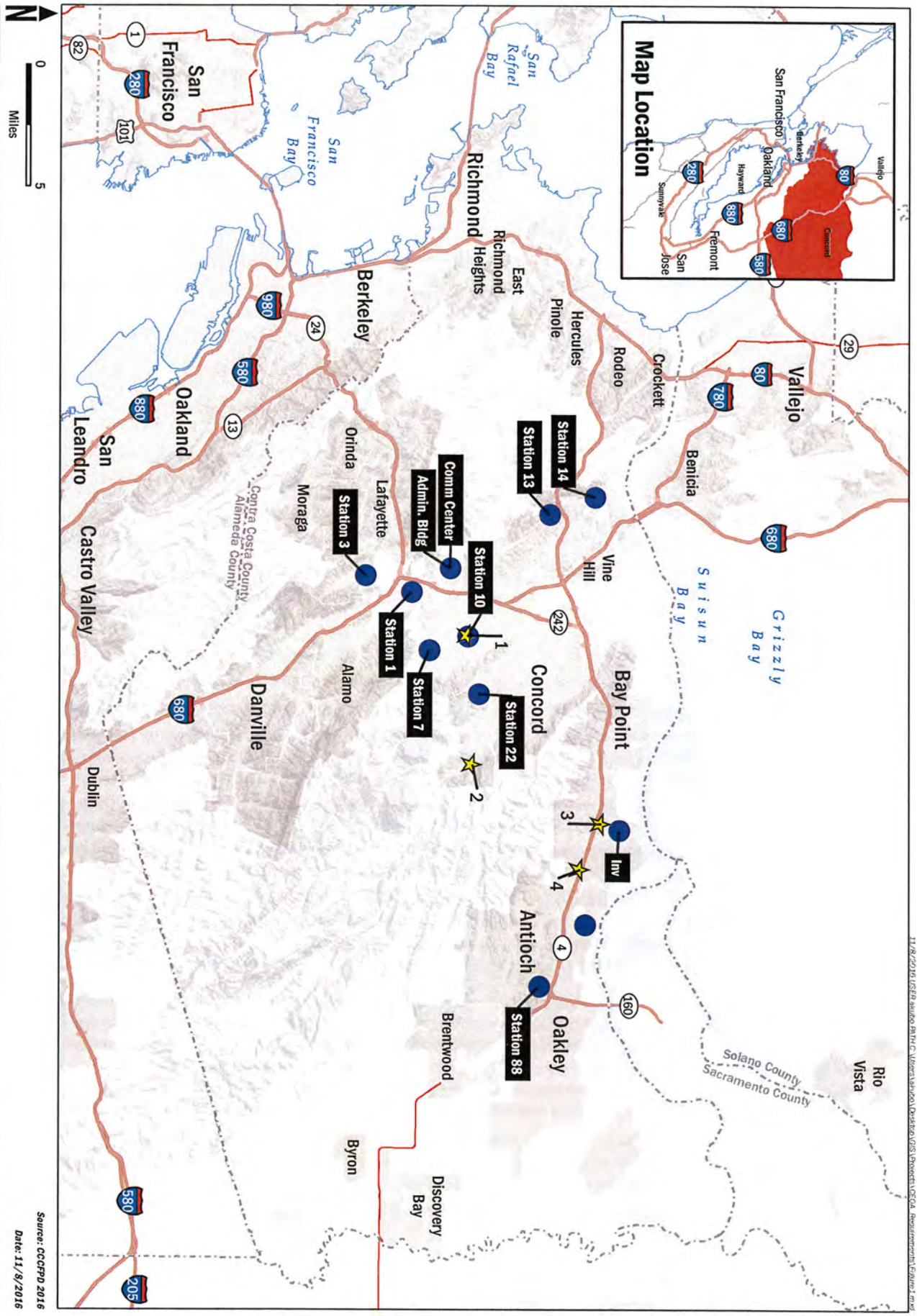
☐ Yes ☒ No ☐ maybe (Nature of concern):

**4. Will the project require approval or permits by other than a County agency?**

☐ Yes ☒ No

**5. Is the project within the Sphere of Influence of any city?** Yes, multiple.

11/8/2016 10:52 AM Auto Plotting - Contra Costa County Fire Protection District - 11/8/2016 10:52 AM



Contra Costa County Fire Protection District  
CCCFPD

- ★ Proposed Solar Panel Location
- HVAC Work Location

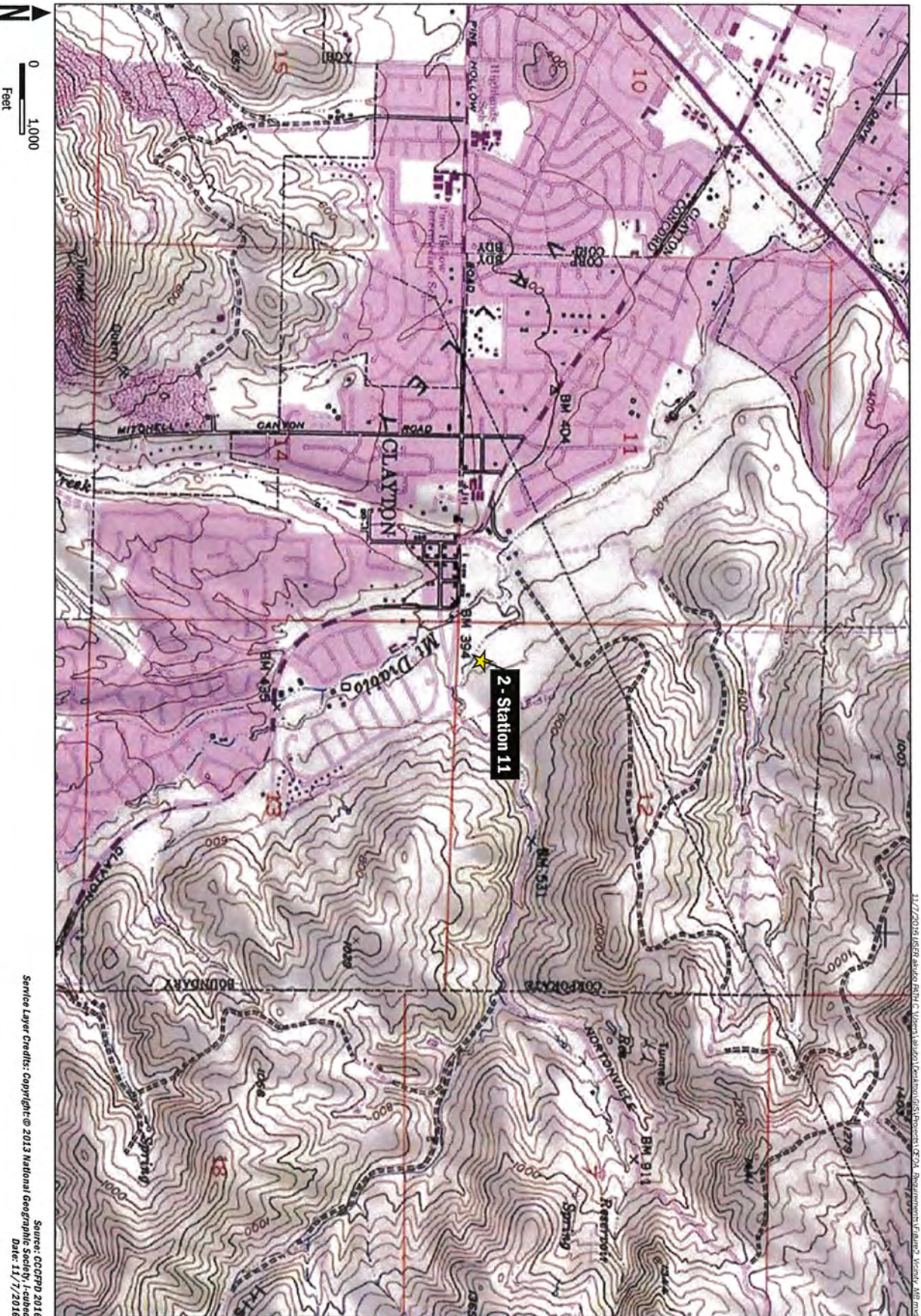
**FIGURE 1**  
County Location Map

Source: CCCFPD 2016  
Date: 11/8/2016









Source: CCCFPD 2016  
 Service Layer Credits: Copyright © 2013 National Geographic Society, Inc. Used  
 Date: 11/7/2016



Contra Costa County Fire Protection District  
 CCCFPD

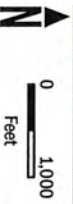
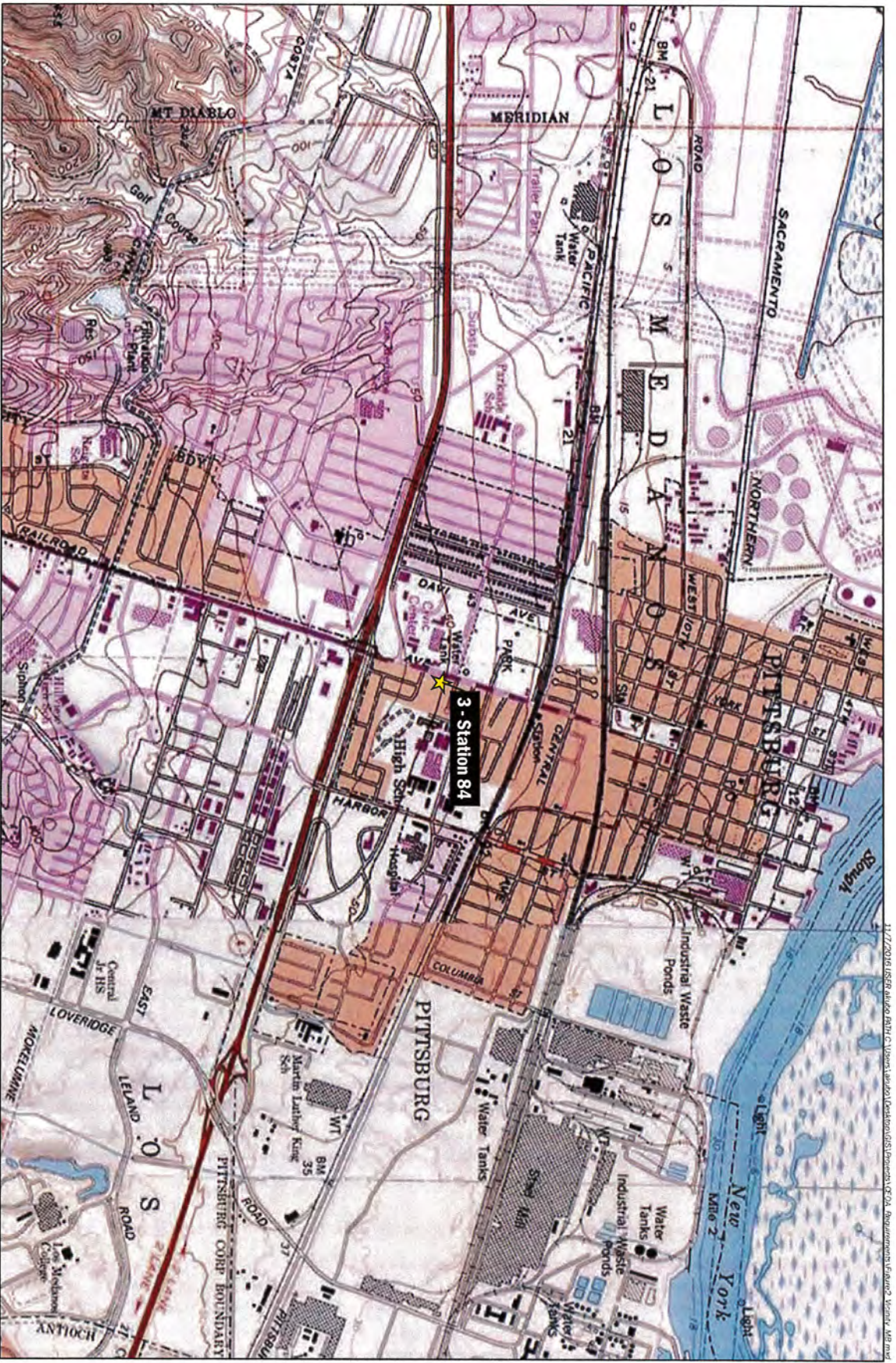


Proposed Solar Panel Location

**FIGURE 2B**

Vicinity Map - Station 11





Contra Costa County Fire Protection District  
CCCFPD



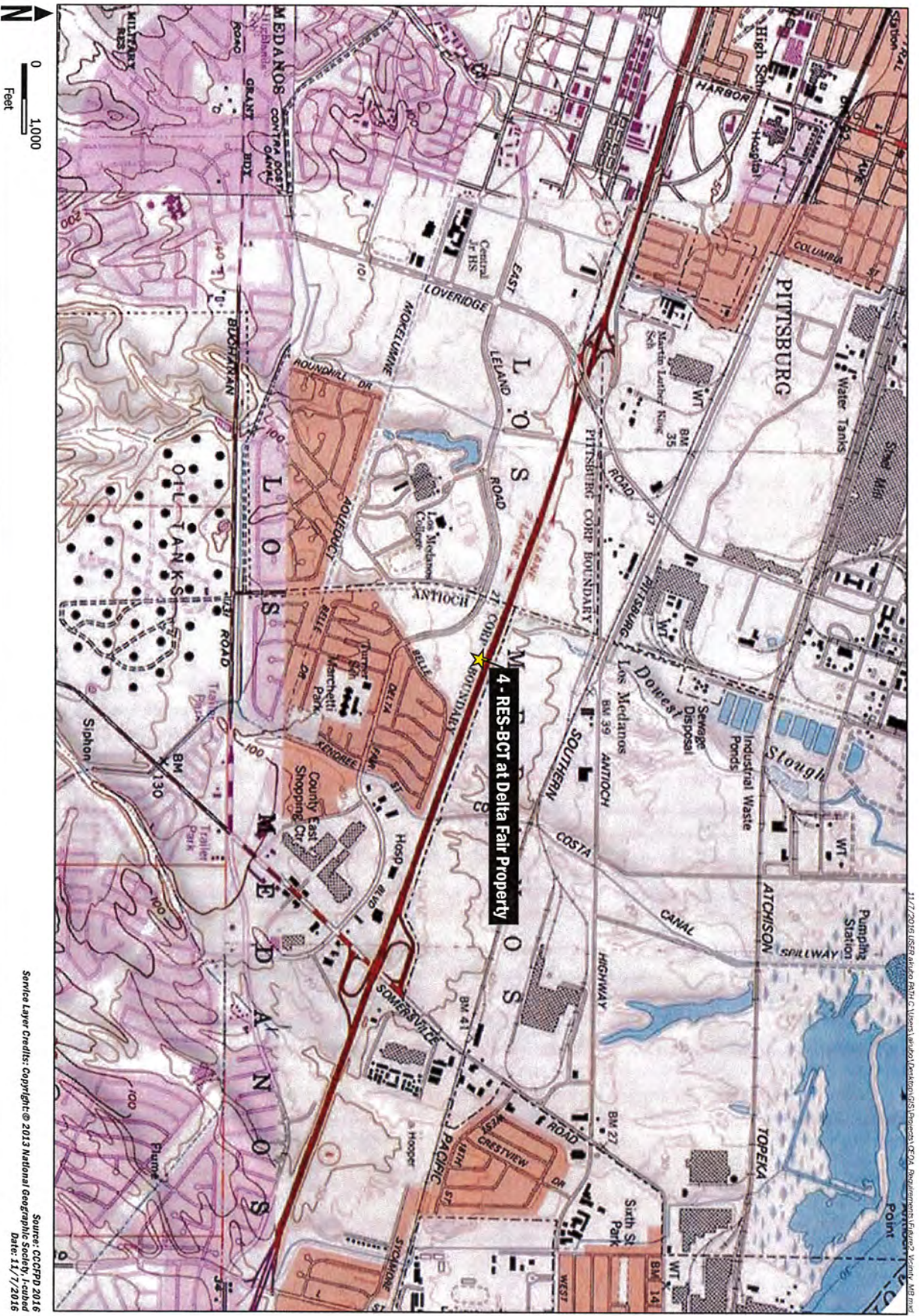
Proposed Solar Panel Location

**FIGURE 2C**

Vicinity Map - Station 84

Source: CCCFPD 2016  
Service Layer Credits: Copyright © 2013 National Geographic Society, Inc. All rights reserved.  
Date: 11/7/2016





Contra Costa County Fire Protection District  
CCFPD



Proposed Solar Panel Location

**FIGURE 2D**

Vicinity Map - RES-BCT at Delta Fair Property

Source: CCFPD 2016  
Service Layer Credits: Copyright © 2013 National Geographic Society, Inc.  
Date: 11/7/2016











11/27/2016 10:52:25 AM C:\Users\Norton\Desktop\GIS\Drawings\Figures\Station\_84.mxd



Source: CCCFPD 2016  
Service Layer Credits: Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, DeLorme, AeroGRID, IGN, IGP, swisstopo, and the GIS User Community  
Date: 11/7/2016



Contra Costa County Fire Protection District  
CCCFPD



Fire Station



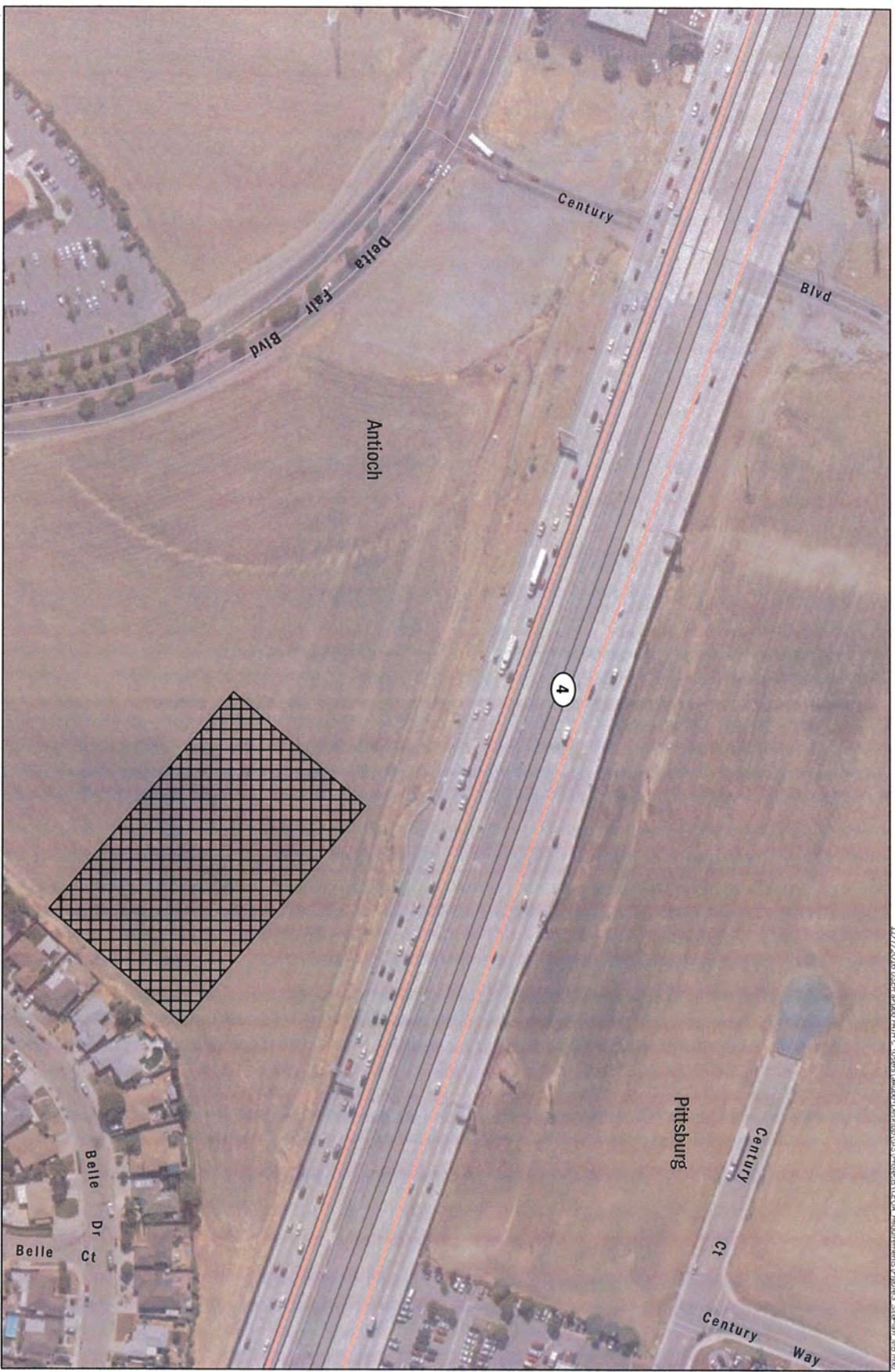
Solar Panel

**FIGURE 3C**

Site Plan - Station 84



11/7/2016 10:58 AM Delta Fair Property District GIS Documents\GIS\Requirements\Figures\3d\Delta Fair.mxd



Source: CCCFPD 2016  
Service Layer Credits: Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, DeLorme, AeroGRID, IGN, IGP, swisstopo, and the GIS User Community  
Date: 11/7/2016

**FIGURE 3D**



Contra Costa County Fire Protection District  
CCCFPD



Fire Station



Solar Panel

Site Plan - RES-BCT at Delta Fair Property



CALIFORNIA ENVIRONMENTAL QUALITY ACT  
**Notice of Exemption**

To: ☐ Office of Planning and Research  
P.O. Box 3044, Room 113  
Sacramento, CA 95812-3044

From: Contra Costa County  
Dept. of Conservation & Development  
30 Muir Road  
Martinez, CA 94553

☒ County Clerk  
County of: Contra Costa

Project Title: **Contra Costa County Fire District - Solar Panel Installation,  
HVAC Upgrades, and Energy Conservation Improvements  
[000-1702] Replacement, Project No. WW0902, CP# 16-52**

Project Applicant: **Contra Costa County Public Works Department**

Project Location – **Specific:** Multiple Contra Costa County Fire District (District)-owned facilities, Countywide

Project Location: Countywide

Project Location – County: **Contra Costa**

**Description of Nature, Purpose and Beneficiaries of Project:** The purpose of the project is to install photovoltaic/solar electricity generating panels, LED lighting, and supporting equipment; and, upgrade the heating, ventilation, and air conditioning (HVAC) systems; boiler replacement, water conservation equipment upgrades; and, install other energy conservation measure (ECM) improvements. The project is located at multiple Contra Costa County Fire District (District)-owned facilities, countywide.

**A. Solar Upgrades:** The solar equipment will consist of solar panels, brackets, wiring, electric meters and other associated equipment required to provide solar-electric energy to the following four (4) District facilities:

- 1) Fire Station (FS) #10/Training Center (Concord)
  - Removal of approximately twenty ornamental trees (raywood ash and deodor) may be necessary for the installation of the solar panels in the parking lot at this location. If trees are removed during nesting bird season (February 15-August 31), a biologist will conduct a nesting bird survey prior to tree removal. The other remaining trees will not be affected.
- 2) FS#11 (Clayton area): Panels and support beams will be installed in the existing parking lot.
- 3) FS#84 (Pittsburg): Panels and support beams will be installed in the existing parking lot.
- 4) Delta Fair RES-BCT (Antioch area): This area is a vacant field. Foundations will be installed for support beams and solar panels.

**B. HVAC Upgrades and improvements:** HVAC system upgrades will include repairing or replacing existing HVAC units, structural supports, retrofitting HVAC controls, replacing existing variable air volume boxes with new terminal boxes, and replacing existing reheat coil, boiler replacement/upgrades, as well upgrading other HVAC system equipment at the following District facilities:

- 1) FS#1, FS#3, and FS#7 (Walnut Creek)
- 2) FS#10 and FS#22 (Concord)
- 3) FS#13 and FS#14 (Martinez)
- 4) FS#81 and FS#88 (Antioch)
- 5) Administration Building-Central and Communication Center (Pleasant Hill)
- 6) Investigations Building (Pittsburg)

**C. Water Conservation and other ECM improvements:** Retrofitting lavatory and kitchen sink faucets, aerators, and upgrade supporting equipment.

No real estate transactions are necessary in support of the project.

Vehicles will be diverted around the project area during construction activities.

Trees and shrubbery may need trimming in the project areas. In order to minimize damage to any nearby trees, any roots exposed during excavation will be cut cleanly.

**Notice of Exemption-continued**  
**CP# 16-52**

Name of Public Agency Approving Project: **Contra Costa County**  
Name of Person or Agency Carrying Out Project: **Contra Costa County Public Works Department**

**Exempt Status:**

- ☐ Ministerial Project (Sec. 21080(b) (1); 15268;  
☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));  
☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- ☒ **Categorical Exemption: 15301/Class 1(d)**  
☐ Other Statutory Exemption, Code No.: \_\_\_\_\_  
☐ General Rule of Applicability [Article 5, Section 15061 (b)(3)]

**Reasons why project is exempt:** The project consists of the minor alteration of existing public structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination, pursuant to Section 15301(d) of the California Environmental Quality Act (CEQA) guidelines; (d) Restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety.

Lead Agency Contact Person: **Trina R. Torres - Public Works Dept.** Area Code/Telephone/Extension: **(925) 313-2176**

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? ☐ Yes ☐ No

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Title: \_\_\_\_\_

☐ Signed by Lead Agency ☐ Signed by Applicant

**AFFIDAVIT OF FILING AND POSTING**

I declare that on \_\_\_\_\_ I received and posted this notice as required by California Public Resources Code Section 21152(c). Said notice will remain posted for 30 days from the filing date.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**Applicant:**

Public Works Department  
255 Glacier Drive  
Martinez, CA 94553  
Attn: **Trina R. Torres**  
Environmental Services Division  
Phone: (925) 313-2176

**Department of Fish and Game Fees Due**

- ☐ EIR - \$3,070.<sup>00</sup>  
☐ Neg. Dec. - \$2,210.<sup>25</sup>  
☐ DeMinimis Findings - \$0  
☒ **County Clerk - \$50**  
☒ **Conservation & Development - \$25**

**Total Due: \$ 75.<sup>00</sup>**

Total Paid \$ \_\_\_\_\_

Receipt #: \_\_\_\_\_



**Energy Services Contract**  
**Contra Costa County Fire Protection District and OpTerra Energy Services**

DIR Project Registration # \_\_\_\_\_  
OpTerra ES Project #: ACECN00070  
OpTerra ES Contract # R 3 1 5 7

**ENERGY SERVICES CONTRACT**

**DRAFT DATED 29 NOVEMBER 2016**

This **ENERGY SERVICES CONTRACT** is made and entered into as of 6 December 2016 (the "Contract Effective Date") by and between **OpTerra Energy Services, Inc.**, a Delaware corporation, with California State Contractor's License Number 995037 ("OpTerra Energy Services"), and **Contra Costa County Fire Protection District** ("ConFire", and together with OpTerra Energy Services the "Parties", and each of ConFire and OpTerra Energy Services a "Party").

**CONTRACT RECITALS**

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

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

WHEREAS, the Parties entered into a Program Development Agreement, dated as of 10 May 2016 (the "PDA") for OpTerra Energy Services to perform an integrated energy assessment of the Facilities, and to present ConFire with recommendations for the implementation of certain ECMs (the "Recommendations"); and

WHEREAS, the Recommendations presented by OpTerra Energy Services identified potential energy and operational savings opportunities at ConFire's Facilities, the estimated program costs to implement the recommended ECMs, and an overall potential energy cost and consumption savings if the ECM recommendations are implemented; and

WHEREAS, on 11 August 2016 OpTerra Energy Services delivered the Recommendations, on an arms-length basis, to ConFire staff, for those staff to make judgments and determinations as to the desired scope of work; and

WHEREAS, pursuant to California Government Code §4217.12, ConFire held a regularly scheduled public hearing on 6 December 2016, of which two weeks advance public notice was given regarding this Contract (as defined below) and its subject matter, and

WHEREAS, ConFire has determined that the anticipated cost to ConFire to implement the recommended ECMs will be less than the anticipated cost to ConFire for thermal, electrical, and other energy that would have been consumed by ConFire in the absence of the recommended ECMs; and

WHEREAS, ConFire has determined that entering into this Contract to implement the ECM recommendations is in the best interests of ConFire.

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

**ARTICLE 1. DEFINITIONS**

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

"**Abnormally Severe Weather Conditions**" means typhoons, hurricanes, tornadoes, lightning storms and other climatic and weather conditions that are abnormally severe for the period of time when, and the area where, such storms or conditions occur, in each case occurring at a property, the access roads to a property, or any other location where Work or Professional Services are then being performed. The term "Abnormally Severe Weather Conditions" specifically includes rain, snow or sleet in excess of one hundred fifty percent (150%) of the median level

over the preceding ten (10) year period for the local geographic area and time of year in which such rain, snow or sleet accumulates.

**“Act”** means the California Public Records Act (California Government Code § 6250 *et seq.*).

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

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

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

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

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

Attachment A	ConFire’s Facilities and Existing Equipment
Attachment B	Standards of Occupancy and Control
Attachment C	Scope of Work
Attachment D	Scope of Monitoring Installation
Attachment E	M&V Services
Attachment F	Maintenance Services

**“Beneficial Use”** means when major new equipment and systems included in the Scope of Work are properly installed, inspected, operational, and are capable of being used for their intended purpose. Criteria for Beneficial Use of equipment / systems are set forth in Attachment C hereto.

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

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

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

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

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

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

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

**“Change Order”** means a written document, signed by both OpTerra Energy Services and ConFire, authorizing OpTerra Energy Services to perform a Change. A Change Order modifies the Scope of Work and will identify: (i) the applicable Change; (ii) any increase or decrease in the compensation to be paid to OpTerra Energy Services to perform such Change; and (iii) any extension of time to complete the Project.



**"ConFire"** is defined in the first paragraph of this Contract.

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

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

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

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

**"Contract"** means this Energy Services Contract, and includes all Attachments hereto (all of which are incorporated herein by this reference), as well as all Change Orders, amendments, restatements, supplements and other modifications hereto.

**"Contract Amount"** means Four Million Three Hundred Eighteen Thousand Eight Hundred Forty-Five Dollars (\$4,318,845), which is inclusive of the \$45,000 assessment fee set forth in the PDA, and the mobilization payment, as set forth in Section 8.01, but exclusive of any fees for Professional Services.

**"Contract Bonds"** is defined in Section 11.04 hereof.

**"Contract Effective Date"** is defined in the first paragraph of this Contract.

**"Delay"** means the delay, disruption, hindrance or interference in OpTerra Energy Service's performance of the Work or the Professional Services.

**"Dispute"** is defined in Section 18.02 hereof.

**"DOE Guidelines"** is defined in Section 12.01 hereof.

**"ECM"** is defined in the Recitals.

**"EMS"** means an energy management system.

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

**"Energy Savings Term"** is defined in Attachment E hereto.

**"Energy Usage Data"** is defined in Section 2.05 hereof.

**"Event of Default"** is defined in ARTICLE 15 hereof.

**"Excusable Event"** means an act, event, occurrence, condition or cause beyond the control of OpTerra Energy Services, including, but not limited to, the following: (i) any act or failure to act of, or other Delay caused by any ConFire Person; (ii) the failure to obtain, or delay in obtaining, any Interconnection Agreement, Applicable Permit, or approval of a Governmental Authority (including due to failure to make timely inspection), or Delays caused by Changes and/or modifications to the Scope of Work required by a Governmental Authority, other than a failure caused by the action or inaction of OpTerra Energy Services; (iii) changes in the design, scope or schedule of the Work required by any Governmental Authority or ConFire Person; (iv) undisclosed or unforeseen conditions encountered at the Project Location, including discovery or existence of Hazardous Substances; (v) the failure to obtain, or delay in obtaining, approval of any Governmental Authority for design and installation of any portion of the Work, including any further or subsequent approval required with respect to any Change, other than a failure caused by the action or inaction of OpTerra Energy Services; (vi) information provided to OpTerra Energy Services by any ConFire Person or Utility is later found to be inaccurate or incomplete; (vii) any Change in Law; (viii) Delay caused by pending arbitration; (ix) acts of God; (x) acts of the public enemy or terrorist acts; (xi) relocation or construction of transmission facilities or the shutdown of such facilities for the purpose of necessary repairs; (xii) work by Utility; (xiii) flood, earthquake, tornado, storm, fire, explosions, lightning, landslide or similar cataclysmic occurrence; (xiv) sabotage, vandalism, riots or civil disobedience; (xv) labor disputes or strikes; (xvi) labor or material shortages, delay in manufacturing and deliveries of equipment; (xvii) Abnormally Severe Weather Conditions; (xviii) an annual level of direct beam solar resource availability that is less than or equal to 90% of historical averages as measured by long-term weather data (minimum 5 years) collected at the applicable Facility and/or other reliable calibrated and appropriate weather station representative of such Facility; (xix) requirement by Utility that any Generating Facility discontinue operation; (xx) any action by a Governmental Authority that prevents or inhibits the Parties from carrying out their respective obligations under this Contract (including an unstayed order of a court or administrative agency

having the effect of subjecting the sales of energy output to federal or state regulation of prices and/or services); or (xxi) any Utility power outage at a Facility.

**"Facilities"** is defined in the Recitals.

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

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

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

**"Greenhouse Gases"** is defined in Section 12.01 hereof.

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

**"Incentive Funds"** is defined in Section 8.06 hereof.

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

**"Instruments of Service"** is defined in Section 10.01(c) hereof.

**"Interconnection Agreement"** means any Interconnection Agreement entered into between ConFire and the Utility with respect to the Generating Facilities.

**"Interconnection Facilities"** is defined in Section 17.02 hereof.

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

**"Losses"** is defined in Section 11.01 hereof.

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

**"M&V Services"** (if any) are defined in Attachment E hereto.

**"Maintenance Services"** (if any) are defined in Attachment F hereto.

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

**"NEC"** means the National Electric Code.

**"Notice to Proceed"** is defined in Section 2.04 hereof.

**"OpTerra Energy Services"** is defined in the first paragraph of this Contract.

**"OpTerra Energy Services Warranty"** is defined in Section 9.01 hereof.

**"Party"** and **"Parties"** are defined in the first paragraph of this Contract.

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

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

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

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

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

**"Recommendations"** is defined in the Recitals of this Contract.

**"Retained Items"** is defined in Section 10.01(c) hereof.

**"Retention"** is defined in Section 8.03 hereof.

**"Schedule of Values"** is defined in Section 8.01 hereof.

**"Scope of Work"** means the Work set forth in Attachments C and D, as modified by any Change Order.

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

**"Surety"** means the surety supplying the Contract Bonds, which must be an admitted surety insurer, as that term is defined in California Code of Civil Procedure §995.120, authorized to do business in the State of California, and reasonably satisfactory to ConFire.

**"Utility"** is defined in Section 17.02 hereof.

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

## **ARTICLE 2. TERM; PERFORMANCE OF THE WORK**

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

Section 2.02 Performance of Work. OpTerra Energy Services will perform the Work and Professional Services hereunder in accordance with the terms of this Contract and the applicable standard of care. OpTerra Energy Services will perform its obligations under this Contract (i) using the degree of skill and care that is required by current, good and sound professional procedures and practices, and (ii) in conformance with (x) generally accepted professional standards prevailing at the time the Work is performed, (y) the covenants, terms and conditions of this Contract, and (z) applicable laws, codes, rules and regulations, including, without limitation, the applicable provisions of the California Building Code. OpTerra Energy Services represents and warrants that it is fully experienced in projects of the nature and scope of the Work and Professional Services, and that it is properly qualified, licensed and equipped to supply and perform the Work and Professional Services. The Work completed herein will be subject to ConFire's general right of inspection and supervision to secure the satisfactory completion thereof in accordance with this Contract.

Section 2.03 Scope of Work.

- (a) The Scope of Work may not exceed that set forth in Attachments C and D hereto, except pursuant to a Change Order.
- (b) The Professional Services may not exceed those set forth in Attachments E and F hereto, except pursuant to a Change Order.

Section 2.04 Notice to Proceed. Within ten (10) days after ConFire has closed the financing referenced in Section 2.07, ConFire will send OpTerra Energy Services a written notice to proceed to perform Work (the "Notice to Proceed"). OpTerra Energy Services will begin Work within thirty (30) calendar days after OpTerra Energy Services' receipt of the Notice to Proceed. If ConFire fails to issue the Notice to Proceed within twenty (20) calendar days after the financing has closed, OpTerra Energy Services will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount as a result of such delay.

Section 2.05 Project Schedule. After receipt of the Notice to Proceed, OpTerra Energy Services will develop, with input from ConFire, a master project schedule using Microsoft Project®. OpTerra Energy Services will

establish a weekly construction meeting at which time the Work of the previous week will be reviewed and a two-week look ahead will be coordinated. The project schedule will be updated monthly.

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

Section 2.07 Finance Contingency. It is acknowledged and agreed by the Parties that the continued existence of this Contract is expressly contingent upon ConFire obtaining financing that will allow it to make the payments to OpTerra Energy Services required by this Contract. ConFire will have sixty (60) calendar days after the Contract Effective Date to obtain such financing. If the financing is not obtained within this time, for any reason, either Party may by written notice to the other Party declare this Contract to be null and void; and the Contract will be null and void as of the other Party's receipt of this notice. It is acknowledged and agreed that OpTerra Energy Services will have no obligation to commence performance of the Work unless and until the financing has been obtained.

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

### **ARTICLE 3. PROJECT IMPLEMENTATION - GENERAL**

#### **Section 3.01 Registrations, Permits and Approvals.**

- (a) Prior to issuing the Notice to Proceed, ConFire will register the Project with the California Department of Industrial Relations using Form PWC-100 as required by California Labor Code section 1773.3.
- (b) ConFire will cooperate fully with and assist OpTerra Energy Services in obtaining all Applicable Permits required under this Contract. OpTerra Energy Services is responsible for obtaining (but not paying for) Applicable Permits, except those Applicable Permits to be issued by ConFire itself. ConFire is responsible for obtaining and paying for all other permits or approvals that may be required, including annual operating permits and any approvals or exemptions required by CEQA, as applicable.
- (c) ConFire is responsible for all fees associated with plan checks (including expedited plan checks), permits, inspections and utility interconnection(s), including any additional Scope of Work that may be required by the Utilities as part of the Interconnection Agreement(s).

Section 3.02 Coordination. ConFire will be responsible for coordinating its own operations and any other construction project that is ongoing at or around the Project Locations with the Work of OpTerra Energy Services.

Section 3.03 Project Meetings/Status Updates. During the course of the Work, OpTerra Energy Services will periodically meet with ConFire to report on the general status and progress of the Work.

Section 3.04 Project Location Access. ConFire hereby grants to OpTerra Energy Services, without cost to OpTerra Energy Services, all rights of ingress and egress at the Project Locations, necessary for OpTerra Energy Services to perform the Work and provide all services contemplated by this Contract. OpTerra Energy Services will provide twenty-four-hour advance notice to ConFire for access to any Facilities. All persons entering the Project Locations, including ConFire and its employees and agents, must follow OpTerra Energy Services' safety procedures.

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

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

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

Section 4.01 General Provisions.

- (a) After the Contract Effective Date, OpTerra Energy Services will proceed with the preparation of any necessary designs, drawings, and specifications related to the Scope of Work.
- (b) After completion of the design phase and approval of the final plans and specifications by ConFire, OpTerra Energy Services will order the equipment identified in the Scope of Work, and any other necessary materials and supplies in order to meet the project schedule.
- (c) ConFire will designate a single-point representative with whom OpTerra Energy Services may consult on a reasonable, regular basis and who is authorized to act on ConFire's behalf with respect to the Project design. ConFire's representative will render decisions in a timely manner with regard to any documents submitted by OpTerra Energy Services and to other requests made by OpTerra Energy Services in order to avoid delay in the orderly and sequential progress of OpTerra Energy Services' design services.
- (d) Within ten (10) Business Days after OpTerra Energy Services' request, ConFire will:
  - (i) furnish all surveys or other information in ConFire's possession that describe the physical characteristics, legal limitations, and utility locations in and around the Project Location;
  - (ii) disclose any prior environmental review documentation and all information in its possession concerning subsurface conditions, including without limitation the existence of any known Hazardous Substances, in or around the general area of the Project Location;
  - (iii) supply OpTerra Energy Services with all relevant information in ConFire's possession, including any as-built drawings and photographs, of prior construction undertaken at the Project Location;
  - (iv) make application for any and all easements, zoning variances, planning approvals, including any resolution of any environmental impact issues, and any other legal authorization regarding utilization of the Project Location for the execution of the Work; and
  - (v) obtain any and all title reports for those Project Locations reasonably requested by OpTerra Energy Services.

- (e) All information furnished pursuant to this Section 4.01 will be supplied at ConFire's expense, and OpTerra Energy Services is entitled to rely upon the accuracy and completeness of all information provided. If OpTerra Energy Services is adversely affected by any failure to provide, or delay in providing, the information specified in Section 4.01(d), OpTerra Energy Services will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount.
- (f) If any information disclosed under this Section 4.01 gives rise to a Change to the Work or an Excusable Event, OpTerra Energy Services will notify ConFire. The Parties will meet and confer with respect to those Changes, and if appropriate, OpTerra Energy Services will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount. If the Parties, however, are unable to agree on whether ConFire's disclosed information gives rise to a Change to the Work or an Excusable Event, those disputes are to be resolved in accordance with ARTICLE 18.
- (g) OpTerra Energy Services contemplates that it will not encounter any Hazardous Substances at any Project Locations, except as has been disclosed as a pre-existing condition by ConFire prior to the Contract Effective Date. However, any disclosure of Hazardous Substances that will affect the performance of the Work after the Contract Effective Date will constitute a valid basis for a Change Order.

**Section 4.02      Review of Construction Documents.** OpTerra Energy Services will prepare and submit all drawings and specifications to ConFire for review. ConFire will review the documents and provide any comments in writing to OpTerra Energy Services within fifteen (15) Business Days after receipt of the documents. OpTerra Energy Services will incorporate appropriate ConFire comments into the applicable drawings and specifications. OpTerra Energy Services reserves the right to issue the drawings and specifications in phases to allow Construction to be performed in phases. If ConFire fails to provide written comments within the fifteen (15) Business Day period, ConFire will be deemed to have no comments regarding the documents.

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

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

## **ARTICLE 5.      CONSTRUCTION PHASE**

**Section 5.01      General Provisions.** Upon securing the requisite Applicable Permits pursuant to Section 3.01, and completion of Construction Documents, OpTerra Energy Services will commence the construction of the Project in accordance with the Construction Documents. The construction will be performed in accordance with all Applicable Laws and Applicable Permits, by OpTerra Energy Services and/or one or more licensed subcontractors qualified to perform the Work.

**Section 5.02      OpTerra Energy Services' Responsibilities during Construction Phase.**

- (a) As an independent contractor to ConFire, OpTerra Energy Services will provide, or cause to be provided by its subcontractor(s), all labor, materials, equipment, tools, transportation, and other facilities and services necessary for the proper execution, construction, and completion of the Work. OpTerra Energy Services will purchase in advance all necessary materials and supplies for the construction of the Project in order to assure the prompt and timely delivery of the completed Work

pursuant to the Project schedule. OpTerra Energy Services is responsible for all means, methods, techniques, sequences, and procedures required by the Construction Documents.

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

Section 5.03      ConFire's Responsibilities during Construction Phase.

- (a) ConFire will designate a single-point representative authorized to act on ConFire's behalf with respect to Project Construction and/or equipment installation. ConFire may from time to time change the designated representative and will provide written notice to OpTerra Energy Services of such change. Any independent review of the Construction will be undertaken at ConFire's sole expense, and will be performed in a timely manner so as to not unreasonably delay the orderly progress of the Work.
- (b) ConFire will provide a temporary staging area for OpTerra Energy Services, or its subcontractors, to use during the Construction phase to store and assemble equipment for completion of the Work, if needed. ConFire will provide sufficient space at the Facilities for the performance of the Work and the storage, installation, and operation of any equipment and materials and will take reasonable steps to protect any such equipment and materials from harm, theft and misuse. ConFire will provide access to the Facilities, including parking permits and identification tags, for OpTerra Energy Services and subcontractors to perform the Work during regular business hours, or such other reasonable hours as may be requested by OpTerra Energy Services and acceptable to ConFire. ConFire will also either provide a set or sets of keys to OpTerra Energy Services and its subcontractors (signed out per ConFire policy) or provide a readily available security escort to unlock and lock doors. ConFire will not unreasonably restrict OpTerra Energy Services' access to Facilities to make emergency repairs or corrections as OpTerra Energy Services may determine are needed.
- (c) ConFire will maintain the portions of the Project Locations that are not directly affected by OpTerra Energy Services' Work. ConFire will keep the designated Project Locations and staging area for the Project free of obstructions, waste, and materials within the control of ConFire.
- (d) ConFire will obtain any required environmental clearance from, and any special permits required by, any federal, state, and local jurisdictions, including but not limited to any clearances required under CEQA, prior to scheduled Construction start date.
- (e) ConFire will prepare the Project Locations for construction, including, but not limited to, clearance of all above and below ground obstructions, such as vegetation, buildings, appurtenances, and utilities. Subsurface conditions and obstacles (buried pipe, utilities, etc.) that are not otherwise previously and accurately documented by ConFire and such documentation made available to OpTerra Energy Services are the responsibility of ConFire. If OpTerra Energy Services encounters such unforeseen conditions in the performance of the Work, OpTerra Energy Services may be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount.
- (f) ConFire will remove any Hazardous Substances either known to ConFire prior to the commencement of the Work or encountered by OpTerra Energy Services during the Construction of the Project, if necessary in order for the Work to progress safely, that were not knowingly released or brought to the site by OpTerra Energy Services. OpTerra Energy Services will respond to the discovery of Hazardous Substances at or around the Project Location during the course of OpTerra Energy Services' construction in accordance with Section 5.06.
- (g) ConFire will coordinate its own operations and any other construction project that is ongoing at or around the Project Location with the Work, with the exception that OpTerra Energy Services will coordinate the Interconnection Facilities work, if any, which will be performed by the local utility.
- (h) ConFire will, and will cause ConFire Persons to, allow OpTerra Energy Services and its subcontractors access to and reasonable use of necessary quantities of ConFire's water and other utilities, including electrical power, as needed for the construction of the Work, at no cost to OpTerra Energy Services; *provided that* OpTerra Energy Services will provide its own water and temporary power at the Project Location for ECM SGF #4.
- (i) ConFire will, and will cause ConFire Persons to, provide OpTerra Energy Services and/or its subcontractors with reasonable access to the Project Locations to perform the Work, including without limitation and at no extra cost to OpTerra Energy Services, access to perform Work on Saturdays, Sundays, and legal holidays.
- (j) ConFire will also do the following:
  - (i) Attend the regularly scheduled progress meetings. Participate as needed regarding scheduling of the Work.
  - (ii) When requested by OpTerra Energy Services, participate in the job inspection walk-through with OpTerra Energy Services to determine Substantial Completion or Beneficial Use of major equipment, and will sign the Certificate(s) of Substantial Completion.



- (iii) Perform a final walk-through of the Project and, upon receipt of the operation and maintenance manuals and as-built drawings, sign the Certificate of Final Completion for the related Work.
- (iv) Upon the completion of the entire Scope of Work listed in Attachment C, including training, if any, and submission of close-out documents, sign a Certificate of Final Completion for the entire Project.

Section 5.04 Changes.

- (a) Change Orders Generally. Changes and/or modifications to the Scope of Work will be authorized by a written Change Order. The Change Order will state the change and/or modification to the Scope of Work, any additional compensation to be paid, and any applicable extension of time. OpTerra Energy Services may, at its election, suspend performance of that portion of the Work affected by any proposed Change until a written Change Order with respect to the Changed or modified Work has been signed by both ConFire and OpTerra Energy Services. OpTerra Energy Services will use its reasonable efforts to continue other portions of the Work not affected or impacted by such proposed Change until such time as the applicable Change Order is resolved. In addition, if ConFire requests a proposal from OpTerra Energy Services for a Change and ConFire subsequently elects to not proceed with such Change, ConFire agrees that a Change Order will be issued to reimburse OpTerra Energy Services for any costs reasonably incurred for estimating services, design services, and/or preparation of the proposal requested by such ConFire Person.
- (b) Change Orders Requiring Additional Compensation. If during construction ConFire requests changes and/or modifications to the Work that increase the cost of the Work or extend the time for the Work, and/or there are Excusable Events, ConFire will pay the extra costs caused by such modifications and/or changes and/or Excusable Event and OpTerra Energy Services will be entitled to additional compensation for the following reasons, that include, but are not limited to: (i) ConFire requests changes and/or modifications to the Scope of Work during the Construction phase of the Project; (ii) ConFire causes delays during OpTerra Energy Services' construction work; (iii) discovery of subsurface or other site conditions that were not reasonably anticipated or disclosed prior to the commencement of the Work; (iv) discovery of Hazardous Substances at or impacting the Project Location; (v) changes and/or modifications to the Scope of Work required to obtain required permits and approvals as required by any Governmental Authority; (vi) damage to any equipment or other Work installed by OpTerra Energy Services caused by the act or omission of any ConFire Person; (vii) changes and/or modifications to Scope of Work ordered by any Governmental Authority; and (viii) any other condition that would not reasonably have been anticipated by OpTerra Energy Services, that modifies and/or changes the Scope of Work or the Contract Amount.
- (c) Change Orders Requiring Additional Time. If during Construction ConFire requests changes and/or modifications to the Scope of Work and/or an Excusable Event occurs, the Parties agree that an equitable extension of time to complete the Work may be necessary. Prior to any extension of time, OpTerra Energy Services will use commercially reasonable efforts to make up such delays, including authorizing overtime payments; *provided* that ConFire has issued a Change Order authorizing any such overtime payment and has specifically agreed to pay all costs, including administrative charges and expenses, associated therewith.
- (d) Method for Adjustment. An increase or decrease in the Contract Amount and/or time resulting from a Change in the Work and/or Excusable Event must be determined by one or more of the following methods:
  - (i) unit prices set forth in this Contract or as subsequently agreed;
  - (ii) a mutually accepted, itemized lump sum; or
  - (iii) costs calculated on a basis agreed upon by ConFire and OpTerra Energy Services plus a fee (either a lump sum or a fee based on a percentage of cost) to which the Parties agree.
- (e) Disagreements. If there is a disagreement between ConFire and OpTerra Energy Services as to whether OpTerra Energy Services is entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount, those disputes are to be resolved in accordance with the provisions of ARTICLE 18. Pending the resolution of any such dispute, OpTerra Energy Services may suspend Work.

Section 5.05 Minor Changes to Scope of Work. OpTerra Energy Services has the authority to make minor changes that do not change the total Contract Amount and are consistent with the intent of the Construction Documents, without prior notice to ConFire. OpTerra Energy Services will either promptly inform ConFire, in writing, of any minor

changes made during the implementation of the Project, or make available to ConFire at the site a set of as-built drawings that will be kept current to show those minor changes.

**Section 5.06      Hazardous Substances.**

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

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

**ARTICLE 6.      PROJECT COMPLETION**

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

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

insurance coverage for, maintenance, utilities for, and damage to or destruction of such portion of the Work. ConFire will not unreasonably withhold, delay or condition approval of a Certificate of Substantial Completion.

Section 6.03 Final Completion. When OpTerra Energy Services considers the entirety of the Work to be fully complete, OpTerra Energy Services will notify ConFire that the Work is fully complete and ready for final inspection. ConFire will inspect the Work to verify the status of Final Completion within ten (10) Business Days after its receipt of OpTerra Energy Services' certification that the Work is complete. If ConFire does not agree that the Work is fully complete, it will so notify OpTerra Energy Services in writing, specifying the reasons therefor. When ConFire agrees that the Work is fully completed, OpTerra Energy Services will issue a Certificate of Final Completion, which ConFire must sign. ConFire agrees that its signing of the Certificate of Final Completion will not be unreasonably withheld, delayed or conditioned. ConFire will promptly record a notice of completion or notice of acceptance in the office of the county recorder in accordance with California Civil Code §9204. Forty-five (45) calendar days after ConFire signs the Certificate of Final Completion, it shall pay the remaining Contract Amount after deducting all amounts properly withheld under this Contract, provided OpTerra Energy Services shows conditional lien releases on final payment from its first-tier subcontractors, no claims have been presented to ConFire based on acts or omissions of OpTerra Energy Services, and no liens or withhold notices have been filed against the Work or Project Location, and provided there are no reasonable indications of defective or missing work or of late-recorded notices of liens or claims against OpTerra Energy Services.

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

## **ARTICLE 7. SUBCONTRACTORS**

Section 7.01 Authority to Subcontract. OpTerra Energy Services may subcontract its duties and performance of Work under this Contract, and has the right to enter into agreements with any subcontractors and other service or material providers as OpTerra Energy Services may select in its discretion to perform the Work, provided however, that OpTerra Energy Services shall remain responsible for all of the Work and other obligation hereunder notwithstanding any subcontracts it may enter into. OpTerra Energy Services will not be required to enter into any subcontracts with parties whom OpTerra Energy Services has not selected or subcontractors whom OpTerra Energy Services has objection to using.

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

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

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

## **ARTICLE 8. PAYMENTS**

Section 8.01 Monthly Progress Payments. Promptly after the financing described in Section 2.07 has been obtained, OpTerra Energy Services will invoice ConFire for the assessment fee for the Recommendations in the amount

of Forty-Five Thousand Dollars (\$45,000) plus a mobilization payment in the amount of Eight Hundred Sixty-Three Thousand Seven Hundred Sixty-Nine Dollars (\$863,769). ConFire will make payment to OpTerra Energy Services for the assessment fee and the mobilization payment within forty-five (45) calendar days after ConFire's receipt of an invoice for those amounts. In addition, as the Work progresses, OpTerra Energy Services will submit to ConFire its applications for monthly payments based on the progress made on the Project through the date on which OpTerra Energy Services submits such Application for Payment. Within twenty-one (21) calendar days from the Contract Effective Date, OpTerra Energy Services will prepare and submit to ConFire a schedule of values apportioned to the various divisions or phases of the Work ("Schedule of Values"). Each line item contained in the Schedule of Values will be assigned a value such that the total of all items equals the Contract Amount. All Applications for Payment will be in accordance with the Schedule of Values.

Section 8.02 Materials Stored Off-Site. In addition to the monthly progress payments specified in Section 8.01, OpTerra Energy Services may invoice ConFire for materials purchased in advance of their use and not stored at the Project Location. All Applications for Payment for materials purchased in advance will be accompanied by proof of off-site material purchases, evidence that the materials have been delivered to a warehouse reasonably acceptable to ConFire, and evidence of appropriate insurance coverage. OpTerra Energy Services will furnish to ConFire written consent from the Surety approving the advance payment for materials stored off site. ConFire will pay one hundred percent (100%) of OpTerra Energy Services' Application for Payment for the materials delivered within forty-five (45) calendar days after ConFire's receipt of an invoice for those amounts, less Retention as indicated in Section 8.03. OpTerra Energy Services will protect stored materials from damage. Damaged materials, even though paid for, will not be incorporated into the Work.

Section 8.03 Retention. ConFire, or its designee, must approve and pay each Application for Payment, less a retention amount of five percent (5%) ("Retention") in accordance with California Public Contract Code §7201, within forty-five (45) calendar days after its receipt of the Application for Payment; *provided, however*, that there ConFire will not withhold a Retention with respect to the mobilization payment. ConFire's failure to approve and pay an Application for Payment in a timely manner is a material default by ConFire under this Contract. ConFire may make progress payments in full without Retention at any time after fifty percent (50%) of the Work has been completed, as permitted pursuant to California Public Contract Code §9203. In lieu of Retention being held by ConFire, OpTerra Energy Services may request that securities be substituted or Retention be held in an escrow account pursuant to California Public Contract Code §22300.

Section 8.04 Final Payment. The final Application for Payment may be submitted after Final Completion. ConFire's final payment amount will also include payment to OpTerra Energy Services for any remaining Retention withheld by ConFire.

Section 8.05 Disputed Invoices/Late Payments. ConFire may in good faith dispute any Application for Payment, or part thereof, within forty-five (45) calendar days after the date the Application for Payment was received by ConFire. If ConFire disputes all or a portion of any Application for Payment, ConFire will pay the undisputed portion when due and provide OpTerra Energy Services a written notice and explanation of the basis for the dispute and the amount of the Application for Payment being withheld related to the dispute. ConFire will be deemed to have waived and released any dispute known to it with respect to an Application for Payment if such notice and written explanation is not provided within fifteen (15) calendar days after the date the Application for Payment was received by ConFire. If any amount disputed by ConFire is finally determined to be due to OpTerra Energy Services, either by agreement between the Parties or as a result of dispute resolution pursuant to ARTICLE 18 below, it will be paid to OpTerra Energy Services within ten (10) Business Days after such final determination, plus Interest from the date billed or claimed until such amount is paid.

Section 8.06 Rebate Programs. The Parties agree that no energy efficiency rebate, incentive, and/or loan program(s) are applicable to or available for this Project.

## **ARTICLE 9. WARRANTY / LIMITATION OF LIABILITY**

EXCEPT FOR THE WARRANTIES PROVIDED IN THIS ARTICLE 9, OPTERRA ENERGY SERVICES MAKES NO WARRANTIES IN CONNECTION WITH THE WORK PROVIDED UNDER THIS CONTRACT, WHETHER EXPRESS OR IMPLIED IN LAW, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES AGAINST INTELLECTUAL PROPERTY INFRINGEMENT. CONFIRE WILL HAVE NO REMEDIES AGAINST EITHER OPTERRA ENERGY SERVICES OR ANY OPTERRA ENERGY SERVICES SUBCONTRACTOR OR VENDOR FOR ANY DEFECTIVE MATERIALS OR EQUIPMENT INSTALLED, EXCEPT FOR THE REPAIR OR REPLACEMENT OF SUCH MATERIALS OR EQUIPMENT IN ACCORDANCE WITH THE WARRANTIES INDICATED BELOW AND WARRANTIES PROVIDED BY EQUIPMENT MANUFACTURERS. SPECIFICALLY, NEITHER OPTERRA ENERGY SERVICES, NOR OPTERRA ENERGY SERVICES' SUBCONTRACTORS OR VENDORS, WILL BE LIABLE TO CONFIRE FOR LOSS OF PROFITS OR FOR

ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY.

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

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

Section 9.03 The warranties in this ARTICLE 9 expressly exclude any remedy for damage or defect caused by improper or inadequate maintenance of the installed equipment by service providers other than OpTerra Energy Services or its subcontractors, corrosion, erosion, deterioration, abuse, modifications or repairs not performed by an authorized OpTerra Energy Services subcontractor, improper use or operation, or normal wear and tear under normal usage.

## **ARTICLE 10. OWNERSHIP OF CERTAIN PROPERTY AND EXISTING EQUIPMENT**

### **Section 10.01 Ownership of Certain Proprietary Property Rights.**

- (a) Ownership: Except as expressly provided in this Contract, ConFire will not acquire, by virtue of this Contract, any rights or interest in any formulas, patterns, devices, software, inventions or processes, copyrights, patents, trade secrets, other intellectual property rights, or similar items of property which are or may be used in connection with the Work. OpTerra Energy Services will own all inventions, improvements, technical data, models, processes, methods, and information and all other work products developed or used in connection with the Work, including all intellectual property rights therein.
- (b) License: Solely in connection with the Facilities, OpTerra Energy Services grants to ConFire a limited, perpetual, royalty-free, non-transferrable license for any OpTerra Energy Services intellectual property rights necessary for ConFire to operate, maintain, and repair any modifications or additions to Facilities, or equipment delivered, as a part of the Work.
- (c) Ownership and Use of Instruments of Service. All data, reports, proposals, plans, specifications, flow sheets, drawings, and other products of the Work (the "Instruments of Service") furnished directly or indirectly, in writing or otherwise, to ConFire by OpTerra Energy Services under this Contract will remain OpTerra Energy Services' property and may be used by ConFire only for the Work. OpTerra Energy Services will be deemed the author and owner of such Instruments of Service and will retain all common law, statutory and other reserved rights, including copyrights. The Instruments of Service may not be used by ConFire or any ConFire Person for future additions or alterations to the Project or for other projects, without the prior written agreement of OpTerra Energy Services. Any unauthorized use of the Instruments of Service will be at ConFire's sole risk and without liability to OpTerra Energy Services. If ConFire uses the Instruments of Service for implementation purposes, including additions to or completion of the Project, without the written permission of OpTerra Energy Services, ConFire agrees to waive and release, and indemnify and hold harmless, OpTerra Energy Services, its subcontractors, and their directors, employees, subcontractors, and agents from any and all Losses associated with or resulting from such use.

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

## **ARTICLE 11. INDEMNIFICATION / INSURANCE / BONDS**

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

Section 11.02 Waiver of Consequential Damages and Limitation of Liability. The liability of a defaulting Party to the other Party hereunder will be limited to direct, actual damages. Neither Party shall be liable to the other Party for any special, indirect, incidental or consequential damages whatsoever, whether in contract, tort (including negligence) or strict liability, including, but not limited to, operational losses in the performance of business such as lost profits or revenues or any increase in operating expense; *provided* that third party damages subject to indemnification by a Party under this Contract will not be limited by this Section 11.02. Additionally, each Party waives any claims for negligence (other than gross negligence) against the other Party to the greatest extent permitted by law; *provided* that this waiver of negligence claims does not apply to a Party's indemnification obligations under this Contract. In no event will OpTerra Energy Services be liable to ConFire for any Losses that collectively exceed the Contract Amount, regardless of whether such amounts arise out of breach of contract, guarantee or warranty, tort, product liability, contribution, strict liability or any other legal theory.

Section 11.03 OpTerra Energy Services Insurance. OpTerra Energy Services will maintain, or cause to be maintained, for the duration of this Contract, the insurance coverage outlined in (a) through (f) below, and all such other insurance as required by Applicable Law. Evidence of coverage will be provided to ConFire via an insurance certificate.

- (a) Workers' Compensation/Employers Liability for states in which OpTerra Energy Services is not a qualified self-insured. Limits as follows:

- \* Workers' Compensation: Statutory
- \* Employers Liability: Bodily Injury by accident \$1,000,000 each accident  
Bodily Injury by disease \$1,000,000 each employee  
Bodily Injury by disease \$1,000,000 policy limit

- (b) Commercial General Liability insurance with limits of:

- \* \$2,000,000 each occurrence for Bodily Injury and Property Damage
- \* \$4,000,000 General Aggregate - other than Products/Completed Operations
- \* \$4,000,000 Products/Completed Operations Aggregate
- \* \$2,000,000 Personal and Advertising Injury
- \* \$ 100,000 Damage to premises rented to OpTerra Energy Services

Coverage to be written on an occurrence form. Coverage to be at least as broad as ISO form CG 0001 (04/13) or its equivalent forms, without endorsements that limit the policy terms with respect to: (1) provisions for severability of interest or (2) explosion, collapse, underground hazard.

- (c) Auto Liability insurance for owned, hired and non-owned vehicles with limits of \$1,000,000 per accident. Coverage to be written on an occurrence form.

(d) Professional Liability insurance with limits of:

- \* \$1,000,000 per occurrence
- \* \$1,000,000 aggregate

Coverage to be written on a claims-made form.

(e) Umbrella/Excess Liability Insurance. Limits as follows:

- \* \$1,000,000 each occurrence
- \* \$1,000,000 aggregate

Coverage terms and limits to apply excess of the per occurrence and/or aggregate limits provided for Commercial General Liability and Professional Liability written on a claims made form. Coverage terms and limits also to apply in excess of those required for Employers Liability and Auto Liability written on an occurrence form.

(f) Policy Endorsements.

- \* The insurance provided for Workers' Compensation and Employers' Liability above will contain waivers of subrogation rights against ConFire, but only to the extent of the indemnity obligations contained in this Contract.
- \* The insurance provided for Commercial General Liability and Auto Liability above will:
  - (i) include ConFire as an additional insured with respect to Work performed under this Contract, but only to the extent of the indemnity obligations contained in this Contract, and
  - (ii) provide that the insurance is primary coverage with respect to all insureds, but only to the extent of the indemnity obligations contained in this Contract.

Section 11.04 **Performance and Payment Bonds.** Prior to commencing Work under this Contract, OpTerra Energy Services will furnish a performance bond, in an amount equal to one hundred percent (100%) of the Contract Amount, and a payment bond to guarantee payment of all claims for labor and materials furnished, in an amount equal to one hundred percent (100%) of the Contract Amount (collectively, the "Contract Bonds"). The Contract Bonds are not being furnished to cover the performance of any Professional Services, including any energy guaranty or guaranteed savings under this Contract, nor to cover any equipment and/or material manufacturer's warranty or other third-party warranty being assigned to ConFire.

## **ARTICLE 12. DOE GUIDELINES; ENERGY POLICY ACT**

Section 12.01 As authorized by §1605(b) of the Energy Policy Act of 1992 (Pub. L. No. 102-486) the U.S. Department of Energy has issued, and may issue in the future, guidelines for the voluntary reporting of Greenhouse Gas emissions ("DOE Guidelines"). "Greenhouse Gases" means those gases and other particles as defined in the DOE Guidelines. ConFire hereby assigns and transfers to OpTerra Energy Services, and its Affiliates and assigns, any Greenhouse Gas emission reduction credits that result from the Work.

Section 12.02 As authorized by §1331 of the Energy Policy Act of 2005 (Pub. L. No. 109-58) ConFire agrees that for the Work, OpTerra Energy Services will be the "designer" as that term is identified in Internal Revenue Bulletin 2008-14, Notice 2008-40, and OpTerra Energy Services will have the exclusive right to report to any federal, state, or local agency, authority or other party any tax benefit associated with the Work. Upon Final Completion, ConFire agrees to cooperate in executing a written allocation including a declaration related to Internal Revenue Code §179D. OpTerra Energy Services will prepare the declaration and all accompanying documentation. OpTerra Energy Services will be designated the §179D beneficiary.

## **ARTICLE 13. MUNICIPAL ADVISOR**

Section 13.01 THE PARTIES ACKNOWLEDGE AND AGREE THAT OPTERRA ENERGY SERVICES IS NOT A MUNICIPAL ADVISOR AND CANNOT GIVE ADVICE TO CONFIRE WITH RESPECT TO MUNICIPAL SECURITIES OR MUNICIPAL FINANCIAL PRODUCTS ABSENT CONFIRE BEING REPRESENTED BY, AND RELYING UPON THE ADVICE OF, AN INDEPENDENT REGISTERED MUNICIPAL ADVISOR. OPTERRA ENERGY SERVICES IS NOT SUBJECT TO A FIDUCIARY DUTY WITH REGARD TO CONFIRE OR THE PROVISION OF INFORMATION TO CONFIRE. CONFIRE WILL CONSULT WITH AN INDEPENDENT REGISTERED MUNICIPAL ADVISOR ABOUT THE FINANCING OPTION APPROPRIATE FOR CONFIRE'S SITUATION.

#### **ARTICLE 14. PUBLIC RECORDS ACT**

If a third party makes a request under the Act for disclosure of any materials or information provided by OpTerra Energy Services to ConFire under or in connection with this Contract or the Project, ConFire will notify OpTerra Energy Services of such request as soon as practical (but not later than five (5) calendar days) after receipt of such request, so that OpTerra Energy Services may advise ConFire whether OpTerra Energy Services believes that any such materials are exempt from disclosure under the Act. OpTerra Energy Services shall seek a protective order if it wants ConFire to withhold the production of materials OpTerra Energy Services feels are exempt from production under the Act.

#### **ARTICLE 15. EVENTS OF DEFAULT**

Section 15.01 Events of Default by OpTerra Energy Services. Each of the following events or conditions will constitute an "Event of Default" by OpTerra Energy Services:

- (i) any substantial failure by OpTerra Energy Services to perform or comply with this Contract, including a material breach of any covenant contained herein, and such failure continues for thirty (30) calendar days after ConFire's written notice to OpTerra Energy Services demanding that such failure to perform be cured; *provided* that (y) such failure to perform will not be deemed a default hereunder if it is excused by a provision of this Contract, or (z) if such cure cannot be reasonably effected in thirty (30) calendar days, OpTerra Energy Services will not be deemed to be in default as long as it continues to diligently pursue remedy of the breach until it is cured; or
- (ii) any representation or warranty furnished by OpTerra Energy Services in this Contract which was false or misleading in any material respect when made; or
- (iii) OpTerra Energy Services filed for bankruptcy protection or is placed into bankruptcy involuntarily, or makes a general assignment for the benefit of its creditors, or declares publicly an inability to pay its obligations.

Section 15.02 Events of Default by ConFire. Each of the following events or conditions will constitute an "Event of Default" by ConFire:

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

#### **ARTICLE 16. REMEDIES UPON DEFAULT**

Section 16.01 Termination for Cause. If there is an Event of Default by either Party under this Contract, unless such Event of Default has been cured within the applicable time periods for a cure set forth in ARTICLE 15, the non-defaulting Party may terminate this Contract by providing ten (10) Business Days' written notice to the defaulting Party. Upon termination of this Contract, each Party will promptly return to the other all papers, materials, and property of the other held by such Party in connection with this Contract. Each Party will also assist the other in the orderly termination of this Contract and the transfer of all aspects hereof, tangible and intangible, as may be necessary for the orderly, non-disrupted business continuation of each Party.

Section 16.02 Remedies Upon Default by OpTerra Energy Services. If an Event of Default by OpTerra Energy Services occurs, ConFire will be entitled to obtain any available legal and equitable remedies available to it, including, without limitation, terminating this Contract, and recovering amounts due and unpaid by OpTerra Energy Services and/or damages, which may include ConFire's reasonable, actual, direct out-of-pocket losses incurred by reason of such Event of Default and any cost of funding; loss of anticipated payment obligations; and any payment or delivery required to have been made on or before the date of the Event of Default and not made, including Interest on any sums due, losses and costs incurred as a result of terminating this Contract and all costs and expenses reasonably incurred in exercising the foregoing remedies.



Section 16.03 Remedies upon Default by ConFire. If an Event of Default by ConFire occurs, OpTerra Energy Services will be entitled to obtain any available legal or equitable remedies available to it, including, without limitation, terminating this Contract or recovering amounts due and unpaid by ConFire, and/or damages which will include OpTerra Energy Services' reasonable, actual, direct out-of-pocket losses incurred by reason of such Event of Default and any cost of funding; loss of anticipated payment obligations; and any payment or delivery required to have been made on or before the date of the Event of Default and not made, including Interest on any sums due, losses and costs incurred as a result of terminating this Contract, payment for Work satisfactorily performed, earned profit and overhead, costs incurred in accordance with this Contract up to the date of termination, and all costs and expenses reasonably incurred in exercising the foregoing remedies.

#### **ARTICLE 17. CONDITIONS BEYOND CONTROL OF THE PARTIES**

Section 17.01 Excusable Events. If either Party is delayed in, or prevented from, performing or carrying out its obligations under this Contract by reason of any Excusable Event, such circumstance will not constitute an Event of Default, and such Party will be excused from performance hereunder for the period of time that the Excusable Event prevents the Party from performing its obligations hereunder, and will not be liable to the other Party for or on account of any loss, damage, injury or expense resulting from, or arising out of, such delay or prevention.

Section 17.02 Utility Work. ConFire expressly understands and agrees that an Excusable Event may occur due to Interconnection Facilities work that may need to be performed by the local electric utility ("Utility") in order for OpTerra Energy Services to fully implement the Project. As used in this Contract the term "Interconnection Facilities" means any distribution or transmission lines and other facilities that may be required to connect equipment supplied under this Contract to an electrical distribution/transmission system owned and maintained by the Utility. Any Interconnection Facilities work that may be required will be performed by the Utility under the Interconnection Agreement.

#### **ARTICLE 18. GOVERNING LAW AND RESOLUTION OF DISPUTES**

Section 18.01 Governing Law. This Contract is governed by and must be interpreted under the laws of the State of California, without regard to the jurisdiction's choice of law rules.

Section 18.02 Initial Dispute Resolution. If a dispute arises out of or relates to this Contract, the transaction contemplated by this Contract, or the breach of this Contract (a "Dispute"), either Party may initiate the dispute resolution process set forth in this ARTICLE 18 by giving notice to the other Party. Nothing in this Article 18 shall limit the right of a Party to pursue any remedy available to it in law or equity. The Parties will endeavor to settle the Dispute as follows:

- (i) *Field Representatives' Meeting:* Within fifteen (15) Business Days after notice of the Dispute, OpTerra Energy Services' senior project management personnel will meet with ConFire's project representative in a good faith attempt to resolve the Dispute.
- (ii) *Management Representatives' Meeting:* If OpTerra Energy Services' and ConFire's project representatives fail to meet, or if they are unable to resolve the Dispute, senior executives for OpTerra Energy Services and for ConFire, neither of whom have had day-to-day management responsibilities for the Project, will meet, within thirty (30) calendar days after notice of the Dispute, in an attempt to resolve the Dispute and any other identified disputes or any unresolved issues that may lead to a dispute. If the senior executives of OpTerra Energy Services and ConFire are unable to resolve a Dispute or if a senior management conference is not held within the time provided herein, either Party may submit the Dispute to mediation in accordance with Section 18.03.

Section 18.03 Mediation. If the Dispute is not settled pursuant to Section 18.02, the Parties may endeavor to settle the Dispute by mediation under the Commercial Mediation Procedures of the American Arbitration Association. Mediation is not a condition precedent to arbitration or the institution of legal or equitable proceedings by either Party. Once one Party files a request for mediation with the other Party and with the American Arbitration Association, the Parties agree to conclude the mediation within sixty (60) calendar days after filing the request. Either Party may terminate the mediation at any time after the first session, but the decision to terminate must be delivered in person by the Party's representative to the other Party's representative and the mediator

Section 18.04 Lien Rights. Nothing in this ARTICLE 18 limits any rights or remedies not expressly waived by OpTerra Energy Services that OpTerra Energy Services may have under any lien laws or stop notice laws.

**ARTICLE 19. REPRESENTATIONS AND WARRANTIES**

Section 19.01 Each Party warrants and represents to the other that:

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

**ARTICLE 20. NOTICE**

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

TO OPTERRA ENERGY SERVICES: OpTerra Energy Services, Inc.  
500 Twelfth Street, Suite 300  
Oakland, CA 94607  
Tel: 415-735-9103  
Attention: Patrick Yost, Lead Project Manager

With a COPY TO: Legal Department  
OpTerra Energy Services, Inc.  
150 East Colorado Boulevard, Suite 360  
Pasadena, CA 91105-3711  
Tel: 626-377-4948  
Attention: Contract Administrator

TO CONFIRE: Contra Costa County Fire Protection District  
2010 Geary Road,  
Pleasant Hill, CA 94523  
Tel: 925-941-3314  
Fax: 925-941-3319  
Attention: Lizz Patterson

**ARTICLE 21. CONSTRUCTION OF CONTRACT**

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

**ARTICLE 22. BINDING EFFECT**

Except as otherwise provided herein, the terms and provisions of this Contract will apply to, be binding upon, and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and permitted assigns.

**ARTICLE 23. NO WAIVER**

The failure of OpTerra Energy Services or ConFire to insist upon the strict performance of this Contract will not constitute or be construed as a waiver or relinquishment of either Party's right to thereafter enforce the same in

accordance with this Contract in the event of a continuing or subsequent default on the part of OpTerra Energy Services or ConFire.

**ARTICLE 24. SEVERABILITY**

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

**ARTICLE 25. HEADINGS**

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

**ARTICLE 26. COUNTERPARTS; INTEGRATION**

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

**ARTICLE 27. ASSIGNMENT**

Section 27.01 Except as provided in this ARTICLE 27, this Contract may not be assigned by either Party in whole or in part without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. This Contract is binding on, enforceable by, and shall inure to the benefit of, the Parties and their respective successors and permitted assigns. Any assignment made in contravention of this clause is void and unenforceable.

Section 27.02 Assignment by OpTerra Energy Services. Notwithstanding Section 27.01, OpTerra Energy Services may assign this Contract without the consent of ConFire (i) to an Affiliate; or (ii) pursuant to a merger, consolidation, or a transfer of substantially all its assets, provided however, that any such assignee shall possess the capabilities to perform the obligations under this Contract. OpTerra Energy Services may also make a collateral assignment of its rights, but not its obligations, under this Contract without the consent of ConFire to (x) a lender providing financing to OpTerra Energy Services, or (y) a special purpose entity that is an Affiliate of such lender.

*[the Parties' signatures appear on the following page]*

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

**OPTERRA ENERGY SERVICES:**

OpTerra Energy Services, Inc.

**CONFIRE:**

Contra Costa County Fire Protection District:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**ATTACHMENT A**

**CONFIRE'S FACILITIES and EXISTING EQUIPMENT**

(a) The following ConFire Facilities are included under the Scope of Work as listed below:

Facility	Address	Square Feet
FS 1	1330 Civic Drive, Walnut Creek 94596	4240
FS 2	2012 Geary Road, Pleasant Hill 94523	3324
FS 3	1520 Rossmoor Pkwy, Walnut Creek 94595	5532
FS 5	205 Boyd Road, Pleasant Hill 94523	3384
FS 6	2210 Willow Pass Rd., Concord 94520	6590
FS 7	1050 Walnut Avenue, Walnut Creek 94598	4550
FS 8	4647 Clayton Road, Concord 94521	2246
FS 10	2955 Treat Boulevard, Concord 94518	4540
FS 11	6500 Center Street, Clayton 94517	5600
FS 13	251 Church Street, Martinez 94553	3663
FS 14	521 Jones Street, Martinez 94553	8500
FS 15	3338 Mt. Diablo Blvd., Lafayette 94549	7500
FS 17	620 St. Marys Road, Lafayette 94549	2784
FS 22	5050 Crystyl Ranch Dr., Concord 94521	5500
FS 69	4640 Appian Way, El Sobrante, 94803	7835
FS 81	315 W. 10th Street, Antioch 94509	10000
FS 82	196 Bluerock Dr., Antioch 94531	5600
FS 83	2717 Gentrytown Drive, Antioch 94509	3090
FS 84	1903 Railroad Ave., Pittsburg 94565	7500
FS 85	2331 Loveridge Road, Pittsburg 94565	7000
FS 87	800 West Leland Rd., Pittsburg 94565	5600
FS 88	4288 Folsom Drive, Antioch 94509	5500
Delta Fair Property	Intersection of Delta Fair Blvd. and Century Blvd.	N/A
Administration	2010 Geary Road, Pleasant Hill 94523	7793
Communication Center	2900 Dorothy Dr., Pleasant Hill 94523	4136
Training Campus	2945 Treat Boulevard, Concord 94518	24150
FPB East office	2329 Loveridge Road, Pittsburg 94565	7000
Investigations, FIUB	200 E. Sixth St., Pittsburg 94565	5836

**ATTACHMENT B**

**STANDARDS OF OCCUPANCY and CONTROL**

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

<b>Facility</b>	<b>Occupancy Schedule</b>	<b>Existing HVAC Schedule</b>	<b>Existing Heating Occupied/Unoccupied Temperature</b>	<b>Existing Cooling Occupied/Unoccupied Temperature</b>	<b>Proposed HVAC Schedule</b>	<b>Proposed Heating Occupied/Unoccupied Temperature</b>	<b>Proposed Cooling Occupied/Unoccupied Temperature</b>
General Office Buildings	MTWRF 7AM – 6PM	MTWRF 7AM – 6PM	70/65	72/76	MTWRF 7AM – 6PM	70/65	72/76
Fire Stations and Communication Center	24/7	24/7	70/65	72/76	MTWRF 7AM – 6PM	70/65	72/76

## ATTACHMENT C

### SCOPE OF WORK

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

#### Energy Conservation Measures to Be Implemented

ECM #	Description
1	HVAC Upgrades
2	Water Conservation
3	Solar Generating Facilities (see below)

#### Solar Generating Facilities to be Installed

SGF #	Facility	Address	System Type
1	FS 10 and Training Center	2945/2955 Treat Boulevard, Concord 94518	Solar Shade Canopy
2	FS 11	6500 Center Street, Clayton 94517	Solar Shade Canopy
3	FS 84	1903 Railroad Ave., Pittsburg 94565	Solar Shade Canopy
4	Delta Fair Property RES-BCT	Intersection of Delta Fair Blvd. and Century Blvd.	Ground Mounted

#### **ECM #1 – HVAC Upgrades**

The general scope of the HVAC upgrade project is to replace the following aging equipment at the thirteen (13) sites shown below:

Site	Rooftop Units	Condensing Units	Furnaces	Packaged Units	Boilers	Exposed Rooftop Ductwork/ Insulation
FS 1	2					
FS 3		3	3			
FS 7		3	3			
FS 10	2					
Training Center				3		X
FS 13	1					X
FS 14	2					
FS 22		3	3			X
FS 81	3					X
FS 88		2	2			
Administration Building					1	
Communications Center	3					
Investigations		3	3			X
<b>Total</b>	<b>13</b>	<b>14</b>	<b>14</b>	<b>3</b>	<b>1</b>	<b>5 sites</b>

#### **Rooftop Gas Package AC Replacement**

Scope of Work:

##### **Demolition:**

1. Remove and dispose existing thirteen (13) rooftop gas packaged units as per the table below
2. Include disposal of equipment in accordance with applicable codes.
3. Provide crane lift safety plan and rigging for rooftop equipment. ConFire must make arrangements to have building unoccupied during any lift.

Location	Unit Type	Make	Model #	Qty	Notes
FS 1	RTU	Carrier	48SS-048080341AA	1	
	RTU	Carrier	48SS-048080341AA	1	

Location	Unit Type	Make	Model #	Qty	Notes
Communication Center	RTU (AC-1)	Carrier	48DJ008510	1	
	RTU (AC-2)	Carrier	48DJ008510	1	
	RTU (AC-3)	Carrier	48DJ008510	1	
FS 10 & Training	RTU (FS10)	Carrier	48SS-048100551AA	1	
	RTU (FS10)	Carrier	48SS-048100551AA	1	
FS 13	RTU	Bryant	588ANW0482100AFAG	1	Replace rooftop ductwork & insulation from unit to roofline
FS 14	RTU	Carrier	48GS-048115301--	1	
	RTU	Carrier	48GS-048115301--	1	
FS 81	RTU	Rheem	RKKA-A060JK10E	1	Replace rooftop ductwork& insulation from unit to roofline
	RTU	Rheem	Bleached out	1	
	RTU	Rheem	Bleached out	1	

**New Work:**

1. Provide and install new mechanical equipment as identified in the mechanical equipment upgrade scope of work.
2. Work will include material, labor, supervision, design completion, services, equipment and tools required to replace the HVAC systems.
3. All units will be installed in the location of the previous equipment.
4. Units will be selected to minimize any increase in weight to limit any potential structural upgrades. The scope of work does not include any structural modifications or seismic upgrades to ConFire buildings.
5. Compressors will come with a minimum 5-year manufacturer's warranty.
6. All units will be provided with a new programmable thermostat and be reconnected to the existing twist timer if present. The programmable thermostat will meet Title 24 requirements.
7. Provide and install flexible connectors with galvanized sheet metal cover at inlet and outlet.
8. Start up by factory trained personnel and commission per factory specifications, ensuring the units operate per user-defined schedule.
9. Reconnect the unit to existing ductwork except in cases where exposed ductwork will be replaced under this scope of work.
10. Reconnect to existing natural gas and condensate piping systems.
11. Existing smoke detectors will be reconnected. New smoke detectors will be provided as required if mechanical system or combined systems serving the zone is > 2000 cfm.
12. Provide and install new electrical disconnect and fuses.
13. Provide and install condensate discharge to comply with local jurisdiction requirements.
14. Provide and install a new adapter curb or sleepers as required for installation of new mechanical equipment and weather proofing. Patch and repair roof as required.
15. Measure and document pre and post installation air flows at each register.
16. Test and balance work will be performed in accordance with AABC or NEBB guidelines.

**Split System Replacement**

Scope of Work:

**Demolition:**

1. Remove and dispose fourteen (14) existing furnaces and fourteen (14) existing condensing units as per the table below.
2. Include disposal of equipment in accordance with applicable codes.

Location	Unit Type	Make	Model #	Qty	Notes
FS 3	CU-1	Carrier	38CKB024320	1	
	Furnace - 1	Carrier	58WAV045-08	1	
	CU-2	Carrier	38CKB042500	1	
	Furnace - 2	Carrier	58WAV091-16	1	



Location	Unit Type	Make	Model #	Qty	Notes
FS 7	CU-3	Carrier	38CKB060500	1	
	Furnace - 3	Carrier	58WAV111-20	1	
	CU-1	Day & Night	591ANX042000ABAA	1	
	Furnace -1	Day & Night	395CAV060090	1	
	CU-2	Day & Night	591ANX036000AAAA	1	
	Furnace -2	Day & Night	395CAV048075	1	
	CU-3	Day & Night	591ANX024000AAAA	1	
	Furnace -3	Day & Night	395CAV036055	1	
FS 22	CU-1	Carrier	38CKC042510	1	
	Furnace - 1	Carrier	58WAV091-16	1	Replace insulation on ductwork from unit to ceiling line
	CU-2	Carrier	38CKC060520	1	
	Furnace - 2	Carrier	58WAV111-20	1	Replace insulation on ductwork from unit to ceiling line
	CU-3	Carrier	38CKC030330	1	
	Furnace -3	Carrier	58WAV045-08	1	Replace insulation on ductwork from unit to ceiling line
Investigations	CU-1	Day & Night	565B1036-A	1	
	Furnace-1	Day & Night	518A036	1	Replace insulation on ductwork from unit to ceiling
	CU-2	Day & Night	565B1042	1	
	Furnace-2	Day & Night	518A036	1	Replace insulation on ductwork from unit to ceiling line
	CU-3	Day & Night	565BJ042	1	
	Furnace-3	Day & Night	518042	1	Replace insulation on ductwork from unit to ceiling
FS 88	CU-1	Carrier	38CKB060510	1	
	Furnace-1	Carrier	58WAV111-20	1	
	CU-2	Carrier	38CKB042500	1	
	Furnace-2	Carrier	58WAV091-14	1	

**New Work:**

1. Provide and install new mechanical equipment as identified in the mechanical equipment upgrade scope of work.
2. Work will include material, labor, supervision, design completion, services, equipment and tools required to replace the HVAC systems.
3. All units will be installed in the location of the previous equipment.
4. Compressors will come with a minimum 5-year manufacturer's warranty.
5. All units will be provided with a new programmable thermostat and be reconnected to the existing twist timer if present. The programmable thermostat will meet Title 24 requirements.
6. Provide and install new refrigerant line sets as per code.
7. Provide and install new matching cooling coils.
8. Start up by factory trained personnel and commission per factory specifications, ensuring the units operate per user defined schedule.
9. Reconnect the unit to existing ductwork except in cases where exposed ductwork will be replaced under this scope of work.
10. Reconnect to existing natural gas and condensate piping systems.

11. Existing smoke detectors will be reconnected, if applicable. New smoke detectors will be provided as required if mechanical system or combined systems serving the zone is > 2000 cfm.
12. Provide and install new electrical disconnect and fuses.
13. Provide and install condensate discharge to comply with local jurisdiction requirements.
14. Ensure all flue vent terminations on furnace meet local code and provide flue extension if required.
15. Measure and document pre and post installation air flows at each register.
16. Test and balance work will be performed in accordance with AABC or NEBB guidelines.

**Packaged Unit Replacements**

Scope of Work:

**Demolition:**

1. Remove and dispose three (3) gas packaged units as per the table below
2. Include disposal of equipment in accordance with applicable codes.

Location	Unit Type	Make	Model#	Qty	Notes
FS 10 & Training	Package Unit (Classroom 3)	Carrier	48GS-036090501--	1	Replace exterior ductwork & insulation till wall inlet
	Package Unit (Classroom 3)	Bryant	588ANW0360B0ACBF	1	Replace exterior ductwork & insulation till wall inlet
	Package Unit (Classroom 3)	Day & Night	584ANW036080	1	Replace exterior ductwork & insulation till wall inlet

**New Work:**

1. Provide and install new mechanical equipment as identified in the mechanical equipment upgrade scope of work.
2. Work will include material, labor, supervision, design completion, services, equipment and tools required to replace the HVAC systems.
3. All units will be installed in the location of the previous equipment.
4. Compressors will come with a minimum 5-year manufacturer's warranty.
5. All units will be provided with a new programmable thermostat and be reconnected to the existing twist timer if present. The programmable thermostat will meet Title 24 requirements.
6. Start up by factory trained personnel and commission per factory specifications, ensuring the units operate per user defined schedule.
7. Reconnect the unit to existing ductwork except in cases whether exposed ductwork will be replaced under this scope of work.
8. Reconnect to existing natural gas and condensate piping systems.
9. Existing smoke detectors will be reconnected, if applicable. New smoke detectors will be provided as required if mechanical system or combined systems serving the zone is > 2000 cfm.
10. Provide and install new electrical disconnect and fuses with all wiring installed in conduit.
11. Provide and install condensate discharge to comply with local jurisdiction.
12. Measure and document pre and post installation air flows at each register.
13. Test and balance work will be performed in accordance with AABC or NEBB guidelines.

**Boiler Replacements**

Scope of Work:

**Demolition:**

1. Remove and dispose one (1) boiler, one (1) hot water circulation water pump - 49 GPM, 1.5 HP, one (1) thirty-gallon expansion tank and one (1) pot feeder as per the table below
2. Include disposal of equipment in accordance with applicable codes.

Location	Unit Type	Make	Model#	Qty
Administration	Boiler	Peerless	210-4-WVP	1
	Hot circulation water pump (49 GPM, 1.5 HP)			1
	Expansion tank (30 gallons)			1
	Pot feeder			1

**New Work:**

1. Provide and install new boiler, hot water pump, expansion tank and pot feeder.
  - a. Work will include material, labor, supervision, design completion, services, equipment and tools required to replace the HVAC systems.
  - b. All units will be installed in the location of the previous equipment.
2. Modify piping as necessary for the new installation including all shut off valves, temperature gauges on the entering and leaving side of the boiler and pressure gauges on the entering and leaving side of the pumps.
3. Provide new thermal insulation on hot water piping inside mechanical room as per code and label piping as appropriate.
4. Include required line and low electrical modification and connections.
5. Connect new equipment to existing controls systems
6. Make gas, hot water and venting connections for hot water equipment / boilers. Include new venting to roof/exterior per manufacturer's requirement.
7. Start up by factory trained personnel and commission per factory specifications, ensuring the units operate per user defined schedule.

**ECM #2 – Water Conservation**

**Scope of Work**

Scope of work will include:

1. Retrofit existing lavatory and kitchen sink faucets with 1.5 GPM aerators at the facilities listed below:

Site	Lavatory Sinks	Kitchen Sinks
FS 1	-	1
FS 2, Admin and Comm Center	12	4
FS 3	4	1
FS 5	4	1
FS 6	3	1
FS 7	-	1
FS 8	-	1
FS 10 and Training Center	13	1
FS 11	2	1
FS 13	2	1
FS 14	5	1
FS 15	-	1
FS 17	2	1
FS 22	4	1
FS 69	5	1
FS 81	4	1
FS 82	3	1
FS 83	2	1
FPB East	-	1
<b>Total</b>	<b>65</b>	<b>22</b>

2. Provide materials, labor, supervision, and coordination with ConFire for the installation.

**ECM #3 - Solar Generating Facilities**

**Scope of Work**

Scope of work will include:

1. Prepare and submit design drawings to the Cities of Antioch, Clayton, Concord and Pittsburg for approval and to local utility for interconnection permits.
2. Provide geotechnical evaluations necessary for design requirements.
3. Provide utility interconnection drawings and application management services.
4. Provide and coordinate installation of the NGOM and NEM metering.
5. Procure materials and equipment necessary for construction.
6. Provide project management and construction management necessary for a full and complete installation.
7. Provide labor, supervision, and coordination with ConFire for the installation of photovoltaic modules and supporting structures, electrical distribution and control systems.
8. Provide and install PV modules and necessary mounting hardware for each system.

9. Provide and install inverters and necessary electrical equipment and conduits to connect to the electrical switchgear or meter. Electrical shut-downs are anticipated at each site. Time of shutdown will be coordinated with ConFire and PG&E and may include weekends.
10. Provide and install solar canopy structures to offset electrical consumption at 4 locations in the table above. The canopy structure design will include a painted canopy structure that is 10-12 feet clear of grade level on the low side and a pier depth of eight feet deep and assumes no de-watering, benching, shoring, or casing. Canopies for engine parking (12' clear) are only provided for Array 3 at Fire Station 10 and Training Center.
11. At Delta Fair Property provide and install a ground mount racking structure that provides at least a 1' ground clearance for the solar PV modules. Approximately 1,800 feet of 6' chain-link fence will be provided around the ground mount system to limit access to the ground mount system. Fence slats, security cameras, and security alarming is not included in the scope of work. The ground within the fenced area and beneath the solar PV modules will remain native grasses and will be maintained by ConFire.
12. DC wiring and AC wiring within the solar canopies and ground mount structure will be copper wire. Aluminum wire will be used from each system's AC combiner to the main point of connection at the site's electrical switchgear.
13. Provide and install eighteen (18) new LED lighting fixtures (Relume PV 40HB or equivalent) for canopies located in parking lots (one for each 27' bay).
14. Provide as-built drawings and Operations & Maintenance manuals upon project completion.
15. Provide tree removal as noted on the solar layouts provided during the project update meetings on 20 July and 6 October 2016.
16. Provide miscellaneous backfill and restoration of landscaping in areas of work.
17. Start-up, test, and commission the systems in accordance with design plan and applicable industry standards.
18. Secure the Project Location and provide traffic redirection during rigging operations, and during the move-in and move-out of large equipment. ConFire will assist with the foregoing site logistics by coordinating access and scheduling with OpTerra Energy Services.

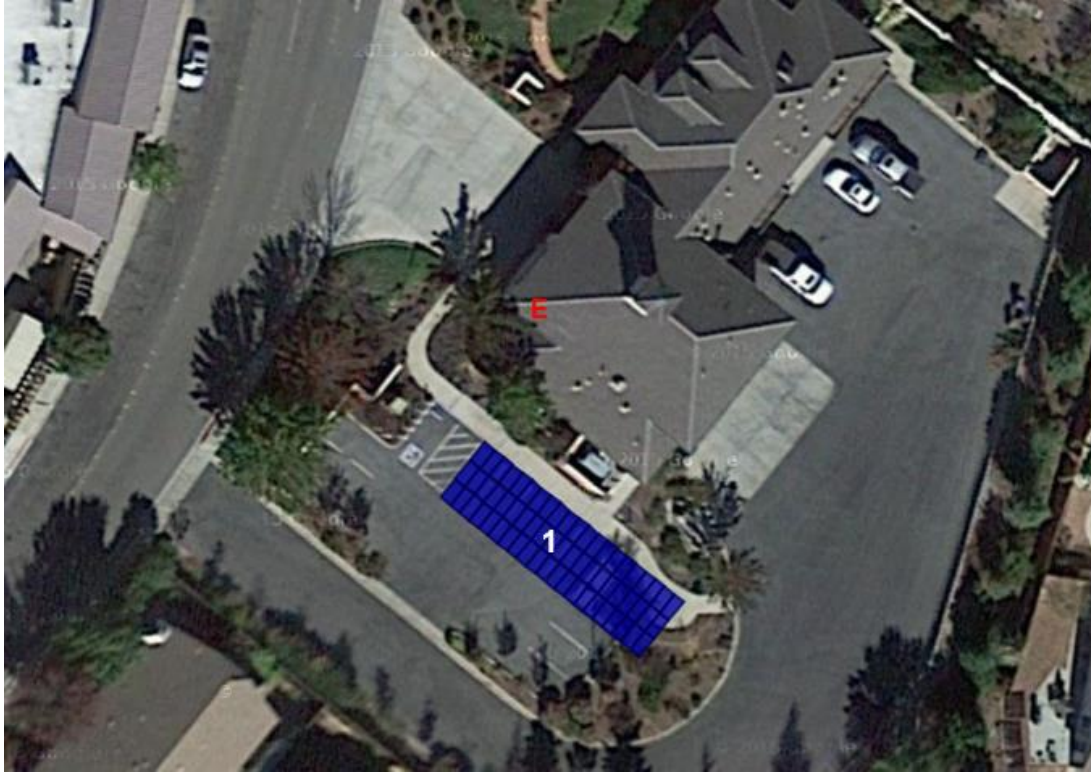
#### **Preliminary Photovoltaic Layouts**

##### **Fire Station 10 and Training Center**





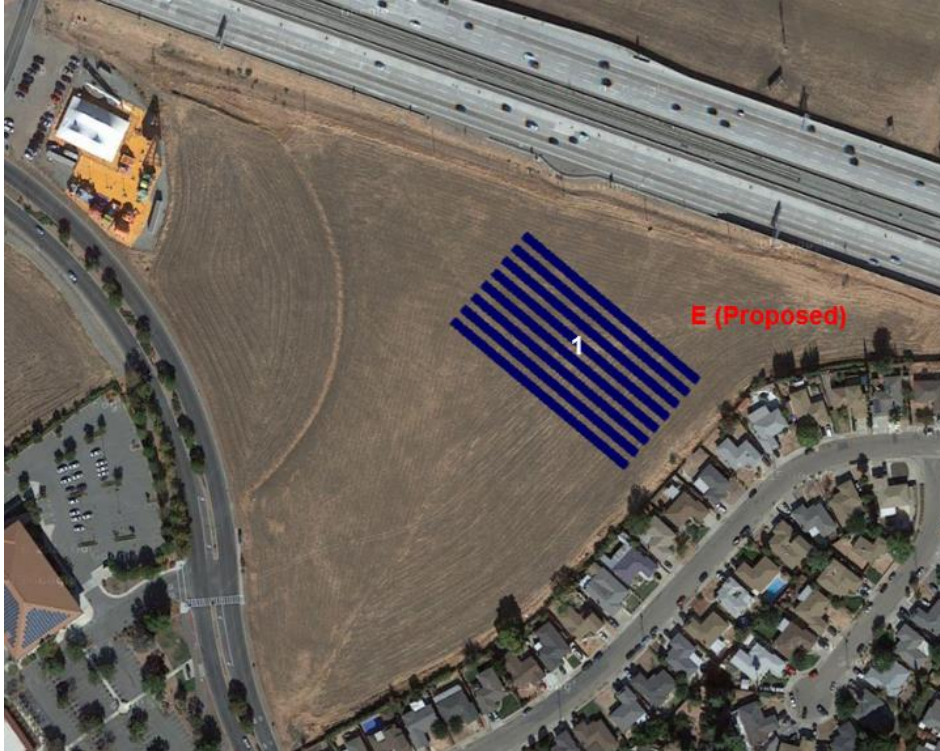
Fire Station 11



Fire Station 84



**RES-BCT at Delta Fair Property**



**Assumptions, Exceptions, Exclusions:**

1. Cost for ADA accessibility upgrades to existing buildings or parking lots for path of travel, if required, are not included and will be calculated based upon final design.
2. Remediation and/or removal of hazardous materials, hazardous wastes, or spoils are not included. CEQA or other environmental studies, if required, will be the responsibility of ConFire.
3. Public Hearings, if required, will be the responsibility of ConFire
4. Access to areas of construction will be blocked to public during construction for safety.
5. An allowance of \$150,000 is included in the Contract Amount for PG&E Interconnection costs for the RES-BCT site, still to be determined. If the final costs are greater than this allowance ConFire will be responsible for the additional cost. If the final costs are less than this allowance a deductive change order can be applied to the Contract or OpTerra Energy Services can perform other ECMs with a value equivalent to the remaining allowance.

**General Project Exclusions and Clarifications:**

- Inspection for all scopes of work are excluded.
- OpTerra Energy Services has assumed Construction will be allowed to proceed smoothly and in a continuous flow. No allowance has been made to demobilize and remobilize resources due to schedule interruptions.
- Temporary utilities are to be provided by ConFire at no cost to OpTerra Energy Services (including, without limitation, trailer power, phone lines, and construction power).
- Removal and disposal of Hazardous Substances, including asbestos containing materials, to be by ConFire (except as noted above). If OpTerra Energy Services encounters material suspected to be hazardous, OpTerra Energy Services will notify ConFire representative and stop further work in the area until the material is removed.
- OpTerra Energy Services will require the assistance of ConFire personnel to secure the Project Location and to provide traffic redirection during rigging operations, and during the move-in and move-out of large equipment.
- No allowance has been made for structural upgrades to existing structures, except as specifically set forth in this Scope of Work.
- No allowance has been made for screening of new or existing equipment, except as specifically set forth in this Scope of Work.
- No temporary heating or cooling services have been included in the Contract Amount. OpTerra Energy Services will attempt to phase Construction in such a way as to avoid complete interruptions of service.
- OpTerra Energy Services standard construction means and methods will be used.

- ConFire will provide access to the Facilities, laydown areas at the work sites, and a reasonable number of parking spaces for OpTerra Energy Services and OpTerra Energy Services' subcontractor vehicles in parking lots at the Facilities.
- Work will be performed during normal work hours; no overtime hours are included in the Contract Amount.
- The Scope of Work assumes that, unless specifically identified otherwise, all existing systems are functioning properly and are up to current codes. OpTerra Energy Services will not be responsible for repairs or upgrades to existing systems that are not functioning properly or compliant with current codes. No allowances have been made to bring existing systems up to code.
- No allowance has been made to repair or replace damaged or inoperable existing equipment that is not specifically being replaced under the Scope of Work. When such items are discovered, OpTerra Energy Services will immediately notify ConFire representative.
- No allowance has been made for underground obstructions or unsuitable soil conditions encountered during trenching or other excavation.
- The PV shade structure is not weather tight and will not provide shelter from rain.
- Water hose bibs for washing the panels are excluded.
- Decorative fascia along the perimeter of the panels and decorative covering underneath the panels are excluded.
- Parking lot repairs are excluded, except to the extent of damage caused by OpTerra Energy Services or its subcontractors.
- Repair or replacement of existing housekeeping pads, concrete pads, or base repair of existing walkway lighting are excluded, except as specifically set forth in this Scope of Work.
- Painting, unless specified, is excluded.
- Where this Scope of Work includes pulling new wiring for lighting fixtures from an existing lighting panel, a grounding conductor must be included in the lighting circuits. ConFire is responsible for providing an existing or new grounding conductor terminal bar at the lighting panel that is properly connected to the Facility grounding electrode system in compliance with the latest NEC adopted by the authority having jurisdiction.
- With respect to Projects with new equipment connecting to the Facility's existing electrical distribution system, OpTerra Energy Services will not be responsible for the electrical integrity of the existing electrical system, e.g., the condition and proper termination of current-carrying, grounded, and grounding conductors, bus taps, protective elements, the proper protection of existing wire through knockouts, or missing components. ConFire is responsible for providing and maintaining the facility's electrical distribution system that meets the latest NEC and guidelines adopted by the authority having jurisdiction.
- OpTerra Energy Services is not responsible for repairing or replacing existing damaged, blocked, or leaky ductwork, or cleaning dirt or mildew, except as specifically set forth in this Scope of Work.
- OpTerra Energy Services will not be responsible for existing damaged pipes, valves, and related parts and components.
- Existing pneumatic control systems that remain in place must be properly maintained (use of air dryer, clean filter, etc.) by ConFire such that oil or moisture does not reach the control and operating devices.
- Unless specifically included in this Scope of Work, existing valves, dampers, linkages, and piping specialties to which new controls/building automation system are being connected are to be in proper functioning condition. If existing device is found to be improperly functioning, ConFire may repair or compensate OpTerra Energy Services for repair / replacement of the device.
- Any upgrade or replacement work to fire alarm systems is excluded, except for reconnecting smoke detectors to units being replaced in this Scope of Work.

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

- i) **ROOFTOP GAS PACKAGE AC / SPLIT SYSTEM / PACKAGE UNIT** - The OpTerra Energy Services Warranty commences immediately upon the occurrence of two weeks of uninterrupted operation of the mechanical equipment while providing reasonable comfort. "Uninterrupted operation" is defined as: no involuntary shutdowns due to control problems. "Reasonable comfort" is defined as: maintaining occupied spaces controlled by the system within +/- 4 degrees of setpoint. Comfort performance will be established by manual spot checks of temperatures by an OpTerra Energy Services employee. With respect to the HVAC equipment, OpTerra Energy Services will provide written notice to ConFire of the date the OpTerra Energy Services Warranty commences.
- ii) **HOT WATER BOILER** –The OpTerra Energy Services Warranty commences immediately upon the occurrence of two weeks of uninterrupted supply of GPM flows within 10% of design values at a supply temperature of approximately 180°F. "Uninterrupted operation" is defined as: no involuntary shutdowns due to mechanical difficulties. Flows will be established by a test and balance report created by OpTerra Energy Services. Temperature performance will be established by EMS trend logs or by manual spot checks of temperature gauge by a OpTerra Energy Services employee. With respect to the Hot Water Boiler, OpTerra Energy Services will provide written notice to ConFire of the date the OpTerra Energy Services Warranty commences.

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

**Tentative work scopes to receive Substantial and Final Completion:**

<b>Scope of Work</b>	<b>Location</b>	<b>Total Qty of SC</b>	<b>Total Qty of FC</b>
SGF 1 through 4 – Solar PV	4 sites	4; one per site	1; for entire SGF
ECM 1 – HVAC Upgrades	13 sites	13; one per site	1; for entire ECM
ECM 2 – Water Conservation	22 sites	1; for entire ECM	1; for entire ECM



**ATTACHMENT D**  
**MONITORING INSTALLATION SCOPE OF WORK**

Overview of DAS Network Installation and Equipment Requirements

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

**OpTerra Energy Services DAS Monitoring Installation:**

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

**ConFire/Facility Responsibilities:**

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

**ATTACHMENT E  
M&V SERVICES**

**EQUIPMENT AND FACILITIES COVERED**

OpTerra Energy Services will perform measurement and verification services (“M&V Services”) as set forth in this Attachment E with respect to ConFire’s property at the following Project Locations:

Facility	Address
FS 1	1330 Civic Drive, Walnut Creek 94596
FS 2	2012 Geary Road, Pleasant Hill 94523
FS 3	1520 Rossmoor Pkwy, Walnut Creek 94595
FS 5	205 Boyd Road, Pleasant Hill 94523
FS 6	2210 Willow Pass Rd., Concord 94520
FS 7	1050 Walnut Avenue, Walnut Creek 94598
FS 8	4647 Clayton Road, Concord 94521
FS 10	2955 Treat Boulevard, Concord 94518
FS 11	6500 Center Street, Clayton 94517
FS 13	251 Church Street, Martinez 94553
FS 14	521 Jones Street, Martinez 94553
FS 15	3338 Mt. Diablo Blvd., Lafayette 94549
FS 17	620 St. Marys Road, Lafayette 94549
FS 22	5050 Crystyl Ranch Dr., Concord 94521
FS 69	4640 Appian Way, El Sobrante, 94803
FS 81	315 W. 10th Street, Antioch 94509
FS 82	196 Bluerock Dr., Antioch 94531
FS 83	2717 Gentrytown Drive, Antioch 94509
FS 84	1903 Railroad Ave., Pittsburg 94565
FS 88	4288 Folsom Drive, Antioch 94509
Delta Fair Property	Intersection of Delta Fair Blvd. and Century Blvd.
Administration	2010 Geary Road, Pleasant Hill 94523
Communication Center	2900 Dorothy Dr., Pleasant Hill 94523
Training Campus	2945 Treat Boulevard, Concord 94518
FPB East office	2329 Loveridge Road, Pittsburg 94565
Investigations, FIUB	200 E. Sixth St., Pittsburg 94565

**I. Definitions:**

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

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

“**Annual M&V Fee**” means a fee payable annually in advance by ConFire to OpTerra Energy Services, in consideration of the provision of up to nineteen (19) years of M&V Services, on the terms and subject to the conditions set forth in this Attachment E.

Measurement Period	Annual M&V Fee
1	Included in Contract Amount
2	Included in Contract Amount
3 (optional)	\$17,312.83
4 (optional)	\$17,832.21
5 (optional)	\$18,367.18
6 (optional)	\$18,918.19
7 (optional)	\$19,485.74
8 (optional)	\$20,070.31
9 (optional)	\$20,672.42
10 (optional)	\$21,292.59
11 (optional)	\$21,931.37

Measurement Period	Annual M&V Fee
12 (optional)	\$22,589.31
13 (optional)	\$23,266.99
14 (optional)	\$23,965.00
15 (optional)	\$24,683.95
16 (optional)	\$25,424.47
17 (optional)	\$26,187.20
18 (optional)	\$26,972.82
19 (optional)	\$27,782.01

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

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

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

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

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

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

**“Energy Savings Term”** means the period beginning on the first day of the Construction Period and ending on the earlier of: (i) the day immediately preceding the second (2<sup>nd</sup>) anniversary of the M&V Commencement Date (unless extended in accordance with the terms of Attachment E, Section (II)(H) hereof); (ii) the termination of the Contract; (iii) the termination by ConFire of the M&V Services in accordance with this Attachment E, Section (II)(G); or (iv) the failure by ConFire, following written notice and an opportunity to cure pursuant to Section 15.02(iii) of the Contract, to pay the Annual M&V Fee in accordance with this Attachment E, Section (II)(I)(i).

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

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

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

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

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

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

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

Measurement Period	Guaranteed Savings
1	\$185,171
2	\$193,506
3 (optional)	\$202,216

Measurement Period	Guaranteed Savings
4 (optional)	\$211,318
5 (optional)	\$220,830
6 (optional)	\$230,771
7 (optional)	\$241,160
8 (optional)	\$252,017
9 (optional)	\$263,363
10 (optional)	\$275,220
11 (optional)	\$287,611
12 (optional)	\$300,560
13 (optional)	\$314,093
14 (optional)	\$328,235
15 (optional)	\$343,014
16 (optional)	\$358,459
17 (optional)	\$374,600
18 (optional)	\$391,469
19 (optional)	\$409,098

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

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

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

“**Stipulated Non-Energy Savings**” means, for any Measurement Period, those savings, having units of dollars (\$), achieved for such Measurement Period through reductions in non-energy costs due to the implementation of the Work. Stipulated Non-Energy Savings will be stipulated by the Parties and set forth in this Attachment E, Section (III).

## II. Terms and Conditions

### A. Guaranteed Savings.

- i. Savings Guarantee. In consideration of the payment of the Annual M&V Fee, and upon the terms and subject to the conditions set forth herein, OpTerra Energy Services warrants that ConFire will realize total EC Savings during the Energy Savings Term of not less than the total Guaranteed Savings (the “Savings Guarantee”), as the same may be adjusted from time to time for changes in Energy Rate Factors, Energy Use Factors and consequential revisions to the relevant Baseline.
- ii. Guarantee Payment. For any Measurement Period in which there is a Guarantee Shortfall, OpTerra Energy Services will pay to ConFire, within forty-five (45) calendar days after the acceptance by ConFire of the Energy Savings Report for such Measurement Period, the Guarantee Payment for that Measurement Period.
- iii. Services or Retrofits in Lieu of Guarantee Payment. If in the judgment of ConFire, ConFire would benefit from additional energy services or energy saving retrofits, ConFire and OpTerra Energy Services may mutually agree that OpTerra Energy Services will provide such services or retrofits in lieu of the Guarantee Payment for such Measurement Period. For the purposes of this Contract, such services or retrofits will have a deemed value equal to the Guarantee Shortfall for that Measurement Period.
- iv. Excess Savings. For any Measurement Period in which there are Excess Savings, ConFire will repay to OpTerra Energy Services, to the extent of such Excess Savings, any Guarantee Payments previously paid by OpTerra Energy Services to ConFire and not previously repaid to OpTerra Energy Services by ConFire, and the Excess Savings for such Measurement Period will be reduced by the amount of such repayment. If OpTerra Energy Services has provided services or retrofits in lieu of the Guarantee Payment for a prior Measurement Period, such that the Guarantee Payment for such Measurement Period cannot be repaid by ConFire, then in lieu of such repayment Excess Savings will be increased by the deemed value of such services or retrofits.
- v. Excusable Events. If OpTerra Energy Services is delayed in, or prevented from, accurately calculating the actual EC Savings for any day of any Measurement Period by reason of any event beyond its control, such circumstance will not constitute a default, and OpTerra Energy Services will be excused

from performing the M&V Services while such event is continuing. During such event, Projected Energy Savings for the month(s) in which such event is continuing will be used in lieu of actual data; *provided that* if three (3) or more years of post M&V Commencement Date data are available for such month(s), the historical average of such data for such month(s) will be used in lieu of Projected Energy Savings.

**B. Changes in Energy Use Factors.**

- i. Adjustments to Baselines. ConFire will notify OpTerra Energy Services in writing within ten (10) Business Days of any change in any Energy Use Factor. In addition, data collected by OpTerra Energy Services during or before the Energy Savings Term may indicate a change in the energy use pattern at the Facilities or any portion thereof and require a change to one or more Baselines. OpTerra Energy Services will determine the effect that any such change will have on EC Savings and present to ConFire a written analysis of the effects of such changes. OpTerra Energy Services will also make corresponding revisions to the Baselines and/or EC Savings that it deems appropriate in its reasonable discretion.
- ii. Adjustments to Guaranteed Savings. If a change in any Energy Rate Factor or Energy Use Factor results in a reduction of EC Savings, then the Guaranteed Savings for the corresponding Measurement Period(s) will be decreased by the same amount. OpTerra Energy Services will notify ConFire, in writing, of all such changes.
- iii. Changes to Facilities. ConFire or OpTerra Energy Services may from time to time propose to make changes to the Facilities for the express purpose of increasing EC Savings or addressing events beyond its control. It is agreed that these changes will only be made with the written consent of both Parties, which will not be unreasonably withheld. The Baseline will not be adjusted to reflect any changes agreed to under this Attachment E, Section (II)(B)(iii).
- iv. Baseline Adjustment. If OpTerra Energy Services proposes changes to the Facilities that would not unreasonably interfere with the conduct of ConFire's business or cause ConFire to incur additional costs, and ConFire does not consent to the changes, then OpTerra Energy Services will adjust the Baselines upward by the amount of savings projected from the changes.
- v. Projected Energy Savings. During the Energy Savings Term, when the ultimate effect of the Work on EC Savings cannot be accurately determined due to pending construction or changes to the Scope of Work, Projected Energy Savings for the Facilities will be used until the effect of the changes can be determined by OpTerra Energy Services.
- vi. Assessment Work. OpTerra Energy Services has the right to charge ConFire for Assessment Work, which will be billed at current OpTerra Energy Services engineering rates and will be paid by ConFire within forty-five (45) calendar days after receiving OpTerra Energy Services' invoice. Before initiating Assessment Work, OpTerra Energy Services will notify ConFire in writing of the intent and estimated cost associated with the Assessment Work. ConFire will, within forty-five (45) calendar days, give OpTerra Energy Services written permission to proceed or, alternatively at no charge to OpTerra Energy Services, to stipulate that the Projected Energy Savings for the portion of the Facility in question be used for the purpose of meeting the Savings Guarantee for such Measurement Period and thereafter. If OpTerra Energy Services does not receive written notice within forty-five (45) calendar days, the Projected Energy Savings for the portion of the Facility in question will be used until such time as ConFire approves the Assessment Work.
- vii. Changes in Energy Use Factors. If ConFire fails to notify OpTerra Energy Services of changes in Energy Use Factors or fails to supply OpTerra Energy Services in a timely manner with information that is requested by OpTerra Energy Services for the calculation of EC Savings, the Energy Unit Savings for the relevant Measurement Period will be deemed equal to the corresponding Projected Energy Savings for such period. If information for the relevant Measurement Period is supplied at a later date, the Energy Unit Savings will be modified only if and to the extent that the calculated savings for such period exceed the Projected Energy Savings for such period.
- viii. Change Order – Savings Effect. OpTerra Energy Services will calculate the energy impact of any Change Orders.
- ix. Changes in Savings Calculations. Any changes made by OpTerra Energy Services to the savings calculations will be presented to ConFire in advance. ConFire will have thirty (30) calendar days to challenge or question the changes in writing.
- x. Inspection of Facilities. ConFire agrees that OpTerra Energy Services will have the right, with three (3) Business Days advance written notice, to inspect the Facilities to determine if ConFire has consistently

complied with its obligations as set forth above. If any inspection discloses that ConFire has failed, on or prior to the date of such inspection, to be in compliance with any of its obligations, then the Guaranteed Savings will be assumed to have been achieved for the portion of the Energy Savings Term during which such failure will have existed.

- xi. Interference. ConFire may not cause, and will take all commercially reasonable steps to prevent any third party from causing, any overshadowing, shading or other interference with the solar insolation that falls on the Generating Facility. Upon discovering, or otherwise becoming aware of, any actual or potential overshadowing, shading or other interference with insolation, ConFire will promptly notify OpTerra Energy Services. If an unforeseeable overshadowing or shading condition not caused by OpTerra Energy Services or its subcontractors exists and continues for five (5) Business Days or more, ConFire agrees that the Guaranteed Savings for such Generating Facility will be reduced based upon such shading condition, and OpTerra Energy Services may present ConFire with a proposed reduction to the Guaranteed Savings reflecting such overshadowing, shading or other interference.

C. ConFire Maintenance. Beginning at Beneficial Use or Substantial Completion for any portion of the Work, ConFire will maintain such portion of the Work and upon Final Completion will maintain the Project, in accordance with the maintenance schedules and procedures recommended by OpTerra Energy Services and by the manufacturers of the relevant equipment, such maintenance to include maintaining all landscaping (including tree trimming) in and around the Generating Facilities.

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

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

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

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

H. Renewal of Savings Guarantee. The Savings Guarantee will terminate on the first day of the third Measurement Period, unless ConFire delivers written notice to OpTerra Energy Services, within thirty (30) calendar days after its receipt of the prior Measurement Period's Energy Savings Report, of its intent to renew the Savings Guarantee for an additional Measurement Period. Subject to Attachment E, Section (II)(B)(xi), ConFire may thereafter renew the Savings Guarantee for additional one (1) year periods (through the



nineteenth (19th) Measurement Period) by delivering written notice to OpTerra Energy Services, within thirty (30) calendar days after its receipt of the prior Measurement Period's Energy Savings Report, of its intent to renew the Savings Guarantee for an additional Measurement Period. The Savings Guarantee cannot be renewed or reinstated if ConFire fails to timely renew for any Measurement Period after the second Measurement Period.

**I. Annual M&V Fee.**

- i. Invoicing and Payment. The Annual M&V Fee for the first two Measurement Periods is included in the Contract Amount. If the M&V Services are renewed, all subsequent Annual M&V Fees will be invoiced by OpTerra Energy Services on the first day of the corresponding Measurement Period. ConFire, or its designee, will pay OpTerra Energy Services such Annual M&V Fee, without any retention amount withheld, within forty-five (45) calendar days after its receipt of the corresponding invoice. Unless ConFire gives OpTerra Energy Services prior written notice of its intent to terminate the M&V Services, any failure to timely pay the Annual M&V Fee in accordance with this Attachment E, Section (II)(H) will be a material default by ConFire under the Contract, and OpTerra Energy Services, in addition to any other legal, contractual and equitable remedies available to it, will have no obligation thereafter to perform M&V Services or to make Guarantee Payments.
- ii. Any amount not paid when due will, from and after the due date, bear Interest. Accrued and unpaid Interest on past due amounts (including Interest on past due Interest) will be due and payable upon demand.
- iii. Not Refundable. The Annual M&V Fee is not refundable for any reason.

**J. Calculations.**

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

**K. Benefitting Accounts.** ConFire is responsible for managing the benefitting accounts designated to receive generation credits in regard to the Utility's RES-BCT tariff to ensure that generation is credited at the preferred rate. During the first two (2) Measurement Periods, OpTerra Energy Services will provide up to eight (8) hours per year of assistance to ConFire to establish and manage the benefitting accounts, and to train ConFire in managing the benefitting accounts. Any additional assistance provided by OpTerra Energy Services will be on a time and materials basis at a rate of \$85/hour. Within twenty (20) Business Days after the first and second anniversaries of the date on which the Generating Facilities are interconnected to the Utility's distribution/transmission system, ConFire shall provide OpTerra Energy Services with the prior twelve (12) months of historical Utility billing data for all ConFire's Utility accounts (both benefitting and non-benefitting), in Excel format.

### III. Methodologies and Calculations

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

**Table E-1 Measurement & Verification Methodologies**

<b>ECM</b>	<b>Electric Usage</b>	<b>Natural Gas Usage</b>	<b>Domestic Water</b>
SGF 1 through 4 – Solar PV	M&V Option B	N/A	N/A
ECM 1 – HVAC Upgrades	Stipulated	Stipulated	N/A
ECM 2 – Water Conservation	N/A	N/A	Stipulated

1. M&V Option B: Energy savings performance of Scope of Work are measured and verified at the end-use site. Option B techniques are designed for projects where long-term continuous measurement of performance is desired and warranted. Under Option B, while some parameter may be stipulated or measured once then stipulated, some individual loads are continuously monitored to determine performance; and this measured performance is compared with an equipment-use Baseline to determine the Energy Unit Savings.
  - a. OpTerra Energy Services will supply a one-time report to ConFire detailing any initial measurements taken to establish usage Baselines or other parameters. Ongoing post-retrofit measurements will be compared to the Baselines, and the quantified Energy Unit Savings will be calculated and presented in ongoing reports. During the Construction Period, the Energy Unit Savings will be calculated by adding the savings measured for the whole months between Substantial Completion or Beneficial Use of the EC Measure and the M&V Commencement Date.
  - b. Scope of Work  
No baseline measurements are necessary because pre-retrofit PV production is zero. Kilowatt-hours produced by the PV system will be measured using automated metering. Measured interval production kilowatt-hours will be compared against production shown on the monthly utility bills and any differences will be reconciled. Projected kWh production is shown in *Table E-4* below, and is projected to degrade by 0.5% per year.

**Table E-2 First Year Solar PV Production**

<b>Location</b>	<b>Projected Annual Production (kWh)</b>
Fire Station #10 & Training Campus	187,578
Fire Station #11	29,812
Fire Station #84	44,208
Delta Fair RES-BCT	823,848
<b>Total</b>	<b>1,085,446</b>

- c. Assumptions: Once Work is Substantially Complete, these savings will be measured and verified monthly for the Energy Savings Term.
  - d. Baselines and Projected Savings: EC Savings will be determined by multiplying the Energy Unit savings by the applicable Base Energy Rate. EC Savings will be calculated and presented in ongoing reports. During the Construction Period, the EC Savings will be calculated by adding the production measured for the period between Substantial Completion of the EC Measure and the M&V Commencement Date.
2. Stipulated Savings: When the cost, complexity, or uncertainty of savings measurements are high as compared to the projected savings, ConFire and OpTerra Energy Services may agree to stipulate the projected Energy Unit Savings as being achieved, without any measurements being taken.
  - a. For the Stipulated Option, the Energy Unit Savings presented below will be agreed to occur each Measurement Period. During the Construction Period, the Energy Unit Savings will be calculated by adding the savings projected for the whole months between Substantial Completion or Beneficial Use of the EC Measure and the M&V Commencement Date.

**Table E-3: Stipulated Annual Savings**

<b>Location/ECM</b>	<b>Projected Annual Savings (kWh)</b>	<b>Projected Annual Savings (Therms)</b>	<b>Projected Annual Savings (CCF)</b>
ECM 1: HVAC Upgrades	34,640	1,124	-
ECM 2: Water Conservation	-	-	177
<b>Total</b>	<b>34,640</b>	<b>1,124</b>	<b>177</b>

3. Base Energy Rates: EC Savings will be calculated using the Base Energy Rates for that meter.

The Base Energy Rates listed here are to be increased each Measurement Period on a cumulative basis by five percent (5%) beginning on the first anniversary of the M&V Commencement Date and continuing on the first day of each Measurement Period thereafter.

**Table E-4 Base Energy Rates**

<b>Location/ECM</b>	<b>Electricity Rate (\$/kWh)</b>	<b>Gas Rate (\$/Therm)</b>	<b>Domestic Water Rate (\$/CCF)</b>
SGF 1: Fire Station #10 & Training Campus	0.2130	-	-
SGF 1: Fire Station #11	0.2260	-	-
SGF 1: Fire Station #84	0.2600	-	-
SGF 1: Delta Fair RES-BCT	0.1430	-	-
ECM 1: HVAC Upgrades	0.2120	1.0520	-
ECM 2: Water Conservation	-	-	3.668

**ATTACHMENT F  
MAINTENANCE SERVICES**

**EQUIPMENT AND FACILITIES COVERED**

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

SGF #	Facility	Address
1	FS 10 and Training Center	2945/2955 Treat Boulevard, Concord 94518
2	FS 11	6500 Center Street, Clayton 94517
3	FS 84	1903 Railroad Ave., Pittsburg 94565
4	Delta Fair Property RES-BCT	Intersection of Delta Fair Blvd. and Century Blvd.

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

**I. Definitions**

“**Annual Maintenance Fee**” means a fee payable annually in advance by ConFire to OpTerra Energy Services, in consideration of the provision of up to thirty (30) years of Maintenance Services, as set forth in the following table:

Measurement Period	Annual Maintenance Fee
1	Included in Contract Amount
2	Included in Contract Amount
3 (optional)	\$23,355
4 (optional)	\$24,056
5 (optional)	\$24,777
6 (optional)	\$25,521
7 (optional)	\$26,286
8 (optional)	\$27,075
9 (optional)	\$27,887
10 (optional)	\$28,724
11 (optional)	\$29,585
12 (optional)	\$30,473
13 (optional)	\$31,387
14 (optional)	\$32,329
15 (optional)	\$33,299
16 (optional)	\$34,297
17 (optional)	\$35,326
18 (optional)	\$36,386
19 (optional)	\$37,478
20 (optional)	\$38,602
21 (optional)	\$39,760
22 (optional)	\$40,953
23 (optional)	\$42,182
24 (optional)	\$43,447
25 (optional)	\$44,750
26 (optional)	\$46,093
27 (optional)	\$47,476
28 (optional)	\$48,900
29 (optional)	\$50,367
30 (optional)	\$51,878



## **II. Term**

So long as ConFire pays to OpTerra Energy Services the Annual Maintenance Fee, OpTerra Energy Services will provide the Maintenance Services, as described herein, up to thirty (30) years from the M&V Commencement Date on an annualized basis. At the end of this term, ConFire may:

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

## **III. Annual Maintenance Fee; Reporting**

The Annual Maintenance Fees for the first and second Measurement Periods are included in the Contract Amount. The Maintenance Services will terminate on the first day of the third Measurement Period, unless ConFire delivers written notice to OpTerra Energy Services, within thirty (30) calendar days after its receipt of the prior Measurement Period's Energy Savings Report, of its intent to renew the Maintenance Services for an additional Measurement Period. ConFire may thereafter renew the Maintenance Services for additional one (1) year periods (through the thirtieth (30<sup>th</sup>) Measurement Period) by delivering written notice to OpTerra Energy Services, within thirty (30) calendar days after its receipt of the prior Measurement Period's Energy Savings Report, of its intent to renew the Maintenance Services for an additional Measurement Period. If ConFire timely elects to renew the Maintenance Services for the third and subsequent Measurement Periods, the Annual Maintenance Fee for such Measurement Period will be invoiced by OpTerra Energy Services to ConFire in a lump sum immediately following OpTerra Energy Services' receipt of ConFire's written notice of renewal.

ConFire, or its designee, will pay OpTerra Energy Services the Annual Maintenance Fee, without any retention amount withheld, within forty-five (45) calendar days after its receipt of the corresponding invoice. Any failure to timely pay the Annual Maintenance Fee in accordance with this Attachment F will be a material default by ConFire, and OpTerra Energy Services, in addition to any other legal, contractual and equitable remedies available to it, will have no obligation thereafter to provide Maintenance Services.

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

The Annual Maintenance Fee is not refundable for any reason.

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

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

## **IV. Preventive Maintenance Services Provided**

OpTerra Energy Services will provide the following Maintenance Services during the term:

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

## **V. Repair Services**

If a Generating Facility is damaged and requires safe-off, repair, demolition and/or reconstruction, ConFire must contact the OpTerra Energy Services PV Operations & Maintenance Manager. In the event of damage, any component of the

Generating Facility installed by OpTerra Energy Services can be repaired or reconstructed by OpTerra Energy Services at ConFire's request. ConFire must submit a request for quotation to the OpTerra Energy Services PV Operations & Maintenance Manager. OpTerra Energy Services will inspect the damage and provide a written quotation and complete scope of work to ConFire to restore the Generating Facility to normal operational condition. Before proceeding with repairs, OpTerra Energy Services and ConFire must execute a work order, on OpTerra Energy Services' form, for the agreed scope of work and quotation amount. Repair work is done on a time and materials basis.

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

#### **VI. Warranty Services**

The OpTerra Energy Services PV Operations & Maintenance Manager will also be ConFire's point of contact for all issues related to the OpTerra Energy Services Warranty set forth in Section 9.01 of the Contract. ConFire should refer to Section 9.02 of the Contract for services provided by OpTerra Energy Services to ConFire in relation to manufacturer's warranties. The terms and conditions of the relevant manufacturer's warranties can be found in the operation and maintenance manuals delivered to ConFire at Final Completion.

#### **VII. Services and Equipment to Be Covered By ConFire**

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

- a. Making the Generating Facilities described herein available to OpTerra Energy Services as of the Contract Effective Date.
- b. Operating and maintaining security systems associated with the Generating Facilities.
- c. Managing the benefitting accounts designated to receive generation credits in regard to the Utility's RES-BCT tariff to ensure that generation is credited at the preferred rate.
- d. Maintaining all landscaping in and around Generating Facilities including tree trimming.
- e. Allowing OpTerra Energy Services and its personnel access as necessary to the Generating Facilities, and any related areas that may be reasonably necessary for performance of the Maintenance Services, including reasonable work, parking, and equipment staging areas.
- f. Allowing OpTerra Energy Services and its personnel to access electrical power and other utilities then existing at the Generating Facilities as necessary for OpTerra Energy Services to satisfy its obligations under the Contract.
- g. Remediating, pursuant to Applicable Law, any known Hazardous Substances encountered by OpTerra Energy Services during the performance of the Maintenance Services which Hazardous Substances were not deposited by OpTerra Energy Services, including any backfill with clean soil as may be reasonably required.
- h. Insuring the Generating Facilities against loss due to acts of God and the public enemy; flood, earthquake, tornado, storm, fire; civil disobedience, sabotage, and vandalism.

OpTerra Energy Services will have no obligation to provide the Maintenance Services to the extent such provision of Maintenance Services is materially adversely affected by ConFire's failure to satisfy the conditions set forth in this Attachment F.

# "Energizing" Contra Costa County Fire Protection District



OPTERRA  
ENERGY SERVICES



Board Presentation  
December 6, 2016



# Today's Agenda

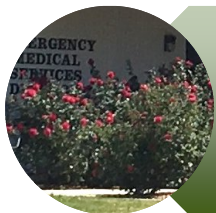


- Partnership Vision
- Opportunity Statement
- Energy Use, Savings
- Pro Forma, Financial Benefits
- Energy Measures by Site Locations
- Solar PV Layouts
- Community Impact / Education Plan
- Alignment with Climate Action Plan
- Next Steps





# Program Vision and Objectives: “Energizing” CCCFPD



Improve CCCFPD facility equipment; address deferred maintenance needs



Model fiscally responsible environmental stewardship; leverage utility incentives, rate structures



Engage / educate community;  
Create local jobs for residents



Align with Contra Costa County  
Climate Action Plan (CAP)

# District-wide Fire Stations Heating & Cooling Deferred Maintenance Challenge



*48-year-old boiler at Fire District Headquarters  
has far exceeded operational life expectancy*

## **Challenge:**

End-of-life heating and cooling equipment at 12 sites; lack of funds

## **Solution:**

Project's utility savings pay for otherwise-capital-intensive equipment at all 12 sites

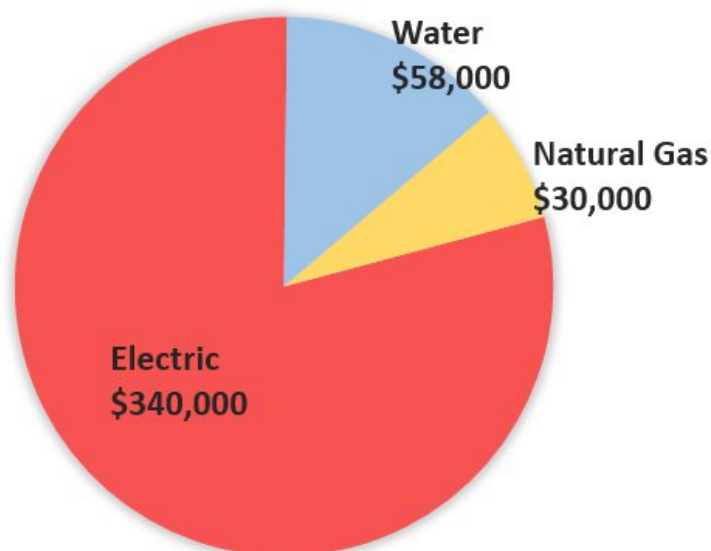
# BEFORE & AFTER

## Current Costs & Project's Future Savings (Annual)



BEFORE | AFTER

**CURRENT UTILITY EXPENDITURE:**  
**\$428,000 / YEAR**



**PROJECT UTILITY SAVINGS:**

- Electric:**  
\$192,000 (56%) | 1.1 MWh (69%)
- Water:**  
\$600 (1%) | 132,000 gallons (2%)
- Natural Gas:**  
\$1,200 (4%) | 1,100 therms (4%)

**GHG Emissions Reduction:**  
214 MTCO<sub>2</sub>e\*  
Equals 500 barrels of oil\*\*

\* PGE calculator (gas + electric)  
\*\* EPA equivalences (per pg 41 CAP)

**CURRENT Operations & Maintenance, Capital Cost: \$72,000/year\***  
\* For HVAC equipment being replaced

**Operations & Maintenance, Capital Cost Avoidance Project Savings: \$72,000/year**

**Total Annual Project Savings: \$266,000**

# Pro-Forma – Sterling National Bank Tax Exempt Municipal Lease Project Financial Benefit



Interest Rate: 2.47%

Annual Energy Escalation: 5%

Finance Term: 19 years

Scope:

- Solar Parking Canopies
  - 3 sites
- Ground Mount Solar utility bill offset
  - 1 ground mount solar site; 23 bill offset sites
- Water Conservation
  - 21 sites
- End-of-life HVAC replacements
  - 12 sites

OPTERRA IS NOT A MUNICIPAL ADVISOR AND CANNOT GIVE ADVICE WITH RESPECT TO MUNICIPAL SECURITIES OR MUNICIPAL FINANCIAL PRODUCTS. THIS INFORMATION IS PROVIDED FOR EDUCATIONAL PURPOSES ABOUT POSSIBLE FINANCING OPTIONS AND IS NOT THE PROVISION OF ADVICE, OR A RECOMMENDATION TO PURSUE, ANY PARTICULAR FINANCING OPTION. CONSULT WITH YOUR MUNICIPAL ADVISOR OR FINANCIAL ADVISOR ABOUT THE FINANCING OPTION APPROPRIATE FOR YOUR SITUATION. OPTERRA CAN PROVIDE INFORMATION TO YOUR MUNICIPAL ADVISOR OR FINANCIAL ADVISOR ABOUT THE HYPOTHETICAL ASSUMPTIONS AND EDUCATIONAL SCENARIOS USED IN THIS SCENARIO.

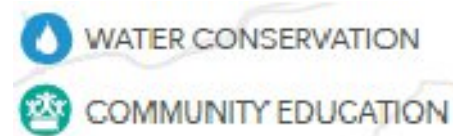
Year	Total Program Savings *	Payment to Lessor	O&M (Self-Generation)	Total Program Costs	Net Savings
1	\$265,751	\$201,580	\$0**	\$201,580	\$64,171
2	\$275,099	\$210,928	\$0	\$210,928	\$64,171
3	\$284,857	\$197,331	\$23,355	\$220,686	\$64,171
4	\$295,046	\$206,819	\$24,056	\$230,875	\$64,171
5	\$305,683	\$216,734	\$24,777	\$241,512	\$64,171
6	\$316,789	\$227,098	\$25,521	\$252,618	\$64,171
7	\$328,387	\$237,929	\$26,286	\$264,216	\$64,171
8	\$340,494	\$249,248	\$27,075	\$276,323	\$64,171
9	\$353,137	\$261,079	\$27,887	\$288,966	\$64,171
10	\$366,338	\$273,443	\$28,724	\$302,167	\$64,171
11	\$380,121	\$286,365	\$29,585	\$315,950	\$64,171
12	\$394,515	\$299,871	\$30,473	\$330,344	\$64,171
13	\$409,543	\$313,985	\$31,387	\$345,372	\$64,171
14	\$425,236	\$328,736	\$32,329	\$361,065	\$64,171
15	\$441,624	\$344,154	\$33,299	\$377,453	\$64,171
16	\$458,735	\$360,267	\$34,297	\$394,564	\$64,171
17	\$476,604	\$377,107	\$35,326	\$412,433	\$64,171
18	\$495,264	\$394,706	\$36,386	\$431,093	\$64,171
19	\$514,749	\$413,100	\$37,478	\$450,578	\$64,171
20	\$448,412	\$0	\$38,602	\$38,602	\$409,810
21	\$444,243	\$0	\$39,760	\$39,760	\$404,482
22	\$464,122	\$0	\$40,953	\$40,953	\$423,169
23	\$484,892	\$0	\$42,182	\$42,182	\$442,710
24	\$506,591	\$0	\$43,447	\$43,447	\$463,144
25	\$529,261	\$0	\$44,750	\$44,750	\$484,510
26	\$552,945	\$0	\$46,093	\$46,093	\$506,852
27	\$577,690	\$0	\$47,476	\$47,476	\$530,214
28	\$603,541	\$0	\$48,900	\$48,900	\$554,641
29	\$630,550	\$0	\$50,367	\$50,367	\$580,183
30	\$658,767	\$0	\$51,878	\$51,878	\$606,889
<b>Totals</b>	<b>\$13,028,985</b>	<b>\$5,400,483</b>	<b>\$1,002,648</b>	<b>\$6,403,131</b>	<b>\$6,625,853</b>

\* Includes Utility Savings, O&M Savings, & Capital Cost Avoidance

\*\* Years 1 & 2 of O&M, Monitoring, and Savings Guarantee included in capital cost



# Sites and Work Scopes



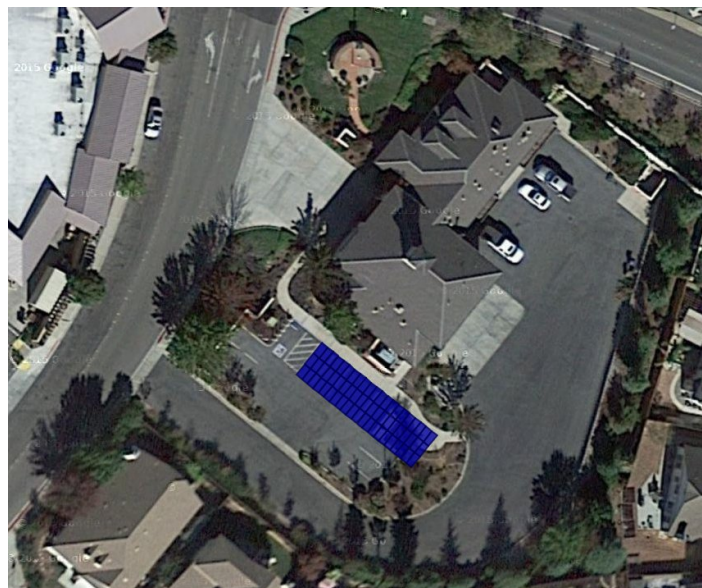
# Renewable Energy / Solar Sites



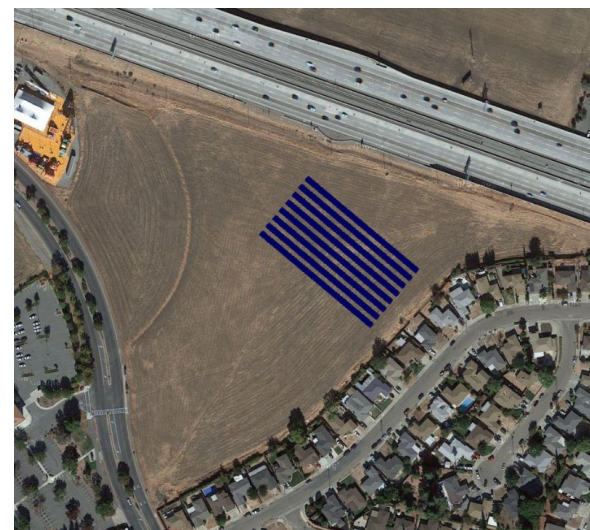
**Fire Station 10 &  
Training Campus  
Concord  
135 kW**



**Fire Station 84  
Pittsburg  
33 kW**



**Fire Station 11  
Clayton  
121 kW**



**Delta Fair Site  
Antioch  
562 kW**



# Community Impact / Education Activities



- October 29 Confire Open House – Solar Education
- Collaborate with District on media and targeted community outreach
- 2017 presentations alongside Battalion Chiefs to District-area City Councils on program's fiscal and environmental benefits
- Program groundbreaking and ribbon cutting celebrations in 2017



*60 local youth explore solar kits*

*Well over 100 families visit  
Confire  
Open House  
October 29*



*Junior firefighter experiments with solar panels under table drape*



# Alignment with County's Climate Action Plan Goals and Measures



Climate Action Plan* Alignment	
GOALS	MEASURES
GOAL 1: Energy Efficiency	EE2: Energy Efficient Retrofits – Nonresidential
	EE3: Energy Conservation Awareness
	EE5: Energy Efficiency Capacity Building
GOAL 2: Renewable Energy	RE2 Renewable Energy Facilities on Public Lands
	RE3: Renewable Energy Financing – Lower Barriers
GOAL 5: Water Conservation	WE1: Water Conservation / Efficiency
GOAL 6: Government Operations	GO2: Energy Efficiency
	GO3: Water Conservation

\* Contra Costa County Climate Action Plan adopted 12/15/2015



# Final Steps to Realizing Vision



Development Activity	Complete?	Date(s)
Feasibility Assessment	✓	2015
Board Approval of Program Development Agreement	✓	5/10
Site walks and existing condition audits	✓	5/26 – 7/8
Update Board	✓	7/19
Competitive Procurement Process: OpTerra/CCCYPD staff run transparent, competitive RFP-based procurement with multiple contractors on installation, equipment	✓	July
Working Group Scope Review and Feedback	✓	August
Issue Competitive RFP for Financing	✓	September
CCCYPD Approval of Funding Plan & Implementation Contract		Today
Groundbreaking Ceremony		Jan 2017
Construction/Implementation		Winter - Spring 2017

# Questions / Comments





Contra  
Costa  
County

To: Contra Costa County Fire Protection District Board of Directors

From: David Twa, County Administrator

Date: December 6, 2016

Subject: 2017 MEETING SCHEDULE FOR THE FIRE DISTRICT BOARD OF DIRECTORS

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**RECOMMENDATION(S):**

ADOPT the 2017 meeting schedule for the Contra Costa County Fire Protection District Board of Directors, noting the Annual Budget Hearings and Adoption on April 18 and May 9, respectively. The schedule has been coordinated with the Contra County County Board of Supervisors:

January 17, 2017  
February 14, 2017  
March 14, 2017  
April 18, 2017 - Budget Hearing  
May 9, 2017- Budget Adoption  
June 13, 2017  
July 11, 2017  
August 8, 2017  
September 12, 2017  
October 17, 2017  
November 14, 2017  
December 12, 2017

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☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD  
COMMITTEE

---

Action of Board On: **12/06/2016** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, Director  
Candace Andersen,  
Director  
Mary N. Piepho, Director  
Karen Mitchoff, Director  
Federal D. Glover, Director

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: December 6, 2016

David J. Twa, County Administrator and Clerk of the Board of Supervisors

Contact: Julie DiMaggio Enea  
925.335.1077

By: June McHuen, Deputy

cc:

RECOMMENDATION(S): (CONT'D)

>

BACKGROUND:

Each year, the Board of Directors adopts a meeting schedule that designates regular meeting dates and any dates on which meetings must be canceled in anticipation that a quorum of the Board will not be present. In order to provide for at least one monthly meeting, the schedule works around those Tuesdays that fall during a week with a District holiday, the fifth Tuesday of a month, and Tuesdays that fall during those weeks in February, May, July, and November in which the annual policy and legislative meetings of the National Association of Counties (NACo) and the California State of Counties (CSAC) are attended by one or more of our Directors. The 2017 meeting schedule provides 12 meetings for the Contra Costa County Fire Protection District Board of Directors. There are legal provisions to schedule a special meeting to address any urgent need that cannot be accommodated in the standing meeting schedule.

The 2017 meeting schedule has been prepared in consultation with the incoming Board Chair, the County Administrator, and the Fire Chief, and is recommended for the Board's adoption. The County Board of Supervisors has already adopted its meeting schedule.





Contra  
Costa  
County

To: Contra Costa County Fire Protection District Board of Directors  
From: Jeff Carman, Chief, Contra Costa County Fire Protection District  
Date: December 6, 2016

Subject: Amendment to Agreement with Bay Area Air Quality Management District to Operate Meteorological Equipment on District Property

---

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Fire Chief, or designee, to execute an amendment to an agreement with the Bay Area Air Quality Management District extending the term and increasing the monthly payment to operate its meteorological system on property owned by the Contra Costa County Fire Protection District.

**FISCAL IMPACT:**

Increased revenue generation of approximately \$900 annually.

**BACKGROUND:**

On August 1, 1990, the Contra Costa County Fire Protection District (District) executed an agreement with the Bay Area Air Quality Management District (BAAQMD) to allow BAAQMD to install and operate a meteorological system on the District's training campus at 2945 Treat Boulevard in Concord. The term of that agreement was from August 1, 1990 to January 31, 1993. Despite the expiration of the agreement, BAAQMD has continued to operate its equipment on District property. This amendment retroactively extends the term of the agreement until terminated in writing by either party. This amendment also increases the monthly fee from \$50 to \$75.

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☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD  
COMMITTEE

---

Action of Board On: **12/06/2016** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, Director  
Candace Andersen,  
Director  
Mary N. Piepho, Director  
Karen Mitchoff, Director  
Federal D. Glover, Director

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: December 6, 2016

David J. Twa, County Administrator and Clerk of the Board of Supervisors

Contact: Wendy Riley, Facilities  
Manager (925) 941-3556

By: June McHuen, Deputy

cc:

CONSEQUENCE OF NEGATIVE ACTION:

BAAQMD will not continue to operate its meteorological system on District property.

CHILDREN'S IMPACT STATEMENT:

No impact.



Contra  
Costa  
County

To: Contra Costa County Fire Protection District Board of Directors

From: David Twa, County Administrator

Date: December 6, 2016

Subject: Resolution No. 2016/3 Authorizing an Upward Salary Step Adjustment

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**RECOMMENDATION(S):**

ADOPT Resolution No. 2016/3 to grant an exemption to Contra Costa County Salary Regulations Section 4.1, and adjust the salary step of the incumbent in the classification of Fire Training Chief (RWHA), position number 5653, from step one to step two of salary range HA5 2248 (\$11,768.38 - \$12,974.64) effective at date of promotion August 15, 2016.

**FISCAL IMPACT:**

Approximately \$12,804 in increased salary and benefit costs, of which \$4,464 is attributable to employer pension costs.

**BACKGROUND:**

On August 15, 2016, the incumbent was promoted to a position in the classification of Fire Training Chief (RWHA) and the department made the recommendation to the County Administrator's Office to approve and recommend to the Board of Supervisors' approval to grant an exemption to the County's Salary Regulations to allow the incumbent to be placed at step two of the classification's salary range.

**CONSEQUENCE OF NEGATIVE ACTION:**

If the recommended action is not approved, the Department will not be able to appropriately compensate the incumbent.

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☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD  
COMMITTEE

---

Action of Board On: **12/06/2016** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, Director  
Candace Andersen,  
Director  
Mary N. Piepho, Director  
Karen Mitchoff, Director  
Federal D. Glover, Director

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: December 6, 2016

David J. Twa, County Administrator and Clerk of the Board of Supervisors

Contact: Timothy Ewell,  
925-335-1036

By: June McHuen, Deputy

AGENDA

ATTACHMENTS

Resolution No. 2016/3

MINUTES

ATTACHMENTS

Signed Resolution No.

2016/3



# THE BOARD OF DIRECTORS OF THE CONTRA COSTA COUNTY FIRE PROTECTION DISTRICT

Adopted this Resolution on 12/06/2016 by the following vote:

**AYE:**  **John Gioia**  
**Candace Andersen**  
**Mary N. Piepho**  
**Karen Mitchoff**  
**Federal D. Glover**

**NO:**

**ABSENT:**

**ABSTAIN:**

**RECUSE:**



## Resolution No. 2016/3

In the Matter of Adjusting the Salary Step of an Incumbent in the Classification of Fire Training Chief (RWHA).

**WHEREAS**, Section 4.1 (Salary-On Promotion) of the Contra Costa County Salary Regulations states, "Any employee who is appointed to a position of a class allocated to a higher salary range than the class he previously occupied, shall receive the salary in the new salary range, which is next higher than the rate he was receiving before promotion. In the event this increase is less than five (5) percent, the employee's salary shall be adjusted to the step in the new range which is five (5) percent greater than the next higher step, if the new range permits such adjustment"; and

**WHEREAS**, the incumbent in the Fire Training Chief (RWHA) position #5653 was promoted to that position on August 15, 2016 and placed at step one according to the salary regulations rule on promotion; and

**WHEREAS**, the Contra Costa County Fire Protection District has requested the incumbent be placed at step two of the Fire Training Chief (RWHA) salary range; and

**WHEREAS**, the County Administrator's Office approves of this specific request to grant an exemption to the Salary-On Promotion regulation for the recently appointed incumbent of the Fire Training Chief (RWHA) position.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Directors does hereby grant an exemption to Section 4.1 (Salary-On Promotion) of the Salary Regulations, so that the incumbent of position #5653 shall be moved from step one to step two of the salary range for the Fire Training Chief (RWHA) classification, effective August 15, 2016.

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

**Contact: Timothy Ewell, 925-335-1036**

**ATTESTED: December 6, 2016**

David J. Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

**cc:** Lisa Lopez, Assistant Director of Human Resources, Harjit S. Nahal, Assistant County Auditor

# THE BOARD OF DIRECTORS OF THE CONTRA COSTA COUNTY FIRE PROTECTION DISTRICT

Adopted this Resolution on 12/06/2016 by the following vote:

**AYE:** ☒ 5 **John Gioia**  
**Candace Andersen**  
**Mary N. Piepho**  
**Karen Mitchoff**  
**Federal D. Glover**  
**NO:** ☐ /  
**ABSENT:** ☐ /  
**ABSTAIN:** ☐ /  
**RECUSE:** ☐ /



## Resolution No. 2016/3

In the Matter of Adjusting the Salary Step of an Incumbent in the Classification of Fire Training Chief (RWHA).

**WHEREAS**, Section 4.1 (Salary-On Promotion) of the Contra Costa County Salary Regulations states, "Any employee who is appointed to a position of a class allocated to a higher salary range than the class he previously occupied, shall receive the salary in the new salary range, which is next higher than the rate he was receiving before promotion. In the event this increase is less than five (5) percent, the employee's salary shall be adjusted to the step in the new range which is five (5) percent greater than the next higher step, if the new range permits such adjustment"; and

**WHEREAS**, the incumbent in the Fire Training Chief (RWHA) position #5653 was promoted to that position on August 15, 2016 and placed at step one according to the salary regulations rule on promotion; and

**WHEREAS**, the Contra Costa County Fire Protection District has requested the incumbent be placed at step two of the Fire Training Chief (RWHA) salary range; and

**WHEREAS**, the County Administrator's Office approves of this specific request to grant an exemption to the Salary-On Promotion regulation for the recently appointed incumbent of the Fire Training Chief (RWHA) position.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Directors does hereby grant an exemption to Section 4.1 (Salary-On Promotion) of the Salary Regulations, so that the incumbent of position #5653 shall be moved from step one to step two of the salary range for the Fire Training Chief (RWHA) classification, effective August 15, 2016.

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

Contact: Timothy Ewell, 925-335-1036

**ATTESTED: December 6, 2016**

David J. Two, County Administrator and Clerk of the Board of Supervisors

By: *June McHuen*  
June McHuen, Deputy

cc: Lisa Lopez, Assistant Director of Human Resources, Harjit S. Nahal, Assistant County Auditor



Contra  
Costa  
County

To: Contra Costa County Fire Protection District Board of Directors  
From: Jeff Carman, Chief, Contra Costa County Fire Protection District  
Date: December 6, 2016

Subject: Acquisition of Hosted Workforce Management Software Solution

---

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Fire Chief, or designee, to execute an order form and terms and conditions with Kronos Incorporated, for a hosted workforce management software solution in an amount not to exceed \$22,000 for the period October 1, 2016, through September 30, 2018.

**FISCAL IMPACT:**

The total cost will not exceed \$11,000 per year or \$22,000 over the entire term of the agreement. Funds were appropriated for this purchase in the District's fiscal year 2016-17 budget.

**BACKGROUND:**

The Contra Costa County Fire Protection District (District) plans to implement a new employee performance management system to replace its existing paper-based system. The District is moving towards an annual evaluation process for all personnel, as is currently written into the labor agreements with I.A.F.F., Local 1230 and the United Chief Officers Association.

The Kronos Incorporated (Kronos) line

---

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD  
COMMITTEE

---

Action of Board On: **12/06/2016** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, Director  
Candace Andersen,  
Director  
Mary N. Piepho, Director  
Karen Mitchoff, Director  
Federal D. Glover, Director

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: December 6, 2016

David J. Twa, County Administrator and Clerk of the Board of Supervisors

Contact: Ken Crawley, Fire District IS  
Manager (925) 941-3391

By: June McHuen, Deputy

cc:

#### BACKGROUND: (CONT'D)

of products are designed to enhance workforce management across many vertical markets. Kronos software and hosted solutions are deployed to thousands of customers today and are endorsed by U.S. Communities as a validated service provider within the State. The District has an immediate need to enhance its record keeping, particularly in the area of employee evaluation and performance reporting. The current employee evaluation process is paper based and fragmented.

The District has evaluated the Kronos Human Resources module and selected it as the most practical solution to the record keeping challenges we face today. The District reviewed the Kronos standard terms and conditions and requested minor modifications. Kronos, in turn, requested a change to the standard County indemnification language in the proposed contract. Because Kronos maintains employee data on their systems, Kronos requests that the District indemnify Kronos in the event any employee data in the hosted database violates any person's right of privacy. Under the agreement, Kronos is not obligated to defend the District in the event any District employee data is disclosed due to a breach of the Kronos system.

As with all software-as-a-service (SAAS) models, the actual database resides at an offsite location. In this case it is in the Kronos cloud. In its entirety, the service organization controls (SOC)1 and SOC2 compliant Kronos Private Cloud solution is designed to optimize the workforce management platform, thereby helping to ensure the best possible configuration and deployment of Kronos applications. The rigorous SOC1 and SOC2 compliance programs require that standard processes and tools are in place for security and confidentiality.

The Kronos Cloud Services team performs ongoing vulnerability testing, a best practice that is not always employed in on premise deployments, to significantly reduce the risk of hacking and other security threats.

#### CONSEQUENCE OF NEGATIVE ACTION:

The District will not proceed with the project at this time. Therefore, the current paper-based routing system will remain in effect.

#### CHILDREN'S IMPACT STATEMENT:

Not applicable.

#### ATTACHMENTS

Draft Agreement Terms and Conditions

## **KRONOS WORKFORCE READY® - SOFTWARE AS A SERVICE TERMS AND CONDITIONS**

This Kronos Workforce Ready® - Software as a Service Terms and Conditions are entered into this \_\_\_ day of 2016, by and between Contra Costa County Fire Protection District, a fire protection district existing under the laws of the State of California ("Customer") and Kronos Incorporated, a Massachusetts corporation ("Kronos"), each of which agree that the terms and conditions set forth herein apply to Kronos' supply of the commercially available version of the Workforce Ready® SaaS Applications in Kronos' hosting environment, the services related thereto, and the sale or rental of Equipment (if any) specified on a Kronos Order Form. The Applications described on the Order Form shall be delivered by means of Customer's permitted access to the Kronos infrastructure hosting such Applications.

BY MANUALLY OR ELECTRONICALLY EXECUTING AN INITIAL ORDER FORM REFERENCING THESE TERMS AND CONDITIONS OR TO WHICH THESE TERMS ARE ATTACHED, CUSTOMER AGREES TO THESE TERMS AND CONDITIONS FOR ALL ORDER FORMS. THE INDIVIDUAL ACCEPTING THESE TERMS AND CONDITIONS ON BEHALF OF CUSTOMER REPRESENTS THAT HE/SHE HAS THE AUTHORITY TO CONTRACTUALLY BIND CUSTOMER. THESE TERMS AND CONDITIONS AND THE ORDER FORM(S) (AND ANY ATTACHMENTS THERETO) TOGETHER FORM A BINDING AND EXECUTED WRITTEN AGREEMENT BETWEEN CUSTOMER AND KRONOS.

### **1. DEFINITIONS**

**"Agreement"** means these terms and conditions and the Order Form(s).

**"Application(s)"** or **"SaaS Application(s)"** means those Kronos software application programs set forth on an Order Form which are made accessible for Customer to use under the terms of this Agreement. **"Billing Start Date"** means the date the billing of the Monthly Service Fees commences as indicated on the applicable Order Form. The Billing Start Date of the Monthly Service Fees for any Services ordered by Customer after the date of this Agreement which are incremental to Customer's then-existing Services shall be the date the applicable Order Form is executed by Kronos and Customer.

**"Confidential Information"** means any non-public information of a party or its Suppliers relating to such entity's business activities, financial affairs, technology, marketing or sales plans that is disclosed pursuant to this Agreement and reasonably should have been understood by the receiving party, because of (i) legends or other markings, (ii) the circumstances of disclosure or (iii) the nature of the information itself, to be proprietary and confidential to the disclosing party or its Suppliers.

**"Customer Content"** means all content Customer, or others acting on behalf of or through Customer, posts or otherwise inputs into the Services.

**"Documentation"** means technical publications published by Kronos relating to the use of the Services.

**"Educational Content"** has the meanings ascribed in Section 7.3.

**"Equipment"** means the Kronos equipment purchased or rented by Customer under this Agreement.

**"Initial Term"** means the initial term of the Services as indicated on the Order Form.

**"Minimum Contract Value"** means the total of all Monthly Service Fees to be invoiced during the Initial Term or a Renewal Term, as applicable.

**"Monthly Service Fee(s)"** means the monthly fees described in an Order Form. Monthly Service Fees include fees for usage of the Applications, the Services, and Equipment rental, if any. Billing of the Monthly Service Fee(s) commences on the Billing Start Date.

**"Order Form"** means an order form mutually agreed upon by Kronos and Customer setting forth the items ordered by Customer and to be provided by Kronos and the fees to be paid by Customer.

**"Personally Identifiable Data"** means information concerning individually identifiable employees of Customer that is protected against disclosure under applicable law or regulation.

**"Renewal Term"** means the renewal term of the Services as indicated on the Order Form.

**"Services"** means (i) accessibility to the commercially available version of the Applications by means of access to the password protected customer area of a Kronos website, and all such services, items and offerings accessed by Customer therein, and (ii) the Equipment rented hereunder, if any.

**"Supplier"** means any contractor, subcontractor or licensor of Kronos providing software, equipment and/or services to Kronos which are incorporated into or otherwise related to the Services.

**"Term"** means the Initial Term and any Renewal Terms thereafter.



## **2. TERM**

**2.1** The Services shall commence on the Billing Start Date, and shall continue for the Initial Term or until terminated in accordance with the provisions hereof. At the expiration of the Initial Term and each Renewal Term as applicable, the Services shall automatically renew for additional Renewal Terms until terminated in accordance with the provisions hereof.

**2.2** Customer may terminate the Services and this Agreement for convenience upon ninety (90) days prior written notice subject to Customer's payment of the Minimum Contract Value. Kronos may terminate the Services and this Agreement to be effective at the expiration of the then current Term upon no less than sixty (60) days prior written notice.

**2.3** Either party may terminate the Services and the Agreement upon a material breach of the Agreement by the other party if such breach is not cured within fifteen (15) days after receipt of written notice. Notwithstanding the foregoing, Kronos may suspend the Services immediately upon notice in the event of any Customer breach of Sections 4 (Rights to Use), 5 (Acceptable Use), or 15 (Confidential Information).

**2.4** In the event that either party becomes insolvent, makes a general assignment for the benefit of creditors, is adjudicated a bankrupt or insolvent, commences a case under applicable bankruptcy laws, or files a petition seeking reorganization, the other party may request adequate assurances of future performance. Failure to provide adequate assurances, in the requesting party's reasonable discretion, within ten (10) days of delivery of the request shall entitle the requesting party to terminate the Agreement immediately upon written notice to the other party.

**2.5** If the Agreement is terminated for any reason:

(a) Customer shall pay Kronos within thirty (30) days of such termination, all fees accrued under this Agreement prior to the effective date of such termination, provided however, if Customer terminates for material breach of the Agreement by Kronos, Kronos shall refund Customer any pre-paid fees for services not delivered by Kronos;

(b) Customer's right to access and use the Applications shall be revoked and be of no further force or effect and return rented Equipment as provided in Section 9.1 below;

(c) No more than fifteen (15) days after termination (or upon Customer's written request at any time during the Term), Kronos will provide to Customer, at no charge to Customer, the Customer Content. After such time period, Kronos shall have no further obligation to store or make available the Customer Content and will securely delete any or all Customer Content without liability;

(d) Customer agrees to timely return all Kronos-provided materials related to the Services to Kronos at Customer's expense or, alternatively, destroy such materials and provide Kronos with an officer's certification of the destruction thereof; and

(e) All provisions in the Agreement, which by their nature are intended to survive termination, shall so survive.

## **3. FEES AND PAYMENT**

**3.1** Customer shall pay Kronos the Setup Fees, the Monthly Service Fees and any additional one time, set-up or recurring fees, all as defined on the Order Form or subject to Section 17.9 below. Billing will commence on the Billing Start Date with the Monthly Service Fees to be billed on the frequency set forth on the Order Form ("Billing Frequency"). Unless otherwise indicated on the Order Form, Kronos will bill Customer for all implementation services in advance. Purchased Equipment will be billed upon shipment of such Equipment. For all other payments and fees due under this Agreement, payment shall be due 30 days following date of invoice unless otherwise indicated on an Order Form. Except as expressly set forth in the Agreement, all amounts paid to Kronos are non-refundable. Customer is responsible for all applicable taxes relating to the goods and services provided by Kronos hereunder (including without limitation GST and/or VAT if applicable), excluding taxes based on Kronos' income or business privilege.

**3.2** The Setup Fees shall be invoiced upon execution of the Agreement and shall be due net 30 days following date of invoice. Customer acknowledges that setup fees may be charged to Customer by third parties for Add-on Features. Third party setup and monthly fees shall be set forth on an Order Form or subject to Section 17.9 below. Monthly Service fees shall be based on monthly periods that begin on the Billing Start Date. Monthly Service Fees shall include fees for Equipment rental, if any. Monthly Service Fees for Services added on or before the 15<sup>th</sup> day of a given month will be charged for that full monthly period and each

monthly period of the Term thereafter; Monthly Service Fees for Services added after the 15<sup>th</sup> day of a given month will begin to accrue as of the 1<sup>st</sup> day of the following month and will be charged for each monthly period of the Term thereafter. Monthly Service Fees shall be invoiced promptly following the end of the calendar month in which the Monthly Service Fees were accrued. Kronos will monitor Customer's "Usage" of the Services (as defined below) in order to calculate the Usage portion of the Monthly Service Fees to be charged. Usage of the Services, depending on applicable features, components, or services, shall be priced as identified on the Order Form either on a: (a) per month basis; (b) per active employee (herein "Active Employee") per month usage basis; (c) per transaction basis (e.g.: pay statement); or, (d) per access point. For purposes of the Agreement, an employee shall be deemed an Active Employee during any applicable billing period if through the Services: (i) time has been entered for such employee; (ii) records have been included for such employee for the purpose of processing payroll; (iii) records have been included for such employee within an import/export process; (iv) such employee has accessed the Services, regardless of the purpose; (v) benefit time has been accrued for such employee; or (vi) such employee has been marked by Customer as having an "Active" status during the period.

**3.3** Customer agrees that except in those circumstances in which Customer is entitled to invoke the termination for cause provision set forth in Section 2.3 above, in consideration of Kronos' delivery of the Services on a variable fee basis, Customer agrees to pay Kronos each month during the Term in which charges accrue no less than the minimum monthly fees ("Minimum Monthly Fees") which shall be calculated by Kronos based the amounts identified on all Order Forms for Customer's Usage of the Services, plus Equipment rental fees, if any. In the event that Customer does not reach the anticipated Usage upon which the Minimum Monthly Fees was based for any given month during the Term, Customer shall remain responsible for paying the Minimum Monthly Fees for that month. If an Order Form or the Agreement is suspended by Kronos for non-payment or otherwise terminated by Kronos for cause, Customer shall remain liable to pay the applicable Minimum Monthly Fees up to and including the last day of the month in which the effective date of termination occurs.

**3.4** If any amount owing under this or any other agreement between the parties is thirty (30) or more days overdue, Kronos may, without limiting Kronos' rights or remedies, suspend Services until such amounts are paid in full. Kronos will provide at least seven (7) days' prior written notice that Customer's account is overdue before suspending Services.

**3.5** At the later of (i) one (1) year after the effective date of this Agreement, or (ii) expiration of the Initial Term, and at each annual anniversary of that date thereafter, Kronos may increase the Monthly Service Fee rates in an amount not to exceed four percent (4%). The increased Monthly Service Fees will be reflected in the monthly invoice following the effective date of such increase without additional notice.

**3.6** Customer agrees that except if Customer terminates for material breach of the Agreement by Kronos, if Customer has not paid the Minimum Contract Value to Kronos prior to the expiration or termination of the Initial Term or a Renewal Term, as applicable, Customer shall pay within thirty (30) days of the date of such expiration or termination, the difference between the total Monthly Service Fees then paid by Customer for the Initial Term or Renewal Term, as applicable, and the Minimum Contract Value.

#### **4. RIGHTS TO USE**

**4.1** Subject to the terms and conditions of the Agreement, Kronos hereby grants Customer a limited, revocable, non-exclusive, non-transferable, non-assignable right to use during the Term and for internal business purposes only: a) the Applications and related services, including the Documentation and training materials; and, b) any embedded third party software, libraries, or other components, which form a part of the Services. The Services contain proprietary trade secret technology of Kronos and its Suppliers. Unauthorized use and/or copying of such technology are prohibited by law, including United States and foreign copyright law. Customer shall not reverse compile, disassemble or otherwise convert the Applications or other software comprising the Services into uncompiled or unassembled code. Customer acknowledges and agrees that the right to use the Services is limited based upon authorized Usage and the amount of the Monthly Service Fees to be paid by Customer. Customer agrees to use only the modules and/or features described on the Order Form. Customer agrees not to use any other modules or features unless Customer has licensed such additional modules or features. Customer may not relicense or sublicense the Services, or otherwise permit use of the Services (including timesharing or networking use) by any third party. Customer may not provide service bureau or other data processing services that make use of the Services without the express prior written consent of Kronos. No license, right, or interest in any Kronos trademark, trade name, or service mark, or those of Kronos' licensors or Suppliers, is granted hereunder.

When using and applying the information generated by the Services, Customer is responsible for ensuring that Customer complies with applicable laws and regulations.

**4.2** Customer may authorize its third party contractors and consultants to access the Services through Customer's administrative access privileges on an as needed basis, provided Customer: a) abides by its obligations to protect Confidential Information as set forth in this Agreement; b) remains responsible for all such third party usage and compliance with the Agreement; and c) does not provide such access to a competitor of Kronos who provides workforce management services.

**4.3** Customer acknowledges and agrees that, as between Customer and Kronos, Kronos retains ownership of all right, title and interest to the Services, all of which are protected by copyright and other intellectual property rights, and that, other than the express rights granted herein and under any other agreement in writing with Customer, Customer shall not obtain or claim any rights in or ownership interest to the Services or any associated intellectual property rights in any of the foregoing. Customer agrees to comply with all copyright and other intellectual property rights notices contained on or in any information obtained or accessed by Customer through the Services.

**4.4** Kronos will make updates and upgrades to the Services (tools, utilities, improvements, third party applications, general enhancements) available to Customer at no charge as they are released generally to its customers as part of the Services. Customer agrees to receive those updates automatically as part of the Services. Kronos also may offer new products and/or services to Customer at an additional charge. Customer shall have the option of purchasing such new products and/or services under a separate Order Form or in accordance with Section 17.9 below.

**4.5** Kronos reserves the right to change the Services, in whole or in part, including but not limited to, the Internet based services, technical support options, and other Services-related policies. Customer's continued use of the Services after Kronos posts or otherwise notifies Customer of any changes indicates Customer's agreement to those changes.

## **5. ACCEPTABLE USE**

**5.1** Customer shall take all reasonable steps to ensure that no unauthorized persons have access to the Services, and to ensure that no persons authorized to have such access shall take any action that would be in violation of this Agreement.

**5.2** Customer represents and warrants to Kronos that Customer has the right to publish the Customer Content into Kronos' Services and disclose the Customer Content in connection with the Services. Customer represents and warrants to Kronos that the Customer Content: (a) does not infringe or violate any third-party right, including but not limited to intellectual property, privacy, or publicity rights, (b) is not abusive, profane, or offensive to a reasonable person, or, (c) is not hateful or threatening.

**5.3** Customer will not (a) use, or allow the use of, the Services in contravention of any federal, state, local, foreign or other applicable law, or rules or regulations of regulatory or administrative organizations; (b) introduce into the Services any virus or other code or routine intended to disrupt or damage the Services, or alter, damage, delete, retrieve or record information about the Services or its users; (c) excessively overload the Kronos systems used to provide the Services; (d) perform any security integrity review, penetration test, load test, denial of service simulation or vulnerability scan; (e) use any tool designed to automatically emulate the actions of a human user (e.g., robots); or, (f) otherwise act in a fraudulent, malicious or negligent manner when using the Services.

## **6. CONNECTIVITY AND ACCESS**

Customer acknowledges that Customer shall (a) be responsible for securing, paying for, and maintaining connectivity to the Services (including any and all related hardware, software, third party services and related equipment and components); and (b) provide Kronos and Kronos' representatives with such physical or remote access to Customer's computer and network environment as Kronos deems reasonably necessary in order for Kronos to perform its obligations under the Agreement. Customer will make all necessary arrangements as may be required to provide access to Customer's computer and network environment if necessary for Kronos to perform its obligations under the Agreement. Kronos is hereby (i) granted access to such Customer data to perform its obligations under the Agreement and (ii) authorized to audit the number of Active Employee counts or other transactions that have occurred to measure Usage.

## **7. IMPLEMENTATION AND SUPPORT**

**7.1 Implementation.** Kronos will configure the Services utilizing scheduled remote resources. Software module configuration will be based on information and work flows obtained from Customer during the

discovery portion of the implementation. Customer shall provide Kronos with necessary configuration-related information in a timely manner to ensure that mutually agreed implementation schedules are met. Kronos and Customer's implementation responsibilities are described more specifically in the Services Implementation Guideline set forth at: <http://www.kronos.com/products/workforce-ready/implementation-guidelines.aspx>

**7.2 Standard Support.** Kronos will provide telephone support 8:00 a.m. to 5:00 p.m., local time, Monday – Friday. Customers also shall be provided the capability to log questions online via the Kronos Customer Portal.

**7.3 Equipment Support.** If Equipment is rented in accordance with Section 9.1 below or if Equipment Support Services are purchased for Equipment purchased in accordance with Section 9.2 below, Kronos will provide the following Depot Exchange Support Services to Customer:

(a) Upon the failure of installed Equipment, Customer shall notify Kronos of such failure and Kronos will provide remote fault isolation at the FRU (Field Replacement Unit) or subassembly level and attempt to resolve the problem. Those failures determined by Kronos to be Equipment related shall be dispatched to a Kronos Depot Repair Center, and Customer will be provided with a Return Material Authorization Number (RMA) for the failed Equipment if Customer is to return the failed Equipment to Kronos, as reasonably determined by Kronos. Customer must return the failed Equipment with the supplied RMA number. Hours of operation, locations and other information related to Kronos' Depot Repair Centers are available upon request and are subject to change. Return and repair procedures for failed Equipment shall be provided based on the Depot option - Depot Exchange or Depot Repair - selected by Customer on the applicable Order Form and as specified herein and in Kronos' then-current Support Services Policies.

(b) Kronos will provide a replacement for the failed Equipment at the FRU or subassembly level on an "advanced exchange" basis, utilizing a carrier of Kronos' choice. Replacement Equipment will be shipped the same day, for delivery to Customer's location as further described in the Support Policies. REPLACEMENT EQUIPMENT MAY BE NEW OR RECONDITIONED. Customer shall specify the address to which the Equipment is to be shipped. All shipments will include the Kronos provided RMA designating the applicable Kronos Depot Repair Center, as the recipient. Customer, upon receipt of the replacement Equipment from Kronos, shall package the defective Equipment in the materials provided by Kronos, with the RMA supplied and promptly return failed Equipment directly to Kronos.

(c) Equipment support also includes Customer access to Equipment service packs via the Kronos Customer Portal.

**7.4 Educational Materials and Content.** Customer will have access to certain educational materials and content (the "Educational Content") within the Services. Customer recognizes and agrees that the Educational Content is copyrighted by Kronos. Customer is permitted to make copies of the Educational Content provided in \*.pdf form solely for Customer's internal training purposes and may not disclose such Educational Content to any third party other than Customer's employees. Customer may not edit, modify, revise, amend, change, alter, customize or vary the Educational Content without the written consent of Kronos, provided that Customer may download and modify contents of training kits solely for Customer's internal use

## **8. CUSTOMER CONTENT**

Customer shall own all Customer Content. Kronos acknowledges that all of the Customer Content is deemed to be the Confidential Information of Customer. Notwithstanding the foregoing, Customer grants Kronos permission to combine Customer's business data with that of other customers in a manner that does not identify the Customer or any individual in order to evaluate and improve the services Kronos offers to customers. In addition, Kronos may, but shall have no obligation to, monitor Customer Content from time to time to ensure compliance with the Agreement and applicable law.

## **9. EQUIPMENT**

If Customer purchases or rents Equipment from Kronos, a description of such Equipment (model and quantity), the applicable pricing, and delivery terms shall be listed on the Order Form.

**9.1 Rented Equipment.** The following terms apply only to Equipment Customer rents from Kronos:

(a) **Rental Term and Warranty Period.** The term of the Equipment rental and the "Warranty Period" for such Equipment shall run coterminously with the Term of the other Services provided under the Agreement.

(b) **Insurance.** Customer shall insure the Equipment for an amount equal to the replacement value of the Equipment for loss or damage by fire, theft, and all normal extended coverage at all times. No loss, theft

or damage after shipment of the Equipment to Customer shall relieve Customer from Customer's obligations under the Agreement.

(c) **Location/Replacement.** Customer shall not make any alterations or remove the Equipment from the place of original installation without Kronos' prior written consent. Kronos shall have the right to enter Customer's premises to inspect the Equipment during normal business hours. Kronos reserves the right, at its sole discretion and at no additional cost to Customer, to replace any Equipment with newer or alternative technology Equipment as long as the replacement Equipment at least provides the same level of functionality as that being replaced.

(d) **Ownership.** All Equipment shall remain the property of Kronos. All Equipment is, and at all times shall remain, separate items of personal property, notwithstanding such Equipment's attachment to other equipment or real property. Customer shall not sell or otherwise encumber the Equipment. Customer shall furnish any assurances, written or otherwise, reasonably requested by Kronos to give full effect to the intent of terms of this paragraph (d).

(e) **Equipment Support.** Kronos shall provide to Customer the Equipment support services described in Section 7.

(f) **Return of Equipment.** Upon termination of the Agreement or the applicable Order Form, Customer shall return, within thirty (30) days of the effective date of termination and at Customer's expense, the Equipment subject to this Section 9.1. Equipment will be returned to Kronos in the same condition as and when received, reasonable wear and tear excepted. If Customer fails to return Equipment within this time period, upon receiving an invoice from Kronos, Customer shall pay Kronos the then list price of the unreturned Equipment.

**9.2 Purchased Equipment.** The following terms apply only to Equipment Customer purchases from Kronos:

(a) **Ownership and Warranty Period.** Title to the Equipment shall pass to Customer upon delivery to the carrier. The "Warranty Period" for the Equipment shall be for a period of ninety (90) days from such delivery (unless otherwise required by law).

(b) **Equipment Support.** Kronos shall provide to Customer the Equipment support services described in this Agreement if purchased separately by Customer as indicated on the applicable Order Form. If purchased, Equipment support services have a term of one (1) year commencing upon expiration of the Warranty Period. Equipment support services will be automatically extended for additional one year terms on the anniversary of its commencement date ("Renewal Date"), unless either party has given the other thirty (30) days written notification of its intent not to renew. Kronos may change the annual support charges for Equipment support services effective at the end of the initial one (1) year term or effective on the Renewal Date, by giving Customer at least thirty (30) days prior written notification.

## **10. SERVICE LEVEL AGREEMENT**

Kronos shall: (a) provide basic support for the Services at no additional charge, (b) use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (when it shall give at least 8 hours notice via the Services and shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Friday to 3:00 a.m. Monday, Eastern Time), or (ii) any unavailability caused by circumstances beyond Kronos' reasonable control, including without limitation, acts of nature, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Kronos employees), internet service provider failures or delays, or denial of service attacks, and (iii) provide Services in accordance with applicable laws and government regulations.

## **11. LIMITED WARRANTY; DISCLAIMERS OF WARRANTY**

**11.1** Kronos represents and warrants to Customer that the Services, under normal operation as specified in the Documentation and when used as authorized herein, will perform substantially in accordance with such Documentation during the Term.

**11.2** Kronos' sole obligation and Customer's sole and exclusive remedy for any breach of the foregoing warranty is limited to Kronos' reasonable commercial efforts to correct the non-conforming Services at no additional charge to Customer. In the event that Kronos is unable to correct material deficiencies in the Services arising during the Warranty Period, after using Kronos' commercially reasonable efforts to do so, Customer shall be entitled to terminate the then remaining Term of the Agreement as Customer's sole and exclusive remedy. Kronos' obligations hereunder for breach of warranty are conditioned upon Customer



notifying Kronos of the material breach in writing, and providing Kronos with sufficient evidence of such non-conformity to enable Kronos to reproduce or verify the same.

**11.3** Kronos warrants to Customer that each item of Equipment shall be free from defects in materials and workmanship during the Warranty Period. In the event of a breach of this warranty, Customer's sole and exclusive remedy shall be Kronos' repair or replacement of the deficient Equipment, at Kronos' option, provided that Customer's use, installation and maintenance thereof have conformed to the Documentation for such Equipment. This warranty is extended to Customer only and shall not apply to any Equipment (or parts thereof) in the event of:

- (a) damage, defects or malfunctions resulting from misuse, accident, neglect, tampering, (including without limitation modification or replacement of any Kronos components on any boards supplied with the Equipment), unusual physical or electrical stress or causes other than normal and intended use;
- (b) failure of Customer to provide and maintain a suitable installation environment, as specified in the published specifications for such Equipment; or
- (c) malfunctions resulting from the use of badges or supplies not approved by Kronos.

EXCEPT AS PROVIDED FOR IN THIS SECTION 11, KRONOS HEREBY DISCLAIMS ALL WARRANTIES, CONDITIONS, GUARANTIES AND REPRESENTATIONS RELATING TO THE SERVICES, EXPRESS OR IMPLIED, ORAL OR IN WRITING, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND WHETHER OR NOT ARISING THROUGH A COURSE OF DEALING. THE SERVICES ARE NOT GUARANTEED TO BE ERROR-FREE OR UNINTERRUPTED. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, KRONOS MAKES NO WARRANTIES OR REPRESENTATIONS CONCERNING THE COMPATIBILITY OF THE SERVICES, THE SAAS APPLICATIONS OR THE EQUIPMENT NOR ANY RESULTS TO BE ACHIEVED THEREFROM.

## **12.0 DATA SECURITY**

**12.1** As part of the Services, Kronos shall provide administrative, physical, and technical safeguards for the protection of the security, confidentiality and integrity of Customer data. Customer acknowledges that such safeguards endeavor to mitigate security incidents, but such incidents may not be mitigated entirely or rendered harmless. Customer should consider any particular Kronos supplied security-related safeguard as just one tool to be used as part of Customer's overall security strategy and not a guarantee of security. Both parties agree to comply with all applicable privacy or data protection statutes, rules, or regulations governing the respective activities of the parties under the Agreement.

**12.2** As between Customer and Kronos, all Personally Identifiable Data is Customer's Confidential Information and will remain the property of Customer. Customer hereby consents to the use, processing or disclosure of Personally Identifiable Data by Kronos and Kronos' Suppliers wherever located only for the purposes described herein and only to the extent such use or processing is necessary for Kronos to carry out Kronos' duties and responsibilities under the Agreement or as required by law.

**12.3** Customer will ensure that: (a) the transfer to Kronos and storage of any Personally Identifiable Data by Kronos or Kronos' Supplier's data center is permitted under applicable data protection laws and regulations; and, (b) Customer will obtain consents from individuals for such transfer and storage to the extent required under applicable laws and regulations.

## **13. INDEMNIFICATION**

**13.1** Kronos shall defend Customer and its respective directors, officers, and employees (collectively, the "**Customer Indemnified Parties**"), from and against any and all notices, charges, claims, proceedings, actions, causes of action and suits, brought by a third party (each a "**Claim**") alleging that the permitted uses of the Services infringe or misappropriate any United States or Canadian copyright or patent and will indemnify and hold harmless the Customer Indemnified Parties against any liabilities, obligations, costs or expenses (including without limitation reasonable attorneys' fees) actually awarded to a third party as a result of such Claim by a court of applicable jurisdiction or as a result of Kronos' settlement of such a Claim. In the event that a final injunction is obtained against Customer's use of the Services by reason of infringement or misappropriation of such copyright or patent, or if in Kronos' opinion, the Services are likely to become the subject of a successful claim of such infringement or misappropriation, Kronos, at Kronos' option and expense, will use commercially reasonable efforts to (a) procure for Customer the right to continue using the Services as provided in the Agreement, (b) replace or modify the Services so that the Services become non-

infringing but remain substantively similar to the affected Services, and if neither (a) or (b) is commercially feasible, to (c) terminate the Agreement and the rights granted hereunder after provision of a refund to Customer of the Monthly Service Fees paid by Customer for the infringing elements of the Services covering the period of their unavailability.

**13.2** Kronos shall have no liability to indemnify or defend Customer to the extent the alleged infringement is based on: (a) a modification of the Services by anyone other than Kronos; (b) use of the Services other than in accordance with the Documentation for such Service or as authorized by the Agreement; (c) use of the Services in conjunction with any data, equipment, service or software not provided by Kronos, where the Services would not otherwise itself be infringing or the subject of the claim; or (d) use of the Services by Customer other than in accordance with the terms of the Agreement.

**13.3** Customer shall defend Kronos, its Suppliers and their respective directors, officers, employees, agents and independent contractors (collectively, the “**Kronos Indemnified Parties**”) harmless, from and against any and all Claims alleging that: (a) employment-related claims arising out of Customer’s configuration of the Services; (b) Customer’s modification or combination of the Services with other services, software or equipment not furnished by Kronos, provided that such Customer modification or combination is the cause of such infringement and was not authorized by Kronos; or, (c) a claim that the Customer Content infringes in any manner any intellectual property right of any third party, or any of the Customer Content contains any material or information that is obscene, defamatory, libelous, or slanderous violates any person’s right of publicity, privacy or personality, or has otherwise caused or resulted in any tort, injury, damage or harm to any other person. Customer will have sole control of the defense of any such action and all negotiations for its settlement or compromise. Kronos will cooperate fully at Customer’s expense with Customer in the defense, settlement or compromise of any such action. Customer will indemnify and hold harmless the Kronos Indemnified Parties against any liabilities, obligations, costs or expenses (including without limitation reasonable attorneys’ fees) actually awarded to a third party as a result of such Claims by a court of applicable jurisdiction or as a result of Customer’s settlement of such a Claim.

**13.4** The Indemnified Party(ies) shall provide written notice to the indemnifying party promptly after receiving notice of such Claim. If the defense of such Claim is materially prejudiced by a delay in providing such notice, the purported indemnifying party shall be relieved from providing such indemnity to the extent of the delay’s impact on the defense. The indemnifying party shall have sole control of the defense of any indemnified Claim and all negotiations for its settlement or compromise, provided that such indemnifying party shall not enter into any settlement which imposes any obligations or restrictions on the applicable Indemnified Parties without the prior written consent of the other party. The Indemnified Parties shall cooperate fully, at the indemnifying party’s request and expense, with the indemnifying party in the defense, settlement or compromise of any such action. The indemnified party may retain its own counsel at its own expense, subject to the indemnifying party’s rights above.

#### **14. LIMITATION OF LIABILITY**

**14.1** EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, KRONOS AND ITS SUPPLIERS WILL NOT BE LIABLE FOR ANY DAMAGES OR INJURIES CAUSED BY THE USE OF THE SERVICES OR BY ANY ERRORS, DELAYS, INTERRUPTIONS IN TRANSMISSION, OR FAILURES OF THE SERVICES.

**14.2** EXCEPT FOR KRONOS’ INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 13 ABOVE, THE TOTAL AGGREGATE LIABILITY OF KRONOS OR KRONOS’ SUPPLIERS TO CUSTOMER AND/OR ANY THIRD PARTY IN CONNECTION WITH THE AGREEMENT SHALL BE LIMITED TO DIRECT DAMAGES PROVEN BY CUSTOMER, SUCH DIRECT DAMAGES NOT TO EXCEED AN AMOUNT EQUAL TO THE TOTAL NET PAYMENTS RECEIVED BY KRONOS FOR THE SERVICES IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE IN WHICH SUCH CLAIM ARISES.

**14.3** EXCEPT FOR KRONOS’ INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 13 ABOVE, IN NO EVENT SHALL KRONOS OR KRONOS’ SUPPLIERS, THEIR RESPECTIVE AFFILIATES, SERVICE PROVIDERS, OR AGENTS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES OR FOR ANY LOST OR IMPUTED PROFITS OR REVENUES, LOST DATA OR COST OF PROCUREMENT OF SUBSTITUTE SERVICES RESULTING FROM DELAYS, NONDELIVERIES, MISDELIVERIES OR SERVICES INTERRUPTION, HOWEVER CAUSED, ARISING FROM OR RELATED TO THE SERVICES OR THE AGREEMENT, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS ASSERTED, WHETHER BREACH OF WARRANTY,

INDEMNIFICATION, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, AND WHETHER LIABILITY IS ASSERTED IN CONTRACT, TORT OR OTHERWISE, AND REGARDLESS OF WHETHER KRONOS OR SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LIABILITY, LOSS OR DAMAGE.

**14.4** EXCEPT WITH RESPECT TO LIABILITY ARISING FROM KRONOS' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, KRONOS DISCLAIMS ANY AND ALL LIABILITY, INCLUDING WITHOUT LIMITATION LIABILITY RELATED TO A BREACH OF DATA SECURITY AND CONFIDENTIALITY OBLIGATIONS, RESULTING FROM ANY EXTERNALLY INTRODUCED HARMFUL PROGRAM (INCLUDING WITHOUT LIMITATION VIRUSES, TROJAN HORSES, AND WORMS), CUSTOMER'S CONTENT OR APPLICATIONS, THIRD PARTY UNAUTHORIZED ACCESS OF EQUIPMENT, SAAS APPLICATIONS OR SYSTEMS, OR MACHINE ERROR.

## **15. CONFIDENTIAL INFORMATION**

**15.1** Each Party shall protect the Confidential Information of the other Party with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, which such Party utilizes for its own information of similar character that it does not wish disclosed to the public. Neither Party shall disclose to third parties the other Party's Confidential Information, or use it for any purpose not explicitly authorized herein, without the prior written consent of the other Party. The obligation of confidentiality shall survive for five (5) years after the return of such Confidential Information to the disclosing party or five (5) years after the expiration or termination of the Agreement, whichever is later, as applicable.

**15.2** Notwithstanding the foregoing, a party may disclose Confidential Information to the extent required: (a) to any subsidiary or affiliate of such Party, or (b) by law, or by a court or governmental agency, or if necessary in any proceeding to establish rights or obligations under the Agreement; provided, the receiving party shall, unless legally prohibited, provide the disclosing party with reasonable prior written notice sufficient to permit the disclosing party an opportunity to contest such disclosure. If a party commits, or threatens to commit, a breach of this Section 15, the other party shall have the right to seek injunctive relief from a court of competent jurisdiction.

**15.3** This Agreement imposes no obligation upon either Party with respect to the other Party's Confidential Information which the receiving Party can establish: (a) is or becomes generally known through no breach of the Agreement by the receiving party, or (b) is already known or is independently developed by the receiving party without use of or reference to the Confidential Information.

## **16. EXPORT**

Customer understands that any export of the Equipment may require an export license and Customer assumes full responsibility for obtaining such license. Customer must obtain Kronos' prior written consent before exporting the Equipment.

## **17. GENERAL**

**17.1** This Agreement shall be governed by and construed in accordance with the laws of the state of California, without regard to any conflict of law provisions. The parties waive the application of the United Nations Commission on International Trade Law and United Nations Convention on Contracts for the International Sale of Goods as to the interpretation or enforcement of the Agreement and waive and "opt out" of the Uniform Computer Information Transactions Act (UCITA), or such other similar law.

**17.2** The invalidity or illegality of any provision of the Agreement shall not affect the validity of any other provision. The parties intend for the remaining unaffected provisions to remain in full force and effect.

**17.3** Customer shall not assign the Agreement or the rights to use the Services without the prior written consent of Kronos and any purported assignment, without such consent, shall be void.

**17.4** Neither Party shall be responsible for any failure to perform or delay in performing any of its obligations under this Agreement (other than a failure to comply with payment obligations) where and to the extent that such failure or delay results from an unforeseeable event beyond a party's reasonable control, including but not limited to, acts of war; acts of nature; earthquake; flood; embargo; riot; sabotage; labor shortage or dispute; changes in government codes, ordinances, laws, rules, regulations or restrictions; failure of the Internet; terrorist acts; failure of data, products or services controlled by any third party, including the providers of communications or network services; utility power failure; material shortages or unavailability or other delay in delivery not resulting from the responsible party's failure to timely place orders therefor, or lack of or delay in transportation (each a "Force Majeure Event").

**17.5** All notices given under the Agreement shall be in writing and sent postage pre-paid, if to Kronos, to the Kronos address on the Order Form, or if to Customer, to the billing address on the Order Form.

**17.6** No action regardless of form, may be brought by either party more than two (2) years after the cause of action has arisen.

**17.7** The section headings herein are provided for convenience only and have no substantive effect on the construction of the Agreement.

**17.8** The parties agree that if the Agreement is accepted by the parties and that acceptance is delivered via fax or electronically delivered via email or the internet it shall constitute a valid and enforceable agreement.

**17.9** Use of the Service includes the ability to enter into agreements and/or to make transactions electronically. CUSTOMER ACKNOWLEDGES THAT WHEN IT INDICATES ACCEPTANCE OF AN AGREEMENT AND/OR TRANSACTION ELECTRONICALLY, THAT ACCEPTANCE WILL CONSTITUTE ITS LEGAL AGREEMENT AND INTENT TO BE BOUND BY AND TO PAY FOR SUCH AGREEMENTS AND TRANSACTIONS. THIS ACKNOWLEDGEMENT THAT CUSTOMER INTENDS TO BE BOUND BY SUCH ELECTRONIC ACCEPTANCE APPLIES TO ALL AGREEMENTS AND TRANSACTIONS CUSTOMER ENTERS INTO THROUGH THE SERVICE, SUCH AS ORDERS, CONTRACTS, STATEMENTS OF WORK, AND NOTICES OF CANCELLATION.

**17.10** This Agreement and any information expressly incorporated by reference herein, together with the applicable Order Form, constitute the entire agreement between the parties for the Services described herein and supersede all prior or contemporaneous representations, negotiations, or other communications between the parties relating to the subject matter of this Agreement. This Agreement may be amended only in writing signed by authorized representatives of both parties. Customer understands and acknowledges that while Kronos may disclose to customers certain confidential information regarding general Service or product development direction, potential future Services, products or product enhancements under consideration, Customer is not entitled to any Services, products or product enhancements other than those contained on the Order Form. Customer has not relied on the availability of any future version of the Services (including SaaS Applications or equipment) identified on an Order Form, nor any other future product in executing the Agreement.

DATED: \_\_\_\_\_

CUSTOMER: CONTRA COSTA  
COUNTY FIRE PROTECTION DISTRICT

KRONOS

BY: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_



**Contra  
Costa  
County**

To: Contra Costa County Fire Protection District Board of Directors  
 From: Jeff Carman, Chief, Contra Costa County Fire Protection District  
 Date: December 6, 2016

Subject: FY 2016 Urban Area Security Initiative (UASI) Grant

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**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Fire Chief, or designee, to apply for and accept grant funding from the Federal Emergency Management Agency, U.S. Department of Homeland Security, Urban Area Security Initiative (UASI) Grants Program in an amount not to exceed \$250,000 for the purchase of a towable emergency power generator and two stakeside Urban Search and Rescue (USAR)/Hazardous Materials support vehicles.

**FISCAL IMPACT:**

The Contra Costa County Fire Protection District (District) could receive up to \$250,000 in federal funds if both grants are awarded. There is no local agency cost sharing requirement. The grant award(s) may be lower than the amount requested and will be for a period of one year from the effective date of award(s).

**BACKGROUND:**

The UASI Program assists high-threat, high-density urban areas in efforts to build and sustain the capabilities necessary to prevent, protect against, mitigate, respond to, and recover from acts of terrorism.

The UASI program is intended to provide financial assistance to address the unique multi-discipline

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☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD  
COMMITTEE

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Action of Board On: **12/06/2016** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, Director  
 Candace Andersen,  
 Director  
 Mary N. Piepho, Director  
 Karen Mitchoff, Director  
 Federal D. Glover, Director

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: December 6, 2016

David J. Twa, County Administrator and Clerk of the Board of Supervisors

Contact: Lewis Broschard, Deputy Fire  
 Chief (925) 941-3501

By: June McHuen, Deputy

cc:



#### BACKGROUND: (CONT'D)

planning, organization, equipment, training, and exercise needs of high-threat, high-density urban areas and to assist these areas in building and sustaining capabilities to prevent, protect against, mitigate, respond to, and recover from threats or acts of terrorism using a "Whole Community" approach. Activities implemented with UASI funds must support terrorism preparedness by building or enhancing capabilities that relate to the prevention of, protection from, mitigation of, response to or recovery from terrorism in order to be considered eligible. However, many capabilities which support terrorism preparedness simultaneously support preparedness for other hazards. Grantees must demonstrate the dual-use quality for any activities implemented that are not explicitly focused on terrorism preparedness. Urban areas must use UASI funds to employ regional approaches to overall preparedness and are encouraged to adopt regional response structures whenever appropriate. UASI program implementation and governance must include regional partners and should have balanced representation among entities with operational responsibilities for prevention, protection, mitigation, response, and recovery activities within the region.

The District is seeking approval to apply for two projects (grants) as part of the fiscal year (FY) 2016 UASI grant program. The first grant would provide funds to purchase a towable 150 kilowatt emergency power generator. The total grant application would be \$96,500.

The second grant would fund the purchase of two (2) Ford F-450 flatbed stakeside vehicles for USAR and Hazardous Materials support. These vehicles are capable of towing heavy trailers as well as carrying large amounts of equipment and supplies to support emergency operations at long duration major incidents. The cost of each vehicle, including sales tax, is approximately \$72,000. The total grant application would be \$145,000.

#### CONSEQUENCE OF NEGATIVE ACTION:

Contra Costa County is home to major industry, railroads, local and state roadways, and dense population and commercial centers. It is imperative that the District has logistical support equipment available at all times to provide emergency response and support in the event of a terrorist incident or natural disaster where supply chains or normal utilities are out of service. Failure to approve this grant request would cause the District to forego the purchase of the much needed logistical and support equipment.

#### CHILDREN'S IMPACT STATEMENT:

No impact.