

CALENDAR FOR THE BOARD OF SUPERVISORS  
**CONTRA COSTA COUNTY**  
AND FOR SPECIAL DISTRICTS, AGENCIES, AND AUTHORITIES GOVERNED BY THE BOARD  
**BOARD CHAMBERS ROOM 107, ADMINISTRATION BUILDING, 1025 ESCOBAR STREET**  
**MARTINEZ, CALIFORNIA 94553-1229**

**JOHN GIOIA, CHAIR, 1ST DISTRICT**  
**CANDACE ANDERSEN, VICE CHAIR, 2ND DISTRICT**  
**DIANE BURGIS, 3RD DISTRICT**  
**KAREN MITCHOFF, 4TH DISTRICT**  
**FEDERAL D. GLOVER, 5TH DISTRICT**

**DAVID J. TWA, CLERK OF THE BOARD AND COUNTY ADMINISTRATOR, (925) 655-2075**

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

A LUNCH BREAK MAY BE CALLED AT THE DISCRETION OF THE BOARD CHAIR.

The Board of Supervisors respects your time, and every attempt is made to accurately estimate when an item may be heard by the Board. All times specified for items on the Board of Supervisors agenda are approximate. Items may be heard later than indicated depending on the business of the day. Your patience is appreciated.

**ANNOTATED AGENDA & MINUTES**  
**September 22, 2020**

**9:00 A.M. Convene and announce adjournment to closed session in Room 168.**

**Closed Session**

**A. CONFERENCE WITH LABOR NEGOTIATORS (Gov. Code § 54957.6)**

1. Agency Negotiators: David Twa and Stacey Cue.

Employee Organizations: Public Employees Union, Local 1; AFSCME Locals 512 and 2700; California Nurses Assn.; SEIU Locals 1021 and 2015; District Attorney Investigators' Assn.; Deputy Sheriffs Assn.; United Prof. Firefighters I.A.F.F., Local 1230; Physicians' & Dentists' Org. of Contra Costa; Western Council of Engineers; United Chief Officers Assn.; Contra Costa County Defenders Assn.; Contra Costa County Deputy District Attorneys' Assn.; Prof. & Tech. Engineers IFPTE, Local 21; and Teamsters Local 856.

2. Agency Negotiators: David Twa.

Unrepresented Employees: All unrepresented employees.

**B. CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION (Gov. Code § 54956.9(d)(1))**

1. *Tammy Esquivel, et al. v. Contra Costa County*; Contra Costa County Superior Court Case No. C19-00553
2. *Jearhamel Fanaro v. Contra Costa County, et al.*, United States District Court, Northern District of California Case No. 19-cv-3247
3. *Contra Costa County Deputy Sheriffs Association v. Contra Costa County, David O. Livingston, et al.*, Contra Costa County Superior Court Case No. N19-0097

**9:30 A.M. Call to order and opening ceremonies.**

Inspirational Thought- *"Sometimes the heart sees what is invisible to the eye."* ~ H. Jackson Brown Jr., author

Present: John Gioia, District I Supervisor; Candace Andersen, District II Supervisor; Diane Burgis, District III Supervisor; Karen Mitchoff, District IV Supervisor; Federal D. Glover, District V Supervisor

Staff Present: David Twa, County Administrator  
Sharon Anderson, County Counsel

**CONSIDER CONSENT ITEMS** (Items listed as C.1 through C.81 on the following agenda) – Items are subject to removal from Consent Calendar by request of any Supervisor or on request for discussion by a member of the public. **Items removed from the Consent Calendar will be considered with the Discussion Items.**

**PRESENTATION ITEMS**

**PR.1** PRESENTATION by the Clerk-Recorder regarding Vote by Mail and in-person voting for the November 3, 2020 Presidential Election and commemorating significant elections historical events. (Supervisor Andersen; Deborah Cooper, Clerk-Recorder)

- 100<sup>th</sup> Anniversary of the 19<sup>th</sup> amendment (see C.17)
- National Voter Registration Day (see C.18)
- Status Update to the Board regarding the November election.

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**DISCUSSION ITEMS**

**D.1** CONSIDER electing 2021 officers of the Board of Supervisors. (Supervisor Andersen)

**ELECTED Supervisor Diane Burgis to be Chairperson of the Board of Supervisors for calendar year 2021 or until the selection of a successor, whichever occurs later;**  
**ELECTED Supervisor Federal Glover to be Vice-Chairperson of the Board of Supervisors for calendar year 2021 or until the selection of a successor, whichever occurs later.**

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**D.2** CONSIDER adopting Climate Emergency Resolution No. 2020/256, as recommended by the Sustainability Committee. (Jody London, Department of Conservation and Development)

**Speakers: Vanessa Cleric; Elsie Mills, Concord; Liz Ritchey; Fred Bihale; Kevin Pang, Danville; no name given; Amanda; Bob Haas, Rossmoor; Ganisterer, East Richmond; Amanda Casey; no name given; Lisa Jackson, Walnut Creek; Shelly Crock, Lafayette; Melvin Willis, Richmond City Councilmember; Colleen Knoll Amanda; Sharon; El Cerrito resident; Floyd Andrews, Richmond; Janet; Kelly Ann Bryant; Karen Perkins, Walnut Creek; no name given; Jackie Garcia, Lafayette; Ogie Strogatz, unincorporated area; Linda de Chambeau; Tai Kwok.**

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**D.3** CONSIDER authorizing the Department of Conservation and Development to initiate a General Plan Amendment process to evaluate a proposed change to the General Plan land use designation for one parcel located at 17000 Highway 4 in the Discovery Bay area, Assessor's Parcel No. 004-500-005, from Delta Recreation and Resources to Single-Family Residential-Medium Density, Light Industry, Parks and Recreation, Commercial Recreation, and Public and Semi-Public or successor land use designations thereof. (County File #20-0002) (100% Applicant Fees) (Will Nelson, Department of Conservation and Development)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**D.4** CONSIDER adopting a position on Proposition 20 and Proposition 21, measures qualified for the November 3, 2020 statewide general election ballot. (Lara DeLaney, County Administrator's Office)

**By unanimous vote, TOOK NO POSITION on Prop 20;**

**By unanimous vote, TOOK NO POSITION on Prop 21.**

**Speakers: Melvin Willis, Richmond City Councilmember; Donald; Elsie Mills, Concord.**

**D.5** CONSIDER adopting Ordinance No. 2020-25, an urgency ordinance authorizing a temporary prohibition on certain evictions of residential tenants in Contra Costa County and authorizing a residential rent increase moratorium. (Mary Ann Mason, Chief Assistant County Counsel)

**Speakers: Rosa Vargas, Bay Point Elsie Mills, Concord; Marianna Moore, Raise the Roof Coalition; Melvin Willis, ACCE; Maria Franco, West Contra Costa; Alex, East Bay Housing Organization; Natalie, First Time Northern California; Donald Lang, ACCE; Francisco Torres, ACCE; Rose Antonio; Patricia Aguilar, ACCE; Debra Ballinger; Christine Laughlin, Raise the Roof Coalition; Allie, Healthy and Active Before 5; name not given. ADOPTED Ordinance No. 2020-25 as presented; and DIRECTED County Counsel to return next week with a draft ordinance amending this ordinance in order to address additional tenant protections.**

**D.6** CONSIDER update on COVID 19; and PROVIDE direction to staff.

1. Health Department - Anna Roth, Director and Dr. Farnitano, Health Officer

**Update report on Covid-19 attached.**

**D. 7** CONSIDER Consent Items previously removed.

**Item C.16: Brian Balbas, Public Works Director, provided comments in appreciation of Karen Laws for her 34 years of service to Contra Costa County**

**Item C.63 was removed from consent to modify the descriptive language under Fiscal Impact and subsequently adopted.**

Brian Balbas, Public Works Director, provided comments in appreciation of Karen Laws, xxxx, upon her retirement;

Item C.63 to APPROVE and AUTHORIZE the Employment and Human Services Director, or designee, to execute a contract with Ombudsman Services of Contra Costa, Inc., in an amount not to exceed \$511,262 to provide countywide ombudsman services to seniors, for the period July 1, 2020 through June 30, 2021 was moved to D.7 to allow for clarification requested by Supervisor Mitchoff and subsequently xxxxxxxxxxxxxxx

**D. 8** PUBLIC COMMENT (2 Minutes/Speaker)

**Mary Schreiber on behalf of the League of Women Voters, thanked the Board for honoring their request to light the exterior of their building in the colors on the Suffragets on August 26, 2020, honoring the 100<sup>th</sup> Anniversary of women's right to vote. The League also commends the great work of Debbie Cooper, Clerk-Recorder for the services and education provided to voters.**

D. 9 CONSIDER reports of Board members.

**There were items reported today.**

**Closed Session**

ADJOURN in memory of  
**Donald Kent Hobert, M.D.**  
Over 30 years of dedicated service and Martinez resident

**Adjourned today's meeting at 3:55 p.m.**

**CONSENT ITEMS**

## **Road and Transportation**

**C.1** APPROVE and AUTHORIZE the Chair, Board of Supervisors, to execute a a contract amendment with Contra Costa Transportation Authority effective September 22, 2020, to increase the amount payable to Contra Costa County by \$4,000 to a new amount payable of \$57,000, to provide right of way services for the I-680 North Express Lanes Project, as recommended by the Public Works Director, I-680 Corridor area. (100% Contra Costa Transportation Authority Funds)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C.2** APPROVE and AUTHORIZE the Public Works Director, or designee, to execute a temporary construction easement and agreement, and grant of easement with East Bay Municipal Utility District, and an encroachment permit with East Bay Regional Parks District, for property rights needed for the Pinehurst Sinkhole and Culvert Repair Project, Orinda area. (60% Federal Funds; 40% Local Road Funds)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C.3** APPROVE and AUTHORIZE the Public Works Director, or designee, to execute a temporary construction easement and agreement and grant of easement with East Bay Municipal Utility District, for property rights needed for the Alhambra Valley Road Realignment Project, West Contra Costa County area. (100% Local Road Funds)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

## **Special Districts & County Airports**

**C.4** As the Governing Body of the Contra Costa County Flood Control & Water Conservation District, APPROVE and AUTHORIZE the Chief Engineer, or designee, to execute a license agreement with the City of Pleasant Hill for recreational and landscaping purposes at Grayson Creek for a period of approximately 25 years commencing on September 22, 2020, and take related actions under the California Environmental Quality Act, Pleasant Hill area. (100% Developer Funds)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C.5** APPROVE and AUTHORIZE the Director of Airports, or designee, to allocate \$43,400 of the Mariposa Energy Project Community Benefits Fund to conduct an analysis of the water, sanitary and sewer systems at Byron Airport and to cover costs associated with upgrading those systems, as recommended by the Airport Committee. (100% Mariposa Energy Project Community Benefits Fund).

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C.6** ADOPT Resolution No. 2020/247 declaring October 2020 as Creek and Channel Safety Awareness Month, ACCEPT the status report from the Public Works Department and the Flood Control and Water Conservation District on the Creek and Channel Safety Awareness Program, and DIRECT the Public Works Department and the Flood Control and Water Conservation District to continue with implementation and the annual campaign of a Countywide sustainable Creek and Channel Safety Awareness Program, as recommended by the Chief Engineer, Flood Control and Water Conservation District, Countywide. (100% Flood Control Zone 3B Funds)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C.7** APPROVE and AUTHORIZE the Director of Airports, or designee, to execute a month-to-month hangar rental agreement with Eight One Whiskey, LLC for a south-facing shade hangar at Buchanan Field Airport effective August 10, 2020 in the monthly amount of \$140.00, Pacheco area (100% Airport Enterprise Fund).

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C.8** APPROVE and AUTHORIZE the Director of Airports, or designee, to execute a month-to-month hangar rental agreement with Christopher Kang for a north-facing T-hangar at Buchanan Field Airport effective September 8, 2020 in the monthly amount of \$370.00, Pacheco area (100% Airport Enterprise Fund).

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

### **Claims, Collections & Litigation**

**C.9** RECEIVE report concerning the final settlement of Mitchell Lemay vs. Contra Costa County; and AUTHORIZE payment from the Workers' Compensation Internal Service Fund in an amount not to exceed \$300,000 as recommended by the Director of Risk Management. (100% Workers' Compensation Internal Service Fund)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C.10** RECEIVE report concerning the final settlement of Kevin Prescott vs. Contra Costa County; and AUTHORIZE payment from the Workers' Compensation Internal Service Fund in an amount not to exceed \$250,000 as recommended by the Director of Risk Management. (100% workers' Compensation Internal Service Fund),

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C.11** DENY claims filed by John W. Bruns, et al., Kyle Combs, and Daronta T. Lewis.

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

### **Statutory Actions**

**C.12** ACCEPT Board members meeting reports for August 2020.

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

### **Honors & Proclamations**

**C.13** ADOPT Resolution No. 2020/234 honoring the 100th anniversary of the Disabled American Veterans organization, as recommended by Supervisor Burgis.

**C.14** ADOPT Resolution No. 2020/251 recognizing the dedicated service of Senior Management Analyst Barbara Riveira upon her retirement from County service, as recommended by the County Administrator.

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C.15** ADOPT Resolution No. 2020/253 recognizing and honoring County Librarian Melinda Cervantes upon her retirement from County service, as recommended by the County Administrator.

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C.16** ADOPT Resolution No. 2020/254 recognizing the contributions of Karen Laws on her 34 years of service with Contra Costa County, as recommended by Supervisor Mitchoff.

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C.17** ADOPT Resolution No. 2020/259 commemorating the 100th Anniversary of the 19th Amendment, which gave women the right to vote, as recommended by the Clerk-Recorder.

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C.18** ADOPT Resolution No. 2020/260 proclaiming September 22, 2020 as National Voter Registration Day, as recommended by the Clerk-Recorder.

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

### **Ordinances**

**C.19** RATIFY Moraga Orinda Fire District Ordinance No. 20-01 as modified, implementing the 2019 California Fire Code with local amendments in the unincorporated portion of the District's service area, as recommended by the Conservation and Development Director. (No fiscal impact)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

### **Appointments & Resignations**

**C.20** APPOINT Paula Troy to the Member of Board of Supervisors Representative seat on the Treasury Oversight Committee; DECLARE vacant the Alternate to the Member of Board of Supervisors Representative seat and DIRECT the Clerk of the Board to post the vacancy, as recommended by the Internal Operations Committee.

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C.21** REAPPOINT Patricia Mantelli Bristow to the County seat on the Contra Costa Transportation Authority Citizens Advisory Committee, as recommended by the Internal Operations Committee.

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 22** REAPPOINT Allan Tobias to the District IV seat on the Emergency Medical Care Committee, as recommended by Supervisor Mitchoff.

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 23** REAPPOINT Donna Allen to the District V Representative seat on the Contra Costa County Planning Commission, as recommended by Supervisor Glover.

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

### **Personnel Actions**

**C. 24** ADOPT Position Adjustment Resolution No. 25629 to cancel two Ambulatory Care Provider-Exempt (represented) positions and add two OBGYN-Family Medicine, Advanced Obstetric-Exempt (represented) positions in the Health Services Department. (100% Cost Neutral Enterprise Fund I)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 25** ADOPT Position Adjustment Resolution No. 25630 to decrease the hours of two Family Nurse Practitioner positions (represented) in the Health Services Department. (100% Cost Savings Enterprise Fund I)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

### **Leases**

**C. 26** APPROVE and AUTHORIZE the County Librarian, or designee, to execute a library sublease with the City of Orinda to permit the County's operation of the library located at 26 Orinda Way, as recommended by the Public Works Director. (No fiscal impact)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

### **Grants & Contracts**

**APPROVE and AUTHORIZE execution of agreements between the County and the following agencies for receipt of fund and/or services:**

**C. 27** APPROVE and AUTHORIZE the Employment and Human Services Director, or designee, to apply for and accept grant funding in an amount of \$17,608,086 from the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Head Start, to provide program services for the period January 1, 2021 through December 31, 2021. (100% Federal)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 28** APPROVE and AUTHORIZE the Employment and Human Services Director, or designee, to apply for and accept grant funding from the United States Department of Health and Human Services, Administration for Children and Families, Office of Head Start, in an amount of \$3,877,134 for program services for the period of January 1, 2021 through December 31, 2021. (100% Federal)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 29** ADOPT Resolution No. 2020/245 to approve and authorize the Employment and Human Services Director, or designee, to accept Coronavirus, Aid, Relief, and Security (CARES) Act grant funding in the amount not to exceed \$1,115,537 for Low Income Home Energy Assistance Program (LIHEAP) services for the period July 1, 2020 through April 30, 2021.(100% Federal, No County match)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 30** APPROVE and AUTHORIZE the Health Services Director, or designee, to execute a contract with the California Department of Public Health Office of AIDS, to extend the term from December 31, 2020 to December 31, 2021 for continuation of home health care services to AIDS Medi-Cal Waiver Program clients. (No County match)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 31** APPROVE and AUTHORIZE the County Librarian, or designee, to apply for and accept a grant in the amount of \$5,000 from Southern California Library Cooperative and the California State Library to provide access to ABCmouse.com, a subscription-based digital educational program, for the period September 1, 2020 through August 31, 2021. (No County match)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 32** APPROVE and AUTHORIZE the Health Services Director, or designee, to execute a contract with the California Department of Public Health in an amount not to exceed \$952,824 for lead poisoning prevention and outreach services for children for the Public Health Division's Childhood Lead Poisoning Prevention Project for the period July 1, 2020 through June 30, 2023. (No County match)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 33** APPROVE and AUTHORIZE the Health Services Director, or designee, to execute a contract with Martinez Unified School District, to pay County an amount not to exceed \$92,164 to provide mental health intervention services for certain Special Education students for the period July 1, 2020 through June 30, 2021. (No County match)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 34** APPROVE and AUTHORIZE the Health Services Director, or designee, to execute a contract with the U. S. Department of Veterans Affairs Northern California Health Care System, to pay County in an amount not to exceed \$137,897 to continue emergency shelter housing for homeless veterans at the Philip Dorn Respite Center in Concord for the period September 29, 2020 through September 28, 2021. (No county match)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 35** APPROVE and AUTHORIZE the Employment and Human Services Director, or designee, to apply for and accept grant funding in the amount of \$414,188 from California Department of Social Services to provide Housing and Disability Advocacy Program services for the period July 1, 2020 through June 30, 2021. (100% State) (1:1 Cash or In-kind match)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover



**C. 36** ADOPT Resolution No. 2020/250 approving and authorizing the District Attorney, or designee, to apply for and accept grant funding, including any extensions or amendments thereof, with the California Governor's Office of Emergency Services, Victim Services & Public Safety Branch, in an amount not to exceed \$228,052, for funding of the Unserved/Underserved Victim Advocacy and Outreach Program for the period January 1 through December 31, 2021.

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 37** APPROVE and ACKNOWLEDGE that, by its terms, the contract between the County and Antioch Unified School District, pertaining to mental health services to students referred to the District's HOPE program and initially approved by the Board on September 15, 2020 (Item C.18), does not contain a payment provision to pay County an amount not to exceed \$90,000 as previously specified in the Board action but, instead, contains a payment provision to pay County an amount not exceed \$300,000.

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 38** APPROVE and AUTHORIZE the Health Services Director, or designee, to execute a contract with Pittsburg Unified School District, to pay County an amount not to exceed \$5,000 to provide scoliosis screening services to 7th and 8th grade students under the Public Health Clinic Services Scoliosis Screening Project for the period September 1, 2020 through August 31, 2021. (No County match)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 39** APPROVE and AUTHORIZE the Health Services Director, or designee, to accept grant extension with the California Institute for Behavioral Health Solutions, to decrease the amount payable to the County by \$6,990 to a new amount not to exceed \$496,413 and extend the termination date to February 28, 2021 to provide prevention screening, intervention, and treatment services to reduce opioid use disorder for youth in East and West Contra Costa County. (No County match)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**APPROVE and AUTHORIZE execution of agreement between the County and the following parties as noted for the purchase of equipment and/or services:**

**C. 40** APPROVE and AUTHORIZE the Employment and Human Services Director, or designee, to execute a contract with Contra Costa Community College District – Diablo Valley College in an amount not to exceed \$32,400 to provide foster parent and caregiver Heritage training for the period July 1, 2020 through June 30, 2021. (75% Federal, 17.5% State, 7.5% County)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 41** APPROVE and AUTHORIZE the Public Defender, or designee, to execute a contract amendment with Rubicon Programs, Inc., to extend the term from September 30, 2020 through September 30, 2021 and increase the payment limit by \$271,425 to a new payment limit of \$367,532, to provide client services in Contra Costa County for Holistic Intervention Partnership participants. (100% State)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 42** APPROVE and AUTHORIZE the Employment and Human Services Director, or designee, to execute a contract with Orantes, LLC (dba Tiny Toes Preschool and Childcare Center), in an amount not to exceed \$106,505 to provide State Preschool and State General Child Care & Development Programs for the period October 01, 2019 through June 30, 2020.

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 43** APPROVE and AUTHORIZE the Employment and Human Services Director, or designee, to execute a contract with STAND! For Families Free of Violence, a California non-profit public benefit corporation, in an amount not to exceed \$317,125 to provide domestic violence support services to California Work Opportunity and Responsibility to Kids (CalWORKs) participants for the period July 1, 2020 through June 30, 2021. (100% Federal)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 44** APPROVE and AUTHORIZE the Chief Information Officer, or designee, to execute an Order Form and Cloud Services Master Agreement with BMC Software, Inc., including County indemnification, in an amount not to exceed \$340,000 for a vendor hosted information technology ticketing software system for the Department of Information Technology's and Employment and Human Services Department help desks for the period of September 30, 2020 through September 29, 2023. (100% Department User Fees)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 45** APPROVE and AUTHORIZE the Sheriff-Coroner, or designee, to execute contract amendments with Sean Alexander Marine Services and Attenti US extending the terms to November 30, 2021; Global Tel\*Link Corporation modifying services and the associated rates at no cost to the County; Alcohol Monitoring Systems, Inc., extending the term to October 31, 2021; Tiburon Inc. increasing payment limit from \$945,151 to \$1,210,051 for dispatch record system support; clarification of prior Board Action approving an amendment with Arnold R. Josselson M.D. to reflect a payment limit of \$1,100,000; and APPROVE and AUTHORIZE the Sheriff-Coroner, or designee, to execute contracts with Ikechi Ogan M.D. and Mark A. Super M.D. in an amount not to exceed \$1,000,000 each for forensic pathology services with terms ending September 30, 2022; Managed Health Network in an amount of \$54,480 for employee counseling services through September 30, 2021; and ADOPT Resolution No.'s 2020/190, 2020/200, 2020/215, 2020/222 to apply for and accept grant funding with the State Homeland Security Grant Program, DNA Program Backlog Reduction Grant, FY 2020 Edward Byrne Memorial Justice Assistance Grant and with the Tobacco Law Enforcement Grant Program. (Various Funds)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 46** APPROVE and AUTHORIZE the County Clerk-Recorder, or designee, to execute a contract with Robert Half International, Inc., in an amount not to exceed \$350,000 for temporary personnel services to staff the 17 Regional Early Voting sites for the November election and other election related temporary services for the period September 22 through December 31, 2020. (100% State/Federal CARE funds)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 47** APPROVE and AUTHORIZE the Health Services Director, or designee, to execute a contract with BHC Fremont Hospital, Inc., in an amount not to exceed \$1,300,000 to provide inpatient psychiatric hospital services to County-referred children and adults for the period July 1, 2020 through June 30, 2021, including a six-month automatic extension in an amount of \$650,000 through December 31, 2021. (100% Mental Health Realignment)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 48** RATIFY the County Administrator, or designee's execution contract amendments with GDCC, LLC, Sharam Taheri, and Agave Grill Corporation, to increase the payment limits to new payment limits not to exceed \$934,132, \$902,880, and \$696,300, respectively, and to extend the terms to December 8, 2020, to provide additional meal services to seniors and other adults under the Great Plates Delivered Program, on the condition additional FEMA funding available. (75% Federal, 19% State, 6% County)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 49** APPROVE and AUTHORIZE the County Administrator, or designee, to execute a contract with RLW Properties, LLC, in an amount not to exceed \$383,467 to provide meal preparation and delivery services under the Great Plates Delivered Program for the period September 22, 2020 through December 8, 2020.

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 50** APPROVE and AUTHORIZE the Employment and Human Services Director, or designee, to execute a contract amendment with Orantes, LLC (dba Tiny Toes Preschool and Childcare Center), to increase the payment limit by \$21,816 to a new payment limit of \$118,928 effective October 1, 2019, and to add eight (8) additional Head Start Childcare Partnership Program Slots for children aged three to five years for the period July 1, 2019 through June 30, 2020. (100% Federal)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 51** APPROVE and AUTHORIZE the County Probation Officer, or designee, to execute a contract with the California Department of Corrections and Rehabilitation in an amount not to exceed \$99,990 through June 30, 2022 for emergency housing for case referrals from Juvenile or Criminal Court to Contra Costa County. (100% County General Fund)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 52** APPROVE and AUTHORIZE the Health Services Director, or designee, to execute a novation contract with Meals on Wheels Diablo Region, in an amount not to exceed \$508,503 to provide home-delivered meals and services for the County's Senior Nutrition Program for the period July 1, 2020 through June 30, 2021, including a three-month automatic extension through September 30, 2021 in an amount not to exceed \$127,125. (100% Title IIC-2 of the Older Americans Act of 1965)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 53** APPROVE and AUTHORIZE the Agricultural Commissioner, or designee, to execute a contract with the California Department of Food and Agriculture to reimburse the County in an amount not to exceed \$119,826 for regulatory compliance and enforcement activities related to the Sudden Oak Death Program for the period July 1, 2020 through June 30, 2021. (100% State)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 54** APPROVE and AUTHORIZE the County Probation Officer, or designee, to execute an Interagency Agreement with the Contra Costa County Office of Education, in an amount not to exceed \$64,000 to provide Juvenile Reentry educational and career services for the period July 1, 2020 through June 30, 2021. (100% General Fund)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 55** APPROVE and AUTHORIZE the County Clerk-Recorder, or designee, to execute a contract with Comcast Corporation in an amount not to exceed \$100,000 for television and digital voter education services targeting under-served communities for the November 2020 election, for the period September 22 through December 31, 2020. (100% State/Federal CARE funds)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 56** APPROVE and AUTHORIZE the Health Services Director, or designee, to execute a contract with Council For Affordable Quality Healthcare, Inc., in an amount not to exceed \$60,000 to provide software and services for Contra Costa Health Plan for the period October 1, 2020 through September 30, 2023. (100% Hospital Enterprise Fund II)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 57** APPROVE and AUTHORIZE the Employment and Human Services Director, or designee, to execute an agreement with Contra Costa Community College District – Los Medanos College in an amount not to exceed \$36,000 to provide Resource Family Pre-Approval training for the period July 1, 2019 through June 30, 2020 (25% State, 75% Federal)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 58** APPROVE and AUTHORIZE the Health Services Director, or designee, to execute a contract amendment with Vickie Lee Scharr, to increase the payment limit by \$8,000 to a new payment limit of \$398,000 to provide additional technical support and planning services with regard to transitioning the West Contra Costa Health Care District to the County, with no change in the term January 1, 2019 through December 31, 2020. (100% West Contra Costa Healthcare District)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 59** APPROVE and AUTHORIZE the Health Services Director, or designee, to execute a contract amendment with Eighty 20 Healthcare Consulting, LLC, to increase the payment limit by \$26,562 to a new payment limit of \$678,562 to provide additional consultation, technical support and planning services for transitioning the West Contra Costa Health Care District to County with no change in the term January 1, 2019 through December 31, 2020. (100% West Contra Costa Health Care District)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 60** APPROVE and AUTHORIZE the Public Works Director, or designee, to execute (1) Consent and Agreement, dated September 22, 2020, with Solar Star Co Co 1, LLC and Wilmington Trust, National Association acknowledging a collateral assignment, and (2) Omnibus Amendment to Power Purchase Agreements, dated September 22, 2020, with Solar Star Co Co 1, LLC and Solar Star Co Co 2, LLC amending power purchase agreements to increase the kilowatt hour rate, Countywide. (No fiscal impact)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 61** APPROVE and AUTHORIZE the Chief Engineer, Contra Costa County Flood Control and Water Conservation District, or designee, to execute, on behalf of the Contra Costa Clean Water Program, a contract amendment with ProProse, LLC (dba Sagent), to increase the payment limit by \$380,000 to a new payment limit of \$890,000 and extend the term from September 30, 2020 to September 30, 2022 for continued public information and outreach services necessary to comply with state stormwater permit requirements, Countywide. (100% Stormwater Utility Assessment Funds)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 62** APPROVE and AUTHORIZE the Public Works Director, or designee, to execute a contract with Valley Air Conditioning & Repair, Inc., in an amount not to exceed \$1,000,000 to provide on-call repairs and scheduled maintenance of cogeneration plants at four County facilities, for the period October 1, 2020 through September 30, 2023, Countywide. (75% General Fund; 25% Hospital Enterprise Funds)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 63** APPROVE and AUTHORIZE the Employment and Human Services Director, or designee, to execute a contract with Ombudsman Services of Contra Costa, Inc., in an amount not to exceed \$511,262 to provide countywide ombudsman services to seniors, for the period July 1, 2020 through June 30, 2021. (19% Federal, 81% State)

**Adopted as modified to read under Fiscal Impact: ~~This will increase department expenditures by \$511,262, Funded 19% by Federal revenues from the Federal Older Americans Act Title III-B and Title VII-A revenue (CFDA# 93.044, 93.042), and 81% by the State Public Health Licensing and Certification Program, Health Facilities Citation Penalties Account, Skilled Nursing Facilities Quality and Accountability Funds, and State Older Americans Act Title III-B. There is no required County match.~~**

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 64** APPROVE and AUTHORIZE the Health Services Director, or designee, to execute a contract with Parham Gharagozlou, M.D., Inc., in an amount not to exceed \$1,800,000 to provide primary care and sleep study services to Contra Costa Health Plan members for the period November 1, 2020 through October 31, 2023. (100% Contra Costa Health Plan Enterprise Fund II)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 65** APPROVE and AUTHORIZE the Health Services Director, or designee, to execute a contract with Philip R. Mill, O.D. and Michael D. Sutton, O.D., Inc., A Professional Corporation, in an amount not to exceed \$225,000 to provide optometry services to Contra Costa Health Plan members for the period November 1, 2020 through October 31, 2023. (100% Contra Costa Health Plan Enterprise Fund II)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 66** APPROVE and AUTHORIZE the Health Services Director, or designee, to execute a contract amendment with WestCare California, Inc., to increase the payment limit by \$291,285 to a new payment limit of \$2,320,109 to provide additional substance use disorder prevention, treatment and detoxification services for Contra Costa County residents in West County with no change in the term October 1, 2019 through September 30, 2020. (57% Substance Abuse Treatment and Prevention Block Grant; 43% Federal Medi-Cal)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

### **Other Actions**

**C. 67** ACKNOWLEDGE that the Auditor-Controller, County Administrator, and the County's labor partners recommend that the President's Executive Order allowing deferments of federal payroll taxes for qualifying individuals not be implemented and therefore DIRECT the Auditor-Controller not to implement deferrals.

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 68** AUTHORIZE the Chair of the Board of Supervisors to submit a letter of support for the Contra Costa Transportation Authority grant application for electric vehicle implementation activities, as recommended by the Conservation and Development Director.

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 69** APPROVE the list of providers recommended by Contra Costa Health Plan's Peer Review and Credentialing Committee on August 11, 2020, and by the Medical Director on August 27, 2020 and by the Health Services Director, as required by the State Departments of Health Care Services and Managed Health Care, and the Centers for Medicare and Medicaid Services.

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 70** APPROVE and AUTHORIZE the Health Services Director, or designee, to execute a contract with Pittsburg Unified School District, to provide school-based mobile clinic services to children and youth for the period September 1, 2020 through August 31, 2025. (Non-financial)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 71** APPROVE the revised Policies and Procedures of the Family and Children's Trust (FACT) Committee, and APPROVE recommendation to extend by one additional year any second year 2020-2021 FACT contracts that meet the criteria for renewal, as recommended by the Employment and Human Services Director.

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 72** ADOPT Resolution No. 2020/249 accepting as complete the contracted work performed by Sterling Environmental Corporation for the abatement of Assessor's Parcel No. 149-271-014 in Pleasant Hill for the 1750 Oak Park Boulevard and 75 Santa Barbara Road Project, as recommended by the Public Works Director. (100% General Fund)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 73** APPROVE and AUTHORIZE the Health Services Director, or designee, to execute legal documents to grant \$1,180,000 in Mental Health Services Act funds to pay for the acquisition of two parcels, 903-919 Virginia Avenue and 360-366 South 9th Street in Richmond, by West County MHSA, LLC to use as special needs housing. (100% State funds)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 74** APPROVE and AUTHORIZE the Sheriff-Coroner, or designee, to renew Cardroom License Number 6, known as "California Grand Casino", currently located at 5988 Pacheco Blvd., Pacheco area, for the period November 26, 2020 through November 25, 2021. (100% Revenue)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 75** ALLOCATE \$505,336 from the Livable Communities Trust (District I Portion) to the Heritage Point Commercial Project in North Richmond and AUTHORIZE the of the Conservation and Development Director, or designee, to execute a contract with Community Housing Development Corporation of North Richmond for the construction of a training facility/resource center on the ground floor of Heritage Point Apartments and a grocery store located next to the apartments on the corner lot of Chesley Ave and Fred Jackson Way in North Richmond. (100% Livable Communities Trust)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 76** APPROVE loan of \$2,200,400 in HOME Investment Partnership Program funds and related legal documents for construction and permanent financing for the Veterans Square affordable housing development in Pittsburg, and ADOPT related findings under the California Environmental Quality Act, as recommended by the Conservation and Development Director. (100% Federal funds)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 77** APPROVE and AUTHORIZE the Auditor-Controller, or designee, to make monthly payments, upon submission of payment demands from the Probation Department, to three 21-year-old Non-Minor Dependents in Supervised Independent Living Placements starting June 29, 2020 through October 31, 2020, as recommended by the County Probation Officer. (100% County General Fund)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 78** ADOPT Resolution No. 2020/238 authorizing the issuance and sale of "Walnut Creek School District General Obligation Bonds, Election of 2016, Series C (2020)" in an amount not to exceed \$20,000,000 by the Walnut Creek School District on its own behalf pursuant to Section 15140(b) of the Education Code, as recommended by the County Administrator. (No County fiscal impact)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 79** ADOPT Resolution No. 2020/252 declaring the intention to form Zone 1204 within County Service Area P-6 in the unincorporated Concord area, and fixing a public hearing for November 3, 2020 to consider public input regarding the establishment of Zone 1204, and the adoption of Ordinance No. 2020-24 authorizing the levy of a special tax within Zone 1204 to fund police protection services, as recommended by the Conservation and Development Director. (100% Developer fees)

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

**C. 80** APPROVE and AUTHORIZE the Public Works Director, or designee, to submit the Proposed Service Plan Report to Contra Costa Local Agency Formation Commission, in connection with the proposed dissolution of the Knightsen Town Community Services District, Knightsen area. (No fiscal impact)

**C.80 was removed from agenda indefinitely. Knightsen has pulled the proposed dissolution.**

**C. 81** CONFIRM the elections of Julie Bautista, County School and Community College Districts Representative (2020 to 2024) as Committee Chair of the Treasury Oversight Committee, and of John Phillips, Public Representative Seat 3 (2020 to 2024) as Committee Vice Chair, as recommended by the Treasury Oversight Committee.

AYE: District I Supervisor John Gioia, District II Supervisor Candace Andersen, District III Supervisor Diane Burgis, District IV Supervisor Karen Mitchoff, District V Supervisor Federal D. Glover

## **GENERAL INFORMATION**

The Board meets in all its capacities pursuant to Ordinance Code Section 24-2.402, including as the Housing Authority and the Successor Agency to the Redevelopment Agency. Persons who wish to address the Board 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 Supervisors less than 96 hours prior to that meeting are available for public inspection at 1025 Escobar Street, First Floor, Martinez, CA 94553, during normal business hours.

All matters listed under CONSENT ITEMS are considered by the Board 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 Board 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 Supervisors can be submitted to the office of the Clerk of the Board via mail: Board of Supervisors, 1025 Escobar Street, First Floor, Martinez, CA 94553.

The County 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) 655-2000. An assistive listening device is available from the Clerk, First Floor.

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) 655-2000, to make the necessary arrangements.

Forms are available to anyone desiring to submit an inspirational thought nomination for inclusion on the Board Agenda. Forms may be obtained at the Office of the County Administrator or Office of the Clerk of the Board, 1025 Escobar Street, Martinez, California.

Subscribe to receive to the weekly Board Agenda by calling the Office of the Clerk of the Board, (925) 655-2000 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)

### STANDING COMMITTEES

Until further notice, to slow the spread of COVID-19 and in lieu of a public gathering, if the Board's STANDING COMMITTEES meet they will provide public access either telephonically or electronically, as noticed on the agenda for the respective STANDING COMMITTEE meeting.

The **Airport Committee** (Supervisors Karen Mitchoff and Diane Burgis) meets quarterly on the second Wednesday of the month at 11:00 a.m. at the Director of Airports Office, 550 Sally Ride Drive, Concord.

The **Family and Human Services Committee** (Supervisors John Gioia and Candace Andersen) meets on the fourth Monday of the month at 9:00 a.m. in Room 110, County Administration Building, 1025 Escobar Street, Martinez.

The **Finance Committee** (Supervisors John Gioia and Karen Mitchoff) meets on the first Monday of the month at 9:00 a.m. in Room 110, County Administration Building, 1025 Escobar Street, Martinez.

The **Hiring Outreach Oversight Committee** (Supervisors Federal D. Glover and John Gioia) meets quarterly on the first Monday of the month at 10:30 a.m. in Room 110, County Administration Building, 1025 Escobar Street, Martinez.

The **Internal Operations Committee** (Supervisors Candace Andersen and Diane Burgis) meets on the second Monday of the month at 10:30 a.m. in Room 110, County Administration Building, 1025 Escobar Street, Martinez.

The **Legislation Committee** (Supervisors Karen Mitchoff and Diane Burgis) meets on the second Monday of the month at 1:00 p.m. in Room 110, County Administration Building, 1025 Street, Martinez.

The **Public Protection Committee** (Supervisors Andersen and Federal D. Glover) meets on the fourth Monday of the month at 10:30 a.m. in Room 110, County Administration Building, 1025 Escobar Street, Martinez.

The **Sustainability Committee** (Supervisors Federal D. Glover and John Gioia) meets on the fourth Monday of every other month at 1:00 p.m. in Room 110, County Administration Building, 1025 Escobar Street, Martinez.

The **Transportation, Water & Infrastructure Committee** (Supervisors Candace Andersen and Karen Mitchoff) meets on the second Monday of the month at 9:00 a.m. in Room 110, County Administration Building, 1025 Escobar Street, Martinez.

Airports Committee	November 5, 2020	11:00 a.m.	See above
Family & Human Services Committee	September 28, 2020	9:00 a.m.	See above
Finance Committee	October 5, 2020 Canceled Special Meeting October 19, 2020	10:00 a.m.	See above
Hiring Outreach Oversight Committee	December 7, 2020	10:30 a.m.	See above



Internal Operations Committee	October 12, 2020	10:30 a.m.	See above
Legislation Committee	October 12, 2020	1:00 p.m.	See above
Public Protection Committee	September 28, 2020	10:30 a.m.	See above
Sustainability Committee	Special Meeting September 29, 2020	3:00 p.m.	See above
Transportation, Water & Infrastructure Committee	October 12, 2020	9:00 a.m.	See above

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

**A LUNCH BREAK MAY BE CALLED AT THE DISCRETION OF THE BOARD CHAIR**

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

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

Contra Costa County 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
- AICP** American Institute of Certified Planners
- AIDS** Acquired Immunodeficiency Syndrome
- ALUC** Airport Land Use Commission
- AOD** Alcohol and Other Drugs
- 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
- BCDC** Bay Conservation & Development Commission
- BGO** Better Government Ordinance
- BOS** Board of Supervisors
- CALTRANS** California Department of Transportation
- CalWIN** California Works Information Network
- CalWORKS** California Work Opportunity and Responsibility to Kids
- CAER** Community Awareness Emergency Response
- CAO** County Administrative Officer or Office
- CCCPCD (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
- CDBG** Community Development Block Grant
- CFDA** Catalog of Federal Domestic Assistance
- CEQA** California Environmental Quality Act
- CIO** Chief Information Officer
- COLA** Cost of living adjustment
- ConFire (CCCPCD)** Contra Costa County Fire Protection District
- CPA** Certified Public Accountant
- CPI** Consumer Price Index
- CSA** County Service Area

**CSAC** California State Association of Counties  
**CTC** California Transportation Commission  
**dba** doing business as  
**DSRIP** Delivery System Reform Incentive Program  
**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  
**EPSDT** Early State Periodic Screening, Diagnosis and Treatment Program (Mental Health)  
**et al.** et alii (and others)  
**FAA** Federal Aviation Administration  
**FEMA** Federal Emergency Management Agency  
**F&HS** Family and Human Services Committee  
**First 5** First Five Children and Families Commission (Proposition 10)  
**FTE** Full Time Equivalent  
**FY** Fiscal Year  
**GHAD** Geologic Hazard Abatement District  
**GIS** Geographic Information System  
**HCD** (State Dept of) Housing & Community Development  
**HHS** (State Dept of ) Health and Human Services  
**HIPAA** Health Insurance Portability and Accountability Act  
**HIV** Human Immunodeficiency Syndrome  
**HOV** High Occupancy Vehicle  
**HR** Human Resources  
**HUD** United States Department of Housing and Urban Development  
**IHSS** In-Home Supportive Services  
**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  
**LVN** Licensed Vocational Nurse  
**MAC** Municipal Advisory Council  
**MBE** Minority Business Enterprise  
**M.D.** Medical Doctor  
**M.F.T.** Marriage and Family Therapist  
**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  
**OB-GYN** Obstetrics and Gynecology  
**O.D.** Doctor of Optometry  
**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  
**Psy.D.** Doctor of Psychology  
**RDA** Redevelopment Agency  
**RFI** Request For Information  
**RFP** Request For Proposal  
**RFQ** Request For Qualifications

**RN** Registered Nurse  
**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  
**VA** Department of Veterans Affairs  
**vs.** versus (against)  
**WAN** Wide Area Network  
**WBE** Women Business Enterprise  
**WCCTAC** West Contra Costa Transportation Advisory Committee



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Deborah R. Cooper, Clerk-Recorder  
Date: September 22, 2020

Subject: Presentation by the Clerk-Recorder regarding Vote by Mail for the November 3, 2020 Presidential Election and commemorating significant elections histo

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**RECOMMENDATION(S):**

PRESENTATION by the Clerk-Recorder regarding Vote by Mail and in-person voting for the November 3, 2020 Presidential Election and commemorating significant elections historical events. (Supervisor Andersen; Deborah Cooper, Clerk-Recorder)

- 100<sup>th</sup> Anniversary of the 19<sup>th</sup> amendment (see C.17)
- National Voter Registration Day (see C.18)
- Status Update to the Board regarding the November election.

**BACKGROUND:**

Please see attached presentation materials and also reference Agenda Items C.17 and C.18.

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APPROVE
  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR
  RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
 Candace Andersen, District II Supervisor  
 Diane Burgis, District III Supervisor  
 Karen Mitchoff, District IV Supervisor  
 Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: June McHuen, Deputy

Contact: Debi Cooper  
925-335-7899

cc:

ATTACHMENTS

Elections  
Presentation



# Votes for Women

100<sup>th</sup> Anniversary  
of the 19<sup>th</sup> Amendment  
August 26, 1920

# 100<sup>th</sup> Anniversary of Women's Right to Vote

- Women's Suffrage movement was born July 1848
- Suffragists worked for 70+ years
- 19<sup>th</sup> Amendment was signed into law August 26, 1920
- This law enfranchised 26 million women, more than any other single group in history



Abigail Bush, local suffragette and abolitionist activist

# 100<sup>th</sup> Anniversary of Women's Right to Vote



1. Women would be corrupted by politics.
2. If women became involved in politics, they would stop marrying, having children, and the human race would die out.
3. Women were emotional creatures, and incapable of making a sound political decision.





# 100<sup>th</sup> Anniversary of Women's Right to Vote



*Amendment XIX*  
The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.  
Congress shall have power to enforce this article by appropriate legislation.





A graphic for National Voter Registration Day. The background is dark blue with a faint map of the United States and scattered white stars. Two large, stylized American flags with red and white stripes and blue fields with white stars are positioned in the top-left and bottom-right corners. The text "NATIONAL VOTER REGISTRATION DAY" is centered in white, bold, sans-serif font. Below the text is a red rectangular button with white text and a double arrow pointing right.

# NATIONAL VOTER REGISTRATION DAY

**REGISTER TODAY »**

# National Voter Registration Day

September 22, 2020



## **Be ready to vote!**

- Register or check your registration at [cocovote.us](https://cocovote.us)
- Stay healthy voting amid COVID
  - Know your options
- Know what's on the ballot
- Learn about voting by mail if you are unfamiliar
- Learn about voting in-person options
- Questions? [voter.services@vote.cccounty.us](mailto:voter.services@vote.cccounty.us) or 925-335-7800

# National Voter Registration Day

September 22, 2020



- Created in 2012
- Thousands of diverse organizations participate
  - Coordinated effort to spread awareness
- Since 2012, over 3 million citizens have registered on this day
- Citizen participation is essential to democracy
- Technology is removing barriers to registering and voting
- Encourage all eligible citizens to register and vote





# VOTING DURING THE 2020 PANDEMIC

Debi Cooper  
Contra Costa County  
Clerk-Recorder and Registrar





# November 2020

## What's changed (and what hasn't)



- All voters will receive a vote by mail ballot
  - Over 75% of CCC voted by mail in March – new experience for the other 25%
- Personal distancing and safety protocols will be in place
  - Lines may seem longer - vote early and by mail to avoid the lines
- Expanded programs for ballot return and in-person early voting
  - 37 secure ballot drop boxes – available 24/7 (Oct. 6 – Nov. 3)
  - 17 early voting sites open Oct. 30 (Fri., Sat., Mon. and Election Day)
- Ballots postmarked by Election Day have an additional 17 days
- First-Class postage is prepaid for all returned ballots
- All ballots will include an “I voted” sticker!
- Vote by mail ballots may take more time to process



# November 2020

## Secure Ballot Drop Boxes

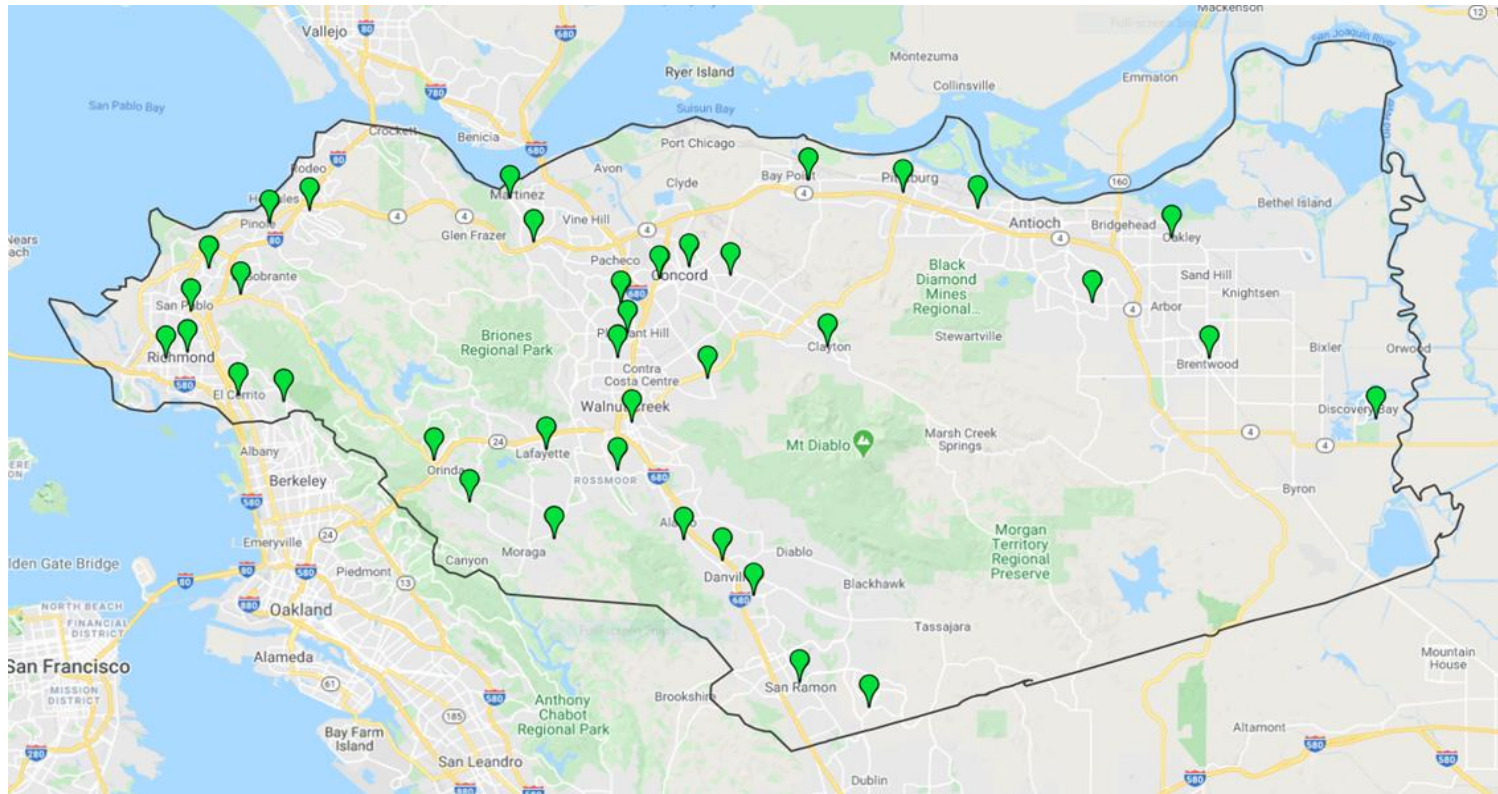


- For Nov. 2020, expanded from 12 to 37 secure ballot drop boxes
- Available 24/7
- High security design
- Serviced daily by 2 Elections staff
- List of specific locations:
  - [cocovote.us](http://cocovote.us)
  - Voter Information Guide



# November 2020

## 37 Secure Ballot Drop Boxes



# November 2020

## Early Voting Locations

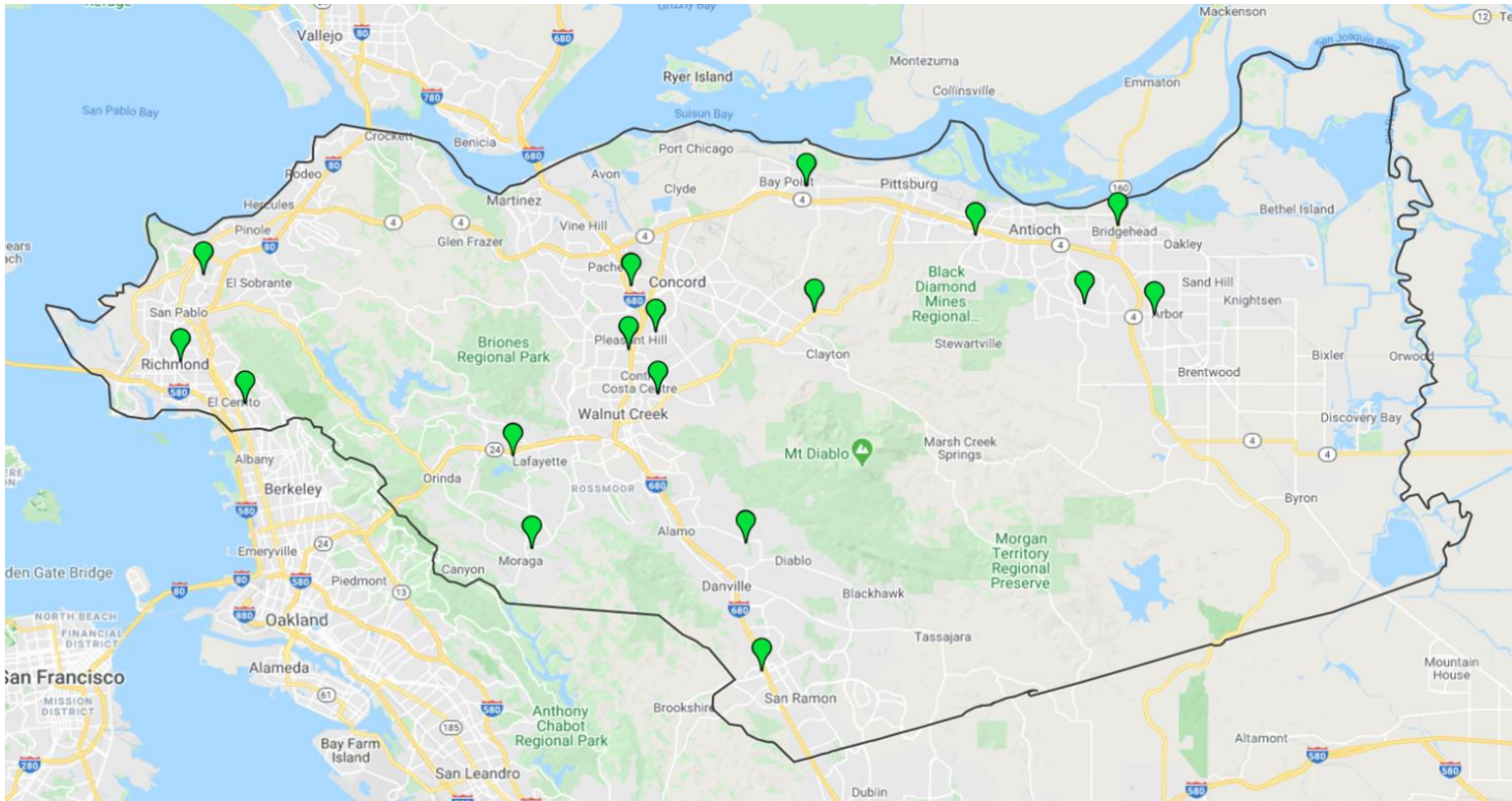


- For November 2020, expanded from 3 to 17 locations
- Open 4 days (Friday, Saturday, Monday and E-Day)
- Indoor and outdoor locations
- 11 located in large tents with generator power
- All services provided
  - Registration
  - Voting for all voters



# November 2020

## 17 Early Voting Locations



# November 2020 Election Day Polling Places



- Every voter is assigned to one of ~150 Polling Places
  - Assigned location is noted on the Voter Information Guide
- PPE and distancing protocols will be in place
- Precinct layout/protocols approved by Risk Mgmt. & Public Health
- Hand-marked and machine-marked paper ballot options
- Electronic check-in will eliminate most Provisionals Ballots
- “Trader Joe Effect”

Our volunteer poll workers are  
American heroes!



# November 2020

## Important Dates



- September 24<sup>th</sup> - Voter Information Guides mailed to each voter
  - Includes locations of all secure ballot drop boxes and early voting sites
- October 5<sup>th</sup> - Official ballots mailed to all voters registered as of Sept. 9
  - In-person voting begins in Martinez
  - Secure ballot drop boxes opened
- October 19<sup>th</sup> - If haven't received a ballot, contact the Elections Office
  - Via email at [ballot@vote.cccounty.us](mailto:ballot@vote.cccounty.us) or by phone at 925-335-7800
- October 30<sup>th</sup> - 17 early voting sites open
  - Fri., Sat., Mon. and Election Day
- November 3<sup>rd</sup> - Election Day!
  - Ballot postmark deadline
- November 20<sup>th</sup> - Last day to receive ballots postmarked on or before Election Day

# November 2020

**Be sure you are ready to vote.**



We want every vote to count. Please do your part to be ready.

- Check your registration or register to vote at: [cocovote.us](https://cocovote.us)
  - Be sure your mailing address is correct
- Vote the ballot we send you; return it by mail or secure drop box
- Keep in-person locations for in-person services
  - Lost ballot
  - Conditional voter registration
  - Language needs or ADA issues
- Track your ballot through the State's "WheresMyBallot" program:
  - Sign up at <https://california.ballottrax.net/voter/>
- Confirm that we have issued or received your ballot:
  - Use the "My Voting Information" tool at [www.contracostacore.us](https://www.contracostacore.us)



# November 2020

## Stay in Touch



- Website: <https://www.contracostacore.us/>
- Facebook: Contra Costa County Elections
- Twitter: @cocoelections
- YouTube: Contra Costa Clerk-Recorder-Elections Department
- Nextdoor: Contra Costa Elections – Community Outreach

**Stay Safe!**  
**Vote by mail!**





Contra  
Costa  
County

To: Board of Supervisors  
From: David Twa, County Administrator  
Date: September 22, 2020

Subject: NOMINATION OF 2021 OFFICERS OF THE BOARD OF SUPERVISORS

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**RECOMMENDATION(S):**

1. ELECT a Supervisor to be Chairperson of the Board of Supervisors for calendar year 2021 or until the selection of a successor, whichever occurs later.
2. ELECT a Supervisor to be Vice-Chairperson of the Board of Supervisors for calendar year 2021 or until the selection of a successor, whichever occurs later.

**FISCAL IMPACT:**

No fiscal impact.

**BACKGROUND:**

At the first meeting of each calendar year, the Board of Supervisors reorganizes, updates its rules of procedure, establishes the list of standing and

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APPROVE

OTHER

RECOMMENDATION OF CNTY ADMINISTRATOR

RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: June McHuen, Deputy

Contact: Jami Napier  
925-655-2005

cc:

## BACKGROUND: (CONT'D)

ad hoc committees and appoints board members to committees, and discusses prior year accomplishments and new year goals and challenges. Preparation for the annual reorganization meeting requires many weeks of staff effort, under the direction of the board chair.

The board of supervisors votes to select its officers following a nomination process. Although not a requirement, the board has traditionally rotated the offices of chair and vice chair among the five members, i.e., each member would serve as chair at least once during his/her term of office. This rotation has historically been interrupted only due to changes in membership or absence due to illness.

The Chair serves as presiding officer of the Board; rules on questions of procedure; nominates for Board approval representatives to Board committees whose appointment is not otherwise provided for; signs resolutions, ordinances, contracts, leases and other official documents approved by the Board; preserves order and decorum; and decides all questions of order. The Chair may consult with County Counsel in making such rulings. Decisions of the Chair may be overruled by a majority vote of the Board of Supervisors.

The Vice-Chair has and may exercise all powers and duties of the Chair at the meetings at which the Chair is absent.

If neither the Chair nor the Vice-Chair is present at a Board meeting, the Board members present selects one of their members to act as the Chair Pro Tempore. The Chair Pro Tempore shall have and exercise all the powers and duties of the Chair for that particular meeting only.

Because the reorganization requires substantial thought and planning, early selection of new year officers permits the incoming board chair to take an active role in planning for the annual reorganization.

## CONSEQUENCE OF NEGATIVE ACTION:

Planning and administration of the annual board reorganization may take longer to implement if the 2021 board officers are not decided in the fall of 2020.

## CLERK'S ADDENDUM

**ELECTED Supervisor Diane Burgis to be Chairperson of the Board of Supervisors for calendar year 2021 or until the selection of a successor, whichever occurs later;**

**ELECTED Supervisor Federal Glover to be Vice-Chairperson of the Board of Supervisors for calendar year 2021 or until the selection of a successor, whichever occurs later.**



Contra  
Costa  
County

To: Board of Supervisors  
From: John Kopchik, Director, Conservation & Development Department  
Date: September 22, 2020

Subject: ADOPT Climate Emergency Resolution, as Recommended by the Sustainability Committee

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**RECOMMENDATION(S):**

ADOPT Climate Emergency Resolution No. 2020/256, as recommended by the Sustainability Committee.

**FISCAL IMPACT:**

No fiscal impact. As written, the tasks directed in the resolution could be accomplished with existing staff.

**BACKGROUND:**

At the October 21, 2019 Sustainability Commission meeting, the Commission recommended that the Board of Supervisors adopt a Climate Emergency Resolution (Resolution). At its November 19, 2019 meeting, the Board referred this issue to the Sustainability Committee. On December 9, 2019, the Sustainability Committee discussed options for structuring a Resolution. The Committee directed the Sustainability Coordinator to develop a draft Resolution in consultation with the Sustainability Commission and come back to the Committee.

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APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

Contact: Jody London, Sustainability  
Coordinator, 925-674-7871

By: June McHuen, Deputy

cc:

## BACKGROUND: (CONT'D)

The Sustainability Commission at its February 24, 2020 meeting considered potential measures that could be included in the Resolution. Staff revised the Resolution to reflect input from the Sustainability Commission as well as the new realities of the COVID-19 pandemic and presented it to the Sustainability Committee at its May 29, 2020 meeting. The Committee on May 29 directed staff to revise the Resolution in certain areas and further consult with the Sustainability Commission before bringing the resolution back for further consideration.

The Sustainability Commission reviewed the revised draft Resolution at its June 22, 2020 meeting. The Commission unanimously voted to recommend adoption of the Resolution with the inclusion of a number of items. The Sustainability Committee at its July 27, 2020 meeting reviewed the draft Resolution and the recommendations from the Sustainability Commission. The Committee also received public comment from a number of County residents and community organizations.

The Sustainability Committee recommends the Board of Supervisors adopt the attached Climate Emergency Resolution. The Resolution takes the following actions:

Declares a climate emergency that threatens the long-term economic and social well-being, health, safety, and security of the County, and recognizes urgent action by all levels of government is needed to immediately address this climate emergency.

Declares that the County supports the State of California's recent goals to reduce greenhouse gases by 40% below 1990 levels by 2030 (SB 32, 2016); achieve net carbon neutrality by 2045 (Executive Order B-55-18, 2018); and provide 100% of the State's electricity from clean energy sources by 2045 (SB 100, 2018), and intends to take actions to help achieve these goals.

Establishes an interdepartmental task force of all Department heads, or their senior deputies, that will focus on urgently implementing the County's Climate Action Plan – as currently adopted and as it may be amended by the Board – and identifying additional actions, policies, and programs the County can undertake to reduce and adapt to the impacts of a changing climate. This task force should report to the Board of Supervisors through the County Sustainability Commission and the Board's Sustainability Committee on a semi-annual basis starting in March 2021. Reports to the Board of Supervisors shall be discussion items for the Board.

Resolves that the Board of Supervisors and the County Sustainability Commission seek input from the community (with a special focus on highly impacted Environmental Justice communities), workers (especially impacted workers), and business/industry to help the County anticipate and plan for an economy that is less dependent on fossil fuels, helps plan for a "Just Transition" away from a fossil-fuel dependent economy, and considers how the County's recovery from the COVID-19 pandemic can incorporate the County's climate goals. As the State of California adopts policies and goals for reducing pollution and addressing climate change, the County will develop strategies to improve the health, safety, infrastructure, job opportunities and revenue opportunities during the shift to a zero emission economy. The County will provide special attention to helping develop new opportunities for frontline and impacted communities that will realize economic, health and other benefits. The Commission will include this topic in its ongoing advice to the Board of Supervisors.

Resolves that Contra Costa County should develop policies to require all new construction to be fully electric through the adoption of reach building codes.

Resolves that Contra Costa County will prioritize the implementation of its Climate Action Plan in order

to achieve greenhouse gas reductions as soon as possible and will consider equity and social justice issues in the implementation of the plan.

Resolves that health, socio-economic, and racial equity considerations should be included in policymaking and climate solutions at all levels and across all sectors as the consequences of climate change have significant impacts on all County residents, especially the young, the elderly, low-income or communities of color, and other vulnerable populations.

Resolves that the General Plan and Climate Action Plan as updated should include land use policies and actions that will facilitate greater availability of fresh food to County residents by creating more opportunities for community gardens, urban gardens, farmers markets, and related policies and programs.

Calls for all Contra Costa cities and agencies, as well as regional agencies, to also approve a Climate Emergency Declaration to create a unified Countywide voice around climate change and strengthen the call for state and federal actions and funds to address the economic, social, public health, and national security threats posed by the climate crisis.

The written comments received to date on the Climate Emergency Resolution are attached. This includes written comments received around the June 22, 2020 Sustainability Commission meeting and the July 27, 2020 Sustainability Committee meeting.

#### CONSEQUENCE OF NEGATIVE ACTION:

Failure to adopt the Climate Emergency Resolution means the Board of Supervisors would forego an opportunity to provide leadership and take action to address the climate crisis.

#### CLERK'S ADDENDUM

**Speakers: Vanessa Cleric; Elsie Mills, Concord; Liz Ritchey; Fred Bihale; Kevin Pang, Danville; no name given; Amanda; Bob Haas, Rossmoor; Ganisterer, East Richmond; Amanda Casey; no name given; Lisa Jackson, Walnut Creek; Shelly Crock, Lafayette; Melvin Willis, Richmond City Councilmember; Colleen Knoll Amanda; Sharon; El Cerrito resident; Floyd Andrews, Richmond; Janet; Kelly Ann Bryant; Karen Perkins, Walnut Creek; no name given; Jackie Garcia, Lafayette; Ogie Strogatz, unincorporated area; Linda de Chambeau; Tai Kwok.**

#### AGENDA ATTACHMENTS

Resolution 2020/256

Climate Emergency Resolution – Redline from June 22, 2020 Version

Written Correspondence Received for June 22, 2020 Sustainability Commission Meeting

Written Correspondence Received for July 27, 2020 Sustainability Committee Meeting

#### MINUTES ATTACHMENTS

Signed Resolution No. 2020/256

Correspondence Received

**THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA**  
**and for Special Districts, Agencies and Authorities Governed by the Board**

Adopted this Resolution on 09/22/2020 by the following vote:

		<b>John Gioia</b>
		<b>Candace Andersen</b>
<b>AYE:</b>	<input type="text" value="5"/>	<b>Diane Burgis</b>
		<b>Karen Mitchoff</b>
		<b>Federal D. Glover</b>
<b>NO:</b>	<input type="text"/>	
<b>ABSENT:</b>	<input type="text"/>	
<b>ABSTAIN:</b>	<input type="text"/>	
<b>RECUSE:</b>	<input type="text"/>	



**Resolution No. 2020/256**

ENDORING THE DECLARATION OF A CLIMATE EMERGENCY IN CONTRA COSTA COUNTY THAT DEMANDS ACCELERATED ACTIONS ON THE CLIMATE CRISIS AND CALLS ON LOCAL AND REGIONAL PARTNERS TO JOIN TOGETHER TO ADDRESS CLIMATE CHANGE

**RESOLVED**, by the Board of Supervisors of the County of Contra Costa, State of California, that:

**WHEREAS**, according to the Intergovernmental Panel on Climate Change (IPCC), increasing emissions of greenhouse gases (GHG) will cause global temperatures to rise 1.5 degrees Celsius by as early as 2030; and

**WHEREAS**, on June 24, 2019, more than 70 health organizations including the American Medical Association and the American Public Health Association declared climate change to be a health emergency and issued a call to action for government, business, and civil society leaders to recognize climate change as a health emergency; and

**WHEREAS**, California's Governor Gavin Newsom in Executive Order N-19-19 has committed state agencies to immediate and bold actions that reduce greenhouse gas emissions, curb the impacts from climate change, and develop a Climate Investment Framework; and

**WHEREAS**, the State of California since 2005 has established the following climate goals and targets:

- 80% reduction in greenhouse gases below 1990 levels by 2050 (Executive Order S-03-05, 2005)
- 1990 greenhouse gas emission levels by 2020 (AB 32, 2006)
- 40% reduction in greenhouse gases below 1990 levels by 2030 (SB 32, 2016)
- Net carbon neutrality by 2045 (Executive Order B-55-18, 2018)
- Provide 100% of the State's electricity from clean energy sources by 2045 (SB 100, 2018); and

**WHEREAS**, the State of California has recognized the need for careful study and planning to decrease demand and supply of fossil fuels, while managing the decline in a way that is economically responsible and sustainable; and

**WHEREAS**, for Contra Costa County, rising global temperatures will cause sea levels to rise (up to six feet or more by year 2100 under certain scenarios), contribute to increasingly extreme weather, including intense rainfall, storms, and heat events, and heightened risk of wildfires; and

**WHEREAS**, the consequences of climate change pose risks to life, safety and critical infrastructure in Contra Costa County and throughout the world, and threaten physical, social, and economic well-being; and

**WHEREAS**, climate change impacts in Contra Costa County will be most acutely felt by children, seniors, low income populations, communities of color, and residents with unstable economic or housing situations; and

**WHEREAS**, the Vulnerability Assessment developed for the Envision Contra Costa 2040 General Plan indicates that the most vulnerable County residents, including households in poverty, low-income households, and persons experiencing homelessness, are more likely to be severely impacted by a changing climate, including flooding, wildfires, extreme heat, and poor air quality; and



**WHEREAS**, the Vulnerability Assessment also indicates that there is severe vulnerability in the County’s agriculture sector, industrial and manufacturing centers, including oil refineries, rangelands, and the Delta due to climate impacts, as well as infrastructure including major roads and highways, flood control, parks and open space, railroads and BART, and wastewater treatment plants and infrastructure; and

**WHEREAS**, fossil fuels are recognized as a primary contributor to the rapidly changing climate; and

**WHEREAS**, seven of the ten largest industrial pollution sources in the San Francisco Bay Area are located in Contra Costa County; and

**WHEREAS**, twenty-five census tracts in Contra Costa County are recognized by the State of California as being in the top twenty-five percent of “disadvantaged communities” or “communities of concern” that are disproportionately burdened by sources of pollution; and

**WHEREAS**, rates of asthma, obesity, and breast, colorectal, lung, and prostate cancer are higher in Contra Costa County than in the rest of California, and in some cases, the nation, particularly in census tracts that are located near large industrial facilities; and

**WHEREAS**, the world is facing an unprecedented crisis with the COVID-19 pandemic, which has swept across the world causing global human tragedy and an historical economic setback, forcing a rebuild of our economy and a need to introduce the necessary recovery plans to restore sustainable progress and prosperity to the citizens of Contra Costa; and

**WHEREAS**, long-term exposure to air pollution increases vulnerability to experiencing the most severe COVID-19 outcomes, further burdening the disproportionately affected communities that traditionally carry the brunt of the negative impacts of climate change, particularly in census tracts recognized as disadvantaged communities; and

**WHEREAS**, the Bay Area Air Quality Management District on June 17, 2020, adopted a *Resolution Condemning Racism and Injustice and Affirming Commitment to Diversity, Equity, Access and Inclusion*, which among other things notes that “studies have shown that racial discrimination takes a tremendous toll on the physical and mental health of Black people in the U.S. Racial discrimination is now recognized as a public health crisis,” “These higher death rates are not a random coincidence; but, instead, is the result of systemic racism and a consequential lack of social, economic and political opportunities,” and “community proximity to sources of air pollution is one of these systemic issues,” and resolves “We affirm our commitment to fighting for racial justice and changing the systems that continue to perpetuate racial disparities, especially as they contribute to disproportionate exposure to hazardous air pollution. We vow to use our voice and resources as an ally to the Black community to affect the meaningful and measurable changes that are so urgently needed in the Bay Area;” and

**WHEREAS**, the COVID-19 crisis could mark a turning point in progress on climate change and there will be a need for a resilient recovery after the pandemic, and Contra Costa County’s capacity to act depends largely on our ability to work together in solidarity to build the bridge between fighting COVID-19, biodiversity loss, and climate change; and

**WHEREAS**, the County has taken a number of actions to address climate change, some of which include: adopting and implementing the 2015 Climate Action Plan; selecting MCE as the electricity provider for unincorporated Contra Costa County, in large part because of the higher clean energy content MCE offers; investing in clean energy, efficient building technologies, and alternative fuels for County operations; providing opportunities to generate more clean energy in Contra Costa County; developing an electric vehicle readiness blueprint; providing energy efficiency programs to County residents; increasing composting and recycling in County facilities; and

**WHEREAS**, the County is in the process of updating its General Plan, Climate Action Plan, and zoning codes, which provide an opportunity to follow the State’s guidance outlined in the California Air Resources Board 2017 Climate Change Scoping Plan by taking action to strengthen policies for the unincorporated County and County operations to better reflect state policies on land use, transportation, energy, natural and working lands, agriculture, conservation, waste management, short-lived climate pollutants, and the built environment; and

**WHEREAS**, the Climate Action Plan includes goals and specific actions the County will take to address the climate emergency, including future policy direction; and

**WHEREAS**, County residents in 2019 and 2020 community meetings related to the ongoing update of the County’s Climate Action Plan and General Plan have expressed interest in having better access to locally grown fresh food; and

**WHEREAS**, behavioral changes are important in achieving climate goals and creating communities that are safer and healthier; and

**WHEREAS**, the current pace of climate actions may still fall short of reducing the projected harm to people and places and

accelerated actions need to be taken to reduce our GHG emissions and implement solutions to prepare and protect our communities; and

**WHEREAS**, by declaring a climate emergency, Contra Costa County will join the over 1,000 national, international and local jurisdictions, including many in the Bay Area, that have made similar declarations that commit to reducing GHG emissions and planning for climate change.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors of the County of Contra Costa declares a climate emergency that threatens the long-term economic and social well-being, health, safety, and security of the County, and that urgent action by all levels of government is needed to immediately address this climate emergency.

**BE IT FURTHER RESOLVED** that Contra Costa County supports the State of California’s recent goals to reduce greenhouse gases by 40% below 1990 levels by 2030 (SB 32, 2016); achieve net carbon neutrality by 2045 (Executive Order B-55-18, 2018); and provide 100% of the State’s electricity from clean energy sources by 2045 (SB 100, 2018); and intends to take actions to help achieve these goals.

**BE IT FURTHER RESOLVED** that Contra Costa County establish an interdepartmental task force of all Department heads, or their senior deputies, that will focus on urgently implementing the County’s Climate Action Plan – as currently adopted and as it may be amended by the Board – and identifying additional actions, policies, and programs the County can undertake to reduce and adapt to the impacts of a changing climate. This task force should report to the Board of Supervisors through the County Sustainability Commission and the Board’s Sustainability Committee on a semi-annual basis starting in March 2021. Reports to the Board of Supervisors shall be discussion items for the Board.

**BE IT FURTHER RESOLVED** that the Board of Supervisors and the County Sustainability Commission seek input from the community (with a special focus on highly impacted Environmental Justice communities), workers (especially impacted workers), and business/industry to help the County anticipate and plan for an economy that is less dependent on fossil fuels, helps plan for a “Just Transition” away from a fossil-fuel dependent economy, and considers how the County’s recovery from the COVID-19 pandemic can incorporate the County’s climate goals. As the State of California adopts policies and goals for reducing pollution and addressing climate change, the County will develop strategies to improve the health, safety, infrastructure, job opportunities and revenue opportunities during the shift to a zero emission economy. The County will provide special attention to helping develop new opportunities for frontline and impacted communities that realize economic, health and other benefits. The Commission will include this topic in its ongoing advice to the Board of Supervisors.

**BE IT FURTHER RESOLVED** that Contra Costa County should develop policies to require all new construction to be fully electric through the adoption of reach building codes.

**BE IT FURTHER RESOLVED** that Contra Costa County will prioritize the implementation of its Climate Action Plan in order to achieve greenhouse gas reductions as soon as possible and will consider equity and social justice issues in the implementation of the plan.

**BE IT FURTHER RESOLVED** that health, socio-economic, and racial equity considerations should be included in policymaking and climate solutions at all levels and across all sectors as the consequences of climate change have significant impacts on all County residents, especially the young, the elderly, low-income or communities of color, and other vulnerable populations.

**BE IT FURTHER RESOLVED** that the General Plan and Climate Action Plan as updated should include land use policies and actions that will facilitate greater availability of fresh food to County residents by creating more opportunities for community gardens, urban gardens, farmers markets, and related policies and programs.

**BE IT FURTHER RESOLVED** that the Board of Supervisors of Contra Costa County calls for all Contra Costa cities and agencies, as well as regional agencies, to also approve a Climate Emergency Declaration to create a unified Countywide voice around climate change and strengthen the call for state and federal actions and funds to address the economic, social, public health, and national security threats posed by the climate crisis.

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: Jody London, Sustainability Coordinator,  
925-674-7871

ATTESTED: September 22, 2020

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

By: June McHuen, Deputy

cc:

**THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA**  
**and for Special Districts, Agencies and Authorities Governed by the Board**

Adopted this Resolution on 09/22/2020 by the following vote:

		<b>John Gioia</b>
		<b>Candace Andersen</b>
<b>AYE:</b>	<input type="text" value="5"/>	<b>Diane Burgis</b>
		<b>Karen Mitchoff</b>
		<b>Federal D. Glover</b>
<b>NO:</b>	<input type="text" value="/"/>	
<b>ABSENT:</b>	<input type="text" value="/"/>	
<b>ABSTAIN:</b>	<input type="text" value="/"/>	
<b>RECUSE:</b>	<input type="text" value="/"/>	



**Resolution No. 2020/256**

ENDORISING THE DECLARATION OF A CLIMATE EMERGENCY IN CONTRA COSTA COUNTY THAT DEMANDS ACCELERATED ACTIONS ON THE CLIMATE CRISIS AND CALLS ON LOCAL AND REGIONAL PARTNERS TO JOIN TOGETHER TO ADDRESS CLIMATE CHANGE

**RESOLVED**, by the Board of Supervisors of the County of Contra Costa, State of California, that:

**WHEREAS**, according to the Intergovernmental Panel on Climate Change (IPCC), increasing emissions of greenhouse gases (GHG) will cause global temperatures to rise 1.5 degrees Celsius by as early as 2030; and

**WHEREAS**, on June 24, 2019, more than 70 health organizations including the American Medical Association and the American Public Health Association declared climate change to be a health emergency and issued a call to action for government, business, and civil society leaders to recognize climate change as a health emergency; and

**WHEREAS**, California's Governor Gavin Newsom in Executive Order N-19-19 has committed state agencies to immediate and bold actions that reduce greenhouse gas emissions, curb the impacts from climate change, and develop a Climate Investment Framework; and

**WHEREAS**, the State of California since 2005 has established the following climate goals and targets:

- 80% reduction in greenhouse gases below 1990 levels by 2050 (Executive Order S-03-05, 2005)
- 1990 greenhouse gas emission levels by 2020 (AB 32, 2006)
- 40% reduction in greenhouse gases below 1990 levels by 2030 (SB 32, 2016)
- Net carbon neutrality by 2045 (Executive Order B-55-18, 2018)
- Provide 100% of the State's electricity from clean energy sources by 2045 (SB 100, 2018); and

**WHEREAS**, the State of California has recognized the need for careful study and planning to decrease demand and supply of fossil fuels, while managing the decline in a way that is economically responsible and sustainable; and

**WHEREAS**, for Contra Costa County, rising global temperatures will cause sea levels to rise (up to six feet or more by year 2100 under certain scenarios), contribute to increasingly extreme weather, including intense rainfall, storms, and heat events, and heightened risk of wildfires; and

**WHEREAS**, the consequences of climate change pose risks to life, safety and critical infrastructure in Contra Costa County and throughout the world, and threaten physical, social, and economic well-being; and

**WHEREAS**, climate change impacts in Contra Costa County will be most acutely felt by children, seniors, low income populations, communities of color, and residents with unstable economic or housing situations; and

**WHEREAS**, the Vulnerability Assessment developed for the Envision Contra Costa 2040 General Plan indicates that the most vulnerable County residents, including households in poverty, low-income households, and persons experiencing homelessness, are more likely to be severely impacted by a changing climate, including flooding, wildfires, extreme heat, and poor air quality; and

**WHEREAS**, the Vulnerability Assessment also indicates that there is severe vulnerability in the County's agriculture sector, industrial and manufacturing centers, including oil refineries, rangelands, and the Delta due to climate impacts, as well as infrastructure including major roads and highways, flood control, parks and open space, railroads and BART, and wastewater treatment plants and infrastructure; and

**WHEREAS**, fossil fuels are recognized as a primary contributor to the rapidly changing climate; and

**WHEREAS**, seven of the ten largest industrial pollution sources in the San Francisco Bay Area are located in Contra Costa County; and

**WHEREAS**, twenty-five census tracts in Contra Costa County are recognized by the State of California as being in the top twenty-five percent of "disadvantaged communities" or "communities of concern" that are disproportionately burdened by sources of pollution; and

**WHEREAS**, rates of asthma, obesity, and breast, colorectal, lung, and prostate cancer are higher in Contra Costa County than in the rest of California, and in some cases, the nation, particularly in census tracts that are located near large industrial facilities; and

**WHEREAS**, the world is facing an unprecedented crisis with the COVID-19 pandemic, which has swept across the world causing global human tragedy and an historical economic setback, forcing a rebuild of our economy and a need to introduce the necessary recovery plans to restore sustainable progress and prosperity to the citizens of Contra Costa; and

**WHEREAS**, long-term exposure to air pollution increases vulnerability to experiencing the most severe COVID-19 outcomes, further burdening the disproportionately affected communities that traditionally carry the brunt of the negative impacts of climate change, particularly in census tracts recognized as disadvantaged communities; and

**WHEREAS**, the Bay Area Air Quality Management District on June 17, 2020, adopted a *Resolution Condemning Racism and Injustice and Affirming Commitment to Diversity, Equity, Access and Inclusion*, which among other things notes that "studies have shown that racial discrimination takes a tremendous toll on the physical and mental health of Black people in the U.S. Racial discrimination is now recognized as a public health crisis," "These higher death rates are not a random coincidence; but, instead, is the result of systemic racism and a consequential lack of social, economic and political opportunities," and "community proximity to sources of air pollution is one of these systemic issues," and resolves "We affirm our commitment to fighting for racial justice and changing the systems that continue to perpetuate racial disparities, especially as they contribute to disproportionate exposure to hazardous air pollution. We vow to use our voice and resources as an ally to the Black community to affect the meaningful and measurable changes that are so urgently needed in the Bay Area;" and

**WHEREAS**, the COVID-19 crisis could mark a turning point in progress on climate change and there will be a need for a resilient recovery after the pandemic, and Contra Costa County's capacity to act depends largely on our ability to work together in solidarity to build the bridge between fighting COVID-19, biodiversity loss, and climate change; and

**WHEREAS**, the County has taken a number of actions to address climate change, some of which include: adopting and implementing the 2015 Climate Action Plan; selecting MCE as the electricity provider for unincorporated Contra Costa County, in large part because of the higher clean energy content MCE offers; investing in clean energy, efficient building technologies, and alternative fuels for County operations; providing opportunities to generate more clean energy in Contra Costa County; developing an electric vehicle readiness blueprint; providing energy efficiency programs to County residents; increasing composting and recycling in County facilities; and

**WHEREAS**, the County is in the process of updating its General Plan, Climate Action Plan, and zoning codes, which provide an opportunity to follow the State's guidance outlined in the California Air Resources Board 2017 Climate Change Scoping Plan by taking action to strengthen policies for the unincorporated County and County operations to better reflect state policies on land use, transportation, energy, natural and working lands, agriculture, conservation, waste management, short-lived climate pollutants, and the built environment; and

**WHEREAS**, the Climate Action Plan includes goals and specific actions the County will take to address the climate emergency, including future policy direction; and

**WHEREAS**, County residents in 2019 and 2020 community meetings related to the ongoing update of the County's Climate Action Plan and General Plan have expressed interest in having better access to locally grown fresh food; and

**WHEREAS**, behavioral changes are important in achieving climate goals and creating communities that are safer and healthier; and

**WHEREAS**, the current pace of climate actions may still fall short of reducing the projected harm to people and places and

accelerated actions need to be taken to reduce our GHG emissions and implement solutions to prepare and protect our communities; and

**WHEREAS**, by declaring a climate emergency, Contra Costa County will join the over 1,000 national, international and local jurisdictions, including many in the Bay Area, that have made similar declarations that commit to reducing GHG emissions and planning for climate change.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors of the County of Contra Costa declares a climate emergency that threatens the long-term economic and social well-being, health, safety, and security of the County, and that urgent action by all levels of government is needed to immediately address this climate emergency.

**BE IT FURTHER RESOLVED** that Contra Costa County supports the State of California's recent goals to reduce greenhouse gases by 40% below 1990 levels by 2030 (SB 32, 2016); achieve net carbon neutrality by 2045 (Executive Order B-55-18, 2018); and provide 100% of the State's electricity from clean energy sources by 2045 (SB 100, 2018); and intends to take actions to help achieve these goals.

**BE IT FURTHER RESOLVED** that Contra Costa County establish an interdepartmental task force of all Department heads, or their senior deputies, that will focus on urgently implementing the County's Climate Action Plan – as currently adopted and as it may be amended by the Board – and identifying additional actions, policies, and programs the County can undertake to reduce and adapt to the impacts of a changing climate. This task force should report to the Board of Supervisors through the County Sustainability Commission and the Board's Sustainability Committee on a semi-annual basis starting in March 2021. Reports to the Board of Supervisors shall be discussion items for the Board.

**BE IT FURTHER RESOLVED** that the Board of Supervisors and the County Sustainability Commission seek input from the community (with a special focus on highly impacted Environmental Justice communities), workers (especially impacted workers), and business/industry to help the County anticipate and plan for an economy that is less dependent on fossil fuels, helps plan for a "Just Transition" away from a fossil-fuel dependent economy, and considers how the County's recovery from the COVID-19 pandemic can incorporate the County's climate goals. As the State of California adopts policies and goals for reducing pollution and addressing climate change, the County will develop strategies to improve the health, safety, infrastructure, job opportunities and revenue opportunities during the shift to a zero emission economy. The County will provide special attention to helping develop new opportunities for frontline and impacted communities that realize economic, health and other benefits. The Commission will include this topic in its ongoing advice to the Board of Supervisors.

**BE IT FURTHER RESOLVED** that Contra Costa County should develop policies to require all new construction to be fully electric through the adoption of reach building codes.

**BE IT FURTHER RESOLVED** that Contra Costa County will prioritize the implementation of its Climate Action Plan in order to achieve greenhouse gas reductions as soon as possible and will consider equity and social justice issues in the implementation of the plan.

**BE IT FURTHER RESOLVED** that health, socio-economic, and racial equity considerations should be included in policymaking and climate solutions at all levels and across all sectors as the consequences of climate change have significant impacts on all County residents, especially the young, the elderly, low-income or communities of color, and other vulnerable populations.

**BE IT FURTHER RESOLVED** that the General Plan and Climate Action Plan as updated should include land use policies and actions that will facilitate greater availability of fresh food to County residents by creating more opportunities for community gardens, urban gardens, farmers markets, and related policies and programs.

**BE IT FURTHER RESOLVED** that the Board of Supervisors of Contra Costa County calls for all Contra Costa cities and agencies, as well as regional agencies, to also approve a Climate Emergency Declaration to create a unified Countywide voice around climate change and strengthen the call for state and federal actions and funds to address the economic, social, public health, and national security threats posed by the climate crisis.

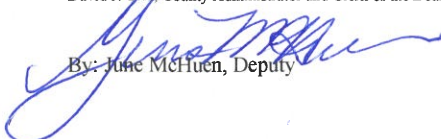
I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

Contact: Jody London, Sustainability Coordinator,  
925-674-7871

ATTESTED: September 22, 2020

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

By: June McHuen, Deputy



RESOLUTION NO. ~~2020/256~~  
CONTRA COSTA COUNTY, STATE OF CALIFORNIA

\* \* \* \* \*

RESOLUTION ENDORSING THE DECLARATION OF A CLIMATE EMERGENCY IN  
CONTRA COSTA COUNTY THAT DEMANDS ACCELERATED ACTIONS ON THE  
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- Provide 100% of the State's electricity from clean energy sources by 2045 (SB 100, 2018)

~~goals to reduce greenhouse gas emissions 40 percent below 1990 levels by 2030, provide 100  
percent of the State's electricity from clean energy sources by 2045, reduce methane emissions~~

~~and hydrofluorocarbon gases by 40 percent, and add five million zero emission vehicles to California's roads by 2030 and these goals imply a zero emissions target date of around 2060; and~~

**WHEREAS**, the State of California has recognized the need for careful study and planning to decrease demand and supply of fossil fuels, while managing the decline in a way that is economically responsible and sustainable; and

**WHEREAS**, for Contra Costa County, rising global temperatures will cause sea levels to rise (up to six feet or more by year 2100 under certain scenarios), contribute to increasingly extreme weather, including intense rainfall, storms, and heat events, and heightened risk of wildfires; and

**WHEREAS**, the consequences of climate change pose risks to life, safety and critical infrastructure in Contra Costa County and throughout the world, and threaten physical, social, and economic well-being; and

**WHEREAS**, climate change impacts in Contra Costa County will be most acutely felt by children, seniors, low income populations, communities of color, and residents with unstable economic or housing situations; and

**WHEREAS**, the Vulnerability Assessment developed for the Envision Contra Costa 2040 General Plan indicates that the most vulnerable County residents, including households in poverty, low-income households, and persons experiencing homelessness, are more likely to be severely impacted by a changing climate, including flooding, wildfires, extreme heat, and poor air quality; and

**WHEREAS**, the Vulnerability Assessment also indicates that there is severe vulnerability in the County's agriculture sector, industrial and manufacturing centers, including oil refineries, rangelands, and the Delta due to climate impacts, as well as infrastructure including major roads and highways, flood control, parks and open space, railroads and BART, and wastewater treatment plants and infrastructure; and

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capacity to act depends largely on our ability to work together in solidarity to build the bridge between fighting COVID-19, biodiversity loss, and climate change; and

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**WHEREAS**, the Climate Action Plan includes goals and specific actions the County will take to address the climate emergency, including future policy direction; and

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**BE IT FURTHER RESOLVED** that Contra Costa County establish an interdepartmental task force of all Department heads, or their senior deputies, that will focus on urgently implementing the County's Climate Action Plan – as currently adopted and as it may be amended by the Board – and identifying additional actions, policies, and programs the County can undertake to reduce and adapt to the impacts of a changing climate. This task force should report to the Board of Supervisors through the ~~County Sustainability Commission and the Board's Sustainability Committee~~ ~~and to the County Sustainability Commission~~ on a bi-annual basis starting in ~~November~~ ~~March~~ 2021~~0~~. ~~Reports to the Board of Supervisors shall be discussion items for the Board.~~

**BE IT FURTHER RESOLVED** that the ~~Board of Supervisors and the~~ County Sustainability Commission seek input from the community (with a special focus on highly impacted Environmental Justice communities), ~~workers (especially impacted workers), and business/industry~~ to help the County anticipate and plan for an economy that is less dependent on fossil fuels, helps plan for a “Just Transition” away from a fossil-fuel dependent economy, and considers how the County's recovery from the COVID-19 pandemic can incorporate the County's climate goals. As the State of California adopts policies and goals for reducing pollution and addressing climate change, the County will develop strategies to improve the health, safety, infrastructure, job opportunities and revenue opportunities during the shift to a zero emission economy. -The County will provide special attention to helping develop new

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**BE IT FURTHER RESOLVED** that health, socio-economic, and racial equity considerations must be included in policymaking and climate solutions at all levels and across all sectors as the consequences of climate change have significant impacts on all County residents, especially the young, the elderly, low-income or communities of color, and other vulnerable populations.

**BE IT FURTHER RESOLVED** that the General Plan and Climate Action Plan as updated should include land use policies and actions that will facilitate greater availability of fresh food to County residents by creating more opportunities for community gardens, urban gardens, farmers markets, and related policies and programs.

**BE IT FURTHER RESOLVED** that the Board of Supervisors of Contra Costa County calls for all Contra Costa cities and agencies, as well as regional agencies, to also approve a Climate Emergency Declaration to create a unified Countywide voice around climate change and strengthen the call for state and federal actions and funds to address the economic, social, public health, and national security threats posed by the climate crisis.

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**From:** [DAVE CASEY](#)  
**To:** [John Gioia](#); [District5](#); [Jody London](#)  
**Cc:** [Amanda C-Cell](#)  
**Subject:** Contra Costa Climate Emergency Resolution  
**Date:** Monday, June 15, 2020 1:51:05 PM  
**Attachments:** [DRAFT Climate Emergency Resolution\\_Clean.docx](#)  
[DRAFT Climate Emergency Resolution\\_trackchanges.docx](#)

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Dear Supervisor Gioia, Supervisor Glover, and Ms London,

Thank you for the opportunity to speak on Contra Costa County's proposed Climate Emergency Resolution (CER) at the May 29th Sustainability Committee meeting and thank you for providing an opportunity for residents of Contra Costa to review and make suggestions for the CER.

A group of residents from Sustainable Rossmoor have been reviewing the draft CER and have made several revisions and additions to hopefully improve the effectiveness of the Resolution in the face of the of the looming climate emergency and California's commitment to reduce greenhouse gases by 2030.

Attached are two version of the Committee's draft CER with Sustainable Rossmoor's revisions. One copy has revisions and additions as "Tracked Changes" and the other copy is a "Clean" version with all tracked changes accepted.

Please let us know if you have any questions or how our team can assist in this process.

Thank you  
Dave Casey, for Sustainable Rossmoor  
[Planet Friendly Eating](#)  
[Cleaner Contra Costa Challenge](#)

RESOLUTION NO. \_\_\_\_\_  
CONTRA COSTA COUNTY, STATE OF CALIFORNIA

\* \* \* \* \*

RESOLUTION ENDORSING THE DECLARATION OF A CLIMATE EMERGENCY IN  
CONTRA COSTA COUNTY THAT DEMANDS ACCELERATED ACTIONS ON THE  
CLIMATE CRISIS AND CALLS ON LOCAL AND REGIONAL PARTNERS TO JOIN  
TOGETHER TO ADDRESS CLIMATE CHANGE.

---

**RESOLVED**, by the Board of Supervisors of the County of Contra Costa, State of California,  
that:

**WHEREAS**, ~~according to the 2018 Intergovernmental Panel on Climate Change (IPCC) Special Report on Global Warming of 1.5 Degrees C(1) describes a 20 year window (until 2038) to reach carbon neutrality in order to have a “two-thirds chance of limiting warming to 1.5 Degrees C;” which is the consensus opinion of the world’s leading climate scientists and has been reviewed and approved by over 100 nations prior to publication; and, increasing emissions of greenhouse gases (GHG) will cause global temperatures to rise 1.5 degrees Celsius by as early as 2030; and~~

**WHEREAS**, according to the 2018 IPCC Report, increasing emissions of greenhouse gases (GHG) will cause global temperatures to rise 1.5 degrees Celsius by as early as 2030; and

**WHEREAS**, on June 24, 2019, more than 70 health organizations including the American Medical Association and the American Public Health Association declared climate change to be a health emergency and issued a call to action for government, business, and civil society leaders to recognize climate change as a health emergency; and

**WHEREAS**, California’s Governor Gavin Newsom in Executive Order N-19-19 has committed state agencies to immediate and bold actions that reduce greenhouse gas emissions, curb the impacts from climate change, and develop a Climate Investment Framework; and

**WHEREAS**, the State of California has established goals to reduce greenhouse gas emissions 40 percent below 1990 levels by 2030, provide 100 percent of the State’s electricity from clean energy sources by 2045, reduce methane emissions and hydrofluorocarbon gases by 40 percent, and add five million zero-emission vehicles to California’s roads by 2030 and these goals imply a zero emissions target date of around 2060; and

**WHEREAS**, the State of California has recognized the need for careful study and

planning to decrease demand and supply of fossil fuels, while managing the decline in a way that is economically responsible and sustainable; and

**WHEREAS**, for Contra Costa County, rising global temperatures will cause sea levels to rise (up to six feet or more by year 2100 under certain scenarios), contribute to increasingly extreme weather, including intense rainfall, storms, and heat events, and heightened risk of wildfires; and

**WHEREAS**, the consequences of climate change pose risks to life, safety and critical infrastructure in Contra Costa County and throughout the world, and threaten physical, social, and economic well-being; and

**WHEREAS**, climate change impacts in Contra Costa County will be most acutely felt by children, seniors, low income populations, communities of color, and residents with unstable economic or housing situations; and

**WHEREAS**, the Vulnerability Assessment developed for the Envision Contra Costa 2040 General Plan indicates that the most vulnerable County residents, including households in poverty, low-income households, and persons experiencing homelessness, are more likely to be severely impacted by a changing climate, including flooding, wildfires, extreme heat, and poor air quality; and

**WHEREAS**, the Vulnerability Assessment also indicates that there is severe vulnerability in the County's agriculture sector, industrial and manufacturing centers, including oil refineries, rangelands, and the Delta due to climate impacts, as well as infrastructure including major roads and highways, flood control, parks and open space, railroads and BART, and wastewater treatment plants and infrastructure; and

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**WHEREAS**, twenty-five census tracts in Contra Costa County are recognized by the State of California as being in the top twenty-five percent of "disadvantaged" or "frontline" communities that are disproportionately burdened by sources of pollution; and

**WHEREAS**, rates of asthma, obesity, and breast, colorectal, lung, and prostate cancer are higher in Contra Costa County than in the rest of California, and in some cases, the nation, particularly in census tracts that are located near large industrial facilities; and

**WHEREAS**, the world is facing an unprecedented crisis with the COVID-19 pandemic, which has swept across the world causing global human tragedy and an historical economic setback, forcing a rebuild of our economy and a need to introduce the necessary recovery plans to restore sustainable progress and prosperity to the citizens of Contra Costa; and

**WHEREAS**, long-term exposure to air pollution increases vulnerability to experiencing the most severe COVID-19 outcomes, further burdening the disproportionately affected communities that traditionally carry the brunt of the negative impacts of climate change, particularly in census tracts recognized as disadvantaged communities; and

**WHEREAS**, PBF Energy, which purchased the former Shell Martinez refinery in February 2020, on March 30, 2020, during a period of rapid decrease in fossil fuel usage announced that it plans to sell two hydrogen plants at the Martinez facility “as part of a strategic plan for PBF to navigate current extraordinary and volatile markets,” creating economic uncertainty for Contra Costa County; and

**WHEREAS**, the COVID-19 crisis could mark a turning point in progress on climate change and there will be a need for a resilient recovery after the pandemic, and Contra Costa County’s capacity to act depends largely on our ability to work together in solidarity to build the bridge between fighting Covid-19, biodiversity loss, and climate change; and

**WHEREAS**, the County has taken a number of actions to address climate change, some of which include: adopting and implementing the 2015 Climate Action Plan; selecting MCE as the electricity provider for unincorporated Contra Costa County, in large part because of the higher clean energy content MCE offers; investing in clean energy, efficient building technologies, and alternative fuels for County operations; providing opportunities to generate more clean energy in Contra Costa County; developing an electric vehicle readiness blueprint; providing energy efficiency programs to County residents; increasing composting and recycling in County facilities; and

**WHEREAS**, per a June 10, 2020, McKinsey & Company report, government spending on renewables creates fifty more jobs per \$10 million invested than spending on fossil fuels; and

**WHEREAS**, the current pace of climate actions may still fall short of reducing the projected harm to people and places and accelerated actions need to be taken to reduce our GHG emissions and implement solutions to prepare and protect our communities; and

**WHEREAS**, by declaring a climate emergency, Contra Costa County will join the over 1,000 national, international and local jurisdictions, including many in the Bay Area, that have



made similar declarations that commit to reducing GHG emissions and planning for climate change; and

**WHEREAS**, the County invites all Contra Costa cities and agencies to also approve a Climate Emergency Declaration to create a unified Countywide voice around climate change and to strengthen the call for state and federal actions and funds to address the economic, social, public health, and national security threats posed by the climate crisis.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors (BOS) of the County of Contra Costa (County) declares a climate emergency that threatens the long-term economic and social well-being, health, safety, and security of ~~the-our~~ County, state, nation, civilization, humanity and the natural world.

**BE IT FURTHER RESOLVED**, the BOS of the County commits to a county-wide mobilization effort to reverse global warming and the ecological crisis, which reduces county-wide greenhouse gas emissions as quickly as possible and no later than 2030.

**BE IT FURTHER RESOLVED**, the County immediately initiates an effort to safely draw down carbon from the atmosphere.

**BE IT FURTHER RESOLVED**, the County ensures a just transition for workers and residents.

**BE IT FURTHER RESOLVED**, the County accelerates adaptation and resilience strategies in preparation for intensifying local climate impacts.

**BE IT FURTHER RESOLVED** that the BOS of the County shall direct the creation of a County Climate Task Force comprised of the head of the Department of Conservation and Development ~~work with~~ the County Administrator, ~~and~~ other County department heads, agency heads, and heads of special districts, ~~to establish an interdepartmental task force of Department heads, or their immediate deputies, the Sustainability Coordinator and two Sustainability Commissioners with the purpose of initiating a county-wide mobilization effort to reverse global warming and the ecological crisis, and reduce county-wide greenhouse gas emissions as quickly as possible and no later than 2030.~~

**BE IT FURTHER RESOLVED**, the Climate Task Force members will arrange for all-staff meetings to educate Contra Costa County staff on the latest climate science and current actions, policies and programs and their anticipated outcome.

**BE IT FURTHER RESOLVED**, the Climate Task Force members will prepare written reports and submit them to the Sustainability Commission and the Sustainability Committee, at least twice per year; that will focus on: ~~implementing the County's Climate Action Plan and~~

- identifying additional actions, policies, and programs the County can undertake to reduce and adapt to the impacts of a changing climate
- opportunities for radical greenhouse gas and co-pollutant emissions reductions and greenhouse gas drawdown opportunities through updates to the County's General Plan and Climate Action Plan, including metrics that prioritize the decrease of fossil fuel use and climate adaptive land use planning
- on the maximum emergency reductions in greenhouse gas emissions from their operations by 2030.

**BE IT FURTHER RESOLVED,** the Climate Task Force to report back to the Sustainability Commission and the Sustainability Committee, within its first 90 days, on the feasibility for the phase out of fossil fuel extraction, including immediate changes to land use regulations, on opportunities for radical greenhouse gas and co-pollutant emissions reductions and greenhouse gas drawdown opportunities through updates to the County's General Plan and Climate Action Plan, including metrics that prioritize the decrease of fossil fuel use and climate adaptive land use planning. of new or expansion of existing fossil fuel infrastructure.

**BE IT FURTHER RESOLVED,** the BOS of the County directs the Sustainability Coordinator to include greenhouse gas and co-pollutant impact statements, greenhouse gas and co-pollutant reduction and greenhouse gas drawdown statements in all relevant Board motions, much as it currently includes fiscal impact statements.

**BE IT FURTHER RESOLVED,** that the County Sustainability Commission ~~seek~~ input commits to engaging county residents in public deliberations on the climate emergency and mobilization declaration and to seek input from the community to help the County anticipate and plan for an economy that is ~~less-not~~ dependent on fossil fuels, helps plan for a just transition from a fossil-fuel dependent economy, and considers how the County's recovery from the COVID-19 pandemic can incorporate the County's climate goals. As the State of California adopts policies and goals for reducing pollution and addressing climate change, the County will consider with the assistance of the Sustainability Commission what this will mean for County health, safety, infrastructure, jobs, and revenues, ~~jobs, health, and infrastructure~~ including new opportunities and how frontline communities will realize ~~economic and other~~ these benefits. The Commission will include this topic in its ongoing advice to the Board of Supervisors.

**BE IT FURTHER RESOLVED,** that health, socio-economic, and racial equity considerations ~~should~~ will be included in policymaking and climate solutions at all-

levels and across all sectors as the consequences of climate change have significant impacts on all County residents, especially the ~~young, the elderly~~, low-income ~~or~~, communities of color, the elderly, the young, and other vulnerable populations.

**BE IT FURTHER RESOLVED**, the County recognizes that the full participation, inclusion, support, and leadership of community organizations, faith communities, youth, labor organizations, academic institutions, indigenous groups, homeowners associations, business and business associations, recreational and health care facilities, and racial, gender, family, immigrant and disability justice organizations and other allies are integral to the climate emergency response and mobilization efforts.

**BE IT FURTHER RESOLVED**, the BOS of the County joins a nationwide call for a regional, national and international climate emergency mobilization effort focused on rapidly catalyzing a mobilization at all levels of government to reverse global warming and the ecological crisis, and provide maximum protection for all people and species of the world.

**BE IT FURTHER RESOLVED**, in furtherance of this resolution, the BOS of the County shall submit a certified copy of this resolution to all cities in the County, to the State of California and to all relevant agencies.

- (1) IPCC Special Report on Global Warming of 1.5 degrees C, Chapter 2, p. 96

**From:** [Contra Costa County Climate Leaders \(4CL\)](#)  
**To:** [Jody London](#)  
**Cc:** [Contra Costa County Climate Leaders](#)  
**Subject:** Fwd: CCC Climate Emergency  
**Date:** Thursday, May 28, 2020 12:10:57 PM

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Dear Jodi, I will try to attend the 10 am meeting tomorrow. if you have a call in number could you please provide it? Zoom is not working for me right now. So in the meantime, the call in option would be great.

If i am unable to attend, I kindly request that you read these comments into the minutes regarding the emergency climate resolution agenda item

XXXXXXXXXX

Dear Sustainability Commissioners,

Contra Costa County Climate Leaders (4CL) appreciates your focus on joining thousands of communities demanding our local leaders do two things (1) acknowledge the Climate Emergency and (2) mobilize immediately.

The draft resolution you have before you sets a very good base and clearly does an excellent job of 'acknowledging the Climate Emergency' in the "whereas" section.

However, in order to achieve the second goal 'to mobilize immediately', please include clear, specific, measurable directives in the "Be it resolved" actions. The items that are currently included, lack the robustness necessary to take on the clearly layed out crisis we face.

Our organization provides links to best practices on this and other local government climate policy topics. Please consider some of the language in these climate emergency resolutions passed in other cities.. Here: [www.cccclimateleaders.org/issues/climateemergency](http://www.cccclimateleaders.org/issues/climateemergency)

We request that you consider the following examples of language we pulled from those other local government Resolutions:

A. BE IT RESOLVED, the county shall implement a Climate Action and Resiliency Plan in 2020, that includes a baseline greenhouse gas (GHG) emissions inventory for both community wide and county operations, that is reviewed and adjusted on an annual basis to ensure 100% reduction of municipal greenhouse gas emissions and to become 100% fossil-free as quickly as possible and no later than 2030. And the CAP shall specify clear time-lines, benchmarks, and accountability with annual review

B. BE IT RESOLVED, the county shall add a new section to all staff reports that reviews the impact of any actions ( or notes if there is no impact) on ghg emissions. sustainability, and resiliency, and any mitigation measures to drawdown emissions

C. BE IT RESOLVED, the county shall revise the general plan in 2020 to incorporate aggressive ghg reduction practices, and require annual reporting on general plan progress be posted on the front page of the county website with a clear dashboard that indicates progress on climate goal implementation plans. Along with clear visuals of how the county is

meeting its greenhouse gas reduction goals.

D. BE IT FURTHER RESOLVED: the county commits to establish a staff climate Emergency Commissioner who will oversee and ensure progress on addressing the climate crisis.

BE IT ALSO RESOLVED: the county commits to deliberative democracy, which underscores the need for full community involvement, and commits to involve and inform residents, Businesses and non profit groups, about the climate emergency, through Town Hall meetings, messaging, staff training, and other processes in which citizen deliberation is central to decision-making; and

BE IT FURTHER RESOLVED: the County calls on the State of California and the United States as a whole to initiate an emergency mobilization to mitigate climate change, and end greenhouse gas emissions, and immediately draw down carbon from the atmosphere.

These statements are more commensurate with the acknowledged emergency; and puts the climate crisis front and center to be addressed as an emergency priority, and to provide opportunity for immediate mobilization to address that emergency.

Thank you for your consideration!

Lynda  
Lynda Deschambault  
Environmental Scientist and Educator  
Executive Director  
[www.cccclimateleaders.org](http://www.cccclimateleaders.org)

May 28, 2020

Dear Supervisor Glover and Supervisor Gioia,

RE Climate Emergency Resolution

It was surprising for me to learn of the Climate Emergency Resolution in a passing email. To my knowledge, there was not public announcement of this draft and I could not find it independently on the Ad Hoc Committee site as recently as a few days ago.

The process for moving this forward disappoints me. Both of you have seen growing resident interest over the past two years in the work of your committee. How is it we are not informed or invited to have input on this resolution? It is also odd to me that it did not go before the Sustainability Commission for discussion prior to its arrival on your agenda. What is the role of the Commission in reviewing and commenting on a resolution like this, so closely allied to their work?

The content of this resolution also disappoints me. I know many communities have jumped on the band wagon of passing such a resolution, regardless of any real intent to do more than sign the resolution. That is not what I want for my County. Nor do I want my County providing that example to cities in my county, who might think this a meaningful act.

If we are in a climate emergency, we need to recognize the reduction targets are now higher than what is mentioned. Governor Jerry Brown's executive order (echoed by many scientific bodies) is that we have to achieve carbon neutrality by 2045, if not sooner.

I would support a resolution with a clearer declaration of intent for the Board of Supervisors to act on this emergency. An emergency, as our dictionary reminds us, implies that we prioritize some things over other things, and we set clear accountability and metrics for addressing the emergency. COVID-19 has shown that our emergency and public health responses are vulnerable. We are not prepared for what is coming. So, a commitment to naming a climate emergency would recognize that accelerated emissions reduction and much more creative resiliency planning is essential and has to start now.

If this Resolution's "Resolve statements" reveal the level of political will to address this emergency, we are in trouble.

With respect and a desire to find other places where we can continue to accelerate progress addressing this threat multiplier that is climate change.

Marti Roach

(for affiliation only: 350 Contra Costa, 350 Bay Area Action, Contra Costa Climate Action Network)

**Comments from the Just Transition Levin Richmond Terminal Working Group**

RESOLUTION NO. \_\_\_\_

CONTRA COSTA COUNTY, STATE OF  
CALIFORNIA

\* \* \* \* \*

\*

RESOLUTION ENDORSING THE DECLARATION OF A CLIMATE EMERGENCY  
IN

CONTRA COSTA COUNTY THAT DEMANDS ACCELERATED ACTIONS ON THE  
CLIMATE CRISIS AND CALLS ON LOCAL AND REGIONAL PARTNERS TO  
JOIN

TOGETHER TO ADDRESS CLIMATE  
CHANGE.

**RESOLVED**, by the Board of Supervisors of the County of Contra Costa, State of California,  
that

**WHEREAS**, according to the Intergovernmental Panel on Climate Change (IPCC),  
increasing emissions of greenhouse gases (GHG) will cause global temperatures to rise  
1.5 degrees Celsius by as early as 2030; and

**WHEREAS**, on June 24, 2019, more than 70 health organizations including the  
American Medical Association and the American Public Health Association declared  
climate change to be a health emergency and issued a call to action for government,  
business, and civil society leaders to recognize climate change as a health emergency; and

**WHEREAS**, California's Governor Gavin Newsom in Executive Order N-19-19  
has  
committed state agencies to immediate and bold actions that reduce greenhouse gas emissions,  
curb the impacts from climate change, and develop a Climate Investment Framework; and

**WHEREAS**, the State of California has established goals to reduce greenhouse gas  
emissions 40 percent below 1990 levels by 2030, provide 100 percent of the State's electricity

from clean energy sources by 2045, reduce methane emissions and hydrofluorocarbon gases by 40 percent, and add five million zero-emission vehicles to California's roads by 2030; and

**WHEREAS**, the State of California has recognized the need for careful study and planning to decrease demand and supply of fossil fuels, while managing the decline in a way that is economically responsible and sustainable; and

**WHEREAS**, for Contra Costa County, rising global temperatures will cause sea levels to rise (up to six feet or more by year 2100 under certain scenarios), contribute to increasingly extreme weather, including intense rainfall, storms, and heat events, and heightened risk of wildfires; and

**WHEREAS**, the consequences of climate change pose risks to life, safety and critical infrastructure in Contra Costa County and throughout the world, and threaten physical, social, and economic well-being; and

**WHEREAS**, climate change impacts in Contra Costa County will be most acutely felt by children, seniors, low income populations, communities of color, and residents with unstable economic or housing situations; and

**WHEREAS**, the Vulnerability Assessment developed for the Envision Contra Costa 2040 General Plan indicates that the most vulnerable County residents, including households in poverty, low-income households, and persons experiencing homelessness, are more likely to be severely impacted by a changing climate, including flooding, wildfires, extreme heat, and poor air quality; and

**WHEREAS**, the Vulnerability Assessment also indicates that there is severe vulnerability in the County's agricultural sector, industrial and manufacturing centers, including oil refineries, rangelands, and the Delta due to climate impacts, as well as infrastructure including major roads and highways, flood control, parks and open space, railroads and BART, and wastewater treatment plants and infrastructure; and



**WHEREAS**, fossil fuels are recognized as a primary contributor to the rapidly changing climate; and

**WHEREAS**, seven of the ten largest industrial pollution sources in the San Francisco Bay Area are located in Contra Costa County;

**WHEREAS**, twenty-five census tracts in Contra Costa County are recognized by the State of California as being in the top twenty-five percent of “disadvantaged” or “frontline” communities that are disproportionately burdened by sources of pollution; and

**WHEREAS**, rates of asthma, obesity, and breast, colorectal, lung, and prostate cancer are higher in Contra Costa County than in the rest of California, and in some cases, the nation, particularly in census tracts that are located near large industrial facilities; and

**WHEREAS**, the world is facing an unprecedented crisis with the COVID-19 pandemic, which has swept across the world causing global human tragedy and an historical economic setback, forcing a rebuild of our economy and a need to introduce the necessary recovery plans to restore sustainable progress and prosperity to the citizens of Contra Costa; and

**WHEREAS**, long-term exposure to air pollution increases vulnerability to experiencing the most severe COVID-19 outcomes, further burdening the disproportionately affected communities that traditionally carry the brunt of the negative impacts of climate change, particularly in census tracts recognized as disadvantaged communities; and

**WHEREAS**, PBF Energy, which purchased the former Shell Martinez refinery in February 2020, on March 30, 2020, during a period of rapid decrease in fossil fuel usage announced that it plans to sell two hydrogen plants at the Martinez facility “as part of a strategic plan for PBF to navigate current extraordinary and volatile markets,” creating economic uncertainty for Contra Costa County; and *potential job losses due to*

*the volatility of the fossil fuel industry require the County to develop and implement a Just Transition Plan to create green jobs and transition these workers to stable employment and continued benefits;*

**WHEREAS**, the COVID-19 crisis could mark a turning point in progress on climate change and there will be a need for a resilient recovery after the pandemic, and Contra Costa County's capacity to act depends largely on our ability to work together in solidarity to build the bridge between fighting Covid-19, biodiversity loss, and climate change; and

**WHEREAS**, the County has taken a number of actions to address climate change, some of which include: adopting and implementing the 2015 Climate Action Plan; selecting MCE as the electricity provider for unincorporated Contra Costa County, in large part because of the higher clean-energy content MCE offers; investing in clean energy, efficient

building technologies, and alternative fuels for County operations; providing opportunities to generate more clean energy in Contra Costa County; developing an electric vehicle readiness blueprint; providing energy efficiency programs to County residents; increasing composting and recycling in County facilities; and

**WHEREAS**, the current pace of climate actions may still fall short of reducing the projected harm to people and places and accelerated actions need to be taken to reduce our GHG emissions and implement solutions to prepare and protect our communities; and

**WHEREAS**, by declaring a climate emergency, Contra Costa County will join the over 1,000 national, international and local jurisdictions, including many in the Bay Area, that have made similar declarations that commit to reducing GHG emissions and planning for climate change; and

**WHEREAS**, the County invites all Contra Costa cities and agencies to also approve a Climate Emergency Declaration to create a unified Countywide voice around climate change and

to strengthen the call for state and federal actions and funds to address the economic, social, public health, and national security threats posed by the climate crisis.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors of the County of Contra Costa declares a climate emergency that threatens the long-term economic and social well-being, health, safety, and security of the County.

**BE IT FURTHER RESOLVED** that the County Department of Conservation and Development work with the County Administrator and other departments to establish an interdepartmental task force of Department heads, or their immediate deputies, that will focus on implementing the County's Climate Action Plan and identifying additional actions, policies, and programs the County can undertake to reduce and adapt to the impacts of a changing climate.

**BE IT FURTHER RESOLVED** that the County Sustainability Commission seek input from the community to help the County anticipate and plan for an economy that is less dependent on fossil fuels, helps plan for a transition from a fossil-fuel dependent economy, and considers how the County's recovery from the COVID-19 pandemic can incorporate the County's climate goals. As the State of California adopts policies and goals for reducing pollution and addressing climate change, the County will consider with the assistance of the Sustainability Commission what this will mean for County revenues, jobs, health, and infrastructure including new opportunities and how frontline communities will realize economic and other benefits.

The Commission will include this topic in its ongoing advice to the Board of Supervisors.

***BE IT FURTHER RESOLVED that the County's Climate Action Plan will be revised to include the creation of a Just Transition Commission of labor, community members and public officials that will develop a Just Transition Plan for transitioning fossil fuel workers and affected communities in the County. The Just Transition Plan will identify the timing and location of potential fossil fuel-related facility closures and job layoffs and their impact on affected workers, businesses, and the community; pathways to job training, apprenticeships, and***

*alternative employment for transitioning workers; job counseling and placement services; and transitional benefits (e.g. wage differential benefit, pension protection, and healthcare insurance). The plan will further identify the projected short-term and long-term cost of each plan component; potential sources for sustainable short-term and long-term funding for just transition plan implementation; and the need for any further enabling legislation.*

**BE IT FURTHER RESOLVED** that health, socio-economic, and racial equity considerations should be included in policymaking and climate solutions at all levels and across all sectors as the consequences of climate change have significant impacts on all County residents, especially the young, the elderly, low-income or communities of color, and other vulnerable populations.

**From:** [Pam Allio](#)  
**To:** [John Gioia](#); [District5](#)  
**Cc:** [Jody London](#)  
**Subject:** CCC Climate Emergency Resolution  
**Date:** Monday, July 27, 2020 9:44:49 AM

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Dear Honorable Supervisors Gioia and Glover,

My name is Pam Allio, and I am a 20-year resident of Danville. All three of my children went through the San Ramon Valley Unified School System, attending Montair and John Baldwin Elementary Schools, Charlotte Wood Middle School, and San Ramon Valley High School.

I am writing to you today to thank you for your attention to the climate crisis and to express my strong support for passing a Climate Emergency Resolution in Contra Costa County.

We need a unified vision to help mitigate and adapt to the changes happening across our ecosystem. Taking URGENT action on the climate crisis is important to me because:

- The facts are clear that our planet is warming and we are not acting quickly enough to 'bend down the curve' to avoid the worst consequences.
- Climate change is here, as evidenced by the massive wildfires, droughts and severe weather we have experienced every year, causing dangerous air pollution levels throughout the Bay Area, including Contra Costa County and Danville. The effects on our lungs from this pollution makes all of us more susceptible to diseases, including COVID-19.
- Fossil fuel extraction and refining here in Contra Costa County is an important industry, employing thousands. We must ensure a just transition for those families, as we reduce our reliance on fossil fuels and phase out those industries in the years ahead. The fossil fuel industry has already begun transitioning their businesses to focus on more renewable energy and recognizes the effects of climate change on the County, as noted in Chevron's 2019 sustainability highlights citing four specific actions to reduce net greenhouse gas emissions by 2023.

**THEREFORE**, I am strongly in support of this Climate Emergency Resolution with ONE SUGGESTION. I would like to make sure this is not just a piece of paper that leads to no action.

I would like you to promise to publish an annual Climate Action Plan report within 90 days after the end of each year, so that the public like myself can monitor and hold our public officials accountable for progress.

Thank you very much for your important efforts in dealing with our response to local climate change.

Sincerely,

Pam Allio

38 St. Mark Court, Danville, CA 94526

**From:** [DAVE CASEY](#)  
**To:** [Jody London](#); [John Gioia](#); [District5](#)  
**Subject:** CCC Climate Emergency Resolution  
**Date:** Monday, July 27, 2020 3:15:20 PM

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Ms London, Supervisors Glover and Gioia,

Thank you for the opportunity to comment on Contra Costa's Climate Emergency Resolution. I am including below text of the comments I made at the Committee Meeting today related to the Task Force in the CER.

I propose:

1 A name change for the Interdepartmental Task Force:

- to Interdepartmental ***Climate*** Task Force

2 An increase in the composition of the Interdepartmental *Climate* Task Force to also include:

- the County Administrator
- Agency heads
- Special District heads
- the Sustainability Coordinator,
- and two Sustainability Commissioners

3 A change in the focus of the Interdepartmental *Climate* Task Force:

- from implementing the Climate Action Plan (CAP)
- to implementing a county-wide mobilization effort to reduce greenhouse gas emissions as quickly as possible to meet State and County targets.

4 Adding a task to the Interdepartmental *Climate* Task Force:

- to arrange for all-hands meetings to inform and educate County staff on the latest climate science and current greenhouse gases actions, policies and programs and their anticipated outcome

5 The Interdepartmental *Climate* Task Force's biannual Report to the Sustainability Commission, Sustainability Committee, and Board of Supervisors will include:

- current progress and
- actions, policies, and programs the County can undertake to i) radically reduce greenhouse gases, ii) increase the drawdown of greenhouse gases from the atmosphere, and iii) prioritize the decrease of fossil fuels and their use in the county

Although the process for review and revision is near its end, I hope that you will consider making changes to the CER that improve the Interdepartmental *Climate* Task Force's ability to better meet the climate crisis.

Thank you,

Dave Casey  
Sustainable Rossmoor Steering Committee  
[Planet Friendly Eating](#)  
[Cleaner Contra Costa Challenge](#)

**From:** [Barbara Beno](#)  
**To:** [District5](#); [John Gioia](#)  
**Cc:** [Jody London](#)  
**Subject:** Climate Emergency Resolution  
**Date:** Monday, July 27, 2020 12:00:36 PM

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July 26, 2020

**To:** Supervisor Federal D. Glover, Chair ([District5@bos.cccounty.us](mailto:District5@bos.cccounty.us))  
Supervisor John Gioia, Vice Chair ([john\\_gioia@bos.cccounty.us](mailto:john_gioia@bos.cccounty.us))

**CC:** Jody London: Sustainability Director ([Jody.London@dcd.cccounty.us](mailto:Jody.London@dcd.cccounty.us))

Dear Members of the Sustainability Committee:

I am writing as a citizen of Contra Costa County to share my concern about our need to address the current and projected severe impact of global warming and climate change on our cities and county, as well as on the San Francisco Bay Region. Almost daily, recognized and legitimate news outlets include stories about the current and anticipated impacts of climate change on all aspects of society. It is vitally important that we step up and begin to take proactive steps to try to mitigate climate change, and even reverse it.

I am therefore asking that the Sustainability Committee adopted a resolution to declare a Climate Emergency in Contra Costa County as a first step toward focusing our collective efforts to mitigate climate change.

Thank you for considering my request.

Sincerely yours,

Dr. Barbara A. Beno  
143 Vierra Way  
Hercules, CA 94547  
[barbbeno@aol.com](mailto:barbbeno@aol.com)



**From:** [Nancy Hu](#)  
**To:** [District5](#); [John Gioia](#); [Jody London](#)  
**Subject:** Comment on the CCC State of Emergency on the Climate Crisis  
**Date:** Sunday, July 26, 2020 11:23:25 PM

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Dear Honorable Supervisors Gioia and Glover:

I am a current resident of Lafayette, and have been living there for 8 years now. I also serve on Lafayette's Environmental Task Force as Vice Chair. Before living in Lafayette, I grew up in Walnut Creek since 1992 and went to Valle Verde Elementary, Foothill Middle School, and Northgate High School (graduating class of 2003).

I wish I could join the meeting but because I will be at work, I am submitting a written public comment instead. Thank you for your attention to the climate crisis. I'd like to express my strong support for passing a Climate Emergency Resolution in Contra Costa County.

Taking urgent action on the climate crisis is important to me because I'm worried for the future of my children, who are now ages 4 and 6. With every year, wildfires in California get worse, and fire season gets longer and longer. In 2018, our kids' preschool and all the schools nearby closed due to the severity of the smoke. At that time, we didn't own an air purifier at home, and my older son told me he couldn't sleep because of the smoky smell. And my younger son, who was 2 at the time, had constant nosebleeds because of the smoke. I felt so helpless I couldn't protect my children. I have daily anxiety thinking of this fall with distance learning in play, with power shut offs, and wildfire... where will we go to escape the effects of our climate crisis? The scientists have made it clear that our planet is warming, and we are not acting quickly enough to "bend the curve" and avoid the worst consequences. Let's meet the moment!

Therefore, I am strongly in support of this Climate Emergency Resolution with one suggestion. I would like to make sure this is not just a piece of paper that leads to no action. Please promise to publish an annual Climate Action Plan report within 90 days after the end of each year, starting with 2020, so that the public, like myself, can monitor and hold our public officials accountable for progress.

Thank you very much for your strong efforts.

Sincerely,

Nancy Hu, DDS  
Climate Reality Project  
Lafayette Environmental Task Force, Vice Chair  
Buy Nothing Lafayette, CA  
[nchsu514@gmail.com](mailto:nchsu514@gmail.com)

**From:** [Kelly K.](#)  
**To:** [District5](#); [John Gioia](#)  
**Cc:** [Jody London](#)  
**Subject:** Comment one Climate Emergency Resolution  
**Date:** Monday, July 27, 2020 11:19:03 AM

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Honorable Supervisors Gioia and Glover,

My name is Kelly Kyutoku, and I'm a senior at California High School. I'm a resident, and have lived in San Ramon for almost my whole life. I'm also a lead hub coordinator from the Sunrise Movement's San Ramon Hub; Sunrise is an intersectional movement of young people across the country fighting against climate change while creating millions of good jobs in the process. Thank you so much for paying attention to this crisis that is amidst us and speaking up on how important passing a Climate Emergency Resolution in Contra Costa County would be.

Living in San Ramon, I am privileged in the fact that we aren't directly impacted by the climate crisis, but we will be. Maybe not you, or your colleagues, but the youth of this county will be affected; our futures are important, and they should be treated as so. Despite not feeling the direct impacts right now, it's important that we acknowledge that many people in neighboring cities are on the front lines of the effects of climate change every day. We cannot fight against climate change, without fighting for climate justice. Black and Latinx communities are disproportionately affected by the climate crisis, and this stems from historical racism. We must stand in solidarity with these communities, during these times, and always. Continuing on, fossil fuel extraction and refining in Contra Costa is a source of jobs and income for workers and their families- but it's not their fault, we *must* ensure that there is a just transition for those workers when we phase out those industries. New jobs must be created, with things like paid training, and listening to the workers, for example to make sure this transition doesn't negatively impact those families.

Therefore, I am strongly in support of the Climate Emergency Resolution, however you must ensure that it incorporates environmental justice and equity, by listening to the voices of the impacted, meeting their needs, and reporting to the public about progress that is or isn't made. We need to make sure that this resolution isn't just something on paper; we need to see it being enacted in real life. We need to do better.

Thank you for your time,

Kelly Kyutoku,  
Sunrise San Ramon, Hub Coordinator

**From:** [Linda Flower](#)  
**To:** [Jody London](#)  
**Subject:** Emergency climate resolution  
**Date:** Monday, July 27, 2020 11:34:16 AM

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Hi Jody,

I am writing to you today to ask you to pass an emergency climate resolution. My name is Linda Flower. I have lived and worked in Lafayette, California since 1996. I am extremely concerned about runaway climate change. The devastation is happening at an exponential rate; every step we take is extremely important right now. Please pass an emergency climate resolution today.

Thank you, stay safe.

Linda Flower  
371 McGraw Ln.  
Lafayette, CA 94549

Sent from my iPhone

**From:** [DEAN MAYER](#)  
**To:** [District5](#)  
**Cc:** [Jody London](#)  
**Subject:** Please support the Climate Emergency Resolution  
**Date:** Monday, July 27, 2020 10:40:03 AM

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July, 27, 2020

Honorable Supervisor Glover:

I'm a 20-year Moraga resident and homeowner writing to thank you for your attention to the climate crisis and urging your support for passing a Climate Emergency Resolution in Contra Costa County.

I'm worried for my future and that of my family and neighbors. We're already seeing the disastrous consequences of a warming planet in Contra Costa County. Last fall, all of Moraga was terrified by local wildfires and multiple power shutoffs due to climate-driven drought and high winds. More of the same is predicted for this fall, and PG&E indicates it may be as long as a decade before it can fully address tree trimming and grid modernization to mitigate the chances of these disasters.

The vast majority of the world's climate scientists have made it abundantly clear that we aren't acting quickly or boldly enough to control CO2 levels and avoid the worst consequences of climate change. From public health to public safety, the climate emergency threatens every aspect of life in Contra Costa—from Richmond to Brentwood to Lamorinda, and every other community in between.

So, again, I strongly urge you and the entire board to support the Climate Emergency Resolution—and to go one step further to ensure that it won't simply become a piece of paper left on a dusty shelf. I would like you to promise to publish an annual Climate Action Plan so that the county's citizens can monitor and hold our public officials accountable for progress.

Please act on the Climate Emergency Resolution like our lives depend on it. In fact, they do.

Thank you,

Dean Mayer  
276 Lakefield Place  
Moraga, CA 94556  
925-286-0815

**From:** [Harry Thurston](#)  
**To:** [Jody London](#)  
**Subject:** Public Comment to the July 27, 2020 Meeting of the Sustainability Committee  
**Date:** Monday, July 27, 2020 10:58:06 AM

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## Public Comment on Agenda Item 4 of the 7/27/20 meeting of the Contra Costa County Sustainability Committee.

I am Harry Thurston, member of the Sustainability Commission and resident of Antioch, California.

However, this public comment represents my personal opinion.

I recommend the Sustainability Committee consider adding to the 1st “ BE IT FUTHER RESOLVED” on page four of the Climate Emergency Resolution, the additional statement of “achieving zero emissions by the year 2050”.

I will be 100yrs old by 2050, most likely beyond my lifespan, however not my son’s or grandson’s. We, our generation, needs to at least try to insure an appropriate level is achieved in their quality of life through the total elimination in the consumption of fossil fuels and the associate environment harm from such consumption by the year 2050.

I make this request because it should be our

pledge to future generations to insure the highest level in their quality of life through the achievement of zero emissions by the year 2050.

Regards,  
Harry L. Thurston

**From:** [DAVE CASEY](#)  
**To:** [Jody London](#); [John Gioia](#)  
**Subject:** State GHG Targets  
**Date:** Monday, July 27, 2020 2:36:16 PM

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Dear Ms London and Supervisor Gioia,

The target date that we set for **county-wide “carbon-neutrality” (or “net zero emissions”)** is of utmost importance. Here is a summary of current State level targets. Contra Costa County can be a leader by setting more aggressive targets for GHG emissions.

**Current California laws** require a 40% reduction in greenhouse gas (GHG) emissions below 1990 levels by 2030 ( [SB32](#)) and an 80% reduction by 2050 ( [Executive Order S-3-05](#)). These laws imply a **zero emissions target date of around 2060.**

Governor Brown’s more recent (2018) [Executive Order B-55-18](#) sets a goal of “... carbon neutrality **as soon as possible and no later than 2045.**” (The target is often misrepresented as 2045; “ **as soon as possible**” really means “ **as soon as possible!**”).

The 2018 IPCC [Special Report on Global Warming of 1.5 °C](#) <sup>1</sup> stated that we had 20 years (until 2038) to reach carbon neutrality in order to have “ **a two-thirds chance** of limiting warming to 1.5 °C.” The **Report** adds that “...geophysical uncertainty ... translates into a variation of this timing ... of roughly 15 to 20 years.” Geophysical uncertainty refers to the effect of amplifying feedback loops such as the release of methane due to melting permafrost, the “ice albedo effect,”etc.

Thus, according to the IPCC, **our target date for zero emissions – and for limiting warming to 1.5°C -- may already have passed.**

<sup>1</sup> [IPCC Special Report on Global Warming of 1.5 °C, Chapter 2](#), p. 96.

Dave Casey  
[Planet Friendly Eating](#)  
[Cleaner Contra Costa Challenge](#)

**From:** [Angela Vincent](#)  
**To:** [District5](#); [John Gioia](#)  
**Cc:** [Jody London](#)  
**Subject:** Support Climate Emergency Resolution  
**Date:** Monday, July 27, 2020 10:40:08 AM

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Hello,

I am a resident of Richmond writing in support of the Climate Emergency Resolution. The COVID-19 pandemic has exposed the racial and environmental inequities in our communities that will be exacerbated by climate change.

Urgent action is needed to address this environmental, public health, and equity crisis and to bend the curve of climate change.

I am strongly in support of this Climate Emergency Resolution with ONE SUGGESTION. I would like to make sure this is not just a piece of paper that leads to no action.

I am recommending a commitment to publish an annual Climate Action Plan report within 90 days after the end of each year, so that the public like myself can monitor and hold our public officials accountable for progress.

Thank you for your leadership!

Angela Vincent  
[www.SaveQueenGreen.org](http://www.SaveQueenGreen.org)  
702-340-7107



**From:** [Wei-Tai Kwok](#)  
**To:** [District5](#); [John Gioia](#)  
**Cc:** [Jody London](#)  
**Subject:** Support for Climate Emergency Resolution  
**Date:** Monday, July 27, 2020 11:38:09 AM

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**re: Contra Costa County Board of Supervisors Sustainability Committee - 7/27/2020 Meeting, Agenda Item #4 "Climate Emergency Resolution"**

Dear Honorable Supervisors Glover and Gioia,

My name is Wei-Tai Kwok and I'm an 18 year resident of Contra Costa County, currently living in Lafayette.

Thank you for your continued efforts to lead Contra Costa County towards a more sustainable future, and for specifically working on an ambitious Climate Emergency Resolution today.

The impacts of climate change are already being felt in the Bay Area. Increasing droughts and wildfires threaten our way of life. Last October I had to evacuate my home during a PG&E PSPS due to a fire sparked by high winds downing power lines near the Lafayette Tennis Club, just 2 miles from our home. Let us not think that the Camp Fire or the Mendocino Complex fires won't ever happen right here in Contra Costa. Every fall, we now live in fear and have our emergency bags ready to go. How can we accept this as our future?

Declaring a Climate Emergency and taking aggressive action today is our primary way of helping Contra Costa residents avoid the worst consequences of climate change. I appreciate the many facets of the resolution and will limit my comments to two of them:

1. Building Electrification Reach Codes: I'm particularly supportive of measures to phase out natural gas from our buildings. I thought that would be difficult, but last summer I challenged myself to see how hard it actually would be to get rid of my gas appliances. It turns out it took only 45 days to retrofit my home with high efficiency heat-pump technology to replace my gas furnace and gas water heater, and to install an electric induction cooktop and electric fireplace. I called PG&E to remove my gas meter and disconnect me from the gas grid, so now my home is zero carbon emission, powered by 100% renewable electricity from my solar panels and MCE Deep Green. It's not as hard as we think.
2. Environmental Justice and a Just Transition. We have many fossil fuel workers in our county whose families deserve to have a just transition to new opportunities as we phase out legacy industries. And many residents in poor communities suffer disproportionately from polluting industries. We must make sure that we build back better with a Just Transition especially for disadvantaged members of our community. We must be sure their voices are formally represented on decision making bodies.

I encourage you to pass the most ambitious Climate Emergency Resolution possible. We will rise to the challenge.

Thank you.

Sincerely,

Wei-Tai Kwok  
(Volunteer, Climate Reality Bay Area Chapter)  
(Past President, Sustainable Lafayette)  
1123 Oak Hill Rd.  
Lafayette. CA 94549  
Email: [climatebuddy@gmail.com](mailto:climatebuddy@gmail.com)  
Mobile: +1 (650) 346-9817



A project of Generation Green - a 501(c)3 nonprofit organization

Find Links to Other Local Government Policy Opportunities at: [www.cccclimateleaders.org](http://www.cccclimateleaders.org)

July 21, 2020

**Re: Climate Emergency Meeting July 26, 2020:**

Honorable Supervisors Gioia and Glover:

We are submitting our comments in advance of the Sustainability Committee meeting we will attend tomorrow at 1pm.

Contra Costa County Climate Leaders (4CL) appreciates your focus on joining thousands of communities demanding our local leaders do two things: (1) acknowledge the Climate Emergency and (2) Mobilize immediately. We have researched, and provide several examples of language that show the type of leadership we would like to see in our community. Please see Attachment A

Certainly, the more recent draft resolution you have before you is much improved. It more clearly acknowledges the Climate Emergency' in the "whereas" section; and goes further in outlining specific measurable and directions in the "be it resolved".

However, since our last meeting we understand more about the history of our Contra Costa County's 2003 Environmental Justice policy; and suggest including the following language:

- **Whereas**, the Environmental Protection Agency defines *Environmental Justice* as "The fair treatment and meaningful involvement of all people regardless of race, color, national origins, or income, with respect to the development, implementation and enforcement of environmental laws, regulations and policies." And defines environmental justice communities as: "Communities that face the cumulative impact of high pollution burdens and socio-economic vulnerabilities", and
- **Whereas**, The Environmental Justice policy adopted in 2003 by the Contra Costa County Board of Supervisors, directed the County Administration Office (CAO) office to appoint a coordinator who would be responsible for County-wide oversight of Environmental Justice, and to chair periodic meetings with departmental Environmental Justice representatives to ensure integration of the Environmental Justice policy into the workings of the County Departments on an on-going basis, and
- **Whereas**, County Departments were also directed to report annually to the Board of Supervisors through the Environmental Justice coordinator on their performance in the area of Environmental Justice, and
- **Whereas**, In 2006 the person appointed as the Environmental Justice Coordinator retired and the position was not reassigned to another staff person. And as a result, representatives from the departments haven't met since 2005. And the Annual reports to the Board of Supervisors on the implementation of the County's Environmental Justice policy have never been provided, and
- **Whereas**, SB 1000 requires local government to fully engage disadvantaged community residents in decision-making and to prioritize investments that meet their community's needs, and
- **Whereas**, on July 24, 2008 the Hazardous Materials Commission voted unanimously to recommend that the Board of Supervisors take the following action;
- **Be it resolved that the county shall:**
  - Re-appoint an Environmental Justice coordinator to implement the County's Environmental Justice policy.
  - Reconvene periodic meetings of Environmental Justice representatives from County Departments
  - Prepare annual reports to the Board of Supervisors that describe Departmental Environmental Justice priorities and the activities they are undertaking to address these priorities.
  - Direct the Environmental Justice coordinator and the County Departments to report back to the Board of Supervisors in three months with a progress report.



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Please also consider the following additional language changes:

- ✓ At the bottom of page 5 of 6: please add a deadline, so that there is a true commitment to complete the CAP and a commitment to review it annually. The first Climate Action Plan for the unincorporated county was begun, and amended several times beginning 13 years ago in 2007 with assistance fromICLEI and a grant from the San Francisco foundation. It should now be a top priority with a clear completion date, and designation of staff to oversee it. We request that you change the language to state:
  - BE IT FURTHER RESOLVED that Contra Costa County will prioritize the completion of its greenhouse gas inventory, and begin the implementation of its Climate Action Plan in order to achieve greenhouse gas reductions ~~as soon as possible~~ **by the end of calendar year 2020**. The progress of the plan shall be reviewed and adjusted on an annual basis to ensure sufficient progress.
- ✓ BE IT ALSO RESOLVED: the county commits to deliberative democracy, which underscores the need for full community involvement, and commits to involve and inform residents, Businesses and nonprofit groups, about the climate emergency, through the new environmental justice coordinator, Town Hall meetings, messaging, staff training, staff reports and other processes in which citizen deliberation is central to decision-making;
- ✓ BE IT RESOLVED, the county shall add a new section to all staff reports that reviews the impact of any actions (or notes if there is no impact) on GHG emissions, sustainability, and resiliency, and any mitigation measures to drawdown emissions
- ✓ BE IT FURTHER RESOLVED: The County calls on the State of California and the United States as a whole to initiate an emergency mobilization to mitigate climate change, and end
- ✓ greenhouse gas emissions, and immediately draw down carbon from the atmosphere

Thank you for your consideration, and all that you do to make our communities a better place to live.

*Lynda Deschambault*

Lynda Deschambault  
Environmental Scientist and Educator  
Former USEPA  
Former Mayor Moraga CA  
Executive Director  
[www.cccclimateleaders.org](http://www.cccclimateleaders.org)



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## **Attachment A: These are recommended statements founds in other local government climate emergency resolutions**

WHEREAS, in order to avoid irreversible, catastrophic climate change impacts, we cannot only focus on reducing emissions but must also dramatically increase and enable meaningful carbon sequestration while preparing communities now for significant climate impacts;

WHEREAS, marginalized communities worldwide—including people of color, immigrants, indigenous communities, low-income people, those with disabilities, and the unhoused—are already disproportionately affected by climate change and must benefit from a just transition to a sustainable and equitable economy; and

BE IT FURTHER RESOLVED, that an urgent global climate mobilization effort to reverse global warming is needed to achieve zero net emissions as quickly as possible and that full community participation, inclusion, and support is integral to our efforts to safely draw down carbon from the atmosphere and accelerate adaptation and resilience strategies in preparation for intensifying climate impacts; and

WHEREAS, the State of California Ocean Protection Council, in its 2018 Rising Seas in California report, projects an increase between a medium-high risk aversion scenario of 6.9 feet of sea level rise in the San Francisco Bay by 21 00 and an extreme risk aversion scenario of 1 0 feet; and

NOW, THEREFORE, BE IT RESOLVED that the City of Alameda declares that a climate emergency threatens our city, region, state, nation, civilization, humanity and the natural world; and BE IT FURTHER RESOLVED that the City of Alameda commits to citywide action that is rooted in equity, self-determination, culture, tradition, deep democracy, and the belief that people locally and around the world have right to clean, healthy and adequate air, water, land, food, education and shelter; and BE IT FURTHER RESOLVED that the Alameda City Council supports the City's ongoing development of a Climate Action and Resiliency Plan, including the development of measurable climate-related goals for 2030 and 2050;

WHEREAS, as outlined in the Benicia Climate Action Plan it is the goal of the City to reduce greenhouse gas emissions, create green jobs, and prepare for the impacts of climate change on public health, infrastructure, the economy, ecosystems, and public spaces in our community, and Benicia has repeatedly upheld this mission through resolutions to protect the environment and divest from extractive industries

WHEREAS, indigenous and low-income communities and communities of color in the United States and abroad have suffered the gravest consequences of the extractive economy since its inception;

BE IT FURTHER RESOLVED, the City of Berkeley commits to becoming a carbon sink by 2030; and BE IT FURTHER RESOLVED, the City of Berkeley commits to educating our citizens about the climate emergency and working tirelessly to catalyze a just emergency climate mobilization at the local, state, national, and global local to protect our citizens as well as all the people and species of the world; and BE IT FURTHER RESOLVED, the City of Berkeley, in order to ensure a just transition, will consult with environmental justice, economic justice, and racial justice organizations at every step of the climate emergency mobilization planning process;

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of El Cerrito does hereby declare that a climate emergency threatens our City, region, state, nation, civilization, humanity and the natural



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BE IT FURTHER RESOLVED, The City of Davis will advocate for implementing aggressive state and federal policies to eliminate GHG emissions, such as in transportation—improving fuel efficiency of personal and commercial vehicles, encouraging active transportation (bicycling, walking and public transit) and moving toward completely electrified transportation systems; in the built environment—adopting energy efficiency standards for appliances and products, moving toward zero net energy standards for new and retrofitted construction, requiring provision of 100% renewable clean energy, reducing heat pollution impacts and providing shade; and in consumption—addressing water management and conservation, sustainable food and agricultural issues, waste reduction, managing our forests, urban areas, natural and working lands to sequester carbon, and engaging in GHG reduction implementation policies related to other emerging standards and technologies.

WHEREAS, The term “Just Transition” is a framework for a fair shift to an economy that is ecologically sustainable, equitable and just for all its members; and WHEREAS, Just transition strategies were first forged by a ‘blue-green’ alliance of labor unions and environmental justice groups who saw the need to phase out the industries that were harming workers, community health and the planet, while also providing just pathways for workers into new livelihoods; and WHEREAS, Just transition initiatives shift the economy from dirty energy to energy democracy, from funding highways to expanding public transit, from incinerators and landfills to zero waste, from industrial food systems to food sovereignty, from car dependent sprawl and unbridled growth to smart urban development without displacement, and from rampant, destructive over-development to habitat and ecosystem restoration; and WHEREAS, Core to a just transition is equity, self-determination, culture, tradition, deep democracy, and the belief that people around the world have a fundamental human right to clean, healthy and adequate air, water, land, food, education and shelter; and

BE IT FURTHER RESOLVED, the City of Hayward calls on the State of California, the United States of America, and all national and sub-national governments and peoples worldwide to initiate a just transition and urgent climate mobilization effort to reverse global warming by restoring near pre-industrial global average temperatures and greenhouse gas concentrations, that immediately halts the development of all new fossil fuel infrastructure, rapidly phases out all fossil fuels and the technologies which rely upon them, ends human-induced greenhouse gas emissions as quickly as possible, initiates an effort to safely draw down carbon from the atmosphere, transitions to regenerative agriculture, ends the potential for a sixth mass extinction, and creates high-quality, good paying jobs with comprehensive benefits for those who will be impacted by this transition.

The following from Los Angeles:

I FURTHER MOVE that the Council direct all City Departments and proprietaries to report back on maximum emergency reductions in greenhouse gas emissions from their operations feasible by the end of 2025, with the highest priority placed on an equitable and just transition in all sectors. I FURTHER MOVE that the Council direct the Planning Department to report back on opportunities for radical greenhouse gas emissions reductions and carbon drawdown and removal opportunities through the City’s General Plan and Community Plan Updates, including on metrics which can prioritize climate-adaptive land use planning. I FURTHER MOVE that the Council direct the City Administrative Officer and Emergency Management Department to report back on opportunities and funding to address climate emergencies and mitigation through existing hazard mitigation programs.

I FURTHER MOVE that the Council direct the City Clerk to work with the Department Chief Sustainability Officers to include greenhouse gas impact statements and greenhouse gas removal or reduction statements in all relevant Council motions, much as it currently includes fiscal impact statements

]



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**From:** Denice A Dennis <[Denice.A.Dennis@cccob.org](mailto:Denice.A.Dennis@cccob.org)>  
**Sent:** Monday, September 21, 2020 5:10 PM  
**To:** [candice.anderson@bos.cccounty.us](mailto:candice.anderson@bos.cccounty.us); John Gioia <[John.Gioia@bos.cccounty.us](mailto:John.Gioia@bos.cccounty.us)>; Karen Mitchoff <[Karen.Mitchoff@bos.cccounty.us](mailto:Karen.Mitchoff@bos.cccounty.us)>; Diane Burgis <[Diane.Burgis@bos.cccounty.us](mailto:Diane.Burgis@bos.cccounty.us)>  
**Cc:** Clerk of the Board <[ClerkOfTheBoard@cob.cccounty.us](mailto:ClerkOfTheBoard@cob.cccounty.us)>  
**Subject:** 9.22.20 Agenda Item D2 Comment

Dear Chair Anderson and members of the Board of Supervisors,

Thank you for considering urgent action today to address the Climate Emergency in Contra Costa County. I have worked with each of you in the past on tobacco control policy, and know that you are concerned about the health of Contra Costans and the future of all young people in our County.

I am writing to urge you to adopt a serious Climate Emergency Resolution (CER) and to commit to mobilizing county staff, and actively encourage and support other cities and residents, to take bold and urgent action to address climate change.

The debate about the impact of climate change on California is over—we must move quickly to eliminate our greenhouse gas emissions. Scientists have warned for years that in order to get us a chance at saving some people from the worst of climate impacts we must cut our greenhouse gas emissions in half by 2030. THAT CALLS FOR ACTION TODAY!

We know what the solutions are—we need to act now on the scientific urgency for bold action, with specific GHG emission reductions and target dates for getting us off of fossil fuels. This will take real leadership and a coordinated effort with county departments and other Bay Area Counties and Cities.

In addition to specific goals for a 50% and 100% greenhouse gas emissions reductions, a strong County Climate Emergency Resolution needs to mandate staff support for implementing actions to get us there, and accountability through a reportback to the Board and the community every 6 months. It also needs to support a Just Transition at the center of climate action planning.

For our children and our grandchildren, please do the right thing and move forward on an urgent, actionable Climate Emergency Resolution that will be a model for other cities in the County.

Toward Health for All,  
Denice A. Dennis, MPH  
Volunteer, 350 East Bay and  
1000 Grandmothers for Future Generations



Contra  
Costa  
County

To: Board of Supervisors  
From: John Kopchik, Director, Conservation & Development Department  
Date: September 22, 2020

Subject: County File #GP20-0002 Cecchini Ranch General Plan Amendment

---

**RECOMMENDATION(S):**

1. AUTHORIZE initiation of a General Plan Amendment (GPA) process, County File #GP20-0002, to evaluate a proposal to change the General Plan land use designation for one parcel located at 17000 Highway 4 in the Discovery Bay area, identified as Assessor's Parcel Number 004-500-005, from Delta Recreation and Resources (DR) to Single-Family Residential-Medium Density (SM), Light Industry (LI), Parks and Recreation (PR), Commercial Recreation (CR), and Public and Semi-Public (PS), or successor land use designations thereof.
2. DIRECT staff to work with the applicant to suggest and consider project modifications necessary to comply with County policies, standards, and objectives related to housing production, transportation, economic development, jobs/housing balance, provision of public services, and environmental protection.
3. ACKNOWLEDGE that granting this authorization does not imply any sort of endorsement for the application to amend the General Plan, but only that the matter is appropriate for consideration.

**FISCAL IMPACT:**

None. The project applicant will pay fees to cover the cost of processing the GPA, if authorized.

- 
- APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE
- 

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

- AYE: John Gioia, District I Supervisor  
 Candace Andersen, District II Supervisor  
 Diane Burgis, District III Supervisor  
 Karen Mitchoff, District IV Supervisor  
 Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: June McHuen, Deputy

Contact: Daniel Barrios, (925) 674-7788

cc:



## BACKGROUND:

On May 18, 2020, the Department of Conservation and Development received application materials (Attachment A) from Mr. Tim Saunders (applicant), representing the Henghou Group, owner of the Cecchini Ranch Property. As explained in the application materials, Cecchini Ranch is divided into two distinct areas: the southern approximately 545-acre parcel is the subject of this General Plan Amendment Feasibility Study; the northern 577+/- acres was placed into an agricultural conservation easement in October of 2017 and is currently being farmed under a lease arrangement. Immediately west of the site is the Discovery Bay community. Old River runs along the eastern property line and is the border with San Joaquin County. Numerous large, active farms are located to the south, along with the Town of Discovery Bay's wastewater treatment facility, Contra Costa Water District's Old River Pumping Plant, and a marine service and supply business. Attachment B includes General Plan and zoning maps of the area and Attachment C is an aerial photo of the site and its surroundings.

The project involves development of a 2,000-unit active adult community primarily intended for empty nesters, adults whose children have moved out of the house and would like to downsize from homes that are typically too large, dated, and no longer fit their needs. This project seeks to provide an opportunity for this demographic to sell their more central Bay Area home to younger families while remaining close enough to visit their children and grandchildren. According to the applicant, there are only nine active adult new home communities in Northern California, and only three of those are in the nine-county Bay Area. In addition to the residential units, the project includes a 40-acre reservation for commercial/light industrial flex uses, a 30-acre sports field that would double as a detention basin, a 21-acre community park with a community center, a 7-acre boat and RV storage area, a 1.5-acre fire station site, 8 acres of protected wetlands, and land for various other uses such as pocket parks, lakes, and trails.

Some project elements would be welcome additions to the Discovery Bay community (e.g., fire station, sports field/detention basin, community park). Staff recognizes, however, that several significant issues must be adequately addressed prior to any project approval:

- It is unclear whether sufficient water, sewer, and drainage capacity exists to serve the project.
- The project involves conversion of agricultural land to urban uses. The subject property has historically and is currently utilized for agricultural production and is designated as Prime Farmland and Farmland of Statewide Importance by the California Department of Conservation.
- With the northern Cecchini Ranch parcel being under an agricultural conservation easement, there is potential for conflict between agricultural activities on that parcel and residential uses on the southern parcel.
- There is potential for significant impacts to biological resources (i.e., protected species and their habitat), water resources, and other sensitive environmental receptors.
- The project's targeted demographic requires services that do not exist in the area. The nearest medical facilities are located in Brentwood, and no regular public transit or paratransit services extend to Discovery Bay. This is problematic for a population that is expected to age in place and may not always maintain the ability to drive to their destinations.
- Being adjacent to Old River and protected by levees, impacts related to projected sea level rise in combination with 100-year storm events are a concern.
- Most trips to and from this project would be in personal vehicles and are expected to be medium- to long-distance because Discovery Bay currently offers few job opportunities and lacks many services and amenities. This would result in high vehicle miles traveled (VMT) and correspondingly high greenhouse gas emissions (GHG). Staff notes that the project's age restrictions may somewhat mitigate VMT and GHG impacts because a smaller percentage of residents would be expected to commute regularly, but impacts are expected to be significant, nonetheless.
- Despite reserving 40 acres for commercial/light industrial uses, the project could exacerbate the jobs-housing imbalance in East County.

County and Town of Discovery Bay (TODB) staff met virtually in August to discuss this application and daylight community concerns. TODB staff's main concerns relate to traffic and impacts to public services. With the addition of 2,000 residential units, there is potential for significant new traffic impacts along Highway 4, which is already impacted by traffic from Discovery Bay and surrounding communities such as Stockton, Brentwood, and Oakley. There is an associated concern regarding the capacity to enforce traffic laws with the proposed influx of vehicles. The project would also place additional load on law enforcement, fire protection, medical service, and code enforcement resources. Potential reductions in the capacity of these resources is of concern. Staff notes that these areas of concern would be reviewed and addressed through the application process. Because the project requires discretionary approval, its potential impacts would be evaluated pursuant to the California Environmental Quality Act.

It is natural for a project this large to evolve as it moves through the planning process, and to continue evolving even after approval. If approved, this project will take years, possibly decades, to build out. Any authorization to move forward with the proposed GPA should be done with the understanding that the plan will require modification in response to the community's long-term aspirations, changing environmental conditions, changing market conditions, new statutory requirements, new technologies, and other external forces. The acreage dedicated to the various uses detailed in the project description, and the location of those uses, will likely change. It is also possible that new project components will be introduced. At this early stage in the process the Board is considering a concept more than an actual land use plan.

The proposed project has many issues to resolve. However, the subject site *is* within the Urban Limit Line and adjacent to urban uses in Discovery Bay. The proposed housing type is needed in the Bay Area, and at least 15 percent of the units would be "affordable." Other project components, such as the job-generating uses, new fire station, and new recreational opportunities would benefit Discovery Bay and the greater East County area. All General Plan amendments require a finding that the amendment is in the public interest. It is not clear to staff at this time that the current proposal will be able to meet that standard. Further study is warranted to determine if the standard can be met, but staff feel confident significant project changes are likely also necessary and is seeking Board authorization to work with the applicant to pursue these changes. As such, staff recommends Board authorization to proceed with the GPA. Staff emphasizes that authorization to proceed does not imply the Board's ultimate endorsement of the application to amend the General Plan, but only that this matter is appropriate for further consideration.

Staff notes that the Envision Contra Costa 2040 General Plan Update may modify or eliminate one or more of the proposed General Plan land use designations. Should that occur while the subject GPA is in process, the application will proceed with whichever successor land use designations are appropriate for the proposed density and uses.

Finally, should the applicant fail to pursue the project within one year of the authorization to proceed with the GPA, the application will be administratively closed.

#### CONSEQUENCE OF NEGATIVE ACTION:

If the Board does not authorize initiation of the GPA process, then an application to amend the General Plan cannot be filed and the subject parcel will retain its current land use designation.

#### ATTACHMENTS

Attachment A - Project Description

Attachment B - General Plan and Zoning Maps

Attachment C - Aerial Photo

## **Cecchini Ranch General Plan Amendment Feasibility Study Project Description**

### **Subject:**

General Plan Amendment Feasibility Study related to development of a Master Planned Community proposed on the south 545 acres of the Cecchini Ranch property in the Town of Discovery Bay.

APN 004-500-005.

### **Background:**

The Cecchini Ranch Property is 1,122 +/- acres and was purchased in April of 2018 by the Henghou Group out of Ningbo, China. The northern 577 +/- acres was put into an Agricultural Conservation Easement in October of 2017 and is currently being farmed under a lease arrangement. The remaining southern 545 +/- acres of the property is under consideration for the General Plan Amendment Feasibility Study.

A regional map identifying the property is attached hereto as Exhibit A.

### **Current Land Use Designation:**

The property is inside Contra Costa County's Urban Limit Line and is designated as Delta Recreation and Resources (DR) in the General Plan. It is zoned under the A-3 Heavy Agriculture District. We propose a General Plan amendment to Single Family Residential – Medium, Light Industry (LI), Parks and Recreation (PR), Commercial Recreation (CR), and Public and Semi-Public (PS) and a corresponding Planned Unit District zoning designation (P-1).

A conceptual plan is attached hereto as Exhibit B.

### **Project Outreach:**

We have engaged in several outreach/vision meetings under the advisement of the County staff and Supervisor's office. We met with the Fire District, Reclamation District 800, Discovery Bay Community Services District, and the Discovery Bay Community Foundation. Comments from the meetings are below and incorporated into our conceptual plan.

#### **East Contra Costa Fire District:**

Brian Helmick– Fire Chief and Steve Aubert– Fire Marshall

There is a need for the existing Discovery Bay community to improve its emergency access and services.

- 1) The project would need to provide funding for a new Fire Station and its operations and maintenance

- 2) The project would need to provide a secondary access for the approximate 2,950 homes that have only a single access point at Discovery Bay Boulevard.

An existing emergency access map is attached hereto as Exhibit C.

**Reclamation District 800:**

Jeff Conway- General Manager

Due to Senate Bill 5 approved in 2007, the residential portions of the project will be required to have a ring levee for flood management which will be built to a 200-year level of protection.

**Discovery Bay Community Services District:**

Mike Davies – General Manager and the Board of Directors

On November 20, 2019 we held a public meeting with the Board of Directors where we presented the project and received feedback from the Board and the Public.

The feedback from the meeting was as follows;

- 1) There was strong support for the need of emergency services/access.
- 2) They agreed with the addition of a sports park and trail system for community benefit. Currently the community of 3,700 homes only has 20 acres of park so adding a sports park and trail system would be a welcomed benefit.
- 3) Increased traffic was a concern, however being an active adult community was a benefit
- 4) Existing sewer, drainage, and water systems need to have more technical studies completed, however they most likely will need to be expanded.

**Discovery Bay Community Foundation (DBCF):**

Jim Mattison – President

DBCF is active in strengthening the community and is very interested in the amenities that a new community would bring to the existing Discovery Bay. They supported the input from the public meeting and would like to be involved in the more detailed plans for the parks and recreation facilities as the project progresses.

**Conceptual Land Plan:**

The plan yields approximately:

- 2,000 active adult residential units inclusive of the Contra Costa County 15% affordable housing requirement
- 40 acres of light industrial flex space
- 30 acres of sports park

- 21 acres of community park and community center
- 7 acres of boat and RV storage
- acres of open space, pocket parks, lakes and trails
- 1.5 acres for a fire station
- preserves 8 acres for an existing wetland

The plan is derived from our public outreach meetings, input from County Staff, and the District Supervisor's office. In order to achieve the above listed amenities, inclusive of their maintenance and infrastructure, the project needs approximately 2,000 residential units. The active adult designation generates the least amount of impact on the existing community especially for traffic and the schools. The 40 acres of light industrial flex space will yield approximately 533,000 sq. feet of building area at a floor area ratio of approximately 0.3. The current General Plan 2040 update study by BAE Urban Economics shows a total of 578,852 sq. ft. needed for all of unincorporated Contra Costa County. Therefore, we would like to be able to have the flexibility to convert some of the acreage (to be determined) to residential if it turns out that the industrial space is not able to be utilized.

### **Market:**

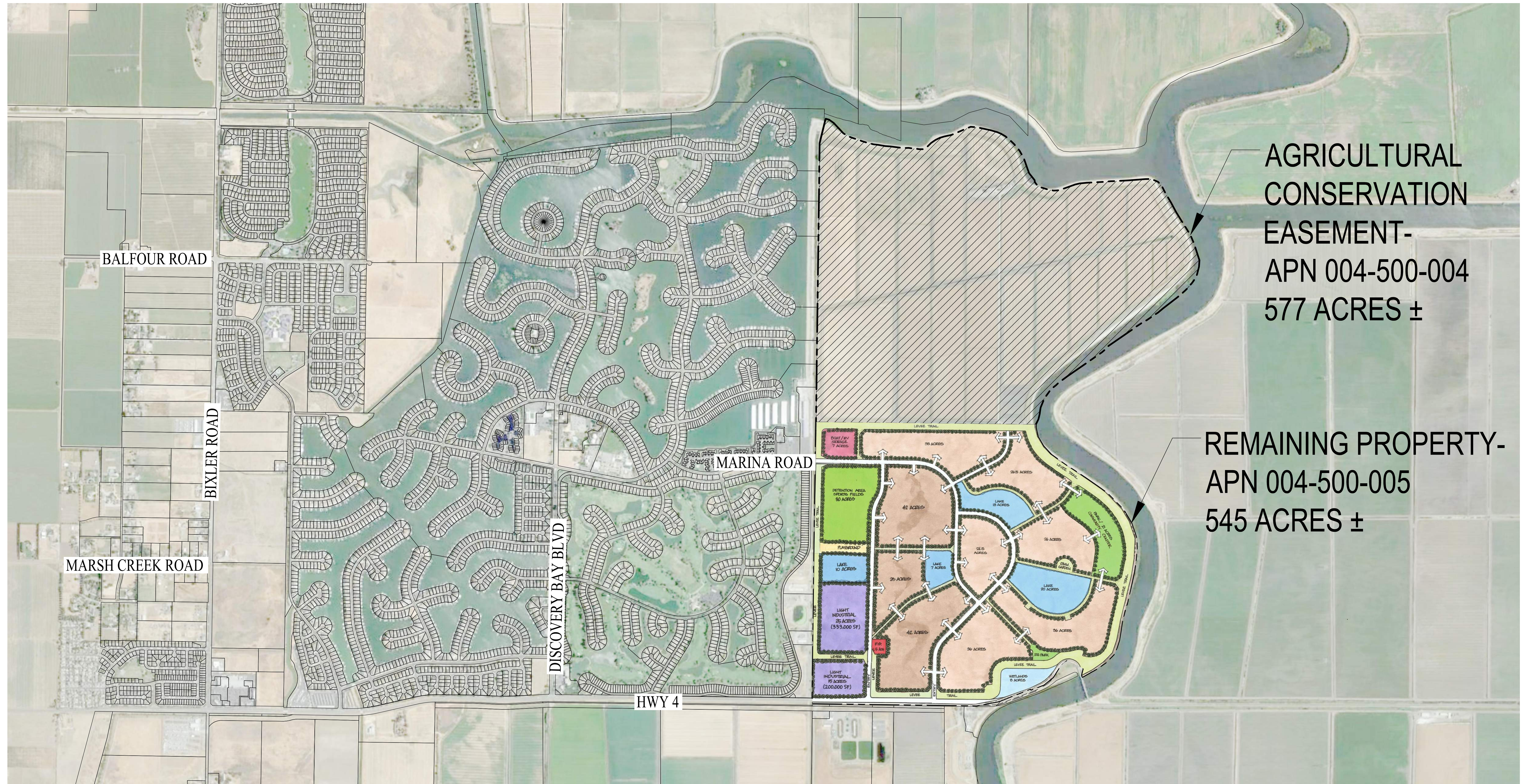
Although Contra Costa County is compliant with the State Regional Housing Numbers Analysis (RHNA), California is experiencing a housing supply crisis resulting in an affordability problem for all levels of housing stock in all areas of the nine county Bay Area including East Contra Costa.

The Bay Area has over 1.6 million residents over the age of 50 living in Contra Costa, Alameda, and Santa Clara Counties. With their children out of the house they are "stuck" in homes that are typically too large, dated and don't fit their needs. This project will allow them to sell their core Bay Area home to younger families and still be close enough to visit their children and grandchildren without having to drive to Sacramento and the Central Valley. Currently there are only nine Active Adult new home communities in Northern California and only three of those are in the nine county Bay Area.

The new homes and site design will incorporate the latest energy efficient codes inclusive of solar energy and the most up to date technology which allows their older out of date homes they moved from to be updated by new families.

The light industrial flex space will allow "jobs to come to housing" as the Bay Area clearly can't provide enough "housing to come to jobs".

Post COVID – 19 pandemic will require new site planning and design elements. The acceleration of technology and services to support the stay at home economy has become the new normal. Space in living area is clearly becoming the priority as society fights the pandemic especially for the active adult age group.

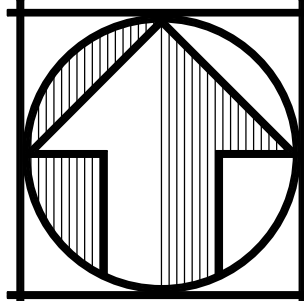
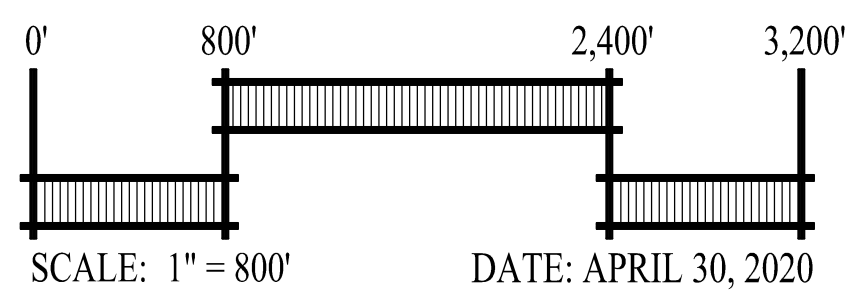


### CURRENT LAND USE DESIGNATION

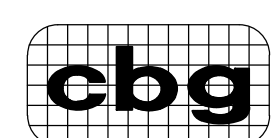
- INSIDE CONTRA COSTA URBAN LIMIT LINE
- GENERAL PLAN LAND USE: DELTA RECREATION AND RESOURCE (DR)
- ZONING: A-3 (HEAVY AGRICULTURE)

### EXHIBIT A REGIONAL MAP CECCHINI RANCH

TOWN OF DISCOVERY BAY    CONTRA COSTA COUNTY    CALIFORNIA

SCALE: 1" = 800'    DATE: APRIL 30, 2020



**Carlson, Barbee & Gibson, Inc.**  
CIVIL ENGINEERS • SURVEYORS • PLANNERS  
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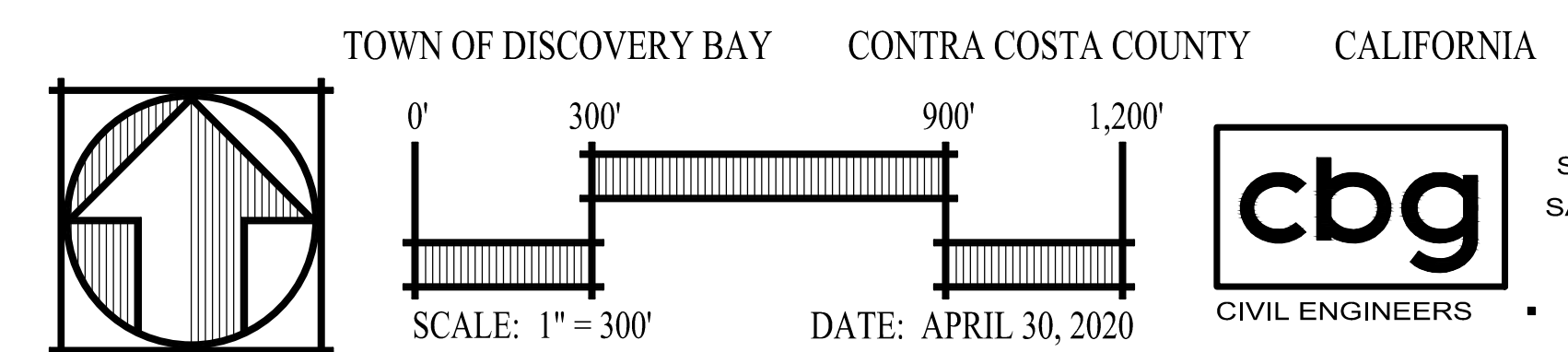
SAN RAMON, CALIFORNIA    (925) 866 - 0322  
SACRAMENTO, CALIFORNIA    (916) 375 - 1877



## PROJECT FEATURES

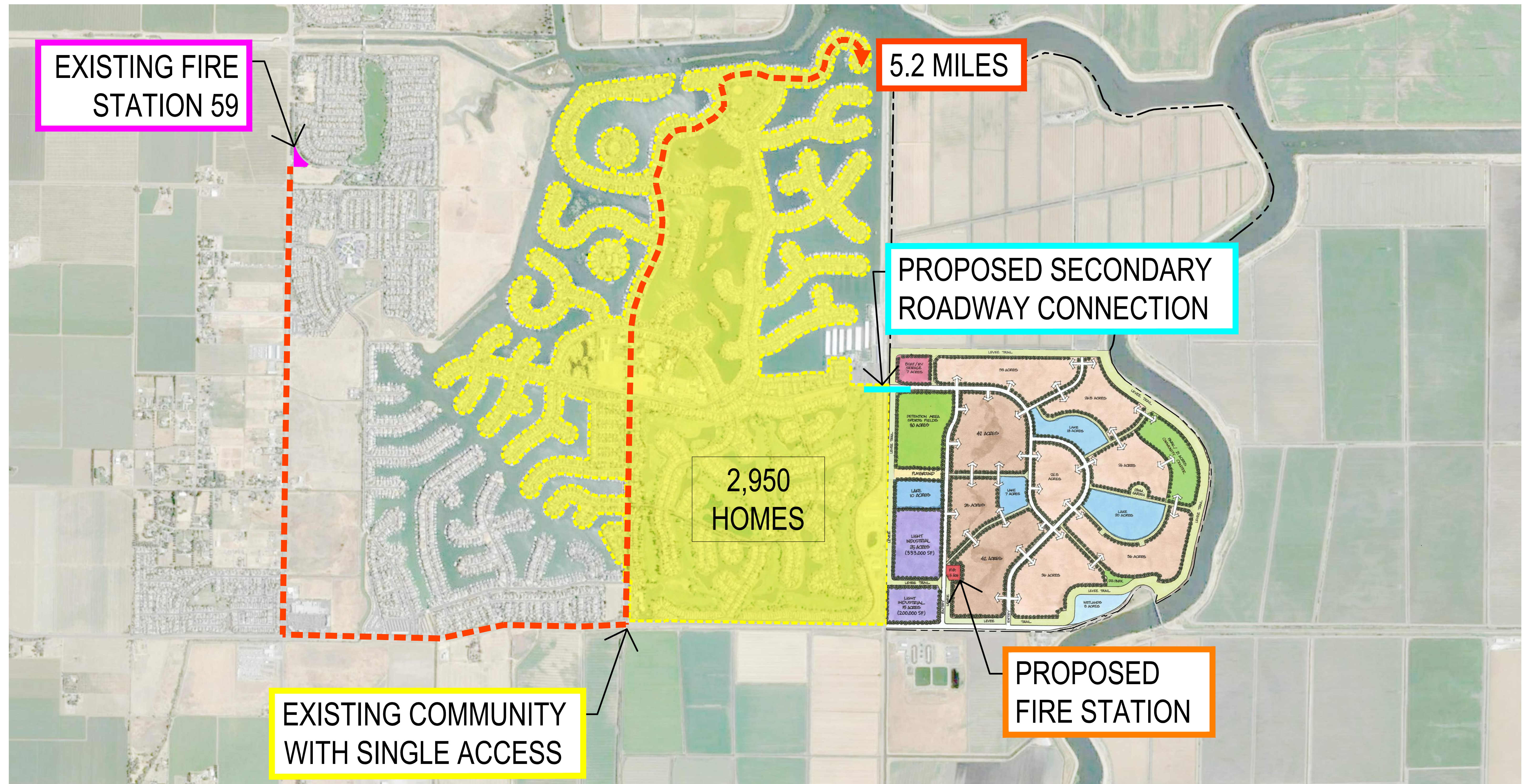
- SPORTS PARKS AND TRAILS
- BOAT AND RV STORAGE
- FIRE STATION
- LIGHT INDUSTRIAL FLEX SPACE
- ACTIVE ADULT RESIDENTIAL – 2,000 UNITS ±

## EXHIBIT B ACTIVE ADULT CONCEPTUAL PLAN CECCHINI RANCH



SAN RAMON • (925) 866-0322  
SACRAMENTO • (916) 375-1877  
WWW.CBANDG.COM

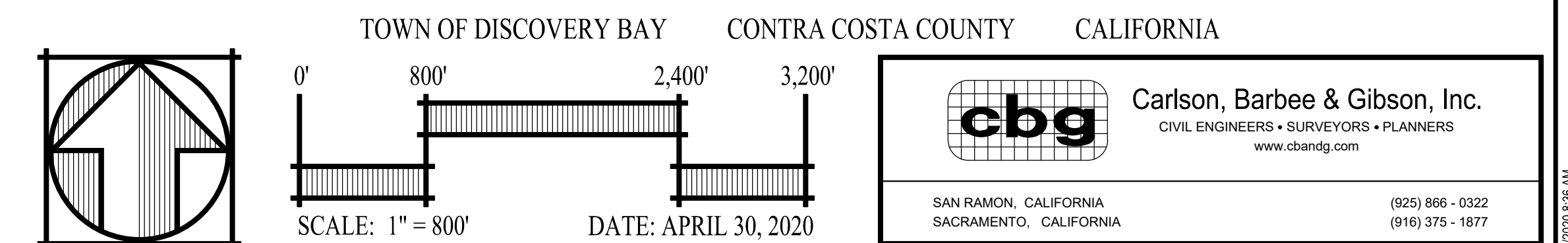


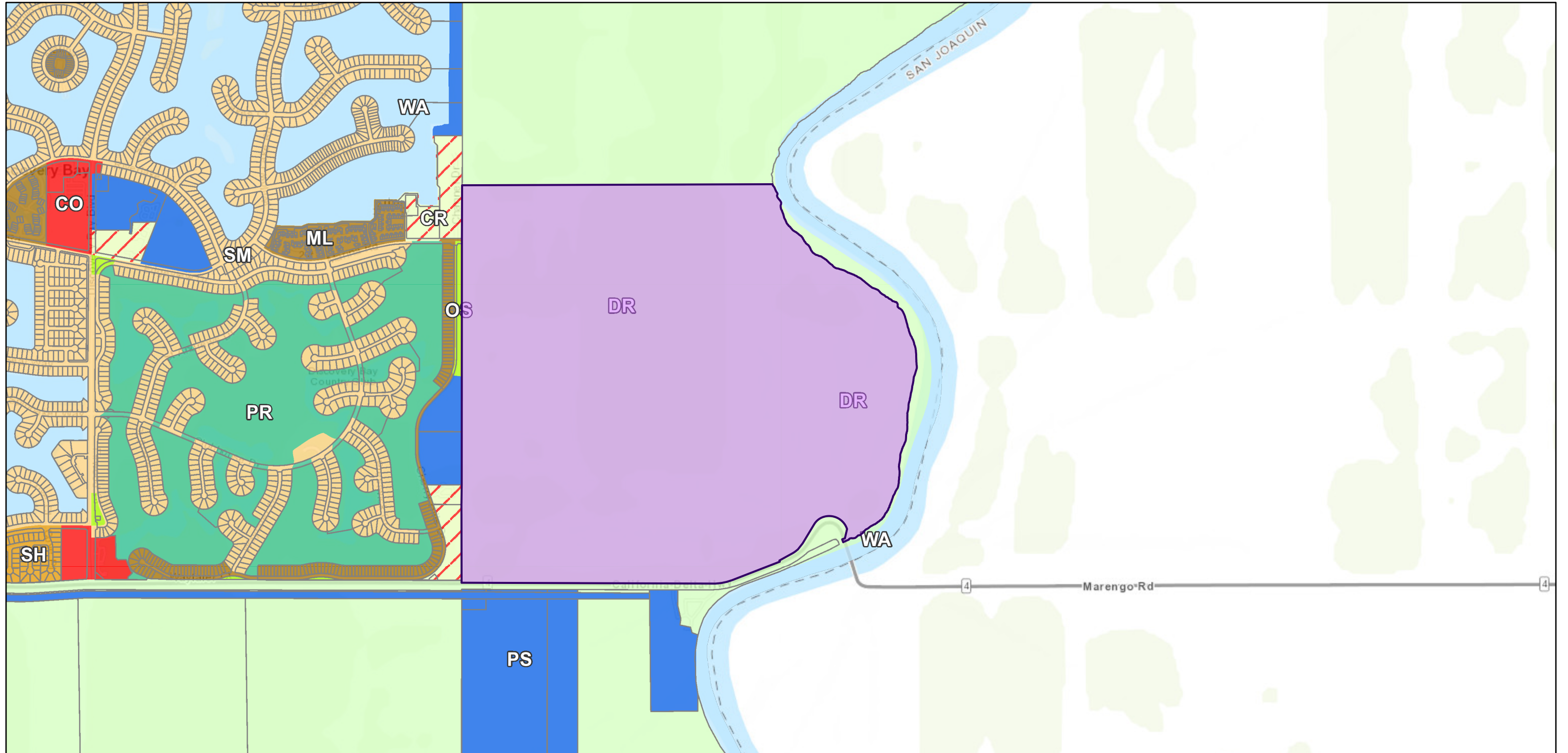


## PROJECT FEATURES

- ENHANCE EMERGENCY ACCESS AND DECREASE RESPONSE TIMES
- PROVIDE SECONDARY INGRESS/EGRESS TO EXISTING DISCOVERY BAY
- PROVIDE NEW FIRE STATION
- PROVIDE FUNDING FOR FIRE DISTRICT OPERATION

## EXHIBIT C EMERGENCY ACCESS CECCHINI RANCH



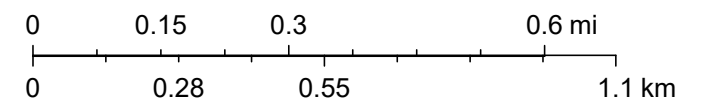


May 18, 2020

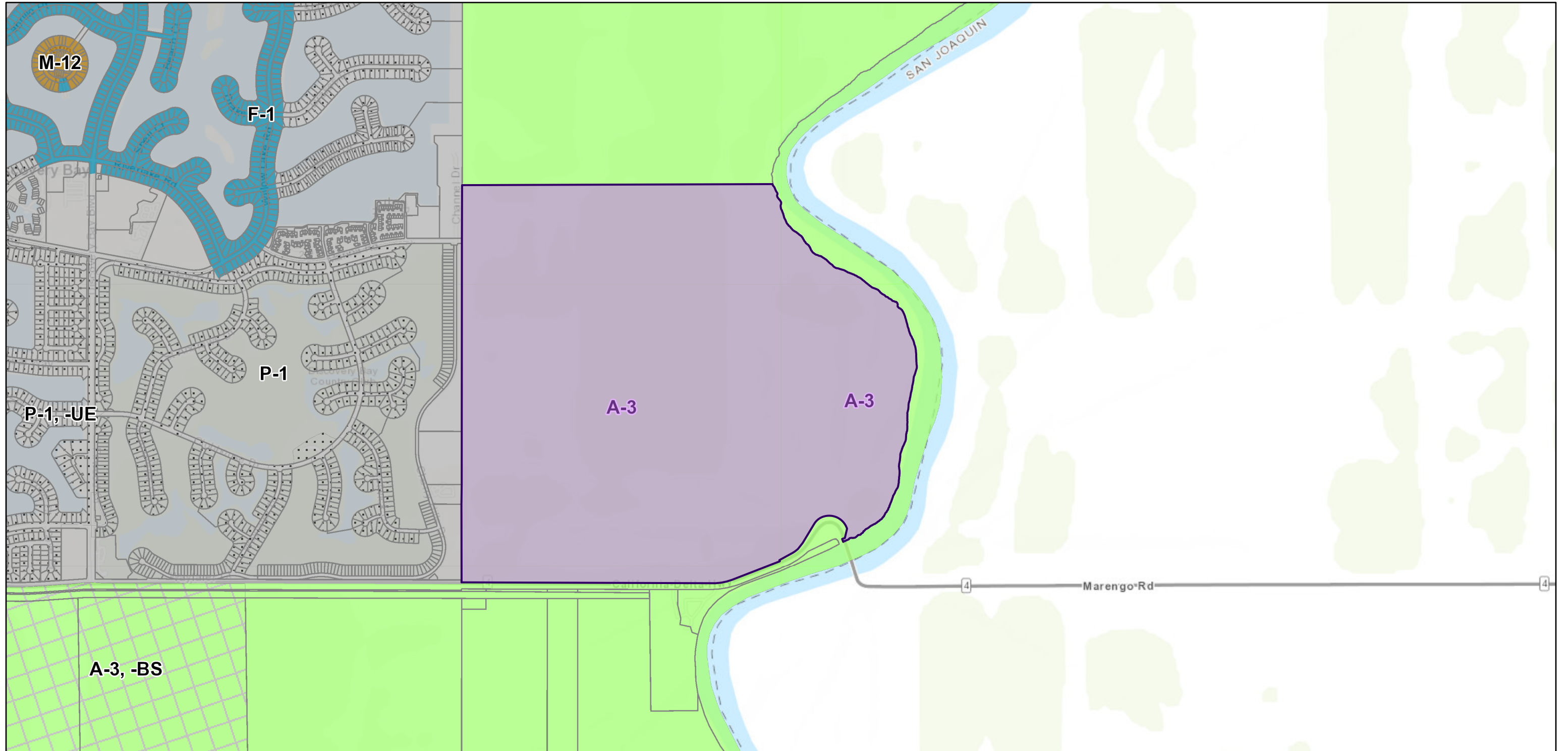
General Plan

- |                               |   |  |  |                     |
|-------------------------------|---|--|--|---------------------|
| SV (Single Family - Very Low) | MH (Multiple Family - High)               | M-3 (Pleasant Hill BART Mixed Use)               | M-10 (Willow Pass Business Park Mixed Use) | CO (Commercial)     |
| SL (Single Family - Low)      | MV (Multiple Family - Very High)          | M-4 (Willow Pass Road Mixed Use)                 | M-11 (Appian Way Mixed Use)                | OF (Office)         |
| SM (Single Family - Medium)   | MS (Multiple Family - Very High Special)  | M-5 (Willow Pass Road Commercial Mixed Use)      | M-12 (Triangle Are Mixed Use)              | BP (Business Park)  |
| SH (Single Family - High)     | CC (Congregate Care Senior Housing)       | M-6 (Bay Point Residential Mixed Use)            | M-13 (San Pablo Dam Road Mixed Use)        | LI (Light Industry) |
| ML (Multiple Family - Low)    | MO (Mobile Home)                          | M-7 (Pittsburg Bay Point BART Station Mixed Use) | M-14 (Heritage Point Mixed Use)            | HI (Heavy Industry) |
| MM (Multiple Family - Medium) | M-1 (Parker Avenue Mixed Use)             | M-8 (Dougherty Valley Village Center Mixed Use)  | M-15 (Saranap Village Mixed Use)           |                     |
|                               | M-2 (Downtown Waterfront Rodeo Mixed Use) | M-9 (Montalvin Manor Mixed Use)                  | MU (Mixed Use)                             |                     |

1:14,266



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

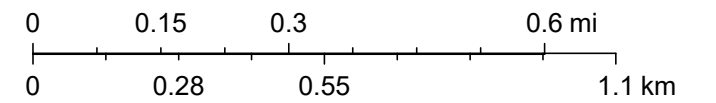


May 18, 2020

Zoning Districts

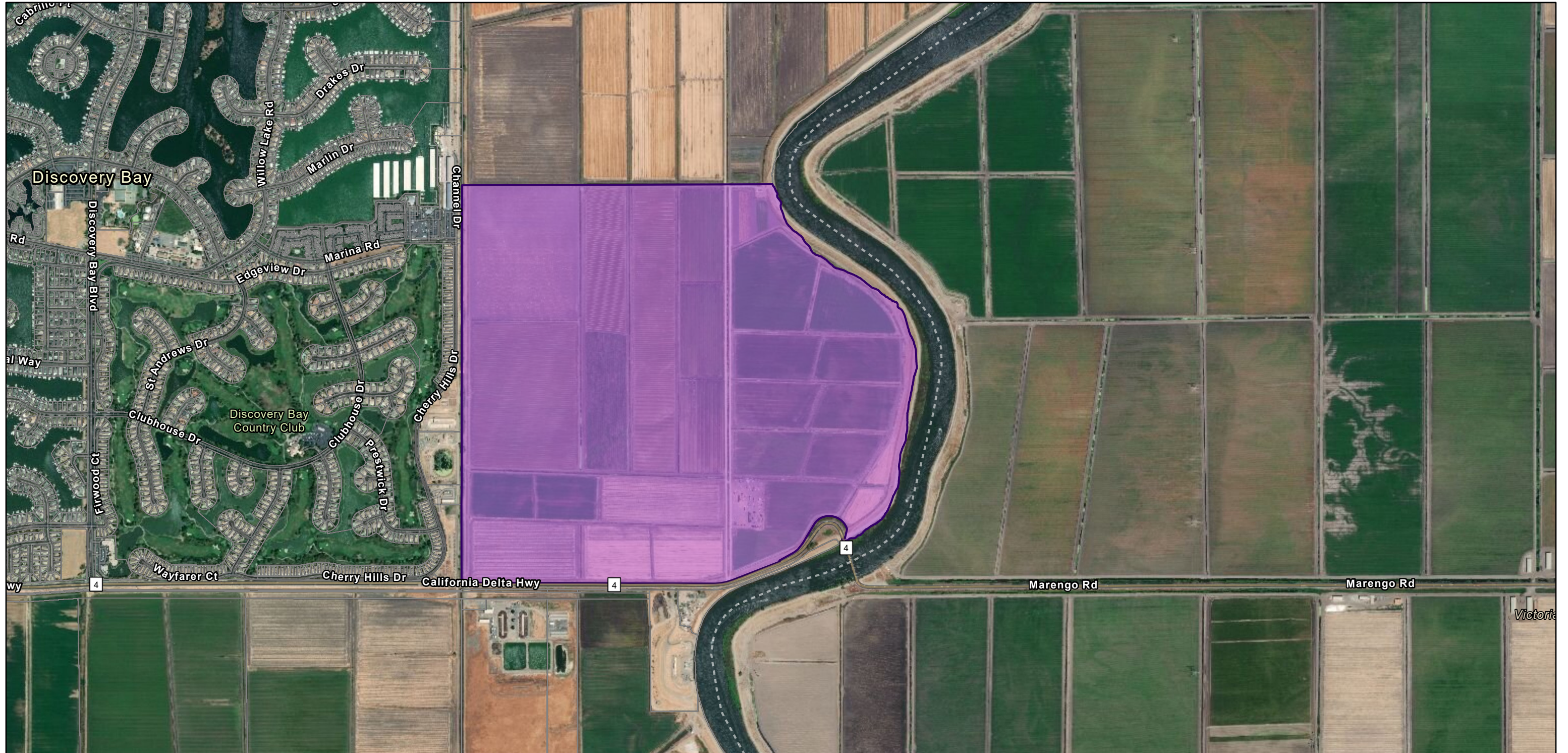
- |  |   |   |  |
|--|---|---|--|
| R-6 (Single Family Residential)                  | R-7 (Single Family Residential)               | R-20, -UE (Urban Farm Animal Exclusion)           | D-1 -T (Transitional Combining District)   |
| R-6, -FH -UE (Flood Hazard and Animal Exclusion) | R-7 -X (Railroad Corridor Combining District) | R-40 (Single Family Residential)                  | D-1, -UE (Urban Farm Animal Exclusion)     |
| R-6 -SD-1 (Slope Density Hillside Development)   | R-10 (Single Family Residential)              | R-40, -FH -UE (Flood Hazard and Animal Exclusion) | M-12 (Multiple Family Residential)         |
| R-6 -TOV -K (Tree Obstruction and Kensington)    | R-10, -UE (Urban Farm Animal Exclusion)       | R-40, -UE (Urban Farm Animal Exclusion)           | M-12 -FH (Flood Hazard Combining District) |
| R-6, -UE (Urban Farm Animal Exclusion)           | R-12 (Single Family Residential)              | R-65 (Single Family Residential)                  | M-17 (Multiple Family Residential)         |
| R-6 -X (Railroad Corridor Combining District)    | R-15 (Single Family Residential)              | R-100 (Single Family Residential)                 | M-29 (Multiple Family Residential)         |
|  | R-20 (Single Family Residential)              | D-1 (Two Family Residential)                      | F-R (Forestry Recreational)                |

1:14,266



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

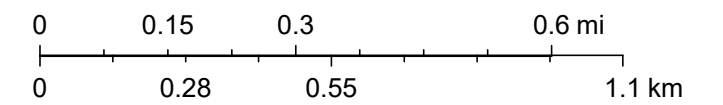
# Aerial Map



May 18, 2020

Parcels

1:14,266



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



Contra  
Costa  
County

To: Board of Supervisors  
From: LEGISLATION COMMITTEE  
Date: September 22, 2020

Subject: Propositions 20 and 21 on the November 3, 2020 General Election Ballot

---

**RECOMMENDATION(S):**

CONSIDER whether to adopt a position on the following measures that have qualified for the November 3, 2020 General Election ballot. The Board of Supervisors may adopt a position of "Support," "Oppose," or "No position."

1. **Proposition 20:** RESTRICTS PAROLE FOR NON-VIOLENT OFFENDERS. AUTHORIZES FELONY SENTENCES FOR CERTAIN OFFENSES CURRENTLY TREATED ONLY AS MISDEMEANORS. INITIATIVE STATUTE.
2. **Proposition 21:** EXPANDS LOCAL GOVERNMENTS' AUTHORITY TO ENACT RENT CONTROL ON RESIDENTIAL PROPERTY. INITIATIVE STATUTE.

**FISCAL IMPACT:**

From the Legislative Analyst's Office:

---

APPROVE
  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR
  RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  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: September 22, 2020

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

Contact: L. DeLaney,  
925-335-1097

By: , Deputy

cc:

## FISCAL IMPACT: (CONT'D)

**Prop. 20: "State and Local Correctional Costs.** The proposition would increase state and local correctional costs in three ways.

- First, the increase in penalties for theft-related crimes would increase correctional costs mostly by increasing county jail populations and the level of community supervision for some people.
- Second, the changes to community supervision practices would increase state and local costs in various ways. For example, the requirement that county probation officers seek to change the terms of supervision for people on PRCS who violate them for a third time could increase county jail populations if this causes more people to be placed in jail.
- Third, the changes made to the Proposition 57 release consideration process would increase state costs by reducing the number of inmates released from prison and generally increasing the cost of the process.

We estimate that more than several thousand people would be affected by the proposition each year. As a result, we estimate that the increase in state and local correctional costs would likely be in the tens of millions of dollars annually. The actual increase would depend on several uncertain factors, such as the specific number of people affected by the proposition. **State and Local Court-Related Costs.** The proposition would increase state and local court-related costs. This is because it would result in some people being convicted of felonies for certain theft-related crimes instead of misdemeanors. Because felonies take more time for courts to handle than misdemeanors, workload for the courts, county prosecutors and public defenders, and county sheriffs (who provide court security) would increase. In addition, requiring probation officers to ask judges to change the terms of supervision for people on PRCS after their third violation would result in additional court workload. We estimate that these court-related costs could be more than several million dollars annually, depending on the actual number of people affected by the proposition. **State and Local Law Enforcement Costs.** The proposition would increase state and local law enforcement costs by expanding the number of people who are required to provide DNA samples, possibly by tens of thousands annually. We estimate that the increase in state and local law enforcement costs would likely not be more than a few million dollars annually. **Other Fiscal Effects.** There could be other unknown fiscal effects on state and local governments due to the proposition. For example, if the increase in penalties reduces crime, some criminal justice system costs could be avoided. The extent to which this or other effects would occur is unknown."

**Prop. 21: "Economic Effects.** If communities respond to this measure by expanding their rent control laws beyond the existing protections for renters, it could lead to several economic effects. The most likely effects are:

- To avoid rent regulation, some landlords would sell their rental housing to new owners who would live there.
- The value of rental housing would decline because potential landlords would not want to pay as much for these properties.
- Some renters would spend less on rent and some landlords would receive less rental income.
- Some renters would move less often. For example, fewer renters would move because their rents increase.

The size of these effects would depend on how many communities pass new laws, how many properties are covered, and how much rents are limited. ***Changes in State and Local Revenues.*** The measure's economic effects would affect property tax, sales tax, and income tax revenues. The largest and most likely impacts are:

- ***Less Property Taxes Paid by Landlords.*** A decline in the value of rental properties would lead to a decrease in property tax payments made by owners of those properties over time. These property tax losses would be partially offset by higher property tax payments resulting from the sales of rental housing. This is because property sales often cause property tax bills to reset at a higher level. Revenue losses from lower property values would be larger than revenue gains from increased sales. Because of this, the measure would reduce overall property tax payments.
- ***More Sales Taxes Paid by Renters.*** Renters who pay less in rent would use some of their savings to buy taxable goods.
- ***Change in Income Taxes Paid by Landlords.*** Landlords' income tax payments ***would change in several ways, both up and down.*** The overall effect on state income tax revenue is not clear.

Overall, the measure likely would reduce state and local revenues over time. The largest effect would be on property taxes. The amount of revenue loss would depend on many factors, most importantly how communities respond to this measure. For example, if communities that already have rent control expand their rules to include newer homes and single-family homes, revenue losses could be in the high tens of millions of dollars per year. If many communities create new rent control rules, revenue losses could be larger. If few communities make changes, revenue losses would be minor. ***Increased Local Government Costs.*** If cities or counties create new rent control laws or expand existing ones, local rent boards would have increased costs. Depending on local government choices, these costs could **range from very little to tens of millions of dollars per year.** These costs likely would be paid by fees on owners of rental housing."

#### BACKGROUND:

At their September 14, 2020 meeting, the Legislation Committee further considered Propositions 20, 21, and 23, measures which have qualified for the November 3, 2020 General Election ballot. After further consideration, the Committee directed staff to send Propositions 20 and 21 to the full Board of Supervisors for consideration of an advocacy position, with no recommendation from the Committee.

**1. Proposition 20:** RESTRICTS PAROLE FOR NON-VIOLENT OFFENDERS. AUTHORIZES FELONY SENTENCES FOR CERTAIN OFFENSES CURRENTLY TREATED ONLY AS MISDEMEANORS. INITIATIVE STATUTE.

Imposes restrictions on parole program for non-violent offenders who have completed the full term for their primary offense. Expands list of offenses that disqualify an inmate from this parole program. Changes standards and requirements governing parole decisions under this program. Authorizes felony charges for specified theft crimes currently chargeable only as misdemeanors, including some theft crimes where the value is between \$250 and \$950. Requires persons convicted of specified misdemeanors to submit to collection of DNA samples for state database.

The summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: Increased state and local correctional costs likely in the tens of millions of dollars annually, primarily related to increases in penalties for certain theft-related crimes and the changes to

the nonviolent offender release consideration process. Increased state and local court-related costs of around a few million dollars annually related to processing probation revocations and additional felony theft filings. Increased state and local law enforcement costs not likely to exceed a couple million dollars annually related to collecting and processing DNA samples from additional offenders. ([17-0044](#).) Proposition 20 has four major provisions. It proposes to do the following:

- Changes state law to increase criminal penalties for some theft-related crimes.
- Changes how people released from state prison are supervised in the community.
- Makes various changes to the process created by Proposition 57 (2016) for considering the release of inmates from prison.
- Requires state and local law enforcement to collect DNA from adults convicted of certain crimes.

The CSAC staff analysis of Prop. 20, which recommended "No position" on the measure, which was concurred with by the Board of Directors, can be found in [Attachment A](#).

The Official Voter Information Guide from the California Secretary of State provides a summary of [Prop. 20](#). The [Legislative Analyst's Office](#) provides an analysis of the measure. [Ballotpedia](#) provides additional information.

The East Bay Times and Mercury News [Editorial Boards](#) recommend that voters reject Prop. 20, saying "California paid a heavy price for its heavy-handed 1990s approach to crime. Voters should reject any effort to return to that failed system. Vote no on Prop. 20."

## **2. Proposition 21: EXPANDS LOCAL GOVERNMENTS' AUTHORITY TO ENACT RENT CONTROL ON RESIDENTIAL PROPERTY. INITIATIVE STATUTE.**

Amends state law to allow local governments to establish rent control on residential properties over 15 years old. Allows rent increases on rent-controlled properties of up to 15 percent over three years from previous tenant's rent above any increase allowed by local ordinance. Exempts individuals who own no more than two homes from new rent-control policies. In accordance with California law, provides that rent-control policies may not violate landlords' right to a fair financial return on their property.

The summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: Potential reduction in state and local revenues of tens of millions of dollars per year in the long term. Depending on actions by local communities, revenue losses could be less or more. ([19-0001](#).)

The measure modifies the three main limitations of the Costa-Hawkins Rental Housing Act of 1995, allowing cities and counties to apply rent control to more properties than under current law. Specifically, cities and counties can apply rent control to most housing that is more than 15 years old. This does not include single-family homes owned by people with two or fewer properties. In addition, cities and counties can limit how much a landlord can increase rents when a new renter moves in. Communities that do so must allow a landlord to increase rents by up to 15 percent during the first three years after a new renter moves in.

The Official Voter Information Guide from the California Secretary of State provides information for [Prop. 21](#). [Ballotpedia](#) provides additional information about the measure. The Legislative Analyst's Office includes an analysis of [Prop. 21](#) on their website.



The Mercury News & East Bay Times Editorial Boards [recommend](#) that voters vote "no" on Proposition 21, saying "However well-intentioned Prop. 21 might be, it's counterproductive. Most economists agree that rent control reduces the quality and quantity of housing."

CONSEQUENCE OF NEGATIVE ACTION:

If the Board of Supervisors does not adopt an advocacy position, there will be no official position or endorsement from the Board of Supervisors on the measure.

CLERK'S ADDENDUM

**By unanimous vote, TOOK NO POSITION on Prop 20;**

By unanimous vote, TOOK NO POSITION on Prop 21.

Speakers: Melvin Willis, Richmond City Councilmember; Donald; Elsie Mills, Concord.

ATTACHMENTS

Attachment A: CSAC Analysis

**OFFICERS****President**

Lisa A. Bartlett  
Orange County

**1st Vice President**

James Gore  
Sonoma County

**2nd Vice President**

Ed Valenzuela  
Siskiyou County

**Past President**

Virginia Bass  
Humboldt County

**EXECUTIVE DIRECTOR**

Graham Knaus

July 23, 2020

**To:** CSAC Administration of Justice Committee

**From:** Josh Gauger, CSAC Legislative Representative  
Stanicia Boatner, CSAC Legislative Analyst

**Re: 2020 Ballot Initiative: Proposition 20 – Reducing Crime and Keeping California Safe Act of 2018 – ACTION ITEM**

**Recommendation**

Staff recommends the Administration of Justice policy committee recommend “no position” to the CSAC Executive Committee and Board of Directors.

**Summary**

This measure amends state law to (1) increase penalties for certain theft-related crimes, (2) change the California Department of Corrections and Rehabilitation’s (CDCR) existing non-violent offender release consideration process, (3) change county probation community supervision practices, and (4) require DNA collection from adults convicted of certain misdemeanors.

**Background**

The criminal justice system has undergone several significant changes over the last decade. These changes primarily intended to reduce county jail and state prison populations, costs of incarceration, and improve reentry and recidivism outcomes among the offender population. Proposition 20 proposes several amendments that overlap with these measures.

**AB 109/2011 Public Safety Realignment**

*What it did:* Among other changes, Chapter 15, Statutes of 2011 (AB 109) changed adult criminal sentencing so that lower-level—non-serious, non-violent, and non-sex registrant—felons served their sentences in county jail rather than state prison. Under AB 109, offenders convicted of a current non-serious, non-violent, and non-sex registrant felony are still sentenced to state prison if they have a prior conviction for a serious or violent felony or felony subjecting the offender to registration as a sex offender. The non-serious, non-violent, and non-sex registrant population currently being sentenced to state prison under this provision is now released on Post-Release Community Supervision (county probation oversight) rather than state parole. AB 109 was part of the broader 2011 Public Safety Realignment and the source of funding for counties to fulfill these responsibilities is protected under the constitutional amendments passed in Proposition 30 (2012). AB 109-related reforms also included new “tools” for managing the offender population which became a county responsibility, including “split sentences” and “flash incarceration.” Split sentences require a period of Mandatory Supervision on county probation after a period of jail incarceration—similar to state parole. Separately, flash incarceration is an alternative sanction that may be utilized to require a short

(up to 10 days) jail incarceration as a response to a violation of the terms and conditions of community supervision (relevant here is Post-Release Community Supervision).

*How Proposition 20 would change it:* This ballot measure would *require* a supervising county agency to petition the court to revoke, modify, or terminate Post-Release Community Supervision, if the supervised person has violated the terms of their release for a third time. Meaning, a third violation would preclude the use of alternative sanctions by probation departments. Additionally, Proposition 20 *requires*, upon a decision to impose a period of flash incarceration, the probation department to notify the court, public defender, district attorney, and sheriff of each imposition of flash incarceration.

#### Proposition 47 (2014)

*What it did:* Proposition 47 implemented three broad changes to felony sentencing laws. First, it reclassified certain theft and drug possession offenses from felonies to misdemeanors unless the defendant has prior convictions for murder, rape, or certain sex or gun offenses. Second, it authorized defendants currently serving sentences for felony offenses that would have qualified as misdemeanors under the proposition to petition courts for resentencing under the new misdemeanor provisions, subject to certain severe crimes noted above. Third, it authorized defendants who have completed their sentences for felony convictions that would have qualified as misdemeanors under the proposition to apply to reclassify those convictions to misdemeanors, subject to certain severe crimes noted above. Additionally, the measure required state savings resulting from the implementation of the act to be transferred to a new fund for specified grant programs.

*How Proposition 20 would change it:* This ballot measure would make multiple changes to criminal sentencing which was impacted by Proposition 47.

- First, because DNA collection is generally authorized for felony convictions, as specified, individuals convicted of crimes that Proposition 47 reclassified from felonies to misdemeanors are no longer subject to DNA collection. Proposition 20 would add numerous misdemeanor convictions to the list of crimes or circumstances in which DNA collection is authorized. Examples include, shoplifting, possession of a controlled substance, assault or battery on school property when school activities are being conducted, disorderly conduct, or certain domestic violence crimes.
- Second, under current law (as impacted by Proposition 47) theft of money or property worth less than \$950 is generally charged as petty theft or shoplifting—generally misdemeanors punishable by up to six months in county jail. Proposition 20 would specify that crimes such as identity theft, forgery, and unauthorized use of a vehicle cannot be charged as petty theft or shoplifting regardless of the value. Alternatively, Proposition 20 would have these crimes charged as “wobblers”—if charged as a misdemeanor, punishable by up to one year in jail, and if charged as a felony, punishable by up to three years in jail or prison.
- Third, Proposition 20 creates new crimes: serial theft and organized retail theft, as specified. These new crimes would apply to offenders who have been previously convicted two or more times on separate occasions of certain retail theft, petty theft, shoplifting, and other specified crimes. Similarly, these new crimes would be “wobblers” punishable by up to three years in jail.

### Proposition 57

*What it did:* Proposition 57 reformed the juvenile and adult criminal justice system in California by (1) creating a parole consideration process for non-violent offenders who have served the full term for their primary criminal offense in state prison; (2) authorizing the CDCR to award credits earned for good conduct and approved rehabilitative or educational achievements; and (3) requiring judges to determine whether juveniles charged with certain crimes should be tried in juvenile or adult court. Pertinent to Proposition 20, offenders can be convicted of multiple crimes, including a primary crime for which they receive the longest amount of prison time. They can serve additional time due to certain case factors (e.g., use of a weapon or previous convictions). Proposition 57 allowed inmates convicted of non-violent felonies (as defined by current law) to be considered for release by the Board of Parole Hearings (BPH) after serving the term for their primary crimes.

*How Proposition 20 changes it:* This ballot measure classifies additional crimes as “violent” for the purposes of the Proposition 57 parole review process, which results in more individuals being excluded from review, and creates a higher threshold for release consideration. Additionally, the measure allows prosecutors to request a review of BPH release decisions. Under this proposition, violent crimes would now include crimes such as assault, domestic violence, specified human trafficking crimes, and solicitation to commit murder. Lastly, Proposition 20 would create additional review factors for the BPH and delay any reviews after a denial to two years (rather than one).

### **Proposition 20 Fiscal Impact**

The Legislative Analyst’s Office and Department of Finance estimate increased state and local correctional costs likely in the tens of millions of dollars annually, primarily related to increases in penalties for certain theft-related crimes and the changes to the non-violent offender release consideration process. Additionally, they estimate increased state and local court-related costs of around a few million dollars annually related to processing probation revocations and additional felony theft filings. Lastly, there could be increased state and local law enforcement costs not likely to exceed a couple million dollars annually related to collecting and processing DNA samples from additional offenders.

Given the overlap with crimes reclassified under Proposition 47, this ballot measure could also reduce the state savings that is annually made available for certain grant programs.

### **Arguments in Support**

Proponents of Proposition 20 generally argue that, despite the violent nature, certain crimes are incorrectly designated as non-violent under California law. Because they are designated as non-violent, offenders serving current state prison terms for these crimes are eligible for parole consideration after serving the full term for their primary offense (Proposition 57 early parole review process). This measure would designate these crimes as “violent” for the purposes of this review and, therefore, make the offenders ineligible for early parole consideration. Additionally, proponents argue that Proposition 20 provides protection against violent crime by allowing DNA collection from persons convicted of theft or drug offenses. Lastly, they argue that Proposition 20 strengthens sanctions against serial theft.

### **Arguments in Opposition**

Opponents of Proposition 20 generally argue that California already has lengthy sentences and strict punishment for serious and violent crime and this measure would unnecessarily result in tens of millions of dollars being spent on prisons while cutting rehabilitation programs and support for crime victims. Additionally, opponents argue that increasing penalties for theft-related crimes will have a disproportionate impact on Black, Latino, and low-income individuals. Lastly, they argue that California has made progress by enacting criminal justice reforms to reduce prison spending and expand rehabilitation and this measure would repeal California's progress.

### **Policy Considerations**

Proposition 20 includes elements that are both consistent with prior CSAC positions on related measures and inconsistent with CSAC's policy platform and positions.

*AB 109 (No Position):* CSAC did not have a formal position on AB 109 but actively negotiated the terms of 2011 Public Safety Realignment with an emphasis on local control and fiscal protections. Proposition 20 reduces flexibility afforded under AB 109 as it relates to county probation department decision making for violations of the terms and conditions of Post-Release Community Supervision. This reduced flexibility could result in increased jail incarceration and potentially increased jail costs which would have to be funded within existing county resources.

The CSAC 2011 Realignment platform states that CSAC will oppose efforts that limit county flexibility in implementing programs and services realigned in 2011 or infringe upon our individual and collective ability to innovate locally. Additionally, the AOJ Policy Platform states that the most cost-effective method of rehabilitating convicted persons is the least restrictive alternative that is close to the individual's community and should be encouraged where possible.

*Proposition 47 (OPPOSE):* CSAC opposed Proposition 47 which requires misdemeanor rather than felony sentencing for certain property and drug crimes and permitted certain offenders to petition for resentencing. Supporting Proposition 20 may be consistent with this prior position. However, it should be considered with the trade-offs of increased incarceration and the following relevant AOJ Policy Platform positions:

- Given that local and state corrections systems are interconnected, true reform must consider the advantage—if not necessity—of investing in local programs and services to help the state reduce the rate of growth in the prison population.
- A shared commitment to rehabilitation can help address the inextricably linked challenges of recidivism and facility overcrowding. The most effective method of rehabilitation is one that maintains ties to an offender's community.

Additionally, each year state savings from the implementation of Proposition 47 is required to be transferred and re-allocated in grant programs, as specified in the initiative. The Budget

estimates total state savings of \$102.9 million for 2019-20. Proposition 20 could reduce state savings made available for these grant programs.

*Proposition 57 (NEUTRAL):* CSAC was “neutral” on Proposition 57. While Proposition 57 largely focuses on the management of the state prison and offender population, the decisions the state makes in implementing Proposition 57 undoubtedly impact counties due to the overall criminal justice continuum and close ties between the two systems. As cited above, the AOJ Policy Platform includes language related to helping the state reduce the rate of growth in the prison population and overcrowding.

**Staff Contact**

Please contact Josh Gauger at [jgauger@counties.org](mailto:jgauger@counties.org) or Stanicia Boatner at [sboatner@counties.org](mailto:sboatner@counties.org).

**Resources**

- 1) [Title and Summary](#)
- 2) [Full text of Ballot Initiative](#)
- 3) [Fiscal Analysis by Legislative Analyst’s Office](#)

**BALLOT TITLE AND SUMMARY**

**RESTRICTS PAROLE FOR NON-VIOLENT OFFENDERS. AUTHORIZES FELONY SENTENCES FOR CERTAIN OFFENSES CURRENTLY TREATED ONLY AS MISDEMEANORS. INITIATIVE STATUTE.**

- Limits access to parole program established for non-violent offenders who have completed the full term of their primary offense by eliminating eligibility for certain offenses.
- Changes standards and requirements governing parole decisions under this program.
- Authorizes felony charges for specified theft crimes currently chargeable only as misdemeanors, including some theft crimes where the value is between \$250 and \$950.
- Requires persons convicted of specified misdemeanors to submit to collection of DNA samples for state database.

**Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:**

- Increased state and local correctional costs likely in the tens of millions of dollars annually, primarily due to increases in county jail populations and levels of community supervision.
- Increased state and local court-related costs that could be more than several million dollars annually.
- Increased state and local law enforcement costs not likely to be more than a few million dollars annually related to collecting and processing DNA samples.

RECEIVED  
JUL 13 2020  
OFFICE OF THE ATTORNEY GENERAL

**OFFICIAL TITLE AND  
SUMMARY PREPARED BY  
THE ATTORNEY GENERAL**

**SUBJECT TO COURT  
ORDERED CHANGES**

Date: 11/14/2017**RECEIVED****NOV 28 2017**

Initiative Coordinator  
Office of the Attorney General  
State of California  
PO Box 994255  
Sacramento, CA 94244-25550

**INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE**

Re: Initiative No. 17-0044 - Amendment # 1

Dear Initiative Coordinator:

Pursuant to subdivision (b) of Section 9002 of the Elections Code, enclosed please find Amendment # 1 to Initiative No. 17-0044. The amendments are reasonably germane to the theme, purpose or subject of the initiative measure as originally proposed.

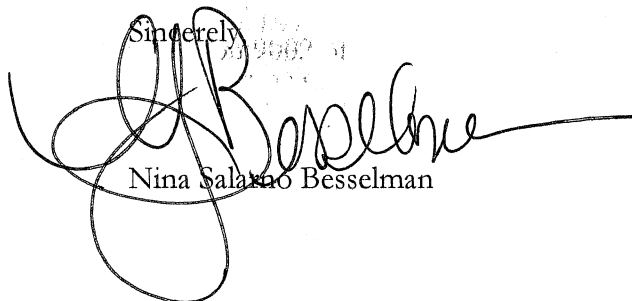
I am the proponent of the measure and request that the Attorney General prepare a circulating title and summary of the measure as provided by law, using the amended language.

For purposes of inquiries from the public and the media, please direct them as follows:

Charles H. Bell, Jr.  
455 Capitol Mall, Suite 600  
Sacramento, CA 95814  
[cbell@bmhlaw.com](mailto:cbell@bmhlaw.com)  
(916) 442-7757

Thank you for your time and attention processing my request.

Sincerely,



Nina Salarno Besselman



## **INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO VOTERS**

### **SEC. 1. TITLE**

This act shall be known and may be cited as the Reducing Crime and Keeping California Safe Act of 2018.

### **SEC. 2. PURPOSES**

This measure will fix three related problems created by recent laws that have threatened the public safety of Californians and their children from violent criminals. This measure will:

- A. Reform the parole system so violent felons are not released early from prison, strengthen oversight of post release community supervision and tighten penalties for violations of terms of post release community supervision;
- B. Reform theft laws to restore accountability for serial thieves and organized theft rings; and
- C. Expand DNA collection from persons convicted of drug, theft and domestic violence related crimes to help solve violent crimes and exonerate the innocent.

### **SEC. 3. FINDINGS AND DECLARATIONS**

#### **A. Prevent Early Release of Violent Felons**

1. Protecting every person in our state, including our most vulnerable children, from violent crime is of the utmost importance. Murderers, rapists, child molesters and other violent criminals should not be released early from prison.
2. Since 2014, California has had a larger increase in violent crime than the rest of the United States. Since 2013, violent crime in Los Angeles has increased 69.5%. Violent crime in Sacramento rose faster during the first six months of 2015 than in any of the 25 largest U.S. cities tracked by the FBI.
3. Recent changes to parole laws allowed the early release of dangerous criminals by the law's failure to define certain crimes as "violent." These changes allowed individuals convicted of sex trafficking of children, rape of an unconscious person, felony assault with a deadly weapon, battery on a police officer or firefighter, and felony domestic violence to be considered "non-violent offenders."
4. As a result, these so-called "non-violent" offenders are eligible for early release from prison after serving only a fraction of the sentence ordered by a judge.
5. Violent offenders are also being allowed to remain free in our communities even when they commit new crimes and violate the terms of their post release community supervision, like the gang member charged with the murder of Whittier Police Officer, Keith Boyer.
6. Californians need better protection from such violent criminals.
7. Californians need better protection from felons who repeatedly violate the terms of their post release community supervision.
8. This measure reforms the law so felons who violate the terms of their release can be brought back to court and held accountable for such violations.
9. Californians need better protection from such violent criminals. This measure reforms the law to define such crimes as "violent felonies" for purposes of early release.

10. Nothing in this act is intended to create additional “strike” offenses which would increase the state prison population.

11. Nothing in this act is intended to affect the ability of the California Department of Corrections and Rehabilitation to award educational and merit credits.

**B. Restore Accountability for Serial Theft and Organized Theft Rings**

1. Recent changes to California law allow individuals who steal repeatedly to face few consequences, regardless of their criminal record or how many times they steal.

2. As a result, between 2014 and 2016, California had the 2<sup>nd</sup> highest increase in theft and property crimes in the United States, while most states have seen a steady decline. According to the California Department of Justice, the value of property stolen in 2015 was \$2.5 billion with an increase of 13 percent since 2014, the largest single-year increase in at least ten years.

3. Individuals who repeatedly steal often do so to support their drug habit. Recent changes to California law have reduced judges’ ability to order individuals convicted of repeated theft crimes into effective drug treatment programs.

4. California needs stronger laws for those who are repeatedly convicted of theft related crimes, which will encourage those who repeatedly steal to support their drug problem to enter into existing drug treatment programs. This measure enacts such reforms.

**C. Restore DNA Collection to Solve Violent Crime**

1. Collecting DNA from criminals is essential to solving violent crimes. Over 450 violent crimes including murder, rape and robbery have gone unsolved because DNA is being collected from fewer criminals.

2. DNA collected in 2015 from a convicted child molester solved the rape-murders of two six-year-old boys that occurred three decades ago in Los Angeles County. DNA collected in 2016 from an individual caught driving a stolen car solved the 2012 San Francisco Bay Area rape-murder of an 83-year-old woman.

3. Recent changes to California law unintentionally eliminated DNA collection for theft and drug crimes. This measure restores DNA collection from persons convicted for such offenses.

4. Permitting collection of more DNA samples will help identify suspects, clear the innocent and free the wrongly convicted.

5. This measure does not affect existing legal safeguards that protect the privacy of individuals by allowing for the removal of their DNA profile if they are not charged with a crime, are acquitted or are found innocent.

**SEC. 4. PAROLE CONSIDERATION**

**Section 3003 of the Penal Code is amended to read:**

[language added to an existing section of law is designated in underlined type and language deleted is designated in ~~strikeout~~ type]

(a) Except as otherwise provided in this section, an inmate who is released on parole or postrelease supervision as provided by Title 2.05 (commencing with Section 3450) shall be returned to the county that was the last legal residence of the inmate prior to his or her incarceration. For purposes of this subdivision, “last legal residence” shall not be construed to mean the county wherein the inmate committed an offense while confined in a state prison or local jail facility or while confined for treatment in a state hospital.

(b) Notwithstanding subdivision (a), an inmate may be returned to another county if that would be in the best interests of the public. If the Board of Parole Hearings setting the conditions of

parole for inmates sentenced pursuant to subdivision (b) of Section 1168, as determined by the parole consideration panel, or the Department of Corrections and Rehabilitation setting the conditions of parole for inmates sentenced pursuant to Section 1170, decides on a return to another county, it shall place its reasons in writing in the parolee's permanent record and include these reasons in the notice to the sheriff or chief of police pursuant to Section 3058.6. In making its decision, the paroling authority shall consider, among others, the following factors, giving the greatest weight to the protection of the victim and the safety of the community:

(1) The need to protect the life or safety of a victim, the parolee, a witness, or any other person.  
 (2) Public concern that would reduce the chance that the inmate's parole would be successfully completed.

(3) The verified existence of a work offer, or an educational or vocational training program.

(4) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed.

(5) The lack of necessary outpatient treatment programs for parolees receiving treatment pursuant to Section 2960.

(c) The Department of Corrections and Rehabilitation, in determining an out-of-county commitment, shall give priority to the safety of the community and any witnesses and victims.

(d) In making its decision about an inmate who participated in a joint venture program pursuant to Article 1.5 (commencing with Section 2717.1) of Chapter 5, the paroling authority shall give serious consideration to releasing him or her to the county where the joint venture program employer is located if that employer states to the paroling authority that he or she intends to employ the inmate upon release.

(e)(1) The following information, if available, shall be released by the Department of Corrections and Rehabilitation to local law enforcement agencies regarding a paroled inmate or inmate placed on postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450) who is released in their jurisdictions:

(A) Last, first, and middle names.

(B) Birth date.

(C) Sex, race, height, weight, and hair and eye color.

(D) Date of parole or placement on postrelease community supervision and discharge.

(E) Registration status, if the inmate is required to register as a result of a controlled substance, sex, or arson offense.

(F) California Criminal Information Number, FBI number, social security number, and driver's license number.

(G) County of commitment.

(H) A description of scars, marks, and tattoos on the inmate.

(I) Offense or offenses for which the inmate was convicted that resulted in parole or postrelease community supervision in this instance.

(J) Address, including all of the following information:

(i) Street name and number. Post office box numbers are not acceptable for purposes of this subparagraph.

(ii) City and ZIP Code.

(iii) Date that the address provided pursuant to this subparagraph was proposed to be effective.

(K) Contact officer and unit, including all of the following information:

(i) Name and telephone number of each contact officer.

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(ii) Contact unit type of each contact officer such as units responsible for parole, registration, or county probation.

(L) A digitized image of the photograph and at least a single digit fingerprint of the parolee.

(M) A geographic coordinate for the inmate's residence location for use with a Geographical Information System (GIS) or comparable computer program.

(N) Copies of the record of supervision during any prior period of parole.

(2) Unless the information is unavailable, the Department of Corrections and Rehabilitation shall electronically transmit to the county agency identified in subdivision (a) of Section 3451 the inmate's tuberculosis status, specific medical, mental health, and outpatient clinic needs, and any medical concerns or disabilities for the county to consider as the offender transitions onto postrelease community supervision pursuant to Section 3450, for the purpose of identifying the medical and mental health needs of the individual. All transmissions to the county agency shall be in compliance with applicable provisions of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Public Law 104-191), the federal Health Information Technology for Clinical Health Act (HITECH) (Public Law 111-005), and the implementing of privacy and security regulations in Parts 160 and 164 of Title 45 of the Code of Federal Regulations. This paragraph shall not take effect until the Secretary of the United States Department of Health and Human Services, or his or her designee, determines that this provision is not preempted by HIPAA.

(3) Except for the information required by paragraph (2), the information required by this subdivision shall come from the statewide parolee database. The information obtained from each source shall be based on the same timeframe.

(4) All of the information required by this subdivision shall be provided utilizing a computer-to-computer transfer in a format usable by a desktop computer system. The transfer of this information shall be continually available to local law enforcement agencies upon request.

(5) The unauthorized release or receipt of the information described in this subdivision is a violation of Section 11143.

~~(f) Notwithstanding any other law, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, a violent felony as defined in paragraphs (1) to (7), inclusive, and paragraph (16) of subdivision (c) of Section 667.5 or a felony in which the defendant inflicts great bodily injury on a person other than an accomplice that has been charged and proved as provided for in Section 12022.53, 12022.7, or 12022.9, if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Parole Hearings or the Department of Corrections and Rehabilitation finds that there is a need to protect the life, safety, or well-being of a victim or witness.~~ the victim or witness, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, any of the following crimes:

(1) A violent felony as defined subdivision (c) of Section 667.5 or subdivision (a) of Section 3040.1.

(2) A felony in which the defendant inflicts great bodily injury on a person, other than an accomplice, that has been charged and proved as provided for in Section 12022.53, 12022.7, or 12022.9.

(g) Notwithstanding any other law, an inmate who is released on parole for a violation of Section 288 or 288.5 whom the Department of Corrections and Rehabilitation determines poses a high risk to the public shall not be placed or reside, for the duration of his or her parole, within one-

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half mile of a public or private school including any or all of kindergarten and grades 1 to 12, inclusive.

(h) Notwithstanding any other law, an inmate who is released on parole or postrelease community supervision for a stalking offense shall not be returned to a location within 35 miles of the victim's or witness' actual residence or place of employment if the victim or witness has requested additional distance in the placement of the inmate on parole or postrelease community supervision, and if the Board of Parole Hearings or the Department of Corrections and Rehabilitation, or the supervising county agency, as applicable, finds that there is a need to protect the life, safety, or well-being of the victim. If an inmate who is released on postrelease community supervision cannot be placed in his or her county of last legal residence in compliance with this subdivision, the supervising county agency may transfer the inmate to another county upon approval of the receiving county.

(i) The authority shall give consideration to the equitable distribution of parolees and the proportion of out-of-county commitments from a county compared to the number of commitments from that county when making parole decisions.

(j) An inmate may be paroled to another state pursuant to any other law. The Department of Corrections and Rehabilitation shall coordinate with local entities regarding the placement of inmates placed out of state on postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450).

(k)(1) Except as provided in paragraph (2), the Department of Corrections and Rehabilitation shall be the agency primarily responsible for, and shall have control over, the program, resources, and staff implementing the Law Enforcement Automated Data System (LEADS) in conformance with subdivision (e). County agencies supervising inmates released to postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450) shall provide any information requested by the department to ensure the availability of accurate information regarding inmates released from state prison. This information may include all records of supervision, the issuance of warrants, revocations, or the termination of postrelease community supervision. On or before August 1, 2011, county agencies designated to supervise inmates released to postrelease community supervision shall notify the department that the county agencies have been designated as the local entity responsible for providing that supervision.

(2) Notwithstanding paragraph (1), the Department of Justice shall be the agency primarily responsible for the proper release of information under LEADS that relates to fingerprint cards.

(l) In addition to the requirements under subdivision (k), the Department of Corrections and Rehabilitation shall submit to the Department of Justice data to be included in the supervised release file of the California Law Enforcement Telecommunications System (CLETS) so that law enforcement can be advised through CLETS of all persons on postrelease community supervision and the county agency designated to provide supervision. The data required by this subdivision shall be provided via electronic transfer.

**Section 3040.1 is added to the Penal Code to read:**

(a) For purposes of early release or parole consideration under the authority of Section 32 of Article I of the Constitution, Sections 12838.4 and 12838.5 of the Government Code, Sections 3000.1, 3041.5, 3041.7, 3052, 5000, 5054, 5055, 5076.2 of this Code and the rulemaking authority granted by Section 5058 of this Code, the following shall be defined as "violent felony offenses":

(1) Murder or voluntary manslaughter;

- (2) Mayhem;
- (3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262;
- (4) Sodomy as defined in subdivision (c) or (d) of Section 286;
- (5) Oral copulation as defined in subdivision (c) or (d) of Section 288a;
- (6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288;
- (7) Any felony punishable by death or imprisonment in the state prison for life;
- (8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55;
- (9) Any robbery;
- (10) Arson, in violation of subdivision (a) or (b) of Section 451;
- (11) Sexual penetration as defined in subdivision (a) or (j) of Section 289;
- (12) Attempted murder;
- (13) A violation of Section 18745, 18750, or 18755;
- (14) Kidnapping;
- (15) Assault with the intent to commit a specified felony, in violation of Section 220;
- (16) Continuous sexual abuse of a child, in violation of Section 288.5;
- (17) Carjacking, as defined in subdivision (a) of Section 215;
- (18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1;
- (19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22;
- (20) Threats to victims or witnesses, as defined in subdivision (c) of Section 136.1;
- (21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary;
- (22) Any violation of Section 12022.53;
- (23) A violation of subdivision (b) or (c) of Section 11418;
- (24) Solicitation to commit murder;
- (25) Felony assault with a firearm in violation of subsections (a)(2) and (b) of Section 245;
- (26) Felony assault with a deadly weapon in violation of paragraph (1) of subdivision (a) of Section 245;
- (27) Felony assault with a deadly weapon upon the person of a peace officer or firefighter in violation of subdivisions (c) and (d) of Section 245;
- (28) Felony assault by means of force likely to produce great bodily injury in violation of paragraph (4) of subdivision (a) of Section 245;
- (29) Assault with caustic chemicals in violation of Section 244;
- (30) False imprisonment in violation of Section 210.5;
- (31) Felony discharging a firearm in violation of Section 246;
- (32) Discharge of a firearm from a motor vehicle in violation of subsection (c) of Section 26100;
- (33) Felony domestic violence resulting in a traumatic condition in violation of Section 273.5;
- (34) Felony use of force or threats against a witness or victim of a crime in violation of Section 140;

- (35) Felony resisting a peace officer and causing death or serious injury in violation of Section 148.10;
  - (36) A felony hate crime punishable pursuant to Section 422.7;
  - (37) Felony elder or dependent adult abuse in violation of subdivision (b) of Section 368;
  - (38) Rape in violation of paragraphs (1), (3), or (4) of subdivision (a) of Section 261;
  - (39) Rape in violation of Section 262;
  - (40) Sexual penetration in violation of subdivision (b), (d) or (e) of Section 289;
  - (41) Sodomy in violation of subdivision (f), (g), or (i) of Section 286;
  - (42) Oral copulation in violation of subdivision (f), (g), or (i) of Section 288a;
  - (43) Abduction of a minor for purposes of prostitution in violation of Section 267;
  - (44) Human trafficking in violation of subdivision (a), (b), or (c) of Section 236.1;
  - (45) Child abuse in violation of Section 273ab;
  - (46) Possessing, exploding, or igniting a destructive device in violation of Section 18740;
  - (47) Two or more violations of subsection (c) of Section 451;
  - (48) Any attempt to commit an offense described in this subdivision;
  - (49) Any felony in which it is pled and proven that the Defendant personally used a dangerous or deadly weapon;
  - (50) Any offense resulting in lifetime sex offender registration pursuant to Sections 290 through 290.009.
  - (51) Any conspiracy to commit an offense described in this Section.
- (b) The provisions of this section shall apply to any inmate serving a custodial prison sentence on or after the effective date of this section, regardless of when the sentence was imposed.

**Section 3040.2 is added to the Penal Code to read:**

- (a) Upon conducting a nonviolent offender parole consideration review, the hearing officer for the Board of Parole Hearings shall consider all relevant, reliable information about the inmate.
- (b) The standard of review shall be whether the inmate will pose an unreasonable risk of creating victims as a result of felonious conduct if released from prison.
- (c) In reaching this determination, the hearing officer shall consider the following factors:
  - (1) Circumstances surrounding the current conviction;
  - (2) The inmate's criminal history, including involvement in other criminal conduct, both juvenile and adult, which is reliably documented;
  - (3) The inmate's institutional behavior including both rehabilitative programming and institutional misconduct;
  - (4) Any input from the inmate, any victim, whether registered or not at the time of the referral, and the prosecuting agency or agencies;
  - (5) The inmate's past and present mental condition as documented in records in the possession of the Department of Corrections and Rehabilitation;
  - (6) The inmate's past and present attitude about the crime;
  - (7) Any other information which bears on the inmate's suitability for release.
- (d) The following circumstances shall be considered by the hearing officer in determining whether the inmate is unsuitable for release:
  - (1) Multiple victims involved in the current commitment offense;
  - (2) A victim was particularly vulnerable due to age or physical or mental condition;
  - (3) The inmate took advantage of a position of trust in the commission of the crime;

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- (4) The inmate was armed with or used a firearm or other deadly weapon in the commission of the crime;
  - (5) A victim suffered great bodily injury during the commission of the crime;
  - (6) The inmate committed the crime in association with a criminal street gang;
  - (7) The inmate occupied a position of leadership or dominance over other participants in the commission of the crime, or the inmate induced others to participate in the commission of the crime;
  - (8) During the commission of the crime, the inmate had a clear opportunity to cease but instead continued;
  - (9) The inmate has engaged in other reliably documented criminal conduct which was an integral part of the crime for which the inmate is currently committed to prison;
  - (10) The manner in which the crime was committed created a potential for serious injury to persons other than the victim of the crime;
  - (11) The inmate was on probation, parole, post release community supervision, mandatory supervision or was in custody or had escaped from custody at the time of the commitment offense;
  - (12) The inmate was on any form of pre- or post-conviction release at the time of the commitment offense;
  - (13) The inmate's prior history of violence, whether as a juvenile or adult;
  - (14) The inmate has engaged in misconduct in prison or jail;
  - (15) The inmate is incarcerated for multiple cases from the same or different counties or jurisdictions.
- (e) The following circumstances shall be considered by the hearing officer in determining whether the inmate is suitable for release:
- (1) The inmate does not have a juvenile record of assaulting others or committing crimes with a potential of harm to victims;
  - (2) The inmate lacks any history of violent crime;
  - (3) The inmate has demonstrated remorse;
  - (4) The inmate's present age reduces the risk of recidivism;
  - (5) The inmate has made realistic plans if released or has developed marketable skills that can be put to use upon release;
  - (6) The inmate's institutional activities demonstrate an enhanced ability to function within the law upon release;
  - (7) The inmate participated in the crime under partially excusable circumstances which do not amount to a legal defense;
  - (8) The inmate had no apparent predisposition to commit the crime but was induced by others to participate in its commission;
  - (9) The inmate has a minimal or no criminal history;
  - (10) The inmate was a passive participant or played a minor role in the commission of the crime;
  - (11) The crime was committed during or due to an unusual situation unlikely to reoccur.

**Section 3040.3 is added to the Penal Code to read:**

- (a) An inmate whose current commitment includes a concurrent, consecutive or stayed sentence for an offense or allegation defined as violent by subdivision (c) of Section 667.5 or 3040.1 shall be deemed a violent offender for purposes of Section 32 of Article I of the Constitution.



(b) An inmate whose current commitment includes an indeterminate sentence shall be deemed a violent offender for purposes of Section 32 of Article I of the Constitution.

(c) An inmate whose current commitment includes any enhancement which makes the underlying offense violent pursuant to subdivision (c) of Section 667.5 shall be deemed a violent offender for purposes of Section 32 of Article I of the Constitution.

(d) For purposes of Section 32 of Article I of the Constitution, the “full term” of the “primary offense” shall be calculated based only on actual days served on the commitment offense.

**Section 3040.4 is added to the Penal Code to read:**

Pursuant to subsection (b) of Section 28 of Article I of the Constitution, the Department shall give reasonable notice to victims of crime prior to an inmate being reviewed for early parole and release. The Department shall provide victims with the right to be heard regarding early parole consideration and to participate in the review process. The Department shall consider the safety of the victims, the victims’ family, and the general public when making a determination on early release.

(a) Prior to conducting a review for early parole, the Department shall provide notice to the prosecuting agency or agencies and to registered victims, and shall make reasonable efforts to locate and notify victims who are not registered.

(b) The prosecuting agency shall have the right to review all information available to the hearing officer including, but not limited to the inmate’s central file, documented adult and juvenile criminal history, institutional behavior including both rehabilitative programming and institutional misconduct, any input from any person or organization advocating on behalf of the inmate, and any information submitted by the public.

(c) A victim shall have a right to submit a statement for purposes of early parole consideration, including a confidential statement.

(d) All prosecuting agencies, any involved law enforcement agency, and all victims, whether or not registered, shall have the right to respond to the board in writing.

(e) Responses to the Board by prosecuting agencies, law enforcement agencies, and victims must be made within 90 days of the date of notification of the inmate’s eligibility for early parole review or consideration.

(f) The Board shall notify the prosecuting agencies, law enforcement agencies, and the victims of the Nonviolent Offender Parole decision within 10 days of the decision being made.

(g) Within 30 days of the notice of the final decision concerning Nonviolent Offender Parole Consideration, the inmate and the prosecuting agencies may request review of the decision.

(h) If an inmate is denied early release under the Nonviolent Offender Parole provisions of Section 32 of Article I of the Constitution, the inmate shall not be eligible for early Nonviolent Offender parole consideration for two (2) calendar years from the date of the final decision of the previous denial.

**Section 3041 of the Penal Code is amended to read:**

[language added to an existing section of law is designated in underlined type and language deleted is designated in ~~strikeout~~ type]

(a)(1) In the case of any inmate sentenced pursuant to any law, other than Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, the Board of Parole Hearings shall meet with each inmate during the sixth year before the inmate’s minimum eligible parole date for the purposes of reviewing and documenting the inmate’s activities and conduct pertinent to parole

eligibility. During this consultation, the board shall provide the inmate information about the parole hearing process, legal factors relevant to his or her suitability or unsuitability for parole, and individualized recommendations for the inmate regarding his or her work assignments, rehabilitative programs, and institutional behavior. Within 30 days following the consultation, the board shall issue its positive and negative findings and recommendations to the inmate in writing.

(2) One year before the inmate's minimum eligible parole date a panel of two or more commissioners or deputy commissioners shall again meet with the inmate and shall normally grant parole as provided in Section 3041.5. No more than one member of the panel shall be a deputy commissioner.

(3) In the event of a tie vote, the matter shall be referred for an en banc review of the record that was before the panel that rendered the tie vote. Upon en banc review, the board shall vote to either grant or deny parole and render a statement of decision. The en banc review shall be conducted pursuant to subdivision (e).

(4) Upon a grant of parole, the inmate shall be released subject to all applicable review periods. However, an inmate shall not be released before reaching his or her minimum eligible parole date as set pursuant to Section 3046 unless the inmate is eligible for earlier release pursuant to his or her youth offender parole eligibility date or elderly parole eligibility date.

(5) At least one commissioner of the panel shall have been present at the last preceding meeting, unless it is not feasible to do so or where the last preceding meeting was the initial meeting. Any person on the hearing panel may request review of any decision regarding parole for an en banc hearing by the board. In case of a review, a majority vote in favor of parole by the board members participating in an en banc review is required to grant parole to any inmate.

(b)(1) The panel or the board, sitting en banc, shall grant parole to an inmate unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual. The panel or the board, sitting en banc, shall consider the entire criminal history of the inmate, including all current or past convicted offenses, in making this determination.

(2) After July 30, 2001, any decision of the parole panel finding an inmate suitable for parole shall become final within 120 days of the date of the hearing. During that period, the board may review the panel's decision. The panel's decision shall become final pursuant to this subdivision unless the board finds that the panel made an error of law, or that the panel's decision was based on an error of fact, or that new information should be presented to the board, any of which when corrected or considered by the board has a substantial likelihood of resulting in a substantially different decision upon a rehearing. In making this determination, the board shall consult with the commissioners who conducted the parole consideration hearing.

(3) A decision of a panel shall not be disapproved and referred for rehearing except by a majority vote of the board, sitting en banc, following a public meeting.

(c) For the purpose of reviewing the suitability for parole of those inmates eligible for parole under prior law at a date earlier than that calculated under Section 1170.2, the board shall appoint panels of at least two persons to meet annually with each inmate until the time the person is released pursuant to proceedings or reaches the expiration of his or her term as calculated under Section 1170.2.

(d) It is the intent of the Legislature that, during times when there is no backlog of inmates awaiting parole hearings, life parole consideration hearings, or life rescission hearings, hearings

will be conducted by a panel of three or more members, the majority of whom shall be commissioners. The board shall report monthly on the number of cases where an inmate has not received a completed initial or subsequent parole consideration hearing within 30 days of the hearing date required by subdivision (a) of Section 3041.5 or paragraph (2) of subdivision (b) of Section 3041.5, unless the inmate has waived the right to those timeframes. That report shall be considered the backlog of cases for purposes of this section, and shall include information on the progress toward eliminating the backlog, and on the number of inmates who have waived their right to the above timeframes. The report shall be made public at a regularly scheduled meeting of the board and a written report shall be made available to the public and transmitted to the Legislature quarterly.

(e) For purposes of this section, an en banc review by the board means a review conducted by a majority of commissioners holding office on the date the matter is heard by the board. An en banc review shall be conducted in compliance with the following:

(1) The commissioners conducting the review shall consider the entire record of the hearing that resulted in the tie vote.

(2) The review shall be limited to the record of the hearing. The record shall consist of the transcript or audiotape of the hearing, written or electronically recorded statements actually considered by the panel that produced the tie vote, and any other material actually considered by the panel. New evidence or comments shall not be considered in the en banc proceeding.

(3) The board shall separately state reasons for its decision to grant or deny parole.

(4) A commissioner who was involved in the tie vote shall be recused from consideration of the matter in the en banc review.

**Section 3454 of the Penal Code is amended to read:**

[language added to an existing section of law is designated in underlined type and language deleted is designated in ~~strikeout~~ type]

(a) Each supervising county agency, as established by the county board of supervisors pursuant to subdivision (a) of Section 3451, shall establish a review process for assessing and refining a person's program of postrelease supervision. Any additional postrelease supervision conditions shall be reasonably related to the underlying offense for which the offender spent time in prison, or to the offender's risk of recidivism, and the offender's criminal history, and be otherwise consistent with law.

(b) Each county agency responsible for postrelease supervision, as established by the county board of supervisors pursuant to subdivision (a) of Section 3451, may determine additional appropriate conditions of supervision listed in Section 3453 consistent with public safety, including the use of continuous electronic monitoring as defined in Section 1210.7, order the provision of appropriate rehabilitation and treatment services, determine appropriate incentives, and determine and order appropriate responses to alleged violations, which can include, but shall not be limited to, immediate, structured, and intermediate sanctions up to and including referral to a reentry court pursuant to Section 3015, or flash incarceration in a city or county jail. Periods of flash incarceration are encouraged as one method of punishment for violations of an offender's condition of postrelease supervision.

(c) As used in this title, "flash incarceration" is a period of detention in a city or county jail due to a violation of an offender's conditions of postrelease supervision. The length of the detention period can range between one and 10 consecutive days. Flash incarceration is a tool that may be used by each county agency responsible for postrelease supervision. Shorter, but if necessary

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more frequent, periods of detention for violations of an offender's postrelease supervision conditions shall appropriately punish an offender while preventing the disruption in a work or home establishment that typically arises from longer term revocations.

(d) Upon a decision to impose a period of flash incarceration, the probation department shall notify the court, public defender, district attorney, and sheriff of each imposition of flash incarceration.

**Section 3455 of the Penal Code is amended to read:**

[language added to an existing section of law is designated in underlined type and language deleted is designated in ~~strikeout~~ type]

(a) If the supervising county agency has determined, following application of its assessment processes, that intermediate sanctions as authorized in subdivision (b) of Section 3454 are not appropriate, or if the supervised person has violated the terms of his or her release for a third time, the supervising county agency shall petition the court pursuant to Section 1203.2 to revoke, modify, or terminate postrelease community supervision. At any point during the process initiated pursuant to this section, a person may waive, in writing, his or her right to counsel, admit the violation of his or her postrelease community supervision, waive a court hearing, and accept the proposed modification of his or her postrelease community supervision. The petition shall include a written report that contains additional information regarding the petition, including the relevant terms and conditions of postrelease community supervision, the circumstances of the alleged underlying violation, the history and background of the violator, and any recommendations. The Judicial Council shall adopt forms and rules of court to establish uniform statewide procedures to implement this subdivision, including the minimum contents of supervision agency reports. Upon a finding that the person has violated the conditions of postrelease community supervision, the revocation hearing officer shall have authority to do all of the following:

- (1) Return the person to postrelease community supervision with modifications of conditions, if appropriate, including a period of incarceration in a county jail.
- (2) Revoke and terminate postrelease community supervision and order the person to confinement in a county jail.
- (3) Refer the person to a reentry court pursuant to Section 3015 or other evidence-based program in the court's discretion.

(b) (1) At any time during the period of postrelease community supervision, if a peace officer, including a probation officer, has probable cause to believe a person subject to postrelease community supervision is violating any term or condition of his or her release, or has failed to appear at a hearing pursuant to Section 1203.2 to revoke, modify, or terminate postrelease community supervision, the officer may, without a warrant or other process, arrest the person and bring him or her before the supervising county agency established by the county board of supervisors pursuant to subdivision (a) of Section 3451. Additionally, an officer employed by the supervising county agency may seek a warrant and a court or its designated hearing officer appointed pursuant to Section 71622.5 of the Government Code shall have the authority to issue a warrant for that person's arrest.

(2) The court or its designated hearing officer shall have the authority to issue a warrant for a person who is the subject of a petition filed under this section who has failed to appear for a hearing on the petition or for any reason in the interests of justice, or to remand to custody a person who does appear at a hearing on the petition for any reason in the interests of justice.

(3) Unless a person subject to postrelease community supervision is otherwise serving a period of flash incarceration, whenever a person who is subject to this section is arrested, with or without a warrant or the filing of a petition for revocation, the court may order the release of the person under supervision from custody under any terms and conditions the court deems appropriate.

(c) The revocation hearing shall be held within a reasonable time after the filing of the revocation petition. Except as provided in paragraph (3) of subdivision (b), based upon a showing of a preponderance of the evidence that a person under supervision poses an unreasonable risk to public safety, or that the person may not appear if released from custody, or for any reason in the interests of justice, the supervising county agency shall have the authority to make a determination whether the person should remain in custody pending the first court appearance on a petition to revoke postrelease community supervision, and upon that determination, may order the person confined pending his or her first court appearance.

(d) Confinement pursuant to paragraphs (1) and (2) of subdivision (a) shall not exceed a period of 180 days in a county jail for each custodial sanction.

(e) A person shall not remain under supervision or in custody pursuant to this title on or after three years from the date of the person's initial entry onto postrelease community supervision, except when his or her supervision is tolled pursuant to Section 1203.2 or subdivision (b) of Section 3456.

## SEC. 5. DNA COLLECTION

### Section 296 of the Penal Code is amended to read:

[language added to an existing section of law is designated in underlined type and language deleted is designated in ~~strikeout~~ type]

(a) The following persons shall provide buccal swab samples, right thumbprints, and a full palm print impression of each hand, and any blood specimens or other biological samples required pursuant to this chapter for law enforcement identification analysis:

(1) Any person, including any juvenile, who is convicted of or pleads guilty or no contest to any felony offense, or is found not guilty by reason of insanity of any felony offense, or any juvenile who is adjudicated under Section 602 of the Welfare and Institutions Code for committing any felony offense.

(2) Any adult person who is arrested for or charged with any of the following felony offenses:

(A) Any felony offense specified in Section 290 or attempt to commit any felony offense described in Section 290, or any felony offense that imposes upon a person the duty to register in California as a sex offender under Section 290.

(B) Murder or voluntary manslaughter or any attempt to commit murder or voluntary manslaughter.

(C) Commencing on January 1, 2009, any adult person arrested or charged with any felony offense.

(3) Any person, including any juvenile, who is required to register under Section 290 through 290.009 or 457.1 because of the commission of, or the attempt to commit, a felony or misdemeanor offense, or any person, including any juvenile, who is housed in a mental health facility or sex offender treatment program after referral to such facility or program by a court after being charged with any felony offense.

(4) Any person, excluding a juvenile, who is convicted of, or pleads guilty or no contest to, any of the following offenses:

(A) A misdemeanor violation of Section 459.5;

(B) A violation of subdivision (a) of Section 473 that is punishable as a misdemeanor pursuant to subdivision (b) of Section 473;

(C) A violation of subdivision (a) of Section 476a that is punishable as a misdemeanor pursuant to subdivision (b) of Section 476a;

(D) A violation of Section 487 that is punishable as a misdemeanor pursuant to Section 490.2;

(E) A violation of Section 496 that is punishable as a misdemeanor;

(F) A misdemeanor violation of subdivision (a) of Section 11350 of the Health and Safety Code;

(G) A misdemeanor violation of subdivision (a) of Section 11377 of the Health and Safety Code;

(H) A misdemeanor violation of paragraph (1) of subdivision (e) of Section 243;

(I) A misdemeanor violation of Section 273.5;

(J) A misdemeanor violation of paragraph (1) of subdivision (b) of Section 368;

(K) Any misdemeanor violation where the victim is defined as set forth in Section 6211 of the Family Code;

(L) A misdemeanor violation of paragraph (3) of subdivision (b) of Section 647.

~~(4)~~(5) The term “felony” as used in this subdivision includes an attempt to commit the offense.

~~(5)~~(6) Nothing in this chapter shall be construed as prohibiting collection and analysis of specimens, samples, or print impressions as a condition of a plea for a non-qualifying offense.

(b) The provisions of this chapter and its requirements for submission of specimens, samples and print impressions as soon as administratively practicable shall apply to all qualifying persons regardless of sentence imposed, including any sentence of death, life without the possibility of parole, or any life or indeterminate term, or any other disposition rendered in the case of an adult or juvenile tried as an adult, or whether the person is diverted, fined, or referred for evaluation, and regardless of disposition rendered or placement made in the case of juvenile who is found to have committed any felony offense or is adjudicated under Section 602 of the Welfare and Institutions Code.

(c) The provisions of this chapter and its requirements for submission of specimens, samples, and print impressions as soon as administratively practicable by qualified persons as described in subdivision (a) shall apply regardless of placement or confinement in any mental hospital or other public or private treatment facility, and shall include, but not be limited to, the following persons, including juveniles:

(1) Any person committed to a state hospital or other treatment facility as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(2) Any person who has a severe mental disorder as set forth within the provisions of Article 4 (commencing with Section 2960) of Chapter 7 of Title 1 of Part 3 of the Penal Code.

(3) Any person found to be a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(d) The provisions of this chapter are mandatory and apply whether or not the court advises a person, including any juvenile, that he or she must provide the data bank and database specimens, samples, and print impressions as a condition of probation, parole, or any plea of guilty, no contest, or not guilty by reason of insanity, or any admission to any of the offenses described in subdivision (a).

(e) If at any stage of court proceedings the prosecuting attorney determines that specimens, samples, and print impressions required by this chapter have not already been taken from any person, as defined under subdivision (a) of Section 296, the prosecuting attorney shall notify the court orally on the record, or in writing, and request that the court order collection of the specimens, samples, and print impressions required by law. However, a failure by the prosecuting attorney or any other law enforcement agency to notify the court shall not relieve a person of the obligation to provide specimens, samples, and print impressions pursuant to this chapter.

(f) Prior to final disposition or sentencing in the case the court shall inquire and verify that the specimens, samples, and print impressions required by this chapter have been obtained and that this fact is included in the abstract of judgment or dispositional order in the case of a juvenile. The abstract of judgment issued by the court shall indicate that the court has ordered the person to comply with the requirements of this chapter and that the person shall be included in the state's DNA and Forensic Identification Data Base and Data Bank program and be subject to this chapter.

However, failure by the court to verify specimen, sample, and print impression collection or enter these facts in the abstract of judgment or dispositional order in the case of a juvenile shall not invalidate an arrest, plea, conviction, or disposition, or otherwise relieve a person from the requirements of this chapter.

## SEC. 6. SHOPLIFTING

### Section 459.5 of the Penal Code is amended to read:

[language added to an existing section of law is designated in underlined type and language deleted is designated in ~~strikeout~~ type]

(a) Notwithstanding Section 459, shoplifting is defined as entering a commercial establishment with intent to ~~commit larceny~~ steal retail property or merchandise while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed nine hundred fifty dollars (\$950). Any other entry into a commercial establishment with intent to commit larceny is burglary. Shoplifting shall be punished as a misdemeanor, except that a person with one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290 may be punished pursuant to subdivision (h) of Section 1170.

(b) Any act of shoplifting as defined in subdivision (a) shall be charged as shoplifting. No person who is charged with shoplifting may also be charged with burglary or theft of the same property.

(c) "Retail property or merchandise" means any article, product, commodity, item or component intended to be sold in retail commerce.

(d) "Value" means the retail value of an item as advertised by the affected retail establishment, including applicable taxes.

(e) This section shall not apply to theft of a firearm, forgery, the unlawful sale, transfer, or conveyance of an access card pursuant to Section 484e, forgery of an access card pursuant to Section 484f, the unlawful use of an access card pursuant to Section 484g, theft from an elder pursuant to subdivision (e) of Section 368, receiving stolen property, embezzlement, or identity theft pursuant to Section 530.5, or the theft or unauthorized use of a vehicle pursuant to Section 10851 of the Vehicle Code.

**Section 490.2 of the Penal Code is amended to read:**

[language added to an existing section of law is designated in underlined type and language deleted is designated in ~~strikeout~~ type]

(a) Notwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars (\$950) shall be considered petty theft and shall be punished as a misdemeanor, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.

(b) This section shall not be applicable to any theft that may be charged as an infraction pursuant to any other provision of law.

(c) This section shall not apply to theft of a firearm, forgery, the unlawful sale, transfer, or conveyance of an access card pursuant to Section 484e, forgery of an access card pursuant to Section 484f, the unlawful use of an access card pursuant to Section 484g, theft from an elder pursuant to subdivision (e) of Section 368, receiving stolen property, embezzlement, or identity theft pursuant to Section 530.5, or the theft or unauthorized use of a vehicle pursuant to Section 10851 of the Vehicle Code.

**SEC. 7. SERIAL THEFT****Section 490.3 is added to the Penal Code to read:**

(a) This section applies to the following crimes:

- (1) petty theft;
  - (2) shoplifting;
  - (3) grand theft;
  - (4) burglary;
  - (5) carjacking;
  - (6) robbery;
  - (7) a crime against an elder or dependent adult within the meaning of subdivision (d) or (e) of Section 368;
  - (8) any violation of Section 496;
  - (9) unlawful taking or driving of a vehicle within the meaning of Section 10851 of the Vehicle Code.
  - (10) Forgery.
  - (11) The unlawful sale, transfer, or conveyance of an access card pursuant to Section 484e.
  - (12) Forgery of an access card pursuant to Section 484f.
  - (13) The unlawful use of an access card pursuant to Section 484g.
  - (14) Identity theft pursuant to Section 530.5.
  - (15) The theft or unauthorized use of a vehicle pursuant to Section 10851 of the Vehicle Code.
- (b) Notwithstanding subsection (3) of subdivision (h) of Section 1170, subsections (2) and (4) of subdivision (a) of Section 1170.12, subsections (2) and (4) of subdivision (c) of Section 667, any person who, having been previously convicted of two or more of the offenses specified in subdivision (a), which offenses were committed on separate occasions, and who is subsequently convicted of petty theft or shoplifting where the value of the money, labor, or real or personal



property taken exceeds two hundred fifty dollars (\$250) shall be punished by imprisonment in the county jail not exceeding one year, or imprisonment pursuant to subdivision (h) of Section 1170.

(c) This section does not prohibit a person or persons from being charged with any violation of law arising out of the same criminal transaction that violates this section.

## **SEC. 8. ORGANIZED RETAIL THEFT**

### **Section 490.4 is added to the Penal Code to read:**

(a) "Retail property or merchandise" means any article, product, commodity, item or component intended to be sold in retail commerce.

(b) "Value" means the retail value of an item as advertised by the affected retail establishment, including applicable taxes.

(c) Any person, who, acting in concert with one or more other persons, commits two (2) or more thefts pursuant to Sections 459.5 or 490.2 of retail property or merchandise having an aggregate value exceeding two hundred fifty dollars (\$250) and unlawfully takes such property during a period of one hundred eighty days (180) is guilty of organized retail theft.

(d) Notwithstanding subsection (3) of subdivision (h) of Section 1170, subsections (2) and (4) of subdivision (a) of Section 1170.12, subsections (2) and (4) of subdivision (c) of Section 667, organized retail theft shall be punished by imprisonment in the county jail not exceeding one year, or imprisonment pursuant to subdivision (h) of Section 1170.

(e) For purposes of this section, the value of retail property stolen by persons acting in concert may be aggregated into a single count or charge, with the sum of the value of all of the retail merchandise being the values considered in determining the degree of theft.

(f) An offense under this section may be prosecuted in any county in which an underlying theft could have been prosecuted as a separate offense.

(g) This section does not prohibit a person or persons from being charged with any violation of law arising out of the same criminal transaction that violates this section.

## **SEC. 9. AMENDMENTS**

This act shall not be amended by the Legislature except by a statute that furthers the purposes, findings and declarations of the Act and is passed in each house by roll call vote entered in the journal, three-fourths of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters.

## **SEC. 10. SEVERABILITY**

If any provision of this Act, or any part of any provision, or its application to any person or circumstance is for any reason held to be invalid or unconstitutional, the remaining provisions and applications which can be given effect without the invalid or unconstitutional provision or application shall not be affected, but shall remain in full force and effect, and to this end the provisions of this Act are severable.

## **SEC. 11. CONFLICTING INITIATIVES**

(a) In the event that this measure and another measure addressing parole consideration pursuant to Section 32 of Article I of the Constitution, revocation of parole and post release community supervision, DNA collection, or theft offenses shall appear on the same statewide ballot, the

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provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes than a measure deemed to be in conflict with it, the provisions of this measure shall prevail in their entirety, and the other measure or measures shall be null and void.

(b) If this measure is approved by voters but superseded by law by any other conflicting measure approved by voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force and effect.

**Proposition 20**  
**Restricts Parole for Non-Violent Offenders.**  
**Authorizes Felony Sentences for Certain Offenses Currently Treated**  
**Only as Misdemeanors. Initiative Statute.**

## OVERVIEW

Proposition 20 has four major provisions. It:

- Changes state law to increase criminal penalties for some theft-related crimes.
- Changes how people released from state prison are supervised in the community.
- Makes various changes to the process created by Proposition 57 (2016) for considering the release of inmates from prison.
- Requires state and local law enforcement to collect DNA from adults convicted of certain crimes.

Below, we discuss each of these major provisions and describe the fiscal effects of the proposition.

## CRIMINAL PENALTIES FOR CERTAIN THEFT-RELATED CRIMES

### Background

A felony is the most severe type of crime. State law defines some felonies as “violent” or “serious,” or both. Examples of felonies defined as violent and serious include murder, robbery, and rape. Felonies that are not defined as violent or serious include human trafficking and selling drugs. A misdemeanor is a less severe crime. Misdemeanors include crimes such as assault and public drunkenness.

**Felony Sentencing.** People convicted of felonies can be sentenced as follows:

- **State Prison.** People whose current or past convictions include serious, violent, or sex crimes can be sentenced to state prison.
- **County Jail and/or Community Supervision.** People who have no current or past convictions for serious, violent, or sex crimes are typically sentenced to county jail or are supervised by county probation officers in the community, or both.

**Misdemeanor Sentencing.** People convicted of misdemeanors can be sentenced to county jail, county community supervision, a fine, or some combination of the three. They are generally punished less than people convicted of felonies. For example, a misdemeanor sentence cannot exceed one year in jail while a felony sentence can require a much longer time in jail or prison. In addition, people convicted of misdemeanors are usually supervised in the community for fewer years and may not be supervised as closely by probation officers.

**Wobbler Sentencing.** Currently, some crimes—such as identity theft—can be punished as either a felony or a misdemeanor. These crimes are known as “wobblers.” The decision is generally based on the specifics of the crime and a person’s criminal history.

**Proposition 47 Reduced Penalties for Certain Crimes.** In November 2014, voters approved Proposition 47, which resulted in certain theft-related crimes being punished as misdemeanors instead of felonies. For example, under Proposition 47, theft involving property worth \$950 or less is generally considered petty theft and punished as a misdemeanor—rather than as a felony as was sometimes possible before (such as if a car was stolen). Proposition 47 also generally requires that shoplifting involving \$950 or less be punished as a misdemeanor—rather than a felony as was possible before.

**Proposal**

*Increases Penalties for Certain Theft-Related Crimes.* Proposition 20 creates two new theft-related crimes:

- ***Serial Theft.*** Any person with two or more past convictions for certain theft-related crimes (such as burglary, forgery, or carjacking) who is found guilty of shoplifting or petty theft involving property worth more than \$250 could be charged with serial theft.
- ***Organized Retail Theft.*** Any person acting with others who commits petty theft or shoplifting two or more times where the total value of property stolen within 180 days exceeds \$250 could be charged with organized retail theft.

Both of these new crimes would be wobblers, punishable by up to three years in county jail, even if the person has a past conviction for a serious, violent, or sex crime.

In addition, Proposition 20 allows some existing theft-related crimes that are generally punished as misdemeanors under Proposition 47 to be punished as felonies. For example, under current law, theft of all property worth less than \$950 from a store is generally required to be punished as a misdemeanor. Under Proposition 20, people who steal property worth less than \$950 that is not for sale (such as a cash register) from a store could receive felony sentences. This could increase the amount of time people convicted of these crimes serve. For example, rather than serving up to six months in county jail, they could serve up to three years in county jail or state prison.

We estimate that a few thousand people could be affected by the above changes each year. However, this estimate is based on the limited data available, and the actual number of people

affected would depend on choices made by prosecutors and judges. As a result, the actual number could be significantly higher or lower.

## COMMUNITY SUPERVISION PRACTICES

### Background

People who are released from state prison after serving a sentence for a serious or violent crime are supervised for a period of time in the community by state parole agents. People who are released from prison after serving a sentence for other crimes are usually supervised in the community by county probation officers—commonly referred to as Post-Release Community Supervision (PRCS). When people on state parole or PRCS break the rules that they are required to follow while supervised—referred to as breaking the “terms of their supervision”—state parole agents or county probation officers can choose to ask a judge to change the terms of their supervision. This can result in harsher terms or placement in county jail.

### Proposal

*Changes Community Supervision Practices.* This proposition makes various changes to state parole and PRCS practices. For example, it requires probation officers to ask a judge to change the terms of supervision for people on PRCS if they have violated them for a third time. In addition, the proposition requires state parole and county probation departments to exchange more information about the people they supervise.

## PROPOSITION 57 RELEASE CONSIDERATION PROCESS

### Background

People in prison have been convicted of a primary crime. This is generally the crime for which they receive the longest amount of time in prison. They often serve additional time due to

the facts of their cases (such as if they used a gun) or for other, lesser crimes they were convicted of at the same time. For example, people previously convicted of a serious or violent crime generally must serve twice the term for any new felony they commit.

In November 2016, voters approved Proposition 57, which changed the State Constitution to make prison inmates convicted of nonviolent felonies eligible to be considered for release after serving the term for their primary crimes. Inmates are considered for release by the state Board of Parole Hearings (BPH). Specifically, a BPH staff member reviews various information in the inmate's files, such as criminal history and behavior in prison, to determine if the inmate will be released. BPH also considers any letters submitted by prosecutors, law enforcement agencies, and victims about the inmate. The California Department of Corrections and Rehabilitation (CDCR) contacts victims registered with the state to notify them that they can submit such letters. The inmate is released unless BPH decides that the inmate poses an unreasonable risk of violence. If not released, the inmate can request a review of the decision. Inmates who are denied release are reconsidered the following year, though they often complete their sentences and are released before then. In 2019, BPH considered nearly 4,600 inmates and approved about 860 (19 percent) for release.

### **Proposal**

*Changes Proposition 57 Release Consideration Process.* Proposition 20 makes various changes to the Proposition 57 release consideration process. The major changes are:

- Excluding some inmates from the process—such as those convicted of some types of assault and domestic violence.

- Requiring BPH to deny release to inmates who pose an unreasonable risk of committing felonies that result in victims, rather than only those who pose an unreasonable risk of violence.
- Requiring BPH to consider additional issues, such as the inmates' attitudes about their crimes, when deciding whether to release them.
- Requiring inmates denied release to wait two years (rather than one) before being reconsidered by BPH.
- Allowing prosecutors to request that BPH perform another review of release decisions.
- Requiring CDCR to try to locate victims to notify them of the review even if they are not registered with the state.

## **DNA COLLECTION**

### **Background**

In California, DNA samples must be provided by (1) adults arrested for, charged with, or convicted of a felony; (2) youth who have committed a felony; and (3) people required to register as sex offenders or arsonists. These samples are collected by state and local law enforcement agencies and submitted to the California Department of Justice (DOJ) for processing. DOJ currently receives roughly 100,000 DNA samples each year. DOJ stores the DNA profiles in a statewide DNA database and submits them to a national database. These databases are used by law enforcement to investigate crimes.



**Proposal**

*Expands DNA Collection.* This proposition requires state and local law enforcement to also collect DNA samples from adults convicted of certain misdemeanors. These crimes include shoplifting, forging checks, and certain domestic violence crimes.

**FISCAL EFFECTS**

The proposition would have various fiscal effects on state and local government. However, the exact size of the effects discussed below would depend on several factors. One key factor would be decisions made by the courts and others (such as county probation departments and prosecutors) about how the proposition would be implemented. For example, the proposition seeks to change certain inmates' constitutional eligibility to be considered for release under Proposition 57 without changing the State Constitution. If the proposition were challenged in court, a judge might rule that certain provisions cannot be put into effect. Our estimates below of the fiscal effects on state and local government assume that the proposition is fully implemented. In total, the estimated increase in state costs reflects less than one percent of the state's current General Fund budget. (The General Fund is the state's main operating account, which it uses to pay for education, prisons, health care, and other services.)

*State and Local Correctional Costs.* The proposition would increase state and local correctional costs in three ways.

- First, the increase in penalties for theft-related crimes would increase correctional costs mostly by increasing county jail populations and the level of community supervision for some people.

- Second, the changes to community supervision practices would increase state and local costs in various ways. For example, the requirement that county probation officers seek to change the terms of supervision for people on PRCS who violate them for a third time could increase county jail populations if this causes more people to be placed in jail.
- Third, the changes made to the Proposition 57 release consideration process would increase state costs by reducing the number of inmates released from prison and generally increasing the cost of the process.

We estimate that more than several thousand people would be affected by the proposition each year. As a result, we estimate that the increase in **state and local correctional costs would likely be in the tens of millions of dollars annually**. The actual increase would depend on several uncertain factors, such as the specific number of people affected by the proposition.

*State and Local Court-Related Costs.* The proposition would increase state and local court-related costs. This is because it would result in some people being convicted of felonies for certain theft-related crimes instead of misdemeanors. Because felonies take more time for courts to handle than misdemeanors, workload for the courts, county prosecutors and public defenders, and county sheriffs (who provide court security) would increase. In addition, requiring probation officers to ask judges to change the terms of supervision for people on PRCS after their third violation would result in additional court workload. We estimate that these **court-related costs could be more than several million dollars annually**, depending on the actual number of people affected by the proposition.

*State and Local Law Enforcement Costs.* The proposition would increase state and local law enforcement costs by expanding the number of people who are required to provide DNA samples, possibly by tens of thousands annually. We estimate that the increase in **state and local law enforcement costs would likely not be more than a few million dollars annually.**

*Other Fiscal Effects.* There could be other unknown fiscal effects on state and local governments due to the proposition. For example, if the increase in penalties reduces crime, some criminal justice system costs could be avoided. The extent to which this or other effects would occur is unknown.



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Sharon L. Anderson, County Counsel  
Date: September 22, 2020

Subject: Urgency Ordinance prohibiting certain residential evictions and residential rent increases.

---

**RECOMMENDATION(S):**

CONSIDER adopting Ordinance No. 2020-25, an urgency ordinance authorizing a temporary prohibition on certain evictions of residential tenants in Contra Costa County and authorizing a residential rent increase moratorium.

**FISCAL IMPACT:**

None.

**BACKGROUND:**

On April 21, 2020, the Board of Supervisors adopted Ordinance No. 2020-14, an urgency ordinance temporarily prohibiting evictions of residential and commercial tenants in the County who are impacted by the COVID-19 pandemic and establishing a moratorium on certain residential rent increases. On May 26, 2020, the Board adopted Ordinance No. 2020-16, continuing and modifying the temporary prohibition on tenant evictions, and continuing and modifying a residential rent increase moratorium. On July 14, 2020, the Board of Supervisors adopted Ordinance No. 2020-20, an urgency ordinance continuing a temporary prohibition on evictions of residential and certain commercial real property tenants in Contra Costa County impacted by the COVID-19 pandemic, and continuing a moratorium on certain residential rent increases.

APPROVE

OTHER

RECOMMENDATION OF CNTY ADMINISTRATOR

RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  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: September 22, 2020

Contact: Mary Ann Mason, Chief Assistant  
County Counsel, (925) 655-2200

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

By: , Deputy

## BACKGROUND: (CONT'D)

On August 31, 2020, Governor Newsom signed Assembly Bill 3088, the COVID-19 Tenant Relief Act of 2020 (the Act), which went into effect immediately. The Act extends eviction protections for residential tenants, including mobilehome tenants, who are experiencing a financial hardship related to COVID-19. The Act prohibits residential tenants from being evicted for failure to pay rent because of a COVID-19-related hardship occurring between March 1 and August 31, 2020, as long as the tenant provides the landlord with a written declaration of hardship. Residential tenants who experience a new COVID-19-related hardship between September 1, 2020, and January 31, 2021, are also protected from eviction through this date as long as they pay 25 percent of the rent due by January 31, 2021.

The Act authorizes local jurisdictions to amend existing urgency ordinances to continue prohibitions on certain types of residential evictions, including no fault evictions. On September 8, 2020, the Board directed the County Counsel's Office to return to the Board on September 22, 2020, with an amended urgency ordinance that continues a temporary prohibition on certain evictions of residential tenants and continues a moratorium on certain residential rent increases.

The attached urgency ordinance, Ordinance No. 2020-25, prohibits a landlord from terminating a residential tenancy for any no-fault reason, subject to specified exceptions. It also prohibits a landlord from terminating a residential tenancy on the basis that a tenant allowed an unauthorized occupant to live in the dwelling unit, if the occupant is the tenant's immediate family member living in the dwelling unit as a result of the COVID-19 pandemic. The ordinance also prohibits a landlord from increasing rent on a residential real property. The term of the ordinance is through January 31, 2021. State law allows the County to adopt this ordinance because it is consistent with state law and provides additional tenant protections, including the provision that prohibits a landlord from terminating a residential tenancy on the basis that a tenant allowed an unauthorized immediate family member to live in the dwelling unit as a result of the COVID-19 pandemic.

The ordinance specifically provides as follows:

No fault evictions (Section 3(a)). A landlord is prohibited from terminating a residential tenancy for any "no-fault" reason, subject to specified exceptions. This prohibition lasts through January 31, 2021.

Immediate family members (Section 3(b)). A landlord is prohibited from terminating a residential tenancy on the basis that a tenant allowed an unauthorized occupant to live in the dwelling unit, if the occupant is the tenant's immediate family member living in the dwelling unit as a result of the COVID-19 pandemic. The ordinance defines "immediate family" as a person's spouse, domestic partner, children, grandchildren, parents, or grandparents. This prohibition lasts through January 31, 2021.

Exceptions to Eviction Moratorium (Section 3(c)). The ordinance does not limit a landlord's ability to terminate a tenancy for three reasons: (1) the termination is necessary to protect the owner's health and safety or any other tenant's health and safety; (2) the termination is necessary where the owner or a member of the owner's immediate family intends to occupy the residential real property; and (3) the termination is to remove the residential unit from the rental market when permitted by the Ellis Act. The Ellis Act, Government Code section 7060 et seq., preempts local governments from prohibiting landlords from removing residential units from the rental market. The Act places strict requirements on how and when these removals can occur.

Section 3 of the ordinance also provides that if state law is more protective of a residential tenancy than the ordinance, then those provisions of state law will apply to the residential tenancy.

Moratorium on residential rent increases (Section 4). A landlord may not increase rent on a residential real property. The moratorium on rent increases lasts through January 31, 2021.

A residential property that is exempt from the rent limits imposed by the Tenant Protection Act of 2019 (Civil Code section 1947.12) is exempt from this residential rent moratorium. The rent limits under the Tenant Protection Act do not apply to residences built within the last 15 years; single family homes, townhouses, and condominiums, unless owned by an investment trust, corporation, or LLC; owner-occupied duplexes; hotels; residential care facilities for adults or the elderly; school dormitories; and group housing.

Under the Costa-Hawkins Rental Housing Act (Civil Code section 1954.50 et seq.), local governments may not regulate rents on rental units built after 1995, single-family homes, individually owned condominiums and townhouses. Residential properties that are exempt from rent control under Costa-Hawkins are also exempt from the residential rent moratorium imposed by this ordinance.

The residential rent moratorium also does not apply to a residential property where one or more scheduled rent increases occur pursuant to a written rental agreement that was entered into before March 16, 2020.

The residential rent moratorium also does not apply when a unit becomes vacant and the landlord sets the initial rent for a new tenancy, in accordance with Civil Code section 1954.53. There is no moratorium on commercial rent increases. Local governments are preempted from controlling rents on commercial real property. (Civil Code section 1954.25 et seq.)

Timing (Section 6). The attached ordinance applies retroactively to specified no fault and unauthorized occupancy eviction notices for residential real property, and unlawful detainers based on those notices, that were served or filed on or after September 1, 2020, except to the extent a tenant has surrendered possession of its premises, or an unlawful detainer lawsuit was finally adjudicated before March 16, 2020. The purpose of this provision is to align the ordinance with the September 1, 2020, effective date of the COVID-19 Tenant Relief Act of 2020. The provisions of Ordinance No. 2020-20 will apply to small businesses through September 30, 2020, and the grace period for past due rent owed by small businesses will extend through January 31, 2021.

Applicability (Section 7). The regulations in the attached ordinance apply to cities within Contra Costa County and unincorporated Contra Costa County. Government Code section 8634 authorizes the Board of Supervisors to “promulgate countywide orders and regulations necessary to provide for the protection of life and property” during a local emergency. The California Attorney General has opined that when a county has declared a local emergency within its jurisdictional boundaries in an area that includes both unincorporated and incorporated territory, the county may adopt emergency rules and regulations pursuant to Government Code section 8634 that will be effective in both unincorporated and incorporated areas. (62 Ops.Cal.Atty.Gen. 701 (1979).) Under the attached ordinance, if the governing body of a city enacts an ordinance or adopts a regulation that governs the subject matter of this ordinance, that city ordinance or regulation will supersede the attached ordinance within that jurisdiction.

Ordinance term (Section 10). The attached ordinance expires January 31, 2021.

Commercial Properties. Before the COVID-19 Tenant Relief Act of 2020 went into effect, Governor Newsom issued two Executive Orders authorizing counties and cities to suspend certain residential and commercial evictions. By waiving state law governing evictions, Executive Order N-28-20 authorized local jurisdictions to suspend the evictions of residential and commercial tenants for the non-payment of rent if the non-payment was a result of the COVID-19 pandemic. Executive Order N-71-20 extended this authority of local jurisdictions through September 30, 2020. As of the date of this Board order, the Governor has not taken any action that would extend past September 30 the authority of local jurisdictions to suspend the evictions of commercial tenants. If the Governor issues an Executive Order authorizing local jurisdictions to suspend these evictions, or if any legislation provides this authority to local jurisdictions, the County Counsel’s Office will seek direction from the Board on whether to exercise any new authority.

CLERK'S ADDENDUM

**Speakers: Rosa Vargas, Bay Point Elsie Mills, Concord; Marianna Moore, Raise the Roof Coalition; Melvin Willis, ACCE; Maria Franco, West Contra Costa; Alex, East Bay Housing Organization; Natalie, First Time Northern California; Donald Lang, ACCE; Francisco Torres, ACCE; Rose Antonio; Patricia Aguilar, ACCE; Debra Ballinger; Christine Laughlin, Raise the Roof Coalition; Allie, Healthy and Active Before 5; name not given.**

**ADOPTED Ordinance No. 2020-25 as presented; and DIRECTED County Counsel to return next week with a draft ordinance amending this ordinance in order to address additional tenant protections.**

AGENDA ATTACHMENTS

Ordinance No. 2020-25

MINUTES ATTACHMENTS

Signed Ordinance 2020-25

ORDINANCE NO. 2020-25

AN URGENCY ORDINANCE AUTHORIZING A TEMPORARY PROHIBITION ON CERTAIN EVICTIONS OF RESIDENTIAL TENANTS IN CONTRA COSTA COUNTY IMPACTED BY THE COVID-19 PANDEMIC AND AUTHORIZING A MORATORIUM ON CERTAIN RESIDENTIAL RENT INCREASES

The Contra Costa County Board of Supervisors ordains as follows:

**Section 1. Findings.**

- A. On January 30, 2020, the World Health Organization declared the outbreak of a novel coronavirus that causes the disease named coronavirus disease 2019 (“COVID-19”), a public health emergency of international concern.
- B. On January 31, 2020, as the result of confirmed cases of COVID-19, the U.S. Secretary of Health and Human Services declared a public health emergency nationwide.
- C. On March 3, 2020, Contra Costa Health Services announced the first case of local transmission of the virus causing COVID-19 in Contra Costa County.
- D. On March 4, 2020, Governor Gavin Newsom proclaimed the existence of a state of emergency in California under the California Emergency Services Act, Gov. Code § 8550 et seq.. As of July 1, 2020, there were more than 2.7 million cases of COVID-19 in the United States, resulting in more than 128,000 deaths, with 3,248 confirmed cases of COVID-19 in Contra Costa County, resulting in 77 deaths.
- E. On March 10, 2020, the Board of Supervisors found that due to the introduction of COVID-19 in the County, conditions of disaster or extreme peril to the safety of persons and property had arisen, commencing on March 3, 2020. Based on these conditions, pursuant to Government Code section 8630, the Board adopted Resolution No. 2020/92, proclaiming the existence of a local emergency throughout the County.
- F. The legislative bodies of a number of cities in Contra Costa County also adopted local emergency proclamations due to COVID-19 pursuant to Government Code section 8630.
- G. On March 16, 2020, the County Health Officer issued an order requiring County residents to shelter at their places of residence in order to slow community transmission of COVID-19, subject to exceptions for the provision and receipt of essential services while complying with social distancing requirements to the maximum extent possible. The County Health Officer extended the order on March 31, 2020, and on April 29, 2020.
- H. On May 18, 2020, the County Health Officer extended the shelter-in-place order, continuing restrictions on many activity, travel, and business functions but allowing a limited number of additional businesses to resume operating. On June 2, June 5, and June 16, 2020, the County Health Officer issued orders allowing additional businesses to resume operating. On July 11, 2020, in response to an increase in community transmission and illness caused by the virus that causes COVID-19, the County Health



Officer issued an order amending the June 16, 2020, order, increasing the restrictions on certain business and activities presenting a high risk for disease transmission.

- I. On August 26, 2020, September 4, 2020, and September 14, 2020, the County Health Officer issued orders allowing a limited number of additional businesses to resume operating.
- J. On March 16, 2020, the Governor issued Executive Order N-28-20, which authorized local jurisdictions to suspend the evictions of residential and commercial tenants for the non-payment of rent if the non-payment was a result of the COVID-19 pandemic.
- K. On June 30, 2020, the Governor issued Executive Order N-71-20, which extended the authority of local jurisdictions to suspend the evictions of residential and commercial tenants for the non-payment of rent if the non-payment was a result of the COVID-19 pandemic through September 30, 2020.
- L. On April 6, 2020, the Judicial Council of California adopted Emergency Rule 1, effectively suspending action on or entry of default in eviction cases, and suspending judicial foreclosures, except where necessary to protect public health and safety.
- M. On April 21, 2020, the Board of Supervisors adopted Ordinance No. 2020-14, an urgency ordinance temporarily prohibiting evictions of residential and commercial real property tenants in the County impacted by the COVID-19 pandemic and establishing a moratorium on certain rent increases.
- N. On May 26, 2020, the Board of Supervisors adopted Ordinance No. 2020-16, an urgency ordinance continuing and modifying a temporary prohibition on evictions of tenants in Contra Costa County impacted by the COVID-19 pandemic, and continuing and modifying a residential rent increase moratorium.
- O. On July 14, 2020, the Board of Supervisors adopted Ordinance No. 2020-20, an urgency ordinance continuing a temporary prohibition on evictions of residential and certain commercial real property tenants in Contra Costa County impacted by the COVID-19 pandemic, and continuing a moratorium on certain residential rent increases.
- P. The Judicial Council voted on August 14, 2020, to terminate the eviction protections in its Emergency Rule 1. This rule terminated September 1, 2020.
- Q. On August 31, 2020, the Governor signed Assembly Bill 3088, the COVID-19 Tenant Relief Act of 2020 (the Act), which went into effect immediately. The Act extends eviction protections for residential tenants, including mobilehome tenants, who are experiencing a financial hardship related to COVID-19.
- R. The Act prohibits residential tenants from being evicted for failure to pay rent because of a COVID-19-related hardship occurring between March 1 and August 31, 2020, as long as the tenant provides the landlord with a written declaration of hardship. Residential tenants who experience a new COVID-19-related hardship between September 1, 2020,

and January 31, 2021, are also protected from eviction through this date as long as they pay 25 percent of the rent due by January 31, 2021.

- S. The COVID-19 pandemic and associated state and local public health orders are resulting in a loss of income to a widespread portion of the local population that depend on wages or business income, hindering their ability to pay rent and leaving them vulnerable to eviction, and in higher medical expenses for certain Contra Costa County residents.
- T. Contra Costa County and the cities within the County are also experiencing a housing affordability crisis, which is driving homelessness and displacement of residents.
- U. Many of the County's renters are rent-burdened, paying over 30 percent of their income on rent, and some renters are severely rent-burdened, paying over 50 percent of their income on rent, which leaves less money for families to spend on other necessities like food, healthcare, transportation, and education.
- V. Housing displacement due to rent increases and evictions occurring during the local emergency would hinder individuals from complying with state and local public health orders and would lead to increased spread of COVID-19, overburdening the healthcare delivery system and potentially resulting in greater loss of life.
- W. There is an urgent need for the County to continue a temporary prohibition on certain residential evictions and continue a temporary moratorium on certain residential rent increases to protect the health, safety, and welfare of its residents in light of the emergency declared regarding the COVID-19 pandemic.
- X. The Act authorizes local jurisdictions to amend existing urgency ordinances to continue prohibitions on certain types of residential evictions, including no-fault evictions. Without local protections in addition to statewide eviction protection for residential renters, eviction notices are likely to increase in light of the COVID-19 pandemic.
- Y. This urgency ordinance prohibits a landlord from terminating a residential tenancy for a no-fault reason; prohibits a landlord from terminating a residential tenancy on the basis that a tenant allowed an unauthorized occupant to live in the dwelling unit, if the occupant is the tenant's immediate family member living in the dwelling unit as a result of the COVID-19 pandemic; and prohibits a landlord from increasing rent on a residential real property. These prohibitions and the specified exceptions last through January 31, 2021.
- Z. The Board finds, pursuant to Civil Code sections 1946.2 and 1179.05(b), that: the just cause for termination of a residential tenancy under this urgency ordinance is consistent with Civil Code section 1946.2; this urgency ordinance, by prohibiting a landlord from terminating a residential tenancy on the basis that a tenant allowed an unauthorized occupant to live in the dwelling unit if the occupant is the tenant's immediate family member living in the dwelling unit as a result of the COVID-19 pandemic, provides additional tenant protections that are not prohibited by any other provision of law; and this urgency ordinance is more protective than the provisions of Civil Code section 1946.2.

**Section 2. Definitions.** For purposes of this ordinance, the following words and phrases have the following meanings:

- (a) “Immediate family” means a person’s spouse, domestic partner, children, grandchildren, parents, or grandparents.
- (b) “Landlord” has the meaning set forth in Code of Civil Procedure Section 1179.02(e).
- (c) “No fault cause for eviction” means any eviction for which the notice of termination of tenancy is not based on an alleged fault of the tenant.
- (d) “Rent” means the financial obligation or monetary payment a tenant owes a landlord for the occupancy or use of residential real property whether by written or oral agreement.
- (e) “Residential real property” includes a mobilehome park and a mobilehome park space or lot.
- (f) “Tenancy” means the lawful occupancy of residential real property by agreement on a month-to-month basis or for a fixed term in excess of 30 days.
- (g) “Tenant” has the meaning set forth in Code of Civil Procedure Section 1179.02(h).

**Section 3. Prohibitions on Certain Residential Evictions.**

- (a) Through January 31, 2021, a landlord shall not terminate a tenancy for any no fault cause for eviction.
- (b) Through January 31, 2021, a landlord shall not terminate a tenancy on the basis of a tenant allowing an unauthorized occupant to live in the dwelling unit, if the occupant is a member of the tenant’s immediate family living in the dwelling unit as a result of the COVID-19 pandemic.
- (c) Notwithstanding the foregoing, nothing in this section limits a landlord’s ability to terminate a tenancy for any of the following reasons:
  - (1) The termination is necessary to protect the landlord’s health or safety or any other tenant’s health or safety.
  - (2) The termination is necessary where the owner or a member of the landlord’s immediate family intends to occupy the residential real property.
  - (3) The termination is to remove the residential real property from the rental market, but only when authorized by Government Code section 7060 et seq.
- (d) To the extent state law is more protective of a residential tenancy than this section, those state law provisions shall apply to the residential tenancy. Nothing in this section shall be

construed to supersede any applicable requirements in Civil Code section 1946.2 pertaining to relocation assistance or rent waiver.

#### **Section 4. Moratorium on Residential Rent Increases.**

- (a) A landlord may not increase rent on a residential real property through January 31, 2021.
- (b) A residential real property that is exempt from the rent limits imposed by Civil Code section 1947.12 or Civil Code section 1954.50 et seq. is exempt from this section.
- (c) This section does not apply to a residential real property where one or more scheduled rent increases occur pursuant to a written rental agreement that was entered into before March 16, 2020.
- (d) This section does not apply when a unit becomes vacant and the landlord sets the initial rent for a new tenancy.

#### **Section 5. Remedies.**

- (a) The provisions of this ordinance may be asserted as an affirmative defense in an unlawful detainer action.
- (b) If a landlord attempts to recover possession or recovers possession of residential real property in violation of this ordinance, retaliates against a tenant for the exercise of any rights under this ordinance, or attempts to prevent a tenant from acquiring any rights under this ordinance, the tenant may institute a civil proceeding for injunctive relief, money damages of not more than three times actual damages (including damages for mental or emotional distress), and whatever other relief a court deems appropriate. If damages are awarded for mental or emotional distress, the award shall only be trebled if the trier of fact finds that the landlord acted in knowing violation of or in reckless disregard of the provisions of this ordinance. The prevailing party shall be entitled to reasonable attorney's fees and costs pursuant to order of the court.

**Section 6. Supersedes.** This ordinance supersedes Ordinance No. 2020-20. This ordinance retroactively applies to eviction notices, and unlawful detainer actions based on those notices, served or filed on or after September 1, 2020, except to the extent a tenant has surrendered possession of its premises, or an unlawful detainer lawsuit was finally adjudicated before March 16, 2020. Ordinance No. 2020-14 applies to eviction notices, and unlawful detainer actions based on those notices, served or filed between March 16, 2020, and May 25, 2020. Ordinance No. 2020-16 applies to eviction notices, and unlawful detainer actions based on those notices, served or filed between May 26, 2020, and July 13, 2020. Ordinance No. 2020-20 applies to eviction notices for residential real property, and unlawful detainer actions based on those notices, served or filed between July 14, 2020, and August 31, 2020. Ordinance No. 2020-20 applies to eviction notices for commercial real property (as defined in Ordinance No. 2020-20), and unlawful detainer actions based on those notices, served or filed between July 14, 2020, and September 30, 2020. The grace period for past due rent owed by commercial real property (as defined in Ordinance No. 2020-20) extends through January 31, 2021.

**Section 7. Applicability.** Government Code section 8634 authorizes the Board of Supervisors to promulgate countywide orders and regulations necessary to provide for the protection of life and property during a local emergency. Pursuant to Government Code section 8634, the regulations in this ordinance shall apply to cities within Contra Costa County and unincorporated Contra Costa County. To the extent that the governing body of a city enacts an ordinance or adopts a regulation that governs the subject matter of this ordinance, that city ordinance or regulation shall supersede this ordinance within that jurisdiction.

**Section 8. Severability.** If any provision or clause of this ordinance or the application thereof to any person or circumstances is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other ordinance provisions or clauses or applications thereof that can be implemented without the invalid provision or clause or application, and to this end the provisions and clauses are declared to be severable. The Board of Supervisors hereby declares that it would have adopted this ordinance and each provision thereof irrespective of whether any one or more provisions are found invalid, unconstitutional, or otherwise unenforceable.

**Section 9. Declaration of Urgency.** This ordinance is hereby declared to be an urgency ordinance necessary for the immediate preservation of the public peace, health, and safety of the County. The facts constituting the urgency of this ordinance's adoption are set forth in Section 1.

**Section 10. Effective Date.** This ordinance becomes effective immediately upon passage by four-fifths vote of the Board of Supervisors. This ordinance shall expire and be repealed as of January 31, 2021, unless shortened or extended by the Board of Supervisors based on the existence of a local emergency.

**Section 11. Publication.** Within 15 days after passage, this ordinance shall be published once with the names of the supervisors voting for and against it in the East Bay Times, a newspaper published in this County.

PASSED ON September 22, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:     DAVID J. TWA,  
                  Clerk of the Board of Supervisors  
                  and County Administrator

\_\_\_\_\_  
Board Chair

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

[SEAL]

ORDINANCE NO. 2020-25

AN URGENCY ORDINANCE AUTHORIZING A TEMPORARY PROHIBITION ON CERTAIN EVICTIONS OF RESIDENTIAL TENANTS IN CONTRA COSTA COUNTY IMPACTED BY THE COVID-19 PANDEMIC AND AUTHORIZING A MORATORIUM ON CERTAIN RESIDENTIAL RENT INCREASES

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- D. On March 4, 2020, Governor Gavin Newsom proclaimed the existence of a state of emergency in California under the California Emergency Services Act, Gov. Code § 8550 et seq.. As of July 1, 2020, there were more than 2.7 million cases of COVID-19 in the United States, resulting in more than 128,000 deaths, with 3,248 confirmed cases of COVID-19 in Contra Costa County, resulting in 77 deaths.
- E. On March 10, 2020, the Board of Supervisors found that due to the introduction of COVID-19 in the County, conditions of disaster or extreme peril to the safety of persons and property had arisen, commencing on March 3, 2020. Based on these conditions, pursuant to Government Code section 8630, the Board adopted Resolution No. 2020/92, proclaiming the existence of a local emergency throughout the County.
- F. The legislative bodies of a number of cities in Contra Costa County also adopted local emergency proclamations due to COVID-19 pursuant to Government Code section 8630.
- G. On March 16, 2020, the County Health Officer issued an order requiring County residents to shelter at their places of residence in order to slow community transmission of COVID-19, subject to exceptions for the provision and receipt of essential services while complying with social distancing requirements to the maximum extent possible. The County Health Officer extended the order on March 31, 2020, and on April 29, 2020.
- H. On May 18, 2020, the County Health Officer extended the shelter-in-place order, continuing restrictions on many activity, travel, and business functions but allowing a limited number of additional businesses to resume operating. On June 2, June 5, and June 16, 2020, the County Health Officer issued orders allowing additional businesses to resume operating. On July 11, 2020, in response to an increase in community transmission and illness caused by the virus that causes COVID-19, the County Health

Officer issued an order amending the June 16, 2020, order, increasing the restrictions on certain business and activities presenting a high risk for disease transmission.

- I. On August 26, 2020, September 4, 2020, and September 14, 2020, the County Health Officer issued orders allowing a limited number of additional businesses to resume operating.
- J. On March 16, 2020, the Governor issued Executive Order N-28-20, which authorized local jurisdictions to suspend the evictions of residential and commercial tenants for the non-payment of rent if the non-payment was a result of the COVID-19 pandemic.
- K. On June 30, 2020, the Governor issued Executive Order N-71-20, which extended the authority of local jurisdictions to suspend the evictions of residential and commercial tenants for the non-payment of rent if the non-payment was a result of the COVID-19 pandemic through September 30, 2020.
- L. On April 6, 2020, the Judicial Council of California adopted Emergency Rule 1, effectively suspending action on or entry of default in eviction cases, and suspending judicial foreclosures, except where necessary to protect public health and safety.
- M. On April 21, 2020, the Board of Supervisors adopted Ordinance No. 2020-14, an urgency ordinance temporarily prohibiting evictions of residential and commercial real property tenants in the County impacted by the COVID-19 pandemic and establishing a moratorium on certain rent increases.
- N. On May 26, 2020, the Board of Supervisors adopted Ordinance No. 2020-16, an urgency ordinance continuing and modifying a temporary prohibition on evictions of tenants in Contra Costa County impacted by the COVID-19 pandemic, and continuing and modifying a residential rent increase moratorium.
- O. On July 14, 2020, the Board of Supervisors adopted Ordinance No. 2020-20, an urgency ordinance continuing a temporary prohibition on evictions of residential and certain commercial real property tenants in Contra Costa County impacted by the COVID-19 pandemic, and continuing a moratorium on certain residential rent increases.
- P. The Judicial Council voted on August 14, 2020, to terminate the eviction protections in its Emergency Rule 1. This rule terminated September 1, 2020.
- Q. On August 31, 2020, the Governor signed Assembly Bill 3088, the COVID-19 Tenant Relief Act of 2020 (the Act), which went into effect immediately. The Act extends eviction protections for residential tenants, including mobilehome tenants, who are experiencing a financial hardship related to COVID-19.
- R. The Act prohibits residential tenants from being evicted for failure to pay rent because of a COVID-19-related hardship occurring between March 1 and August 31, 2020, as long as the tenant provides the landlord with a written declaration of hardship. Residential tenants who experience a new COVID-19-related hardship between September 1, 2020,

and January 31, 2021, are also protected from eviction through this date as long as they pay 25 percent of the rent due by January 31, 2021.

- S. The COVID-19 pandemic and associated state and local public health orders are resulting in a loss of income to a widespread portion of the local population that depend on wages or business income, hindering their ability to pay rent and leaving them vulnerable to eviction, and in higher medical expenses for certain Contra Costa County residents.
- T. Contra Costa County and the cities within the County are also experiencing a housing affordability crisis, which is driving homelessness and displacement of residents.
- U. Many of the County's renters are rent-burdened, paying over 30 percent of their income on rent, and some renters are severely rent-burdened, paying over 50 percent of their income on rent, which leaves less money for families to spend on other necessities like food, healthcare, transportation, and education.
- V. Housing displacement due to rent increases and evictions occurring during the local emergency would hinder individuals from complying with state and local public health orders and would lead to increased spread of COVID-19, overburdening the healthcare delivery system and potentially resulting in greater loss of life.
- W. There is an urgent need for the County to continue a temporary prohibition on certain residential evictions and continue a temporary moratorium on certain residential rent increases to protect the health, safety, and welfare of its residents in light of the emergency declared regarding the COVID-19 pandemic.
- X. The Act authorizes local jurisdictions to amend existing urgency ordinances to continue prohibitions on certain types of residential evictions, including no-fault evictions. Without local protections in addition to statewide eviction protection for residential renters, eviction notices are likely to increase in light of the COVID-19 pandemic.
- Y. This urgency ordinance prohibits a landlord from terminating a residential tenancy for a no-fault reason; prohibits a landlord from terminating a residential tenancy on the basis that a tenant allowed an unauthorized occupant to live in the dwelling unit, if the occupant is the tenant's immediate family member living in the dwelling unit as a result of the COVID-19 pandemic; and prohibits a landlord from increasing rent on a residential real property. These prohibitions and the specified exceptions last through January 31, 2021.
- Z. The Board finds, pursuant to Civil Code sections 1946.2 and 1179.05(b), that: the just cause for termination of a residential tenancy under this urgency ordinance is consistent with Civil Code section 1946.2; this urgency ordinance, by prohibiting a landlord from terminating a residential tenancy on the basis that a tenant allowed an unauthorized occupant to live in the dwelling unit if the occupant is the tenant's immediate family member living in the dwelling unit as a result of the COVID-19 pandemic, provides additional tenant protections that are not prohibited by any other provision of law; and this urgency ordinance is more protective than the provisions of Civil Code section 1946.2.



**Section 2. Definitions.** For purposes of this ordinance, the following words and phrases have the following meanings:

- (a) “Immediate family” means a person’s spouse, domestic partner, children, grandchildren, parents, or grandparents.
- (b) “Landlord” has the meaning set forth in Code of Civil Procedure Section 1179.02(e).
- (c) “No fault cause for eviction” means any eviction for which the notice of termination of tenancy is not based on an alleged fault of the tenant.
- (d) “Rent” means the financial obligation or monetary payment a tenant owes a landlord for the occupancy or use of residential real property whether by written or oral agreement.
- (e) “Residential real property” includes a mobilehome park and a mobilehome park space or lot.
- (f) “Tenancy” means the lawful occupancy of residential real property by agreement on a month-to-month basis or for a fixed term in excess of 30 days.
- (g) “Tenant” has the meaning set forth in Code of Civil Procedure Section 1179.02(h).

**Section 3. Prohibitions on Certain Residential Evictions.**

- (a) Through January 31, 2021, a landlord shall not terminate a tenancy for any no fault cause for eviction.
- (b) Through January 31, 2021, a landlord shall not terminate a tenancy on the basis of a tenant allowing an unauthorized occupant to live in the dwelling unit, if the occupant is a member of the tenant’s immediate family living in the dwelling unit as a result of the COVID-19 pandemic.
- (c) Notwithstanding the foregoing, nothing in this section limits a landlord’s ability to terminate a tenancy for any of the following reasons:
  - (1) The termination is necessary to protect the landlord’s health or safety or any other tenant’s health or safety.
  - (2) The termination is necessary where the owner or a member of the landlord’s immediate family intends to occupy the residential real property.
  - (3) The termination is to remove the residential real property from the rental market, but only when authorized by Government Code section 7060 et seq.
- (d) To the extent state law is more protective of a residential tenancy than this section, those state law provisions shall apply to the residential tenancy. Nothing in this section shall be

construed to supersede any applicable requirements in Civil Code section 1946.2 pertaining to relocation assistance or rent waiver.

**Section 4. Moratorium on Residential Rent Increases.**

- (a) A landlord may not increase rent on a residential real property through January 31, 2021.
- (b) A residential real property that is exempt from the rent limits imposed by Civil Code section 1947.12 or Civil Code section 1954.50 et seq. is exempt from this section.
- (c) This section does not apply to a residential real property where one or more scheduled rent increases occur pursuant to a written rental agreement that was entered into before March 16, 2020.
- (d) This section does not apply when a unit becomes vacant and the landlord sets the initial rent for a new tenancy.

**Section 5. Remedies.**

- (a) The provisions of this ordinance may be asserted as an affirmative defense in an unlawful detainer action.
- (b) If a landlord attempts to recover possession or recovers possession of residential real property in violation of this ordinance, retaliates against a tenant for the exercise of any rights under this ordinance, or attempts to prevent a tenant from acquiring any rights under this ordinance, the tenant may institute a civil proceeding for injunctive relief, money damages of not more than three times actual damages (including damages for mental or emotional distress), and whatever other relief a court deems appropriate. If damages are awarded for mental or emotional distress, the award shall only be trebled if the trier of fact finds that the landlord acted in knowing violation of or in reckless disregard of the provisions of this ordinance. The prevailing party shall be entitled to reasonable attorney's fees and costs pursuant to order of the court.

**Section 6. Supersedes.** This ordinance supersedes Ordinance No. 2020-20. This ordinance retroactively applies to eviction notices, and unlawful detainer actions based on those notices, served or filed on or after September 1, 2020, except to the extent a tenant has surrendered possession of its premises, or an unlawful detainer lawsuit was finally adjudicated before March 16, 2020. Ordinance No. 2020-14 applies to eviction notices, and unlawful detainer actions based on those notices, served or filed between March 16, 2020, and May 25, 2020. Ordinance No. 2020-16 applies to eviction notices, and unlawful detainer actions based on those notices, served or filed between May 26, 2020, and July 13, 2020. Ordinance No. 2020-20 applies to eviction notices for residential real property, and unlawful detainer actions based on those notices, served or filed between July 14, 2020, and August 31, 2020. Ordinance No. 2020-20 applies to eviction notices for commercial real property (as defined in Ordinance No. 2020-20), and unlawful detainer actions based on those notices, served or filed between July 14, 2020, and September 30, 2020. The grace period for past due rent owed by commercial real property (as defined in Ordinance No. 2020-20) extends through January 31, 2021.

**Section 7. Applicability.** Government Code section 8634 authorizes the Board of Supervisors to promulgate countywide orders and regulations necessary to provide for the protection of life and property during a local emergency. Pursuant to Government Code section 8634, the regulations in this ordinance shall apply to cities within Contra Costa County and unincorporated Contra Costa County. To the extent that the governing body of a city enacts an ordinance or adopts a regulation that governs the subject matter of this ordinance, that city ordinance or regulation shall supersede this ordinance within that jurisdiction.

**Section 8. Severability.** If any provision or clause of this ordinance or the application thereof to any person or circumstances is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other ordinance provisions or clauses or applications thereof that can be implemented without the invalid provision or clause or application, and to this end the provisions and clauses are declared to be severable. The Board of Supervisors hereby declares that it would have adopted this ordinance and each provision thereof irrespective of whether any one or more provisions are found invalid, unconstitutional, or otherwise unenforceable.

**Section 9. Declaration of Urgency.** This ordinance is hereby declared to be an urgency ordinance necessary for the immediate preservation of the public peace, health, and safety of the County. The facts constituting the urgency of this ordinance's adoption are set forth in Section 1.

**Section 10. Effective Date.** This ordinance becomes effective immediately upon passage by four-fifths vote of the Board of Supervisors. This ordinance shall expire and be repealed as of January 31, 2021, unless shortened or extended by the Board of Supervisors based on the existence of a local emergency.

**Section 11. Publication.** Within 15 days after passage, this ordinance shall be published once with the names of the supervisors voting for and against it in the East Bay Times, a newspaper published in this County.

PASSED ON September 22, 2020, by the following vote:

AYES: John Gioia, Candace Andersen, Diane Burgis, Karen Mitchoff, Federal Glover

NOES: None

ABSENT: None

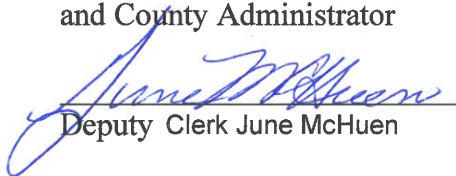
ABSTAIN: None

ATTEST: DAVID J. TWA,  
Clerk of the Board of Supervisors  
and County Administrator



Board Chair Candace Andersen

By:



Deputy Clerk June McHuen

[SEAL]

H:\2020\Covid 19\evictions\urgency ordinance - third continuation of eviction moratorium - final.docx



Contra  
Costa  
County

To: Board of Supervisors  
From: David Twa, County Administrator  
Date: September 22, 2020  
Subject: Update on COVID-19

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**RECOMMENDATION(S):**

CONSIDER update on COVID 19; and PROVIDE direction to staff.

1. Health Department - Anna Roth, Director and Dr. Farnitano, Health Officer

**FISCAL IMPACT:**

Administrative reports with no specific fiscal impact.

**BACKGROUND:**

The Health Services Department has established a website dedicated to COVID-19, including daily updates. The site is located at: <https://www.coronavirus.cchealth.org/>

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APPROVE

OTHER

RECOMMENDATION OF CNTY ADMINISTRATOR

RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  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: September 22, 2020

, County Administrator and Clerk of the Board of Supervisors

Contact: David Twa

By: June McHuen, Deputy

cc:

CLERK'S ADDENDUM

**Update report on Covid-19 attached.**



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Brian M. Balbas, Public Works Director/Chief Engineer  
Date: September 22, 2020

Subject: APPROVE and AUTHORIZE an amendment to Contra Costa Transportation Authority Agreement No. 454 for the I-680 North Express Lanes Project.

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Chair, Board of Supervisors, to execute Amendment No. 2 to Agreement No. 454 with the Contra Costa Transportation Authority (CCTA), to increase the maximum compensation paid to Contra Costa County (County) by \$4,000 to a new total of \$57,000, effective September 22, 2020, as recommended by the Public Works Director, I-680 Corridor area. Project No. 4660-6X4172

DIRECT the Real Estate staff of the Public Works Department to deliver fully executed copies of Amendment No. 2 to CCTA.

**FISCAL IMPACT:**

100% Contra Costa Transportation Authority Funds.

**BACKGROUND:**

CCTA requires a variety of right of way services related to the I-680 North Express Lanes Project but have no right of way staff and has contracted with the County for these services. On November 15, 2016, the Board of Supervisors approved the original agreement between the County and CCTA. Amendment No. 1, adding additional funds, was approved by the Board of Supervisors on May 7, 2019. Additional funds from CCTA are

APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Stacey M. Boyd, Deputy

Contact: Jewel Lopez, (925)  
957-2485

cc:

BACKGROUND: (CONT'D)

required for the County to provide the necessary right of way services under the agreement and to complete the additional services identified in the attached Amendment No. 2.

Accordingly, this amendment expands the total agreement value by \$4,000 for a total agreement value of \$57,000, including the contingency value of \$8,500. The County will complete the assignment of two utility easements and file close outs for the project.

CONSEQUENCE OF NEGATIVE ACTION:

CCTA will not be able to contract for the County's right of way services and will not meet the terms of the agreement.

ATTACHMENTS

Agreement No. 454



Agreement No. 454  
With  
County of Contra Costa  
For  
Interstate 680 (1-680) North Express Lane Project  
Right-of-Way (ROW) Support Services  
September 16, 2020

**AMENDMENT No. 2**

**WHEREAS**, the Contra Costa Transportation Authority (Authority) and Contra Costa County (County) entered into Real Property Services Agreement No. 454 on November 15, 2016 to acquire property and for preparation of ROW Certification with a termination date of December 31, 2018 and a total agreement value of \$43,000; and

**WHEREAS**, Amendment No. 1 was approved on April 17, 2019 to include additional ROW support services, and increase the agreement amount by \$10,000 for a new total agreement value of \$53,000 and;

**WHEREAS**, the parties now wish to increase the agreement value to include additional ROW support services, and increase the agreement amount by \$4,000 for a new total agreement value of \$57,000 and; now therefore be it

**MUTUALLY AGREED:**

(1) that the agreement value and maximum compensation limit is increased by \$4,000 for a new total agreement value of \$57,000; and

(2) that the dollar values under Article 4 of the agreement are replaced in their entirety as follows:

Base Work	\$53,000	Maximum
Extra Work	\$ 4,000	Maximum
Total Agreement Value	\$57,000	Maximum

(3) that all other items and conditions of the agreement shall remain in effect.



In witness whereof, the parties hereto have executed this Amendment No. 2 to Agreement No. 454 effective as of the 16<sup>th</sup> day of September, 2020.

**COUNTY OF CONTRA COSTA**

**CONTRA COSTA  
TRANSPORTATION AUTHORITY**

\_\_\_\_\_  
Chair, Board of supervisors

\_\_\_\_\_  
Julie K. Pierce, Chair

ATTEST:

ATTEST:

\_\_\_\_\_  
David Twa, Clerk of the Board of  
Supervisors and County Administrator

\_\_\_\_\_  
Tarienne Grover, Clerk of the Board

Recommended to the County Board of  
Supervisors for Approval:

Approved as to form:

\_\_\_\_\_  
Brian M. Balbas, Public Works Director

\_\_\_\_\_  
Malathy Subramanian, Authority Counsel

Approved as to form:  
Sharon L. Anderson, County Counsel

\_\_\_\_\_  
Deputy County Counsel



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Brian M. Balbas, Public Works Director/Chief Engineer  
Date: September 22, 2020

Subject: APPROVE Temporary Construction Easement and Agreement and Grant of Easement with EBMUD; APPROVE an Encroachment Permit with EBRPD, Orinda area.

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**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Public Works Director, or designee, to execute a Temporary Construction Easement and Agreement and a Grant of Easement from East Bay Municipal Utility District (EBMUD) for property rights located on a portion of APN 257-020-003, and APPROVE and AUTHORIZE the Public Works Director, or designee, to execute an Encroachment Permit with East Bay Regional Park District (EBRPD) for the property rights located on a portion of APN 257-010-002 in connection with the Pinehurst Sinkhole and Culvert Repair, in the unincorporated Orinda area. (County Project No. 0672-6U6202; Federal Project No. ER 32L0 (517))

DIRECT the Auditor-Controller to issue payment in the amount of \$7,500 (\$3,000 for property rights granted by the Temporary Construction Easement and Agreement and \$4,500 for the property rights granted by the Grant of Easement) to East Bay Municipal Utility District, 375 11<sup>th</sup> Street, MS 903, Oakland, CA 94607.

DIRECT the Auditor-Controller to issue payment in the amount of \$3,000 for said property rights for the Encroachment Permit to East Bay Regional Park District, 2950 Peralta Oaks Court, Oakland, CA 94605, Permit No. 062E-20-134, to be forwarded to the Real Estate Division for Delivery.

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APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

Contact: Olivia Reynolds-Freeman,  
(925) 957-2462

By: Stacey M. Boyd, Deputy

cc:

RECOMMENDATION(S): (CONT'D)

DIRECT the Real Estate Division of the Public Works Department to deliver a certified copy of this Board Order with the Grant of Easement to EBMUD for acceptance and recording in the office of the County Clerk Recorder.

FISCAL IMPACT:

60% Federal Funds; 40% Local Road Funds.

BACKGROUND:

The purpose of this Project is to repair a 72” culvert and sinkhole beneath Pinehurst Road that was heavily damaged during the 2017 rainy season. The Project site is located on Pinehurst Road, approximately 2.5 miles northwest of Canyon Road at the first hairpin turn in unincorporated Orinda. The Project will return the road to satisfactory condition and ensure that storm drainage is conveyed through the culvert. Real Estate Division staff recommend approval of the Temporary Construction Easement and Agreement, Grant of Easement, and Encroachment Permit in the forms attached hereto.

CONSEQUENCE OF NEGATIVE ACTION:

The County will not have sufficient property rights to complete the project.

ATTACHMENTS

Agreement

Encroachment Permit

Grant of Easement

<b>PROJECT NAME</b>	Pinehurst Culvert Repair	<b>PROP #, ADDRESS &amp; APN</b>	Watershed – Pinehurst Rd APN: 257-020-003-6
<b>GRANTEE</b>	Contra Costa County	<b>DISTRICT</b>	East Bay Municipal Utility District
<b>GRANTEE POINT OF CONTACT</b>	Adelina Huerta 925-348-4497 Adelina.huerta@pw.cccounty.us  Mo Nasser 925-313-2178 Mo.nasser@pw.cccounty.us	<b>DISTRICT POINT OF CONTACT</b>	Mark Silva 510-287-2035 (o) or 510-715-8319 (c) mark.silva@ebmud.com  Rob Korn 510-287-1246 robert.korn@ebmud.com

## EAST BAY MUNICIPAL UTILITY DISTRICT TEMPORARY CONSTRUCTION EASEMENT AND AGREEMENT

**THIS INDENTURE**, made by and between EAST BAY MUNICIPAL UTILITY DISTRICT, a public corporation organized and existing under the laws of the State of California, as Grantor, hereinafter called the "District", and, Contra Costa County, a political subdivision of the State of California, its contractors and their authorized agents, hereinafter called the "Grantee".

### WITNESSETH:

1. The District, for full payment of the consideration hereinafter specified and of the terms, covenants, and conditions herein contained in this Temporary Construction Easement and Agreement (“Agreement”), does hereby grant to Grantee a temporary construction easement for a portion of property the Watershed Property located at Pinehurst Road (the “Property”), more accurately described as APN 257-020-003-6, delineated on **Exhibit A**, attached hereto and made a part hereof, consisting of approximately 2494 square feet of ground space (the “Premises”), as identified in **Exhibit B**, attached hereto and made a part hereof, for staging of Grantee’s equipment, machinery, and material; and for emergency vehicle access; and for the work associated with the Pinehurst Culvert Repair, hereinafter (“Project”).
2. Term. This easement shall be for a period of up to SIX (6) MONTHS. Grantee shall have the option to use the Temporary Easement Area for the six month period at any time between 8/15/2020 through 12/31/2021, as dictated by project. Grantee shall notify Grantor of its intent to commence its occupancy of the Temporary Easement Area at least sixty (60) days in advance of occupancy. Should Grantee need the temporary construction easement for an additional time it shall provide the District with 30-days’ advance notice to fully review the request to extend the Agreement. In the event the District approves the requested extension, Grantee shall provide the District with 10-days’ advance payment for each additional 30-day period of use at a rate of \$500 per 30-day period. Regardless of any such extension of time, this easement shall terminate no later than 12/31/2021.
3. Consideration. Grantee agrees to pay District as consideration, the sum of Three Thousand Dollars (\$3,000.00) payable within one month of full execution of this agreement and prior to occupancy. The Property is to be used solely for the Project by Grantee, its contractors and their authorized agents.

4. If the Grantee uses the Premises for other purposes than the Project, this Agreement will immediately become void. Within 10 business days of receiving written notice of this violation the Grantee will remove all equipment and materials from the Premises and restore as near as possible the Premises to the condition in which it was prior to the commencement of said work to the satisfaction of District. In the event Grantee fails to do so within this time frame, District shall remove the equipment and materials and restore the Premises at Grantee's expense.
5. Grantee shall erect and maintain secure, self-supporting temporary fencing to delimit the Premises. The temporary fencing must be installed upon Premises move-in and removed at the time of Premises move-out. Grantee shall keep the access gate closed and locked any time when the Grantee is not on Premises and at the end of each day. Grantee shall give a copy of the lock keys to District. Grantee is responsible for maintaining all site security. The District is not liable in the event of any theft, vandalism or damage to the Grantee's property.
6. Grantee does hereby agree to provide the District, at no cost, copies of all field data and reports generated as a result of activities authorized under this Agreement.
7. Grantee shall comply with all applicable laws, ordinances and regulations, including but not limited to all applicable regulatory, environmental and safety requirements at Grantee's sole cost and expense. Grantee shall not use, deposit or permit the use or deposit of any hazardous material or toxic waste or other harmful substances on the Property or on any other real property of District adjacent to the Property.
8. To the best of its ability, Grantee shall not materially interfere with the operations and activities of District (or other property users) on District's property under use outside of the Premises, and Grantee shall use such routes and follow such procedures on District's property so as to result in the least inconvenience to District.
9. Grantee hereby commits to make every effort to use existing drive aisles, roads, trails and paths to minimize any potential impact to District's property.
10. Grantee shall be responsible for any damage to the Property or to personal or real property of third parties resulting from any exercise of the rights herein granted, including but not limited to soil erosion, subsidence or damage resulting therefrom. Grantee shall promptly repair and restore to its original condition any of District's property, including, but not limited to, roads, utilities, buildings, gates and fences that may be altered, damaged or destroyed in connection with the exercise of Grantee's rights under this Agreement or use of the Property to the satisfaction of District.
11. Grantee agrees upon the completion of its work to restore as near as possible the surface of the ground within the Premises and drive aisles required for access to the condition in which it was prior to the commencement of said work to the satisfaction of District. It is understood and agreed that Grantee will leave the Premises in a clean and orderly condition and will repair, replace or reasonably compensate District for any existing improvement that may have been disturbed or removed during the course of the work to the satisfaction of District.

Upon failure of Grantee to do so, said work may be performed by District at Grantee's expense, which expense Grantee agrees to pay District promptly upon demand. This includes the restoration

of any and all staging areas, parking lots, fire trails, roads, erosion control measures or any other District property damaged by Grantee, its contractors or their authorized agents in the exercise of this Agreement.

12. Indemnification: Grantee expressly agrees to indemnify, defend and hold harmless Grantor, its directors, officers, and employees from and against any and all loss, liability, expense, claims, costs, suits, and damages, including attorneys' fees, arising out of Grantee's operation or performance under this agreement, including all costs, claims and damages (including property and personal injury) arising out of any hazardous substances, hazardous materials or hazardous wastes (including petroleum) within the easement area or on the adjacent Grantor's property, released by Grantee, its officers, employees, or contractors, as a result of Grantee's construction, reconstruction, maintenance, use, or removal of its structure.

Where applicable by law, the duty to indemnify, including the cost to defend is limited in accordance with California Civil Code § 2782.8.

13. Insurance Requirements: Grantee, its contractors and their authorized agents shall take out and maintain during the life of the Agreement all the insurance required in this section. Grantee, its contractors and their authorized agents must provide proof of coverage on District supplied insurance certificates for approval prior to accessing the Property. Such approval will not be unreasonably withheld by District. Acceptance of the certificates shall not relieve Grantee of any of the insurance requirements, nor decrease the liability of Grantee. The District reserves the right to require Grantee to provide insurance policies for review by the District.

Grantee shall provide a written request for authorization and the District will consider self-insurance in lieu of the insurance requirements listed below.

A. *Workers Compensation Insurance*: Grantee shall take out and maintain during the life of the Agreement Workers Compensation Insurance for all of its employees on the project. In lieu of evidence of Workers Compensation Insurance, the District will accept a Self-Insured Certificate from the State of California. Grantee shall require any subcontractor to provide it with evidence of Workers Compensation Insurance. Grantee shall not be granted access to the Property until such insurance has been approved by the District

B. *Commercial General Liability Insurance*: Grantee shall take out and maintain during the life of the Agreement Automobile and General Liability Insurance that provides protection from claims which may arise from operations or performance under this Agreement. If Grantee elects to self-insure (self-fund) any liability exposure during the Agreement above \$50,000, Grantee is required to notify the District immediately. Any request to self-insure must first be approved by the District before the changed terms are accepted. Grantee shall require any subcontractor or Professional Service Provider to provide evidence of liability insurance coverages. The amounts of insurance shall be not less than the following:

\$2,000,000/Occurrence, Bodily Injury, Property Damage -- Automobile.

\$2,000,000/Occurrence, Bodily Injury, Property Damage -- General Liability.

The following coverages or endorsements must be included in the policy(ies):

- 1) The District, its Directors, Board Members, officers, and employees are Additional Insureds in the policy(ies) as to the work being performed under the Agreement.
- 2) The coverage is Primary and non-contributory to any other applicable insurance carried by the District.
- 3) The policy(ies) covers contractual liability.
- 4) The policy(ies) is written on an occurrence basis.
- 5) The policy(ies) covers the District's Property in Grantee's care, custody, and control.
- 6) The policy(ies) covers personal injury (libel, slander, and wrongful entry and eviction) liability.
- 7) The policy(ies) covers explosion, collapse, and underground hazards.
- 8) The policy(ies) covers products and completed operations.
- 9) The policy(ies) covers the use of owned, non-owned, and hired automobiles.
- 10) The policy(ies) will not be canceled nor the above coverages/endorsements reduced without 30 days written notice to District.

C. *Pollution Liability Insurance:* Grantee shall take out and maintain during the life of the Agreement Pollution Liability Insurance that provides protection from claims which may arise from operations or performance under this Agreement. Grantee's insurance shall be Primary and any insurance or self-insurance procured or maintained by the District shall not be required to contribute to it. Coverage must be included for bodily injury and property damage, including coverage for loss of use and/or diminution in property value, and for clean-up costs arising out of, pertaining to, or in any way related to the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of contaminants or pollutants, arising out of, pertaining to, or in any way resulting from any services performed by Grantee under this Agreement; including any transportation of hazardous wastes, hazardous materials, or contaminants. The policy shall provide 30 days advance written notice to the District for cancellation or reduction in coverage. The Grantee shall require its subcontractor(s) to provide it with a copy of proof of the same pollution liability insurance coverages. Pollution Liability coverage shall not be less than:

Each Claim or Occurrence Limit: \$2,000,000;  
Aggregate Limit: \$2,000,000.

If coverage is written on a claims-made form, the following shall apply:

1. The retroactive date must be shown, and must be before the date of the Agreement or the beginning of the Project, whichever comes first.
2. Insurance must be maintained and evidence of insurance must be provided for a minimum of three (3) years after completion of the Project.
3. If claims-made coverage is canceled or non-renewed, and not replaced with another claims-made policies form with a retroactive date prior to the effective date of the Agreement, Grantee must purchase an extended period of coverage for a minimum of three (3) years after completion of the Project or expiration of the Agreement, whichever is later.

Insurance shall include prior acts coverage sufficient to cover the services under this Agreement.

D. *Professional Liability Insurance:* Grantee shall take out and maintain during the life of the

Agreement Professional Liability Insurance (Errors and Omissions). Grantee's insurance shall be primary and any insurance or self-insurance procured or maintained by the District shall not be required to contribute to it. The policy shall provide 30 days advance written notice to the District for cancellation or reduction in coverage. Professional Liability coverage shall not be less than:

Each Claim or Occurrence Limit: \$2,000,000;  
Aggregate Limit: \$2,000,000.

If coverage is written on a claims-made form, the following shall apply:

1. The retroactive date must be shown, and must be before the date of the Agreement or the beginning of the Project, whichever comes first.
2. Insurance must be maintained and evidence of insurance must be provided for a minimum of three (3) years after completion of the Project.
3. If claims-made coverage is canceled or non-renewed, and not replaced with another claims-made policies form with a retroactive date prior to the effective date of the Agreement, Grantee must purchase an extended period of coverage for a minimum of three (3) years after completion of the Project or expiration of the Agreement, whichever is later.

Insurance shall include prior acts coverage sufficient to cover the services under this Agreement.

Coverage shall be included for all premises and operations in any way related to this Agreement.

*E. Provisions Applicable to All Required Insurance*

Waiver of Subrogation: All policies must contain a waiver of subrogation endorsement providing that each insurer waives any rights of recovery by subrogation, or otherwise, against the District, its directors, Board members, officials, employees, volunteers and agents. Grantee shall defend and pay any damages, fees, costs, etc. as a result of failure to provide the waiver of subrogation from the insurance carrier(s).

The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy(ies) or proceeds available to the Named Insured/Grantee. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader than or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the Grantee.

Excess and/or Umbrella Liability Insurance Coverage: Prior to the beginning of, and throughout the duration of the Agreement and for any additional period of time as specified herein, Grantee shall, at its sole cost and expense, maintain insurance in conformance with the requirements set forth in this Agreement.

Deductibles, Self-Insurance Retentions: Any deductibles, self-insurance, or self-insured retentions (SIRs) applicable to required insurance coverage must be declared to and



accepted by the District's Risk Manager or delegate.

At the option and request of the District, Grantee shall provide documentation of its financial ability to pay the deductible, self-insurance, or SIR.

Claims-Made Coverage: If coverage is written on a claims-made form (which type of form is permitted only where specified), the following shall apply:

- 1) The retroactive date must be shown, and must be before the date of the Agreement or the beginning of the Project.
- 2) Insurance must be maintained and evidence of insurance must be provided for a minimum of three (3) years after completion of the Project.
- 3) If coverage is canceled or non-renewed, and not replaced with another claims-made policy(ies) form with a retroactive date prior to the effective date of the Agreement, Grantee must purchase an extended period of coverage for a minimum of three (3) years after completion of the Project or expiration of the Agreement, whichever is later.

It is Grantee's responsibility to ensure its compliance with the insurance requirements. Any actual or alleged failure on the part of District to obtain proof of insurance required under this Agreement shall not in any way be construed to be a waiver of any right or remedy of the District, in this or any regard.

14. Grantee hereby acknowledges that, as the contracting party, they are directly and solely liable for any failure to satisfy the terms and obligations of this Agreement.
15. It is understood that when the further use of the Premises is no longer required for the construction project described herein, this Agreement shall become null and void and shall terminate, and in any event shall cease and terminate no later than 12/31/2021. Termination under Sections 4 and 14 shall not relieve Grantee of any of the obligations under Sections 4, 10, 11, 12 and 13 of this Agreement.

The performance of this Agreement in furtherance of the completion of the Project constitutes the entire consideration for this temporary construction easement.

**IN WITNESS WHEREOF**, the District has executed this indenture this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

EAST BAY MUNICIPAL UTILITY DISTRICT

CONTRA COSTA COUNTY

\_\_\_\_\_  
Matt Elawady  
Manager of Real Estate Services

By: \_\_\_\_\_  
Brian M. Balbas  
Director of Public Works

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

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

# EXHIBIT A

**PINEHURST RD, CANYON, CA 94516**

Site Address	PINEHURST RD CANYON, CA 94516
Parcel No. (APN)	257-020-003-6
Land Use Cat.	MISCELLANEOUS
Land Use Desc.	GOVERNMENTAL, PUBLIC
Building Area	
Lot Area	223,898 SF (5.14 ACRES)
Building/Lot Ratio	
No. of Units	
Year Built	
Total Assd. Value	\$6,867
Owner 1	EAST BAY MUNICIPAL UTILITY, DIS
Owner 2	
Owner Address	PO BOX 24055 OAKLAND, CA 94623
Last Transfer	
Last Market Sale	

[Add to List](#) [Full Property Detail](#) More

**Location**

Site Address	PINEHURST RD CANYON, CA 94516
Parcel No. (APN)	257-020-003-6
Legal Information	POR SW QR SEC 15 T1S R3W 5.140 AC
Subdivision	
Legal Lot	
Legal Block	

[Tax Map](#) [Full Property Detail](#)

**Ownership**

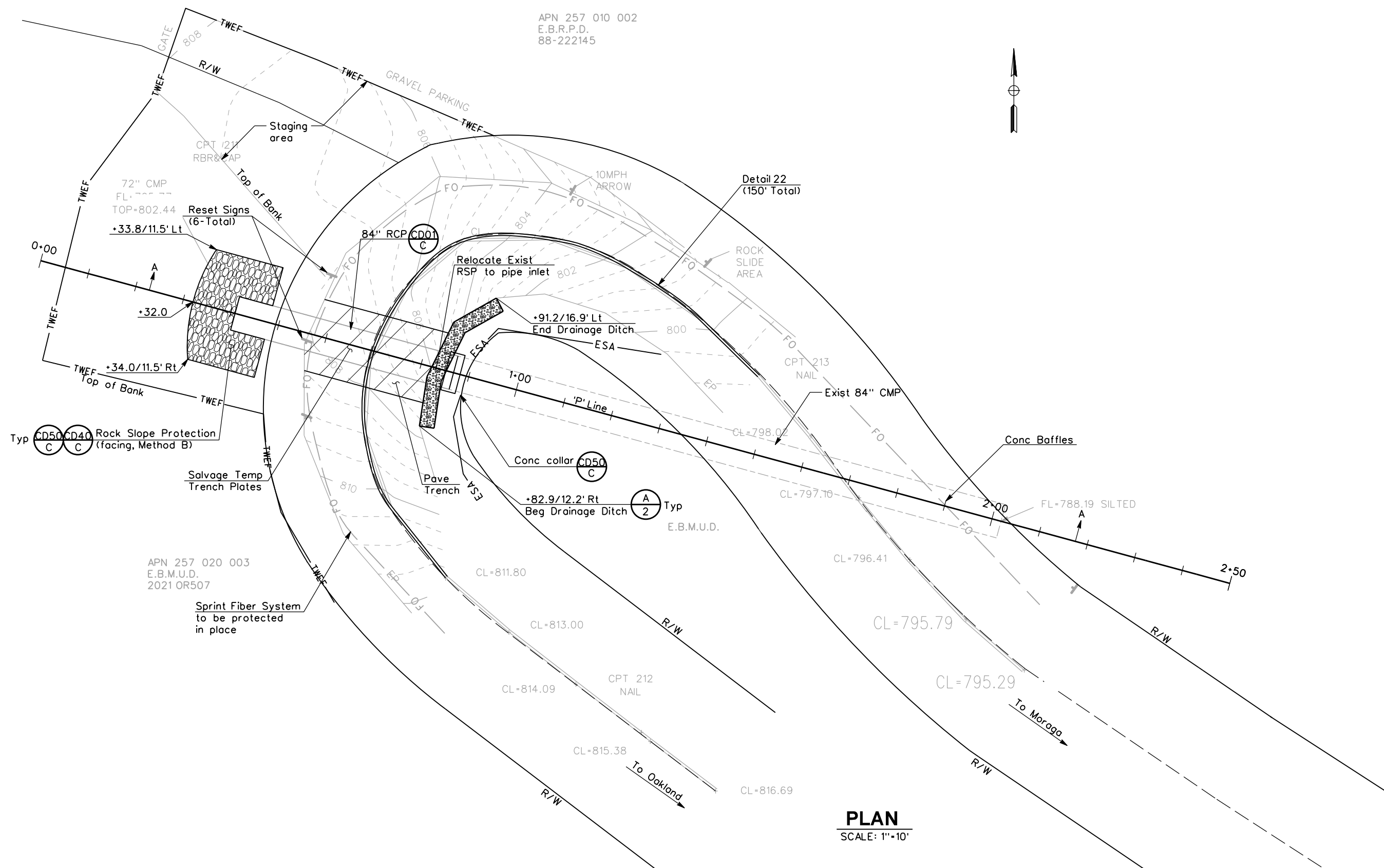
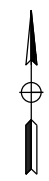
Owner 1	EAST BAY MUNICIPAL UTILITY, DIS
Owner 2	
Owner Address	PO BOX 24055 OAKLAND, CA 94623

Results at this Location | 1

# **EXHIBIT B**

(See Attached Page)

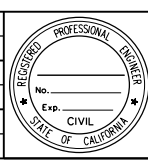
APN 257 010 002  
E.B.R.P.D.  
88-222145



**PLAN**  
SCALE: 1"=10'

REVISIONS			
NO.	DESCRIPTION	BY	DATE

DES.: MO NASSER  
DRAWN: H.HUSSEY  
CHKD.: A.HUERTA  
DATE: 1/30/20  
SCALE: 1"=10'  
FLD. BK.



PROJECT ENGINEER  
PLANS APPROVAL DATE

CONTRA COSTA COUNTY  
PUBLIC WORKS DEPARTMENT  
255 GLACIER DRIVE  
MARTINEZ, CALIFORNIA 94553

65% PRELIMINARY  
DRAWING DATED 1/30/20

FOR REDUCED PLANS ORIGINAL SCALE IS IN INCHES		
STATE PLANE	EAST COORD.	NORTH COORD.
NAD83 CALIFORNIA ZONE 3		

PINEHURST ROAD  
SINKHOLE AND CULVERT REPAIR  
PLAN  
FILE NO. SHEET 3 OF 3  
FILE NAME: dc620218.003 PEN TBL:

6620218.003 5/29/2020



**East Bay Regional Park District  
Encroachment Permit**

**PERMIT NUMBER:** 062E-20-134  
**PERMIT FEE:** \$3000.00

EBRPD FACILITY AFFECTED:	Sibley/Claremont Canyon/Huckleberry (134)
PERMITEE NAME: (Company)	Contra Costa County
ADDRESS:	255 Glacier Drive, Martinez CA 94553
CONTACT PERSON:	Adelina Huerta
PHONE:	925-348-4497
EMAIL:	adelina.huerta@pw.cccounty.us

PERMIT VALID THROUGH:	October 31, 2021	
PARK SUPERVISOR:	Name: Jim Rutledge	Phone: 510-544-3111

**CONDITIONS:**

1. No project work shall commence until all necessary permits and environmental clearances have been obtained. It shall be the sole responsibility of the Permittee to obtain all necessary permits and authorizations for the proposed activities.
2. The District has discretionary authority to suspend, modify, or revoke authorization of this permit in the event of non-compliance and violation(s) of permit conditions.
3. At least one week prior to the commencement of work, the Permittee shall contact the Park Supervisor listed above to coordinate access. Work during wet, storm or elevated fire hazard conditions shall be at the discretion of the Park Supervisor.
4. Prior to the commencement of work the Permittee and Permittee's Contractor shall provide and maintain Liability and Workers Compensation Insurance. See page 4 "Insurance Requirements".
5. Permittee and Permittee's Contractor agree to indemnify, hold harmless, defend and protect Park District, its officers, directors, agents, employees, invitees (each of which is an indemnitee) from and against any and all claims, losses, damages, demands, liabilities, suits, costs, expenses (including attorneys' fees), penalties, judgments, or obligations whatsoever for or in connection with injury (including death) or damage to any person or the loss or damage of property to whomsoever belonging or pecuniary or monetary loss resulting from, arising out of, or in any way related to activity conducted by or the omission of Permittee or Permittee's Contractor, including but not limited to Permittee's or Permittee's Contractor's development, construction, occupation, use, operation, maintenance and/or removal of the property, premises, or any facilities or operations thereon, including events occurring on or off the property, premises, or facilities, regardless of how the injury or damage was caused or suffered, unless the injury or damage resulted from the sole negligence or the intentional and willful misconduct of the Park District, its officers, directors, agents or employees.



6. Permittee agrees to restore any park facility disturbed to its pre-construction/project condition. The Park District may elect to make repairs and charge the Permittee the cost thereof. At the Permittee's sole expense, the Permittee shall provide a pre-construction photo and/or video record to document the site conditions before the start of the work.
7. Prior to any grading, trenching, digging, ditching, drilling, augering, tunneling, scraping or any other type of excavation, the Permittee shall provide the Park District with an initial inquiry identification number from Underground Service Alert.
8. All work performed within the parkland shall conform to recognized standards of construction.
9. Survey monuments shall be protected. Any survey monuments or property corners removed or disturbed shall be replaced at the Permittee's sole expense using survey practices acceptable to the Park District.
10. After both entering and exiting East Bay Regional Park District property, all gates must be closed and locked immediately.
11. All work performed shall be consistent with Encroachment Permit Application dated, 06/01/2020 and all documents submitted to the Park District, attached ~~as~~ Exhibit(s) 1 through 4 and Supplementary Condition(s) S1 through S8.
12. Permittee and Permittee's Contractor shall implement standard erosion control practices at every site.
13. If checked, Permittee shall implement the following invasive weed BMP's in lieu of submitting an Integrated Pest Management Plan and weed abatement program.
  - a. Permittee shall use only weed-free straw mulch. No monofilament plastic mesh or line will be used for erosion control.
  - b. Permittee shall wash all project equipment, prior to entering the work area. All vehicles shall be cleaned of dirt and debris ~~per BMP Decontamination Protocol attached~~ NL 8/2020
  - c. Permittee shall incorporate topsoil salvage into the excavation efforts. The top 2-3 inches of soil will be scraped/excavated and placed in a separate location from all other excavated material. Upon the completion of Construction, the salvaged topsoil will be placed back over the excavated area.
14. If hazardous waste is transported, Permittee shall provide the appropriate copy of the Uniform Hazardous Waste Manifest to the Park District.
15. No construction material shall be stored, nor equipment parked on Park District land.
16. All vehicles traveling on Park District land shall be limited to speeds not to exceed 15 MPH. All vehicles shall yield right of way to park and trail users.
17. Upon completion of the work all debris, scraps, material, etc., shall be removed from the parkland.
18. The Permittee shall cease work in the vicinity of any archaeological resources that are revealed and notify the Park District immediately. A qualified archaeologist, retained by the Permittee, will evaluate the situation and make recommendations to the Park District concerning the continuation of the work. All resulting recommendations shall be incorporated in the work at no additional cost to Park District.
19. This Permit allows temporary trail or road closure only where allowed by Park Supervisor.
20. The Permittee is responsible for meeting all requirements of California Public Resources Code, Sections 4427 and 4431. See page 5 "California Public Resources Code, Sections 4427 and 4431".
21. Permittee shall review Conditions of this Permit with all employees and subcontractors prior to any work.
22. The work site shall be enclosed by suitable barricades, fencing, signs and lights, as approved by Park District Representative, to warn and protect public and traffic effectively.
23. Excavations made within the limits of the parklands shall be backfilled or securely covered before leaving the work for the night.
24. Permittee shall provide the Park District with copies of any reports or findings made as a result of this access.



**East Bay Regional Park District  
Encroachment Permit**

**PERMIT NUMBER:** 062E-20-134

- 25. Permittee shall provide the Park District with GIS data for any underground or above ground utilities installed or repaired under this Permit. The data shall be provided in the ESRI Shapefile format (.shp).
- 26. Smoking and/or vaping is prohibited on Park District property.
- 27. This Permit does not authorize tree trimming or tree removal.
- 28. Permittee shall notify the Park Supervisor once the project is completed. A site visit may be scheduled to confirm all Conditions of this Encroachment Permit have been completed to Park District Representatives' satisfaction.
- 29. **A copy of this fully executed Encroachment Permit must be on site and presented to East Bay Regional Park District personnel upon request.**

**Subject to the above conditions, A PERMIT IS HEREBY ISSUED FOR:**

Access to gravel lot at Sibley Park, lower Pinehurst Trail Gate for construction staging. Access to the downstream culvert location is included in this permit. Staging and construction work at the downstream culvert will take place on EBMUD right of way. Only ingress at culvert is needed on EBRPD right of way.

See Supplementary Conditions and Fire Season Restrictions, attached.

**ISSUED BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
**Nate Luna, Project Manager**

**CONDITIONS ACCEPTED BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
**Permittee**





### INSURANCE REQUIREMENTS

Prior to the commencement of work the Permittee and Permittee's Contractor shall provide and maintain:

- a. Commercial General Liability Insurance, occurrence form, with a limit of not less than **\$2,000,000 for each occurrence**. If such insurance contains a general aggregate limit, either it shall apply separately to this Encroachment Permit or be no less than **two (2) times the occurrence limit**.
- b. Automobile Liability Insurance, occurrence form, with a limit of not less than **\$1,000,000 for each occurrence**. Such occurrence shall include coverage for owned, hired and non-owned automobiles.
- c. Builder's Risk, Special Hazards, or other coverage may be required, as provided in the Supplementary Conditions or other written communication from the East Bay Regional Park District ("Park District").
- d. Workers Compensation Insurance: Statutory coverage for Workers' Compensation Employer's Liability (\$500,000 per accident). Workers' Compensation shall comply with California Labor Code Section 3700 and contain a waiver of subrogation in favor of the District.
- e. General Provisions for all insurance:
  - i. All insurance shall include the Park District, its elected and appointed officers, employees, and volunteers as additional insureds with respect to this Encroachment Permit and the performance of the Description of Project/Activity on the Encroachment Permit and Permit Application. The coverage shall contain no special limitations on the scope of its protection to the above-designated insureds.
  - ii. General liability insurance shall be primary and non-contributory with respect to any insurance or self-insurance programs of the Park District, its boards, commissions, officers, agents, employees, and volunteers.
  - iii. All insurance shall be evidenced, prior to commencement of services, by properly executed policy endorsements in addition to a certificate of insurance.
  - iv. In addition to requiring that the Permittee and Permittee's Contractor provide an insurance certificate showing the levels and types of coverage required for the project or contract, the Park District also requires the Permittee and Permittee's Contractor to provide the Park District with a copy of the actual endorsements (a document that modifies the terms of the underlying policy and is issued by the insurance company itself, rather than a broker) to the commercial, general, automobile, and excess liability insurance policies that show the Park District, its boards, commissions, officers, agents, and employees have been named as additional insureds by the insurers.
  - v. If the Permittee and Permittee's Contractor maintain broader coverage and/or higher limits than the minimums shown above, the District requires and will be entitled to the broader coverage and/or higher limits maintained by the Permittee and Permittee's Contractor.
- f. No changes in insurance may be made without the approval of the Park District.
- g. Notice of Cancellation. The Park District requires thirty (30) days written notice of cancellation of any insurance required by this Permit. Additionally, the notice statement on the certificate should not include the wording "endeavor to" or "but failure to mail such notice shall impose no obligation or liability upon the company, its agents or representatives" (or similar wording).



**California Public Resources Code, Sections 4427 and 4431.**

SECTION 4427. During any time of the year when burning permits are required in an area pursuant to this article, no person shall use or operate any motor, engine, boiler, stationary equipment, welding equipment, cutting torches, tarpots, or grinding devices from which a spark, fire, or flame may originate, which is located on or near any forest-covered land, brush-covered land, or grass-covered land, without doing both of the following:

- (a) First clearing away all flammable material, including snags, from the area around such operation for a distance of 10 feet.
- (b) Maintain one serviceable round point shovel with an overall length of not less than forty-six (46) inches and one backpack pump water-type fire extinguisher fully equipped and ready for use at the immediate area during the operation.

This section does not apply to portable power saws and other portable tools powered by a gasoline-fueled internal combustion engine.

SECTION 4431. During any time of the year when burning permits are required in an area pursuant to this article, no person shall use or operate or cause to be operated in the area any portable saw, auger, drill, tamper, or other portable tool powered by a gasoline-fueled internal combustion engine on or near any forest-covered land, brush-covered land, or grass-covered land, within 25 feet of any flammable material, without providing and maintaining at the immediate locations of use or operation of the saw or tool, for firefighting purposes one serviceable round point shovel, with an overall length of not less than 46 inches, or one serviceable fire extinguisher. The Director of Forestry and Fire Protection shall by administrative regulation specify the type and size of fire extinguisher necessary to provide at least minimum assurance of controlling fire caused by use of portable power tools under various climatic and fuel conditions.

The required fire tools shall at no time be farther from the point of operation of the power saw or tool than 25 feet with unrestricted access for the operator from the point of operation.

Additionally, Fire Season Restrictions apply to projects in Parklands from April Through November. "East Bay Regional Park District Fire Season Restrictions" attached if applicable.



## Encroachment Permit Supplementary Conditions

PERMIT NUMBER:

**062E-20-134**

The purpose of the Supplementary Conditions is to amend the Encroachment Permit Conditions to establish certain conditions to the control and execution of this Encroachment Permit. By signing the Encroachment Permit, Permittee acknowledges that they have read, and agree to be bound by all permit conditions, including but not limited to the Supplementary Conditions contained herein.

### **S1 Condition 3. Add the following: Project Coordination**

East Bay Regional Park District may have a project occurring at the same time in the area. Contra Costa County shall to accommodate access as needed. Please coordinate with the Park District Project Representative for the McCosker Creek Project, Carmen Erasmus

Contact Carmen Erasmus, Landscape Architect, one month prior to project start date:

Carmen Erasmus  
Phone: 510-544-2303  
Email: [CErasmus@ebparks.org](mailto:CErasmus@ebparks.org)

Coordinate access with Jim Rutledge, Park Supervisor, two weeks prior to project start date:

Jim Rutledge  
Phone: (510) 544-3111  
Email: [jrutledge@ebparks.org](mailto:jrutledge@ebparks.org)

### **S2 Condition 23. Add the following: Project Signage**

1. Prior to commencement of the project, Permittee or Permittee's Contractor shall provide 30"x30" signs at the main entry and exit points for construction access and at the location of the project(s) advising the public of the anticipated period that the construction, vegetation management, grading and/or tree work may be expected. The signs shall include the name and telephone number of the Contractor and Contra Costa County, a brief description of the project, starting and completion dates of the project. Signs shall be approved by Park District Representative.

### **S3 Condition 28. Add the following: Inspections, Project Close Out & Final Inspection**

- a. Park District Representative shall inspect the site for compliance to permit conditions weekly. Encroachment Permit Supervisor or assigned Inspector shall inspect the site for compliance to permit conditions a minimum of once a month.
- b. At the end of Work, the Park Supervisor, Permit Supervisor and/or assigned Inspector and Permittee's Representative shall schedule an onsite inspection to establish a Contractor's punch list for returning the land to conditions acceptable to the Park District. Park Supervisor shall have final authority in making determination that land has been returned to an acceptable condition.

## Encroachment Permit Supplementary Conditions

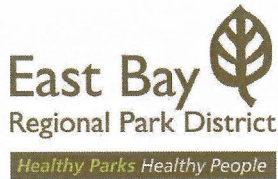
PERMIT NUMBER:

**062E-20-134**

- c. Upon project completion, if re-vegetation efforts are necessary, the Permittee shall seed the work area and area used for laydown using a seed mix provided by the Park Supervisor.
- d. Final inspection is scheduled for October 31, 2021.

### **S4 Add Condition 30: CONSTRUCTION STAGING AREA ("STAGING AREA")**

1. Permittee may elect to erect temporary fencing around the useable perimeter of Staging Area with entrance gates having both PG&E and EBRPD locks installed.
2. Permittee acknowledges that Park District shall continue to use Staging Area for Park District purposes and Park District shall require unobstructed access to all Park District materials stored at Staging Area.
3. Permittee shall be responsible for protection of all equipment and materials stored at Staging Area. Park District shall hold no responsibility for loss or damage to Permittee's property from any cause.
4. Any grading and modification to Staging Area shall be approved in advance by the Park Supervisor.
5. In the event of conflict or inconsistency between Permittee's Contract Documents and Conditions of this Permit, the most stringent shall prevail.
6. Permittee shall comply with all applicable laws and regulations regarding spill prevention and response.
7. If vehicles or equipment need to be serviced onsite, then care shall be taken to prevent spillage onto the ground surface. Vehicles and equipment shall be parked on asphalt over drip pans while being serviced. Care shall be taken to gather and dispose of wastes off-site in a legal manner. Any spillage onto the ground surface shall be reported and cleaned up. In order to minimize potential pollution from spillage:
  - a. A stockpile of spill cleanup materials (rags, absorbents, etc.) shall be onsite.
  - b. If a spill or leak occurs, contain immediately and be particularly careful to prevent leaks and spills from reaching the gutter, street or storm drain. Do not wash spilled material into gutter, street, storm drain or creek.
  - c. Report any hazardous materials spills immediately.
8. Inspect vehicles and equipment for leaks frequently. Use drip pans to catch leaks until repairs are made, repair leaks promptly.
9. Permittee shall not store bulk hazardous materials in the Staging Area. Specifically, flammable liquids, solvents, oils, and other material that typically require secondary containment shall not be permitted to be stored on the ground, in containers, or in tanks located at the Staging Area.
10. Permittee shall employ Best Management Practices for all activities at the Staging Area including, but not limited to, storm water and safety.
11. Permittee may have a vendor install and maintain a portable sanitary facility at Staging Area for use by company and subcontractors throughout the duration of construction. Placement of the facility will be at the direction of the Park Supervisor.



## Encroachment Permit Supplementary Conditions

PERMIT NUMBER:

**062E-20-134**

### **S5 Condition 22. Add the following: Work in Trail Area**

Permittee and Permittee's contractor shall always maintain six (6) feet wide section of trail open to the public. No work shall take place in the six-foot open trail area. Work that encroaches in the trail area shall be enclosed with barricades including lights for nighttime to effectively warn the public.

### **S6 Add Condition 31: Documents Submitted to East Bay Regional Park District and Regulatory Agencies**

1. All work shall be performed in accordance with documents provided by Contra Costa County for the application of this Encroachment Permit including but not limited to:
  - a. CONTRA COSTA COUNTY, PUBLIC WORKS DEPARTMENT, PINEHURST ROAD SINKHOLE AND CULVERT REPAIR, Sheets 1 – 3, 65% Preliminary Drawings, Dated 1/30/20
  - b. CALTRANS CEQA EXEMPTION / NEPA CATEGORICAL EXCLUSION DETERMINATION FORM (rev. 05/2020)
  - c. USFWS Formal Consultation on the Proposed Pinehurst Road Sinkhole and Culvert Repair Project, Contra Costa County, California (Caltrans Project Number: ER-32LO (517))
  - d. CEQA Notice of Exemption dated May 9, 2019

### **S7 Add Condition 32 to read as follows: Encroachment Permit Fees**

1. Encroachment Permit rates and fees are based on the East Bay Regional Park District Consolidated Fee Schedule and are subject to change from year to year. If an extension or alteration is requested, the most current permit fees will be assessed.

### **S8 Add Condition 33 to read as follows: Penalties**

**Penalties.** Following Permit issuance, any violation of Permit conditions shall be subject to a per day penalty of \$300 + 2x Encroachment Permit Fee + Staff Cost. The penalty fee for this permit shall be \$4300 per day plus staff time. Fees Based on 2020 East Bay Regional Park District Consolidated Fee Schedule, Section IV. LAND USE, ENCROACHMENT & DEVELOPMENT FEES.

## EAST BAY REGIONAL PARK DISTRICT FIRE SEASON RESTRICTIONS

### DIVISION 01: EAST BAY REGIONAL PARK DISTRICT FIRE SEASON RESTRICTIONS

The East Bay Regional Park District restricts activities that can be performed in the Parks during the fire season based on the level of fire danger. EBRPD typically announces the start of the Fire Season in May of each year and usually doesn't end the season until November, depending on weather and fuel conditions. This section applies to work occurring during the declared Fire Season and during any Level I, Level II, or Red Flag conditions. It is the responsibility of the Contractor to follow these requirements and to contact the District Representative for clarification.

#### 01.16 General Fire Season Requirements

- .1 No smoking or vaping: on the East Bay Regional Park District property.
- .2 Emergency Notification: Contractors shall maintain at least one working cell phone, radio, or satellite phone capable of communicating in case of an emergency, such as medical or fire incident. In an emergency, call 911 then notify the EBRPD Communications Center by calling 510-881-1833.
- .3 Vehicle use: Contractor must remain on improved roads when driving between work sites. No cross country or off-road driving is permitted. All vehicles must be parked on paved or dirt improved areas near the work site to minimize igniting grass.
- .4 Spark Arresters: Spark arresters affixed to the exhaust system of engines or vehicles shall not be mounted in a manner as to allow flames or heat from exhaust system to ignite any flammable material.
- .5 Fueling Equipment: When fueling equipment, allow it to cool in an area where there is no flammable vegetation that can be ignited by the hot exhaust, preferably in a dirt or paved area.
- .6 Equipment Requirements mobile/on-site: Provide at least one serviceable round-point shovel with an overall length of not less than 46 inches and one five-gallon water fire extinguisher or backpack pump. Unless otherwise noted, The Contractor shall provide and maintain a fire pump with a minimum of 350 gallons of water and a 1-inch hose line in the immediate work area. The hose line must be a minimum of 50 feet in length with an adjustable combination nozzle that can provide a fog pattern and straight stream capability of 50 gallons per minute.
- .7 Fire Department monitoring: An EBRPD Fire Department representative may be on-site for initial start of work and may make periodic inspections.
- .8 Applicable laws and Regulations: California Public Resource Code Sections 4442 & 4443 Spark arrester & muffler requirements; 4427 Clearance & equipment requirements. California Health and Safety Code Sections 13001 Causing Fire; 13005 Use of Hydrocarbon Engine without Exhaust Spark Arrester; 13007 & 13009 liability.

- 01.17 The District will determine when weather and wildland fuel conditions increase fire danger to Very High (Level 1) or Extreme (Level 2) in certain Fire Danger Rating Areas (FDRA's) on a daily basis. The District's Fire Danger Rating Areas Map and Park locations can be found on the District's website at: [https://www.ebparks.org/about/fire/fire\\_danger\\_and\\_weather\\_information](https://www.ebparks.org/about/fire/fire_danger_and_weather_information)  
The Contractor shall check the District's website or call the recorded phone message at 510-544-3059 to check if there are any Level 1, Level 2 Restrictions or park closures resulting from a Red Flag Warning

## EAST BAY REGIONAL PARK DISTRICT FIRE SEASON RESTRICTIONS

issued by the National Weather Service (Section 01.18). Information is updated by 6:00 pm for the following day.

.1 EBRPD Fire Season Level 1 Restrictions, Very High Fire Danger

1. Vehicles are restricted to driving only on designated roadways; no cross-country or off-road driving is permitted.
2. No use of combustion powered equipment (e.g. mowers in rough areas, weed eaters, chain saws, welders and generators) outside of irrigated areas, designated campgrounds or developed recreational areas is allowed unless the Extra Protection Fire Safety Measures listed below (Section 01.19) are implemented.
3. Maintenance of irrigated areas and road grading are permitted.
4. Prepare and check all fire equipment for readiness.

.2 EBRPD Fire Season Level 2 Restrictions, Extreme Fire Danger

1. Vehicles are restricted to driving only on designated roadways; no cross-country or off-road driving is permitted.
2. No use of combustion powered equipment (e.g. mowers in rough areas, weed eaters, chain saws, welders and generators) outside of irrigated areas, designated campgrounds or developed recreational areas is allowed unless the Extra Protection Fire Safety Measures listed below (Section 01.19) are implemented.
3. Prepare and check all fire equipment daily for readiness.

01.18 National Weather Service Red Flag Warning: NO work within or adjacent to grass, bush or forest covered areas shall occur within 24 hours of a predicted red flag event as determined by the National Weather Service (<https://www.weather.gov>).

.1 Red Flag Warning and Reduced Suppression Resources

The Park will be closed, and no Contractor access will be allowed, During Red Flag conditions when the Park District Fire Department has determined that adequate fire suppression resources are not available. Park closures will be noted on the Park District website and recorded message as noted in section B above.

- .2 A representative of the East Bay Regional Park District Fire Department or other fire jurisdiction having authority may direct work to stop at any time.

01.19 Extra Protection Fire Safety Measures: The Contractor shall submit an Extra Protection Fire Safety Measures Plan clearly describing how the measures below will be implemented. No **welding, cutting, grading, grinding, and mowing (WCGGM)**, or other activity potentially creating a fire hazard, is allowed until this plan has been approved by the Park District. The following is intended as a guideline for the operational procedures to be used by Contractors when performing **WCGGM**, within or adjacent to grass, bush or forest covered areas at any time during the fire season in the Park District:

- .1 Weather Sampling: Prior to commencement of WCGGM, a weather sampling shall be conducted at the work site utilizing a weather device such as "Kestrel," capable of monitoring temperature, wind and relative humidity (RH).
- .2 Additional weather samplings: will be conducted every two (2) hours thereafter until completion of the operation.

## EAST BAY REGIONAL PARK DISTRICT FIRE SEASON RESTRICTIONS

1. Temperature: If the ambient temperature reaches 80 degrees Fahrenheit at any time during the operation, weather sampling must be taken hourly.
2. In the event that the following readings are noted, **WCGGM OPERATIONS WILL CEASE IMMEDIATELY**:  
When the ambient air temperature reaches 80 degrees Fahrenheit or above  
**and either**  
The relative humidity is at or below 30 percent  
**or**  
Sustained wind speeds reach 10 mph or higher
3. Note that adjusting to an earlier scheduled work time may be necessary to avoid the worsening afternoon fire conditions.
4. The Contractor shall record the Relative Humidity (RH), ambient temperature and wind speed into a daily log.
- .3 Active fire monitoring during welding, cutting or grinding operations: Contractor is required to provide active fire monitoring, which minimally consists of a non-divertible fire pump with a minimum of 350 gallons of water and a 1-inch hose line in the immediate work area. The hose line must be a minimum of 50 feet in length with an adjustable combination nozzle that can provide a fog pattern and straight stream capability of 50 gallons per minute.
- .4 Wetting area during cutting, grinding or welding: Contractor must adequately wet the work area with water utilizing a water truck or equivalent portable water source to eliminate potential fire ignition. Contractor must also monitor the area for drying conditions, apply additional water as necessary and monitor work area for any signs of fire ignition following WCGGM operations.
- .5 Fire clearance during cutting, grinding or welding: Contractor must provide a minimum of 20 feet of fire clearance around each welding area with a fire proof barrier and/or clearing down to bare soil.
- .6 Active fire watch during mowing or grading operations: Contractor shall provide active fire patrol following behind the mower or ground engaging equipment (grader, dozer, etc.), which minimally consists of a non-divertible pickup truck equipped with a fire pump with a minimum of 350 gallons of water with a 1-inch hose line, staffed with at least one person in the pickup truck. The hose line must be a minimum of 100 feet in length with an adjustable combination nozzle that can provide a fog pattern and straight stream capability of 50 gallons per minute.





**East Bay Regional Park District  
Encroachment Permit Application**

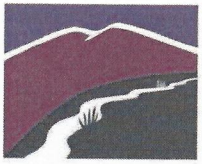
Return To: Nate Luna (510) 544-2564  
nluna@ebparks.org

EBRPD USE	
PERMIT NUMBER:	062E-10-134
PERMIT FEE:	\$3000.00

PLEASE FILL OUT THE FIELDS BELOW:

APPLICATION DATE:	June 01, 2020
APPLICANT NAME: (Company Name)	Contra Costa County
ADDRESS:	255 Glacier Drive, Martinez, CA 94553
CONTACT PERSON:	Adelina Huerta
PHONE:	(925) 348-4497
EMAIL:	Adelina.Huerta@pw.cccounty.us

EBRPD FACILITY AFFECTED:	Gravel Parking Area in front of Lower Pinehurst Trailhead gate		
ESTIMATED START DATE	Aug 02, 2021	ESTIMATED COMPLETION DATE	September 30,2021
DESCRIPTION OF PROJECT/ACTIVITY:	<p>Note: If the scope of work includes brush removal, tree trimming, tree removal or ground disturbance in Park District lands, include an ArcGIS (.shp) Shape File or KMZ file showing the location with this Application.</p> <p>See attached Project Description.</p>		
ATTACHMENTS/ENCLOSURES:	Project Description, Preliminary Project Drawings, Aerial with improvements, California Environmental Quality Act Categorical Exemption, Fish Passage Design Memo, Project Location and site photos		
INSURANCE CARRIER:			
OTHER AGENCY PERMITS REQUIRED:	US Army Corps of Engineers Nationwide Permit, Natural Environment Study Minimal Impacts Permit, Regional Water Quality Control Board Permit and Encroachment Permit from EBMUD.		



## Application to Use EBRPD Property

### Project Description

***Project Name: Pinehurst Road Sinkhole and Culvert Repair***

***Project No.: 0672-6U6202***

***Federal Project No.: ER 32 L0 (517)***

The Public Works Department of Contra Costa County is proposing to repair a damaged 84" culvert and sinkhole beneath Pinehurst Road near the Lower Pinehurst Trailhead, approximately 2.5 miles northwest of Canyon Road at the first hairpin turn in unincorporated Orinda. The damage took place during the 2017 rainy season and the sinkhole is temporarily covered with trench plates to allow traffic to pass. Please see the attached drawings for project location.

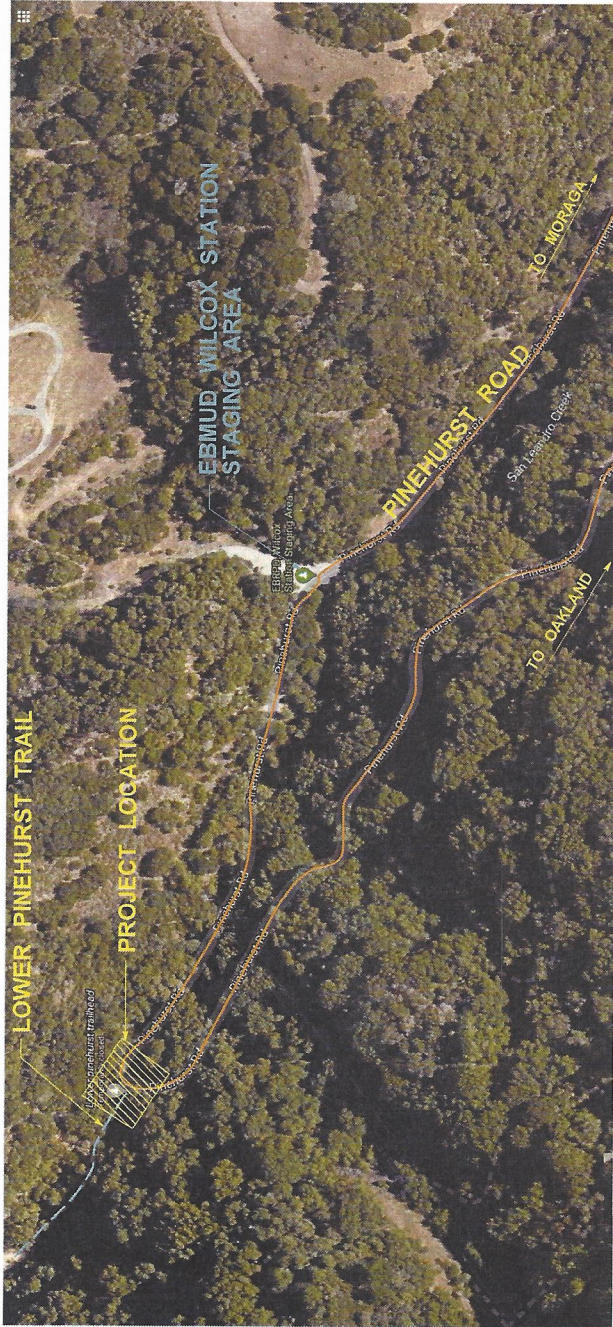
The repair will consist of

- 1) Replacing the first 45 linear feet of the Corrugated Metal Pipe (CMP) inlet with an 84" Reinforced Concrete Pipe (RCP).
- 2) Both the roadway and the roadside ditch will be reconstructed and rock slope protection will be placed at the embankment from the edge of pavement down to the creek bed and around the pipe inlet.
- 3) The remaining length of the existing culvert (120 linear feet) will be rehabilitated in place by removing the pipe's invert and placing a wire mesh and concrete grout to the spring line.
- 4) Removal of material/debris at the outlet from the creek bed to allow for positive drainage.

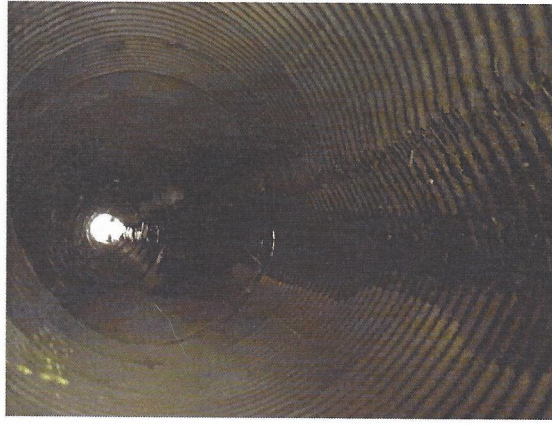
A fish passage assessment has been conducted and is attached to the encroachment permit application. The attached preliminary design drawings show the baffles to be installed at the culvert's invert based on the study's findings.

We anticipate construction to occur during the Summer of 2021 when the creek flow is minimal. Construction will necessitate the closure of the roadway. The gravel parking area north of the pipe inlet (approximately 1400 square feet) is proposed as a staging area due to the limited space available at the road's hairpin. According to Contra Costa County's records, EBMUD and EBRPD share the ownership of this gravel parking (see attached preliminary drawings and encroachment area for staging) and temporary construction rights need to be acquired to complete the work.

Construction is expected to last approximately one month barring any unforeseen circumstances and would be completed by September, 2021.



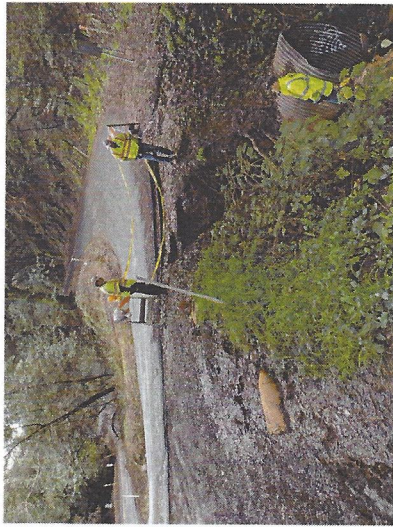
LOCATION MAP



INSIDE VIEW OF DAMAGED CULVERT  
LOOKING DOWNSTREAM



CULVERT OUTLET  
LOOKING WEST








CULVERT INLET  
LOOKING EAST

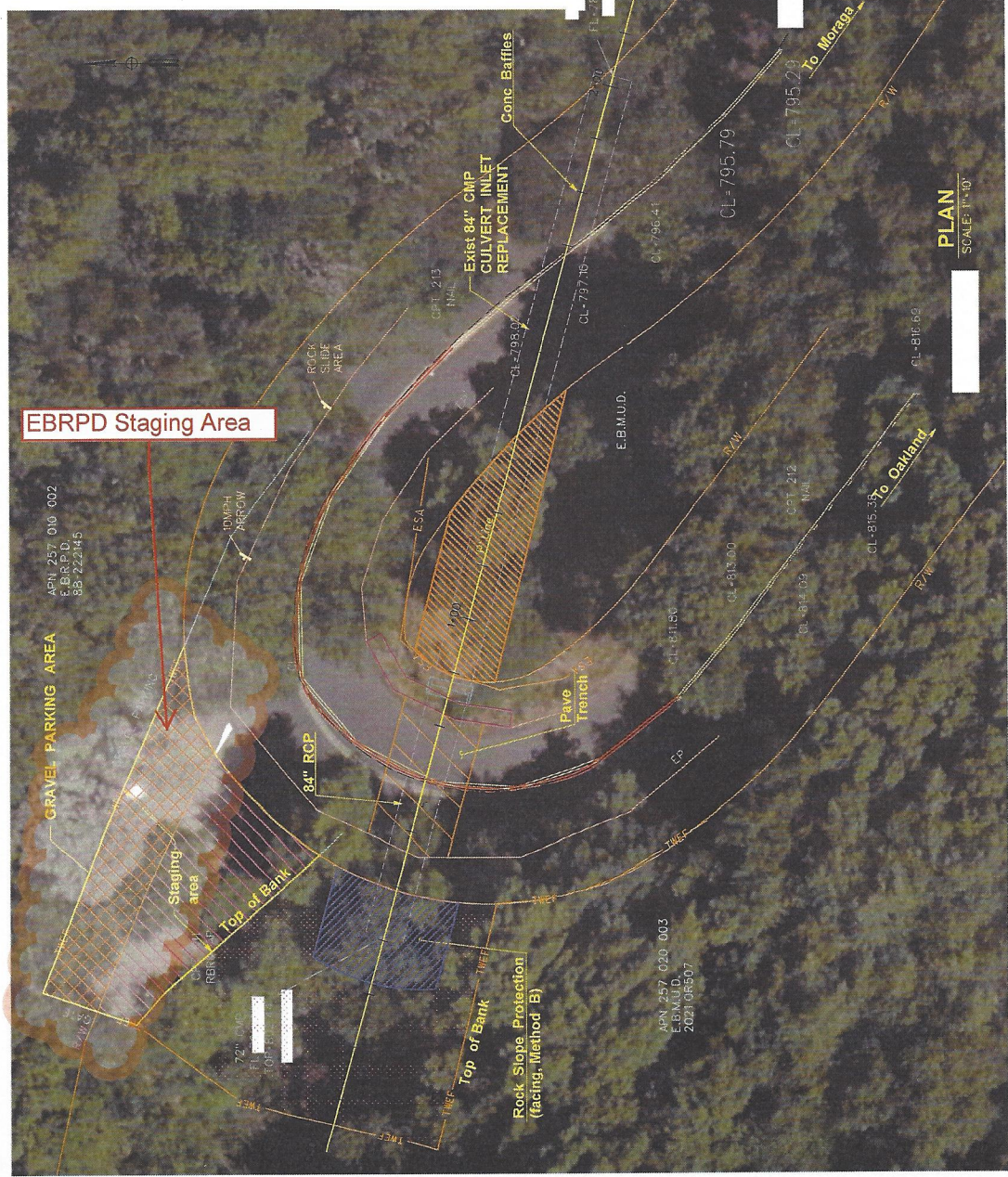


<b>REVISIONS</b> NO.   BY   DATE   DESCRIPTION		SHEET NO. 1 OF 2 PROJECT ENGINEER: [Signature] PLANS APPROVAL DATE:	
DRAWN: H. HUSSEY CHECKED: A. HUERTA DATE: 1/30/20 SCALE: 1" = 100' P.L.D. BK.		PROJECT ENGINEER: [Signature] PLANS APPROVAL DATE:	
1" = 100' HORIZONTAL ORIGINAL SCALE IS IN INCHES		CONRA COSTA COUNTY PUBLIC WORKS DEPARTMENT 255 GLACIER DRIVE MARTINEZ, CALIFORNIA 94553	
STATE PLANE NAD 83 ZONE 3		65% PRELIMINARY DATE: 6/08/20 DRAWING	
EAST COORD.   NORTH COORD.		PINEHURST ROAD SINKHOLE AND CULVERT REPAIR LOCATION MAP	
FILE NO.		SHEET 1 OF 2	

- NOTES:**
1. Remove temporary steel plates over roadway, to be salvaged.
  2. Relocate existing RSP and supplement with new RSP (Facing, Method B) around pipe. Limits to be determined by Engineer.
  3. Exact locations and limits of ESA/TWEF fence to be determined by the Engineer.
  4. Replace roadway striping over trench and any disturbed areas as part of work.
  5. Dewatering methodology to be determined by Contractor and approved by the Engineer. No excavation in creek bed allowed for dewatering/water diversion purposes.
  6. Traffic Control Plan and detour to be determined by Contractor and approved by the Engineer.
  7. Temporary Trench Shoring Plan to be determined by Contractor and approved by the Engineer.

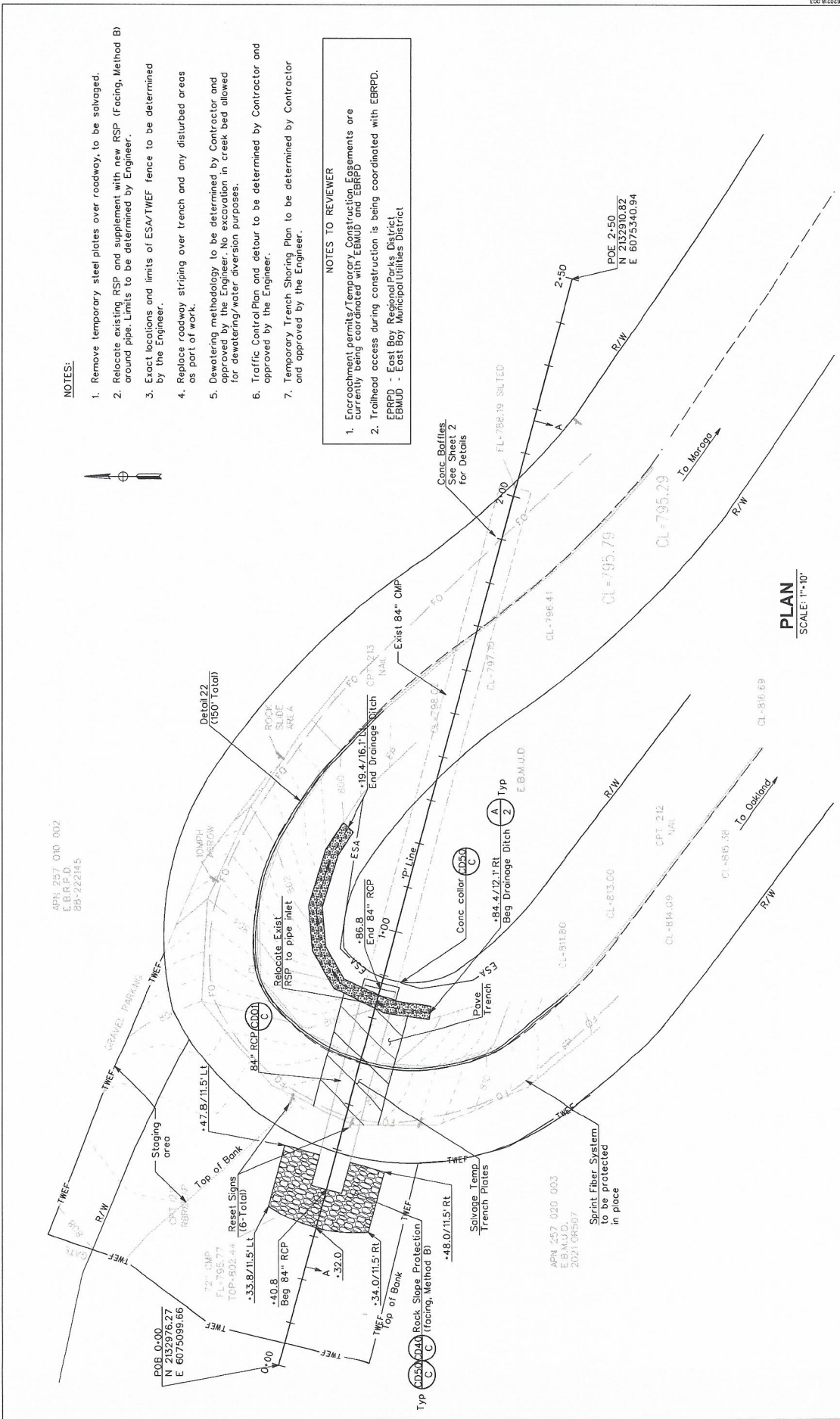
**LEGEND**

-  TEMPORARY CONSTRUCTION ON EBMUD PROPERTY: DEWATERING AND PLACEMENT OF TEMPORARY WILDLIFE EXCLUSION FENCING.
-  PERMANENT IMPROVEMENTS ON EBMUD PROPERTY: CULVERT INLET REPLACEMENT AND PROTECTION
-  STAGING AREA - EBMUD PROPERTY
-  STAGING AREA - EBRPD PROPERTY
-  CULVERT REPAIR ON EBMUD PROPERTY



<b>REVISIONS</b> NO. DESCRIPTION 1.		DEL: MO MASSER DRAWN: J. HUSSEY CHG: A. HUERTA DATE: 1/30/20 SCALE: 1"=10' HDR: BK	PROJECT ENGINEER PLANS APPROVAL DATE	CONTRA COSTA COUNTY PUBLIC WORKS DEPARTMENT 285 GLACIER DRIVE MARTINEZ, CALIFORNIA 94553	<b>65% PRELIMINARY DRAWING</b> DATED 6/08/20	FOR REDUCED PLANS ORIGINAL SCALE IS 1"=30' STATE PLANE CALIFORNIA ZONE 3 EAST COORD. NORTL. COORD.	PINEHURST ROAD SINKHOLE AND CULVERT REPAIR PLAN SHEET 2 OF 2 FILE NO. 065202BEE0003 PROJ. TITL.
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APR. 257.010.002  
E.B.R.P.D.  
88-222145



NOTES:

1. Remove temporary steel plates over roadway, to be salvaged.
2. Relocate existing RSP and supplement with new RSP (Facing, Method B) around pipe. Limits to be determined by Engineer.
3. Exact locations and limits of ESA/TWEF fence to be determined by the Engineer.
4. Replace roadway striping over trench and any disturbed areas as part of work.
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6. Traffic Control Plan and detour to be determined by Contractor and approved by the Engineer.
7. Temporary Trench Shoring Plan to be determined by Contractor and approved by the Engineer.

NOTES TO REVIEWER

1. Encroachment permits/Temporary Construction Easements are currently being coordinated with EBMD and EBRPD
2. Trench access during construction is being coordinated with EBRPD. EBRPD - East Bay Regional Parks District  
EBMD - East Bay Municipal Utilities District

Conc. Barriers  
See Sheet 2  
for Details

FL=798.19 SLOTTED

APR. 257.020.003  
E.B.M.U.D.  
202108507

Sprint Fiber System  
to be protected  
in place

PLAN  
SCALE: 1"=10'

PINEHURST ROAD  
SINKHOLE AND CULVERT REPAIR  
PLAN

FILE NO. \_\_\_\_\_ SHEET 3 OF 3  
DATE: 02/20/18.003 PER. TEL. \_\_\_\_\_

95% PRELIMINARY  
DRAWING 8/6/20

CONTRA COSTA COUNTY  
PUBLIC WORKS DEPARTMENT  
285 GLACIER DRIVE  
MARTINEZ, CALIFORNIA 94653

PROJECT ENGINEER  
PLANS APPROVAL DATE



REV. M. MASSEZ/CLAPENDOK  
BY DATE  
CHG. A. HUERTA  
DATE 8/12/20  
SCALE 1"=10'  
FIGURE

NO.	DESCRIPTION











# 062E-20-134 EPV3

Final Audit Report

2020-08-21

Created:	2020-08-21
By:	Nate Luna (nluna@ebparks.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAzwdbyYc40xTWm6yZ3Dc2u2aRuLYn-RTs

## "062E-20-134 EPV3" History

-  Document created by Nate Luna (nluna@ebparks.org)  
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-  Document emailed to adelina huerta (adelina.huerta@pw.cccounty.us) for signature  
2020-08-21 - 6:17:09 PM GMT
-  Email viewed by adelina huerta (adelina.huerta@pw.cccounty.us)  
2020-08-21 - 6:17:27 PM GMT- IP address: 64.166.144.108
-  Document e-signed by adelina huerta (adelina.huerta@pw.cccounty.us)  
Signature Date: 2020-08-21 - 6:34:13 PM GMT - Time Source: server- IP address: 64.166.144.108
-  Document signing automatically delegated to Meadow D'Arcy (mdarcy@ebparks.org) by Nate Luna (nluna@ebparks.org)  
2020-08-21 - 6:34:15 PM GMT
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-  Signed document emailed to Dan Sykes (dsykes@ebparks.org), Nate Luna (nluna@ebparks.org), adelina huerta (adelina.huerta@pw.cccounty.us), Carmen Erasmus (cerasmus@ebparks.org), and 2 more  
2020-08-21 - 9:48:47 PM GMT

**RECORDING REQUESTED BY**  
Contra Costa County

**AND WHEN RECORDED MAIL TO**  
Contra Costa County  
Public Works Department  
255 Glacier Dr.  
Martinez, CA 94553  
Attn: Principal Real Property Agent

**R/W X-# 1775**  
Slope and Drainage Easement - Pinehurst

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 257-020-003-6

### GRANT OF EASEMENT

THIS INDENTURE, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, by and between EAST BAY MUNICIPAL UTILITY DISTRICT, a public corporation organized and existing under the laws of the State of California hereinafter called Grantor, and Contra Costa County, a political subdivision of the State of California, hereinafter called Grantee,

#### WITNESSETH:

THAT the Grantor, for a good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, and the faithful performance and observance by Grantee of all of the covenants and agreements herein contained, does hereby grant, subject to all of the terms and conditions hereof, to Grantee an easement for the construction, reconstruction, maintenance, removal and use, for the purpose of maintaining roadway slopes, culverts, drainage, rock protection and erosion control, as necessary to maintain the integrity of said slope and provide for adequate drainage, together with the necessary appurtenances thereto, all hereinafter referred to as "the structure", within the boundaries of that certain real property described in **Exhibit "A"** and shown on **Exhibit "B"**, attached hereto and made a part hereof.

The easement above mentioned is granted by Grantor and accepted by Grantee upon the following terms and conditions, and Grantee does hereby covenant with Grantor as follows:

1. Grantee hereby acknowledges the title of Grantor in and to the real property above described and agrees never to assail or to resist said title.
2. The construction, reconstruction, maintenance, removal and use of, and all work upon or in connection with the structure shall at no time and in no way whatsoever interfere with the operations of Grantor; the location of the structure, the construction, reconstruction, maintenance and removal thereof and all work in connection therewith shall be done and made under the supervision and to the satisfaction of Grantor, and the construction, reconstruction, maintenance, removal and use of any aqueduct, pipelines and other facilities or improvements of Grantor, present or future, upon said real property shall at all times be paramount to any rights of Grantee under this indenture.

3. Upon completion of any of its works hereunder, Grantee shall promptly restore as near as possible the surface of the ground to the condition in which it was prior to the commencement of said work and leave said real property in a clean and presentable condition, free from waste, and if Grantee fails to keep said real property so then Grantor may perform the necessary work at the expense of Grantee, which expense Grantee agrees to pay to Grantor upon demand.

4. Grantee expressly agrees to indemnify, defend and hold harmless Grantor, its directors, officers, and employees from and against any and all loss, liability, expense, claims, costs, suits, and damages, including attorneys' fees, arising out of Grantee's operation or performance under this agreement, including all costs, claims and damages (including property and personal injury) arising out of any hazardous substances, hazardous materials or hazardous wastes (including petroleum) within the easement area or on the adjacent Grantor's property, released by Grantee, its officers, employees, or contractors, as a result of Grantee's construction, reconstruction, maintenance, use, or removal of its structure.

5. Grantee shall be responsible for and shall reimburse Grantor for any damage or loss to Grantor's present and future pipelines and appurtenances thereto, directly or indirectly contributed to or caused by Grantee's operation or performance under this agreement, including, but not limited to, any damage or loss due to corrosion of Grantor's aqueducts or pipelines, present or future, caused by the deposit by Grantee of hazardous substances, hazardous materials or hazardous wastes including petroleum or caused by electrical currents flowing between the structure and the aqueducts or pipelines of Grantor; and Grantee shall not make any physical connection or bonding whatsoever between said aqueducts or pipelines of Grantor and the structure without first having obtained the written permission of Grantor so to do.

6. Grantee agrees that it shall pay the cost of any additional work made necessary and other costs incurred by Grantor by reason of the location of said structure of the Grantee upon said real property of Grantor; all of such work shall be performed by Grantor and upon the completion thereof Grantor shall promptly upon demand be reimbursed by Grantee for the cost thereof.

7. Grantee agrees to assume all risk of damage to the structure and to any other property of Grantee or any property under the control or custody of Grantee while upon the property or rights of way of Grantor or in proximity thereto, caused by or contributed to in any way by the construction, reconstruction, operation, maintenance, repair or use of aqueducts, pipelines, or other facilities or improvements or roadways of Grantor, present or future.

8. Except in the case of routine inspections or emergency repairs, Grantee shall give to Grantor at least ten (10) days' notice in writing before entering upon the real property hereinabove described for the purpose of constructing, reconstructing, repairing or removing the structure or performing any work on or in connection with the structure or the operation thereof.

9. All rights herein granted to Grantee are subject to all existing rights, rights of way, reservations and easements by whomsoever held in and to said real property.



10. If Grantee shall fail to construct the structure and place it in operation within a period of two years after the date hereof, or shall at any time abandon the structure or any portion thereof, or fail to use the structure for the purposes for which this easement is granted, then all rights of Grantee in and to said real property or such portions thereof so abandoned or not so used shall thereupon cease and terminate and title thereto shall immediately revert to and vest in Grantor. Upon any termination of the rights of Grantee hereunder, Grantee shall at Grantee's expense, promptly upon request by Grantor so to do, remove the structure from said real property and restore said real property to its original condition; upon failure of Grantee so to do, said work may be performed by Grantor at Grantee's expense, which expense Grantee agrees to pay to Grantor promptly upon demand.

11. No rights of Grantee hereunder shall be transferred or assigned unless the written consent of Grantor is first secured. With that exception, this indenture and each and all of the covenants herein contained shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto.

12. Grantee recognizes and understands that this easement may create a possessory interest subject to property taxation and that Grantee may be subject to the payment of property taxes levied on such interest.

IN WITNESS WHEREOF, the parties hereto have executed this indenture, the day and year first above written.

EAST BAY MUNICIPAL UTILITY DISTRICT

CONTRA COSTA COUNTY

By: \_\_\_\_\_  
Mamdoh Elawady aka Matt Elawady  
Manager of Real Estate Services

By: \_\_\_\_\_  
Brian M. Balbas  
Director of Public Works

GRANTOR

GRANTEE

**EXHIBIT "A"**

Real property in an unincorporated area of the County of Contra Costa, State of California, being a portion of the Southwest one-quarter of Section 15, Township 1 South, Range 3 West, Mount Diablo Meridian, also being a portion of the property described in the deed to East Bay Municipal Utility District (EBMUD), recorded November 7, 1952 in Book 2021 of Official Records, at Page 507, Contra Costa County records, described as follows:

**Parcel One – Slope and Drainage Easement**

Commencing at the center of the original County road leading from Redwood Canyon to Oakland, as said road is described in said EBMUD deed, at the southerly terminus of the course labeled as "north 61°30' west, 188.1 feet" in said EBMUD deed (record bearings rotated 00°24'45" clockwise for purposes of this description); thence from said Point of Commencement south 69°15'49" west, 34.58 feet to the northwesterly Right of Way of relocated Pinehurst Road (40' wide) as said Right of Way is described in Road Petition No. 173, Williams et. al., established July 6, 1896 in Volume 12, page 115 Board of Supervisors meeting minutes, and being on a non-tangent curve concave to the southeast having a radius of 59.00 feet, a radial to said point bears north 61°58'37" west, also being the Point of Beginning; thence from said Point of Beginning along said curve through a central angle of 22°29'18", an arc length of 23.16 feet; thence leaving said Right of Way north 74°49'19" west, 16.20 feet to a non-tangent curve concave to the southeast having a radius of 35.56 feet, a radial to said point bears south 85°51'56" west; thence northerly along said curve through a central angle of 37°44'22", an arc length of 23.42 feet; thence south 74°49'19" east, 17.02 feet to the Point of Beginning.

Containing an area of 394 square feet of land, more or less.

This real property description has been prepared by me or under my direction, in conformance with the Professional Land Surveyors Act.

Signature: 

Licensed Land Surveyor  
Contra Costa County Public Works Department

Date: 7/7/2020



**EXHIBIT "A"**

Real property in an unincorporated area of the County of Contra Costa, State of California, being a portion of the Southwest one-quarter of Section 15, Township 1 South, Range 3 West, Mount Diablo Meridian, also being a portion of the property described in the deed to East Bay Municipal Utility District (EBMUD), recorded November 7, 1952 in Book 2021 of Official Records, at Page 507, Contra Costa County records, described as follows:

**Parcel Two – Drainage Easement**

Commencing at the center of the original County road leading from Redwood Canyon to Oakland, as said road is described in said EBMUD deed, at the southerly terminus of the course labeled as "north 61°30' west, 188.1 feet" in said EBMUD deed (record bearings rotated 00°24'45" clockwise for purposes of this description); thence from said Point of Commencement south 13°43'08" east, 27.17 feet to the southeasterly Right of Way of relocated Pinehurst Road (40' wide) as said Right of Way is described in Road Petition No. 173, Williams et. al., established July 6, 1896 in Volume 12, page 115 Board of Supervisors meeting minutes; thence from said Point of Beginning, leaving said Right of Way south 74°49'19" east, 26.32 feet to a point on the southwesterly Right of Way of Pinehurst Road, said point being a non-tangent curve concave to the southwest, having a radius of 131.00 feet, a radial to said point bears north 37°16'51" east, thence southeasterly along said curve through a central angle of 14°20'50", an arc length of 32.80 feet; thence leaving said Right of way north 74°49'19" west, 56.37 feet to a point on the southeasterly Right of Way of Pinehurst Road, said point being a non-tangent curve concave to the southeast having a radius of 19.00 feet, a radial to said point bears south 85°32'48" west; thence northeasterly along said curve through a central angle of 50°02'18", an arc length of 16.59 feet to the Point of Beginning.

Containing an area of 703 square feet of land, more or less.

This real property description has been prepared by me or under my direction, in conformance with the Professional Land Surveyors Act.

Signature: James A. Stein

Licensed Land Surveyor  
Contra Costa County Public Works Department

Date: 7/7/2020



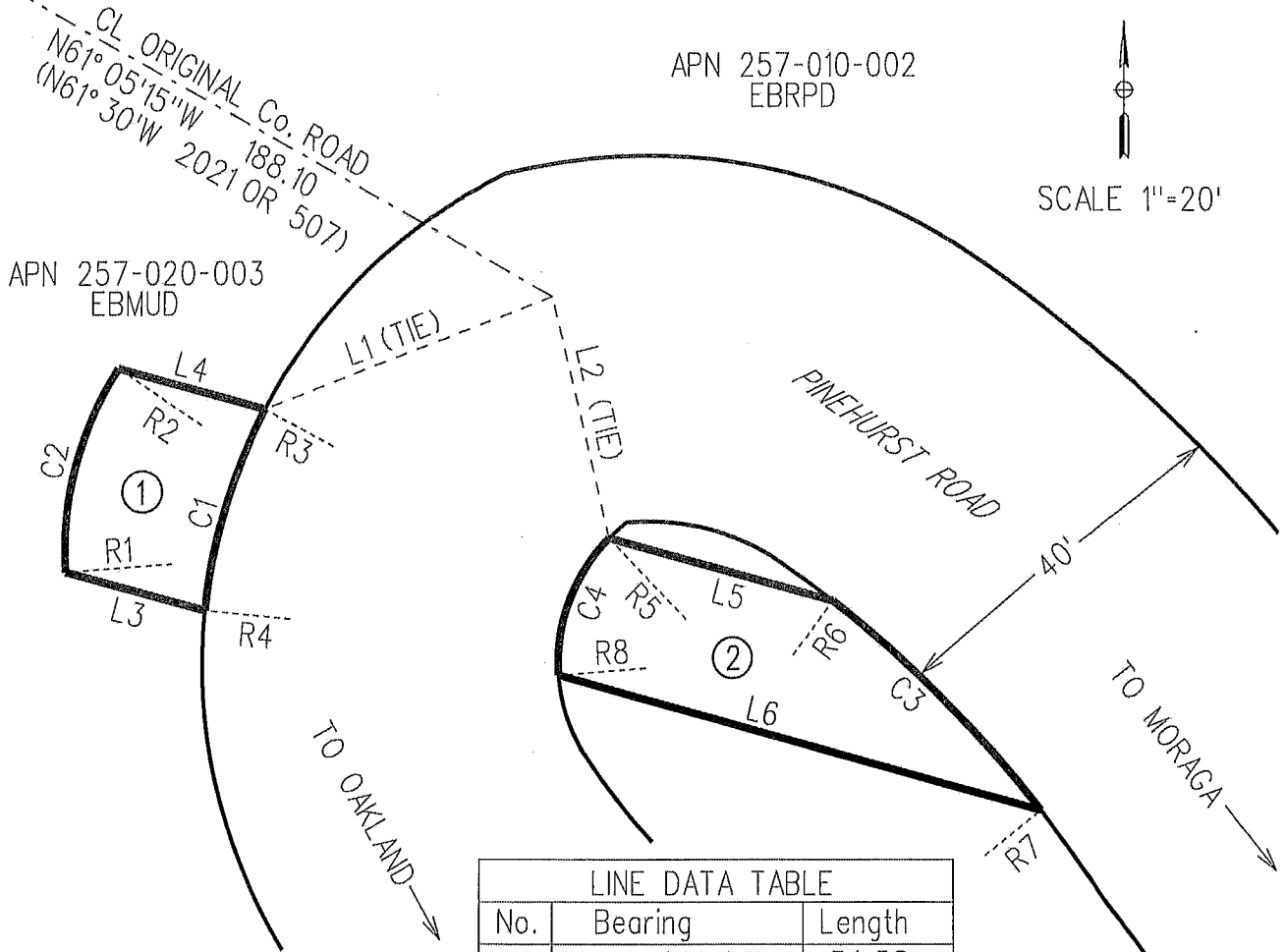
# EXHIBIT B

PLAT TO ACCOMPANY EXHIBIT A

APN 257-010-002  
EBRPD



SCALE 1"=20'



APN 257-020-003  
EBMUD

No.	Bearing
R1	S85° 51'56"W
R2	N56° 23'42"W
R3	N61° 58'37"W
R4	N84° 27'55"W
R5	N44° 24'54"W
R6	N37° 16'51"E
R7	N51° 37'41"E
R8	S85° 32'48"W

No.	Bearing	Length
L1	S69° 15'49"W	34.58
L2	S13° 43'08"E	27.17
L3	N74° 49'19"W	16.20
L4	S74° 49'19"E	17.02
L5	S74° 49'19"E	26.32
L6	N74° 49'19"W	56.37

No.	Radius	Length	Delta
C1	59.00	23.16	22° 29'18"
C2	35.56	23.42	37° 44'22"
C3	131.00	32.80	14° 20'50"
C4	19.00	16.59	50° 02'18"

## PINEHURST RD Slope and Drainage Easements

Instrument:	Scale: 1"=20'	Date: JUNE 2020
Series No.:	Recorded:	Drawn By: AR File No.: A2631A-20
		Checked By: JS Cad File: RW2631A20.dgn



Contra  
Costa  
County

To: Board of Supervisors  
From: Brian M. Balbas, Public Works Director/Chief Engineer  
Date: September 22, 2020

Subject: APPROVE Temporary Construction Easement and Agreement and Grant of Easement with EBMUD, Unincorporated West Contra Costa County.

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Public Works Director, or designee, to execute a Temporary Construction Easement and Agreement, and a Grant of Easement from East Bay Municipal Utility District (EBMUD) for property rights located on a portion of APN 362-100-003 in connection with the Alhambra Valley Road Realignment Project. (Project No. 0662-6U4095)

DIRECT the Auditor-Controller to issue payment in the amount of \$7,500 (\$3,000 for property rights granted by the Temporary Construction Easement and Agreement and \$4,500 for the Grant of Easement) to East Bay Municipal Utility District, 375 11<sup>th</sup> Street, MS 903, Oakland, CA 94607, to be forwarded to the Real Estate Division for delivery.

DIRECT the Real Estate Division of the Public Works Department to deliver a certified copy of this Board Order with the Temporary Construction Easement and Agreement and the Grant of Easement to EBMUD for acceptance and recording in the office of the County Clerk Recorder.

**FISCAL IMPACT:**

100% Local Road Funds.

APPROVE

OTHER

RECOMMENDATION OF CNTY ADMINISTRATOR

RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

Contact: Olivia Reynolds-Freeman,  
(925) 957-2462

By: Stacey M. Boyd, Deputy

cc:

BACKGROUND:

The purpose of this Project is to restore two-way traffic and allow unimpeded traffic flow along a segment of Alhambra Valley Road, which has been functioning with one-way reversing traffic due to existing creek bank erosion at the south side of the road. The project consists of realigning the roadway slightly to the north, away from Pinole Creek, and reconstructing the road with two 10-foot lanes and two 4-foot shoulders. There is an existing earthen ditch located along the north side of the road that will be re-established parallel to the new alignment. Following the project, the k-rail will remain and end treatments will be installed or a guardrail system will be installed as necessary. (CP# 19-06)

CONSEQUENCE OF NEGATIVE ACTION:

The County will not have sufficient property rights to complete the project.

ATTACHMENTS

TCE and Agreement

Grant of Easement

<b>PROJECT NAME</b>	Alhambra Valley Road Repair	<b>PROP #, ADDRESS &amp; APN</b>	Watershed – Alhambra Valley Rd APN: 362-100-003-7
<b>GRANTEE</b>	Contra Costa County	<b>DISTRICT</b>	East Bay Municipal Utility District
<b>GRANTEE POINT OF CONTACT</b>	Adelina Huerta 925-348-4497 Adelina.huerta@pw.cccounty.us  Mo Nasser 925-313-2178 Mo.nasser@pw.cccounty.us	<b>DISTRICT POINT OF CONTACT</b>	Mark Silva 510-287-2035 (o) or 510-715-8319 (c) mark.silva@ebmud.com  Rob Korn 510-287-1246 robert.korn@ebmud.com

## EAST BAY MUNICIPAL UTILITY DISTRICT TEMPORARY CONSTRUCTION EASEMENT AND AGREEMENT

**THIS INDENTURE**, made by and between EAST BAY MUNICIPAL UTILITY DISTRICT, a public corporation organized and existing under the laws of the State of California, as Grantor, hereinafter called the "District", and, Contra Costa County, a political subdivision of the State of California, its contractors and their authorized agents, hereinafter called the "Grantee".

### WITNESSETH:

1. The District, for full payment of the consideration hereinafter specified and of the terms, covenants, and conditions herein contained in this Temporary Construction Easement and Agreement (“Agreement”), does hereby grant to Grantee a temporary construction easement for a portion of property the Watershed Property located at Pinehurst Road (the “Property”), more accurately described as APN 362-100-003-7, delineated on **Exhibit A**, attached hereto and made a part hereof, consisting of approximately 14,300 square feet of ground space (the “Premises”), as identified in **Exhibit B**, attached hereto and made a part hereof, for staging of Grantee’s equipment, machinery, and material; and for emergency vehicle access; and for the work associated with the Alhambra Valley Road Repair, hereinafter (“Project”).
2. Term. This easement shall be for a period of up to SIX (6) MONTHS. Grantee shall have the option to use the Temporary Easement Area for the six month period at any time between 9/1/2020 through 12/31/2021, as dictated by project. Grantee shall notify Grantor of its intent to commence its occupancy of the Temporary Easement Area at least sixty (60) days in advance of occupancy. Should Grantee need the temporary construction easement for an additional time it shall provide the District with 30-days’ advance notice to fully review the request to extend the Agreement. In the event the District approves the requested extension, Grantee shall provide the District with 10-days’ advance payment for each additional 30-day period of use at a rate of \$500 per 30-day period. Regardless of any such extension of time, this easement shall terminate no later than 12/31/2021.
3. Consideration. Grantee agrees to pay District as consideration, the sum of Three Thousand Dollars (\$3,000.00) payable within one month of full execution of this agreement and prior to occupancy. The Property is to be used solely for the Project by Grantee, its contractors and their authorized agents.

4. If the Grantee uses the Premises for other purposes than the Project, this Agreement will immediately become void. Within 10 business days of receiving written notice of this violation the Grantee will remove all equipment and materials from the Premises and restore as near as possible the Premises to the condition in which it was prior to the commencement of said work to the satisfaction of District. In the event Grantee fails to do so within this time frame, District shall remove the equipment and materials and restore the Premises at Grantee's expense.
5. Grantee shall erect and maintain secure, self-supporting temporary fencing to delimit the Premises. The temporary fencing must be installed upon Premises move-in and removed at the time of Premises move-out. Grantee shall keep the access gate closed and locked any time when the Grantee is not on Premises and at the end of each day. Grantee shall give a copy of the lock keys to District. Grantee is responsible for maintaining all site security. The District is not liable in the event of any theft, vandalism or damage to the Grantee's property.
6. Grantee does hereby agree to provide the District, at no cost, copies of all field data and reports generated as a result of activities authorized under this Agreement.
7. Grantee shall comply with all applicable laws, ordinances and regulations, including but not limited to all applicable regulatory, environmental and safety requirements at Grantee's sole cost and expense. Grantee shall not use, deposit or permit the use or deposit of any hazardous material or toxic waste or other harmful substances on the Property or on any other real property of District adjacent to the Property.
8. To the best of its ability, Grantee shall not materially interfere with the operations and activities of District (or other property users) on District's property under use outside of the Premises, and Grantee shall use such routes and follow such procedures on District's property so as to result in the least inconvenience to District.
9. Grantee hereby commits to make every effort to use existing drive aisles, roads, trails and paths to minimize any potential impact to District's property.
10. Grantee shall be responsible for any damage to the Property or to personal or real property of third parties resulting from any exercise of the rights herein granted, including but not limited to soil erosion, subsidence or damage resulting therefrom. Grantee shall promptly repair and restore to its original condition any of District's property, including, but not limited to, roads, utilities, buildings, gates and fences that may be altered, damaged or destroyed in connection with the exercise of Grantee's rights under this Agreement or use of the Property to the satisfaction of District.
11. Grantee agrees upon the completion of its work to restore as near as possible the surface of the ground within the Premises and drive aisles required for access to the condition in which it was prior to the commencement of said work to the satisfaction of District. It is understood and agreed that Grantee will leave the Premises in a clean and orderly condition and will repair, replace or reasonably compensate District for any existing improvement that may have been disturbed or removed during the course of the work to the satisfaction of District.

Upon failure of Grantee to do so, said work may be performed by District at Grantee's expense, which expense Grantee agrees to pay District promptly upon demand. This includes the restoration



of any and all staging areas, parking lots, fire trails, roads, erosion control measures or any other District property damaged by Grantee, its contractors or their authorized agents in the exercise of this Agreement.

12. Indemnification: Grantee expressly agrees to indemnify, defend and hold harmless Grantor, its directors, officers, and employees from and against any and all loss, liability, expense, claims, costs, suits, and damages, including attorneys' fees, arising out of Grantee's operation or performance under this agreement, including all costs, claims and damages (including property and personal injury) arising out of any hazardous substances, hazardous materials or hazardous wastes (including petroleum) within the easement area or on the adjacent Grantor's property, released by Grantee, its officers, employees, or contractors, as a result of Grantee's construction, reconstruction, maintenance, use, or removal of its structure.

Where applicable by law, the duty to indemnify, including the cost to defend is limited in accordance with California Civil Code § 2782.8.

13. Insurance Requirements: Grantee, its contractors and their authorized agents shall take out and maintain during the life of the Agreement all the insurance required in this section. Grantee, its contractors and their authorized agents must provide proof of coverage on District supplied insurance certificates for approval prior to accessing the Property. Such approval will not be unreasonably withheld by District. Acceptance of the certificates shall not relieve Grantee of any of the insurance requirements, nor decrease the liability of Grantee. The District reserves the right to require Grantee to provide insurance policies for review by the District.

Grantee shall provide a written request for authorization and the District will consider self-insurance in lieu of the insurance requirements listed below.

- A. *Workers Compensation Insurance*: Grantee shall take out and maintain during the life of the Agreement Workers Compensation Insurance for all of its employees on the project. In lieu of evidence of Workers Compensation Insurance, the District will accept a Self-Insured Certificate from the State of California. Grantee shall require any subcontractor to provide it with evidence of Workers Compensation Insurance. Grantee shall not be granted access to the Property until such insurance has been approved by the District
- B. *Commercial General Liability Insurance*: Grantee shall take out and maintain during the life of the Agreement Automobile and General Liability Insurance that provides protection from claims which may arise from operations or performance under this Agreement. If Grantee elects to self-insure (self-fund) any liability exposure during the Agreement above \$50,000, Grantee is required to notify the District immediately. Any request to self-insure must first be approved by the District before the changed terms are accepted. Grantee shall require any subcontractor or Professional Service Provider to provide evidence of liability insurance coverages. The amounts of insurance shall be not less than the following:

\$2,000,000/Occurrence, Bodily Injury, Property Damage -- Automobile.

\$2,000,000/Occurrence, Bodily Injury, Property Damage -- General Liability.

The following coverages or endorsements must be included in the policy(ies):

- 1) The District, its Directors, Board Members, officers, and employees are Additional Insureds in the policy(ies) as to the work being performed under the Agreement.
- 2) The coverage is Primary and non-contributory to any other applicable insurance carried by the District.
- 3) The policy(ies) covers contractual liability.
- 4) The policy(ies) is written on an occurrence basis.
- 5) The policy(ies) covers the District's Property in Grantee's care, custody, and control.
- 6) The policy(ies) covers personal injury (libel, slander, and wrongful entry and eviction) liability.
- 7) The policy(ies) covers explosion, collapse, and underground hazards.
- 8) The policy(ies) covers products and completed operations.
- 9) The policy(ies) covers the use of owned, non-owned, and hired automobiles.
- 10) The policy(ies) will not be canceled nor the above coverages/endorsements reduced without 30 days written notice to District.

C. *Pollution Liability Insurance*: Grantee shall take out and maintain during the life of the Agreement Pollution Liability Insurance that provides protection from claims which may arise from operations or performance under this Agreement. Grantee's insurance shall be Primary and any insurance or self-insurance procured or maintained by the District shall not be required to contribute to it. Coverage must be included for bodily injury and property damage, including coverage for loss of use and/or diminution in property value, and for clean-up costs arising out of, pertaining to, or in any way related to the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of contaminants or pollutants, arising out of, pertaining to, or in any way resulting from any services performed by Grantee under this Agreement; including any transportation of hazardous wastes, hazardous materials, or contaminants. The policy shall provide 30 days advance written notice to the District for cancellation or reduction in coverage. The Grantee shall require its subcontractor(s) to provide it with a copy of proof of the same pollution liability insurance coverages. Pollution Liability coverage shall not be less than:

Each Claim or Occurrence Limit: \$2,000,000;  
 Aggregate Limit: \$2,000,000.

If coverage is written on a claims-made form, the following shall apply:

1. The retroactive date must be shown, and must be before the date of the Agreement or the beginning of the Project, whichever comes first.
2. Insurance must be maintained and evidence of insurance must be provided for a minimum of three (3) years after completion of the Project.
3. If claims-made coverage is canceled or non-renewed, and not replaced with another claims-made policies form with a retroactive date prior to the effective date of the Agreement, Grantee must purchase an extended period of coverage for a minimum of three (3) years after completion of the Project or expiration of the Agreement, whichever is later.

Insurance shall include prior acts coverage sufficient to cover the services under this Agreement.

D. *Professional Liability Insurance*: Grantee shall take out and maintain during the life of the

Agreement Professional Liability Insurance (Errors and Omissions). Grantee's insurance shall be primary and any insurance or self-insurance procured or maintained by the District shall not be required to contribute to it. The policy shall provide 30 days advance written notice to the District for cancellation or reduction in coverage. Professional Liability coverage shall not be less than:

Each Claim or Occurrence Limit: \$2,000,000;  
Aggregate Limit: \$2,000,000.

If coverage is written on a claims-made form, the following shall apply:

1. The retroactive date must be shown, and must be before the date of the Agreement or the beginning of the Project, whichever comes first.
2. Insurance must be maintained and evidence of insurance must be provided for a minimum of three (3) years after completion of the Project.
3. If claims-made coverage is canceled or non-renewed, and not replaced with another claims-made policies form with a retroactive date prior to the effective date of the Agreement, Grantee must purchase an extended period of coverage for a minimum of three (3) years after completion of the Project or expiration of the Agreement, whichever is later.

Insurance shall include prior acts coverage sufficient to cover the services under this Agreement.

Coverage shall be included for all premises and operations in any way related to this Agreement.

*E. Provisions Applicable to All Required Insurance*

Waiver of Subrogation: All policies must contain a waiver of subrogation endorsement providing that each insurer waives any rights of recovery by subrogation, or otherwise, against the District, its directors, Board members, officials, employees, volunteers and agents. Grantee shall defend and pay any damages, fees, costs, etc. as a result of failure to provide the waiver of subrogation from the insurance carrier(s).

The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy(ies) or proceeds available to the Named Insured/Grantee. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader than or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the Grantee.

Excess and/or Umbrella Liability Insurance Coverage: Prior to the beginning of, and throughout the duration of the Agreement and for any additional period of time as specified herein, Grantee shall, at its sole cost and expense, maintain insurance in conformance with the requirements set forth in this Agreement.

Deductibles, Self-Insurance Retentions: Any deductibles, self-insurance, or self-insured retentions (SIRs) applicable to required insurance coverage must be declared to and

accepted by the District's Risk Manager or delegate.

At the option and request of the District, Grantee shall provide documentation of its financial ability to pay the deductible, self-insurance, or SIR.

Claims-Made Coverage: If coverage is written on a claims-made form (which type of form is permitted only where specified), the following shall apply:

- 1) The retroactive date must be shown, and must be before the date of the Agreement or the beginning of the Project.
- 2) Insurance must be maintained and evidence of insurance must be provided for a minimum of three (3) years after completion of the Project.
- 3) If coverage is canceled or non-renewed, and not replaced with another claims-made policy(ies) form with a retroactive date prior to the effective date of the Agreement, Grantee must purchase an extended period of coverage for a minimum of three (3) years after completion of the Project or expiration of the Agreement, whichever is later.

It is Grantee's responsibility to ensure its compliance with the insurance requirements. Any actual or alleged failure on the part of District to obtain proof of insurance required under this Agreement shall not in any way be construed to be a waiver of any right or remedy of the District, in this or any regard.

14. Grantee hereby acknowledges that, as the contracting party, they are directly and solely liable for any failure to satisfy the terms and obligations of this Agreement.
15. It is understood that when the further use of the Premises is no longer required for the construction project described herein, this Agreement shall become null and void and shall terminate, and in any event shall cease and terminate no later than 12/31/2021. Termination under Sections 4 and 14 shall not relieve Grantee of any of the obligations under Sections 4, 10, 11, 12 and 13 of this Agreement.

The performance of this Agreement in furtherance of the completion of the Project constitutes the entire consideration for this temporary construction easement.

**IN WITNESS WHEREOF**, the District has executed this indenture this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

EAST BAY MUNICIPAL UTILITY DISTRICT

CONTRA COSTA COUNTY

\_\_\_\_\_  
Matt Elawady  
Manager of Real Estate Services

By: \_\_\_\_\_  
Brian M. Balbas  
Director of Public Works

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

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

# EXHIBIT A

Site Address	ALHAMBRA VALLEY RD MARTINEZ, CA 94553
Parcel No. (APN)	362-100-003-7
Land Use Cat.	MISCELLANEOUS
Land Use Desc.	GOVERNMENTAL, PUBLIC
Building Area	
Lot Area	12,863,268 SF (295.3 ACRES)
Building/Lot Ratio	
No. of Units	
Year Built	
Total Assd. Value	\$274,018
Owner 1	EAST BAY MUNICIPAL UTILITY, DIS
Owner 2	
Owner Address	PO BOX 24055 OAKLAND, CA 94623
Last Transfer	
Last Market Sale	

[Add to List](#)   [Full Property Detail](#)   [More](#)

**Ownership**

Owner 1	EAST BAY MUNICIPAL UTILITY, DIS
Owner 2	
Owner Address	PO BOX 24055 OAKLAND, CA 94623
Vesting Code	

[List Units](#)   [Owner Portfolio](#)   [Owner Lookup](#)

**Last Market Sale**

Last Transfer	
Last Market Sale	
Last Sale Price	
Buyer Name	
Seller Name	
Deed Type	

# EXHIBIT B

**RECORDING REQUESTED BY**  
Contra Costa County

**AND WHEN RECORDED MAIL TO**  
Contra Costa County  
Public Works Department  
255 Glacier Dr.  
Martinez, CA 94553  
Attn: Principal Real Property Agent

**R/W X-# 1777**  
Slope and Drainage Easement – Alhambra Vly

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 362-100-003-7

**GRANT OF EASEMENT**

THIS INDENTURE, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between EAST BAY MUNICIPAL UTILITY DISTRICT, a public corporation organized and existing under the laws of the State of California hereinafter called Grantor, and Contra Costa County, a political subdivision of the State of California, hereinafter called Grantee,

**WITNESSETH:**

THAT the Grantor, for a good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, and the faithful performance and observance by Grantee of all of the covenants and agreements herein contained, does hereby grant, subject to all of the terms and conditions hereof, to Grantee an easement for the construction, reconstruction, maintenance, removal and use, for the purpose of maintaining roadway slopes, culverts, drainage, rock protection and erosion control, as necessary to maintain the integrity of said slope and provide for adequate drainage, together with the necessary appurtenances thereto, all hereinafter referred to as "the structure", within the boundaries of that certain real property described in **Exhibit "A"** and shown on **Exhibit "B"**, attached hereto and made a part hereof.

The easement above mentioned is granted by Grantor and accepted by Grantee upon the following terms and conditions, and Grantee does hereby covenant with Grantor as follows:

1. Grantee hereby acknowledges the title of Grantor in and to the real property above described and agrees never to assail or to resist said title.
  
2. The construction, reconstruction, maintenance, removal and use of, and all work upon or in connection with the structure shall at no time and in no way whatsoever interfere with the operations of Grantor; the location of the structure, the construction, reconstruction, maintenance and removal thereof and all work in connection therewith shall be done and made under the supervision and to the satisfaction of Grantor, and the construction, reconstruction, maintenance, removal and use of any aqueduct, pipelines and other facilities or improvements of Grantor, present or future, upon said real property shall at all times be paramount to any rights of Grantee under this indenture.



3. Upon completion of any of its works hereunder, Grantee shall promptly restore as near as possible the surface of the ground to the condition in which it was prior to the commencement of said work and leave said real property in a clean and presentable condition, free from waste, and if Grantee fails to keep said real property so then Grantor may perform the necessary work at the expense of Grantee, which expense Grantee agrees to pay to Grantor upon demand.

4. Grantee expressly agrees to indemnify, defend and hold harmless Grantor, its directors, officers, and employees from and against any and all loss, liability, expense, claims, costs, suits, and damages, including attorneys' fees, arising out of Grantee's operation or performance under this agreement, including all costs, claims and damages (including property and personal injury) arising out of any hazardous substances, hazardous materials or hazardous wastes (including petroleum) within the easement area or on the adjacent Grantor's property, released by Grantee, its officers, employees, or contractors, as a result of Grantee's construction, reconstruction, maintenance, use, or removal of its structure.

5. Grantee shall be responsible for and shall reimburse Grantor for any damage or loss to Grantor's present and future pipelines and appurtenances thereto, directly or indirectly contributed to or caused by Grantee's operation or performance under this agreement, including, but not limited to, any damage or loss due to corrosion of Grantor's aqueducts or pipelines, present or future, caused by the deposit by Grantee of hazardous substances, hazardous materials or hazardous wastes including petroleum or caused by electrical currents flowing between the structure and the aqueducts or pipelines of Grantor; and Grantee shall not make any physical connection or bonding whatsoever between said aqueducts or pipelines of Grantor and the structure without first having obtained the written permission of Grantor so to do.

6. Grantee agrees that it shall pay the cost of any additional work made necessary and other costs incurred by Grantor by reason of the location of said structure of the Grantee upon said real property of Grantor; all of such work shall be performed by Grantor and upon the completion thereof Grantor shall promptly upon demand be reimbursed by Grantee for the cost thereof.

7. Grantee agrees to assume all risk of damage to the structure and to any other property of Grantee or any property under the control or custody of Grantee while upon the property or rights of way of Grantor or in proximity thereto, caused by or contributed to in any way by the construction, reconstruction, operation, maintenance, repair or use of aqueducts, pipelines, or other facilities or improvements or roadways of Grantor, present or future.

8. Except in the case of routine inspections or emergency repairs, Grantee shall give to Grantor at least ten (10) days' notice in writing before entering upon the real property hereinabove described for the purpose of constructing, reconstructing, repairing or removing the structure or performing any work on or in connection with the structure or the operation thereof.

9. All rights herein granted to Grantee are subject to all existing rights, rights of way, reservations and easements by whomsoever held in and to said real property.

10. If Grantee shall fail to construct the structure and place it in operation within a period of two years after the date hereof, or shall at any time abandon the structure or any portion thereof, or fail to use the structure for the purposes for which this easement is granted, then all rights of Grantee in and to said real property or such portions thereof so abandoned or not so used shall thereupon cease and terminate and title thereto shall immediately revert to and vest in Grantor. Upon any termination of the rights of Grantee hereunder, Grantee shall at Grantee's expense, promptly upon request by Grantor so to do, remove the structure from said real property and restore said real property to its original condition; upon failure of Grantee so to do, said work may be performed by Grantor at Grantee's expense, which expense Grantee agrees to pay to Grantor promptly upon demand.

11. No rights of Grantee hereunder shall be transferred or assigned unless the written consent of Grantor is first secured. With that exception, this indenture and each and all of the covenants herein contained shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto.

12. Grantee recognizes and understands that this easement may create a possessory interest subject to property taxation and that Grantee may be subject to the payment of property taxes levied on such interest.

IN WITNESS WHEREOF, the parties hereto have executed this indenture, the day and year first above written.

EAST BAY MUNICIPAL UTILITY DISTRICT

CONTRA COSTA COUNTY

By: \_\_\_\_\_  
Mamdoh Elawady aka Matt Elawady  
Manager of Real Estate Services

By: \_\_\_\_\_  
Brian M. Balbas  
Director of Public Works

GRANTOR

GRANTEE

Alhambra Valley Road (Road No. 1481)  
EBMUD  
Portion of APN 362-100-003  
Approx. 0.4 miles west of Bear Creek Road  
Drawing No. A1481-20

## EXHIBIT "A"

Real property in an unincorporated area of the County of Contra Costa, State of California, being a portion of Rancho Boca de La Cañada de Pinole, also being a portion of the property described in the deed to East Bay Municipal Utility District (EBMUD), recorded November 8, 1950 in Book 1664 at Page 376, Contra Costa County records, and a portion of the property described in the deed to EBMUD recorded September 14, 1950 in Book 1632 at Page 326, Contra Costa County records, described as follows:

### Parcel One – Slope Easement

Commencing at AV-69, a 2" iron pipe on the precise traverse line of Alhambra Valley Road, from which AV-70, a 2" iron pipe bears north 57°17'48" west, 693.09 (record 693.01) feet; thence from said Point of Commencement north 86°04'55" east, 46.45 feet to the northerly Right of Way of Alhambra Valley Road, as said Right of Way is described in the deed from EBMUD to Contra Costa County recorded August 30, 1984 in Book 11948 at Page 741, Contra Costa County records and as shown on the Right of Way map RW1481-84, filed in the Contra Costa County Public Works Department, also being the Point of Beginning; thence from said Point of Beginning and along said Right of Way north 59°45'00" west, 59.65 feet to a non-tangent curve concave to the southwest having a radius of 289.44 feet, a radial to said point bears north 45°19'08" east; thence leaving said Right of Way along said curve through a central angle of 17°59'20", an arc length of 90.87 feet; thence north 62°40'12" west, 187.99 feet to the northerly Right of Way of Alhambra Valley Road; thence along said Right of Way north 59°45'00" west, 51.18 feet; thence leaving said Right of Way south 62°48'30" east, 77.80 feet; thence south 65°43'28" east, 156.55 feet to a tangent curve concave to the southwest having a radius of 360.00 feet; thence along said curve through a central angle of 26°20'29", an arc length of 165.51 feet to a point of cusp on the northerly Right of Way of Alhambra Valley Road, being a non-tangent curve concave to the southwest having a radius of 274.12 feet, a radial to said point bears north 31°50'12" east; thence along said curve through a central angle of 1°35'12", an arc length of 7.59 feet to the Point of Beginning.

Containing an area of 3,225 square feet of land, more or less.

Exhibit B, a plat is attached hereto, and by this reference, made a part hereof.

This real property description has been prepared by me or under my direction, in conformance with the Professional Land Surveyors Act.

Signature: 

Licensed Land Surveyor  
Contra Costa County Public Works Department

Date: 7/9/2020



Alhambra Valley Road (Road No. 1481)  
EBMUD  
Portion of APN 362-100-003  
Approx. 0.4 miles west of Bear Creek Road  
Drawing No. A1481-20

**EXHIBIT "A"**

Real property in an unincorporated area of the County of Contra Costa, State of California, being a portion of Rancho Boca de La Cañada de Pinole, also being a portion of the property described in the deed to East Bay Municipal Utility District (EBMUD), recorded November 8, 1950 in Book 1664 at Page 376, Contra Costa County records, and a portion of the property described in the deed to EBMUD recorded September 14, 1950 in Book 1632 at Page 326, Contra Costa County records, described as follows:

**Parcel Two – Drainage Easement**

Commencing at AV-69, a 2" iron pipe on the precise traverse line of Alhambra Valley Road, from which AV-70, a 2" iron pipe bears north 57°17'48" west, 693.09 (record 693.01) feet; thence from said Point of Commencement north 8°51'39" west, 33.62 feet to the northerly Right of Way of Alhambra Valley Road, as said Right of Way is described in the deed from EBMUD to Contra Costa County recorded August 30, 1984 in Book 11948 at Page 741, Contra Costa County records and as shown on the Right of Way map RW1481-84, filed in the Contra Costa County Public Works Department, also being the Point of Beginning; thence from said Point of Beginning and along said Right of Way north 59°45'00" west, 277.74 feet; thence leaving said Right of Way south 62°40'12" east, 187.99 feet to a tangent curve concave to the southwest having a radius of 289.44 feet; thence along said curve through a central angle of 17°59'20", an arc length of 90.87 feet to the Point of Beginning.

Containing an area of 1,545 square feet of land, more or less.

Exhibit B, a plat is attached hereto, and by this reference, made a part hereof.

This real property description has been prepared by me or under my direction, in conformance with the Professional Land Surveyors Act.

Signature: James A. Stein

Licensed Land Surveyor  
Contra Costa County Public Works Department

Date: 7/7/2020



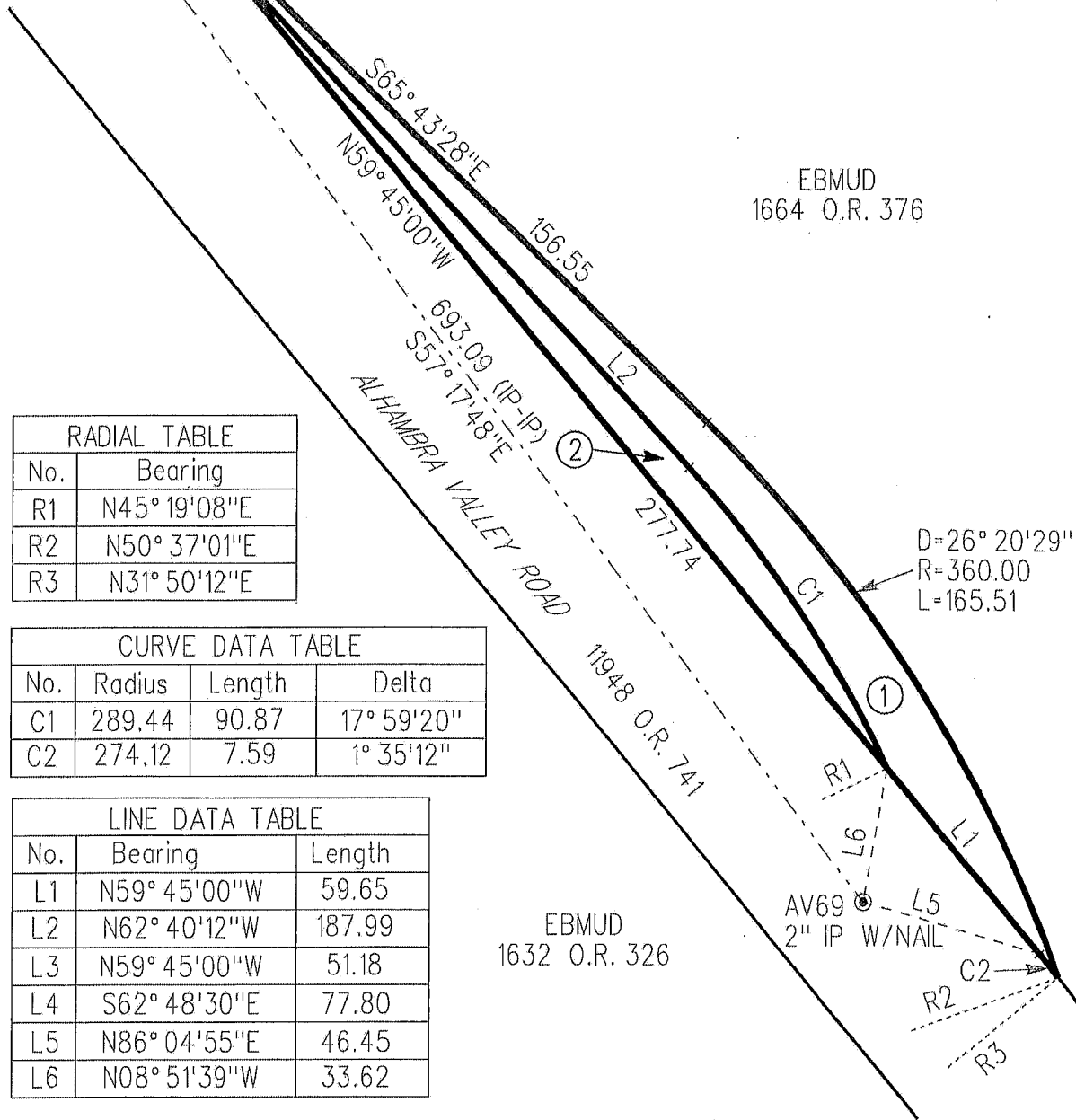
# EXHIBIT B

PLAT TO ACCOMPANY EXHIBIT A

AV70  
2" IP  
W/NAIL



SCALE 1"=40'



RADIAL TABLE	
No.	Bearing
R1	N45° 19'08"E
R2	N50° 37'01"E
R3	N31° 50'12"E

CURVE DATA TABLE			
No.	Radius	Length	Delta
C1	289.44	90.87	17° 59'20"
C2	274.12	7.59	1° 35'12"

LINE DATA TABLE		
No.	Bearing	Length
L1	N59° 45'00"W	59.65
L2	N62° 40'12"W	187.99
L3	N59° 45'00"W	51.18
L4	S62° 48'30"E	77.80
L5	N86° 04'55"E	46.45
L6	N08° 51'39"W	33.62

## ALHAMBRA VALLEY RD Slope and Drainage Easements

Instrument:	Scale: 1"=40'	Date: JULY 2020
Series No.:	Drawn By: AR	File No.: A1481-20
Recorded:	Checked By: JS	Cad File: RW148120.dgn



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Brian M. Balbas, Public Works Director/Chief Engineer  
Date: September 22, 2020

Subject: APPROVE a License Agreement with the City of Pleasant Hill for Joint Use of a portion of Grayson Creek, on the West Bank, Pleasant Hill area.

**RECOMMENDATION(S):**

As the Governing Body of the Contra Costa County Flood Control & Water Conservation District (District) APPROVE and AUTHORIZE the Chief Engineer, or designee, to execute, on behalf of the District, a license agreement with the City of Pleasant Hill (City), for use (recreation and landscaping purposes) and maintenance on the west bank of Grayson Creek adjacent to 280 Golf Club Road, Pleasant Hill, for a period of approximately twenty five (25) years.

DETERMINE that the activity is not subject to the California Environmental Quality Act (CEQA), pursuant to Article 5, Section 15061(b)(3) of the CEQA Guidelines; and

DIRECT the Director of the Department of Conservation and Development (DCD) to file a Notice of Exemption with the County Clerk.

AUTHORIZE the Chief Engineer to arrange for payment of a \$50.00 fee to the County Clerk for filing and a \$25.00 fee to DCD for processing the Notice of Exemption.

**FISCAL IMPACT:**

100% Developer Funds.

APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Stacey M. Boyd, Deputy

Contact: Stacey Sinclair, (925) 957-2464

### BACKGROUND:

MerloneGeier Partners (Developer) submitted a development plan to the City to redevelop the Diablo Valley Plaza (DV Plaza) commercial center. The DV Plaza lot (APN 153-300-001) is bounded by Chilpancingo Parkway to the north, Golf Club Road to the south, Old Quarry Road to the west, and Grayson Creek to the east. The Developer plans to refurbish existing commercial structures. As part of the redevelopment, the City has conditioned the Developer to construct a trail and install other landscape improvements along the west bank of Grayson Creek in the District's right of way.

The Joint Use Area extends from Chilpancingo Parkway on the north end to Chilpancingo Park on the south end and from the western District Grayson Creek right of way line to the edge of the low flow channel. Improvements constructed and installed within the Joint Use Area include a 10-foot-wide paved asphalt trail with gravel shoulders, trees, bushes, irrigation, and a 3-foot high wooden split rail fence, and will be maintained by the City.

### CONSEQUENCE OF NEGATIVE ACTION:

Grayson Creek will not be maintained to District standards and trash will continue to collect in the creek.

### ATTACHMENTS

License Agreement

CEQA



**LICENSE AGREEMENT  
BETWEEN  
CONTRA COSTA COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT  
AND  
THE CITY OF PLEASANT HILL  
FOR JOINT USE OF A PORTION OF GRAYSON CREEK, ON THE WEST BANK,  
BETWEEN CHILPANCINGO PARKWAY AND GOLF CLUB ROAD**

This License Agreement (“**Agreement**”) is entered into effective \_\_\_\_\_, 2020, (“**Effective Date**”) by and between CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a flood control district organized under the laws of the State of California, (“**District**”) and the CITY OF PLEASANT HILL, a California municipal corporation (“**City**”). The District and the City are sometimes collectively referred to herein as the “**Parties**,” and individually as a “**Party**.”

Recitals

- A. The District holds fee title to the property (“**District Property**”) within and adjacent to Grayson Creek, in the City of Pleasant Hill in central Contra Costa County, a portion of which is shown on Exhibit A, attached hereto. The District uses the District Property for flood control and other District purposes.
  
- B. The City approved the development of Diablo Valley Plaza Remodel & Commercial Building, Use Permit #PLN 19-0013 (the “**Development**”) on property located at 180-280 Golf Club Road, Pleasant Hill, adjacent to the District Property. The Development is owned by MGP X DVC, LLC (“**Adjacent Owner**”). As a condition of Development approval, the City agreed to obtain a license in the District Property for use and maintenance of a trail, bollards, signs, landscaping, irrigation, and fencing to be installed and maintained within the District Property and to allow the Adjacent Owner to act on the City’s behalf to use and maintain those facilities, as may be directed by the City. The City desires to obtain that license within a portion of the District Property more particularly identified on Exhibit A, attached hereto (the “**Joint Use Area**”). The District is willing to grant a license to the City for those purposes, subject to the terms of this Agreement, which require the City to maintain the Joint Use Area, including removing debris and litter, and abating weeds and other objectionable vegetation.

Agreement

Now, therefore, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. **GRANT OF LICENSE**: Subject to the terms of this Agreement, the District grants to the City a nonexclusive, revocable license upon, over, and across the Joint Use Area, for the purposes described in Section 5 of this Agreement.

2. **TERM:** The term of this Agreement commences on the Effective Date, and this Agreement expires twenty-five (25) years after the Effective Date, unless it is sooner terminated.

3. **DISTRICT'S TITLE:** The City hereby acknowledges the District's fee title in and to the property within the Joint Use Area., and the City agrees never to assail or to resist the District's title to that property. The City acknowledges and agrees that, by executing this Agreement, it is not acquiring any interest or estate in the Joint Use Area, or the property underlying the Joint Use Area. The City further agrees that it does not have and shall not assert any right to use the Joint Use Area beyond that specifically granted in this Agreement. The City shall not enter into any agreement or contract, or accept grants, gifts, or funding provided by the Federal, State, or other governmental authority, that in any way would subordinate the District rights in and title to the Joint Use Area, including but not limited to, District's right to construct, use, maintain, alter, reconstruct, enlarge, or otherwise modify its facilities. Further, the City shall not enter into any agreement or contract with any third party that extends any rights beyond the rights granted by the terms of this License.

4. **NO INTERFERENCE WITH DISTRICT'S USES:**

A. The District has the right to use the Joint Use Area for any lawful District purpose, including, but not limited to, drainage water conveyance, maintenance, channeling, or otherwise controlling the flow of drainage waters, as well as performing any other activities, and constructing or maintaining any facilities that the District may be required to perform, construct, or maintain by Federal, State, regional, or local governmental agencies (collectively, "**District's Uses**"). District's Uses of the Joint Use Area shall be paramount and superior to any and all other use of the Joint Use Area, including but not limited to City's Uses within the Joint Use Area, as described in Section 5.

B. The City agrees and acknowledges that the District's Uses may cause a temporary interruption of the City's use of, or its permission to enter upon and use, the Joint Use Area. In the event that any of District's Uses interrupts or interferes with any of City's Uses, the District will use its best efforts, as determined by the District, to attempt to minimize the interruption or interference. However, the District shall not be liable to the City, or to any other person who uses the Joint Use Area at the City's direction, for any cost, expense, or damage caused by the District's Uses, except for those costs, expenses, or damages caused by District's sole negligence or sole willful misconduct. The District will provide written notice to the City of any planned District activities within the Joint Use Area at least 30 days before those activities begin. The District will use its best efforts to protect any City improvements within the Joint Use Area.

5. **CITY'S USE OF THE JOINT USE AREA:**

A. The City, its officers, employees, contractors, and agents shall have the non-exclusive right to enter, occupy, and use the Joint Use Area for recreational and landscaping purposes, including use of and maintaining a recreation trail, trees, irrigation facilities, bollards, signs and a split rail fence, removing litter and debris, and maintaining vegetation, in accordance with the terms of this Agreement ("**City's Uses**"). The City may contract with the Adjacent Owner or others to act on the City's behalf and to enter and use the Joint Use Area for City's

Uses. The City shall be solely responsible for requiring the Adjacent Owner or others to use the Joint Use Area in accordance with the terms of this Agreement. The City, at its sole expense, shall provide for any equipment or use of equipment and other personal property which may be necessary or convenient to its use of the Joint Use Area. Before the City allows any third party, including the Adjacent Owner or others, to perform any work within the Joint Use Area on the City's behalf, the City shall enter into an agreement with the third party that requires that party to indemnify and defend both the City and the District to the same extent that the City is required to indemnify and defend the District under this Agreement.

B. The City shall not use, nor shall it permit others to use, any type of motor-driven vehicle in the Joint Use Area, except vehicles required by the City for City's Uses. The City shall install barricades, bollards, and signs, as the District deems necessary, to prevent unauthorized access of the Joint Use Area by motor-driven vehicles. The City shall post signs at points of entry to the Joint Use Area indicating that vehicles are prohibited within the Joint Use Area. The District requires access to all areas of the Joint Use Area, including those areas that are obstructed by barricades and bollards. Each barricade or bollard shall have two padlocks attached to it, to enable both the District and the City to access the Joint Use Area at all times. The City shall not knowingly hinder or obstruct the District's or its permittees' access to the Joint Use Area.

C. The City's Uses and all rights granted or implied by this Agreement, are secondary and subordinate to the District's Uses, as well as to all other uses of the Joint Use Area by the District. In addition, the City's Uses are subordinate to the rights of a public utility or other entity with existing facilities in place upon, in, over, under, or across the Joint Use Area.

D. If the District determines, in its sole discretion, that City's Uses of the Joint Use Area conflict with District's Uses of the Joint Use Area, the District will comply with Section 19.

## **6. PAYMENT OF DISTRICT'S COSTS:**

A. If the District's Chief Engineer, or designee, determines, in its sole discretion, that the District's cost to operate or maintain the District's facilities adjacent to or within the Joint Use Area has increased due to the City's Uses, the City shall reimburse the District for those cost increases. On or before June 1, 2021, and on or before each June 1 thereafter, the District will send the City an invoice documenting the District's cost increases attributed to City's Use during the May 1<sup>st</sup> through April 30<sup>th</sup> period that immediately precedes the June 1 on which the invoice is given. Unless the City contests the invoice in accordance with Section 6.B., the City shall pay the District the amount stated on the District's invoice within 30 days after the date the invoice is given.

B. The City may contest the amount stated on a District invoice by giving written notice to the District within 15 days after the date the District's invoice is given. Within 30 days after the District's receipt of that notice, District and City staff will meet to confer regarding the invoice. The District's Chief Engineer shall have sole discretion to determine what, if any, corrective action needs to be taken. Within 15 days after District and City staff meet to confer regarding the invoice, the District's Chief Engineer, or designee, will provide the City a response

indicating whether any corrective action will be taken, and, if any is taken, the District will provide the City a corrected invoice. The City shall pay the District's invoice or corrected invoice within 15 days after the City receives the District's response.

7. **LAWFUL CONDUCT:** While using the Joint Use Area under this Agreement, the City shall, and shall require any person or entity acting on the City's behalf to, obey and observe all terms of this Agreement, and all applicable laws, ordinances, orders, rules, permits, regulations, and requirements relating to the use of the Joint Use Area, whether federal, state, or local in origin. The City shall not commit, suffer, or permit, and shall prohibit any person or entity acting on the City's behalf from committing, suffering, or permitting, any nuisance in or about the Joint Use Area. The City shall be solely responsible for paying all fines, penalties, or charges that may be levied for violation of laws, ordinances, orders, rules permits, regulations, and requirements arising out of the operations of City, its employees, contractors, permittees, and any person or entity acting on the City's behalf.

8. **MAINTENANCE AND SURRENDER OF THE JOINT USE AREA:**

A. As partial consideration for the license granted under this Agreement, the City, at its sole expense, shall maintain the Joint Use Area, and all improvements located within the Joint Use Area under this Agreement, in a safe, clean, neat, orderly, and presentable condition, free from waste, litter, and graffiti resulting from City's Uses or the public's use of the Joint Use Area. However, the City shall not be responsible for any waste, litter, graffiti, or other condition requiring maintenance caused by District or its other permittees. As used in this Agreement, the term "litter" includes, but is not be limited to, paper, garbage, refuse, trimmings, furniture, mattresses, appliances, construction debris, abandoned equipment, abandoned motor vehicles, and other items that detract from the neat and tidy appearance, cleanliness, and safety of the Joint Use Area. The City, at its sole expense, shall be solely responsible for the removal of all dead animals from the Joint Use Area, which may include calling the Contra Costa County Animal Services Department to have them remove the dead animal(s).

B. The City shall maintain all improvements that are installed within the Joint Use Area, including, but not limited to, a recreation trail, bollards, signs, trees, shrubs, irrigation, and a split rail fence, in a safe, clean, neat, orderly, and serviceable condition, such that the improvements do not interfere with the District's Uses. As partial consideration for the license granted under this Agreement, the City shall keep the Joint Use Area along the western creek bank, from the right-of-way line to the water surface in the low flow channel, free from weeds and other objectionable vegetation, and the City shall abate vegetation within the Joint Use Area to Contra Costa County Fire Protection District standards . Except for routine maintenance activities, the City shall obtain the District's consent and approval at least fifteen (15) days before the City performs any activity within the Joint Use Area that may conflict with any of District's Uses.

C. The City, at its sole expense, shall be solely responsible for all repair and maintenance required within the Joint Use Area as a result of City's Uses. Except in the case of an emergency, the City shall not make alterations to the Joint Use Area, including the installation of additional improvements or utilities or performance of any construction, reconstruction,

remodeling, alteration, removal, landscaping, tree planting, major maintenance work, or other work, other than necessary for City's Uses, without the prior written consent of District's Chief Engineer, or designee, which shall be in the form of an Encroachment Permit for Use of District's Right of Way ("**Encroachment Permit**"). The City shall make every effort to report emergency work in the Joint Use Area to the District within one (1) business day after the emergency work commences. If the District revokes an Encroachment Permit previously issued, the City shall immediately remove any of alterations made under the permit. The District may require the City to alter or remove, at the City's sole expense, any emergency work done by the City if the emergency work interferes with District's Uses. The City shall reimburse the District for the District's cost to process an Encroachment Permit application. If an Encroachment Permit is issued, the City shall pay the District's costs to inspect the City's encroachments made under that permit.

D. Unless the District notifies the City otherwise before the expiration or termination of this Agreement, within 6 months after the expiration or termination of this Agreement the City shall remove any improvements installed within the Joint Use Area under this Agreement, and the City shall restore the Joint Use Area to the condition it was in before the Effective Date. However, if the District provides written notice to the City that certain improvements shall remain in place upon the expiration or termination of the Agreement, the City shall leave those designated improvements in place, and the City shall remove any other improvements not designated to remain in place. The 6-month period can be extended at the discretion of and with written consent from the District.

E. The City, at its sole expense, shall promptly clean, repair, remove, or replace any improvements located in the Joint Use Area under this Agreement, or any District improvements within the Joint Use Area, if the improvements are damaged, vandalized, or otherwise determined by the District to be nuisances or hazards.

F. The City agrees that the granting of the license under this Agreement coupled with the City's installation or construction of any equipment, structures, or fixtures within the Joint Use Area shall not render the license irrevocable, and shall not be construed to create a license coupled with an interest in the District Property.

## **9. SECURITY; CITY'S DUTIES REGARDING PROPERTY:**

A. The City, at its sole expense, shall provide patrol and security service, fencing, and gates as may be necessary to prevent the unauthorized use of the Joint Use Area by third parties and the general public. The City, at its sole cost, shall evict trespassers, if necessary, to protect the safety of the users of the Joint Use Area, and the District shall not be responsible for any of such security responsibilities within the Joint Use Area. At a minimum, the City shall devote the same standards and levels of public safety patrol, security service, fencing, and gates within the Joint Use Area as the City devotes to its other outdoor recreational facilities.

B. The District shall not have any duty to guard or secure the Joint Use Area, and it shall have no liability for any injury, loss, or damage to, the goods, property, facilities, improvements, or equipment of the City or anyone acting for or on behalf of the City,

irrespective of the cause of such injury, loss, or damage, except to the extent that an injury, loss, or damage is caused by the sole negligence or sole willful misconduct of the District, or its officers, employees, or agents.

C. The City shall designate a representative who shall be responsible for overseeing the day-to-day operation and maintenance of the Joint Use Area. Within 10 days after the Effective Date, the City shall provide the District written notice identifying and providing contact information for the City's representative. When the City's representative changes, the City shall provide the District written notice identifying and providing contact information for the City's new representative within 10 days.

**10. CONDITION OF PROPERTY:**

A. The District makes no representations as to the suitability of the Joint Use Area for any of City's Uses. By executing this Agreement, the City acknowledges that it has inspected the Joint Use Area, and that the City has made its own determination as to the suitability of the Joint Use Area for City's Uses.

B. The City agrees that the Joint Use Area is subject to naturally-occurring hazardous conditions, including but not limited to sliding, erosion, subsidence, and flooding. The City further agrees that, if the District determines those naturally-occurring hazardous conditions do not affect the operation of the flood control channel or other District uses of the District Property, the District is under no obligation to restore, maintain, or repair any damage resulting from the naturally-occurring hazardous conditions. The City, with the prior written approval of the District's Chief Engineer, may perform, at the City's sole cost and expense, any restoration, maintenance, or repair as the City deems necessary for its proper and safe use of the Joint Use Area. The City agrees that the District has no responsibility or liability to the City for any naturally-occurring hazardous condition that exists, or that may later occur, on, in, or adjacent to the Joint Use Area.

**11. HEALTH, SAFETY, AND ENVIRONMENTAL PROTECTION:**

A. The City, at its sole cost and expense, shall comply with all present and future applicable laws, statues, codes, rules, and regulations regarding health, safety, noise, environmental protection, waste disposal, and water and air quality as they pertain to the City's Uses. The City shall not commit, suffer, or permit the commission of, any waste in the Joint Use Area, or any nuisance or other act that may pollute or contaminate the Joint Use Area or the watershed and District Property of which the Joint Use Area is a part.

B. The City shall not cause or permit any hazardous materials, as defined in this Section, to be generated, brought onto, stored, used, emitted, released, discharged, or disposed of in, on, under, or about the Joint Use Area by the City or its officers, employees, agents, contractors, guests, or invitees, or any person acting on its behalf including the Adjacent Owner, without having first obtained express written permission from the District, which shall be in District's sole discretion to provide. As used herein, "hazardous substance" includes but is not limited to any substance, material, or waste which is or becomes designated, classified, or

regulated as being “toxic,” “hazardous” or a “pollutant” under any federal, state, or local law, regulation, or ordinance.

C. The City is prohibited from using within the Joint Use Area any herbicide, pesticide, or hazardous substance, including those for which it has obtained District’s prior approval to use, in an unsafe or careless manner or in any manner that is contrary to the manufacturer's instructions or contrary to greater restrictions that the District may impose. The City must satisfy any and all herbicide and pesticide application permit requirements, as may be required by Federal, State, or local regulations or agencies.

D. Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Joint Use Area due to the City’s Uses, or due to the City’s use, release, or disposal of any pesticide or hazardous substance, the City, at its sole expense, shall test, remedy, repair, remove, clean, remediate, and detoxify all property affected thereby, whether owned or controlled by the District or by any third party, to the satisfaction of District, and to the satisfaction of any governmental body having jurisdiction thereover. **The City shall immediately notify the District verbally and in writing upon either the occurrence or discovery of any such discharge, leakage, spillage, emission, or pollution.** The City’s notification to the District pursuant to this Section does not relieve the City of any legal requirement to notify any governmental body with jurisdiction over the Joint Use Area.

**12. WATER QUALITY CONTROL BOARD REQUIREMENTS:** The City shall conform fully to the requirements of the California Regional Water Quality Control Board San Francisco Bay Region’s (“**Regional Board**”) most current National Pollutant Discharge Elimination System Permit regarding waste discharge requirements for Contra Costa County, the City of Pleasant Hill, and other cities that form the Contra Costa Clean Water Program, which was adopted by the Regional Board on July 29, 1999, and including all subsequent amendments by the Regional Board (the “**NPDES Permit**”). The NPDES Permit regulates storm water and non-storm water discharges associated with activities within District rights of way. Prior to using the Joint Use Area, the City shall develop, implement, and maintain a District-approved Facility Pollution Prevention Plan (“**FPPP**”), describing the pollution prevention practices associated with activities within the Joint Use Area and facilities located within the Joint Use Area. The FPPP shall accomplish compliance by implementing Best Management Practices described in the Contra Costa Clean Water Program Countywide 1999 Storm Water Management Plan, including any subsequent plan adopted by the District’s governing board (the “**SWMP**”). The City shall modify its FPPP as the District deems necessary to assure the conformance of City’s Uses with the SWMP, as may be revised, modified, or recreated in the future.

**13. HOLD HARMLESS AND INDEMNIFICATION:** The City shall defend, indemnify, save, protect, and hold harmless the District, and its governing board, officers, agents, and employees (“**Indemnitees**,” and each an “**Indemnitee**”), from and against any and all claims, suits, costs, losses, expenses, and liabilities for any damages, sickness, death, or injury to persons or property, including without limitation all consequential damages, (“**Liabilities**”) from any cause whatsoever arising directly or indirectly from use of the Joint Use Area under this Agreement by the City, its officers, agents, employees, contractors, subcontractors, or invitees,

or by the Adjacent Owner or any other person or entity acting on City's behalf hereunder, and the City shall make good to and reimburse the District for any expenditures, including reasonable attorneys' fees, that the District may make by reason of such matters. If requested by the District, the City shall defend any such suits at the sole cost and expense of the City. Notwithstanding the foregoing, the City shall not be required to defend, indemnify, save, protect, and hold harmless the Indemnitees from any Liabilities that arise from the sole negligence or sole willful misconduct of an Indemnitee. This Section shall survive the expiration or termination of this Agreement.

14. **INSURANCE:**

A. Unless the City self-insures as permitted by this Section, throughout the term of this Agreement, the City shall provide and maintain, in full force and effect at all times, insurance policies meeting the following requirements, unless otherwise expressed in writing by the District's Chief Engineer.

1. The City shall provide comprehensive general liability insurance with a minimum combined single-limit coverage of Five Million and No/100 Dollars (\$5,000,000.00) for all damages, including consequential damages, due to bodily injury, sickness, or disease, or death to any person(s) or damage to or destruction of property, including the loss of use thereof, arising from each occurrence.

2. The City shall take out and maintain Worker's Compensation and Employer's Liability Insurance, as required by law, for all of its employees working on the Joint Use Area. The City shall require any contractor or other person acting on its behalf within the Joint use Area to provide it with evidence of Worker's Compensation and Employer's Liability Insurance, all in strict compliance with California State laws.

B. The City shall have the right to self-insure for any or all insurance required under this Section. In the event that the City does self-insure, the City shall provide written evidence of such self-insurance to District, and shall include the District as an additional insured under such self-insurance coverage.

C. All insurance policies required by this Agreement shall include the following language, or substantially similar language acceptable to the District's Chief Engineer: **"Contra Costa County Flood Control and Water Conservation District, its governing body, officers, agents, and employees are additional insureds under this insurance policy as to all operations and activities performed on District property by the City, its employees, contractors, and agents."** Said policies shall constitute primary insurance as to the District and its directors, officers, and employees, so that other insurance policies held by them or their self-insurance programs shall not be required to contribute to any loss covered under the City's insurance policy or policies.

D. Before the City may enter and use the Joint Use Area under this Agreement, the District's Chief Engineer, or designee, must provide written approval of the City's liability



insurance policy, or written approval of the City's evidence of self-insurance. The City shall provide the District with a copy of the City's insurance policies issued by a carrier evidencing liability insurance as required herein; or the City shall provide the District evidence of self-insurance that meets the requirements of this Section. If the City should renew the insurance policies or acquire either a new insurance policy or amend the coverage afforded through an endorsement to the policy at any time during the term of this Agreement, the City shall provide a current copy of the insurance policy to the District.

E. The City shall require its contractors and subcontractors, the Adjacent Owner, and any other person acting on the City's behalf, to provide insurance coverage of the types and in the amounts specified by the District, and to furnish evidence of such insurance to the City and the District, before the City authorizes those persons to begin performing work on behalf of the City within the Joint Use Area. Those insurance policies must contain the language in Section 14.C. that the City is required to include in its insurance policies. Those insurance policies must constitute primary insurance as to the District, its boards, officers, agents and employees, so that other insurance policies held by them or their self-insurance programs shall not be required to contribute to any loss covered under insurance policy or policies of the City's contractors and subcontractors, the Adjacent Owner, and any other person acting on the City's behalf.

F. Upon 90 days' advance written notice to the City, the District's Chief Engineer, at its sole discretion, may modify the requirements of this Section, including but not limited to requiring City to modify the limits of coverage, to provide and maintain insurance coverage for additional categories of risk, or to otherwise change the policy provided for each type of insurance to reflect changes in general costs or in risk exposure due to City's Uses. Within 30 days after that notice is given, the City shall modify its insurance coverage, and it shall require its contractors and subcontractors, the Adjacent Owner, and any other person acting on the City's behalf to modify their insurance coverage, and the City will provide the District new certificates of insurance that comply with the District's changes to insurance.

G. All insurance policies required to be provided under this Section shall include a provision requiring thirty (30) days' written notice to the District before cancellation, lapse, or material change in coverage.

H. The provisions of this Section shall accrue to the benefit of any public entity successor to fee title to the District Property.

15. **ASSIGNMENT**: The City shall not assign or transfer this Agreement to any other person or entity without the prior written consent of the District, which shall be within the District's sole discretion to provide.

16. **WAIVERS**: No waiver by the District of any breach or violation by the City of any provision of this Agreement shall be deemed to be a waiver of any breach or violation of any other provision of this Agreement, nor of any subsequent or continued breach or violation of the same or any other provision of this Agreement. The District's acceptance of any monies that become due under this Agreement shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the City of any provision of this Agreement.

17. **NON-DISCRIMINATION:** The City shall not discriminate against, or allow any discrimination against or segregation of, any person or group of persons on account of race, age, color, sex, creed, religion, national origin, or ancestry, or any basis protected under the law, in the use, occupancy, tenure, or enjoyment of the Joint Use Area.

18. **PRIOR AGREEMENTS:** This Agreement represents the entire agreement of the Parties hereto, and it replaces any and all other previous agreements, if any, between the Parties concerning the City's use of the Joint Use Area.

19. **LIMITATIONS OF USE:**

A. The District and the City have determined, and the City hereby acknowledges, that City's Uses may not always be compatible with District's Uses, even if the City observes and complies with the terms of this Agreement. In circumstances where, in the District's determination, City's Uses of the Joint Use Area materially and substantially conflicts with District's Uses of the Joint Use Area, or presents a threat to the public's health and safety, the District shall have the right, in its discretion, to suspend, limit, or modify City's Uses of the Joint Use Area, including the right to require City to remove or modify any facilities, improvements, equipment, or other property, within the Joint Use Area, or to restore the condition of the Joint Use Area, as the District deems necessary. This Section shall not apply to temporary interferences in City's Uses of the Joint Use Area caused by District's Uses, as governed by Section 4, nor shall temporary interferences in use be deemed a conflict for purposes of this Section. If the District's Chief Engineer, or designee, determines that any suspension, limitation, or modification of City's Uses of the Joint Use Area are necessary, the District's Chief Engineer, or designee, shall provide the City ninety (90) days advance written notice ("**Modification Notice**") of that suspension, limitation, or modification, and the District's Chief Engineer, or designee, shall have the right to require City to remove its improvements from, or modify its improvements within, the Joint Use Area. If the City determines that the removal or modification will take more than ninety (90) days from the date the Modification Notice is given, the City shall submit a schedule to the District's Chief Engineer, or designee, stating the date by which the modification or removal will be completed. During the course of removing or modifying improvements, the City may request, in writing, one or more ninety (90) day extensions to the removal period, one at a time, at least thirty (30) days before the end of the current ninety (90) day removal period. However, the total time for the City to remove its facilities shall not exceed three hundred sixty-five (365) days following the date the Modification Notice is given. If the District does not require the City to remove its improvements from the Joint Use Area, the City shall still have the option of removing its improvements to allow for the District's work.

B. Notwithstanding Section 19.A., if the District's Chief Engineer determines that the City's Uses present an immediate threat to public health and safety, the District shall not be required to provide the City prior written notice of a suspension, limitation, or modification of the City's Uses, so long as the District's Chief Engineer, or designee, notifies the City of the threat to public health and safety and its decision to suspend, limit, or modify City's Uses as soon as the Chief Engineer deems practicable under the circumstances. If the District's Chief

Engineer determines that the City must remove its improvements due to a threat to public health and safety, the Chief Engineer will provide written notice to the City, and, upon receipt of that notice, the City, at its sole expense, shall immediately act to remove the improvements. If the District's Chief Engineer determines that an emergency exists, the District, at its sole discretion, may do either of the following: (1) require the City to immediately remove its facilities, improvements, equipment, or other property from the Joint Use Area; or (2) immediately remove the City's improvements, equipment, or other property in the Joint Use Area, in which case the City shall reimburse the District for the District's removal costs within 30 days after the District gives the City a written demand for reimbursement of those costs.

C. Nothing in this Section is intended to require the District to provide prior notice to the City as a condition of the District's entry, alteration, or use of the Joint Use Area for District's Uses. Nevertheless, the District will endeavor to provide the City with advance notice at least ten (10) business days before the District performs any regular maintenance or other activities that the District determines could disrupt City's Uses. The City acknowledges and agrees that the District's use of the District Property, which includes the Joint Use Area, is paramount to City's Uses.

**20. TERMINATION:** This Agreement may be terminated as follows:

A. This Agreement may be terminated at any time upon the mutual written agreement of the Parties or for Flood Control purposes relating to flooding or expansion.

B. Either Party may terminate this Agreement upon ninety (90) days' prior written notice to the other Party.

**21. NOTICES:** All notices, demands, and communications under this Agreement shall be in writing and served by enclosing the same in a sealed envelope, and given personally, by overnight delivery, or by certified U.S. Mail, with postage or delivery fees prepaid, addressed as follows:

To District: Chief Engineer  
Contra Costa County  
Flood Control and Water Conservation District  
255 Glacier Drive  
Martinez, CA 94553

To City: City Manager  
City of Pleasant Hill  
100 Gregory Lane  
Pleasant Hill, CA 94523

or to such other address as either Party may designate by written notice to the other. Notice is deemed effective immediately if it is given personally, on the next business day following deposit for delivery if it is given by overnight delivery, or on the third business day following the date of mailing if it is given by certified U.S. Mail.

22. **NO THIRD PARTY BENEFICIARIES:** Nothing in this Agreement shall, nor is it intended to, confer on any person or party other than the Parties hereto, any rights or remedies under this Agreement.

23. **NO MODIFICATION:** This Agreement may not be modified or amended except in writing agreed upon and executed by both Parties hereto, and approved by both Parties' governing bodies. Any requests by the City for modification of this Agreement shall be made in writing and given to the District.

24. **UTILITIES:** The City shall not install any utilities, including, but not limited to, gas, water, electricity, garbage disposal, storm water, cable TV, fiber optic cables, sanitary sewer services, and telephone services, on, in, over, or under the Joint Use Area without the District's prior written consent, which consent shall be within the District's sole discretion to provide. If the District provides the City prior written consent to the installation of utilities, the City shall be solely responsible for all installation costs, and for all charges for utilities used within the Joint Use Area. Unless the District's Chief Engineer provides written notice to leave utilities in place, upon the expiration or termination of this Agreement, the City shall remove all utilities from the Joint Use Area.

25. **SEVERABILITY:** If any term or provision of this Agreement, which does not materially affect the consideration of this Agreement, is held to be invalid, illegal, or unenforceable in any respect, the validity of the remainder of this Agreement shall not be affected thereby.

26. **CONTROLLING LAW:** This Agreement shall be construed in accordance with the laws of the State of California. In the event of any dispute arising under this Agreement, venue shall be set in Contra Costa County.

[Remainder of Page Intentionally Left Blank. Signatures on Next Page.]

**DISTRICT:**  
CONTRA COSTA COUNTY  
FLOOD CONTROL AND  
WATER CONSERVATION DISTRICT

By: \_\_\_\_\_  
Brian M. Balbas  
Chief Engineer

Date: \_\_\_\_\_  
(Date signed)

Recommended for Approval:

By: \_\_\_\_\_  
Jessica L. Dillingham  
Principal Real Property Agent

**Approved as to form:**  
Sharon L. Anderson, County Counsel

By: \_\_\_\_\_  
Stephen Siptroth  
Deputy County Counsel

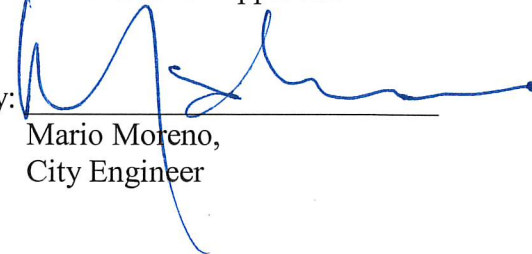
Exhibits:  
Exhibit A – Depiction of the Joint Use Area

**CITY:**  
CITY OF PLEASANT HILL

By: June W. Catalano/gy  
June W. Catalano  
City Manager

Date: 6/23/2020  
(Date signed)

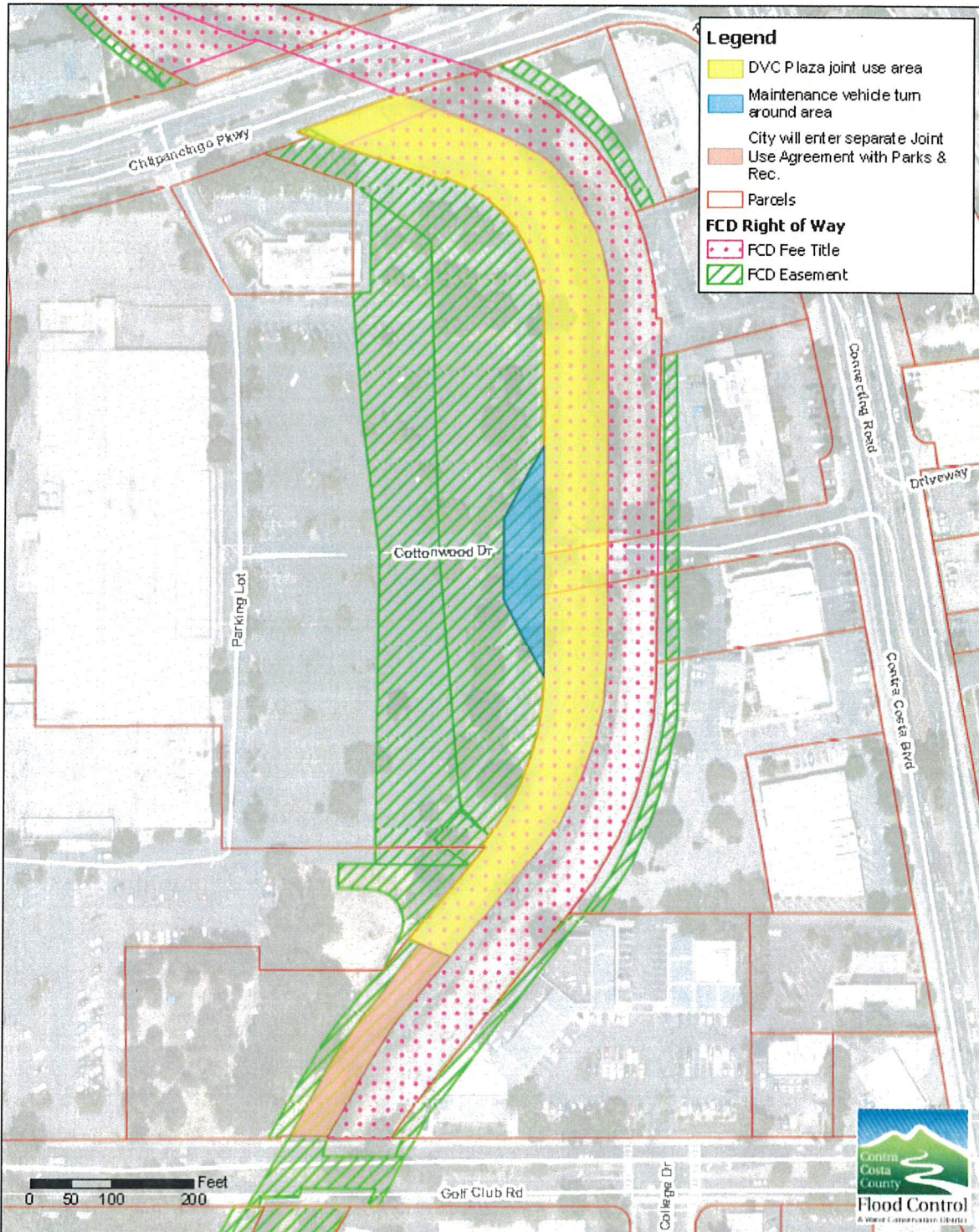
Recommended for Approval:

By:   
Mario Moreno,  
City Engineer

**Approved as to form:**

By: Janet Coleson/ko  
Janet Coleson  
City Attorney

# Grayson Creek - DVC Plaza Joint Use Agreement - Exhibit A



Document Path: P:\GIS\USERS - PROJECTS\FCD\ROAD\ROAD\PROJECTS\2016-10-26 Grayson Creek McDonalds Development\6 DVC Plaza\A\_ Exhibit\_2016-09.mxd Date: 5/14/2016

**DETERMINATION THAT AN ACTIVITY  
IS EXEMPT FROM THE  
CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

FILE NO.: FCP625-15 (WO#WLO83B/EF1500625)

CP NO.: 16-05

ACTIVITY NAME: FCP625-15 and License Agreement – Trail Improvements on Grayson Creek at DV Plaza Between Chilpancingo Parkway and Golf Club Road DATE: February 10, 2016

PREPARED BY: Ave' Brown, Contra Costa County Public Works Department

**This activity is not subject to the California Environmental Quality Act (CEQA) pursuant to Article 5, Section 15061 (b) (3) of the CEQA Guidelines.**

It can be seen with certainty that there is no possibility that the activity may have a significant adverse effect on the environment.

**DESCRIPTION OF THE ACTIVITY:**

The purpose of this activity is for the Contra Costa County Flood Control and Water Conservation District (District) to issue a Flood Control Permit (FCP625-15) to Merlone Geier Partners (developer) for construction of a paved trail and to enter into a license agreement with the City of Pleasant Hill (City) for use and maintenance of the trail.


The developer was conditioned by the City of Pleasant Hill to construct a new trail along Grayson Creek during redevelopment of the Diablo Valley Plaza Commercial Center. The new paved trail will be partially constructed in the District's right-of-way on the west side of Grayson Creek approximately 10-feet to the west of the District's existing gravel access road. The new trail will become the new access road for the District. A split rail fence will be installed between the channel and the paved trail that will have openings to facilitate District maintenance access.

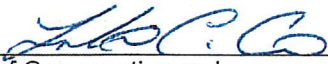
The District and the City will enter into a license agreement for joint use to allow the City to have and maintain a public trail within the District's right-of-way. As a condition of the license agreement, the City will accept liability and indemnify the District for the public use of the trail. The agreement will also outline the City's maintenance responsibility for the trail improvements. The proposed improvements are not expected to impede the District's maintenance ability; however, the District will require the removal or relocation of improvements if they interfere with major operations.

This CEQA documentation covers the issuance of FCP625-15, the license agreement, and any associated real property transactions, including right-of-way, only. The City or the developer is responsible for any other necessary environmental compliance for the redevelopment project including but not limited to CEQA compliance and obtaining any applicable County, City, or regulatory permits for the project.

**LOCATION:**

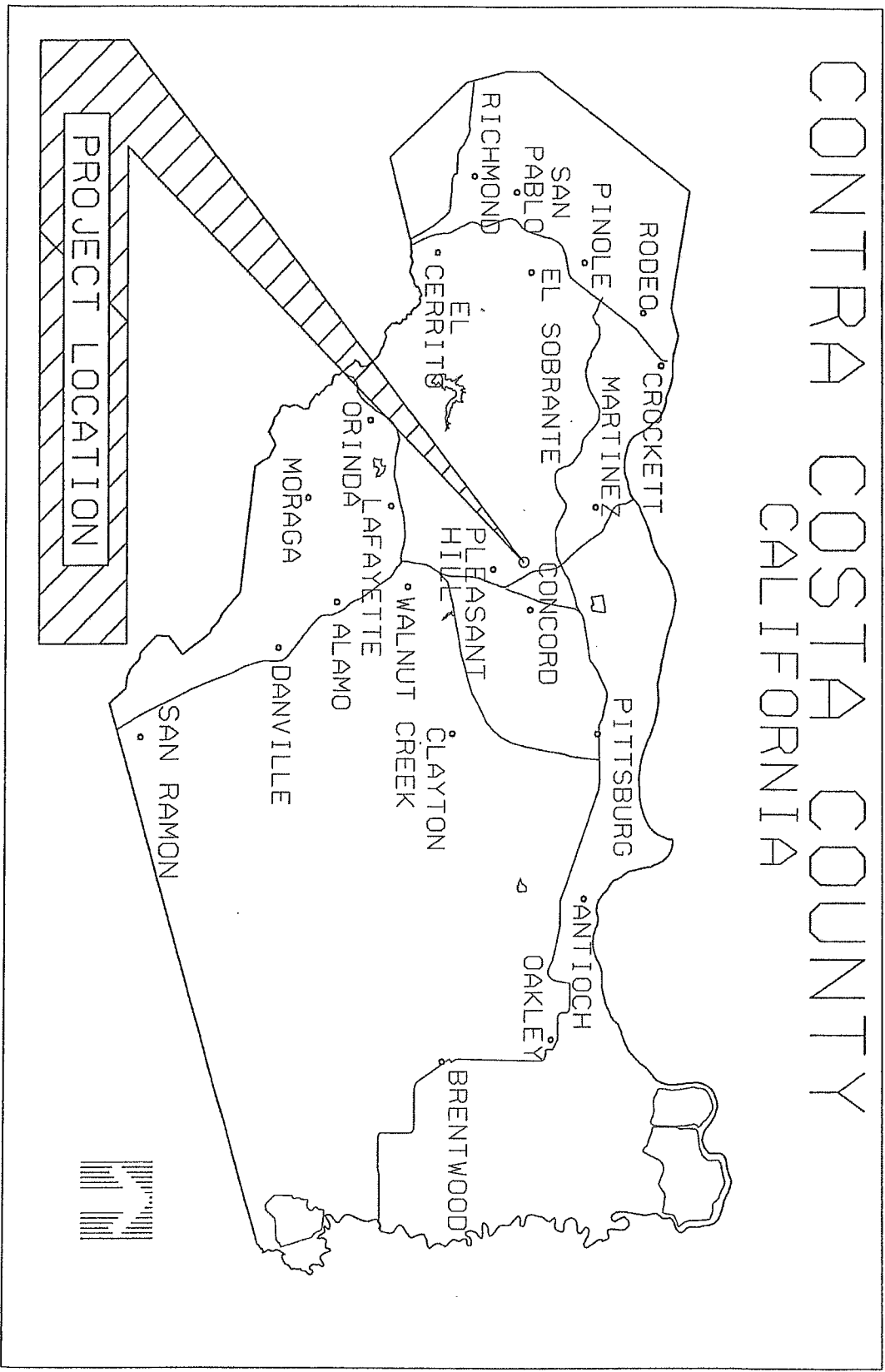
The project is located in the City of Pleasant Hill between Chilpancingo Parkway and Golf Club Road. (Figures 1 – 2)

REVIEWED BY:  DATE: 02/10/16  
Leigh Chavez, Division Manager  
Environmental Services  
Contra Costa County Public Works Department

APPROVED BY:  DATE: 2-29-16  
Dept. of Conservation and  
Development Representative

AB:  
\\PW-DATA\grpdata\engsv\ENVIRO\Flood Control\Grayson Creek Trail FCP LAID3\Final Trail on Grayson DE.doc  
Form Updated: Jan. 2015

# CONTRA COSTA COUNTY CALIFORNIA



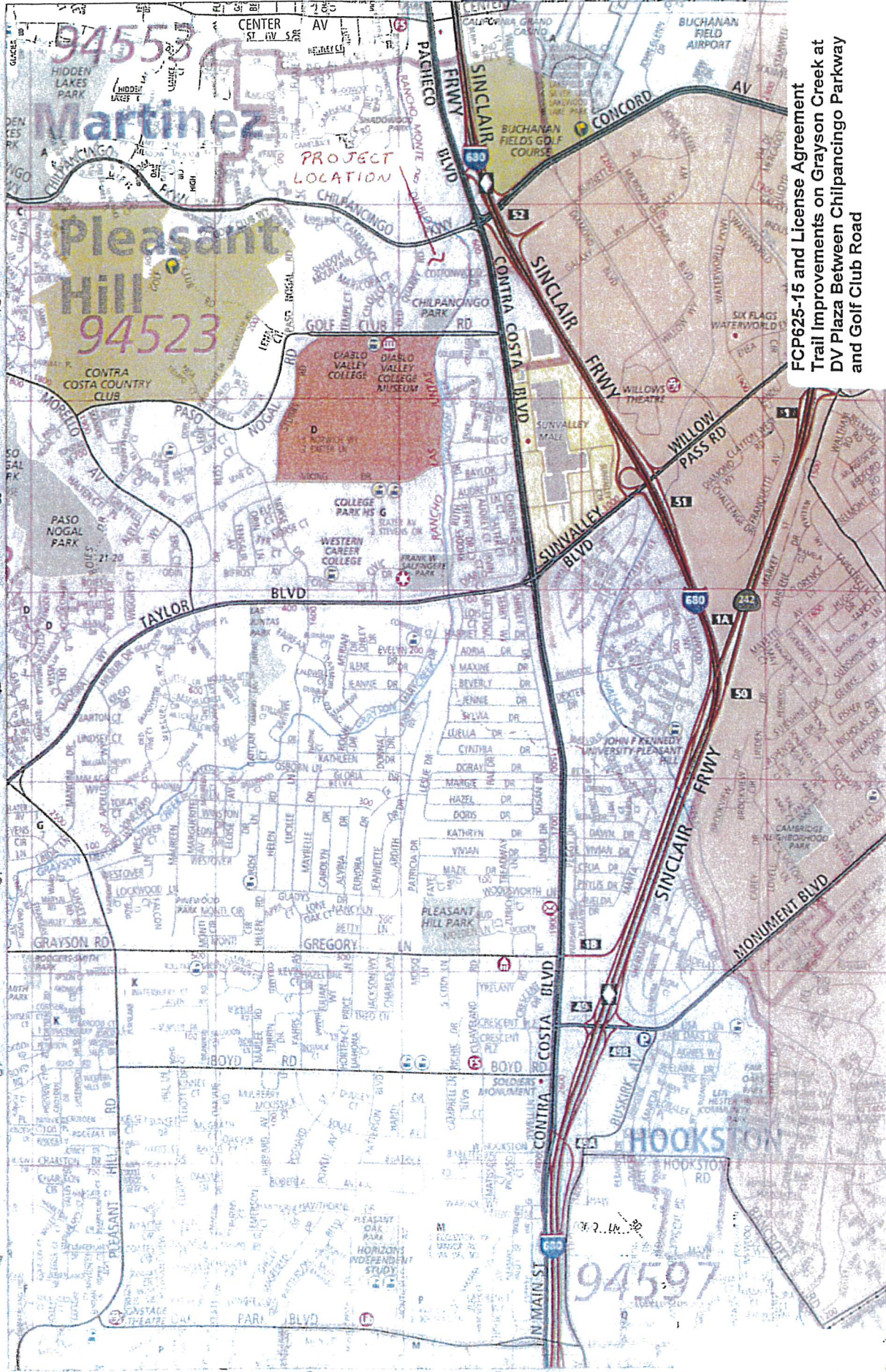
## LOCATION MAP

NO SCALE

FCP625-15 and License Agreement  
Trail Improvements on Grayson Creek at  
DV Plaza Between Chilpancingo Parkway  
and Golf Club Road

Figure 1





FCP625-15 and License Agreement  
 Trail Improvements on Grayson Creek at  
 DV Implants Between Chilpancingo Parkway  
 and Golf Club Road

Figure 2

CONTRA COSTA

SEE 591 MAP

RAND McNALLY



Contra  
Costa  
County

To: Board of Supervisors  
From: Keith Freitas, Airports Director  
Date: September 22, 2020

Subject: Use of the Mariposa Energy Project Community Benefits Fund for Infrastructure Analysis at Byron Airport

---

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Director of Airports, or designee, to use \$43,400 of the Mariposa Energy Project Community Benefits Fund for an analysis of the water, sanitary and sewer systems at Byron Airport and costs associated with upgrading those systems, as recommended by the Airport Committee.

**FISCAL IMPACT:**

Pursuant to an action of the Board of Supervisors on December 14, 2010, the Mariposa Energy Project Community Benefits Fund (Fund) was established for the purpose of providing a funding source for projects benefiting Byron Airport. If the action proposed by this board order is taken, \$232,696 will remain in the Fund. The proposed action will have no impact on the General Fund.

**BACKGROUND:**

**Establishment of the Fund**

The County is a party to the Mariposa Energy Project Cooperation Agreement dated December 14, 2010, through which the Fund was established with an \$800,000 contribution by Mariposa Energy, LLC. The cooperation agreement specifically states that the funds are to be used for County programs that are recommended by the District III Supervisor and approved by the Board of Supervisors. Through a board order approved December 14, 2010, the Board of Supervisors determined that the Fund is to be used for projects intended to benefit Byron Airport.

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APPROVE
  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR
  RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
 Candace Andersen, District II Supervisor  
 Diane Burgis, District III Supervisor  
 Karen Mitchoff, District IV Supervisor  
 Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Stacey M. Boyd, Deputy

Contact: Beth Lee  
925-681-4200

cc:



## BACKGROUND: (CONT'D)

### Airport Infrastructure Analysis

Byron Airport is located in a rural part of Contra Costa County. The airport uses a septic system for sewage treatment and well water as its source of potable water. In order to carry out the Byron Airport Master Plan, which was approved in 2005, and support the attendant growth in aviation and aviation-related land uses, it is expected that the water and sanitary/sewer systems will need to be upgraded.

The subject of this board order is the proposed use of \$43,400 of the Fund to engage a consulting firm, Kimley Horn, to perform an analysis of the existing water and sanitary/sewer systems. The purpose of the study is to determine (i) how much growth the existing water and sanitary/sewer systems can support, (ii) what the County can do to improve the existing systems, and (iii) the expected cost of any improvements. The analysis is expected to include an assessment not only of the drinking water needs associated with the growth of commercial operations at the airport, but the water needs associated with providing an adequate fire safety system at the airport.

The use of \$43,400 of the Fund for the proposed purpose was approved by the Airport Committee on August 12, 2020.

### Historical Use of Fund

To date, the Board of Supervisors has approved the following uses of the Fund:

- \$19,634 for the design and engineering of pavement upgrades and the preparation of a utility analysis.
- \$349,270 for a General Plan amendment, including an update to the Airport Land Use Compatibility Plan, a water supply assessment, and a CEQA analysis for the addition of a 11.7-acre parcel to the planning program.
- \$50,000 to prepare National Environmental Protection Act (NEPA) documentation to support a request to the FAA for certain property to be released for non-aeronautical use.
- \$105,000 to purchase and install an Aircraft Rescue and Fire Fighting (ARFF) storage garage.

### CONSEQUENCE OF NEGATIVE ACTION:

Not performing an infrastructure analysis at Byron Airport could result in the development opportunities contemplated by the Byron Airport Master Plan to not be realized. Failing to implement the Byron Airport Master Plan would result in a reduction of revenue and services at the Byron Airport.



Contra  
Costa  
County

To: Contra Costa County Flood Control District Board of Supervisors  
From: Brian M. Balbas, Public Works Director/Chief Engineer  
Date: September 22, 2020

Subject: Creek and Channel Safety Awareness Month and its Associated Program, Countywide. Project No. 7520-6B8311

---

**RECOMMENDATION(S):**

ADOPT Resolution No. 2020/247 declaring October 2020 as Creek and Channel Safety Awareness Month; and,

ACCEPT the following status report from the Public Works Department and the Contra Costa County Flood Control and Water Conservation District (FC District) on the Creek and Channel Safety Awareness Program (CCSAP); and,

DIRECT the Public Works Department and the FC District to continue with implementation and the annual campaign of a Countywide sustainable CCSAP, including a follow-up report to this Board in one year.

**FISCAL IMPACT:**

Annual notices, outreach, and maintenance of safety features for this year is estimated to cost \$70,000 and will be funded by Flood Control Zone 3B.

---

APPROVE

OTHER

RECOMMENDATION OF CNTY ADMINISTRATOR

RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Stacey M. Boyd, Deputy

Contact: Michelle Cordis, (925) 313-2381

## BACKGROUND:

On March 1, 2011, the Board of Supervisors directed the FC District to develop a sustainable and impactful outreach program to promote creek and channel safety throughout the County, after the drowning of two high school students in the Walnut Creek channel. In response, the FC District formed a CCSAP team that developed a strategy to achieve this goal.

On October 4, 2011, the Board declared October 2011 as the first Creek and Channel Safety Awareness Month, accepted the status report from the FC District on the CCSAP, approved the implementation plan, and directed the FC District to continue with implementation and initiation of an annual campaign of a sustainable CCSAP, including a follow-up report to the Board in one year.

Since then, the Board of Supervisors received and approved a status report on the Annual CCSAP and declared October as Creek and Channel Safety Awareness Month in the years 2012 through 2019. The Board of Supervisors also directed the FC District to continue with implementation and the annual campaign of a Countywide sustainable CCSAP, including a follow-up report to the Board in one year.

This past year, we refreshed the warning stencils and signs in our facilities, completed the annual outreach to schools in September, and worked with Walnut Creek Intermediate School to put on our fifth annual Creek and Channel Safety Event. The annual event involved working with the leadership class to help develop and implement events for students that would raise student awareness of the “Stay Out, Stay Alive!” campaign. The highly successful program engaged hundreds of students in such activities as a poster competition, sharing of watershed information, distribution of “Stay Out, Stay Alive!” bracelets, and equipment showcased from Contra Costa Fire Protection District’s Swiftwater Rescue personnel. As in the past, several student posters were laminated and placed in prominent locations in downtown Walnut Creek to communicate their safety message through the winter. The FC District also had an information table at Las Lomas High School’s Wellness Fair and continued to share creek and safety information in April. This past summer, we also secured fences and added student posters to locations along flood control facilities in Danville and Lafayette, in coordination with those Cities in response to people entering the channels to cool off during the hot weather.

The Chief Engineer, FC District, recommends that the Board declare October 2020 as Creek and Channel Safety Awareness Month, accept the above report, and direct the Public Works Department and FC District to continue with implementation and the annual campaign of a Countywide sustainable CCSAP, including a follow-up report to this Board in one year.

## CONSEQUENCE OF NEGATIVE ACTION:

If this Resolution is not adopted, members of the public may not receive important information about creek and channel safety.

## CHILDREN'S IMPACT STATEMENT:

The FC District will continue to work with the schools and youth-based groups within the County to educate children about safety regarding creeks and flood control channels.

## AGENDA ATTACHMENTS

Resolution No. 2020/247

## MINUTES ATTACHMENTS

Signed: Resolution No. 2020/247

**THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA**  
**and for Special Districts, Agencies and Authorities Governed by the Board**

Adopted this Resolution on 09/22/2020 by the following vote:

		<b>John Gioia</b>
		<b>Candace Andersen</b>
<b>AYE:</b>	<input type="text" value="5"/>	<b>Diane Burgis</b>
		<b>Karen Mitchoff</b>
		<b>Federal D. Glover</b>
<b>NO:</b>	<input type="text"/>	
<b>ABSENT:</b>	<input type="text"/>	
<b>ABSTAIN:</b>	<input type="text"/>	
<b>RECUSE:</b>	<input type="text"/>	



**Resolution No. 2020/247**

In The Matter Of: Declaring October 2020 as Creek and Channel Safety Awareness Month, Countywide.

WHEREAS, various regional flood control channels were constructed in Contra Costa County to efficiently drain stormwater and runoff from within the cities and towns; and

WHEREAS, in April 2010, a family lost a husband and son in the rain-swollen Walnut Creek Channel; and

WHEREAS, in February 2011, two young men drowned in the same channel; and

WHEREAS, on March 1, 2011, the Board of Supervisors directed the County Public Works Department and Contra Costa County Flood Control and Water Conservation District to pursue a sustainable outreach program to educate the public on the benefits and dangers of creeks and channels; and

WHEREAS, continued education of the public about creeks and channels has been determined as the best way to keep citizens safe and avoid future tragedies; and

WHEREAS, the Creek and Channel Safety Awareness Program is now being implemented Countywide with an annual declaration of October as Creek and Channel Safety Awareness Month to remind the public of the Program.

NOW, THEREFORE, BE IT RESOLVED that the Contra Costa County Board of Supervisors hereby declares October 2020 as Creek and Channel Safety Awareness Month encouraging the public to be informed about the benefits and dangers of creeks and channels throughout Contra Costa County.

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: Michelle Cordis, (925) 313-2381**

**ATTESTED: September 22, 2020**

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

By: Stacey M. Boyd, Deputy

**cc:** Allison Knapp, Deputy Chief Engineer, Carrie Ricci, Deputy Public Works Director, Kelly Kalfsbeek, Administrative Services, Tim Jensen, Flood Control, Michelle Cordis, Flood Control, Patrick Melgar, Flood Control, Catherine Windham, Flood Control

**THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA**

**and for Special Districts, Agencies and Authorities Governed by the Board**

Adopted this Resolution on 09/22/2020 by the following vote:

**John Gioia**  
**Candace Andersen**  
**Diane Burgis**  
**Karen Mitchoff**  
**Federal D. Glover**

**AYE:**  5

**NO:**

**ABSENT:**

**ABSTAIN:**

**RECUSE:**



**Resolution No. 2020/247**

In The Matter Of: Declaring October 2020 as Creek and Channel Safety Awareness Month, Countywide.

WHEREAS, various regional flood control channels were constructed in Contra Costa County to efficiently drain stormwater and runoff from within the cities and towns; and

WHEREAS, in April 2010, a family lost a husband and son in the rain-swollen Walnut Creek Channel; and

WHEREAS, in February 2011, two young men drowned in the same channel; and

WHEREAS, on March 1, 2011, the Board of Supervisors directed the County Public Works Department and Contra Costa County Flood Control and Water Conservation District to pursue a sustainable outreach program to educate the public on the benefits and dangers of creeks and channels; and

WHEREAS, continued education of the public about creeks and channels has been determined as the best way to keep citizens safe and avoid future tragedies; and

WHEREAS, the Creek and Channel Safety Awareness Program is now being implemented Countywide with an annual declaration of October as Creek and Channel Safety Awareness Month to remind the public of the Program.

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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: September 22, 2020**

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

*Stacey M. Boyd*  
By: Stacey M. Boyd, Deputy

Contact: Michelle Cordis, (925) 313-2381

cc: Allison Knapp, Deputy Chief Engineer, Carrie Ricci, Deputy Public Works Director, Kelly Kalfsbeek, Administrative Services, Tim Jensen, Flood Control, Michelle Cordis, Flood Control, Patrick Melgar, Flood Control, Catherine Windham, Flood Control





**Contra  
Costa  
County**

To: Board of Supervisors  
From: Keith Freitas, Airports Director  
Date: September 22, 2020

Subject: APPROVE and AUTHORIZE the Director of Airports, or designee, to execute a hangar rental agreement with Buchanan Field Airport Hangar tenant

---

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Director of Airports, or designee, to execute a month-to-month hangar rental agreement with Eight One Whiskey, LLC for a south-facing shade hangar at Buchanan Field Airport effective August 10, 2020 in the monthly amount of \$140.00, Pacheco area.

**FISCAL IMPACT:**

The Airport Enterprise Fund will realize \$1,680.00 annually.

**BACKGROUND:**

On September 1, 1970, Buchanan Airport Hangar Company entered into a 30-year lease with Contra Costa County for the construction of seventy-five (75) hangars and eighteen (18) aircraft shelters/shade hangars at Buchanan Field Airport. In 1977 Buchanan Airport Hangar Company amended their lease to allow for the construction of another 30-year lease with Contra Costa County for the construction of seventeen (17) additional hangars. Buchanan Airport Hangar Company was responsible for the maintenance and property management of the property during the lease period.

On September 1, 2000, the ninety-three

---

APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Stacey M. Boyd, Deputy

Contact: Beth Lee  
925-681-4200

cc:

BACKGROUND: (CONT'D)

(93) t- and shade hangars at Buchanan Field reverted to the County ownership pursuant to the terms of the above lease.

On November 14, 2006, the Contra Costa County Board of Supervisors approved the form of the T-Hangar and Shade Hangar Rental Agreement for use with renting the County's t-hangars, shade hangars, medium hangars, and executive hangars at Buchanan Field Airport.

On February 16, 2007, the additional seventeen (17) hangars at Buchanan Field reverted back to the County pursuant to the above referenced lease. This row included six (6) large hangars which were not covered by the approved T-Hangar and Shade Hangar Rental Agreement.

On February 23, 2007, Contra Costa County Board of Supervisors approved the new Large Hangar Rental Agreement for use with the large East Ramp Hangars.

On January 16, 2009, Contra Costa County Board of Supervisors approved an amendment to the T-Hangar and Shade Hangar Rental Agreement and the Large Hangar Rental Agreement (combined "Hangar Rental Agreements") which removed the Aircraft Physical Damage Insurance requirement. The Hangar Rental Agreements are the current forms in use for rental of all the County hangars at Buchanan Field Airport.

CONSEQUENCE OF NEGATIVE ACTION:

A negative action will cause a loss of revenue to the Airport Enterprise Fund.

ATTACHMENTS

B-13 Hangar Agmt

## CONTRA COSTA COUNTY - BUCHANAN FIELD AIRPORT

### T-HANGAR AND SHADE HANGAR RENTAL AGREEMENT

1. **PARTIES:** August 10, 2020 ("Effective Date"), the COUNTY OF CONTRA COSTA, a political subdivision of the State of California ("Airport"), Eight One Whiskey, LLC ("Renter"), hereby mutually agree and promise as follows:
2. **RENTER AND AIRCRAFT INFORMATION:** Simultaneous with the execution of this T-Hangar and Shade Hangar Rental Agreement ("**Rental Agreement**") by Renter, Renter shall complete the Renter and Aircraft Information Form. A completed copy of the Renter and Aircraft Information Form is attached hereto as Exhibit "A" and incorporated herein. Renter must also provide to Airport at that time, for inspection and copying, (1) the original current Aircraft Registration or, if the aircraft described in Exhibit A is under construction, the plans for and proof of ownership of such aircraft; and (2) the insurance information required by Section 16 below.
3. **PURPOSE:** The purpose of this Rental Agreement is to provide for the rental of a T-Hangar or Shade Hangar space at the Contra Costa County - Buchanan Field Airport for the storage of the aircraft described in the Renter and Aircraft Information Form ("**Renter's Aircraft**").
4. **PREMISES:** For and in consideration of the rents and faithful performance by Renter of the terms and conditions set forth herein, Airport hereby rents to Renter and Renter hereby rents from Airport that T-Hangar or Shade Hangar shown as # B-13 on the T-Hangar and Shade Hangar Site Plan, attached hereto as Exhibit B and incorporated herein. This T-Hangar or Shade Hangar is part of the T-Hangar and Shade Hangar Site ("**T-Hangar Site**") and shall hereinafter be described as the "**T-Hangar.**"

Renter has inspected the T-Hangar and hereby accepts the T-Hangar in its present condition, as is, without any obligation on the part of Airport to make any alterations, improvements, or repairs in or about the T-Hangar.

5. **USE:** The T-Hangar shall be exclusively by Renter for the storage of Renter's Aircraft. In addition to the storage of Renter's Aircraft, Renter may use the T-Hangar for (1) the homebuilding, restoration and/or maintenance of Renter's Aircraft, provided that such homebuilding, restoration and/or maintenance is performed by Renter only and in conformance with all applicable statutes, ordinances, resolutions, regulations, orders, circulars (including but not limited to FAA Advisory Circular 20-27) and policies now in existence or adopted from time to time by the United States, the State of California, the County of Contra Costa and other government agencies with jurisdiction over Buchanan Field Airport; (2) the storage of and materials directly

related to the storage, construction of homebuilt planes homebuilding, restoration, and/or maintenance of Renter's Aircraft; (3) the storage of one boat, or one recreational vehicle, or one motorcycle, or one automobile, provided that Renter first provides to Airport proof of Renter's ownership and original registration of any stored boat or vehicle, for inspection and copying; and/or (4) the storage of comfort items (such as a couch, small refrigerator, etc.) that the Director of Airports, in his sole discretion, determines will not impede the use of the hangar for the storage of Renter's Aircraft, and are not prohibited by applicable building and fire codes. The T-Hangar shall not be used for any purpose not expressly set forth in this Section 5. Use.

The use of all or a portion of the T-Hangar for the storage of aircraft not owned or leased by Renter is prohibited. ("Aircraft not owned or leased by Renter" means any aircraft in which Renter does not have an ownership interest or which is not directly leased to Renter). Renter shall present proof of said ownership interest or lease to Airport upon request in addition to that information provided in Exhibit A.

If Renter's Aircraft is or becomes non-operational, it may be stored in the T-Hangar only if it is being homebuilt or restored by Renter. Prior to the commencement of any such homebuilding or restoration, Renter shall provide to Airport (1) a copy of the purchase agreement or (2) a valid federal registration number. If Renter's Aircraft is not registered as of the Effective Date, upon completion of construction, Renter shall register and apply for an airworthiness certificate for Renter's Aircraft in accordance with all applicable federal statutes and regulations and provide the original registration and certification to Airport, for inspection and copying, immediately upon receipt by Renter. On or before January 1 of each year, if the homebuilding or restoration has not been completed, Renter shall provide a written annual report to the Director of Airports that details the homebuilding or restoration activity performed, work still required to be completed and an estimate of time of completion.

6. **TERM:** This Rental Agreement shall be from month to month commencing **August 10, 2020**, and shall continue until terminated. This Rental Agreement may be terminated by any party upon thirty (30) days written notice to the other party.

7. **RENT:**

A. **Monthly Rent and Additional Rent.** Renter shall pay \$ **140.00** in rent per month ("**Monthly Rent**") due and payable in advance on the first day of each calendar month, beginning on the commencement date of this Rental Agreement. Unless directed to do otherwise by Airport, Renter shall pay rent only in cash or by personal check, certified check, or money order. If the term of this Rental Agreement begins on a day other than the first day of the month, the Monthly Rent stated above for the first month shall be prorated



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Keith Freitas, Airports Director  
Date: September 22, 2020

Subject: APPROVE and AUTHORIZE the Director of Airports, or designee, to execute a hangar rental agreement with Buchanan Field Airport Hangar tenant

---

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Director of Airports, or designee, to execute a month-to-month hangar rental agreement with Christopher Kang for a north-facing T-hangar at Buchanan Field Airport effective September 8, 2020 in the monthly amount of \$370.00, Pacheco area.

**FISCAL IMPACT:**

The Airport Enterprise Fund will realize \$4,440.00 annually.

**BACKGROUND:**

On September 1, 1970, Buchanan Airport Hangar Company entered into a 30-year lease with Contra Costa County for the construction of seventy-five (75) hangars and eighteen (18) aircraft shelters/shade hangars at Buchanan Field Airport. In 1977 Buchanan Airport Hangar Company amended their lease to allow for the construction of another 30-year lease with Contra Costa County for the construction of seventeen (17) additional hangars. Buchanan Airport Hangar Company was responsible for the maintenance and property management of the property during the lease period.

On

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APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Stacey M. Boyd, Deputy

Contact: Beth Lee  
925-681-4200

cc:

BACKGROUND: (CONT'D)

September 1, 2000, the ninety-three (93) t- and shade hangars at Buchanan Field reverted to the County ownership pursuant to the terms of the above lease.

On November 14, 2006, the Contra Costa County Board of Supervisors approved the form of the T-Hangar and Shade Hangar Rental Agreement for use with renting the County's t-hangars, shade hangars, medium hangars, and executive hangars at Buchanan Field Airport.

On February 16, 2007, the additional seventeen (17) hangars at Buchanan Field reverted back to the County pursuant to the above referenced lease. This row included six (6) large hangars which were not covered by the approved T-Hangar and Shade Hangar Rental Agreement.

On February 23, 2007, Contra Costa County Board of Supervisors approved the new Large Hangar Rental Agreement for use with the large East Ramp Hangars.

On January 16, 2009, Contra Costa County Board of Supervisors approved an amendment to the T-Hangar and Shade Hangar Rental Agreement and the Large Hangar Rental Agreement (combined "Hangar Rental Agreements") which removed the Aircraft Physical Damage Insurance requirement. The Hangar Rental Agreements are the current forms in use for rental of all the County hangars at Buchanan Field Airport.

CONSEQUENCE OF NEGATIVE ACTION:

A negative action will cause a loss of revenue to the Airport Enterprise Fund.

ATTACHMENTS

C-5 Hangar Agmt

## CONTRA COSTA COUNTY - BUCHANAN FIELD AIRPORT

### T-HANGAR AND SHADE HANGAR RENTAL AGREEMENT

1. **PARTIES:** September 8, 2020 ("Effective Date"), the COUNTY OF CONTRA COSTA, a political subdivision of the State of California ("Airport"), Christopher Kang ("Renter"), hereby mutually agree and promise as follows:
  
2. **RENTER AND AIRCRAFT INFORMATION:** Simultaneous with the execution of this T-Hangar and Shade Hangar Rental Agreement ("**Rental Agreement**") by Renter, Renter shall complete the Renter and Aircraft Information Form. A completed copy of the Renter and Aircraft Information Form is attached hereto as Exhibit "A" and incorporated herein. Renter must also provide to Airport at that time, for inspection and copying, (1) the original current Aircraft Registration or, if the aircraft described in Exhibit A is under construction, the plans for and proof of ownership of such aircraft; and (2) the insurance information required by Section 16 below.
  
3. **PURPOSE:** The purpose of this Rental Agreement is to provide for the rental of a T-Hangar or Shade Hangar space at the Contra Costa County - Buchanan Field Airport for the storage of the aircraft described in the Renter and Aircraft Information Form ("**Renter's Aircraft**").
  
4. **PREMISES:** For and in consideration of the rents and faithful performance by Renter of the terms and conditions set forth herein, Airport hereby rents to Renter and Renter hereby rents from Airport that T-Hangar or Shade Hangar shown as # C-5 on the T-Hangar and Shade Hangar Site Plan, attached hereto as Exhibit B and incorporated herein. This T-Hangar or Shade Hangar is part of the T-Hangar and Shade Hangar Site ("**T-Hangar Site**") and shall hereinafter be described as the "**T-Hangar**."
  

Renter has inspected the T-Hangar and hereby accepts the T-Hangar in its present condition, as is, without any obligation on the part of Airport to make any alterations, improvements, or repairs in or about the T-Hangar.

  
5. **USE:** The T-Hangar shall be exclusively by Renter for the storage of Renter's Aircraft. In addition to the storage of Renter's Aircraft, Renter may use the T-Hangar for (1) the homebuilding, restoration and/or maintenance of Renter's Aircraft, provided that such homebuilding, restoration and/or maintenance is performed by Renter only and in conformance with all applicable statutes, ordinances, resolutions, regulations, orders, circulars (including but not limited to FAA Advisory Circular 20-27) and policies now in existence or adopted from time to time by the United States, the State of California, the County of Contra Costa and other government agencies with jurisdiction over Buchanan Field Airport; (2) the storage of and materials directly

related to the storage, construction of homebuilt planes homebuilding, restoration, and/or maintenance of Renter's Aircraft; (3) the storage of one boat, or one recreational vehicle, or one motorcycle, or one automobile, provided that Renter first provides to Airport proof of Renter's ownership and original registration of any stored boat or vehicle, for inspection and copying; and/or (4) the storage of comfort items (such as a couch, small refrigerator, etc.) that the Director of Airports, in his sole discretion, determines will not impede the use of the hangar for the storage of Renter's Aircraft, and are not prohibited by applicable building and fire codes. The T-Hangar shall not be used for any purpose not expressly set forth in this Section 5. Use.

The use of all or a portion of the T-Hangar for the storage of aircraft not owned or leased by Renter is prohibited. ("Aircraft not owned or leased by Renter" means any aircraft in which Renter does not have an ownership interest or which is not directly leased to Renter). Renter shall present proof of said ownership interest or lease to Airport upon request in addition to that information provided in Exhibit A.

If Renter's Aircraft is or becomes non-operational, it may be stored in the T-Hangar only if it is being homebuilt or restored by Renter. Prior to the commencement of any such homebuilding or restoration, Renter shall provide to Airport (1) a copy of the purchase agreement or (2) a valid federal registration number. If Renter's Aircraft is not registered as of the Effective Date, upon completion of construction, Renter shall register and apply for an airworthiness certificate for Renter's Aircraft in accordance with all applicable federal statutes and regulations and provide the original registration and certification to Airport, for inspection and copying, immediately upon receipt by Renter. On or before January 1 of each year, if the homebuilding or restoration has not been completed, Renter shall provide a written annual report to the Director of Airports that details the homebuilding or restoration activity performed, work still required to be completed and an estimate of time of completion.

6. **TERM:** This Rental Agreement shall be from month to month commencing **September 8, 2020**, and shall continue until terminated. This Rental Agreement may be terminated by any party upon thirty (30) days written notice to the other party.

7. **RENT:**

A. **Monthly Rent and Additional Rent.** Renter shall pay \$ **370.00** in rent per month ("**Monthly Rent**") due and payable in advance on the first day of each calendar month, beginning on the commencement date of this Rental Agreement. Unless directed to do otherwise by Airport, Renter shall pay rent only in cash or by personal check, certified check, or money order. If the term of this Rental Agreement begins on a day other than the first day of the month, the Monthly Rent stated above for the first month shall be prorated





**Contra  
Costa  
County**

To: Board of Supervisors  
From: Karen Caoile, Director of Risk Management  
Date: September 22, 2020

Subject: Final Settlement of Claim, Mitchell Lemay v. Contra Costa County

---

**RECOMMENDATION(S):**

RECEIVE this report concerning the final settlement of Mitchell Lemay and AUTHORIZE payment from the Workers' Compensation Internal Service Fund in an amount not to exceed \$300,000, less permanent disability advances.

**FISCAL IMPACT:**

Workers' Compensation Internal Service Fund payment of \$300,000, less permanent disability advances.

**BACKGROUND:**

Attorney Mark A. Cartier, defense counsel for the County, has advised the County Administrator that within authorization an agreement has been reached settling the workers' compensation claim of Mitchell Lemay vs. Contra Costa County. The Board's September 8, 2020, closed session vote was: Supervisors Gioia, Andersen, Burgis, Mitchoff and Glover - Yes. This action is taken so that the terms of this final settlement and the earlier September 8, 2020, closed session vote of this Board authorizing its negotiated settlement are known publicly.

**CONSEQUENCE OF NEGATIVE ACTION:**

Case will not be settled.

APPROVE

OTHER

RECOMMENDATION OF CNTY ADMINISTRATOR

RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Stacey M. Boyd, Deputy

Contact: Karen Caoile (925)  
335-1400

cc:





**Contra  
Costa  
County**

To: Board of Supervisors  
From: Karen Caoile, Director of Risk Management  
Date: September 22, 2020

Subject: Final Settlement of Claim, Kevin Prescott v. Contra Costa County

---

**RECOMMENDATION(S):**

RECEIVE this report concerning the final settlement of Kevin Prescott and AUTHORIZE payment from the Workers' Compensation Internal Service Fund in an amount not to exceed \$250,000, less permanent disability advances.

**FISCAL IMPACT:**

Workers' Compensation Internal Service Fund payment of \$250,000, less permanent disability advances.

**BACKGROUND:**

Attorney Mark A. Cartier, defense counsel for the County, has advised the County Administrator that within authorization an agreement has been reached settling the workers' compensation claim of Kevin Prescott vs. Contra Costa County. The Board's September 8, 2020, closed session vote was: Supervisors Gioia, Andersen, Burgis, Mitchoff and Glover - Yes. This action is taken so that the terms of this final settlement and the earlier September 8, 2020, closed session vote of this Board authorizing its negotiated settlement are known publicly.

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APPROVE
  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR
  RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
 Candace Andersen, District II Supervisor  
 Diane Burgis, District III Supervisor  
 Karen Mitchoff, District IV Supervisor  
 Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Stacey M. Boyd, Deputy

Contact: Karen Caoile (925)  
335-1400

cc:

CONSEQUENCE OF NEGATIVE ACTION:

Case will not be settled.



**Contra  
Costa  
County**

To: Board of Supervisors  
From: David Twa, County Administrator  
Date: September 22, 2020

Subject: Claims

---

**RECOMMENDATION(S):**

DENY claims filed by John W. Bruns, et al., Kyle Combs, and Daronta T. Lewis.

**FISCAL IMPACT:**

No fiscal impact.

**BACKGROUND:**

John W. Bruns, et al: Personal injury claim for damages arising out of bicycle accident in an amount to exceed \$10,000. Kyle Combs: Personal injury claim for injuries due to exposure to hazardous material in an amount not listed. Daronta T. Lewis: Property and personal injury claim for violation of civil rights in an amount to exceed \$55,000.

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APPROVE

OTHER

RECOMMENDATION OF CNTY ADMINISTRATOR

RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Stacey M. Boyd, Deputy

Contact: Scott Selby  
925.335.1400

cc:



**Contra  
Costa  
County**

To: Board of Supervisors  
From: David Twa, County Administrator  
Date: September 22, 2020

Subject: ACCEPT Board members meeting reports for August 2020

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**RECOMMENDATION(S):**

ACCEPT Board members meeting reports for August 2020.

**FISCAL IMPACT:**

No fiscal impact.

**BACKGROUND:**

Government Code section 53232.3(d) requires that members of legislative bodies report on meetings attended for which there has been expense reimbursement (mileage, meals, lodging ex cetera). The attached reports were submitted by the Board of Supervisors members in satisfaction of this requirement. District V has nothing to report.

**CONSEQUENCE OF NEGATIVE ACTION:**

The Board of Supervisors will not be in compliance with Government Code 53232.3(d).

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APPROVE

OTHER

RECOMMENDATION OF CNTY ADMINISTRATOR

RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Stacey M. Boyd, Deputy

Contact: Joellen Bergamini  
925.335.1906

cc:

ATTACHMENTS

District IV August 2020  
Report

District III August 2020  
Report

District II August 2020 Report

**Supervisor Karen Mitchoff  
August 2020**

<b>DATE</b>	<b>MEETING NAME</b>	<b>LOCATION</b>	<b>PURPOSE</b>
08/04/20	Board of Supervisors Meeting	Martinez	Decisions on agenda items
08/11/20	Board of Supervisors Meeting	Martinez	Decisions on agenda items



**Supervisor Diane Burgis - August 2020 AB1234 R**

(Government Code Section 53232.3(d) requires that members legislative attended for which there has been expense reimbursement (mileage,

<b>Date</b>	<b>Meeting Name</b>	<b>Location</b>
3-Aug	CSAC Meeting	Web Meeting
3-Aug	Meeting with Environmental Health	Web Meeting
3-Aug	Meeting with County Administrator, David Twa	Via Phone
3-Aug	Meeting with Stand Together Contra Costa	Web Meeting
4-Aug	Board of Supervisors Meeting	Web Meeting
6-Aug	Meeting with Chief Broschard, Con Fire	Web Meeting
6-Aug	Meeting with Sustainability Coordinator of Contra Costa	Web Meeting
7-Aug	Delta Counties Coalition Meeting	Via Phone
7-Aug	Meeting with Public Works	Web Meeting
9-Aug	Census 2020 Caravan	Antioch
11-Aug	Board of Supervisors Meeting	Web Meeting
11-Aug	Meeting with Phillips 66 Refinery	Via Phone
12-Aug	Airport Committee Meeting	Web Meeting
12-Aug	LAFCO Meeting	Web Meeting
13-Aug	East Bay Regional Park District Wildfire Prevention Meeting	Web Meeting
13-Aug	Transplan Meeting	Web Meeting
13-Aug	State Route 4 Bypass Authority Meeting	Web Meeting
14-Aug	Meeting with Health Services	Via Phone
19-Aug	Meeting with Health Services	Via Phone
20-Aug	SCU Lightning Base Camp Tour	Pleasanton
21-Aug	Board of Supervisors Special Meeting	Web Meeting

\* Reimbursement may come from an agency other than Contra Costa County



## Supervisor Candace Andersen – Monthly Meeting Report *August 2020*

Date	Meeting	Location
3	CCHS Briefing	Phone conference
3-7	Daily Staff meeting	Zoom meeting
3	SWAT	Zoom Meeting
4	BOS meeting	Zoom meeting
5	CCHS Briefing	Phone conf
6	Constituent meeting	Zoom Meeting
7	CCHS Briefing	Phone conf
7	SR Mayors Conf	Zoom Meeting
10	TWIC	Zoom meeting
10-14	Daily Staff Meet	Zoom meeting
11	Board of Supervisors	Zoom Meeting
12	CCCERA	Zoom Meeting
12	LAFCO	Zoom Meeting
12	Juvenile Justice	Zoom Meeting
13	EBEDA	Zoom Meeting
13	COVID Ad-Hoc	Zoom Meeting
14	CCHS Briefing	Phone conf
17	CCHS Briefing	Phone conf.
17	Alamo Liaison	Zoom Meeting
17-21	Staff meeting daily	Zoom Meeting
17	Census Com	Zoom Meeting
19	CCHS Briefing	Phone Conf
20	CCCTA	Zoom Meeting
20	ABAG	Zoom Meeting
21	BOS Special Meeting	Zoom Meeting
24	CCHS Briefing	Phone Conf
24	Family & Human Services	Zoom Meeting
24-28	Staff meeting daily	Zoom meeting
26	CCHS Briefing	Phone Conf
26	CCCERA	Zoom meeting
26	JJCC Special Meeting	Zoom meeting
27	Covid Adhoc	Zoom meeting
31	CCHS Briefing	phone conf
31	CCC CAFR FY20	Zoom meeting
31	Staff meeting	Zoom meeting

**Supervisor Candace Andersen – Monthly Meeting Report *August 2020***



Contra  
Costa  
County

To: Board of Supervisors  
From: Diane Burgis, District III Supervisor  
Date: September 22, 2020

Subject: Disabled American Veterans Day 2020

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- 
- APPROVE  OTHER
  - RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE
- 

Action of Board On: **09/22/2020**  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: September 22, 2020

Contact: Dawn Morrow,  
316-9980

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

By: Joellen Bergamini, Deputy

cc:

ATTACHMENTS

Resolution  
2020/246

*The Board of Supervisors of  
Contra Costa County, California*

**In the matter of:**

**Resolution No. 2020/246**

**Honoring the 100th anniversary of Disabled American Veterans**

*Whereas, Disabled American Veterans (DAV) was founded by World War I veterans on September 25, 1920, and was chartered by an Act of Congress on June 17, 1932;*

*Whereas, in 2020, DAV celebrates 100 years of serving veterans of the Armed Forces, their families and survivors, and communities;*

*Whereas, DAV is dedicated to a single purpose: empowering veterans to lead high-quality lives with respect and dignity;*

*Whereas, DAV accomplishes this by ensuring veterans and their families have access to the full range of benefits available to them, by fighting for the interests of America's injured heroes, and by educating the public about the needs of veterans transitioning back to civilian life;*

*Whereas, DAV provides free, professional assistance to veterans and their families in obtaining benefits and services provided by the United States Department of Veterans Affairs and other agencies;*

*Whereas, DAV also provides outreach concerning its programs and services to the American people generally, and to disabled veterans and their families specifically;*

*Whereas, DAV represents the interests of disabled veterans, their families, their widowed spouses and their orphans before the federal government, as well as state and local governments;*

*Whereas, DAV has fought tirelessly for equal access to critical VA caregiver benefits and services for several disabled veterans of all generations, resulting in legislation to expand eligibility to those injured prior to September 11, 2001, as part of the VA MISSION Act; and*

*Whereas, DAV co-presents the National Disabled Veterans Winter Sports Clinic and National Disabled Veterans TEE Tournament; has organized the nationwide DAV Transportation Network to provide free transportation for veterans to VA medical appointments; operates an active Charitable Service Trust funding the needs of local providers assisting at-risk local veterans; has built an active volunteer corps offering thousands of hours of service to our veterans and communities; offers veterans, transitioning military members and spouses access to employers through its nationwide job fair program; provides emergency assistance to veterans in need through the DAV Disaster Relief Program; and operates the Jesse Brown Memorial Youth Scholarship program to contribute to the lives of young Americans;*

*Whereas, DAV Department of and the chapters across our state demonstrate their unending commitment to ill and injured veterans of all generations and conflicts;*

*Whereas, Contra Costa County is proud to honor the members of the Disabled American Veterans;*

*Now, Therefore, we do hereby proclaim September Twenty-Fifth in the year Twenty-Twenty as "Disabled American Veterans Day" and commend its observance to all citizens.*

*Contra Costa County Board of Supervisors*

\_\_\_\_\_  
**CANDACE ANDERSEN**  
Chair, District II Supervisor

\_\_\_\_\_  
**JOHN GIOIA**  
Chair, District I Supervisor

\_\_\_\_\_  
**DIANE BURGIS**  
District III Supervisor

\_\_\_\_\_  
**KAREN MITCHOFF**  
District IV Supervisor

\_\_\_\_\_  
**FEDERAL D. GLOVER**  
District V Supervisor

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: September 22, 2020

David J. Twa,

By: \_\_\_\_\_, Deputy





Contra  
Costa  
County

To: Board of Supervisors  
From: David Twa, County Administrator  
Date: September 22, 2020

Subject: RECOGNIZING THE CONTRIBUTIONS OF SENIOR MANAGEMENT ANALYST BARBARA RIVEIRA OF THE COUNTY ADMINISTRATOR'S OFFICE UPON HER RETIREMENT FROM COUNTY SERVICE

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**RECOMMENDATION(S):**

ADOPT Resolution No. 2020/251 recognizing the dedicated service of CAO Senior Management Analyst Barbara Riveira upon her retirement from County service.

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APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Joellen Bergamini, Deputy

Contact: Julie DiMaggio Enea  
(925) 655-2056

cc:

ATTACHMENTS

Resolution  
2020/251

*The Board of Supervisors of  
Contra Costa County, California*

In the matter of:

**Resolution No. 2020/251**

**RECOGNIZING THE CONTRIBUTIONS OF SENIOR MANAGEMENT ANALYST BARBARA RIVEIRA OF THE COUNTY ADMINISTRATOR'S OFFICE UPON HER RETIREMENT FROM COUNTY SERVICE**

WHEREAS, Barbara Riveira joined Contra Costa County in July 1999 as a Management Analyst III/Senior Management Analyst in the County Administrator's Office; and

WHEREAS until 2007, Barbara served as the sole staff analyst for the County Affirmative Action Program, a unique, vital and demanding position where she had responsibilities for contract compliance and complaint investigation; and where she helped to develop the County's Small Business Enterprise (SBE) and Outreach Program and the SBE Directory, and served as a valuable ambassador for those programs; and

WHEREAS in 2007, Barbara was assigned to the County Administrator's Budget Division where, during her tenure, she had executive office oversight of several municipal services departments including the County Library, Clerk-Recorder, Conservation and Development, Human Resources, Information Technology, County Counsel, and the former General Services; and

WHEREAS, in 2012 Barbara was instrumental in shepherding an update to the Countywide Take Home Vehicle Policy through the Internal Operations Committee and, ultimately, the Board of Supervisors including drafting staff reports and creating relevant forms; and

WHEREAS, Barbara garnered the trust of the County Administrator and members of the Board of Supervisor, allowing her staff Board Standing committees from time to time in lieu of Senior Deputy County Administrator staff; and

WHEREAS, Barbara devoted countless hours to help organize and present the Board of Supervisors' annual Martin Luther King and Cesar Chavez Commemorative Celebrations -- securing sponsors, arranging keynote speakers, food, entertainment, advertisements, and décor -- culminating in tributes that were both festive and meaningful; and

WHEREAS Barbara ably managed the grant and program budgets for the Contra Costa County's 2020 U.S. Census effort, organized and staffed the Board's Census Steering Committee and regional planning workshops, and was instrumental achieving the County's high self-reporting rate; and

WHEREAS, Barbara consistently provided excellent support to her colleagues and assigned departments, and approached new assignments with the same competence, enthusiasm and congeniality that has distinguished her as an outstanding County employee and a role model for her peers; and

WHEREAS, Barbara is a fabulous cook and generously shared her culinary talents with her very grateful colleagues, frequently providing delicious lunches for the entire staff; and

WHEREAS, Barbara is a treasured member of the County Administrator team, earning the friendship, admiration and respect of her colleagues, current and former; and

WHEREAS, Barbara will retire from County service on October 31, 2020, and it is appropriate to publicly recognize her professionalism and dedicated service;

NOW THEREFORE, BE IT RESOLVED that the Board of Supervisors does hereby thank with sincere appreciation and congratulate Barbara Riveira on her invaluable 21 years of service to the County of Contra Costa and its citizens, and wish her every happiness in her retirement.

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**CANDACE ANDERSEN**  
Chair, District II Supervisor

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**JOHN GIOIA**  
Chair, District I Supervisor

---

**DIANE BURGIS**  
District III Supervisor

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**KAREN MITCHOFF**

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**FEDERAL D. GLOVER**

District IV Supervisor

District V Supervisor

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: September 22, 2020

David J. Twa,

By: \_\_\_\_\_, Deputy



Contra  
Costa  
County

To: Board of Supervisors  
From: David Twa, County Administrator  
Date: September 22, 2020

Subject: RECOGNIZING COUNTY LIBRARIAN MELINDA CERVANTES ON HER RETIREMENT FROM COUNTY SERVICE

---

**RECOMMENDATION(S):**

ADOPT Resolution No. 2020/253 recognizing and honoring County Librarian Melinda Cervantes upon her retirement from County service.

---

APPROVE

OTHER

RECOMMENDATION OF CNTY ADMINISTRATOR

RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Joellen Bergamini, Deputy

Contact: Julie DiMaggio Enea (925)  
335-1077

cc:

ATTACHMENTS

Resolution  
2020/253

*The Board of Supervisors of  
Contra Costa County, California*

In the matter of:

**Resolution No. 2020/253**

**RECOGNIZING MELINDA S. CERVANTES ON THE OCCASION OF HER RETIREMENT FROM CONTRA COSTA COUNTY**

WHEREAS, Melinda S. Cervantes first served Contra Costa County as Deputy County Librarian from December 1999 through December 2002; and

WHEREAS, Melinda returned to Contra Costa County and has been County Librarian of the Contra Costa County Library since 2016; and

WHEREAS, under Melinda's leadership, library fines were eliminated, thus removing the single highest barrier to the use of libraries and library services; and

WHEREAS, under Melinda's oversight, numerous facility improvements have occurred creating vibrant community libraries including new building construction at the San Ramon, San Pablo, Brentwood, and El Sobrante libraries; and

WHEREAS, Melinda oversaw the launching of a new website and interactive online catalog providing users with a modern, streamlined and overall improved online experience; and

WHEREAS, other accomplishments achieved under Melinda's leadership include the drafting of a new strategic plan, the strengthening of the library's network security, and the introduction of new library card designs; and

WHEREAS, Melinda has been involved in local, state, and national library associations; maintaining relationships both within and outside county government that allowed her to be innovative and effective in her work; and

WHEREAS, Melinda garnered the respect of her subordinates and peers as a dynamic and compassionate leader always tapping in to the intelligence and creativity of staff; and

WHEREAS, Melinda exhibited unwavering dedication and service to the residents of Contra Costa County by championing personal and community engagement; and

WHEREAS, Melinda has successfully furthered the Contra Costa County Library's mission of bringing people and ideas together while supporting Contra Costa County mission, vision, and values.

NOW, THEREFORE, BE IT RESOVED that the Contra Costa County Board of Supervisors does hereby honor and congratulate Melinda S. Cervantes on the occasion of her retirement from Contra Costa County.

\_\_\_\_\_  
**CANDACE ANDERSEN**  
Chair, District II Supervisor

\_\_\_\_\_  
**JOHN GIOIA**  
Chair, District I Supervisor

\_\_\_\_\_  
**DIANE BURGIS**  
District III Supervisor

\_\_\_\_\_  
**KAREN MITCHOFF**  
District IV Supervisor

\_\_\_\_\_  
**FEDERAL D. GLOVER**  
District V Supervisor

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: September 22, 2020

David J. Twa,

By: \_\_\_\_\_, Deputy



Contra  
Costa  
County

To: Board of Supervisors  
From: Karen Mitchoff, District IV Supervisor  
Date: September 22, 2020

Subject: Recognizing Karen Laws for 34 years of service

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APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: , Deputy

Contact: Lisa Chow

cc:



CLERK'S ADDENDUM

ATTACHMENTS

Resolution 2020/254

*The Board of Supervisors of  
Contra Costa County, California*

In the matter of:

**Resolution No. 2020/254**

**recognizing the contributions of Karen Laws on her 34 years of service to Contra Costa County**

WHEREAS in 1981, Karen A. Laws received her BA Degree in Economics from the California State University of Chico.  
WHEREAS in 1985, she began her career with the Public Works Department as a Junior Real Property Agent, promoted to Assistant Real Property Agent in 1987, Associate Real Property in 1989, Senior Real Property Agent in 1992, Supervising Real Property Agent in 1999 and lastly Principal Real Property Agent in 2000; and  
WHEREAS Karen is well recognized for her work individually and as a team – Certificate of Appreciation from the “1991” Charity Campaign, the Award of Merit from the American Public Works Association (APWA) in 1991 and 1999, the Award of Excellence for the State Route 4/Bailey Road Interchange Project in 1993, the J. Michael Walford Project Manager of the Year to the SR4 Bypass Team in 2001, Award of Excellence for the Withers Headwall Property Acquisition in 2001, the J. Michael Walford Team of the Year Award of Excellence in 2016, Contra Costa County Employer of the Year Award in 2018; and  
WHEREAS in 1992, Karen received her Senior Right of Way designation through the International Right of Way Association, held the position of Vice-President in the Association from 1999 to 2001 and was awarded in 2002 and 2008 the Contra Costa County Employer of the Year Award by the Association’s San Francisco Bay Area Chapter; and  
WHEREAS from 1992 to 1995, Karen was a Commissioner of the City of Martinez Parks & Recreation Committee; and  
WHEREAS, in 1995, Karen became the President and Shop Steward for the Engineering Unit, Local One; and  
WHEREAS in 2019, Karen was recognized by the Contra Costa County Board of Supervisors for her leadership, integrity, continued vision and partnership in completing the Marsh Creek Road Bridge Replacement Project 141; and  
WHEREAS Karen’s work ethic and dedication have made a positive difference in the Public Works Department. Her passion for public service is apparent as she delivers quality service, guidance and leadership within the Real Estate Division and every entity she has had the privilege of working with such as: all divisions of Public Works, other County departments, Department of Water Resources, Army Corps of Engineers, Contra Costa Transportation Authority, CALTRANS, State Route 4 Bypass Authority, Solano Transportation Authority, Metropolitan Transportation Commission and many more; and  
WHEREAS Karen was born and raised in Martinez, married her husband Mike in 1995 and in 1996 had her son, Gus. She loves hunting, camping outdoors and has the uncanny ability to diplomatically share her opinions. Her willingness to go beyond the call of duty only scratches the surface of her heartfelt commitment to Contra Costa County.

NOW, THEREFORE, IT IS BY THE BOARD RESOLVED that Karen A. Laws be recognized for her 34 years of dedicated service to Contra Costa County and for her unyielding leadership and dedication to produce high quality work during her career.

\_\_\_\_\_  
**CANDACE ANDERSEN**  
Chair, District II Supervisor

\_\_\_\_\_  
**JOHN GIOIA**  
Chair, District I Supervisor

\_\_\_\_\_  
**DIANE BURGIS**  
District III Supervisor

\_\_\_\_\_  
**KAREN MITCHOFF**  
District IV Supervisor

\_\_\_\_\_  
**FEDERAL D. GLOVER**  
District V Supervisor

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: September 22, 2020

David J. Twa,

By: \_\_\_\_\_, Deputy



Contra  
Costa  
County

To: Board of Supervisors  
From: Deborah R. Cooper, Clerk-Recorder  
Date: September 22, 2020

Subject: 100th Anniversary of 19th Amendment Resolution

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**RECOMMENDATION(S):**

ADOPT Resolution No. 2020/259 commemorating the 100th Anniversary of the 19th Amendment, which gave women the right to vote.

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APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Joellen Bergamini, Deputy

Contact: Debi Cooper  
925-335-7899

cc:

ATTACHMENTS

Resolution  
2020/259

*The Board of Supervisors of  
Contra Costa County, California*

In the matter of:

**Resolution No. 2020/259**

**RECOGNIZING AND HONORING THE 100TH ANNIVERSARY OF THE RATIFICATION OF THE 19TH AMENDMENT, WHICH GAVE WOMEN THE RIGHT TO VOTE**

WHEREAS, the year 2020 marks the 100th anniversary of the ratification of the 19th Amendment to the United States Constitution, guaranteeing and protecting women's right to vote; and  
WHEREAS, the amendment was a culmination of more than 70 years of work by women suffragists; and  
WHEREAS, the Women's Suffrage movement started in July 1848 at the first women's rights convention in the United States, known as the Seneca Falls Convention; and  
WHEREAS, voting rights in the United States was largely restricted to white male property owners in the 1770's and the 15th Amendment, ratified in 1870, stated that citizens could not be denied the right to vote because of their race; and  
WHEREAS, the 15th Amendment expanded voting rights to African American men, however women were still denied the right to vote; and  
WHEREAS, five Equal Suffrage Leagues were founded in Contra Costa County to support the suffrage movement; and  
WHEREAS, California voters passed the Equal Suffrage measure in 1911; and  
WHEREAS, on August 26, 1920 the 19th Amendment was signed into law giving women the right to vote; and  
WHEREAS, this historic achievement was but one step in the long battle for voters' rights in this country. Voter suppression tactics continued in many states, targeting men and women of color, and low-income whites; and  
WHEREAS, the 24th amendment, ratified in 1964, stated that "the rights of citizens... shall not be denied or abridged by the United States by reason of failure to pay any poll tax or other tax"; and  
WHEREAS, the 1965 Voter's Rights Act prohibited States from using policies and practices to suppress voters; and  
WHEREAS, in 1975 the Voting Rights Act was expanded to protect language minorities; and  
WHEREAS, the 1982 expansion of the Voting Rights Act made voting more accessible for the elderly and people with disabilities.  
NOW, THEREFORE, BE IT RESOLVED that the Contra Costa County Board of Supervisors hereby recognizes the 100th Anniversary of the Women's Right to Vote Amendment and its important and historic part of our nation's movement toward equal representation.

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**CANDACE ANDERSEN**  
Chair, District II Supervisor

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**JOHN GIOIA**  
Chair, District I Supervisor

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**DIANE BURGIS**  
District III Supervisor

---

**KAREN MITCHOFF**  
District IV Supervisor

---

**FEDERAL D. GLOVER**  
District V Supervisor

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: September 22, 2020

David J. Twa,

By: \_\_\_\_\_, Deputy



Contra  
Costa  
County

To: Board of Supervisors  
From: Deborah R. Cooper, Clerk-Recorder  
Date: September 22, 2020

Subject: National Voter Registration Day Resolution

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**RECOMMENDATION(S):**

ADOPT Resolution No. 2020/260 proclaiming September 22, 2020 as National Voter Registration Day.

---

APPROVE

OTHER

RECOMMENDATION OF CNTY ADMINISTRATOR

RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Joellen Bergamini, Deputy

Contact: Debi Cooper 925-335-7899

cc:

ATTACHMENTS

Resolution

2020/260

*The Board of Supervisors of  
Contra Costa County, California*

In the matter of:

**Resolution No. 2020/260**

**PROCLAIMING SEPTEMBER 22, 2020 AS NATIONAL VOTER REGISTRATION DAY**

WHEREAS, Contra Costa County is committed to empowering all citizens to be informed, active members of our democracy; and

WHEREAS, consistent civic engagement contributes to a more representative government; and

WHEREAS, increasing voter registration is essential to maximizing participation in our democracy; and

WHEREAS, encouraging broad voter registration, access, and citizen participate in elections among voting-eligible citizens is vital; and

WHEREAS, technology, including online voter registration, is helping to remove barriers to voting, giving citizens greater access to voting resources; and

WHEREAS, California offers pre-registration to 16- and 17-year-olds to make civic engagement a priority among youth; and

WHEREAS, every citizen can encourage their family, friends, co-workers, and neighbors to register and exercise their right to vote; and

WHEREAS, local businesses, community groups, nonprofit organizations, and public agencies can help mobilize their communities to vote in all elections;

NOW, THEREFORE, BE IT RESOLVED that we, the Contra Costa County Board of Supervisors, recognize September 22, 2020 as NATIONAL VOTER REGISTRATION DAY, and encourage all eligible citizens to register to vote.

\_\_\_\_\_  
**CANDACE ANDERSEN**  
Chair, District II Supervisor

\_\_\_\_\_  
**JOHN GIOIA**  
Chair, District I Supervisor

\_\_\_\_\_  
**DIANE BURGIS**  
District III Supervisor

\_\_\_\_\_  
**KAREN MITCHOFF**  
District IV Supervisor

\_\_\_\_\_  
**FEDERAL D. GLOVER**  
District V Supervisor

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: September 22, 2020

David J. Twa,

By: \_\_\_\_\_, Deputy





**Contra  
Costa  
County**

To: Board of Supervisors  
From: John Kopchik, Director, Conservation & Development Department  
Date: September 22, 2020

Subject: Ratify Moraga Orinda Fire District Ordinance No. 20-01, implementing the 2019 California Fire Code with local amendments

**RECOMMENDATION(S):**

1. RATIFY Moraga Orinda Fire District Ordinance No. 20-01 with attached modifications, implementing the 2019 California Fire Code with local amendments in the unincorporated portion of the District's service area.
2. DIRECT the Clerk of the Board of Supervisors to provide a certified copy of this Board Order to the Moraga Orinda Fire District within 15 days of this ratification, pursuant to Health and Safety Code section 13869.7.

**FISCAL IMPACT:**

None.

**BACKGROUND:**

The Board of Directors of the Moraga Orinda Fire District has adopted Ordinance No. 20-01, adopting the 2019 California Fire Code, with local amendments. The District's local amendments strengthen fire prevention and protection requirements consistent with local conditions, as described in the attached staff report dated July 15, 2020, presented by District staff to the District's Board of Directors. The District has requested that the Board of Supervisors ratify the District's adoption of the ordinance so that the District

APPROVE

OTHER

RECOMMENDATION OF CNTY ADMINISTRATOR

RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: June McHuen, Deputy

Contact: Jason Crapo,  
925-674-7722

cc:

BACKGROUND: (CONT'D)

can implement the 2019 Fire Code, with local amendments, in the unincorporated portion of the District's service area. Ratification by the Board of Supervisors is required by State law for the District's code adoption ordinance to be effective in the unincorporated portion of the District's service area. This Board Order modifies the District's ordinance by providing for the retention of the Board of Supervisor's discretion for final County approval of entitlements, completion of development improvements, and issuance of County stop work orders within the unincorporated area of the County.

CONSEQUENCE OF NEGATIVE ACTION:

If the Board of Supervisors does not approve the recommended actions, the Moraga Orinda Fire District will not be able to implement District Ordinance No. 20-01 within the unincorporated portion of the District's service area.

ATTACHMENTS

20-01 Fire Code Adoption Ordinance

Modifications to MOFD 2019 Fire Code Ordinance

MOFD Staff Report

**ORDINANCE NO. 20-01**

AN ORDINANCE OF THE MORAGA-ORINDA FIRE DISTRICT OF CONTRA COSTA COUNTY, CALIFORNIA, ADOPTING, THE 2019 EDITION OF THE CALIFORNIA FIRE CODE (WITH CERTAIN AMENDMENTS) AND BY REFERENCE, THE INTERNATIONAL FIRE CODE, 2018 EDITION, PUBLISHED BY THE INTERNATIONAL CODE COUNCIL.

The Board of Directors, as the governing body of the Moraga-Orinda Fire District does ordain as follows:

**Part 1. ADOPTION OF THE CALIFORNIA FIRE CODE.**

For the purpose of prescribing regulations governing conditions hazardous to life and property from fire, explosion or hazardous substances, materials and devices, and from conditions hazardous to life and property in the occupancy of buildings and premises as herein provided; providing for the issuance of permits and collection of fees therefore; and each and all of the regulations, provisions, penalties, conditions and terms of said Fire Code on file in the office of the Moraga-Orinda Fire District are hereby referred to adopted, and made a part hereof, as if fully set out in this ordinance, with the additions, insertions, deletions and changes, if any, prescribed in Section 2 of this ordinance.

The Moraga-Orinda Fire District does hereby adopt the California Fire Code–2019 edition, including Appendices A, B, BB, C, CC, D (as amended), H and by reference, the International Fire Code as published by the International Code Council being particular the 2018 edition and thereof and whole thereof, save and except such portions as are hereinafter added, modified or amended by Part 2 of this ordinance is hereby adopted pursuant to Section 13869 of the California Health and Safety Code and incorporated as fully as if set out at length herein, and from the date on which this ordinance shall take effect, the provisions thereof shall be controlling within the limits of the Moraga-Orinda Fire District, in the state of California,

Repealing Ordinance No. 16-02 of the Moraga-Orinda Fire District; and all other Ordinances and parts of the Ordinances in conflict therewith.

**Part 2. AMENDMENTS TO THE CALIFORNIA FIRE CODE.**

The 2019 California Fire Code is amended by the changes, additions and modifications set forth in this Section 2. Chapter and Section numbers used below are those of the 2018 International Fire Code.

**CHAPTER 1 ADMINISTRATION**

Section 101.1 is amended to read:

**101.1 Title.** These regulations shall be known as the Fire Code of the Moraga-Orinda Fire District, hereinafter referred to as “this code.”

Section 102.1 is amended by adding item 5 to read:

**102.1 Construction and design provisions.** The construction and design provisions of this code shall apply to:

5. Where not otherwise limited by law, the provisions of this Code shall apply to vehicles, ships, boats, and mobile vehicles when fixed in a specific location within the boundaries of this jurisdiction.

Section 105.4.3 Applicant Responsibility has been amended to read:

**105.4.3.1 Responsibility of Permittee.** It shall be the responsibility of the applicant to ensure that the construction documents include all of the fire protection requirements and that the shop drawings are complete and in compliance with the applicable codes and standards. Building Permits shall be presumed by the District to incorporate all of the work that the applicant, the applicant's agent, employees and/or contractors shall carry out. Said proposed work shall be in accordance with the approved plans and with all requirements of this code and any other laws or regulations applicable thereto. No City, Town or County approval shall relieve or exonerate any person from the responsibility of complying with the provisions of this code nor shall any vested rights be created for any work performed in violation of this code.

Section 105.6 is amended to read:

**105.6 Required operational permits.** The fire code official is authorized to issue operational permits for the operations set forth in 105.6.1 through 105.6.55.

Section 105.6 is amended to add subsections: 105.6.52 through 105.6.55:

**105.6.52 Battery systems.** A permit is required to operate stationary storage battery systems having the capacities exceeding the values shown in Table 1206.2 pursuant to Section 1206.

**105.6.53 Christmas tree sales.** A permit is required to use a property for the purpose of selling cut Christmas trees.

**105.6.54 Model rockets.** A permit is required to sell or launch model rockets pursuant to California Code of Regulations Title 19, Division 1 Article 17.

**105.6.55 Temporary water supply.** A permit is required to use a temporary water supply for construction of residential projects or subdivisions pursuant to Section 3312.1.

Section 105.7 is amended to add:

**105.7 Required construction permits.** The fire code official is authorized to issue construction permits for operations set forth in Chapter 1, Sections 105.7.1 through 105.7.29.

Section 105.7.26 has been added to read:

**105.7.26 Medical gas systems.** A construction permit is required for the installation of or modification to a medical gas system pursuant to Section 5306.

Section 105.7.27 has been added to read:

**105.7.27 Access for fire apparatus.** A construction permit is required to install, improve, modify or remove public or private roadways, driveways and bridges for required fire apparatus access pursuant to Section 501.3.

Section 105.7.28 has been added to read:

**105.7.28 Subdivision of land.** A construction permit is required for any subdivision of land within the District. Plans shall be submitted for all land developments and/or improvements proposed within the District.

Section 105.7.29 has been added to read:

**105.7.29 Water supply for fire protection.** A construction permit is required for water supply for fire protection. Plans shall be submitted to determine adequate water supplies and fire hydrants are provided for all facilities, buildings or portions of buildings either constructed or moved into the District pursuant to Section 507.

Section 109.1 is amended to read:

**109.1 Board of appeals established.** In order to hear and decide appeals of orders, decisions or determinations made by the fire code official relative to the application and interpretation of this code, there is hereby created a Board of Appeals. The Board of Appeals is comprised of the Board of Directors. The fire code official shall be an ex officio member of said Board but shall have no vote on any matter before the board. The board may adopt rules of procedure for conducting its business, and The Board shall render all decisions and findings in writing to the appellant with a duplicate copy to the fire code official. The decision of the board of appeals shall be final.

Section 110.1 is amended to read:

**110.1. Unlawful acts.** It shall be unlawful and a public nuisance for a person, firm, corporation, or other entity to erect, construct, alter, repair, remove, demolish, or utilize a building, occupancy, premises, or system, equipment, or process regulated by this code, or cause same to be done, or maintain such condition, in conflict with or in violation of any of the provisions of this code, District ordinance or resolution, or other lawful order of the Board of Directors or fire code official.

Section 110.4 is amended to read:

**110.4 Violation penalties.** . Any person, firm, corporation, or other entity that causes, permits, maintains or allows a violation of any provision of this code or fails to comply

with any of the requirements thereof or who erects, installs, alters, repairs or does or causes to be done work in violation of the approved construction documents or directive of the fire code official, *or* of a permit or certificate used under provisions of this code, shall be subject to the criminal sanctions set forth in Health and Safety Code section 13871. Each day that a violation continues after such due notice has been served shall be deemed a separate offense.

Section 112.4 is amended to read:

**112.4 Failure to comply.** Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to a fine of not less than 500 dollars or not more than 5,000 dollars.

## **CHAPTER 2 DEFINITIONS**

Section 202 is amended by adding the following definitions:

**ABATEMENT COSTS.** Any and all costs incurred by the District to abate hazardous vegetation or combustible material on any property pursuant to this ordinance, including physical abatement costs, administration fees, technical reports or surveys, and any other actual costs incurred by the District for the abatement proceeding, including attorney's fees, if applicable.

**ADMINISTRATOR.** The Fire Chief or his/her designee.

**ALL WEATHER DRIVING SURFACE.** A roadway designed to carry the imposed weight loads of fire apparatus with asphalt, concrete or other approved surface.

**BOARD OF DIRECTORS.** The governing body of the District.

**COST OF ABATEMENT.** All expenses incurred by the jurisdiction in its work of abatement undertaken and administrative costs pursuant to Section 325.5.4 of this Ordinance.

**COMBUSTIBLE MATERIAL.** Rubbish, litter or material of any kind other than hazardous vegetation that is combustible and endangers the public safety by creating a fire hazard as determined by the fire code official.

**DEFENSIBLE SPACE.** The area adjacent to a structure or dwelling as determined by the fire code official where wildfire prevention or protection practices are implemented to provide the key point of defense from an approaching wildfire or to minimize the spread of a structure fire to wildlands or surrounding areas.

**DISTRICT BOARD.** The Board of Directors of the District.

**EMERGENCY VEHICLE ACCESS (EVA).** Shall mean an approved access meeting the requirements for fire district apparatus use and shall be restricted for the use of emergency vehicles.

**EXTERIOR FIRE HAZARD INSPECTION.** A property inspection intended to identify hazard areas and evaluate the risk to life and structures from exterior fires.

**FIRE APPARATUS ACCESS ROAD.** A road that provides fire apparatus access from a fire station to a facility, building or portion thereof. This is a general term that includes, but is not limited to a fire lane, public street, private street, driveway, parking lot lane, and access roadway.

**FIRE BREAK.** Means a continuous strip of land upon and from which all vegetation has been removed to bare mineral soil. This area is used to stop the spread of or extension of fire from one area to another.

**FIRE CODE OFFICIAL.** The Fire Chief or a duly authorized representative, or other person as may be designated by law, appointment or delegation and charged with the administration and enforcement of this code.

**FIRE HAZARD.** Any condition or conduct which: (a) increases or may increase the threat of fire to a greater degree as determined by the fire code official (b) may obstruct, delay, hinder or interfere with the operations of the fire department or the egress of occupants in the event of fire.

**FIRE PROTECTION PLAN.** A document prepared for a specific parcel, project or development. This document shall address ways to minimize and mitigate the fire problems created by the project or development, with the purpose of reducing impact on the community's fire protection delivery system. It shall be prepared by the applicant when required by the fire code official. It must be approved by the fire code official. Instances where a fire protection plan could be required:

1. A project is unable to meet fire code requirements due impracticality and requests alternate means and measures.
2. A project has 5 or more new single family homes with surrounding undeveloped land or open space.

Exception: A fire protection plan will not be required for high-density infill projects.

**FIRE TRAIL.** A graded firebreak of sufficient width, surface, and design to provide access for personnel and equipment to suppress and to assist in preventing extension of fire from one area to another.

**FUEL BREAK.** A strategically located block or strip, on which a cover of dense, heavy, or combustible vegetation has been changed to one of lower fuel volume or reduced combustibility, as an aid to fire control. Fuel breaks require annual and recurring maintenance.

**HAZARDOUS VEGETATION.** Vegetation that is combustible and endangers the public safety by creating a fire hazard including but not limited to seasonal and recurrent grasses, weeds, stubble, brush, dry leaves, dry needles, dead, dying or diseased trees and any other vegetation as determined by the fire code official.

**IMPROVED PARCEL.** A portion of land of any size, the area of which is determined by the legal lot of record and may be identified by an Assessor's Parcel Number upon which a structure is located.

**LADDER FUEL.** Fuel that provides vertical continuity between surface fuel and canopy fuel strata, increasing the likelihood that fire will carry from surface fuel into the crowns of shrubs and trees.

**PARCEL.** A portion of land of any size, the area which is determined by the legal lot of record (Reference Health and Safety Code 14883).

**PERSON.** Includes; individuals, firms, partnerships, and corporations.

**PUBLIC NUISANCE.** A declaration by the fire code official that the presence of combustible materials on any parcel creates a fire hazard or threat to public safety (Health and Safety Code 14875 and 14876) or any violation of this code.

**RUBBISH.** Waste matter, litter, trash, refuse and debris on streets or private property in the jurisdiction which is, or when dry, is combustible and may become a fire hazard.

**STRUCTURE.** That which is built or constructed.

**SUBSTANTIAL ADDITION, EXPANSION, REMODEL OR RENOVATION.** Where the new fire area exceeds 50 percent of the existing fire area.

**SURFACE FUELS** are those on the surface of the ground. They include everything from grasses to logs and stumps. Aerial fuels are fuels that are not in contact with the ground. These include limbs, foliage, and branches, as well as any dead material caught up in the branches of other plants. Needles draped over the branches of shrubs are a good example of an aerial fuel.

**TEMPORARY FIRE DEPARTMENT ACCESS ROAD FOR CONSTRUCTION.** An approved temporary roadway for emergency vehicle use during construction. addition or expansion of a building where the new or modified fire area exceeds 50 percent of the existing fire area.

**TEMPORARY WATER SUPPLY.** A water source stored for firefighting purposes in an approved aboveground tank during combustible construction.

**TREE LITTER.** Any limbs, bark, branches, or leaves left to gather on the ground or the roof of a structure.

**UNIMPROVED PARCEL.** A portion of land of any size, the area of which is determined by the legal lot record and may be identified by an Assessor's Parcel Number and on which no habitable structure is located.



## CHAPTER 3 GENERAL PRECAUTIONS AGAINST FIRE

Section 304.1.2 is amended to read:

**304.1.2. Hazardous Vegetation and Combustible Material.** Weeds, grass, vines, leaves, brush, diseased or dead trees, combustible growth, debris, or rubbish capable of being ignited and endangering property shall be cut down by the owner or occupant of the premises. Clearance of combustibles upon default of the owner or occupant shall be in accordance with Section 325.

Section 308 OPEN FLAMES is amended to adopt entire section.

Chapter 3 is amended to add Section 325 as follows:

### 325 EXTERIOR FIRE HAZARD CONTROL

**325.1 Scope** This section provides provisions intended to identify hazard areas and mitigate the risk to life and structures from wildland fire exposures and fire exposures from adjacent structures and to mitigate fires from spreading to or from wildland fuels that may threaten life, overwhelm fire suppression capabilities, or result in property loss. Section 325 applies to structures with roofs, intended for living, storage or commercial activity. Private sheds or other utility buildings less than 120 square feet which are located more than 30 feet from a habitable structure are exempt. Also exempt are non-habitable structures such as fences, retaining walls, decks, and arbors. Fuel mitigation and defensible space work shall be conducted in a manner that the activities will not result in the taking of endangered, rare or threatened plant or animal species or cause significant erosion and sedimentation of surface waters in accordance with California Environmental Quality Guidelines Section 15304.

**325.1.1 Purpose.** The purpose of this section is to establish minimum requirements in wildland-urban interface areas that will increase the ability of a building to resist the intrusion of flame or burning embers by a vegetation fire, including the identification of hazardous fire areas that require applicable defensible space provisions as set forth by and enforced by the fire code official and applicable state and local fire resistive building standards that are enforced by the local building official and fire code official.

**325.1.2 Jurisdictional authority.** The Board of Directors as the supervising, legislative and executive authority of this jurisdiction has the authority to act pursuant to Part 5 (commencing with Section §14875), Division 12, of the State of California Health and Safety Code, to clear or order the clearing of rubbish, litter or other combustible material where such combustible material endangers the public the safety by creating a fire hazard. Such fire hazard abatement shall be conducted in accordance with the provisions of Part 5 and/or this code. In the application of the provisions of Part 5 to fire hazard abatement proceeding under this code and the Fire Protection District Law of 1961, the terms “Board of Directors” or “Board” when used in Part 5, shall mean the Board of Directors of this jurisdiction under this article; and the officer designated in Section §14890 of Part 5 shall mean the Fire Chief.

**325.1.3 Contract for services.** The Board of Directors reserves and retains the power to award a contract for such fire hazard abatement work where the employees of this jurisdiction are not used to perform such abatement work.

**325.1.4. Technical reports.** The Board of Directors reserves and retains the power to award a contract for a survey or other technical report to determine parcel ownership information in cases of dispute. The parcel owners that are the subject of the report will each pay for one-half the cost of the report, payable to the District upon completion of the report.

Section 325.2 has been added to read:

**325.2 Definitions.**

**The following definitions are defined in Chapter 2:**

**ALL WEATHER DRIVING SURFACE.**  
**ABATE AND/OR ABATEMENT.**  
**ABATEMENT COSTS.**  
**BUILDING.**  
**COMBUSTIBLE MATERIAL.**  
**DEFENSIBLE SPACE.**  
**EXTERIOR FIRE HAZARD INSPECTION.**  
**FIRE APPARATUS ACCESS ROAD.**  
**FIRE PROTECTION PLAN.**  
**FUEL BREAK.**  
**HAZARDOUS VEGETATION.**  
**IMPROVED PARCEL.**  
**LADDER FUEL.**  
**PARCEL.**  
**PERSON.**  
**PUBLIC NUISANCE.**  
**RUBBISH.**  
**STRUCTURE.**  
**TREE LITTER.**  
**UNIMPROVED PARCEL.**  
**WEEDS.**

**325.3 Public nuisance.** The Board of Directors, or fire code official may declare that hazardous fire areas, including combustible materials, and hazardous vegetation, upon private property are a public nuisance.

**5.3.1 Seasonal and recurrent nuisance.** If the nuisance is seasonal and recurrent, the Board of Directors shall so declare. Thereafter, such seasonable and recurring weeds shall be abated every year but must be maintained year-round as determined by the fire code official without any further hearing.

**325.4 Unlawful disposal.** Any person who places, deposits or dumps combustible material or hazardous vegetation on a parcel whether or not he/she owns such parcel, is subject to the criminal sanctions set forth in Health and Safety Code Section 13871.

**325.5 Abatement of hazard.**

**325.5.1 Hazardous Vegetation and Combustible Material to be removed.** Parcels are to be maintained free of hazardous vegetation and combustible material.

**325.5.2 Prohibition.** No person who has any ownership or possessory interest in or control of parcel of land shall allow to exist thereon any hazardous vegetation or combustible material which constitutes a fire hazard as determined by the fire code official.

**325.6 General abatement requirements.** The provisions of this section shall govern the abatement of combustible materials and hazardous vegetation creating a fire hazard upon premises (reference Government Code 51175-51189 and Public Resources Code 4291). The District shall develop minimum abatement standards for land in residential or business, areas, or improved or unimproved parcels of any size, including vacant parcels of any type. Such standards shall be approved by the Board of Directors and may be modified periodically as circumstances dictate.

**325.6.1 Clearance of hazardous vegetation or combustible materials from fire apparatus access roads.** The fire code official is authorized to require areas within 3 feet on each side and 15 feet in height of the paved edge on fire apparatus access roads to be abated of hazardous vegetation and combustible material. On unpaved fire apparatus access roads, the measurement will be from the edge of the improved roadway surface.

**325.6.2 Clearance of Hazardous Vegetation Combustible material from parcels.** All improved and unimproved parcels declared a public nuisance by the Board of Directors shall be abated as determined by the fire code official.

**325.6.2.1** Remove from improved and unimproved parcels all hazardous vegetation and combustible material that are deemed a fire hazard.

**325.6.2.2** Parcels one acre or less (43,560 square feet) shall require abatement of the entire parcel.

**325.6.2.3** Parcels over one acre (43,560 square feet) may be required to comply with the following requirements:

1. Parcels shall provide 30-foot fuel breaks along the perimeter of the property line.
2. Parcels 10 acres or more shall provide a 30-foot cross breaks to divide the parcel into approximately 5-acre sections.
3. Eliminate any ladder fuels that can readily transmit fire in fuel breaks and cross breaks.
4. Provide 100 feet clearance from unimproved parcels to property line of improved adjacent parcels.

5. Provide 100 feet clearance around structures in accordance with 325.6.3.

**325.6.3 Clearance of brush or vegetative growth from structures.** Any person owning, leasing, controlling, operating or maintaining any structure in, upon, or adjoining any hazardous fire area shall at all times maintain defensible space around and adjacent to such structure by removing and clearing away all combustible material for a distance not less than 100 feet from all portions of the structure. Distances may be increased or decreased by the fire code official based on site specific analysis of local conditions.

**Exception:** Single specimens of trees ornamental vegetative fuels or cultivated ground cover, such as green grass, ivy succulents or similar plants used as ground cover, provided that they do not form a means of readily transmitting fire as determined by the fire code official.

**325.6.3.1** Remove that portion of any tree that extends within 10 feet of the outlet of any chimney or stovepipe.

**325.6.3.1.1** Remove hazardous vegetation and combustible material around any outdoor wood burning fire pit, heating or cooking appliance.

**325.6.3.1.2** Annual grasses must be removed or cut to less than 3 inches.

**325.6.3.2** Maintain any tree, shrub, or other plant adjacent to or overhanging any structure free of dead limbs, branches or other combustible material that is determined to be a fire hazard.

**325.6.3.3** Maintain the roof of any structure and roof gutters free of leaves, needles, or hazardous vegetation and other combustible materials.

**325.6.3.4** Maintain trees to remove ladder fuels so that foliage, twigs or branches are greater than 6 feet above the ground or surface fuels within 100 feet of any structure, or within 10 feet of the paved edge of any fire apparatus access road. On unpaved fire apparatus access roads, the measurement will be from the edge of the improved roadway surface.

**325.6.3.5** Maintain 6 feet of vertical clearance between roof surfaces and portions of trees overhanging any structure.

**325.6.3.5.1** All Monterey Pines (*Pinus radiata*) and Eucalyptus (Genus *Eucalyptus*) must be 6 feet or greater, measured horizontally or vertically from any habitable structure.

**325.6.3.6** Maintain all ground areas within 2 feet of the exterior walls of any habitable structure free of combustible ground cover including combustible mulch and barks.

**Exception:** Ornamental vegetative fuels or cultivated ground cover, such as green grass, ivy succulents or similar plants used a ground cover, provided that they do not form a means of readily transmitting fire as determined by the fire code official. MOFD will maintain a list of approved plant species that may be used as ground cover.

**325.6.3.6.1** All native and nonnative plant species next to a habitable structure must be maintained in a manner that removes combustible material within a 2-foot horizontal and 1-foot vertical area, measured from the base of the structure.

**Exception:** Ornamental vegetative species used as ground cover that are irrigated and have a high moisture content and configuration that would not promote or cause a fire to spread from the vegetation to the structure. Brush and other ornamental species may be planted within 2-feet of a structure provided foliage, twigs, and small branches are maintained in a such a manner to create a minimum of 1-foot clearance above the ground or ground cover. MOFD will maintain a list of approved plant species that may be used as ground cover.

**325.6.3.7** Remove all Junipers (genus juniperus) and Bamboo (genus bambusa) within 10 feet of the paved edge of all public and private roads by December 31, 2023.

**325.7 Fire Protection Plan.** A fire protection plan shall be prepared by the applicant when required by the fire code official. All Fire Protection Plans require approval by the Fire Code Official.

**325.8 Cost.** The cost of the fire protection plan preparation and review shall be the responsibility of the applicant.

### **325.9 Abatement procedures.**

**325.9.1 Manner of giving notice.** The fire code official may place a copy of the notice and order to abate in a conspicuous location on the property and shall mail to the property owner as such person's name and address appears on the last county equalized assessment roll. If the address is unknown, that fact shall be so stated, and the property will be physically posted with the notice and order to abate in a conspicuous place or location. Service by mail shall be deemed complete at the time of deposit in the U.S. mail. The failure of any person in possession or owner of the property to receive such notice shall not affect the validity of these proceedings.

**325.9.1.1 Public Notice.** As the first step to achieve compliance, the fire code official will distribute an annual Exterior Fire Hazard Reduction Mailer. This mailer serves as an annual notice to all property owners within the district of the requirement to comply with Sections 304.1 and 325.5. In addition, the mailer provides detailed information regarding steps to take to achieve compliance and reduce fire danger. These mailers will be sent in the spring at least 30 days prior to annual enforcement deadline.

**325.9.1.2 Assessment.** Fire Code Officials will conduct Exterior Fire Hazard Property Assessments beginning on or about June 1st. The fire code official will determine if the property is compliant or non-compliant with Ordinance No. 20-01 Sections 304.1 and 325.5.

Compliant properties will be entered into the Parcel Fire Hazard Assessment System as "Passed" with no further action required. Property owners may also self-report compliance by submitting photos of their property for review by fire code official. Non-Compliant properties will be entered into the Parcel Fire Hazard Assessment System as "Failed" along with the listed violation(s) and uploaded photographs. An Exterior Fire Hazard Assessment letter will be mailed to the property owner as such person's name and address appears on the last county equalized assessment roll,

advising of the existing violation(s) and requests abatement with 30 days. “Failed” properties will be scheduled for inspection no sooner than 30 days after the date of assessment.

**325.9.1.3 Inspection,** Fire code officials will conduct the Exterior Fire Hazard Property Inspection no sooner than 30 days after a property received a “Failed” assessment. The inspector will determine if the property is compliant or non-compliant with Ordinance No. 20-01 Sections 304.1 and 325.5.

Compliant properties will be entered into the Parcel Fire Hazard Assessment System as “Passed” with no further action required. Property owners may also self-report compliance by submitting photos of their property for review by fire code officials.

Non-Compliant properties will be entered into the Parcel Fire Hazard Assessment System as “Failed” and an update of the remaining violation(s) along with additional photographs shall be uploaded. A “Notice to Abate” letter will be mailed to the property owner, as such person’s name and address appears on the last county equalized assessment roll, which advises of the remaining violation(s) and request abatement within 15 days. Failed properties will be scheduled for re-inspection no sooner than 15 days after the Inspection.

**325.9.1.4 Re-Inspection** The Exterior Fire Hazard Property Re-Inspection is the third attempt to achieve compliance. Fire code official will conduct the Exterior Fire Hazard Property Re-Inspection no sooner than 15 days after a property has received a “Failed” Inspection. The inspector will determine if the property is compliant or non-compliant with Sections 304.1 and 325.5. Compliant properties will be entered into the Parcel Fire Hazard Assessment System as “Passed” with no further action required. Non-Compliant properties will be entered into the Parcel Fire Hazard Assessment System as “Failed” and an update on the remaining violation(s) along with additional photographs shall be uploaded. A pre-Lien letter will be mailed to the property owner which advises of the continued violation(s), identifies the date and location at which a hearing will be held by the MOFD Board, and describes the appeals procedure.

**325.9.1.5 Abatement order.** The fire code official of this jurisdiction may order the abatement of hazardous vegetation, combustible material, as described in Sections 304.1 and 325.2. On making the order, the fire code official of this jurisdiction shall mail a copy of a notice/order to the owner of the affected property as he/she and his/her address appear upon the current and last county equalized assessment roll as of January 1 of each calendar year, or as his/her address is known to this jurisdiction. The notice/order is also physically posted upon the affected property in a conspicuous location and published in this jurisdiction, not less than fifteen 15 days prior to the date of the abatement hearing. Copies of the notice shall be headed with the words “Notice to Abate Hazardous Vegetation and Combustible Material” in letters at least one inch high. The notice shall be in substantially the following form:

**325.9.1.6 Notice for seasonal and recurring nuisance.** In the case of hazardous vegetation and combustible material, which have previously been declared to constitute a seasonal and recurring nuisance, a fire code official will physically post a notice on the property and mail a notice to the owner(s) of the property via U.S. mail at the address as it appears on the current assessment roll. The notice will state that hazardous vegetation or combustible material of a seasonal and recurrent nature are located on the property and that they constitute a public nuisance and a fire hazard that

must be abated by removal. If the violation is not removed, it will be abated by the Moraga-Orinda Fire District, in which case the costs of removal, plus an administrative fee will be assessed. to the parcel. The cost will constitute a lien upon the property until paid. No hearing will take place.

**325.9.1.7 Immediate hazard.** When, in the opinion of the fire code official, an extreme fire hazard exists which constitutes an immediate threat to public, safety, and welfare, and it is deemed necessary to abate such hazard as promptly as possible, said fire hazard shall be removed or abated within five (5) days. Notice of the violations and abatement action taken shall be provided within seven (7) business days after such emergency abatement.

**325.9.1.8 Hearing date.** If the owner fails to comply with a notice of violation, a hearing will be held during a regular schedule district board meeting. The date of the notice is the date on which the notice is placed in the United States mail or the date on which it is posted on the property. At the hearing, the property owner or his or her agent may appear to show cause why the order should not be enforced. For good cause shown, the Board may extend the time for compliance with the order or may rescind the order. Service by mail shall be deemed complete at the time of deposit in the U.S. mail. The failure of any person in possession or owner of the property to receive such notice shall not affect the validity of these proceedings.

**325.9.1.9 Contract award.** If a contract is awarded, it shall be by public bid, awarded to the lowest responsible bidder. A contract may include work on more than one parcel. An administrative fee will be attached to the cost of the contracted work to the violator.

**325.9.1.10 Abatement report of costs.** The fire code official or his or her designee abating the nuisance shall keep an account of the cost of abatement located on each separate parcel of land and shall render an itemized report in writing to the Board of Directors showing the cost of removing the hazardous vegetation, combustible material, or public nuisance on or each separate lot or parcel of land, or both. Before the report is submitted to the Board, a copy of it shall be posted for at least three days on or near the entrance door of the Fire Department Administration Headquarters with a notice of the time and when the report will be submitted to the Board for confirmation. The report and notice shall also be posted for the three days in two other public places in the District. At the time fixed for receiving and considering the report, the Board of Directors shall hear it and any objections of any of the property owners liable to be assessed for the work of abatement.

Thereupon, the Board of Directors may make such modifications in the report, as it deems necessary, after which by order of resolution, the report shall be confirmed. The amounts of the cost, including administrative costs, for abating the nuisance in front of or upon the various parcels of the land mentioned in the report as confirmed shall constitute special assessment against the respective parcels of land, and are a lien on the property for the amount of the respective assessments. The decision of the Board of Directors shall be final.

**325.9.1.11 Cost assessments.** Upon confirmation of the report of cost by the Board of Directors of this jurisdiction and the recordation of the Resolution of Confirmation by the administrator, a copy of the report of cost shall be sent to the County Auditor, who shall enter the amount of the assessments against the parcels. Thereafter the amount of the assessments shall be collected at the same time and in the same way as County taxes are collected. The owners are subject to the same

penalties and the same procedure and sale in case of delinquency as provided for ordinary county taxes. All laws applicable to the levy, collection, and enforcement of county taxes are applicable to these assessment taxes.

**325.9.1.12 Fuel breaks.** In lieu of ordering complete abatement, the fire code official of this jurisdiction may order the preparation of fuel breaks around parcels of property where hazardous vegetation and combustible material are present. In determining the proper width for fuel breaks, the fire code official shall consider the height and type of fuels, weather conditions, topography, and accessibility to the property of fire protection equipment.

**325.9.10 Sale or transfer of property.** Before the close of escrow, the seller shall provide to the buyer documentation from the Fire Chief, Fire Code Official or his/ her designee stating that the property is currently in compliance with the exterior hazard abatement section of the Moraga Orinda Fire Code. The fire code official shall have discretion to accept alternate means and measures in the event completion of the required work will delay the sale or transfer of property.

**325.11 Suppression costs.** Any person who negligently, intentionally or in violation of law causes an emergency response by the District, may be liable for the costs of securing such emergency. Any costs incurred by the Fire District in fighting a fire and for the cost of providing rescue or emergency medical services shall be a charge against said person. The charge shall constitute a debt of that person and is collectable by the Fire District incurring those costs in the same manner as in the case of an obligation under a contract, express or implied. (See State of California Health & Safety Code §13009)

## **CHAPTER 4 EMERGENCY PLANNING AND PREPAREDNESS**

Section 401.5 is amended to add:

**401.5.1 False/nuisance alarm fee.** A fee may be charged for false/negligent alarms according to the adopted fee schedule of the District.

## **CHAPTER 5 FIRE SERVICE FEATURES**

Section 502.1 is amended to add the following definition. The following term is defined in Chapter 2:

### **ALL WEATHER DRIVING SURFACE.**

Section 503 Fire Apparatus Access Roads is adopted.

### **503.1.2 Additional access.**

Section 503.1.2 is amended to add Sections 503.1.2.1, and 503.1.2.2 as follows:

**503.1.2.1 Required access roads for residential developments.** The minimum number of access roads serving residential development(s) shall be based upon the number of dwelling units served as follows:



- 1-20 units, one public or private access road.
- 21-50 units, one public or private access road and one fire apparatus access road as approved by the fire code official.
- 51-100 units, a minimum of two or more public or private access roads and one fire apparatus access road as approved by the fire code official.
- 101+ units, a minimum of 3 public or private access roads and one fire apparatus access road as approved by the fire code official.
- Nothing in this section shall be construed to limit the creation of accessory dwelling units that are otherwise authorized by law.

**503.1.2.2 Access to open spaces.** When access to open land/space or fire trail systems maintained for public or private use is obstructed by new development of any kind, the developer shall provide alternate acceptable access into the area that is sufficient to allow access for fire personnel and apparatus. The alternate means of access requires the approval of the fire code official.

**503.1.2.2.1** Existing fire trail systems shall be maintained. When conditions make maintenance of existing trails impractical, alternate means of access shall be provided and requires approval by fire code official.

Section 503.2.1 is amended to add:

**Section 503.2.1 Dimensions.** Fire apparatus access roads shall have an unobstructed width of not less than 28 feet (8534 mm), exclusive of shoulders, except for approved security gates in accordance with Section 503.6, and an unobstructed vertical clearance of not less than 15 feet (4572 mm).

Section 503.2.1.1 is added to read:

**503.2.1.1 Road widths for fire department access roads serving 1 or 2 dwelling units.** A fire department access road serving less than three dwelling units may be a minimum of 18 feet (5486 mm) in width if no parking is permitted on the roadway.

Section 503.2.1.2

Section 503.2.1.3 building height is added to read:

**503.2.1.3 Building height.** Fire apparatus access roads shall have a minimum unobstructed width of 36 feet (10,973 mm) in the immediate vicinity of any building or portion of building more than 30 feet (10,668 mm) in height as defined in Appendix D.

## **503.2 Specifications.**

Section 502.3 is amended to read:

**503.2.4 Minimum turning radius.** A fire department access road shall have a minimum standard turning radius of 28 feet (8534 mm) inside and a 48 foot (14,630 mm) outside diameter.

Section 503.2.7 is amended to read:

**503.2.7 Grade.** The grade of the fire apparatus access road shall be within the limits established by the fire code official based on the fire department's apparatus. A fire department access road having a grade between 15% and 20% shall be designed to have a finished surface of grooved concrete to hold 75,000 pounds (34,019 kg) (H-20 Cal-Trans Design Standard). Design for grooved concrete shall be ½ inch (12.7 mm) by ½ inch (12.7 mm) and 1-1/2 inch (38 mm) on center. Grades exceeding 20 percent and cross slopes of greater than 8 percent are not permitted unless approved by the fire code official.

**Exception:** Other approved all weather surfaces may be used if the skid resistance is equivalent to or greater than grooved concrete as certified by a registered engineer, in accordance with ASTM E274 and approved by the fire code official.

Section 503.2.8 is amended to read:

**503.2.8 Angles of approach and departure.** The angles of approach and departure for any means of access shall not exceed 10 percent at 10 feet of the grade break.

## **505 PREMISES IDENTIFICATION**

Section 505 is amended by adding Section 505.1.2:

Section 507.2 is adopted without amendment:

**507.2 Type of water supply.** A water supply shall consist of reservoirs, pressure tanks, elevated tanks, water mains or other fixed systems capable of providing fire flow.

**Section 510.3 Permit required is adopted.**

## **CHAPTER 6 BUILDING SERVICES AND SYSTEMS**

### **603.6 Chimneys**

Section 603.6 is amended by adding subsection 603.6.6 to read:

**603.6.6 Sparks from chimneys.** Chimneys used with fireplaces or heating appliances in which solid or liquid fuel is used shall be maintained with a spark arrester as required for incinerators by the Mechanical Code.

## **CHAPTER 9 FIRE PROTECTION AND LIFE SAFETY SYSTEMS**

Section 902.1 is amended to add:

**SUBSTANTIAL ADDITION, EXPANSION, REMODEL OR RENOVATION.**

Section 903.2 is amended to read:

**903.2 Where required.** Approved automatic sprinkler systems shall be installed in new non-residential buildings with a fire area that exceeds 3600 square feet and in the locations set forth in sections 903.2.1 through 903.2.12.

**Exceptions:**

Systems which are required to mitigate deficiencies shall be installed in accordance with requirements as deemed necessary by the fire code official.

**Section 903.2.8 Group R is amended to add exception 5.**

**903.2.8 Group R.** An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

**Exceptions:**

1. See California Fire Code.
2. See California Fire Code.
3. See California Fire Code.
4. See California Fire Code.
5. Detached Group U private garages less than 2000 square feet accessory to a Group R-3 occupancy.

Section 903.3.1.1.3 is added to read:

**903.3.1.1.3 Undeclared use and tenant space.** In buildings of undeclared use or with tenant space areas; the fire sprinkler system may be required to conform to the design density of the most hazardous occupancy use allowed within the building.

Where a subsequent occupancy requires a system with greater capability, it shall be the responsibility of the owner/and or tenant occupant to upgrade the system.

Section 903.3.1.2 is amended to add:

**903.3.1.2.1 Eave protection.** Sprinkler protection shall be provided under roof eaves as defined in CBC 702A definitions in Fire Hazard Severity Zones and Wildland Urban Interface Fire Areas.

### **903.3.5 Water supplies.**

Section 903.3.5 is amended to add subsection 903.3.5.3 to read:

**903.3.5.3 Non-permissible water supply storage.** Swimming pools, ponds, and underground cisterns shall not be considered water storage for the purposes of Section 903.3.5.

Section 903.3.10 is added to read:

**903.3.3.10 System risers.** The location of system risers shall be approved by the fire code official. System risers shall be located in a common area of the protected premises with regards to firefighter access. System risers located inside buildings shall either be located in stairways or in riser closets accessible from common areas.

### **903.6 Where required in existing buildings and structures.**

Section 903.6.1 has been added to read:

**903.6.1 All occupancies except Group R-3.** An automatic sprinkler system shall be provided throughout existing buildings except buildings with a group R-3 occupancy that have an addition or expansion where the new fire area exceeds 50 percent of the existing fire area.

Section 903.6.2 is added to read:

**903.6.2 Group R-3.** An automatic sprinkler system shall be provided throughout all existing buildings containing a group R-3 occupancy that have an addition or alteration where the removal or replacement of 50 percent or greater of the linear length of the walls of the building (exterior plus interior) and 50 percent of the roof are permitted within a one-year period.

Section 903.6.3 is added to read:

**903.6.3 Change in occupancy classification.** Existing non-residential buildings which undergo a change in occupancy classification to higher hazard occupancy shall require the entire building be protected by an automatic sprinkler system installed in accordance with Section 903.3. The requirements of Section 903.2 shall not be required when a change of occupancy classification is made to an equal or lesser hazard category as determined by the fire code official.

## **CHAPTER 10 MEANS OF EGRESS**

Section 1028.5 is amended to add:

**1028.5.1 Exit discharge surface.** Exterior exit pathway surfaces shall be suitable for pedestrian use in inclement weather and terminate at a public way as defined in the *California Building Code*.

## CHAPTER 33 FIRE SAFETY DURING CONSTRUCTION AND DEMOLITION

Section 3301.3 is added to read:

**3301.3 Construction documents.** Construction documents and a schedule for demolition must be submitted to the fire code official when required by the building code official. Where such information is required, no work shall be done until such construction documents or schedule, or both, are approved by the fire code official.

Section 3301.4 Permits is added to read:

### **3301.4 Permits**

Section 3301.4.1 is added to read:

**3301.4.1 Temporary fire department access road for construction.** A permit is required to utilize a temporary fire department access road for construction regulated by Section 3301.2, see Section 105.7.

Section 3301.4.2 is added to read:

**3301.4.2 Temporary water supply.** A permit is required to utilize a temporary water supply for construction of residential projects or subdivisions regulated by Section 3312.1, see Section 105.7.

Section 3310.2.1 is added to read:

**3310.2.1 Construction site locks.** Site security gates shall be provided with a District padlock. Application for a District padlock is made through the Fire Prevention Office.

Section 3310.3 is added to read:

**3310.3 Permit.** A permit is required for a temporary fire department access road, see Section 105.7.27.

Section 3310.4 is added to read:

**3310.4 Temporary fire department access road for construction.** The use of a temporary roadway in lieu of permanent roadways is limited to April 15th through October 15th. Timelines may be modified by the fire code official depending on inclement weather conditions.

Section 3310.5 is added to read:

**3310.5 Obstructions to access roads.** Staging of building materials, placement of equipment or parking of worker vehicles shall not take place within the required width of a fire department access road.

## **3312 WATER SUPPLY FOR FIRE PROTECTION**

Section 3312 is amended to add:

**3312.1.1 Permit.** A permit is required for temporary water supplies, see Section 105.7.30.

**3312.1.2 Temporary water supply for subdivisions.** For construction of residential projects or subdivisions an approved temporary water supplies are permitted only for construction of model units.

## **CHAPTER 50 HAZARDOUS MATERIALS-General Provisions**

Section 5001.5.3 is added to read:

**5001.5.3 Emergency response support information.** Floor plan, material safety data sheets, hazardous material inventory statements (HMIS), hazardous material management plans (HMMP) and other information may be stored in cabinets outside of facilities or buildings. Information may be required in a specific electronic media format to facilitate computer aided dispatching.

## **CHAPTER 56 EXPLOSIVES AND FIREWORKS**

Section 5601.3 is amended to read:

**5601.3 Fireworks. The possession, manufacture, storage, sale, handling and use of fireworks are prohibited.** The possession, manufacture, storage, sale, handling and use of fireworks or pyrotechnic materials within the jurisdiction of the District are prohibited. The definition of fireworks for this section includes snap caps.

### **Exception:**

Firework storage within the jurisdiction of the District is limited to aerial fireworks in conjunction with an approved and permitted aerial display, in accordance with California Code of Regulations, Title 19, Chapter 6.

## **APPENDIX D FIRE APPARATUS ACCESS ROADS**

Appendix D is adopted with the following amendments:

### **SECTION D105 AERIAL FIRE APPARATUS ROADS**

SECTION D105.2 has been amended to read:

**D105.2 Width.** Aerial fire apparatus roads shall have a minimum width of 36 feet (10973 mm) exclusive of shoulders, in the immediate vicinity of the building or portion thereof.

## **Section D106 MULTIPLE-FAMILY RESIDENTIAL DEVELOPMENTS**

Section D106.1 has been amended to read:

**D106.1 Multiple-family residential developments.** Multiple-family residential developments shall have the number of access roads required by Section 503.1.2.1.

### **D106.3 REMOTENESS**

The following exception is added Section D106.3:

**Exception:** The fire code official may approve an alternative, circular route of travel with the entrance and exit points closer than required by this section. A fire protection plan shall be submitted addressing Wildfire risk when the fire apparatus access roadways do not meet the remoteness requirement.

## **D107 ONE- OR TWO- FAMILY RESIDENTIAL DEVELOPMENTS**

Section D107.1 is amended to read:

**D107.1 One or two family dwelling residential developments.** One or two family dwelling residential developments shall have the number of access roads required by Section 503.1.2.1.

## **SECTION 4. REPEAL OF CONFLICTING ORDINANCES.**

**13.1 Repeal.** The following Ordinance previously adopted by the Board of Directors is hereby repealed: Ordinance #16-02 Moraga-Orinda Fire District with amendments from the California Fire Code (2016 Edition). Elements of section 325.6.3 that are more restrictive than those adopted via Ordinance #16-02 shall take effect no sooner than January 1, 2021. Until the time these elements take effect, the provisions of MOFD Ordinance #16-02, section 325.6.3, will remain in effect.

## **SECTION 5. VALIDITY.**

**14.1 Validity.** The Board of Directors of the District hereby declares that should any section, paragraph, sentence or work of this Ordinance 20-01 or of the California Fire Code, 2019 Edition and the International Fire Code, 2018 Edition as adopted and amended herein be declared for any reason to be invalid, it is the intent of the Board of Directors of the District that it would have passed all other portions or provisions of this Ordinance independent of the elimination here from any such portion or provision as may be declared invalid.

## **SECTION 6. MORE RESTRICTIVE REQUIREMENTS.**

**15.1 More restrictive requirements.** In the event the City of Orinda, Town of Moraga, or Contra Costa County, adopt more restrictive requirements, or amend those provisions contained herein, those more restrictive or amended requirements shall only apply within the jurisdiction adopting such requirements.

**SECTION 7. DATE OF EFFECT.**

**16.1 Date of effect.** This Ordinance shall become effective on October 1, 2020 and within fifteen (15) days of passage, shall be published once with the names of the Directors voting for and against it, in the Contra Costa Times, a newspaper of general circulation in this District. Passed and Adopted on July 15, 2020, by the following Vote:

PASSED, APPROVED and ADOPTED this 15<sup>th</sup> day of July, 2020 at the regular meeting of the District Board of Directors held virtually on July 15, 2020, on a motion made by Director Jorgens seconded by Director Jex, and duly carried with the following roll call vote:

AYES: DIRECTORS DONNER, JEX, JORGENS, AND DANZIGER

NOES: NONE

ABSENT: DIRECTOR BAITX

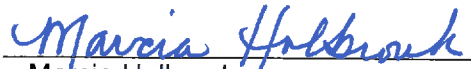
ABSTAIN: NONE


**ORDINANCE 20-01**

  
\_\_\_\_\_  
Steven Danziger, President  
Board of Directors

ATTEST:

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Marcia Holbrook  
District Secretary/District Clerk

  
\_\_\_\_\_  
Jonathan V. Holtzman  
District Counsel



**CONTRA COSTA COUNTY MODIFICATIONS TO  
MORAGA-ORINDA FIRE DISTRICT ORDINANCE NO. 20-01**

1. § 102 – Applicability. This section is modified to clarify that it does not mandate the performance or non-performance of any act by the County and its planning agency, officers, and employees, and to clarify that the District has no legal authority to prescribe the governmental discretion and actions of the County and its officers and employees. County staff is hereby directed to cooperate to the greatest reasonable extent (subject to applicable County and State rules and regulations) with the District concerning the subjects of this section and District Ordinance No. 20-01.
2. § 112 – Stop Orders. This section is modified to clarify that it does not mandate the County building inspector or other County official or agency to issue any stop work orders or to perform or not perform any act, and with this clarification is the same as § 102 above.
3. § 503 – Fire Apparatus Access Roads. This section is modified to clarify that nothing in it shall prevent the County from legislating, taking administrative action, or occupying this area of regulation to the extent allowed by law. This modification is made to retain the County’s ability to require uniform unincorporated area regulations such as public road improvements, widths, and access.
4. § 505 – Premises Identification. This section is modified to clarify that the County fully retains its authority pursuant to law to determine unincorporated area street names and addresses.
5. § 507 – Fire Protection Water Supplies. This section is modified in the same manner as § 503 except limited to the reservation of County discretion involving the provision of water for domestic use.
6. Section 4 – Repeal of Conflicting Ordinances. This section is modified to clarify that District Ordinance No. 20-01 supersedes Contra Costa County Ordinance No. 2019-37 only with respect to those portions of the District located within the unincorporated area of Contra Costa County.
7. Section 6 – More Restrictive Requirements. This section is modified to clarify that nothing in it shall prevent the County from legislating in and/or occupying an area of regulation as hereinabove provided or otherwise allowed by law. In part, this modification is made to retain the County’s ability to require uniform unincorporated area regulations.
8. Modified Ordinance Ratification. In ratifying District Ordinance No. 20-01, the Board of Supervisors has not reviewed and passed upon any “Findings of Necessity” that may have been prepared by the District, nor has it reviewed and passed upon the scope of the District’s Health and Safety Code regulatory authority.
9. Enforcement. The Chief of the Moraga-Orinda Fire District is authorized to enforce Moraga-Orinda Fire District Ordinance No. 20-01 within those portions of the District located within the unincorporated area of Contra Costa County. (Health and Saf. Code, § 13869.7(h)(1)(A).)



# Moraga-Orinda Fire District

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**TO:** The Board of Directors

**FROM:** Dave Winnacker, Fire Chief

**DATE:** July 15, 2020

**SUBJECT:** **Item 3.2 – Public Hearing on Second Reading of Ordinance 20-01 adopting the 2019 California Fire Code and the 2018 International Fire Code with Fire District Amendments; consideration of Findings of Fact pursuant to Section 18941.5 of the Health and Safety Code**

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## **BACKGROUND:**

Recognizing the significant risk of wildfire to which our community is exposed, staff propose progressive modifications to the fire code in order to adopt best practices to harden homes, create defensible space, and ensure roadway access.

Under state law, the District is required to hold a public hearing and a first and second reading before the proposed ordinance is adopted (Government Code § 50022.3). Following adoption of the ordinance, copies of the signed document will be forwarded to the Town of Moraga, City of Orinda, and Contra Costa County Board of Supervisors (for unincorporated areas). This submittal is required in order for each agency to ratify the document.

In accordance with Health and Safety Code section 13869.7, copies of the proposed Ordinance and Findings of Fact have been provided to the Town of Moraga, the City of Orinda, and Contra Costa County for review and comment. The proposed ordinance is the product of significant inter-agency coordination to ensure all concerns have been addressed.

Attached are the proposed amendments for the 2020 California Fire Code and 2020 International Fire Code. Presentations outlining the proposed changes were made to the City of Orinda and Town of Moraga Councils earlier this year.

## **MAJOR CHANGES:**

Every three years new editions of the state codes are published. The new codes and local amendments reflect changes in technology, fire safety techniques, and the building industry. These codes become the minimum standards for the State of California on January 1, 2020. By adopting the 2019 Fire Code, the Moraga-Orinda Fire District will be enforcing a code that is consistent with state regulations.

The following is a summary of the proposed changes to the 2019 Fire Code:

- Chapter 2 Definitions
  - Clearly defined Fire Protection Plans and where they will be required
  - Defined hazardous vegetation and combustible material

- Cleaned up the language for substantial addition, expansion, remodel, or renovation
- Added definition of surface fuels
- Chapter 3 General Safety Provisions
  - Move annual exterior hazard compliance date from 15 June to 31 May
  - Ban the use of combustible ground cover (to include Mulch & Bark) within 2' of structures
  - Require at least a 1' air gap between the ground and lower portion of bushes within 2' of structures
  - Increase the vertical clearance for trees above roofs from 5' to 6'
  - Increase the vertical clearance for trees from 5' to 6' above the ground and surface fuels
  - Require the removal of Eucalyptus and Monterrey Pine within 6' of structures
  - Require an exterior fire hazard inspection for real property transfers
  - Require the removal of Juniper and Bamboo within 10' of a road by the end of 2023
  - Streamline and define inspection process. Post card - Property Assessment – Inspection –re-inspection- Lien hearing.
- Chapter 5 Fire Service Features
  - Increases new road width from 16' to 18' for 1-2 new units
  - Increases new road width to 28' for 3 or more new units
- Chapter 9 Fire Protection and Life Safety Systems
  - Major Remodels and Additions to Existing Structures:
    - Require fire sprinklers for any remodel or addition in all occupancies except Group R-3 that have an addition or expansion where the new fire area exceeds 50 percent of the existing fire area.
    - Require fire sprinklers for any remodel or addition in group R-3 that have an addition or alteration where the removal or replacement of 50 percent or greater of linear length of walls of the building (exterior plus interior) and 50 percent of the roof are permitted within a one year period.
  - New Structures
    - Requires exterior under eave sprinklers for residential sprinkler systems
- Appendix D
  - Allows for waiver of remoteness requirement for large development road access with a Fire Protection Plan

**RECOMMENDATION:**

- 1) Discuss; 2) Deliberate; 3) Conduct a public hearing; 4) Introduce and waive the second reading of Ordinance 20-01 – An Ordinance of the Moraga-Orinda Fire District of Contra Costa County Adopting the 2019 California Fire Code and the 2018 International Fire Code with Fire District Amendments; consideration of Findings of Fact pursuant to Section 18941.5 of the Health and Safety Code; 5) Direct changes if needed.

**ATTACHMENTS**

1. Attachment A – Ordinance 20-01
2. Attachment B – Findings of Fact



**Contra  
Costa  
County**

To: Board of Supervisors  
From: INTERNAL OPERATIONS COMMITTEE  
Date: September 22, 2020

Subject: RECOMMENDATION FOR APPOINTMENT TO THE TREASURY OVERSIGHT COMMITTEE

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**RECOMMENDATION(S):**

1. APPOINT Paula Troy to the Member of Board of Supervisors Representative seat on the Treasury Oversight Committee to a new four-year term ending on April 30, 2024;
2. DECLARE vacant the Alternate to the Member of Board of Supervisors Representative seat held by Paula Troy and DIRECT the Clerk of the Board to post the vacancy.

**FISCAL IMPACT:**

No fiscal impact.

**BACKGROUND:**

The purpose of the Treasury Oversight Committee is to review the County's investment policy, regularly monitor the County Investment Pool's performance, and report on the pool's performance to the Board of Supervisors. The membership of seven comprises: (1) One representative (or Member) appointed by the Board of Supervisors; (2) The County Superintendent of Schools, or his or her designee; (3) One representative selected by a majority of the presiding officers of the governing bodies of the school districts

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APPROVE
  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR
  RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
 Candace Andersen, District II Supervisor  
 Diane Burgis, District III Supervisor  
 Karen Mitchoff, District IV Supervisor  
 Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Stacey M. Boyd, Deputy

Contact: Julie DiMaggio Enea  
(925) 655-2056

## BACKGROUND: (CONT'D)

and the community college district in the County; (4) One representative selected by a majority of the presiding officers of the legislative bodies of the special districts in the County that are required or authorized to deposit funds in the County Treasury; and (5-7) Three members of the public, a majority of whom shall have expertise in, or an academic background in, public finance and who shall be economically diverse and bipartisan in political registration. (May have no fewer than three nor more than 11 members, additional restrictions are on members).

In December 2019, the Board of Supervisors appointed Kirk Schumacher to the Board of Supervisors Representative seat that had been vacated by longstanding member and retired County Auditor-Controller Don Bouchet. Mr. Schumacher attended one meeting with the Treasury Oversight Committee in 2020, and then notified the County of his decision to step down.

On July 14, 2020, a vacancy was declared in the statutory Board of Supervisors Representative seat on the Treasury Oversight Committee (TOC) for a term ending April 30, 2024. Paula Troy, currently the Alternate Board of Supervisor Representative on the Treasury Oversight Committee, is the only applicant for this vacant seat. Ms. Troy was first appointed by the Board of Supervisors to the Alternate Representative seat on December 17, 2019 to a term expiring on April 30, 2022. Ms. Troy has expressed a willingness to serve as the statutory Board of Supervisors Representative through term that expires on April 30, 2024. A summary of her background and experience is as follows: Paula Troy is a graduate of University of California, Sacramento with a degree in Finance. Her professional experience includes working as a Financial Services Professional with experience serving large public fund clients ranging in portfolio size and complexity. Ms. Troy has served on the Treasury Oversight Committee as an Alternate since December 2019. Her application and resume are attached for reference.

The Internal Operations Committee interviewed Ms. Troy last year for the Alternate Representative seat and is pleased to now recommend her for appointment to the statutory Board of Supervisors Representative seat.

## ATTACHMENTS

Candidate Application\_Paula Troy\_Treasury Oversight Cte



Contra Costa County

Please return completed applications to:

Clerk of the Board of Supervisors

651 Pine St., Room 106

Martinez, CA 94553

or email to: ClerkofTheBoard@cob.cccounty.us

BOARDS, COMMITTEES, AND COMMISSIONS APPLICATION

First Name

Paula

Last Name

Troy

Home Address - Street

City

Martinez

Zip Code

94553

Phone (best number to reach you)

Email

Resident of Supervisorial District:

EDUCATION

Check appropriate box if you possess one of the following:

High School Diploma

CA High School Proficiency Certificate

G.E.D. Certificate

Colleges or Universities Attended	Course of Study/Major	Degree Awarded	
University of California, Sacramento	Business/Finance	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No

Other Training Completed:

Board, Committee or Commission Name

Treasury Oversight Committee

Seat Name

Have you ever attended a meeting of the advisory board for which you are applying?

No

Yes

If yes, how many?

2

Please explain why you would like to serve on this particular board, committee, or commission.

I have over 20 years experience in the Finance industry and would like to serve on the board.

Describe your qualifications for this appointment. (NOTE: you may also include a copy of your resume with this application)

I am including my resume with this application:

Please check one:

Yes

No

I would like to be considered for appointment to other advisory bodies for which I may be qualified.

Please check one:

Yes

No

Are you currently or have you ever been appointed to a Contra Costa County advisory board?

Please check one:  Yes  No

List any volunteer and community experience, including any boards on which you have served.

Do you have a familial relationship with a member of the Board of Supervisors? (Please refer to the relationships listed below or Resolution no. 2011/55)

Please check one:  Yes  No

If Yes, please identify the nature of the relationship:

Do you have any financial relationships with the county, such as grants, contracts, or other economic relationships?

Please check one:  Yes  No

If Yes, please identify the nature of the relationship:

I CERTIFY that the statements made by me in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge and understand that all information in this application is publicly accessible. I understand and agree that misstatements and/or omissions of material fact may cause forfeiture of my appointment, committee, or commission in Contra Costa County.

Signed: \_\_\_\_\_ Date: 9-1-2020

Sub \_\_\_\_\_ Clerk of the Board of Supervisors  
651 Pine St., Room 106  
Martinez, CA 94553

Questions about this application? Contact the Clerk of the Board at (925) 335-1900 or by email at ClerkofTheBoard@cob.cccounty.us

**Important Information**

1. This application and any attachments you provide to it is a public document and is subject to the California Public Records Act (CA Government Code §6250-6270).
2. All members of appointed bodies are required to take the advisory body training provided by Contra Costa County.
3. Members of certain boards, commissions, and committees may be required to: 1) file a Statement of Economic Interest Form also known as a Form 700, and 2) complete the State Ethics Training Course as required by AB 1234.
4. Meetings may be held in various locations and some locations may not be accessible by public transportation.
5. Meeting dates and times are subject to change and may occur up to two (2) days per month.
6. Some boards, committees, or commissions may assign members to subcommittees or work groups which may require an additional commitment of time.
7. As indicated in Board Resolution 2011/55, a person will not be eligible for appointment if he/she is related to a Board of Supervisors member in any of the following relationships: mother, father, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, great-grandfather, great-grandmother, aunt, uncle, nephew, niece, great-grandson, great-granddaughter, first-cousin, husband, wife, father-in-law, mother-in-law, daughter-in-law, stepson, stepdaughter, sister-in-law, brother-in-law, spouse's grandmother, spouse's grandfather, spouse's granddaughter, and spouses' grandson, registered domestic partner, relatives of a registered domestic partner as listed above.
8. A person will not be eligible to serve if the person shares a financial interest as defined in Government Code §87103 with a Board of Supervisors Member.

# PAULA TROY

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Martinez, California 94553 ▪

## SUMMARY OF EXPERIENCE

**Financial Services Professional** with in-depth experience in client service and operational management. Proven record working with very large public fund clients that range in portfolio size and complexity. Recognized for establishing, nurturing, and retaining valuable clients and relationships. Known for working closely with a variety of partner organizations and internal departments in the coordination of services and information, ensuring that client needs are met.

## PROFESSIONAL EXPERIENCE

### **AMG/STANTEC/CITY OF PLEASANT HILL/ TRANSPAC / 511 CONTRA COSTA Pleasant Hill, CA 2013-PRESENT** *Project Controls Specialist*

Management of project and program budgets, cost control functions including budgeting, estimating, and forecasting. Process invoices, expenditure tracking, compile monthly reimbursement invoices, payroll reconciliation and maintaining related records with Contra Costa Transportation Authority. Carpool Instead incentive distribution, coordination of the Contra Costa County Library's Discover & Go transit promotion, Employer outreach, SchoolPool, and commute incentives. Maintain access databases and assist with audits.

### **STATE STREET CALIFORNIA, INC., Alameda, California 1992 - 2011** *Client Service Officer* 1998 - 2011

Managed all aspects of client service relationships for 7 Public Fund Clients worth \$35 billion. Facilitated client requests and deliverables, ensuring compliance with internal and external regulations, procedures, and controls while ensuring client satisfaction and retention.

- Implemented efficiencies with a significant reduction of exceptions by centralizing daily functions within the accounting team.
- Developed and implemented significant reductions through efficiencies and outsourcing, resulting in a reduction of turnover from 25% to 10%.
- Created procedure manuals for all online system access for daily and monthly activity for hedge fund/commingled portfolios.
- Researched, analyzed, and presented all P&L sheets in a clear concise form, projecting changes in revenue, operating income, cash position, and compensation calculations.
- Presented to Public Retirement Boards for service updates, education, RFP's.
- Received the Quality Management Award.

### *Client Service Manager* 1995 - 1998

Managed 14 portfolio accountants and 3 Quality Control Specialists in a dynamic team environment. Maintained accurate daily fund accounting records for 21 Public Fund Clients.

- Increased client satisfaction through improved performance and delivery of vital financial information.
- Improved cash operation accuracy and efficiency, contributing to client satisfaction as indicated on client survey.

### *Quality Control Specialist* 1994 - 1995

Responsible for the training and development of new Portfolio Accountants.

- Developed and implemented operating procedures for consistency and improved delivery of client service at all levels.
- Ensured internal and external reporting met established quality standards and developed new processes/documents for complex client reporting.

### *Portfolio Accountant* 1992 - 1994

Responsible for accounting of securities of pension funds including general ledger accounting, pricing, and verification of daily financial statements. Proofed account balances on global and domestic funds as well.

## TRAINING AND EDUCATION

Compliance (GASB40, GASB53), Money Laundering, and Diversity  
B.S. Business Administration, Finance concentration - California State University, Sacramento





Contra  
Costa  
County

To: Board of Supervisors  
From: INTERNAL OPERATIONS COMMITTEE  
Date: September 22, 2020

Subject: RECOMMENDATION FOR APPOINTMENT TO THE CONTRA COSTA TRANSPORTATION AUTHORITY  
CITIZENS ADVISORY COMMITTEE

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**RECOMMENDATION(S):**

REAPPOINT Patricia Mantelli Bristow (Byron area) to the County seat on the Contra Costa Transportation Authority Citizens Advisory Committee (CCTA CAC) to a new four-year term ending on March 31, 2023.

**FISCAL IMPACT:**

No County cost. If authorized, CAC members may be reimbursed by the CCTA for travel expenses incurred to attend meetings.

**BACKGROUND:**

The Contra Costa Transportation Authority (CCTA) maintains a standing Citizens Advisory Committee (CAC) to provide citizen perspective, participation, and involvement in CCTA's administration of the Transportation Expenditure Plan (Measure J 2004) and Growth Management Program. The CAC comprises 23 members: 20 are appointed by each of the 20 local jurisdictions within Contra Costa (the cities, towns and the County); and three "at-large" members who should be residents of Contra Costa and are nominated by community-based stakeholder organizations within Contra Costa and subsequently appointed to the CAC by CCTA.

The CAC County Representative reviews and provides citizen input on transportation projects and programs on behalf of Contra Costa County, with the objective of advising and providing recommendations

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APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Stacey M. Boyd, Deputy

Contact: Julie DiMaggio Enea  
(925) 655-2056

## BACKGROUND: (CONT'D)

to the CCTA Board Members. The County representative serves a four-year term in a volunteer capacity and is eligible for reimbursement for travel expenses by CCTA.

The term for the County representative position, currently held by Patricia Bristow, expired in March 2019. After being informed by CCTA staff about the expired position, County staff advertised a recruitment for the position for a period that included the entire month of August 2020. A memo (Exhibit A) was sent to the Board of Supervisors informing them of the vacancy. In addition, Contra Costa Television (CCTV) forwarded a news release (Exhibit B) to various daily and weekly newspapers and publications for countywide public advertisement. Information about the vacancy and an application was made available on the County website (<https://www.contracosta.ca.gov/6408/Boards-and-Commissions-Database>).

County staff received no applications during the recruitment period. However, prior to the recruitment period, staff had received four applications for the position. County staff reached out to each of the four applicants to confirm their continued interest in serving as the County Representative. Two of the four applicants were deemed ineligible because they did not meet residency requirements (CAC bylaws require the County Representative to be a resident of the unincorporated County).

The Internal Operations Committee considered the two eligible candidates -- incumbent Patricia Bristow (Byron area) and Nazanin Shakerin (Alamo area) -- at its September 14 meeting, and recommends the reappointment of current County Representative Patricia Bristow. The IOC recommends Ms. Bristow because she served the CAC well during her first one and one-half terms since 2014, and represents the eastern portion of the county, which has historically been underrepresented. Ms. Bristow has also served on several community organizations, including the Brentwood Union School District Foundation Board, the John Marsh Historic Trust Board, and the Union Cemetery District Board. Ms. Bristow received her B.S. and teaching credential from Colorado State University and M.S. in Organization and Leadership from the University of San Francisco.

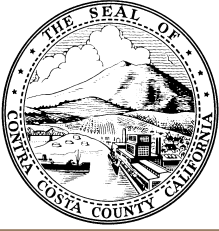
Ms. Shakerin (Alamo area) has a professional and technical transportation engineering background and already serves as the District II Representative on the County Iron Horse Corridor Management Program Advisory Committee and as a County Representative on the Metropolitan Transportation Commission Regional Measure 3 Independent Oversight Committee. While very highly qualified, the IOC believes Ms. Bristow, having a less technical background, to be a better fit for the citizens advisory committee.

## CONSEQUENCE OF NEGATIVE ACTION:

Should the Board elect not to reappoint Ms. Mantelli Bristow, the County will be unrepresented on the CCTA CAC.

## ATTACHMENTS

CCTA CAC County Representative Exhibits



**CONTRA COSTA COUNTY**  
**DEPARTMENT OF CONSERVATION & DEVELOPMENT**  
30 Muir Road  
Martinez, CA 94553  
**Telephone:** (925) 674-7209    **Fax:** (925) 674-7250

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**TO:** Members, Board of Supervisors  
Members, Municipal Advisory Council

**FROM:** John Kopchik, Director of Conservation and Development  
By: Robert Sarmiento, Planner (RS)

**DATE:** July 31, 2020

**SUBJECT:** **Recruitment for a County Representative to the Citizen Advisory Committee of the Contra Costa Transportation Authority**

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This memo is to inform you that the term for the current County representative on the Citizen Advisory Committee (CAC) of the Contra Costa Transportation Authority (CCTA), Patricia Bristow (Byron), has expired. The Department of Conservation and Development (DCD) is seeking candidates who reside in unincorporated areas to represent the County on the CCTA CAC (Exhibit A).

The CCTA CAC is comprised of 23 members, 20 of whom are individually appointed by the 20 local governments within Contra Costa (The County, cities, and towns), and three “at-large” members nominated by community-based stakeholder organizations within Contra Costa and subsequently appointed to the CAC by CCTA. The CCTA CAC reviews transportation programs and plans throughout the County (<https://ccta.net/about-us/#what-we-do>), including transportation projects and programs funded by the county half-cent transportation sales tax (Measure J) (<https://ccta.net/2018/10/17/measure-j>), with the objective of advising and providing recommendations to the CCTA Board of Directors. All CAC members serve a four-year term in a volunteer capacity. There is no limit to the number of consecutive terms a CAC member may serve. Relevant information on the function of the CAC and a copy of the ordinance and by-laws governing the Committee is enclosed for your reference (Exhibit B).

Contra Costa Television (CCTV) will forward a news release to various daily and weekly newspapers and publications for countywide public advertisement (Exhibit C).

DCD is accepting applications until August 31, 2020. Interested candidates can either apply online or download the application (Exhibit D) and fax the completed form to DCD. Ms. Bristow, who has been regularly attending CAC meetings throughout her term, has indicated her interest in serving as the County representative again and will apply. Should you have any questions, please contact Robert Sarmiento at (925) 674-7822, or via e-mail at [robert.sarmiento@dcd.cccounty.us](mailto:robert.sarmiento@dcd.cccounty.us).

Attachments:

**Exhibit A** – Call for a County Representative to Serve on the CCTA CAC

**EXHIBIT A**

**Exhibit B** – CCTA CAC Ordinance and Bylaws

**Exhibit C** – News Release Calling for a County Representative to Serve on the CCTA CAC

**Exhibit D** – County Advisory Boards, Committees, and Commissions Application Form

cc: Clerk of the Board  
CAO  
GTC Staff  
Better Government Ordinance File  
John Cunningham, DCD  
Maureen Toms, DCD

EXHIBIT A

**Call for a County Representative  
Citizen Advisory Committee of the County's Transportation Authority**

Contra Costa County seeks an individual to serve as the County Representative on the Citizen Advisory Committee (CAC) of the Contra Costa Transportation Authority (CCTA). The individual selected for this position must live in the unincorporated area of the County, be available to attend committee meetings on the 4<sup>th</sup> Wednesday of every month at 6:00 p.m., which are normally held at the CCTA offices, located at 2999 Oak Road, Suite 100, Walnut Creek, CA 94597, and have the ability to review CAC agenda packets and develop input on agenda items beforehand. Due to the COVID-19 pandemic, meetings presently occur via videoconference. The individual will serve a four-year term in a volunteer capacity and be eligible for reimbursement for travel expenses.

The CCTA CAC reviews transportation programs and plans throughout the County (<https://ccta.net/about-us/#what-we-do>), with the objective of advising and providing recommendations to the CCTA Board of Directors. This includes transportation projects and programs funded by the county half-cent transportation sales tax ("Measure J") (<https://ccta.net/2018/10/17/measure-j>), which CCTA oversees. CCTA maintains its standing CAC in order to provide citizen perspective, participation, and involvement in the Measure J-funded and voter-approved Transportation Expenditure Plan and Growth Management Program. The CAC members have an opportunity to learn about and influence transportation and growth issues within Contra Costa County and in other jurisdictions through scheduled presentation by transportation experts, advocates, and CCTA staff.

Should you have any questions, please call (925) 674-7822. To apply for this position, please fill out the application form online at <https://www.contracosta.ca.gov/6408> or download it at <https://www.contracosta.ca.gov/DocumentCenter/View/6433> and fax the completed form to the attention of Robert Sarmiento at (925) 674-7250. **Interested individuals should apply by August 31, 2020.**

**ORDINANCE 06-05**  
**AMENDMENTS TO THE ADMINISTRATIVE CODE REGARDING THE**  
**STRUCTURE, COMPOSITION AND APPOINTMENT OF MEMBERS OF THE**  
**AUTHORITY'S CITIZENS ADVISORY COMMITTEE**

**AN ORDINANCE** amending the Administrative Code regarding the structure, composition and appointment or members of the Authority's Citizens Advisory Committee.

**WHEREAS**, the Measure C Ordinance as amended establishes the Citizens Advisory Committee (CAC) to serve as the Authority's citizens advisory committee; and

**WHEREAS**, the Authority has determined that it is necessary and advisable to restructure the CAC to increase community perspective, participation and involvement in Authority policy determination and implementation; and

**WHEREAS**, at the July 17, 1996 Regular Meeting of the Authority Board, the Board approved and adopted a revised structure, membership and appointment procedure for the CAC (formerly TPAC – the Transportation Partnership Advisory Committee), subject to review and approval of necessary amendments to the Authority's Administrative Code; and

**WHEREAS**, at the September 18, 1996 Regular Meeting of the Authority Board, Ordinance 96-04, incorporating the recommended structure, membership and appointment procedures for the CAC (formerly TPAC) was duly approved and adopted by the Board, amending Chapter 1, Article IV of the Administrative Code, Section 104.3(b)(1) and (2), excluding section 104.3 (b) (3) & (4), which was referred back to staff for further development; and

**WHEREAS**, at its October 19, 1996 Regular Meeting of the Authority Board, Ordinance 96-04 (Revision 1) was duly approved and adopted by the Board, including section 104.3 (b)(3) & (4) of Chapter 1, Article IV of the Administrative Code; and

**WHEREAS**, at the June 21, 2006 Regular Meeting of the Authority Board, Ordinance 06-01 was duly approved and adopted by the Board, Amending and Restating Sales Tax Ordinance 88-01, as Amended, to Make Non-Substantive Changes and Conform to Existing Conditions, among which changes included changing the name of the Authority's citizen advisory committee from the TPAC to the CAC; and

**WHEREAS**, at its meeting on September 27, 2006, the CAC has reviewed and unanimously approved proposed bylaws to govern the CAC's operations; and

**WHEREAS**, it is necessary and advisable to further amend the Administrative Code to reflect revisions to the Authority citizen advisory committee's name structure, composition, and

incorporation of proposed bylaws as recommended to the Board at its October 18, 2006 meeting.

**NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS:**

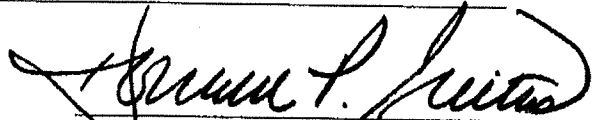
1. Section 104.3, subdivision (b) of Article IV of Chapter 1 of the Administrative Code is amended to read in full as follows:
  - (b) **Citizens Advisory Committee.** The CAC is a citizens' advisory committee to the Authority. The purpose of the citizens' advisory committee is to provide citizen perspective, participation and involvement in Authority policy development and implementation.
    - (1) **Membership.** Each of the Cities and the County shall appoint one member to the CAC. In addition, three (3) members shall be appointed by the Authority as "at large" members. Members shall be selected to reflect community and business organizations and interests within the County. Members shall not serve in a representative capacity with respect to their appointing authorities.
    - (2) **Terms of membership.** Members shall be appointed for four (4) year terms. There shall be no limit on the number of consecutive terms which a member may serve. At the discretion of the respective appointing body, CAC members are subject to re-call at anytime.
    - (3) **Subcommittees, select committees and ad hoc committees.** The CAC may create such subcommittees, select committees and ad hoc committees, and shall fix the membership and duties thereof, as it determines necessary or advisable to carry out its functions. Except as otherwise provided herein, such subcommittees, select committees and ad hoc committees shall be advisory only, and their recommendations and reports shall be made to the CAC.
    - (4) **Growth Management Compliance Checklist Review Subcommittee.** A Growth Management Compliance Checklist Review subcommittee may be created, and its members appointed from the CAC membership by the full membership of the CAC. The subcommittee, if constituted, shall be charged with responsibility for reviewing and making recommendations to the Authority and any appropriate standing committee of the Authority with respect to Growth Management checklists which have been submitted to the Authority by the Cities and the County in accordance with requirements of Ordinance 88-01 (as amended). In the interest of meeting timetables established by the Authority for review of Growth Management Checklists by the subcommittee, the report and recommendations of the Growth Management Compliance Checklist Review subcommittee may be submitted directly by the subcommittee to the Authority and/or any appropriate Authority standing committee. In such event, the report and recommendation

need not be reviewed or approved by the full membership of the CAC. In the event the full membership of the CAC reviews reports and recommendations made by the subcommittee, such review shall comply with the Authority timetable for review of the Checklists.

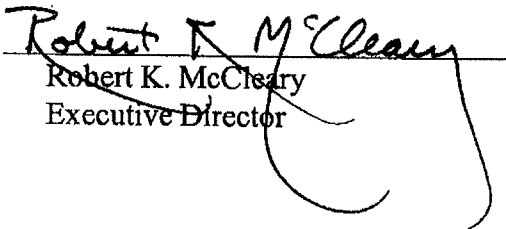
- (5) **CAC Bylaws.** The CAC may develop and adopt bylaws setting forth procedures for meetings, election of officers, attendance requirements, and other matters as necessary to facilitate CAC functions. Initial adoption of the bylaws, and subsequent approval of any amendments to the bylaws, requires a two-thirds (2/3) vote of the CAC members present and voting at any regular meeting of the CAC, and subsequent approval by the full Authority Board.
- 2. Ordinance 96-04 is hereby rescinded;
- 3. Ordinance 96-04 (Rev. 1) is hereby rescinded.

Passed and adopted by the Contra Costa Transportation Authority on October 18, 2006, 2006 by the following vote:

Abelson, Abrams, Alegria, Freitas, Gioia, Glover, Hudson,  
AYES: Tatzin for Metcalf, Nix, Pierce, Viramontes  
NOES: None  
ABSENT: Metcalf

  
Donald P. Freitas, Chair

This ORDINANCE was entered into at a meeting of the Contra Costa Transportation Authority held on October 18, 2006 and held in Pleasant Hill, California, and became effective forthwith.

Attest:   
Robert K. McCleary  
Executive Director



**CONTRA COSTA TRANSPORTATION AUTHORITY  
CITIZENS ADVISORY COMMITTEE (CAC)**

**BYLAWS**

**November 29, 2006**

**1.0 NAME AND AUTHORIZATION**

The name of this organization shall be the Citizens Advisory Committee (CAC). The CAC was authorized and established pursuant to Ordinance 88-01 as amended.

**2.0 PURPOSE**

- 2.1. The purpose of the CAC is to provide citizen perspective, participation and involvement in Authority policy development and implementation.
- 2.2. Subject to the direction and concurrence of the Board of Directors of the Contra Costa Transportation Authority (the Authority), the CAC may engage in related activities as appropriate to the discharge of its responsibilities, and bring matters of public concern to the attention of the Authority. The CAC shall identify and educate themselves on transportation issues of regional, countywide, and local concern. The CAC shall report to the Authority on those issues deemed of importance to the CAC. The Authority may also assign issues to the CAC for its review, comment and recommendation.
- 2.3. The CAC shall provide recommendations to the Authority regarding matters of interest and concern to the community.

**3.0 MEMBERSHIP**

- 3.1. Each of the cities, towns, and the County of Contra Costa shall appoint one member to the CAC. In addition, three (3) members shall be appointed by the Authority as "at large" members. Members shall be selected to reflect community and business organizations and interests within Contra Costa County. Members shall not serve in a representative capacity with respect to their appointing authorities or any specific organization.
- 3.2. At the discretion of the respective appointing body, CAC members are subject to recall at anytime.
- 3.3. Members shall be appointed for four (4) year terms. There shall be no limit on the number of consecutive terms which a member may serve. To assure continuity, membership terms should be staggered and should overlap.
- 3.4. The CAC shall encourage prompt filling of vacancies.
- 3.5. Except as noted in Section 8.0 below, CAC members serve without any compensation.

#### 4.0 OFFICERS

4.1. The Officers of the CAC shall be a Chair and a Vice-Chair. Their duties shall be as follows:

4.1.1. Chair: Presides over CAC meetings; develops the monthly meeting agenda; appoints subcommittees and subcommittee chairs; and reports the CAC's actions and decisions to the Authority as appropriate.

4.1.2. Vice-Chair: Presides over the CAC meetings in the absence of the Chair; conducts the other duties of the Chair in his/her absence.

4.2. Election of Officers shall be made as follows:

4.2.1. Chair: The Chair's term of office shall be for one calendar year. The Chair shall be elected each year at the last meeting of the calendar year by a majority of the CAC members present and voting, and shall serve until replaced by a newly-elected chair. If the term of appointment of the Chair expires before the year is out, and that member does not seek or accept reappointment, the Vice-Chair will serve as Chair until the following January.

4.2.2. Vice-Chair: This officer shall be elected by a majority of the CAC members present and voting at the last meeting of the calendar year. The term of office shall be for one year. If the term of appointment of the Vice-Chair expires before the year is out and that member does not seek or accept reappointment, the Committee will hold an election for a Vice-Chair to serve out the remainder of the term.

#### 5.0 MEETINGS

5.1. The regular meetings of the CAC are generally scheduled for the fourth Wednesday of each month at 6:30 p.m. in the Authority offices at 3478 Buskirk Avenue, Suite 100, Pleasant Hill, California 94523.

5.2. The CAC meetings and subcommittee meetings are subject to the Brown Act.

5.3. A quorum is defined as a majority of currently appointed members.

5.4. Any member who is absent for four (4) of any twelve (12) regularly scheduled consecutive meetings shall be subject to termination. Any resulting vacancy shall be filled for a new four-year period. There are no provisions for alternates to serve as substitutes for CAC members who are unable to attend a CAC meeting.

5.5. The rules contained within the current edition of Robert's Rules of Order (Newly Revised) shall govern the CAC in all cases to which they are applicable and in which they are not inconsistent with these bylaws, the Authority's Administrative Code, the Authority's Office Procedures Guide, and any special rules of order the CAC may adopt.

## 6.0 SUBCOMMITTEES

- 6.1. The Chair may establish Subcommittees and Ad Hoc Committees as necessary.
- 6.2. Each subcommittee shall consist of at least three (3) CAC members appointed by the CAC Chair and reappointed annually.
- 6.3. A Growth Management Compliance Checklist Review Subcommittee may be created, and its members appointed from the CAC membership by the CAC Chairperson with the concurrence of the full CAC. The subcommittee, if constituted, shall be charged with responsibility for reviewing and making recommendations to the Authority and any appropriate standing committee of the Authority with respect to Growth Management Checklists which have been submitted to the Authority by the Cities and the County in accordance with requirements of Ordinance 88-01 as amended and the applicable sales tax expenditure plan.
  - 6.3.1. Normally, the subcommittee's recommendations will be forwarded to the full CAC for review and recommendation for approval. In the interest of meeting timetables, however, the report and recommendations of the Growth Management Compliance Checklist Review subcommittee may be submitted directly by the Checklist Review subcommittee to the Authority and/or any appropriate Authority standing committee. In such event, the report and recommendation need not be reviewed or approved by the full membership of CAC.
  - 6.3.2. When the full membership of the CAC reviews reports and recommendations made by the subcommittee, such review shall comply with the Authority timetable for review of the Checklists.
  - 6.3.3. Questions or requests for additional information from a local jurisdiction shall be communicated from the CAC to local staff through Authority staff.

## 7.0 AMENDMENT OF BYLAWS

Amendment of these bylaws requires a two-thirds (2/3) vote of the CAC members present and voting at any regular meeting of the CAC, and subsequent approval by the full Authority Board.

## 8.0 REIMBURSEMENT OF TRAVEL EXPENSES

If authorized by the Authority, CAC members will be reimbursed for travel expenses incurred for transportation to and from regular and subcommittee meetings of the CAC. Such reimbursement shall be consistent with the Authority's Administrative Code and Office Procedures Guide. If applicable, payment will be issued quarterly based upon members' signed verification of mileage on a monthly Meeting Attendance Log.

**9.0 COMMUNICATIONS AND REPORTING**

- 9.1. The primary channel of communication for the CAC shall be through written and oral reports from the Chair of the CAC to the Authority or its standing committee.
- 9.2. Reports from the CAC to the Authority should reflect the consensus of the CAC. If consensus has not been achieved, the Chair shall convey to the Authority that the CAC position reflects a majority vote, and the Chair shall acknowledge and convey minority opinions.
- 9.3. CAC members are encouraged to report back to their appointing Councils or boards on at least an annual basis and more frequently if warranted.

**10.0 CONFLICT OF INTEREST**

- 10.1. There shall be no monetary gain by members of the CAC as a result of their membership and actions on the CAC.
- 10.2. CAC members shall recuse themselves from discussion and voting on issues in which they might have a financial interest or benefit.



## Contra Costa County

County Administrator's Office • 651 Pine Street • Martinez, CA 94553 • [www.contracosta.ca.gov](http://www.contracosta.ca.gov)

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### NEWS RELEASE

July 31, 2020

Contact: Robert Sarmiento, (925) 674-7822

Department of Conservation & Development

## Citizen Advisory Committee on Transportation Seeks New Representative

(Martinez, CA) – The Contra Costa County Board of Supervisors is seeking an individual to serve on the Contra Costa Transportation Authority (CCTA) Citizen Advisory Committee (CAC) as Public Representative on behalf of the County. The individual selected for this position must live in the unincorporated area of the County, be available to attend committee meetings on the 4<sup>th</sup> Wednesday of every month at 6:00 pm, normally held at the CCTA offices located at 2999 Oak Road, Suite 100, Walnut Creek, CA 94597, have the ability to review CAC agenda packets, and develop input on agenda items beforehand. Due to the COVID-19 pandemic, meetings presently occur via videoconference. The individual will serve a four-year term in a volunteer capacity and be eligible for reimbursement for travel expenses.

The CCTA Citizen Advisory Committee reviews transportation programs and plans throughout the County (<https://ccta.net/about-us/#what-we-do>), with the objective of advising and providing recommendations to the CCTA Board of Directors. This includes transportation projects and programs funded by the county half-cent transportation sales tax (“Measure J”) (<https://ccta.net/2018/10/17/measure-j>), which CCTA oversees. CCTA maintains its standing CAC in order to provide citizen perspective, participation, and involvement in the Measure J-funded and voter-approved Transportation Expenditure Plan and Growth Management Program. The CAC members have an opportunity to learn about and influence transportation and growth issues within Contra Costa County and in other jurisdictions through scheduled presentations by transportation experts, advocates, and CCTA staff.

**The deadline to apply is August 31, 2020.** For more information on this position, please call (925) 674-7822. To apply, visit the Contra Costa County Boards and Commissions website at [www.contracosta.ca.gov/6408](http://www.contracosta.ca.gov/6408), or download an application at [www.contracosta.ca.gov/DocumentCenter/View/6433](http://www.contracosta.ca.gov/DocumentCenter/View/6433). Applicants can fax the completed form to the attention of Robert Sarmiento at (925) 674-7250.

###

# Application Form

## Profile

Patricia

First Name

M

Middle Initial

Bristow

Last Name

[Redacted] Home Address

Suite or Apt

Byron

City

CA

State

94514

Postal Code

[Redacted] Primary Phone

[Redacted] Email Address

### Which supervisorial district do you live in?

District 3

## Education

### Select the option that applies to your high school education \*

High School Diploma

### College/ University A

#### Name of College Attended

University of SAn Francisco

#### Degree Type / Course of Study / Major

Masters

#### Degree Awarded?

Yes  No

### College/ University B

#### Name of College Attended

Colorado State Univ.

**Degree Type / Course of Study / Major**

---

Bachelor of Science

**Degree Awarded?**

---

Yes  No

---

**College/ University C**

**Name of College Attended**

---

**Degree Type / Course of Study / Major**

---

**Degree Awarded?**

---

Yes  No

---

**Other schools / training completed:**

**Course Studied**

---

**Hours Completed**

---

**Certificate Awarded?**

---

Yes  No

---

**Board and Interest**

**Which Boards would you like to apply for?**

---

Contra Costa County Transportation Authority Citizens Advisory Committee (BOS Appointee): Submitted

**Seat Name**

---

Representative of the unincorporated area of Contra Costa

**Have you ever attended a meeting of the advisory board for which you are applying?**

---

Yes  No

**If you have attended, how many meetings have you attended?**

---

40

EXHIBIT C

Please explain why you would like to serve on this particular board, committee, or commission.

I've been on the board for the past 4 years and would like to continue my work.

---

**Qualifications and Volunteer Experience**

I would like to be considered for appointment to other advisory boards for which I may be qualified.

Yes  No

Are you currently or have you ever been appointed to a Contra Costa County advisory board, commission, or committee?

Yes  No

List any volunteer or community experience, including any advisory boards on which you have served.

Transportation Authority CAC

Describe your qualifications for this appointment. (NOTE: you may also include a copy of your resume with this application)

My 4 years on the Transportation Authority CAC

[Upload a Resume](#)

---

**Conflict of Interest and Certification**

Do you have a Familial or Financial Relationship with a member of the Board of Supervisors?

Yes  No

If Yes, please identify the nature of the relationship:

Do you have any financial relationships with the County such as grants, contracts, or other economic relations?

Yes  No

If Yes, please identify the nature of the relationship:



EXHIBIT C

Please Agree with the Following Statement

---

I certify that the statements made by me in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge and understand that all information in this application is publicly accessible. I understand that misstatements and/or omissions of material fact may cause forfeiture of my rights to serve on a board, committee, or commission in Contra Costa County.

---

I Agree

# Application Form

## Profile

Nazanin

First Name

Shakerin

Last Name

Middle Initial

[Redacted]

Home Address

Suite or Apt

Alamo

City

CA

State

94507

Postal Code

[Redacted]

Primary Phone

[Redacted]

Email Address

### Which supervisorial district do you live in?

District 2

## Education

Select the option that applies to your high school education \*

High School Diploma

### College/ University A

Name of College Attended

UC Berkeley

Degree Type / Course of Study / Major

Masters/Transportation Engineering

Degree Awarded?

Yes  No

### College/ University B

Name of College Attended

UC Berkeley

**Degree Type / Course of Study / Major**

---

Bachelors/Architecture

**Degree Awarded?**

---

Yes  No

---

**College/ University C**

**Name of College Attended**

---

**Degree Type / Course of Study / Major**

---

**Degree Awarded?**

---

Yes  No

---

**Other schools / training completed:**

**Course Studied**

---

Many extension courses offered by ITS at UC Berkeley

**Hours Completed**

---

Over 100 hours

**Certificate Awarded?**

---

Yes  No

---

**Board and Interest**

**Which Boards would you like to apply for?**

---

Contra Costa County Transportation Authority Citizens Advisory Committee (BOS Appointee): Submitted  
Iron Horse Corridor Management Program Advisory Committee: Submitted  
Contra Costa Transportation Authority - Bicycle and Pedestrian Adv. Committee (BOS Appointees):  
Submitted  
Regional Measure 3 Independent Oversight Committee: Submitted

**Seat Name**

---

**Have you ever attended a meeting of the advisory board for which you are applying?**

---

Yes  No

**If you have attended, how many meetings have you attended?**

---

EXHIBIT C

Please explain why you would like to serve on this particular board, committee, or commission.

My education and work experience is in the Transportation Engineering field and I believe I can contribute my expertise to the County commissions and committees which deal with various modes of transportation from planning, operation, construction, and oversight aspects.

---

**Qualifications and Volunteer Experience**

I would like to be considered for appointment to other advisory boards for which I may be qualified.

Yes  No

Are you currently or have you ever been appointed to a Contra Costa County advisory board, commission, or committee?

Yes  No

List any volunteer or community experience, including any advisory boards on which you have served.

Have attended numerous conferences, seminars, city council, town hall and neighborhood meetings during the course of my career in Transportation.

Describe your qualifications for this appointment. (NOTE: you may also include a copy of your resume with this application)

I have a Masters degree in Transportation Engineering and have worked for both public and private sectors in this field for 31 years. I am now retired and would like to be involved in the oversight and implementation of Transportation related measures by providing my expertise for the betterment of my community.

[Nazanin\\_Shakerin- Resume.pdf](#)

Upload a Resume

---

**Conflict of Interest and Certification**

Do you have a Familial or Financial Relationship with a member of the Board of Supervisors?

Yes  No

If Yes, please identify the nature of the relationship:

Do you have any financial relationships with the County such as grants, contracts, or other economic relations?

Yes  No

If Yes, please identify the nature of the relationship:

---

Please Agree with the Following Statement

---

I certify that the statements made by me in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge and understand that all information in this application is publicly accessible. I understand that misstatements and/or omissions of material fact may cause forfeiture of my rights to serve on a board, committee, or commission in Contra Costa County.

---

I Agree

**Nazanin Shakerin**

**Objective:** With 31 years of professional experience in the Transportation Engineering field, I would like to contribute my time and expertise to any County Commission which does work and/or oversight in transportation planning and operations.

**Work Experience:**

Town of Danville	1996-2015
Ensys Engineering	1994-1996
Korve Engineering	1992-1994
TJKM Transportation Consultants	1988-1992
DKS & Associates	1984-1988

- Monitored townwide traffic signal operations
- Implemented and managed Neighborhood Traffic Management Program (NTMP)
- Reviewed and approved traffic impact studies
- Designed and timed traffic signals
- Managed transportation related Capital Improvement Projects (CIP)
- Prepared work scope for traffic impact studies
- Reviewed site plans and circulation plans
- Reviewed and approved roadway signing and striping plans
- Reviewed and approved traffic control plans
- Coordinated project design and construction with other public agencies; Caltrans, MTC
- Responded to citizen inquiries

**Education:**

University of California, Berkeley	
- Bachelors of Arts in Architecture	May 1981
- Masters of Science in Transportation Engineering	May 1984
- Affiliations: Institute of Transportation Engineers	

**Skills:**

- Traffic signal design
- Traffic impact studies
- Report preparation
- Presentation to elected officials
- Conduct neighborhood meetings
- Perform field work and site assessment for projects



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Karen Mitchoff, District IV Supervisor  
Date: September 22, 2020

Subject: REAPPOINT Allan Tobias to the District IV seat on the Emergency Medical Care Committee

---

**RECOMMENDATION(S):**

REAPPOINT the following individual to the District IV seat on the Emergency Medical Care Committee (EMCC) to a two-year term to expire on September 30, 2022.

Allan Tobias  
Walnut Creek, CA 94598

**FISCAL IMPACT:**

None.

**BACKGROUND:**

The Contra Costa County Board of Supervisors (Authority), established the Contra Costa County EMCC (Resolutions 68/404, 77/637, 79/460 and by Board Order on February 24, 1998) in accordance with the California Health and Safety Code Division 2.5, Chapter 4, Article 3, to act in an advisory capacity to the Board and the County Health Services Director on matters relating to emergency medical services.

---

APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Stacey M. Boyd, Deputy

Contact: Lisa Chow, (925)  
521-7100

cc:

CONSEQUENCE OF NEGATIVE ACTION:

Seat will become vacant.

CHILDREN'S IMPACT STATEMENT:

N/A.





Contra  
Costa  
County

To: Board of Supervisors  
From: Federal D. Glover, District V Supervisor  
Date: September 22, 2020

Subject: RE-APPOINT Donna Allen to the County Planning Commission, District V Seat

---

**RECOMMENDATION(S):**

RE-APPOINT the following individual to the District V Representative Seat on the Contra Costa County Planning Commission with a term expiring June 30, 2024, as recommended by Supervisor Federal D. Glover.

Donna Allen

**FISCAL IMPACT:**

NONE.

**BACKGROUND:**

The Planning Commission's powers and duties include: 1. Exercise all powers and duties prescribed by law (statute, ordinance or board order), including consideration of matters referred to it by the zoning administrator except those powers and duties specifically reserved or delegated to other divisions of the planning agency; 2. Initiate preparation of general plans, specific plans, regulations, programs and legislation to implement the planning power of the county; 3. Be generally responsible for advising the legislative body of matters relating to planning, which, in the opinion of the commission, should be studied; 4. Be the advisory agency as designated in Title

- 
- APPROVE  OTHER
  - RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE
- 

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

- AYE: John Gioia, District I Supervisor
- Candace Andersen, District II Supervisor
- Diane Burgis, District III Supervisor
- Karen Mitchoff, District IV Supervisor
- Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Stacey M. Boyd, Deputy

Contact: Vincent Manuel (925)  
608-4200

cc:

BACKGROUND: (CONT'D)

9 of this code for the purpose of passing on subdivisions; 5. Hear and decide all applications or requests for proposed entitlements estimated to generate one hundred or more peak hour trips unless otherwise provided by this code or board order; and 6. Hear and make recommendations regarding proposed development agreements when it is hearing the related project applications being processed concurrently with the development agreements.

CONSEQUENCE OF NEGATIVE ACTION:

The position would remain vacant.

CHILDREN'S IMPACT STATEMENT:

None.



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Anna Roth, Health Services  
Date: September 22, 2020

Subject: Cancel Two Ambulatory Care Provider-Exempt Positions and Add Two OBGYN-Family Medicine, Advanced Obstetric - Exempt Positions

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**RECOMMENDATION(S):**

ADOPT Position Adjustment Resolution No. 25629 to cancel two (2) vacant Ambulatory Care Provider-Exempt (VPT1) positions #8618 and #10013 at salary plan and grade level 1PX-1001 (\$15,285 - \$17,333) and add two (2) OBGYN-Family Medicine, Advanced Obstetric-Exempt (VPS6) positions at salary plan and grade level 1PX-1006 (\$15,253 - \$17,333) in the Health Services Department. (Represented)

**FISCAL IMPACT:**

Upon approval, this action will be 100% cost neutral. (Enterprise Fund I)

**BACKGROUND:**

The Obstetrics Department has been short-staff and in order to meet patient needs, the Department is requesting to add two OBGYN-Family Medicine providers. To fully offset the costs, the Department is canceling two vacant Ambulatory Care Provider-Exempt positions #8618 and 10013. These positions have been vacant for a number of years and the Department has determined there is a greater need to staff its Obstetrics Department.

APPROVE

OTHER

RECOMMENDATION OF CNTY ADMINISTRATOR

RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: June McHuen, Deputy

Contact: Jo-Anne Linares,  
925-957-5240

cc: Gina S., Samir Shah, J Linares

CONSEQUENCE OF NEGATIVE ACTION:

If this action is not approved, the OB department will continue to be understaffed which negatively impacts the delivery of patient care services.

AGENDA ATTACHMENTS

P300-25629

MINUTES ATTACHMENTS

Signed P300 25629

**POSITION ADJUSTMENT REQUEST**

NO. 25629  
DATE 09/2/20

Department Health Services

Budget Unit No. 0540 Org No. 6301

Department No./  
Agency No. A18

Action Requested: Add two (2) OBGYN-Family Medicine, Advanced Obstetric-Exempt (VPS6) positions and cancel vacant Ambulatory Care Provider-Exempt (VPT1) positions #8618 and #10013 in the Health Services Department.

Proposed Effective Date: 9/23/2020

Classification Questionnaire attached: Yes  No  / Cost is within Department's budget: Yes  No

Total One-Time Costs (non-salary) associated with request: \$0.00

Estimated total cost adjustment (salary / benefits / one time):

Total annual cost \$0

Net County Cost 0

Total this FY \$0

N.C.C. this FY \$0

SOURCE OF FUNDING TO OFFSET ADJUSTMENT: 100% Cost Neutral (Enterprise Fund I)

Department must initiate necessary adjustment and submit to CAO.

Use additional sheet for further explanations or comments.

Jo-Anne Linares

\_\_\_\_\_  
(for) Department Head

REVIEWED BY CAO AND RELEASED TO HUMAN RESOURCES DEPARTMENT

Sarah Kennard for

9/15/2020

\_\_\_\_\_  
Deputy County Administrator

\_\_\_\_\_  
Date

HUMAN RESOURCES DEPARTMENT RECOMMENDATIONS

DATE \_\_\_\_\_

Exempt from Human Resources review under delegated authority.

Amend Resolution 71/17 establishing positions and resolutions allocating classes to the Basic / Exempt salary schedule.

Effective:  Day following Board Action.

\_\_\_\_\_(Date)

\_\_\_\_\_  
(for) Director of Human Resources

\_\_\_\_\_  
Date

COUNTY ADMINISTRATOR RECOMMENDATION:

DATE

Approve Recommendation of Director of Human Resources

Disapprove Recommendation of Director of Human Resources

Other: Approve as recommended by the department.

\_\_\_\_\_  
(for) County Administrator

BOARD OF SUPERVISORS ACTION:

Adjustment is APPROVED  DISAPPROVED

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

DATE \_\_\_\_\_

BY \_\_\_\_\_

APPROVAL OF THIS ADJUSTMENT CONSTITUTES A PERSONNEL / SALARY RESOLUTION AMENDMENT

POSITION ADJUSTMENT ACTION TO BE COMPLETED BY HUMAN RESOURCES DEPARTMENT FOLLOWING BOARD ACTION

Adjust class(es) / position(s) as follows:

## REQUEST FOR PROJECT POSITIONS

Department \_\_\_\_\_

Date 9/15/2020

No. xxxxxx

1. Project Positions Requested:
  
2. Explain Specific Duties of Position(s)
  
3. Name / Purpose of Project and Funding Source (do not use acronyms i.e. SB40 Project or SDSS Funds)
  
4. Duration of the Project: Start Date \_\_\_\_\_ End Date \_\_\_\_\_  
Is funding for a specified period of time (i.e. 2 years) or on a year-to-year basis? Please explain.
  
5. Project Annual Cost
  - a. Salary & Benefits Costs: \_\_\_\_\_
  - b. Support Costs: \_\_\_\_\_  
(services, supplies, equipment, etc.)
  - c. Less revenue or expenditure: \_\_\_\_\_
  - d. Net cost to General or other fund: \_\_\_\_\_
  
6. Briefly explain the consequences of not filling the project position(s) in terms of:
  - a. potential future costs
  - b. legal implications
  - c. financial implications
  - d. political implications
  - e. organizational implications
  
7. Briefly describe the alternative approaches to delivering the services which you have considered. Indicate why these alternatives were not chosen.
  
8. Departments requesting new project positions must submit an updated cost benefit analysis of each project position at the halfway point of the project duration. This report is to be submitted to the Human Resources Department, which will forward the report to the Board of Supervisors. Indicate the date that your cost / benefit analysis will be submitted
  
9. How will the project position(s) be filled?
  - a. Competitive examination(s)
  - b. Existing employment list(s) Which one(s)? \_\_\_\_\_
  - c. Direct appointment of:
    1. Merit System employee who will be placed on leave from current job
    2. Non-County employee

Provide a justification if filling position(s) by C1 or C2

USE ADDITIONAL PAPER IF NECESSARY

POSITION ADJUSTMENT REQUEST

NO. 25629
DATE 09/2/20

Department Health Services

Budget Unit No.0540 Org No.6301

Department No./
Agency No. A18

Action Requested: Add two (2) OBGYN-Family Medicine, Advanced Obstetric-Exempt (VPS6) positions and cancel vacant Ambulatory Care Provider-Exempt (VPT1) positions #8618 and #10013 in the Health Services Department.

Proposed Effective Date: 9/23/2020

Classification Questionnaire attached: Yes [ ] No [x] / Cost is within Department's budget: Yes [x] No [ ]

Total One-Time Costs (non-salary) associated with request: \$0.00

Estimated total cost adjustment (salary / benefits / one time):

Total annual cost \$0

Net County Cost 0

Total this FY \$0

N.C.C. this FY \$0

SOURCE OF FUNDING TO OFFSET ADJUSTMENT: 100% Cost Neutral (Enterprise Fund I)

Department must initiate necessary adjustment and submit to CAO.

Use additional sheet for further explanations or comments.

Jo-Anne Linares

(for) Department Head

REVIEWED BY CAO AND RELEASED TO HUMAN RESOURCES DEPARTMENT

Sarah Kennard for

9/15/2020

Deputy County Administrator

Date

HUMAN RESOURCES DEPARTMENT RECOMMENDATIONS

DATE

Exempt from Human Resources review under delegated authority.

Amend Resolution 71/17 establishing positions and resolutions allocating classes to the Basic / Exempt salary schedule.

Effective: [x] Day following Board Action.

[ ] (Date)

(for) Director of Human Resources

Date

COUNTY ADMINISTRATOR RECOMMENDATION:

DATE

- [ ] Approve Recommendation of Director of Human Resources
[ ] Disapprove Recommendation of Director of Human Resources
[x] Other: Approve as recommended by the department.

(for) County Administrator

BOARD OF SUPERVISORS ACTION:

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

Adjustment is APPROVED [x] DISAPPROVED [ ]

DATE 09-22-2020

BY

APPROVAL OF THIS ADJUSTMENT CONSTITUTES A PERSONNEL / SALARY RESOLUTION AMENDMENT

POSITION ADJUSTMENT ACTION TO BE COMPLETED BY HUMAN RESOURCES DEPARTMENT FOLLOWING BOARD ACTION
Adjust class(es) / position(s) as follows:



Contra  
Costa  
County

To: Board of Supervisors  
From: Anna Roth, Health Services  
Date: September 22, 2020

Subject: Decrease the Hours of Two Family Nurse Practitioner Positions in the Health Services Department

---

**RECOMMENDATION(S):**

ADOPT Position Adjustment Resolution No. 25630 to decrease the hours of two (2) Family Nurse Practitioner (VWSB) positions #15470 from 32/40 to 22/40 and #9571 from 40/40 to 36/40, at salary plan and grade L35-1873 (\$11,378 – \$14,210) in the Health Services Department. (Represented)

**FISCAL IMPACT:**

Upon approval, this action will result in an annual cost savings of approximately \$90,765. (Enterprise Fund I)

**BACKGROUND:**

Health Services is requesting to reduce the hours of Family Nurse Practitioner positions #9571 from 40/40 to 36/40 and #15470 from 32/40 to 22/40 due to the incumbents' availability. This action results in cost savings and the Department has determined that operational needs are met with the reduced position hours.

**CONSEQUENCE OF NEGATIVE ACTION:**

If this action is not approved, the department will not be able to fulfill the request of the incumbents and support the operational needs.

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APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: June McHuen, Deputy

Contact: Jo-Anne Linares,  
925-957-5240

cc: Gina S., Jo-Anne Linares



AGENDA

ATTACHMENTS

P300-25630

MINUTES

ATTACHMENTS

Signed P300 25630

**POSITION ADJUSTMENT REQUEST**

NO. 25630  
DATE 09/2/20

Department Health Services

Budget Unit No. 0540 Org No. 6386/6388 Agency No. A18

Department No./

Action Requested: Decrease the hours of Family Nurse Practitioner (VWSB) position #9571 from 40/40 to 36/40 and position #15470 from 32/40 to 22/40 in the Health Services Department.

Proposed Effective Date: 9/23/20

Classification Questionnaire attached: Yes  No  / Cost is within Department's budget: Yes  No

Total One-Time Costs (non-salary) associated with request: \$0.00

Estimated total cost adjustment (salary / benefits / one time):

Total annual cost \$0

Net County Cost 0

Total this FY \$0

N.C.C. this FY \$0

SOURCE OF FUNDING TO OFFSET ADJUSTMENT: 100% Cost Savings (Enterprise Fund I)

Department must initiate necessary adjustment and submit to CAO.

Use additional sheet for further explanations or comments.

Jo-Anne Linares

\_\_\_\_\_  
(for) Department Head

REVIEWED BY CAO AND RELEASED TO HUMAN RESOURCES DEPARTMENT

Sarah Kennard for

9/15/20

\_\_\_\_\_  
Deputy County Administrator

\_\_\_\_\_  
Date

HUMAN RESOURCES DEPARTMENT RECOMMENDATIONS

DATE \_\_\_\_\_

Exempt from Human Resources review under delegated authority.

Amend Resolution 71/17 establishing positions and resolutions allocating classes to the Basic / Exempt salary schedule.

Effective:  Day following Board Action.

\_\_\_\_\_(Date)

\_\_\_\_\_  
(for) Director of Human Resources

\_\_\_\_\_  
Date

COUNTY ADMINISTRATOR RECOMMENDATION:

DATE

Approve Recommendation of Director of Human Resources

Disapprove Recommendation of Director of Human Resources

Other: Approve as recommended by the department.

\_\_\_\_\_  
(for) County Administrator

BOARD OF SUPERVISORS ACTION:

Adjustment is APPROVED  DISAPPROVED

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

DATE \_\_\_\_\_

BY \_\_\_\_\_

APPROVAL OF THIS ADJUSTMENT CONSTITUTES A PERSONNEL / SALARY RESOLUTION AMENDMENT

POSITION ADJUSTMENT ACTION TO BE COMPLETED BY HUMAN RESOURCES DEPARTMENT FOLLOWING BOARD ACTION

Adjust class(es) / position(s) as follows:

## REQUEST FOR PROJECT POSITIONS

Department \_\_\_\_\_

Date 9/15/2020

No. xxxxxx

1. Project Positions Requested:
  
2. Explain Specific Duties of Position(s)
  
3. Name / Purpose of Project and Funding Source (do not use acronyms i.e. SB40 Project or SDSS Funds)
  
4. Duration of the Project: Start Date \_\_\_\_\_ End Date \_\_\_\_\_  
Is funding for a specified period of time (i.e. 2 years) or on a year-to-year basis? Please explain.
  
5. Project Annual Cost
  - a. Salary & Benefits Costs: \_\_\_\_\_
  - b. Support Costs: \_\_\_\_\_  
(services, supplies, equipment, etc.)
  - c. Less revenue or expenditure: \_\_\_\_\_
  - d. Net cost to General or other fund: \_\_\_\_\_
  
6. Briefly explain the consequences of not filling the project position(s) in terms of:
  - a. potential future costs
  - b. legal implications
  - c. financial implications
  - d. political implications
  - e. organizational implications
  
7. Briefly describe the alternative approaches to delivering the services which you have considered. Indicate why these alternatives were not chosen.
  
8. Departments requesting new project positions must submit an updated cost benefit analysis of each project position at the halfway point of the project duration. This report is to be submitted to the Human Resources Department, which will forward the report to the Board of Supervisors. Indicate the date that your cost / benefit analysis will be submitted
  
9. How will the project position(s) be filled?
  - a. Competitive examination(s)
  - b. Existing employment list(s) Which one(s)? \_\_\_\_\_
  - c. Direct appointment of:
    1. Merit System employee who will be placed on leave from current job
    2. Non-County employee

Provide a justification if filling position(s) by C1 or C2

USE ADDITIONAL PAPER IF NECESSARY

# POSITION ADJUSTMENT REQUEST

NO. 25630  
DATE 09/2/20

Department No./  
Agency No. A18

Department Health Services

Budget Unit No. 0540 Org No. 6386/6388

Action Requested: Decrease the hours of Family Nurse Practitioner (VWSB) position #9571 from 40/40 to 36/40 and position #15470 from 32/40 to 22/40 in the Health Services Department.

Proposed Effective Date: 9/23/20

Classification Questionnaire attached: Yes  No  / Cost is within Department's budget: Yes  No

Total One-Time Costs (non-salary) associated with request: \$0.00

Estimated total cost adjustment (salary / benefits / one time):

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Net County Cost 0

Total this FY \$0

N.C.C. this FY \$0

SOURCE OF FUNDING TO OFFSET ADJUSTMENT: 100% Cost Savings (Enterprise Fund I)

Department must initiate necessary adjustment and submit to CAO.

Use additional sheet for further explanations or comments.

Jo-Anne Linares

(for) Department Head

REVIEWED BY CAO AND RELEASED TO HUMAN RESOURCES DEPARTMENT

Sarah Kennard for

9/15/20

Deputy County Administrator

Date

HUMAN RESOURCES DEPARTMENT RECOMMENDATIONS

DATE \_\_\_\_\_

Exempt from Human Resources review under delegated authority.

Amend Resolution 71/17 establishing positions and resolutions allocating classes to the Basic / Exempt salary schedule.

Effective:  Day following Board Action.

\_\_\_\_\_ (Date)

(for) Director of Human Resources

Date

COUNTY ADMINISTRATOR RECOMMENDATION:

DATE

- Approve Recommendation of Director of Human Resources
- Disapprove Recommendation of Director of Human Resources
- Other: Approve as recommended by the department.

(for) County Administrator

BOARD OF SUPERVISORS ACTION:

Adjustment is APPROVED  ~~DISAPPROVED~~  XXXXX

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

DATE 09-22-2020

BY 

APPROVAL OF THIS ADJUSTMENT CONSTITUTES A PERSONNEL / SALARY RESOLUTION AMENDMENT

POSITION ADJUSTMENT ACTION TO BE COMPLETED BY HUMAN RESOURCES DEPARTMENT FOLLOWING BOARD ACTION  
Adjust class(es) / position(s) as follows:



Contra  
Costa  
County

To: Board of Supervisors  
From: Brian M. Balbas, Public Works Director/Chief Engineer  
Date: September 22, 2020

Subject: APPROVE Library Sublease and Service Agreement with the City of Orinda

---

**RECOMMENDATION(S):**

AUTHORIZE the County Librarian, or designee, to execute a Library Sublease and Service Agreement between the County and the City of Orinda for the operation of the Orinda Library located at 26 Orinda Way, Orinda.

**FISCAL IMPACT:**

No fiscal impact. The proposed changes to the operations plan reflect existing practices.

**BACKGROUND:**

The County operates the library at 26 Orinda Way in Orinda under a Library Sublease and Maintenance Agreement dated October 7, 2001. The sublease that is the subject of this board order is substantially similar to the County's standard form Library Lease and Service Agreement. The County's standard form Library Lease and Service Agreement was approved by the Board of Supervisors in 2010 and amended in 2020. Under the terms of sublease with the City of Orinda, the County will perform library services and related activities at the library and the City will pay for and provide all maintenance, utilities, and janitorial services to the library. No rent is due or payable by the County.

---

APPROVE

OTHER

RECOMMENDATION OF CNTY ADMINISTRATOR

RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Stacey M. Boyd, Deputy

Contact: Stacey Sinclair, 925  
957-2464

cc: Melinda Cervantes, County Librarian

CONSEQUENCE OF NEGATIVE ACTION:

Failure to approve the Library Lease and Service Agreement with the City of Orinda may reduce library services in the City of Orinda.

ATTACHMENTS

Orinda Library Sublease and Agreement

**LIBRARY SUBLEASE**

**and**

**SERVICE AGREEMENT**

**Between**

**COUNTY OF CONTRA COSTA**

**and**

**THE CITY OF ORINDA**

**July 1, 2020**

**LIBRARY SUBLEASE AND SERVICE AGREEMENT**

**BETWEEN**

**COUNTY OF CONTRA COSTA AND THE CITY OF ORINDA**

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EXHIBITS

- Exhibit A     Library Floor Plan  
Exhibit B     Form of Sublease Supplement

**LIBRARY SUBLEASE  
And  
SERVICE AGREEMENT**

This Sublease and service agreement (“**Sublease**”) is dated July 1, 2020 (“**Effective Date**”), and is between the City of Orinda, California, a municipal corporation (the “**City**”), and the County of Contra Costa, a political subdivision of the State of California (the “**County**”).

**Recitals**

- A. The City owns that certain property having Assessor’s Parcel No. 260-200-005 located at 26 Orinda Way in Orinda, California (the “**Property**”).
- B. The Property has been improved with a 33,000 square foot building (the “**Building**”), a parking lot, and landscaping.
- C. The Friends of the Orinda Library is the owner of the 33,000 square foot library Building and parking lot. The City has entered into a Sublease-Option to Purchase Agreement with the Friends of the Orinda Library effective October 7, 2001.
- D. That portion of the Building that is used to provide Library Services, as defined below, is outlined in bold on the floor plan to the Building that is attached as Exhibit A – Library Floor Plan (the “**Library**” or the “**Premises**”).
- E. The City and the County are parties to the Library Sublease and Maintenance Agreement dated October 7, 2001, under which the County Subleases the Building from the City for use as a library (the “**2001 Sublease**”).
- F. The City and the County agree that the presence of a public library in a community enhances the quality of life in that community. The City and the County therefore desire to work cooperatively to permit the County to operate the Library as a public library. Toward this end, the City desires to Sublease the Library to the County and the County desires to Sublease the Library from the City on the terms set forth herein.

The parties therefore agree as follows:

**AGREEMENT**

1. **DEFINITIONS**. The following terms have the following meanings:

“**Actual Hours**” means the number of hours of Library Services that the County will provide each week in a Fiscal year at the Library and is the sum of Base Hours and Extra Hours.

“**Base Hours**” means the number of hours of Library Services that the County will provide each week in a Fiscal Year to all County-operated libraries. The County is responsible for the cost of providing Library Services during Base Hours.

“**Community Library Manager**” means the person designated as the on-site manager by the Librarian.

“**Components**” means computers, charging stations (e.g., laptop kiosks), mobile devices, printers, scanners, monitors, keyboards, and related equipment and software used in the Library by the public and staff.

“**Data Communication Equipment**” means routers, switches, servers, uninterrupted power supply (UPS) and wireless access points.

“**Data Communication Services**” means broadband and wireless access.

“**Extra Hours**” means the number of hours of Library Services that the City elects to obtain from the County each week at the Library that are in excess of Base Hours. The City is responsible for the cost of Extra Hours.

“**Fiscal Year**” means a twelve-month period beginning July 1.

“**Librarian**” means the person designated by the County as the County Librarian.

“**Library**” or “**Premises**” have the meaning ascribed to those terms in Recital D.

“**Library Complex**” means the entirety of the Building, including the area not outlined in bold on the floorplan to the Building that is attached as Exhibit A – Library Floor Plan.

“**Library Services**” includes lending books and other media to the public, offering programs to the public, and providing collection management and technical services in the course of operating a library. Except as otherwise provided herein, Library Services does not include maintenance of the Building.

“**Meeting Rooms**” are rooms in the Library Complex that are used for meetings and/or events and include the Auditorium, Garden Room, Gallery Room, and May Room but exclude the Study Room within the Library. Meeting Rooms may be used for library and other City business and may be reserved by community groups in accordance with City guidelines. Library staff is solely responsible for scheduling the reservation and use of the Study Room

“**Specialized Equipment**” means equipment that supports library operations that is not otherwise defined in this Lease, including, but not limited to, book security gates, self-check machines, remote lockers, self-service library access system (e.g., Open+) and any automated material handling equipment used at the Library.

“**Sublease Supplement**” means a supplement to this Sublease in substantially the form of Exhibit B – Form of Sublease Supplement.

2. **EFFECTIVENESS**. This Sublease supersedes and replaces the 2001 Sublease.
3. **SUBLEASE OF LIBRARY**. The City hereby Subleases to the County and the County hereby Subleases from the City, the Library.
4. **CONSIDERATION**. In exchange for the use of the Library, the County shall perform Library Services and related activities at the Library during the Term of this Sublease. No rent is due or payable from the County to the City during the Term of this Sublease.
5. **TERM**. The “**Initial Term**” of this Sublease begins on the Effective Date and ends June 30, 2021.

A. Automatic Renewal. The Sublease will automatically renew on a yearly basis unless written notice is given by either party of their intent to terminate the Sublease at least one year in advance in accordance with Section 5.B., Termination, below. Each annual renewal period is a “**Renewal Term**.” Each Renewal Term will automatically commence on the day following the last day of the prior Term. Upon commencement of a Renewal Term, the “Term” of this Sublease will be deemed to mean the Initial Term and each Renewal Term.

B. Termination. Either party may terminate this Sublease at any time by giving the other party written notice at least one year prior to the proposed termination date. In the event of termination, the County shall leave the Premises and all City Materials, as defined in Section 13.B below, in good working order, and shall remove only County Materials, as defined in Section 13.A below.

6. **USE**.

A. County’s Use of Library. The County may use the Library for the purpose of providing Library Services for the public and related activities.

B. City’s Use of Library. The City may use the Library (including Meeting Rooms) during and outside the Library’s normal operating hours, so long as such use does not interfere directly with normal community library functions. The City is entirely responsible for any use of the Library that it schedules and shall hold harmless and indemnify the County, its officers, agents and employees for such use as provided for in Section 15, Indemnification. The City shall establish use guidelines for the use of Meeting Rooms, schedule use of the Meeting Rooms, and collect and retain any fees.

Any use of the Library scheduled by the City is subject to the City’s guidelines and the City’s rules and regulations. The City may not close the Library during its normal operating hours without the prior written consent of the Librarian.

C. County's Use of Meeting Rooms. City and County Library staff will work cooperatively to schedule use of the Meeting Rooms. Library sponsored programs are to be given priority use of Meeting Rooms in the Library Complex during library hours of operation, provided that a Library program may not displace a previously scheduled use of a Meeting Room. The County will have an opportunity to place Meeting Room reservations before the City takes general reservations. At no time will the County be charged for use of Meeting Rooms for Library programs.

The County will also have an opportunity to reserve the Auditorium that is part of the Building up to six times per year for library-related programs and activities at no charge. Use of the auditorium may be scheduled up to twelve months in advance, on a space available basis.

D. County's Use of Parking Lot. City may designate Library staff parking areas. Alternately, Library staff may park within designated library parking areas subject to the same provisions or restrictions that apply to the general public.

7. **MAINTENANCE AND REPAIRS.** The City shall provide the maintenance and repairs described below to keep and maintain the Building in good order, condition and repair. Such maintenance and repair is to be carried out in a manner that is at least consistent with the caliber of maintenance and repairs applied by the City to other City facilities, or as mutually agreed by the City and the County. City responsibilities for maintenance and repair include:

A. Exterior. All exterior building maintenance including but not limited to the roof, landscaping, hardscape, grounds, pest control, lighting and parking.

B. Interior. All interior building maintenance including but not limited to mechanical and electrical systems, including gas, electrical, water, plumbing, elevators, voice and data communication systems infrastructure, heating, ventilating, air-conditioning (HVAC) systems, pest control, and all interior lighting systems, including the replacement of all fixtures and bulbs.

C. Fixtures and Furnishings. Maintenance and replacement of Building fixtures and furnishings including shelving, lighting, furniture, carpeting, window treatments, and appliances.

D. Custodial Services. City shall notify the Community Library Manager prior to selecting a contractor to provide custodial services. Alternately, City may provide such service using City staff.

8. **CAPITAL IMPROVEMENTS.** If the City and County agree that capital improvements to the Building or the Property are necessary (such improvements, "**Capital Improvements**"), then (i) the City shall provide the Capital Improvements at its sole cost and expense, and (ii) the City shall coordinate the schedule associated with the construction of all Capital Improvements with the Librarian.

9. **ALTERATIONS; FIXTURES; SIGNS.** The County may make any lawful and proper minor alterations to the Library and may attach fixtures and signs in or upon the Property with the

City's prior written approval. The County is responsible for the cost of such alterations and attachments. All alterations and attachments must comply with existing code requirements.

10. **OPERATIONS: HOURS; COSTS.**

A. Initial Period. For the Initial Term (i) the number of Base Hours the County will provide, (ii) the number of Extra Hours the City elects to obtain from the County, (iii) the resulting number of Actual Hours, and (iv) the cost to the City of the Extra Hours (such cost, the "**City's Obligation**") are set forth in Sublease Supplement No. 1, which supplement is substantially in the form of Exhibit B.

B. Annual Modifications. For each Renewal Term, the Librarian will provide a Sublease Supplement to the City in substantially the form of Exhibit B by March 31 of each year. The Sublease Supplement will set forth (i) the number of Base Hours the County will provide in the upcoming Fiscal Year, (ii) the number of Extra Hours of Library Services the County anticipates that the City will elect to obtain from the County at the Library in the upcoming Fiscal Year (in the absence of more current information from the City, the County will assume the number of Extra Hours in the upcoming Fiscal Year will be equal to the number of Extra Hours then in effect), (iii) the resulting number of Actual Hours during which Library Services will be conducted at the Library in the upcoming Fiscal Year, and (iv) the cost of the City's Obligation.

C. City Election: Extra Hours. Within 60 days of receiving the Sublease Supplement, the City shall notify the Librarian in writing if it intends to modify the number of Extra Hours at the Library in the upcoming Fiscal Year. Such modification may be based on fiscal or other considerations identified by the City.

1. Change in Extra Hours from Prior Fiscal Year. If the County receives a notice modifying the number of Extra Hours desired in the upcoming Fiscal Year within the time allotted, the parties shall use good faith efforts to finalize a revised Sublease Supplement for the upcoming Fiscal Year before the July 1 start of that Fiscal Year. If the City fails to make a final determination regarding the number of Extra Hours before the start of the upcoming Fiscal Year, the Sublease Supplement issued by the Librarian for the upcoming Fiscal Year will be effective until the City makes its final determination and a revised Sublease Supplement for that Fiscal Year is executed. The final, revised, Sublease Supplement will be effective upon its execution by the County and the City.

2. No Change in Extra Hours from Prior Fiscal Year. If the County does not receive a notice modifying the number of Extra Hours desired in the upcoming Fiscal Year within the time allotted, the County and the City shall each execute the original Sublease Supplement issued by the Librarian for the upcoming Fiscal Year, which Sublease Supplement will become effective on July 1 of the Fiscal Year to which it applies.

D. Invoices; Payment. The County will invoice the City quarterly for the cost of Extra Hours incurred in the prior quarter. The City shall pay the County the amount due to the County within thirty (30) days of receipt of the invoice. In no event is the City obligated to pay an amount

greater than the amount identified as the City's Obligation in the Sublease Supplement in effect for that Fiscal Year.

11. **OPERATIONS: COST OF UTILITIES.** The City shall pay for all utilities provided to the Premises, including gas, electricity, voice communication services, water, sewer, fire alarm, intrusion alarm, garbage, and recycling.

12. **OPERATIONS: TECHNOLOGY AND EQUIPMENT; COSTS.** The County and the City shall share responsibility for providing and maintaining technological equipment and services as follows:

A. **Components.** The County shall provide technology support at the Library, including determining the quantity, type, configuration, and location of all Components used in the Library. The County shall acquire Components for use in the Library and maintain them in good working order. The County is responsible for the cost of obtaining and maintaining Components in the Library.

B. **Voice Communication System.** The City, at its expense, shall acquire and provide voice communication equipment and on-going voice services to the Library.

C. **Data Communication System.** The County shall acquire and configure the Data Communication Equipment and select Data Communication Services for the Library to create the Library's data communication system. The City is responsible for the actual cost of obtaining and maintaining the Data Communication Equipment. To ensure the City is able to properly budget for the cost of the Data Communication Equipment, prior to placing an order for Data Communication Equipment, (i) the County will provide a written estimate of the cost of the Data Communication Equipment to the City, and (ii) must receive the City's written consent to the acquisition. At the parties' discretion, such writings may be in the form of emails. The City acknowledges that it is responsible for the actual cost of the Data Communication Equipment, even if it varies from the estimate through no fault of the County's.

1. **Connection.** The County will connect the Library's data communication system to the County Library wireless network. It is expressly understood and agreed that such wireless network is for the exclusive use of the County in providing Library Services. The City shall provide CAT5 or better Ethernet cabling throughout the Library and replace or upgrade as needed.

2. **Monthly Cost.** The County is responsible for the cost of the monthly usage fee for Data Communication Services.

D. **Miscellaneous Equipment.**

1. **Specialized Equipment.** The County shall acquire any Specialized Equipment used in the Library. The City is responsible for the actual cost of obtaining and maintaining any Specialized Equipment. To ensure the City is able to properly budget for the cost of any Specialized Equipment, prior to placing an order for Specialized Equipment, (i) the County will provide a written estimate of the cost of the Specialized Equipment to the City, and (ii) must

receive the City's written consent to the acquisition. At the parties' discretion, such writings may be in the form of emails. The City acknowledges that it is responsible for the actual cost of the Specialized Equipment, even if it varies from the estimate through no fault of the County's.

2. Copiers. The County shall provide, at its sole cost and expense, one or more copy machines for use by library staff at the Library. The County may provide, at its sole cost and expense, one or more copy machines for use by the public at the Library. The County shall also obtain, at its sole cost and expense, a maintenance contract for each such copy machine. Any revenue collected for the use of copy machines will be retained by the County.

3. Audio Visual Equipment. Should the City elect to procure any audio-visual equipment for use, either by the City or County, at the Library, the City shall provide such equipment, at its sole cost and expense. The City shall also maintain, at its sole cost and expense, any audio-visual equipment it procures. All such audio-visual equipment will be City Materials, as defined in Section 13(B) of this Lease.

E. Obsolescence Avoidance. The City and County are both responsible and shall work together in good faith to ensure that all equipment and technology services at the Library, including the voice communication system, the data communication System, Data Communication Services, and Specialized Equipment, and excluding copiers and Components, are adequate for the Library's needs and that costs that are the responsibility of the City are within the City's fiscal parameters and approved by the City in advance.

### 13. OWNERSHIP OF CONTENTS.

A. County. All books, furnishings, fixtures, equipment, and materials purchased by the County, or foundations or private or public fundraising efforts on behalf of the County, are owned by the County. Together, these books, materials, furnishings, fixtures, and equipment are the "**County Materials.**"

B. City. All books, furnishings, fixtures, equipment and materials purchased by the City, or foundations or private or public fundraising efforts on behalf of the City, are owned by the City. Together, these books, materials, furnishings, fixtures, and equipment are the "**City Materials.**" City Materials will be identified in the County's Integrated Library System.

C. Replacement of FF&E. From time to time, City and County will jointly determine if City-owned furnishings, fixtures and equipment are in need of repair or replacement, or, if applicable, a schedule for replacing City-owned furnishings, fixtures and equipment. The City shall carry out, and bear the cost of, such repair or replacement as soon as is practically and fiscally possible.

D. Public Art. The City is responsible for the selection, cost, maintenance, installation, and removal of, and any liability for, all interior and exterior public art displayed at the Library.



## 14. INSURANCE

### A. Liability Insurance

1. County. Throughout the Term, the County shall maintain in full force and effect, at its sole expense, either (i) comprehensive general liability insurance in commercially reasonable amounts, but in no event in an amount less than \$3,000,000 per occurrence, protecting and insuring against claims for bodily injury, death, property damage, and personal injury occurring within or resulting from use of the Property, or (ii) a general self-insurance program covering bodily injury, death, property damage, and personal injury occurring within or resulting from use of the Property. Any policy of insurance obtained by the County must (i) name the City, its officers, agents, and employees, as additional insureds, (ii) be endorsed to provide that the insurance is primary to and non-contributory to insurance carried by the City with respect to liability imposed on the County under this agreement, and (iii) contain a severability of interest clause.

2. City. Throughout the Term, the City shall maintain in full force and effect, at its sole expense, either (i) comprehensive general liability insurance in commercially reasonable amounts, but in no event in an amount less than \$3,000,000 per occurrence, protecting and insuring against claims for bodily injury, death, property damage, and personal injury occurring within or resulting from use of the Property, or (ii) a general self-insurance program covering bodily injury, death, property damage, and personal injury occurring within or resulting from use of the Property. Any policy of insurance obtained by the City must (i) name the County, its officers, agents, and employees, as additional insureds thereunder, (ii) be endorsed to provide that the insurance is primary to and non-contributory to insurance carried by the County with respect to liability imposed on the City under this agreement, and (iii) contain a severability of interest clause.

### B. Property Insurance.

3. County. Throughout the Term, the County shall maintain in full force and effect, at its sole expense, fire insurance and a standard “all risk” policy covering the County-owned property within the Library, and any other personal property owned by the County located at the Property. Such coverage must (i) contain a waiver of subrogation endorsement in favor of the City, and (ii) cover loss or damage to the County-owned property in the amount of the full replacement value. Covered perils are to include fire, all risk, vandalism, malicious mischief, and sprinkler leakage.

4. City. Throughout the Term, the City shall maintain in full force and effect, at its sole expense, fire insurance and a standard “all risk” policy covering all structures and improvements at the Property and any personal property owned by the City located at the Property. Such coverage must contain a waiver of subrogation endorsement in favor of the County. Covered perils are to include fire, all risk, vandalism, malicious mischief and sprinkler leakage.

C. Workers Compensation and Employers Liability. Both parties shall maintain in full force and effect Workers Compensation Insurance or self-insurance, and Employers Liability Insurance or self-insurance with limits that conform to legal requirements.

**15. INDEMNIFICATION**

A. By County. County shall indemnify, defend and hold the City harmless from the County's share of any and all claims, costs and liability for any damage, injury or death of or to any person or the property of any person, including attorneys' fees, caused by the willful misconduct or the negligent acts, errors, or omissions of the County, its officers, agents or employees in using the Property pursuant to this Sublease, except to the extent caused or contributed to by (i) the structural, mechanical, or other failure of buildings owned or maintained by the City or the Friends of the Orinda Library, (ii) the design of the Library, (iii) fixtures in the Library that are owned by the City or the Friends of the Orinda Library, and/or (iv) the negligent acts, errors, or omissions of the City, its officers, agents or employees.

B. By City. The City shall indemnify, defend and hold the County harmless from City's share of any and all claims, costs and liability for any damage, injury or death of or to any person or the property of any person, including attorneys' fees, caused by the willful misconduct or the negligent acts, errors or omissions of the City, its officers, agents or employees with respect to the Property, or the City's performance under this Sublease, or the City's use of the Property, the structural, mechanical or other failure of buildings owned or maintained by the City or the Friends of the Orinda Library, the design of the Library, or fixtures in the Library that are owned by the City or the Friends of the Orinda Library, except to the extent caused or contributed to by the negligent acts, errors, or omissions of the County, its officers, agents, or employees. The City is responsible for all claims that result from the design of the Library and from fixtures in the Library that are owned by the City or the Friends of the Orinda Library, except for any claims that result from a change in the design of the Library that is requested by the County and approved by the Board of Supervisors after the date of this Sublease.

16. **HAZARDOUS MATERIAL**. The City warrants to the County that the City does not have any knowledge of the presence of Hazardous Material (as defined below) or contamination of the Building or Property in violation of environmental laws. The City shall defend, save, protect and hold the County harmless from any loss arising out of the presence of any Hazardous Material on the Property that was not brought to the Property by or at the request of the County, its agents, contractors, invitees or employees. The City acknowledges and agrees that the County has no obligation to clean up or remediate, or contribute to the cost of clean up or remediation, of any Hazardous Material unless such Hazardous Material is released, discharged or spilled on or about the Property by the County or by any of County's agents, employees, contractors, invitees or other representatives. The obligations of this Section shall survive the expiration or earlier termination of this Sublease.

**"Hazardous Material"** means any substance, material or waste, including lead based paint, asbestos and petroleum (including crude oil or any fraction thereof), that is or becomes designated as a hazardous substance, hazardous waste, hazardous material, toxic substance, or toxic material under any federal, state or local law, regulation, or ordinance.

17. **DEFAULT**. The occurrence of any of the following events is a default ("**Default**") under this Sublease:

A. By County. If the County fails to operate the Library as a public library and such failure continues for thirty (30) days after receipt of a written notice of failure from the City to the Librarian with a copy to the County Administrator; provided, however, that the County will have additional time, up to an additional one hundred twenty (120) days, if its failure is due to circumstances beyond its reasonable control, including, without limitation, failure of the County's Board of Supervisors to adopt a budget, work stoppages, and acts of God.

B. By City. The City's failure to perform any of its obligations under this Sublease if such failure is not remedied within thirty (30) days after receipt of a written notice of failure from the County to the City specifying the nature of the breach in reasonably sufficient detail; provided, however, if such breach cannot reasonably be remedied within such thirty (30) day period, then a Default will not be deemed to occur until the occurrence of the City's failure to perform within the period of time that may be reasonably required to remedy the breach, up to an aggregate of one hundred twenty (120) days, provided the City commences curing such breach within thirty (30) days after receipt of the notice of the breach and thereafter diligently proceeds to cure such breach.

## **18. REMEDIES**

A. By County. Upon the occurrence of a Default by the City, the County may (i) terminate this Sublease and quit the Premises, or (ii) suspend operation of Library Services until the default is cured.

B. By City. Upon the occurrence of a Default by the County, the City may, after giving the County written notice of the Default, and in accordance with due process of law, reenter and repossess the Premises and remove all persons and property from the Premises.

## **19. MISCELLANEOUS**

A. Use of Volunteers. Volunteers are vital and welcome in enhancing the level of service offered in providing Library Services. City staff may work with the County's library volunteer coordinator to recruit and schedule volunteers to assist with community library operation. Volunteers will be utilized to perform services as mutually agreed upon by the County and the City.

B. Assignment and Sublease. The County does not have the right to assign this Sublease or Sublease the Premises or any part thereof at any time during the Term.

C. Quiet Enjoyment. Provided the County is following the material terms of this Sublease, the City shall warrant and defend the County in its quiet enjoyment and possession of the Premises during the Term.

D. Waste. The County shall not commit, or suffer to be committed, any waste upon the Premises.

E. Surrender of Premises. On the last day of the Term, or earlier termination of this Sublease, the County shall peaceably and quietly leave and surrender the Library to the City, in good condition, ordinary wear and tear, and damage by casualty, condemnation, acts of God, and

the City's failure to make repairs required of the City excepted. Upon termination of this Sublease, the County shall remove the County Materials from the Premises within one hundred eighty (180) days, unless otherwise agreed to in writing by the City.

F. Holding Over. Any holding over after the Term of this Sublease is a tenancy from month to month and is subject to the terms of this Sublease.

G. Notices. Any notice required or permitted under this Sublease must be in writing and sent by overnight delivery service or registered or certified mail, postage prepaid and directed as follows:

To the City:                   City of Orinda  
22 Orinda Way  
Orinda, CA 94563  
Phone: (925) 253-4220  
Facsimile: (925) 254-2068

To County:                   County Librarian  
Contra Costa County  
777 Arnold Drive, Suite 210  
Martinez, CA 94553  
Phone: (925) 608-7700  
Facsimile: (925) 608-7761

With a copy to:           Real Estate Manager  
Contra Costa County  
Public Works Department  
255 Glacier Drive  
Martinez, CA 94553  
Phone: (925) 313-2000  
Facsimile: (925) 646-0288

Either party may at any time designate in writing a substitute address for that set forth above, and thereafter notices are to be directed to such substituted address. If sent in accordance with this Section, all written notices will be deemed effective (i) the next business day, if sent by overnight courier, or (ii) three days after being deposited in the United States Postal system.

H. Time is of the Essence. Time is of the essence in fulfilling all terms and conditions of this Sublease.

I. Governing Law. The laws of the State of California govern all matters arising out of this Sublease.

J. Severability. In the event that any provision herein contained is held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining provisions of this Sublease will not in any way be affected or impaired.

K. Entire Agreement; Construction; Modification. Neither party has relied on any promise or representation not contained in this Sublease. All previous conversations, negotiations, and understandings are of no further force or effect.

This Sublease is not to be construed as if it has been prepared by one of the parties, but rather as if both parties have prepared it. This Sublease may be modified only by a writing signed by both parties.

The parties are executing this Sublease as of the date set forth in the introductory paragraph.

**COUNTY**

COUNTY OF CONTRA COSTA, a political subdivision of the State of California

By: \_\_\_\_\_  
Melinda S. Cervantes  
County Librarian

**CITY**

CITY OF ORINDA, a municipal corporation of the State of California

By: \_\_\_\_\_  
Steve Salomon  
City Manager

**RECOMMENDED FOR APPROVAL:**

By \_\_\_\_\_  
Brian M. Balbas  
Public Works Director

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Osa L. Wolff  
City Attorney

By \_\_\_\_\_  
Jessica L. Dillingham  
Principal Real Property Agent

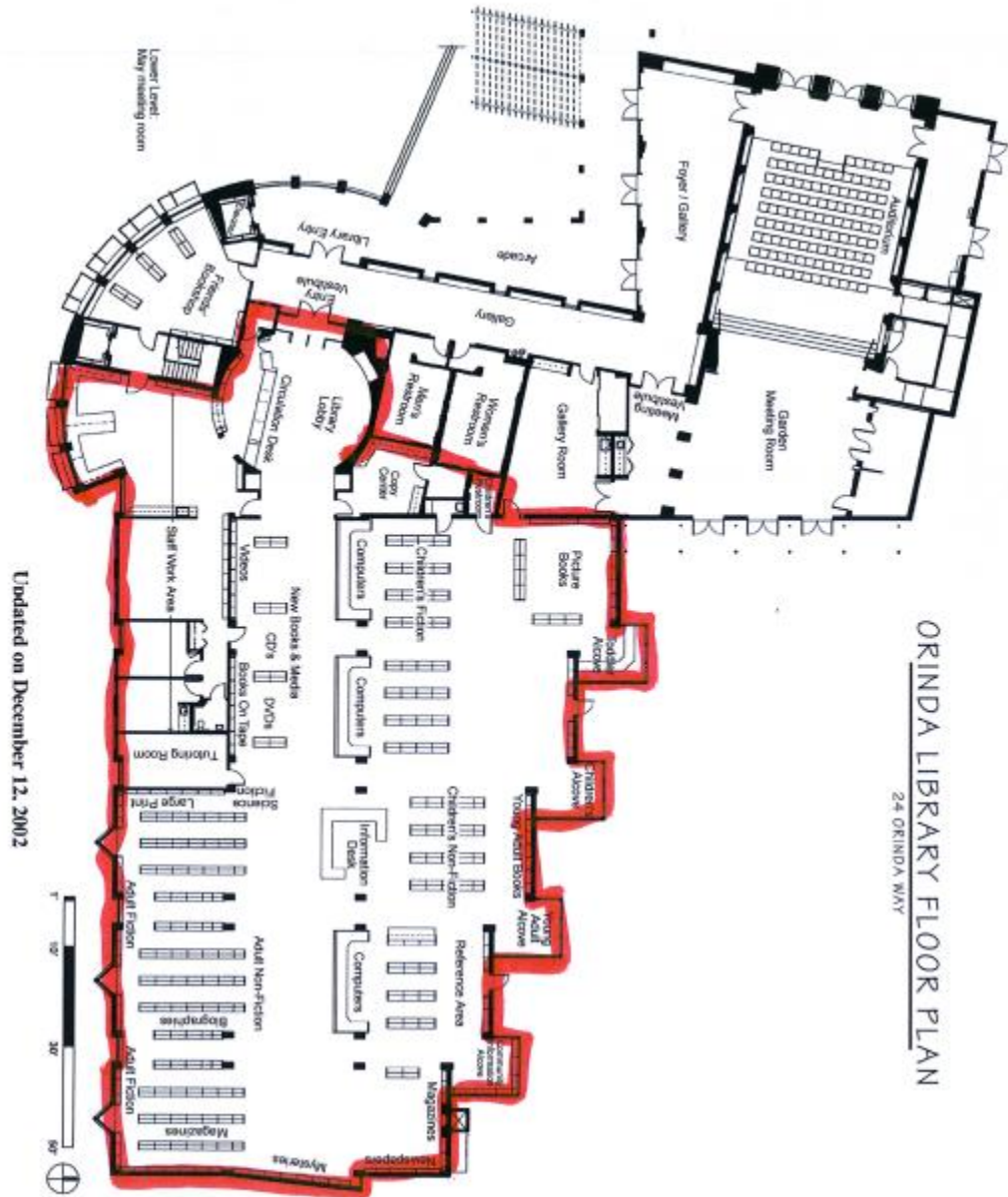
**APPROVED AS TO FORM:**

SHARON L. ANDERSON, COUNTY COUNSEL

By: \_\_\_\_\_  
Kathleen M. Andrus  
Deputy County Counsel

# EXHIBIT A

## Library Floor Plan



Updated on December 12, 2002

**EXHIBIT B**

**Form of Sublease Supplement**

SUBLEASE SUPPLEMENT No. [ ]

This Sublease Supplement No. [ ] is dated \_\_\_\_\_ and supplements the Sublease dated \_\_\_\_\_ (the “**Sublease**”) between the City of Orinda, a municipal corporation of the State of California (the “**City**”), and the County of Contra Costa, a political subdivision of the State of California (the “**County**”).

Unless otherwise defined herein, capitalized terms have the meanings given to such terms in the Sublease.

1. The number of Base Hours to be provided by the County in the Fiscal Year beginning July 1, 20\_\_, is \_\_\_\_\_.
2. The number of Extra Hours to be provided in the Fiscal Year beginning July 1, 20\_\_ is \_\_\_\_\_.
3. The number of Actual Hours to be provided in the Fiscal Year beginning July 1, 20\_\_ is \_\_\_\_\_.
4. The City’s Obligation for the Fiscal Year beginning July 1, 2\_\_ is \$\_\_\_\_\_.
5. This Sublease Supplement No. [ ] is effective in accordance with the terms of the Sublease.

**COUNTY**

COUNTY OF CONTRA COSTA, a political subdivision of the State of California

**CITY**

CITY OF ORINDA, a municipal corporation of the State of California

By: \_\_\_\_\_  
Name  
County Librarian

By: \_\_\_\_\_  
Name  
City Manager



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Kathy Gallagher, Employment & Human Services Director  
Date: September 22, 2020

Subject: 2021 Head Start Continuation Grant

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**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Employment and Human Services Department Director, or designee, to accept grant funding in an amount not to exceed \$17,608,086 from the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Head Start, for Head Start Program services for the period January 1, 2021 through December 31, 2021 and AUTHORIZE the Chair Board of Supervisors to sign the grant application.

**FISCAL IMPACT:**

Funding for the period January 1 through June 30, 2021 is included in the Department's FY 2020-21 budget. Funding for the period July 1 through December 31, 2021 will be included in the Department's proposed FY 2021-22 budget. The County, as Grantee, is required to generate a 20% non-federal match of the total project budget. For 2021, the match amount equates to \$4,402,022, which will be achieved through collaboration with State Child Development programs and the volunteer hours accrued by Head Start parents and community partners. The application includes \$2,293,865 requested funding for the County's Head Start Delegate Agency, First Baptist Church of Pittsburg, California. CFDA #93.600. (100% Federal)

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APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Elaine Burres  
608-4960

cc:



## BACKGROUND:

Head Start is a federal program that promotes the school readiness of children ages birth through five years old from low-income families by enhancing their cognitive, social and emotional development. Head Start programs provide a learning environment that supports children's growth in the following domains: language and literacy; cognition and general knowledge; physical development and health; social and emotional development; and approaches to learning. Head Start also provides comprehensive services which include health, nutrition, social and other services determined as necessary via family needs assessments. Services are designed to be responsive to each child and family's ethnic, cultural, and linguistic heritage. Services are provided through a variety of service models including: centers or schools that children attend part or full day, family childcare homes and/or the children's own homes wherein a Head Start staff visit once per week to provide in-home services. Children who receive home-based services gather periodically with other enrolled families for group learning experiences facilitated by Head Start staff. Contra Costa County submits an application annually to the U.S. Health and Human Services Department, Administration for Children and Families, Office of Head Start, as the Head Start grantee. The annual application includes newly identified goals and objectives for the program. This is year 3 of a 5 year funding cycle. This application was reviewed for approval by the Head Start Policy Council on 08/19/20. Approval of this Board order will allow the continued provision of Head Start services to program eligible children and families

## CONSEQUENCE OF NEGATIVE ACTION:

If not approved, County will not receive funding to operate Head Start childcare centers.

## CHILDREN'S IMPACT STATEMENT:

The Head Start grant funding supports three of the community outcomes established in the Children's Report Card: 1) "Children Ready for and Succeeding in School, 3) "Families that are Economically Self-sufficient" and, 4) "Families that are Safe, Stable, and Nurturing" by offering comprehensive services, including high quality early childhood education, nutrition, and health services to children from low income families throughout Contra Costa County.

## ATTACHMENTS

Head Start Funding Letter

Head Start Budget Narrative



ADMINISTRATION FOR  
**CHILDREN & FAMILIES**

Office of Head Start | 330 C St., SW, 4th Floor, Washington DC 20201 | [eclkc.ohs.acf.hhs.gov](http://eclkc.ohs.acf.hhs.gov)

August 18, 2020

**Grant No. 09CH010862**

**Dear Head Start Grantee:**

A grant application must be completed for the upcoming budget period. The application for the Head Start grant is due October 1, 2020.

The following table reflects the annual funding and enrollment levels for Fiscal Year 2021.

Funding Type	Head Start	Early Head Start
Program Operations	\$17,410,742	\$3,794,190
Training and Technical Assistance	\$197,344	\$82,944
<b>Total Funding</b>		<b>\$21,485,220</b>

Program	Head Start	Early Head Start
Federal Funded Enrollment	1,351	311

**Period of Funding: 01/01/2021 - 12/31/2021**

### **Application Submission Requirements**

The application must be prepared and submitted in accordance with the *Head Start Grant Application Instructions with Guidance, Version 3 (Application Instructions)* for a continuation application. It must be submitted on behalf of the Authorizing Official registered in the HSES.

The *Application Instructions* are available on the home page of HSES. Please review the instructions carefully prior to preparing the application. Submission guidance can be found in the "Instructions" section of the HSES.

**Incomplete applications will not be processed.**

Please ensure the application contains all of the required information. For additional questions or guidance regarding the application instructions, please contact Chris Pflaumer, Head Start Program Specialist, at 415-437-8445 or [chris.pflaumer@acf.hhs.gov](mailto:chris.pflaumer@acf.hhs.gov) or Keith Chin, Grants Management Specialist, at 646-905-8121 or [keith.chin@acf.hhs.gov](mailto:keith.chin@acf.hhs.gov).

For technical assistance in submitting the application in HSES, contact the Help Desk at [help@hsesinfo.org](mailto:help@hsesinfo.org) or 1-866-771-4737.

Funding is contingent upon the availability of federal funds and satisfactory performance under the terms and conditions of the current award, including the submission of all required financial and real property reports.

***Enrollment and funding levels are subject to change prior to or during the period of funding for failure to comply with the terms and conditions of the award, including the full enrollment initiative.***

Sincerely,

/Cynthia Yao/

Cynthia Yao  
Regional Program Manager  
Office of Head Start

**Contra Costa County Employment & Human Services Department  
Community Services Bureau  
2021 Early Head Start Program Continuation Grant Funding Application**

**EXECUTIVE SUMMARY  
INCOMING FUNDS NARRATIVE STATEMENT**

**1. PROJECT/PROGRAM TITLE.** Early Head Start Program Continuation Grant Funding Application for Budget Period 1/1/21 through 12/31/21.

**2. FUNDING AGENCY.** Department of Health and Human Services, Administration for Children and Families (ACF), Office of Head Start (OHS).

**3. SUBMITTAL STATUS.** This is a submission of application for continuation grant funding for FY 2021.

**4. PROPOSED TERM.** Funding must be requested annually. The standard one budget period is from 1/1/21 through 12/31/21. The budget summary below is for year 3 of the five year grant period.

**5. CURRENT FUNDING.** Funding for Early Head Start is provided by federal dollars. Contra Costa County, as Grantee, is required to generate a 20% non-federal match of the total project budget, which may be in cash or in-kind contributions, fairly valued.

**6. FUTURE FUNDING.** An application for continuation grant funding must be submitted each year.

**7. BUDGET SUMMARY**

<b>Budget Categories:</b>	<b>T/TA</b>	<b>Basic Grant</b>	<b>TOTAL</b>
Personnel		475,500	475,500
Fringe Benefits		300,000	300,000
Travel	2,000	-	2,000
Supplies		15,500	15,500
Contractual	20,500	1,957,328	1,977,828
Construction			
Other	60,444	955,517	1,015,961
Sub-Total of Direct Charges	82,944	3,703,845	3,786,789
Indirect Costs		90,345	90,345
<b>Total Federal Amount Requested</b>	<b>82,944</b>	<b>3,794,190</b>	<b>3,877,134</b>
<b>Non-Federal Share</b>	<b>20,736</b>	<b>948,548</b>	<b>969,284</b>
<b>Total Federal and Non-Federal</b>	<b>\$103,680</b>	<b>\$4,742,738</b>	<b>\$4,846,418</b>

**8. STAFFING REQUIREMENTS.** As Grantee, Contra Costa County operates the Early Head Start Program, which is administered and staffed by the Employment & Human Services Department, Community Services Bureau.

**9. PROGRAM NEED.** The Community Services Bureau serves the needs of low-income children (3-5 years of age under Head Start, and prenatal - 3 yrs under Early Head Start) and their families, by providing quality childcare, child development, and other services such as medical, mental health and dental needs.

**10. RELATIONSHIP TO OTHER PROGRAMS.** The Community Services Bureau's Head Start program combines Federal Head Start and State Child Development funding into one cohesive program. The Bureau also has strong collaborations with other departments within the County and partners with community based organizations, local private businesses, schools, non-profits, and volunteer organizations.

**11. PROJECT GOALS. (Same goals and objectives for both Head Start and Early Head Start)**

**Goal 1:** Through the use of multiple technologies, CSB will develop systems to enhance staff and client communication while coordinating program-wide approaches to effective data management and ensuring high quality service delivery.

**Goal 2:** Due to an 84% increase in Early Head Start slots (from 311 to 623) in two years, CSB will enhance its Early Head Start programming through a multi-faceted approach.

**Goal 3:** CSB will implement a "Grow Our Own" approach to hiring, developing, and retaining a robust staff across all service areas that are responsive to the clients and intrinsically motivated to be the best they can be through a variety of supports and services.

**Goal 4:** CSB will implement data-driven Parent, Family and Community Engagement (PFCE) services that embrace the PFCE framework and result in measurable impacts that achieve the mission of the organization.

**12. STATED OBJECTIVES.**

- By June 30, 2021, CSB will take a program-wide approach to identifying a platform which allows families to remotely access individualized child and family information.
- By June 30, 2021, CSB will use technologies to design a contact-less sign-in/out process that supports safety for families and staff while maintaining accurate records.
- By June 30, 2021, CSB will employ new innovative strategies to support communication with clients conducive to a remote workspace including the CLOUDS calling feature.
- By June 2021, CSB will implement an oral health curriculum for families and staff to support dental health practices at home and at school.
- By December 2020, select program staff will receive Infant/Toddler CLASS coaching with a certified Infant/Toddler CLASS consultant to increase their understanding of best practices in adult/child interactions.
- By December 2020, 7 additional Teacher Assistant Trainees (TAT) will complete the core 12 units by participating in the ECE Work Study Program, in partnership with the colleges of Contra Costa and the YMCA of the East Bay.
- By December 2020, the Staff Health Improvement Plan in partnership with the Wellness Champions will incorporate wellness activities unique to each unit or center's needs. Impact of efforts will be measured by the annual workforce satisfaction survey.
- By June 2021, CSB will utilize innovative recruitment strategies to increase the number of qualified Teacher Assistant Trainees (TAT) and Associate Teachers (AT) by 10%.
- By June 2021, CSB will practice "Strong Partners/Strong families," a new approach directed at re-designing Parent Committee Meetings and enhancing meaningful participation by parents and staff.

- By June 2021, CSB will build pro-fathering knowledge, attitudes, and skills of the fathers and other male caregivers by piloting the Fathering in 15<sup>(TM)</sup>: Online Learning for Dads.
- By June 2021, CSB will implement a comprehensive approach to serving homeless families that addresses all of their needs that result from the devastating effects of homelessness.

**13. ACTIVITY SUMMARY.** Program continues to provide high-quality services.

**14. EVALUATION METHOD(S).** Measurable, results-based child and family outcomes have been implemented, such as the required State of California's Desired Results Developmental Profile, for programs providing services through collaboration with the State of California Department of Education.

**15. CHANGES COMPARED TO PRIOR YEAR (if any).** Goals and Objectives cover FY 2018 – FY 2022. Policy Council has been involved in the development, review and evaluation process of the goals and objectives.

**16. POTENTIAL CONTROVERSIAL ISSUES.** None. Public perception of the Head Start and Early Head Start programs remain positive. The Policy Council is anticipated to approve submission of this grant at their August 19, 2020 meeting.



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Kathy Gallagher, Employment & Human Services Director  
Date: September 22, 2020

Subject: 2021 Early Head Start Continuation Grant

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**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Employment and Human Services Department Director, or designee, to accept grant funding from the United States Department of Health and Human Services, Administration for Children and Families, Office of Head Start, in an amount not to exceed \$3,877,134 for Early Head Start Program services for the period of January 1, 2021 through December 31, 2021 and AUTHORIZE the Chair Board of Supervisors to sign the grant application.

**FISCAL IMPACT:**

Funding for the period January 1 through June 30, 2021 is included in the Department's FY 2020-21 budget. Funding for the period July 1 through December 31, 2021 will be included in the Department's proposed FY 2021-22 budget. The County, as Grantee, is required to generate a non-federal match of 20% of the total project budget. For 2021, the match requirement is \$969,284 which will be achieved through collaboration with State Child Development programs and the volunteer hours acquired by Early Head Start parents and community partners. CFDA #93.600. (100% Federal)

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APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Elaine Burres  
608-4960

cc:

## BACKGROUND:

Early Head Start is a federal program that serves low-income pregnant women and families with infants and toddlers from birth to age three. It is designed to support and nurture healthy attachments between the child and the child's family. Early Head Start programs provide quality child care, child development, and other services such as medical, mental health and dental. Head Start/Early Head Start also provides comprehensive services which include health, nutrition, social and other services determined as necessary via family needs assessments. Services are designed to be responsive to each child and family's ethnic, cultural, and linguistic heritage. Services are provided through a variety of service models including: centers or schools that children attend part or full day, family childcare homes and/or the children's own homes wherein a Head Start staff visit once per week to provide in-home services. Children who receive home-based services gather periodically with other enrolled families for group learning experiences facilitated by Head Start staff. Contra Costa County submits an application annually to U.S. Health and Human Services Department, Administration for Children and Families, Office of Head Start, as the Head Start grantee. The annual application includes newly identified goals and objectives for the program. This is year 3 of a 5 year grant cycle. This application was reviewed and approved by the Head Start Policy Council on 08/19/2020. Approval of this board order request will allow the continued provision of Early Head Start services to program eligible children and families.

## CONSEQUENCE OF NEGATIVE ACTION:

If not approved, County will not receive funding to operate early Head State childcare centers.

## CHILDREN'S IMPACT STATEMENT:

The Community Services Bureau of the Employment & Human Services Department's Early Head Start program supports three of Contra Costa County's community outcomes - Outcome 1: "Children Ready for and Succeeding in School," Outcome 3: "Families that are Economically Self-sufficient," and, Outcome 4: "Families that are Safe, Stable, and Nurturing." These outcomes are achieved by offering comprehensive services, including high quality early childhood education, nutrition, and health services to low-income pregnant women and families throughout Contra Costa County.

## ATTACHMENTS

EHS Funding Letter

EHS Budget Narrative





ADMINISTRATION FOR  
**CHILDREN & FAMILIES**

Office of Head Start | 330 C St., SW, 4th Floor, Washington DC 20201 | [eclkc.ohs.acf.hhs.gov](http://eclkc.ohs.acf.hhs.gov)

August 18, 2020

**Grant No. 09CH010862**

**Dear Head Start Grantee:**

A grant application must be completed for the upcoming budget period. The application for the Head Start grant is due October 1, 2020.

The following table reflects the annual funding and enrollment levels for Fiscal Year 2021.

Funding Type	Head Start	Early Head Start
Program Operations	\$17,410,742	\$3,794,190
Training and Technical Assistance	\$197,344	\$82,944
<b>Total Funding</b>		<b>\$21,485,220</b>

Program	Head Start	Early Head Start
Federal Funded Enrollment	1,351	311

**Period of Funding: 01/01/2021 - 12/31/2021**

### **Application Submission Requirements**

The application must be prepared and submitted in accordance with the *Head Start Grant Application Instructions with Guidance, Version 3 (Application Instructions)* for a continuation application. It must be submitted on behalf of the Authorizing Official registered in the HSES.

The *Application Instructions* are available on the home page of HSES. Please review the instructions carefully prior to preparing the application. Submission guidance can be found in the "Instructions" section of the HSES.

**Incomplete applications will not be processed.**

Please ensure the application contains all of the required information. For additional questions or guidance regarding the application instructions, please contact Chris Pflaumer, Head Start Program Specialist, at 415-437-8445 or [chris.pflaumer@acf.hhs.gov](mailto:chris.pflaumer@acf.hhs.gov) or Keith Chin, Grants Management Specialist, at 646-905-8121 or [keith.chin@acf.hhs.gov](mailto:keith.chin@acf.hhs.gov).

For technical assistance in submitting the application in HSES, contact the Help Desk at [help@hsesinfo.org](mailto:help@hsesinfo.org) or 1-866-771-4737.

Funding is contingent upon the availability of federal funds and satisfactory performance under the terms and conditions of the current award, including the submission of all required financial and real property reports.

***Enrollment and funding levels are subject to change prior to or during the period of funding for failure to comply with the terms and conditions of the award, including the full enrollment initiative.***

Sincerely,

/Cynthia Yao/

Cynthia Yao  
Regional Program Manager  
Office of Head Start

**Contra Costa County Employment & Human Services Department  
Community Services Bureau  
2021 Early Head Start Program Continuation Grant Funding Application**

**EXECUTIVE SUMMARY  
INCOMING FUNDS NARRATIVE STATEMENT**

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**16. POTENTIAL CONTROVERSIAL ISSUES.** None. Public perception of the Head Start and Early Head Start programs remain positive. The Policy Council is anticipated to approve submission of this grant at their August 19, 2020 meeting.



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Kathy Gallagher, Employment & Human Services Director  
Date: September 22, 2020

Subject: 2020 CARES Act Program, Low Energy Assistance Program Funding

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**RECOMMENDATION(S):**

ADOPT Resolution No. 2020/245 to approve and authorize the Employment and Human Services Director, or designee, to accept Coronavirus, Aid, Relief, and Security (CARES) Act grant funding in the amount not to exceed \$1,115,537 for Low Income Home Energy Assistance Program (LIHEAP) services for the period July 1, 2020 through April 30, 2021.

**FISCAL IMPACT:**

County to receive total funding in the amount of \$1,115,537. Revenue is 100% Federal through the California Department of Community Services and Development, State Agreement Number 20U-2554. No County match is required. CFDA # 93.568.

**BACKGROUND:**

On July 8, 2020, the County received funding from the State Department of Community Services and Development to provide energy bill assistance payments and weatherization services to county residents who are financially impacted by the COVID-19 pandemic through the CARES

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APPROVE
  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR
  RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
 Candace Andersen, District II Supervisor  
 Diane Burgis, District III Supervisor  
 Karen Mitchoff, District IV Supervisor  
 Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Elaine Burres  
608-4960

cc:

### BACKGROUND: (CONT'D)

Act Program Contract under the Low Income Home Energy Assistance Program (LIHEAP) and the Energy Crisis Intervention Program (ECIP). Energy saving measures may provide homes with hot water heaters, furnaces, refrigerators, microwaves, doors, windows, energy-saving light bulbs, weather stripping, ceiling fans, and attic insulation. Homes with gas appliances receive a combustion appliance safety test that checks for carbon monoxide gas leakage and are provided with a carbon monoxide alarm. Residents can also qualify for the Home Energy Assistance Program, which provides a credit on their energy bills. First priority are for income eligible households that have suffered an employment impact in meeting their home energy needs, particularly those that pay a high proportion of household income for home energy and whose household includes a member of the Vulnerable Populations defined as elderly individuals, disabled individuals or children five years and under. Second priority are to those households which have the lowest incomes and the highest energy costs or needs in relation to income.

The funding is to help prevent, prepare for or respond to the COVID-19 pandemic.

### CONSEQUENCE OF NEGATIVE ACTION:

If not approved, County may not receive funding to operate CARES Act Program for LIHEAP.

### CHILDREN'S IMPACT STATEMENT:

The LIHEAP funding supports one of the community outcomes established in the Children's Report Card, #4 "Families that are Safe, Stable and Nurturing" by the provision of home energy assistance to keep households warm in winter and to increase household energy efficiency.

### ATTACHMENTS

Resolution 2020/245

**THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA**  
**and for Special Districts, Agencies and Authorities Governed by the Board**

Adopted this Resolution on 09/22/2020 by the following vote:

		<b>John Gioia</b>
		<b>Candace Andersen</b>
<b>AYE:</b>	<input type="text" value="5"/>	<b>Diane Burgis</b>
		<b>Karen Mitchoff</b>
		<b>Federal D. Glover</b>
<b>NO:</b>	<input type="text"/>	
<b>ABSENT:</b>	<input type="text"/>	
<b>ABSTAIN:</b>	<input type="text"/>	
<b>RECUSE:</b>	<input type="text"/>	



**Resolution No. 2020/245**

**In the Matter Of:** 2020 Coronavirus Aid, Relief, and Economic Security (CARES) Act Program Low Income Home Energy Assistance Program (LIHEAP).

**WHEREAS:** On July 8, 2020, the County received funding from the State Department of Community Services and Development for Low Income Home Energy Assistance Program services; and **WHEREAS:** County will provide energy saving assistance payments and weatherization services to County residents who are financially impacted by COVID-19 pandemic; and **WHEREAS:** energy saving assistance measures and services may include providing homes with hot water heaters, furnaces, refrigerators, microwaves, doors, windows, light bulbs, weather stripping, ceiling fans, attic insulation, and checks for carbon monoxide gas leakage and alarms; and **WHEREAS:** the first priority are income eligible households that have suffered an employment impact in meeting home energy needs, particularly those that pay a high prportion of household income for home energy and whose household incudes a member of vulnerable populations defined as elderly individuals, disabled individuals ,or children five years and under; and **WHEREAS:** the CARES funding is to help [prevent, prepare for, or respond to the COVID-29 pandemic.

**Now, Therefore, Be It Resolved:** the Contra Costa County Board of Supervisors to approve and authorize the Employment and Human Services Department Director, or designee, to accept Coronavirus, Aid, Relief, and Economic Security (CARES) Act grant funding in the amount not to exceed \$1,115,537 from the California Department of Community Services and Development for Low Income Home Energy Assistance Program services for the period July 1, 2020 through April 30, 2021.

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: September 22, 2020**

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

**Contact: Elaine Burres 608-4960**

By: Laura Cassell, Deputy

**cc:**





Contra  
Costa  
County

To: Board of Supervisors  
From: Anna Roth, Health Services Director  
Date: September 22, 2020

Subject: Amendment Agreement #29-391-18 with the California Department of Public Health Office of AIDS

---

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Health Services Director, or designee, to execute on behalf of the County Amendment Agreement #29-391-18 (State #17-10797, A-1) with the California Department of Public Health, Office of AIDS, to extend the termination date from December 31, 2020 to December 31, 2021, for continuation of the AIDS Medi-Cal Waiver Program.

**FISCAL IMPACT:**

No change in the payment to County, which will not exceed \$25,727 per client per calendar year. Payment is provided for specific services at established Medi-Cal rates. The total funded amount will be determined by the number of "slots" awarded and services provided. (No county match required)

**BACKGROUND:**

The Department's Public Health Division, AIDS Program staff is experienced in providing case management services for people with HIV. The AIDS Medi-Cal Waiver Program goals are to lessen the financial cost of care which, for people with AIDS and AIDS related Complex (ARC), are historically driven by hospitalizations and other institution-based care, and to provide the most humane and appropriate levels of care in the most appropriate setting for the client. Participation in the program allows the Department's AIDS Program to offer case managed home and community-based care to a greater number of clients in the County.

APPROVE

OTHER

RECOMMENDATION OF CNTY ADMINISTRATOR

RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Daniel Peddycord,  
925-313-6712

cc: Marcy Wilhelm

BACKGROUND: (CONT'D)

On March 27, 2018, the Board of Supervisors approved Agreement #29-391-16 with the State to allow County's Public Health Division to provide direct home health care services to AIDS Medi-Cal Waiver Program clients through December 31, 2020, including agreeing to mutually indemnify.

Approval of Amendment Agreement #29-391-18 will allow the Contractor to continue providing AIDS Medi-Cal Waiver Program services, through December 31, 2021.

CONSEQUENCE OF NEGATIVE ACTION:

If this Amendment Agreement is not approved, County will not be able to provide AIDS Medi-Cal waiver Program services for an additional year.



Contra  
Costa  
County

To: Board of Supervisors  
From: Melinda Cervantes, County Librarian  
Date: September 22, 2020

Subject: Grant in the amount of \$5,000 from Southern California Library Cooperative

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**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the County Librarian, or designee, to apply for and accept a grant in the amount of \$5,000 from Southern California Library Cooperative and the California State Library to provide access to ABCmouse.com, a subscription-based digital educational program, for the period September 1, 2020 through August 31, 2021.

**FISCAL IMPACT:**

No Library Fund match.

**BACKGROUND:**

Southern California Library Cooperative, in partnership with the California State Library, provides an opportunity for California public libraries to apply for fund reimbursement for purchasing e-Resources, such as e-books, e-audiobooks, and databases, to meet increased demand from communities during the COVID-19 pandemic. The free subscription access for ABCmouse.com, ended on August 31, 2020. However, since the Library received overwhelming feedback from patrons and staff regarding the value of the program and the educational support needed for pre-school aged children that are currently unable to attend traditional pre-school programs, the County would like to continue to support the program.

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APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Walt Beveridge  
925-608-7730

cc:

CONSEQUENCE OF NEGATIVE ACTION:

The Library would need to divert other limited resources to support the program.

CHILDREN'S IMPACT STATEMENT:

With 9,000+ (English/Spanish) interactive books, educational games, puzzles, and other learning activities, ABCmouse.com's award-winning online curriculum is an invaluable resource for young learners ages 2 to 8. Access to the resource would offer additional educational support to pre-school aged children that are currently unable to attend traditional pre-school programs. This meets the Children's Report Card objective of Children Ready for and Exceeding in School.



Contra  
Costa  
County

To: Board of Supervisors  
From: Anna Roth, Health Services Director  
Date: September 22, 2020

Subject: Standard Agreement #28-596-15 with California Department of Public Health

---

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Health Services Director, or designee, to execute on behalf of the County Standard Agreement #28-596-15 (State #20-10517) with the California Department of Public Health, to pay the County an amount not to exceed \$952,824, for continuation of the Public Health Division's Childhood Lead Poisoning Prevention Project, for the period from July 1, 2020 through June 30, 2023.

**FISCAL IMPACT:**

Approval of this agreement will result in a funding amount not to exceed \$952,824. No County match required.

**BACKGROUND:**

On August 15, 2017, the Board of Supervisors approved Standard Agreement #28-596-14 from the California Department of Public Health, for continuation of the Childhood Lead Poisoning Prevention Project for fiscal years 2017 through 2020.

In Contra Costa County, over 60% of the housing units were built before 1978, the year consumer product safety commission banned lead paint. Lead paint is a recognized source of lead poisoning in children. Over 5,000 children live in these types of units. Since 1992, over 800 children have been identified in Contra

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APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Daniel Peddycord,  
925-313-6712

cc: Marcy Wilhelm

BACKGROUND: (CONT'D)

Costa County with lead poisoning, and many more are likely to have lead poisoning although they have not been tested. The Centers for Disease Control (CDC) identifies lead poisoning as the principal environmental health problem affecting children in the United States and emphasizes that this is a problem, which is entirely preventable. In Contra Costa County, over 500 residents have been diagnosed with a lead level of over 10 mcg/dl and approximately, 75 children each year have low levels of lead between 5-10 mcg/dl. The only way to know if a child has been poisoned by lead is to test the child. This Project is the sole source of funding for case management and follow-up care for children identified as lead-poisoned. The goal of the Project is to decrease the exposure of children to lead and the incidence of increased childhood blood lead levels.

Approval of this Agreement #28-596-15 will allow the County's Public Health Division to continue receiving funding for the Childhood Lead Poisoning Prevention Project, through June 30, 2023, including agreeing to indemnify and hold the State harmless for claims arising out of the County's performance under this Agreement.

CONSEQUENCE OF NEGATIVE ACTION:

If this Agreement is not approved, children and residents of Contra Costa County will not be treated nor receive the necessary information with regard to exposure to lead poisoning.



Contra  
Costa  
County

To: Board of Supervisors  
From: Anna Roth, Health Services Director  
Date: September 22, 2020

Subject: Interagency Agreement #29-816-4 with Martinez Unified School District

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**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Health Services Director, or designee, to execute on behalf of the County Interagency Agreement #29-816-4 with Martinez Unified School District, a government agency, to pay County an amount not to exceed \$92,164, to provide mental health intervention services for certain Special Education students, for the period from July 1, 2020 through June 30, 2021.

**FISCAL IMPACT:**

Approval of this Interagency Agreement will result in a total payment to the County not to exceed \$92,164. No County match required.

**BACKGROUND:**

Contra Costa Behavioral Health Services Division/Mental Health in collaboration with Seneca Family of Agencies will implement the Martinez Unified School District Counseling Enriched Classrooms to provide mental health services for the seriously emotionally disturbed youth and families who live in Martinez.

On June 18, 2019, the Board of Supervisors approved Interagency Agreement #29-816-3 with Martinez Unified School District for mental health intervention services for certain Special Education students for the period from July 1, 2019 through June 30, 2020.

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APPROVE
  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR
  RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
 Candace Andersen, District II  
 Supervisor  
 Diane Burgis, District III Supervisor  
 Karen Mitchoff, District IV Supervisor  
 Federal D. Glover, District V  
 Supervisor

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: September 22, 2020

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

Contact: Suzanne Tavano, Ph.D.,  
925-957-5169

By: Laura Cassell, Deputy

BACKGROUND: (CONT'D)

Approval of Interagency Agreement #29-816-4 will allow Agency to continue to pay County to provide mental health intervention services for certain Special Education students through June 30, 2021.

CONSEQUENCE OF NEGATIVE ACTION:

If this agreement is not approved, County will not receive funding to support mental health intervention services for certain Special Education students.

CHILDREN'S IMPACT STATEMENT:

This program supports the following Board of Supervisors' community outcomes: "Children Ready For and Succeeding in School"; "Families that are Safe, Stable, and Nurturing"; and "Communities that are Safe and Provide a High Quality of Life for Children and Families". Expected program outcomes include an increase in positive social and emotional development as measured by the Child and Adolescent Functional Assessment Scale (CAFAS).





**Contra  
Costa  
County**

To: Board of Supervisors  
From: Anna Roth, Health Services Director  
Date: September 22, 2020

Subject: Grant Agreement #29-539-10 with the U. S. Department of Veterans Affairs Northern California Health Care System

---

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Health Services Director, or designee, to execute Grant Agreement #29-539-10 (VA #612-20-3-2973-0055) with Veterans Affairs Northern California Health Care System (VANCHCS), a Government Agency, to pay the County in an amount of \$137,897 for the provision of services and associated operating cost of the Philip Dorn Respite Center through the Central County's Adult Interim Housing Program in Concord, for the period from September 29, 2020 through September 28, 2021.

**FISCAL IMPACT:**

Approval of this agreement will result in an amount of \$137,897 from VANCHCS for the Central County's Adult Interim Housing Program, Philip Dorn Respite Center in Concord for 2020/2021. (No County match required)

**BACKGROUND:**

The Health Services Department seeks continuous funding to provide interim housing, treatment, and other services for homeless veterans that access the County's emergency shelter program. Each year the shelters provide interim housing and support services to over 75 homeless veterans of Contra Costa County.

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APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Lavonna Martin,  
925-608-6701

BACKGROUND: (CONT'D)

On October 22, 2019, the Board of Supervisors approved Agreement #29-539-9 to receive funding to support emergency shelter housing for homeless veterans of Contra Costa County for the period September 29, 2019 through September 28, 2020.

Approval of Grant Agreement #29-539-10 will allow the County to receive funds to support the Central County's Adult Interim Housing Program Philip Dorn Respite Center in Concord through September 28, 2021.

CONSEQUENCE OF NEGATIVE ACTION:

If this Agreement is not approved, the County will not receive funding to support homeless veterans requiring shelter.



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Kathy Gallagher, Employment & Human Services Director  
Date: September 22, 2020

Subject: California Department of Social Services, Housing and Disability Advocacy Program Funding

---

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Employment and Human Services Director, or designee, to accept grant funding in an amount not to exceed \$414,188 from California Department of Social Services (CDSS) to provide Housing and Disability Advocacy Program (HDAP) services for the period July 1, 2020 through June 30, 2021.

**FISCAL IMPACT:**

County to receive an amount not to exceed \$414,188 from the California Department of Social Services (CDSS) Housing Bureau to fund Housing and Disability Advocacy Program (HDAP) services 100% State funds. There is a required 1:1 cash or in-kind match which employment and Human Services (EHSD) Adult & Aging Services Bureau will draw from Contra Costa Health Services, Health, Housing and Homelessness (H3) service funds.

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APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Elaine Burres  
608-4960

cc:

## BACKGROUND:

The goals of the HDAP are to provide outreach, benefits advocacy, housing subsidies, and case management to house homeless individuals who are assessed as having potential eligibility to any of the SSI/SSDI, veterans, or CAPI benefits. The housing assistance includes help with housing navigation, housing case management, and housing subsidies throughout HDAP participation. Both interim and permanent supportive housing will be sought for program participants. Grant funding to be used for:

1. Conduct outreach activities that actively seek out potentially eligible HDAP clients.
2. Provide intensive case management services to coordinate multiple HDAP service components including outreach, disability advocacy, and housing assistance.
3. Establish and expand housing navigation and placements for program participants served by HDAP, from the point of outreach engagement through the disability income application determination client is placed in stabilized permanent housing.
4. Provide benefits advocacy services for SSI/SSP, Social Security Disability Benefits (SSDI), Cash Assistance Program for Immigrants (CAPI), veterans benefits, and other disability benefit programs.

EHSD's Aging & Adult Services will partner with Contra Costa Health Services, Health, Housing & Homelessness Services (H3) and contracted partners to deliver the housing prevention and interventions outlined in the proposal application to CDSS Housing Bureau. Additional partners may be identified and added as needed.

## **Pros and cons of request:**

### **Pros:**

- Leverages existing Coordinated Entry services and housing partners to address gaps in services for SSI eligible individuals
- Focuses on providing integrated services to support homeless individuals from the point of outreach and engagement through housing stability and disability benefits determination
- Builds upon existing partnerships between local agencies including local homelessness Continuum of Care (CoC), housing partners, health services, behavioral health care, and SSI advocacy services.

### **Cons:**

- Sustainability of program funding beyond end of grant term, June 30, 2021

The California Department of Social Services issued the county allocation for HDAP FY 2020-2021 through a AWWDL (All County Welfare Directors Letter) August 10, 2020 which falls after the start of the fiscal year and thus retroactive to July 1, 2020.

CONSEQUENCE OF NEGATIVE ACTION:

Without funding, the community will continue to face an increasing number of chronically homeless clients who do not have access to housing subsidies and after care to remain stably housed.



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Diana Becton, District Attorney  
Date: September 22, 2020

Subject: Unserved/Underserved Victim Advocacy and Outreach (UV) Program Grant Award for the period January 1, 2021 through December 31, 2021

---

**RECOMMENDATION(S):**

ADOPT Resolution No. 2020/250 approving and authorizing the District Attorney, or designee, to submit an application and execute a grant award agreement, including any extensions or amendments thereof, pursuant to State guidelines, with the California Governor's Office of Emergency Services (Cal OES), Victim Services & Public Safety Branch, in an amount not to exceed \$ 228,052, for funding of the Unserved/Underserved Victim Advocacy and Outreach (UV) Program for the period January 1, 2021 through December 31, 2021.

**FISCAL IMPACT:**

The District Attorney will receive up to \$228,052 to fund victim advocacy staff to provide better services to underserved populations in targeted areas. The funding requires a 25% match, which will be met with in-kind services.

**BACKGROUND:**

The Unserved/Underserved Victim Advocacy and Outreach (UV) Program is supported by Victims of Crime Act (VOCA) Victim Assistance and is authorized by the Victims of Crime Act of 1984 (42 U.S.C. 10603(a) and (b)).

The primary goal of the program is to enhance the safety of unserved/underserved victims

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APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Jason Chan, (925)  
957-2234

cc:

BACKGROUND: (CONT'D)

populations in California by establishing victim advocacy programs solely dedicated to the unserved/underserved population, coordinate direct services in an enhanced response to victimization of specific crime populations among locally involved agencies and implement an outreach awareness program to the specific population determined as unserved/underserved. This grant will fund services to the designated unserved/underserved victim population.

CONSEQUENCE OF NEGATIVE ACTION:

The District Attorney will be unable to apply for and accept the grant.

ATTACHMENTS

Resolution 2020/250

**THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA**  
**and for Special Districts, Agencies and Authorities Governed by the Board**

Adopted this Resolution on 09/22/2020 by the following vote:

		<b>John Gioia</b>
		<b>Candace Andersen</b>
<b>AYE:</b>	<input type="text" value="5"/>	<b>Diane Burgis</b>
		<b>Karen Mitchoff</b>
		<b>Federal D. Glover</b>
<b>NO:</b>	<input type="text"/>	
<b>ABSENT:</b>	<input type="text"/>	
<b>ABSTAIN:</b>	<input type="text"/>	
<b>RECUSE:</b>	<input type="text"/>	



**Resolution No. 2020/250**

IN THE MATTER OF Unserved/Underserved Victim Advocacy and Outreach (UV) Program Grant Award for the period January 1, 2021 through December 31, 2021.

WHEREAS, the Board of Supervisors, Contra Costa County, desires to undertake a certain project designated as the Unserved/Underserved Victim Advocacy and Outreach (UV) Program to be funded in part from funds made available under the authority of the California Governor's Office of Emergency Services (Cal OES), Victim Services & Public Safety Branch.

NOW, THEREFORE, BE IT RESOLVED that the District Attorney of the County of Contra Costa is authorized to execute, on behalf of the Board of Supervisors, the Grant Award Agreement, including any extensions or amendments therof.

BE IT FURTHER RESOLVED, that the grant funds received hereunder shall not be used to supplant expenditures previously authorized or controlled by this body.

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: Jason Chan, (925) 957-2234**

**ATTESTED: September 22, 2020**

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

By: Laura Cassell, Deputy

**cc:**





Contra  
Costa  
County

To: Board of Supervisors  
From: Anna Roth, Health Services Director  
Date: September 22, 2020

Subject: Correct Board Order Item #C.18 with Antioch Unified School District

---

**RECOMMENDATION(S):**

APPROVE and ACKNOWLEDGE that, by its terms, the contract between the County and Antioch Unified School District, pertaining to the provision of mental health services and crisis intervention services to students referred to the Antioch Unified School District's HOPE program and initially approved by the Board on September 15, 2020 (Item C.18), does not contain a payment provision to pay County an amount not to exceed \$90,000 as previously specified in the Board action but, instead, contains a payment provision to pay County an amount not exceed \$300,000.

**FISCAL IMPACT:**

Approval of this Interagency Agreement will allow Antioch Unified School District to pay County an amount up to \$300,000. No County match required.

**BACKGROUND:**

On September 15, 2020, the Board of Supervisors approved Interagency Agreement #28-331-5 with the Antioch Unified School District, to pay County an amount not to exceed \$90,000 to provide mental health and crisis intervention services to students referred to the District's HOPE program for the period from July 1, 2020 through June 30, 2021.

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APPROVE
  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR
  RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
 Candace Andersen, District II  
 Supervisor  
 Diane Burgis, District III Supervisor  
 Karen Mitchoff, District IV  
 Supervisor  
 Federal D. Glover, District V  
 Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Suzanne Tavano, PhD.,  
925-957-5212

BACKGROUND: (CONT'D)

The purpose of this Board Order is to change the payment limit authorized by the Board to read \$300,000 instead of \$90,000, due to an increase in funding.

CONSEQUENCE OF NEGATIVE ACTION:

If this correction is not approved, the County will not receive increased funding to provide mental health services to students referred to the District's HOPE program.

ATTACHMENTS



Contra  
Costa  
County

To: Board of Supervisors  
From: Anna Roth, Health Services Director  
Date: September 22, 2020

Subject: Interagency Agreement #28-753-12 with Pittsburg Unified School District

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**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Health Services Director, or designee, to execute on behalf of the County Interagency Agreement 28-753-12 with Pittsburg Unified School District, an educational institution, to pay County an amount not to exceed \$5,000, for the Public Health Clinic Services Scoliosis Screening Project for the District's 7th and 8th grade students, for the period from September 1, 2020 through August 31, 2021.

**FISCAL IMPACT:**

Approval of this Interagency Agreement will allow Pittsburg Unified School District to pay County \$5.00 per student to support the Public Health Clinic Services Scoliosis Screening Project. No County match required.

**BACKGROUND:**

Pittsburg Unified School District has requested that Contra Costa Health Services, Public Health Clinic Services, provide Scoliosis Screening Clinics at their middle schools for their 7th grade girls and 8th grade boys, throughout the school year. By providing an outreach program such as the scoliosis screening of their students, the School District can provide a valuable diagnostic and preventative service to their students who might otherwise go untreated.

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APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Daniel Peddycord,  
925-313-6712

BACKGROUND: (CONT'D)

On July 30, 2019, the Board of Supervisors approved Interagency Agreement #28-753-11 with Pittsburg Unified School District, for the Public Health Clinic Services Scoliosis Screening Project for its 7th and 8th grade students for the period from September 1, 2019 through August 31, 2020.

Approval of Interagency Agreement #28-753-12 will allow Agency to offer continuous scoliosis-screening services to its students, through August 31, 2021.

CONSEQUENCE OF NEGATIVE ACTION:

If this contract is not approved, the County will not receive funds in order to screen for scoliosis in approximately 1,000 7th and 8th grade students in Pittsburg Unified School District.



Contra  
Costa  
County

To: Board of Supervisors  
From: Anna Roth, Health Services Director  
Date: September 22, 2020

Subject: Amendment Agreement #28-900-2 California Institute for Behavioral Health Solutions

---

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Health Services Director, or designee, to accept Grant Extension #28-900-2 with the California Institute for Behavioral Health Solutions, to decrease the amount payable to the County by \$6,990 to a new amount not to exceed \$496,413 and extend the termination date from August 31, 2020 to February 28, 2021 for prevention screening, intervention, and treatment services to reduce Opioid Use Disorder (OUD) for youth in East and West Contra Costa County.

**FISCAL IMPACT:**

Approval of this Agreement will result in an amount not to exceed \$496,413 payable to the County. No County match required.

**BACKGROUND:**

This Grant is needed to expand access to youth-friendly prevention, screening, intervention and treatment services to reduce OUD among youth ages 13 through 24 years. Services will be provided to high school youth in Antioch, Pittsburg and West Contra Costa Unified School Districts, Juvenile Hall, Golden Gate Community Schools operated by Contra Costa Office of Education, Calli House Youth Shelter and Concord Homeless Shelter. Data from the California Opioid Overdose

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APPROVE
  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR
  RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
 Candace Andersen, District II Supervisor  
 Diane Burgis, District III Supervisor  
 Karen Mitchoff, District IV Supervisor  
 Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Daniel Peddycord,  
925-313-6712

BACKGROUND: (CONT'D)

Surveillance Dashboard show that areas of West and East Contra Costa, including Richmond, Pittsburg and Antioch, have some of the highest rates of opioid overdose deaths for all ages in the county, indicating that misuse of opioids and OUD is an issue in these areas. Because most adults with OUD started using opioids before age 25, misuse of opioids and OUD among youth and young adults in these areas is a concern.

Approval of Grant Extension #28-900-2 with allow County to provide prevention screening, intervention, and treatment services for youth to reduce OUD through February 28, 2021.

CONSEQUENCE OF NEGATIVE ACTION:

If this grant extension is not accepted, County will not receive funds to reduce opioid use disorder and opioid overdose among youth in East and West Contra Costa County.

CHILDREN'S IMPACT STATEMENT:

This program supports the following Board of Supervisors' community outcomes: "Families that are Safe, Stable, and Nurturing"; and "Communities that are Safe and Provide a High Quality of Life for Children and Families".



Contra  
Costa  
County

To: Board of Supervisors  
From: Kathy Gallagher, Employment & Human Services Director  
Date: September 22, 2020

Subject: Interagency Agreement with Contra Costa Community College District - Diablo Valley College Campus for Resource Family Heritage Training

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Employment and Human Services Director, or designee, to execute an agreement with Contra Costa Community College District – Diablo Valley College (DVC) in an amount not to exceed \$32,400 to provide foster parent and caregiver Heritage training for the period July 1, 2020 through June 30, 2021.

**FISCAL IMPACT:**

The interagency agreement is funded with 75% Federal (\$24,300); 17.5% State (\$5,670); and 7.5% General Fund (\$2,430) funding and are included in the FY2020/21 department budget. (CFDA #93.658)

**BACKGROUND:**

In response to the increasing magnitude of problems related to perinatal exposure to alcohol and other drugs, an interagency collaboration was formed that involved the California Departments of Alcohol and Drug Programs, Health Services, and Social, Services. This collaboration was previously named Options for Recovery (OFR), now known as the “Heritage” project. The mission is to promote the recovery of pregnant, postpartum, and parenting chemically dependent women and the enhancement of the health of their children by providing comprehensive and coordinated

- APPROVE  OTHER
- RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

- AYE: John Gioia, District I Supervisor
- Candace Andersen, District II Supervisor
- Diane Burgis, District III Supervisor
- Karen Mitchoff, District IV Supervisor
- Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: C. Youngblood, (925) 608-4964

cc:

BACKGROUND: (CONT'D)

alcohol and other drug treatment, case management, and specialized recruitment and training of foster parents and relative caregivers.

The Heritage Project in Contra Costa County is a program designed to train caregivers of the needs of babies and children who are born exposed to drugs and/or alcohol, which may also be HIV exposed, are court dependents and are under six (6) years of age. The Heritage Project training for foster caregivers entails thirty-three (33) hours of classroom training in the areas of Childhood HIV and AIDS, Comforting the Drug Exposed Infant and Special Medical Needs and the Effects of Drugs and Alcohol on Infants.

CONSEQUENCE OF NEGATIVE ACTION:

If the Heritage training is not delivered to foster caregivers, there will be less available specialty trained families who will be able to care for babies and children who are born exposed to drugs and/or alcohol, who may also be HIV exposed.

CHILDREN'S IMPACT STATEMENT:

This agreement supports all five of the community outcomes established in the Children's Report Card: 1) Children Ready for and Succeeding in School; 2) Children and Youth Healthy and Preparing for Productive Adulthood; 3) Families that are Economically Self Sufficient; 4) Families that are Safe, Stable and Nurturing; and 5) Communities that are Safe and Provide a High Quality of Life for Children and Families, by preparing families to better meet the needs of vulnerable children in the foster care system and allows seamless transition to permanency.





Contra  
Costa  
County

To: Board of Supervisors  
From: Robin Lipetzky, Public Defender  
Date: September 22, 2020

Subject: APPROVE and AUTHORIZE the Public Defender, or designee, to execute a contract amendment/extension contract with Rubicon Programs, Inc.

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Public Defender, or designee, to execute an amendment with Rubicon Programs, Inc. to extend the term from September 30, 2020 through September 30, 2021 and increase the payment limit by \$271,425 to a new payment limit of \$367,532, to provide client services in Contra Costa County for Holistic Intervention Partnership (HIP) participants.

**FISCAL IMPACT:**

100% California State Board of Community Corrections

**BACKGROUND:**

The Holistic Intervention Partnership (HIP) program is an innovative holistic defense program funded by a three-year \$3 million Edward Byrne Memorial Justice Assistance Grant (JAG) from the California State Board of Community Corrections (BSCC). Contra Costa is one of only two Public Defender Offices in the state to receive a JAG grant as part of a total \$16.2 million in JAG funding awarded by BSCC to criminal justice programs around the state. Holistic defense is an innovative client-centered, interdisciplinary model that looks beyond a criminal defendant's legal needs and engages both criminal and civil attorneys, as well as social workers and non-lawyer specialists,

APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Joanne Sanchez,  
925-335-8065

cc:

BACKGROUND: (CONT'D)

to assist with underlying issues such as unstable housing, substance use disorders, immigration, public benefits, and other issues commonly affecting individuals with law enforcement contact.

HIP goals are to:

1. Reduce the financial and human resource burden of misdemeanor cases on law enforcement, the justice system, and the community;
2. Reduce future criminal justice system involvement among program participants;
3. Establish early coordination, collaboration and linkages across system partners to better serve indigent individuals involved in the criminal justice system

The Contra Costa Public Defender's Office is partnering with: Contra Costa County Health, Housing, and Homeless Services; Behavioral Health Services; Employment and Human Services; California Highway Patrol; and Antioch, Martinez, and Richmond Police Departments. HIP's community-based programs include: Rubicon Programs and Uprust, a technology company that enables text communication services for low-income individuals navigating the criminal justice system.

This proposed amendment/extension is to provide services to HIP participants in Central and East Contra Costa County in addition to West Contra Costa County for the second year of this three-year project.

CONSEQUENCE OF NEGATIVE ACTION:

Valuable services to HIP participants will not be provided resulting in possible increased cost to law enforcement, justice system, and the community.



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Kathy Gallagher, Employment & Human Services Director  
Date: September 22, 2020

Subject: 2019-2020 Orantes, LLC Childcare Services Contract (State)

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**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Employment and Human Services Director, or designee, to execute a contract with Orantes, LLC dba Tiny Toes Preschool and Childcare Center in an amount not to exceed \$106,504.85 to provide State Preschool and State General Child Care & Development Programs for the period October 01, 2019 through June 30, 2020.

**FISCAL IMPACT:**

This contract is 100% funded by state funds from the State of California Department of Education General Childcare and Development.

**BACKGROUND:**

Contra Costa County receives funds from the California Department of Education (CDE) Child Development program to provide State Preschool and General Childcare and Development program services to program eligible County residents. The Employment and Human Services Department, in turn, contracts with a number of community-based organizations to provide a wider distribution of services. This contract ensures Orantes, LLC dba Tiny Toes Preschool and Childcare has funding to fulfill the obligations for the contract term for 14 state slots for children ages birth to five years of age.

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APPROVE
  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR
  RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
 Candace Andersen, District II Supervisor  
 Diane Burgis, District III Supervisor  
 Karen Mitchoff, District IV Supervisor  
 Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Lisa Gonzales  
925-608-4968

cc:

CONSEQUENCE OF NEGATIVE ACTION:

If not approved, the County will not be able to fund the state childcare slots for its community based agency partner, Orantes, LLC.

CHILDREN'S IMPACT STATEMENT:

The Employment and Human Services Department Community Services Bureau supports three of Contra Costa County's community outcomes - Outcome 1: Children Ready for and Succeeding in School, Outcome 3: Families that are Economically Self-sufficient, and Outcome 4: Families that are Safe, Stable, and Nurturing. These outcomes are achieved by offering comprehensive services, including high quality early childhood education, nutrition, and health services to low-income children throughout Contra Costa County.



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Kathy Gallagher, Employment & Human Services Director  
Date: September 22, 2020

Subject: Contract with STAND! For Families Free of Violence

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**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Employment and Human Services Director, or designee, to execute a contract with STAND! For Families Free of Violence, a California non-profit public benefit corporation, in an amount not to exceed \$317,125 to provide domestic violence support services to California Work Opportunity and Responsibility to Kids (CalWORKs) participants for the period July 1, 2020 through June 30, 2021.

**FISCAL IMPACT:**

The funds allocated for this contract are 100% Federal/State capped, and were included in the Department's FY 2020/21 Recommended Budget.

**BACKGROUND:**

STAND! For Families Free of Violence provides a wide array of domestic violence services tailored to meet the specific needs of the Workforce Services Bureau. Services include California Work Opportunity and Responsibility

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APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Laura Pacheco, (925)  
608-4963

cc:

BACKGROUND: (CONT'D)

to Kids (CalWORKs) domestic violence liaisons at Employment and Human Services Department offices, technical assistance, consultation, and domestic violence identification and skills training, on-site capacity building, and linkages for domestic violence victims to community resources. STAND! For Families Free of Violence was selected through a competitive bid process (Request For Proposals #1152).

CONSEQUENCE OF NEGATIVE ACTION:

If not approved, CalWORKs clients' access to domestic violence services will be hindered.

CHILDREN'S IMPACT STATEMENT:

This contract supports all of the community outcomes established in the Children's Report Card: (1) Children Ready for and Succeeding in School; (2) Children and Youth Healthy and Preparing for Productive Adulthood; (3) Families that are Economically Self Sufficient; (4) Families that are Safe, Stable and Nurturing; and (5) Communities that are Safe and Provide a High Quality of Life for Children and Families.



Contra  
Costa  
County

To: Board of Supervisors  
From: Marc Shorr, Chief Information Officer  
Date: September 22, 2020

Subject: APPROVE and AUTHORIZE the Chief Information Officer, or designee, to execute a Software and Services Agreement with BMC Software, Inc.

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Chief Information Officer, or designee, to execute an Order Form and Cloud Services Master Agreement with BMC Software, Inc., including County indemnification, in an amount not to exceed \$340,000 for a vendor hosted information technology ticketing software system for the Department of Information Technology's (DoIT) and Employment and Human Services Department help desks for the period of September 30, 2020 through September 29, 2023.

**FISCAL IMPACT:**

The cost for this software purchase will be split equally over the three (3) year period and a portion of the cost will be shared with the Employment and Human Services Department and recovered through the department's billing system. DoIT's portion of the first-year payment of is budgeted in the FY 20-21 approved budget.

APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Marc Shorr, 925  
608-4071

cc:

BACKGROUND:

The purchase of Remedyforce software will significantly enhance DoIT and EHSD's Help Desk's ability to assist customers. The current ticketing system requires extensive manual effort to sort and triage tickets and is very labor intensive. Remedyforce software is a cloud-based system that provides comprehensive IT service management, including incident, problem, change, self-service, configuration and asset management. The best practice pre-built templates and out of the box content offers short time to value and fast Return on Investment (ROI).

The County may only terminate the agreement during the initial three year term if BMC breaches its obligations, or the County fails to appropriate funds to make payments under the contract in the fiscal year.

The Cloud Services Master Agreement obligates the County to indemnify BMC for third party claims arising out of County data in the hosted system and County's violation of the terms of the agreement. BMC's liability under the contract is capped at the amount the County pays under the contract, except for infringement claims, bodily injury, and gross negligence.

CONSEQUENCE OF NEGATIVE ACTION:

If this Software and Services Agreement is not approved, both departments will continue to use outdated systems to track and assist customers with Helpdesk requests.





Contra  
Costa  
County

To: Board of Supervisors  
From: David O. Livingston, Sheriff-Coroner  
Date: September 22, 2020

Subject: Various Agreements and Grant Applications

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**RECOMMENDATION(S):**

1. APPROVE and AUTHORIZE the Sheriff-Coroner, or designee, to execute a contract amendment with Sean Alexander Marine Services extending the termination date of the contract from November 30, 2020 to November 30, 2021 with no change in the payment limit;
2. APPROVE and AUTHORIZE the Sheriff-Coroner, or designee, to execute a contract with Ikechi Ogan M.D., in an amount not to exceed \$1,000,000 for the provision of forensic pathology services for the term of October 1, 2020 through September 30, 2022;
3. APPROVE and AUTHORIZE the Sheriff-Coroner, or designee, to execute a contract with Mark A. Super M.D., in an amount not to exceed \$1,000,000 for the provision of forensic pathology services for the term of October 1, 2020 through September 30, 2022;
4. APPROVE and AUTHORIZE the Sheriff-Coroner, or designee, to execute a contract with modified indemnification language with Managed Health Network, in an amount not to exceed \$54,480 to provide counseling services to Sheriff-Coroner employees for the term October 1, 2020 through September 30, 2021;
5. APPROVE and AUTHORIZE the Sheriff-Coroner, or designee, to execute a contract amendment with Attenti US, Inc. to extend the term for one year

APPROVE

OTHER

RECOMMENDATION OF CNTY ADMINISTRATOR

RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Stacey M. Boyd, Deputy

Contact: Sandra Brown,  
925-655-0004

cc:



RECOMMENDATION(S): (CONTD)

to November 31, 2021, for professional services and products related to the electronic home detention program with no change in payment limit of \$800,000;

6. APPROVE and AUTHORIZE the Sheriff-Coroner, or designee, to execute a contract amendment with Global Tel\*Link Corporation (GTL) to provide Inmate Communications Services including a jail management system (JMS), inmate telephones, video visitation, and inmate tablets in the adult facilities and associated rates at no cost to the County;

7. APPROVE and AUTHORIZE the Sheriff-Coroner, or designee, to execute a Products and Services Agreement Amendment and associated schedules with Alcohol Monitoring Systems, Inc., in an amount not to exceed \$800,000, for the purchase and lease of SCRAMx alcohol monitoring systems, monitoring services and hosted software, extending the term to November 1, 2017 through October 31, 2021 with no change in payment limit;

8. APPROVE and AUTHORIZE a payment limit increase in the amount of \$264,900 from \$945,151, to a new payment limit of \$1,210,051 under the Master Support Agreement with Tiburon Inc., for dispatch and records systems support for the period September 10, 2020 to September 9, 2021;

9. ADOPT Resolution No. 2020/190 authorizing the Sheriff-Coroner, Undersheriff or Commander Management Services to apply for and accept State Homeland Security Grant Program (SHSGP) funds in an initial amount of \$1,245,202 from the California Governor's Office of Emergency Services, make required grant assurances and authorize specified Sheriff's Office officials to act on behalf of the County to obtain funding for the period of September 1, 2020 through the end of grant fund availability;

10. ADOPT Resolution No. 2020/200 authorizing the Sheriff-Coroner, Undersheriff, or Commander of Management Services to apply for and accept the U.S. Department of Justice, Office of Justice Programs, DNA Program Backlog Reduction Grant in an initial amount of \$250,000 to reduce the number of backlogged DNA tests in the Sheriff's Criminalistics Laboratory for the period January 1, 2021 through the end of the grant period;

11. ADOPT Resolution No. 2020/215 authorizing the Sheriff-Coroner, or designee, to apply for and accept, subject to compliance with certifications, the U.S. Department of Justice, FY 2020 Edward Byrne Memorial Justice Assistance Grant (JAG) in an initial amount of \$129,048 for support of countywide law enforcement programming for the period October 1, 2020 through September 30, 2023;

12. ADOPT Resolution No. 2020/222 approving and authorizing the Sheriff-Coroner or designee, to apply for and accept the Office of the Attorney General, California Department of Justice, Division of Law Enforcement Tobacco Law Enforcement Grant Program in an initial amount of \$191,479 for law enforcement operations to decrease juvenile access and use of tobacco products for the period January 1, 2021 through the end of the grant funding period; and

13. APPROVE clarification of Board Action of July 14, 2020, Item C.122 which authorized the Sheriff-Coroner to execute a contract amendment with Arnold R. Josselson M.D., to reflect the intent of the parties to have a payment limit in the amount of \$1,100,000 instead of \$1,000,000 to provide forensic pathology services and extend the term for an additional two years to October 1, 2018 through September 30, 2022.

FISCAL IMPACT:

Marine Salvage Services with Sean Alexander Marine Services - \$500,000; Budgeted and funded by the California Department of Boating and Waterways grant, Surrendered and Abandoned Vessel Exchange (SAVE) and the General Fund.

Forensic Pathology Services with Ikechi Ogan M.D. - 100% County General Fund; \$1,000,000. Budgeted.

Forensic Pathology Services - Mark A. Super M.D. - 100% County General Fund; \$1,000,000. Budgeted.

Managed Health Network - \$54,480, 100% County General Fund; Budgeted.

Attenti US, Inc. - \$800,000; 100% County General Fund, Budgeted.

Global Tel\*Link Corporation - no net County cost.

Alcohol Monitoring Systems Inc. - \$800,000. 100% Custody Alternative Facility Participant Fees.

Tiburon Inc. - \$264,900, FY 2020/21 budgeted expenditure. 100% County General Fund

FY 2020 State Homeland Security Grant Program Funds - Revenue of \$1,245,202, 100% Federal. No County match.

2020 DNA Capacity Enhancement for Backlog Reduction Program - Initial revenue: \$250,000, 100% Federal revenue, no County match required.

2020 Justice Assistance Grant - \$129,048, 100% Federal; No County match. County portion is \$20,710 to the Sheriff-Coroner. County will receive 5% of city allocations for serving as the fiscal agent for the County. (CFDA 16.738) County Allocation: \$20,710; Antioch Allocation: \$42,258; Richmond Allocation: \$66,080; Total grant award: \$129,048. County will receive 5% of pass through of the grant allocation for grant management and administration. County's 5% portion of the Cities allocation totals \$5,416.90.

Tobacco Law Enforcement Grant - Initial Revenue of \$191,479; 100% State funds.

Forensic Pathology Services - Arnold R. Josselson M.D. - 100% County General Fund; \$1,100,000. Budgeted.

#### BACKGROUND:

#### **Marine Salvage Services - Sean Alexander Marine Services**

The waterways in and around Contra Costa County have long been used for the illegal dumping and sinking of abandoned and derelict vessels of all sizes and types. If allowed to remain, these vessels are often hazards to safety, navigation, wildlife, and are hazardous to the environment. Many vessels are carrying hazardous materials. The vessels adversely impact residents, commercial, and recreational boaters in and around Contra Costa County.

The Office of the Sheriff's Marine Services Unit utilizes salvagers who are specially trained, equipped, and capable of removing the vessels that may be afloat, aground or submerged.

#### **Forensic Pathology Services - Ikechi Ogan M.D.**

Ikechi Ogan M.D., who specializes in pathology and forensic pathology will assume responsibility for and perform autopsy services for deaths that fall within the jurisdiction of the Coroner, will prepare as required documents and reports, provide training to personnel, provide court testimony as required, and ensure that quality standards are met for the services performed. This will allow the Sheriff-Coroner's Office to continue to meet the obligations to provide forensic pathology services.

### **Forensic Pathology Services - Mark A. Super M.D.**

Mark A. Super M.D., who specializes in pathology and forensic pathology. Dr. Super will assume responsibility for and perform autopsy services for deaths that fall within the jurisdiction of the Coroner, will prepare as required documents and reports, provide training to personnel, provide court testimony as required, and ensure that quality standards are met for the services performed. This will allow the Sheriff-Coroner's Office to continue to meet the obligations to provide forensic pathology services.

### **Managed Health Network**

Stress counseling can potentially reduce workers compensation and disability retirement claims. For the Sheriff and others in the law enforcement field, this program has become an essential part of the overall employee assistance package. Many employees have received significant help in their personal and professional lives by utilizing the available services.

### **Attenti US, Inc.**

The Sheriff's Office operates an Electronic Home Detention program intended as an alternative to incarceration for those persons who are qualified for home detention. This program provides significant savings to the County when compared to regular incarceration. It also keeps the County within the daily population standard as required in the three detention facilities. Attenti US, Inc. develops, manufactures and provides innovative technology products for the criminal justice industry that help ensure the safety of communities and efficient, secure monitoring and tracking operations. Attenti is a leading global provider of presence and location verification technologies and offers a complete suite of proprietary products and services. The vendor's solutions can be customized, and are based upon a full-featured, integrated platform that is scalable and highly flexible to meet the CCC Office of the Sheriff's unique needs now and in the future. Attenti's develops, manufactures and provides innovative technology products for the criminal justice industry that help ensure the safety of communities and efficient, secure monitoring and tracking operations. Attenti's Electronic Monitoring is a leading global provider of presence and location verification technologies and offers a complete suite of proprietary products and services. The vendor's solutions can be customized, and are based upon a full-featured, integrated platform that is scalable and highly flexible to meet the CCC Office of the Sheriff's unique needs now and in the future.

### **Global Tel\*Link Corporation**

After completion of the solicitation and contracting process with GTL, the Office of the Sheriff fully reviewed, called on references, and evaluated both the JMS originally proposed by GTL as well as the tablet model being proposed. The Office of the Sheriff and the General Services Department negotiated with GTL to provide the ATIMS JMS vs. the originally agreed upon proprietary OMS JMS. All parties agree that the JMS provided by ATIMS is more flexible and will more fully accommodate the needs for the Office of the Sheriff. Additionally, the Office of the Sheriff and the General Services Department decided to implement a newer, more industry-standard tablet model that will allow inmates to pay for tablet usage by the minute similar to phone calls. This tablet model will be provided in lieu of a

subscription-based model. The amendment will also detail and specify the rates inmates will be charged for the tablet usage with GTL.

### **Alcohol Monitoring Systems Inc.**

The Office of the Sheriff has been utilizing SCRAM and Remote Breath Alcohol monitor devices for offenders who commit alcohol related offenses since 2009. Alcohol Monitoring Systems, Inc., has been providing sales, leasing, on-going warranty and on-line monitoring of SCRAM and Remote Breath Alcohol monitor devices. Alcohol monitoring programs are utilized for both sentenced and pre-trial release offenders. The use of alcohol monitoring equipment helps reduce the jail population and cost savings associated with housing offenders in-custody. The alcohol monitoring program also plays a key role in helping offender complete their court ordered commitment and allowing them to re-enter the community in a timely manner. Approval of the Products and Services Agreement documents the vendor's obligations to provide the described products and services to the County.

### **Tiburon Inc.**

Tiburon Inc. provides the Office of the Sheriff with computer aided dispatch (CAD) and record management (RMS) systems. Authorizing additional payments under the Master Support Agreement will renew support for these systems and the CopLogic reporting system that is integrated with CAD/RMS for the period September 10, 2020 to September 9, 2021. The CAD/RMS system is used by Sheriff's dispatch to document calls for service and dispatch police and Sheriff's units to those calls. The system is also used by the records division to collect data required by the state. The support will allow the CAD and RMS systems to be up and running 24/7 and to provide emergency assistance if the system fails. CAD/RMS and mobile systems are mission critical applications to public safety. Without Tiburon Inc., supporting their products the Office of the Sheriff runs the risk of crashing these systems without the ability to fix it. In September 2016, the Board of Supervisors approved an Agreement with Tiburon, Inc., to license software for the Sheriff's Office 9-1-1 Dispatch and Records Management systems. The 9-1-1 CAD system is used by the Office of the Sheriff's Dispatch Center, and the RMS is used by the entire Office of the Sheriff and the agencies that contract with the Sheriff's Office for law enforcement services. Tiburon Inc., provides the County with the software for the CAD system and RMS. This request will provide for systems maintenance and support for an additional year.

### **FY 2020 State Homeland Security Grant Program (SHSGP)**

The Fiscal Year (FY) 2020 Homeland Security Grant Program (HSGP) is a Federal Department of Homeland Security (DHS)/Federal Emergency Management Agency's (FEMA's) grant program. This grant is distributed to the Contra Costa Operational Area to assist in preventing, protecting and responding to and recovering from terrorist attacks. These grant programs are part of a comprehensive set of measures authorized by Congress and implemented by DHS to help strengthen the nation's communities against potential terrorist attacks.

### **2020 DNA Capacity Enhancement for Backlog Reduction Program**

The Contra Costa County, Office of the Sheriff, Forensic Services Division operates an ANAB Accredited Crime Laboratory able to provide County-wide Forensic DNA testing services. The DNA backlog reduction grant funds are needed to ensure the efficient processing of DNA evidence. Grant funds have been used in the past to purchase scientific equipment allowing for high throughput DNA extraction, quantification and detection. In addition, funding supported DNA analysts who process DNA samples collected at crime scenes to aid in criminal investigations and prosecutions. The 2020 DNA

Capacity Enhancement for Backlog Reduction Program Grant will be used to support DNA analysts, acquire advanced technology, and provide state-of the art forensic DNA testing to law enforcement agencies in the Contra Costa County.

### **2020 Justice Assistance Grant**

The Edward Byrne Memorial Justice Assistance Grant (JAG) Program is the primary provider of federal criminal justice funding to state and local jurisdictions. The JAG FY2020 Grant is a formula grant with emphasis on assisting local efforts to prevent or reduce crime and violence. The eligible jurisdictions within Contra Costa County have a scheduled allocation totaling \$129,048 with \$20,710, allocated to the County. The \$20,710 county allocation will be to the Office of the Sheriff. Established to streamline justice funding and grant administration, the JAG Program allows states, tribes, and local governments to support a broad range of activities to prevent and control crime based on their own local needs and conditions. The Bureau of Justice Statistics (BJS) calculates a minimum base allocation for each state. Once the state funding is calculated, 60 percent of the allocation is awarded to the state and 40 percent to eligible units of local government. Local governments are awarded amounts based on their share of the total violent crime reported within the state. Based on a formula allocation, Contra Costa County has been designated as a disparate jurisdiction because a city within the county is scheduled to receive 150% more than the county, while the county bears more than 50% of the costs associated with the prosecution and incarceration of that city's Part 1 violent crime. Jurisdictions certified as disparate must identify a fiscal agent that will submit a joint application for the total eligible allocation. The Office of the Sheriff has been designated as the fiscal agent for this grant and will manage and oversee the distribution of the funds for all participating agencies within the county. As Fiscal Agent, the Office of the Sheriff will receive 5% (\$5,416.90) of the pass through of the grant allocation (5% from each jurisdictions' allocation) to cover management and administration of the grant, to include personnel and operational costs directly related to grant management.

### **Tobacco Law Enforcement Grant**

The Office of the Attorney General, California Department of Justice, Division of Law Enforcement Tobacco Law Enforcement Grant Program is providing funding to apply strategies that reduce illegal sales and marketing of all tobacco products to minors. According to California Healthy Kids Survey, Contra Costa County 2020 data, forty percent of 11th graders have smoked at least one whole cigarette, used smokeless tobacco, or used electronic cigarettes within Contra Costa County. Beginning January 1, 2021 the Office of the Sheriff will conduct various enforcement operations and prevention projects in order to meet the goals of the grant if state funding is awarded.

### **Forensic Pathology Services - Arnold R. Josselson M.D.**

Dr. Josselson will assume responsibility for and perform autopsy services for deaths that fall within the jurisdiction of the Coroner, will prepare documents and reports as required, provide training to personnel, provide court testimony as required, and ensure that quality standards are met for the services performed. This will allow the Sheriff-Coroner's Office to continue to meet the obligations to provide forensic pathology services.

### **CONSEQUENCE OF NEGATIVE ACTION:**

Marine Salvage Services - Sean Alexander Marine Services: The Office of the Sheriff may not be in compliance with the grant funding and in addition, abandoned vessels may not be removed from County waterways.

Forensic Pathology Services - Ikechi Ogan M.D.: If a negative action is given this will result in the Sheriff's Office not having access to this vendor to perform autopsy services and related reporting in the Coroner's Division.

Forensic Pathology Services - Mark A. Super M.D.: If a negative action is given this will result in the Sheriff's Office not having access to this vendor to perform autopsy services and related reporting in the Coroner's Division.

Managed Health Network: There is the potential for the increase in stress related workers compensation claims and disability claims if counseling services are not provided as part of a comprehensive employee assistance program.

Attenti US, Inc. - A negative action on this would cause a disruption in services that the Sheriff's Custody Alternative Program provides.

Global Tel\*Link Corporation - A decision not to enter into this Amendment will further delay addressing the dire needs to replace the JMS for the Office of the Sheriff. Further, delays could result in the need to obtain another service provider which could potentially lead to providing less technology and reduced cost reimbursement amounts, while suspending this service to inmates which may result in lawsuits against the County.

Alcohol Monitoring Systems Inc. - Replacement cost for potential loss to monitoring equipment due to intentional damage and/or absconders discarding equipment.

Tiburon Inc. - Negative action on this item would not allow the Office of the Sheriff to provide emergency assistance if the system fails.

FY 2020 State Homeland Security Grant Program - The Office of the Sheriff would not be able to apply for and accept this grant funding.

2020 DNA Capacity Enhancement for Backlog Reduction Program - A decision not to pursue grant funding will increase the DNA case backlog, increase the turnaround time for DNA sample processing, and contribute to delays in criminal prosecutions.

2020 Justice Assistance Grant- The Sheriff's Office will be unable to apply for and accept the grant from the U.S. Department of Justice.

Tobacco Law Enforcement Grant - Failure to secure state funding will result in less opportunities for the Office of the Sheriff to lower the access and use of tobacco products to juveniles in Contra Costa County.

Forensic Pathology Services - Arnold R. Josselson M.D. - If a negative action is given this will result in the Sheriff's Office not having access to a vendor to perform autopsy services and related reporting in the Coroner's Division.

## ATTACHMENTS

Resolution 2020/190



Resolution 2020/200

Resolution 2020/215

Resolution 2020/222

**THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA**  
**and for Special Districts, Agencies and Authorities Governed by the Board**

Adopted this Resolution on 08/11/2020 by the following vote:

**AYE:**   
**NO:**   
**ABSENT:**   
**ABSTAIN:**   
**RECUSE:**



**Resolution No. 2020/190**

IN THE MATTER OF: Applying for and Accepting 2020 State Homeland Security Grant Program funds.

WHEREAS the County of Contra Costa is seeking funds available through the California Homeland Security Grant Program administered by the California Governor's Office of Emergency Services;

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors: Authorizes the Sheriff-Coroner, Undersheriff or Commander Management Services, to execute for and on behalf of the County of Contra Costa, a public entity established under the laws of the State of California, any actions necessary for the purpose of obtaining Federal financial assistance including grant modification and extensions provided by the U.S. Department of Homeland Security and sub-granted through the State of California related to the State Homeland Security Grant Program.

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: August 11, 2020**

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

**Contact: Mary Jane Robb, 925-655-0005**

By: , Deputy

**cc:**

**THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA**  
**and for Special Districts, Agencies and Authorities Governed by the Board**

Adopted this Resolution on 08/11/2020 by the following vote:

**AYE:**   
**NO:**   
**ABSENT:**   
**ABSTAIN:**   
**RECUSE:**



**Resolution No. 2020/200**

IN THE MATTER OF: Applying for and Accepting the 2020 U.S. Department of Justice, Office of Justice Program, DNA Program Backlog Reduction Grant.

WHEREAS, the County of Contra Costa is seeking funds available through the U.S. Department of Justice;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors: Authorizes the Sheriff-Coroner, Undersheriff or Commander Management Services, to execute for and on behalf of the County of Contra Costa, a public entity established under the laws of the State of California, any actions necessary for the purpose of obtaining Federal financial assistance including grant modifications and extensions provided by the U.S. Department of Justice.

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: August 11, 2020**

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

**Contact: Mary Jane Robb, 925-655-0005**

By: , Deputy

**cc:**

**THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA**  
**and for Special Districts, Agencies and Authorities Governed by the Board**

Adopted this Resolution on 09/22/2020 by the following vote:

**AYE:**

**NO:**

**ABSENT:**

**ABSTAIN:**

**RECUSE:**



**Resolution No. 2020/215**

**IN THE MATTER OF:** Applying for and Accepting the U.S. Department of Justice 2020 Edward Byrne Memorial Justice Assistance Grant(JAG).

**WHEREAS,** the County of Contra Costa is seeking funds available through the U.S. Department of Justice;

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors of Contra Costa County:

Authorizes the Sheriff-Coroner, Undersheriff, Commander or the Sheriff's Chief of Management Services, to execute for and on behalf of the County of Contra Costa, a public entity established under the laws of the State of California, any actions necessary for the purpose of obtaining Federal financial assistance, including grant modifications and extensions, provided by the U.S. Department of Justice related to the 2020 Edward Byrne Memorial Justice Assistance Grant.

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: September 22, 2020**

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

**Contact: Mary Jane Robb, (925) 655-0005**

By: , Deputy

**cc:**

**THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA**  
**and for Special Districts, Agencies and Authorities Governed by the Board**

Adopted this Resolution on 09/22/2020 by the following vote:

**AYE:**

**NO:**

**ABSENT:**

**ABSTAIN:**

**RECUSE:**



**Resolution No. 2020/222**

IN THE MATTER OF: Applying for and Accepting the Office of the Attorney General, California Department of Justice, Division of Law Enforcement Tobacco Law Enforcement Grant Program and any future amendments, if any, to this Grant Program for the purpose of increasing funding provided in the original contract, without an additional resolution from the Board of Supervisors, beginning January 1, 2021 through the end of the available grant funding.

WHEREAS, the County of Contra Costa is seeking funds available through the Office of the Attorney General, California Department of Justice, Division of Law Enforcement Tobacco Law Enforcement Grant Program;

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisor's Authorizes the Sheriff-Coroner, Undersheriff, Commander or the Sheriff's Chief of Management Services, to execute for and on behalf of the County of Contra Costa, a public entity established under the laws of the State of California, any action necessary for the purpose of obtaining financial assistance including grant modifications and extensions provided by the Office of the Attorney General, California Department of Justice, Division of Law Enforcement Tobacco Law Enforcement Grant Program.

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: September 22, 2020**

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

**Contact: Sandra Brown 925-335-1553**

By: , Deputy

**cc:**



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Deborah R. Cooper, Clerk-Recorder  
Date: September 22, 2020

Subject: Contract With Robert Half for temporary personnel services for the November 2020 election

---

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the County Clerk-Recorder, or designee, to execute a contract with Robert Half International, Inc., in an amount not to exceed \$350,000 for temporary personnel services to staff the 17 Regional Early Voting sites for the November election and other election related temporary services for the period September 22, 2020 through December 31, 2020.

**FISCAL IMPACT:**

The total costs will not exceed \$350,000. These costs are reimbursable by the State using federal CARE funding as part of Contra Costa's approved allocation.

**BACKGROUND:**

To maximize in-person voting opportunities for the November election as directed by the Governor's Executive Order, we are increasing the number of Regional Early Voting sites from 3 to 17. Each site requires at least a staff of five persons over eight days. Elections has hired and is still hiring about 85 temporary staff in preparation for the November election. However, staffing the additional mandated early voting sites will require another 80 personnel, which exceeds the County's ability to recruit and successfully hire in the short time remaining before the November election.

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APPROVE
  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR
  RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
 Candace Andersen, District II Supervisor  
 Diane Burgis, District III Supervisor  
 Karen Mitchoff, District IV Supervisor  
 Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Scott O. Konopasek,  
925-335-7808

cc:

CONSEQUENCE OF NEGATIVE ACTION:

We will not be able to staff the 17 Regional Early Voting sites for the election.



Contra  
Costa  
County

To: Board of Supervisors  
From: Anna Roth, Health Services Director  
Date: September 22, 2020

Subject: Novation Contract #24-794-12(10) with BHC Fremont Hospital, Inc.

---

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Health Services Director, or designee, to execute on behalf of the County Novation Contract #24-794-12(10) with BHC Fremont Hospital, Inc., a corporation, in an amount not to exceed \$1,300,000, to provide inpatient psychiatric hospital services for the period from July 1, 2020 through June 30, 2021, which includes a six-month automatic extension in an amount of \$650,000 through December 31, 2021.

**FISCAL IMPACT:**

This Contract is funded 100% by Mental Health Realignment Funds.

**BACKGROUND:**

On May 7, 2019, the Board of Supervisors approved Contract #24-794-12(7), as amended by Amendment Agreements #24-794-12(8) and 24-794-12(9), with BHC Fremont Hospital, Inc. for the provision of inpatient psychiatric hospital services to County-referred adults and children for the period from July 1, 2019 through June 30, 2020, which included a six-month automatic extension through December 31, 2020. Approval of Novation Contract #24-794-12(10) will allow the Contractor to continue to provide inpatient psychiatric hospital services through June 30, 2021.

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APPROVE
  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR
  RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
 Candace Andersen, District II  
 Supervisor  
 Diane Burgis, District III Supervisor  
 Karen Mitchoff, District IV Supervisor  
 Federal D. Glover, District V  
 Supervisor

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: September 22, 2020

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

Contact: Suzanne Tavano, Ph.D.,  
925-957-5169

By: Laura Cassell, Deputy



CONSEQUENCE OF NEGATIVE ACTION:

If this contract is not approved, County's mental health clients will not receive needed inpatient psychiatric services from Contractor's facility.

CHILDREN'S IMPACT STATEMENT:

This program supports the following Board of Supervisors' community outcome: "Communities that are Safe and Provide a High Quality of Life for Children and Families". Expected program outcomes include a decrease in the need for inpatient care and placement at a lower level of care.



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Kathy Gallagher, Employment & Human Services Director  
Date: September 22, 2020

Subject: Great Plates Delivered Program Contract Amendment

---

**RECOMMENDATION(S):**

1. Ratify the execution of the following contract amendments by the County Administrator, or designee, in an aggregate amount not to exceed \$1,280,812.50, to facilitate the preparation and delivery of meals under the State of California Great Plates Delivered Program:

A. Execute a contract amendment with GDCC LLC to increase the payment limit from \$509,219.25 by \$424,912.50 to a new payment limit not to exceed \$934,131.75 to prepare, to provide and deliver a maximum of 225 meals a day to 75 program eligible older adults and extend the term through December 8, 2020 on the condition of additional Federal Emergency Management Agency's Public Assistance (FEMA) funding being available under the Great Plates Delivered Program.

B. Execute a contract amendment with Shahram Taheri to increase the payment limit from \$492,480.00 by \$410,400.00 to a new payment limit not to exceed \$902,880.00 to prepare, provide and deliver a maximum of 225 meals per day to 75 program eligible older adults and extend the term through December 8, 2020 on the condition of additional FEMA funding being available under the Great Plates Delivered Program.

C. Execute a contract amendment with Agave Grill Corporation to increase the payment limit from \$250,800.00 by \$445,500.00 to a new payment limit not to exceed \$696,300.00 to prepare, provide and deliver a maximum of 225 meals

APPROVE

OTHER

RECOMMENDATION OF CNTY ADMINISTRATOR

RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Tracy Murray,  
925-608-4805

cc:

RECOMMENDATION(S): (CONT'D)

a day to 75 program eligible older adults and extend the term through December 8, 2020 on the condition of additional FEMA funding being available under the Great Plates Delivered Program.

FISCAL IMPACT:

Expenditures will initially be funded with County General Funds and submitted to the FEMA program for up to 75% Federal reimbursement and to the California Office of Emergency Services (CalOES) for 18.75% State of California Disaster Assistance Act funding, and 6.25% will remain County funds. Any expenditures not fully reimbursed at 75% Federal FEMA funds will be County funds.

BACKGROUND:

The original three contracts with GDCC LLC, Sharam Taheri and Agave Corporation, together with their respective amendments, provide for three nutritious restaurant meals a day for eligible older adults required to shelter in place or self-isolate due to the COVID-19 pandemic, who are not receiving nutrition assistance benefits from other federal or state programs, and who are unable to prepare meals on their behalf. In addition, the Great Plates Delivered Program (Program) provides economic stimulus to local restaurants that are struggling due to COVID-19 mitigation orders.

The Program is currently extended until October 09, 2020, and may receive additional extensions and associated funding. Ratification of the contract amendments between the County and GDCC LLC, Shahram Taheri, and Agave Corporation will ratify the execution of contract amendments that enables Contra Costa County to serve 225 vulnerable older adults. Consistent with Program specifications, contractors will be paid an amount not to exceed \$66 per person per day during the terms of these contracts and, where authorized and approved, their amendments. The execution of further amendments of the three contracts with GDCC LLC, Shahram Taheri and Agave Corporation under this Program will extend the services through December 8, 2020, but will occur only on the condition that FEMA funding becomes available.

CONSEQUENCE OF NEGATIVE ACTION:

The execution of the contract amendments will not be ratified.



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Kathy Gallagher, Employment & Human Services Director  
Date: September 22, 2020

Subject: Great Plates Delivered Program Contract

---

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the County Administrator, or designee, to execute on behalf of the County a contract with RLW Properties, LLC in an amount not to exceed \$383,467.50 to prepare, provide and deliver a maximum of 225 meals a day to 75 program eligible adults for the period of September 22, 2020 through December 08, 2020, on the condition of Federal Emergency Management Agency's Public Assistance (FEMA) funding being available for meal services under the Great Plates Delivered Program.

**FISCAL IMPACT:**

Contract expenditures will not exceed \$383,467.50 for the period of September 22, 2020 through December 08, 2020. Expenditures will initially be funded with County General Funds and submitted to the FEMA program for up to 75% Federal reimbursement and to the California Office of Emergency Services (CalOES) for 18.75% State of California Disaster Assistance Act funding, and 6.25% will remain County funds. Any expenditures not fully reimbursed at 75% Federal FEMA funds will be County funds.

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APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Tracy Murray 925  
608 4805

cc:

**BACKGROUND:**

On April 24, 2020, Governor Gavin Newsom announced the launch of a first-in-the-nation Great Plates Delivered program (Program). The Program is designed to support adults 65 and older and adults 60-64 who are at high-risk from COVID-19, in staying home and staying healthy by delivering three nutritious meals a day, and also provide essential economic stimulus to local businesses and workers struggling to stay afloat during the COVID-19 crisis. On May 1, 2020, the County Administrator submitted a letter of interest in participating in the Program to CalOES. The letter of interest presented a Program plan of a maximum of 500 participants a day, receiving three meals a day, provided by a maximum of 10 local restaurants. On May 26, 2020, the Board determined that it is necessary to appropriate monies from the General Fund as authorized by Government Code Section 26227 to contribute toward the cost of meals for specified older adults residing in Contra Costa County during the coronavirus disease 2019 (COVID-19) pandemic as part of the State of California's Program and ratified the execution of contracts with Taheri's Mediterranean Restaurant and GDCC Kitchens. On July 14, 2020, the Board ratified execution of a contract with Agave Grill Corporation. Ratification of the execution of the contract between the County and RLW LLC will enable Contra Costa County to serve an additional 75 vulnerable older adults. Consistent with Program specifications, the contractor will be paid an amount not to exceed \$66 per person per day during the terms of the contract. The authorization and approval to execute an amendment of this contract is on the condition that FEMA funds continue to be available. For any amendment executed, consistent with Program specifications, the contractor will be paid an amount not to exceed \$66 per person per day

**CONSEQUENCE OF NEGATIVE ACTION:**

The execution of the contract will not be authorized.



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Kathy Gallagher, Employment & Human Services Director  
Date: September 22, 2020

Subject: 2019-2020 Orantes, LLC Childcare Services Contract Amendment

---

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Employment and Human Services Director, or designee, to execute a contract amendment with Orantes, LLC dba Tiny Toes Preschool and Childcare Center to increase the payment limit by \$21,816 to a new payment limit of \$118,928 effective October 1, 2019, and to add eight (8) additional Head Start Childcare Partnership Program Slots for children aged three to five years for the period of July 1, 2019 through June 30, 2020.

**FISCAL IMPACT:**

This contract is 100% funded by federal grant funds from the Administration for Children and Families, Head Start Program.  
CFDA #93.600. (100% Federal)

**BACKGROUND:**

Contra Costa County receives funds from the U.S. Department of Health and Human Services, Administration for Children and Families (ACF) to provide Head Start and Early Head Start program services to program eligible County residents. The Employment and Human Services Department, in turn, contracts with a number of community-based organizations to provide a wider distribution of services. This contract ensures Orantes, LLC dba Tiny Toes Preschool and Childcare has funding to fulfill the obligations for the contract term by adding eight (8) additional Head Start Childcare Partnership Program slots.

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APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Lisa Gonzales (925)  
608-4968

CONSEQUENCE OF NEGATIVE ACTION:

If not approved, the County will not be able to fund the eight (8) additional childcare slots for its community based agency partner, Orantes, LLC.

CHILDREN'S IMPACT STATEMENT:

This Employment and Human Services Department Community Services Bureau contract supports three of Contra Costa County's community outcomes - Outcome 1: Children Ready for and Succeeding in School, Outcome 3: Families that are Economically Self-sufficient, and Outcome 4: Families that are Safe, Stable, and Nurturing. These outcomes are achieved by offering comprehensive services, including high quality early childhood education, nutrition, and health services to low-income children throughout Contra Costa County.



Contra  
Costa  
County

To: Board of Supervisors  
From: Esa Ehmen-Krause, County Probation Officer  
Date: September 22, 2020

Subject: Emergency Housing Contract with California Department of Corrections and Rehabilitation

---

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the County Probation Officer, or designee, to execute a contract with the California Department of Corrections and Rehabilitation, in an amount not to exceed \$99,990 beginning upon Board and State approval through June 30, 2022 for emergency housing for case referrals from Juvenile or Criminal Court to Contra Costa County.

**FISCAL IMPACT:**

100% County General Fund.

**BACKGROUND:**

The California Department of Corrections and Rehabilitation provides emergency housing for case referrals from Juvenile Courts for youth that present a significant risk of violence or escape if housed in the local county juvenile facility, or if the local facility is rendered temporarily unsafe due to natural or manmade disaster.

**CONSEQUENCE OF NEGATIVE ACTION:**

If the Juvenile Court makes an order placing a person in Emergency Housing, Probation will not have a contract in place to pay for services.

**CHILDREN'S IMPACT STATEMENT:**

This action supports one of the community outcomes established in the Children's Report Card: 1)

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APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Danielle Fokkema,  
925-313-4195

cc:



"Communities that are Safe and Provide a High Quality of Life for Children and Families."



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Anna Roth, Health Services Director  
Date: September 22, 2020

Subject: Novation Contract #22-137-57 with Meals on Wheels Diablo Region

---

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Health Services Director, or designee, to execute on behalf of the County Novation Contract #22-137-57 with Meals on Wheels Diablo Region, a non-profit corporation, in an amount not to exceed \$508,503, to provide home-delivered meals for the Senior Nutrition Program, for the period from July 1, 2020 through June 30, 2021, which includes a three-month automatic extension through September 30, 2021, in an amount not to exceed \$127,125.

**FISCAL IMPACT:**

This Contract is federally funded 100% by Title IIIC-2 of the Older Americans Act of 1965, through an interdepartmental agreement with the Contra Costa Employment and Human Services Department.

**BACKGROUND:**

This Contract meets the social needs of County's population by providing home-delivered meals on 250 serving days, to an average of 1600 nutritionally at-risk, home-bound senior citizens and County residents living with HIV/AIDS, to ensure they receive at least one third of their daily nutritional requirements.

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APPROVE
  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR
  RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
 Candace Andersen, District II Supervisor  
 Diane Burgis, District III Supervisor  
 Karen Mitchoff, District IV Supervisor  
 Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Daniel Peddycord,  
925-313-6712

BACKGROUND: (CONT'D)

On September 10, 2019, the Board of Supervisors approved Novation Contract #22-137-55 with Meals on Wheels Diablo Region for the provision of home-delivered meals for the Senior Nutrition Program, for the period from July 1, 2019 through June 30, 2020, which included a three-month automatic extension through September 30, 2020.

Approval of Novation Contract #22-137-57 replaces the automatic extension under the prior Contract and allows the Contractor to continue providing meals for the Senior Nutrition Program through June 30, 2021.

CONSEQUENCE OF NEGATIVE ACTION:

If this contract is not approved, County's homebound senior citizens and HIV/AIDS patients will not receive Senior Nutrition Program meals, which provide at least one third of their daily nutrition.



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Matt Slattengren  
Date: September 22, 2020

Subject: 20-0506-019SF Phytophthora ramorum - Quarantine (Sudden Oak Death)

---

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Agricultural Commissioner, or designee, to execute an agreement with the California Department of Food and Agriculture to reimburse the County in an amount not to exceed \$119,826 for regulatory compliance and enforcement activities related to the Sudden Oak Death Program for the period July 1, 2020 through June 30, 2021.

**FISCAL IMPACT:**

This agreement will reimburse the Agriculture Department in an amount not to exceed \$119,826 for conducting regulatory compliance activities related to Sudden Oak Death (SOD) on behalf of the California Department of Food and Agriculture (CDFA). The agreement is fully funded by CDFA. There is no County match of funds.

**BACKGROUND:**

CDFA is the lead agency for the multi-agency task force, known as the California Oak Mortality Task Force (COMTF), that was formed to develop a coordinated effort to address Phytophthora Ramorum (Sudden Oak Death). Due to CDFA's responsibility under the COMTF and its statutory authority to establish quarantines, CDFA

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APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: 608-6600

cc:

BACKGROUND: (CONT'D)

must enter into cooperative agreements with impacted counties. The role of the Agriculture Department is to issue compliance agreements, and do related work that assures compliance by affected businesses, including plant nurseries, firewood dealers, tree services, green waste and compost facilities, to stop the spread of SOD to non-infested areas of the State and County and to foreign countries.

CONSEQUENCE OF NEGATIVE ACTION:

Failure to accept the agreement will result in the Agriculture Department not being reimbursed by CDFA for regulatory enforcement activities related to the Sudden Oak Death Program.

ATTACHMENTS



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Esa Ehmen-Krause, County Probation Officer  
Date: September 22, 2020

Subject: Interagency Agreement with the Contra Costa County Office of Education

---

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the County Probation Officer, or designee, to execute an Interagency Agreement with the Contra Costa County Office of Education, in an amount not to exceed \$64,000 to provide Juvenile Reentry educational and career services for the period July 1, 2020 through June 30, 2021.

**FISCAL IMPACT:**

100% General Fund

**BACKGROUND:**

Contra Costa County Office of Education provides Juvenile Reentry educational and career services in East County to youth who will be released from the Youthful Offender Treatment Program and the Girls in Motion Program at the Juvenile Hall, and the Orin Allen Youth Rehabilitative Facility. The Contra Costa County Office of Education also coordinates these services with our community service providers in the Central and West County.

**CONSEQUENCE OF NEGATIVE ACTION:**

The educational and career services will not be available to the youth in the East County.

---

APPROVE
  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR
  RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
 Candace Andersen, District II Supervisor  
 Diane Burgis, District III Supervisor  
 Karen Mitchoff, District IV Supervisor  
 Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Danielle Fokkema,  
925-313-4195

cc:

CHILDREN'S IMPACT STATEMENT:

This action supports four of the five community outcomes set forth in the Children's Report Card. They are: Children Ready for and Succeeding in School; Children and Youth Healthy and Preparing for a Productive Adulthood; Families that are Safe, Stable and Nurturing; and Communities that are Safe and Provide a High Quality of Life.



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Deborah R. Cooper, Clerk-Recorder  
Date: September 22, 2020

Subject: Contract with Comcast for voter education campaign for the November 2020 election

---

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the County Clerk-Recorder, or designee, to execute a contract with Comcast Corporation in an amount not to exceed \$100,000 for television and digital voter education services targeting under-served communities for the November 2020 election, for the period September 22, 2020 through December 31, 2020.

**FISCAL IMPACT:**

The cost of the education and outreach campaign will not exceed \$100,000 and is reimbursable by the State using federal CARE funds as part of Contra Costa's approved allocation.

**BACKGROUND:**

Due to COVID-19, the Governor issued an Executive Order directing counties to send all voters a ballot for the November election while maintaining in-person voting sites. The 25% of voters who will receive a ballot without having requested one is weighted heavily towards under-represented groups. This campaign is to inform and encourage these voters to cast their ballots by mail and to inform them of the various methods for returning and tracking their voted ballots. The scope and concentrated timeframe of these specialized television and digital production services are beyond what can be managed with current County resources.

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APPROVE
  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR
  RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
 Candace Andersen, District II  
 Supervisor  
 Diane Burgis, District III Supervisor  
 Karen Mitchoff, District IV  
 Supervisor  
 Federal D. Glover, District V  
 Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Scott O. Konopasek,  
925-335-7808

cc:



CONSEQUENCE OF NEGATIVE ACTION:

We will not be able to target this important demographic with voting information via television and digital ads.



Contra  
Costa  
County

To: Board of Supervisors  
From: Anna Roth, Health Services Director  
Date: September 22, 2020

Subject: Contract #77-289 Council For Affordable Quality Healthcare, Inc.

---

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Health Services Director, or designee, to execute on behalf of the County Contract #77-289 containing mutual indemnification with Council For Affordable Quality Healthcare, Inc., a corporation, in an amount not to exceed \$60,000, to provide software implementation and administration services for their online repository database to Contra Costa Health Plan (CCHP), for the period from October 1, 2020 through September 30, 2023.

**FISCAL IMPACT:**

This Contract is funded 100% by Hospital Enterprise Fund II.

**BACKGROUND:**

Council For Affordable Quality Healthcare, Inc. (CAQH), has developed an online repository of health care provider information. That database, CAQH ProView ("ProView"), is currently supported by two modules through which health care providers submit information to ProView via an Internet-based service; and through which participating organizations are able to access information in ProView electronically. CCHP will access the database through a web portal which CAQH operates, to obtain electronic provider credential applications.

APPROVE

OTHER

RECOMMENDATION OF CNTY ADMINISTRATOR

RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Sharon Mackey,  
925-313-6104

BACKGROUND: (CONT'D)

Under Contract #77-289, Contractor and County will execute a Master Service Agreement under which Contractor will provide software implementation and administrative services for the period from October 1, 2020 through September 30, 2023. This Contract includes mutual indemnification.

CONSEQUENCE OF NEGATIVE ACTION:

If this contract is not approved, the County will not have access to this database that allows Contra Costa Health Plan to obtain electronic provider credential applications.



Contra  
Costa  
County

To: Board of Supervisors  
From: Kathy Gallagher, Employment & Human Services Director  
Date: September 22, 2020

Subject: Contract with Contra Costa Community College District – Los Medanos College for Resource Family Pre-Approval Training

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Employment and Human Services Director, or designee, to execute an agreement with Contra Costa Community College District – Los Medanos College (LMC) in an amount not to exceed \$36,000 to provide Resource Family Pre-Approval training for the period July 1, 2020 through June 30, 2021.

**FISCAL IMPACT:**

This interagency agreement will increase department expenditures by \$36,000 to be funded 25% State 2011 Realignment funds, and 75% Federal funding. The expenditures are included in the FY 2020-2021 department budget. CFDA No. 93.658

**BACKGROUND:**

The Resource Family Pre-Approval training program was enacted by legislation in 2007 and expanded through Senate Bill 1013 (Chapter 35, Statutes of 2012). The statute requires the California Department of Social Services (CDSS), in consultation with county child welfare agencies, including Juvenile Probation, foster parent associations and other interested community parties, to implement a unified, family friendly and child-centered resource family approval process.

The Resource Family Pre-Approval

APPROVE

OTHER

RECOMMENDATION OF CNTY ADMINISTRATOR

RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: C. Youngblood, (925)  
608-4964

cc:

BACKGROUND: (CONT'D)

program has a single approval standard that replaces the pre-existing multiple processes for licensing foster family homes, approving relatives and non-relative extended family members (“NREFMs”) as foster care providers, and approving families for legal guardianship or adoption.

In compliance with State mandates, under the inter-agency renewal agreement, Contra Costa Community College District – LMC will provide caregivers of foster children a minimum of six 18 hour training series, locate and hire independent training consultants, and provide appropriate instructional materials to each training participant. Trainings will educate prospective Resource Families on how to support and parent vulnerable children, as defined in State Assembly Bill 686.

CONSEQUENCE OF NEGATIVE ACTION:

State law requires that all currently licensed foster family homes, approved relative caregivers, or non-relative extended family members must convert to the Resource Family Pre-Approval program no later than December 31, 2020. If the caregiver does not obtain resource family approval by December 31, 2020, all licenses and prior approvals shall forfeit on that date.

CHILDREN'S IMPACT STATEMENT:

This contract supports all five of the community outcomes established in the Children's Report Card: 1) "Children Ready for and Succeeding in School"; 2) "Children and Youth Healthy and Preparing for Productive Adulthood"; 3) "Families that are Economically Self Sufficient"; 4) "Families that are Safe, Stable and Nurturing"; and 5) "Communities that are Safe and Provide a High Quality of Life for Children and Families" by preparing families to better meet the needs of vulnerable children in the foster care system and allows seamless transition to permanency.



Contra  
Costa  
County

To: Board of Supervisors  
From: Anna Roth, Health Services Director  
Date: September 22, 2020

Subject: Amendment #23-648-3 with Vickie Lee Scharr

---

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Health Services Director, or designee, to execute on behalf of the County Contract Amendment #23-648-3 with Vickie Lee Scharr, an individual, effective September 1, 2020, to amend Contract #23-648, as amended by Amendment Agreements #23-648-1 and #23-648-2, to increase the payment limit by \$8,000, from \$390,000 to a new payment limit of \$398,000, with no change in the term of January 1, 2019 through December 31, 2020, to provide additional consultation, technical support and planning services with regard to the West Contra Costa Health Care District (WCCHCD).

**FISCAL IMPACT:**

This Contract is funded 100% by West Contra Costa Healthcare District Funds.

**BACKGROUND:**

On December 4, 2018, the Board of Supervisors approved Contract #23-648, as amended by Amendment Agreements #23-648-1 and #23-648-2, with Vickie Lee Scharr for the provision of consultation, technical support and planning services to the Chief Operating Officer with regard to the transition of the WCCHCD to Contra Costa County including but not limited to financial planning and operational improvement, for the period from January 1, 2019 through December 31, 2020.

---

APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Patrick Godley,  
925-957-5405

cc: Marcy Wilhelm

BACKGROUND: (CONT'D)

Approval of Contract Amendment #23-648-3 will allow the Contractor to provide additional services through December 31, 2020.

CONSEQUENCE OF NEGATIVE ACTION:

If this contract is not approved, the Health Services Department will not be able to use Contractor's expertise in the transition of WCCHCD to Contra Costa County.



Contra  
Costa  
County

To: Board of Supervisors  
From: Anna Roth, Health Services Director  
Date: September 22, 2020

Subject: Amendment #23-646-3 with Eighty 20 Healthcare Consulting, LLC

---

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Health Services Director, or designee, to execute on behalf of the County Contract Amendment #23-646-3 with Eighty 20 Healthcare Consulting, LLC, a limited liability company, to amend Contract #23-646, as amended by Amendment Agreements #23-646-1 and #23-646-2, effective September 1, 2020, to increase the payment limit by \$26,562, from \$652,000 to a new payment limit of \$678,562, with no change in the term of January 1, 2019 through December 31, 2020, to provide additional consultation, technical support and planning services with regard to transitioning the West Contra Costa Health Care District (WCCHCD) to County.

**FISCAL IMPACT:**

This Contract is funded 100% by West Contra Costa Health Care District Funds.

**BACKGROUND:**

On December 4, 2018, the Board of Supervisors approved Contract #23-646, as amended by Amendment Agreements #23-646-1 and #23-646-2, to provide consultation, technical support and planning services to the Chief Operating Officer with regard to the transition of the WCCHCD to Contra Costa County including but not limited to financial planning and operational improvement

---

APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Patrick Godley,  
925-957-5405

cc: Marcy Wilhelm



BACKGROUND: (CONT'D)

for the period from January 1, 2019 through December 31, 2020.

Approval of Contract Amendment #23-646-3 will allow the Contractor to provide additional services through December 31, 2020.

CONSEQUENCE OF NEGATIVE ACTION:

If this contract is not approved, the Health Services Department will not be able to use Contractor's expertise in the transition of WCCHCD to Contra Costa County.



Contra  
Costa  
County

To: Board of Supervisors  
From: Brian M. Balbas, Public Works Director/Chief Engineer  
Date: September 22, 2020

Subject: Approve amendments to Power Purchase Agreements with SunPower (Solar Star Co Co 1, LLC)

---

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Public Works Director, or designee, to execute a Consent and Agreement, dated September 22, 2020, with Solar Star Co Co 1, LLC and Wilmington Trust, National Association acknowledging a collateral assignment of Power Purchase Agreements for the solar provider’s construction of the solar systems.

APPROVE and AUTHORIZE the Public Works Director, or designee, to execute an Omnibus Amendment to Power Purchase Agreements (PPAs) among Contra Costa County and Solar Star Co Co 1, LLC and Solar Star Co Co 2, LLC to increase the kilowatt hour rate and changes to 1000 Ward battery storage capacity.

**FISCAL IMPACT:**

The increase in the kilowatt hour rate is precipitated by PG&E requirements for upgraded electrical system infrastructure not to exceed \$500,000, which will increase the price per kWh from \$0.1344/kWh to \$.1476/kWh an increase of \$0.0132/kWh. Estimated savings over the PPA term will reduce from \$16,497,946 to \$14,529,973.

The increased capacity of the energy storage system at 1000 Ward as a result

- 
- APPROVE  OTHER
  - RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE
- 

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

- AYE: John Gioia, District I Supervisor
- Candace Andersen, District II Supervisor
- Diane Burgis, District III Supervisor
- Karen Mitchoff, District IV Supervisor
- Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Ramesh Kanzaria, (925) 957-2468

cc:

## FISCAL IMPACT: (CONT'D)

of Sun Power's no-cost modification to the system will result in a Guaranteed Savings increase of \$7,000/year.

There are no other fiscal impacts.

## BACKGROUND:

Contra Costa County and SunPower (Solar Star Co Co 1) entered into Power Purchase and Storage Services Agreements (PPA) on June 18, 2019 for various solar projects at 40 Muir Road (Martinez), 595 Center Avenue (Martinez), 597 Center Avenue (Martinez), 1000 Ward Street (Martinez), 50 Douglas (Martinez), 4545 Delta Fair Boulevard (Antioch), 4540 Delta Fair Boulevard (Antioch), 1305 MacDonald (Richmond), 2530 Arnold Drive (Martinez).

### Consent and Agreement

The originally executed PPAs established the County's obligation in Section 14.17 to reasonably cooperate with SunPower and its financing parties in connection with such financing including the giving of the Financing Party acknowledgment form attached in the Power Purchase Agreement, Exhibit B. On March 26, 2020, the County received the Notice of Assignment from SunPower. The now finalized Consent and Agreement is presented to the County for approval and execution.

### Omnibus Amendment

Upon execution of the original PPA, PG&E processed the solar interconnection applications for the projects and subsequently performed supplemental assessments of the proposed locations. The supplement assessments determined that the added renewable power generation capacity from these projects require material changes to PG&E's electrical system, for example, replacing existing primary transformers with larger transformers and increasing the size of secondary conduits that connect the transformer to the building main service panel. These improvements increase the cost to the solar provider, SunPower, to install the solar systems at an additional cost estimate of \$500,000 as summarized below.

### 595 Center, Martinez Project

PG&E requires upgrades to the secondary conductor between the primary transformer and the building main panel. In addition, SunPower determined that their switchgear would need to be relocated to accommodate the utility electrical distribution system requiring the construction of a retaining wall to accommodate the new switchgear location. These modifications are estimated to be \$104,730.

2530 Arnold, Martinez Project The PG&E for 2530 Arnold Drive identified the need to upgrade the primary transformer to 1000 kVA to accommodate the solar and storage system capacity at an estimated cost of \$149,617.

1305 MacDonald, Richmond Project Improvements to the aging electrical main panel at 1305 McDonald to which a small rooftop PV is interconnected (through the AES PPA) are required to safely interconnect the SunPower PPA parking lot canopy system. Working with Contra Costa County Public Works, SunPower designed a modification that allows for the safe interconnection of the new solar PV system and facilitates future opportunities in the parking lot associated with electric vehicles and increased resiliency. A minor PG&E system upgrade was required to accommodate the change and the full cost of the electrical system upgrade is estimated to be \$105,000

In addition to the costs associated with change orders precipitated by PG&E, SunPower will incur additional costs estimated to be \$140,653 to cover additional unforeseen changes and to fund the implementation of make-ready electrical infrastructure for the future installation of EV charging stations for County pool and fleet vehicles at facilities where SunPower is installing solar carports. This EV

infrastructure work will be completed by SunPower.

The Omnibus Amendment increases the kilowatt hour price so that SunPower will realize additional amounts to pay for the increased solar system installation costs. Failure to execute the Amendment would result in a delay of construction commencement and require the County to identify alternate funding for the change orders.

1000 Ward, Martinez Project At the 1000 Ward, Martinez location, SunPower applied for and received a grant from the State of California allowing them to double the storage capacity of the energy storage system included as part of the original PPA. This will result in an increase of the contractual Guaranteed Savings in the PPA from \$29,791/year to \$36,791/year. This alteration comes at no cost to the County as the cost was covered by the State grant. The PPA Termination Values, which proportionally increased as the project value increased due to the increased energy storage system capacity, is revised by the Omnibus Amendment.

CONSEQUENCE OF NEGATIVE ACTION:

Without approval of the Consent and Agreement the County would not be in accordance with the original Power Purchase Agreement. Without approval of the Omnibus Amendment, the County would need to identify an alternate funding source for the required change orders resulting in delays to the construction of solar and battery storage facilities.

ATTACHMENTS

- 30 Douglas
- 4545 Delta Fair
- 4549 Delta Fair
- 30 Muir
- 50 Douglas
- 597 Center
- 2530 Arnold
- 1000 Ward
- 1000 Ward (Savings Guarantee Agreement)
- 1305 Macdonald
- Consent (redline)

***EXECUTION VERSION***

*NOTE: 30 Douglas Dr, Martinez, CA 945533*

**POWER PURCHASE AGREEMENT**

Dated as of June 18, 2019

by and between

Solar Star Co Co 1, LLC  
as Provider

and

Contra Costa County  
as Customer

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### **Exhibits, Schedules**

Exhibit A	-	System Design and Construction
Exhibit B	-	Form of Financing Party Acknowledgment
Exhibit C	-	Performance Guarantee
Schedule A	-	Description of Site
Schedule B	-	Description of System
Schedule C	-	System Pricing
Schedule D	-	Termination Values



## POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT (as amended, amended and restated, supplemented or otherwise modified from time to time, this "Agreement"), dated as of June 18, 2019 (the "Effective Date"), is by and between Solar Star Co Co 1, LLC, a limited liability company formed under the laws of the State of Delaware ("Provider"), and Contra Costa County, a political subdivision of the State of California ("Customer").

### RECITALS:

WHEREAS, Customer leases or owns, directly or indirectly, facilities in that certain location in California as more fully described in Schedule A of the Appendices hereto (the "Site");

WHEREAS, Customer desires that Provider install, maintain and operate, and Provider desires to install, maintain and operate, the System (as hereinafter defined) to be located on the Site; and

WHEREAS, Provider desires to sell, and Customer desires to purchase, (a) the Solar Services (as hereinafter defined), including the delivery of electrical energy generated by the System (the "Energy") and (b) other services pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### AGREEMENT:

1. Definitions.

Unless otherwise defined herein: (a) capitalized terms used in this Agreement shall have the respective meanings set forth in this Section 1; (b) the singular shall include the plural and vice versa; (c) the word "including" shall mean "including, without limitation", (d) references to "Sections," "Exhibits," "Appendices" and the like shall be to sections, exhibits, appendices, etc. of or to this Agreement; (e) the words "herein," "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection hereof; and (f) references to this Agreement shall include a reference to all exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time.

"Agreement" has the meaning set forth in the preamble.

"Annual Rate Escalator" means the percentage set forth in Schedule C.

"Applicable Law" shall mean, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, governmental approval, consent or requirement of such

Governmental Authority, enforceable at law or in equity, along with the interpretation and administration thereof by any Governmental Authority.

“Claim Notice” shall have the meaning set forth in Section 13.3.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Commercial Operation Date” shall have the meaning set forth in Section 3.4.

“Confidential Information” shall have the meaning set forth in Section 15.

“Customer” shall have the meaning set forth in the preamble.

“Customer Default” shall have the meaning set forth in Section 11.1.

“Effective Date” shall have the meaning set forth in the preamble.

“Energy” shall have the meaning set forth in the preamble.

“Environmental Attributes” includes, without limitation, tradable renewable certificates, green-e tags, allowances, reductions or other transferable indicia denoting carbon offset credits or indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility attributed to the Energy during the Term created under a renewable energy, emission reduction, or other reporting program adopted by a Governmental Authority, or for which a registry and a market exists (which, as of the Effective Date are certificates issued by Green-e in accordance with the Green-e Renewable Electric Certification Program, National Standard Version 1.3 administered by the Center of Resource Solutions) or for which a market may exist at a future time.

“Environmental Financial Incentives” shall mean each of the following financial rebates and incentives that is in effect as of the Effective Date or may come into effect in the future: (i) performance-based incentives, rebates and any other incentive programs offered by or in the State of California (or any political subdivision thereof) under the federal government’s, any municipality’s, any utility’s or any other state’s program or initiative (including, if applicable, subsidies available under the Self Generation Incentive Program administered through the California Public Utilities Commission), incentive tax credits (including investment tax credits arising under the Code) other tax benefits or grants in lieu thereof (including without limitation the monetization of tax benefits), and accelerated depreciation (collectively, “Incentives”), howsoever named or referred to, with respect to any and all fuel, emissions, air quality, energy generation, or other environmental or energy characteristics, resulting from the construction, ownership or operation of the System or from the use of solar generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Energy generated by the System; and (ii) all reporting rights with respect to such Incentives.

“Estimated Year 1 Production” shall mean the amount set forth in Schedule B to this Agreement.

“Expiration Date” shall have the meaning set forth in Section 10.1.

“Fair Market Value” shall have the meaning set forth in Section 10.3.2.

“Financing Party” means any third-party entity providing debt or equity financing to Provider (or any successor or assignee thereof) with respect to the System, including without limitation a party providing construction financing, a lessor in a sale-leaseback transaction, a partner in a partnership flip transaction, or a limited liability company member in an equity sale transaction.

“Force Majeure Event” shall mean, when used in connection with the performance of a Party’s obligations under this Agreement, any of the following events to the extent not caused by such Party or its agents or employees, which is not preventable by such Party as of the Effective Date:

- a) war, riot, acts of a public enemy or other civil disturbance;
- b) acts of God, including but not limited to, storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, volcanic eruptions, range or forest fires, and objects striking the earth from space (such as meteorites), sabotage or destruction by a third party (other than any contractor retained by or on behalf of the Party) of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;
- c) acts of federal, state or local government agencies, including changes in Applicable Law, that result in increasing Provider’s costs of construction and installation, or continuing operation, of the System by 15% or more; and
- d) strikes, walkouts, lockouts or similar industrial or labor actions or disputes.

“Governmental Authority” shall mean any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Indemnified Party” shall have the meaning set forth in Section 13.3.

“Indemnifying Party” shall have the meaning set forth in Section 13.3.

“Interconnection Point” shall have the meaning set forth in Section 3.5.

“kWh Rate” shall have the meaning set forth in Section 6.1.

“License” shall have the meaning set forth in Section 2.

“Liens” shall have the meaning set forth in Section 7.1.3.

“Meter” shall have the meaning set forth in Section 4.3.1.

“Monthly Period” shall mean the period commencing on the Commercial Operation Date and ending on the last day of the calendar month in which the Commercial Operation Date occurs, and, thereafter, all subsequent one (1) month periods during the Term.

“Monthly Production” shall mean, for each Monthly Period, the amount of Energy delivered during such Monthly Period.

“O&M Work” shall have the meaning set forth in Section 4.1.1.

“Party” shall mean each of Customer and Provider (and/or any successor or permitted assignee thereof).

“Person” shall mean any individual, corporation, partnership, company, limited liability company, joint venture, association, trust, unincorporated organization or Governmental Authority.

“Provider” shall have the meaning set forth in the preamble (and includes its successor(s) and permitted assignee(s)).

“Provider Default” shall have the meaning set forth in Section 11.2.

“Renewal Rate” shall mean the fair market price for electricity generated by solar photovoltaic systems as determined by agreement of the Parties or through the appraisal process applicable to the purchase option contained in this Agreement.

“Reporting Rights” means the right to report ownership of the Environmental Attributes or the Environmental Financial Incentives associated with the Energy to any federal, state, or local agency, authority or other party, including without limitation under Section 1605(b) of the Energy Policy Act of 1992 and provisions of the Energy Policy Act of 2005, or under any present or future domestic, international or foreign emissions trading program.

“Scheduled Outage” shall have the meaning set forth in Section 4.5.

“Site” has the meaning set forth in the first recital.

“Solar Services” mean all solar services provided to Customer by Provider hereunder, including the provision of Energy.

“Standards” shall have the meaning set forth in Section 3.1.1.

“System” shall mean the solar photovoltaic system installed pursuant to this Agreement at the Site and more fully described in Schedule B hereto; provided, however, that the term “System” shall only include equipment and materials up to but not including the Interconnection Point of the System.

“Term” shall have the meaning set forth in Section 10.1.

“Termination Date” shall have the meaning set forth in Section 10.1.

“Termination Value” shall mean, on any date of determination (or, if such date is not a scheduled termination date, the scheduled termination date immediately preceding such date) the applicable amount specified for such date in Schedule D to this Agreement.

“Transfer Taxes” shall have the meaning set forth in Section 6.2.1.

2. Purchase and Sale of Solar Services; License.

2.1 Purchase and Sale of Solar Services.

Customer hereby engages Provider to provide the services set forth in this Agreement, including the Solar Services to Customer, and Provider agrees to provide the services set forth in this Agreement, including the Solar Services to Customer, all in accordance with the terms and conditions set forth herein. Customer shall provide Provider with access to the Site in accordance with the terms of this Agreement. Provider may retain one or more contractors or subcontractors to fulfill its obligations hereunder; provided that Provider shall remain liable for performance of its obligations hereunder

2.2 License.

Customer hereby grants to Provider and to Provider’s agents, employees and subcontractors an irrevocable, non-exclusive license running with the Site for access to, on, over, under or across the Site (the “License”) for the purpose of (i) installing, constructing, operating, maintaining, accessing, removing and replacing the System; (ii) performing all of Provider’s obligations and enforcing all of Provider’s rights set forth in this Agreement; and (iii) installing, using and maintaining electric lines and equipment, including inverters and meters, necessary to interconnect the System to Customer’s electric system at the Site or to the utility’s electric distribution system or that otherwise may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance, or repair of the System. The term of the License is the Term of this Agreement plus the period of time necessary for Provider to remove the System pursuant to Section 10.3.3, but in no case later than one hundred eighty (180) days after the Expiration Date with respect to the System (the “License Term”). During the License Term, Customer shall preserve and protect Provider’s rights under the License and Provider’s access to the Site and shall not interfere with or permit any third parties to interfere with Provider’s rights or access. Except for an emergency situation as described in Section 4.2.1(a) or (b) (an “Emergency Situation”), Provider shall notify Customer in writing, which may be made via email to Customer’s Energy Manager, 40 Muir Road, Martinez, CA 94553 (Frank.DiMassa@pw.cccounty.us), or to any other address Customer may designate in a written notice to Provider, forty-eight (48) hours before Provider intends to access the Site pursuant to the License. Notwithstanding that the License granted herein is irrevocable, Customer reserves the right to exclude Provider, its agents, employees and subcontractors from the Site in the event that Customer notifies Provider of a breach of the License and Provider fails to cure such breach pursuant to Section 11.2.1 of this Agreement; provided, however, that, Customer

agrees not to exclude Provider, its agents, employees and subcontractors from the Site (A) in the event of an Emergency Situation as described in Section 4.2 so long as Customer has been notified of such an Emergency Situation pursuant to Section 4.2 and (B) in the event that the System is to be removed pursuant to this Agreement.

3. Design, Construction, Installation and Testing of System.

3.1 Installation.

Subject to Section 3.2, Provider will cause the System to be designed, engineered, installed and constructed at the Site substantially in accordance with the terms of this Agreement, including without limitation, the provisions of Exhibit A (System Design and Construction). Customer shall review and approve, such approval not to be unreasonably withheld or delayed, all construction plans, including engineering evaluations of the impact of the System on the structural integrity and strength of the location where the System is installed inside, on or near Customer's buildings. Provider shall organize the procurement of all materials and equipment for the installation work and maintain the same at the Site. Subject to the terms of the License, Provider shall perform installation work at the Site during the times set forth in Exhibit A and Schedule B in a manner that minimizes inconvenience to and interference with Customer's and Customer's invitees' and Customers' use of the Site to the extent commercially practical. Notwithstanding the foregoing, in the event that Provider determines in its sole discretion that it is unable to install the System at the Site, it shall be under no obligation to do so, and this Agreement shall terminate and be of no further force and effect upon written notice from Provider to Customer to that effect.

3.1.1 System Design and Construction. Exhibit A (System Design and Construction) attached hereto sets forth the design, engineering and construction specifications for the System, as well as assumptions made by the Provider regarding the Site conditions, the electrical conditions, and System attributes (such assumptions being referred to herein as the "Standards"). Schedule B (Description of System) sets forth the known actual conditions for the Site and the System, including deviations from the Standards. The Standards are such that the described items for the System will not need repair, replacement, modification or construction beyond that described in Exhibit A and Schedule B in order for Provider to properly construct and install the System. If the construction and installation of the System is required for any reason (except for reasons attributable to Provider) to deviate from the Standards and Schedule B, Provider will notify the Customer and provide an estimate of any incremental cost to Customer and Customer will have the option to (i) pay the incremental cost at the time the cost is incurred and billed to the Customer, (ii) pay the incremental cost over the Term through a calculated increase in the kWh Rate, or (iii) elect an alternative location subject to the conditions of Section 3.1.2.

3.1.2 Alternative Location. Prior to the Commercial Operation Date, if the Customer's interest in the Site is a leasehold interest and the Customer is unable to obtain the landlord's consent in accordance with the License or Customer chooses an alternative location per Section 3.1.1, Customer will have the option to elect an alternative location if Environmental

Attributes and Environmental Financial Incentives financially equivalent to or better than those associated with the original location are available for the alternative location, and if the expected System kWh output and construction cost at the alternative location are equivalent to or superior than those associated with the originally proposed location. Such alternative location is subject to Provider approval, not to be unreasonably withheld. If an alternative location cannot be established, Provider will have the right to terminate per Section 3.2.

### 3.2 Conditions Precedent to Commencement of Construction and Installation.

3.2.1 Commencement by the Provider of construction and installation activities with respect to the System are subject to the satisfaction of the following conditions precedent (in addition to the condition set forth in Section 3.3):

- (a) Provider shall have closed financing for construction and long-term ownership of the System and the Solar Services to be performed at the Site and, to the extent required pursuant to the applicable financing documentation, the third party financing institution providing such financing shall have been provided with the materials referred to in Section 14.17 and Section 16;
- (b) Provider shall have entered into the applicable contract(s) for construction and installation of the System, subject to the terms of the applicable financing, if any;
- (c) Provider shall have obtained the permits, licenses and other approvals required by Applicable Law to be obtained by Provider prior to such commencement;
- (d) Provider shall have received satisfactory notice that the applications for Environmental Financial Incentives for the System have been accepted and approved by the appropriate governing agency; and
- (e) Provider shall have received from Customer satisfactory evidence that the project—including the System, the License, and the work and Solar Services described in this Agreement—is exempt from the regulatory jurisdiction of local agencies (including zoning, building, and land-use requirements) or that all required local agency approvals and permits have been obtained.

provided, however, that if any of the foregoing conditions precedent have not been satisfied on or before June 17, 2020 (the “CP Date”), Provider shall have the option to terminate this Agreement without triggering the default provisions of this Agreement or any liability under this Agreement, and if Provider does not terminate this Agreement one hundred eighty (180) days following the CP Date, Customer may terminate this Agreement without triggering the default provisions of this Agreement or any liability under this Agreement.

Alternatively, in the event that such conditions precedent are not satisfied by such date, the Parties may mutually agree to amend this Agreement to revise the Commercial Operation Date and term of this Agreement.

### 3.3 Utility Approvals.

Notwithstanding that Provider shall have primary responsibility for preparing applications and obtaining all permits, licenses and approvals required for the performance of work under this Agreement, Customer agrees to reasonably assist Provider in obtaining necessary permits, licenses and approvals in connection with the installation, operation and maintenance of the System, including the submission of applications for interconnection of the System with the local electric utility. Customer shall not make any material changes to its electrical equipment at the Site after the date on which the applicable utility interconnection application is submitted unless any such changes, individually or in the aggregate, would not adversely affect the approval by such utility of such interconnection. Should the local electric utility fail to approve the interconnection of the System or require equipment in addition to the equipment set forth in Schedule B in connection with the Site, Provider may, at Provider's option, terminate this Agreement immediately subsequent to notification from the local utility. The Parties shall not be obligated to go forward with installation of the System if the applicable utility approvals are conditioned upon material upgrades to the existing electrical infrastructure and neither Party elects to provide for such upgrades. Customer also agrees to assist Provider and make all necessary repairs or changes to the existing electrical infrastructure so that the Site and System are eligible for the Environmental Financial Incentives.

### 3.4 Energy Delivery.

The date on which the delivery of Energy from the System commences (the "Commercial Operation Date") shall be the date on which all of the following shall have occurred: (a) Provider shall have certified to Customer in writing that the System is substantially complete and available for commercial operation; (b) all permits and licenses required to be obtained under Applicable Law in connection with the operation of the System shall have been obtained and be in full force and effect; and (c) Customer shall have entered into an interconnection agreement with the local electricity utility. In no event shall Provider have any liability to Customer for a delay in the Commercial Operation Date caused by Customer, Customer's electricity provider, a local agency issuing permits for the System or any other third parties outside of Provider's control.

### 3.5 Risk of Loss; Exclusive Control.

As between the Parties, Provider will be deemed to be in exclusive control (and responsible for any property damage or injuries to persons caused thereby) of the Energy up to but excluding the point where the System is interconnected to Customer's electrical intertie; e.g., the Customer's line-side tap (the "Interconnection Point") and Customer will be deemed to be in exclusive control



(and responsible for any property damage or injuries to persons caused thereby) of the Energy at and from the Interconnection Point. Risk of loss related to the Energy will transfer from Provider to Customer at the Interconnection Point.

### 3.6 Termination Values.

The Parties acknowledge and agree that the Termination Values with respect to the applicable System are as set forth in Schedule D of this Agreement.

## 4. Operation and Maintenance of System.

### 4.1 O&M Work; Phone/Data Line.

4.1.1 O&M Work. Provider shall provide operation, repair, monitoring and maintenance services to the System during the Term of this Agreement, including the monitoring and maintenance of metering equipment determining the quantity of electricity produced by the System (collectively, the “O&M Work”). Provider shall perform the O&M Work, either directly or indirectly through a subcontract with SunPower Corporation, Systems, an affiliate of Provider or through a third-party service provider capable of providing comparable services, provided that Provider remains responsible for all O&M Work notwithstanding any such subcontracting. Provider shall perform, or cause to be performed, the O&M Work to ensure that the System is capable of delivering the Energy in accordance with the specifications set forth in Schedule B. Provider shall use commercially reasonable efforts to enforce the terms of any contract for operations and maintenance services to which it is a party and System warranty agreements.

4.1.2 Phone/Data Line. Customer shall properly maintain, pay for and provide access to the necessary phone, computer, or other communication lines necessary to permit Provider to record the electrical output of the System for the entire Term.

### 4.2 Malfunctions and Emergencies.

4.2.1 Each of Customer and Provider shall notify the other within twenty-four (24) hours following the discovery by it of (a) any material malfunction in the operation of the System, (b) an interruption in the supply of Solar Services. Provider and Customer shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Provider’s repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Each Party shall notify the other Party immediately upon the discovery of an emergency condition in the System.

4.2.2 Provider shall commence repairs to the malfunctioning System and restore the supply of the Energy, as soon as reasonably possible after notice or upon its own discovery of any of the conditions specified in Section 4.2.1 during normal business hours and, subject to Section 2, take steps to mobilize personnel to commence repairs after notice or discovery of a condition requiring repair or other corrective action. If an emergency condition exists, Provider shall dispatch the appropriate personnel immediately upon becoming aware thereof to perform the necessary repairs or corrective action in an expeditious and safe manner. For routine and emergency repairs, the Parties shall contact the persons set forth below:

If to Provider:

Wayne Webb, Senior Manager, Operations & Maintenance  
2900 Esperanza Crossing, 2nd Floor  
Austin, TX 78759  
(510) 439 – 4663 or (800) 251-9728

[Wayne.Webb@sunpowercorp.com](mailto:Wayne.Webb@sunpowercorp.com) with a copy to: [customer.service@sunpower.com](mailto:customer.service@sunpower.com)

#### 4.3 Metering.

4.3.1 Meters. For the term of this Agreement, Provider shall install and maintain a utility-grade kilowatt-hour (“kWh”) meter (the “Meter”) at the System for the measurement of Energy provided to Customer, which shall measure the kWh output of the System on a continuous basis. Upon Customer’s written request, Provider shall furnish a copy of all technical specifications and accuracy calibrations for the Meter, as well as all metering data and energy production and consumption calculations. Provider shall test the Meter in compliance with manufacturer’s recommendations.

4.3.2 Customer Audits and Inspections. Once per calendar year, Customer shall have the right to audit all Meter data upon reasonable notice, and any such audit shall be at Customer’s sole cost. Customer shall have a right of access to the Meter at reasonable times and with reasonable prior notice for the purpose of verifying readings and calibrations.

4.3.3 Adjustments. If testing of the Meter pursuant to Section 4.3.1 or Section 4.3.2 indicates that the Meter is in error by more than two percent (2%), then Provider shall promptly repair or replace the Meter. If the Meter is found to be in error by more than two percent (2%), Provider shall make a corresponding adjustment to the records of the amount of Energy based on such test results for (a) the actual period of time when such error caused inaccurate Meter recordings, if such period can be determined to the mutual satisfaction of the Parties, or (b) if such period cannot be so determined, then a period equal to one-half (1/2) of the period from the later of (i) the date of the last previous test confirming accurate metering, and (ii) the date the Meter was placed into service; provided, however, that such period shall in no case exceed two (2) years.

4.3.4 Disputes. Any dispute arising out of the reading or calibration of the Meter shall be resolved in accordance with the procedures set forth in Section 6.3.2.

#### 4.4 Title to System.

Provider, or Provider’s permitted assigns with respect to the System, shall at all times retain title to and be the legal and beneficial owner of the System, including the right to any tax credits available under federal or state law, and the System shall remain the property of Provider or Provider’s assigns. The System shall remain the personal property of Provider or Provider’s assigns and shall not attach to or be deemed a part of, or fixture to, the Site. It is the Parties’ intention that the System shall at all times retain the legal status of personal property. Provider shall be entitled to, and is hereby authorized to, file one or more precautionary Uniform Commercial Code financing statements with the California Secretary of State with

respect to the System in order to protect its rights in the System, provided that no such UCC financing statement shall name Customer as the debtor. The System shall be clearly marked and identified as being the property of the Provider or Provider's assigns. The Parties intend that neither Customer nor any party related to Customer shall acquire the right to operate the System or be deemed to operate the System.

#### 4.5 Outages.

Customer shall be permitted two (2) twenty-four (24) consecutive hour days during which the System may be offline (each, a "Scheduled Outage") per calendar year during the Term, during which days Customer shall not be obligated to accept, and if not accepted, pay for the Energy; provided, however, that Customer shall have notified Provider in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of such Scheduled Outage. In the event that Scheduled Outages at the Site exceed two (2) days per calendar year for a reason other than a Force Majeure Event, and for all unscheduled outages, Provider shall reasonably estimate the amount of Energy that would have been delivered to Customer during each hour of such excess Scheduled Outages or unscheduled outages and shall invoice Customer for such amount, which shall be payable in accordance with Section 6.3. Additionally, as set forth in Exhibit C (Performance Guarantee), Provider shall be relieved of any failure to meet the Performance Guarantee due to any Scheduled Outage or unscheduled outage.

#### 4.6 Compliance with Utility Specifications.

Provider shall ensure that the operation of the System and all Energy generated by the System conform to applicable utility specifications for energy being generated and delivered to the Site's electric distribution system, which shall include the installation of proper power conditioning and safety equipment, submittal of necessary specifications, coordination of utility testing and verification, and all related costs.

### 5. Purchase of Solar Services.

#### 5.1 Purchase Requirement.

Customer agrees to purchase one hundred percent (100%) of the Energy delivered by the System during the Term of this Agreement. While the Solar Services are calculated and billed on the basis of kWh of Energy as set forth in Section 6.1, Customer acknowledges and agrees that such Solar Services represent a package of services including the production and supply of electrical energy output from the System, together with any other services associated with solar energy production that Provider may provide to Customer. The payment for Solar Services (expressed in \$/kWh) is calculated to include all of the above services. Neither Party may claim that by this Agreement Provider is an electric utility subject to regulation as an electric utility or subject to regulated electricity rates. Provider shall not claim to be providing electric utility services to Customer and shall not interfere with Customer's ability to select an electric utility provider except that, to the extent

Customer has a choice in selecting an electric utility provider or electricity provider, Customer shall not select an electric utility provider or electricity provider that requires, as part of their conditions for service, removal or discontinued operation of the System or the sales of Energy hereunder.

5.2 Environmental Attributes; Environmental Financial Incentives.

5.2.1 Environmental Attributes. All Environmental Attributes and associated Reporting Rights available in connection with the System are retained and owned by Customer or its assignee. Provider shall take all reasonable measures to assist Customer in obtaining all Environmental Attributes currently available or subsequently made available in connection with the System. At Customer's request and expense, Provider shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Customer's or its assignee right, title and interest in and to the Environmental Attributes. If the standards used to qualify the Environmental Attributes to which Customer is entitled under this Agreement are changed or modified, Provider shall, at Customer's request and expense, use all reasonable efforts to cause the Environmental Attributes to comply with new standards as changed or modified. If Provider fails to act in good faith in completing documentation or taking actions reasonably requested by Customer, and such failure results in the loss of an Environmental Attribute that would otherwise be available, Provider shall reimburse Customer for the full amount of such lost Environmental Attribute.

5.2.2 Environmental Financial Incentives. All Environmental Financial Incentives and associated Reporting Rights available in connection with the System are retained and owned by Provider or its assignee. Customer shall take all reasonable measures to assist Provider in obtaining all Environmental Financial Incentives currently available or subsequently made available in connection with the System. At Provider's request and expense, Customer shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Provider's or its assignee right, title and interest in and to the Environmental Financial Incentives. If the standards used to qualify the Environmental Financial Incentives to which Provider is entitled under this Agreement are changed or modified, Customer shall, at Provider's request and expense, use all reasonable efforts to cause the Environmental Financial Incentives to comply with new standards as changed or modified. If Customer fails to act in good faith in completing documentation or taking actions reasonably requested by Provider, and such failure results in the loss of an Environmental Financial Incentive that would otherwise be available, Customer shall reimburse Provider for the full amount of such lost Environmental Financial Incentive.

5.2.3 Customer shall not take any action or suffer any omission that would have the effect of impairing the value to the Provider of the Environmental Attributes or Environmental Financial Incentives.

5.2.4 Provider or its assignee will at all times retain all tax credits and related tax benefits (including depreciation) associated with the System.

6. Price and Payment.

6.1 Price.

Customer shall pay Provider for the Energy provided pursuant to the terms of this Agreement at the rate per kWh (the "kWh Rate") set forth in Schedule C for the Term of this Agreement, plus any adjustments required pursuant to Section 3.1.1, plus any additional amount required pursuant to Section 6.2. Notwithstanding the foregoing, in the event that Customer elects to renew this Agreement pursuant Section 10.3.1, Customer shall pay the Renewal Rate for Energy delivered during such renewal period.

6.2 Taxes.

6.2.1 Customer Taxes. Provider shall invoice Customer for, and Customer shall pay all sales, use, excise, ad valorem, transfer and other similar taxes ("Transfer Taxes"), but excluding in all events taxes based on or measured by net income, that are imposed by any taxing authority arising out of or with respect to the purchase or sale of the Solar Services (regardless of whether such Transfer Taxes are imposed on Provider or Customer), together with any interest, penalties or additions to tax payable with respect to such Transfer Taxes, unless such interest, penalties or additions to tax payable with respect to such Transfer Taxes are due to Provider's failure to timely remit any such Transfer Taxes or to file any returns required by the appropriate taxing authority, and Provider shall indemnify and hold Customer harmless in such excepted cases. If Customer shall be required to by law to withhold or deduct any Transfer Taxes or other taxes imposed by any jurisdiction or any political subdivision from or in respect of any sum payable hereunder, the sum payable shall be increased as may be necessary so that, after taking all required deductions, Provider shall have received an amount equal to the sum it would have received had no such deductions been made. Provider will pay any ad valorem property tax imposed on the System by any taxing authority.

6.2.2 Provider Taxes. Provider will pay and hold harmless Customer from any sales or use tax imposed upon Customer arising from this Agreement, other than as set forth in the preceding Section 6.2.1, including but not limited to Provider's manufacture, installation and acquisition of the System. Provider will pay and hold harmless Customer from property tax, if any, assessed on (i) Provider's use of the portion of the Site on which the System is installed, to the extent prescribed in the License; (ii) the System or Provider's ownership, installation or use thereof; or (iii) any other aspect of this Agreement. Notwithstanding the foregoing, Customer shall pay and hold harmless Provider from sales and use taxes, if any, arising upon the transfer, if any, of both legal and beneficial ownership of the System to Customer pursuant to this Agreement.

6.3 Billing and Payment.

Billing and payment for the Solar Services sold and purchased under this Agreement and any other amounts due and payable hereunder shall occur as follows:

6.3.1 Payments. Subject to adjustment in accordance with the following sentences of this Section 6.3.1, Customer shall pay to Provider for each Monthly Period during the Term within thirty (30) days after receipt of any invoice a payment for the Energy delivered by the System during each such Monthly Period equal to the product of (a) Monthly Production for the System for the relevant month multiplied by (b) the then applicable kWh Rate.

Customer payments under Sections 6.3.1, above, shall be made by check to:

Solar Star Co Co 1, LLC  
Attn: Commercial Asset Management Group  
c/o SunPower Capital Services, LLC  
2900 Esperanza Crossing  
Austin, TX 78758

Payment may also be made by wire transfer of immediately available funds upon receipt of specific instructions by Provider. Upon receipt of written direction and instructions from Provider and Provider's Financing Party, all payments to be made by the Customer to the Provider under this Agreement shall be made directly to the Provider's Financing Party or its agent designated in a writing addressed to Customer from time to time.

6.3.2 Invoice Errors. Within thirty (30) days after receipt of any invoice, Customer may provide written notice to Provider of any alleged error therein (including any error resulting from Meter adjustments pursuant to Section 4.3.3). Customer shall pay all undisputed amounts, including the undisputed portion of any invoice, in accordance with the instructions set forth for payment under Section 6.3.1. If Provider notifies Customer in writing within thirty (30) days of receipt of such notice that Provider disagrees with the allegation of error in the invoice, the Parties shall meet, by telephone conference call or otherwise, within ten (10) days of Customer's response for the purpose of attempting to resolve the dispute.

6.3.3 Late Payments. All payments hereunder shall be made without setoff or deduction. Any payment not made within the time limits specified in Section 6.3.1 shall bear interest from the date on which such payment was required to have been made through and including the date on which such payment is actually received by the Provider. Such interest shall accrue at a monthly rate equal to the lesser of the then prevailing prime rate of interest as published in The Wall Street Journal or the maximum interest rate permitted by Applicable Law.

## 7. General Covenants.

### 7.1 Provider's Covenants.

Provider covenants and agrees as follows:

7.1.1 Permits and Approvals. While performing this Agreement, Provider shall obtain and maintain all approvals, consents, licenses and permits from relevant Governmental Authorities, utility personnel, and (to the extent known to Provider) the Site's owners, if Customer is not the owner of the Site, and other agreements and consents required to be obtained and maintained by Provider and to enable Provider to perform such work. Provider shall deliver copies of all permits and approvals obtained pursuant to this Section to Customer.

7.1.2 Health and Safety. Provider shall take all reasonably necessary safety precautions in performing this Agreement and shall comply in all material respects with all Applicable Laws pertaining to the safety of persons and real and personal property.

7.1.3 Removal of Liens. Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', laborers' or materialmen's liens), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Site or any interest therein; provided that this Section 7.1.3 shall not limit Liens on the System. If Provider breaches its obligations under this Section, it shall immediately notify Customer in writing, shall promptly cause such Lien to be discharged and released of record without cost to Customer, and shall defend and indemnify Customer against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

7.1.4 Provider Records. Provider shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Customer has the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

## 7.2 Customer's Covenants.

Customer covenants and agrees as follows:

7.2.1 Health and Safety. Customer shall at all times maintain the areas of the Site consistent with all Applicable Laws pertaining to the health and safety of persons and property.

7.2.2 Security. Customer shall provide and take reasonable measures for security of the System, including commercially reasonable monitoring of the Site's alarms, if any.

7.2.3 Notice of Damage. Customer shall promptly notify Provider of any matters of which it becomes aware pertaining to any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System.

7.2.4 Liens. Customer shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein. Customer also shall pay promptly any taxes, charges or fees of whatever type of any relevant Governmental Authority for which Customer is responsible under Section 6.2 before a fine or penalty may attach to the System. If Customer breaches its obligations under this Section, it shall immediately notify Provider in writing, and shall promptly cause such Lien on or with respect to the System (including if such arises in favor of any third party claiming through Customer, such as a lender, mortgagee or encumbrancer of real property) to be removed, discharged and released of record without cost to Provider, and shall defend, indemnify and hold Provider harmless against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in removing, discharging and releasing such Lien.

7.2.5 Consents and Approvals. Customer shall obtain and maintain, and secure and deliver to Provider copies of, all consents, approvals, permits, licenses, and authorizations (or evidence that the project—including the System, and the work and Solar Services described in this Agreement—is exempt from the regulatory jurisdiction of local agencies (including zoning, building, and land-use requirements) or that all required local agency approvals and permits have been obtained) relating to the performance of Customer’s obligations and the rights granted by Customer hereunder, and that are required by the terms, conditions or provisions of any restriction or any agreement or instrument or statute to which Customer is a party or by which Customer is bound, including completing applications for interconnection with Customer’s local electric utility. Customer shall use best efforts to assist Provider in fulfilling Provider’s responsibilities under Section 7.1.1. In addition, as a condition precedent to the effectiveness of this Agreement, Customer covenants that it has obtained all discretionary and other approvals required in connection with the project from its governing board and all applicable Government Authorities and that such board or Governmental Authority complied with the California Environmental Quality Act; or, if no other discretionary approvals were required, such board or Governmental Authority approved this Agreement before it was executed.

7.2.6 Maintenance of Interconnection. Customer shall ensure that all of the facilities to which the Energy is delivered hereunder remain interconnected to the electrical grid during the entire Term, except as permitted under Section 4.5 and Section 9.

7.2.7 Solar Access. Customer shall ensure that the System remains free of overshadowing or other blocked access to sunlight during the Term, and it is acknowledged and agreed by the Parties that the foregoing is a material obligation of the Customer for the purposes of this Agreement. Customer will use best efforts to secure a solar easement for the Site to prevent other buildings, structures or flora from overshadowing or otherwise blocking access of the sunlight to the System. Provider shall provide assistance to Customer in seeking a solar easement; however, Customer shall bear all costs and expenses related to obtaining any such easement.

7.2.8 Customer Records. Customer shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Provider shall have the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

## 8. Insurance Requirements.

### 8.1 Provider’s General Liability Insurance.

Provider shall maintain, at its sole expense, commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of one million dollars (\$1,000,000) per occurrence and in the aggregate, endorsed to provide contractual liability in said amount, specifically covering Provider’s obligations under this Agreement and naming Customer as an additional insured. The minimum coverage amount of \$1,000,000 per occurrence and in the aggregate may be satisfied by a combination of a general liability policy and an excess/umbrella liability policy. Provider, if it has employees, shall also maintain at all times during the term of



this Agreement workers' compensation insurance coverage in accordance with the applicable requirements of federal and state law. Within thirty (30) days after execution of this Agreement and upon Customer's request annually thereafter, Provider shall deliver to Customer certificates of insurance evidencing such coverage, which shall specify that Customer shall be given at least thirty (30) days' prior written notice by the applicable insurer in the event of any material modification, cancellation or termination of coverage, except ten (10) days for non-payment of premium. Such insurance shall be primary coverage without right of contribution from any insurance of Customer.

## 8.2 Customer's Insurance.

Customer shall provide and maintain "all-risk" property insurance covering the buildings on which the System is located during all periods (construction and operation) that Provider is the beneficial owner of the System, and naming Provider or its assignee as the loss payee. The System shall be insured for not less than its Termination Value. All such policies shall be with financially sound and reputable insurance companies that have an (i) A.M. Best rating of A+ and a financial strength category of "XII" or higher, (ii) a Standard & Poor's financial strength rating of A+ or higher, or (iii) are otherwise reasonably satisfactory to the Provider or its assignee; and such policies shall be on terms that are reasonably satisfactory to the Provider or its assignee. Within thirty (30) days after execution of this Agreement and upon Provider's request annually thereafter, Customer shall deliver to Provider certificates of insurance evidencing such coverage, which shall specify that Provider shall be given at least thirty (30) days' prior written notice (10 days' notice for cancellation due to nonpayment of premiums) by the applicable insurer in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Provider. Notwithstanding the foregoing, Customer shall be entitled to self-insure all of its insurance requirements under this Agreement.

## 9. Force Majeure Events.

If either Party is prevented from or delayed in performing any of its obligations under this Agreement by reason of a Force Majeure Event, such Party shall notify the other Party in writing as soon as practicable after the onset of such Force Majeure Event and shall be excused from the performance of its obligations under this Agreement to the extent that such Force Majeure Event interferes with such performance. The Party whose performance under this Agreement is prevented or delayed as the result of a Force Majeure Event shall use reasonable efforts to remedy its inability to perform. If a Party's failure to perform its obligations under this Agreement is due to a Force Majeure Event, then such failure shall not be deemed a Provider Default or a Customer Default, as the case may be. In case a Force Majeure Event continues for at least one (1) year with respect to the System, then either Party may terminate this Agreement by written notice to the other.

10. Term; Customer Options; Termination.

10.1 Term.

The term of this Agreement shall commence on the Effective Date and shall expire on the date that is twenty-five (25) years after the Commercial Operation Date (the “Expiration Date”), unless and until terminated earlier pursuant to Sections 3.1, 3.2, 3.3, 9, 10.2.3, 10.6 or 12 (the date of any such termination, the “Termination Date”, and the “Term” being such period of time commencing on the Effective Date and ending on the earlier of (i) the Termination Date, and (ii) the Expiration Date).

10.2 Customer Options Upon Cessation of Business Operations at Site.

If, prior to the end of the Term, Customer ceases to conduct business operations at the Site, vacates the Site, or is prevented from allowing operation of the System on the Site:

10.2.1 Substitute Site. So long as Customer’s exercise of its rights under this Section 10.2.1 does not impair or reduce any Environmental Financial Incentives that may be available to the Provider, or otherwise have an adverse tax effect on Provider, or in the Provider’s sole discretion and determination, impair Provider’s ability to meet any and all obligations in connection with a Financing Party or a prospective financing transaction, Customer shall have the right to provide Provider with a mutually agreeable substitute Site located within the same utility district, subject to requisite governing agency approvals, to relocate the System, which agreement shall not be unreasonably withheld, or, if not available, in a location with similar solar insolation, utility rates, Environmental Attributes and Environmental Financial Incentives. Any such alternate Site shall have a similar demand charge profile as the Site. If such alternate Site is available and is acceptable to Provider, this Agreement shall be amended to delete the prior Site and add the new Site, but otherwise this Agreement shall remain in full force in accordance with its terms and shall not be deemed otherwise amended. Customer shall pay the reasonable costs arising in connection with the relocation(s) of the System, including removal costs, installation costs, any applicable interconnection fees, costs related to obtaining a site license or lease at the substitute site, other costs of deployment at the substitute Site, and amounts lost that would otherwise be payable under this Agreement due to such relocation(s) to Provider based on delivered Energy averaged over the prior twelve months for the System.

10.2.2 Move and Pay Option. So long as such event does not impair or reduce any Environmental Attributes or Environmental Financial Incentives, Customer may elect to pay or guarantee the payment of the remaining monthly amounts due under this Agreement to Provider, and cause the System to be kept in operation at the Site, in each case through the remainder of the Term.

10.2.3 Termination and Payment of Termination Value. If, beginning in the sixth year following the Commercial Operation Date, a substitute Site cannot be located in accordance with Section 10.2.1 with respect to the System and Customer elects not to avail itself of the provisions of Section 10.2.2 with respect to the System, then Customer shall so notify Provider, Provider shall remove the System (at Customer’s sole cost and expense) and Customer shall pay to Provider the then-applicable Termination Value specified in Column A of Schedule D

as liquidated damages, whereupon this Agreement shall terminate. The Parties agree that actual damages to Provider if this Agreement is terminated as contemplated in this Section 10.2 would be difficult to ascertain, and the applicable Termination Value is a reasonable approximation of the damages suffered by Provider as a result of early termination of this Agreement.

### 10.3 Customer Options Upon Expiration of Term.

10.3.1 Extension of Term. Upon prior written notice to Provider at least one-hundred eighty (180) days prior to the Expiration Date, Customer has the option to renew the term of this Agreement with respect to the System and Solar Services for one (1) additional three (3)-year period at the Renewal Rate.

10.3.2 Purchase of System. If Customer has not elected to renew the term of this Agreement in accordance with Section 10.3.1, Customer may purchase the System by providing Provider written notice of its intent to purchase the System no later than one-hundred and eighty (180) days prior to the Expiration Date, and paying Provider the Fair Market Value thereof no later than the relevant Expiration Date. The “Fair Market Value” of the System shall be the value determined by the mutual agreement of Customer and Provider within ten (10) days after receipt by Provider of Customer’s notice of its election to purchase the System. If Customer and Provider cannot mutually agree to a Fair Market Value, then the Parties shall jointly select a nationally recognized independent appraiser with whom the parties have discussed methods and assumptions, with experience and expertise in the solar photovoltaic industry to value such equipment. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding on the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. To the extent transferable, the remaining period, if any, on all warranties for the System will be transferred from Provider to Customer. If the Parties are unable to agree on the selection of an appraiser, such appraiser shall be jointly selected by the appraiser firm proposed by the Customer and the appraiser firm proposed by the Provider. Upon receipt by Provider of payment of the Fair Market Value, title to the System as well as available Environmental Attributes and Environmental Financial Incentives from the System shall transfer to Customer as-is, where-is.

10.3.3 Return of System. If at the end of a Term, or an Extension of Term pursuant to Section 10.3.1, Customer does not exercise any of the options described in Sections 10.3.1 and 10.3.2, Provider shall remove all of its tangible property comprising the System from the Site by a mutually convenient date but in no case later than one hundred eighty (180) days after the Expiration Date with respect to the System. The cost to remove the System shall be borne by the Provider. The portion of the Site on which the System was installed shall be returned to its original condition, except for ordinary wear and tear, and Provider shall leave the portion of the Site on which the System was installed in neat and clean order.

### 10.4 Customer Purchase Options Prior to Expiration Date.

10.4.1 On the later to occur of the sixth (6th) anniversary of the Commercial Operation Date, provided that no Customer Default shall have occurred and be continuing beyond any applicable period of cure, Customer may elect to purchase all, but not less than all, of the System. If Customer elects to so purchase the System,

the purchase price shall be the higher of the then Fair Market Value of the System (calculated in accordance with the definition of Fair Market Value set forth in Section 10.3.2 for the System, and such determination to be at Customer's sole cost and expense), or the then-current Termination Value specified in Column A of Schedule D. Not less than one-hundred-and-eighty (180) days prior to the exercise of the purchase option for the System, Customer shall provide written notice to Provider of Customer's exercise thereof. Upon the exercise of the foregoing purchase option plus receipt of the Value as determined in Section 10.4 above and all other amounts then owing by Customer to Provider, the Parties will execute all documents necessary to cause title to the System to pass to Customer as-is, where-is; provided, however, that Provider shall remove any encumbrances placed on the System by Provider at Customer's expense.

10.4.2 On the later to occur of the fifteenth (15th) anniversary of the Commercial Operation Date, provided that no Customer Default shall have occurred and be continuing beyond any applicable period of cure, Customer may elect to purchase the System. If Customer elects to so purchase the System, the purchase price shall be the higher of the then Fair Market Value of the System (calculated in accordance with the definition of "Fair Market Value" set forth in Section 10.3.2 for the System, and such determination to be at Customer's sole cost and expense), and the amount specified in Column A of Schedule D. Not less than one-hundred-and-eighty (180) days prior to the exercise of the purchase option for the System, Customer shall provide written notice to Provider of Customer's exercise thereof. Upon the exercise of the foregoing purchase option plus receipt of the Fair Market Value and all other amounts then owing by Customer to Provider, the Parties will execute all documents necessary to cause title to the System to pass to Customer as-is, where-is; provided, however, that Provider shall remove any encumbrances placed on the System by Provider at Customer's expense.

#### 10.5 Payment of Termination Value on Termination Date.

In the event that the Termination Date has occurred for reasons other than pursuant to Sections 3.1.2., 10.6 or 12.1.1, Customer shall be required to pay to Provider the then-applicable Termination Value specified in Column A of Schedule D as liquidated damages. The Parties agree that actual damages to Provider in the event this Agreement terminates prior to the expiration of the Term for causes attributable to Customer would be difficult to ascertain, and the applicable Termination Value is a reasonable approximation of the damages suffered by Provider as a result of early termination of this Agreement.

#### 10.6 Provider Termination.

Provider shall have the right, in Provider's sole and absolute discretion, to terminate this Agreement upon written notice if any of the following occurs:

10.6.1 at any time until construction of the System commences Provider determines in its sole discretion that it is unable to install the System at the Site;

10.6.2 if the occurrence of an unstayed order of a court or administrative agency has the effect of subjecting the sales of the Energy to federal or state regulation of the prices therefor and/or the delivery of the service;

10.6.3 the elimination or alteration of one or more Environmental Financial Incentives or other change in law that results in a material adverse economic impact on Provider; or

10.6.4 if the annual direct beam solar resource availability at the Site is less than or equal to 90% of historical averages as measured by long-term weather data (minimum of five (5) years) collected at the Site and/or other reliable calibrated and appropriate weather station representative of the Site.

In the event of a Provider termination under this Section 10.6, Provider shall remove all of its tangible property comprising the System from the Site by a mutually convenient date but in no case later than one hundred eighty (180) days after the Termination Date. The cost to remove the System shall be borne by the Provider. The portion of the Site on which the System was installed shall be returned to its original condition, except for ordinary wear and tear, and Provider shall leave the portion of the Site on which the System was installed in neat and clean order.

## 11. Defaults.

### 11.1 Customer Default.

The occurrence at any time of any of the following events shall constitute a “Customer Default”:

11.1.1 Failure to Pay. The failure of Customer to pay during the Term any amounts owing to Provider on or before the date on which such amounts are due and payable under the terms of this Agreement and Customer’s failure to cure such failure within fifteen (15) days after Customer receives written notice of each such failure from Provider;

11.1.2 Failure to Maintain Phone/Data Line. Unless due to a Force Majeure Event excused by Section 9, the failure of Customer to maintain and grant Provider access to the phone and other communications lines required to be maintained pursuant to Section 4.1.3 and Customer’s failure to cure such failure within twenty (20) business days after Customer receives written notice of such failure from Provider; provided that in any event if such failure shall continue for at least five (5) days after notice to Customer and shall result in lost revenue to Provider, Provider shall be entitled to reasonably estimate the amount of revenue that would have been obtained and shall invoice Customer therefor;

11.1.3 Failure to Perform Other Obligations. Unless due to (i) a Force Majeure Event excused by Section 9, or (ii) a breach of paragraph 2 of Section 2 (License), the failure of Customer to perform or cause to be performed any other material obligation required to be performed by Customer under this Agreement, or the failure of any representation, covenant, or warranty set forth herein to be true and correct as and when made; provided, however, that if such failure by its nature can be cured, then Customer shall have a period of thirty (30) business

days after receipt of written notice from Provider of such failure to Customer to cure the same and a Customer Default shall not be deemed to exist during such period; provided, further, that if Customer commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for one hundred twenty (120) additional days;

11.1.4 Bankruptcy, Etc. (a) Customer admits in writing its inability to pay its debts generally as they become due; (b) Customer files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof; (c) Customer makes an assignment for the benefit of creditors; (d) Customer consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Customer has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Customer's assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Customer's assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control; or

11.1.5 Failure of Site Access. A breach by Customer of the License occurs and Customer fails to cure such breach within five (5) days after Customer receives written notice of such breach from Provider.

## 11.2 Provider Default.

The occurrence at any time of the following event shall constitute a "Provider Default":

11.2.1 Failure to Perform Obligations. Unless due to a Force Majeure Event excused by Section 9, the failure of Provider to perform or cause to be performed any obligation required to be performed by Provider under this Agreement or the failure of any representation and warranty set forth herein to be true and correct as and when made; provided, however, that if such failure by its nature can be cured, then Provider shall have a period of thirty (30) business days after receipt of written notice from Customer of such failure to Provider to cure the same and a Provider Default shall not be deemed to exist during such period; provided, further, that if Provider commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for one-hundred twenty (120) additional days; or

11.2.2 Bankruptcy, Etc. (a) Provider admits in writing its inability to pay its debts generally as they become due; (b) Provider files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof; (c) Provider makes an assignment for the benefit of creditors; (d) Provider consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Provider has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; (f) a

court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Provider's assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Provider's assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control.

## 12. Remedies Following Default.

### 12.1 Customer's Remedies Upon Occurrence of a Provider Default.

12.1.1 Termination. If a Provider Default has occurred and is continuing, then Customer may terminate this Agreement by providing written notice to Provider thereof, and this Agreement shall terminate and be of no further force or effect as of the date of the notice according to Section 14.1.

12.1.2 Other Rights and Remedies. If any Provider Default described under Section 11.2 has occurred and Customer has terminated this Agreement as a result thereof in accordance with the terms of Section 12.1.1 above, then, subject to Section 12.3, Provider shall pay to Customer an amount not to exceed the then-present value (discounted at the prevailing prime rate of interest as published in *The Wall Street Journal* on the day preceding the date of determination) of (a) the cash flows equal to the product of (i) the positive difference, if any, of the price per kWh for commercially available, utility-provided energy in the applicable market(s) (which shall not include related charges such as delivery, service, distribution, or taxes) minus the kWh Rate of Energy hereunder (as such kWh Rate would have been escalated over time pursuant to the terms hereof) hereof, multiplied by (ii) the number of days remaining in the term of this Agreement had it not been terminated times the expected daily number of kWh of Energy to be delivered under this Agreement, calculated by dividing the Estimated Year 1 Production set forth in Schedule B, adjusted for as-built System, by 365. Provider's payment to Customer of the amounts set forth in this Section 12.1.2 shall not in any way limit the other remedies at law or in equity that Customer may pursue as damages for Provider's breach of this Agreement; provided, however, that such damages pursued by Customer are subject to the limitation provisions of Sections 12.3 and 12.5.

### 12.2 Provider's Remedies Upon Customer Default.

In addition to any other remedies available under this Agreement or at law, if a Customer Default has occurred and is continuing, then Provider may terminate this Agreement by providing written notice to Customer thereof, and this Agreement shall terminate and be of no further force or effect as of the date of the notice according to Section 14.1 and Provider shall have the right to (a) cause Customer to pay (and Customer shall have the obligation to pay to Provider) the applicable Termination Value set forth in Column A of Schedule D and (b) enter onto the Site and remove the System in accordance with the last sentence of Section 10.2.3.

12.3 No Consequential Damages.

Nothing in this Agreement is intended to cause either Party to be, and neither Party shall be, liable to the other Party for any lost business, lost profits or revenues from others or other special or consequential damages, all claims for which are hereby irrevocably waived by Customer and Provider. Notwithstanding the foregoing, none of the payments for the Energy or any other amount specified as payable by Customer to Provider under the terms of this Agreement upon the termination of this Agreement shall be deemed consequential damages

12.4 Effect of Termination of Agreement.

Upon the Termination Date or the Expiration Date, as applicable, any amounts then owing by a Party to the other Party shall become immediately due and payable and the then future obligations of Customer and Provider under this Agreement shall be terminated (other than the indemnity obligations set forth in Section 13). Such termination shall not relieve either Party from obligations accrued prior to the effective date of termination or expiration.

12.5 Limitation of Liability.

THE TOTAL LIABILITY OF A PARTY TO THE OTHER PARTY FOR ALL CLAIMS OR SUITS OF ANY KIND, WHETHER BASED UPON THIS AGREEMENT, TORT (INCLUDING NEGLIGENCE BUT EXCLUDING THIRD PARTY TORT CLAIMS FOR PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM THE PERFORMANCE OF THIS AGREEMENT), WARRANTY, STRICT LIABILITY OR OTHERWISE, FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES OF ANY KIND WHATSOEVER ARISING OUT OF, RESULTING FROM OR RELATED TO THE PERFORMANCE OR BREACH OF THIS AGREEMENT SHALL, UNDER NO CIRCUMSTANCES, EXCEED \$2,576,367, PROVIDED THAT THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (A) LIABILITY FOR FRAUD OR WILLFUL MISCONDUCT OF ANY PERSON; (B) LIABILITY UNDER THE INDEMNIFICATION PROVISIONS OF THIS AGREEMENT FOR CLAIMS OF THIRD PARTIES FOR PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM THIS AGREEMENT; OR (C) PAYMENT OF THE KWH RATE. THE LIMITATION OF LIABILITY PROVIDED FOR HEREIN SHALL NOT BE USED TO LIMIT OR REDUCE ANY AVAILABLE INSURANCE.

13. Indemnification.

13.1 Indemnification by Provider.

Provider shall fully indemnify, save harmless and defend Customer from and against any and all costs, claims, and expenses incurred by Customer in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (a) the negligence or willful misconduct of Provider or its agents or employees or others under Provider's control in performing this Agreement, and



(b) a Provider Default under this Agreement; provided, however, that nothing in this Section 13.1 is intended to modify the limitation of Provider's liability set forth in Section 12.3 above; provided further that to the extent Customer recovers such damages, losses and expenses under any insurance policy, Customer shall reimburse any payment made by Provider under this indemnity.

13.2 Indemnification by Customer.

Without limiting the provisions of Section 8, Customer shall fully indemnify, save harmless and defend Provider or its assignees and successors from and against any and all costs, claims, and expenses incurred by Provider in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (a) the negligence or willful misconduct of Customer or its agents or employees or others under Customer's control at the Site or (b) a Customer Default hereunder; provided, however, that nothing in this Section 13.2 is intended to modify the limitation of Customer's liability set forth in Section 12.3 above; provided further that to the extent Provider recovers such damages, losses and expenses under any insurance policy, Provider shall reimburse any payment made by Customer under this indemnity.

13.3 Notice of Claims.

Any Party seeking indemnification hereunder (the "Indemnified Party") shall deliver to the other Party (the "Indemnifying Party") a notice describing the facts underlying its indemnification claim and the amount of such claim (each such notice a "Claim Notice"). Such Claim Notice shall be delivered promptly to the Indemnifying Party after the Indemnified Party receives notice that an action at law or a suit in equity has commenced; provided, however, that failure to deliver the Claim Notice as aforesaid shall not relieve the Indemnifying Party of its obligations under this Section 13, except to the extent that such Indemnifying Party has been prejudiced by such failure.

13.4 Defense of Action.

If requested by an Indemnified Party, the Indemnifying Party shall assume on behalf of the Indemnified Party, and conduct with due diligence and in good faith, the defense of such Indemnified Party with counsel reasonably satisfactory to the Indemnified Party; provided, however, that if the Indemnifying Party is a defendant in any such action and the Indemnified Party believes that there may be legal defenses available to it that are inconsistent with those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to participate in its defense of such action at the Indemnifying Party's expense. If any claim, action, proceeding or investigation arises as to which the indemnity provided for in this Section 13 applies, and the Indemnifying Party fails to assume the defense of such claim, action, proceeding or investigation after having been requested to do so by the Indemnified Party, then the Indemnified Party may, at the Indemnifying Party's expense, contest or, with the prior written consent

of the Indemnifying Party, which consent shall not be unreasonably withheld, settle such claim, action, proceeding or investigation. All costs and expenses incurred by the Indemnified Party in connection with any such contest or settlement shall be paid upon demand by the Indemnifying Party.

13.5 Survival of Provisions.

The provisions of this Section 13 shall survive the expiration or termination of this Agreement.

14. Miscellaneous Provisions.

14.1 Notices.

All notices, communications and waivers under this Agreement shall be in writing and shall be (a) delivered in person or (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested or (c) sent by reputable overnight express courier, addressed in each case to the addresses set forth below, or to any other address either of the parties to this Agreement shall designate in a written notice to the other Party:

If to Provider:

Solar Star Co Co 1, LLC  
c/o SunPower Corporation  
1414 Harbour Way South, Suite 1901  
Richmond, CA 94804  
Attention: Julie Williamson, Project Administration  
Phone:510-540-0550  
Fax:510-540-0552

If to Customer:

Contra Costa County Public Works Dept.  
Capital Projects Management Division  
Attn: Energy Manager  
40 Muir Road  
Martinez, CA 94553 Phone: 925-313-2000  
Fax: 925-313-2333

All notices sent pursuant to the terms of this Section 14.1 shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by reputable overnight, express courier, then on the next business day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third (3rd) business day following the day sent or when actually received.

14.2 Authority.

14.2.1 Provider Representations. Provider hereby represents and warrants that:

- (a) It is a Delaware limited liability company duly organized, validly existing and in good standing under the laws of the state of its formation and has all requisite limited liability company power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (b) The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary limited liability company action;
- (c) This Agreement is a legal, valid and binding obligation of Provider enforceable against Provider in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law);
- (d) To the best knowledge of Provider, as of the date of execution hereof, no governmental approval (other than any governmental approvals that have been previously obtained or disclosed in writing to Customer) is required in connection with the due authorization, execution and delivery of this Agreement by Provider or the performance by Provider of its obligations hereunder which Provider has reason to believe that it will be unable to obtain in due course on or before the date required for Provider to perform such obligations; and
- (e) Neither the execution and delivery of this Agreement by Provider nor compliance by Provider with any of the terms and provisions hereof (i) conflicts with, breaches or contravenes the provisions of the articles of formation or operating agreement of Provider or any contractual obligation of Provider or (ii) results in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default under any material contractual obligation of Provider.

14.2.2 Customer Representations. Customer hereby represents and warrants that:

- (a) It is a political subdivision of the State of California, validly existing and in good standing under the laws of the state of its formation and has all requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (b) The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary governmental action;
- (c) This Agreement is a legal, valid and binding obligation of Customer enforceable against Customer in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law);
- (d) No governmental approval (other than any governmental approvals which have been previously obtained or disclosed in writing to Provider) is required in connection with the due authorization, execution and delivery of this Agreement by Customer or the performance by Customer of its obligations hereunder which Customer has reason to believe that it will be unable to obtain in due course;
- (e) Neither the execution and delivery of this Agreement by Customer nor compliance by Customer with any of the terms and provisions of this Agreement results in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default under any contractual obligation of Customer;
- (f) Customer has not entered into any contracts or agreements with any other person regarding the provision of the services at the Site contemplated to be provided by Provider under this Agreement; and
- (g) None of the electricity to be generated by the Provider will be used to generate energy for the purpose of heating a swimming pool.

### 14.3 Assignment

#### 14.3.1 Provider Assignment.

Provider may assign this Agreement upon written notice thereof to Customer, provided that any such assignment shall be to an assignee capable of performing Provider's obligations hereunder. Provider may, without any consent of Customer, sell, transfer, assign or pledge (or grant security interests in) its rights, title and interest in this Agreement, and/or any monies due under this Agreement to a Financing Party, in connection with any financing for the ownership, acquisition, construction, operation or use of the System.

#### 14.3.2 Customer Assignment.

Customer shall not assign all or any part of this Agreement to any entity other than an affiliate of Customer without the prior written consent of the Provider, which shall not be unreasonably withheld. Customer may not assign this Agreement to any Person, including an affiliate, with a credit rating lower than that of Customer without providing matching credit support in the form of cash, letter(s) of credit, or other security reasonably acceptable to Provider. Any assignment by the Customer not permitted under this Section 14.3 shall be void ab initio. In the event that Customer decides to sell or otherwise transfer the Site or a portion thereof upon which the System is located, Customer may (i) with Provider's prior written consent, which will not be unreasonably withheld or delayed, assign this Agreement to the Site purchaser who shall assume all of Customer's obligations under this Agreement and Provider shall release Customer from any further liability associated with this Agreement, or (ii) terminate this Agreement by paying Provider the Termination Value applicable to the date of termination. Upon payment of the Termination Value, the Parties will execute all documents necessary to cause title to the System to pass to Customer as-is, where-is. The Customer does not have the present intention of making any transfer of the Site or that portion of the Site on which the System is located; provided, however, nothing herein shall prohibit Customer from making any transfer of the Site or any portion thereof on which System is located, subject to the provisions set forth above.

#### 14.4 Successors and Assigns.

The rights, powers and remedies of each Party shall inure to the benefit of such party and its successors and permitted assigns.

#### 14.5 Entire Agreement.

This Agreement (including all exhibits and schedules attached hereto) represent the entire agreement between the parties to this Agreement with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous oral and prior written agreements.

14.6 Amendments to Agreement.

This Agreement shall not be amended, modified or supplemented without the written agreement of Provider and Customer at the time of such amendment, modification or supplement.

14.7 Waivers; Approvals.

No waiver of any provision of this Agreement shall be effective unless set forth in writing signed by the Party making such waiver, and any such waiver shall be effective only to the extent it is set forth in such writing. Failure by a Party to insist upon full and prompt performance of any provision of this Agreement, or to take action in the event of any breach of any such provisions or upon the occurrence of any Provider Default or Customer Default, as applicable, shall not constitute a waiver of any rights of such Party, and, subject to the notice requirements of this Agreement, such Party may at any time after such failure exercise all rights and remedies available under this Agreement with respect to such Provider Default or Customer Default. Receipt by a Party of any instrument or document shall not constitute or be deemed to be an approval of such instrument or document. Any approvals required under this Agreement must be in writing, signed by the Party whose approval is being sought.

14.8 Partial Invalidity.

In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of Applicable Law, Provider and Customer shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Agreement (and in the event that Provider and Customer cannot agree then such provisions shall be severed from this Agreement) and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected by such adjustment and shall remain in full force and effect.

14.9 Execution in Counterparts.

This Agreement may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same Agreement.

14.10 Governing Law; Jurisdiction; Forum.

This Agreement shall be governed by and construed in accordance with the internal laws of the State of California. Customer irrevocably agrees that any action, suit or proceeding by or among Provider and Customer may be brought in whichever of the Superior Courts of the State of California, Alameda County, or the Federal Court for the Northern District of California, has subject matter jurisdiction over the dispute and waives any objection that Customer may now or hereafter have regarding the choice of forum whether on personal jurisdiction, venue, forum non conveniens or on any other ground. Customer irrevocably consents to the service

of process outside of the territorial jurisdiction of such courts by mailing copies thereof by registered or certified mail, postage prepaid, to Customer's address set forth herein with the same effect as if Customer were a resident of the State of California and had been lawfully served in such state. Nothing in this Agreement shall affect the right to service of process in any other manner permitted by law.

14.11 Attorneys' Fees.

If any action shall be instituted between Customer and Provider in connection with this Agreement, the Party prevailing in such action shall be entitled to recover from the other Party all of its reasonable costs and expenses incurred in connection with such action by arbitration or other legal proceeding, including reasonable attorneys' fees.

14.12 No Third Party Rights.

This Agreement is only for the benefit of the parties to this Agreement, their successors and permitted assigns (including any lender or lessor of Provider) and Persons expressly benefited by the indemnity provisions of this Agreement. No other Person (including, without limitation, tenants of the Site) shall be entitled to rely on any matter set forth in, or shall have any rights on account of the performance or non-performance by any Party of its obligations under, this Agreement.

14.13 Treatment of Additional Amounts.

The Parties hereto acknowledge and agree that Customer's payment of the Termination Value constitute liquidated damages and not penalties. The Parties further acknowledge that in the case of the payment of the Termination Value: (a) the amount of loss or damages likely to be incurred is incapable or is difficult to precisely estimate, (b) the amounts specified hereunder bear a reasonable proportion and are not plainly or grossly disproportionate to the probable loss likely to be incurred by Customer or Provider as the case may be and (c) the Parties are sophisticated business parties and have been represented by legal counsel and negotiated this Agreement at arm's length.

14.14 No Agency.

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

14.15 No Public Utility.

Nothing contained in this Agreement shall be construed as an intent by Provider to dedicate its property to public use or subject itself to regulation as a “public utility” (as defined in the California Public Utilities Code or any other Applicable Law).

14.16 No Recourse to Affiliates.

This Agreement is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party.

14.17 Cooperation with Financing.

Customer acknowledges that Provider may be financing the Solar Services and the System and Customer agrees that it shall reasonably cooperate with Provider and its financing parties in connection with such financing, including (a) the furnishing of information related to the System and this Agreement, and (b) the giving of a Financing Party acknowledgment in the form attached hereto as Exhibit B (each, a “Consent”); provided, that the foregoing undertaking shall not obligate Customer to materially change any rights or benefits, or materially increase any burdens, liabilities or obligations of Customer, under this Agreement except for providing notices and additional cure periods to a Financing Party with respect to events of default by Provider under this Agreement pursuant to the terms of the Consent.

14.18 Setoff.

Except as otherwise set forth herein, each Party reserves to itself all rights, setoffs, counterclaims and other remedies and/or defenses to which it is or may be entitled, arising from or out of this Agreement.

14.19 Service Contract.

The Parties intend this Agreement to be treated as a service contract within the meaning of Section 7701(e)(3) of the Code.

15. Confidential Information.

15.1 Each Party (the “Receiving Party”) shall not use for any purpose other than performing its obligations under this Agreement, or divulge, disclose, produce, publish, or permit access to, without the prior written consent of the other Party (the “Disclosing Party”), any Confidential Information of the Disclosing Party. As used herein, the term “Confidential Information” means information or materials prepared in connection with this Agreement, designs, drawings, specifications, techniques, models, data, documentation, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans, customer, supplier or personnel names and other information related to customers,



suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets. Confidential Information does not include (a) information known to the Receiving Party prior to obtaining the same from the Disclosing Party; (b) information in the public domain at the time of disclosure by the Receiving Party; or (c) information obtained by the Receiving Party from a third party who did not receive same, directly or indirectly, from the Disclosing Party. The Receiving Party shall use the higher of the standard of care that the Receiving Party uses to preserve its own Confidential Information or a reasonable standard of care to prevent unauthorized use or disclosure of such Confidential Information. Notwithstanding anything herein to the contrary, the Receiving Party has the right to disclose Confidential Information without the prior written consent of the Disclosing Party: (i) as required by any court or other Governmental Authority, or by any stock exchange on which the shares of any Party are listed, (ii) as otherwise required by law, (iii) as advisable or required in connection with any government or regulatory filings, including without limitation, filings with any regulating authorities covering the relevant financial markets, (iv) to its attorneys, accountants, financial advisors or other agents, in each case bound by confidentiality obligations, (v) to banks, investors and other financing sources and their advisors, in each case bound by confidentiality obligations; or (vi) in connection with an actual or prospective merger or acquisition or similar transaction where the party receiving the Confidential Information is bound by confidentiality obligations. If a Receiving Party believes that it will be compelled by the law or a court or other Governmental Authority to disclose Confidential Information of the Disclosing Party, it shall give the Disclosing Party prompt written notice, and in all cases not less than five (5) business days' notice in advance of disclosure, so that the Disclosing Party may determine whether to take steps to oppose such disclosure.

16. Estoppel Certificate.

Either Party hereto, without charge, at any time and from time to time, within twenty (20) days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other relevant person, firm or corporation specified by such requesting party:

- a) If true and correct, that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;
- b) Whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and
- c) Such other information as may be reasonably requested by a Party hereto.

Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the date set forth above.

PROVIDER:

SOLAR STAR CO CO 1, LLC

By: SunPower AssetCo, LLC  
Its member

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

CUSTOMER:

CONTRA COSTA COUNTY

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

## EXHIBIT A

### SYSTEM DESIGN AND CONSTRUCTION

This Exhibit A sets forth the design, engineering and construction specifications for the System, as well as assumptions being made by the Provider regarding the existing condition at the Site, including but not limited to the building roof, building structure, ground conditions, electrical system including panels, inverter installation location, and security fencing. Capitalized terms used herein and not otherwise defined have the meaning given in the Agreement to which this exhibit is attached.

#### 1. SYSTEM LOCATION AND DESCRIPTION:

Descriptions of the site and system are located in Schedule A (Description of Site) and Schedule B (Description of System) of the Agreement.

#### 2. PROJECT SCHEDULE:

##### PORTFOLIO MILESTONES

	Tranche	Contract Approval Date	Commercial Operation Date
1000 Ward	1	6-18-2019	6/24/2020
30/40 Muir	1	6-18-2019	5/24/2020
597 Center	1	6-18-2019	6/13/2020
595 Center	2	6-18-2019	10/26/2020
50 Douglas	2	6-18-2019	9/22/2020
30 Douglas	2	6-18-2019	10/30/2020
2530 Arnold	3	6-18-2019	12/14/2020
4545 Delta Fair	3	6-18-2019	12/21/2020
4549 Delta Fair	3	6-18-2019	11/24/2020
1305 MacDonald	3	6-18-2019	12/21/2020

#### 3. SCOPE OF WORK:

##### *System Design & Scope*

##### *Design Documentation*

Provider shall provide comprehensive submittal packages for the 30% and 90% design sets as detailed below. Changes to 30% Customer approved drawings (scope lock) could result a change order. At a minimum, each submittal package shall include the elements required to convey in sufficient detail the following for each phase of the design:

	<b>Submittal Requirement</b>	<b>30% Design Set</b>	<b>90% Design Set</b>
1	Cover Sheet, with Content, Project Details, Directory, etc.	X	X
2	PV System Sizes & Production Estimates.	X	X
3	Overall Site Plan with PV Array Names, Conduit Routes, Tree/Light Removal, etc.	X	X
4	Electrical Site Plan Drawings & General Conduit Routing.	X	X
5	Electrical Single Line Diagrams.	X	X
6	Demolition Plans.		X
7	Structural Drawings.		X
8	Equipment Pad locations.	X	X
9	Mounting Details.		X
10	Signage, Trenching, Installation, and Grounding Details.		X
11	Monitoring System Details.		X
13	Construction Schedule.	Prelim	Detailed
14	Manufacturer's Cut Sheets with Equipment Specifications		X
15	Civil Drawings (if applicable)		X
16	Fire Access Plans		X
17	Carport Lighting Plans		X

Production modeling of the PV system shall accurately simulate energy production for proposed system layouts, sizes, and orientation. Provider shall be responsible for updating the production models each time significant changes are made to the proposed system designs that will impact production.

### ***Solar Electrical Equipment and Conductors***

Conductors will be aluminum or copper according to Electrical Engineer of Record's determination. AC feeder length from panel boards to equipment pad location and from equipment pad location to electrical tie-in is identified on the array layout drawings. AC feeder lengths from electrical equipment pad location to assumed point of interconnection, and length assumptions with equipment amperage ratings are shown on the single line drawing.

Transformers are 480V:12kV, non-Dry-type by manufacturer of Provider's choosing. Secondary containment is not included in the scope of the project.

### ***Battery Energy Storage System Requirements***

For sites with storage to be installed:

- 13.5' by 11' minimum required area per storage unit. Area required includes storage unit, concrete pad, and clearance zone in front of units.
- Storage unit must be located in an area free of combustible materials (nearby foliage and trees would need to be removed).
- Storage unit must be separated from public foot traffic with a fence and must be separated from vehicle traffic with bollards.
- Crane rental required to land up to 24,500 lb units. Location of units must accommodate both crane and semi-trailer truck access.
- PVS5 DAS, Auxiliary Box, Energy Storage System, and all Accuvim meters (Site meter, PV output meter, and Storage meter) must all be located such that hardlined communication lines can connect these devices to the same Local Area Network. CAT5e/6 cable is preferred means of connection between all devices, which has a 330' distance limit. Runs longer than 330' will require additional equipment to accommodate.

### ***Utility Interconnection***

Coordination of shutdown may be required with Customer and local utility. Temporary power generators are excluded. Interconnection is scheduled for a minimum of 4 hours and is assumed to be performed during off-hours with prior written approval from Customer. Additional shutdowns will be required in order to assess physical condition of Customer's switchgear.

The utility will have 24/7 access to existing electric utility meters and the utility lockable disconnect locations for all electrical interconnections related to this project.

### ***Utility Requirements***

A cost of \$172,012.58 is included for utility required electrical upgrades for the System at 30 Douglas Dr., Martinez, CA, as reflected in Pacific Gas & Electric's Supplemental Review, Notification # 114209530; additional utility-required electrical equipment upgrades or replacements are not included.

Any costs and / or schedule delays associated with unforeseen utility interconnection requirements, including but not limited to utility-owned equipment upgrades or additions, relay protection equipment external to the inverters, system impact studies, or telemetry requirements and interconnection studies are not included in this proposal.

### ***Facility Equipment***

Utility required circuit breaker coordination studies are not assumed for this project.

A short-circuit coordination study is not included for this project.

Solar system includes all standard interconnection related equipment on the Customer side of the meter, including panel circuit breakers, utility and/or visible utility lockable disconnect switches, solar metering, conduit, and wiring. Additional Customer-side protection required by the utilities above that provided by the certified inverters is not included.

If harmonic data of the site is not available, Provider shall assume that the Harmonic data are within the acceptable limits of the Institute for Electrical and Electronics Engineers (IEEE) Standard 519.

***Soils and Structural Foundations***

Foundation assumptions are as follows for system options:

- Drilled cast-in-place, 30” round caisson, 12’ Deep, approximately 2.5’ above grade, depending on existing topography.
- Requirements for dewatering, sub grade rock removal, or other unforeseen conditions are not included.

***Canopy Structure Design***

Carport Canopies are at 10 degree tilt with 11 ft clear height.

***Roof Conditions***

Provider assumes no upgrading of the building structures or canopies will be required to support the added live and dead loads from the photovoltaic installation and rooftop equipment, or to resist added lateral or seismic loads. Modifications to the roof system and design and construction of supports, upgrades to the building structure or platforms are not included.

Anchor and ballast counts are based on the wind load gradient method developed by Cermak Peterka Petersen, Inc, (CPP) and SunPower, based on the CPP wind tunnel testing results presented in CPP’s report “CPP7979\_SunPowerEWSsystem\_REP\_SOL\_R08” dated May 17th, 2018.

Increased anchor and ballast counts resulting from other design methods will be the responsibility of the client.

<b>Site Name</b>	<b>Anchor Count</b>
30 Muir	71
595 center	27
50 Douglas	90
1000 Ward	170
597 Center	33

Provider is not responsible for normal wear and tear associated with the installation of the solar system. Provider reserves the right to inspect the roof to verify its condition. In addition, Provider may offer recommendations to the Customer on modifications to the roof system to improve its serviceability. Customer is responsible for any and all modifications to the roof system. Modifications of roof systems fall into four categories:

- Modifications to improve roof condition / serviceability / useful life.
- Modifications required by roofing manufacturer prior to installation of PV system on their roof system. (e.g. slip sheets, strapping, etc.)
- Modifications required by Provider to make the roof a suitable substrate for the installation of PV. (e.g. air seals, batten bars, etc.)
- 3<sup>rd</sup> party engineering and insurance company requirements.
- Proposal assumes Customer-provided information accurately represents the existing site and roof conditions. This includes but is not limited to as-built drawings, roof reports, structural drawings, roof maintenance history, and roof warranty information. Failure to provide as-built drawings and structural drawings will cause schedule delay and added expense for acquisition of documentation through local authority having jurisdiction (“AHJ”). Provider is not responsible for additional costs or schedule delays.

***Drainage***

Special drainage requirements and/or drainage design and interconnection to Customer’s existing storm drain system or any other storm drain discharge system are not included.

Carport designs do not include structural roof deck for storm water collection or protection.

***Permits***

<b>Permit</b>	<b>Provider Permit</b>	<b>Customer Permit</b>	<b>Cost Allocation</b>	<b>Allotted Time following Application</b>
Building	X			
Fire	X			
Electrical	X			
Conditional Use Permit		NA		
Environmental Control		NA		
Storm Water		NA		
Soil Erosion and Sediment Control		NA		
Environmental Impact Report (CEQA)		NA		
Army Corps of Engineers		NA		
Wetlands		NA		
Water Quality		NA		
Archeological		NA		



Endangered Species		NA		
Water Rights		NA		
Mineral Rights		NA		
Redevelopment Agency		NA		
FAA Approvals		NA		

***Permit Allowance Schedule***

<b>Site</b>	<b>Allowance for Permit</b>
1000 Ward St	\$3,000
30 Douglas Dr	\$10,000
50 Douglas Dr	\$5,000
30/40 Muir Dr	\$5,000
597 Center Ave	\$2,500
595 Center Ave	\$7,000
2530 Arnold Dr	\$6,000
4545 Delta Fair Blvd	\$5,000
4549 Delta Fair Blvd	\$2,500
1305 Macdonald	\$3,000

All other permits/approvals are excluded.

Provider includes durations of 50 days for procuring permit and regulatory approvals (per project ). Provider will not be responsible for construction delays caused by permit and approval requirements from local jurisdictions or regulatory review bodies. Any delays in procuring permits will result in a day-for-day construction schedule extension.

***Shading***

The design is based on existing visual conditions on site. Removal of trees or other obstructions to install the solar arrays and system components is included as reflected in the Tier 1 array layouts. Trees and/or other obstructions identified for removal or trimming by Customer must be removed or trimmed prior to substantial completion or performance expectations/guarantees will require adjustment which will be handled as a change to the contract. At Substantial Completion an as-built shade study and performance simulation will be completed to ensure accuracy of initial shading assumptions.

### ***Painting***

Galvanization of canopy columns and primary beams only is included. All other metallic materials are either factory-finished or non-corrosive.

Painting of wall-mounted conduits is not included.

### ***Landscaping***

Site landscaping (e.g. plant restoration or long term weed abatement) is not included.

Irrigation repair and reconfiguration caused by foundation or underground construction is not included.

### ***Fencing***

A 6-0' galvanized, 9 gauge, 2" mesh fencing and chain link fence-with gate around perimeter electrical equipment pad locations is included. Special provisions for privacy slats, special hardware, lock sets, small fabric, etc. are not included. 4" bollards are included only in areas subject to vehicle impact. Additional bollards required by utility or other entities are excluded.

### ***Labor***

#### ***Project Labor Agreement***

Provider shall cause its project contractor to enter into Customer's project labor agreement among Customer, the project contractor, and all subcontractors thereof working on the project (the "PLA").

#### ***Overtime and special shift requirements***

Overtime and special shift requirements are not included, based on schedule submitted with this proposal, except for the interconnection work if shutdown is required. Project hours are based on Monday through Friday 7am – 5pm.

#### ***Prevailing Wages***

Provider shall pay prevailing wages for the project per the PLA and industrial relations requirements of project location.

#### ***Diversity Requirements***

Provider shall comply with Contra Costa County's Construction Outreach Program.

### ***Indirect Construction Costs***

#### ***Taxes and fees***

Taxes or fees, other than permit fees and sales tax, are not included.

### ***Bonds***

Prior to the Effective Date of the Agreement to which this Exhibit A is attached, Provider shall deliver to Customer for approval good and sufficient bonds with sureties, in amounts specified in Section 12.5 (Limitation of Liability) of the Agreement guaranteeing its faithful performance of the Agreement and its payment for all labor and materials thereunder.

### ***Site & Construction Conditions***

#### ***Access***

Design assumes each project site will be constructed in a single phase, set up of construction fencing at beginning of mobilization and removed when construction is completed. Extra time and labor for moving fences to “phase” construction in efforts to minimize parking impacts will have impacts in cost and schedule and will be calculated as a change order.

Customer will provide Site access to Provider to perform all work pursuant to the License granted in the Agreement. Provider will perform all work during regular business hours according to the PLA. Extra time or personnel constraints due to site security beyond daily signing in by workers on a sign in sheet i.e. badging, background checks, tool inventory checks, etc.—is not included.

Provider will be provided a sufficient area for staging materials and locating temporary facilities such as cranes, fork lifts, scaffolding, staintowers, construction trailers, portable toilets and dumpsters.

Existing roads will be capable of handling all required construction equipment such as drilling rigs, concrete trucks, delivery trucks, cranes, and all other equipment necessary to complete the work. Provider will not be responsible for any damage to existing roads, parking lots or playgrounds resulting from normal construction operations and activities.

#### ***Use of Facilities***

On-site water and power will be available for construction with no restrictions and at no charge to Provider. If a Customer initiated power shut down has duration over 4 hours and effects normal construction operations, Provider can rent and install a temporary generator and submit associated costs to Customer for reimbursement. Water quality shall be sufficient for use in dust control, as necessary, and be suitable for Provider’s standard concrete mix design.

#### ***Special handling of site materials***

Testing for removal and disposal of any existing hazardous waste materials, contaminated soils, or any other unforeseen site conditions that require special handling are not included.

#### ***Site utilities and hazards***

Changes resulting from utilities, right of ways, easements, and/or hazards—underground or above ground—or any undocumented building upgrades are not included.

Documented utilities and building upgrades are considered as part of this proposal if as-builts are provided to Provider prior to contract execution in order to confirm locations of these possible hazards. Customers shall supply Provider with a current Title Report with plotted easements, encumbrances, and rights-of-way at all project site locations.

### ***Security and Lighting***

Proposal assumes all parking lot light standards in direct conflict with installation of photovoltaic parking canopies will be removed by Provider. Proposal also assumes that the existing lighting circuits, for those removed parking lot light standards, can be re-used for photovoltaic parking canopies lighting system and that those existing circuits have ample current carrying capacity to provide required lighting at parking canopies, per jurisdictional code requirements. PV canopies located in areas where no existing lights are present will not include lighting unless the Customer requests this for an additional cost.

Temporary lighting during construction is excluded.

New lighting circuit installation is excluded from this proposal as well as any required timing circuit reconfiguration, lighting controllers, relays, or new panel boards. Lighting design and/or installation beyond the footprint of the photovoltaic parking canopies is not included in this proposal. Replacement of existing light standards is not included. Proposal includes LED fixtures for lighting under structures.

Additional security systems or infrastructure are not included in this proposal

### ***Special Conditions***

Proposal assumes modifications and/or reconfiguration of the existing parking lots will not be required to accommodate installation of Provider's photovoltaic parking canopy.

Assumes existing islands in parking lot to remain at area of new carport structure. Proposal excludes any re-striping of the parking lot/hard-court areas, unless specifically related to the construction of the photovoltaic parking canopies, or specifically described in the RFP.

While special care will be taken to locate existing underground utilities (underground survey) and locate carport structures with minimum conflicts, relocation of existing underground utilities due to carport foundations is not included.

Proposal excludes requirements for accessibility upgrades and accessibility design around the photovoltaic parking canopy structures and assumes that current parking lot layout has been reviewed and approved by AHJ and built and closed at the AHJ. If the architect of record recommends addition of new accessible parking stalls under the solar canopies, grade change to meet code, changed path of travel and/or new canopies over existing accessible stalls, design and construction costs will be addressed via Change Order.

Proposal excludes design or installation of any required additional fire hydrants or fire protection apparatuses as required by local first responders or Fire, Life/Safety professionals responsible for review and approval of the design for this project.

Architectural enhancements to the photovoltaic parking canopy structures or ground and roof arrays and mounting systems are not included.

At the detention center located at 1000 Ward in Martinez, the project estimate is based on utilizing existing conduit and equipment from the previous pv installation. The ability utilize existing conduit will be verified during the design phase.

### ***Testing and Inspections***

Provider assumes all Special Inspections/Testing shall be paid for and contracted by the Customer.

### ***Weather conditions***

Provider assumes standard weather patterns and site conditions for planning the project schedule. Instances of excessive climate, weather (greater than the most adverse conditions in the last 3 years) or natural disasters may result in delays and/or unplanned costs (i.e. additional labor, shipping, storage, and logistics costs) which will be the responsibility of the Customer.

### ***Commissioning, Monitoring, Operations & Maintenance***

#### ***Commissioning***

Proposal assumes commissioning requirements for this project is only for the Photovoltaic and energy storage systems. Proposal does not include other building system commissioning costs not related to our work (i.e. HVAC, Plumbing, Fire Alarm, etc.).

**EXHIBIT B**  
**FORM OF FINANCING PARTY ACKNOWLEDGMENT**

*[This Form of Consent contemplates a Sale-Leaseback of the System between the Provider and Provider's Lender and Provider's eventual lender may request changes]*

This CONSENT AND AGREEMENT (this "Consent") dated as of [●], 201 is entered into among (i) Contra Costa County, a political subdivision of the State of California (the "Customer"), (ii) Solar Star Co Co 1, LLC, a limited liability company duly organized and existing under the laws of the State of Delaware (the "Provider"), and (iii) [●], a [●] duly organized and existing under the laws of the State of [●] (together, with its successors in such capacity, the "System Lessor").

WHEREAS, the Provider intends to develop, install, own, operate and maintain a [\_\_\_\_\_] MW [**ground-mounted/rooftop**] photovoltaic solar electric generating facility to be located in [\_\_\_\_\_] (the "Project");

WHEREAS, the Provider and the Customer entered into that certain Power Purchase & Storage Services Agreement, dated as of [●], 2019 (as amended, amended and restated, modified or supplemented from time to time, the "Assigned Agreement");<sup>1</sup>

WHEREAS, the Project will be sold by the Provider to the System Lessor pursuant to that certain Participation Agreement (as amended, the "Participation Agreement") dated as of the date hereof, among the Provider, the System Lessor, [●], not in its individual capacity but as owner trustee, and [●] ("Owner Participant");

WHEREAS, the System Lessor will lease the Project back to the Provider pursuant to that certain Lease Agreement, a related Project Schedule and a Certificate of Acceptance (as amended, the "Lease Agreement") dated as of the date hereof, between the System Lessor and the Provider;

WHEREAS, the Provider will grant the System Lessor a first priority security interest in and to all of the Provider's assets, including the Assigned Agreement, pursuant to a security agreement in form and substance acceptable to the System Lessor (as amended, amended and restated, modified or supplemented from time to time, the "Security Agreement"); and

WHEREAS, it is a condition precedent to the Owner Participant's obligation to make its investment in the System Lessor and for the System Lessor to acquire the Project under the Participation Agreement and lease the Project to the Provider under the Lease Agreement that the Customer execute and deliver this Consent.

NOW, THEREFORE, as an inducement to the Owner Participant to make its investment in the System Lessor and for the System Lessor to acquire the Project under the Participation Agreement and lease the Project to the Provider under the Lease Agreement, and in consideration

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<sup>1</sup> NTD: Can be expanded to include any additional agreements to which the Customer is a party.

of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

**1. CONSENT TO ASSIGNMENT, ETC.**

(a) Consent to Assignment. The Customer (i) acknowledges that the Provider and the System Lessor have entered into the Participation Agreement and the Owner Participant's obligation to make its investment in the System Lessor and for the System Lessor to acquire the Project under the Participation Agreement and lease the Project to the Provider under the Lease Agreement will be made in reliance upon the execution and delivery by the Customer of the Assigned Agreement and this Consent, (ii) consents in all respects to the pledge and assignment to the System Lessor of all of the Provider's right, title and interest in, to and under the Assigned Agreement pursuant to the Security Agreement, and (iii) acknowledges the right, but not the obligation, of the System Lessor or the System Lessor's designee, in the exercise of the System Lessor's rights and remedies under the Lease Agreement, the Security Agreement, and related documents to make all demands, give all notices, take all actions and exercise all rights of the Provider in accordance with the Assigned Agreement, and agrees that in such event the Customer shall continue to perform its obligations under the Assigned Agreement; provided that in the event, with respect to the Assigned Agreement, there exists a conflict between any notice given or action taken by the System Lessor and any notice given or action taken by the Provider, such conflict shall be resolved in favor of the notice given or the action taken by the System Lessor.

(b) Substitute Owner. The Customer agrees that, if the System Lessor notifies the Customer that an event of default under the Lease Agreement has occurred and is continuing and that the System Lessor has exercised its rights (i) to have itself or its designee substituted for the Provider under the Assigned Agreement, (ii) to acquire or have its designee or assignee acquire the Provider, or (iii) to sell, assign, transfer or otherwise dispose of the Assigned Agreement to a third party, including in a judicial or non-judicial foreclosure sale, then the System Lessor, the System Lessor's designee or such third party (each, a "Substitute Owner") shall be substituted for the Provider under the Assigned Agreement and, in such event, the Customer will (x) recognize the Substitute Owner as its counterparty to the Assigned Agreement, (y) take any actions and execute any documents, agreements or instruments reasonably necessary to effect such substitution, and (z) continue to perform its obligations under the Assigned Agreement in favor of the Substitute Owner pursuant to the terms hereof and thereof.

(c) Right to Cure.

(i) Notwithstanding anything to the contrary contained in the Assigned Agreement, the Customer shall not exercise any right it may have under the Assigned Agreement, at law or in equity, to cancel, suspend or terminate the Assigned Agreement or any of its obligations under the Assigned Agreement, as the result of any default or other action or omission of the Provider in the performance of any of its obligations under the Assigned Agreement, or upon the occurrence or non-occurrence of any event or condition under the Assigned Agreement that would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable the Customer to terminate or suspend its obligations or exercise any other right or remedy under the Assigned Agreement or under applicable law (hereinafter an "Assigned Agreement Default"), until it first gives prompt written notice of such Assigned Agreement

Default to the System Lessor and the Owner Participant and affords the System Lessor and the System Lessor's respective successor, assignee and/or designee a period of at least ninety (90) days (or, if such default is a payment default, forty-five (45) days) to cure such default, commencing from the later to occur of (x) the System Lessor's and the Owner Participant's receipt of such notice, and (y) the expiration of any notice periods or cure periods provided for in the Assigned Agreement; provided, however, that if (1) an event of default under the Lease Agreement has occurred and is continuing, the System Lessor has exercised its rights to foreclose on the Project as a result thereof and possession of the Project is necessary to cure any such non-monetary default, then, so long as the System Lessor or the System Lessor's respective successor, assignee and/or designee is diligently pursuing such foreclosure proceedings, the time periods specified in this Section 1(c) for curing an Assigned Agreement Default shall be extended for the time taken to complete foreclosure proceedings, and (2) any such party is prohibited from curing any such Assigned Agreement Default by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding involving the Provider, then the time periods specified in this Section 1(c) for curing an Assigned Agreement Default shall be extended for the period of such prohibition.

(ii) No such cancellation, suspension or termination of the Assigned Agreement by the Customer shall be binding upon the System Lessor without the notice and extended cure period specified in this Section 1(c). Any dispute that may arise under the Assigned Agreement notwithstanding, the Customer shall continue performance under the Assigned Agreement and resolve any dispute without discontinuing such performance until the lapse of the notice and extended cure period specified in this Section 1(c).

(d) No Termination, Assignment or Material Amendments. The Customer shall not enter into any consensual cancellation or termination of the Assigned Agreement (except with respect to termination in the event of a default by the Provider, subject to the limitations and extended cure periods provided for in Section 1(c)), or assign, novate or otherwise transfer any of its right, title or interest thereunder or consent to any such assignment or transfer by the Provider without, in each such case, the written consent of the System Lessor. The Customer shall not enter into or agree to any amendment, supplement, assignment or other modification to, or benefit from any waiver under, the Assigned Agreement without the prior written consent of the System Lessor.

(e) Replacement Agreement. In the event that the Assigned Agreement is rejected or otherwise terminated as a result of any bankruptcy or insolvency proceeding affecting the Provider, the Customer shall, at the option of the System Lessor or the System Lessor's respective successor, assignee and/or designee, enter into a new agreement with the System Lessor or any Substitute Owner (or its transferee or other nominee that owns or leases the Project) having terms substantially the same as the terms of the Assigned Agreement. Thereafter, references in this Consent to the "Assigned Agreement" shall be deemed to refer to such new agreement.

(f) No Liability. The Customer acknowledges and agrees that none of the System Lessor, or the System Lessor's respective successor, assignee and/or designee or the Owner Participant shall have any liability or obligation under the Assigned Agreement as a result of this Consent, the Security Agreement, the Lease Agreement or otherwise, nor shall the System Lessor or the System Lessor's respective successor, assignee and/or designee be obligated or required to (i) perform any of the Provider's obligations under the Assigned Agreement, except, in the case of



the System Lessor or the System Lessor's respective successor, assignee and/or designee, during any period in which the System Lessor or the System Lessor's respective successor, assignee and/or designee is a Substitute Owner pursuant to Section 1(b), in which case the System Lessor or other Substitute Owner shall not be liable for acts or omissions of the Provider and the obligations of such Substitute Owner shall otherwise be no more than those of the Provider under the Assigned Agreement, or (ii) take any action to collect or enforce any claim for payment assigned under the Security Agreement or any related document.

(g) Delivery of Notices. The Customer shall deliver to the System Lessor and the Owner Participant, concurrently with the delivery thereof to the Provider, a copy of each notice, request or demand given by the Customer pursuant to the Assigned Agreement.

(h) Acknowledgements. The Customer agrees to execute such acknowledgements or other similar instruments as the System Lessor may reasonably request in connection with the transactions contemplated by this Consent.

## **2. PAYMENTS UNDER THE ASSIGNED AGREEMENT**

(a) Payments. The Customer will pay all amounts payable by it under the Assigned Agreement, if any, in lawful money of the United States of America, in immediately available funds and in the manner required by, and subject to the terms and conditions of, the Assigned Agreement, directly into the account specified on Exhibit A hereto, or to such other person or account as may be specified from time to time by the System Lessor to the Customer in writing.

(b) No Offset, etc. All payments required to be made by the Customer under the Assigned Agreement shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever.

## **3. REPRESENTATIONS AND WARRANTIES OF THE CUSTOMER**

The Customer makes the following representations and warranties to the System Lessor, the Provider and the Owner Participant as of the date hereof, which shall survive the execution and delivery of this Consent and the Assigned Agreement and the consummation of the transactions contemplated hereby and thereby:

(a) Organization; Power and Authority. The Customer is a political subdivision of the State of California, and is duly qualified, authorized to do business and in good standing in all jurisdictions where it is required to be so qualified and authorized to do business, and has all requisite power and authority to enter into and to perform its obligations under this Consent and the Assigned Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

(b) Authorization. The execution, delivery and performance by the Customer of this Consent and the Assigned Agreement have been duly authorized by all necessary action on the part of the Customer and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of (i) the Customer, or (ii) any other person or entity, except approvals or consents which have previously been obtained.

(c) Execution and Delivery; Binding Agreements. Each of this Consent and the Assigned Agreement is in full force and effect, has been duly executed and delivered on behalf of the Customer and constitutes the legal, valid and binding obligation of the Customer, enforceable against the Customer in accordance with its terms except as the enforceability hereof or thereof may be limited by (i) bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights generally, and (ii) general equitable principles (whether considered in a proceeding in equity or at law).

(d) Litigation. There is no legislation, litigation, action, suit, proceeding or investigation pending or (to the best of the Customer's knowledge after due inquiry) threatened against the Customer before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate, (i) could adversely affect the performance by the Customer of its obligations under this Consent or the Assigned Agreement, or that could modify or otherwise adversely affect the Approvals (as defined in Section 3(f)), (ii) questions the validity, binding effect or enforceability of this Consent or the Assigned Agreement, any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby, or (iii) could have a material adverse effect upon (x) the value, validity, perfection or enforceability of the liens granted to the System Lessor under the Security Agreement and other security documents, or (y) the ability of the System Lessor to enforce any of its rights and remedies under the Assigned Agreement or this Consent.

(e) No Conflict. The execution and delivery of this Consent and the Assigned Agreement and the performance by the Customer under this Consent and the Assigned Agreement will not violate, result in a breach of, default under or conflict with (i) any law, rule, regulation, order, permit or decree applicable to the Customer, (ii) its organizational documents, or (iii) the terms of any other agreement binding on the Customer.

(f) Government Consent. No consent, order, authorization, waiver, approval or any other action, or registration, declaration or filing with, any person, board or body, public or private (collectively, the "Approvals"), is required to be obtained by the Customer in connection with the execution, delivery or performance of this Consent, the Assigned Agreement or the consummation of the transactions contemplated hereunder and thereunder, except any Approvals which have previously been obtained.

(g) No Default or Amendment. Neither the Customer nor, to the Customer's knowledge after due inquiry, the Provider or any other party to the Assigned Agreement is in default of any of its obligations thereunder (or has claimed force majeure, emergency, or any other excuse for performance thereunder which is still ongoing as of the date hereof). The Customer has no existing counterclaims, offsets, defenses, or claims for change orders against the Provider under the Assigned Agreement. To the Customer's knowledge, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either the Customer or the Provider to terminate or suspend its obligations (or the performance of such obligations) under the Assigned Agreement. The Assigned Agreement has not been amended, modified or supplemented in any manner other than as indicated above.

(h) No Previous Assignments. The Customer has no notice of, and has not consented to, any previous assignment of all or any part of its right, title or interest in, to or under the Assigned Agreement.

(i) **Purchase Option.** The Customer has not taken any official action requiring or authorizing the exercise of any purchase option available to it under the Assigned Agreement, has not decided whether or not it will exercise any such purchase option, and is under no legal or economic compulsion to exercise any such purchase option; provided, however, nothing herein shall prohibit the Customer from exercising any purchase option under the Assigned Agreement when it becomes exercisable in accordance with its term and such exercise shall not be deemed to be a breach of this representation and warranty.]

(j) Liens; Mortgages. The Customer has no knowledge of any existing lease, mortgage, security interest or other interest in or lien upon the [Premises], which could attach to the Project as an interest adverse to the System Lessor's interest therein.

Representations and Warranties. All representations, warranties and other statements made by the Customer in the Assigned Agreement were true and correct in all material respects as of the date when made and, except for those that by their terms speak as of a specific date, are true and correct in all material respects as of the date hereof.

#### **4. ADDITIONAL PROVISIONS<sup>2</sup>**

(a) **Commercial Operation Date.** The Commercial Operation Date is \_\_\_\_\_.

(b) **Use of Electricity.** None of the electricity to be sold under the Assigned Agreement will be used to generate energy for the purpose of heating a swimming pool.

(c) **Project.** The Customer has approved the Project as installed at the [Premises].

(d) **Access Rights.** The System Lessor and the System Lessor's respective successors, assignees and/or designees shall have the same rights as the Provider to access the Project in order to install, operate, maintain and remove the Project as the right accorded to the System Lessor under the Lease Agreement and the Security Agreement.

(e) **Notice of Ownership.** The Customer will use commercially reasonable efforts to place its successors, assigns and lien holders on notice of the ownership of the Project by the Provider or the System Lessor, the existence of the security interest, and the fact that the Project is not part of the [Premises] or a fixture thereof, as necessary and appropriate to avoid confusion or adverse claims.

(f) **Amendments.** The Customer acknowledges that, under the Provider's financing arrangements, the Provider is not permitted to agree to an amendment or assignment of the Assigned Agreement without prior written consent of the System Lessor.]

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<sup>2</sup> NTD: Additional provisions to be added to address specific matters contained in the PPA.

**5. MISCELLANEOUS**

(a) Applicable Law; [Submission to Jurisdiction]. THIS CONSENT, AND ANY INSTRUMENT OR AGREEMENT REQUIRED HEREUNDER (TO THE EXTENT NOT EXPRESSLY PROVIDED FOR THEREIN), SHALL BE GOVERNED BY, AND CONSTRUED UNDER, THE LAWS OF THE STATE OF CALIFORNIA, APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE AND WITHOUT REFERENCE TO CONFLICTS OF LAWS.

(b) [Reserved.]

(c) Notices. All notices and other communications hereunder (i) shall be in writing, (ii) shall be effective upon actual receipt thereof by the party or parties to whom such notice is addressed, except that any communication or notice so transmitted by telecopy or electronic mail shall be deemed to have been validly and effectively given on the day (if a business day and, if not, on the next following business day) on which it is transmitted if transmitted during normal business hours of the recipient, and if transmitted after that time, on the next following business day, in each case as evidenced by transmittal confirmation received by the transmitter, (iii) shall be delivered by hand or overnight courier service or mailed by certified or registered mail, sent by facsimile or via electronic mail, and (iv) shall be directed as follows:

If to the Customer:	[_____] [_____] [_____] Attention: [_____] Telephone: [_____] Facsimile: [_____] Email: [_____]
If to the Provider:	[●]
If to the System Lessor:	[●]

The above parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent.

(d) Amendment, Waiver. Neither this Consent nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the Customer, the Provider and the System Lessor.

(e) Third Party Beneficiary. The Owner Participant shall be an express third-party beneficiary of this Consent. The Owner Participant shall be entitled to enforce the rights of the System Lessor hereunder.

(f) No Waiver; Remedies Cumulative. The waiver of any right, breach or default under this Consent by any party must be made specifically and in writing. No failure or delay on the part of the System Lessor in exercising any right, power or privilege hereunder and no course of dealing between the Customer and the System Lessor shall operate as a waiver thereof; nor shall any single

or partial exercise of any right, power or privilege hereunder preclude any other exercise, or the further exercise, of any other right, power or privilege hereunder. No notice to or demand upon any party will entitle such party to any further, subsequent or other notice or demand in similar or any other circumstances. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies that the System Lessor would otherwise have.

(g) Counterparts. This Consent may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered, including by e-mail or other electronic transmission, shall be deemed an original, but all of which shall together constitute one and the same instrument.

(h) Headings Descriptive. The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

(i) Severability. In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(j) Successors and Assigns. This Consent shall be binding upon the parties hereto and their permitted successors and assigns and shall inure to the benefit of the parties, their designees and their respective permitted successors and assigns; provided, however, that no party or its respective successor or assign shall assign any of its interest in this Consent except in connection with an assignment of its interests in the Assigned Agreement and then only to the same person(s) or entity(ies) to which its interest in the Assigned Agreement is so assigned.

(k) Survival. All agreements, statements, representations and warranties made by the Customer herein shall be considered to have been relied upon by the System Lessor and the Owner Participant and shall survive the execution and delivery of this Consent.

(l) Conflicts. In the event of a conflict between any provision of this Consent and any provision of the Assigned Agreement, the provisions of this Consent shall prevail.

(m) Further Assurances. Each party hereto hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

[SIGNATURE PAGES FOLLOW]

**IN WITNESS WHEREOF**, the parties hereto have caused this Consent to be executed by their respective officers as of the date first above written.

[\_\_\_\_\_]
as the Customer

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

[\_\_\_\_\_]
as the Provider

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

[●],
as the System Lessor

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

**Payment Instructions**

Accounts Bank	
ABA Number	[_____] <sup>3</sup>
Account Number	[_____]
Account Name	[_____]
Reference	[_____]

---

<sup>3</sup> Account information to be confirmed and included.

## EXHIBIT C

### SYSTEM PERFORMANCE GUARANTEE (the “Guarantee”)

#### ARTICLE I. ADDITIONAL DEFINED TERMS

**Actual Generation** means, for each Guarantee Year during the Term and with respect to the System, the System’s alternating current or “AC” electricity production in kilowatt-hours (“kWh”) as measured under Section 3.02.

**Annual Deficit** has the meaning set forth in Section 3.01.

**Annual System Performance Report** means the report that summarizes annual system performance in kWh and includes calculations for Weather Adjustment and True-up Period calculations.

**Avoided Energy Price per kWh** means the amount that the Customer will be paid by Provider for each Kilowatt-hour as set out in Appendix B (Avoided Energy Price) of this Guarantee.

**Data Acquisition System** or **DAS** means Provider’s system that displays historical meteorological and production data over an Internet connection and consists of hardware located on-Site and software housed on Provider’s DAS server. The DAS measures and logs, at a minimum, the following parameters on a 15-minute average basis at the Site: actual AC electricity production of the System (in kWh) and solar irradiance (in W/m<sup>2</sup>).

**Expected Energy** means, for the System in a specified Guarantee Year, the kilowatt hours for the System set forth on Appendix A (Expected Energy) of this Guarantee.

**Excused Performance Event** means:

- Force Majeure Event;
- Impingements on solar access by structures or activities on neighboring sites or by facilities that are beyond the control of either Party;
- Externally caused outages, including:
  - Warranty Exclusions: hours during any period when the System or any portion thereof is off-line due to an event that would constitute an exclusion under any applicable manufacturer’s, System, workmanship or other applicable warranty.
  - Network Disturbance Hours: hours during any period when a fluctuation in the utility network parameters (e.g., a frequency or voltage variation) result in the disconnection of the inverters or the System from the utility network and prevented energy from being evacuated from the System.
  - Network Outage Hours: hours during any period when a failure in the distribution network or in the connection infrastructure prevented energy from being evacuated from the System.
  - Third-Party Equipment Servicing Hours: equipment or System outage hours during any period that result from service issues related to non-Provider equipment or delays in procuring non-Provider replacement parts.



- Customer-Caused Hours: hours during any period when the equipment or the System is off-line due to Customer-required outages or Customer-caused delays in Site access.
- Major Maintenance Hours: hours during any period when the equipment or the System is off-line due to Customer-required major maintenance work.

**Guaranteed Level** means 90% of the Expected Energy for a Guarantee Year for the System.

**Guarantee Year** means each successive 12-month period during the Term commencing on the Commercial Operation Date.

**PVSim** means the software program utilized by Provider to predict the amount of energy that the System will produce in an average year which has the following characteristics: (1) based on PVFORM, the photovoltaic simulation software produced by Sandia National Laboratories and the US Department of Energy, (2) all photovoltaic characteristics are modeled, (3) all ancillary array losses are taken into account and (4) PVSim simulations use either measured data or typical meteorological year files from Meteornorm and NREL.

**SEMMY** or “Simulated Energy in a Measured Meteorological Year”, means, with respect to any Guarantee Year, Year 1 AC Energy output of the System simulated by PVSim using measured average hourly irradiance, wind speed, and air temperature as recorded by the Data Acquisition System, holding all other inputs equal to those used in calculating SETMY.

**SETMY** or “Simulated Energy for a Typical Meteorological Year”, means the Year 1 AC Energy output of the System simulated by PVSim using average hourly irradiance, wind speed, and air temperature data contained within the Weather File.

**True-up Period** means each successive one (5)-year period during the Term commencing on the first day of the Term.

**Weather Adjustment** means the ratio described in Section 3.01. Section 3.01

**Weather File** means the typical meteorological year data set specified for the System set forth on Appendix C (Weather File) of this Guarantee.

## **ARTICLE II. PERFORMANCE GUARANTEE CONSIDERATION**

### **Section 2.01 Consideration**

The Parties agree that the consideration set forth in Section 5.1 of the Agreement includes adequate consideration for the terms, conditions and provisions of this Guarantee.

## **ARTICLE III. PERFORMANCE GUARANTEE**

Provider guarantees to Customer that the Actual Generation of the System during any Guarantee Year, subject to the limitations, terms and conditions stated in this Guarantee shall not be less than the Guaranteed Level.

### **Section 3.01 Guaranteed Output Calculations.**

Provider shall calculate the Annual Deficit for the System for each Guarantee Year during the Term:

- (a) Annual Deficit = (Expected Energy x Guaranteed Level) x Weather Adjustment – Actual Generation

Where the Weather Adjustment ratio is as follows:

Simulated Energy in a Measured Meteorological Year (SEMMY)

Simulated Energy for a Typical Meteorological Year (SETMY)

For each Guarantee Year, within thirty (30) days after the end of such Guarantee Year, Provider shall calculate the Annual Deficit for the System. Customer has the right to access all data and information supporting Provider's calculation of the Annual Deficit.

- (b) Guarantee Payment Reimbursement. At the end of each True-up Period:
- (i) if the sum of Annual Deficits > 0, then Provider shall pay to Customer an amount equal to the cumulative product of (y) the Annual Deficits and (z) the Avoided Energy Price per kWh (a "Guarantee Payment");
  - (ii) Provider shall promptly notify Customer of any Guarantee Payment due. Provider shall make Guarantee Payments within thirty (30) days of the date of the notice provided in the first sentence of this paragraph.

### **Section 3.02 Actual Generation Measurement.**

Provider shall measure Actual Generation for the System for each Guarantee Year as follows:

- (a) **Initial Output Data Collection.** During the Term, Provider will collect energy output data using its Data Acquisition System. For each Guarantee Year, Provider will sum the daily kWh output for the System provided by the DAS to calculate the Actual Generation for the System for such Guarantee Year.
- (b) **Equipment Calibration and Replacement.** Provider may request to have the meteorological equipment independently calibrated or replaced at its own expense every eighteen (18) to thirty (30) months. Provider shall notify the Customer of the scheduled calibration date and time no less than 30 days prior, and shall provide the Customer written proof of calibration or replacement.
- (c) **Contingency for Equipment Failure.** In the event of hardware, communication, or other failure affecting the DAS, Provider will make commercially-reasonable efforts to resolve the failure in a timely manner. In the event that data is lost, Actual Generation for each affected System shall be adjusted to compensate for such lost data as follows:
  - (i) In lieu of lost meteorological data, Provider will utilize such data obtained from a nearby meteorological station that Provider monitors and selects for such purpose.
  - (ii) In lieu of lost electricity data, Provider will utilize the cumulative data from System meter readings to calculate the electricity generated by each affected System during the missing interval. In the event that data

from the System meter is inaccurate or missing, Provider will simulate electricity production during the missing interval utilizing measured meteorological data and PVSIM. The simulated electricity production during the missing interval will be added to the Actual Generation for each affected System for the subject Guarantee Year.

#### **ARTICLE IV. CUSTOMER RESPONSIBILITIES**

##### **Section 4.01 Customer's Failure to Uphold Responsibilities.**

Provider shall promptly notify Customer of any breach ("Out of Compliance Letter") of (i) Customer's obligation to pay Provider for the Solar Services pursuant to the Agreement and (ii) any Customer obligations pursuant to the Agreement that directly (A) hinder the amount of Energy delivered by the System or (B) degrade the functionality of the System. Upon Customer's cure of all failures described in an Out of Compliance Letter, Provider will notify Customer ("In Compliance Letter") that Customer is complying with Customer's Responsibilities. For any period between the issuance of an Out of Compliance Letter and of an In Compliance Letter (a "Noncompliance Period"), to the extent that Customer's non-compliance actually impacts the Actual Generation of the System, any Actual Generation from such affected Systems in such month(s) shall be disregarded in the calculation of Annual Deficits for such Systems under Section 3.01, and the Expected Energy for any affected System in any Guarantee Year in which there is a Noncompliance Period shall be reduced by a proportionate amount.

#### **ARTICLE V. EXPECTED ENERGY ADJUSTMENT**

##### **Section 5.01 Adjustment of Expected Energy.**

If, and to the extent, any of the following events results in a change in the production of electricity by the System, Expected Energy for that System shall be adjusted correlatively for the period of such change:

- (a) Subject to Provider's obligations under any warranty it provides in connection with the Systems (including any Provider obligation, with respect to the System, in connection with any requirements under the California Solar Initiative program), a material portion of the components of the System fails, and the manufacturer of such component(s) refuses, or otherwise fails to honor its corresponding warranty;
- (b) Customer fails to perform any of its obligations under the PPA – such as obligations related to maintaining the System's interconnection to the local utility grid or limiting outages (as defined in the Agreement) – and such failure reduces the amount of electricity that the System can generate or deliver.
- (c) There is any failure of the System to perform caused by legislative, administrative or executive action, regulation, order or requisition of any federal, state or local government, local utility or public utilities commission;
- (d) There is an Excused Performance Event; or

- (e) Adjustment to the Expected Energy, or a reduction in the amount of Energy that Provider is obligated to deliver, is permitted or required under the Agreement.

**Section 5.02 Notification of Changes to Expected Energy.**

If Provider determines that any changes to Expected Energy for the System are required based on an event or events described in Section 5.01, then Provider shall notify the Customer, in writing, of the basis for its determination, and Provider shall either provide revised definitions of Expected Energy in exhibits that, upon mutual agreement of the Parties, which shall not be unreasonably denied or delayed, shall replace the current exhibits to this Guarantee, or specify a date by which it shall do so.

### Appendix A – Expected Energy

<b>Guarantee Year</b>	<b>Expected Annual kWh</b>
1	1,262,133
2	1,258,978
3	1,255,831
4	1,252,691
5	1,249,559
6	1,246,436
7	1,243,319
8	1,240,211
9	1,237,111
10	1,234,018
11	1,230,933
12	1,227,855
13	1,224,786
14	1,221,724
15	1,218,670
16	1,215,623
17	1,212,584
18	1,209,552
19	1,206,528
20	1,203,512
21	1,200,503
22	1,197,502
23	1,194,508
24	1,191,522
25	1,188,543
<b>Total</b>	<b>30,624,634</b>

### Appendix B – Avoided Energy Price

<b>Guarantee Year</b>	<b>Avoided Energy Price per kWh</b>
1	\$0.0048
2	\$0.0049
3	\$0.0051
4	\$0.0052
5	\$0.0054
6	\$0.0056
7	\$0.0057
8	\$0.0059
9	\$0.0061
10	\$0.0063
11	\$0.0065
12	\$0.0066
13	\$0.0068
14	\$0.0070
15	\$0.0073
16	\$0.0075
17	\$0.0077
18	\$0.0079
19	\$0.0082
20	\$0.0084
21	\$0.0087
22	\$0.0089
23	\$0.0092
24	\$0.0095
25	\$0.0098

## **Appendix C – Weather File**

SolarAnywhereTGY2016\_(10km)\_37.95\_-122.15

**Schedule A**

**DESCRIPTION OF SITE**

<b>Facility</b>	<b>System Size (kW DC)</b>	<b>Product Type</b>	<b>Module qty &amp; type - SunPower</b>	<b>Inverters- qty &amp; type-Delta</b>
30 Douglas Dr, Martinez, CA 94553	775.50	Carport – Helix 1.5	(1650) SPR- X21-470- COM	(6) M80U_121 (1) M60U_121 (2) M42U_121 (2) M36U_121



**Schedule B**

**DESCRIPTION OF SYSTEM**

PV System Array Layouts and Electrical Single Line Diagrams



- NOTES:**
- 110 MPH WIND ZONE (ASCE 7-10) CATEGORY II, EXPOSURE C.
  - SNOWLOAD OPSF, ELEVATION 188'
  - SEWER MAINS 12" DIA. (10' DEPTH), 10' DIA. (8' DEPTH), 12" DIA. (6' DEPTH)
  - REQUIRED COATING FOR PREGALVANIZED STEEL IN ORDER TO ACHIEVE 10 YEAR LIFE BEFORE APPEARANCE OF RUST: G115
  - REQUIRED COATING FOR PREGALVANIZED STEEL IN ORDER TO ACHIEVE LIFETIME COST OVER 25 YEARS: G210
  - ARRAY SHOWN ON AERIAL IMAGE.
  - ARRAY MOUNTING STRUCTURE: HELIX CARPORT 1.5
  - STANDARD CANOPY LOW-END CLEARANCE: 11' PROVIDED FOR STANDARD BUILDING CODE REQUIRES 20' MIN. CLEARANCE FROM EXISTING BUILDINGS
  - FIRE DEPARTMENT REQUIRES 20' MIN. CLEARANCE ALONG EMERGENCY ACCESS ROUTES
  - TREES TO BE REMOVED: 15
  - TOTAL OF LIGHT POLE TO BE REMOVED: 3



PANELBOARD-CARPORT	CANOPY	LABEL	#MODULE	#STRING	KW (DC)	M8BDU_121 (18 STR)	M82U_121 (15 STR)	M82U_121 (12 STR)	M8BU_121 (9 STR)	KW (AC)	CEC LISTING (KW-AC)	TILT	AZIMUTH CSI	AZIMUTH SPWR	AC RUN (INV-SPB)	AC RUN (SPB-SSB)
SPB01	1	6A85	510	51	239.7	2	1	1	1	232	230.998	10°	-40°		35,140,240	205
SPB02	2	6A95	570	57	267.9	2	1	1	1	251.6	251.237				35,140,245	145
SPB03	3	6A95	570	57	267.9	2	1	1	1	251.6	251.237				35,140,245	75
			1650	165	775.50	6	1	2	2	735.2	733.472					

**PROJECT SUMMARY**

PROJECT SUMMARY	CARPORT
TOTAL # OF MODULE	1650
MODULE TYPE	SPR-X21-470-COM
# OF INVERTER	11
DC SYSTEM SIZE (KW)	775.50
AC SYSTEM SIZE (KW)	735.20



**SUNPOWER® HELIX™**  
**TIER 1**

**REVISIONS**

REV	DESIGN #	DESCRIPTION	DATE
A	D009100	PROPOSAL	08-16-18
B		SITE NEW INFORMATION	04-09-19

**SUNPOWER**  
1414 HARBORWAY SOUTH  
RICHMOND, CA 94804 USA  
(510) 540-0550

ENGINEER'S STAMP

CONTRA COSTA COUNTY  
30 DOUGLAS DRIVE  
MARTINEZ, CA 94553  
30 DOUGLAS DRIVE  
MARTINEZ, CA 94553

DATE	BY	CHK	APP

**OPPORTUNITY** 000157288

**PROJECT** 0 3/2" 1"

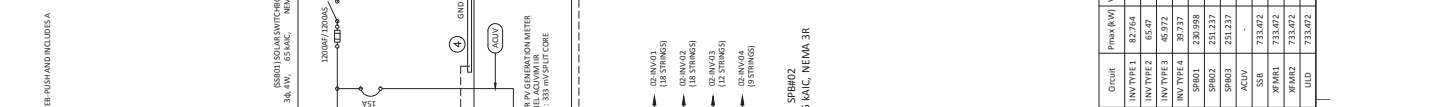
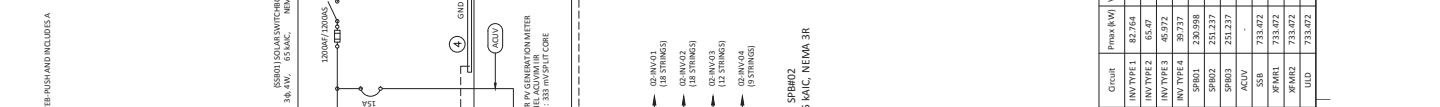
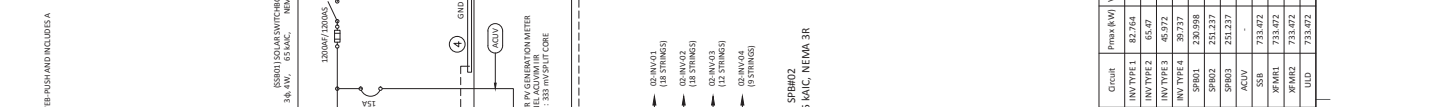
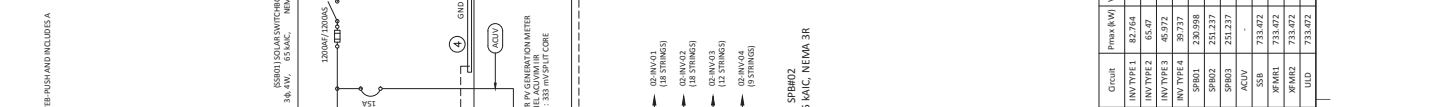
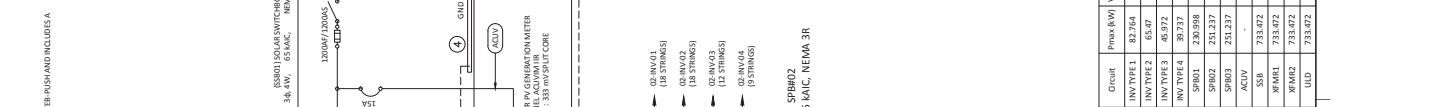
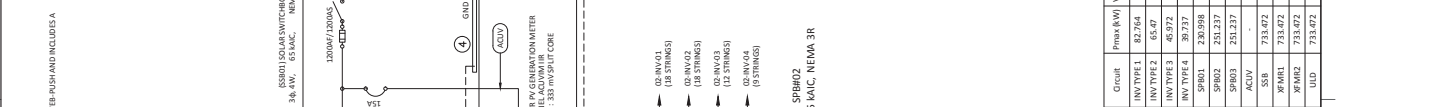
**SHEET** AL1

**SPECIFIC ELECTRICAL NOTES:**

1. LINE SIDE CONNECTION PER ART. 705.12(A). WIRES TO OVERCURRENT DEVICE SHALL BE INSTALLED IN RIGID STEEL CONDUIT WITH GROUND BUSHINGS PER ART. 250.92. BUS CONNECTIONS SHALL BE RELIEVED BY A 3RD PARTY TESTING AGENCY IF THE BUS EXCEEDS 30' IN LENGTH. WIRES SHALL BE TERMINATED IN SERVICE EQUIPMENT WITH CABLE LIMITERS PER ART. 705.31. CONNECTION SHALL BE MADE USING EXISTING BOLT HOLES, AND FACTORY BUSHING SHALL NOT BE DRILLED.
2. GANG OPERATED, LOCKABLE, VISIBLE OPEN DISCONNECT
3. ALL INVERTERS ARE LISTED TO UL 1741 TO INCORPORATE ANTI-ISLANDING AND THE FOLLOWING PROTECTIONS:
  - (a) 120V AC
  - (b) 60HZ
  - (c) 15% VOLTAGE
  - (d) 15% FREQ
4. NEUTRAL BUS SHALL NOT BE BONDED TO THE GROUND BUS AND SHALL BE ISOLATED FROM THE ENCLOSURE UNLESS OTHERWISE SPECIFIED
5. METERING NOTES:
  - FOR PV PRODUCTION MONITORING:
    - EXTERNAL METER ENCLOSURE AND 333v SPILT CORE CT
    - EXTERNAL METER ENCLOSURE AND ROGOWSKI CT

**METERING NOTE:**

- OPTION 1. EXTERNAL METER ENCLOSURE
- OPTION 2. EXTERNAL METER ENCLOSURE WITH METER AND 333V SPILT CORE CT'S. A CIRCUIT BREAKER 333V WITH 25 OHM INDUCTANCE IS A CIRCUIT BREAKER IN ADDITION TO THE 85-86 TERMINAL BLOCK
- OPTION 3. EXTERNAL METER ENCLOSURE WITH METER AND 333V SPILT CORE CT'S. A CIRCUIT BREAKER 333V WITH 25 OHM INDUCTANCE IS A CIRCUIT BREAKER IN ADDITION TO THE 85-86 TERMINAL BLOCK
- OPTION 4. EXTERNAL METER ENCLOSURE WITH METER AND 333V SPILT CORE CT'S. A CIRCUIT BREAKER 333V WITH 25 OHM INDUCTANCE IS A CIRCUIT BREAKER IN ADDITION TO THE 85-86 TERMINAL BLOCK



CANNOT MODULES INFO	
MODEL TYPE	SPR-120V-1000
WARRANTY	10 YEARS
MAX OUTPUT (KW)	4000
WARRANTY	5 YEARS
VOC	91.50
VMP	6.06
VMP	77.60
VEFF (VOC)	-0.27
VEFF (VMP)	-0.29

INVERTER SUMMARY TABLE				
SPB#	CANOPW	AC POWER	DC POWER	# OF STRINGS
SPB01	1	282	250,988	299.7
SPB02	2	251.6	251,237	267.9
SPB03	3	251.6	251,237	267.9
TOTAL		785.2	733,472	775.5

INVERTER SUMMARY TABLE				
Circuit	Prnx (kW)	Vmax (V)	Imax (A)	Conductor/Ph
INVTYPE1	82,254	480	100	(1)UL THWLN-2
INVTYPE2	65,472	480	80	(1)UL THWLN-2
INVTYPE3	46,972	480	56.2	(1)UL THWLN-2
INVTYPE4	30,737	480	40.2	(1)UL THWLN-2
SPB01	230,998	480	280	(2)14/0 THWLN-2
SPB02	251,337	480	304.4	(2)250 THWLN-2
SPB03	251,337	480	304.4	(2)250 THWLN-2
SSB	733,472	480	888.8	(4)500 THWLN-2
XMW1	733,472	12000	35,790.22	1/C,1/2 AVG (ALL) 1/FN, 15AW SHIELDED CABLE, MV-VOLTS, 100% INSULATION
XMW2	733,472	480	888.8	(4)500 THWLN-2
ULD	733,472	480	888.8	(4)500 THWLN-2

**ELECTRICAL SINGLE LINE DIAGRAM**  
30 DOUGLAS DRIVE  
CONTRA COSTA COUNTY

MARTINEZ, CA 94555  
30 DOUGLAS DRIVE

ENGINEER'S STAMP

PRELIMINARY  
NOT FOR  
CONSTRUCTION

E201

SHEET

OPPORTUNITY 000157288

PRODUCT 0 - 3/4" 1"

0 - 1/4" 1"

**REVISIONS**

NO.	DATE	DESCRIPTION
01	05-21-18	PROF.
02	05-21-18	PROF.
03	05-21-18	PROF.
04	09-19-18	SITING NEW INFORMATION
05	09-19-18	CHANGE SYSTEM SIZE

**REVISIONS**

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05	09-19-18	CHANGE SYSTEM SIZE

**SUNPOWER**  
1414 HARBORWAY SOUTH  
RICHMOND, CA 94804 USA  
(510) 540-0550

478783153E04M

**Schedule C**

**PV SYSTEM PRICING**

The following pricing is based on the Standard System Design Package described in Exhibit A.

kWh Rate (\$/kWh)	Term (Years)	Annual Rate Escalator (% / Year)
\$0.1344	25	0%

**Schedule D**  
**TERMINATIONS VALUES**

<b>Applicable Date : Years from Commercial Operation Date</b>	<b>Termination Value (\$)</b>
0 Year	\$3,692,799
1 Year	\$2,982,661
2 Years	\$2,673,282
3 Years	\$2,362,596
4 Years	\$2,050,842
5 Years	\$1,737,382
6 Years	\$1,695,787
7 Years	\$1,652,628
8 Years	\$1,608,098
9 Years	\$1,561,601
10 Years	\$1,513,303
11 Years	\$1,463,915
12 Years	\$1,412,905
13 Years	\$1,359,773
14 Years	\$1,305,170
15 Years	\$1,249,190
16 Years	\$1,192,016
17 Years	\$1,133,258
18 Years	\$1,073,080
19 Years	\$1,011,462
20 Years	\$948,547
21 Years	\$884,001
22 Years	\$817,960
23 Years	\$750,407
24 Years	\$681,457

***EXECUTION VERSION***

*NOTE: 4545 Delta Fair Blvd, Antioch, CA 94509*

**POWER PURCHASE AGREEMENT**

Dated as of June 18, 2019

by and between

Solar Star Co Co 1, LLC  
as Provider

and

Contra Costa County  
as Customer

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### **Exhibits, Schedules**

Exhibit A	-	System Design and Construction
Exhibit B	-	Form of Financing Party Acknowledgment
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Schedule B	-	Description of System
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Schedule D	-	Termination Values

## POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT (as amended, amended and restated, supplemented or otherwise modified from time to time, this “Agreement”), dated as of June 18, 2019 (the “Effective Date”), is by and between Solar Star Co Co 1, LLC, a limited liability company formed under the laws of the State of Delaware (“Provider”), and Contra Costa County, a political subdivision of the State of California (“Customer”).

### RECITALS:

WHEREAS, Customer leases or owns, directly or indirectly, facilities in that certain location in California as more fully described in Schedule A of the Appendices hereto (the “Site”);

WHEREAS, Customer desires that Provider install, maintain and operate, and Provider desires to install, maintain and operate, the System (as hereinafter defined) to be located on the Site; and

WHEREAS, Provider desires to sell, and Customer desires to purchase, (a) the Solar Services (as hereinafter defined), including the delivery of electrical energy generated by the System (the “Energy”) and (b) other services pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### AGREEMENT:

1. Definitions.

Unless otherwise defined herein: (a) capitalized terms used in this Agreement shall have the respective meanings set forth in this Section 1; (b) the singular shall include the plural and vice versa; (c) the word “including” shall mean “including, without limitation”, (d) references to “Sections,” “Exhibits,” “Appendices” and the like shall be to sections, exhibits, appendices, etc. of or to this Agreement; (e) the words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection hereof; and (f) references to this Agreement shall include a reference to all exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time.

“Agreement” has the meaning set forth in the preamble.

“Annual Rate Escalator” means the percentage set forth in Schedule C.

“Applicable Law” shall mean, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, governmental approval, consent or requirement of such

Governmental Authority, enforceable at law or in equity, along with the interpretation and administration thereof by any Governmental Authority.

“Claim Notice” shall have the meaning set forth in Section 13.3.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Commercial Operation Date” shall have the meaning set forth in Section 3.4.

“Confidential Information” shall have the meaning set forth in Section 15.

“Customer” shall have the meaning set forth in the preamble.

“Customer Default” shall have the meaning set forth in Section 11.1.

“Effective Date” shall have the meaning set forth in the preamble.

“Energy” shall have the meaning set forth in the preamble.

“Environmental Attributes” includes, without limitation, tradable renewable certificates, green-e tags, allowances, reductions or other transferable indicia denoting carbon offset credits or indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility attributed to the Energy during the Term created under a renewable energy, emission reduction, or other reporting program adopted by a Governmental Authority, or for which a registry and a market exists (which, as of the Effective Date are certificates issued by Green-e in accordance with the Green-e Renewable Electric Certification Program, National Standard Version 1.3 administered by the Center of Resource Solutions) or for which a market may exist at a future time.

“Environmental Financial Incentives” shall mean each of the following financial rebates and incentives that is in effect as of the Effective Date or may come into effect in the future: (i) performance-based incentives, rebates and any other incentive programs offered by or in the State of California (or any political subdivision thereof) under the federal government’s, any municipality’s, any utility’s or any other state’s program or initiative (including, if applicable, subsidies available under the Self Generation Incentive Program administered through the California Public Utilities Commission), incentive tax credits (including investment tax credits arising under the Code) other tax benefits or grants in lieu thereof (including without limitation the monetization of tax benefits), and accelerated depreciation (collectively, “Incentives”), howsoever named or referred to, with respect to any and all fuel, emissions, air quality, energy generation, or other environmental or energy characteristics, resulting from the construction, ownership or operation of the System or from the use of solar generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Energy generated by the System; and (ii) all reporting rights with respect to such Incentives.

“Estimated Year 1 Production” shall mean the amount set forth in Schedule B to this Agreement.

“Expiration Date” shall have the meaning set forth in Section 10.1.

“Fair Market Value” shall have the meaning set forth in Section 10.3.2.

“Financing Party” means any third-party entity providing debt or equity financing to Provider (or any successor or assignee thereof) with respect to the System, including without limitation a party providing construction financing, a lessor in a sale-leaseback transaction, a partner in a partnership flip transaction, or a limited liability company member in an equity sale transaction.

“Force Majeure Event” shall mean, when used in connection with the performance of a Party’s obligations under this Agreement, any of the following events to the extent not caused by such Party or its agents or employees, which is not preventable by such Party as of the Effective Date:

- a) war, riot, acts of a public enemy or other civil disturbance;
- b) acts of God, including but not limited to, storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, volcanic eruptions, range or forest fires, and objects striking the earth from space (such as meteorites), sabotage or destruction by a third party (other than any contractor retained by or on behalf of the Party) of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;
- c) acts of federal, state or local government agencies, including changes in Applicable Law, that result in increasing Provider’s costs of construction and installation, or continuing operation, of the System by 15% or more; and
- d) strikes, walkouts, lockouts or similar industrial or labor actions or disputes.

“Governmental Authority” shall mean any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Indemnified Party” shall have the meaning set forth in Section 13.3.

“Indemnifying Party” shall have the meaning set forth in Section 13.3.

“Interconnection Point” shall have the meaning set forth in Section 3.5.

“kWh Rate” shall have the meaning set forth in Section 6.1.

“License” shall have the meaning set forth in Section 2.

“Liens” shall have the meaning set forth in Section 7.1.3.

“Meter” shall have the meaning set forth in Section 4.3.1.

“Monthly Period” shall mean the period commencing on the Commercial Operation Date and ending on the last day of the calendar month in which the Commercial Operation Date occurs, and, thereafter, all subsequent one (1) month periods during the Term.

“Monthly Production” shall mean, for each Monthly Period, the amount of Energy delivered during such Monthly Period.

“O&M Work” shall have the meaning set forth in Section 4.1.1.

“Party” shall mean each of Customer and Provider (and/or any successor or permitted assignee thereof).

“Person” shall mean any individual, corporation, partnership, company, limited liability company, joint venture, association, trust, unincorporated organization or Governmental Authority.

“Provider” shall have the meaning set forth in the preamble (and includes its successor(s) and permitted assignee(s)).

“Provider Default” shall have the meaning set forth in Section 11.2.

“Renewal Rate” shall mean the fair market price for electricity generated by solar photovoltaic systems as determined by agreement of the Parties or through the appraisal process applicable to the purchase option contained in this Agreement.

“Reporting Rights” means the right to report ownership of the Environmental Attributes or the Environmental Financial Incentives associated with the Energy to any federal, state, or local agency, authority or other party, including without limitation under Section 1605(b) of the Energy Policy Act of 1992 and provisions of the Energy Policy Act of 2005, or under any present or future domestic, international or foreign emissions trading program.

“Scheduled Outage” shall have the meaning set forth in Section 4.5.

“Site” has the meaning set forth in the first recital.

“Solar Services” mean all solar services provided to Customer by Provider hereunder, including the provision of Energy.

“Standards” shall have the meaning set forth in Section 3.1.1.

“System” shall mean the solar photovoltaic system installed pursuant to this Agreement at the Site and more fully described in Schedule B hereto; provided, however, that the term “System” shall only include equipment and materials up to but not including the Interconnection Point of the System.

“Term” shall have the meaning set forth in Section 10.1.

“Termination Date” shall have the meaning set forth in Section 10.1.

“Termination Value” shall mean, on any date of determination (or, if such date is not a scheduled termination date, the scheduled termination date immediately preceding such date) the applicable amount specified for such date in Schedule D to this Agreement.

“Transfer Taxes” shall have the meaning set forth in Section 6.2.1.

2. Purchase and Sale of Solar Services; License.

2.1 Purchase and Sale of Solar Services.

Customer hereby engages Provider to provide the services set forth in this Agreement, including the Solar Services to Customer, and Provider agrees to provide the services set forth in this Agreement, including the Solar Services to Customer, all in accordance with the terms and conditions set forth herein. Customer shall provide Provider with access to the Site in accordance with the terms of this Agreement. Provider may retain one or more contractors or subcontractors to fulfill its obligations hereunder; provided that Provider shall remain liable for performance of its obligations hereunder

2.2 License.

Customer hereby grants to Provider and to Provider’s agents, employees and subcontractors an irrevocable, non-exclusive license running with the Site for access to, on, over, under or across the Site (the “License”) for the purpose of (i) installing, constructing, operating, maintaining, accessing, removing and replacing the System; (ii) performing all of Provider’s obligations and enforcing all of Provider’s rights set forth in this Agreement; and (iii) installing, using and maintaining electric lines and equipment, including inverters and meters, necessary to interconnect the System to Customer’s electric system at the Site or to the utility’s electric distribution system or that otherwise may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance, or repair of the System. The term of the License is the Term of this Agreement plus the period of time necessary for Provider to remove the System pursuant to Section 10.3.3, but in no case later than one hundred eighty (180) days after the Expiration Date with respect to the System (the “License Term”). During the License Term, Customer shall preserve and protect Provider’s rights under the License and Provider’s access to the Site and shall not interfere with or permit any third parties to interfere with Provider’s rights or access. Except for an emergency situation as described in Section 4.2.1(a) or (b) (an “Emergency Situation”), Provider shall notify Customer in writing, which may be made via email to Customer’s Energy Manager, 40 Muir Road, Martinez, CA 94553 (Frank.DiMassa@pw.cccounty.us), or to any other address Customer may designate in a written notice to Provider, forty-eight (48) hours before Provider intends to access the Site pursuant to the License. Notwithstanding that the License granted herein is irrevocable, Customer reserves the right to exclude Provider, its agents, employees and subcontractors from the Site in the event that Customer notifies Provider of a breach of the License and Provider fails to cure such breach pursuant to Section 11.2.1 of this Agreement; provided, however, that, Customer

agrees not to exclude Provider, its agents, employees and subcontractors from the Site (A) in the event of an Emergency Situation as described in Section 4.2 so long as Customer has been notified of such an Emergency Situation pursuant to Section 4.2 and (B) in the event that the System is to be removed pursuant to this Agreement.

3. Design, Construction, Installation and Testing of System.

3.1 Installation.

Subject to Section 3.2, Provider will cause the System to be designed, engineered, installed and constructed at the Site substantially in accordance with the terms of this Agreement, including without limitation, the provisions of Exhibit A (System Design and Construction). Customer shall review and approve, such approval not to be unreasonably withheld or delayed, all construction plans, including engineering evaluations of the impact of the System on the structural integrity and strength of the location where the System is installed inside, on or near Customer's buildings. Provider shall organize the procurement of all materials and equipment for the installation work and maintain the same at the Site. Subject to the terms of the License, Provider shall perform installation work at the Site during the times set forth in Exhibit A and Schedule B in a manner that minimizes inconvenience to and interference with Customer's and Customer's invitees' and Customers' use of the Site to the extent commercially practical. Notwithstanding the foregoing, in the event that Provider determines in its sole discretion that it is unable to install the System at the Site, it shall be under no obligation to do so, and this Agreement shall terminate and be of no further force and effect upon written notice from Provider to Customer to that effect.

3.1.1 System Design and Construction. Exhibit A (System Design and Construction) attached hereto sets forth the design, engineering and construction specifications for the System, as well as assumptions made by the Provider regarding the Site conditions, the electrical conditions, and System attributes (such assumptions being referred to herein as the "Standards"). Schedule B (Description of System) sets forth the known actual conditions for the Site and the System, including deviations from the Standards. The Standards are such that the described items for the System will not need repair, replacement, modification or construction beyond that described in Exhibit A and Schedule B in order for Provider to properly construct and install the System. If the construction and installation of the System is required for any reason (except for reasons attributable to Provider) to deviate from the Standards and Schedule B, Provider will notify the Customer and provide an estimate of any incremental cost to Customer and Customer will have the option to (i) pay the incremental cost at the time the cost is incurred and billed to the Customer, (ii) pay the incremental cost over the Term through a calculated increase in the kWh Rate, or (iii) elect an alternative location subject to the conditions of Section 3.1.2.

3.1.2 Alternative Location. Prior to the Commercial Operation Date, if the Customer's interest in the Site is a leasehold interest and the Customer is unable to obtain the landlord's consent in accordance with the License or Customer chooses an alternative location per Section 3.1.1, Customer will have the option to elect an alternative location if Environmental

Attributes and Environmental Financial Incentives financially equivalent to or better than those associated with the original location are available for the alternative location, and if the expected System kWh output and construction cost at the alternative location are equivalent to or superior than those associated with the originally proposed location. Such alternative location is subject to Provider approval, not to be unreasonably withheld. If an alternative location cannot be established, Provider will have the right to terminate per Section 3.2.

### 3.2 Conditions Precedent to Commencement of Construction and Installation.

3.2.1 Commencement by the Provider of construction and installation activities with respect to the System are subject to the satisfaction of the following conditions precedent (in addition to the condition set forth in Section 3.3):

- (a) Provider shall have closed financing for construction and long-term ownership of the System and the Solar Services to be performed at the Site and, to the extent required pursuant to the applicable financing documentation, the third party financing institution providing such financing shall have been provided with the materials referred to in Section 14.17 and Section 16;
- (b) Provider shall have entered into the applicable contract(s) for construction and installation of the System, subject to the terms of the applicable financing, if any;
- (c) Provider shall have obtained the permits, licenses and other approvals required by Applicable Law to be obtained by Provider prior to such commencement;
- (d) Provider shall have received satisfactory notice that the applications for Environmental Financial Incentives for the System have been accepted and approved by the appropriate governing agency; and
- (e) Provider shall have received from Customer satisfactory evidence that the project—including the System, the License, and the work and Solar Services described in this Agreement—is exempt from the regulatory jurisdiction of local agencies (including zoning, building, and land-use requirements) or that all required local agency approvals and permits have been obtained.

provided, however, that if any of the foregoing conditions precedent have not been satisfied on or before June 17, 2020 (the “CP Date”), Provider shall have the option to terminate this Agreement without triggering the default provisions of this Agreement or any liability under this Agreement, and if Provider does not terminate this Agreement one hundred eighty (180) days following the CP Date, Customer may terminate this Agreement without triggering the default provisions of this Agreement or any liability under this Agreement.



Alternatively, in the event that such conditions precedent are not satisfied by such date, the Parties may mutually agree to amend this Agreement to revise the Commercial Operation Date and term of this Agreement.

### 3.3 Utility Approvals.

Notwithstanding that Provider shall have primary responsibility for preparing applications and obtaining all permits, licenses and approvals required for the performance of work under this Agreement, Customer agrees to reasonably assist Provider in obtaining necessary permits, licenses and approvals in connection with the installation, operation and maintenance of the System, including the submission of applications for interconnection of the System with the local electric utility. Customer shall not make any material changes to its electrical equipment at the Site after the date on which the applicable utility interconnection application is submitted unless any such changes, individually or in the aggregate, would not adversely affect the approval by such utility of such interconnection. Should the local electric utility fail to approve the interconnection of the System or require equipment in addition to the equipment set forth in Schedule B in connection with the Site, Provider may, at Provider's option, terminate this Agreement immediately subsequent to notification from the local utility. The Parties shall not be obligated to go forward with installation of the System if the applicable utility approvals are conditioned upon material upgrades to the existing electrical infrastructure and neither Party elects to provide for such upgrades. Customer also agrees to assist Provider and make all necessary repairs or changes to the existing electrical infrastructure so that the Site and System are eligible for the Environmental Financial Incentives.

### 3.4 Energy Delivery.

The date on which the delivery of Energy from the System commences (the "Commercial Operation Date") shall be the date on which all of the following shall have occurred: (a) Provider shall have certified to Customer in writing that the System is substantially complete and available for commercial operation; (b) all permits and licenses required to be obtained under Applicable Law in connection with the operation of the System shall have been obtained and be in full force and effect; and (c) Customer shall have entered into an interconnection agreement with the local electricity utility. In no event shall Provider have any liability to Customer for a delay in the Commercial Operation Date caused by Customer, Customer's electricity provider, a local agency issuing permits for the System or any other third parties outside of Provider's control.

### 3.5 Risk of Loss; Exclusive Control.

As between the Parties, Provider will be deemed to be in exclusive control (and responsible for any property damage or injuries to persons caused thereby) of the Energy up to but excluding the point where the System is interconnected to Customer's electrical intertie; e.g., the Customer's line-side tap (the "Interconnection Point") and Customer will be deemed to be in exclusive control

(and responsible for any property damage or injuries to persons caused thereby) of the Energy at and from the Interconnection Point. Risk of loss related to the Energy will transfer from Provider to Customer at the Interconnection Point.

### 3.6 Termination Values.

The Parties acknowledge and agree that the Termination Values with respect to the applicable System are as set forth in Schedule D of this Agreement.

## 4. Operation and Maintenance of System.

### 4.1 O&M Work; Phone/Data Line.

4.1.1 O&M Work. Provider shall provide operation, repair, monitoring and maintenance services to the System during the Term of this Agreement, including the monitoring and maintenance of metering equipment determining the quantity of electricity produced by the System (collectively, the “O&M Work”). Provider shall perform the O&M Work, either directly or indirectly through a subcontract with SunPower Corporation, Systems, an affiliate of Provider or through a third-party service provider capable of providing comparable services, provided that Provider remains responsible for all O&M Work notwithstanding any such subcontracting. Provider shall perform, or cause to be performed, the O&M Work to ensure that the System is capable of delivering the Energy in accordance with the specifications set forth in Schedule B. Provider shall use commercially reasonable efforts to enforce the terms of any contract for operations and maintenance services to which it is a party and System warranty agreements.

4.1.2 Phone/Data Line. Customer shall properly maintain, pay for and provide access to the necessary phone, computer, or other communication lines necessary to permit Provider to record the electrical output of the System for the entire Term.

### 4.2 Malfunctions and Emergencies.

4.2.1 Each of Customer and Provider shall notify the other within twenty-four (24) hours following the discovery by it of (a) any material malfunction in the operation of the System, (b) an interruption in the supply of Solar Services. Provider and Customer shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Provider’s repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Each Party shall notify the other Party immediately upon the discovery of an emergency condition in the System.

4.2.2 Provider shall commence repairs to the malfunctioning System and restore the supply of the Energy, as soon as reasonably possible after notice or upon its own discovery of any of the conditions specified in Section 4.2.1 during normal business hours and, subject to Section 2, take steps to mobilize personnel to commence repairs after notice or discovery of a condition requiring repair or other corrective action. If an emergency condition exists, Provider shall dispatch the appropriate personnel immediately upon becoming aware thereof to perform the necessary repairs or corrective action in an expeditious and safe manner. For routine and emergency repairs, the Parties shall contact the persons set forth below:

If to Provider:

Wayne Webb, Senior Manager, Operations & Maintenance  
2900 Esperanza Crossing, 2nd Floor  
Austin, TX 78759  
(510) 439 – 4663 or (800) 251-9728

[Wayne.Webb@sunpowercorp.com](mailto:Wayne.Webb@sunpowercorp.com) with a copy to: [customer.service@sunpower.com](mailto:customer.service@sunpower.com)

#### 4.3 Metering.

4.3.1 Meters. For the term of this Agreement, Provider shall install and maintain a utility-grade kilowatt-hour (“kWh”) meter (the “Meter”) at the System for the measurement of Energy provided to Customer, which shall measure the kWh output of the System on a continuous basis. Upon Customer’s written request, Provider shall furnish a copy of all technical specifications and accuracy calibrations for the Meter, as well as all metering data and energy production and consumption calculations. Provider shall test the Meter in compliance with manufacturer’s recommendations.

4.3.2 Customer Audits and Inspections. Once per calendar year, Customer shall have the right to audit all Meter data upon reasonable notice, and any such audit shall be at Customer’s sole cost. Customer shall have a right of access to the Meter at reasonable times and with reasonable prior notice for the purpose of verifying readings and calibrations.

4.3.3 Adjustments. If testing of the Meter pursuant to Section 4.3.1 or Section 4.3.2 indicates that the Meter is in error by more than two percent (2%), then Provider shall promptly repair or replace the Meter. If the Meter is found to be in error by more than two percent (2%), Provider shall make a corresponding adjustment to the records of the amount of Energy based on such test results for (a) the actual period of time when such error caused inaccurate Meter recordings, if such period can be determined to the mutual satisfaction of the Parties, or (b) if such period cannot be so determined, then a period equal to one-half (1/2) of the period from the later of (i) the date of the last previous test confirming accurate metering, and (ii) the date the Meter was placed into service; provided, however, that such period shall in no case exceed two (2) years.

4.3.4 Disputes. Any dispute arising out of the reading or calibration of the Meter shall be resolved in accordance with the procedures set forth in Section 6.3.2.

#### 4.4 Title to System.

Provider, or Provider’s permitted assigns with respect to the System, shall at all times retain title to and be the legal and beneficial owner of the System, including the right to any tax credits available under federal or state law, and the System shall remain the property of Provider or Provider’s assigns. The System shall remain the personal property of Provider or Provider’s assigns and shall not attach to or be deemed a part of, or fixture to, the Site. It is the Parties’ intention that the System shall at all times retain the legal status of personal property. Provider shall be entitled to, and is hereby authorized to, file one or more precautionary Uniform Commercial Code financing statements with the California Secretary of State with

respect to the System in order to protect its rights in the System, provided that no such UCC financing statement shall name Customer as the debtor. The System shall be clearly marked and identified as being the property of the Provider or Provider's assigns. The Parties intend that neither Customer nor any party related to Customer shall acquire the right to operate the System or be deemed to operate the System.

#### 4.5 Outages.

Customer shall be permitted two (2) twenty-four (24) consecutive hour days during which the System may be offline (each, a "Scheduled Outage") per calendar year during the Term, during which days Customer shall not be obligated to accept, and if not accepted, pay for the Energy; provided, however, that Customer shall have notified Provider in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of such Scheduled Outage. In the event that Scheduled Outages at the Site exceed two (2) days per calendar year for a reason other than a Force Majeure Event, and for all unscheduled outages, Provider shall reasonably estimate the amount of Energy that would have been delivered to Customer during each hour of such excess Scheduled Outages or unscheduled outages and shall invoice Customer for such amount, which shall be payable in accordance with Section 6.3. Additionally, as set forth in Exhibit C (Performance Guarantee), Provider shall be relieved of any failure to meet the Performance Guarantee due to any Scheduled Outage or unscheduled outage.

#### 4.6 Compliance with Utility Specifications.

Provider shall ensure that the operation of the System and all Energy generated by the System conform to applicable utility specifications for energy being generated and delivered to the Site's electric distribution system, which shall include the installation of proper power conditioning and safety equipment, submittal of necessary specifications, coordination of utility testing and verification, and all related costs.

### 5. Purchase of Solar Services.

#### 5.1 Purchase Requirement.

Customer agrees to purchase one hundred percent (100%) of the Energy delivered by the System during the Term of this Agreement. While the Solar Services are calculated and billed on the basis of kWh of Energy as set forth in Section 6.1, Customer acknowledges and agrees that such Solar Services represent a package of services including the production and supply of electrical energy output from the System, together with any other services associated with solar energy production that Provider may provide to Customer. The payment for Solar Services (expressed in \$/kWh) is calculated to include all of the above services. Neither Party may claim that by this Agreement Provider is an electric utility subject to regulation as an electric utility or subject to regulated electricity rates. Provider shall not claim to be providing electric utility services to Customer and shall not interfere with Customer's ability to select an electric utility provider except that, to the extent

Customer has a choice in selecting an electric utility provider or electricity provider, Customer shall not select an electric utility provider or electricity provider that requires, as part of their conditions for service, removal or discontinued operation of the System or the sales of Energy hereunder.

5.2 Environmental Attributes; Environmental Financial Incentives.

5.2.1 Environmental Attributes. All Environmental Attributes and associated Reporting Rights available in connection with the System are retained and owned by Customer or its assignee. Provider shall take all reasonable measures to assist Customer in obtaining all Environmental Attributes currently available or subsequently made available in connection with the System. At Customer's request and expense, Provider shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Customer's or its assignee right, title and interest in and to the Environmental Attributes. If the standards used to qualify the Environmental Attributes to which Customer is entitled under this Agreement are changed or modified, Provider shall, at Customer's request and expense, use all reasonable efforts to cause the Environmental Attributes to comply with new standards as changed or modified. If Provider fails to act in good faith in completing documentation or taking actions reasonably requested by Customer, and such failure results in the loss of an Environmental Attribute that would otherwise be available, Provider shall reimburse Customer for the full amount of such lost Environmental Attribute.

5.2.2 Environmental Financial Incentives. All Environmental Financial Incentives and associated Reporting Rights available in connection with the System are retained and owned by Provider or its assignee. Customer shall take all reasonable measures to assist Provider in obtaining all Environmental Financial Incentives currently available or subsequently made available in connection with the System. At Provider's request and expense, Customer shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Provider's or its assignee right, title and interest in and to the Environmental Financial Incentives. If the standards used to qualify the Environmental Financial Incentives to which Provider is entitled under this Agreement are changed or modified, Customer shall, at Provider's request and expense, use all reasonable efforts to cause the Environmental Financial Incentives to comply with new standards as changed or modified. If Customer fails to act in good faith in completing documentation or taking actions reasonably requested by Provider, and such failure results in the loss of an Environmental Financial Incentive that would otherwise be available, Customer shall reimburse Provider for the full amount of such lost Environmental Financial Incentive.

5.2.3 Customer shall not take any action or suffer any omission that would have the effect of impairing the value to the Provider of the Environmental Attributes or Environmental Financial Incentives.

5.2.4 Provider or its assignee will at all times retain all tax credits and related tax benefits (including depreciation) associated with the System.

6. Price and Payment.

6.1 Price.

Customer shall pay Provider for the Energy provided pursuant to the terms of this Agreement at the rate per kWh (the "kWh Rate") set forth in Schedule C for the Term of this Agreement, plus any adjustments required pursuant to Section 3.1.1, plus any additional amount required pursuant to Section 6.2. Notwithstanding the foregoing, in the event that Customer elects to renew this Agreement pursuant Section 10.3.1, Customer shall pay the Renewal Rate for Energy delivered during such renewal period.

6.2 Taxes.

6.2.1 Customer Taxes. Provider shall invoice Customer for, and Customer shall pay all sales, use, excise, ad valorem, transfer and other similar taxes ("Transfer Taxes"), but excluding in all events taxes based on or measured by net income, that are imposed by any taxing authority arising out of or with respect to the purchase or sale of the Solar Services (regardless of whether such Transfer Taxes are imposed on Provider or Customer), together with any interest, penalties or additions to tax payable with respect to such Transfer Taxes, unless such interest, penalties or additions to tax payable with respect to such Transfer Taxes are due to Provider's failure to timely remit any such Transfer Taxes or to file any returns required by the appropriate taxing authority, and Provider shall indemnify and hold Customer harmless in such excepted cases. If Customer shall be required to by law to withhold or deduct any Transfer Taxes or other taxes imposed by any jurisdiction or any political subdivision from or in respect of any sum payable hereunder, the sum payable shall be increased as may be necessary so that, after taking all required deductions, Provider shall have received an amount equal to the sum it would have received had no such deductions been made. Provider will pay any ad valorem property tax imposed on the System by any taxing authority.

6.2.2 Provider Taxes. Provider will pay and hold harmless Customer from any sales or use tax imposed upon Customer arising from this Agreement, other than as set forth in the preceding Section 6.2.1, including but not limited to Provider's manufacture, installation and acquisition of the System. Provider will pay and hold harmless Customer from property tax, if any, assessed on (i) Provider's use of the portion of the Site on which the System is installed, to the extent prescribed in the License; (ii) the System or Provider's ownership, installation or use thereof; or (iii) any other aspect of this Agreement. Notwithstanding the foregoing, Customer shall pay and hold harmless Provider from sales and use taxes, if any, arising upon the transfer, if any, of both legal and beneficial ownership of the System to Customer pursuant to this Agreement.

6.3 Billing and Payment.

Billing and payment for the Solar Services sold and purchased under this Agreement and any other amounts due and payable hereunder shall occur as follows:

6.3.1 Payments. Subject to adjustment in accordance with the following sentences of this Section 6.3.1, Customer shall pay to Provider for each Monthly Period during the Term within thirty (30) days after receipt of any invoice a payment for the Energy delivered by the System during each such Monthly Period equal to the product of (a) Monthly Production for the System for the relevant month multiplied by (b) the then applicable kWh Rate.

Customer payments under Sections 6.3.1, above, shall be made by check to:

Solar Star Co Co 1, LLC  
Attn: Commercial Asset Management Group  
c/o SunPower Capital Services, LLC  
2900 Esperanza Crossing  
Austin, TX 78758

Payment may also be made by wire transfer of immediately available funds upon receipt of specific instructions by Provider. Upon receipt of written direction and instructions from Provider and Provider's Financing Party, all payments to be made by the Customer to the Provider under this Agreement shall be made directly to the Provider's Financing Party or its agent designated in a writing addressed to Customer from time to time.

6.3.2 Invoice Errors. Within thirty (30) days after receipt of any invoice, Customer may provide written notice to Provider of any alleged error therein (including any error resulting from Meter adjustments pursuant to Section 4.3.3). Customer shall pay all undisputed amounts, including the undisputed portion of any invoice, in accordance with the instructions set forth for payment under Section 6.3.1. If Provider notifies Customer in writing within thirty (30) days of receipt of such notice that Provider disagrees with the allegation of error in the invoice, the Parties shall meet, by telephone conference call or otherwise, within ten (10) days of Customer's response for the purpose of attempting to resolve the dispute.

6.3.3 Late Payments. All payments hereunder shall be made without setoff or deduction. Any payment not made within the time limits specified in Section 6.3.1 shall bear interest from the date on which such payment was required to have been made through and including the date on which such payment is actually received by the Provider. Such interest shall accrue at a monthly rate equal to the lesser of the then prevailing prime rate of interest as published in The Wall Street Journal or the maximum interest rate permitted by Applicable Law.

## 7. General Covenants.

### 7.1 Provider's Covenants.

Provider covenants and agrees as follows:

7.1.1 Permits and Approvals. While performing this Agreement, Provider shall obtain and maintain all approvals, consents, licenses and permits from relevant Governmental Authorities, utility personnel, and (to the extent known to Provider) the Site's owners, if Customer is not the owner of the Site, and other agreements and consents required to be obtained and maintained by Provider and to enable Provider to perform such work. Provider shall deliver copies of all permits and approvals obtained pursuant to this Section to Customer.

7.1.2 Health and Safety. Provider shall take all reasonably necessary safety precautions in performing this Agreement and shall comply in all material respects with all Applicable Laws pertaining to the safety of persons and real and personal property.

7.1.3 Removal of Liens. Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', laborers' or materialmen's liens), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Site or any interest therein; provided that this Section 7.1.3 shall not limit Liens on the System. If Provider breaches its obligations under this Section, it shall immediately notify Customer in writing, shall promptly cause such Lien to be discharged and released of record without cost to Customer, and shall defend and indemnify Customer against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

7.1.4 Provider Records. Provider shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Customer has the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

## 7.2 Customer's Covenants.

Customer covenants and agrees as follows:

7.2.1 Health and Safety. Customer shall at all times maintain the areas of the Site consistent with all Applicable Laws pertaining to the health and safety of persons and property.

7.2.2 Security. Customer shall provide and take reasonable measures for security of the System, including commercially reasonable monitoring of the Site's alarms, if any.

7.2.3 Notice of Damage. Customer shall promptly notify Provider of any matters of which it becomes aware pertaining to any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System.

7.2.4 Liens. Customer shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein. Customer also shall pay promptly any taxes, charges or fees of whatever type of any relevant Governmental Authority for which Customer is responsible under Section 6.2 before a fine or penalty may attach to the System. If Customer breaches its obligations under this Section, it shall immediately notify Provider in writing, and shall promptly cause such Lien on or with respect to the System (including if such arises in favor of any third party claiming through Customer, such as a lender, mortgagee or encumbrancer of real property) to be removed, discharged and released of record without cost to Provider, and shall defend, indemnify and hold Provider harmless against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in removing, discharging and releasing such Lien.



7.2.5 Consents and Approvals. Customer shall obtain and maintain, and secure and deliver to Provider copies of, all consents, approvals, permits, licenses, and authorizations (or evidence that the project—including the System, and the work and Solar Services described in this Agreement—is exempt from the regulatory jurisdiction of local agencies (including zoning, building, and land-use requirements) or that all required local agency approvals and permits have been obtained) relating to the performance of Customer’s obligations and the rights granted by Customer hereunder, and that are required by the terms, conditions or provisions of any restriction or any agreement or instrument or statute to which Customer is a party or by which Customer is bound, including completing applications for interconnection with Customer’s local electric utility. Customer shall use best efforts to assist Provider in fulfilling Provider’s responsibilities under Section 7.1.1. In addition, as a condition precedent to the effectiveness of this Agreement, Customer covenants that it has obtained all discretionary and other approvals required in connection with the project from its governing board and all applicable Government Authorities and that such board or Governmental Authority complied with the California Environmental Quality Act; or, if no other discretionary approvals were required, such board or Governmental Authority approved this Agreement before it was executed.

7.2.6 Maintenance of Interconnection. Customer shall ensure that all of the facilities to which the Energy is delivered hereunder remain interconnected to the electrical grid during the entire Term, except as permitted under Section 4.5 and Section 9.

7.2.7 Solar Access. Customer shall ensure that the System remains free of overshadowing or other blocked access to sunlight during the Term, and it is acknowledged and agreed by the Parties that the foregoing is a material obligation of the Customer for the purposes of this Agreement. Customer will use best efforts to secure a solar easement for the Site to prevent other buildings, structures or flora from overshadowing or otherwise blocking access of the sunlight to the System. Provider shall provide assistance to Customer in seeking a solar easement; however, Customer shall bear all costs and expenses related to obtaining any such easement.

7.2.8 Customer Records. Customer shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Provider shall have the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

## 8. Insurance Requirements.

### 8.1 Provider’s General Liability Insurance.

Provider shall maintain, at its sole expense, commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of one million dollars (\$1,000,000) per occurrence and in the aggregate, endorsed to provide contractual liability in said amount, specifically covering Provider’s obligations under this Agreement and naming Customer as an additional insured. The minimum coverage amount of \$1,000,000 per occurrence and in the aggregate may be satisfied by a combination of a general liability policy and an excess/umbrella liability policy. Provider, if it has employees, shall also maintain at all times during the term of

this Agreement workers' compensation insurance coverage in accordance with the applicable requirements of federal and state law. Within thirty (30) days after execution of this Agreement and upon Customer's request annually thereafter, Provider shall deliver to Customer certificates of insurance evidencing such coverage, which shall specify that Customer shall be given at least thirty (30) days' prior written notice by the applicable insurer in the event of any material modification, cancellation or termination of coverage, except ten (10) days for non-payment of premium. Such insurance shall be primary coverage without right of contribution from any insurance of Customer.

## 8.2 Customer's Insurance.

Customer shall provide and maintain "all-risk" property insurance covering the buildings on which the System is located during all periods (construction and operation) that Provider is the beneficial owner of the System, and naming Provider or its assignee as the loss payee. The System shall be insured for not less than its Termination Value. All such policies shall be with financially sound and reputable insurance companies that have an (i) A.M. Best rating of A+ and a financial strength category of "XII" or higher, (ii) a Standard & Poor's financial strength rating of A+ or higher, or (iii) are otherwise reasonably satisfactory to the Provider or its assignee; and such policies shall be on terms that are reasonably satisfactory to the Provider or its assignee. Within thirty (30) days after execution of this Agreement and upon Provider's request annually thereafter, Customer shall deliver to Provider certificates of insurance evidencing such coverage, which shall specify that Provider shall be given at least thirty (30) days' prior written notice (10 days' notice for cancellation due to nonpayment of premiums) by the applicable insurer in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Provider. Notwithstanding the foregoing, Customer shall be entitled to self-insure all of its insurance requirements under this Agreement.

## 9. Force Majeure Events.

If either Party is prevented from or delayed in performing any of its obligations under this Agreement by reason of a Force Majeure Event, such Party shall notify the other Party in writing as soon as practicable after the onset of such Force Majeure Event and shall be excused from the performance of its obligations under this Agreement to the extent that such Force Majeure Event interferes with such performance. The Party whose performance under this Agreement is prevented or delayed as the result of a Force Majeure Event shall use reasonable efforts to remedy its inability to perform. If a Party's failure to perform its obligations under this Agreement is due to a Force Majeure Event, then such failure shall not be deemed a Provider Default or a Customer Default, as the case may be. In case a Force Majeure Event continues for at least one (1) year with respect to the System, then either Party may terminate this Agreement by written notice to the other.

10. Term; Customer Options; Termination.

10.1 Term.

The term of this Agreement shall commence on the Effective Date and shall expire on the date that is twenty-five (25) years after the Commercial Operation Date (the “Expiration Date”), unless and until terminated earlier pursuant to Sections 3.1, 3.2, 3.3, 9, 10.2.3, 10.6 or 12 (the date of any such termination, the “Termination Date”, and the “Term” being such period of time commencing on the Effective Date and ending on the earlier of (i) the Termination Date, and (ii) the Expiration Date).

10.2 Customer Options Upon Cessation of Business Operations at Site.

If, prior to the end of the Term, Customer ceases to conduct business operations at the Site, vacates the Site, or is prevented from allowing operation of the System on the Site:

10.2.1 Substitute Site. So long as Customer’s exercise of its rights under this Section 10.2.1 does not impair or reduce any Environmental Financial Incentives that may be available to the Provider, or otherwise have an adverse tax effect on Provider, or in the Provider’s sole discretion and determination, impair Provider’s ability to meet any and all obligations in connection with a Financing Party or a prospective financing transaction, Customer shall have the right to provide Provider with a mutually agreeable substitute Site located within the same utility district, subject to requisite governing agency approvals, to relocate the System, which agreement shall not be unreasonably withheld, or, if not available, in a location with similar solar insolation, utility rates, Environmental Attributes and Environmental Financial Incentives. Any such alternate Site shall have a similar demand charge profile as the Site. If such alternate Site is available and is acceptable to Provider, this Agreement shall be amended to delete the prior Site and add the new Site, but otherwise this Agreement shall remain in full force in accordance with its terms and shall not be deemed otherwise amended. Customer shall pay the reasonable costs arising in connection with the relocation(s) of the System, including removal costs, installation costs, any applicable interconnection fees, costs related to obtaining a site license or lease at the substitute site, other costs of deployment at the substitute Site, and amounts lost that would otherwise be payable under this Agreement due to such relocation(s) to Provider based on delivered Energy averaged over the prior twelve months for the System.

10.2.2 Move and Pay Option. So long as such event does not impair or reduce any Environmental Attributes or Environmental Financial Incentives, Customer may elect to pay or guarantee the payment of the remaining monthly amounts due under this Agreement to Provider, and cause the System to be kept in operation at the Site, in each case through the remainder of the Term.

10.2.3 Termination and Payment of Termination Value. If, beginning in the sixth year following the Commercial Operation Date, a substitute Site cannot be located in accordance with Section 10.2.1 with respect to the System and Customer elects not to avail itself of the provisions of Section 10.2.2 with respect to the System, then Customer shall so notify Provider, Provider shall remove the System (at Customer’s sole cost and expense) and Customer shall pay to Provider the then-applicable Termination Value specified in Column A of Schedule D

as liquidated damages, whereupon this Agreement shall terminate. The Parties agree that actual damages to Provider if this Agreement is terminated as contemplated in this Section 10.2 would be difficult to ascertain, and the applicable Termination Value is a reasonable approximation of the damages suffered by Provider as a result of early termination of this Agreement.

### 10.3 Customer Options Upon Expiration of Term.

10.3.1 Extension of Term. Upon prior written notice to Provider at least one-hundred eighty (180) days prior to the Expiration Date, Customer has the option to renew the term of this Agreement with respect to the System and Solar Services for one (1) additional three (3)-year period at the Renewal Rate.

10.3.2 Purchase of System. If Customer has not elected to renew the term of this Agreement in accordance with Section 10.3.1, Customer may purchase the System by providing Provider written notice of its intent to purchase the System no later than one-hundred and eighty (180) days prior to the Expiration Date, and paying Provider the Fair Market Value thereof no later than the relevant Expiration Date. The “Fair Market Value” of the System shall be the value determined by the mutual agreement of Customer and Provider within ten (10) days after receipt by Provider of Customer’s notice of its election to purchase the System. If Customer and Provider cannot mutually agree to a Fair Market Value, then the Parties shall jointly select a nationally recognized independent appraiser with whom the parties have discussed methods and assumptions, with experience and expertise in the solar photovoltaic industry to value such equipment. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding on the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. To the extent transferable, the remaining period, if any, on all warranties for the System will be transferred from Provider to Customer. If the Parties are unable to agree on the selection of an appraiser, such appraiser shall be jointly selected by the appraiser firm proposed by the Customer and the appraiser firm proposed by the Provider. Upon receipt by Provider of payment of the Fair Market Value, title to the System as well as available Environmental Attributes and Environmental Financial Incentives from the System shall transfer to Customer as-is, where-is.

10.3.3 Return of System. If at the end of a Term, or an Extension of Term pursuant to Section 10.3.1, Customer does not exercise any of the options described in Sections 10.3.1 and 10.3.2, Provider shall remove all of its tangible property comprising the System from the Site by a mutually convenient date but in no case later than one hundred eighty (180) days after the Expiration Date with respect to the System. The cost to remove the System shall be borne by the Provider. The portion of the Site on which the System was installed shall be returned to its original condition, except for ordinary wear and tear, and Provider shall leave the portion of the Site on which the System was installed in neat and clean order.

### 10.4 Customer Purchase Options Prior to Expiration Date.

10.4.1 On the later to occur of the sixth (6th) anniversary of the Commercial Operation Date, provided that no Customer Default shall have occurred and be continuing beyond any applicable period of cure, Customer may elect to purchase all, but not less than all, of the System. If Customer elects to so purchase the System,

the purchase price shall be the higher of the then Fair Market Value of the System (calculated in accordance with the definition of Fair Market Value set forth in Section 10.3.2 for the System, and such determination to be at Customer's sole cost and expense), or the then-current Termination Value specified in Column A of Schedule D. Not less than one-hundred-and-eighty (180) days prior to the exercise of the purchase option for the System, Customer shall provide written notice to Provider of Customer's exercise thereof. Upon the exercise of the foregoing purchase option plus receipt of the Value as determined in Section 10.4 above and all other amounts then owing by Customer to Provider, the Parties will execute all documents necessary to cause title to the System to pass to Customer as-is, where-is; provided, however, that Provider shall remove any encumbrances placed on the System by Provider at Customer's expense.

10.4.2 On the later to occur of the fifteenth (15th) anniversary of the Commercial Operation Date, provided that no Customer Default shall have occurred and be continuing beyond any applicable period of cure, Customer may elect to purchase the System. If Customer elects to so purchase the System, the purchase price shall be the higher of the then Fair Market Value of the System (calculated in accordance with the definition of "Fair Market Value" set forth in Section 10.3.2 for the System, and such determination to be at Customer's sole cost and expense), and the amount specified in Column A of Schedule D. Not less than one-hundred-and-eighty (180) days prior to the exercise of the purchase option for the System, Customer shall provide written notice to Provider of Customer's exercise thereof. Upon the exercise of the foregoing purchase option plus receipt of the Fair Market Value and all other amounts then owing by Customer to Provider, the Parties will execute all documents necessary to cause title to the System to pass to Customer as-is, where-is; provided, however, that Provider shall remove any encumbrances placed on the System by Provider at Customer's expense.

10.5 Payment of Termination Value on Termination Date.

In the event that the Termination Date has occurred for reasons other than pursuant to Sections 3.1.2., 10.6 or 12.1.1, Customer shall be required to pay to Provider the then-applicable Termination Value specified in Column A of Schedule D as liquidated damages. The Parties agree that actual damages to Provider in the event this Agreement terminates prior to the expiration of the Term for causes attributable to Customer would be difficult to ascertain, and the applicable Termination Value is a reasonable approximation of the damages suffered by Provider as a result of early termination of this Agreement.

10.6 Provider Termination.

Provider shall have the right, in Provider's sole and absolute discretion, to terminate this Agreement upon written notice if any of the following occurs:

10.6.1 at any time until construction of the System commences Provider determines in its sole discretion that it is unable to install the System at the Site;

10.6.2 if the occurrence of an unstayed order of a court or administrative agency has the effect of subjecting the sales of the Energy to federal or state regulation of the prices therefor and/or the delivery of the service;

10.6.3 the elimination or alteration of one or more Environmental Financial Incentives or other change in law that results in a material adverse economic impact on Provider; or

10.6.4 if the annual direct beam solar resource availability at the Site is less than or equal to 90% of historical averages as measured by long-term weather data (minimum of five (5) years) collected at the Site and/or other reliable calibrated and appropriate weather station representative of the Site.

In the event of a Provider termination under this Section 10.6, Provider shall remove all of its tangible property comprising the System from the Site by a mutually convenient date but in no case later than one hundred eighty (180) days after the Termination Date. The cost to remove the System shall be borne by the Provider. The portion of the Site on which the System was installed shall be returned to its original condition, except for ordinary wear and tear, and Provider shall leave the portion of the Site on which the System was installed in neat and clean order.

## 11. Defaults.

### 11.1 Customer Default.

The occurrence at any time of any of the following events shall constitute a “Customer Default”:

11.1.1 Failure to Pay. The failure of Customer to pay during the Term any amounts owing to Provider on or before the date on which such amounts are due and payable under the terms of this Agreement and Customer’s failure to cure such failure within fifteen (15) days after Customer receives written notice of each such failure from Provider;

11.1.2 Failure to Maintain Phone/Data Line. Unless due to a Force Majeure Event excused by Section 9, the failure of Customer to maintain and grant Provider access to the phone and other communications lines required to be maintained pursuant to Section 4.1.3 and Customer’s failure to cure such failure within twenty (20) business days after Customer receives written notice of such failure from Provider; provided that in any event if such failure shall continue for at least five (5) days after notice to Customer and shall result in lost revenue to Provider, Provider shall be entitled to reasonably estimate the amount of revenue that would have been obtained and shall invoice Customer therefor;

11.1.3 Failure to Perform Other Obligations. Unless due to (i) a Force Majeure Event excused by Section 9, or (ii) a breach of paragraph 2 of Section 2 (License), the failure of Customer to perform or cause to be performed any other material obligation required to be performed by Customer under this Agreement, or the failure of any representation, covenant, or warranty set forth herein to be true and correct as and when made; provided, however, that if such failure by its nature can be cured, then Customer shall have a period of thirty (30) business

days after receipt of written notice from Provider of such failure to Customer to cure the same and a Customer Default shall not be deemed to exist during such period; provided, further, that if Customer commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for one hundred twenty (120) additional days;

11.1.4 Bankruptcy, Etc. (a) Customer admits in writing its inability to pay its debts generally as they become due; (b) Customer files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof; (c) Customer makes an assignment for the benefit of creditors; (d) Customer consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Customer has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Customer's assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Customer's assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control; or

11.1.5 Failure of Site Access. A breach by Customer of the License occurs and Customer fails to cure such breach within five (5) days after Customer receives written notice of such breach from Provider.

## 11.2 Provider Default.

The occurrence at any time of the following event shall constitute a "Provider Default":

11.2.1 Failure to Perform Obligations. Unless due to a Force Majeure Event excused by Section 9, the failure of Provider to perform or cause to be performed any obligation required to be performed by Provider under this Agreement or the failure of any representation and warranty set forth herein to be true and correct as and when made; provided, however, that if such failure by its nature can be cured, then Provider shall have a period of thirty (30) business days after receipt of written notice from Customer of such failure to Provider to cure the same and a Provider Default shall not be deemed to exist during such period; provided, further, that if Provider commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for one-hundred twenty (120) additional days; or

11.2.2 Bankruptcy, Etc. (a) Provider admits in writing its inability to pay its debts generally as they become due; (b) Provider files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof; (c) Provider makes an assignment for the benefit of creditors; (d) Provider consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Provider has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; (f) a

court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Provider's assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Provider's assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control.

## 12. Remedies Following Default.

### 12.1 Customer's Remedies Upon Occurrence of a Provider Default.

12.1.1 Termination. If a Provider Default has occurred and is continuing, then Customer may terminate this Agreement by providing written notice to Provider thereof, and this Agreement shall terminate and be of no further force or effect as of the date of the notice according to Section 14.1.

12.1.2 Other Rights and Remedies. If any Provider Default described under Section 11.2 has occurred and Customer has terminated this Agreement as a result thereof in accordance with the terms of Section 12.1.1 above, then, subject to Section 12.3, Provider shall pay to Customer an amount not to exceed the then-present value (discounted at the prevailing prime rate of interest as published in *The Wall Street Journal* on the day preceding the date of determination) of (a) the cash flows equal to the product of (i) the positive difference, if any, of the price per kWh for commercially available, utility-provided energy in the applicable market(s) (which shall not include related charges such as delivery, service, distribution, or taxes) minus the kWh Rate of Energy hereunder (as such kWh Rate would have been escalated over time pursuant to the terms hereof) hereof, multiplied by (ii) the number of days remaining in the term of this Agreement had it not been terminated times the expected daily number of kWh of Energy to be delivered under this Agreement, calculated by dividing the Estimated Year 1 Production set forth in Schedule B, adjusted for as-built System, by 365. Provider's payment to Customer of the amounts set forth in this Section 12.1.2 shall not in any way limit the other remedies at law or in equity that Customer may pursue as damages for Provider's breach of this Agreement; provided, however, that such damages pursued by Customer are subject to the limitation provisions of Sections 12.3 and 12.5.

### 12.2 Provider's Remedies Upon Customer Default.

In addition to any other remedies available under this Agreement or at law, if a Customer Default has occurred and is continuing, then Provider may terminate this Agreement by providing written notice to Customer thereof, and this Agreement shall terminate and be of no further force or effect as of the date of the notice according to Section 14.1 and Provider shall have the right to (a) cause Customer to pay (and Customer shall have the obligation to pay to Provider) the applicable Termination Value set forth in Column A of Schedule D and (b) enter onto the Site and remove the System in accordance with the last sentence of Section 10.2.3.



12.3 No Consequential Damages.

Nothing in this Agreement is intended to cause either Party to be, and neither Party shall be, liable to the other Party for any lost business, lost profits or revenues from others or other special or consequential damages, all claims for which are hereby irrevocably waived by Customer and Provider. Notwithstanding the foregoing, none of the payments for the Energy or any other amount specified as payable by Customer to Provider under the terms of this Agreement upon the termination of this Agreement shall be deemed consequential damages

12.4 Effect of Termination of Agreement.

Upon the Termination Date or the Expiration Date, as applicable, any amounts then owing by a Party to the other Party shall become immediately due and payable and the then future obligations of Customer and Provider under this Agreement shall be terminated (other than the indemnity obligations set forth in Section 13). Such termination shall not relieve either Party from obligations accrued prior to the effective date of termination or expiration.

12.5 Limitation of Liability.

THE TOTAL LIABILITY OF A PARTY TO THE OTHER PARTY FOR ALL CLAIMS OR SUITS OF ANY KIND, WHETHER BASED UPON THIS AGREEMENT, TORT (INCLUDING NEGLIGENCE BUT EXCLUDING THIRD PARTY TORT CLAIMS FOR PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM THE PERFORMANCE OF THIS AGREEMENT), WARRANTY, STRICT LIABILITY OR OTHERWISE, FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES OF ANY KIND WHATSOEVER ARISING OUT OF, RESULTING FROM OR RELATED TO THE PERFORMANCE OR BREACH OF THIS AGREEMENT SHALL, UNDER NO CIRCUMSTANCES, EXCEED \$1,318,009, PROVIDED THAT THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (A) LIABILITY FOR FRAUD OR WILLFUL MISCONDUCT OF ANY PERSON; (B) LIABILITY UNDER THE INDEMNIFICATION PROVISIONS OF THIS AGREEMENT FOR CLAIMS OF THIRD PARTIES FOR PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM THIS AGREEMENT; OR (C) PAYMENT OF THE KWH RATE. THE LIMITATION OF LIABILITY PROVIDED FOR HEREIN SHALL NOT BE USED TO LIMIT OR REDUCE ANY AVAILABLE INSURANCE.

13. Indemnification.

13.1 Indemnification by Provider.

Provider shall fully indemnify, save harmless and defend Customer from and against any and all costs, claims, and expenses incurred by Customer in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (a) the negligence or willful misconduct of Provider or its agents or employees or others under Provider's control in performing this Agreement, and

(b) a Provider Default under this Agreement; provided, however, that nothing in this Section 13.1 is intended to modify the limitation of Provider's liability set forth in Section 12.3 above; provided further that to the extent Customer recovers such damages, losses and expenses under any insurance policy, Customer shall reimburse any payment made by Provider under this indemnity.

13.2 Indemnification by Customer.

Without limiting the provisions of Section 8, Customer shall fully indemnify, save harmless and defend Provider or its assignees and successors from and against any and all costs, claims, and expenses incurred by Provider in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (a) the negligence or willful misconduct of Customer or its agents or employees or others under Customer's control at the Site or (b) a Customer Default hereunder; provided, however, that nothing in this Section 13.2 is intended to modify the limitation of Customer's liability set forth in Section 12.3 above; provided further that to the extent Provider recovers such damages, losses and expenses under any insurance policy, Provider shall reimburse any payment made by Customer under this indemnity.

13.3 Notice of Claims.

Any Party seeking indemnification hereunder (the "Indemnified Party") shall deliver to the other Party (the "Indemnifying Party") a notice describing the facts underlying its indemnification claim and the amount of such claim (each such notice a "Claim Notice"). Such Claim Notice shall be delivered promptly to the Indemnifying Party after the Indemnified Party receives notice that an action at law or a suit in equity has commenced; provided, however, that failure to deliver the Claim Notice as aforesaid shall not relieve the Indemnifying Party of its obligations under this Section 13, except to the extent that such Indemnifying Party has been prejudiced by such failure.

13.4 Defense of Action.

If requested by an Indemnified Party, the Indemnifying Party shall assume on behalf of the Indemnified Party, and conduct with due diligence and in good faith, the defense of such Indemnified Party with counsel reasonably satisfactory to the Indemnified Party; provided, however, that if the Indemnifying Party is a defendant in any such action and the Indemnified Party believes that there may be legal defenses available to it that are inconsistent with those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to participate in its defense of such action at the Indemnifying Party's expense. If any claim, action, proceeding or investigation arises as to which the indemnity provided for in this Section 13 applies, and the Indemnifying Party fails to assume the defense of such claim, action, proceeding or investigation after having been requested to do so by the Indemnified Party, then the Indemnified Party may, at the Indemnifying Party's expense, contest or, with the prior written consent

of the Indemnifying Party, which consent shall not be unreasonably withheld, settle such claim, action, proceeding or investigation. All costs and expenses incurred by the Indemnified Party in connection with any such contest or settlement shall be paid upon demand by the Indemnifying Party.

13.5 Survival of Provisions.

The provisions of this Section 13 shall survive the expiration or termination of this Agreement.

14. Miscellaneous Provisions.

14.1 Notices.

All notices, communications and waivers under this Agreement shall be in writing and shall be (a) delivered in person or (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested or (c) sent by reputable overnight express courier, addressed in each case to the addresses set forth below, or to any other address either of the parties to this Agreement shall designate in a written notice to the other Party:

If to Provider:

Solar Star Co Co 1, LLC  
c/o SunPower Corporation  
1414 Harbour Way South, Suite 1901  
Richmond, CA 94804  
Attention: Julie Williamson, Project Administration  
Phone:510-540-0550  
Fax:510-540-0552

If to Customer:

Contra Costa County Public Works Dept.  
Capital Projects Management Division  
Attn: Energy Manager  
40 Muir Road  
Martinez, CA 94553 Phone: 925-313-2000  
Fax: 925-313-2333

All notices sent pursuant to the terms of this Section 14.1 shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by reputable overnight, express courier, then on the next business day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third (3rd) business day following the day sent or when actually received.

14.2 Authority.

14.2.1 Provider Representations. Provider hereby represents and warrants that:

- (a) It is a Delaware limited liability company duly organized, validly existing and in good standing under the laws of the state of its formation and has all requisite limited liability company power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (b) The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary limited liability company action;
- (c) This Agreement is a legal, valid and binding obligation of Provider enforceable against Provider in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law);
- (d) To the best knowledge of Provider, as of the date of execution hereof, no governmental approval (other than any governmental approvals that have been previously obtained or disclosed in writing to Customer) is required in connection with the due authorization, execution and delivery of this Agreement by Provider or the performance by Provider of its obligations hereunder which Provider has reason to believe that it will be unable to obtain in due course on or before the date required for Provider to perform such obligations; and
- (e) Neither the execution and delivery of this Agreement by Provider nor compliance by Provider with any of the terms and provisions hereof (i) conflicts with, breaches or contravenes the provisions of the articles of formation or operating agreement of Provider or any contractual obligation of Provider or (ii) results in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default under any material contractual obligation of Provider.

14.2.2 Customer Representations. Customer hereby represents and warrants that:

- (a) It is a political subdivision of the State of California, validly existing and in good standing under the laws of the state of its formation and has all requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (b) The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary governmental action;
- (c) This Agreement is a legal, valid and binding obligation of Customer enforceable against Customer in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law);
- (d) No governmental approval (other than any governmental approvals which have been previously obtained or disclosed in writing to Provider) is required in connection with the due authorization, execution and delivery of this Agreement by Customer or the performance by Customer of its obligations hereunder which Customer has reason to believe that it will be unable to obtain in due course;
- (e) Neither the execution and delivery of this Agreement by Customer nor compliance by Customer with any of the terms and provisions of this Agreement results in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default under any contractual obligation of Customer;
- (f) Customer has not entered into any contracts or agreements with any other person regarding the provision of the services at the Site contemplated to be provided by Provider under this Agreement; and
- (g) None of the electricity to be generated by the Provider will be used to generate energy for the purpose of heating a swimming pool.

### 14.3 Assignment

#### 14.3.1 Provider Assignment.

Provider may assign this Agreement upon written notice thereof to Customer, provided that any such assignment shall be to an assignee capable of performing Provider's obligations hereunder. Provider may, without any consent of Customer, sell, transfer, assign or pledge (or grant security interests in) its rights, title and interest in this Agreement, and/or any monies due under this Agreement to a Financing Party, in connection with any financing for the ownership, acquisition, construction, operation or use of the System.

#### 14.3.2 Customer Assignment.

Customer shall not assign all or any part of this Agreement to any entity other than an affiliate of Customer without the prior written consent of the Provider, which shall not be unreasonably withheld. Customer may not assign this Agreement to any Person, including an affiliate, with a credit rating lower than that of Customer without providing matching credit support in the form of cash, letter(s) of credit, or other security reasonably acceptable to Provider. Any assignment by the Customer not permitted under this Section 14.3 shall be void ab initio. In the event that Customer decides to sell or otherwise transfer the Site or a portion thereof upon which the System is located, Customer may (i) with Provider's prior written consent, which will not be unreasonably withheld or delayed, assign this Agreement to the Site purchaser who shall assume all of Customer's obligations under this Agreement and Provider shall release Customer from any further liability associated with this Agreement, or (ii) terminate this Agreement by paying Provider the Termination Value applicable to the date of termination. Upon payment of the Termination Value, the Parties will execute all documents necessary to cause title to the System to pass to Customer as-is, where-is. The Customer does not have the present intention of making any transfer of the Site or that portion of the Site on which the System is located; provided, however, nothing herein shall prohibit Customer from making any transfer of the Site or any portion thereof on which System is located, subject to the provisions set forth above.

#### 14.4 Successors and Assigns.

The rights, powers and remedies of each Party shall inure to the benefit of such party and its successors and permitted assigns.

#### 14.5 Entire Agreement.

This Agreement (including all exhibits and schedules attached hereto) represent the entire agreement between the parties to this Agreement with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous oral and prior written agreements.

14.6 Amendments to Agreement.

This Agreement shall not be amended, modified or supplemented without the written agreement of Provider and Customer at the time of such amendment, modification or supplement.

14.7 Waivers; Approvals.

No waiver of any provision of this Agreement shall be effective unless set forth in writing signed by the Party making such waiver, and any such waiver shall be effective only to the extent it is set forth in such writing. Failure by a Party to insist upon full and prompt performance of any provision of this Agreement, or to take action in the event of any breach of any such provisions or upon the occurrence of any Provider Default or Customer Default, as applicable, shall not constitute a waiver of any rights of such Party, and, subject to the notice requirements of this Agreement, such Party may at any time after such failure exercise all rights and remedies available under this Agreement with respect to such Provider Default or Customer Default. Receipt by a Party of any instrument or document shall not constitute or be deemed to be an approval of such instrument or document. Any approvals required under this Agreement must be in writing, signed by the Party whose approval is being sought.

14.8 Partial Invalidity.

In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of Applicable Law, Provider and Customer shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Agreement (and in the event that Provider and Customer cannot agree then such provisions shall be severed from this Agreement) and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected by such adjustment and shall remain in full force and effect.

14.9 Execution in Counterparts.

This Agreement may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same Agreement.

14.10 Governing Law; Jurisdiction; Forum.

This Agreement shall be governed by and construed in accordance with the internal laws of the State of California. Customer irrevocably agrees that any action, suit or proceeding by or among Provider and Customer may be brought in whichever of the Superior Courts of the State of California, Alameda County, or the Federal Court for the Northern District of California, has subject matter jurisdiction over the dispute and waives any objection that Customer may now or hereafter have regarding the choice of forum whether on personal jurisdiction, venue, forum non conveniens or on any other ground. Customer irrevocably consents to the service

of process outside of the territorial jurisdiction of such courts by mailing copies thereof by registered or certified mail, postage prepaid, to Customer's address set forth herein with the same effect as if Customer were a resident of the State of California and had been lawfully served in such state. Nothing in this Agreement shall affect the right to service of process in any other manner permitted by law.

14.11 Attorneys' Fees.

If any action shall be instituted between Customer and Provider in connection with this Agreement, the Party prevailing in such action shall be entitled to recover from the other Party all of its reasonable costs and expenses incurred in connection with such action by arbitration or other legal proceeding, including reasonable attorneys' fees.

14.12 No Third Party Rights.

This Agreement is only for the benefit of the parties to this Agreement, their successors and permitted assigns (including any lender or lessor of Provider) and Persons expressly benefited by the indemnity provisions of this Agreement. No other Person (including, without limitation, tenants of the Site) shall be entitled to rely on any matter set forth in, or shall have any rights on account of the performance or non-performance by any Party of its obligations under, this Agreement.

14.13 Treatment of Additional Amounts.

The Parties hereto acknowledge and agree that Customer's payment of the Termination Value constitute liquidated damages and not penalties. The Parties further acknowledge that in the case of the payment of the Termination Value: (a) the amount of loss or damages likely to be incurred is incapable or is difficult to precisely estimate, (b) the amounts specified hereunder bear a reasonable proportion and are not plainly or grossly disproportionate to the probable loss likely to be incurred by Customer or Provider as the case may be and (c) the Parties are sophisticated business parties and have been represented by legal counsel and negotiated this Agreement at arm's length.

14.14 No Agency.

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.



14.15 No Public Utility.

Nothing contained in this Agreement shall be construed as an intent by Provider to dedicate its property to public use or subject itself to regulation as a “public utility” (as defined in the California Public Utilities Code or any other Applicable Law).

14.16 No Recourse to Affiliates.

This Agreement is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party.

14.17 Cooperation with Financing.

Customer acknowledges that Provider may be financing the Solar Services and the System and Customer agrees that it shall reasonably cooperate with Provider and its financing parties in connection with such financing, including (a) the furnishing of information related to the System and this Agreement, and (b) the giving of a Financing Party acknowledgment in the form attached hereto as Exhibit B (each, a “Consent”); provided, that the foregoing undertaking shall not obligate Customer to materially change any rights or benefits, or materially increase any burdens, liabilities or obligations of Customer, under this Agreement except for providing notices and additional cure periods to a Financing Party with respect to events of default by Provider under this Agreement pursuant to the terms of the Consent.

14.18 Setoff.

Except as otherwise set forth herein, each Party reserves to itself all rights, setoffs, counterclaims and other remedies and/or defenses to which it is or may be entitled, arising from or out of this Agreement.

14.19 Service Contract.

The Parties intend this Agreement to be treated as a service contract within the meaning of Section 7701(e)(3) of the Code.

15. Confidential Information.

15.1 Each Party (the “Receiving Party”) shall not use for any purpose other than performing its obligations under this Agreement, or divulge, disclose, produce, publish, or permit access to, without the prior written consent of the other Party (the “Disclosing Party”), any Confidential Information of the Disclosing Party. As used herein, the term “Confidential Information” means information or materials prepared in connection with this Agreement, designs, drawings, specifications, techniques, models, data, documentation, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans, customer, supplier or personnel names and other information related to customers,

suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets. Confidential Information does not include (a) information known to the Receiving Party prior to obtaining the same from the Disclosing Party; (b) information in the public domain at the time of disclosure by the Receiving Party; or (c) information obtained by the Receiving Party from a third party who did not receive same, directly or indirectly, from the Disclosing Party. The Receiving Party shall use the higher of the standard of care that the Receiving Party uses to preserve its own Confidential Information or a reasonable standard of care to prevent unauthorized use or disclosure of such Confidential Information. Notwithstanding anything herein to the contrary, the Receiving Party has the right to disclose Confidential Information without the prior written consent of the Disclosing Party: (i) as required by any court or other Governmental Authority, or by any stock exchange on which the shares of any Party are listed, (ii) as otherwise required by law, (iii) as advisable or required in connection with any government or regulatory filings, including without limitation, filings with any regulating authorities covering the relevant financial markets, (iv) to its attorneys, accountants, financial advisors or other agents, in each case bound by confidentiality obligations, (v) to banks, investors and other financing sources and their advisors, in each case bound by confidentiality obligations; or (vi) in connection with an actual or prospective merger or acquisition or similar transaction where the party receiving the Confidential Information is bound by confidentiality obligations. If a Receiving Party believes that it will be compelled by the law or a court or other Governmental Authority to disclose Confidential Information of the Disclosing Party, it shall give the Disclosing Party prompt written notice, and in all cases not less than five (5) business days' notice in advance of disclosure, so that the Disclosing Party may determine whether to take steps to oppose such disclosure.

16. Estoppel Certificate.

Either Party hereto, without charge, at any time and from time to time, within twenty (20) days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other relevant person, firm or corporation specified by such requesting party:

- a) If true and correct, that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;
- b) Whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and
- c) Such other information as may be reasonably requested by a Party hereto.

Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

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IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the date set forth above.

PROVIDER:

SOLAR STAR CO CO 1, LLC

By: SunPower AssetCo, LLC  
Its member

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

CUSTOMER:

CONTRA COSTA COUNTY

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

## EXHIBIT A

### SYSTEM DESIGN AND CONSTRUCTION

This Exhibit A sets forth the design, engineering and construction specifications for the System, as well as assumptions being made by the Provider regarding the existing condition at the Site, including but not limited to the building roof, building structure, ground conditions, electrical system including panels, inverter installation location, and security fencing. Capitalized terms used herein and not otherwise defined have the meaning given in the Agreement to which this exhibit is attached.

#### 1. SYSTEM LOCATION AND DESCRIPTION:

Descriptions of the site and system are located in Schedule A (Description of Site) and Schedule B (Description of System) of the Agreement.

#### 2. PROJECT SCHEDULE:

##### PORTFOLIO MILESTONES

	Tranche	Contract Approval Date	Commercial Operation Date
1000 Ward	1	6-18-2019	6/24/2020
30/40 Muir	1	6-18-2019	5/24/2020
597 Center	1	6-18-2019	6/13/2020
595 Center	2	6-18-2019	10/26/2020
50 Douglas	2	6-18-2019	9/22/2020
30 Douglas	2	6-18-2019	10/30/2020
2530 Arnold	3	6-18-2019	12/14/2020
4545 Delta Fair	3	6-18-2019	12/21/2020
4549 Delta Fair	3	6-18-2019	11/24/2020
1305 MacDonald	3	6-18-2019	12/21/2020

#### 3. SCOPE OF WORK:

##### *System Design & Scope*

##### *Design Documentation*

Provider shall provide comprehensive submittal packages for the 30% and 90% design sets as detailed below. Changes to 30% Customer approved drawings (scope lock) could result a change order. At a minimum, each submittal package shall include the elements required to convey in sufficient detail the following for each phase of the design:

	<b>Submittal Requirement</b>	<b>30% Design Set</b>	<b>90% Design Set</b>
1	Cover Sheet, with Content, Project Details, Directory, etc.	X	X
2	PV System Sizes & Production Estimates.	X	X
3	Overall Site Plan with PV Array Names, Conduit Routes, Tree/Light Removal, etc.	X	X
4	Electrical Site Plan Drawings & General Conduit Routing.	X	X
5	Electrical Single Line Diagrams.	X	X
6	Demolition Plans.		X
7	Structural Drawings.		X
8	Equipment Pad locations.	X	X
9	Mounting Details.		X
10	Signage, Trenching, Installation, and Grounding Details.		X
11	Monitoring System Details.		X
13	Construction Schedule.	Prelim	Detailed
14	Manufacturer's Cut Sheets with Equipment Specifications		X
15	Civil Drawings (if applicable)		X
16	Fire Access Plans		X
17	Carport Lighting Plans		X

Production modeling of the PV system shall accurately simulate energy production for proposed system layouts, sizes, and orientation. Provider shall be responsible for updating the production models each time significant changes are made to the proposed system designs that will impact production.

### ***Solar Electrical Equipment and Conductors***

Conductors will be aluminum or copper according to Electrical Engineer of Record's determination. AC feeder length from panel boards to equipment pad location and from equipment pad location to electrical tie-in is identified on the array layout drawings. AC feeder lengths from electrical equipment pad location to assumed point of interconnection, and length assumptions with equipment amperage ratings are shown on the single line drawing.

Transformers are 480V:12kV, non-Dry-type by manufacturer of Provider's choosing. Secondary containment is not included in the scope of the project.

### ***Battery Energy Storage System Requirements***

For sites with storage to be installed:

- 13.5' by 11' minimum required area per storage unit. Area required includes storage unit, concrete pad, and clearance zone in front of units.
- Storage unit must be located in an area free of combustible materials (nearby foliage and trees would need to be removed).
- Storage unit must be separated from public foot traffic with a fence and must be separated from vehicle traffic with bollards.
- Crane rental required to land up to 24,500 lb units. Location of units must accommodate both crane and semi-trailer truck access.
- PVS5 DAS, Auxiliary Box, Energy Storage System, and all Accuvim meters (Site meter, PV output meter, and Storage meter) must all be located such that hardlined communication lines can connect these devices to the same Local Area Network. CAT5e/6 cable is preferred means of connection between all devices, which has a 330' distance limit. Runs longer than 330' will require additional equipment to accommodate.

### ***Utility Interconnection***

Coordination of shutdown may be required with Customer and local utility. Temporary power generators are excluded. Interconnection is scheduled for a minimum of 4 hours and is assumed to be performed during off-hours with prior written approval from Customer. Additional shutdowns will be required in order to assess physical condition of Customer's switchgear.

The utility will have 24/7 access to existing electric utility meters and the utility lockable disconnect locations for all electrical interconnections related to this project.

### ***Utility Requirements***

A cost of \$172,012.58 is included for utility required electrical upgrades for the System at 30 Douglas Dr., Martinez, CA, as reflected in Pacific Gas & Electric's Supplemental Review, Notification # 114209530; additional utility-required electrical equipment upgrades or replacements are not included.

Any costs and / or schedule delays associated with unforeseen utility interconnection requirements, including but not limited to utility-owned equipment upgrades or additions, relay protection equipment external to the inverters, system impact studies, or telemetry requirements and interconnection studies are not included in this proposal.

### ***Facility Equipment***

Utility required circuit breaker coordination studies are not assumed for this project.

A short-circuit coordination study is not included for this project.

Solar system includes all standard interconnection related equipment on the Customer side of the meter, including panel circuit breakers, utility and/or visible utility lockable disconnect switches, solar metering, conduit, and wiring. Additional Customer-side protection required by the utilities above that provided by the certified inverters is not included.

If harmonic data of the site is not available, Provider shall assume that the Harmonic data are within the acceptable limits of the Institute for Electrical and Electronics Engineers (IEEE) Standard 519.

### ***Soils and Structural Foundations***

Foundation assumptions are as follows for system options:

- Drilled cast-in-place, 30” round caisson, 12’ Deep, approximately 2.5’ above grade, depending on existing topography.
- Requirements for dewatering, sub grade rock removal, or other unforeseen conditions are not included.

### ***Canopy Structure Design***

Carport Canopies are at 10 degree tilt with 11 ft clear height.

### ***Roof Conditions***

Provider assumes no upgrading of the building structures or canopies will be required to support the added live and dead loads from the photovoltaic installation and rooftop equipment, or to resist added lateral or seismic loads. Modifications to the roof system and design and construction of supports, upgrades to the building structure or platforms are not included.

Anchor and ballast counts are based on the wind load gradient method developed by Cermak Peterka Petersen, Inc, (CPP) and SunPower, based on the CPP wind tunnel testing results presented in CPP’s report “CPP7979\_SunPowerEWSsystem\_REP\_SOL\_R08” dated May 17th, 2018.

Increased anchor and ballast counts resulting from other design methods will be the responsibility of the client.

<b>Site Name</b>	<b>Anchor Count</b>
30 Muir	71
595 center	27
50 Douglas	90
1000 Ward	170
597 Center	33



Provider is not responsible for normal wear and tear associated with the installation of the solar system. Provider reserves the right to inspect the roof to verify its condition. In addition, Provider may offer recommendations to the Customer on modifications to the roof system to improve its serviceability. Customer is responsible for any and all modifications to the roof system. Modifications of roof systems fall into four categories:

- Modifications to improve roof condition / serviceability / useful life.
- Modifications required by roofing manufacturer prior to installation of PV system on their roof system. (e.g. slip sheets, strapping, etc.)
- Modifications required by Provider to make the roof a suitable substrate for the installation of PV. (e.g. air seals, batten bars, etc.)
- 3<sup>rd</sup> party engineering and insurance company requirements.
- Proposal assumes Customer-provided information accurately represents the existing site and roof conditions. This includes but is not limited to as-built drawings, roof reports, structural drawings, roof maintenance history, and roof warranty information. Failure to provide as-built drawings and structural drawings will cause schedule delay and added expense for acquisition of documentation through local authority having jurisdiction (“AHJ”). Provider is not responsible for additional costs or schedule delays.

***Drainage***

Special drainage requirements and/or drainage design and interconnection to Customer’s existing storm drain system or any other storm drain discharge system are not included.

Carport designs do not include structural roof deck for storm water collection or protection.

***Permits***

<b>Permit</b>	<b>Provider Permit</b>	<b>Customer Permit</b>	<b>Cost Allocation</b>	<b>Allotted Time following Application</b>
Building	X			
Fire	X			
Electrical	X			
Conditional Use Permit		NA		
Environmental Control		NA		
Storm Water		NA		
Soil Erosion and Sediment Control		NA		
Environmental Impact Report (CEQA)		NA		
Army Corps of Engineers		NA		
Wetlands		NA		
Water Quality		NA		
Archeological		NA		

Endangered Species		NA		
Water Rights		NA		
Mineral Rights		NA		
Redevelopment Agency		NA		
FAA Approvals		NA		

***Permit Allowance Schedule***

<b>Site</b>	<b>Allowance for Permit</b>
1000 Ward St	\$3,000
30 Douglas Dr	\$10,000
50 Douglas Dr	\$5,000
30/40 Muir Dr	\$5,000
597 Center Ave	\$2,500
595 Center Ave	\$7,000
2530 Arnold Dr	\$6,000
4545 Delta Fair Blvd	\$5,000
4549 Delta Fair Blvd	\$2,500
1305 Macdonald	\$3,000

All other permits/approvals are excluded.

Provider includes durations of 50 days for procuring permit and regulatory approvals (per project). Provider will not be responsible for construction delays caused by permit and approval requirements from local jurisdictions or regulatory review bodies. Any delays in procuring permits will result in a day-for-day construction schedule extension.

***Shading***

The design is based on existing visual conditions on site. Removal of trees or other obstructions to install the solar arrays and system components is included as reflected in the Tier 1 array layouts. Trees and/or other obstructions identified for removal or trimming by Customer must be removed or trimmed prior to substantial completion or performance expectations/guarantees will require adjustment which will be handled as a change to the contract. At Substantial Completion an as-built shade study and performance simulation will be completed to ensure accuracy of initial shading assumptions.

### ***Painting***

Galvanization of canopy columns and primary beams only is included. All other metallic materials are either factory-finished or non-corrosive.

Painting of wall-mounted conduits is not included.

### ***Landscaping***

Site landscaping (e.g. plant restoration or long term weed abatement) is not included.

Irrigation repair and reconfiguration caused by foundation or underground construction is not included.

### ***Fencing***

A 6-0' galvanized, 9 gauge, 2" mesh fencing and chain link fence-with gate around perimeter electrical equipment pad locations is included. Special provisions for privacy slats, special hardware, lock sets, small fabric, etc. are not included. 4" bollards are included only in areas subject to vehicle impact. Additional bollards required by utility or other entities are excluded.

### ***Labor***

#### ***Project Labor Agreement***

Provider shall cause its project contractor to enter into Customer's project labor agreement among Customer, the project contractor, and all subcontractors thereof working on the project (the "PLA").

#### ***Overtime and special shift requirements***

Overtime and special shift requirements are not included, based on schedule submitted with this proposal, except for the interconnection work if shutdown is required. Project hours are based on Monday through Friday 7am – 5pm.

#### ***Prevailing Wages***

Provider shall pay prevailing wages for the project per the PLA and industrial relations requirements of project location.

#### ***Diversity Requirements***

Provider shall comply with Contra Costa County's Construction Outreach Program.

### ***Indirect Construction Costs***

#### ***Taxes and fees***

Taxes or fees, other than permit fees and sales tax, are not included.

### ***Bonds***

Prior to the Effective Date of the Agreement to which this Exhibit A is attached, Provider shall deliver to Customer for approval good and sufficient bonds with sureties, in amounts specified in Section 12.5 (Limitation of Liability) of the Agreement guaranteeing its faithful performance of the Agreement and its payment for all labor and materials thereunder.

### ***Site & Construction Conditions***

#### ***Access***

Design assumes each project site will be constructed in a single phase, set up of construction fencing at beginning of mobilization and removed when construction is completed. Extra time and labor for moving fences to “phase” construction in efforts to minimize parking impacts will have impacts in cost and schedule and will be calculated as a change order.

Customer will provide Site access to Provider to perform all work pursuant to the License granted in the Agreement. Provider will perform all work during regular business hours according to the PLA. Extra time or personnel constraints due to site security beyond daily signing in by workers on a sign in sheet i.e. badging, background checks, tool inventory checks, etc.—is not included.

Provider will be provided a sufficient area for staging materials and locating temporary facilities such as cranes, fork lifts, scaffolding, staintowers, construction trailers, portable toilets and dumpsters.

Existing roads will be capable of handling all required construction equipment such as drilling rigs, concrete trucks, delivery trucks, cranes, and all other equipment necessary to complete the work. Provider will not be responsible for any damage to existing roads, parking lots or playgrounds resulting from normal construction operations and activities.

#### ***Use of Facilities***

On-site water and power will be available for construction with no restrictions and at no charge to Provider. If a Customer initiated power shut down has duration over 4 hours and effects normal construction operations, Provider can rent and install a temporary generator and submit associated costs to Customer for reimbursement. Water quality shall be sufficient for use in dust control, as necessary, and be suitable for Provider’s standard concrete mix design.

#### ***Special handling of site materials***

Testing for removal and disposal of any existing hazardous waste materials, contaminated soils, or any other unforeseen site conditions that require special handling are not included.

#### ***Site utilities and hazards***

Changes resulting from utilities, right of ways, easements, and/or hazards—underground or above ground—or any undocumented building upgrades are not included.

Documented utilities and building upgrades are considered as part of this proposal if as-builts are provided to Provider prior to contract execution in order to confirm locations of these possible hazards. Customers shall supply Provider with a current Title Report with plotted easements, encumbrances, and rights-of-way at all project site locations.

### ***Security and Lighting***

Proposal assumes all parking lot light standards in direct conflict with installation of photovoltaic parking canopies will be removed by Provider. Proposal also assumes that the existing lighting circuits, for those removed parking lot light standards, can be re-used for photovoltaic parking canopies lighting system and that those existing circuits have ample current carrying capacity to provide required lighting at parking canopies, per jurisdictional code requirements. PV canopies located in areas where no existing lights are present will not include lighting unless the Customer requests this for an additional cost.

Temporary lighting during construction is excluded.

New lighting circuit installation is excluded from this proposal as well as any required timing circuit reconfiguration, lighting controllers, relays, or new panel boards. Lighting design and/or installation beyond the footprint of the photovoltaic parking canopies is not included in this proposal. Replacement of existing light standards is not included. Proposal includes LED fixtures for lighting under structures.

Additional security systems or infrastructure are not included in this proposal

### ***Special Conditions***

Proposal assumes modifications and/or reconfiguration of the existing parking lots will not be required to accommodate installation of Provider's photovoltaic parking canopy.

Assumes existing islands in parking lot to remain at area of new carport structure. Proposal excludes any re-striping of the parking lot/hard-court areas, unless specifically related to the construction of the photovoltaic parking canopies, or specifically described in the RFP.

While special care will be taken to locate existing underground utilities (underground survey) and locate carport structures with minimum conflicts, relocation of existing underground utilities due to carport foundations is not included.

Proposal excludes requirements for accessibility upgrades and accessibility design around the photovoltaic parking canopy structures and assumes that current parking lot layout has been reviewed and approved by AHJ and built and closed at the AHJ. If the architect of record recommends addition of new accessible parking stalls under the solar canopies, grade change to meet code, changed path of travel and/or new canopies over existing accessible stalls, design and construction costs will be addressed via Change Order.

Proposal excludes design or installation of any required additional fire hydrants or fire protection apparatuses as required by local first responders or Fire, Life/Safety professionals responsible for review and approval of the design for this project.

Architectural enhancements to the photovoltaic parking canopy structures or ground and roof arrays and mounting systems are not included.

At the detention center located at 1000 Ward in Martinez, the project estimate is based on utilizing existing conduit and equipment from the previous pv installation. The ability utilize existing conduit will be verified during the design phase.

### ***Testing and Inspections***

Provider assumes all Special Inspections/Testing shall be paid for and contracted by the Customer.

### ***Weather conditions***

Provider assumes standard weather patterns and site conditions for planning the project schedule. Instances of excessive climate, weather (greater than the most adverse conditions in the last 3 years) or natural disasters may result in delays and/or unplanned costs (i.e. additional labor, shipping, storage, and logistics costs) which will be the responsibility of the Customer.

### ***Commissioning, Monitoring, Operations & Maintenance***

#### ***Commissioning***

Proposal assumes commissioning requirements for this project is only for the Photovoltaic and energy storage systems. Proposal does not include other building system commissioning costs not related to our work (i.e. HVAC, Plumbing, Fire Alarm, etc.).

**EXHIBIT B**  
**FORM OF FINANCING PARTY ACKNOWLEDGMENT**

*[This Form of Consent contemplates a Sale-Leaseback of the System between the Provider and Provider's Lender and Provider's eventual lender may request changes]*

This CONSENT AND AGREEMENT (this "Consent") dated as of [●], 201 is entered into among (i) Contra Costa County, a political subdivision of the State of California (the "Customer"), (ii) Solar Star Co Co 1, LLC, a limited liability company duly organized and existing under the laws of the State of Delaware (the "Provider"), and (iii) [●], a [●] duly organized and existing under the laws of the State of [●] (together, with its successors in such capacity, the "System Lessor").

WHEREAS, the Provider intends to develop, install, own, operate and maintain a [\_\_\_\_\_] MW [**ground-mounted/rooftop**] photovoltaic solar electric generating facility to be located in [\_\_\_\_\_] (the "Project");

WHEREAS, the Provider and the Customer entered into that certain Power Purchase & Storage Services Agreement, dated as of [●], 2019 (as amended, amended and restated, modified or supplemented from time to time, the "Assigned Agreement");<sup>1</sup>

WHEREAS, the Project will be sold by the Provider to the System Lessor pursuant to that certain Participation Agreement (as amended, the "Participation Agreement") dated as of the date hereof, among the Provider, the System Lessor, [●], not in its individual capacity but as owner trustee, and [●] ("Owner Participant");

WHEREAS, the System Lessor will lease the Project back to the Provider pursuant to that certain Lease Agreement, a related Project Schedule and a Certificate of Acceptance (as amended, the "Lease Agreement") dated as of the date hereof, between the System Lessor and the Provider;

WHEREAS, the Provider will grant the System Lessor a first priority security interest in and to all of the Provider's assets, including the Assigned Agreement, pursuant to a security agreement in form and substance acceptable to the System Lessor (as amended, amended and restated, modified or supplemented from time to time, the "Security Agreement"); and

WHEREAS, it is a condition precedent to the Owner Participant's obligation to make its investment in the System Lessor and for the System Lessor to acquire the Project under the Participation Agreement and lease the Project to the Provider under the Lease Agreement that the Customer execute and deliver this Consent.

NOW, THEREFORE, as an inducement to the Owner Participant to make its investment in the System Lessor and for the System Lessor to acquire the Project under the Participation Agreement and lease the Project to the Provider under the Lease Agreement, and in consideration

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<sup>1</sup> NTD: Can be expanded to include any additional agreements to which the Customer is a party.

of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

**1. CONSENT TO ASSIGNMENT, ETC.**

(a) Consent to Assignment. The Customer (i) acknowledges that the Provider and the System Lessor have entered into the Participation Agreement and the Owner Participant's obligation to make its investment in the System Lessor and for the System Lessor to acquire the Project under the Participation Agreement and lease the Project to the Provider under the Lease Agreement will be made in reliance upon the execution and delivery by the Customer of the Assigned Agreement and this Consent, (ii) consents in all respects to the pledge and assignment to the System Lessor of all of the Provider's right, title and interest in, to and under the Assigned Agreement pursuant to the Security Agreement, and (iii) acknowledges the right, but not the obligation, of the System Lessor or the System Lessor's designee, in the exercise of the System Lessor's rights and remedies under the Lease Agreement, the Security Agreement, and related documents to make all demands, give all notices, take all actions and exercise all rights of the Provider in accordance with the Assigned Agreement, and agrees that in such event the Customer shall continue to perform its obligations under the Assigned Agreement; provided that in the event, with respect to the Assigned Agreement, there exists a conflict between any notice given or action taken by the System Lessor and any notice given or action taken by the Provider, such conflict shall be resolved in favor of the notice given or the action taken by the System Lessor.

(b) Substitute Owner. The Customer agrees that, if the System Lessor notifies the Customer that an event of default under the Lease Agreement has occurred and is continuing and that the System Lessor has exercised its rights (i) to have itself or its designee substituted for the Provider under the Assigned Agreement, (ii) to acquire or have its designee or assignee acquire the Provider, or (iii) to sell, assign, transfer or otherwise dispose of the Assigned Agreement to a third party, including in a judicial or non-judicial foreclosure sale, then the System Lessor, the System Lessor's designee or such third party (each, a "Substitute Owner") shall be substituted for the Provider under the Assigned Agreement and, in such event, the Customer will (x) recognize the Substitute Owner as its counterparty to the Assigned Agreement, (y) take any actions and execute any documents, agreements or instruments reasonably necessary to effect such substitution, and (z) continue to perform its obligations under the Assigned Agreement in favor of the Substitute Owner pursuant to the terms hereof and thereof.

(c) Right to Cure.

(i) Notwithstanding anything to the contrary contained in the Assigned Agreement, the Customer shall not exercise any right it may have under the Assigned Agreement, at law or in equity, to cancel, suspend or terminate the Assigned Agreement or any of its obligations under the Assigned Agreement, as the result of any default or other action or omission of the Provider in the performance of any of its obligations under the Assigned Agreement, or upon the occurrence or non-occurrence of any event or condition under the Assigned Agreement that would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable the Customer to terminate or suspend its obligations or exercise any other right or remedy under the Assigned Agreement or under applicable law (hereinafter an "Assigned Agreement Default"), until it first gives prompt written notice of such Assigned Agreement



Default to the System Lessor and the Owner Participant and affords the System Lessor and the System Lessor's respective successor, assignee and/or designee a period of at least ninety (90) days (or, if such default is a payment default, forty-five (45) days) to cure such default, commencing from the later to occur of (x) the System Lessor's and the Owner Participant's receipt of such notice, and (y) the expiration of any notice periods or cure periods provided for in the Assigned Agreement; provided, however, that if (1) an event of default under the Lease Agreement has occurred and is continuing, the System Lessor has exercised its rights to foreclose on the Project as a result thereof and possession of the Project is necessary to cure any such non-monetary default, then, so long as the System Lessor or the System Lessor's respective successor, assignee and/or designee is diligently pursuing such foreclosure proceedings, the time periods specified in this Section 1(c) for curing an Assigned Agreement Default shall be extended for the time taken to complete foreclosure proceedings, and (2) any such party is prohibited from curing any such Assigned Agreement Default by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding involving the Provider, then the time periods specified in this Section 1(c) for curing an Assigned Agreement Default shall be extended for the period of such prohibition.

(ii) No such cancellation, suspension or termination of the Assigned Agreement by the Customer shall be binding upon the System Lessor without the notice and extended cure period specified in this Section 1(c). Any dispute that may arise under the Assigned Agreement notwithstanding, the Customer shall continue performance under the Assigned Agreement and resolve any dispute without discontinuing such performance until the lapse of the notice and extended cure period specified in this Section 1(c).

(d) No Termination, Assignment or Material Amendments. The Customer shall not enter into any consensual cancellation or termination of the Assigned Agreement (except with respect to termination in the event of a default by the Provider, subject to the limitations and extended cure periods provided for in Section 1(c)), or assign, novate or otherwise transfer any of its right, title or interest thereunder or consent to any such assignment or transfer by the Provider without, in each such case, the written consent of the System Lessor. The Customer shall not enter into or agree to any amendment, supplement, assignment or other modification to, or benefit from any waiver under, the Assigned Agreement without the prior written consent of the System Lessor.

(e) Replacement Agreement. In the event that the Assigned Agreement is rejected or otherwise terminated as a result of any bankruptcy or insolvency proceeding affecting the Provider, the Customer shall, at the option of the System Lessor or the System Lessor's respective successor, assignee and/or designee, enter into a new agreement with the System Lessor or any Substitute Owner (or its transferee or other nominee that owns or leases the Project) having terms substantially the same as the terms of the Assigned Agreement. Thereafter, references in this Consent to the "Assigned Agreement" shall be deemed to refer to such new agreement.

(f) No Liability. The Customer acknowledges and agrees that none of the System Lessor, or the System Lessor's respective successor, assignee and/or designee or the Owner Participant shall have any liability or obligation under the Assigned Agreement as a result of this Consent, the Security Agreement, the Lease Agreement or otherwise, nor shall the System Lessor or the System Lessor's respective successor, assignee and/or designee be obligated or required to (i) perform any of the Provider's obligations under the Assigned Agreement, except, in the case of

the System Lessor or the System Lessor's respective successor, assignee and/or designee, during any period in which the System Lessor or the System Lessor's respective successor, assignee and/or designee is a Substitute Owner pursuant to Section 1(b), in which case the System Lessor or other Substitute Owner shall not be liable for acts or omissions of the Provider and the obligations of such Substitute Owner shall otherwise be no more than those of the Provider under the Assigned Agreement, or (ii) take any action to collect or enforce any claim for payment assigned under the Security Agreement or any related document.

(g) Delivery of Notices. The Customer shall deliver to the System Lessor and the Owner Participant, concurrently with the delivery thereof to the Provider, a copy of each notice, request or demand given by the Customer pursuant to the Assigned Agreement.

(h) Acknowledgements. The Customer agrees to execute such acknowledgements or other similar instruments as the System Lessor may reasonably request in connection with the transactions contemplated by this Consent.

## **2. PAYMENTS UNDER THE ASSIGNED AGREEMENT**

(a) Payments. The Customer will pay all amounts payable by it under the Assigned Agreement, if any, in lawful money of the United States of America, in immediately available funds and in the manner required by, and subject to the terms and conditions of, the Assigned Agreement, directly into the account specified on Exhibit A hereto, or to such other person or account as may be specified from time to time by the System Lessor to the Customer in writing.

(b) No Offset, etc. All payments required to be made by the Customer under the Assigned Agreement shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever.

## **3. REPRESENTATIONS AND WARRANTIES OF THE CUSTOMER**

The Customer makes the following representations and warranties to the System Lessor, the Provider and the Owner Participant as of the date hereof, which shall survive the execution and delivery of this Consent and the Assigned Agreement and the consummation of the transactions contemplated hereby and thereby:

(a) Organization; Power and Authority. The Customer is a political subdivision of the State of California, and is duly qualified, authorized to do business and in good standing in all jurisdictions where it is required to be so qualified and authorized to do business, and has all requisite power and authority to enter into and to perform its obligations under this Consent and the Assigned Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

(b) Authorization. The execution, delivery and performance by the Customer of this Consent and the Assigned Agreement have been duly authorized by all necessary action on the part of the Customer and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of (i) the Customer, or (ii) any other person or entity, except approvals or consents which have previously been obtained.

(c) Execution and Delivery; Binding Agreements. Each of this Consent and the Assigned Agreement is in full force and effect, has been duly executed and delivered on behalf of the Customer and constitutes the legal, valid and binding obligation of the Customer, enforceable against the Customer in accordance with its terms except as the enforceability hereof or thereof may be limited by (i) bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights generally, and (ii) general equitable principles (whether considered in a proceeding in equity or at law).

(d) Litigation. There is no legislation, litigation, action, suit, proceeding or investigation pending or (to the best of the Customer's knowledge after due inquiry) threatened against the Customer before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate, (i) could adversely affect the performance by the Customer of its obligations under this Consent or the Assigned Agreement, or that could modify or otherwise adversely affect the Approvals (as defined in Section 3(f)), (ii) questions the validity, binding effect or enforceability of this Consent or the Assigned Agreement, any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby, or (iii) could have a material adverse effect upon (x) the value, validity, perfection or enforceability of the liens granted to the System Lessor under the Security Agreement and other security documents, or (y) the ability of the System Lessor to enforce any of its rights and remedies under the Assigned Agreement or this Consent.

(e) No Conflict. The execution and delivery of this Consent and the Assigned Agreement and the performance by the Customer under this Consent and the Assigned Agreement will not violate, result in a breach of, default under or conflict with (i) any law, rule, regulation, order, permit or decree applicable to the Customer, (ii) its organizational documents, or (iii) the terms of any other agreement binding on the Customer.

(f) Government Consent. No consent, order, authorization, waiver, approval or any other action, or registration, declaration or filing with, any person, board or body, public or private (collectively, the "Approvals"), is required to be obtained by the Customer in connection with the execution, delivery or performance of this Consent, the Assigned Agreement or the consummation of the transactions contemplated hereunder and thereunder, except any Approvals which have previously been obtained.

(g) No Default or Amendment. Neither the Customer nor, to the Customer's knowledge after due inquiry, the Provider or any other party to the Assigned Agreement is in default of any of its obligations thereunder (or has claimed force majeure, emergency, or any other excuse for performance thereunder which is still ongoing as of the date hereof). The Customer has no existing counterclaims, offsets, defenses, or claims for change orders against the Provider under the Assigned Agreement. To the Customer's knowledge, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either the Customer or the Provider to terminate or suspend its obligations (or the performance of such obligations) under the Assigned Agreement. The Assigned Agreement has not been amended, modified or supplemented in any manner other than as indicated above.

(h) No Previous Assignments. The Customer has no notice of, and has not consented to, any previous assignment of all or any part of its right, title or interest in, to or under the Assigned Agreement.

(i) **Purchase Option.** The Customer has not taken any official action requiring or authorizing the exercise of any purchase option available to it under the Assigned Agreement, has not decided whether or not it will exercise any such purchase option, and is under no legal or economic compulsion to exercise any such purchase option; provided, however, nothing herein shall prohibit the Customer from exercising any purchase option under the Assigned Agreement when it becomes exercisable in accordance with its term and such exercise shall not be deemed to be a breach of this representation and warranty.]

(j) Liens; Mortgages. The Customer has no knowledge of any existing lease, mortgage, security interest or other interest in or lien upon the [Premises], which could attach to the Project as an interest adverse to the System Lessor's interest therein.

Representations and Warranties. All representations, warranties and other statements made by the Customer in the Assigned Agreement were true and correct in all material respects as of the date when made and, except for those that by their terms speak as of a specific date, are true and correct in all material respects as of the date hereof.

#### **4. ADDITIONAL PROVISIONS<sup>2</sup>**

(a) **Commercial Operation Date.** The Commercial Operation Date is \_\_\_\_\_.

(b) **Use of Electricity.** None of the electricity to be sold under the Assigned Agreement will be used to generate energy for the purpose of heating a swimming pool.

(c) **Project.** The Customer has approved the Project as installed at the [Premises].

(d) **Access Rights.** The System Lessor and the System Lessor's respective successors, assignees and/or designees shall have the same rights as the Provider to access the Project in order to install, operate, maintain and remove the Project as the right accorded to the System Lessor under the Lease Agreement and the Security Agreement.

(e) **Notice of Ownership.** The Customer will use commercially reasonable efforts to place its successors, assigns and lien holders on notice of the ownership of the Project by the Provider or the System Lessor, the existence of the security interest, and the fact that the Project is not part of the [Premises] or a fixture thereof, as necessary and appropriate to avoid confusion or adverse claims.

(f) **Amendments.** The Customer acknowledges that, under the Provider's financing arrangements, the Provider is not permitted to agree to an amendment or assignment of the Assigned Agreement without prior written consent of the System Lessor.]

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<sup>2</sup> NTD: Additional provisions to be added to address specific matters contained in the PPA.

**5. MISCELLANEOUS**

(a) Applicable Law; [Submission to Jurisdiction]. THIS CONSENT, AND ANY INSTRUMENT OR AGREEMENT REQUIRED HEREUNDER (TO THE EXTENT NOT EXPRESSLY PROVIDED FOR THEREIN), SHALL BE GOVERNED BY, AND CONSTRUED UNDER, THE LAWS OF THE STATE OF CALIFORNIA, APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE AND WITHOUT REFERENCE TO CONFLICTS OF LAWS.

(b) [Reserved.]

(c) Notices. All notices and other communications hereunder (i) shall be in writing, (ii) shall be effective upon actual receipt thereof by the party or parties to whom such notice is addressed, except that any communication or notice so transmitted by telecopy or electronic mail shall be deemed to have been validly and effectively given on the day (if a business day and, if not, on the next following business day) on which it is transmitted if transmitted during normal business hours of the recipient, and if transmitted after that time, on the next following business day, in each case as evidenced by transmittal confirmation received by the transmitter, (iii) shall be delivered by hand or overnight courier service or mailed by certified or registered mail, sent by facsimile or via electronic mail, and (iv) shall be directed as follows:

If to the Customer:	[_____] [_____] [_____] Attention: [_____] Telephone: [_____] Facsimile: [_____] Email: [_____]
If to the Provider:	[●]
If to the System Lessor:	[●]

The above parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent.

(d) Amendment, Waiver. Neither this Consent nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the Customer, the Provider and the System Lessor.

(e) Third Party Beneficiary. The Owner Participant shall be an express third-party beneficiary of this Consent. The Owner Participant shall be entitled to enforce the rights of the System Lessor hereunder.

(f) No Waiver; Remedies Cumulative. The waiver of any right, breach or default under this Consent by any party must be made specifically and in writing. No failure or delay on the part of the System Lessor in exercising any right, power or privilege hereunder and no course of dealing between the Customer and the System Lessor shall operate as a waiver thereof; nor shall any single

or partial exercise of any right, power or privilege hereunder preclude any other exercise, or the further exercise, of any other right, power or privilege hereunder. No notice to or demand upon any party will entitle such party to any further, subsequent or other notice or demand in similar or any other circumstances. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies that the System Lessor would otherwise have.

(g) Counterparts. This Consent may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered, including by e-mail or other electronic transmission, shall be deemed an original, but all of which shall together constitute one and the same instrument.

(h) Headings Descriptive. The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

(i) Severability. In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(j) Successors and Assigns. This Consent shall be binding upon the parties hereto and their permitted successors and assigns and shall inure to the benefit of the parties, their designees and their respective permitted successors and assigns; provided, however, that no party or its respective successor or assign shall assign any of its interest in this Consent except in connection with an assignment of its interests in the Assigned Agreement and then only to the same person(s) or entity(ies) to which its interest in the Assigned Agreement is so assigned.

(k) Survival. All agreements, statements, representations and warranties made by the Customer herein shall be considered to have been relied upon by the System Lessor and the Owner Participant and shall survive the execution and delivery of this Consent.

(l) Conflicts. In the event of a conflict between any provision of this Consent and any provision of the Assigned Agreement, the provisions of this Consent shall prevail.

(m) Further Assurances. Each party hereto hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

[SIGNATURE PAGES FOLLOW]

**IN WITNESS WHEREOF**, the parties hereto have caused this Consent to be executed by their respective officers as of the date first above written.

[\_\_\_\_\_]   
 as the Customer

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

[\_\_\_\_\_]   
 as the Provider

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

[●],   
 as the System Lessor

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

**Payment Instructions**

Accounts Bank	
ABA Number	[_____] <sup>3</sup>
Account Number	[_____]
Account Name	[_____]
Reference	[_____]

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<sup>3</sup> Account information to be confirmed and included.



## EXHIBIT C

### SYSTEM PERFORMANCE GUARANTEE (the “Guarantee”)

#### ARTICLE I. ADDITIONAL DEFINED TERMS

**Actual Generation** means, for each Guarantee Year during the Term and with respect to the System, the System’s alternating current or “AC” electricity production in kilowatt-hours (“kWh”) as measured under Section 3.02.

**Annual Deficit** has the meaning set forth in Section 3.01.

**Annual System Performance Report** means the report that summarizes annual system performance in kWh and includes calculations for Weather Adjustment and True-up Period calculations.

**Avoided Energy Price per kWh** means the amount that the Customer will be paid by Provider for each Kilowatt-hour as set out in Appendix B (Avoided Energy Price) of this Guarantee.

**Data Acquisition System** or **DAS** means Provider’s system that displays historical meteorological and production data over an Internet connection and consists of hardware located on-Site and software housed on Provider’s DAS server. The DAS measures and logs, at a minimum, the following parameters on a 15-minute average basis at the Site: actual AC electricity production of the System (in kWh) and solar irradiance (in W/m<sup>2</sup>).

**Expected Energy** means, for the System in a specified Guarantee Year, the kilowatt hours for the System set forth on Appendix A (Expected Energy) of this Guarantee.

**Excused Performance Event** means:

- Force Majeure Event;
- Impingements on solar access by structures or activities on neighboring sites or by facilities that are beyond the control of either Party;
- Externally caused outages, including:
  - Warranty Exclusions: hours during any period when the System or any portion thereof is off-line due to an event that would constitute an exclusion under any applicable manufacturer’s, System, workmanship or other applicable warranty.
  - Network Disturbance Hours: hours during any period when a fluctuation in the utility network parameters (e.g., a frequency or voltage variation) result in the disconnection of the inverters or the System from the utility network and prevented energy from being evacuated from the System.
  - Network Outage Hours: hours during any period when a failure in the distribution network or in the connection infrastructure prevented energy from being evacuated from the System.
  - Third-Party Equipment Servicing Hours: equipment or System outage hours during any period that result from service issues related to non-Provider equipment or delays in procuring non-Provider replacement parts.

- Customer-Caused Hours: hours during any period when the equipment or the System is off-line due to Customer-required outages or Customer-caused delays in Site access.
- Major Maintenance Hours: hours during any period when the equipment or the System is off-line due to Customer-required major maintenance work.

**Guaranteed Level** means 90% of the Expected Energy for a Guarantee Year for the System.

**Guarantee Year** means each successive 12-month period during the Term commencing on the Commercial Operation Date.

**PVSim** means the software program utilized by Provider to predict the amount of energy that the System will produce in an average year which has the following characteristics: (1) based on PVFORM, the photovoltaic simulation software produced by Sandia National Laboratories and the US Department of Energy, (2) all photovoltaic characteristics are modeled, (3) all ancillary array losses are taken into account and (4) PVSim simulations use either measured data or typical meteorological year files from Meteonorm and NREL.

**SEMMY** or “Simulated Energy in a Measured Meteorological Year”, means, with respect to any Guarantee Year, Year 1 AC Energy output of the System simulated by PVSim using measured average hourly irradiance, wind speed, and air temperature as recorded by the Data Acquisition System, holding all other inputs equal to those used in calculating SETMY.

**SETMY** or “Simulated Energy for a Typical Meteorological Year”, means the Year 1 AC Energy output of the System simulated by PVSim using average hourly irradiance, wind speed, and air temperature data contained within the Weather File.

**True-up Period** means each successive one (5)-year period during the Term commencing on the first day of the Term.

**Weather Adjustment** means the ratio described in Section 3.01. Section 3.01

**Weather File** means the typical meteorological year data set specified for the System set forth on Appendix C (Weather File) of this Guarantee.

## **ARTICLE II. PERFORMANCE GUARANTEE CONSIDERATION**

### **Section 2.01 Consideration**

The Parties agree that the consideration set forth in Section 5.1 of the Agreement includes adequate consideration for the terms, conditions and provisions of this Guarantee.

## **ARTICLE III. PERFORMANCE GUARANTEE**

Provider guarantees to Customer that the Actual Generation of the System during any Guarantee Year, subject to the limitations, terms and conditions stated in this Guarantee shall not be less than the Guaranteed Level.

### **Section 3.01 Guaranteed Output Calculations.**

Provider shall calculate the Annual Deficit for the System for each Guarantee Year during the Term:

- (a) Annual Deficit = (Expected Energy x Guaranteed Level) x Weather Adjustment – Actual Generation

Where the Weather Adjustment ratio is as follows:

Simulated Energy in a Measured Meteorological Year (SEMMY)

Simulated Energy for a Typical Meteorological Year (SETMY)

For each Guarantee Year, within thirty (30) days after the end of such Guarantee Year, Provider shall calculate the Annual Deficit for the System. Customer has the right to access all data and information supporting Provider's calculation of the Annual Deficit.

- (b) Guarantee Payment Reimbursement. At the end of each True-up Period:
- (i) if the sum of Annual Deficits > 0, then Provider shall pay to Customer an amount equal to the cumulative product of (y) the Annual Deficits and (z) the Avoided Energy Price per kWh (a "Guarantee Payment");
  - (ii) Provider shall promptly notify Customer of any Guarantee Payment due. Provider shall make Guarantee Payments within thirty (30) days of the date of the notice provided in the first sentence of this paragraph.

### **Section 3.02 Actual Generation Measurement.**

Provider shall measure Actual Generation for the System for each Guarantee Year as follows:

- (a) **Initial Output Data Collection.** During the Term, Provider will collect energy output data using its Data Acquisition System. For each Guarantee Year, Provider will sum the daily kWh output for the System provided by the DAS to calculate the Actual Generation for the System for such Guarantee Year.
- (b) **Equipment Calibration and Replacement.** Provider may request to have the meteorological equipment independently calibrated or replaced at its own expense every eighteen (18) to thirty (30) months. Provider shall notify the Customer of the scheduled calibration date and time no less than 30 days prior, and shall provide the Customer written proof of calibration or replacement.
- (c) **Contingency for Equipment Failure.** In the event of hardware, communication, or other failure affecting the DAS, Provider will make commercially-reasonable efforts to resolve the failure in a timely manner. In the event that data is lost, Actual Generation for each affected System shall be adjusted to compensate for such lost data as follows:
  - (i) In lieu of lost meteorological data, Provider will utilize such data obtained from a nearby meteorological station that Provider monitors and selects for such purpose.
  - (ii) In lieu of lost electricity data, Provider will utilize the cumulative data from System meter readings to calculate the electricity generated by each affected System during the missing interval. In the event that data

from the System meter is inaccurate or missing, Provider will simulate electricity production during the missing interval utilizing measured meteorological data and PVSIM. The simulated electricity production during the missing interval will be added to the Actual Generation for each affected System for the subject Guarantee Year.

#### **ARTICLE IV. CUSTOMER RESPONSIBILITIES**

##### **Section 4.01 Customer's Failure to Uphold Responsibilities.**

Provider shall promptly notify Customer of any breach ("Out of Compliance Letter") of (i) Customer's obligation to pay Provider for the Solar Services pursuant to the Agreement and (ii) any Customer obligations pursuant to the Agreement that directly (A) hinder the amount of Energy delivered by the System or (B) degrade the functionality of the System. Upon Customer's cure of all failures described in an Out of Compliance Letter, Provider will notify Customer ("In Compliance Letter") that Customer is complying with Customer's Responsibilities. For any period between the issuance of an Out of Compliance Letter and of an In Compliance Letter (a "Noncompliance Period"), to the extent that Customer's non-compliance actually impacts the Actual Generation of the System, any Actual Generation from such affected Systems in such month(s) shall be disregarded in the calculation of Annual Deficits for such Systems under Section 3.01, and the Expected Energy for any affected System in any Guarantee Year in which there is a Noncompliance Period shall be reduced by a proportionate amount.

#### **ARTICLE V. EXPECTED ENERGY ADJUSTMENT**

##### **Section 5.01 Adjustment of Expected Energy.**

If, and to the extent, any of the following events results in a change in the production of electricity by the System, Expected Energy for that System shall be adjusted correlatively for the period of such change:

- (a) Subject to Provider's obligations under any warranty it provides in connection with the Systems (including any Provider obligation, with respect to the System, in connection with any requirements under the California Solar Initiative program), a material portion of the components of the System fails, and the manufacturer of such component(s) refuses, or otherwise fails to honor its corresponding warranty;
- (b) Customer fails to perform any of its obligations under the PPA – such as obligations related to maintaining the System's interconnection to the local utility grid or limiting outages (as defined in the Agreement) – and such failure reduces the amount of electricity that the System can generate or deliver.
- (c) There is any failure of the System to perform caused by legislative, administrative or executive action, regulation, order or requisition of any federal, state or local government, local utility or public utilities commission;
- (d) There is an Excused Performance Event; or

- (e) Adjustment to the Expected Energy, or a reduction in the amount of Energy that Provider is obligated to deliver, is permitted or required under the Agreement.

**Section 5.02 Notification of Changes to Expected Energy.**

If Provider determines that any changes to Expected Energy for the System are required based on an event or events described in Section 5.01, then Provider shall notify the Customer, in writing, of the basis for its determination, and Provider shall either provide revised definitions of Expected Energy in exhibits that, upon mutual agreement of the Parties, which shall not be unreasonably denied or delayed, shall replace the current exhibits to this Guarantee, or specify a date by which it shall do so.

### Appendix A – Expected Energy

<b>Guarantee Year</b>	<b>Expected Annual kWh</b>
1	737,856
2	736,012
3	734,172
4	732,336
5	730,505
6	728,679
7	726,858
8	725,040
9	723,228
10	721,420
11	719,616
12	717,817
13	716,023
14	714,233
15	712,447
16	710,666
17	708,889
18	707,117
19	705,349
20	703,586
21	701,827
22	700,072
23	698,322
24	696,576
25	694,835
<b>Total</b>	<b>17,903,480</b>

### Appendix B – Avoided Energy Price

<b>Guarantee Year</b>	<b>Avoided Energy Price per kWh</b>
1	\$0.0048
2	\$0.0049
3	\$0.0051
4	\$0.0052
5	\$0.0054
6	\$0.0056
7	\$0.0057
8	\$0.0059
9	\$0.0061
10	\$0.0063
11	\$0.0065
12	\$0.0066
13	\$0.0068
14	\$0.0070
15	\$0.0073
16	\$0.0075
17	\$0.0077
18	\$0.0079
19	\$0.0082
20	\$0.0084
21	\$0.0087
22	\$0.0089
23	\$0.0092
24	\$0.0095
25	\$0.0098

## **Appendix C – Weather File**

SolarAnywhereTGY2016\_(10km)\_37.95\_-121.85



**Schedule A**

**DESCRIPTION OF SITE**

<b>Facility</b>	<b>System Size (kW DC)</b>	<b>Product Type</b>	<b>Module qty &amp; type - SunPower</b>	<b>Inverters- qty &amp; type-Delta</b>
4545 Delta Fair Blvd, Antioch, CA 94509	437.10	Carport – Helix 1.5	(930) SPR-X21-470-COM	(3) M80U_121 (1) M60U_121 (2) M42U_121

**Schedule B**

**DESCRIPTION OF SYSTEM**

PV System Array Layouts and Electrical Single Line Diagrams



1  
 ARRAY LAYOUT  
 SCALE: 1/32" = 1'-0"

- NOTES:**
- 110 MPH WIND ZONE (ASCE 7-10) CATEGORY II, EXPOSURE C
  - SNOWLOAD 0 PSF, ELEVATION 50'
  - CORROSION RATE: [3.24mm/YR][0.125in/YR] [C4: 50% CS: 99%]
  - ALL STEEL SHALL BE GALVALUMATED STEEL IN ORDER TO ACHIEVE 10 YEAR LIFE BEFORE APPEARANCE OF RUST-G165
  - REQUIRED COATING FOR PREGALVANIZED STEEL IN ORDER TO ACHIEVE LIFETIME COST OVER 25 YEARS: G235
  - ARRAY SHOW ON AERIAL IMAGE
  - ARRAY MOUNTING STRUCTURE: HELIX CARPORT 1.5
  - STANDARD CANOPY LOW-END CLEARANCE: 11' PROVIDED FOR STANDARD
  - VEHICLE CLEARANCE CODE REQUIRES 20' MIN. CLEARANCE FROM EXISTING BUILDINGS
  - FIRE DEPARTMENT REQUIRES 20' MIN. CLEARANCE ALONG EMERGENCY ACCESS ROUTES
  - TOTAL OF TREES TO BE REMOVED: 12
  - TOTAL OF LIGHT POLE TO BE REMOVED: 4

ARRAY SUMMARY TABLE - CARPORT		AC RUN (INV-SPB)	AC RUN (SSB-POI)
PANEL BOARD - CARPORT	CANOPY	AC RUN (INV-SPB)	AC RUN (SSB-POI)
SPB01	1	35,140	30
SPB02	3	200,200	245
TOTAL	4	235,340	275

PROJECT SUMMARY	
TOTAL # OF MODULE	930
MODULE TYPE	SPR-X21-470-COM
# OF INVERTER	6
DC SYSTEM SIZE (KW)	437.10
AC SYSTEM SIZE (KW)	407.00



**SUNPOWER® HELIX™**  
**TIER 1**

0000157288

REVISIONS	
REV	DESCRIPTION
A	DESIGN #
B	DATE
C	DATE
D	DATE
E	DATE
F	DATE
G	DATE
H	DATE
I	DATE
J	DATE
K	DATE
L	DATE
M	DATE
N	DATE
O	DATE
P	DATE
Q	DATE
R	DATE
S	DATE
T	DATE
U	DATE
V	DATE
W	DATE
X	DATE
Y	DATE
Z	DATE

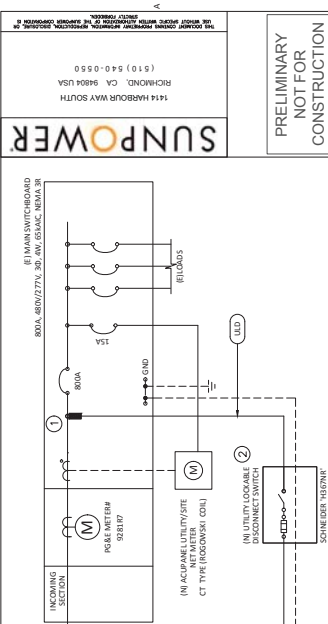
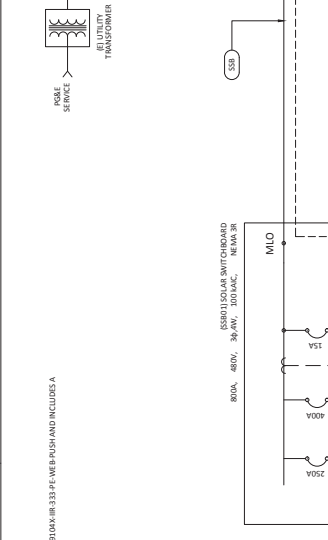
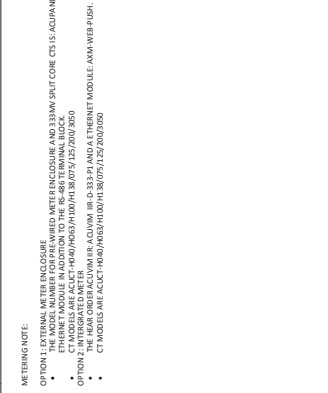
ENGINEER'S STAMP

4545 DELTA FAIR BLVD  
 CONTRA COSTA COUNTY  
 ANTIOCH, CA 94509

**SUNPOWER**

1414 HARBORWAY SOUTH  
 RICHMOND, CA 94804 USA  
 (510) 540-0550

- SPECIFIC ELECTRICAL NOTES:**
- LINE SIDE CONNECTION PER ART. 705.12(A). WIRES TO OVERCURRENT DEVICE SHALL BE INSTALLED IN RIGID STEEL CONDUIT WITH GROUND BUSHINGS PER ART. 250.52. BUS CONNECTIONS SHALL BE RELIEST BY A 3RD PARTY TESTING AGENCY IF THE CONTRACTOR IS NOT LICENSED IN THE STATE OF CALIFORNIA. IF WIRE RUN EXCEEDS 100' WIRES SHALL BE TERMINATED IN SERVICE EQUIPMENT WITH CABLE LIMITERS PER ART. 705.31. CONNECTION SHALL BE MADE USING EXISTING BOLT HOLES, AND FACTORY BUSHINGS SHALL NOT BE DRILLED.
  - GANGL OPERATED, LOCKABLE, VISIBLE OPEN DISCONNECT
  - ALL INVERTERS ARE LISTED TO UL 1741 TO INCORPORATE ANTI-ISLANDING AND THE FOLLOWING PROTECTIONS: (a) (b) (c) (d) (e)
  - NEUTRAL BUS SHALL NOT BE BONDED TO THE GROUND BUS AND SHALL BE ISOLATED FROM THE ENCLOSURE UNLESS OTHERWISE SPECIFIED
  - METERING NOTES:  
FOR PV PRODUCTION MONITORING:  
EXTERNAL METER ENCLOSURE AND 333mV SPLIT CORE CT  
EXTERNAL METER ENCLOSURE AND ROGOWSKI CT



**CHART MODULES INFO**

MODEL TYPE	SRV-2X12-DCOM
NAME PLATE STC	4800
CT	4800
GC	6.45
VOC	91.50
IMP	6.06
VMP	77.60
VCEFF (V-OC)	-0.27
VCEFF (V-MP)	-0.29

**INVERTER TYPE**

M80U_121	M42U_121	M42U_121	
RATED OUTPUT (KW AC)	80	60	42
MAX OUTPUT (KW AC)	83	66	46
# OF STRING	18	15	12
STRING LENGTH	10	10	10
# OF MODULES / INVERTER	80	150	120
STRING MAX VOLTAGE (V-OC)	981.02	981.02	981.02
STRING OPERATING VOLTAGE (V-MP)	673.26	673.26	673.26
STRING DC SHORT CURRENT (ISC)	6.45	6.45	6.45
STRING OPERATING CURRENT (IMP)	6.06	6.06	6.06
# OF INVERTER TYPE	3	1	2

**DC LISTING INverter SUMMARY TABLE**

SPBM	A/B/WAY	AC POWER	DC POWER	# OF MODULES	# OF STRINGS
SP801	1	120	120.276	141	27
SP802	2	112	111.442	126.9	22
SP802	3	166	165.528	169.2	36
TOTAL		407	402.705	437.1	93

**INVERTER CONFIGURATIONS**

- INV TYPE 1  
SUNPOWER PROVIDED  
AC INTERFACE  
DELTA M80U\_121  
3Φ, 4W, 100/1A  
98.5% EFF  
UNGROUNDING  
DC INTERFACE WITH AFC  
NET SHORT CUIT (SC) (1) 1 AWG THIN GROUND (CU)  
DC CABLE (1) 1 AWG THIN GROUND (CU)
- INV TYPE 2  
SUNPOWER PROVIDED  
AC INTERFACE  
DELTA M80U\_121  
3Φ, 4W, 100/1A  
98.5% EFF  
UNGROUNDING  
DC INTERFACE WITH AFC  
NET SHORT CUIT (SC) (1) 1 AWG THIN GROUND (CU)  
DC CABLE (1) 1 AWG THIN GROUND (CU)
- INV TYPE 3  
SUNPOWER PROVIDED  
AC INTERFACE  
DELTA M42U\_121  
3Φ, 4W, 56.2/1A  
98.5% EFF  
UNGROUNDING  
DC INTERFACE WITH AFC  
NET SHORT CUIT (SC) (1) 1 AWG THIN GROUND (CU)  
DC CABLE (1) 1 AWG THIN GROUND (CU)

Circuit	Rating (W)	Rated (V)	Imax (A)	Conductor/Ph	Type	Al/CU	Terminal Temp.	V. REF	EGC	OC PD (A)	kCondlets	Size	Type	Temp. Degrade	Fill Degrade	One Way Dist.	% V. Drop
INV TYPE 1	82,764	480	100	(1) #1	THWN-2	CU	75°C	#6	#6	125	1	1-1/4"	EMT	0.91	1	70ft	0.36%
INV TYPE 2	65,47	480	80	(1) #1	THWN-2	CU	75°C	#8	#8	100	1	1-1/4"	EMT	0.91	1	200ft	1.26%
INV TYPE 3	42,972	480	56.2	(1) #1	THWN-2	CU	75°C	#8	#8	80	1	1"	EMT	0.91	1	300ft	1.12%
SP801	240,178	480	292.4	(1) 2/0	THWN-2	AL	75°C	#1	#1	400	2	2-1/2"	PVC-40	0.91	1	200ft	0.13%
SP802	165,528	480	200	(1) 3/0	THWN-2	AL	75°C	#2	#2	250	1	2-1/2"	PVC-40	0.91	1	245ft	1.03%
ACUV	-	480	5	(1) #14	THWN-2	CU	75°C	-	#14	15	1	1/2"	EMT	0.91	1	100ft	1.42%
SSB	402,705	480	492.4	(2) 5/0	THWN-2	AL	75°C	#0	#0	700	2	3"	PVC-40	0.91	1	50ft	0.19%
UID	-	480	492.4	(2) 3/0	THWN-2	CU	75°C	#1/0	#1/0	700	2	2-1/2"	EMT	0.91	1	50ft	0.17%

**CONTRA COSTA COUNTY 4545 DELTA FAIR BLVD**

**ELECTRICAL SINGLE LINE DIAGRAM**

ENGINEER'S STAMP

PRELIMINARY NOT FOR CONSTRUCTION

SUNPOWER

1414 HARBOR WAY SOUTH RICHMOND, CA 94804 USA (510) 540-0550

4545 DELTA FAIR BLVD ANTONIO, CA 94509

DATE: 03-26-19  
 DESIGNED BY: RA  
 CHECKED BY: RA  
 DATE: 03-26-19

REVISIONS

REV	DESCRIPTION	DATE
A	FOR P&ID	03-26-19
B	UPDATE TO SHOW CFC AC POWER	03-26-19

OPPORTUNITY: 000157288  
 PROJECT: ----  
 SHEET: E201  
 SCALE: 1" = 0' 0"

000357288\_2L\_4545 DELTA FAIR BLVD

**Schedule C**

**PV SYSTEM PRICING**

The following pricing is based on the Standard System Design Package described in Exhibit A.

kWh Rate (\$/kWh)	Term (Years)	Annual Rate Escalator (% / Year)
\$0.1344	25	0%

**Schedule D**  
**TERMINATIONS VALUES**

<b>Applicable Date : Years from Commercial Operation Date</b>	<b>Termination Value (\$)</b>
0 Year	\$2,158,848
1 Year	\$1,743,694
2 Years	\$1,562,828
3 Years	\$1,381,198
4 Years	\$1,198,944
5 Years	\$1,015,692
6 Years	\$991,374
7 Years	\$966,144
8 Years	\$940,110
9 Years	\$912,928
10 Years	\$884,693
11 Years	\$855,820
12 Years	\$825,999
13 Years	\$794,937
14 Years	\$763,016
15 Years	\$730,289
16 Years	\$696,865
17 Years	\$662,514
18 Years	\$627,334
19 Years	\$591,311
20 Years	\$554,530
21 Years	\$516,796
22 Years	\$478,188
23 Years	\$438,696
24 Years	\$398,387

***EXECUTION VERSION***

*NOTE: 4549 Delta Fair Blvd, Antioch, CA 94509*

**POWER PURCHASE AGREEMENT**

Dated as of June 18, 2019

by and between

Solar Star Co Co 1, LLC  
as Provider

and

Contra Costa County  
as Customer

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### **Exhibits, Schedules**

Exhibit A	-	System Design and Construction
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## POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT (as amended, amended and restated, supplemented or otherwise modified from time to time, this "Agreement"), dated as of June 18, 2019 (the "Effective Date"), is by and between Solar Star Co Co 1, LLC, a limited liability company formed under the laws of the State of Delaware ("Provider"), and Contra Costa County, a political subdivision of the State of California ("Customer").

### RECITALS:

WHEREAS, Customer leases or owns, directly or indirectly, facilities in that certain location in California as more fully described in Schedule A of the Appendices hereto (the "Site");

WHEREAS, Customer desires that Provider install, maintain and operate, and Provider desires to install, maintain and operate, the System (as hereinafter defined) to be located on the Site; and

WHEREAS, Provider desires to sell, and Customer desires to purchase, (a) the Solar Services (as hereinafter defined), including the delivery of electrical energy generated by the System (the "Energy") and (b) other services pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### AGREEMENT:

1. Definitions.

Unless otherwise defined herein: (a) capitalized terms used in this Agreement shall have the respective meanings set forth in this Section 1; (b) the singular shall include the plural and vice versa; (c) the word "including" shall mean "including, without limitation", (d) references to "Sections," "Exhibits," "Appendices" and the like shall be to sections, exhibits, appendices, etc. of or to this Agreement; (e) the words "herein," "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection hereof; and (f) references to this Agreement shall include a reference to all exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time.

"Agreement" has the meaning set forth in the preamble.

"Annual Rate Escalator" means the percentage set forth in Schedule C.

"Applicable Law" shall mean, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, governmental approval, consent or requirement of such

Governmental Authority, enforceable at law or in equity, along with the interpretation and administration thereof by any Governmental Authority.

“Claim Notice” shall have the meaning set forth in Section 13.3.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Commercial Operation Date” shall have the meaning set forth in Section 3.4.

“Confidential Information” shall have the meaning set forth in Section 15.

“Customer” shall have the meaning set forth in the preamble.

“Customer Default” shall have the meaning set forth in Section 11.1.

“Effective Date” shall have the meaning set forth in the preamble.

“Energy” shall have the meaning set forth in the preamble.

“Environmental Attributes” includes, without limitation, tradable renewable certificates, green-e tags, allowances, reductions or other transferable indicia denoting carbon offset credits or indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility attributed to the Energy during the Term created under a renewable energy, emission reduction, or other reporting program adopted by a Governmental Authority, or for which a registry and a market exists (which, as of the Effective Date are certificates issued by Green-e in accordance with the Green-e Renewable Electric Certification Program, National Standard Version 1.3 administered by the Center of Resource Solutions) or for which a market may exist at a future time.

“Environmental Financial Incentives” shall mean each of the following financial rebates and incentives that is in effect as of the Effective Date or may come into effect in the future: (i) performance-based incentives, rebates and any other incentive programs offered by or in the State of California (or any political subdivision thereof) under the federal government’s, any municipality’s, any utility’s or any other state’s program or initiative (including, if applicable, subsidies available under the Self Generation Incentive Program administered through the California Public Utilities Commission), incentive tax credits (including investment tax credits arising under the Code) other tax benefits or grants in lieu thereof (including without limitation the monetization of tax benefits), and accelerated depreciation (collectively, “Incentives”), howsoever named or referred to, with respect to any and all fuel, emissions, air quality, energy generation, or other environmental or energy characteristics, resulting from the construction, ownership or operation of the System or from the use of solar generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Energy generated by the System; and (ii) all reporting rights with respect to such Incentives.

“Estimated Year 1 Production” shall mean the amount set forth in Schedule B to this Agreement.

“Expiration Date” shall have the meaning set forth in Section 10.1.

“Fair Market Value” shall have the meaning set forth in Section 10.3.2.

“Financing Party” means any third-party entity providing debt or equity financing to Provider (or any successor or assignee thereof) with respect to the System, including without limitation a party providing construction financing, a lessor in a sale-leaseback transaction, a partner in a partnership flip transaction, or a limited liability company member in an equity sale transaction.

“Force Majeure Event” shall mean, when used in connection with the performance of a Party’s obligations under this Agreement, any of the following events to the extent not caused by such Party or its agents or employees, which is not preventable by such Party as of the Effective Date:

- a) war, riot, acts of a public enemy or other civil disturbance;
- b) acts of God, including but not limited to, storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, volcanic eruptions, range or forest fires, and objects striking the earth from space (such as meteorites), sabotage or destruction by a third party (other than any contractor retained by or on behalf of the Party) of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;
- c) acts of federal, state or local government agencies, including changes in Applicable Law, that result in increasing Provider’s costs of construction and installation, or continuing operation, of the System by 15% or more; and
- d) strikes, walkouts, lockouts or similar industrial or labor actions or disputes.

“Governmental Authority” shall mean any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Indemnified Party” shall have the meaning set forth in Section 13.3.

“Indemnifying Party” shall have the meaning set forth in Section 13.3.

“Interconnection Point” shall have the meaning set forth in Section 3.5.

“kWh Rate” shall have the meaning set forth in Section 6.1.

“License” shall have the meaning set forth in Section 2.

“Liens” shall have the meaning set forth in Section 7.1.3.

“Meter” shall have the meaning set forth in Section 4.3.1.

“Monthly Period” shall mean the period commencing on the Commercial Operation Date and ending on the last day of the calendar month in which the Commercial Operation Date occurs, and, thereafter, all subsequent one (1) month periods during the Term.

“Monthly Production” shall mean, for each Monthly Period, the amount of Energy delivered during such Monthly Period.

“O&M Work” shall have the meaning set forth in Section 4.1.1.

“Party” shall mean each of Customer and Provider (and/or any successor or permitted assignee thereof).

“Person” shall mean any individual, corporation, partnership, company, limited liability company, joint venture, association, trust, unincorporated organization or Governmental Authority.

“Provider” shall have the meaning set forth in the preamble (and includes its successor(s) and permitted assignee(s)).

“Provider Default” shall have the meaning set forth in Section 11.2.

“Renewal Rate” shall mean the fair market price for electricity generated by solar photovoltaic systems as determined by agreement of the Parties or through the appraisal process applicable to the purchase option contained in this Agreement.

“Reporting Rights” means the right to report ownership of the Environmental Attributes or the Environmental Financial Incentives associated with the Energy to any federal, state, or local agency, authority or other party, including without limitation under Section 1605(b) of the Energy Policy Act of 1992 and provisions of the Energy Policy Act of 2005, or under any present or future domestic, international or foreign emissions trading program.

“Scheduled Outage” shall have the meaning set forth in Section 4.5.

“Site” has the meaning set forth in the first recital.

“Solar Services” mean all solar services provided to Customer by Provider hereunder, including the provision of Energy.

“Standards” shall have the meaning set forth in Section 3.1.1.

“System” shall mean the solar photovoltaic system installed pursuant to this Agreement at the Site and more fully described in Schedule B hereto; provided, however, that the term “System” shall only include equipment and materials up to but not including the Interconnection Point of the System.

“Term” shall have the meaning set forth in Section 10.1.

“Termination Date” shall have the meaning set forth in Section 10.1.

“Termination Value” shall mean, on any date of determination (or, if such date is not a scheduled termination date, the scheduled termination date immediately preceding such date) the applicable amount specified for such date in Schedule D to this Agreement.

“Transfer Taxes” shall have the meaning set forth in Section 6.2.1.

2. Purchase and Sale of Solar Services; License.

2.1 Purchase and Sale of Solar Services.

Customer hereby engages Provider to provide the services set forth in this Agreement, including the Solar Services to Customer, and Provider agrees to provide the services set forth in this Agreement, including the Solar Services to Customer, all in accordance with the terms and conditions set forth herein. Customer shall provide Provider with access to the Site in accordance with the terms of this Agreement. Provider may retain one or more contractors or subcontractors to fulfill its obligations hereunder; provided that Provider shall remain liable for performance of its obligations hereunder

2.2 License.

Customer hereby grants to Provider and to Provider’s agents, employees and subcontractors an irrevocable, non-exclusive license running with the Site for access to, on, over, under or across the Site (the “License”) for the purpose of (i) installing, constructing, operating, maintaining, accessing, removing and replacing the System; (ii) performing all of Provider’s obligations and enforcing all of Provider’s rights set forth in this Agreement; and (iii) installing, using and maintaining electric lines and equipment, including inverters and meters, necessary to interconnect the System to Customer’s electric system at the Site or to the utility’s electric distribution system or that otherwise may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance, or repair of the System. The term of the License is the Term of this Agreement plus the period of time necessary for Provider to remove the System pursuant to Section 10.3.3, but in no case later than one hundred eighty (180) days after the Expiration Date with respect to the System (the “License Term”). During the License Term, Customer shall preserve and protect Provider’s rights under the License and Provider’s access to the Site and shall not interfere with or permit any third parties to interfere with Provider’s rights or access. Except for an emergency situation as described in Section 4.2.1(a) or (b) (an “Emergency Situation”), Provider shall notify Customer in writing, which may be made via email to Customer’s Energy Manager, 40 Muir Road, Martinez, CA 94553 (Frank.DiMassa@pw.cccounty.us), or to any other address Customer may designate in a written notice to Provider, forty-eight (48) hours before Provider intends to access the Site pursuant to the License. Notwithstanding that the License granted herein is irrevocable, Customer reserves the right to exclude Provider, its agents, employees and subcontractors from the Site in the event that Customer notifies Provider of a breach of the License and Provider fails to cure such breach pursuant to Section 11.2.1 of this Agreement; provided, however, that, Customer

agrees not to exclude Provider, its agents, employees and subcontractors from the Site (A) in the event of an Emergency Situation as described in Section 4.2 so long as Customer has been notified of such an Emergency Situation pursuant to Section 4.2 and (B) in the event that the System is to be removed pursuant to this Agreement.

3. Design, Construction, Installation and Testing of System.

3.1 Installation.

Subject to Section 3.2, Provider will cause the System to be designed, engineered, installed and constructed at the Site substantially in accordance with the terms of this Agreement, including without limitation, the provisions of Exhibit A (System Design and Construction). Customer shall review and approve, such approval not to be unreasonably withheld or delayed, all construction plans, including engineering evaluations of the impact of the System on the structural integrity and strength of the location where the System is installed inside, on or near Customer's buildings. Provider shall organize the procurement of all materials and equipment for the installation work and maintain the same at the Site. Subject to the terms of the License, Provider shall perform installation work at the Site during the times set forth in Exhibit A and Schedule B in a manner that minimizes inconvenience to and interference with Customer's and Customer's invitees' and Customers' use of the Site to the extent commercially practical. Notwithstanding the foregoing, in the event that Provider determines in its sole discretion that it is unable to install the System at the Site, it shall be under no obligation to do so, and this Agreement shall terminate and be of no further force and effect upon written notice from Provider to Customer to that effect.

3.1.1 System Design and Construction. Exhibit A (System Design and Construction) attached hereto sets forth the design, engineering and construction specifications for the System, as well as assumptions made by the Provider regarding the Site conditions, the electrical conditions, and System attributes (such assumptions being referred to herein as the "Standards"). Schedule B (Description of System) sets forth the known actual conditions for the Site and the System, including deviations from the Standards. The Standards are such that the described items for the System will not need repair, replacement, modification or construction beyond that described in Exhibit A and Schedule B in order for Provider to properly construct and install the System. If the construction and installation of the System is required for any reason (except for reasons attributable to Provider) to deviate from the Standards and Schedule B, Provider will notify the Customer and provide an estimate of any incremental cost to Customer and Customer will have the option to (i) pay the incremental cost at the time the cost is incurred and billed to the Customer, (ii) pay the incremental cost over the Term through a calculated increase in the kWh Rate, or (iii) elect an alternative location subject to the conditions of Section 3.1.2.

3.1.2 Alternative Location. Prior to the Commercial Operation Date, if the Customer's interest in the Site is a leasehold interest and the Customer is unable to obtain the landlord's consent in accordance with the License or Customer chooses an alternative location per Section 3.1.1, Customer will have the option to elect an alternative location if Environmental



Attributes and Environmental Financial Incentives financially equivalent to or better than those associated with the original location are available for the alternative location, and if the expected System kWh output and construction cost at the alternative location are equivalent to or superior than those associated with the originally proposed location. Such alternative location is subject to Provider approval, not to be unreasonably withheld. If an alternative location cannot be established, Provider will have the right to terminate per Section 3.2.

### 3.2 Conditions Precedent to Commencement of Construction and Installation.

3.2.1 Commencement by the Provider of construction and installation activities with respect to the System are subject to the satisfaction of the following conditions precedent (in addition to the condition set forth in Section 3.3):

- (a) Provider shall have closed financing for construction and long-term ownership of the System and the Solar Services to be performed at the Site and, to the extent required pursuant to the applicable financing documentation, the third party financing institution providing such financing shall have been provided with the materials referred to in Section 14.17 and Section 16;
- (b) Provider shall have entered into the applicable contract(s) for construction and installation of the System, subject to the terms of the applicable financing, if any;
- (c) Provider shall have obtained the permits, licenses and other approvals required by Applicable Law to be obtained by Provider prior to such commencement;
- (d) Provider shall have received satisfactory notice that the applications for Environmental Financial Incentives for the System have been accepted and approved by the appropriate governing agency; and
- (e) Provider shall have received from Customer satisfactory evidence that the project—including the System, the License, and the work and Solar Services described in this Agreement—is exempt from the regulatory jurisdiction of local agencies (including zoning, building, and land-use requirements) or that all required local agency approvals and permits have been obtained.

provided, however, that if any of the foregoing conditions precedent have not been satisfied on or before June 17, 2020 (the “CP Date”), Provider shall have the option to terminate this Agreement without triggering the default provisions of this Agreement or any liability under this Agreement, and if Provider does not terminate this Agreement one hundred eighty (180) days following the CP Date, Customer may terminate this Agreement without triggering the default provisions of this Agreement or any liability under this Agreement.

Alternatively, in the event that such conditions precedent are not satisfied by such date, the Parties may mutually agree to amend this Agreement to revise the Commercial Operation Date and term of this Agreement.

### 3.3 Utility Approvals.

Notwithstanding that Provider shall have primary responsibility for preparing applications and obtaining all permits, licenses and approvals required for the performance of work under this Agreement, Customer agrees to reasonably assist Provider in obtaining necessary permits, licenses and approvals in connection with the installation, operation and maintenance of the System, including the submission of applications for interconnection of the System with the local electric utility. Customer shall not make any material changes to its electrical equipment at the Site after the date on which the applicable utility interconnection application is submitted unless any such changes, individually or in the aggregate, would not adversely affect the approval by such utility of such interconnection. Should the local electric utility fail to approve the interconnection of the System or require equipment in addition to the equipment set forth in Schedule B in connection with the Site, Provider may, at Provider's option, terminate this Agreement immediately subsequent to notification from the local utility. The Parties shall not be obligated to go forward with installation of the System if the applicable utility approvals are conditioned upon material upgrades to the existing electrical infrastructure and neither Party elects to provide for such upgrades. Customer also agrees to assist Provider and make all necessary repairs or changes to the existing electrical infrastructure so that the Site and System are eligible for the Environmental Financial Incentives.

### 3.4 Energy Delivery.

The date on which the delivery of Energy from the System commences (the "Commercial Operation Date") shall be the date on which all of the following shall have occurred: (a) Provider shall have certified to Customer in writing that the System is substantially complete and available for commercial operation; (b) all permits and licenses required to be obtained under Applicable Law in connection with the operation of the System shall have been obtained and be in full force and effect; and (c) Customer shall have entered into an interconnection agreement with the local electricity utility. In no event shall Provider have any liability to Customer for a delay in the Commercial Operation Date caused by Customer, Customer's electricity provider, a local agency issuing permits for the System or any other third parties outside of Provider's control.

### 3.5 Risk of Loss; Exclusive Control.

As between the Parties, Provider will be deemed to be in exclusive control (and responsible for any property damage or injuries to persons caused thereby) of the Energy up to but excluding the point where the System is interconnected to Customer's electrical intertie; e.g., the Customer's line-side tap (the "Interconnection Point") and Customer will be deemed to be in exclusive control

(and responsible for any property damage or injuries to persons caused thereby) of the Energy at and from the Interconnection Point. Risk of loss related to the Energy will transfer from Provider to Customer at the Interconnection Point.

### 3.6 Termination Values.

The Parties acknowledge and agree that the Termination Values with respect to the applicable System are as set forth in Schedule D of this Agreement.

## 4. Operation and Maintenance of System.

### 4.1 O&M Work; Phone/Data Line.

4.1.1 O&M Work. Provider shall provide operation, repair, monitoring and maintenance services to the System during the Term of this Agreement, including the monitoring and maintenance of metering equipment determining the quantity of electricity produced by the System (collectively, the “O&M Work”). Provider shall perform the O&M Work, either directly or indirectly through a subcontract with SunPower Corporation, Systems, an affiliate of Provider or through a third-party service provider capable of providing comparable services, provided that Provider remains responsible for all O&M Work notwithstanding any such subcontracting. Provider shall perform, or cause to be performed, the O&M Work to ensure that the System is capable of delivering the Energy in accordance with the specifications set forth in Schedule B. Provider shall use commercially reasonable efforts to enforce the terms of any contract for operations and maintenance services to which it is a party and System warranty agreements.

4.1.2 Phone/Data Line. Customer shall properly maintain, pay for and provide access to the necessary phone, computer, or other communication lines necessary to permit Provider to record the electrical output of the System for the entire Term.

### 4.2 Malfunctions and Emergencies.

4.2.1 Each of Customer and Provider shall notify the other within twenty-four (24) hours following the discovery by it of (a) any material malfunction in the operation of the System, (b) an interruption in the supply of Solar Services. Provider and Customer shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Provider’s repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Each Party shall notify the other Party immediately upon the discovery of an emergency condition in the System.

4.2.2 Provider shall commence repairs to the malfunctioning System and restore the supply of the Energy, as soon as reasonably possible after notice or upon its own discovery of any of the conditions specified in Section 4.2.1 during normal business hours and, subject to Section 2, take steps to mobilize personnel to commence repairs after notice or discovery of a condition requiring repair or other corrective action. If an emergency condition exists, Provider shall dispatch the appropriate personnel immediately upon becoming aware thereof to perform the necessary repairs or corrective action in an expeditious and safe manner. For routine and emergency repairs, the Parties shall contact the persons set forth below:

If to Provider:

Wayne Webb, Senior Manager, Operations & Maintenance  
2900 Esperanza Crossing, 2nd Floor  
Austin, TX 78759  
(510) 439 – 4663 or (800) 251-9728

[Wayne.Webb@sunpowercorp.com](mailto:Wayne.Webb@sunpowercorp.com) with a copy to: [customer.service@sunpower.com](mailto:customer.service@sunpower.com)

#### 4.3 Metering.

4.3.1 Meters. For the term of this Agreement, Provider shall install and maintain a utility-grade kilowatt-hour (“kWh”) meter (the “Meter”) at the System for the measurement of Energy provided to Customer, which shall measure the kWh output of the System on a continuous basis. Upon Customer’s written request, Provider shall furnish a copy of all technical specifications and accuracy calibrations for the Meter, as well as all metering data and energy production and consumption calculations. Provider shall test the Meter in compliance with manufacturer’s recommendations.

4.3.2 Customer Audits and Inspections. Once per calendar year, Customer shall have the right to audit all Meter data upon reasonable notice, and any such audit shall be at Customer’s sole cost. Customer shall have a right of access to the Meter at reasonable times and with reasonable prior notice for the purpose of verifying readings and calibrations.

4.3.3 Adjustments. If testing of the Meter pursuant to Section 4.3.1 or Section 4.3.2 indicates that the Meter is in error by more than two percent (2%), then Provider shall promptly repair or replace the Meter. If the Meter is found to be in error by more than two percent (2%), Provider shall make a corresponding adjustment to the records of the amount of Energy based on such test results for (a) the actual period of time when such error caused inaccurate Meter recordings, if such period can be determined to the mutual satisfaction of the Parties, or (b) if such period cannot be so determined, then a period equal to one-half (1/2) of the period from the later of (i) the date of the last previous test confirming accurate metering, and (ii) the date the Meter was placed into service; provided, however, that such period shall in no case exceed two (2) years.

4.3.4 Disputes. Any dispute arising out of the reading or calibration of the Meter shall be resolved in accordance with the procedures set forth in Section 6.3.2.

#### 4.4 Title to System.

Provider, or Provider’s permitted assigns with respect to the System, shall at all times retain title to and be the legal and beneficial owner of the System, including the right to any tax credits available under federal or state law, and the System shall remain the property of Provider or Provider’s assigns. The System shall remain the personal property of Provider or Provider’s assigns and shall not attach to or be deemed a part of, or fixture to, the Site. It is the Parties’ intention that the System shall at all times retain the legal status of personal property. Provider shall be entitled to, and is hereby authorized to, file one or more precautionary Uniform Commercial Code financing statements with the California Secretary of State with

respect to the System in order to protect its rights in the System, provided that no such UCC financing statement shall name Customer as the debtor. The System shall be clearly marked and identified as being the property of the Provider or Provider's assigns. The Parties intend that neither Customer nor any party related to Customer shall acquire the right to operate the System or be deemed to operate the System.

#### 4.5 Outages.

Customer shall be permitted two (2) twenty-four (24) consecutive hour days during which the System may be offline (each, a "Scheduled Outage") per calendar year during the Term, during which days Customer shall not be obligated to accept, and if not accepted, pay for the Energy; provided, however, that Customer shall have notified Provider in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of such Scheduled Outage. In the event that Scheduled Outages at the Site exceed two (2) days per calendar year for a reason other than a Force Majeure Event, and for all unscheduled outages, Provider shall reasonably estimate the amount of Energy that would have been delivered to Customer during each hour of such excess Scheduled Outages or unscheduled outages and shall invoice Customer for such amount, which shall be payable in accordance with Section 6.3. Additionally, as set forth in Exhibit C (Performance Guarantee), Provider shall be relieved of any failure to meet the Performance Guarantee due to any Scheduled Outage or unscheduled outage.

#### 4.6 Compliance with Utility Specifications.

Provider shall ensure that the operation of the System and all Energy generated by the System conform to applicable utility specifications for energy being generated and delivered to the Site's electric distribution system, which shall include the installation of proper power conditioning and safety equipment, submittal of necessary specifications, coordination of utility testing and verification, and all related costs.

### 5. Purchase of Solar Services.

#### 5.1 Purchase Requirement.

Customer agrees to purchase one hundred percent (100%) of the Energy delivered by the System during the Term of this Agreement. While the Solar Services are calculated and billed on the basis of kWh of Energy as set forth in Section 6.1, Customer acknowledges and agrees that such Solar Services represent a package of services including the production and supply of electrical energy output from the System, together with any other services associated with solar energy production that Provider may provide to Customer. The payment for Solar Services (expressed in \$/kWh) is calculated to include all of the above services. Neither Party may claim that by this Agreement Provider is an electric utility subject to regulation as an electric utility or subject to regulated electricity rates. Provider shall not claim to be providing electric utility services to Customer and shall not interfere with Customer's ability to select an electric utility provider except that, to the extent

Customer has a choice in selecting an electric utility provider or electricity provider, Customer shall not select an electric utility provider or electricity provider that requires, as part of their conditions for service, removal or discontinued operation of the System or the sales of Energy hereunder.

5.2 Environmental Attributes; Environmental Financial Incentives.

5.2.1 Environmental Attributes. All Environmental Attributes and associated Reporting Rights available in connection with the System are retained and owned by Customer or its assignee. Provider shall take all reasonable measures to assist Customer in obtaining all Environmental Attributes currently available or subsequently made available in connection with the System. At Customer's request and expense, Provider shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Customer's or its assignee right, title and interest in and to the Environmental Attributes. If the standards used to qualify the Environmental Attributes to which Customer is entitled under this Agreement are changed or modified, Provider shall, at Customer's request and expense, use all reasonable efforts to cause the Environmental Attributes to comply with new standards as changed or modified. If Provider fails to act in good faith in completing documentation or taking actions reasonably requested by Customer, and such failure results in the loss of an Environmental Attribute that would otherwise be available, Provider shall reimburse Customer for the full amount of such lost Environmental Attribute.

5.2.2 Environmental Financial Incentives. All Environmental Financial Incentives and associated Reporting Rights available in connection with the System are retained and owned by Provider or its assignee. Customer shall take all reasonable measures to assist Provider in obtaining all Environmental Financial Incentives currently available or subsequently made available in connection with the System. At Provider's request and expense, Customer shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Provider's or its assignee right, title and interest in and to the Environmental Financial Incentives. If the standards used to qualify the Environmental Financial Incentives to which Provider is entitled under this Agreement are changed or modified, Customer shall, at Provider's request and expense, use all reasonable efforts to cause the Environmental Financial Incentives to comply with new standards as changed or modified. If Customer fails to act in good faith in completing documentation or taking actions reasonably requested by Provider, and such failure results in the loss of an Environmental Financial Incentive that would otherwise be available, Customer shall reimburse Provider for the full amount of such lost Environmental Financial Incentive.

5.2.3 Customer shall not take any action or suffer any omission that would have the effect of impairing the value to the Provider of the Environmental Attributes or Environmental Financial Incentives.

5.2.4 Provider or its assignee will at all times retain all tax credits and related tax benefits (including depreciation) associated with the System.

6. Price and Payment.

6.1 Price.

Customer shall pay Provider for the Energy provided pursuant to the terms of this Agreement at the rate per kWh (the "kWh Rate") set forth in Schedule C for the Term of this Agreement, plus any adjustments required pursuant to Section 3.1.1, plus any additional amount required pursuant to Section 6.2. Notwithstanding the foregoing, in the event that Customer elects to renew this Agreement pursuant Section 10.3.1, Customer shall pay the Renewal Rate for Energy delivered during such renewal period.

6.2 Taxes.

6.2.1 Customer Taxes. Provider shall invoice Customer for, and Customer shall pay all sales, use, excise, ad valorem, transfer and other similar taxes ("Transfer Taxes"), but excluding in all events taxes based on or measured by net income, that are imposed by any taxing authority arising out of or with respect to the purchase or sale of the Solar Services (regardless of whether such Transfer Taxes are imposed on Provider or Customer), together with any interest, penalties or additions to tax payable with respect to such Transfer Taxes, unless such interest, penalties or additions to tax payable with respect to such Transfer Taxes are due to Provider's failure to timely remit any such Transfer Taxes or to file any returns required by the appropriate taxing authority, and Provider shall indemnify and hold Customer harmless in such excepted cases. If Customer shall be required to by law to withhold or deduct any Transfer Taxes or other taxes imposed by any jurisdiction or any political subdivision from or in respect of any sum payable hereunder, the sum payable shall be increased as may be necessary so that, after taking all required deductions, Provider shall have received an amount equal to the sum it would have received had no such deductions been made. Provider will pay any ad valorem property tax imposed on the System by any taxing authority.

6.2.2 Provider Taxes. Provider will pay and hold harmless Customer from any sales or use tax imposed upon Customer arising from this Agreement, other than as set forth in the preceding Section 6.2.1, including but not limited to Provider's manufacture, installation and acquisition of the System. Provider will pay and hold harmless Customer from property tax, if any, assessed on (i) Provider's use of the portion of the Site on which the System is installed, to the extent prescribed in the License; (ii) the System or Provider's ownership, installation or use thereof; or (iii) any other aspect of this Agreement. Notwithstanding the foregoing, Customer shall pay and hold harmless Provider from sales and use taxes, if any, arising upon the transfer, if any, of both legal and beneficial ownership of the System to Customer pursuant to this Agreement.

6.3 Billing and Payment.

Billing and payment for the Solar Services sold and purchased under this Agreement and any other amounts due and payable hereunder shall occur as follows:

6.3.1 Payments. Subject to adjustment in accordance with the following sentences of this Section 6.3.1, Customer shall pay to Provider for each Monthly Period during the Term within thirty (30) days after receipt of any invoice a payment for the Energy delivered by the System during each such Monthly Period equal to the product of (a) Monthly Production for the System for the relevant month multiplied by (b) the then applicable kWh Rate.

Customer payments under Sections 6.3.1, above, shall be made by check to:

Solar Star Co Co 1, LLC  
Attn: Commercial Asset Management Group  
c/o SunPower Capital Services, LLC  
2900 Esperanza Crossing  
Austin, TX 78758

Payment may also be made by wire transfer of immediately available funds upon receipt of specific instructions by Provider. Upon receipt of written direction and instructions from Provider and Provider's Financing Party, all payments to be made by the Customer to the Provider under this Agreement shall be made directly to the Provider's Financing Party or its agent designated in a writing addressed to Customer from time to time.

6.3.2 Invoice Errors. Within thirty (30) days after receipt of any invoice, Customer may provide written notice to Provider of any alleged error therein (including any error resulting from Meter adjustments pursuant to Section 4.3.3). Customer shall pay all undisputed amounts, including the undisputed portion of any invoice, in accordance with the instructions set forth for payment under Section 6.3.1. If Provider notifies Customer in writing within thirty (30) days of receipt of such notice that Provider disagrees with the allegation of error in the invoice, the Parties shall meet, by telephone conference call or otherwise, within ten (10) days of Customer's response for the purpose of attempting to resolve the dispute.

6.3.3 Late Payments. All payments hereunder shall be made without setoff or deduction. Any payment not made within the time limits specified in Section 6.3.1 shall bear interest from the date on which such payment was required to have been made through and including the date on which such payment is actually received by the Provider. Such interest shall accrue at a monthly rate equal to the lesser of the then prevailing prime rate of interest as published in The Wall Street Journal or the maximum interest rate permitted by Applicable Law.

## 7. General Covenants.

### 7.1 Provider's Covenants.

Provider covenants and agrees as follows:

7.1.1 Permits and Approvals. While performing this Agreement, Provider shall obtain and maintain all approvals, consents, licenses and permits from relevant Governmental Authorities, utility personnel, and (to the extent known to Provider) the Site's owners, if Customer is not the owner of the Site, and other agreements and consents required to be obtained and maintained by Provider and to enable Provider to perform such work. Provider shall deliver copies of all permits and approvals obtained pursuant to this Section to Customer.



7.1.2 Health and Safety. Provider shall take all reasonably necessary safety precautions in performing this Agreement and shall comply in all material respects with all Applicable Laws pertaining to the safety of persons and real and personal property.

7.1.3 Removal of Liens. Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', laborers' or materialmen's liens), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Site or any interest therein; provided that this Section 7.1.3 shall not limit Liens on the System. If Provider breaches its obligations under this Section, it shall immediately notify Customer in writing, shall promptly cause such Lien to be discharged and released of record without cost to Customer, and shall defend and indemnify Customer against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

7.1.4 Provider Records. Provider shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Customer has the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

## 7.2 Customer's Covenants.

Customer covenants and agrees as follows:

7.2.1 Health and Safety. Customer shall at all times maintain the areas of the Site consistent with all Applicable Laws pertaining to the health and safety of persons and property.

7.2.2 Security. Customer shall provide and take reasonable measures for security of the System, including commercially reasonable monitoring of the Site's alarms, if any.

7.2.3 Notice of Damage. Customer shall promptly notify Provider of any matters of which it becomes aware pertaining to any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System.

7.2.4 Liens. Customer shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein. Customer also shall pay promptly any taxes, charges or fees of whatever type of any relevant Governmental Authority for which Customer is responsible under Section 6.2 before a fine or penalty may attach to the System. If Customer breaches its obligations under this Section, it shall immediately notify Provider in writing, and shall promptly cause such Lien on or with respect to the System (including if such arises in favor of any third party claiming through Customer, such as a lender, mortgagee or encumbrancer of real property) to be removed, discharged and released of record without cost to Provider, and shall defend, indemnify and hold Provider harmless against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in removing, discharging and releasing such Lien.

7.2.5 Consents and Approvals. Customer shall obtain and maintain, and secure and deliver to Provider copies of, all consents, approvals, permits, licenses, and authorizations (or evidence that the project—including the System, and the work and Solar Services described in this Agreement—is exempt from the regulatory jurisdiction of local agencies (including zoning, building, and land-use requirements) or that all required local agency approvals and permits have been obtained) relating to the performance of Customer’s obligations and the rights granted by Customer hereunder, and that are required by the terms, conditions or provisions of any restriction or any agreement or instrument or statute to which Customer is a party or by which Customer is bound, including completing applications for interconnection with Customer’s local electric utility. Customer shall use best efforts to assist Provider in fulfilling Provider’s responsibilities under Section 7.1.1. In addition, as a condition precedent to the effectiveness of this Agreement, Customer covenants that it has obtained all discretionary and other approvals required in connection with the project from its governing board and all applicable Government Authorities and that such board or Governmental Authority complied with the California Environmental Quality Act; or, if no other discretionary approvals were required, such board or Governmental Authority approved this Agreement before it was executed.

7.2.6 Maintenance of Interconnection. Customer shall ensure that all of the facilities to which the Energy is delivered hereunder remain interconnected to the electrical grid during the entire Term, except as permitted under Section 4.5 and Section 9.

7.2.7 Solar Access. Customer shall ensure that the System remains free of overshadowing or other blocked access to sunlight during the Term, and it is acknowledged and agreed by the Parties that the foregoing is a material obligation of the Customer for the purposes of this Agreement. Customer will use best efforts to secure a solar easement for the Site to prevent other buildings, structures or flora from overshadowing or otherwise blocking access of the sunlight to the System. Provider shall provide assistance to Customer in seeking a solar easement; however, Customer shall bear all costs and expenses related to obtaining any such easement.

7.2.8 Customer Records. Customer shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Provider shall have the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

## 8. Insurance Requirements.

### 8.1 Provider’s General Liability Insurance.

Provider shall maintain, at its sole expense, commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of one million dollars (\$1,000,000) per occurrence and in the aggregate, endorsed to provide contractual liability in said amount, specifically covering Provider’s obligations under this Agreement and naming Customer as an additional insured. The minimum coverage amount of \$1,000,000 per occurrence and in the aggregate may be satisfied by a combination of a general liability policy and an excess/umbrella liability policy. Provider, if it has employees, shall also maintain at all times during the term of

this Agreement workers' compensation insurance coverage in accordance with the applicable requirements of federal and state law. Within thirty (30) days after execution of this Agreement and upon Customer's request annually thereafter, Provider shall deliver to Customer certificates of insurance evidencing such coverage, which shall specify that Customer shall be given at least thirty (30) days' prior written notice by the applicable insurer in the event of any material modification, cancellation or termination of coverage, except ten (10) days for non-payment of premium. Such insurance shall be primary coverage without right of contribution from any insurance of Customer.

## 8.2 Customer's Insurance.

Customer shall provide and maintain "all-risk" property insurance covering the buildings on which the System is located during all periods (construction and operation) that Provider is the beneficial owner of the System, and naming Provider or its assignee as the loss payee. The System shall be insured for not less than its Termination Value. All such policies shall be with financially sound and reputable insurance companies that have an (i) A.M. Best rating of A+ and a financial strength category of "XII" or higher, (ii) a Standard & Poor's financial strength rating of A+ or higher, or (iii) are otherwise reasonably satisfactory to the Provider or its assignee; and such policies shall be on terms that are reasonably satisfactory to the Provider or its assignee. Within thirty (30) days after execution of this Agreement and upon Provider's request annually thereafter, Customer shall deliver to Provider certificates of insurance evidencing such coverage, which shall specify that Provider shall be given at least thirty (30) days' prior written notice (10 days' notice for cancellation due to nonpayment of premiums) by the applicable insurer in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Provider. Notwithstanding the foregoing, Customer shall be entitled to self-insure all of its insurance requirements under this Agreement.

## 9. Force Majeure Events.

If either Party is prevented from or delayed in performing any of its obligations under this Agreement by reason of a Force Majeure Event, such Party shall notify the other Party in writing as soon as practicable after the onset of such Force Majeure Event and shall be excused from the performance of its obligations under this Agreement to the extent that such Force Majeure Event interferes with such performance. The Party whose performance under this Agreement is prevented or delayed as the result of a Force Majeure Event shall use reasonable efforts to remedy its inability to perform. If a Party's failure to perform its obligations under this Agreement is due to a Force Majeure Event, then such failure shall not be deemed a Provider Default or a Customer Default, as the case may be. In case a Force Majeure Event continues for at least one (1) year with respect to the System, then either Party may terminate this Agreement by written notice to the other.

10. Term; Customer Options; Termination.

10.1 Term.

The term of this Agreement shall commence on the Effective Date and shall expire on the date that is twenty-five (25) years after the Commercial Operation Date (the “Expiration Date”), unless and until terminated earlier pursuant to Sections 3.1, 3.2, 3.3, 9, 10.2.3, 10.6 or 12 (the date of any such termination, the “Termination Date”, and the “Term” being such period of time commencing on the Effective Date and ending on the earlier of (i) the Termination Date, and (ii) the Expiration Date).

10.2 Customer Options Upon Cessation of Business Operations at Site.

If, prior to the end of the Term, Customer ceases to conduct business operations at the Site, vacates the Site, or is prevented from allowing operation of the System on the Site:

10.2.1 Substitute Site. So long as Customer’s exercise of its rights under this Section 10.2.1 does not impair or reduce any Environmental Financial Incentives that may be available to the Provider, or otherwise have an adverse tax effect on Provider, or in the Provider’s sole discretion and determination, impair Provider’s ability to meet any and all obligations in connection with a Financing Party or a prospective financing transaction, Customer shall have the right to provide Provider with a mutually agreeable substitute Site located within the same utility district, subject to requisite governing agency approvals, to relocate the System, which agreement shall not be unreasonably withheld, or, if not available, in a location with similar solar insolation, utility rates, Environmental Attributes and Environmental Financial Incentives. Any such alternate Site shall have a similar demand charge profile as the Site. If such alternate Site is available and is acceptable to Provider, this Agreement shall be amended to delete the prior Site and add the new Site, but otherwise this Agreement shall remain in full force in accordance with its terms and shall not be deemed otherwise amended. Customer shall pay the reasonable costs arising in connection with the relocation(s) of the System, including removal costs, installation costs, any applicable interconnection fees, costs related to obtaining a site license or lease at the substitute site, other costs of deployment at the substitute Site, and amounts lost that would otherwise be payable under this Agreement due to such relocation(s) to Provider based on delivered Energy averaged over the prior twelve months for the System.

10.2.2 Move and Pay Option. So long as such event does not impair or reduce any Environmental Attributes or Environmental Financial Incentives, Customer may elect to pay or guarantee the payment of the remaining monthly amounts due under this Agreement to Provider, and cause the System to be kept in operation at the Site, in each case through the remainder of the Term.

10.2.3 Termination and Payment of Termination Value. If, beginning in the sixth year following the Commercial Operation Date, a substitute Site cannot be located in accordance with Section 10.2.1 with respect to the System and Customer elects not to avail itself of the provisions of Section 10.2.2 with respect to the System, then Customer shall so notify Provider, Provider shall remove the System (at Customer’s sole cost and expense) and Customer shall pay to Provider the then-applicable Termination Value specified in Column A of Schedule D

as liquidated damages, whereupon this Agreement shall terminate. The Parties agree that actual damages to Provider if this Agreement is terminated as contemplated in this Section 10.2 would be difficult to ascertain, and the applicable Termination Value is a reasonable approximation of the damages suffered by Provider as a result of early termination of this Agreement.

### 10.3 Customer Options Upon Expiration of Term.

10.3.1 Extension of Term. Upon prior written notice to Provider at least one-hundred eighty (180) days prior to the Expiration Date, Customer has the option to renew the term of this Agreement with respect to the System and Solar Services for one (1) additional three (3)-year period at the Renewal Rate.

10.3.2 Purchase of System. If Customer has not elected to renew the term of this Agreement in accordance with Section 10.3.1, Customer may purchase the System by providing Provider written notice of its intent to purchase the System no later than one-hundred and eighty (180) days prior to the Expiration Date, and paying Provider the Fair Market Value thereof no later than the relevant Expiration Date. The “Fair Market Value” of the System shall be the value determined by the mutual agreement of Customer and Provider within ten (10) days after receipt by Provider of Customer’s notice of its election to purchase the System. If Customer and Provider cannot mutually agree to a Fair Market Value, then the Parties shall jointly select a nationally recognized independent appraiser with whom the parties have discussed methods and assumptions, with experience and expertise in the solar photovoltaic industry to value such equipment. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding on the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. To the extent transferable, the remaining period, if any, on all warranties for the System will be transferred from Provider to Customer. If the Parties are unable to agree on the selection of an appraiser, such appraiser shall be jointly selected by the appraiser firm proposed by the Customer and the appraiser firm proposed by the Provider. Upon receipt by Provider of payment of the Fair Market Value, title to the System as well as available Environmental Attributes and Environmental Financial Incentives from the System shall transfer to Customer as-is, where-is.

10.3.3 Return of System. If at the end of a Term, or an Extension of Term pursuant to Section 10.3.1, Customer does not exercise any of the options described in Sections 10.3.1 and 10.3.2, Provider shall remove all of its tangible property comprising the System from the Site by a mutually convenient date but in no case later than one hundred eighty (180) days after the Expiration Date with respect to the System. The cost to remove the System shall be borne by the Provider. The portion of the Site on which the System was installed shall be returned to its original condition, except for ordinary wear and tear, and Provider shall leave the portion of the Site on which the System was installed in neat and clean order.

### 10.4 Customer Purchase Options Prior to Expiration Date.

10.4.1 On the later to occur of the sixth (6th) anniversary of the Commercial Operation Date, provided that no Customer Default shall have occurred and be continuing beyond any applicable period of cure, Customer may elect to purchase all, but not less than all, of the System. If Customer elects to so purchase the System,

the purchase price shall be the higher of the then Fair Market Value of the System (calculated in accordance with the definition of Fair Market Value set forth in Section 10.3.2 for the System, and such determination to be at Customer's sole cost and expense), or the then-current Termination Value specified in Column A of Schedule D. Not less than one-hundred-and-eighty (180) days prior to the exercise of the purchase option for the System, Customer shall provide written notice to Provider of Customer's exercise thereof. Upon the exercise of the foregoing purchase option plus receipt of the Value as determined in Section 10.4 above and all other amounts then owing by Customer to Provider, the Parties will execute all documents necessary to cause title to the System to pass to Customer as-is, where-is; provided, however, that Provider shall remove any encumbrances placed on the System by Provider at Customer's expense.

10.4.2 On the later to occur of the fifteenth (15th) anniversary of the Commercial Operation Date, provided that no Customer Default shall have occurred and be continuing beyond any applicable period of cure, Customer may elect to purchase the System. If Customer elects to so purchase the System, the purchase price shall be the higher of the then Fair Market Value of the System (calculated in accordance with the definition of "Fair Market Value" set forth in Section 10.3.2 for the System, and such determination to be at Customer's sole cost and expense), and the amount specified in Column A of Schedule D. Not less than one-hundred-and-eighty (180) days prior to the exercise of the purchase option for the System, Customer shall provide written notice to Provider of Customer's exercise thereof. Upon the exercise of the foregoing purchase option plus receipt of the Fair Market Value and all other amounts then owing by Customer to Provider, the Parties will execute all documents necessary to cause title to the System to pass to Customer as-is, where-is; provided, however, that Provider shall remove any encumbrances placed on the System by Provider at Customer's expense.

#### 10.5 Payment of Termination Value on Termination Date.

In the event that the Termination Date has occurred for reasons other than pursuant to Sections 3.1.2., 10.6 or 12.1.1, Customer shall be required to pay to Provider the then-applicable Termination Value specified in Column A of Schedule D as liquidated damages. The Parties agree that actual damages to Provider in the event this Agreement terminates prior to the expiration of the Term for causes attributable to Customer would be difficult to ascertain, and the applicable Termination Value is a reasonable approximation of the damages suffered by Provider as a result of early termination of this Agreement.

#### 10.6 Provider Termination.

Provider shall have the right, in Provider's sole and absolute discretion, to terminate this Agreement upon written notice if any of the following occurs:

10.6.1 at any time until construction of the System commences Provider determines in its sole discretion that it is unable to install the System at the Site;

10.6.2 if the occurrence of an unstayed order of a court or administrative agency has the effect of subjecting the sales of the Energy to federal or state regulation of the prices therefor and/or the delivery of the service;

10.6.3 the elimination or alteration of one or more Environmental Financial Incentives or other change in law that results in a material adverse economic impact on Provider; or

10.6.4 if the annual direct beam solar resource availability at the Site is less than or equal to 90% of historical averages as measured by long-term weather data (minimum of five (5) years) collected at the Site and/or other reliable calibrated and appropriate weather station representative of the Site.

In the event of a Provider termination under this Section 10.6, Provider shall remove all of its tangible property comprising the System from the Site by a mutually convenient date but in no case later than one hundred eighty (180) days after the Termination Date. The cost to remove the System shall be borne by the Provider. The portion of the Site on which the System was installed shall be returned to its original condition, except for ordinary wear and tear, and Provider shall leave the portion of the Site on which the System was installed in neat and clean order.

## 11. Defaults.

### 11.1 Customer Default.

The occurrence at any time of any of the following events shall constitute a “Customer Default”:

11.1.1 Failure to Pay. The failure of Customer to pay during the Term any amounts owing to Provider on or before the date on which such amounts are due and payable under the terms of this Agreement and Customer’s failure to cure such failure within fifteen (15) days after Customer receives written notice of each such failure from Provider;

11.1.2 Failure to Maintain Phone/Data Line. Unless due to a Force Majeure Event excused by Section 9, the failure of Customer to maintain and grant Provider access to the phone and other communications lines required to be maintained pursuant to Section 4.1.3 and Customer’s failure to cure such failure within twenty (20) business days after Customer receives written notice of such failure from Provider; provided that in any event if such failure shall continue for at least five (5) days after notice to Customer and shall result in lost revenue to Provider, Provider shall be entitled to reasonably estimate the amount of revenue that would have been obtained and shall invoice Customer therefor;

11.1.3 Failure to Perform Other Obligations. Unless due to (i) a Force Majeure Event excused by Section 9, or (ii) a breach of paragraph 2 of Section 2 (License), the failure of Customer to perform or cause to be performed any other material obligation required to be performed by Customer under this Agreement, or the failure of any representation, covenant, or warranty set forth herein to be true and correct as and when made; provided, however, that if such failure by its nature can be cured, then Customer shall have a period of thirty (30) business

days after receipt of written notice from Provider of such failure to Customer to cure the same and a Customer Default shall not be deemed to exist during such period; provided, further, that if Customer commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for one hundred twenty (120) additional days;

11.1.4 Bankruptcy, Etc. (a) Customer admits in writing its inability to pay its debts generally as they become due; (b) Customer files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof; (c) Customer makes an assignment for the benefit of creditors; (d) Customer consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Customer has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Customer's assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Customer's assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control; or

11.1.5 Failure of Site Access. A breach by Customer of the License occurs and Customer fails to cure such breach within five (5) days after Customer receives written notice of such breach from Provider.

## 11.2 Provider Default.

The occurrence at any time of the following event shall constitute a "Provider Default":

11.2.1 Failure to Perform Obligations. Unless due to a Force Majeure Event excused by Section 9, the failure of Provider to perform or cause to be performed any obligation required to be performed by Provider under this Agreement or the failure of any representation and warranty set forth herein to be true and correct as and when made; provided, however, that if such failure by its nature can be cured, then Provider shall have a period of thirty (30) business days after receipt of written notice from Customer of such failure to Provider to cure the same and a Provider Default shall not be deemed to exist during such period; provided, further, that if Provider commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for one-hundred twenty (120) additional days; or

11.2.2 Bankruptcy, Etc. (a) Provider admits in writing its inability to pay its debts generally as they become due; (b) Provider files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof; (c) Provider makes an assignment for the benefit of creditors; (d) Provider consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Provider has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; (f) a



court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Provider's assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Provider's assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control.

## 12. Remedies Following Default.

### 12.1 Customer's Remedies Upon Occurrence of a Provider Default.

12.1.1 Termination. If a Provider Default has occurred and is continuing, then Customer may terminate this Agreement by providing written notice to Provider thereof, and this Agreement shall terminate and be of no further force or effect as of the date of the notice according to Section 14.1.

12.1.2 Other Rights and Remedies. If any Provider Default described under Section 11.2 has occurred and Customer has terminated this Agreement as a result thereof in accordance with the terms of Section 12.1.1 above, then, subject to Section 12.3, Provider shall pay to Customer an amount not to exceed the then-present value (discounted at the prevailing prime rate of interest as published in *The Wall Street Journal* on the day preceding the date of determination) of (a) the cash flows equal to the product of (i) the positive difference, if any, of the price per kWh for commercially available, utility-provided energy in the applicable market(s) (which shall not include related charges such as delivery, service, distribution, or taxes) minus the kWh Rate of Energy hereunder (as such kWh Rate would have been escalated over time pursuant to the terms hereof) hereof, multiplied by (ii) the number of days remaining in the term of this Agreement had it not been terminated times the expected daily number of kWh of Energy to be delivered under this Agreement, calculated by dividing the Estimated Year 1 Production set forth in Schedule B, adjusted for as-built System, by 365. Provider's payment to Customer of the amounts set forth in this Section 12.1.2 shall not in any way limit the other remedies at law or in equity that Customer may pursue as damages for Provider's breach of this Agreement; provided, however, that such damages pursued by Customer are subject to the limitation provisions of Sections 12.3 and 12.5.

### 12.2 Provider's Remedies Upon Customer Default.

In addition to any other remedies available under this Agreement or at law, if a Customer Default has occurred and is continuing, then Provider may terminate this Agreement by providing written notice to Customer thereof, and this Agreement shall terminate and be of no further force or effect as of the date of the notice according to Section 14.1 and Provider shall have the right to (a) cause Customer to pay (and Customer shall have the obligation to pay to Provider) the applicable Termination Value set forth in Column A of Schedule D and (b) enter onto the Site and remove the System in accordance with the last sentence of Section 10.2.3.

12.3 No Consequential Damages.

Nothing in this Agreement is intended to cause either Party to be, and neither Party shall be, liable to the other Party for any lost business, lost profits or revenues from others or other special or consequential damages, all claims for which are hereby irrevocably waived by Customer and Provider. Notwithstanding the foregoing, none of the payments for the Energy or any other amount specified as payable by Customer to Provider under the terms of this Agreement upon the termination of this Agreement shall be deemed consequential damages

12.4 Effect of Termination of Agreement.

Upon the Termination Date or the Expiration Date, as applicable, any amounts then owing by a Party to the other Party shall become immediately due and payable and the then future obligations of Customer and Provider under this Agreement shall be terminated (other than the indemnity obligations set forth in Section 13). Such termination shall not relieve either Party from obligations accrued prior to the effective date of termination or expiration.

12.5 Limitation of Liability.

THE TOTAL LIABILITY OF A PARTY TO THE OTHER PARTY FOR ALL CLAIMS OR SUITS OF ANY KIND, WHETHER BASED UPON THIS AGREEMENT, TORT (INCLUDING NEGLIGENCE BUT EXCLUDING THIRD PARTY TORT CLAIMS FOR PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM THE PERFORMANCE OF THIS AGREEMENT), WARRANTY, STRICT LIABILITY OR OTHERWISE, FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES OF ANY KIND WHATSOEVER ARISING OUT OF, RESULTING FROM OR RELATED TO THE PERFORMANCE OR BREACH OF THIS AGREEMENT SHALL, UNDER NO CIRCUMSTANCES, EXCEED \$730,546, PROVIDED THAT THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (A) LIABILITY FOR FRAUD OR WILLFUL MISCONDUCT OF ANY PERSON; (B) LIABILITY UNDER THE INDEMNIFICATION PROVISIONS OF THIS AGREEMENT FOR CLAIMS OF THIRD PARTIES FOR PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM THIS AGREEMENT; OR (C) PAYMENT OF THE KWH RATE. THE LIMITATION OF LIABILITY PROVIDED FOR HEREIN SHALL NOT BE USED TO LIMIT OR REDUCE ANY AVAILABLE INSURANCE.

13. Indemnification.

13.1 Indemnification by Provider.

Provider shall fully indemnify, save harmless and defend Customer from and against any and all costs, claims, and expenses incurred by Customer in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (a) the negligence or willful misconduct of Provider or its agents or employees or others under Provider's control in performing this Agreement, and

(b) a Provider Default under this Agreement; provided, however, that nothing in this Section 13.1 is intended to modify the limitation of Provider's liability set forth in Section 12.3 above; provided further that to the extent Customer recovers such damages, losses and expenses under any insurance policy, Customer shall reimburse any payment made by Provider under this indemnity.

13.2 Indemnification by Customer.

Without limiting the provisions of Section 8, Customer shall fully indemnify, save harmless and defend Provider or its assignees and successors from and against any and all costs, claims, and expenses incurred by Provider in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (a) the negligence or willful misconduct of Customer or its agents or employees or others under Customer's control at the Site or (b) a Customer Default hereunder; provided, however, that nothing in this Section 13.2 is intended to modify the limitation of Customer's liability set forth in Section 12.3 above; provided further that to the extent Provider recovers such damages, losses and expenses under any insurance policy, Provider shall reimburse any payment made by Customer under this indemnity.

13.3 Notice of Claims.

Any Party seeking indemnification hereunder (the "Indemnified Party") shall deliver to the other Party (the "Indemnifying Party") a notice describing the facts underlying its indemnification claim and the amount of such claim (each such notice a "Claim Notice"). Such Claim Notice shall be delivered promptly to the Indemnifying Party after the Indemnified Party receives notice that an action at law or a suit in equity has commenced; provided, however, that failure to deliver the Claim Notice as aforesaid shall not relieve the Indemnifying Party of its obligations under this Section 13, except to the extent that such Indemnifying Party has been prejudiced by such failure.

13.4 Defense of Action.

If requested by an Indemnified Party, the Indemnifying Party shall assume on behalf of the Indemnified Party, and conduct with due diligence and in good faith, the defense of such Indemnified Party with counsel reasonably satisfactory to the Indemnified Party; provided, however, that if the Indemnifying Party is a defendant in any such action and the Indemnified Party believes that there may be legal defenses available to it that are inconsistent with those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to participate in its defense of such action at the Indemnifying Party's expense. If any claim, action, proceeding or investigation arises as to which the indemnity provided for in this Section 13 applies, and the Indemnifying Party fails to assume the defense of such claim, action, proceeding or investigation after having been requested to do so by the Indemnified Party, then the Indemnified Party may, at the Indemnifying Party's expense, contest or, with the prior written consent

of the Indemnifying Party, which consent shall not be unreasonably withheld, settle such claim, action, proceeding or investigation. All costs and expenses incurred by the Indemnified Party in connection with any such contest or settlement shall be paid upon demand by the Indemnifying Party.

13.5 Survival of Provisions.

The provisions of this Section 13 shall survive the expiration or termination of this Agreement.

14. Miscellaneous Provisions.

14.1 Notices.

All notices, communications and waivers under this Agreement shall be in writing and shall be (a) delivered in person or (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested or (c) sent by reputable overnight express courier, addressed in each case to the addresses set forth below, or to any other address either of the parties to this Agreement shall designate in a written notice to the other Party:

If to Provider:

Solar Star Co Co 1, LLC  
c/o SunPower Corporation  
1414 Harbour Way South, Suite 1901  
Richmond, CA 94804  
Attention: Julie Williamson, Project Administration  
Phone:510-540-0550  
Fax:510-540-0552

If to Customer:

Contra Costa County Public Works Dept.  
Capital Projects Management Division  
Attn: Energy Manager  
40 Muir Road  
Martinez, CA 94553 Phone: 925-313-2000  
Fax: 925-313-2333

All notices sent pursuant to the terms of this Section 14.1 shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by reputable overnight, express courier, then on the next business day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third (3rd) business day following the day sent or when actually received.

14.2 Authority.

14.2.1 Provider Representations. Provider hereby represents and warrants that:

- (a) It is a Delaware limited liability company duly organized, validly existing and in good standing under the laws of the state of its formation and has all requisite limited liability company power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (b) The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary limited liability company action;
- (c) This Agreement is a legal, valid and binding obligation of Provider enforceable against Provider in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law);
- (d) To the best knowledge of Provider, as of the date of execution hereof, no governmental approval (other than any governmental approvals that have been previously obtained or disclosed in writing to Customer) is required in connection with the due authorization, execution and delivery of this Agreement by Provider or the performance by Provider of its obligations hereunder which Provider has reason to believe that it will be unable to obtain in due course on or before the date required for Provider to perform such obligations; and
- (e) Neither the execution and delivery of this Agreement by Provider nor compliance by Provider with any of the terms and provisions hereof (i) conflicts with, breaches or contravenes the provisions of the articles of formation or operating agreement of Provider or any contractual obligation of Provider or (ii) results in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default under any material contractual obligation of Provider.

14.2.2 Customer Representations. Customer hereby represents and warrants that:

- (a) It is a political subdivision of the State of California, validly existing and in good standing under the laws of the state of its formation and has all requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (b) The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary governmental action;
- (c) This Agreement is a legal, valid and binding obligation of Customer enforceable against Customer in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law);
- (d) No governmental approval (other than any governmental approvals which have been previously obtained or disclosed in writing to Provider) is required in connection with the due authorization, execution and delivery of this Agreement by Customer or the performance by Customer of its obligations hereunder which Customer has reason to believe that it will be unable to obtain in due course;
- (e) Neither the execution and delivery of this Agreement by Customer nor compliance by Customer with any of the terms and provisions of this Agreement results in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default under any contractual obligation of Customer;
- (f) Customer has not entered into any contracts or agreements with any other person regarding the provision of the services at the Site contemplated to be provided by Provider under this Agreement; and
- (g) None of the electricity to be generated by the Provider will be used to generate energy for the purpose of heating a swimming pool.

### 14.3 Assignment

#### 14.3.1 Provider Assignment.

Provider may assign this Agreement upon written notice thereof to Customer, provided that any such assignment shall be to an assignee capable of performing Provider's obligations hereunder. Provider may, without any consent of Customer, sell, transfer, assign or pledge (or grant security interests in) its rights, title and interest in this Agreement, and/or any monies due under this Agreement to a Financing Party, in connection with any financing for the ownership, acquisition, construction, operation or use of the System.

#### 14.3.2 Customer Assignment.

Customer shall not assign all or any part of this Agreement to any entity other than an affiliate of Customer without the prior written consent of the Provider, which shall not be unreasonably withheld. Customer may not assign this Agreement to any Person, including an affiliate, with a credit rating lower than that of Customer without providing matching credit support in the form of cash, letter(s) of credit, or other security reasonably acceptable to Provider. Any assignment by the Customer not permitted under this Section 14.3 shall be void ab initio. In the event that Customer decides to sell or otherwise transfer the Site or a portion thereof upon which the System is located, Customer may (i) with Provider's prior written consent, which will not be unreasonably withheld or delayed, assign this Agreement to the Site purchaser who shall assume all of Customer's obligations under this Agreement and Provider shall release Customer from any further liability associated with this Agreement, or (ii) terminate this Agreement by paying Provider the Termination Value applicable to the date of termination. Upon payment of the Termination Value, the Parties will execute all documents necessary to cause title to the System to pass to Customer as-is, where-is. The Customer does not have the present intention of making any transfer of the Site or that portion of the Site on which the System is located; provided, however, nothing herein shall prohibit Customer from making any transfer of the Site or any portion thereof on which System is located, subject to the provisions set forth above.

#### 14.4 Successors and Assigns.

The rights, powers and remedies of each Party shall inure to the benefit of such party and its successors and permitted assigns.

#### 14.5 Entire Agreement.

This Agreement (including all exhibits and schedules attached hereto) represent the entire agreement between the parties to this Agreement with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous oral and prior written agreements.

14.6 Amendments to Agreement.

This Agreement shall not be amended, modified or supplemented without the written agreement of Provider and Customer at the time of such amendment, modification or supplement.

14.7 Waivers; Approvals.

No waiver of any provision of this Agreement shall be effective unless set forth in writing signed by the Party making such waiver, and any such waiver shall be effective only to the extent it is set forth in such writing. Failure by a Party to insist upon full and prompt performance of any provision of this Agreement, or to take action in the event of any breach of any such provisions or upon the occurrence of any Provider Default or Customer Default, as applicable, shall not constitute a waiver of any rights of such Party, and, subject to the notice requirements of this Agreement, such Party may at any time after such failure exercise all rights and remedies available under this Agreement with respect to such Provider Default or Customer Default. Receipt by a Party of any instrument or document shall not constitute or be deemed to be an approval of such instrument or document. Any approvals required under this Agreement must be in writing, signed by the Party whose approval is being sought.

14.8 Partial Invalidity.

In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of Applicable Law, Provider and Customer shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Agreement (and in the event that Provider and Customer cannot agree then such provisions shall be severed from this Agreement) and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected by such adjustment and shall remain in full force and effect.

14.9 Execution in Counterparts.

This Agreement may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same Agreement.

14.10 Governing Law; Jurisdiction; Forum.

This Agreement shall be governed by and construed in accordance with the internal laws of the State of California. Customer irrevocably agrees that any action, suit or proceeding by or among Provider and Customer may be brought in whichever of the Superior Courts of the State of California, Alameda County, or the Federal Court for the Northern District of California, has subject matter jurisdiction over the dispute and waives any objection that Customer may now or hereafter have regarding the choice of forum whether on personal jurisdiction, venue, forum non conveniens or on any other ground. Customer irrevocably consents to the service



of process outside of the territorial jurisdiction of such courts by mailing copies thereof by registered or certified mail, postage prepaid, to Customer's address set forth herein with the same effect as if Customer were a resident of the State of California and had been lawfully served in such state. Nothing in this Agreement shall affect the right to service of process in any other manner permitted by law.

14.11 Attorneys' Fees.

If any action shall be instituted between Customer and Provider in connection with this Agreement, the Party prevailing in such action shall be entitled to recover from the other Party all of its reasonable costs and expenses incurred in connection with such action by arbitration or other legal proceeding, including reasonable attorneys' fees.

14.12 No Third Party Rights.

This Agreement is only for the benefit of the parties to this Agreement, their successors and permitted assigns (including any lender or lessor of Provider) and Persons expressly benefited by the indemnity provisions of this Agreement. No other Person (including, without limitation, tenants of the Site) shall be entitled to rely on any matter set forth in, or shall have any rights on account of the performance or non-performance by any Party of its obligations under, this Agreement.

14.13 Treatment of Additional Amounts.

The Parties hereto acknowledge and agree that Customer's payment of the Termination Value constitute liquidated damages and not penalties. The Parties further acknowledge that in the case of the payment of the Termination Value: (a) the amount of loss or damages likely to be incurred is incapable or is difficult to precisely estimate, (b) the amounts specified hereunder bear a reasonable proportion and are not plainly or grossly disproportionate to the probable loss likely to be incurred by Customer or Provider as the case may be and (c) the Parties are sophisticated business parties and have been represented by legal counsel and negotiated this Agreement at arm's length.

14.14 No Agency.

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

14.15 No Public Utility.

Nothing contained in this Agreement shall be construed as an intent by Provider to dedicate its property to public use or subject itself to regulation as a “public utility” (as defined in the California Public Utilities Code or any other Applicable Law).

14.16 No Recourse to Affiliates.

This Agreement is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party.

14.17 Cooperation with Financing.

Customer acknowledges that Provider may be financing the Solar Services and the System and Customer agrees that it shall reasonably cooperate with Provider and its financing parties in connection with such financing, including (a) the furnishing of information related to the System and this Agreement, and (b) the giving of a Financing Party acknowledgment in the form attached hereto as Exhibit B (each, a “Consent”); provided, that the foregoing undertaking shall not obligate Customer to materially change any rights or benefits, or materially increase any burdens, liabilities or obligations of Customer, under this Agreement except for providing notices and additional cure periods to a Financing Party with respect to events of default by Provider under this Agreement pursuant to the terms of the Consent.

14.18 Setoff.

Except as otherwise set forth herein, each Party reserves to itself all rights, setoffs, counterclaims and other remedies and/or defenses to which it is or may be entitled, arising from or out of this Agreement.

14.19 Service Contract.

The Parties intend this Agreement to be treated as a service contract within the meaning of Section 7701(e)(3) of the Code.

15. Confidential Information.

15.1 Each Party (the “Receiving Party”) shall not use for any purpose other than performing its obligations under this Agreement, or divulge, disclose, produce, publish, or permit access to, without the prior written consent of the other Party (the “Disclosing Party”), any Confidential Information of the Disclosing Party. As used herein, the term “Confidential Information” means information or materials prepared in connection with this Agreement, designs, drawings, specifications, techniques, models, data, documentation, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans, customer, supplier or personnel names and other information related to customers,

suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets. Confidential Information does not include (a) information known to the Receiving Party prior to obtaining the same from the Disclosing Party; (b) information in the public domain at the time of disclosure by the Receiving Party; or (c) information obtained by the Receiving Party from a third party who did not receive same, directly or indirectly, from the Disclosing Party. The Receiving Party shall use the higher of the standard of care that the Receiving Party uses to preserve its own Confidential Information or a reasonable standard of care to prevent unauthorized use or disclosure of such Confidential Information. Notwithstanding anything herein to the contrary, the Receiving Party has the right to disclose Confidential Information without the prior written consent of the Disclosing Party: (i) as required by any court or other Governmental Authority, or by any stock exchange on which the shares of any Party are listed, (ii) as otherwise required by law, (iii) as advisable or required in connection with any government or regulatory filings, including without limitation, filings with any regulating authorities covering the relevant financial markets, (iv) to its attorneys, accountants, financial advisors or other agents, in each case bound by confidentiality obligations, (v) to banks, investors and other financing sources and their advisors, in each case bound by confidentiality obligations; or (vi) in connection with an actual or prospective merger or acquisition or similar transaction where the party receiving the Confidential Information is bound by confidentiality obligations. If a Receiving Party believes that it will be compelled by the law or a court or other Governmental Authority to disclose Confidential Information of the Disclosing Party, it shall give the Disclosing Party prompt written notice, and in all cases not less than five (5) business days' notice in advance of disclosure, so that the Disclosing Party may determine whether to take steps to oppose such disclosure.

16. Estoppel Certificate.

Either Party hereto, without charge, at any time and from time to time, within twenty (20) days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other relevant person, firm or corporation specified by such requesting party:

- a) If true and correct, that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;
- b) Whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and
- c) Such other information as may be reasonably requested by a Party hereto.

Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the date set forth above.

PROVIDER:

SOLAR STAR CO CO 1, LLC

By: SunPower AssetCo, LLC  
Its member

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

CUSTOMER:

CONTRA COSTA COUNTY

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

## EXHIBIT A

### SYSTEM DESIGN AND CONSTRUCTION

This Exhibit A sets forth the design, engineering and construction specifications for the System, as well as assumptions being made by the Provider regarding the existing condition at the Site, including but not limited to the building roof, building structure, ground conditions, electrical system including panels, inverter installation location, and security fencing. Capitalized terms used herein and not otherwise defined have the meaning given in the Agreement to which this exhibit is attached.

#### 1. SYSTEM LOCATION AND DESCRIPTION:

Descriptions of the site and system are located in Schedule A (Description of Site) and Schedule B (Description of System) of the Agreement.

#### 2. PROJECT SCHEDULE:

##### PORTFOLIO MILESTONES

	Tranche	Contract Approval Date	Commercial Operation Date
1000 Ward	1	6-18-2019	6/24/2020
30/40 Muir	1	6-18-2019	5/24/2020
597 Center	1	6-18-2019	6/13/2020
595 Center	2	6-18-2019	10/26/2020
50 Douglas	2	6-18-2019	9/22/2020
30 Douglas	2	6-18-2019	10/30/2020
2530 Arnold	3	6-18-2019	12/14/2020
4545 Delta Fair	3	6-18-2019	12/21/2020
4549 Delta Fair	3	6-18-2019	11/24/2020
1305 MacDonald	3	6-18-2019	12/21/2020

#### 3. SCOPE OF WORK:

##### *System Design & Scope*

##### *Design Documentation*

Provider shall provide comprehensive submittal packages for the 30% and 90% design sets as detailed below. Changes to 30% Customer approved drawings (scope lock) could result a change order. At a minimum, each submittal package shall include the elements required to convey in sufficient detail the following for each phase of the design:

	<b>Submittal Requirement</b>	<b>30% Design Set</b>	<b>90% Design Set</b>
1	Cover Sheet, with Content, Project Details, Directory, etc.	X	X
2	PV System Sizes & Production Estimates.	X	X
3	Overall Site Plan with PV Array Names, Conduit Routes, Tree/Light Removal, etc.	X	X
4	Electrical Site Plan Drawings & General Conduit Routing.	X	X
5	Electrical Single Line Diagrams.	X	X
6	Demolition Plans.		X
7	Structural Drawings.		X
8	Equipment Pad locations.	X	X
9	Mounting Details.		X
10	Signage, Trenching, Installation, and Grounding Details.		X
11	Monitoring System Details.		X
13	Construction Schedule.	Prelim	Detailed
14	Manufacturer's Cut Sheets with Equipment Specifications		X
15	Civil Drawings (if applicable)		X
16	Fire Access Plans		X
17	Carport Lighting Plans		X

Production modeling of the PV system shall accurately simulate energy production for proposed system layouts, sizes, and orientation. Provider shall be responsible for updating the production models each time significant changes are made to the proposed system designs that will impact production.

### ***Solar Electrical Equipment and Conductors***

Conductors will be aluminum or copper according to Electrical Engineer of Record's determination. AC feeder length from panel boards to equipment pad location and from equipment pad location to electrical tie-in is identified on the array layout drawings. AC feeder lengths from electrical equipment pad location to assumed point of interconnection, and length assumptions with equipment amperage ratings are shown on the single line drawing.

Transformers are 480V:12kV, non-Dry-type by manufacturer of Provider's choosing. Secondary containment is not included in the scope of the project.

### ***Battery Energy Storage System Requirements***

For sites with storage to be installed:

- 13.5' by 11' minimum required area per storage unit. Area required includes storage unit, concrete pad, and clearance zone in front of units.
- Storage unit must be located in an area free of combustible materials (nearby foliage and trees would need to be removed).
- Storage unit must be separated from public foot traffic with a fence and must be separated from vehicle traffic with bollards.
- Crane rental required to land up to 24,500 lb units. Location of units must accommodate both crane and semi-trailer truck access.
- PVS5 DAS, Auxiliary Box, Energy Storage System, and all Accuvim meters (Site meter, PV output meter, and Storage meter) must all be located such that hardlined communication lines can connect these devices to the same Local Area Network. CAT5e/6 cable is preferred means of connection between all devices, which has a 330' distance limit. Runs longer than 330' will require additional equipment to accommodate.

### ***Utility Interconnection***

Coordination of shutdown may be required with Customer and local utility. Temporary power generators are excluded. Interconnection is scheduled for a minimum of 4 hours and is assumed to be performed during off-hours with prior written approval from Customer. Additional shutdowns will be required in order to assess physical condition of Customer's switchgear.

The utility will have 24/7 access to existing electric utility meters and the utility lockable disconnect locations for all electrical interconnections related to this project.

### ***Utility Requirements***

A cost of \$172,012.58 is included for utility required electrical upgrades for the System at 30 Douglas Dr., Martinez, CA, as reflected in Pacific Gas & Electric's Supplemental Review, Notification # 114209530; additional utility-required electrical equipment upgrades or replacements are not included.

Any costs and / or schedule delays associated with unforeseen utility interconnection requirements, including but not limited to utility-owned equipment upgrades or additions, relay protection equipment external to the inverters, system impact studies, or telemetry requirements and interconnection studies are not included in this proposal.

### ***Facility Equipment***

Utility required circuit breaker coordination studies are not assumed for this project.

A short-circuit coordination study is not included for this project.



Solar system includes all standard interconnection related equipment on the Customer side of the meter, including panel circuit breakers, utility and/or visible utility lockable disconnect switches, solar metering, conduit, and wiring. Additional Customer-side protection required by the utilities above that provided by the certified inverters is not included.

If harmonic data of the site is not available, Provider shall assume that the Harmonic data are within the acceptable limits of the Institute for Electrical and Electronics Engineers (IEEE) Standard 519.

### ***Soils and Structural Foundations***

Foundation assumptions are as follows for system options:

- Drilled cast-in-place, 30” round caisson, 12’ Deep, approximately 2.5’ above grade, depending on existing topography.
- Requirements for dewatering, sub grade rock removal, or other unforeseen conditions are not included.

### ***Canopy Structure Design***

Carport Canopies are at 10 degree tilt with 11 ft clear height.

### ***Roof Conditions***

Provider assumes no upgrading of the building structures or canopies will be required to support the added live and dead loads from the photovoltaic installation and rooftop equipment, or to resist added lateral or seismic loads. Modifications to the roof system and design and construction of supports, upgrades to the building structure or platforms are not included.

Anchor and ballast counts are based on the wind load gradient method developed by Cermak Peterka Petersen, Inc, (CPP) and SunPower, based on the CPP wind tunnel testing results presented in CPP’s report “CPP7979\_SunPowerEWSsystem\_REP\_SOL\_R08” dated May 17th, 2018.

Increased anchor and ballast counts resulting from other design methods will be the responsibility of the client.

<b>Site Name</b>	<b>Anchor Count</b>
30 Muir	71
595 center	27
50 Douglas	90
1000 Ward	170
597 Center	33

Provider is not responsible for normal wear and tear associated with the installation of the solar system. Provider reserves the right to inspect the roof to verify its condition. In addition, Provider may offer recommendations to the Customer on modifications to the roof system to improve its serviceability. Customer is responsible for any and all modifications to the roof system. Modifications of roof systems fall into four categories:

- Modifications to improve roof condition / serviceability / useful life.
- Modifications required by roofing manufacturer prior to installation of PV system on their roof system. (e.g. slip sheets, strapping, etc.)
- Modifications required by Provider to make the roof a suitable substrate for the installation of PV. (e.g. air seals, batten bars, etc.)
- 3<sup>rd</sup> party engineering and insurance company requirements.
- Proposal assumes Customer-provided information accurately represents the existing site and roof conditions. This includes but is not limited to as-built drawings, roof reports, structural drawings, roof maintenance history, and roof warranty information. Failure to provide as-built drawings and structural drawings will cause schedule delay and added expense for acquisition of documentation through local authority having jurisdiction (“AHJ”). Provider is not responsible for additional costs or schedule delays.

***Drainage***

Special drainage requirements and/or drainage design and interconnection to Customer’s existing storm drain system or any other storm drain discharge system are not included.

Carport designs do not include structural roof deck for storm water collection or protection.

***Permits***

<b>Permit</b>	<b>Provider Permit</b>	<b>Customer Permit</b>	<b>Cost Allocation</b>	<b>Allotted Time following Application</b>
Building	X			
Fire	X			
Electrical	X			
Conditional Use Permit		NA		
Environmental Control		NA		
Storm Water		NA		
Soil Erosion and Sediment Control		NA		
Environmental Impact Report (CEQA)		NA		
Army Corps of Engineers		NA		
Wetlands		NA		
Water Quality		NA		
Archeological		NA		

Endangered Species		NA		
Water Rights		NA		
Mineral Rights		NA		
Redevelopment Agency		NA		
FAA Approvals		NA		

***Permit Allowance Schedule***

<b>Site</b>	<b>Allowance for Permit</b>
1000 Ward St	\$3,000
30 Douglas Dr	\$10,000
50 Douglas Dr	\$5,000
30/40 Muir Dr	\$5,000
597 Center Ave	\$2,500
595 Center Ave	\$7,000
2530 Arnold Dr	\$6,000
4545 Delta Fair Blvd	\$5,000
4549 Delta Fair Blvd	\$2,500
1305 Macdonald	\$3,000

All other permits/approvals are excluded.

Provider includes durations of 50 days for procuring permit and regulatory approvals (per project ). Provider will not be responsible for construction delays caused by permit and approval requirements from local jurisdictions or regulatory review bodies. Any delays in procuring permits will result in a day-for-day construction schedule extension.

***Shading***

The design is based on existing visual conditions on site. Removal of trees or other obstructions to install the solar arrays and system components is included as reflected in the Tier 1 array layouts. Trees and/or other obstructions identified for removal or trimming by Customer must be removed or trimmed prior to substantial completion or performance expectations/guarantees will require adjustment which will be handled as a change to the contract. At Substantial Completion an as-built shade study and performance simulation will be completed to ensure accuracy of initial shading assumptions.

### ***Painting***

Galvanization of canopy columns and primary beams only is included. All other metallic materials are either factory-finished or non-corrosive.

Painting of wall-mounted conduits is not included.

### ***Landscaping***

Site landscaping (e.g. plant restoration or long term weed abatement) is not included.

Irrigation repair and reconfiguration caused by foundation or underground construction is not included.

### ***Fencing***

A 6-0' galvanized, 9 gauge, 2" mesh fencing and chain link fence-with gate around perimeter electrical equipment pad locations is included. Special provisions for privacy slats, special hardware, lock sets, small fabric, etc. are not included. 4" bollards are included only in areas subject to vehicle impact. Additional bollards required by utility or other entities are excluded.

### ***Labor***

#### ***Project Labor Agreement***

Provider shall cause its project contractor to enter into Customer's project labor agreement among Customer, the project contractor, and all subcontractors thereof working on the project (the "PLA").

#### ***Overtime and special shift requirements***

Overtime and special shift requirements are not included, based on schedule submitted with this proposal, except for the interconnection work if shutdown is required. Project hours are based on Monday through Friday 7am – 5pm.

#### ***Prevailing Wages***

Provider shall pay prevailing wages for the project per the PLA and industrial relations requirements of project location.

#### ***Diversity Requirements***

Provider shall comply with Contra Costa County's Construction Outreach Program.

### ***Indirect Construction Costs***

#### ***Taxes and fees***

Taxes or fees, other than permit fees and sales tax, are not included.

### ***Bonds***

Prior to the Effective Date of the Agreement to which this Exhibit A is attached, Provider shall deliver to Customer for approval good and sufficient bonds with sureties, in amounts specified in Section 12.5 (Limitation of Liability) of the Agreement guaranteeing its faithful performance of the Agreement and its payment for all labor and materials thereunder.

### ***Site & Construction Conditions***

#### ***Access***

Design assumes each project site will be constructed in a single phase, set up of construction fencing at beginning of mobilization and removed when construction is completed. Extra time and labor for moving fences to “phase” construction in efforts to minimize parking impacts will have impacts in cost and schedule and will be calculated as a change order.

Customer will provide Site access to Provider to perform all work pursuant to the License granted in the Agreement. Provider will perform all work during regular business hours according to the PLA. Extra time or personnel constraints due to site security beyond daily signing in by workers on a sign in sheet i.e. badging, background checks, tool inventory checks, etc.—is not included.

Provider will be provided a sufficient area for staging materials and locating temporary facilities such as cranes, fork lifts, scaffolding, staintowers, construction trailers, portable toilets and dumpsters.

Existing roads will be capable of handling all required construction equipment such as drilling rigs, concrete trucks, delivery trucks, cranes, and all other equipment necessary to complete the work. Provider will not be responsible for any damage to existing roads, parking lots or playgrounds resulting from normal construction operations and activities.

#### ***Use of Facilities***

On-site water and power will be available for construction with no restrictions and at no charge to Provider. If a Customer initiated power shut down has duration over 4 hours and effects normal construction operations, Provider can rent and install a temporary generator and submit associated costs to Customer for reimbursement. Water quality shall be sufficient for use in dust control, as necessary, and be suitable for Provider’s standard concrete mix design.

#### ***Special handling of site materials***

Testing for removal and disposal of any existing hazardous waste materials, contaminated soils, or any other unforeseen site conditions that require special handling are not included.

#### ***Site utilities and hazards***

Changes resulting from utilities, right of ways, easements, and/or hazards—underground or above ground—or any undocumented building upgrades are not included.

Documented utilities and building upgrades are considered as part of this proposal if as-builts are provided to Provider prior to contract execution in order to confirm locations of these possible hazards. Customers shall supply Provider with a current Title Report with plotted easements, encumbrances, and rights-of-way at all project site locations.

### ***Security and Lighting***

Proposal assumes all parking lot light standards in direct conflict with installation of photovoltaic parking canopies will be removed by Provider. Proposal also assumes that the existing lighting circuits, for those removed parking lot light standards, can be re-used for photovoltaic parking canopies lighting system and that those existing circuits have ample current carrying capacity to provide required lighting at parking canopies, per jurisdictional code requirements. PV canopies located in areas where no existing lights are present will not include lighting unless the Customer requests this for an additional cost.

Temporary lighting during construction is excluded.

New lighting circuit installation is excluded from this proposal as well as any required timing circuit reconfiguration, lighting controllers, relays, or new panel boards. Lighting design and/or installation beyond the footprint of the photovoltaic parking canopies is not included in this proposal. Replacement of existing light standards is not included. Proposal includes LED fixtures for lighting under structures.

Additional security systems or infrastructure are not included in this proposal

### ***Special Conditions***

Proposal assumes modifications and/or reconfiguration of the existing parking lots will not be required to accommodate installation of Provider's photovoltaic parking canopy.

Assumes existing islands in parking lot to remain at area of new carport structure. Proposal excludes any re-striping of the parking lot/hard-court areas, unless specifically related to the construction of the photovoltaic parking canopies, or specifically described in the RFP.

While special care will be taken to locate existing underground utilities (underground survey) and locate carport structures with minimum conflicts, relocation of existing underground utilities due to carport foundations is not included.

Proposal excludes requirements for accessibility upgrades and accessibility design around the photovoltaic parking canopy structures and assumes that current parking lot layout has been reviewed and approved by AHJ and built and closed at the AHJ. If the architect of record recommends addition of new accessible parking stalls under the solar canopies, grade change to meet code, changed path of travel and/or new canopies over existing accessible stalls, design and construction costs will be addressed via Change Order.

Proposal excludes design or installation of any required additional fire hydrants or fire protection apparatuses as required by local first responders or Fire, Life/Safety professionals responsible for review and approval of the design for this project.

Architectural enhancements to the photovoltaic parking canopy structures or ground and roof arrays and mounting systems are not included.

At the detention center located at 1000 Ward in Martinez, the project estimate is based on utilizing existing conduit and equipment from the previous pv installation. The ability utilize existing conduit will be verified during the design phase.

### ***Testing and Inspections***

Provider assumes all Special Inspections/Testing shall be paid for and contracted by the Customer.

### ***Weather conditions***

Provider assumes standard weather patterns and site conditions for planning the project schedule. Instances of excessive climate, weather (greater than the most adverse conditions in the last 3 years) or natural disasters may result in delays and/or unplanned costs (i.e. additional labor, shipping, storage, and logistics costs) which will be the responsibility of the Customer.

### ***Commissioning, Monitoring, Operations & Maintenance***

#### ***Commissioning***

Proposal assumes commissioning requirements for this project is only for the Photovoltaic and energy storage systems. Proposal does not include other building system commissioning costs not related to our work (i.e. HVAC, Plumbing, Fire Alarm, etc.).

**EXHIBIT B**  
**FORM OF FINANCING PARTY ACKNOWLEDGMENT**

*[This Form of Consent contemplates a Sale-Leaseback of the System between the Provider and Provider's Lender and Provider's eventual lender may request changes]*

This CONSENT AND AGREEMENT (this "Consent") dated as of [●], 201 is entered into among (i) Contra Costa County, a political subdivision of the State of California (the "Customer"), (ii) Solar Star Co Co 1, LLC, a limited liability company duly organized and existing under the laws of the State of Delaware (the "Provider"), and (iii) [●], a [●] duly organized and existing under the laws of the State of [●] (together, with its successors in such capacity, the "System Lessor").

WHEREAS, the Provider intends to develop, install, own, operate and maintain a [\_\_\_\_\_] MW [**ground-mounted/rooftop**] photovoltaic solar electric generating facility to be located in [\_\_\_\_\_] (the "Project");

WHEREAS, the Provider and the Customer entered into that certain Power Purchase & Storage Services Agreement, dated as of [●], 2019 (as amended, amended and restated, modified or supplemented from time to time, the "Assigned Agreement");<sup>1</sup>

WHEREAS, the Project will be sold by the Provider to the System Lessor pursuant to that certain Participation Agreement (as amended, the "Participation Agreement") dated as of the date hereof, among the Provider, the System Lessor, [●], not in its individual capacity but as owner trustee, and [●] ("Owner Participant");

WHEREAS, the System Lessor will lease the Project back to the Provider pursuant to that certain Lease Agreement, a related Project Schedule and a Certificate of Acceptance (as amended, the "Lease Agreement") dated as of the date hereof, between the System Lessor and the Provider;

WHEREAS, the Provider will grant the System Lessor a first priority security interest in and to all of the Provider's assets, including the Assigned Agreement, pursuant to a security agreement in form and substance acceptable to the System Lessor (as amended, amended and restated, modified or supplemented from time to time, the "Security Agreement"); and

WHEREAS, it is a condition precedent to the Owner Participant's obligation to make its investment in the System Lessor and for the System Lessor to acquire the Project under the Participation Agreement and lease the Project to the Provider under the Lease Agreement that the Customer execute and deliver this Consent.

NOW, THEREFORE, as an inducement to the Owner Participant to make its investment in the System Lessor and for the System Lessor to acquire the Project under the Participation Agreement and lease the Project to the Provider under the Lease Agreement, and in consideration

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<sup>1</sup> NTD: Can be expanded to include any additional agreements to which the Customer is a party.



of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

**1. CONSENT TO ASSIGNMENT, ETC.**

(a) Consent to Assignment. The Customer (i) acknowledges that the Provider and the System Lessor have entered into the Participation Agreement and the Owner Participant's obligation to make its investment in the System Lessor and for the System Lessor to acquire the Project under the Participation Agreement and lease the Project to the Provider under the Lease Agreement will be made in reliance upon the execution and delivery by the Customer of the Assigned Agreement and this Consent, (ii) consents in all respects to the pledge and assignment to the System Lessor of all of the Provider's right, title and interest in, to and under the Assigned Agreement pursuant to the Security Agreement, and (iii) acknowledges the right, but not the obligation, of the System Lessor or the System Lessor's designee, in the exercise of the System Lessor's rights and remedies under the Lease Agreement, the Security Agreement, and related documents to make all demands, give all notices, take all actions and exercise all rights of the Provider in accordance with the Assigned Agreement, and agrees that in such event the Customer shall continue to perform its obligations under the Assigned Agreement; provided that in the event, with respect to the Assigned Agreement, there exists a conflict between any notice given or action taken by the System Lessor and any notice given or action taken by the Provider, such conflict shall be resolved in favor of the notice given or the action taken by the System Lessor.

(b) Substitute Owner. The Customer agrees that, if the System Lessor notifies the Customer that an event of default under the Lease Agreement has occurred and is continuing and that the System Lessor has exercised its rights (i) to have itself or its designee substituted for the Provider under the Assigned Agreement, (ii) to acquire or have its designee or assignee acquire the Provider, or (iii) to sell, assign, transfer or otherwise dispose of the Assigned Agreement to a third party, including in a judicial or non-judicial foreclosure sale, then the System Lessor, the System Lessor's designee or such third party (each, a "Substitute Owner") shall be substituted for the Provider under the Assigned Agreement and, in such event, the Customer will (x) recognize the Substitute Owner as its counterparty to the Assigned Agreement, (y) take any actions and execute any documents, agreements or instruments reasonably necessary to effect such substitution, and (z) continue to perform its obligations under the Assigned Agreement in favor of the Substitute Owner pursuant to the terms hereof and thereof.

(c) Right to Cure.

(i) Notwithstanding anything to the contrary contained in the Assigned Agreement, the Customer shall not exercise any right it may have under the Assigned Agreement, at law or in equity, to cancel, suspend or terminate the Assigned Agreement or any of its obligations under the Assigned Agreement, as the result of any default or other action or omission of the Provider in the performance of any of its obligations under the Assigned Agreement, or upon the occurrence or non-occurrence of any event or condition under the Assigned Agreement that would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable the Customer to terminate or suspend its obligations or exercise any other right or remedy under the Assigned Agreement or under applicable law (hereinafter an "Assigned Agreement Default"), until it first gives prompt written notice of such Assigned Agreement

Default to the System Lessor and the Owner Participant and affords the System Lessor and the System Lessor's respective successor, assignee and/or designee a period of at least ninety (90) days (or, if such default is a payment default, forty-five (45) days) to cure such default, commencing from the later to occur of (x) the System Lessor's and the Owner Participant's receipt of such notice, and (y) the expiration of any notice periods or cure periods provided for in the Assigned Agreement; provided, however, that if (1) an event of default under the Lease Agreement has occurred and is continuing, the System Lessor has exercised its rights to foreclose on the Project as a result thereof and possession of the Project is necessary to cure any such non-monetary default, then, so long as the System Lessor or the System Lessor's respective successor, assignee and/or designee is diligently pursuing such foreclosure proceedings, the time periods specified in this Section 1(c) for curing an Assigned Agreement Default shall be extended for the time taken to complete foreclosure proceedings, and (2) any such party is prohibited from curing any such Assigned Agreement Default by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding involving the Provider, then the time periods specified in this Section 1(c) for curing an Assigned Agreement Default shall be extended for the period of such prohibition.

(ii) No such cancellation, suspension or termination of the Assigned Agreement by the Customer shall be binding upon the System Lessor without the notice and extended cure period specified in this Section 1(c). Any dispute that may arise under the Assigned Agreement notwithstanding, the Customer shall continue performance under the Assigned Agreement and resolve any dispute without discontinuing such performance until the lapse of the notice and extended cure period specified in this Section 1(c).

(d) No Termination, Assignment or Material Amendments. The Customer shall not enter into any consensual cancellation or termination of the Assigned Agreement (except with respect to termination in the event of a default by the Provider, subject to the limitations and extended cure periods provided for in Section 1(c)), or assign, novate or otherwise transfer any of its right, title or interest thereunder or consent to any such assignment or transfer by the Provider without, in each such case, the written consent of the System Lessor. The Customer shall not enter into or agree to any amendment, supplement, assignment or other modification to, or benefit from any waiver under, the Assigned Agreement without the prior written consent of the System Lessor.

(e) Replacement Agreement. In the event that the Assigned Agreement is rejected or otherwise terminated as a result of any bankruptcy or insolvency proceeding affecting the Provider, the Customer shall, at the option of the System Lessor or the System Lessor's respective successor, assignee and/or designee, enter into a new agreement with the System Lessor or any Substitute Owner (or its transferee or other nominee that owns or leases the Project) having terms substantially the same as the terms of the Assigned Agreement. Thereafter, references in this Consent to the "Assigned Agreement" shall be deemed to refer to such new agreement.

(f) No Liability. The Customer acknowledges and agrees that none of the System Lessor, or the System Lessor's respective successor, assignee and/or designee or the Owner Participant shall have any liability or obligation under the Assigned Agreement as a result of this Consent, the Security Agreement, the Lease Agreement or otherwise, nor shall the System Lessor or the System Lessor's respective successor, assignee and/or designee be obligated or required to (i) perform any of the Provider's obligations under the Assigned Agreement, except, in the case of

the System Lessor or the System Lessor's respective successor, assignee and/or designee, during any period in which the System Lessor or the System Lessor's respective successor, assignee and/or designee is a Substitute Owner pursuant to Section 1(b), in which case the System Lessor or other Substitute Owner shall not be liable for acts or omissions of the Provider and the obligations of such Substitute Owner shall otherwise be no more than those of the Provider under the Assigned Agreement, or (ii) take any action to collect or enforce any claim for payment assigned under the Security Agreement or any related document.

(g) Delivery of Notices. The Customer shall deliver to the System Lessor and the Owner Participant, concurrently with the delivery thereof to the Provider, a copy of each notice, request or demand given by the Customer pursuant to the Assigned Agreement.

(h) Acknowledgements. The Customer agrees to execute such acknowledgements or other similar instruments as the System Lessor may reasonably request in connection with the transactions contemplated by this Consent.

## **2. PAYMENTS UNDER THE ASSIGNED AGREEMENT**

(a) Payments. The Customer will pay all amounts payable by it under the Assigned Agreement, if any, in lawful money of the United States of America, in immediately available funds and in the manner required by, and subject to the terms and conditions of, the Assigned Agreement, directly into the account specified on Exhibit A hereto, or to such other person or account as may be specified from time to time by the System Lessor to the Customer in writing.

(b) No Offset, etc. All payments required to be made by the Customer under the Assigned Agreement shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever.

## **3. REPRESENTATIONS AND WARRANTIES OF THE CUSTOMER**

The Customer makes the following representations and warranties to the System Lessor, the Provider and the Owner Participant as of the date hereof, which shall survive the execution and delivery of this Consent and the Assigned Agreement and the consummation of the transactions contemplated hereby and thereby:

(a) Organization; Power and Authority. The Customer is a political subdivision of the State of California, and is duly qualified, authorized to do business and in good standing in all jurisdictions where it is required to be so qualified and authorized to do business, and has all requisite power and authority to enter into and to perform its obligations under this Consent and the Assigned Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

(b) Authorization. The execution, delivery and performance by the Customer of this Consent and the Assigned Agreement have been duly authorized by all necessary action on the part of the Customer and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of (i) the Customer, or (ii) any other person or entity, except approvals or consents which have previously been obtained.

(c) Execution and Delivery; Binding Agreements. Each of this Consent and the Assigned Agreement is in full force and effect, has been duly executed and delivered on behalf of the Customer and constitutes the legal, valid and binding obligation of the Customer, enforceable against the Customer in accordance with its terms except as the enforceability hereof or thereof may be limited by (i) bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights generally, and (ii) general equitable principles (whether considered in a proceeding in equity or at law).

(d) Litigation. There is no legislation, litigation, action, suit, proceeding or investigation pending or (to the best of the Customer's knowledge after due inquiry) threatened against the Customer before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate, (i) could adversely affect the performance by the Customer of its obligations under this Consent or the Assigned Agreement, or that could modify or otherwise adversely affect the Approvals (as defined in Section 3(f)), (ii) questions the validity, binding effect or enforceability of this Consent or the Assigned Agreement, any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby, or (iii) could have a material adverse effect upon (x) the value, validity, perfection or enforceability of the liens granted to the System Lessor under the Security Agreement and other security documents, or (y) the ability of the System Lessor to enforce any of its rights and remedies under the Assigned Agreement or this Consent.

(e) No Conflict. The execution and delivery of this Consent and the Assigned Agreement and the performance by the Customer under this Consent and the Assigned Agreement will not violate, result in a breach of, default under or conflict with (i) any law, rule, regulation, order, permit or decree applicable to the Customer, (ii) its organizational documents, or (iii) the terms of any other agreement binding on the Customer.

(f) Government Consent. No consent, order, authorization, waiver, approval or any other action, or registration, declaration or filing with, any person, board or body, public or private (collectively, the "Approvals"), is required to be obtained by the Customer in connection with the execution, delivery or performance of this Consent, the Assigned Agreement or the consummation of the transactions contemplated hereunder and thereunder, except any Approvals which have previously been obtained.

(g) No Default or Amendment. Neither the Customer nor, to the Customer's knowledge after due inquiry, the Provider or any other party to the Assigned Agreement is in default of any of its obligations thereunder (or has claimed force majeure, emergency, or any other excuse for performance thereunder which is still ongoing as of the date hereof). The Customer has no existing counterclaims, offsets, defenses, or claims for change orders against the Provider under the Assigned Agreement. To the Customer's knowledge, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either the Customer or the Provider to terminate or suspend its obligations (or the performance of such obligations) under the Assigned Agreement. The Assigned Agreement has not been amended, modified or supplemented in any manner other than as indicated above.

(h) No Previous Assignments. The Customer has no notice of, and has not consented to, any previous assignment of all or any part of its right, title or interest in, to or under the Assigned Agreement.

(i) **Purchase Option.** The Customer has not taken any official action requiring or authorizing the exercise of any purchase option available to it under the Assigned Agreement, has not decided whether or not it will exercise any such purchase option, and is under no legal or economic compulsion to exercise any such purchase option; provided, however, nothing herein shall prohibit the Customer from exercising any purchase option under the Assigned Agreement when it becomes exercisable in accordance with its term and such exercise shall not be deemed to be a breach of this representation and warranty.]

(j) Liens; Mortgages. The Customer has no knowledge of any existing lease, mortgage, security interest or other interest in or lien upon the [Premises], which could attach to the Project as an interest adverse to the System Lessor's interest therein.

Representations and Warranties. All representations, warranties and other statements made by the Customer in the Assigned Agreement were true and correct in all material respects as of the date when made and, except for those that by their terms speak as of a specific date, are true and correct in all material respects as of the date hereof.

#### **4. ADDITIONAL PROVISIONS<sup>2</sup>**

(a) **Commercial Operation Date.** The Commercial Operation Date is \_\_\_\_\_.

(b) **Use of Electricity.** None of the electricity to be sold under the Assigned Agreement will be used to generate energy for the purpose of heating a swimming pool.

(c) **Project.** The Customer has approved the Project as installed at the [Premises].

(d) **Access Rights.** The System Lessor and the System Lessor's respective successors, assignees and/or designees shall have the same rights as the Provider to access the Project in order to install, operate, maintain and remove the Project as the right accorded to the System Lessor under the Lease Agreement and the Security Agreement.

(e) **Notice of Ownership.** The Customer will use commercially reasonable efforts to place its successors, assigns and lien holders on notice of the ownership of the Project by the Provider or the System Lessor, the existence of the security interest, and the fact that the Project is not part of the [Premises] or a fixture thereof, as necessary and appropriate to avoid confusion or adverse claims.

(f) **Amendments.** The Customer acknowledges that, under the Provider's financing arrangements, the Provider is not permitted to agree to an amendment or assignment of the Assigned Agreement without prior written consent of the System Lessor.]

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<sup>2</sup> NTD: Additional provisions to be added to address specific matters contained in the PPA.

**5. MISCELLANEOUS**

(a) Applicable Law; [Submission to Jurisdiction]. THIS CONSENT, AND ANY INSTRUMENT OR AGREEMENT REQUIRED HEREUNDER (TO THE EXTENT NOT EXPRESSLY PROVIDED FOR THEREIN), SHALL BE GOVERNED BY, AND CONSTRUED UNDER, THE LAWS OF THE STATE OF CALIFORNIA, APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE AND WITHOUT REFERENCE TO CONFLICTS OF LAWS.

(b) [Reserved.]

(c) Notices. All notices and other communications hereunder (i) shall be in writing, (ii) shall be effective upon actual receipt thereof by the party or parties to whom such notice is addressed, except that any communication or notice so transmitted by telecopy or electronic mail shall be deemed to have been validly and effectively given on the day (if a business day and, if not, on the next following business day) on which it is transmitted if transmitted during normal business hours of the recipient, and if transmitted after that time, on the next following business day, in each case as evidenced by transmittal confirmation received by the transmitter, (iii) shall be delivered by hand or overnight courier service or mailed by certified or registered mail, sent by facsimile or via electronic mail, and (iv) shall be directed as follows:

If to the Customer:	[_____] [_____] [_____] Attention: [_____] Telephone: [_____] Facsimile: [_____] Email: [_____]
If to the Provider:	[●]
If to the System Lessor:	[●]

The above parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent.

(d) Amendment, Waiver. Neither this Consent nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the Customer, the Provider and the System Lessor.

(e) Third Party Beneficiary. The Owner Participant shall be an express third-party beneficiary of this Consent. The Owner Participant shall be entitled to enforce the rights of the System Lessor hereunder.

(f) No Waiver; Remedies Cumulative. The waiver of any right, breach or default under this Consent by any party must be made specifically and in writing. No failure or delay on the part of the System Lessor in exercising any right, power or privilege hereunder and no course of dealing between the Customer and the System Lessor shall operate as a waiver thereof; nor shall any single

or partial exercise of any right, power or privilege hereunder preclude any other exercise, or the further exercise, of any other right, power or privilege hereunder. No notice to or demand upon any party will entitle such party to any further, subsequent or other notice or demand in similar or any other circumstances. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies that the System Lessor would otherwise have.

(g) Counterparts. This Consent may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered, including by e-mail or other electronic transmission, shall be deemed an original, but all of which shall together constitute one and the same instrument.

(h) Headings Descriptive. The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

(i) Severability. In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(j) Successors and Assigns. This Consent shall be binding upon the parties hereto and their permitted successors and assigns and shall inure to the benefit of the parties, their designees and their respective permitted successors and assigns; provided, however, that no party or its respective successor or assign shall assign any of its interest in this Consent except in connection with an assignment of its interests in the Assigned Agreement and then only to the same person(s) or entity(ies) to which its interest in the Assigned Agreement is so assigned.

(k) Survival. All agreements, statements, representations and warranties made by the Customer herein shall be considered to have been relied upon by the System Lessor and the Owner Participant and shall survive the execution and delivery of this Consent.

(l) Conflicts. In the event of a conflict between any provision of this Consent and any provision of the Assigned Agreement, the provisions of this Consent shall prevail.

(m) Further Assurances. Each party hereto hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

[SIGNATURE PAGES FOLLOW]

**IN WITNESS WHEREOF**, the parties hereto have caused this Consent to be executed by their respective officers as of the date first above written.

[\_\_\_\_\_]
as the Customer

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

[\_\_\_\_\_]
as the Provider

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

[●],
as the System Lessor

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



**Payment Instructions**

Accounts Bank	
ABA Number	[_____] <sup>3</sup>
Account Number	[_____]
Account Name	[_____]
Reference	[_____]

---

<sup>3</sup> Account information to be confirmed and included.

## EXHIBIT C

### SYSTEM PERFORMANCE GUARANTEE (the “Guarantee”)

#### ARTICLE I. ADDITIONAL DEFINED TERMS

**Actual Generation** means, for each Guarantee Year during the Term and with respect to the System, the System’s alternating current or “AC” electricity production in kilowatt-hours (“kWh”) as measured under Section 3.02.

**Annual Deficit** has the meaning set forth in Section 3.01.

**Annual System Performance Report** means the report that summarizes annual system performance in kWh and includes calculations for Weather Adjustment and True-up Period calculations.

**Avoided Energy Price per kWh** means the amount that the Customer will be paid by Provider for each Kilowatt-hour as set out in Appendix B (Avoided Energy Price) of this Guarantee.

**Data Acquisition System** or **DAS** means Provider’s system that displays historical meteorological and production data over an Internet connection and consists of hardware located on-Site and software housed on Provider’s DAS server. The DAS measures and logs, at a minimum, the following parameters on a 15-minute average basis at the Site: actual AC electricity production of the System (in kWh) and solar irradiance (in W/m<sup>2</sup>).

**Expected Energy** means, for the System in a specified Guarantee Year, the kilowatt hours for the System set forth on Appendix A (Expected Energy) of this Guarantee.

**Excused Performance Event** means:

- Force Majeure Event;
- Impingements on solar access by structures or activities on neighboring sites or by facilities that are beyond the control of either Party;
- Externally caused outages, including:
  - Warranty Exclusions: hours during any period when the System or any portion thereof is off-line due to an event that would constitute an exclusion under any applicable manufacturer’s, System, workmanship or other applicable warranty.
  - Network Disturbance Hours: hours during any period when a fluctuation in the utility network parameters (e.g., a frequency or voltage variation) result in the disconnection of the inverters or the System from the utility network and prevented energy from being evacuated from the System.
  - Network Outage Hours: hours during any period when a failure in the distribution network or in the connection infrastructure prevented energy from being evacuated from the System.
  - Third-Party Equipment Servicing Hours: equipment or System outage hours during any period that result from service issues related to non-Provider equipment or delays in procuring non-Provider replacement parts.

- Customer-Caused Hours: hours during any period when the equipment or the System is off-line due to Customer-required outages or Customer-caused delays in Site access.
- Major Maintenance Hours: hours during any period when the equipment or the System is off-line due to Customer-required major maintenance work.

**Guaranteed Level** means 90% of the Expected Energy for a Guarantee Year for the System.

**Guarantee Year** means each successive 12-month period during the Term commencing on the Commercial Operation Date.

**PVSim** means the software program utilized by Provider to predict the amount of energy that the System will produce in an average year which has the following characteristics: (1) based on PVFORM, the photovoltaic simulation software produced by Sandia National Laboratories and the US Department of Energy, (2) all photovoltaic characteristics are modeled, (3) all ancillary array losses are taken into account and (4) PVSim simulations use either measured data or typical meteorological year files from Meteornorm and NREL.

**SEMMY** or “Simulated Energy in a Measured Meteorological Year”, means, with respect to any Guarantee Year, Year 1 AC Energy output of the System simulated by PVSim using measured average hourly irradiance, wind speed, and air temperature as recorded by the Data Acquisition System, holding all other inputs equal to those used in calculating SETMY.

**SETMY** or “Simulated Energy for a Typical Meteorological Year”, means the Year 1 AC Energy output of the System simulated by PVSim using average hourly irradiance, wind speed, and air temperature data contained within the Weather File.

**True-up Period** means each successive one (5)-year period during the Term commencing on the first day of the Term.

**Weather Adjustment** means the ratio described in Section 3.01. Section 3.01

**Weather File** means the typical meteorological year data set specified for the System set forth on Appendix C (Weather File) of this Guarantee.

## **ARTICLE II. PERFORMANCE GUARANTEE CONSIDERATION**

### **Section 2.01 Consideration**

The Parties agree that the consideration set forth in Section 5.1 of the Agreement includes adequate consideration for the terms, conditions and provisions of this Guarantee.

## **ARTICLE III. PERFORMANCE GUARANTEE**

Provider guarantees to Customer that the Actual Generation of the System during any Guarantee Year, subject to the limitations, terms and conditions stated in this Guarantee shall not be less than the Guaranteed Level.

### **Section 3.01 Guaranteed Output Calculations.**

Provider shall calculate the Annual Deficit for the System for each Guarantee Year during the Term:

- (a) Annual Deficit = (Expected Energy x Guaranteed Level) x Weather Adjustment – Actual Generation

Where the Weather Adjustment ratio is as follows:

Simulated Energy in a Measured Meteorological Year (SEMMY)

Simulated Energy for a Typical Meteorological Year (SETMY)

For each Guarantee Year, within thirty (30) days after the end of such Guarantee Year, Provider shall calculate the Annual Deficit for the System. Customer has the right to access all data and information supporting Provider's calculation of the Annual Deficit.

- (b) Guarantee Payment Reimbursement. At the end of each True-up Period:
- (i) if the sum of Annual Deficits > 0, then Provider shall pay to Customer an amount equal to the cumulative product of (y) the Annual Deficits and (z) the Avoided Energy Price per kWh (a "Guarantee Payment");
  - (ii) Provider shall promptly notify Customer of any Guarantee Payment due. Provider shall make Guarantee Payments within thirty (30) days of the date of the notice provided in the first sentence of this paragraph.

**Section 3.02 Actual Generation Measurement.**

Provider shall measure Actual Generation for the System for each Guarantee Year as follows:

- (a) **Initial Output Data Collection.** During the Term, Provider will collect energy output data using its Data Acquisition System. For each Guarantee Year, Provider will sum the daily kWh output for the System provided by the DAS to calculate the Actual Generation for the System for such Guarantee Year.
- (b) **Equipment Calibration and Replacement.** Provider may request to have the meteorological equipment independently calibrated or replaced at its own expense every eighteen (18) to thirty (30) months. Provider shall notify the Customer of the scheduled calibration date and time no less than 30 days prior, and shall provide the Customer written proof of calibration or replacement.
- (c) **Contingency for Equipment Failure.** In the event of hardware, communication, or other failure affecting the DAS, Provider will make commercially-reasonable efforts to resolve the failure in a timely manner. In the event that data is lost, Actual Generation for each affected System shall be adjusted to compensate for such lost data as follows:
  - (i) In lieu of lost meteorological data, Provider will utilize such data obtained from a nearby meteorological station that Provider monitors and selects for such purpose.
  - (ii) In lieu of lost electricity data, Provider will utilize the cumulative data from System meter readings to calculate the electricity generated by each affected System during the missing interval. In the event that data

from the System meter is inaccurate or missing, Provider will simulate electricity production during the missing interval utilizing measured meteorological data and PVSIM. The simulated electricity production during the missing interval will be added to the Actual Generation for each affected System for the subject Guarantee Year.

#### **ARTICLE IV. CUSTOMER RESPONSIBILITIES**

##### **Section 4.01 Customer's Failure to Uphold Responsibilities.**

Provider shall promptly notify Customer of any breach ("Out of Compliance Letter") of (i) Customer's obligation to pay Provider for the Solar Services pursuant to the Agreement and (ii) any Customer obligations pursuant to the Agreement that directly (A) hinder the amount of Energy delivered by the System or (B) degrade the functionality of the System. Upon Customer's cure of all failures described in an Out of Compliance Letter, Provider will notify Customer ("In Compliance Letter") that Customer is complying with Customer's Responsibilities. For any period between the issuance of an Out of Compliance Letter and of an In Compliance Letter (a "Noncompliance Period"), to the extent that Customer's non-compliance actually impacts the Actual Generation of the System, any Actual Generation from such affected Systems in such month(s) shall be disregarded in the calculation of Annual Deficits for such Systems under Section 3.01, and the Expected Energy for any affected System in any Guarantee Year in which there is a Noncompliance Period shall be reduced by a proportionate amount.

#### **ARTICLE V. EXPECTED ENERGY ADJUSTMENT**

##### **Section 5.01 Adjustment of Expected Energy.**

If, and to the extent, any of the following events results in a change in the production of electricity by the System, Expected Energy for that System shall be adjusted correlatively for the period of such change:

- (a) Subject to Provider's obligations under any warranty it provides in connection with the Systems (including any Provider obligation, with respect to the System, in connection with any requirements under the California Solar Initiative program), a material portion of the components of the System fails, and the manufacturer of such component(s) refuses, or otherwise fails to honor its corresponding warranty;
- (b) Customer fails to perform any of its obligations under the PPA – such as obligations related to maintaining the System's interconnection to the local utility grid or limiting outages (as defined in the Agreement) – and such failure reduces the amount of electricity that the System can generate or deliver.
- (c) There is any failure of the System to perform caused by legislative, administrative or executive action, regulation, order or requisition of any federal, state or local government, local utility or public utilities commission;
- (d) There is an Excused Performance Event; or

- (e) Adjustment to the Expected Energy, or a reduction in the amount of Energy that Provider is obligated to deliver, is permitted or required under the Agreement.

**Section 5.02 Notification of Changes to Expected Energy.**

If Provider determines that any changes to Expected Energy for the System are required based on an event or events described in Section 5.01, then Provider shall notify the Customer, in writing, of the basis for its determination, and Provider shall either provide revised definitions of Expected Energy in exhibits that, upon mutual agreement of the Parties, which shall not be unreasonably denied or delayed, shall replace the current exhibits to this Guarantee, or specify a date by which it shall do so.

### Appendix A – Expected Energy

Guarantee Year	Expected Annual kWh
1	344,427
2	343,566
3	342,707
4	341,850
5	340,995
6	340,143
7	339,293
8	338,444
9	337,598
10	336,754
11	335,912
12	335,073
13	334,235
14	333,399
15	332,566
16	331,734
17	330,905
18	330,078
19	329,253
20	328,429
21	327,608
22	326,789
23	325,972
24	325,157
25	324,345
<b>Total</b>	<b>8,357,234</b>

### Appendix B – Avoided Energy Price

<b>Guarantee Year</b>	<b>Avoided Energy Price per kWh</b>
1	\$0.0048
2	\$0.0049
3	\$0.0051
4	\$0.0052
5	\$0.0054
6	\$0.0056
7	\$0.0057
8	\$0.0059
9	\$0.0061
10	\$0.0063
11	\$0.0065
12	\$0.0066
13	\$0.0068
14	\$0.0070
15	\$0.0073
16	\$0.0075
17	\$0.0077
18	\$0.0079
19	\$0.0082
20	\$0.0084
21	\$0.0087
22	\$0.0089
23	\$0.0092
24	\$0.0095
25	\$0.0098



## **Appendix C – Weather File**

SolarAnywhereTGY2016\_(10km)\_37.95\_-121.85

**Schedule A**

**DESCRIPTION OF SITE**

<b>Facility</b>	<b>System Size (kW DC)</b>	<b>Product Type</b>	<b>Module qty &amp; type - SunPower</b>	<b>Inverters- qty &amp; type-Delta</b>
4549 Delta Fair Blvd, Antioch, CA 94509	211.50	Carport – Helix 1.5	(450) SPR-X21-470-COM	(3) M42U_121 (1) M36U_121

**Schedule B**

**DESCRIPTION OF SYSTEM**

PV System Array Layouts and Electrical Single Line Diagrams



SOLAR SWITCHBOARD

AC-RUN (SSB-POI)  
@ 880V, 1200A

POINT OF INTERCONNECTION  
@ 880V, 1200A

1 ARRAY LAYOUT  
SCALE: 1/32" = 1'-0"

- NOTES:
1. 10 MPH WIND ZONE (ASCE 7-10) CATEGORY II, EXPOSURE C.
  2. CORROSION RATE: B2 (MIL/YR) (CA: 90%, CS: 99%)
  3. REQUIRED COATING FOR PREGALVANIZED STEEL IN ORDER TO ACHIEVE 10 YEAR LIFE BEFORE APPEARANCE OF RUST: G155
  4. REQUIRED COATING FOR PREGALVANIZED STEEL IN ORDER TO ACHIEVE LIFETIME COST LOWER THAN 25 YEARS: G235
  5. METER # K2G10101073740716
  6. ARRAY SHOWN ON AERIAL IMAGE:
  7. FOUNDATIONS STRUCTURE TYPE: CARPORT V1.5
  8. STANDARD CANOPY LSN END CLEARANCE: 11' PROVIDED FOR STANDARD VEHICLE
  9. BUILDING CODE REQUIRES 20' MIN. CLEARANCE FROM EXISTING BUILDINGS
  10. FIRE DEPARTMENT REQUIRES 20' MIN. CLEARANCE ALONG EMERGENCY ACCESS
  11. TOTAL OF TREES TO BE REMOVED: 8
  12. TOTAL OF LIGHT POLE TO BE REMOVED: 4
  13. TOTAL OF LIGHT POLE TO BE REMOVED: 4

**SUNPOWER**  
1414 HARBORWAY SOUTH  
RICHMOND, CA 94804 USA  
(510) 540-0550

ENGINEER'S STAMP

CONTRA COSTA COUNTY  
4549 DELTA FAIR BLVD  
ANTIOCH, CA 94509  
ARRAY LAYOUT

REV	DATE	DESCRIPTION
A	08-28-18	REVISION
B	03-22-19	NEW SITE INFORMATION

PROJECT: 000152788  
OPPORTUNITY: 000152788

SHEET: AL1

PROJECT SUMMARY

CARPORT	450
TOTAL # OF MODULE	SPR-X21-470-COM
MODULE TYPE	4
# OF INVERTER	211.50
DC SYSTEM SIZE (KW)	177.60
AC SYSTEM SIZE (KW)	



**SUNPOWER** HELIX  
**TIER 1**

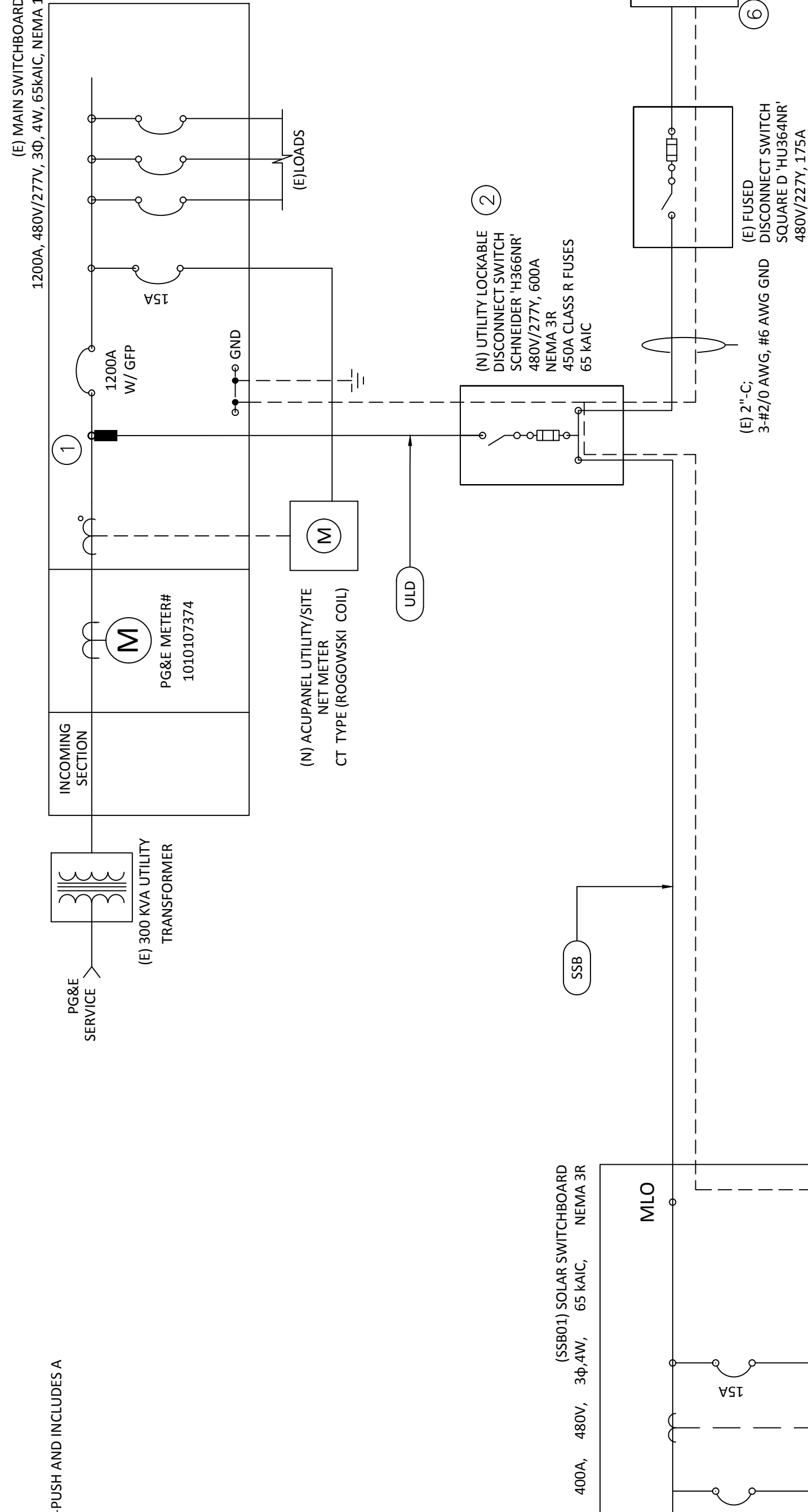
CANOPY LABEL	# MODULE	# STRING	KW (DC)	M20U_121 (125TR)	M20U_121 (95TR)	KW (AC)	CEC LISTING (KW-AC)	TILT	AZIMUTH CSI	AZIMUTH SPWR	AC RUN (INV-SSB)
1	6x35	210	21	98.70	1	85.60	85.71	10°	255°	75°	105,105
2	6x40	240	24	112.80	2	92.00	91.94	10°	255°	75°	35,35
TOTAL	450	45	211.50	3	1	177.60	177.65				

**SPECIFIC ELECTRICAL NOTES:**

- 1 LINE SIDE CONNECTION PER ART. 705.12(A). WIRES TO OVERCURRENT DEVICE SHALL BE INSTALLED IN RIGID STEEL CONDUIT WITH GROUND BUSHINGS PER ART. 250.92. BUS CONNECTIONS SHALL BE RELISTED BY A 3RD PARTY TESTING AGENCY IF THE CONNECTION IS NOT IN ACCORDANCE WITH THE LISTING OF THE EQUIPMENT. IF WIRE RUN EXCEEDS 10', WIRES SHALL BE TERMINATED IN SERVICE EQUIPMENT WITH CABLE LIMITERS PER ART. 705.31. CONNECTION SHALL BE MADE USING EXISTING BOLT HOLES, AND FACTORY BUSSING SHALL NOT BE DRILLED.
- 2 GANG OPERATED, LOCKABLE, VISIBLE OPEN DISCONNECT
- 3 ALL INVERTERS ARE LISTED TO UL 1741 TO INCORPORATE ANTI-ISLANDING AND THE FOLLOWING PROTECTIONS: (50) (51) (59) (27) (81) (82)
- 4 NEUTRAL BUS SHALL NOT BE BONDED TO THE GROUND BUS AND SHALL BE ISOLATED FROM THE ENCLOSURE UNLESS OTHERWISE SPECIFIED
- 5 METERING NOTES:  
FOR PV PRODUCTION MONITORING:  
EXTERNAL METER ENCLOSURE AND 333mV SPLIT CORE CT
- 6 REFER TO AS-BUILT DRAWINGS FOR EXISTING SOLAR SYSTEM DETAIL SCHEMATICS.

**METERING NOTE:**

- OPTION 1: EXTERNAL METER ENCLOSURE
- THE MODEL NUMBER FOR PRE-WIRED METER ENCLOSURE AND 333mV SPLIT CORE CTS IS: ACUPANEL 9104X/IR-333-PE-WEB-PUSH AND INCLUDES A CT MODEL AND ACCT-1040/H063/H160/H138/075/125/200/3050
  - THE HEAR ORDER ACUMIM IIR-ACUMIM IIR-D-333-PI AND A ETHERNET MODULE: AXM-WEB-PUSH.
- OPTION 2: INTEGRATED METER
- CT MODELS ARE ACCT-1040/H063/H160/H138/075/125/200/3050
  - THE HEAR ORDER ACUMIM IIR-ACUMIM IIR-D-333-PI AND A ETHERNET MODULE: AXM-WEB-PUSH.
  - CT MODELS ARE ACCT-1040/H063/H100/H138/075/125/200/3050



**SUNPOWER**  
1414 HARBOUR WAY SOUTH  
RICHMOND, CA 94804 USA  
(510) 540-0550

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**PRELIMINARY  
NOT FOR  
CONSTRUCTION**

ENGINEER'S STAMP

**CONTRA COSTA COUNTY  
4549 DELTA FAIR BLVD  
ANTIOCH, CA 94509**

**REVISIONS**

REV	DESIGN #	DESCRIPTION	DATE
A	ES-00013141	PROPOSAL	08-31-18
B		UPDATE TO SHOW CEC AC POWER	03-26-19
J5			

OPPORTUNITY: 0001557288  
PROJECT: -----  
SHEET: **E201**  
SCALE: 0 1/2" 1"  
IF BARS NOT ON INCL. DRAWING IS NOT TO SCALE

**CARPENT MODULES INFO**

MODEL TYPE	SPR-X21-470-COM
NAME PLATE STC	470.00
PTC	438.00
ISC	6.45
VOC	91.50
IMP	6.06
VMP	77.60
VCEFF. (VOC)	-0.27
VCEFF. (VMP)	-0.29

**INVERTER TYPE**

INVERTER TYPE	M42U_121	M36U_121
RATED OUTPUT (KW AC)	42	36
MAX OUTPUT (KW AC)	46	40
# OF STRING	12	9
STRING LENGTH	10	10
# OF MODULES / INVERTER	120	90
STRING MAX VOLTAGE (VOC)	981.02	981.02
STRING OPERATING VOLTAGE (VMP)	673.26	673.26
STRING DC SHORT CURRENT (ISC)	6.45	6.45
STRING OPERATING CURRENT (IMP)	6.06	6.06
# OF INVERTER/TYPE	3	1

**INVERTER SUMMARY TABLE**

INVR	ARRAY#	AC POWER (KW-AC)	DC POWER (KW-AC)	# OF STRINGS	# OF MODULES
INV01	1	46	45.972	12	120
INV02		39.6	39.737	9	90
INV03		46	45.972	12	120
INV04	2	46	45.972	12	120
<b>TOTAL</b>		177.6	177.653	45	450

Circuit	Rated (kW)	Vrated (V)	Imax. (A)	Conductor/Ph	Type	AL/CU	Terminal Temp.	V. REF	EGC	OCPP (A)	#Conduits	Size	Type	Temp. Derate	Fill Derate	One Way Dist.	% V. Drop
INV01	45.972	480	56.2	(1) #4	THWN-2	CU	75°C	#8	#8	80	1	1"	EMT	0.96	1	105 ft	0.57%
INV02	39.737	480	48.2	(1) #6	THWN-2	CU	75°C	#8	#8	70	1	1"	EMT	0.96	1	105 ft	0.78%
INV03	45.972	480	56.2	(1) #4	THWN-2	CU	75°C	#8	#8	80	1	1"	EMT	0.96	1	35 ft	0.19%
INV04	45.972	480	56.2	(1) #4	THWN-2	CU	75°C	#8	#8	80	1	1"	EMT	0.96	1	35 ft	0.19%
ACUV	-	480	5	(1) #14	THWN-2	CU	75°C	-	#14	15	1	1/2"	EMT/PVC-40	0.96	1	100 ft	1.42%
SSB	177.653	480	216.8	(1) #500	THWN-2	AL	75°C	#2	#2	300	1	3"	PVC-40	0.96	1	170 ft	0.55%
ULD	277.653	480	334	(2) #4/0	THWN-2	CU	75°C	#2	#2	450	2	2"	RMC	0.96	1	30 ft	0.11%

**Schedule C**

**PV SYSTEM PRICING**

The following pricing is based on the Standard System Design Package described in Exhibit A.

kWh Rate (\$/kWh)	Term (Years)	Annual Rate Escalator (% / Year)
\$0.1344	25	0%

**Schedule D**  
**TERMINATIONS VALUES**

<b>Applicable Date : Years from Commercial Operation Date</b>	<b>Termination Value (\$)</b>
0 Year	\$1,007,738
1 Year	\$813,947
2 Years	\$729,519
3 Years	\$644,735
4 Years	\$559,660
5 Years	\$474,119
6 Years	\$462,768
7 Years	\$450,990
8 Years	\$438,838
9 Years	\$426,150
10 Years	\$412,970
11 Years	\$399,492
12 Years	\$385,571
13 Years	\$371,072
14 Years	\$356,171
15 Years	\$340,895
16 Years	\$325,293
17 Years	\$309,258
18 Years	\$292,836
19 Years	\$276,021
20 Years	\$258,852
21 Years	\$241,237
22 Years	\$223,215
23 Years	\$204,781
24 Years	\$185,965

***EXECUTION VERSION***

*NOTE: 30 Muir Rd, Martinez, CA 94553*

**POWER PURCHASE AGREEMENT**

Dated as of June 18, 2019

by and between

Solar Star Co Co 1, LLC  
as Provider

and

Contra Costa County  
as Customer



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## POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT (as amended, amended and restated, supplemented or otherwise modified from time to time, this "Agreement"), dated as of June 18, 2019 (the "Effective Date"), is by and between Solar Star Co Co 1, LLC, a limited liability company formed under the laws of the State of Delaware ("Provider"), and Contra Costa County, a political subdivision of the State of California ("Customer").

### RECITALS:

WHEREAS, Customer leases or owns, directly or indirectly, facilities in that certain location in California as more fully described in Schedule A of the Appendices hereto (the "Site");

WHEREAS, Customer desires that Provider install, maintain and operate, and Provider desires to install, maintain and operate, the System (as hereinafter defined) to be located on the Site; and

WHEREAS, Provider desires to sell, and Customer desires to purchase, (a) the Solar Services (as hereinafter defined), including the delivery of electrical energy generated by the System (the "Energy") and (b) other services pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### AGREEMENT:

1. Definitions.

Unless otherwise defined herein: (a) capitalized terms used in this Agreement shall have the respective meanings set forth in this Section 1; (b) the singular shall include the plural and vice versa; (c) the word "including" shall mean "including, without limitation", (d) references to "Sections," "Exhibits," "Appendices" and the like shall be to sections, exhibits, appendices, etc. of or to this Agreement; (e) the words "herein," "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection hereof; and (f) references to this Agreement shall include a reference to all exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time.

"Agreement" has the meaning set forth in the preamble.

"Annual Rate Escalator" means the percentage set forth in Schedule C.

"Applicable Law" shall mean, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, governmental approval, consent or requirement of such

Governmental Authority, enforceable at law or in equity, along with the interpretation and administration thereof by any Governmental Authority.

“Claim Notice” shall have the meaning set forth in Section 13.3.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Commercial Operation Date” shall have the meaning set forth in Section 3.4.

“Confidential Information” shall have the meaning set forth in Section 15.

“Customer” shall have the meaning set forth in the preamble.

“Customer Default” shall have the meaning set forth in Section 11.1.

“Effective Date” shall have the meaning set forth in the preamble.

“Energy” shall have the meaning set forth in the preamble.

“Environmental Attributes” includes, without limitation, tradable renewable certificates, green-e tags, allowances, reductions or other transferable indicia denoting carbon offset credits or indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility attributed to the Energy during the Term created under a renewable energy, emission reduction, or other reporting program adopted by a Governmental Authority, or for which a registry and a market exists (which, as of the Effective Date are certificates issued by Green-e in accordance with the Green-e Renewable Electric Certification Program, National Standard Version 1.3 administered by the Center of Resource Solutions) or for which a market may exist at a future time.

“Environmental Financial Incentives” shall mean each of the following financial rebates and incentives that is in effect as of the Effective Date or may come into effect in the future: (i) performance-based incentives, rebates and any other incentive programs offered by or in the State of California (or any political subdivision thereof) under the federal government’s, any municipality’s, any utility’s or any other state’s program or initiative (including, if applicable, subsidies available under the Self Generation Incentive Program administered through the California Public Utilities Commission), incentive tax credits (including investment tax credits arising under the Code) other tax benefits or grants in lieu thereof (including without limitation the monetization of tax benefits), and accelerated depreciation (collectively, “Incentives”), howsoever named or referred to, with respect to any and all fuel, emissions, air quality, energy generation, or other environmental or energy characteristics, resulting from the construction, ownership or operation of the System or from the use of solar generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Energy generated by the System; and (ii) all reporting rights with respect to such Incentives.

“Estimated Year 1 Production” shall mean the amount set forth in Schedule B to this Agreement.

“Expiration Date” shall have the meaning set forth in Section 10.1.

“Fair Market Value” shall have the meaning set forth in Section 10.3.2.

“Financing Party” means any third-party entity providing debt or equity financing to Provider (or any successor or assignee thereof) with respect to the System, including without limitation a party providing construction financing, a lessor in a sale-leaseback transaction, a partner in a partnership flip transaction, or a limited liability company member in an equity sale transaction.

“Force Majeure Event” shall mean, when used in connection with the performance of a Party’s obligations under this Agreement, any of the following events to the extent not caused by such Party or its agents or employees, which is not preventable by such Party as of the Effective Date:

- a) war, riot, acts of a public enemy or other civil disturbance;
- b) acts of God, including but not limited to, storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, volcanic eruptions, range or forest fires, and objects striking the earth from space (such as meteorites), sabotage or destruction by a third party (other than any contractor retained by or on behalf of the Party) of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;
- c) acts of federal, state or local government agencies, including changes in Applicable Law, that result in increasing Provider’s costs of construction and installation, or continuing operation, of the System by 15% or more; and
- d) strikes, walkouts, lockouts or similar industrial or labor actions or disputes.

“Governmental Authority” shall mean any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Indemnified Party” shall have the meaning set forth in Section 13.3.

“Indemnifying Party” shall have the meaning set forth in Section 13.3.

“Interconnection Point” shall have the meaning set forth in Section 3.5.

“kWh Rate” shall have the meaning set forth in Section 6.1.

“License” shall have the meaning set forth in Section 2.

“Liens” shall have the meaning set forth in Section 7.1.3.

“Meter” shall have the meaning set forth in Section 4.3.1.

“Monthly Period” shall mean the period commencing on the Commercial Operation Date and ending on the last day of the calendar month in which the Commercial Operation Date occurs, and, thereafter, all subsequent one (1) month periods during the Term.

“Monthly Production” shall mean, for each Monthly Period, the amount of Energy delivered during such Monthly Period.

“O&M Work” shall have the meaning set forth in Section 4.1.1.

“Party” shall mean each of Customer and Provider (and/or any successor or permitted assignee thereof).

“Person” shall mean any individual, corporation, partnership, company, limited liability company, joint venture, association, trust, unincorporated organization or Governmental Authority.

“Provider” shall have the meaning set forth in the preamble (and includes its successor(s) and permitted assignee(s)).

“Provider Default” shall have the meaning set forth in Section 11.2.

“Renewal Rate” shall mean the fair market price for electricity generated by solar photovoltaic systems as determined by agreement of the Parties or through the appraisal process applicable to the purchase option contained in this Agreement.

“Reporting Rights” means the right to report ownership of the Environmental Attributes or the Environmental Financial Incentives associated with the Energy to any federal, state, or local agency, authority or other party, including without limitation under Section 1605(b) of the Energy Policy Act of 1992 and provisions of the Energy Policy Act of 2005, or under any present or future domestic, international or foreign emissions trading program.

“Scheduled Outage” shall have the meaning set forth in Section 4.5.

“Site” has the meaning set forth in the first recital.

“Solar Services” mean all solar services provided to Customer by Provider hereunder, including the provision of Energy.

“Standards” shall have the meaning set forth in Section 3.1.1.

“System” shall mean the solar photovoltaic system installed pursuant to this Agreement at the Site and more fully described in Schedule B hereto; provided, however, that the term “System” shall only include equipment and materials up to but not including the Interconnection Point of the System.

“Term” shall have the meaning set forth in Section 10.1.

“Termination Date” shall have the meaning set forth in Section 10.1.

“Termination Value” shall mean, on any date of determination (or, if such date is not a scheduled termination date, the scheduled termination date immediately preceding such date) the applicable amount specified for such date in Schedule D to this Agreement.

“Transfer Taxes” shall have the meaning set forth in Section 6.2.1.

2. Purchase and Sale of Solar Services; License.

2.1 Purchase and Sale of Solar Services.

Customer hereby engages Provider to provide the services set forth in this Agreement, including the Solar Services to Customer, and Provider agrees to provide the services set forth in this Agreement, including the Solar Services to Customer, all in accordance with the terms and conditions set forth herein. Customer shall provide Provider with access to the Site in accordance with the terms of this Agreement. Provider may retain one or more contractors or subcontractors to fulfill its obligations hereunder; provided that Provider shall remain liable for performance of its obligations hereunder

2.2 License.

Customer hereby grants to Provider and to Provider’s agents, employees and subcontractors an irrevocable, non-exclusive license running with the Site for access to, on, over, under or across the Site (the “License”) for the purpose of (i) installing, constructing, operating, maintaining, accessing, removing and replacing the System; (ii) performing all of Provider’s obligations and enforcing all of Provider’s rights set forth in this Agreement; and (iii) installing, using and maintaining electric lines and equipment, including inverters and meters, necessary to interconnect the System to Customer’s electric system at the Site or to the utility’s electric distribution system or that otherwise may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance, or repair of the System. The term of the License is the Term of this Agreement plus the period of time necessary for Provider to remove the System pursuant to Section 10.3.3, but in no case later than one hundred eighty (180) days after the Expiration Date with respect to the System (the “License Term”). During the License Term, Customer shall preserve and protect Provider’s rights under the License and Provider’s access to the Site and shall not interfere with or permit any third parties to interfere with Provider’s rights or access. Except for an emergency situation as described in Section 4.2.1(a) or (b) (an “Emergency Situation”), Provider shall notify Customer in writing, which may be made via email to Customer’s Energy Manager, 40 Muir Road, Martinez, CA 94553 (Frank.DiMassa@pw.cccounty.us), or to any other address Customer may designate in a written notice to Provider, forty-eight (48) hours before Provider intends to access the Site pursuant to the License. Notwithstanding that the License granted herein is irrevocable, Customer reserves the right to exclude Provider, its agents, employees and subcontractors from the Site in the event that Customer notifies Provider of a breach of the License and Provider fails to cure such breach pursuant to Section 11.2.1 of this Agreement; provided, however, that, Customer



agrees not to exclude Provider, its agents, employees and subcontractors from the Site (A) in the event of an Emergency Situation as described in Section 4.2 so long as Customer has been notified of such an Emergency Situation pursuant to Section 4.2 and (B) in the event that the System is to be removed pursuant to this Agreement.

3. Design, Construction, Installation and Testing of System.

3.1 Installation.

Subject to Section 3.2, Provider will cause the System to be designed, engineered, installed and constructed at the Site substantially in accordance with the terms of this Agreement, including without limitation, the provisions of Exhibit A (System Design and Construction). Customer shall review and approve, such approval not to be unreasonably withheld or delayed, all construction plans, including engineering evaluations of the impact of the System on the structural integrity and strength of the location where the System is installed inside, on or near Customer's buildings. Provider shall organize the procurement of all materials and equipment for the installation work and maintain the same at the Site. Subject to the terms of the License, Provider shall perform installation work at the Site during the times set forth in Exhibit A and Schedule B in a manner that minimizes inconvenience to and interference with Customer's and Customer's invitees' and Customers' use of the Site to the extent commercially practical. Notwithstanding the foregoing, in the event that Provider determines in its sole discretion that it is unable to install the System at the Site, it shall be under no obligation to do so, and this Agreement shall terminate and be of no further force and effect upon written notice from Provider to Customer to that effect.

3.1.1 System Design and Construction. Exhibit A (System Design and Construction) attached hereto sets forth the design, engineering and construction specifications for the System, as well as assumptions made by the Provider regarding the Site conditions, the electrical conditions, and System attributes (such assumptions being referred to herein as the "Standards"). Schedule B (Description of System) sets forth the known actual conditions for the Site and the System, including deviations from the Standards. The Standards are such that the described items for the System will not need repair, replacement, modification or construction beyond that described in Exhibit A and Schedule B in order for Provider to properly construct and install the System. If the construction and installation of the System is required for any reason (except for reasons attributable to Provider) to deviate from the Standards and Schedule B, Provider will notify the Customer and provide an estimate of any incremental cost to Customer and Customer will have the option to (i) pay the incremental cost at the time the cost is incurred and billed to the Customer, (ii) pay the incremental cost over the Term through a calculated increase in the kWh Rate, or (iii) elect an alternative location subject to the conditions of Section 3.1.2.

3.1.2 Alternative Location. Prior to the Commercial Operation Date, if the Customer's interest in the Site is a leasehold interest and the Customer is unable to obtain the landlord's consent in accordance with the License or Customer chooses an alternative location per Section 3.1.1, Customer will have the option to elect an alternative location if Environmental

Attributes and Environmental Financial Incentives financially equivalent to or better than those associated with the original location are available for the alternative location, and if the expected System kWh output and construction cost at the alternative location are equivalent to or superior than those associated with the originally proposed location. Such alternative location is subject to Provider approval, not to be unreasonably withheld. If an alternative location cannot be established, Provider will have the right to terminate per Section 3.2.

### 3.2 Conditions Precedent to Commencement of Construction and Installation.

3.2.1 Commencement by the Provider of construction and installation activities with respect to the System are subject to the satisfaction of the following conditions precedent (in addition to the condition set forth in Section 3.3):

- (a) Provider shall have closed financing for construction and long-term ownership of the System and the Solar Services to be performed at the Site and, to the extent required pursuant to the applicable financing documentation, the third party financing institution providing such financing shall have been provided with the materials referred to in Section 14.17 and Section 16;
- (b) Provider shall have entered into the applicable contract(s) for construction and installation of the System, subject to the terms of the applicable financing, if any;
- (c) Provider shall have obtained the permits, licenses and other approvals required by Applicable Law to be obtained by Provider prior to such commencement;
- (d) Provider shall have received satisfactory notice that the applications for Environmental Financial Incentives for the System have been accepted and approved by the appropriate governing agency; and
- (e) Provider shall have received from Customer satisfactory evidence that the project—including the System, the License, and the work and Solar Services described in this Agreement—is exempt from the regulatory jurisdiction of local agencies (including zoning, building, and land-use requirements) or that all required local agency approvals and permits have been obtained.

provided, however, that if any of the foregoing conditions precedent have not been satisfied on or before June 17, 2020 (the “CP Date”), Provider shall have the option to terminate this Agreement without triggering the default provisions of this Agreement or any liability under this Agreement, and if Provider does not terminate this Agreement one hundred eighty (180) days following the CP Date, Customer may terminate this Agreement without triggering the default provisions of this Agreement or any liability under this Agreement.

Alternatively, in the event that such conditions precedent are not satisfied by such date, the Parties may mutually agree to amend this Agreement to revise the Commercial Operation Date and term of this Agreement.

### 3.3 Utility Approvals.

Notwithstanding that Provider shall have primary responsibility for preparing applications and obtaining all permits, licenses and approvals required for the performance of work under this Agreement, Customer agrees to reasonably assist Provider in obtaining necessary permits, licenses and approvals in connection with the installation, operation and maintenance of the System, including the submission of applications for interconnection of the System with the local electric utility. Customer shall not make any material changes to its electrical equipment at the Site after the date on which the applicable utility interconnection application is submitted unless any such changes, individually or in the aggregate, would not adversely affect the approval by such utility of such interconnection. Should the local electric utility fail to approve the interconnection of the System or require equipment in addition to the equipment set forth in Schedule B in connection with the Site, Provider may, at Provider's option, terminate this Agreement immediately subsequent to notification from the local utility. The Parties shall not be obligated to go forward with installation of the System if the applicable utility approvals are conditioned upon material upgrades to the existing electrical infrastructure and neither Party elects to provide for such upgrades. Customer also agrees to assist Provider and make all necessary repairs or changes to the existing electrical infrastructure so that the Site and System are eligible for the Environmental Financial Incentives.

### 3.4 Energy Delivery.

The date on which the delivery of Energy from the System commences (the "Commercial Operation Date") shall be the date on which all of the following shall have occurred: (a) Provider shall have certified to Customer in writing that the System is substantially complete and available for commercial operation; (b) all permits and licenses required to be obtained under Applicable Law in connection with the operation of the System shall have been obtained and be in full force and effect; and (c) Customer shall have entered into an interconnection agreement with the local electricity utility. In no event shall Provider have any liability to Customer for a delay in the Commercial Operation Date caused by Customer, Customer's electricity provider, a local agency issuing permits for the System or any other third parties outside of Provider's control.

### 3.5 Risk of Loss; Exclusive Control.

As between the Parties, Provider will be deemed to be in exclusive control (and responsible for any property damage or injuries to persons caused thereby) of the Energy up to but excluding the point where the System is interconnected to Customer's electrical intertie; e.g., the Customer's line-side tap (the "Interconnection Point") and Customer will be deemed to be in exclusive control

(and responsible for any property damage or injuries to persons caused thereby) of the Energy at and from the Interconnection Point. Risk of loss related to the Energy will transfer from Provider to Customer at the Interconnection Point.

### 3.6 Termination Values.

The Parties acknowledge and agree that the Termination Values with respect to the applicable System are as set forth in Schedule D of this Agreement.

## 4. Operation and Maintenance of System.

### 4.1 O&M Work; Phone/Data Line.

4.1.1 O&M Work. Provider shall provide operation, repair, monitoring and maintenance services to the System during the Term of this Agreement, including the monitoring and maintenance of metering equipment determining the quantity of electricity produced by the System (collectively, the “O&M Work”). Provider shall perform the O&M Work, either directly or indirectly through a subcontract with SunPower Corporation, Systems, an affiliate of Provider or through a third-party service provider capable of providing comparable services, provided that Provider remains responsible for all O&M Work notwithstanding any such subcontracting. Provider shall perform, or cause to be performed, the O&M Work to ensure that the System is capable of delivering the Energy in accordance with the specifications set forth in Schedule B. Provider shall use commercially reasonable efforts to enforce the terms of any contract for operations and maintenance services to which it is a party and System warranty agreements.

4.1.2 Phone/Data Line. Customer shall properly maintain, pay for and provide access to the necessary phone, computer, or other communication lines necessary to permit Provider to record the electrical output of the System for the entire Term.

### 4.2 Malfunctions and Emergencies.

4.2.1 Each of Customer and Provider shall notify the other within twenty-four (24) hours following the discovery by it of (a) any material malfunction in the operation of the System, (b) an interruption in the supply of Solar Services. Provider and Customer shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Provider’s repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Each Party shall notify the other Party immediately upon the discovery of an emergency condition in the System.

4.2.2 Provider shall commence repairs to the malfunctioning System and restore the supply of the Energy, as soon as reasonably possible after notice or upon its own discovery of any of the conditions specified in Section 4.2.1 during normal business hours and, subject to Section 2, take steps to mobilize personnel to commence repairs after notice or discovery of a condition requiring repair or other corrective action. If an emergency condition exists, Provider shall dispatch the appropriate personnel immediately upon becoming aware thereof to perform the necessary repairs or corrective action in an expeditious and safe manner. For routine and emergency repairs, the Parties shall contact the persons set forth below:

If to Provider:

Wayne Webb, Senior Manager, Operations & Maintenance  
2900 Esperanza Crossing, 2nd Floor  
Austin, TX 78759  
(510) 439 – 4663 or (800) 251-9728

[Wayne.Webb@sunpowercorp.com](mailto:Wayne.Webb@sunpowercorp.com) with a copy to: [customer.service@sunpower.com](mailto:customer.service@sunpower.com)

#### 4.3 Metering.

4.3.1 Meters. For the term of this Agreement, Provider shall install and maintain a utility-grade kilowatt-hour (“kWh”) meter (the “Meter”) at the System for the measurement of Energy provided to Customer, which shall measure the kWh output of the System on a continuous basis. Upon Customer’s written request, Provider shall furnish a copy of all technical specifications and accuracy calibrations for the Meter, as well as all metering data and energy production and consumption calculations. Provider shall test the Meter in compliance with manufacturer’s recommendations.

4.3.2 Customer Audits and Inspections. Once per calendar year, Customer shall have the right to audit all Meter data upon reasonable notice, and any such audit shall be at Customer’s sole cost. Customer shall have a right of access to the Meter at reasonable times and with reasonable prior notice for the purpose of verifying readings and calibrations.

4.3.3 Adjustments. If testing of the Meter pursuant to Section 4.3.1 or Section 4.3.2 indicates that the Meter is in error by more than two percent (2%), then Provider shall promptly repair or replace the Meter. If the Meter is found to be in error by more than two percent (2%), Provider shall make a corresponding adjustment to the records of the amount of Energy based on such test results for (a) the actual period of time when such error caused inaccurate Meter recordings, if such period can be determined to the mutual satisfaction of the Parties, or (b) if such period cannot be so determined, then a period equal to one-half (1/2) of the period from the later of (i) the date of the last previous test confirming accurate metering, and (ii) the date the Meter was placed into service; provided, however, that such period shall in no case exceed two (2) years.

4.3.4 Disputes. Any dispute arising out of the reading or calibration of the Meter shall be resolved in accordance with the procedures set forth in Section 6.3.2.

#### 4.4 Title to System.

Provider, or Provider’s permitted assigns with respect to the System, shall at all times retain title to and be the legal and beneficial owner of the System, including the right to any tax credits available under federal or state law, and the System shall remain the property of Provider or Provider’s assigns. The System shall remain the personal property of Provider or Provider’s assigns and shall not attach to or be deemed a part of, or fixture to, the Site. It is the Parties’ intention that the System shall at all times retain the legal status of personal property. Provider shall be entitled to, and is hereby authorized to, file one or more precautionary Uniform Commercial Code financing statements with the California Secretary of State with

respect to the System in order to protect its rights in the System, provided that no such UCC financing statement shall name Customer as the debtor. The System shall be clearly marked and identified as being the property of the Provider or Provider's assigns. The Parties intend that neither Customer nor any party related to Customer shall acquire the right to operate the System or be deemed to operate the System.

#### 4.5 Outages.

Customer shall be permitted two (2) twenty-four (24) consecutive hour days during which the System may be offline (each, a "Scheduled Outage") per calendar year during the Term, during which days Customer shall not be obligated to accept, and if not accepted, pay for the Energy; provided, however, that Customer shall have notified Provider in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of such Scheduled Outage. In the event that Scheduled Outages at the Site exceed two (2) days per calendar year for a reason other than a Force Majeure Event, and for all unscheduled outages, Provider shall reasonably estimate the amount of Energy that would have been delivered to Customer during each hour of such excess Scheduled Outages or unscheduled outages and shall invoice Customer for such amount, which shall be payable in accordance with Section 6.3. Additionally, as set forth in Exhibit C (Performance Guarantee), Provider shall be relieved of any failure to meet the Performance Guarantee due to any Scheduled Outage or unscheduled outage.

#### 4.6 Compliance with Utility Specifications.

Provider shall ensure that the operation of the System and all Energy generated by the System conform to applicable utility specifications for energy being generated and delivered to the Site's electric distribution system, which shall include the installation of proper power conditioning and safety equipment, submittal of necessary specifications, coordination of utility testing and verification, and all related costs.

### 5. Purchase of Solar Services.

#### 5.1 Purchase Requirement.

Customer agrees to purchase one hundred percent (100%) of the Energy delivered by the System during the Term of this Agreement. While the Solar Services are calculated and billed on the basis of kWh of Energy as set forth in Section 6.1, Customer acknowledges and agrees that such Solar Services represent a package of services including the production and supply of electrical energy output from the System, together with any other services associated with solar energy production that Provider may provide to Customer. The payment for Solar Services (expressed in \$/kWh) is calculated to include all of the above services. Neither Party may claim that by this Agreement Provider is an electric utility subject to regulation as an electric utility or subject to regulated electricity rates. Provider shall not claim to be providing electric utility services to Customer and shall not interfere with Customer's ability to select an electric utility provider except that, to the extent

Customer has a choice in selecting an electric utility provider or electricity provider, Customer shall not select an electric utility provider or electricity provider that requires, as part of their conditions for service, removal or discontinued operation of the System or the sales of Energy hereunder.

## 5.2 Environmental Attributes; Environmental Financial Incentives.

5.2.1 Environmental Attributes. All Environmental Attributes and associated Reporting Rights available in connection with the System are retained and owned by Customer or its assignee. Provider shall take all reasonable measures to assist Customer in obtaining all Environmental Attributes currently available or subsequently made available in connection with the System. At Customer's request and expense, Provider shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Customer's or its assignee right, title and interest in and to the Environmental Attributes. If the standards used to qualify the Environmental Attributes to which Customer is entitled under this Agreement are changed or modified, Provider shall, at Customer's request and expense, use all reasonable efforts to cause the Environmental Attributes to comply with new standards as changed or modified. If Provider fails to act in good faith in completing documentation or taking actions reasonably requested by Customer, and such failure results in the loss of an Environmental Attribute that would otherwise be available, Provider shall reimburse Customer for the full amount of such lost Environmental Attribute.

5.2.2 Environmental Financial Incentives. All Environmental Financial Incentives and associated Reporting Rights available in connection with the System are retained and owned by Provider or its assignee. Customer shall take all reasonable measures to assist Provider in obtaining all Environmental Financial Incentives currently available or subsequently made available in connection with the System. At Provider's request and expense, Customer shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Provider's or its assignee right, title and interest in and to the Environmental Financial Incentives. If the standards used to qualify the Environmental Financial Incentives to which Provider is entitled under this Agreement are changed or modified, Customer shall, at Provider's request and expense, use all reasonable efforts to cause the Environmental Financial Incentives to comply with new standards as changed or modified. If Customer fails to act in good faith in completing documentation or taking actions reasonably requested by Provider, and such failure results in the loss of an Environmental Financial Incentive that would otherwise be available, Customer shall reimburse Provider for the full amount of such lost Environmental Financial Incentive.

5.2.3 Customer shall not take any action or suffer any omission that would have the effect of impairing the value to the Provider of the Environmental Attributes or Environmental Financial Incentives.

5.2.4 Provider or its assignee will at all times retain all tax credits and related tax benefits (including depreciation) associated with the System.

6. Price and Payment.

6.1 Price.

Customer shall pay Provider for the Energy provided pursuant to the terms of this Agreement at the rate per kWh (the “kWh Rate”) set forth in Schedule C for the Term of this Agreement, plus any adjustments required pursuant to Section 3.1.1, plus any additional amount required pursuant to Section 6.2. Notwithstanding the foregoing, in the event that Customer elects to renew this Agreement pursuant Section 10.3.1, Customer shall pay the Renewal Rate for Energy delivered during such renewal period.

6.2 Taxes.

6.2.1 Customer Taxes. Provider shall invoice Customer for, and Customer shall pay all sales, use, excise, ad valorem, transfer and other similar taxes (“Transfer Taxes”), but excluding in all events taxes based on or measured by net income, that are imposed by any taxing authority arising out of or with respect to the purchase or sale of the Solar Services (regardless of whether such Transfer Taxes are imposed on Provider or Customer), together with any interest, penalties or additions to tax payable with respect to such Transfer Taxes, unless such interest, penalties or additions to tax payable with respect to such Transfer Taxes are due to Provider’s failure to timely remit any such Transfer Taxes or to file any returns required by the appropriate taxing authority, and Provider shall indemnify and hold Customer harmless in such excepted cases. If Customer shall be required to by law to withhold or deduct any Transfer Taxes or other taxes imposed by any jurisdiction or any political subdivision from or in respect of any sum payable hereunder, the sum payable shall be increased as may be necessary so that, after taking all required deductions, Provider shall have received an amount equal to the sum it would have received had no such deductions been made. Provider will pay any ad valorem property tax imposed on the System by any taxing authority.

6.2.2 Provider Taxes. Provider will pay and hold harmless Customer from any sales or use tax imposed upon Customer arising from this Agreement, other than as set forth in the preceding Section 6.2.1, including but not limited to Provider's manufacture, installation and acquisition of the System. Provider will pay and hold harmless Customer from property tax, if any, assessed on (i) Provider’s use of the portion of the Site on which the System is installed, to the extent prescribed in the License; (ii) the System or Provider’s ownership, installation or use thereof; or (iii) any other aspect of this Agreement. Notwithstanding the foregoing, Customer shall pay and hold harmless Provider from sales and use taxes, if any, arising upon the transfer, if any, of both legal and beneficial ownership of the System to Customer pursuant to this Agreement.

6.3 Billing and Payment.

Billing and payment for the Solar Services sold and purchased under this Agreement and any other amounts due and payable hereunder shall occur as follows:



6.3.1 Payments. Subject to adjustment in accordance with the following sentences of this Section 6.3.1, Customer shall pay to Provider for each Monthly Period during the Term within thirty (30) days after receipt of any invoice a payment for the Energy delivered by the System during each such Monthly Period equal to the product of (a) Monthly Production for the System for the relevant month multiplied by (b) the then applicable kWh Rate.

Customer payments under Sections 6.3.1, above, shall be made by check to:

Solar Star Co Co 1, LLC  
Attn: Commercial Asset Management Group  
c/o SunPower Capital Services, LLC  
2900 Esperanza Crossing  
Austin, TX 78758

Payment may also be made by wire transfer of immediately available funds upon receipt of specific instructions by Provider. Upon receipt of written direction and instructions from Provider and Provider's Financing Party, all payments to be made by the Customer to the Provider under this Agreement shall be made directly to the Provider's Financing Party or its agent designated in a writing addressed to Customer from time to time.

6.3.2 Invoice Errors. Within thirty (30) days after receipt of any invoice, Customer may provide written notice to Provider of any alleged error therein (including any error resulting from Meter adjustments pursuant to Section 4.3.3). Customer shall pay all undisputed amounts, including the undisputed portion of any invoice, in accordance with the instructions set forth for payment under Section 6.3.1. If Provider notifies Customer in writing within thirty (30) days of receipt of such notice that Provider disagrees with the allegation of error in the invoice, the Parties shall meet, by telephone conference call or otherwise, within ten (10) days of Customer's response for the purpose of attempting to resolve the dispute.

6.3.3 Late Payments. All payments hereunder shall be made without setoff or deduction. Any payment not made within the time limits specified in Section 6.3.1 shall bear interest from the date on which such payment was required to have been made through and including the date on which such payment is actually received by the Provider. Such interest shall accrue at a monthly rate equal to the lesser of the then prevailing prime rate of interest as published in The Wall Street Journal or the maximum interest rate permitted by Applicable Law.

## 7. General Covenants.

### 7.1 Provider's Covenants.

Provider covenants and agrees as follows:

7.1.1 Permits and Approvals. While performing this Agreement, Provider shall obtain and maintain all approvals, consents, licenses and permits from relevant Governmental Authorities, utility personnel, and (to the extent known to Provider) the Site's owners, if Customer is not the owner of the Site, and other agreements and consents required to be obtained and maintained by Provider and to enable Provider to perform such work. Provider shall deliver copies of all permits and approvals obtained pursuant to this Section to Customer.

7.1.2 Health and Safety. Provider shall take all reasonably necessary safety precautions in performing this Agreement and shall comply in all material respects with all Applicable Laws pertaining to the safety of persons and real and personal property.

7.1.3 Removal of Liens. Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', laborers' or materialmen's liens), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Site or any interest therein; provided that this Section 7.1.3 shall not limit Liens on the System. If Provider breaches its obligations under this Section, it shall immediately notify Customer in writing, shall promptly cause such Lien to be discharged and released of record without cost to Customer, and shall defend and indemnify Customer against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

7.1.4 Provider Records. Provider shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Customer has the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

## 7.2 Customer's Covenants.

Customer covenants and agrees as follows:

7.2.1 Health and Safety. Customer shall at all times maintain the areas of the Site consistent with all Applicable Laws pertaining to the health and safety of persons and property.

7.2.2 Security. Customer shall provide and take reasonable measures for security of the System, including commercially reasonable monitoring of the Site's alarms, if any.

7.2.3 Notice of Damage. Customer shall promptly notify Provider of any matters of which it becomes aware pertaining to any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System.

7.2.4 Liens. Customer shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein. Customer also shall pay promptly any taxes, charges or fees of whatever type of any relevant Governmental Authority for which Customer is responsible under Section 6.2 before a fine or penalty may attach to the System. If Customer breaches its obligations under this Section, it shall immediately notify Provider in writing, and shall promptly cause such Lien on or with respect to the System (including if such arises in favor of any third party claiming through Customer, such as a lender, mortgagee or encumbrancer of real property) to be removed, discharged and released of record without cost to Provider, and shall defend, indemnify and hold Provider harmless against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in removing, discharging and releasing such Lien.

7.2.5 Consents and Approvals. Customer shall obtain and maintain, and secure and deliver to Provider copies of, all consents, approvals, permits, licenses, and authorizations (or evidence that the project—including the System, and the work and Solar Services described in this Agreement—is exempt from the regulatory jurisdiction of local agencies (including zoning, building, and land-use requirements) or that all required local agency approvals and permits have been obtained) relating to the performance of Customer’s obligations and the rights granted by Customer hereunder, and that are required by the terms, conditions or provisions of any restriction or any agreement or instrument or statute to which Customer is a party or by which Customer is bound, including completing applications for interconnection with Customer’s local electric utility. Customer shall use best efforts to assist Provider in fulfilling Provider’s responsibilities under Section 7.1.1. In addition, as a condition precedent to the effectiveness of this Agreement, Customer covenants that it has obtained all discretionary and other approvals required in connection with the project from its governing board and all applicable Government Authorities and that such board or Governmental Authority complied with the California Environmental Quality Act; or, if no other discretionary approvals were required, such board or Governmental Authority approved this Agreement before it was executed.

7.2.6 Maintenance of Interconnection. Customer shall ensure that all of the facilities to which the Energy is delivered hereunder remain interconnected to the electrical grid during the entire Term, except as permitted under Section 4.5 and Section 9.

7.2.7 Solar Access. Customer shall ensure that the System remains free of overshadowing or other blocked access to sunlight during the Term, and it is acknowledged and agreed by the Parties that the foregoing is a material obligation of the Customer for the purposes of this Agreement. Customer will use best efforts to secure a solar easement for the Site to prevent other buildings, structures or flora from overshadowing or otherwise blocking access of the sunlight to the System. Provider shall provide assistance to Customer in seeking a solar easement; however, Customer shall bear all costs and expenses related to obtaining any such easement.

7.2.8 Customer Records. Customer shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Provider shall have the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

## 8. Insurance Requirements.

### 8.1 Provider’s General Liability Insurance.

Provider shall maintain, at its sole expense, commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of one million dollars (\$1,000,000) per occurrence and in the aggregate, endorsed to provide contractual liability in said amount, specifically covering Provider’s obligations under this Agreement and naming Customer as an additional insured. The minimum coverage amount of \$1,000,000 per occurrence and in the aggregate may be satisfied by a combination of a general liability policy and an excess/umbrella liability policy. Provider, if it has employees, shall also maintain at all times during the term of

this Agreement workers' compensation insurance coverage in accordance with the applicable requirements of federal and state law. Within thirty (30) days after execution of this Agreement and upon Customer's request annually thereafter, Provider shall deliver to Customer certificates of insurance evidencing such coverage, which shall specify that Customer shall be given at least thirty (30) days' prior written notice by the applicable insurer in the event of any material modification, cancellation or termination of coverage, except ten (10) days for non-payment of premium. Such insurance shall be primary coverage without right of contribution from any insurance of Customer.

## 8.2 Customer's Insurance.

Customer shall provide and maintain "all-risk" property insurance covering the buildings on which the System is located during all periods (construction and operation) that Provider is the beneficial owner of the System, and naming Provider or its assignee as the loss payee. The System shall be insured for not less than its Termination Value. All such policies shall be with financially sound and reputable insurance companies that have an (i) A.M. Best rating of A+ and a financial strength category of "XII" or higher, (ii) a Standard & Poor's financial strength rating of A+ or higher, or (iii) are otherwise reasonably satisfactory to the Provider or its assignee; and such policies shall be on terms that are reasonably satisfactory to the Provider or its assignee. Within thirty (30) days after execution of this Agreement and upon Provider's request annually thereafter, Customer shall deliver to Provider certificates of insurance evidencing such coverage, which shall specify that Provider shall be given at least thirty (30) days' prior written notice (10 days' notice for cancellation due to nonpayment of premiums) by the applicable insurer in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Provider. Notwithstanding the foregoing, Customer shall be entitled to self-insure all of its insurance requirements under this Agreement.

## 9. Force Majeure Events.

If either Party is prevented from or delayed in performing any of its obligations under this Agreement by reason of a Force Majeure Event, such Party shall notify the other Party in writing as soon as practicable after the onset of such Force Majeure Event and shall be excused from the performance of its obligations under this Agreement to the extent that such Force Majeure Event interferes with such performance. The Party whose performance under this Agreement is prevented or delayed as the result of a Force Majeure Event shall use reasonable efforts to remedy its inability to perform. If a Party's failure to perform its obligations under this Agreement is due to a Force Majeure Event, then such failure shall not be deemed a Provider Default or a Customer Default, as the case may be. In case a Force Majeure Event continues for at least one (1) year with respect to the System, then either Party may terminate this Agreement by written notice to the other.

10. Term; Customer Options; Termination.

10.1 Term.

The term of this Agreement shall commence on the Effective Date and shall expire on the date that is twenty-five (25) years after the Commercial Operation Date (the “Expiration Date”), unless and until terminated earlier pursuant to Sections 3.1, 3.2, 3.3, 9, 10.2.3, 10.6 or 12 (the date of any such termination, the “Termination Date”, and the “Term” being such period of time commencing on the Effective Date and ending on the earlier of (i) the Termination Date, and (ii) the Expiration Date).

10.2 Customer Options Upon Cessation of Business Operations at Site.

If, prior to the end of the Term, Customer ceases to conduct business operations at the Site, vacates the Site, or is prevented from allowing operation of the System on the Site:

10.2.1 Substitute Site. So long as Customer’s exercise of its rights under this Section 10.2.1 does not impair or reduce any Environmental Financial Incentives that may be available to the Provider, or otherwise have an adverse tax effect on Provider, or in the Provider’s sole discretion and determination, impair Provider’s ability to meet any and all obligations in connection with a Financing Party or a prospective financing transaction, Customer shall have the right to provide Provider with a mutually agreeable substitute Site located within the same utility district, subject to requisite governing agency approvals, to relocate the System, which agreement shall not be unreasonably withheld, or, if not available, in a location with similar solar insolation, utility rates, Environmental Attributes and Environmental Financial Incentives. Any such alternate Site shall have a similar demand charge profile as the Site. If such alternate Site is available and is acceptable to Provider, this Agreement shall be amended to delete the prior Site and add the new Site, but otherwise this Agreement shall remain in full force in accordance with its terms and shall not be deemed otherwise amended. Customer shall pay the reasonable costs arising in connection with the relocation(s) of the System, including removal costs, installation costs, any applicable interconnection fees, costs related to obtaining a site license or lease at the substitute site, other costs of deployment at the substitute Site, and amounts lost that would otherwise be payable under this Agreement due to such relocation(s) to Provider based on delivered Energy averaged over the prior twelve months for the System.

10.2.2 Move and Pay Option. So long as such event does not impair or reduce any Environmental Attributes or Environmental Financial Incentives, Customer may elect to pay or guarantee the payment of the remaining monthly amounts due under this Agreement to Provider, and cause the System to be kept in operation at the Site, in each case through the remainder of the Term.

10.2.3 Termination and Payment of Termination Value. If, beginning in the sixth year following the Commercial Operation Date, a substitute Site cannot be located in accordance with Section 10.2.1 with respect to the System and Customer elects not to avail itself of the provisions of Section 10.2.2 with respect to the System, then Customer shall so notify Provider, Provider shall remove the System (at Customer’s sole cost and expense) and Customer shall pay to Provider the then-applicable Termination Value specified in Column A of Schedule D

as liquidated damages, whereupon this Agreement shall terminate. The Parties agree that actual damages to Provider if this Agreement is terminated as contemplated in this Section 10.2 would be difficult to ascertain, and the applicable Termination Value is a reasonable approximation of the damages suffered by Provider as a result of early termination of this Agreement.

### 10.3 Customer Options Upon Expiration of Term.

10.3.1 Extension of Term. Upon prior written notice to Provider at least one-hundred eighty (180) days prior to the Expiration Date, Customer has the option to renew the term of this Agreement with respect to the System and Solar Services for one (1) additional three (3)-year period at the Renewal Rate.

10.3.2 Purchase of System. If Customer has not elected to renew the term of this Agreement in accordance with Section 10.3.1, Customer may purchase the System by providing Provider written notice of its intent to purchase the System no later than one-hundred and eighty (180) days prior to the Expiration Date, and paying Provider the Fair Market Value thereof no later than the relevant Expiration Date. The “Fair Market Value” of the System shall be the value determined by the mutual agreement of Customer and Provider within ten (10) days after receipt by Provider of Customer’s notice of its election to purchase the System. If Customer and Provider cannot mutually agree to a Fair Market Value, then the Parties shall jointly select a nationally recognized independent appraiser with whom the parties have discussed methods and assumptions, with experience and expertise in the solar photovoltaic industry to value such equipment. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding on the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. To the extent transferable, the remaining period, if any, on all warranties for the System will be transferred from Provider to Customer. If the Parties are unable to agree on the selection of an appraiser, such appraiser shall be jointly selected by the appraiser firm proposed by the Customer and the appraiser firm proposed by the Provider. Upon receipt by Provider of payment of the Fair Market Value, title to the System as well as available Environmental Attributes and Environmental Financial Incentives from the System shall transfer to Customer as-is, where-is.

10.3.3 Return of System. If at the end of a Term, or an Extension of Term pursuant to Section 10.3.1, Customer does not exercise any of the options described in Sections 10.3.1 and 10.3.2, Provider shall remove all of its tangible property comprising the System from the Site by a mutually convenient date but in no case later than one hundred eighty (180) days after the Expiration Date with respect to the System. The cost to remove the System shall be borne by the Provider. The portion of the Site on which the System was installed shall be returned to its original condition, except for ordinary wear and tear, and Provider shall leave the portion of the Site on which the System was installed in neat and clean order.

### 10.4 Customer Purchase Options Prior to Expiration Date.

10.4.1 On the later to occur of the sixth (6th) anniversary of the Commercial Operation Date, provided that no Customer Default shall have occurred and be continuing beyond any applicable period of cure, Customer may elect to purchase all, but not less than all, of the System. If Customer elects to so purchase the System,

the purchase price shall be the higher of the then Fair Market Value of the System (calculated in accordance with the definition of Fair Market Value set forth in Section 10.3.2 for the System, and such determination to be at Customer's sole cost and expense), or the then-current Termination Value specified in Column A of Schedule D. Not less than one-hundred-and-eighty (180) days prior to the exercise of the purchase option for the System, Customer shall provide written notice to Provider of Customer's exercise thereof. Upon the exercise of the foregoing purchase option plus receipt of the Value as determined in Section 10.4 above and all other amounts then owing by Customer to Provider, the Parties will execute all documents necessary to cause title to the System to pass to Customer as-is, where-is; provided, however, that Provider shall remove any encumbrances placed on the System by Provider at Customer's expense.

10.4.2 On the later to occur of the fifteenth (15th) anniversary of the Commercial Operation Date, provided that no Customer Default shall have occurred and be continuing beyond any applicable period of cure, Customer may elect to purchase the System. If Customer elects to so purchase the System, the purchase price shall be the higher of the then Fair Market Value of the System (calculated in accordance with the definition of "Fair Market Value" set forth in Section 10.3.2 for the System, and such determination to be at Customer's sole cost and expense), and the amount specified in Column A of Schedule D. Not less than one-hundred-and-eighty (180) days prior to the exercise of the purchase option for the System, Customer shall provide written notice to Provider of Customer's exercise thereof. Upon the exercise of the foregoing purchase option plus receipt of the Fair Market Value and all other amounts then owing by Customer to Provider, the Parties will execute all documents necessary to cause title to the System to pass to Customer as-is, where-is; provided, however, that Provider shall remove any encumbrances placed on the System by Provider at Customer's expense.

#### 10.5 Payment of Termination Value on Termination Date.

In the event that the Termination Date has occurred for reasons other than pursuant to Sections 3.1.2., 10.6 or 12.1.1, Customer shall be required to pay to Provider the then-applicable Termination Value specified in Column A of Schedule D as liquidated damages. The Parties agree that actual damages to Provider in the event this Agreement terminates prior to the expiration of the Term for causes attributable to Customer would be difficult to ascertain, and the applicable Termination Value is a reasonable approximation of the damages suffered by Provider as a result of early termination of this Agreement.

#### 10.6 Provider Termination.

Provider shall have the right, in Provider's sole and absolute discretion, to terminate this Agreement upon written notice if any of the following occurs:

10.6.1 at any time until construction of the System commences Provider determines in its sole discretion that it is unable to install the System at the Site;

10.6.2 if the occurrence of an unstayed order of a court or administrative agency has the effect of subjecting the sales of the Energy to federal or state regulation of the prices therefor and/or the delivery of the service;

10.6.3 the elimination or alteration of one or more Environmental Financial Incentives or other change in law that results in a material adverse economic impact on Provider; or

10.6.4 if the annual direct beam solar resource availability at the Site is less than or equal to 90% of historical averages as measured by long-term weather data (minimum of five (5) years) collected at the Site and/or other reliable calibrated and appropriate weather station representative of the Site.

In the event of a Provider termination under this Section 10.6, Provider shall remove all of its tangible property comprising the System from the Site by a mutually convenient date but in no case later than one hundred eighty (180) days after the Termination Date. The cost to remove the System shall be borne by the Provider. The portion of the Site on which the System was installed shall be returned to its original condition, except for ordinary wear and tear, and Provider shall leave the portion of the Site on which the System was installed in neat and clean order.

## 11. Defaults.

### 11.1 Customer Default.

The occurrence at any time of any of the following events shall constitute a “Customer Default”:

11.1.1 Failure to Pay. The failure of Customer to pay during the Term any amounts owing to Provider on or before the date on which such amounts are due and payable under the terms of this Agreement and Customer’s failure to cure such failure within fifteen (15) days after Customer receives written notice of each such failure from Provider;

11.1.2 Failure to Maintain Phone/Data Line. Unless due to a Force Majeure Event excused by Section 9, the failure of Customer to maintain and grant Provider access to the phone and other communications lines required to be maintained pursuant to Section 4.1.3 and Customer’s failure to cure such failure within twenty (20) business days after Customer receives written notice of such failure from Provider; provided that in any event if such failure shall continue for at least five (5) days after notice to Customer and shall result in lost revenue to Provider, Provider shall be entitled to reasonably estimate the amount of revenue that would have been obtained and shall invoice Customer therefor;

11.1.3 Failure to Perform Other Obligations. Unless due to (i) a Force Majeure Event excused by Section 9, or (ii) a breach of paragraph 2 of Section 2 (License), the failure of Customer to perform or cause to be performed any other material obligation required to be performed by Customer under this Agreement, or the failure of any representation, covenant, or warranty set forth herein to be true and correct as and when made; provided, however, that if such failure by its nature can be cured, then Customer shall have a period of thirty (30) business



days after receipt of written notice from Provider of such failure to Customer to cure the same and a Customer Default shall not be deemed to exist during such period; provided, further, that if Customer commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for one hundred twenty (120) additional days;

11.1.4 Bankruptcy, Etc. (a) Customer admits in writing its inability to pay its debts generally as they become due; (b) Customer files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof; (c) Customer makes an assignment for the benefit of creditors; (d) Customer consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Customer has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Customer's assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Customer's assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control; or

11.1.5 Failure of Site Access. A breach by Customer of the License occurs and Customer fails to cure such breach within five (5) days after Customer receives written notice of such breach from Provider.

## 11.2 Provider Default.

The occurrence at any time of the following event shall constitute a "Provider Default":

11.2.1 Failure to Perform Obligations. Unless due to a Force Majeure Event excused by Section 9, the failure of Provider to perform or cause to be performed any obligation required to be performed by Provider under this Agreement or the failure of any representation and warranty set forth herein to be true and correct as and when made; provided, however, that if such failure by its nature can be cured, then Provider shall have a period of thirty (30) business days after receipt of written notice from Customer of such failure to Provider to cure the same and a Provider Default shall not be deemed to exist during such period; provided, further, that if Provider commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for one-hundred twenty (120) additional days; or

11.2.2 Bankruptcy, Etc. (a) Provider admits in writing its inability to pay its debts generally as they become due; (b) Provider files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof; (c) Provider makes an assignment for the benefit of creditors; (d) Provider consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Provider has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; (f) a

court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Provider's assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Provider's assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control.

## 12. Remedies Following Default.

### 12.1 Customer's Remedies Upon Occurrence of a Provider Default.

12.1.1 Termination. If a Provider Default has occurred and is continuing, then Customer may terminate this Agreement by providing written notice to Provider thereof, and this Agreement shall terminate and be of no further force or effect as of the date of the notice according to Section 14.1.

12.1.2 Other Rights and Remedies. If any Provider Default described under Section 11.2 has occurred and Customer has terminated this Agreement as a result thereof in accordance with the terms of Section 12.1.1 above, then, subject to Section 12.3, Provider shall pay to Customer an amount not to exceed the then-present value (discounted at the prevailing prime rate of interest as published in *The Wall Street Journal* on the day preceding the date of determination) of (a) the cash flows equal to the product of (i) the positive difference, if any, of the price per kWh for commercially available, utility-provided energy in the applicable market(s) (which shall not include related charges such as delivery, service, distribution, or taxes) minus the kWh Rate of Energy hereunder (as such kWh Rate would have been escalated over time pursuant to the terms hereof) hereof, multiplied by (ii) the number of days remaining in the term of this Agreement had it not been terminated times the expected daily number of kWh of Energy to be delivered under this Agreement, calculated by dividing the Estimated Year 1 Production set forth in Schedule B, adjusted for as-built System, by 365. Provider's payment to Customer of the amounts set forth in this Section 12.1.2 shall not in any way limit the other remedies at law or in equity that Customer may pursue as damages for Provider's breach of this Agreement; provided, however, that such damages pursued by Customer are subject to the limitation provisions of Sections 12.3 and 12.5.

### 12.2 Provider's Remedies Upon Customer Default.

In addition to any other remedies available under this Agreement or at law, if a Customer Default has occurred and is continuing, then Provider may terminate this Agreement by providing written notice to Customer thereof, and this Agreement shall terminate and be of no further force or effect as of the date of the notice according to Section 14.1 and Provider shall have the right to (a) cause Customer to pay (and Customer shall have the obligation to pay to Provider) the applicable Termination Value set forth in Column A of Schedule D and (b) enter onto the Site and remove the System in accordance with the last sentence of Section 10.2.3.

12.3 No Consequential Damages.

Nothing in this Agreement is intended to cause either Party to be, and neither Party shall be, liable to the other Party for any lost business, lost profits or revenues from others or other special or consequential damages, all claims for which are hereby irrevocably waived by Customer and Provider. Notwithstanding the foregoing, none of the payments for the Energy or any other amount specified as payable by Customer to Provider under the terms of this Agreement upon the termination of this Agreement shall be deemed consequential damages

12.4 Effect of Termination of Agreement.

Upon the Termination Date or the Expiration Date, as applicable, any amounts then owing by a Party to the other Party shall become immediately due and payable and the then future obligations of Customer and Provider under this Agreement shall be terminated (other than the indemnity obligations set forth in Section 13). Such termination shall not relieve either Party from obligations accrued prior to the effective date of termination or expiration.

12.5 Limitation of Liability.

THE TOTAL LIABILITY OF A PARTY TO THE OTHER PARTY FOR ALL CLAIMS OR SUITS OF ANY KIND, WHETHER BASED UPON THIS AGREEMENT, TORT (INCLUDING NEGLIGENCE BUT EXCLUDING THIRD PARTY TORT CLAIMS FOR PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM THE PERFORMANCE OF THIS AGREEMENT), WARRANTY, STRICT LIABILITY OR OTHERWISE, FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES OF ANY KIND WHATSOEVER ARISING OUT OF, RESULTING FROM OR RELATED TO THE PERFORMANCE OR BREACH OF THIS AGREEMENT SHALL, UNDER NO CIRCUMSTANCES, EXCEED \$459,739, PROVIDED THAT THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (A) LIABILITY FOR FRAUD OR WILLFUL MISCONDUCT OF ANY PERSON; (B) LIABILITY UNDER THE INDEMNIFICATION PROVISIONS OF THIS AGREEMENT FOR CLAIMS OF THIRD PARTIES FOR PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM THIS AGREEMENT; OR (C) PAYMENT OF THE KWH RATE. THE LIMITATION OF LIABILITY PROVIDED FOR HEREIN SHALL NOT BE USED TO LIMIT OR REDUCE ANY AVAILABLE INSURANCE.

13. Indemnification.

13.1 Indemnification by Provider.

Provider shall fully indemnify, save harmless and defend Customer from and against any and all costs, claims, and expenses incurred by Customer in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (a) the negligence or willful misconduct of Provider or its agents or employees or others under Provider's control in performing this Agreement, and

(b) a Provider Default under this Agreement; provided, however, that nothing in this Section 13.1 is intended to modify the limitation of Provider's liability set forth in Section 12.3 above; provided further that to the extent Customer recovers such damages, losses and expenses under any insurance policy, Customer shall reimburse any payment made by Provider under this indemnity.

13.2 Indemnification by Customer.

Without limiting the provisions of Section 8, Customer shall fully indemnify, save harmless and defend Provider or its assignees and successors from and against any and all costs, claims, and expenses incurred by Provider in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (a) the negligence or willful misconduct of Customer or its agents or employees or others under Customer's control at the Site or (b) a Customer Default hereunder; provided, however, that nothing in this Section 13.2 is intended to modify the limitation of Customer's liability set forth in Section 12.3 above; provided further that to the extent Provider recovers such damages, losses and expenses under any insurance policy, Provider shall reimburse any payment made by Customer under this indemnity.

13.3 Notice of Claims.

Any Party seeking indemnification hereunder (the "Indemnified Party") shall deliver to the other Party (the "Indemnifying Party") a notice describing the facts underlying its indemnification claim and the amount of such claim (each such notice a "Claim Notice"). Such Claim Notice shall be delivered promptly to the Indemnifying Party after the Indemnified Party receives notice that an action at law or a suit in equity has commenced; provided, however, that failure to deliver the Claim Notice as aforesaid shall not relieve the Indemnifying Party of its obligations under this Section 13, except to the extent that such Indemnifying Party has been prejudiced by such failure.

13.4 Defense of Action.

If requested by an Indemnified Party, the Indemnifying Party shall assume on behalf of the Indemnified Party, and conduct with due diligence and in good faith, the defense of such Indemnified Party with counsel reasonably satisfactory to the Indemnified Party; provided, however, that if the Indemnifying Party is a defendant in any such action and the Indemnified Party believes that there may be legal defenses available to it that are inconsistent with those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to participate in its defense of such action at the Indemnifying Party's expense. If any claim, action, proceeding or investigation arises as to which the indemnity provided for in this Section 13 applies, and the Indemnifying Party fails to assume the defense of such claim, action, proceeding or investigation after having been requested to do so by the Indemnified Party, then the Indemnified Party may, at the Indemnifying Party's expense, contest or, with the prior written consent

of the Indemnifying Party, which consent shall not be unreasonably withheld, settle such claim, action, proceeding or investigation. All costs and expenses incurred by the Indemnified Party in connection with any such contest or settlement shall be paid upon demand by the Indemnifying Party.

13.5 Survival of Provisions.

The provisions of this Section 13 shall survive the expiration or termination of this Agreement.

14. Miscellaneous Provisions.

14.1 Notices.

All notices, communications and waivers under this Agreement shall be in writing and shall be (a) delivered in person or (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested or (c) sent by reputable overnight express courier, addressed in each case to the addresses set forth below, or to any other address either of the parties to this Agreement shall designate in a written notice to the other Party:

If to Provider:

Solar Star Co Co 1, LLC  
c/o SunPower Corporation  
1414 Harbour Way South, Suite 1901  
Richmond, CA 94804  
Attention: Julie Williamson, Project Administration  
Phone:510-540-0550  
Fax:510-540-0552

If to Customer:

Contra Costa County Public Works Dept.  
Capital Projects Management Division  
Attn: Energy Manager  
40 Muir Road  
Martinez, CA 94553 Phone: 925-313-2000  
Fax: 925-313-2333

All notices sent pursuant to the terms of this Section 14.1 shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by reputable overnight, express courier, then on the next business day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third (3rd) business day following the day sent or when actually received.

14.2 Authority.

14.2.1 Provider Representations. Provider hereby represents and warrants that:

- (a) It is a Delaware limited liability company duly organized, validly existing and in good standing under the laws of the state of its formation and has all requisite limited liability company power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (b) The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary limited liability company action;
- (c) This Agreement is a legal, valid and binding obligation of Provider enforceable against Provider in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law);
- (d) To the best knowledge of Provider, as of the date of execution hereof, no governmental approval (other than any governmental approvals that have been previously obtained or disclosed in writing to Customer) is required in connection with the due authorization, execution and delivery of this Agreement by Provider or the performance by Provider of its obligations hereunder which Provider has reason to believe that it will be unable to obtain in due course on or before the date required for Provider to perform such obligations; and
- (e) Neither the execution and delivery of this Agreement by Provider nor compliance by Provider with any of the terms and provisions hereof (i) conflicts with, breaches or contravenes the provisions of the articles of formation or operating agreement of Provider or any contractual obligation of Provider or (ii) results in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default under any material contractual obligation of Provider.

14.2.2 Customer Representations. Customer hereby represents and warrants that:

- (a) It is a political subdivision of the State of California, validly existing and in good standing under the laws of the state of its formation and has all requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (b) The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary governmental action;
- (c) This Agreement is a legal, valid and binding obligation of Customer enforceable against Customer in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law);
- (d) No governmental approval (other than any governmental approvals which have been previously obtained or disclosed in writing to Provider) is required in connection with the due authorization, execution and delivery of this Agreement by Customer or the performance by Customer of its obligations hereunder which Customer has reason to believe that it will be unable to obtain in due course;
- (e) Neither the execution and delivery of this Agreement by Customer nor compliance by Customer with any of the terms and provisions of this Agreement results in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default under any contractual obligation of Customer;
- (f) Customer has not entered into any contracts or agreements with any other person regarding the provision of the services at the Site contemplated to be provided by Provider under this Agreement; and
- (g) None of the electricity to be generated by the Provider will be used to generate energy for the purpose of heating a swimming pool.

### 14.3 Assignment

#### 14.3.1 Provider Assignment.

Provider may assign this Agreement upon written notice thereof to Customer, provided that any such assignment shall be to an assignee capable of performing Provider's obligations hereunder. Provider may, without any consent of Customer, sell, transfer, assign or pledge (or grant security interests in) its rights, title and interest in this Agreement, and/or any monies due under this Agreement to a Financing Party, in connection with any financing for the ownership, acquisition, construction, operation or use of the System.

#### 14.3.2 Customer Assignment.

Customer shall not assign all or any part of this Agreement to any entity other than an affiliate of Customer without the prior written consent of the Provider, which shall not be unreasonably withheld. Customer may not assign this Agreement to any Person, including an affiliate, with a credit rating lower than that of Customer without providing matching credit support in the form of cash, letter(s) of credit, or other security reasonably acceptable to Provider. Any assignment by the Customer not permitted under this Section 14.3 shall be void ab initio. In the event that Customer decides to sell or otherwise transfer the Site or a portion thereof upon which the System is located, Customer may (i) with Provider's prior written consent, which will not be unreasonably withheld or delayed, assign this Agreement to the Site purchaser who shall assume all of Customer's obligations under this Agreement and Provider shall release Customer from any further liability associated with this Agreement, or (ii) terminate this Agreement by paying Provider the Termination Value applicable to the date of termination. Upon payment of the Termination Value, the Parties will execute all documents necessary to cause title to the System to pass to Customer as-is, where-is. The Customer does not have the present intention of making any transfer of the Site or that portion of the Site on which the System is located; provided, however, nothing herein shall prohibit Customer from making any transfer of the Site or any portion thereof on which System is located, subject to the provisions set forth above.

#### 14.4 Successors and Assigns.

The rights, powers and remedies of each Party shall inure to the benefit of such party and its successors and permitted assigns.

#### 14.5 Entire Agreement.

This Agreement (including all exhibits and schedules attached hereto) represent the entire agreement between the parties to this Agreement with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous oral and prior written agreements.



14.6 Amendments to Agreement.

This Agreement shall not be amended, modified or supplemented without the written agreement of Provider and Customer at the time of such amendment, modification or supplement.

14.7 Waivers; Approvals.

No waiver of any provision of this Agreement shall be effective unless set forth in writing signed by the Party making such waiver, and any such waiver shall be effective only to the extent it is set forth in such writing. Failure by a Party to insist upon full and prompt performance of any provision of this Agreement, or to take action in the event of any breach of any such provisions or upon the occurrence of any Provider Default or Customer Default, as applicable, shall not constitute a waiver of any rights of such Party, and, subject to the notice requirements of this Agreement, such Party may at any time after such failure exercise all rights and remedies available under this Agreement with respect to such Provider Default or Customer Default. Receipt by a Party of any instrument or document shall not constitute or be deemed to be an approval of such instrument or document. Any approvals required under this Agreement must be in writing, signed by the Party whose approval is being sought.

14.8 Partial Invalidity.

In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of Applicable Law, Provider and Customer shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Agreement (and in the event that Provider and Customer cannot agree then such provisions shall be severed from this Agreement) and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected by such adjustment and shall remain in full force and effect.

14.9 Execution in Counterparts.

This Agreement may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same Agreement.

14.10 Governing Law; Jurisdiction; Forum.

This Agreement shall be governed by and construed in accordance with the internal laws of the State of California. Customer irrevocably agrees that any action, suit or proceeding by or among Provider and Customer may be brought in whichever of the Superior Courts of the State of California, Alameda County, or the Federal Court for the Northern District of California, has subject matter jurisdiction over the dispute and waives any objection that Customer may now or hereafter have regarding the choice of forum whether on personal jurisdiction, venue, forum non conveniens or on any other ground. Customer irrevocably consents to the service

of process outside of the territorial jurisdiction of such courts by mailing copies thereof by registered or certified mail, postage prepaid, to Customer's address set forth herein with the same effect as if Customer were a resident of the State of California and had been lawfully served in such state. Nothing in this Agreement shall affect the right to service of process in any other manner permitted by law.

14.11 Attorneys' Fees.

If any action shall be instituted between Customer and Provider in connection with this Agreement, the Party prevailing in such action shall be entitled to recover from the other Party all of its reasonable costs and expenses incurred in connection with such action by arbitration or other legal proceeding, including reasonable attorneys' fees.

14.12 No Third Party Rights.

This Agreement is only for the benefit of the parties to this Agreement, their successors and permitted assigns (including any lender or lessor of Provider) and Persons expressly benefited by the indemnity provisions of this Agreement. No other Person (including, without limitation, tenants of the Site) shall be entitled to rely on any matter set forth in, or shall have any rights on account of the performance or non-performance by any Party of its obligations under, this Agreement.

14.13 Treatment of Additional Amounts.

The Parties hereto acknowledge and agree that Customer's payment of the Termination Value constitute liquidated damages and not penalties. The Parties further acknowledge that in the case of the payment of the Termination Value: (a) the amount of loss or damages likely to be incurred is incapable or is difficult to precisely estimate, (b) the amounts specified hereunder bear a reasonable proportion and are not plainly or grossly disproportionate to the probable loss likely to be incurred by Customer or Provider as the case may be and (c) the Parties are sophisticated business parties and have been represented by legal counsel and negotiated this Agreement at arm's length.

14.14 No Agency.

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

14.15 No Public Utility.

Nothing contained in this Agreement shall be construed as an intent by Provider to dedicate its property to public use or subject itself to regulation as a “public utility” (as defined in the California Public Utilities Code or any other Applicable Law).

14.16 No Recourse to Affiliates.

This Agreement is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party.

14.17 Cooperation with Financing.

Customer acknowledges that Provider may be financing the Solar Services and the System and Customer agrees that it shall reasonably cooperate with Provider and its financing parties in connection with such financing, including (a) the furnishing of information related to the System and this Agreement, and (b) the giving of a Financing Party acknowledgment in the form attached hereto as Exhibit B (each, a “Consent”); provided, that the foregoing undertaking shall not obligate Customer to materially change any rights or benefits, or materially increase any burdens, liabilities or obligations of Customer, under this Agreement except for providing notices and additional cure periods to a Financing Party with respect to events of default by Provider under this Agreement pursuant to the terms of the Consent.

14.18 Setoff.

Except as otherwise set forth herein, each Party reserves to itself all rights, setoffs, counterclaims and other remedies and/or defenses to which it is or may be entitled, arising from or out of this Agreement.

14.19 Service Contract.

The Parties intend this Agreement to be treated as a service contract within the meaning of Section 7701(e)(3) of the Code.

15. Confidential Information.

15.1 Each Party (the “Receiving Party”) shall not use for any purpose other than performing its obligations under this Agreement, or divulge, disclose, produce, publish, or permit access to, without the prior written consent of the other Party (the “Disclosing Party”), any Confidential Information of the Disclosing Party. As used herein, the term “Confidential Information” means information or materials prepared in connection with this Agreement, designs, drawings, specifications, techniques, models, data, documentation, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans, customer, supplier or personnel names and other information related to customers,

suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets. Confidential Information does not include (a) information known to the Receiving Party prior to obtaining the same from the Disclosing Party; (b) information in the public domain at the time of disclosure by the Receiving Party; or (c) information obtained by the Receiving Party from a third party who did not receive same, directly or indirectly, from the Disclosing Party. The Receiving Party shall use the higher of the standard of care that the Receiving Party uses to preserve its own Confidential Information or a reasonable standard of care to prevent unauthorized use or disclosure of such Confidential Information. Notwithstanding anything herein to the contrary, the Receiving Party has the right to disclose Confidential Information without the prior written consent of the Disclosing Party: (i) as required by any court or other Governmental Authority, or by any stock exchange on which the shares of any Party are listed, (ii) as otherwise required by law, (iii) as advisable or required in connection with any government or regulatory filings, including without limitation, filings with any regulating authorities covering the relevant financial markets, (iv) to its attorneys, accountants, financial advisors or other agents, in each case bound by confidentiality obligations, (v) to banks, investors and other financing sources and their advisors, in each case bound by confidentiality obligations; or (vi) in connection with an actual or prospective merger or acquisition or similar transaction where the party receiving the Confidential Information is bound by confidentiality obligations. If a Receiving Party believes that it will be compelled by the law or a court or other Governmental Authority to disclose Confidential Information of the Disclosing Party, it shall give the Disclosing Party prompt written notice, and in all cases not less than five (5) business days' notice in advance of disclosure, so that the Disclosing Party may determine whether to take steps to oppose such disclosure.

16. Estoppel Certificate.

Either Party hereto, without charge, at any time and from time to time, within twenty (20) days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other relevant person, firm or corporation specified by such requesting party:

- a) If true and correct, that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;
- b) Whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and
- c) Such other information as may be reasonably requested by a Party hereto.

Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the date set forth above.

PROVIDER:

SOLAR STAR CO CO 1, LLC

By: SunPower AssetCo, LLC  
Its member

By: \_\_\_\_\_  
Name: David McIlhenny  
Title: Vice President

CUSTOMER:

CONTRA COSTA COUNTY

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

## EXHIBIT A

### SYSTEM DESIGN AND CONSTRUCTION

This Exhibit A sets forth the design, engineering and construction specifications for the System, as well as assumptions being made by the Provider regarding the existing condition at the Site, including but not limited to the building roof, building structure, ground conditions, electrical system including panels, inverter installation location, and security fencing. Capitalized terms used herein and not otherwise defined have the meaning given in the Agreement to which this exhibit is attached.

#### 1. SYSTEM LOCATION AND DESCRIPTION:

Descriptions of the site and system are located in Schedule A (Description of Site) and Schedule B (Description of System) of the Agreement.

#### 2. PROJECT SCHEDULE:

##### PORTFOLIO MILESTONES

	Tranche	Contract Approval Date	Commercial Operation Date
1000 Ward	1	6-18-2019	6/24/2020
30/40 Muir	1	6-18-2019	5/24/2020
597 Center	1	6-18-2019	6/13/2020
595 Center	2	6-18-2019	10/26/2020
50 Douglas	2	6-18-2019	9/22/2020
30 Douglas	2	6-18-2019	10/30/2020
2530 Arnold	3	6-18-2019	12/14/2020
4545 Delta Fair	3	6-18-2019	12/21/2020
4549 Delta Fair	3	6-18-2019	11/24/2020
1305 MacDonald	3	6-18-2019	12/21/2020

#### 3. SCOPE OF WORK:

##### *System Design & Scope*

##### *Design Documentation*

Provider shall provide comprehensive submittal packages for the 30% and 90% design sets as detailed below. Changes to 30% Customer approved drawings (scope lock) could result a change order. At a minimum, each submittal package shall include the elements required to convey in sufficient detail the following for each phase of the design:

	<b>Submittal Requirement</b>	<b>30% Design Set</b>	<b>90% Design Set</b>
1	Cover Sheet, with Content, Project Details, Directory, etc.	X	X
2	PV System Sizes & Production Estimates.	X	X
3	Overall Site Plan with PV Array Names, Conduit Routes, Tree/Light Removal, etc.	X	X
4	Electrical Site Plan Drawings & General Conduit Routing.	X	X
5	Electrical Single Line Diagrams.	X	X
6	Demolition Plans.		X
7	Structural Drawings.		X
8	Equipment Pad locations.	X	X
9	Mounting Details.		X
10	Signage, Trenching, Installation, and Grounding Details.		X
11	Monitoring System Details.		X
13	Construction Schedule.	Prelim	Detailed
14	Manufacturer's Cut Sheets with Equipment Specifications		X
15	Civil Drawings (if applicable)		X
16	Fire Access Plans		X
17	Carport Lighting Plans		X

Production modeling of the PV system shall accurately simulate energy production for proposed system layouts, sizes, and orientation. Provider shall be responsible for updating the production models each time significant changes are made to the proposed system designs that will impact production.

### ***Solar Electrical Equipment and Conductors***

Conductors will be aluminum or copper according to Electrical Engineer of Record's determination. AC feeder length from panel boards to equipment pad location and from equipment pad location to electrical tie-in is identified on the array layout drawings. AC feeder lengths from electrical equipment pad location to assumed point of interconnection, and length assumptions with equipment amperage ratings are shown on the single line drawing.

Transformers are 480V:12kV, non-Dry-type by manufacturer of Provider's choosing. Secondary containment is not included in the scope of the project.

### ***Battery Energy Storage System Requirements***

For sites with storage to be installed:



- 13.5' by 11' minimum required area per storage unit. Area required includes storage unit, concrete pad, and clearance zone in front of units.
- Storage unit must be located in an area free of combustible materials (nearby foliage and trees would need to be removed).
- Storage unit must be separated from public foot traffic with a fence and must be separated from vehicle traffic with bollards.
- Crane rental required to land up to 24,500 lb units. Location of units must accommodate both crane and semi-trailer truck access.
- PVS5 DAS, Auxiliary Box, Energy Storage System, and all Accuvim meters (Site meter, PV output meter, and Storage meter) must all be located such that hardlined communication lines can connect these devices to the same Local Area Network. CAT5e/6 cable is preferred means of connection between all devices, which has a 330' distance limit. Runs longer than 330' will require additional equipment to accommodate.

### ***Utility Interconnection***

Coordination of shutdown may be required with Customer and local utility. Temporary power generators are excluded. Interconnection is scheduled for a minimum of 4 hours and is assumed to be performed during off-hours with prior written approval from Customer. Additional shutdowns will be required in order to assess physical condition of Customer's switchgear.

The utility will have 24/7 access to existing electric utility meters and the utility lockable disconnect locations for all electrical interconnections related to this project.

### ***Utility Requirements***

A cost of \$172,012.58 is included for utility required electrical upgrades for the System at 30 Douglas Dr., Martinez, CA, as reflected in Pacific Gas & Electric's Supplemental Review, Notification # 114209530; additional utility-required electrical equipment upgrades or replacements are not included.

Any costs and / or schedule delays associated with unforeseen utility interconnection requirements, including but not limited to utility-owned equipment upgrades or additions, relay protection equipment external to the inverters, system impact studies, or telemetry requirements and interconnection studies are not included in this proposal.

### ***Facility Equipment***

Utility required circuit breaker coordination studies are not assumed for this project.

A short-circuit coordination study is not included for this project.

Solar system includes all standard interconnection related equipment on the Customer side of the meter, including panel circuit breakers, utility and/or visible utility lockable disconnect switches, solar metering, conduit, and wiring. Additional Customer-side protection required by the utilities above that provided by the certified inverters is not included.

If harmonic data of the site is not available, Provider shall assume that the Harmonic data are within the acceptable limits of the Institute for Electrical and Electronics Engineers (IEEE) Standard 519.

***Soils and Structural Foundations***

Foundation assumptions are as follows for system options:

- Drilled cast-in-place, 30” round caisson, 12’ Deep, approximately 2.5’ above grade, depending on existing topography.
- Requirements for dewatering, sub grade rock removal, or other unforeseen conditions are not included.

***Canopy Structure Design***

Carport Canopies are at 10 degree tilt with 11 ft clear height.

***Roof Conditions***

Provider assumes no upgrading of the building structures or canopies will be required to support the added live and dead loads from the photovoltaic installation and rooftop equipment, or to resist added lateral or seismic loads. Modifications to the roof system and design and construction of supports, upgrades to the building structure or platforms are not included.

Anchor and ballast counts are based on the wind load gradient method developed by Cermak Peterka Petersen, Inc, (CPP) and SunPower, based on the CPP wind tunnel testing results presented in CPP’s report “CPP7979\_SunPowerEWSsystem\_REP\_SOL\_R08” dated May 17th, 2018.

Increased anchor and ballast counts resulting from other design methods will be the responsibility of the client.

<b>Site Name</b>	<b>Anchor Count</b>
30 Muir	71
595 center	27
50 Douglas	90
1000 Ward	170
597 Center	33

Provider is not responsible for normal wear and tear associated with the installation of the solar system. Provider reserves the right to inspect the roof to verify its condition. In addition, Provider may offer recommendations to the Customer on modifications to the roof system to improve its serviceability. Customer is responsible for any and all modifications to the roof system. Modifications of roof systems fall into four categories:

- Modifications to improve roof condition / serviceability / useful life.
- Modifications required by roofing manufacturer prior to installation of PV system on their roof system. (e.g. slip sheets, strapping, etc.)
- Modifications required by Provider to make the roof a suitable substrate for the installation of PV. (e.g. air seals, batten bars, etc.)
- 3<sup>rd</sup> party engineering and insurance company requirements.
- Proposal assumes Customer-provided information accurately represents the existing site and roof conditions. This includes but is not limited to as-built drawings, roof reports, structural drawings, roof maintenance history, and roof warranty information. Failure to provide as-built drawings and structural drawings will cause schedule delay and added expense for acquisition of documentation through local authority having jurisdiction (“AHJ”). Provider is not responsible for additional costs or schedule delays.

***Drainage***

Special drainage requirements and/or drainage design and interconnection to Customer’s existing storm drain system or any other storm drain discharge system are not included.

Carport designs do not include structural roof deck for storm water collection or protection.

***Permits***

<b>Permit</b>	<b>Provider Permit</b>	<b>Customer Permit</b>	<b>Cost Allocation</b>	<b>Allotted Time following Application</b>
Building	X			
Fire	X			
Electrical	X			
Conditional Use Permit		NA		
Environmental Control		NA		
Storm Water		NA		
Soil Erosion and Sediment Control		NA		
Environmental Impact Report (CEQA)		NA		
Army Corps of Engineers		NA		
Wetlands		NA		
Water Quality		NA		
Archeological		NA		

Endangered Species		NA		
Water Rights		NA		
Mineral Rights		NA		
Redevelopment Agency		NA		
FAA Approvals		NA		

***Permit Allowance Schedule***

<b>Site</b>	<b>Allowance for Permit</b>
1000 Ward St	\$3,000
30 Douglas Dr	\$10,000
50 Douglas Dr	\$5,000
30/40 Muir Dr	\$5,000
597 Center Ave	\$2,500
595 Center Ave	\$7,000
2530 Arnold Dr	\$6,000
4545 Delta Fair Blvd	\$5,000
4549 Delta Fair Blvd	\$2,500
1305 Macdonald	\$3,000

All other permits/approvals are excluded.

Provider includes durations of 50 days for procuring permit and regulatory approvals (per project ). Provider will not be responsible for construction delays caused by permit and approval requirements from local jurisdictions or regulatory review bodies. Any delays in procuring permits will result in a day-for-day construction schedule extension.

***Shading***

The design is based on existing visual conditions on site. Removal of trees or other obstructions to install the solar arrays and system components is included as reflected in the Tier 1 array layouts. Trees and/or other obstructions identified for removal or trimming by Customer must be removed or trimmed prior to substantial completion or performance expectations/guarantees will require adjustment which will be handled as a change to the contract. At Substantial Completion an as-built shade study and performance simulation will be completed to ensure accuracy of initial shading assumptions.

### ***Painting***

Galvanization of canopy columns and primary beams only is included. All other metallic materials are either factory-finished or non-corrosive.

Painting of wall-mounted conduits is not included.

### ***Landscaping***

Site landscaping (e.g. plant restoration or long term weed abatement) is not included.

Irrigation repair and reconfiguration caused by foundation or underground construction is not included.

### ***Fencing***

A 6-0' galvanized, 9 gauge, 2" mesh fencing and chain link fence-with gate around perimeter electrical equipment pad locations is included. Special provisions for privacy slats, special hardware, lock sets, small fabric, etc. are not included. 4" bollards are included only in areas subject to vehicle impact. Additional bollards required by utility or other entities are excluded.

### ***Labor***

#### ***Project Labor Agreement***

Provider shall cause its project contractor to enter into Customer's project labor agreement among Customer, the project contractor, and all subcontractors thereof working on the project (the "PLA").

#### ***Overtime and special shift requirements***

Overtime and special shift requirements are not included, based on schedule submitted with this proposal, except for the interconnection work if shutdown is required. Project hours are based on Monday through Friday 7am – 5pm.

#### ***Prevailing Wages***

Provider shall pay prevailing wages for the project per the PLA and industrial relations requirements of project location.

#### ***Diversity Requirements***

Provider shall comply with Contra Costa County's Construction Outreach Program.

### ***Indirect Construction Costs***

#### ***Taxes and fees***

Taxes or fees, other than permit fees and sales tax, are not included.

### ***Bonds***

Prior to the Effective Date of the Agreement to which this Exhibit A is attached, Provider shall deliver to Customer for approval good and sufficient bonds with sureties, in amounts specified in Section 12.5 (Limitation of Liability) of the Agreement guaranteeing its faithful performance of the Agreement and its payment for all labor and materials thereunder.

### ***Site & Construction Conditions***

#### ***Access***

Design assumes each project site will be constructed in a single phase, set up of construction fencing at beginning of mobilization and removed when construction is completed. Extra time and labor for moving fences to “phase” construction in efforts to minimize parking impacts will have impacts in cost and schedule and will be calculated as a change order.

Customer will provide Site access to Provider to perform all work pursuant to the License granted in the Agreement. Provider will perform all work during regular business hours according to the PLA. Extra time or personnel constraints due to site security beyond daily signing in by workers on a sign in sheet i.e. badging, background checks, tool inventory checks, etc.—is not included.

Provider will be provided a sufficient area for staging materials and locating temporary facilities such as cranes, fork lifts, scaffolding, staintowers, construction trailers, portable toilets and dumpsters.

Existing roads will be capable of handling all required construction equipment such as drilling rigs, concrete trucks, delivery trucks, cranes, and all other equipment necessary to complete the work. Provider will not be responsible for any damage to existing roads, parking lots or playgrounds resulting from normal construction operations and activities.

#### ***Use of Facilities***

On-site water and power will be available for construction with no restrictions and at no charge to Provider. If a Customer initiated power shut down has duration over 4 hours and effects normal construction operations, Provider can rent and install a temporary generator and submit associated costs to Customer for reimbursement. Water quality shall be sufficient for use in dust control, as necessary, and be suitable for Provider’s standard concrete mix design.

#### ***Special handling of site materials***

Testing for removal and disposal of any existing hazardous waste materials, contaminated soils, or any other unforeseen site conditions that require special handling are not included.

#### ***Site utilities and hazards***

Changes resulting from utilities, right of ways, easements, and/or hazards—underground or above ground—or any undocumented building upgrades are not included.

Documented utilities and building upgrades are considered as part of this proposal if as-builts are provided to Provider prior to contract execution in order to confirm locations of these possible hazards. Customers shall supply Provider with a current Title Report with plotted easements, encumbrances, and rights-of-way at all project site locations.

### ***Security and Lighting***

Proposal assumes all parking lot light standards in direct conflict with installation of photovoltaic parking canopies will be removed by Provider. Proposal also assumes that the existing lighting circuits, for those removed parking lot light standards, can be re-used for photovoltaic parking canopies lighting system and that those existing circuits have ample current carrying capacity to provide required lighting at parking canopies, per jurisdictional code requirements. PV canopies located in areas where no existing lights are present will not include lighting unless the Customer requests this for an additional cost.

Temporary lighting during construction is excluded.

New lighting circuit installation is excluded from this proposal as well as any required timing circuit reconfiguration, lighting controllers, relays, or new panel boards. Lighting design and/or installation beyond the footprint of the photovoltaic parking canopies is not included in this proposal. Replacement of existing light standards is not included. Proposal includes LED fixtures for lighting under structures.

Additional security systems or infrastructure are not included in this proposal

### ***Special Conditions***

Proposal assumes modifications and/or reconfiguration of the existing parking lots will not be required to accommodate installation of Provider's photovoltaic parking canopy.

Assumes existing islands in parking lot to remain at area of new carport structure. Proposal excludes any re-striping of the parking lot/hard-court areas, unless specifically related to the construction of the photovoltaic parking canopies, or specifically described in the RFP.

While special care will be taken to locate existing underground utilities (underground survey) and locate carport structures with minimum conflicts, relocation of existing underground utilities due to carport foundations is not included.

Proposal excludes requirements for accessibility upgrades and accessibility design around the photovoltaic parking canopy structures and assumes that current parking lot layout has been reviewed and approved by AHJ and built and closed at the AHJ. If the architect of record recommends addition of new accessible parking stalls under the solar canopies, grade change to meet code, changed path of travel and/or new canopies over existing accessible stalls, design and construction costs will be addressed via Change Order.

Proposal excludes design or installation of any required additional fire hydrants or fire protection apparatuses as required by local first responders or Fire, Life/Safety professionals responsible for review and approval of the design for this project.

Architectural enhancements to the photovoltaic parking canopy structures or ground and roof arrays and mounting systems are not included.

At the detention center located at 1000 Ward in Martinez, the project estimate is based on utilizing existing conduit and equipment from the previous pv installation. The ability utilize existing conduit will be verified during the design phase.

### ***Testing and Inspections***

Provider assumes all Special Inspections/Testing shall be paid for and contracted by the Customer.

### ***Weather conditions***

Provider assumes standard weather patterns and site conditions for planning the project schedule. Instances of excessive climate, weather (greater than the most adverse conditions in the last 3 years) or natural disasters may result in delays and/or unplanned costs (i.e. additional labor, shipping, storage, and logistics costs) which will be the responsibility of the Customer.

### ***Commissioning, Monitoring, Operations & Maintenance***

#### ***Commissioning***

Proposal assumes commissioning requirements for this project is only for the Photovoltaic and energy storage systems. Proposal does not include other building system commissioning costs not related to our work (i.e. HVAC, Plumbing, Fire Alarm, etc.).



**EXHIBIT B**  
**FORM OF FINANCING PARTY ACKNOWLEDGMENT**

*[This Form of Consent contemplates a Sale-Leaseback of the System between the Provider and Provider's Lender and Provider's eventual lender may request changes]*

This CONSENT AND AGREEMENT (this "Consent") dated as of [●], 201 is entered into among (i) Contra Costa County, a political subdivision of the State of California (the "Customer"), (ii) Solar Star Co Co 1, LLC, a limited liability company duly organized and existing under the laws of the State of Delaware (the "Provider"), and (iii) [●], a [●] duly organized and existing under the laws of the State of [●] (together, with its successors in such capacity, the "System Lessor").

WHEREAS, the Provider intends to develop, install, own, operate and maintain a [\_\_\_\_\_] MW [**ground-mounted/rooftop**] photovoltaic solar electric generating facility to be located in [\_\_\_\_\_] (the "Project");

WHEREAS, the Provider and the Customer entered into that certain Power Purchase & Storage Services Agreement, dated as of [●], 2019 (as amended, amended and restated, modified or supplemented from time to time, the "Assigned Agreement");<sup>1</sup>

WHEREAS, the Project will be sold by the Provider to the System Lessor pursuant to that certain Participation Agreement (as amended, the "Participation Agreement") dated as of the date hereof, among the Provider, the System Lessor, [●], not in its individual capacity but as owner trustee, and [●] ("Owner Participant");

WHEREAS, the System Lessor will lease the Project back to the Provider pursuant to that certain Lease Agreement, a related Project Schedule and a Certificate of Acceptance (as amended, the "Lease Agreement") dated as of the date hereof, between the System Lessor and the Provider;

WHEREAS, the Provider will grant the System Lessor a first priority security interest in and to all of the Provider's assets, including the Assigned Agreement, pursuant to a security agreement in form and substance acceptable to the System Lessor (as amended, amended and restated, modified or supplemented from time to time, the "Security Agreement"); and

WHEREAS, it is a condition precedent to the Owner Participant's obligation to make its investment in the System Lessor and for the System Lessor to acquire the Project under the Participation Agreement and lease the Project to the Provider under the Lease Agreement that the Customer execute and deliver this Consent.

NOW, THEREFORE, as an inducement to the Owner Participant to make its investment in the System Lessor and for the System Lessor to acquire the Project under the Participation Agreement and lease the Project to the Provider under the Lease Agreement, and in consideration

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<sup>1</sup> NTD: Can be expanded to include any additional agreements to which the Customer is a party.

of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

**1. CONSENT TO ASSIGNMENT, ETC.**

(a) Consent to Assignment. The Customer (i) acknowledges that the Provider and the System Lessor have entered into the Participation Agreement and the Owner Participant's obligation to make its investment in the System Lessor and for the System Lessor to acquire the Project under the Participation Agreement and lease the Project to the Provider under the Lease Agreement will be made in reliance upon the execution and delivery by the Customer of the Assigned Agreement and this Consent, (ii) consents in all respects to the pledge and assignment to the System Lessor of all of the Provider's right, title and interest in, to and under the Assigned Agreement pursuant to the Security Agreement, and (iii) acknowledges the right, but not the obligation, of the System Lessor or the System Lessor's designee, in the exercise of the System Lessor's rights and remedies under the Lease Agreement, the Security Agreement, and related documents to make all demands, give all notices, take all actions and exercise all rights of the Provider in accordance with the Assigned Agreement, and agrees that in such event the Customer shall continue to perform its obligations under the Assigned Agreement; provided that in the event, with respect to the Assigned Agreement, there exists a conflict between any notice given or action taken by the System Lessor and any notice given or action taken by the Provider, such conflict shall be resolved in favor of the notice given or the action taken by the System Lessor.

(b) Substitute Owner. The Customer agrees that, if the System Lessor notifies the Customer that an event of default under the Lease Agreement has occurred and is continuing and that the System Lessor has exercised its rights (i) to have itself or its designee substituted for the Provider under the Assigned Agreement, (ii) to acquire or have its designee or assignee acquire the Provider, or (iii) to sell, assign, transfer or otherwise dispose of the Assigned Agreement to a third party, including in a judicial or non-judicial foreclosure sale, then the System Lessor, the System Lessor's designee or such third party (each, a "Substitute Owner") shall be substituted for the Provider under the Assigned Agreement and, in such event, the Customer will (x) recognize the Substitute Owner as its counterparty to the Assigned Agreement, (y) take any actions and execute any documents, agreements or instruments reasonably necessary to effect such substitution, and (z) continue to perform its obligations under the Assigned Agreement in favor of the Substitute Owner pursuant to the terms hereof and thereof.

(c) Right to Cure.

(i) Notwithstanding anything to the contrary contained in the Assigned Agreement, the Customer shall not exercise any right it may have under the Assigned Agreement, at law or in equity, to cancel, suspend or terminate the Assigned Agreement or any of its obligations under the Assigned Agreement, as the result of any default or other action or omission of the Provider in the performance of any of its obligations under the Assigned Agreement, or upon the occurrence or non-occurrence of any event or condition under the Assigned Agreement that would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable the Customer to terminate or suspend its obligations or exercise any other right or remedy under the Assigned Agreement or under applicable law (hereinafter an "Assigned Agreement Default"), until it first gives prompt written notice of such Assigned Agreement

Default to the System Lessor and the Owner Participant and affords the System Lessor and the System Lessor's respective successor, assignee and/or designee a period of at least ninety (90) days (or, if such default is a payment default, forty-five (45) days) to cure such default, commencing from the later to occur of (x) the System Lessor's and the Owner Participant's receipt of such notice, and (y) the expiration of any notice periods or cure periods provided for in the Assigned Agreement; provided, however, that if (1) an event of default under the Lease Agreement has occurred and is continuing, the System Lessor has exercised its rights to foreclose on the Project as a result thereof and possession of the Project is necessary to cure any such non-monetary default, then, so long as the System Lessor or the System Lessor's respective successor, assignee and/or designee is diligently pursuing such foreclosure proceedings, the time periods specified in this Section 1(c) for curing an Assigned Agreement Default shall be extended for the time taken to complete foreclosure proceedings, and (2) any such party is prohibited from curing any such Assigned Agreement Default by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding involving the Provider, then the time periods specified in this Section 1(c) for curing an Assigned Agreement Default shall be extended for the period of such prohibition.

(ii) No such cancellation, suspension or termination of the Assigned Agreement by the Customer shall be binding upon the System Lessor without the notice and extended cure period specified in this Section 1(c). Any dispute that may arise under the Assigned Agreement notwithstanding, the Customer shall continue performance under the Assigned Agreement and resolve any dispute without discontinuing such performance until the lapse of the notice and extended cure period specified in this Section 1(c).

(d) No Termination, Assignment or Material Amendments. The Customer shall not enter into any consensual cancellation or termination of the Assigned Agreement (except with respect to termination in the event of a default by the Provider, subject to the limitations and extended cure periods provided for in Section 1(c)), or assign, novate or otherwise transfer any of its right, title or interest thereunder or consent to any such assignment or transfer by the Provider without, in each such case, the written consent of the System Lessor. The Customer shall not enter into or agree to any amendment, supplement, assignment or other modification to, or benefit from any waiver under, the Assigned Agreement without the prior written consent of the System Lessor.

(e) Replacement Agreement. In the event that the Assigned Agreement is rejected or otherwise terminated as a result of any bankruptcy or insolvency proceeding affecting the Provider, the Customer shall, at the option of the System Lessor or the System Lessor's respective successor, assignee and/or designee, enter into a new agreement with the System Lessor or any Substitute Owner (or its transferee or other nominee that owns or leases the Project) having terms substantially the same as the terms of the Assigned Agreement. Thereafter, references in this Consent to the "Assigned Agreement" shall be deemed to refer to such new agreement.

(f) No Liability. The Customer acknowledges and agrees that none of the System Lessor, or the System Lessor's respective successor, assignee and/or designee or the Owner Participant shall have any liability or obligation under the Assigned Agreement as a result of this Consent, the Security Agreement, the Lease Agreement or otherwise, nor shall the System Lessor or the System Lessor's respective successor, assignee and/or designee be obligated or required to (i) perform any of the Provider's obligations under the Assigned Agreement, except, in the case of

the System Lessor or the System Lessor's respective successor, assignee and/or designee, during any period in which the System Lessor or the System Lessor's respective successor, assignee and/or designee is a Substitute Owner pursuant to Section 1(b), in which case the System Lessor or other Substitute Owner shall not be liable for acts or omissions of the Provider and the obligations of such Substitute Owner shall otherwise be no more than those of the Provider under the Assigned Agreement, or (ii) take any action to collect or enforce any claim for payment assigned under the Security Agreement or any related document.

(g) Delivery of Notices. The Customer shall deliver to the System Lessor and the Owner Participant, concurrently with the delivery thereof to the Provider, a copy of each notice, request or demand given by the Customer pursuant to the Assigned Agreement.

(h) Acknowledgements. The Customer agrees to execute such acknowledgements or other similar instruments as the System Lessor may reasonably request in connection with the transactions contemplated by this Consent.

## **2. PAYMENTS UNDER THE ASSIGNED AGREEMENT**

(a) Payments. The Customer will pay all amounts payable by it under the Assigned Agreement, if any, in lawful money of the United States of America, in immediately available funds and in the manner required by, and subject to the terms and conditions of, the Assigned Agreement, directly into the account specified on Exhibit A hereto, or to such other person or account as may be specified from time to time by the System Lessor to the Customer in writing.

(b) No Offset, etc. All payments required to be made by the Customer under the Assigned Agreement shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever.

## **3. REPRESENTATIONS AND WARRANTIES OF THE CUSTOMER**

The Customer makes the following representations and warranties to the System Lessor, the Provider and the Owner Participant as of the date hereof, which shall survive the execution and delivery of this Consent and the Assigned Agreement and the consummation of the transactions contemplated hereby and thereby:

(a) Organization; Power and Authority. The Customer is a political subdivision of the State of California, and is duly qualified, authorized to do business and in good standing in all jurisdictions where it is required to be so qualified and authorized to do business, and has all requisite power and authority to enter into and to perform its obligations under this Consent and the Assigned Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

(b) Authorization. The execution, delivery and performance by the Customer of this Consent and the Assigned Agreement have been duly authorized by all necessary action on the part of the Customer and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of (i) the Customer, or (ii) any other person or entity, except approvals or consents which have previously been obtained.

(c) Execution and Delivery; Binding Agreements. Each of this Consent and the Assigned Agreement is in full force and effect, has been duly executed and delivered on behalf of the Customer and constitutes the legal, valid and binding obligation of the Customer, enforceable against the Customer in accordance with its terms except as the enforceability hereof or thereof may be limited by (i) bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights generally, and (ii) general equitable principles (whether considered in a proceeding in equity or at law).

(d) Litigation. There is no legislation, litigation, action, suit, proceeding or investigation pending or (to the best of the Customer's knowledge after due inquiry) threatened against the Customer before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate, (i) could adversely affect the performance by the Customer of its obligations under this Consent or the Assigned Agreement, or that could modify or otherwise adversely affect the Approvals (as defined in Section 3(f)), (ii) questions the validity, binding effect or enforceability of this Consent or the Assigned Agreement, any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby, or (iii) could have a material adverse effect upon (x) the value, validity, perfection or enforceability of the liens granted to the System Lessor under the Security Agreement and other security documents, or (y) the ability of the System Lessor to enforce any of its rights and remedies under the Assigned Agreement or this Consent.

(e) No Conflict. The execution and delivery of this Consent and the Assigned Agreement and the performance by the Customer under this Consent and the Assigned Agreement will not violate, result in a breach of, default under or conflict with (i) any law, rule, regulation, order, permit or decree applicable to the Customer, (ii) its organizational documents, or (iii) the terms of any other agreement binding on the Customer.

(f) Government Consent. No consent, order, authorization, waiver, approval or any other action, or registration, declaration or filing with, any person, board or body, public or private (collectively, the "Approvals"), is required to be obtained by the Customer in connection with the execution, delivery or performance of this Consent, the Assigned Agreement or the consummation of the transactions contemplated hereunder and thereunder, except any Approvals which have previously been obtained.

(g) No Default or Amendment. Neither the Customer nor, to the Customer's knowledge after due inquiry, the Provider or any other party to the Assigned Agreement is in default of any of its obligations thereunder (or has claimed force majeure, emergency, or any other excuse for performance thereunder which is still ongoing as of the date hereof). The Customer has no existing counterclaims, offsets, defenses, or claims for change orders against the Provider under the Assigned Agreement. To the Customer's knowledge, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either the Customer or the Provider to terminate or suspend its obligations (or the performance of such obligations) under the Assigned Agreement. The Assigned Agreement has not been amended, modified or supplemented in any manner other than as indicated above.

(h) No Previous Assignments. The Customer has no notice of, and has not consented to, any previous assignment of all or any part of its right, title or interest in, to or under the Assigned Agreement.

(i) **Purchase Option.** The Customer has not taken any official action requiring or authorizing the exercise of any purchase option available to it under the Assigned Agreement, has not decided whether or not it will exercise any such purchase option, and is under no legal or economic compulsion to exercise any such purchase option; provided, however, nothing herein shall prohibit the Customer from exercising any purchase option under the Assigned Agreement when it becomes exercisable in accordance with its term and such exercise shall not be deemed to be a breach of this representation and warranty.]

(j) Liens; Mortgages. The Customer has no knowledge of any existing lease, mortgage, security interest or other interest in or lien upon the [Premises], which could attach to the Project as an interest adverse to the System Lessor's interest therein.

Representations and Warranties. All representations, warranties and other statements made by the Customer in the Assigned Agreement were true and correct in all material respects as of the date when made and, except for those that by their terms speak as of a specific date, are true and correct in all material respects as of the date hereof.

#### **4. ADDITIONAL PROVISIONS<sup>2</sup>**

(a) **Commercial Operation Date.** The Commercial Operation Date is \_\_\_\_\_.

(b) **Use of Electricity.** None of the electricity to be sold under the Assigned Agreement will be used to generate energy for the purpose of heating a swimming pool.

(c) **Project.** The Customer has approved the Project as installed at the [Premises].

(d) **Access Rights.** The System Lessor and the System Lessor's respective successors, assignees and/or designees shall have the same rights as the Provider to access the Project in order to install, operate, maintain and remove the Project as the right accorded to the System Lessor under the Lease Agreement and the Security Agreement.

(e) **Notice of Ownership.** The Customer will use commercially reasonable efforts to place its successors, assigns and lien holders on notice of the ownership of the Project by the Provider or the System Lessor, the existence of the security interest, and the fact that the Project is not part of the [Premises] or a fixture thereof, as necessary and appropriate to avoid confusion or adverse claims.

(f) **Amendments.** The Customer acknowledges that, under the Provider's financing arrangements, the Provider is not permitted to agree to an amendment or assignment of the Assigned Agreement without prior written consent of the System Lessor.]

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<sup>2</sup> NTD: Additional provisions to be added to address specific matters contained in the PPA.

5. MISCELLANEOUS

(a) Applicable Law; [Submission to Jurisdiction]. THIS CONSENT, AND ANY INSTRUMENT OR AGREEMENT REQUIRED HEREUNDER (TO THE EXTENT NOT EXPRESSLY PROVIDED FOR THEREIN), SHALL BE GOVERNED BY, AND CONSTRUED UNDER, THE LAWS OF THE STATE OF CALIFORNIA, APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE AND WITHOUT REFERENCE TO CONFLICTS OF LAWS.

(b) [Reserved.]

(c) Notices. All notices and other communications hereunder (i) shall be in writing, (ii) shall be effective upon actual receipt thereof by the party or parties to whom such notice is addressed, except that any communication or notice so transmitted by telecopy or electronic mail shall be deemed to have been validly and effectively given on the day (if a business day and, if not, on the next following business day) on which it is transmitted if transmitted during normal business hours of the recipient, and if transmitted after that time, on the next following business day, in each case as evidenced by transmittal confirmation received by the transmitter, (iii) shall be delivered by hand or overnight courier service or mailed by certified or registered mail, sent by facsimile or via electronic mail, and (iv) shall be directed as follows:

If to the Customer: [\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]
Attention: [\_\_\_\_\_]
Telephone: [\_\_\_\_\_]
Facsimile: [\_\_\_\_\_]
Email: [\_\_\_\_\_]

If to the Provider: [●]

If to the System Lessor: [●]

The above parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent.

(d) Amendment, Waiver. Neither this Consent nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the Customer, the Provider and the System Lessor.

(e) Third Party Beneficiary. The Owner Participant shall be an express third-party beneficiary of this Consent. The Owner Participant shall be entitled to enforce the rights of the System Lessor hereunder.

(f) No Waiver; Remedies Cumulative. The waiver of any right, breach or default under this Consent by any party must be made specifically and in writing. No failure or delay on the part of the System Lessor in exercising any right, power or privilege hereunder and no course of dealing between the Customer and the System Lessor shall operate as a waiver thereof; nor shall any single

or partial exercise of any right, power or privilege hereunder preclude any other exercise, or the further exercise, of any other right, power or privilege hereunder. No notice to or demand upon any party will entitle such party to any further, subsequent or other notice or demand in similar or any other circumstances. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies that the System Lessor would otherwise have.

(g) Counterparts. This Consent may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered, including by e-mail or other electronic transmission, shall be deemed an original, but all of which shall together constitute one and the same instrument.

(h) Headings Descriptive. The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

(i) Severability. In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(j) Successors and Assigns. This Consent shall be binding upon the parties hereto and their permitted successors and assigns and shall inure to the benefit of the parties, their designees and their respective permitted successors and assigns; provided, however, that no party or its respective successor or assign shall assign any of its interest in this Consent except in connection with an assignment of its interests in the Assigned Agreement and then only to the same person(s) or entity(ies) to which its interest in the Assigned Agreement is so assigned.

(k) Survival. All agreements, statements, representations and warranties made by the Customer herein shall be considered to have been relied upon by the System Lessor and the Owner Participant and shall survive the execution and delivery of this Consent.

(l) Conflicts. In the event of a conflict between any provision of this Consent and any provision of the Assigned Agreement, the provisions of this Consent shall prevail.

(m) Further Assurances. Each party hereto hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

[SIGNATURE PAGES FOLLOW]



**IN WITNESS WHEREOF**, the parties hereto have caused this Consent to be executed by their respective officers as of the date first above written.

[\_\_\_\_\_]   
as the Customer

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

[\_\_\_\_\_]   
as the Provider

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

[●],   
as the System Lessor

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

**Payment Instructions**

Accounts Bank	
ABA Number	[_____] <sup>3</sup>
Account Number	[_____]
Account Name	[_____]
Reference	[_____]

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<sup>3</sup> Account information to be confirmed and included.

## EXHIBIT C

### SYSTEM PERFORMANCE GUARANTEE (the “Guarantee”)

#### ARTICLE I. ADDITIONAL DEFINED TERMS

**Actual Generation** means, for each Guarantee Year during the Term and with respect to the System, the System’s alternating current or “AC” electricity production in kilowatt-hours (“kWh”) as measured under Section 3.02.

**Annual Deficit** has the meaning set forth in Section 3.01.

**Annual System Performance Report** means the report that summarizes annual system performance in kWh and includes calculations for Weather Adjustment and True-up Period calculations.

**Avoided Energy Price per kWh** means the amount that the Customer will be paid by Provider for each Kilowatt-hour as set out in Appendix B (Avoided Energy Price) of this Guarantee.

**Data Acquisition System** or **DAS** means Provider’s system that displays historical meteorological and production data over an Internet connection and consists of hardware located on-Site and software housed on Provider’s DAS server. The DAS measures and logs, at a minimum, the following parameters on a 15-minute average basis at the Site: actual AC electricity production of the System (in kWh) and solar irradiance (in W/m<sup>2</sup>).

**Expected Energy** means, for the System in a specified Guarantee Year, the kilowatt hours for the System set forth on Appendix A (Expected Energy) of this Guarantee.

**Excused Performance Event** means:

- Force Majeure Event;
- Impingements on solar access by structures or activities on neighboring sites or by facilities that are beyond the control of either Party;
- Externally caused outages, including:
  - Warranty Exclusions: hours during any period when the System or any portion thereof is off-line due to an event that would constitute an exclusion under any applicable manufacturer’s, System, workmanship or other applicable warranty.
  - Network Disturbance Hours: hours during any period when a fluctuation in the utility network parameters (e.g., a frequency or voltage variation) result in the disconnection of the inverters or the System from the utility network and prevented energy from being evacuated from the System.
  - Network Outage Hours: hours during any period when a failure in the distribution network or in the connection infrastructure prevented energy from being evacuated from the System.
  - Third-Party Equipment Servicing Hours: equipment or System outage hours during any period that result from service issues related to non-Provider equipment or delays in procuring non-Provider replacement parts.

- Customer-Caused Hours: hours during any period when the equipment or the System is off-line due to Customer-required outages or Customer-caused delays in Site access.
- Major Maintenance Hours: hours during any period when the equipment or the System is off-line due to Customer-required major maintenance work.

**Guaranteed Level** means 90% of the Expected Energy for a Guarantee Year for the System.

**Guarantee Year** means each successive 12-month period during the Term commencing on the Commercial Operation Date.

**PVSim** means the software program utilized by Provider to predict the amount of energy that the System will produce in an average year which has the following characteristics: (1) based on PVFORM, the photovoltaic simulation software produced by Sandia National Laboratories and the US Department of Energy, (2) all photovoltaic characteristics are modeled, (3) all ancillary array losses are taken into account and (4) PVSim simulations use either measured data or typical meteorological year files from Meteornorm and NREL.

**SEMMY** or “Simulated Energy in a Measured Meteorological Year”, means, with respect to any Guarantee Year, Year 1 AC Energy output of the System simulated by PVSim using measured average hourly irradiance, wind speed, and air temperature as recorded by the Data Acquisition System, holding all other inputs equal to those used in calculating SETMY.

**SETMY** or “Simulated Energy for a Typical Meteorological Year”, means the Year 1 AC Energy output of the System simulated by PVSim using average hourly irradiance, wind speed, and air temperature data contained within the Weather File.

**True-up Period** means each successive one (5)-year period during the Term commencing on the first day of the Term.

**Weather Adjustment** means the ratio described in Section 3.01.

**Weather File** means the typical meteorological year data set specified for the System set forth on Appendix C (Weather File) of this Guarantee.

## **ARTICLE II. PERFORMANCE GUARANTEE CONSIDERATION**

### **Section 2.01 Consideration**

The Parties agree that the consideration set forth in Section 5.1 of the Agreement includes adequate consideration for the terms, conditions and provisions of this Guarantee.

## **ARTICLE III. PERFORMANCE GUARANTEE**

Provider guarantees to Customer that the Actual Generation of the System during any Guarantee Year, subject to the limitations, terms and conditions stated in this Guarantee shall not be less than the Guaranteed Level.

### **Section 3.01 Guaranteed Output Calculations.**

Provider shall calculate the Annual Deficit for the System for each Guarantee Year during the Term:

- (a) Annual Deficit = (Expected Energy x Guaranteed Level) x Weather Adjustment – Actual Generation

Where the Weather Adjustment ratio is as follows:

Simulated Energy in a Measured Meteorological Year (SEMMY)

Simulated Energy for a Typical Meteorological Year (SETMY)

For each Guarantee Year, within thirty (30) days after the end of such Guarantee Year, Provider shall calculate the Annual Deficit for the System. Customer has the right to access all data and information supporting Provider's calculation of the Annual Deficit.

- (b) Guarantee Payment Reimbursement. At the end of each True-up Period:
- (i) if the sum of Annual Deficits > 0, then Provider shall pay to Customer an amount equal to the cumulative product of (y) the Annual Deficits and (z) the Avoided Energy Price per kWh (a "Guarantee Payment");
- (ii) Provider shall promptly notify Customer of any Guarantee Payment due. Provider shall make Guarantee Payments within thirty (30) days of the date of the notice provided in the first sentence of this paragraph.

### **Section 3.02 Actual Generation Measurement.**

Provider shall measure Actual Generation for the System for each Guarantee Year as follows:

- (a) **Initial Output Data Collection.** During the Term, Provider will collect energy output data using its Data Acquisition System. For each Guarantee Year, Provider will sum the daily kWh output for the System provided by the DAS to calculate the Actual Generation for the System for such Guarantee Year.
- (b) **Equipment Calibration and Replacement.** Provider may request to have the meteorological equipment independently calibrated or replaced at its own expense every eighteen (18) to thirty (30) months. Provider shall notify the Customer of the scheduled calibration date and time no less than 30 days prior, and shall provide the Customer written proof of calibration or replacement.
- (c) **Contingency for Equipment Failure.** In the event of hardware, communication, or other failure affecting the DAS, Provider will make commercially-reasonable efforts to resolve the failure in a timely manner. In the event that data is lost, Actual Generation for each affected System shall be adjusted to compensate for such lost data as follows:
- (i) In lieu of lost meteorological data, Provider will utilize such data obtained from a nearby meteorological station that Provider monitors and selects for such purpose.
- (ii) In lieu of lost electricity data, Provider will utilize the cumulative data from System meter readings to calculate the electricity generated by each affected System during the missing interval. In the event that data

from the System meter is inaccurate or missing, Provider will simulate electricity production during the missing interval utilizing measured meteorological data and PVSIm. The simulated electricity production during the missing interval will be added to the Actual Generation for each affected System for the subject Guarantee Year.

#### **ARTICLE IV. CUSTOMER RESPONSIBILITIES**

##### **Section 4.01 Customer's Failure to Uphold Responsibilities.**

Provider shall promptly notify Customer of any breach ("Out of Compliance Letter") of (i) Customer's obligation to pay Provider for the Solar Services pursuant to the Agreement and (ii) any Customer obligations pursuant to the Agreement that directly (A) hinder the amount of Energy delivered by the System or (B) degrade the functionality of the System. Upon Customer's cure of all failures described in an Out of Compliance Letter, Provider will notify Customer ("In Compliance Letter") that Customer is complying with Customer's Responsibilities. For any period between the issuance of an Out of Compliance Letter and of an In Compliance Letter (a "Noncompliance Period"), to the extent that Customer's non-compliance actually impacts the Actual Generation of the System, any Actual Generation from such affected Systems in such month(s) shall be disregarded in the calculation of Annual Deficits for such Systems under Section 3.01, and the Expected Energy for any affected System in any Guarantee Year in which there is a Noncompliance Period shall be reduced by a proportionate amount.

#### **ARTICLE V. EXPECTED ENERGY ADJUSTMENT**

##### **Section 5.01 Adjustment of Expected Energy.**

If, and to the extent, any of the following events results in a change in the production of electricity by the System, Expected Energy for that System shall be adjusted correlatively for the period of such change:

- (a) Subject to Provider's obligations under any warranty it provides in connection with the Systems (including any Provider obligation, with respect to the System, in connection with any requirements under the California Solar Initiative program), a material portion of the components of the System fails, and the manufacturer of such component(s) refuses, or otherwise fails to honor its corresponding warranty;
- (b) Customer fails to perform any of its obligations under the PPA – such as obligations related to maintaining the System's interconnection to the local utility grid or limiting outages (as defined in the Agreement) – and such failure reduces the amount of electricity that the System can generate or deliver.
- (c) There is any failure of the System to perform caused by legislative, administrative or executive action, regulation, order or requisition of any federal, state or local government, local utility or public utilities commission;
- (d) There is an Excused Performance Event; or

- (e) Adjustment to the Expected Energy, or a reduction in the amount of Energy that Provider is obligated to deliver, is permitted or required under the Agreement.

**Section 5.02 Notification of Changes to Expected Energy.**

If Provider determines that any changes to Expected Energy for the System are required based on an event or events described in Section 5.01, then Provider shall notify the Customer, in writing, of the basis for its determination, and Provider shall either provide revised definitions of Expected Energy in exhibits that, upon mutual agreement of the Parties, which shall not be unreasonably denied or delayed, shall replace the current exhibits to this Guarantee, or specify a date by which it shall do so.

### Appendix A – Expected Energy

<b>Guarantee Year</b>	<b>Expected Annual kWh</b>
1	251,756
2	251,127
3	250,499
4	249,873
5	249,248
6	248,625
7	248,004
8	247,384
9	246,765
10	246,148
11	245,533
12	244,919
13	244,307
14	243,696
15	243,087
16	242,479
17	241,873
18	241,268
19	240,665
20	240,063
21	239,463
22	238,864
23	238,267
24	237,672
25	237,077
<b>Total</b>	<b>6,108,663</b>



### Appendix B – Avoided Energy Price

<b>Guarantee Year</b>	<b>Avoided Energy Price per kWh</b>
1	\$0.0048
2	\$0.0049
3	\$0.0051
4	\$0.0052
5	\$0.0054
6	\$0.0056
7	\$0.0057
8	\$0.0059
9	\$0.0061
10	\$0.0063
11	\$0.0065
12	\$0.0066
13	\$0.0068
14	\$0.0070
15	\$0.0073
16	\$0.0075
17	\$0.0077
18	\$0.0079
19	\$0.0082
20	\$0.0084
21	\$0.0087
22	\$0.0089
23	\$0.0092
24	\$0.0095
25	\$0.0098

## **Appendix C – Weather File**

SolarAnywhereTGY2016\_(10km)\_37.95\_-122.15

**Schedule A**

**DESCRIPTION OF SITE**

<b>Facility</b>	<b>System Size (kW DC)</b>	<b>Product Type</b>	<b>Module qty &amp; type - SunPower</b>	<b>Inverters- qty &amp; type-Delta</b>
30 Muir Rd, Martinez, CA 94553	165.60	Rooftop – Helix Dual Tilt	(460) SPR- X22-360- COM	(1) M60U_121 (2) M36U_121

**Schedule B**

**DESCRIPTION OF SYSTEM**

PV System Array Layouts and Electrical Single Line Diagrams

REV	DATE	DESCRIPTION
A	08-16-18	PROPOSAL
B	08-16-18	UPDATE PER MARK UPS
C	03-25-19	MOVE POI LOCATION
D	09-01-19	

PROJECT	00152788
OPPORTUNITY	
SHEET	AL1

**PROJECT SUMMARY**

TOTAL # OF MODULES	460
MODULE TYPE	SPR-X22-360-COM
# OF INVERTER	3
DC SYSTEM SIZE (KW)	165.60
AC SYSTEM SIZE (KW)	145.20

**STRUCTURAL DESIGN PARAMETERS**

WINDS SPEED ASCE 7-10 (MPH)	110
EXPOSURE CATEGORY	C
TRANSITIONAL DISTANCE (FT)	0
GROUND SNOW LOAD (PSF)	0
SPECTRAL RESPONSE (S <sub>1</sub> )	1.051
S <sub>1</sub>	1.577
S <sub>2</sub>	0.6
SEISMIC HAZARD LEVEL	2
SITE CLASS	D
SEISMIC IMPT. FACTOR (IP)	1.0
OCCUPANCY CATEGORY	II

**RACKING TYPE**

ROOF A	ROOF B
RACKING TECHNOLOGY	HELIIX
DUAL-TILT	OMG
PowerGrip Plus	PowerGrip Plus
ANCHOR TYPE	OMG
BALLAST BLOCK WEIGHT (LBS)	14
ROOF MEMBRANE	TBD
MAX. ROOF GROUND ANCHORS (IN)	12
MAX. ROOF SLOPE	1:12
MIN. OFFSET FROM ROOF EDGE (FT)	6

**BUILDING CHARACTERIZATIONS**

ROOF HEIGHT (FT)	30
ROOF LENGTH (FT)	188
ROOF WIDTH (FT)	143
PARAPET HEIGHT (FT)	3
SPWR AZIMUTH (DEGREES)	28
MAX ALLOWABLE PRESSURE (PSF)	12
MAX ALLOWABLE WEIGHT (LBS)	TBD

**BALLAST AND ANCHOR SUMMARY**

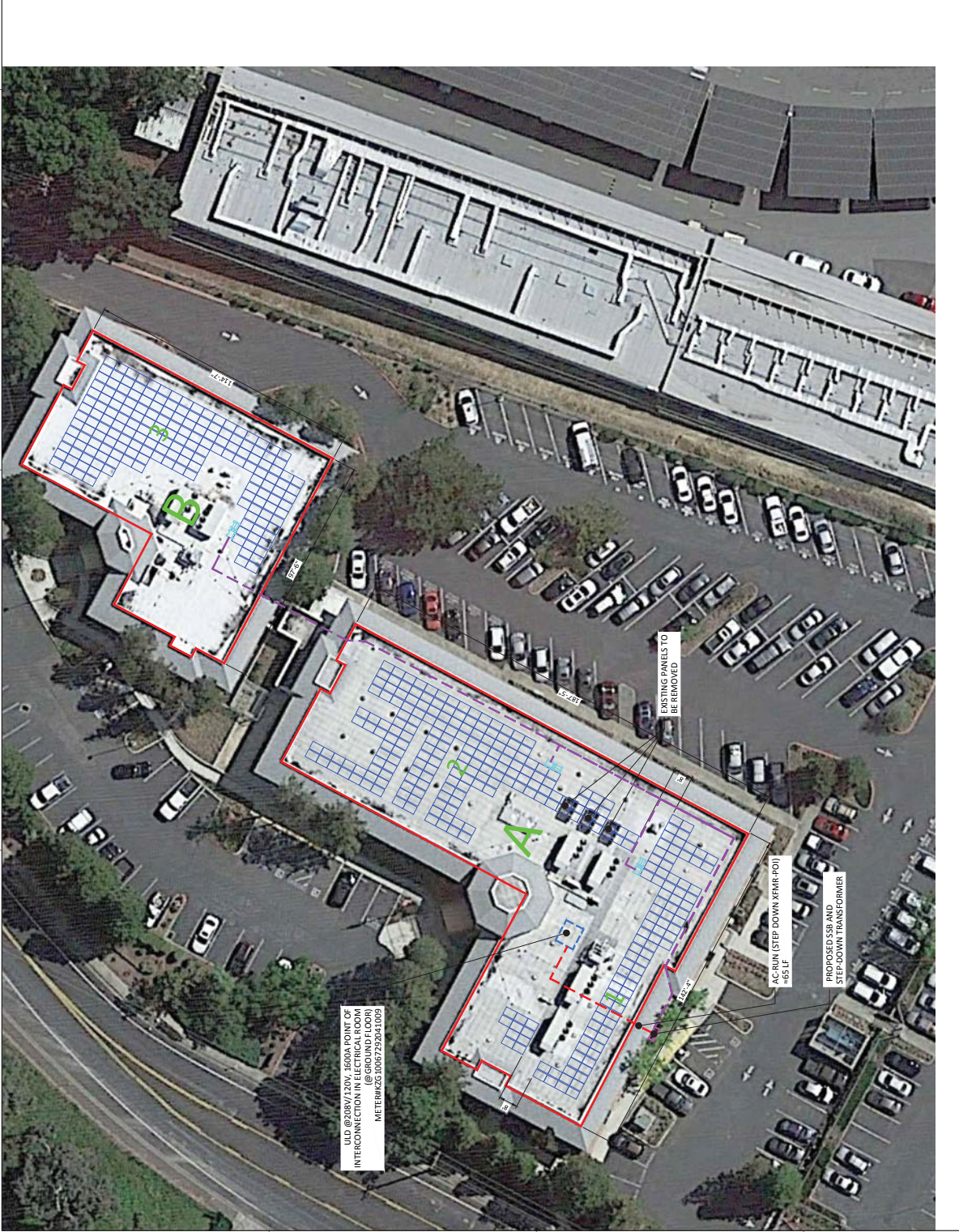
SYSTEM WEIGHT (LBS)	27556
AVERAGE PSF	5.10
MAX PSF	11.25
# BALLAST PER ROOF	1043
# OF ANCHOR PER ROOF	46
# MODULE PER ROOF	280
TOTAL # OF BALLASTS	1579
TOTAL # OF ANCHORS	71
TOTAL # OF MODULES	460

**LEGEND:**

- PROPOSED EQUIPMENT PAD
- PROPOSED POINT OF INTERCONNECTION
- AC CONDUITS (STEP-DOWN XFMR-POI)
- AC CONDUITS (INV-SSR)



**SUNPOWER HELIIX**  
TIER 1  
THE PROPOSED ARRAY LAYOUT SHOWN IS DESIGNED TO FIT EXISTING QUANTITIES ARE SUBJECT TO CHANGE BASED ON SUNPOWER VERIFICATION OF ACTUAL SITE CONDITIONS.



ROOF	ARRAY	MERU 131 (13 STR)	MERU 131 (14 STR)	TOTAL STRINGS	TOTAL # OF MODULES	DC POWER (KW)	AC POWER (KW)	EC LISTING (KW-AC)	AC UN (INV-SSR)
SS801	1	1	1	14	140	50.4	39.16	39.737	160
	2	1	1	14	140	50.4	39.16	39.737	160
TOTAL		2	2	28	280	64.8	65.47	65.47	355

ULD @288V/120V, 3600A POINT OF INTERCONNECTION IN ELECTRICAL ROOM METERBKG5 0002723011009

EXISTING PANELS TO BE REMOVED

AC-NUM (STEP-DOWN XFMR-POI) 45 LF

PROPOSED SSB AND STEP-DOWN TRANSFORMER

1 ARRAY LAYOUT SCALE: 1"=20'



**Schedule C**

**PV SYSTEM PRICING**

The following pricing is based on the Standard System Design Package described in Exhibit A.

kWh Rate (\$/kWh)	Term (Years)	Annual Rate Escalator (% / Year)
\$0.1344	25	0%

**Schedule D**  
**TERMINATIONS VALUES**

<b>Applicable Date : Years from Commercial Operation Date</b>	<b>Termination Value (\$)</b>
0 Year	\$736,598
1 Year	\$594,947
2 Years	\$533,236
3 Years	\$471,264
4 Years	\$409,079
5 Years	\$346,553
6 Years	\$338,256
7 Years	\$329,648
8 Years	\$320,765
9 Years	\$311,490
10 Years	\$301,857
11 Years	\$292,005
12 Years	\$281,830
13 Years	\$271,232
14 Years	\$260,340
15 Years	\$249,174
16 Years	\$237,770
17 Years	\$226,049
18 Years	\$214,046
19 Years	\$201,755
20 Years	\$189,205
21 Years	\$176,330
22 Years	\$163,157
23 Years	\$149,683
24 Years	\$135,929



***EXECUTION VERSION***

*NOTE: 50 Douglas Dr, Martinez, CA 945533*

**POWER PURCHASE AGREEMENT**

Dated as of June 18, 2019

by and between

Solar Star Co Co 1, LLC  
as Provider

and

Contra Costa County  
as Customer

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### **Exhibits, Schedules**

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## POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT (as amended, amended and restated, supplemented or otherwise modified from time to time, this "Agreement"), dated as of June 18, 2019 (the "Effective Date"), is by and between Solar Star Co Co 1, LLC, a limited liability company formed under the laws of the State of Delaware ("Provider"), and Contra Costa County, a political subdivision of the State of California ("Customer").

### RECITALS:

WHEREAS, Customer leases or owns, directly or indirectly, facilities in that certain location in California as more fully described in Schedule A of the Appendices hereto (the "Site");

WHEREAS, Customer desires that Provider install, maintain and operate, and Provider desires to install, maintain and operate, the System (as hereinafter defined) to be located on the Site; and

WHEREAS, Provider desires to sell, and Customer desires to purchase, (a) the Solar Services (as hereinafter defined), including the delivery of electrical energy generated by the System (the "Energy") and (b) other services pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### AGREEMENT:

1. Definitions.

Unless otherwise defined herein: (a) capitalized terms used in this Agreement shall have the respective meanings set forth in this Section 1; (b) the singular shall include the plural and vice versa; (c) the word "including" shall mean "including, without limitation", (d) references to "Sections," "Exhibits," "Appendices" and the like shall be to sections, exhibits, appendices, etc. of or to this Agreement; (e) the words "herein," "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection hereof; and (f) references to this Agreement shall include a reference to all exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time.

"Agreement" has the meaning set forth in the preamble.

"Annual Rate Escalator" means the percentage set forth in Schedule C.

"Applicable Law" shall mean, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, governmental approval, consent or requirement of such

Governmental Authority, enforceable at law or in equity, along with the interpretation and administration thereof by any Governmental Authority.

“Claim Notice” shall have the meaning set forth in Section 13.3.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Commercial Operation Date” shall have the meaning set forth in Section 3.4.

“Confidential Information” shall have the meaning set forth in Section 15.

“Customer” shall have the meaning set forth in the preamble.

“Customer Default” shall have the meaning set forth in Section 11.1.

“Effective Date” shall have the meaning set forth in the preamble.

“Energy” shall have the meaning set forth in the preamble.

“Environmental Attributes” includes, without limitation, tradable renewable certificates, green-e tags, allowances, reductions or other transferable indicia denoting carbon offset credits or indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility attributed to the Energy during the Term created under a renewable energy, emission reduction, or other reporting program adopted by a Governmental Authority, or for which a registry and a market exists (which, as of the Effective Date are certificates issued by Green-e in accordance with the Green-e Renewable Electric Certification Program, National Standard Version 1.3 administered by the Center of Resource Solutions) or for which a market may exist at a future time.

“Environmental Financial Incentives” shall mean each of the following financial rebates and incentives that is in effect as of the Effective Date or may come into effect in the future: (i) performance-based incentives, rebates and any other incentive programs offered by or in the State of California (or any political subdivision thereof) under the federal government’s, any municipality’s, any utility’s or any other state’s program or initiative (including, if applicable, subsidies available under the Self Generation Incentive Program administered through the California Public Utilities Commission), incentive tax credits (including investment tax credits arising under the Code) other tax benefits or grants in lieu thereof (including without limitation the monetization of tax benefits), and accelerated depreciation (collectively, “Incentives”), howsoever named or referred to, with respect to any and all fuel, emissions, air quality, energy generation, or other environmental or energy characteristics, resulting from the construction, ownership or operation of the System or from the use of solar generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Energy generated by the System; and (ii) all reporting rights with respect to such Incentives.

“Estimated Year 1 Production” shall mean the amount set forth in Schedule B to this Agreement.

“Expiration Date” shall have the meaning set forth in Section 10.1.

“Fair Market Value” shall have the meaning set forth in Section 10.3.2.

“Financing Party” means any third-party entity providing debt or equity financing to Provider (or any successor or assignee thereof) with respect to the System, including without limitation a party providing construction financing, a lessor in a sale-leaseback transaction, a partner in a partnership flip transaction, or a limited liability company member in an equity sale transaction.

“Force Majeure Event” shall mean, when used in connection with the performance of a Party’s obligations under this Agreement, any of the following events to the extent not caused by such Party or its agents or employees, which is not preventable by such Party as of the Effective Date:

- a) war, riot, acts of a public enemy or other civil disturbance;
- b) acts of God, including but not limited to, storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, volcanic eruptions, range or forest fires, and objects striking the earth from space (such as meteorites), sabotage or destruction by a third party (other than any contractor retained by or on behalf of the Party) of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;
- c) acts of federal, state or local government agencies, including changes in Applicable Law, that result in increasing Provider’s costs of construction and installation, or continuing operation, of the System by 15% or more; and
- d) strikes, walkouts, lockouts or similar industrial or labor actions or disputes.

“Governmental Authority” shall mean any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Indemnified Party” shall have the meaning set forth in Section 13.3.

“Indemnifying Party” shall have the meaning set forth in Section 13.3.

“Interconnection Point” shall have the meaning set forth in Section 3.5.

“kWh Rate” shall have the meaning set forth in Section 6.1.

“License” shall have the meaning set forth in Section 2.

“Liens” shall have the meaning set forth in Section 7.1.3.

“Meter” shall have the meaning set forth in Section 4.3.1.

“Monthly Period” shall mean the period commencing on the Commercial Operation Date and ending on the last day of the calendar month in which the Commercial Operation Date occurs, and, thereafter, all subsequent one (1) month periods during the Term.

“Monthly Production” shall mean, for each Monthly Period, the amount of Energy delivered during such Monthly Period.

“O&M Work” shall have the meaning set forth in Section 4.1.1.

“Party” shall mean each of Customer and Provider (and/or any successor or permitted assignee thereof).

“Person” shall mean any individual, corporation, partnership, company, limited liability company, joint venture, association, trust, unincorporated organization or Governmental Authority.

“Provider” shall have the meaning set forth in the preamble (and includes its successor(s) and permitted assignee(s)).

“Provider Default” shall have the meaning set forth in Section 11.2.

“Renewal Rate” shall mean the fair market price for electricity generated by solar photovoltaic systems as determined by agreement of the Parties or through the appraisal process applicable to the purchase option contained in this Agreement.

“Reporting Rights” means the right to report ownership of the Environmental Attributes or the Environmental Financial Incentives associated with the Energy to any federal, state, or local agency, authority or other party, including without limitation under Section 1605(b) of the Energy Policy Act of 1992 and provisions of the Energy Policy Act of 2005, or under any present or future domestic, international or foreign emissions trading program.

“Scheduled Outage” shall have the meaning set forth in Section 4.5.

“Site” has the meaning set forth in the first recital.

“Solar Services” mean all solar services provided to Customer by Provider hereunder, including the provision of Energy.

“Standards” shall have the meaning set forth in Section 3.1.1.

“System” shall mean the solar photovoltaic system installed pursuant to this Agreement at the Site and more fully described in Schedule B hereto; provided, however, that the term “System” shall only include equipment and materials up to but not including the Interconnection Point of the System.

“Term” shall have the meaning set forth in Section 10.1.

“Termination Date” shall have the meaning set forth in Section 10.1.



“Termination Value” shall mean, on any date of determination (or, if such date is not a scheduled termination date, the scheduled termination date immediately preceding such date) the applicable amount specified for such date in Schedule D to this Agreement.

“Transfer Taxes” shall have the meaning set forth in Section 6.2.1.

2. Purchase and Sale of Solar Services; License.

2.1 Purchase and Sale of Solar Services.

Customer hereby engages Provider to provide the services set forth in this Agreement, including the Solar Services to Customer, and Provider agrees to provide the services set forth in this Agreement, including the Solar Services to Customer, all in accordance with the terms and conditions set forth herein. Customer shall provide Provider with access to the Site in accordance with the terms of this Agreement. Provider may retain one or more contractors or subcontractors to fulfill its obligations hereunder; provided that Provider shall remain liable for performance of its obligations hereunder

2.2 License.

Customer hereby grants to Provider and to Provider’s agents, employees and subcontractors an irrevocable, non-exclusive license running with the Site for access to, on, over, under or across the Site (the “License”) for the purpose of (i) installing, constructing, operating, maintaining, accessing, removing and replacing the System; (ii) performing all of Provider’s obligations and enforcing all of Provider’s rights set forth in this Agreement; and (iii) installing, using and maintaining electric lines and equipment, including inverters and meters, necessary to interconnect the System to Customer’s electric system at the Site or to the utility’s electric distribution system or that otherwise may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance, or repair of the System. The term of the License is the Term of this Agreement plus the period of time necessary for Provider to remove the System pursuant to Section 10.3.3, but in no case later than one hundred eighty (180) days after the Expiration Date with respect to the System (the “License Term”). During the License Term, Customer shall preserve and protect Provider’s rights under the License and Provider’s access to the Site and shall not interfere with or permit any third parties to interfere with Provider’s rights or access. Except for an emergency situation as described in Section 4.2.1(a) or (b) (an “Emergency Situation”), Provider shall notify Customer in writing, which may be made via email to Customer’s Energy Manager, 40 Muir Road, Martinez, CA 94553 (Frank.DiMassa@pw.cccounty.us), or to any other address Customer may designate in a written notice to Provider, forty-eight (48) hours before Provider intends to access the Site pursuant to the License. Notwithstanding that the License granted herein is irrevocable, Customer reserves the right to exclude Provider, its agents, employees and subcontractors from the Site in the event that Customer notifies Provider of a breach of the License and Provider fails to cure such breach pursuant to Section 11.2.1 of this Agreement; provided, however, that, Customer

agrees not to exclude Provider, its agents, employees and subcontractors from the Site (A) in the event of an Emergency Situation as described in Section 4.2 so long as Customer has been notified of such an Emergency Situation pursuant to Section 4.2 and (B) in the event that the System is to be removed pursuant to this Agreement.

3. Design, Construction, Installation and Testing of System.

3.1 Installation.

Subject to Section 3.2, Provider will cause the System to be designed, engineered, installed and constructed at the Site substantially in accordance with the terms of this Agreement, including without limitation, the provisions of Exhibit A (System Design and Construction). Customer shall review and approve, such approval not to be unreasonably withheld or delayed, all construction plans, including engineering evaluations of the impact of the System on the structural integrity and strength of the location where the System is installed inside, on or near Customer's buildings. Provider shall organize the procurement of all materials and equipment for the installation work and maintain the same at the Site. Subject to the terms of the License, Provider shall perform installation work at the Site during the times set forth in Exhibit A and Schedule B in a manner that minimizes inconvenience to and interference with Customer's and Customer's invitees' and Customers' use of the Site to the extent commercially practical. Notwithstanding the foregoing, in the event that Provider determines in its sole discretion that it is unable to install the System at the Site, it shall be under no obligation to do so, and this Agreement shall terminate and be of no further force and effect upon written notice from Provider to Customer to that effect.

3.1.1 System Design and Construction. Exhibit A (System Design and Construction) attached hereto sets forth the design, engineering and construction specifications for the System, as well as assumptions made by the Provider regarding the Site conditions, the electrical conditions, and System attributes (such assumptions being referred to herein as the "Standards"). Schedule B (Description of System) sets forth the known actual conditions for the Site and the System, including deviations from the Standards. The Standards are such that the described items for the System will not need repair, replacement, modification or construction beyond that described in Exhibit A and Schedule B in order for Provider to properly construct and install the System. If the construction and installation of the System is required for any reason (except for reasons attributable to Provider) to deviate from the Standards and Schedule B, Provider will notify the Customer and provide an estimate of any incremental cost to Customer and Customer will have the option to (i) pay the incremental cost at the time the cost is incurred and billed to the Customer, (ii) pay the incremental cost over the Term through a calculated increase in the kWh Rate, or (iii) elect an alternative location subject to the conditions of Section 3.1.2.

3.1.2 Alternative Location. Prior to the Commercial Operation Date, if the Customer's interest in the Site is a leasehold interest and the Customer is unable to obtain the landlord's consent in accordance with the License or Customer chooses an alternative location per Section 3.1.1, Customer will have the option to elect an alternative location if Environmental

Attributes and Environmental Financial Incentives financially equivalent to or better than those associated with the original location are available for the alternative location, and if the expected System kWh output and construction cost at the alternative location are equivalent to or superior than those associated with the originally proposed location. Such alternative location is subject to Provider approval, not to be unreasonably withheld. If an alternative location cannot be established, Provider will have the right to terminate per Section 3.2.

### 3.2 Conditions Precedent to Commencement of Construction and Installation.

3.2.1 Commencement by the Provider of construction and installation activities with respect to the System are subject to the satisfaction of the following conditions precedent (in addition to the condition set forth in Section 3.3):

- (a) Provider shall have closed financing for construction and long-term ownership of the System and the Solar Services to be performed at the Site and, to the extent required pursuant to the applicable financing documentation, the third party financing institution providing such financing shall have been provided with the materials referred to in Section 14.17 and Section 16;
- (b) Provider shall have entered into the applicable contract(s) for construction and installation of the System, subject to the terms of the applicable financing, if any;
- (c) Provider shall have obtained the permits, licenses and other approvals required by Applicable Law to be obtained by Provider prior to such commencement;
- (d) Provider shall have received satisfactory notice that the applications for Environmental Financial Incentives for the System have been accepted and approved by the appropriate governing agency; and
- (e) Provider shall have received from Customer satisfactory evidence that the project—including the System, the License, and the work and Solar Services described in this Agreement—is exempt from the regulatory jurisdiction of local agencies (including zoning, building, and land-use requirements) or that all required local agency approvals and permits have been obtained.

provided, however, that if any of the foregoing conditions precedent have not been satisfied on or before June 17, 2020 (the “CP Date”), Provider shall have the option to terminate this Agreement without triggering the default provisions of this Agreement or any liability under this Agreement, and if Provider does not terminate this Agreement one hundred eighty (180) days following the CP Date, Customer may terminate this Agreement without triggering the default provisions of this Agreement or any liability under this Agreement.

Alternatively, in the event that such conditions precedent are not satisfied by such date, the Parties may mutually agree to amend this Agreement to revise the Commercial Operation Date and term of this Agreement.

### 3.3 Utility Approvals.

Notwithstanding that Provider shall have primary responsibility for preparing applications and obtaining all permits, licenses and approvals required for the performance of work under this Agreement, Customer agrees to reasonably assist Provider in obtaining necessary permits, licenses and approvals in connection with the installation, operation and maintenance of the System, including the submission of applications for interconnection of the System with the local electric utility. Customer shall not make any material changes to its electrical equipment at the Site after the date on which the applicable utility interconnection application is submitted unless any such changes, individually or in the aggregate, would not adversely affect the approval by such utility of such interconnection. Should the local electric utility fail to approve the interconnection of the System or require equipment in addition to the equipment set forth in Schedule B in connection with the Site, Provider may, at Provider's option, terminate this Agreement immediately subsequent to notification from the local utility. The Parties shall not be obligated to go forward with installation of the System if the applicable utility approvals are conditioned upon material upgrades to the existing electrical infrastructure and neither Party elects to provide for such upgrades. Customer also agrees to assist Provider and make all necessary repairs or changes to the existing electrical infrastructure so that the Site and System are eligible for the Environmental Financial Incentives.

### 3.4 Energy Delivery.

The date on which the delivery of Energy from the System commences (the "Commercial Operation Date") shall be the date on which all of the following shall have occurred: (a) Provider shall have certified to Customer in writing that the System is substantially complete and available for commercial operation; (b) all permits and licenses required to be obtained under Applicable Law in connection with the operation of the System shall have been obtained and be in full force and effect; and (c) Customer shall have entered into an interconnection agreement with the local electricity utility. In no event shall Provider have any liability to Customer for a delay in the Commercial Operation Date caused by Customer, Customer's electricity provider, a local agency issuing permits for the System or any other third parties outside of Provider's control.

### 3.5 Risk of Loss; Exclusive Control.

As between the Parties, Provider will be deemed to be in exclusive control (and responsible for any property damage or injuries to persons caused thereby) of the Energy up to but excluding the point where the System is interconnected to Customer's electrical intertie; e.g., the Customer's line-side tap (the "Interconnection Point") and Customer will be deemed to be in exclusive control

(and responsible for any property damage or injuries to persons caused thereby) of the Energy at and from the Interconnection Point. Risk of loss related to the Energy will transfer from Provider to Customer at the Interconnection Point.

### 3.6 Termination Values.

The Parties acknowledge and agree that the Termination Values with respect to the applicable System are as set forth in Schedule D of this Agreement.

## 4. Operation and Maintenance of System.

### 4.1 O&M Work; Phone/Data Line.

4.1.1 O&M Work. Provider shall provide operation, repair, monitoring and maintenance services to the System during the Term of this Agreement, including the monitoring and maintenance of metering equipment determining the quantity of electricity produced by the System (collectively, the “O&M Work”). Provider shall perform the O&M Work, either directly or indirectly through a subcontract with SunPower Corporation, Systems, an affiliate of Provider or through a third-party service provider capable of providing comparable services, provided that Provider remains responsible for all O&M Work notwithstanding any such subcontracting. Provider shall perform, or cause to be performed, the O&M Work to ensure that the System is capable of delivering the Energy in accordance with the specifications set forth in Schedule B. Provider shall use commercially reasonable efforts to enforce the terms of any contract for operations and maintenance services to which it is a party and System warranty agreements.

4.1.2 Phone/Data Line. Customer shall properly maintain, pay for and provide access to the necessary phone, computer, or other communication lines necessary to permit Provider to record the electrical output of the System for the entire Term.

### 4.2 Malfunctions and Emergencies.

4.2.1 Each of Customer and Provider shall notify the other within twenty-four (24) hours following the discovery by it of (a) any material malfunction in the operation of the System, (b) an interruption in the supply of Solar Services. Provider and Customer shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Provider’s repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Each Party shall notify the other Party immediately upon the discovery of an emergency condition in the System.

4.2.2 Provider shall commence repairs to the malfunctioning System and restore the supply of the Energy, as soon as reasonably possible after notice or upon its own discovery of any of the conditions specified in Section 4.2.1 during normal business hours and, subject to Section 2, take steps to mobilize personnel to commence repairs after notice or discovery of a condition requiring repair or other corrective action. If an emergency condition exists, Provider shall dispatch the appropriate personnel immediately upon becoming aware thereof to perform the necessary repairs or corrective action in an expeditious and safe manner. For routine and emergency repairs, the Parties shall contact the persons set forth below:

If to Provider:

Wayne Webb, Senior Manager, Operations & Maintenance  
2900 Esperanza Crossing, 2nd Floor  
Austin, TX 78759  
(510) 439 – 4663 or (800) 251-9728

[Wayne.Webb@sunpowercorp.com](mailto:Wayne.Webb@sunpowercorp.com) with a copy to: [customer.service@sunpower.com](mailto:customer.service@sunpower.com)

#### 4.3 Metering.

4.3.1 Meters. For the term of this Agreement, Provider shall install and maintain a utility-grade kilowatt-hour (“kWh”) meter (the “Meter”) at the System for the measurement of Energy provided to Customer, which shall measure the kWh output of the System on a continuous basis. Upon Customer’s written request, Provider shall furnish a copy of all technical specifications and accuracy calibrations for the Meter, as well as all metering data and energy production and consumption calculations. Provider shall test the Meter in compliance with manufacturer’s recommendations.

4.3.2 Customer Audits and Inspections. Once per calendar year, Customer shall have the right to audit all Meter data upon reasonable notice, and any such audit shall be at Customer’s sole cost. Customer shall have a right of access to the Meter at reasonable times and with reasonable prior notice for the purpose of verifying readings and calibrations.

4.3.3 Adjustments. If testing of the Meter pursuant to Section 4.3.1 or Section 4.3.2 indicates that the Meter is in error by more than two percent (2%), then Provider shall promptly repair or replace the Meter. If the Meter is found to be in error by more than two percent (2%), Provider shall make a corresponding adjustment to the records of the amount of Energy based on such test results for (a) the actual period of time when such error caused inaccurate Meter recordings, if such period can be determined to the mutual satisfaction of the Parties, or (b) if such period cannot be so determined, then a period equal to one-half (1/2) of the period from the later of (i) the date of the last previous test confirming accurate metering, and (ii) the date the Meter was placed into service; provided, however, that such period shall in no case exceed two (2) years.

4.3.4 Disputes. Any dispute arising out of the reading or calibration of the Meter shall be resolved in accordance with the procedures set forth in Section 6.3.2.

#### 4.4 Title to System.

Provider, or Provider’s permitted assigns with respect to the System, shall at all times retain title to and be the legal and beneficial owner of the System, including the right to any tax credits available under federal or state law, and the System shall remain the property of Provider or Provider’s assigns. The System shall remain the personal property of Provider or Provider’s assigns and shall not attach to or be deemed a part of, or fixture to, the Site. It is the Parties’ intention that the System shall at all times retain the legal status of personal property. Provider shall be entitled to, and is hereby authorized to, file one or more precautionary Uniform Commercial Code financing statements with the California Secretary of State with

respect to the System in order to protect its rights in the System, provided that no such UCC financing statement shall name Customer as the debtor. The System shall be clearly marked and identified as being the property of the Provider or Provider's assigns. The Parties intend that neither Customer nor any party related to Customer shall acquire the right to operate the System or be deemed to operate the System.

#### 4.5 Outages.

Customer shall be permitted two (2) twenty-four (24) consecutive hour days during which the System may be offline (each, a "Scheduled Outage") per calendar year during the Term, during which days Customer shall not be obligated to accept, and if not accepted, pay for the Energy; provided, however, that Customer shall have notified Provider in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of such Scheduled Outage. In the event that Scheduled Outages at the Site exceed two (2) days per calendar year for a reason other than a Force Majeure Event, and for all unscheduled outages, Provider shall reasonably estimate the amount of Energy that would have been delivered to Customer during each hour of such excess Scheduled Outages or unscheduled outages and shall invoice Customer for such amount, which shall be payable in accordance with Section 6.3. Additionally, as set forth in Exhibit C (Performance Guarantee), Provider shall be relieved of any failure to meet the Performance Guarantee due to any Scheduled Outage or unscheduled outage.

#### 4.6 Compliance with Utility Specifications.

Provider shall ensure that the operation of the System and all Energy generated by the System conform to applicable utility specifications for energy being generated and delivered to the Site's electric distribution system, which shall include the installation of proper power conditioning and safety equipment, submittal of necessary specifications, coordination of utility testing and verification, and all related costs.

### 5. Purchase of Solar Services.

#### 5.1 Purchase Requirement.

Customer agrees to purchase one hundred percent (100%) of the Energy delivered by the System during the Term of this Agreement. While the Solar Services are calculated and billed on the basis of kWh of Energy as set forth in Section 6.1, Customer acknowledges and agrees that such Solar Services represent a package of services including the production and supply of electrical energy output from the System, together with any other services associated with solar energy production that Provider may provide to Customer. The payment for Solar Services (expressed in \$/kWh) is calculated to include all of the above services. Neither Party may claim that by this Agreement Provider is an electric utility subject to regulation as an electric utility or subject to regulated electricity rates. Provider shall not claim to be providing electric utility services to Customer and shall not interfere with Customer's ability to select an electric utility provider except that, to the extent

Customer has a choice in selecting an electric utility provider or electricity provider, Customer shall not select an electric utility provider or electricity provider that requires, as part of their conditions for service, removal or discontinued operation of the System or the sales of Energy hereunder.

## 5.2 Environmental Attributes; Environmental Financial Incentives.

5.2.1 Environmental Attributes. All Environmental Attributes and associated Reporting Rights available in connection with the System are retained and owned by Customer or its assignee. Provider shall take all reasonable measures to assist Customer in obtaining all Environmental Attributes currently available or subsequently made available in connection with the System. At Customer's request and expense, Provider shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Customer's or its assignee right, title and interest in and to the Environmental Attributes. If the standards used to qualify the Environmental Attributes to which Customer is entitled under this Agreement are changed or modified, Provider shall, at Customer's request and expense, use all reasonable efforts to cause the Environmental Attributes to comply with new standards as changed or modified. If Provider fails to act in good faith in completing documentation or taking actions reasonably requested by Customer, and such failure results in the loss of an Environmental Attribute that would otherwise be available, Provider shall reimburse Customer for the full amount of such lost Environmental Attribute.

5.2.2 Environmental Financial Incentives. All Environmental Financial Incentives and associated Reporting Rights available in connection with the System are retained and owned by Provider or its assignee. Customer shall take all reasonable measures to assist Provider in obtaining all Environmental Financial Incentives currently available or subsequently made available in connection with the System. At Provider's request and expense, Customer shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Provider's or its assignee right, title and interest in and to the Environmental Financial Incentives. If the standards used to qualify the Environmental Financial Incentives to which Provider is entitled under this Agreement are changed or modified, Customer shall, at Provider's request and expense, use all reasonable efforts to cause the Environmental Financial Incentives to comply with new standards as changed or modified. If Customer fails to act in good faith in completing documentation or taking actions reasonably requested by Provider, and such failure results in the loss of an Environmental Financial Incentive that would otherwise be available, Customer shall reimburse Provider for the full amount of such lost Environmental Financial Incentive.

5.2.3 Customer shall not take any action or suffer any omission that would have the effect of impairing the value to the Provider of the Environmental Attributes or Environmental Financial Incentives.

5.2.4 Provider or its assignee will at all times retain all tax credits and related tax benefits (including depreciation) associated with the System.



6. Price and Payment.

6.1 Price.

Customer shall pay Provider for the Energy provided pursuant to the terms of this Agreement at the rate per kWh (the "kWh Rate") set forth in Schedule C for the Term of this Agreement, plus any adjustments required pursuant to Section 3.1.1, plus any additional amount required pursuant to Section 6.2. Notwithstanding the foregoing, in the event that Customer elects to renew this Agreement pursuant Section 10.3.1, Customer shall pay the Renewal Rate for Energy delivered during such renewal period.

6.2 Taxes.

6.2.1 Customer Taxes. Provider shall invoice Customer for, and Customer shall pay all sales, use, excise, ad valorem, transfer and other similar taxes ("Transfer Taxes"), but excluding in all events taxes based on or measured by net income, that are imposed by any taxing authority arising out of or with respect to the purchase or sale of the Solar Services (regardless of whether such Transfer Taxes are imposed on Provider or Customer), together with any interest, penalties or additions to tax payable with respect to such Transfer Taxes, unless such interest, penalties or additions to tax payable with respect to such Transfer Taxes are due to Provider's failure to timely remit any such Transfer Taxes or to file any returns required by the appropriate taxing authority, and Provider shall indemnify and hold Customer harmless in such excepted cases. If Customer shall be required to by law to withhold or deduct any Transfer Taxes or other taxes imposed by any jurisdiction or any political subdivision from or in respect of any sum payable hereunder, the sum payable shall be increased as may be necessary so that, after taking all required deductions, Provider shall have received an amount equal to the sum it would have received had no such deductions been made. Provider will pay any ad valorem property tax imposed on the System by any taxing authority.

6.2.2 Provider Taxes. Provider will pay and hold harmless Customer from any sales or use tax imposed upon Customer arising from this Agreement, other than as set forth in the preceding Section 6.2.1, including but not limited to Provider's manufacture, installation and acquisition of the System. Provider will pay and hold harmless Customer from property tax, if any, assessed on (i) Provider's use of the portion of the Site on which the System is installed, to the extent prescribed in the License; (ii) the System or Provider's ownership, installation or use thereof; or (iii) any other aspect of this Agreement. Notwithstanding the foregoing, Customer shall pay and hold harmless Provider from sales and use taxes, if any, arising upon the transfer, if any, of both legal and beneficial ownership of the System to Customer pursuant to this Agreement.

6.3 Billing and Payment.

Billing and payment for the Solar Services sold and purchased under this Agreement and any other amounts due and payable hereunder shall occur as follows:

6.3.1 Payments. Subject to adjustment in accordance with the following sentences of this Section 6.3.1, Customer shall pay to Provider for each Monthly Period during the Term within thirty (30) days after receipt of any invoice a payment for the Energy delivered by the System during each such Monthly Period equal to the product of (a) Monthly Production for the System for the relevant month multiplied by (b) the then applicable kWh Rate.

Customer payments under Sections 6.3.1, above, shall be made by check to:

Solar Star Co Co 1, LLC  
Attn: Commercial Asset Management Group  
c/o SunPower Capital Services, LLC  
2900 Esperanza Crossing  
Austin, TX 78758

Payment may also be made by wire transfer of immediately available funds upon receipt of specific instructions by Provider. Upon receipt of written direction and instructions from Provider and Provider's Financing Party, all payments to be made by the Customer to the Provider under this Agreement shall be made directly to the Provider's Financing Party or its agent designated in a writing addressed to Customer from time to time.

6.3.2 Invoice Errors. Within thirty (30) days after receipt of any invoice, Customer may provide written notice to Provider of any alleged error therein (including any error resulting from Meter adjustments pursuant to Section 4.3.3). Customer shall pay all undisputed amounts, including the undisputed portion of any invoice, in accordance with the instructions set forth for payment under Section 6.3.1. If Provider notifies Customer in writing within thirty (30) days of receipt of such notice that Provider disagrees with the allegation of error in the invoice, the Parties shall meet, by telephone conference call or otherwise, within ten (10) days of Customer's response for the purpose of attempting to resolve the dispute.

6.3.3 Late Payments. All payments hereunder shall be made without setoff or deduction. Any payment not made within the time limits specified in Section 6.3.1 shall bear interest from the date on which such payment was required to have been made through and including the date on which such payment is actually received by the Provider. Such interest shall accrue at a monthly rate equal to the lesser of the then prevailing prime rate of interest as published in The Wall Street Journal or the maximum interest rate permitted by Applicable Law.

## 7. General Covenants.

### 7.1 Provider's Covenants.

Provider covenants and agrees as follows:

7.1.1 Permits and Approvals. While performing this Agreement, Provider shall obtain and maintain all approvals, consents, licenses and permits from relevant Governmental Authorities, utility personnel, and (to the extent known to Provider) the Site's owners, if Customer is not the owner of the Site, and other agreements and consents required to be obtained and maintained by Provider and to enable Provider to perform such work. Provider shall deliver copies of all permits and approvals obtained pursuant to this Section to Customer.

7.1.2 Health and Safety. Provider shall take all reasonably necessary safety precautions in performing this Agreement and shall comply in all material respects with all Applicable Laws pertaining to the safety of persons and real and personal property.

7.1.3 Removal of Liens. Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', laborers' or materialmen's liens), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Site or any interest therein; provided that this Section 7.1.3 shall not limit Liens on the System. If Provider breaches its obligations under this Section, it shall immediately notify Customer in writing, shall promptly cause such Lien to be discharged and released of record without cost to Customer, and shall defend and indemnify Customer against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

7.1.4 Provider Records. Provider shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Customer has the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

## 7.2 Customer's Covenants.

Customer covenants and agrees as follows:

7.2.1 Health and Safety. Customer shall at all times maintain the areas of the Site consistent with all Applicable Laws pertaining to the health and safety of persons and property.

7.2.2 Security. Customer shall provide and take reasonable measures for security of the System, including commercially reasonable monitoring of the Site's alarms, if any.

7.2.3 Notice of Damage. Customer shall promptly notify Provider of any matters of which it becomes aware pertaining to any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System.

7.2.4 Liens. Customer shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein. Customer also shall pay promptly any taxes, charges or fees of whatever type of any relevant Governmental Authority for which Customer is responsible under Section 6.2 before a fine or penalty may attach to the System. If Customer breaches its obligations under this Section, it shall immediately notify Provider in writing, and shall promptly cause such Lien on or with respect to the System (including if such arises in favor of any third party claiming through Customer, such as a lender, mortgagee or encumbrancer of real property) to be removed, discharged and released of record without cost to Provider, and shall defend, indemnify and hold Provider harmless against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in removing, discharging and releasing such Lien.

7.2.5 Consents and Approvals. Customer shall obtain and maintain, and secure and deliver to Provider copies of, all consents, approvals, permits, licenses, and authorizations (or evidence that the project—including the System, and the work and Solar Services described in this Agreement—is exempt from the regulatory jurisdiction of local agencies (including zoning, building, and land-use requirements) or that all required local agency approvals and permits have been obtained) relating to the performance of Customer’s obligations and the rights granted by Customer hereunder, and that are required by the terms, conditions or provisions of any restriction or any agreement or instrument or statute to which Customer is a party or by which Customer is bound, including completing applications for interconnection with Customer’s local electric utility. Customer shall use best efforts to assist Provider in fulfilling Provider’s responsibilities under Section 7.1.1. In addition, as a condition precedent to the effectiveness of this Agreement, Customer covenants that it has obtained all discretionary and other approvals required in connection with the project from its governing board and all applicable Government Authorities and that such board or Governmental Authority complied with the California Environmental Quality Act; or, if no other discretionary approvals were required, such board or Governmental Authority approved this Agreement before it was executed.

7.2.6 Maintenance of Interconnection. Customer shall ensure that all of the facilities to which the Energy is delivered hereunder remain interconnected to the electrical grid during the entire Term, except as permitted under Section 4.5 and Section 9.

7.2.7 Solar Access. Customer shall ensure that the System remains free of overshadowing or other blocked access to sunlight during the Term, and it is acknowledged and agreed by the Parties that the foregoing is a material obligation of the Customer for the purposes of this Agreement. Customer will use best efforts to secure a solar easement for the Site to prevent other buildings, structures or flora from overshadowing or otherwise blocking access of the sunlight to the System. Provider shall provide assistance to Customer in seeking a solar easement; however, Customer shall bear all costs and expenses related to obtaining any such easement.

7.2.8 Customer Records. Customer shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Provider shall have the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

## 8. Insurance Requirements.

### 8.1 Provider’s General Liability Insurance.

Provider shall maintain, at its sole expense, commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of one million dollars (\$1,000,000) per occurrence and in the aggregate, endorsed to provide contractual liability in said amount, specifically covering Provider’s obligations under this Agreement and naming Customer as an additional insured. The minimum coverage amount of \$1,000,000 per occurrence and in the aggregate may be satisfied by a combination of a general liability policy and an excess/umbrella liability policy. Provider, if it has employees, shall also maintain at all times during the term of

this Agreement workers' compensation insurance coverage in accordance with the applicable requirements of federal and state law. Within thirty (30) days after execution of this Agreement and upon Customer's request annually thereafter, Provider shall deliver to Customer certificates of insurance evidencing such coverage, which shall specify that Customer shall be given at least thirty (30) days' prior written notice by the applicable insurer in the event of any material modification, cancellation or termination of coverage, except ten (10) days for non-payment of premium. Such insurance shall be primary coverage without right of contribution from any insurance of Customer.

## 8.2 Customer's Insurance.

Customer shall provide and maintain "all-risk" property insurance covering the buildings on which the System is located during all periods (construction and operation) that Provider is the beneficial owner of the System, and naming Provider or its assignee as the loss payee. The System shall be insured for not less than its Termination Value. All such policies shall be with financially sound and reputable insurance companies that have an (i) A.M. Best rating of A+ and a financial strength category of "XII" or higher, (ii) a Standard & Poor's financial strength rating of A+ or higher, or (iii) are otherwise reasonably satisfactory to the Provider or its assignee; and such policies shall be on terms that are reasonably satisfactory to the Provider or its assignee. Within thirty (30) days after execution of this Agreement and upon Provider's request annually thereafter, Customer shall deliver to Provider certificates of insurance evidencing such coverage, which shall specify that Provider shall be given at least thirty (30) days' prior written notice (10 days' notice for cancellation due to nonpayment of premiums) by the applicable insurer in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Provider. Notwithstanding the foregoing, Customer shall be entitled to self-insure all of its insurance requirements under this Agreement.

## 9. Force Majeure Events.

If either Party is prevented from or delayed in performing any of its obligations under this Agreement by reason of a Force Majeure Event, such Party shall notify the other Party in writing as soon as practicable after the onset of such Force Majeure Event and shall be excused from the performance of its obligations under this Agreement to the extent that such Force Majeure Event interferes with such performance. The Party whose performance under this Agreement is prevented or delayed as the result of a Force Majeure Event shall use reasonable efforts to remedy its inability to perform. If a Party's failure to perform its obligations under this Agreement is due to a Force Majeure Event, then such failure shall not be deemed a Provider Default or a Customer Default, as the case may be. In case a Force Majeure Event continues for at least one (1) year with respect to the System, then either Party may terminate this Agreement by written notice to the other.

10. Term; Customer Options; Termination.

10.1 Term.

The term of this Agreement shall commence on the Effective Date and shall expire on the date that is twenty-five (25) years after the Commercial Operation Date (the “Expiration Date”), unless and until terminated earlier pursuant to Sections 3.1, 3.2, 3.3, 9, 10.2.3, 10.6 or 12 (the date of any such termination, the “Termination Date”, and the “Term” being such period of time commencing on the Effective Date and ending on the earlier of (i) the Termination Date, and (ii) the Expiration Date).

10.2 Customer Options Upon Cessation of Business Operations at Site.

If, prior to the end of the Term, Customer ceases to conduct business operations at the Site, vacates the Site, or is prevented from allowing operation of the System on the Site:

10.2.1 Substitute Site. So long as Customer’s exercise of its rights under this Section 10.2.1 does not impair or reduce any Environmental Financial Incentives that may be available to the Provider, or otherwise have an adverse tax effect on Provider, or in the Provider’s sole discretion and determination, impair Provider’s ability to meet any and all obligations in connection with a Financing Party or a prospective financing transaction, Customer shall have the right to provide Provider with a mutually agreeable substitute Site located within the same utility district, subject to requisite governing agency approvals, to relocate the System, which agreement shall not be unreasonably withheld, or, if not available, in a location with similar solar insolation, utility rates, Environmental Attributes and Environmental Financial Incentives. Any such alternate Site shall have a similar demand charge profile as the Site. If such alternate Site is available and is acceptable to Provider, this Agreement shall be amended to delete the prior Site and add the new Site, but otherwise this Agreement shall remain in full force in accordance with its terms and shall not be deemed otherwise amended. Customer shall pay the reasonable costs arising in connection with the relocation(s) of the System, including removal costs, installation costs, any applicable interconnection fees, costs related to obtaining a site license or lease at the substitute site, other costs of deployment at the substitute Site, and amounts lost that would otherwise be payable under this Agreement due to such relocation(s) to Provider based on delivered Energy averaged over the prior twelve months for the System.

10.2.2 Move and Pay Option. So long as such event does not impair or reduce any Environmental Attributes or Environmental Financial Incentives, Customer may elect to pay or guarantee the payment of the remaining monthly amounts due under this Agreement to Provider, and cause the System to be kept in operation at the Site, in each case through the remainder of the Term.

10.2.3 Termination and Payment of Termination Value. If, beginning in the sixth year following the Commercial Operation Date, a substitute Site cannot be located in accordance with Section 10.2.1 with respect to the System and Customer elects not to avail itself of the provisions of Section 10.2.2 with respect to the System, then Customer shall so notify Provider, Provider shall remove the System (at Customer’s sole cost and expense) and Customer shall pay to Provider the then-applicable Termination Value specified in Column A of Schedule D

as liquidated damages, whereupon this Agreement shall terminate. The Parties agree that actual damages to Provider if this Agreement is terminated as contemplated in this Section 10.2 would be difficult to ascertain, and the applicable Termination Value is a reasonable approximation of the damages suffered by Provider as a result of early termination of this Agreement.

### 10.3 Customer Options Upon Expiration of Term.

10.3.1 Extension of Term. Upon prior written notice to Provider at least one-hundred eighty (180) days prior to the Expiration Date, Customer has the option to renew the term of this Agreement with respect to the System and Solar Services for one (1) additional three (3)-year period at the Renewal Rate.

10.3.2 Purchase of System. If Customer has not elected to renew the term of this Agreement in accordance with Section 10.3.1, Customer may purchase the System by providing Provider written notice of its intent to purchase the System no later than one-hundred and eighty (180) days prior to the Expiration Date, and paying Provider the Fair Market Value thereof no later than the relevant Expiration Date. The “Fair Market Value” of the System shall be the value determined by the mutual agreement of Customer and Provider within ten (10) days after receipt by Provider of Customer’s notice of its election to purchase the System. If Customer and Provider cannot mutually agree to a Fair Market Value, then the Parties shall jointly select a nationally recognized independent appraiser with whom the parties have discussed methods and assumptions, with experience and expertise in the solar photovoltaic industry to value such equipment. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding on the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. To the extent transferable, the remaining period, if any, on all warranties for the System will be transferred from Provider to Customer. If the Parties are unable to agree on the selection of an appraiser, such appraiser shall be jointly selected by the appraiser firm proposed by the Customer and the appraiser firm proposed by the Provider. Upon receipt by Provider of payment of the Fair Market Value, title to the System as well as available Environmental Attributes and Environmental Financial Incentives from the System shall transfer to Customer as-is, where-is.

10.3.3 Return of System. If at the end of a Term, or an Extension of Term pursuant to Section 10.3.1, Customer does not exercise any of the options described in Sections 10.3.1 and 10.3.2, Provider shall remove all of its tangible property comprising the System from the Site by a mutually convenient date but in no case later than one hundred eighty (180) days after the Expiration Date with respect to the System. The cost to remove the System shall be borne by the Provider. The portion of the Site on which the System was installed shall be returned to its original condition, except for ordinary wear and tear, and Provider shall leave the portion of the Site on which the System was installed in neat and clean order.

### 10.4 Customer Purchase Options Prior to Expiration Date.

10.4.1 On the later to occur of the sixth (6th) anniversary of the Commercial Operation Date, provided that no Customer Default shall have occurred and be continuing beyond any applicable period of cure, Customer may elect to purchase all, but not less than all, of the System. If Customer elects to so purchase the System,

the purchase price shall be the higher of the then Fair Market Value of the System (calculated in accordance with the definition of Fair Market Value set forth in Section 10.3.2 for the System, and such determination to be at Customer's sole cost and expense), or the then-current Termination Value specified in Column A of Schedule D. Not less than one-hundred-and-eighty (180) days prior to the exercise of the purchase option for the System, Customer shall provide written notice to Provider of Customer's exercise thereof. Upon the exercise of the foregoing purchase option plus receipt of the Value as determined in Section 10.4 above and all other amounts then owing by Customer to Provider, the Parties will execute all documents necessary to cause title to the System to pass to Customer as-is, where-is; provided, however, that Provider shall remove any encumbrances placed on the System by Provider at Customer's expense.

10.4.2 On the later to occur of the fifteenth (15th) anniversary of the Commercial Operation Date, provided that no Customer Default shall have occurred and be continuing beyond any applicable period of cure, Customer may elect to purchase the System. If Customer elects to so purchase the System, the purchase price shall be the higher of the then Fair Market Value of the System (calculated in accordance with the definition of "Fair Market Value" set forth in Section 10.3.2 for the System, and such determination to be at Customer's sole cost and expense), and the amount specified in Column A of Schedule D. Not less than one-hundred-and-eighty (180) days prior to the exercise of the purchase option for the System, Customer shall provide written notice to Provider of Customer's exercise thereof. Upon the exercise of the foregoing purchase option plus receipt of the Fair Market Value and all other amounts then owing by Customer to Provider, the Parties will execute all documents necessary to cause title to the System to pass to Customer as-is, where-is; provided, however, that Provider shall remove any encumbrances placed on the System by Provider at Customer's expense.

#### 10.5 Payment of Termination Value on Termination Date.

In the event that the Termination Date has occurred for reasons other than pursuant to Sections 3.1.2., 10.6 or 12.1.1, Customer shall be required to pay to Provider the then-applicable Termination Value specified in Column A of Schedule D as liquidated damages. The Parties agree that actual damages to Provider in the event this Agreement terminates prior to the expiration of the Term for causes attributable to Customer would be difficult to ascertain, and the applicable Termination Value is a reasonable approximation of the damages suffered by Provider as a result of early termination of this Agreement.

#### 10.6 Provider Termination.

Provider shall have the right, in Provider's sole and absolute discretion, to terminate this Agreement upon written notice if any of the following occurs:

10.6.1 at any time until construction of the System commences Provider determines in its sole discretion that it is unable to install the System at the Site;



10.6.2 if the occurrence of an unstayed order of a court or administrative agency has the effect of subjecting the sales of the Energy to federal or state regulation of the prices therefor and/or the delivery of the service;

10.6.3 the elimination or alteration of one or more Environmental Financial Incentives or other change in law that results in a material adverse economic impact on Provider; or

10.6.4 if the annual direct beam solar resource availability at the Site is less than or equal to 90% of historical averages as measured by long-term weather data (minimum of five (5) years) collected at the Site and/or other reliable calibrated and appropriate weather station representative of the Site.

In the event of a Provider termination under this Section 10.6, Provider shall remove all of its tangible property comprising the System from the Site by a mutually convenient date but in no case later than one hundred eighty (180) days after the Termination Date. The cost to remove the System shall be borne by the Provider. The portion of the Site on which the System was installed shall be returned to its original condition, except for ordinary wear and tear, and Provider shall leave the portion of the Site on which the System was installed in neat and clean order.

## 11. Defaults.

### 11.1 Customer Default.

The occurrence at any time of any of the following events shall constitute a “Customer Default”:

11.1.1 Failure to Pay. The failure of Customer to pay during the Term any amounts owing to Provider on or before the date on which such amounts are due and payable under the terms of this Agreement and Customer’s failure to cure such failure within fifteen (15) days after Customer receives written notice of each such failure from Provider;

11.1.2 Failure to Maintain Phone/Data Line. Unless due to a Force Majeure Event excused by Section 9, the failure of Customer to maintain and grant Provider access to the phone and other communications lines required to be maintained pursuant to Section 4.1.3 and Customer’s failure to cure such failure within twenty (20) business days after Customer receives written notice of such failure from Provider; provided that in any event if such failure shall continue for at least five (5) days after notice to Customer and shall result in lost revenue to Provider, Provider shall be entitled to reasonably estimate the amount of revenue that would have been obtained and shall invoice Customer therefor;

11.1.3 Failure to Perform Other Obligations. Unless due to (i) a Force Majeure Event excused by Section 9, or (ii) a breach of paragraph 2 of Section 2 (License), the failure of Customer to perform or cause to be performed any other material obligation required to be performed by Customer under this Agreement, or the failure of any representation, covenant, or warranty set forth herein to be true and correct as and when made; provided, however, that if such failure by its nature can be cured, then Customer shall have a period of thirty (30) business

days after receipt of written notice from Provider of such failure to Customer to cure the same and a Customer Default shall not be deemed to exist during such period; provided, further, that if Customer commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for one hundred twenty (120) additional days;

11.1.4 Bankruptcy, Etc. (a) Customer admits in writing its inability to pay its debts generally as they become due; (b) Customer files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof; (c) Customer makes an assignment for the benefit of creditors; (d) Customer consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Customer has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Customer's assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Customer's assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control; or

11.1.5 Failure of Site Access. A breach by Customer of the License occurs and Customer fails to cure such breach within five (5) days after Customer receives written notice of such breach from Provider.

## 11.2 Provider Default.

The occurrence at any time of the following event shall constitute a "Provider Default":

11.2.1 Failure to Perform Obligations. Unless due to a Force Majeure Event excused by Section 9, the failure of Provider to perform or cause to be performed any obligation required to be performed by Provider under this Agreement or the failure of any representation and warranty set forth herein to be true and correct as and when made; provided, however, that if such failure by its nature can be cured, then Provider shall have a period of thirty (30) business days after receipt of written notice from Customer of such failure to Provider to cure the same and a Provider Default shall not be deemed to exist during such period; provided, further, that if Provider commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for one-hundred twenty (120) additional days; or

11.2.2 Bankruptcy, Etc. (a) Provider admits in writing its inability to pay its debts generally as they become due; (b) Provider files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof; (c) Provider makes an assignment for the benefit of creditors; (d) Provider consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Provider has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; (f) a

court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Provider's assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Provider's assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control.

## 12. Remedies Following Default.

### 12.1 Customer's Remedies Upon Occurrence of a Provider Default.

12.1.1 Termination. If a Provider Default has occurred and is continuing, then Customer may terminate this Agreement by providing written notice to Provider thereof, and this Agreement shall terminate and be of no further force or effect as of the date of the notice according to Section 14.1.

12.1.2 Other Rights and Remedies. If any Provider Default described under Section 11.2 has occurred and Customer has terminated this Agreement as a result thereof in accordance with the terms of Section 12.1.1 above, then, subject to Section 12.3, Provider shall pay to Customer an amount not to exceed the then-present value (discounted at the prevailing prime rate of interest as published in *The Wall Street Journal* on the day preceding the date of determination) of (a) the cash flows equal to the product of (i) the positive difference, if any, of the price per kWh for commercially available, utility-provided energy in the applicable market(s) (which shall not include related charges such as delivery, service, distribution, or taxes) minus the kWh Rate of Energy hereunder (as such kWh Rate would have been escalated over time pursuant to the terms hereof) hereof, multiplied by (ii) the number of days remaining in the term of this Agreement had it not been terminated times the expected daily number of kWh of Energy to be delivered under this Agreement, calculated by dividing the Estimated Year 1 Production set forth in Schedule B, adjusted for as-built System, by 365. Provider's payment to Customer of the amounts set forth in this Section 12.1.2 shall not in any way limit the other remedies at law or in equity that Customer may pursue as damages for Provider's breach of this Agreement; provided, however, that such damages pursued by Customer are subject to the limitation provisions of Sections 12.3 and 12.5.

### 12.2 Provider's Remedies Upon Customer Default.

In addition to any other remedies available under this Agreement or at law, if a Customer Default has occurred and is continuing, then Provider may terminate this Agreement by providing written notice to Customer thereof, and this Agreement shall terminate and be of no further force or effect as of the date of the notice according to Section 14.1 and Provider shall have the right to (a) cause Customer to pay (and Customer shall have the obligation to pay to Provider) the applicable Termination Value set forth in Column A of Schedule D and (b) enter onto the Site and remove the System in accordance with the last sentence of Section 10.2.3.

12.3 No Consequential Damages.

Nothing in this Agreement is intended to cause either Party to be, and neither Party shall be, liable to the other Party for any lost business, lost profits or revenues from others or other special or consequential damages, all claims for which are hereby irrevocably waived by Customer and Provider. Notwithstanding the foregoing, none of the payments for the Energy or any other amount specified as payable by Customer to Provider under the terms of this Agreement upon the termination of this Agreement shall be deemed consequential damages

12.4 Effect of Termination of Agreement.

Upon the Termination Date or the Expiration Date, as applicable, any amounts then owing by a Party to the other Party shall become immediately due and payable and the then future obligations of Customer and Provider under this Agreement shall be terminated (other than the indemnity obligations set forth in Section 13). Such termination shall not relieve either Party from obligations accrued prior to the effective date of termination or expiration.

12.5 Limitation of Liability.

THE TOTAL LIABILITY OF A PARTY TO THE OTHER PARTY FOR ALL CLAIMS OR SUITS OF ANY KIND, WHETHER BASED UPON THIS AGREEMENT, TORT (INCLUDING NEGLIGENCE BUT EXCLUDING THIRD PARTY TORT CLAIMS FOR PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM THE PERFORMANCE OF THIS AGREEMENT), WARRANTY, STRICT LIABILITY OR OTHERWISE, FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES OF ANY KIND WHATSOEVER ARISING OUT OF, RESULTING FROM OR RELATED TO THE PERFORMANCE OR BREACH OF THIS AGREEMENT SHALL, UNDER NO CIRCUMSTANCES, EXCEED \$1,661,816, PROVIDED THAT THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (A) LIABILITY FOR FRAUD OR WILLFUL MISCONDUCT OF ANY PERSON; (B) LIABILITY UNDER THE INDEMNIFICATION PROVISIONS OF THIS AGREEMENT FOR CLAIMS OF THIRD PARTIES FOR PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM THIS AGREEMENT; OR (C) PAYMENT OF THE KWH RATE. THE LIMITATION OF LIABILITY PROVIDED FOR HEREIN SHALL NOT BE USED TO LIMIT OR REDUCE ANY AVAILABLE INSURANCE.

13. Indemnification.

13.1 Indemnification by Provider.

Provider shall fully indemnify, save harmless and defend Customer from and against any and all costs, claims, and expenses incurred by Customer in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (a) the negligence or willful misconduct of Provider or its agents or employees or others under Provider's control in performing this Agreement, and

(b) a Provider Default under this Agreement; provided, however, that nothing in this Section 13.1 is intended to modify the limitation of Provider's liability set forth in Section 12.3 above; provided further that to the extent Customer recovers such damages, losses and expenses under any insurance policy, Customer shall reimburse any payment made by Provider under this indemnity.

13.2 Indemnification by Customer.

Without limiting the provisions of Section 8, Customer shall fully indemnify, save harmless and defend Provider or its assignees and successors from and against any and all costs, claims, and expenses incurred by Provider in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (a) the negligence or willful misconduct of Customer or its agents or employees or others under Customer's control at the Site or (b) a Customer Default hereunder; provided, however, that nothing in this Section 13.2 is intended to modify the limitation of Customer's liability set forth in Section 12.3 above; provided further that to the extent Provider recovers such damages, losses and expenses under any insurance policy, Provider shall reimburse any payment made by Customer under this indemnity.

13.3 Notice of Claims.

Any Party seeking indemnification hereunder (the "Indemnified Party") shall deliver to the other Party (the "Indemnifying Party") a notice describing the facts underlying its indemnification claim and the amount of such claim (each such notice a "Claim Notice"). Such Claim Notice shall be delivered promptly to the Indemnifying Party after the Indemnified Party receives notice that an action at law or a suit in equity has commenced; provided, however, that failure to deliver the Claim Notice as aforesaid shall not relieve the Indemnifying Party of its obligations under this Section 13, except to the extent that such Indemnifying Party has been prejudiced by such failure.

13.4 Defense of Action.

If requested by an Indemnified Party, the Indemnifying Party shall assume on behalf of the Indemnified Party, and conduct with due diligence and in good faith, the defense of such Indemnified Party with counsel reasonably satisfactory to the Indemnified Party; provided, however, that if the Indemnifying Party is a defendant in any such action and the Indemnified Party believes that there may be legal defenses available to it that are inconsistent with those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to participate in its defense of such action at the Indemnifying Party's expense. If any claim, action, proceeding or investigation arises as to which the indemnity provided for in this Section 13 applies, and the Indemnifying Party fails to assume the defense of such claim, action, proceeding or investigation after having been requested to do so by the Indemnified Party, then the Indemnified Party may, at the Indemnifying Party's expense, contest or, with the prior written consent

of the Indemnifying Party, which consent shall not be unreasonably withheld, settle such claim, action, proceeding or investigation. All costs and expenses incurred by the Indemnified Party in connection with any such contest or settlement shall be paid upon demand by the Indemnifying Party.

13.5 Survival of Provisions.

The provisions of this Section 13 shall survive the expiration or termination of this Agreement.

14. Miscellaneous Provisions.

14.1 Notices.

All notices, communications and waivers under this Agreement shall be in writing and shall be (a) delivered in person or (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested or (c) sent by reputable overnight express courier, addressed in each case to the addresses set forth below, or to any other address either of the parties to this Agreement shall designate in a written notice to the other Party:

If to Provider:

Solar Star Co Co 1, LLC  
c/o SunPower Corporation  
1414 Harbour Way South, Suite 1901  
Richmond, CA 94804  
Attention: Julie Williamson, Project Administration  
Phone:510-540-0550  
Fax:510-540-0552

If to Customer:

Contra Costa County Public Works Dept.  
Capital Projects Management Division  
Attn: Energy Manager  
40 Muir Road  
Martinez, CA 94553 Phone: 925-313-2000  
Fax: 925-313-2333

All notices sent pursuant to the terms of this Section 14.1 shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by reputable overnight, express courier, then on the next business day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third (3rd) business day following the day sent or when actually received.

14.2 Authority.

14.2.1 Provider Representations. Provider hereby represents and warrants that:

- (a) It is a Delaware limited liability company duly organized, validly existing and in good standing under the laws of the state of its formation and has all requisite limited liability company power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (b) The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary limited liability company action;
- (c) This Agreement is a legal, valid and binding obligation of Provider enforceable against Provider in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law);
- (d) To the best knowledge of Provider, as of the date of execution hereof, no governmental approval (other than any governmental approvals that have been previously obtained or disclosed in writing to Customer) is required in connection with the due authorization, execution and delivery of this Agreement by Provider or the performance by Provider of its obligations hereunder which Provider has reason to believe that it will be unable to obtain in due course on or before the date required for Provider to perform such obligations; and
- (e) Neither the execution and delivery of this Agreement by Provider nor compliance by Provider with any of the terms and provisions hereof (i) conflicts with, breaches or contravenes the provisions of the articles of formation or operating agreement of Provider or any contractual obligation of Provider or (ii) results in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default under any material contractual obligation of Provider.

14.2.2 Customer Representations. Customer hereby represents and warrants that:

- (a) It is a political subdivision of the State of California, validly existing and in good standing under the laws of the state of its formation and has all requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (b) The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary governmental action;
- (c) This Agreement is a legal, valid and binding obligation of Customer enforceable against Customer in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law);
- (d) No governmental approval (other than any governmental approvals which have been previously obtained or disclosed in writing to Provider) is required in connection with the due authorization, execution and delivery of this Agreement by Customer or the performance by Customer of its obligations hereunder which Customer has reason to believe that it will be unable to obtain in due course;
- (e) Neither the execution and delivery of this Agreement by Customer nor compliance by Customer with any of the terms and provisions of this Agreement results in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default under any contractual obligation of Customer;
- (f) Customer has not entered into any contracts or agreements with any other person regarding the provision of the services at the Site contemplated to be provided by Provider under this Agreement; and
- (g) None of the electricity to be generated by the Provider will be used to generate energy for the purpose of heating a swimming pool.

### 14.3 Assignment

#### 14.3.1 Provider Assignment.



Provider may assign this Agreement upon written notice thereof to Customer, provided that any such assignment shall be to an assignee capable of performing Provider's obligations hereunder. Provider may, without any consent of Customer, sell, transfer, assign or pledge (or grant security interests in) its rights, title and interest in this Agreement, and/or any monies due under this Agreement to a Financing Party, in connection with any financing for the ownership, acquisition, construction, operation or use of the System.

#### 14.3.2 Customer Assignment.

Customer shall not assign all or any part of this Agreement to any entity other than an affiliate of Customer without the prior written consent of the Provider, which shall not be unreasonably withheld. Customer may not assign this Agreement to any Person, including an affiliate, with a credit rating lower than that of Customer without providing matching credit support in the form of cash, letter(s) of credit, or other security reasonably acceptable to Provider. Any assignment by the Customer not permitted under this Section 14.3 shall be void ab initio. In the event that Customer decides to sell or otherwise transfer the Site or a portion thereof upon which the System is located, Customer may (i) with Provider's prior written consent, which will not be unreasonably withheld or delayed, assign this Agreement to the Site purchaser who shall assume all of Customer's obligations under this Agreement and Provider shall release Customer from any further liability associated with this Agreement, or (ii) terminate this Agreement by paying Provider the Termination Value applicable to the date of termination. Upon payment of the Termination Value, the Parties will execute all documents necessary to cause title to the System to pass to Customer as-is, where-is. The Customer does not have the present intention of making any transfer of the Site or that portion of the Site on which the System is located; provided, however, nothing herein shall prohibit Customer from making any transfer of the Site or any portion thereof on which System is located, subject to the provisions set forth above.

#### 14.4 Successors and Assigns.

The rights, powers and remedies of each Party shall inure to the benefit of such party and its successors and permitted assigns.

#### 14.5 Entire Agreement.

This Agreement (including all exhibits and schedules attached hereto) represent the entire agreement between the parties to this Agreement with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous oral and prior written agreements.

14.6 Amendments to Agreement.

This Agreement shall not be amended, modified or supplemented without the written agreement of Provider and Customer at the time of such amendment, modification or supplement.

14.7 Waivers; Approvals.

No waiver of any provision of this Agreement shall be effective unless set forth in writing signed by the Party making such waiver, and any such waiver shall be effective only to the extent it is set forth in such writing. Failure by a Party to insist upon full and prompt performance of any provision of this Agreement, or to take action in the event of any breach of any such provisions or upon the occurrence of any Provider Default or Customer Default, as applicable, shall not constitute a waiver of any rights of such Party, and, subject to the notice requirements of this Agreement, such Party may at any time after such failure exercise all rights and remedies available under this Agreement with respect to such Provider Default or Customer Default. Receipt by a Party of any instrument or document shall not constitute or be deemed to be an approval of such instrument or document. Any approvals required under this Agreement must be in writing, signed by the Party whose approval is being sought.

14.8 Partial Invalidity.

In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of Applicable Law, Provider and Customer shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Agreement (and in the event that Provider and Customer cannot agree then such provisions shall be severed from this Agreement) and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected by such adjustment and shall remain in full force and effect.

14.9 Execution in Counterparts.

This Agreement may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same Agreement.

14.10 Governing Law; Jurisdiction; Forum.

This Agreement shall be governed by and construed in accordance with the internal laws of the State of California. Customer irrevocably agrees that any action, suit or proceeding by or among Provider and Customer may be brought in whichever of the Superior Courts of the State of California, Alameda County, or the Federal Court for the Northern District of California, has subject matter jurisdiction over the dispute and waives any objection that Customer may now or hereafter have regarding the choice of forum whether on personal jurisdiction, venue, forum non conveniens or on any other ground. Customer irrevocably consents to the service

of process outside of the territorial jurisdiction of such courts by mailing copies thereof by registered or certified mail, postage prepaid, to Customer's address set forth herein with the same effect as if Customer were a resident of the State of California and had been lawfully served in such state. Nothing in this Agreement shall affect the right to service of process in any other manner permitted by law.

14.11 Attorneys' Fees.

If any action shall be instituted between Customer and Provider in connection with this Agreement, the Party prevailing in such action shall be entitled to recover from the other Party all of its reasonable costs and expenses incurred in connection with such action by arbitration or other legal proceeding, including reasonable attorneys' fees.

14.12 No Third Party Rights.

This Agreement is only for the benefit of the parties to this Agreement, their successors and permitted assigns (including any lender or lessor of Provider) and Persons expressly benefited by the indemnity provisions of this Agreement. No other Person (including, without limitation, tenants of the Site) shall be entitled to rely on any matter set forth in, or shall have any rights on account of the performance or non-performance by any Party of its obligations under, this Agreement.

14.13 Treatment of Additional Amounts.

The Parties hereto acknowledge and agree that Customer's payment of the Termination Value constitute liquidated damages and not penalties. The Parties further acknowledge that in the case of the payment of the Termination Value: (a) the amount of loss or damages likely to be incurred is incapable or is difficult to precisely estimate, (b) the amounts specified hereunder bear a reasonable proportion and are not plainly or grossly disproportionate to the probable loss likely to be incurred by Customer or Provider as the case may be and (c) the Parties are sophisticated business parties and have been represented by legal counsel and negotiated this Agreement at arm's length.

14.14 No Agency.

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

14.15 No Public Utility.

Nothing contained in this Agreement shall be construed as an intent by Provider to dedicate its property to public use or subject itself to regulation as a “public utility” (as defined in the California Public Utilities Code or any other Applicable Law).

14.16 No Recourse to Affiliates.

This Agreement is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party.

14.17 Cooperation with Financing.

Customer acknowledges that Provider may be financing the Solar Services and the System and Customer agrees that it shall reasonably cooperate with Provider and its financing parties in connection with such financing, including (a) the furnishing of information related to the System and this Agreement, and (b) the giving of a Financing Party acknowledgment in the form attached hereto as Exhibit B (each, a “Consent”); provided, that the foregoing undertaking shall not obligate Customer to materially change any rights or benefits, or materially increase any burdens, liabilities or obligations of Customer, under this Agreement except for providing notices and additional cure periods to a Financing Party with respect to events of default by Provider under this Agreement pursuant to the terms of the Consent.

14.18 Setoff.

Except as otherwise set forth herein, each Party reserves to itself all rights, setoffs, counterclaims and other remedies and/or defenses to which it is or may be entitled, arising from or out of this Agreement.

14.19 Service Contract.

The Parties intend this Agreement to be treated as a service contract within the meaning of Section 7701(e)(3) of the Code.

15. Confidential Information.

15.1 Each Party (the “Receiving Party”) shall not use for any purpose other than performing its obligations under this Agreement, or divulge, disclose, produce, publish, or permit access to, without the prior written consent of the other Party (the “Disclosing Party”), any Confidential Information of the Disclosing Party. As used herein, the term “Confidential Information” means information or materials prepared in connection with this Agreement, designs, drawings, specifications, techniques, models, data, documentation, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans, customer, supplier or personnel names and other information related to customers,

suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets. Confidential Information does not include (a) information known to the Receiving Party prior to obtaining the same from the Disclosing Party; (b) information in the public domain at the time of disclosure by the Receiving Party; or (c) information obtained by the Receiving Party from a third party who did not receive same, directly or indirectly, from the Disclosing Party. The Receiving Party shall use the higher of the standard of care that the Receiving Party uses to preserve its own Confidential Information or a reasonable standard of care to prevent unauthorized use or disclosure of such Confidential Information. Notwithstanding anything herein to the contrary, the Receiving Party has the right to disclose Confidential Information without the prior written consent of the Disclosing Party: (i) as required by any court or other Governmental Authority, or by any stock exchange on which the shares of any Party are listed, (ii) as otherwise required by law, (iii) as advisable or required in connection with any government or regulatory filings, including without limitation, filings with any regulating authorities covering the relevant financial markets, (iv) to its attorneys, accountants, financial advisors or other agents, in each case bound by confidentiality obligations, (v) to banks, investors and other financing sources and their advisors, in each case bound by confidentiality obligations; or (vi) in connection with an actual or prospective merger or acquisition or similar transaction where the party receiving the Confidential Information is bound by confidentiality obligations. If a Receiving Party believes that it will be compelled by the law or a court or other Governmental Authority to disclose Confidential Information of the Disclosing Party, it shall give the Disclosing Party prompt written notice, and in all cases not less than five (5) business days' notice in advance of disclosure, so that the Disclosing Party may determine whether to take steps to oppose such disclosure.

16. Estoppel Certificate.

Either Party hereto, without charge, at any time and from time to time, within twenty (20) days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other relevant person, firm or corporation specified by such requesting party:

- a) If true and correct, that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;
- b) Whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and
- c) Such other information as may be reasonably requested by a Party hereto.

Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

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IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the date set forth above.

PROVIDER:

SOLAR STAR CO CO 1, LLC

By: SunPower AssetCo, LLC  
Its member

By: \_\_\_\_\_  
Name: David McIlhenny  
Title: Vice President

CUSTOMER:

CONTRA COSTA COUNTY

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

## EXHIBIT A

### SYSTEM DESIGN AND CONSTRUCTION

This Exhibit A sets forth the design, engineering and construction specifications for the System, as well as assumptions being made by the Provider regarding the existing condition at the Site, including but not limited to the building roof, building structure, ground conditions, electrical system including panels, inverter installation location, and security fencing. Capitalized terms used herein and not otherwise defined have the meaning given in the Agreement to which this exhibit is attached.

#### 1. SYSTEM LOCATION AND DESCRIPTION:

Descriptions of the site and system are located in Schedule A (Description of Site) and Schedule B (Description of System) of the Agreement.

#### 2. PROJECT SCHEDULE:

##### PORTFOLIO MILESTONES

	Tranche	Contract Approval Date	Commercial Operation Date
1000 Ward	1	6-18-2019	6/24/2020
30/40 Muir	1	6-18-2019	5/24/2020
597 Center	1	6-18-2019	6/13/2020
595 Center	2	6-18-2019	10/26/2020
50 Douglas	2	6-18-2019	9/22/2020
30 Douglas	2	6-18-2019	10/30/2020
2530 Arnold	3	6-18-2019	12/14/2020
4545 Delta Fair	3	6-18-2019	12/21/2020
4549 Delta Fair	3	6-18-2019	11/24/2020
1305 MacDonald	3	6-18-2019	12/21/2020

#### 3. SCOPE OF WORK:

##### *System Design & Scope*

##### *Design Documentation*

Provider shall provide comprehensive submittal packages for the 30% and 90% design sets as detailed below. Changes to 30% Customer approved drawings (scope lock) could result a change order. At a minimum, each submittal package shall include the elements required to convey in sufficient detail the following for each phase of the design:



	<b>Submittal Requirement</b>	<b>30% Design Set</b>	<b>90% Design Set</b>
1	Cover Sheet, with Content, Project Details, Directory, etc.	X	X
2	PV System Sizes & Production Estimates.	X	X
3	Overall Site Plan with PV Array Names, Conduit Routes, Tree/Light Removal, etc.	X	X
4	Electrical Site Plan Drawings & General Conduit Routing.	X	X
5	Electrical Single Line Diagrams.	X	X
6	Demolition Plans.		X
7	Structural Drawings.		X
8	Equipment Pad locations.	X	X
9	Mounting Details.		X
10	Signage, Trenching, Installation, and Grounding Details.		X
11	Monitoring System Details.		X
13	Construction Schedule.	Prelim	Detailed
14	Manufacturer's Cut Sheets with Equipment Specifications		X
15	Civil Drawings (if applicable)		X
16	Fire Access Plans		X
17	Carport Lighting Plans		X

Production modeling of the PV system shall accurately simulate energy production for proposed system layouts, sizes, and orientation. Provider shall be responsible for updating the production models each time significant changes are made to the proposed system designs that will impact production.

### ***Solar Electrical Equipment and Conductors***

Conductors will be aluminum or copper according to Electrical Engineer of Record's determination. AC feeder length from panel boards to equipment pad location and from equipment pad location to electrical tie-in is identified on the array layout drawings. AC feeder lengths from electrical equipment pad location to assumed point of interconnection, and length assumptions with equipment amperage ratings are shown on the single line drawing.

Transformers are 480V:12kV, non-Dry-type by manufacturer of Provider's choosing. Secondary containment is not included in the scope of the project.

### ***Battery Energy Storage System Requirements***

For sites with storage to be installed:

- 13.5' by 11' minimum required area per storage unit. Area required includes storage unit, concrete pad, and clearance zone in front of units.
- Storage unit must be located in an area free of combustible materials (nearby foliage and trees would need to be removed).
- Storage unit must be separated from public foot traffic with a fence and must be separated from vehicle traffic with bollards.
- Crane rental required to land up to 24,500 lb units. Location of units must accommodate both crane and semi-trailer truck access.
- PVS5 DAS, Auxiliary Box, Energy Storage System, and all Accuvim meters (Site meter, PV output meter, and Storage meter) must all be located such that hardlined communication lines can connect these devices to the same Local Area Network. CAT5e/6 cable is preferred means of connection between all devices, which has a 330' distance limit. Runs longer than 330' will require additional equipment to accommodate.

### ***Utility Interconnection***

Coordination of shutdown may be required with Customer and local utility. Temporary power generators are excluded. Interconnection is scheduled for a minimum of 4 hours and is assumed to be performed during off-hours with prior written approval from Customer. Additional shutdowns will be required in order to assess physical condition of Customer's switchgear.

The utility will have 24/7 access to existing electric utility meters and the utility lockable disconnect locations for all electrical interconnections related to this project.

### ***Utility Requirements***

A cost of \$172,012.58 is included for utility required electrical upgrades for the System at 30 Douglas Dr., Martinez, CA, as reflected in Pacific Gas & Electric's Supplemental Review, Notification # 114209530; additional utility-required electrical equipment upgrades or replacements are not included.

Any costs and / or schedule delays associated with unforeseen utility interconnection requirements, including but not limited to utility-owned equipment upgrades or additions, relay protection equipment external to the inverters, system impact studies, or telemetry requirements and interconnection studies are not included in this proposal.

### ***Facility Equipment***

Utility required circuit breaker coordination studies are not assumed for this project.

A short-circuit coordination study is not included for this project.

Solar system includes all standard interconnection related equipment on the Customer side of the meter, including panel circuit breakers, utility and/or visible utility lockable disconnect switches, solar metering, conduit, and wiring. Additional Customer-side protection required by the utilities above that provided by the certified inverters is not included.

If harmonic data of the site is not available, Provider shall assume that the Harmonic data are within the acceptable limits of the Institute for Electrical and Electronics Engineers (IEEE) Standard 519.

***Soils and Structural Foundations***

Foundation assumptions are as follows for system options:

- Drilled cast-in-place, 30” round caisson, 12’ Deep, approximately 2.5’ above grade, depending on existing topography.
- Requirements for dewatering, sub grade rock removal, or other unforeseen conditions are not included.

***Canopy Structure Design***

Carport Canopies are at 10 degree tilt with 11 ft clear height.

***Roof Conditions***

Provider assumes no upgrading of the building structures or canopies will be required to support the added live and dead loads from the photovoltaic installation and rooftop equipment, or to resist added lateral or seismic loads. Modifications to the roof system and design and construction of supports, upgrades to the building structure or platforms are not included.

Anchor and ballast counts are based on the wind load gradient method developed by Cermak Peterka Petersen, Inc, (CPP) and SunPower, based on the CPP wind tunnel testing results presented in CPP’s report “CPP7979\_SunPowerEWSsystem\_REP\_SOL\_R08” dated May 17th, 2018.

Increased anchor and ballast counts resulting from other design methods will be the responsibility of the client.

<b>Site Name</b>	<b>Anchor Count</b>
30 Muir	71
595 center	27
50 Douglas	90
1000 Ward	170
597 Center	33

Provider is not responsible for normal wear and tear associated with the installation of the solar system. Provider reserves the right to inspect the roof to verify its condition. In addition, Provider may offer recommendations to the Customer on modifications to the roof system to improve its serviceability. Customer is responsible for any and all modifications to the roof system. Modifications of roof systems fall into four categories:

- Modifications to improve roof condition / serviceability / useful life.
- Modifications required by roofing manufacturer prior to installation of PV system on their roof system. (e.g. slip sheets, strapping, etc.)
- Modifications required by Provider to make the roof a suitable substrate for the installation of PV. (e.g. air seals, batten bars, etc.)
- 3<sup>rd</sup> party engineering and insurance company requirements.
- Proposal assumes Customer-provided information accurately represents the existing site and roof conditions. This includes but is not limited to as-built drawings, roof reports, structural drawings, roof maintenance history, and roof warranty information. Failure to provide as-built drawings and structural drawings will cause schedule delay and added expense for acquisition of documentation through local authority having jurisdiction (“AHJ”). Provider is not responsible for additional costs or schedule delays.

***Drainage***

Special drainage requirements and/or drainage design and interconnection to Customer’s existing storm drain system or any other storm drain discharge system are not included.

Carport designs do not include structural roof deck for storm water collection or protection.

***Permits***

<b>Permit</b>	<b>Provider Permit</b>	<b>Customer Permit</b>	<b>Cost Allocation</b>	<b>Allotted Time following Application</b>
Building	X			
Fire	X			
Electrical	X			
Conditional Use Permit		NA		
Environmental Control		NA		
Storm Water		NA		
Soil Erosion and Sediment Control		NA		
Environmental Impact Report (CEQA)		NA		
Army Corps of Engineers		NA		
Wetlands		NA		
Water Quality		NA		
Archeological		NA		

Endangered Species		NA		
Water Rights		NA		
Mineral Rights		NA		
Redevelopment Agency		NA		
FAA Approvals		NA		

***Permit Allowance Schedule***

<b>Site</b>	<b>Allowance for Permit</b>
1000 Ward St	\$3,000
30 Douglas Dr	\$10,000
50 Douglas Dr	\$5,000
30/40 Muir Dr	\$5,000
597 Center Ave	\$2,500
595 Center Ave	\$7,000
2530 Arnold Dr	\$6,000
4545 Delta Fair Blvd	\$5,000
4549 Delta Fair Blvd	\$2,500
1305 Macdonald	\$3,000

All other permits/approvals are excluded.

Provider includes durations of 50 days for procuring permit and regulatory approvals (per project). Provider will not be responsible for construction delays caused by permit and approval requirements from local jurisdictions or regulatory review bodies. Any delays in procuring permits will result in a day-for-day construction schedule extension.

***Shading***

The design is based on existing visual conditions on site. Removal of trees or other obstructions to install the solar arrays and system components is included as reflected in the Tier 1 array layouts. Trees and/or other obstructions identified for removal or trimming by Customer must be removed or trimmed prior to substantial completion or performance expectations/guarantees will require adjustment which will be handled as a change to the contract. At Substantial Completion an as-built shade study and performance simulation will be completed to ensure accuracy of initial shading assumptions.

### ***Painting***

Galvanization of canopy columns and primary beams only is included. All other metallic materials are either factory-finished or non-corrosive.

Painting of wall-mounted conduits is not included.

### ***Landscaping***

Site landscaping (e.g. plant restoration or long term weed abatement) is not included.

Irrigation repair and reconfiguration caused by foundation or underground construction is not included.

### ***Fencing***

A 6-0' galvanized, 9 gauge, 2" mesh fencing and chain link fence-with gate around perimeter electrical equipment pad locations is included. Special provisions for privacy slats, special hardware, lock sets, small fabric, etc. are not included. 4" bollards are included only in areas subject to vehicle impact. Additional bollards required by utility or other entities are excluded.

### ***Labor***

#### ***Project Labor Agreement***

Provider shall cause its project contractor to enter into Customer's project labor agreement among Customer, the project contractor, and all subcontractors thereof working on the project (the "PLA").

#### ***Overtime and special shift requirements***

Overtime and special shift requirements are not included, based on schedule submitted with this proposal, except for the interconnection work if shutdown is required. Project hours are based on Monday through Friday 7am – 5pm.

#### ***Prevailing Wages***

Provider shall pay prevailing wages for the project per the PLA and industrial relations requirements of project location.

#### ***Diversity Requirements***

Provider shall comply with Contra Costa County's Construction Outreach Program.

### ***Indirect Construction Costs***

#### ***Taxes and fees***

Taxes or fees, other than permit fees and sales tax, are not included.

### ***Bonds***

Prior to the Effective Date of the Agreement to which this Exhibit A is attached, Provider shall deliver to Customer for approval good and sufficient bonds with sureties, in amounts specified in Section 12.5 (Limitation of Liability) of the Agreement guaranteeing its faithful performance of the Agreement and its payment for all labor and materials thereunder.

### ***Site & Construction Conditions***

#### ***Access***

Design assumes each project site will be constructed in a single phase, set up of construction fencing at beginning of mobilization and removed when construction is completed. Extra time and labor for moving fences to “phase” construction in efforts to minimize parking impacts will have impacts in cost and schedule and will be calculated as a change order.

Customer will provide Site access to Provider to perform all work pursuant to the License granted in the Agreement. Provider will perform all work during regular business hours according to the PLA. Extra time or personnel constraints due to site security beyond daily signing in by workers on a sign in sheet i.e. badging, background checks, tool inventory checks, etc.—is not included.

Provider will be provided a sufficient area for staging materials and locating temporary facilities such as cranes, fork lifts, scaffolding, staintowers, construction trailers, portable toilets and dumpsters.

Existing roads will be capable of handling all required construction equipment such as drilling rigs, concrete trucks, delivery trucks, cranes, and all other equipment necessary to complete the work. Provider will not be responsible for any damage to existing roads, parking lots or playgrounds resulting from normal construction operations and activities.

#### ***Use of Facilities***

On-site water and power will be available for construction with no restrictions and at no charge to Provider. If a Customer initiated power shut down has duration over 4 hours and effects normal construction operations, Provider can rent and install a temporary generator and submit associated costs to Customer for reimbursement. Water quality shall be sufficient for use in dust control, as necessary, and be suitable for Provider’s standard concrete mix design.

#### ***Special handling of site materials***

Testing for removal and disposal of any existing hazardous waste materials, contaminated soils, or any other unforeseen site conditions that require special handling are not included.

#### ***Site utilities and hazards***

Changes resulting from utilities, right of ways, easements, and/or hazards—underground or above ground—or any undocumented building upgrades are not included.

Documented utilities and building upgrades are considered as part of this proposal if as-builts are provided to Provider prior to contract execution in order to confirm locations of these possible hazards. Customers shall supply Provider with a current Title Report with plotted easements, encumbrances, and rights-of-way at all project site locations.

### ***Security and Lighting***

Proposal assumes all parking lot light standards in direct conflict with installation of photovoltaic parking canopies will be removed by Provider. Proposal also assumes that the existing lighting circuits, for those removed parking lot light standards, can be re-used for photovoltaic parking canopies lighting system and that those existing circuits have ample current carrying capacity to provide required lighting at parking canopies, per jurisdictional code requirements. PV canopies located in areas where no existing lights are present will not include lighting unless the Customer requests this for an additional cost.

Temporary lighting during construction is excluded.

New lighting circuit installation is excluded from this proposal as well as any required timing circuit reconfiguration, lighting controllers, relays, or new panel boards. Lighting design and/or installation beyond the footprint of the photovoltaic parking canopies is not included in this proposal. Replacement of existing light standards is not included. Proposal includes LED fixtures for lighting under structures.

Additional security systems or infrastructure are not included in this proposal

### ***Special Conditions***

Proposal assumes modifications and/or reconfiguration of the existing parking lots will not be required to accommodate installation of Provider's photovoltaic parking canopy.

Assumes existing islands in parking lot to remain at area of new carport structure. Proposal excludes any re-striping of the parking lot/hard-court areas, unless specifically related to the construction of the photovoltaic parking canopies, or specifically described in the RFP.

While special care will be taken to locate existing underground utilities (underground survey) and locate carport structures with minimum conflicts, relocation of existing underground utilities due to carport foundations is not included.

Proposal excludes requirements for accessibility upgrades and accessibility design around the photovoltaic parking canopy structures and assumes that current parking lot layout has been reviewed and approved by AHJ and built and closed at the AHJ. If the architect of record recommends addition of new accessible parking stalls under the solar canopies, grade change to meet code, changed path of travel and/or new canopies over existing accessible stalls, design and construction costs will be addressed via Change Order.



Proposal excludes design or installation of any required additional fire hydrants or fire protection apparatuses as required by local first responders or Fire, Life/Safety professionals responsible for review and approval of the design for this project.

Architectural enhancements to the photovoltaic parking canopy structures or ground and roof arrays and mounting systems are not included.

At the detention center located at 1000 Ward in Martinez, the project estimate is based on utilizing existing conduit and equipment from the previous pv installation. The ability utilize existing conduit will be verified during the design phase.

### ***Testing and Inspections***

Provider assumes all Special Inspections/Testing shall be paid for and contracted by the Customer.

### ***Weather conditions***

Provider assumes standard weather patterns and site conditions for planning the project schedule. Instances of excessive climate, weather (greater than the most adverse conditions in the last 3 years) or natural disasters may result in delays and/or unplanned costs (i.e. additional labor, shipping, storage, and logistics costs) which will be the responsibility of the Customer.

### ***Commissioning, Monitoring, Operations & Maintenance***

#### ***Commissioning***

Proposal assumes commissioning requirements for this project is only for the Photovoltaic and energy storage systems. Proposal does not include other building system commissioning costs not related to our work (i.e. HVAC, Plumbing, Fire Alarm, etc.).

**EXHIBIT B**  
**FORM OF FINANCING PARTY ACKNOWLEDGMENT**

*[This Form of Consent contemplates a Sale-Leaseback of the System between the Provider and Provider's Lender and Provider's eventual lender may request changes]*

This CONSENT AND AGREEMENT (this "Consent") dated as of [●], 201 is entered into among (i) Contra Costa County, a political subdivision of the State of California (the "Customer"), (ii) Solar Star Co Co 1, LLC, a limited liability company duly organized and existing under the laws of the State of Delaware (the "Provider"), and (iii) [●], a [●] duly organized and existing under the laws of the State of [●] (together, with its successors in such capacity, the "System Lessor").

WHEREAS, the Provider intends to develop, install, own, operate and maintain a [\_\_\_\_\_] MW [**ground-mounted/rooftop**] photovoltaic solar electric generating facility to be located in [\_\_\_\_\_] (the "Project");

WHEREAS, the Provider and the Customer entered into that certain Power Purchase & Storage Services Agreement, dated as of [●], 2019 (as amended, amended and restated, modified or supplemented from time to time, the "Assigned Agreement");<sup>1</sup>

WHEREAS, the Project will be sold by the Provider to the System Lessor pursuant to that certain Participation Agreement (as amended, the "Participation Agreement") dated as of the date hereof, among the Provider, the System Lessor, [●], not in its individual capacity but as owner trustee, and [●] ("Owner Participant");

WHEREAS, the System Lessor will lease the Project back to the Provider pursuant to that certain Lease Agreement, a related Project Schedule and a Certificate of Acceptance (as amended, the "Lease Agreement") dated as of the date hereof, between the System Lessor and the Provider;

WHEREAS, the Provider will grant the System Lessor a first priority security interest in and to all of the Provider's assets, including the Assigned Agreement, pursuant to a security agreement in form and substance acceptable to the System Lessor (as amended, amended and restated, modified or supplemented from time to time, the "Security Agreement"); and

WHEREAS, it is a condition precedent to the Owner Participant's obligation to make its investment in the System Lessor and for the System Lessor to acquire the Project under the Participation Agreement and lease the Project to the Provider under the Lease Agreement that the Customer execute and deliver this Consent.

NOW, THEREFORE, as an inducement to the Owner Participant to make its investment in the System Lessor and for the System Lessor to acquire the Project under the Participation Agreement and lease the Project to the Provider under the Lease Agreement, and in consideration

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<sup>1</sup> NTD: Can be expanded to include any additional agreements to which the Customer is a party.

of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

**1. CONSENT TO ASSIGNMENT, ETC.**

(a) Consent to Assignment. The Customer (i) acknowledges that the Provider and the System Lessor have entered into the Participation Agreement and the Owner Participant's obligation to make its investment in the System Lessor and for the System Lessor to acquire the Project under the Participation Agreement and lease the Project to the Provider under the Lease Agreement will be made in reliance upon the execution and delivery by the Customer of the Assigned Agreement and this Consent, (ii) consents in all respects to the pledge and assignment to the System Lessor of all of the Provider's right, title and interest in, to and under the Assigned Agreement pursuant to the Security Agreement, and (iii) acknowledges the right, but not the obligation, of the System Lessor or the System Lessor's designee, in the exercise of the System Lessor's rights and remedies under the Lease Agreement, the Security Agreement, and related documents to make all demands, give all notices, take all actions and exercise all rights of the Provider in accordance with the Assigned Agreement, and agrees that in such event the Customer shall continue to perform its obligations under the Assigned Agreement; provided that in the event, with respect to the Assigned Agreement, there exists a conflict between any notice given or action taken by the System Lessor and any notice given or action taken by the Provider, such conflict shall be resolved in favor of the notice given or the action taken by the System Lessor.

(b) Substitute Owner. The Customer agrees that, if the System Lessor notifies the Customer that an event of default under the Lease Agreement has occurred and is continuing and that the System Lessor has exercised its rights (i) to have itself or its designee substituted for the Provider under the Assigned Agreement, (ii) to acquire or have its designee or assignee acquire the Provider, or (iii) to sell, assign, transfer or otherwise dispose of the Assigned Agreement to a third party, including in a judicial or non-judicial foreclosure sale, then the System Lessor, the System Lessor's designee or such third party (each, a "Substitute Owner") shall be substituted for the Provider under the Assigned Agreement and, in such event, the Customer will (x) recognize the Substitute Owner as its counterparty to the Assigned Agreement, (y) take any actions and execute any documents, agreements or instruments reasonably necessary to effect such substitution, and (z) continue to perform its obligations under the Assigned Agreement in favor of the Substitute Owner pursuant to the terms hereof and thereof.

(c) Right to Cure.

(i) Notwithstanding anything to the contrary contained in the Assigned Agreement, the Customer shall not exercise any right it may have under the Assigned Agreement, at law or in equity, to cancel, suspend or terminate the Assigned Agreement or any of its obligations under the Assigned Agreement, as the result of any default or other action or omission of the Provider in the performance of any of its obligations under the Assigned Agreement, or upon the occurrence or non-occurrence of any event or condition under the Assigned Agreement that would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable the Customer to terminate or suspend its obligations or exercise any other right or remedy under the Assigned Agreement or under applicable law (hereinafter an "Assigned Agreement Default"), until it first gives prompt written notice of such Assigned Agreement

Default to the System Lessor and the Owner Participant and affords the System Lessor and the System Lessor's respective successor, assignee and/or designee a period of at least ninety (90) days (or, if such default is a payment default, forty-five (45) days) to cure such default, commencing from the later to occur of (x) the System Lessor's and the Owner Participant's receipt of such notice, and (y) the expiration of any notice periods or cure periods provided for in the Assigned Agreement; provided, however, that if (1) an event of default under the Lease Agreement has occurred and is continuing, the System Lessor has exercised its rights to foreclose on the Project as a result thereof and possession of the Project is necessary to cure any such non-monetary default, then, so long as the System Lessor or the System Lessor's respective successor, assignee and/or designee is diligently pursuing such foreclosure proceedings, the time periods specified in this Section 1(c) for curing an Assigned Agreement Default shall be extended for the time taken to complete foreclosure proceedings, and (2) any such party is prohibited from curing any such Assigned Agreement Default by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding involving the Provider, then the time periods specified in this Section 1(c) for curing an Assigned Agreement Default shall be extended for the period of such prohibition.

(ii) No such cancellation, suspension or termination of the Assigned Agreement by the Customer shall be binding upon the System Lessor without the notice and extended cure period specified in this Section 1(c). Any dispute that may arise under the Assigned Agreement notwithstanding, the Customer shall continue performance under the Assigned Agreement and resolve any dispute without discontinuing such performance until the lapse of the notice and extended cure period specified in this Section 1(c).

(d) No Termination, Assignment or Material Amendments. The Customer shall not enter into any consensual cancellation or termination of the Assigned Agreement (except with respect to termination in the event of a default by the Provider, subject to the limitations and extended cure periods provided for in Section 1(c)), or assign, novate or otherwise transfer any of its right, title or interest thereunder or consent to any such assignment or transfer by the Provider without, in each such case, the written consent of the System Lessor. The Customer shall not enter into or agree to any amendment, supplement, assignment or other modification to, or benefit from any waiver under, the Assigned Agreement without the prior written consent of the System Lessor.

(e) Replacement Agreement. In the event that the Assigned Agreement is rejected or otherwise terminated as a result of any bankruptcy or insolvency proceeding affecting the Provider, the Customer shall, at the option of the System Lessor or the System Lessor's respective successor, assignee and/or designee, enter into a new agreement with the System Lessor or any Substitute Owner (or its transferee or other nominee that owns or leases the Project) having terms substantially the same as the terms of the Assigned Agreement. Thereafter, references in this Consent to the "Assigned Agreement" shall be deemed to refer to such new agreement.

(f) No Liability. The Customer acknowledges and agrees that none of the System Lessor, or the System Lessor's respective successor, assignee and/or designee or the Owner Participant shall have any liability or obligation under the Assigned Agreement as a result of this Consent, the Security Agreement, the Lease Agreement or otherwise, nor shall the System Lessor or the System Lessor's respective successor, assignee and/or designee be obligated or required to (i) perform any of the Provider's obligations under the Assigned Agreement, except, in the case of

the System Lessor or the System Lessor's respective successor, assignee and/or designee, during any period in which the System Lessor or the System Lessor's respective successor, assignee and/or designee is a Substitute Owner pursuant to Section 1(b), in which case the System Lessor or other Substitute Owner shall not be liable for acts or omissions of the Provider and the obligations of such Substitute Owner shall otherwise be no more than those of the Provider under the Assigned Agreement, or (ii) take any action to collect or enforce any claim for payment assigned under the Security Agreement or any related document.

(g) Delivery of Notices. The Customer shall deliver to the System Lessor and the Owner Participant, concurrently with the delivery thereof to the Provider, a copy of each notice, request or demand given by the Customer pursuant to the Assigned Agreement.

(h) Acknowledgements. The Customer agrees to execute such acknowledgements or other similar instruments as the System Lessor may reasonably request in connection with the transactions contemplated by this Consent.

## **2. PAYMENTS UNDER THE ASSIGNED AGREEMENT**

(a) Payments. The Customer will pay all amounts payable by it under the Assigned Agreement, if any, in lawful money of the United States of America, in immediately available funds and in the manner required by, and subject to the terms and conditions of, the Assigned Agreement, directly into the account specified on Exhibit A hereto, or to such other person or account as may be specified from time to time by the System Lessor to the Customer in writing.

(b) No Offset, etc. All payments required to be made by the Customer under the Assigned Agreement shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever.

## **3. REPRESENTATIONS AND WARRANTIES OF THE CUSTOMER**

The Customer makes the following representations and warranties to the System Lessor, the Provider and the Owner Participant as of the date hereof, which shall survive the execution and delivery of this Consent and the Assigned Agreement and the consummation of the transactions contemplated hereby and thereby:

(a) Organization; Power and Authority. The Customer is a political subdivision of the State of California, and is duly qualified, authorized to do business and in good standing in all jurisdictions where it is required to be so qualified and authorized to do business, and has all requisite power and authority to enter into and to perform its obligations under this Consent and the Assigned Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

(b) Authorization. The execution, delivery and performance by the Customer of this Consent and the Assigned Agreement have been duly authorized by all necessary action on the part of the Customer and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of (i) the Customer, or (ii) any other person or entity, except approvals or consents which have previously been obtained.

(c) Execution and Delivery; Binding Agreements. Each of this Consent and the Assigned Agreement is in full force and effect, has been duly executed and delivered on behalf of the Customer and constitutes the legal, valid and binding obligation of the Customer, enforceable against the Customer in accordance with its terms except as the enforceability hereof or thereof may be limited by (i) bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights generally, and (ii) general equitable principles (whether considered in a proceeding in equity or at law).

(d) Litigation. There is no legislation, litigation, action, suit, proceeding or investigation pending or (to the best of the Customer's knowledge after due inquiry) threatened against the Customer before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate, (i) could adversely affect the performance by the Customer of its obligations under this Consent or the Assigned Agreement, or that could modify or otherwise adversely affect the Approvals (as defined in Section 3(f)), (ii) questions the validity, binding effect or enforceability of this Consent or the Assigned Agreement, any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby, or (iii) could have a material adverse effect upon (x) the value, validity, perfection or enforceability of the liens granted to the System Lessor under the Security Agreement and other security documents, or (y) the ability of the System Lessor to enforce any of its rights and remedies under the Assigned Agreement or this Consent.

(e) No Conflict. The execution and delivery of this Consent and the Assigned Agreement and the performance by the Customer under this Consent and the Assigned Agreement will not violate, result in a breach of, default under or conflict with (i) any law, rule, regulation, order, permit or decree applicable to the Customer, (ii) its organizational documents, or (iii) the terms of any other agreement binding on the Customer.

(f) Government Consent. No consent, order, authorization, waiver, approval or any other action, or registration, declaration or filing with, any person, board or body, public or private (collectively, the "Approvals"), is required to be obtained by the Customer in connection with the execution, delivery or performance of this Consent, the Assigned Agreement or the consummation of the transactions contemplated hereunder and thereunder, except any Approvals which have previously been obtained.

(g) No Default or Amendment. Neither the Customer nor, to the Customer's knowledge after due inquiry, the Provider or any other party to the Assigned Agreement is in default of any of its obligations thereunder (or has claimed force majeure, emergency, or any other excuse for performance thereunder which is still ongoing as of the date hereof). The Customer has no existing counterclaims, offsets, defenses, or claims for change orders against the Provider under the Assigned Agreement. To the Customer's knowledge, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either the Customer or the Provider to terminate or suspend its obligations (or the performance of such obligations) under the Assigned Agreement. The Assigned Agreement has not been amended, modified or supplemented in any manner other than as indicated above.

(h) No Previous Assignments. The Customer has no notice of, and has not consented to, any previous assignment of all or any part of its right, title or interest in, to or under the Assigned Agreement.

(i) **Purchase Option.** The Customer has not taken any official action requiring or authorizing the exercise of any purchase option available to it under the Assigned Agreement, has not decided whether or not it will exercise any such purchase option, and is under no legal or economic compulsion to exercise any such purchase option; provided, however, nothing herein shall prohibit the Customer from exercising any purchase option under the Assigned Agreement when it becomes exercisable in accordance with its term and such exercise shall not be deemed to be a breach of this representation and warranty.]

(j) Liens; Mortgages. The Customer has no knowledge of any existing lease, mortgage, security interest or other interest in or lien upon the [Premises], which could attach to the Project as an interest adverse to the System Lessor's interest therein.

Representations and Warranties. All representations, warranties and other statements made by the Customer in the Assigned Agreement were true and correct in all material respects as of the date when made and, except for those that by their terms speak as of a specific date, are true and correct in all material respects as of the date hereof.

#### **4. ADDITIONAL PROVISIONS<sup>2</sup>**

(a) **Commercial Operation Date.** The Commercial Operation Date is \_\_\_\_\_.

(b) **Use of Electricity.** None of the electricity to be sold under the Assigned Agreement will be used to generate energy for the purpose of heating a swimming pool.

(c) **Project.** The Customer has approved the Project as installed at the [Premises].

(d) **Access Rights.** The System Lessor and the System Lessor's respective successors, assignees and/or designees shall have the same rights as the Provider to access the Project in order to install, operate, maintain and remove the Project as the right accorded to the System Lessor under the Lease Agreement and the Security Agreement.

(e) **Notice of Ownership.** The Customer will use commercially reasonable efforts to place its successors, assigns and lien holders on notice of the ownership of the Project by the Provider or the System Lessor, the existence of the security interest, and the fact that the Project is not part of the [Premises] or a fixture thereof, as necessary and appropriate to avoid confusion or adverse claims.

(f) **Amendments.** The Customer acknowledges that, under the Provider's financing arrangements, the Provider is not permitted to agree to an amendment or assignment of the Assigned Agreement without prior written consent of the System Lessor.]

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<sup>2</sup> NTD: Additional provisions to be added to address specific matters contained in the PPA.

5. **MISCELLANEOUS**

(a) Applicable Law; [Submission to Jurisdiction]. THIS CONSENT, AND ANY INSTRUMENT OR AGREEMENT REQUIRED HEREUNDER (TO THE EXTENT NOT EXPRESSLY PROVIDED FOR THEREIN), SHALL BE GOVERNED BY, AND CONSTRUED UNDER, THE LAWS OF THE STATE OF CALIFORNIA, APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE AND WITHOUT REFERENCE TO CONFLICTS OF LAWS.

(b) [Reserved.]

(c) Notices. All notices and other communications hereunder (i) shall be in writing, (ii) shall be effective upon actual receipt thereof by the party or parties to whom such notice is addressed, except that any communication or notice so transmitted by telecopy or electronic mail shall be deemed to have been validly and effectively given on the day (if a business day and, if not, on the next following business day) on which it is transmitted if transmitted during normal business hours of the recipient, and if transmitted after that time, on the next following business day, in each case as evidenced by transmittal confirmation received by the transmitter, (iii) shall be delivered by hand or overnight courier service or mailed by certified or registered mail, sent by facsimile or via electronic mail, and (iv) shall be directed as follows:

If to the Customer:	[_____] [_____] [_____] Attention: [_____] Telephone: [_____] Facsimile: [_____] Email: [_____]
If to the Provider:	[●]
If to the System Lessor:	[●]

The above parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent.

(d) Amendment, Waiver. Neither this Consent nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the Customer, the Provider and the System Lessor.

(e) Third Party Beneficiary. The Owner Participant shall be an express third-party beneficiary of this Consent. The Owner Participant shall be entitled to enforce the rights of the System Lessor hereunder.

(f) No Waiver; Remedies Cumulative. The waiver of any right, breach or default under this Consent by any party must be made specifically and in writing. No failure or delay on the part of the System Lessor in exercising any right, power or privilege hereunder and no course of dealing between the Customer and the System Lessor shall operate as a waiver thereof; nor shall any single



or partial exercise of any right, power or privilege hereunder preclude any other exercise, or the further exercise, of any other right, power or privilege hereunder. No notice to or demand upon any party will entitle such party to any further, subsequent or other notice or demand in similar or any other circumstances. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies that the System Lessor would otherwise have.

(g) Counterparts. This Consent may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered, including by e-mail or other electronic transmission, shall be deemed an original, but all of which shall together constitute one and the same instrument.

(h) Headings Descriptive. The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

(i) Severability. In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(j) Successors and Assigns. This Consent shall be binding upon the parties hereto and their permitted successors and assigns and shall inure to the benefit of the parties, their designees and their respective permitted successors and assigns; provided, however, that no party or its respective successor or assign shall assign any of its interest in this Consent except in connection with an assignment of its interests in the Assigned Agreement and then only to the same person(s) or entity(ies) to which its interest in the Assigned Agreement is so assigned.

(k) Survival. All agreements, statements, representations and warranties made by the Customer herein shall be considered to have been relied upon by the System Lessor and the Owner Participant and shall survive the execution and delivery of this Consent.

(l) Conflicts. In the event of a conflict between any provision of this Consent and any provision of the Assigned Agreement, the provisions of this Consent shall prevail.

(m) Further Assurances. Each party hereto hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

[SIGNATURE PAGES FOLLOW]

**IN WITNESS WHEREOF**, the parties hereto have caused this Consent to be executed by their respective officers as of the date first above written.

[\_\_\_\_\_]
as the Customer

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

[\_\_\_\_\_]
as the Provider

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

[●],
as the System Lessor

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

**Payment Instructions**

Accounts Bank	
ABA Number	[_____] <sup>3</sup>
Account Number	[_____]
Account Name	[_____]
Reference	[_____]

---

<sup>3</sup> Account information to be confirmed and included.

## EXHIBIT C

### SYSTEM PERFORMANCE GUARANTEE (the “Guarantee”)

#### ARTICLE I. ADDITIONAL DEFINED TERMS

**Actual Generation** means, for each Guarantee Year during the Term and with respect to the System, the System’s alternating current or “AC” electricity production in kilowatt-hours (“kWh”) as measured under Section 3.02.

**Annual Deficit** has the meaning set forth in Section 3.01.

**Annual System Performance Report** means the report that summarizes annual system performance in kWh and includes calculations for Weather Adjustment and True-up Period calculations.

**Avoided Energy Price per kWh** means the amount that the Customer will be paid by Provider for each Kilowatt-hour as set out in Appendix B (Avoided Energy Price) of this Guarantee.

**Data Acquisition System** or **DAS** means Provider’s system that displays historical meteorological and production data over an Internet connection and consists of hardware located on-Site and software housed on Provider’s DAS server. The DAS measures and logs, at a minimum, the following parameters on a 15-minute average basis at the Site: actual AC electricity production of the System (in kWh) and solar irradiance (in W/m<sup>2</sup>).

**Expected Energy** means, for the System in a specified Guarantee Year, the kilowatt hours for the System set forth on Appendix A (Expected Energy) of this Guarantee.

**Excused Performance Event** means:

- Force Majeure Event;
- Impingements on solar access by structures or activities on neighboring sites or by facilities that are beyond the control of either Party;
- Externally caused outages, including:
  - Warranty Exclusions: hours during any period when the System or any portion thereof is off-line due to an event that would constitute an exclusion under any applicable manufacturer’s, System, workmanship or other applicable warranty.
  - Network Disturbance Hours: hours during any period when a fluctuation in the utility network parameters (e.g., a frequency or voltage variation) result in the disconnection of the inverters or the System from the utility network and prevented energy from being evacuated from the System.
  - Network Outage Hours: hours during any period when a failure in the distribution network or in the connection infrastructure prevented energy from being evacuated from the System.
  - Third-Party Equipment Servicing Hours: equipment or System outage hours during any period that result from service issues related to non-Provider equipment or delays in procuring non-Provider replacement parts.

- Customer-Caused Hours: hours during any period when the equipment or the System is off-line due to Customer-required outages or Customer-caused delays in Site access.
- Major Maintenance Hours: hours during any period when the equipment or the System is off-line due to Customer-required major maintenance work.

**Guaranteed Level** means 90% of the Expected Energy for a Guarantee Year for the System.

**Guarantee Year** means each successive 12-month period during the Term commencing on the Commercial Operation Date.

**PVSim** means the software program utilized by Provider to predict the amount of energy that the System will produce in an average year which has the following characteristics: (1) based on PVFORM, the photovoltaic simulation software produced by Sandia National Laboratories and the US Department of Energy, (2) all photovoltaic characteristics are modeled, (3) all ancillary array losses are taken into account and (4) PVSim simulations use either measured data or typical meteorological year files from Meteornorm and NREL.

**SEMMY** or “Simulated Energy in a Measured Meteorological Year”, means, with respect to any Guarantee Year, Year 1 AC Energy output of the System simulated by PVSim using measured average hourly irradiance, wind speed, and air temperature as recorded by the Data Acquisition System, holding all other inputs equal to those used in calculating SETMY.

**SETMY** or “Simulated Energy for a Typical Meteorological Year”, means the Year 1 AC Energy output of the System simulated by PVSim using average hourly irradiance, wind speed, and air temperature data contained within the Weather File.

**True-up Period** means each successive one (5)-year period during the Term commencing on the first day of the Term.

**Weather Adjustment** means the ratio described in Section 3.01.

**Weather File** means the typical meteorological year data set specified for the System set forth on Appendix C (Weather File) of this Guarantee.

## **ARTICLE II. PERFORMANCE GUARANTEE CONSIDERATION**

### **Section 2.01 Consideration**

The Parties agree that the consideration set forth in Section 5.1 of the Agreement includes adequate consideration for the terms, conditions and provisions of this Guarantee.

## **ARTICLE III. PERFORMANCE GUARANTEE**

Provider guarantees to Customer that the Actual Generation of the System during any Guarantee Year, subject to the limitations, terms and conditions stated in this Guarantee shall not be less than the Guaranteed Level.

### **Section 3.01 Guaranteed Output Calculations.**

Provider shall calculate the Annual Deficit for the System for each Guarantee Year during the Term:

- (a) Annual Deficit = (Expected Energy x Guaranteed Level) x Weather Adjustment – Actual Generation

Where the Weather Adjustment ratio is as follows:

Simulated Energy in a Measured Meteorological Year (SEMMY)

Simulated Energy for a Typical Meteorological Year (SETMY)

For each Guarantee Year, within thirty (30) days after the end of such Guarantee Year, Provider shall calculate the Annual Deficit for the System. Customer has the right to access all data and information supporting Provider's calculation of the Annual Deficit.

- (b) Guarantee Payment Reimbursement. At the end of each True-up Period:
- (i) if the sum of Annual Deficits > 0, then Provider shall pay to Customer an amount equal to the cumulative product of (y) the Annual Deficits and (z) the Avoided Energy Price per kWh (a "Guarantee Payment");
  - (ii) Provider shall promptly notify Customer of any Guarantee Payment due. Provider shall make Guarantee Payments within thirty (30) days of the date of the notice provided in the first sentence of this paragraph.

### **Section 3.02 Actual Generation Measurement.**

Provider shall measure Actual Generation for the System for each Guarantee Year as follows:

- (a) **Initial Output Data Collection.** During the Term, Provider will collect energy output data using its Data Acquisition System. For each Guarantee Year, Provider will sum the daily kWh output for the System provided by the DAS to calculate the Actual Generation for the System for such Guarantee Year.
- (b) **Equipment Calibration and Replacement.** Provider may request to have the meteorological equipment independently calibrated or replaced at its own expense every eighteen (18) to thirty (30) months. Provider shall notify the Customer of the scheduled calibration date and time no less than 30 days prior, and shall provide the Customer written proof of calibration or replacement.
- (c) **Contingency for Equipment Failure.** In the event of hardware, communication, or other failure affecting the DAS, Provider will make commercially-reasonable efforts to resolve the failure in a timely manner. In the event that data is lost, Actual Generation for each affected System shall be adjusted to compensate for such lost data as follows:
  - (i) In lieu of lost meteorological data, Provider will utilize such data obtained from a nearby meteorological station that Provider monitors and selects for such purpose.
  - (ii) In lieu of lost electricity data, Provider will utilize the cumulative data from System meter readings to calculate the electricity generated by each affected System during the missing interval. In the event that data

from the System meter is inaccurate or missing, Provider will simulate electricity production during the missing interval utilizing measured meteorological data and PVSIm. The simulated electricity production during the missing interval will be added to the Actual Generation for each affected System for the subject Guarantee Year.

#### **ARTICLE IV. CUSTOMER RESPONSIBILITIES**

##### **Section 4.01 Customer's Failure to Uphold Responsibilities.**

Provider shall promptly notify Customer of any breach ("Out of Compliance Letter") of (i) Customer's obligation to pay Provider for the Solar Services pursuant to the Agreement and (ii) any Customer obligations pursuant to the Agreement that directly (A) hinder the amount of Energy delivered by the System or (B) degrade the functionality of the System. Upon Customer's cure of all failures described in an Out of Compliance Letter, Provider will notify Customer ("In Compliance Letter") that Customer is complying with Customer's Responsibilities. For any period between the issuance of an Out of Compliance Letter and of an In Compliance Letter (a "Noncompliance Period"), to the extent that Customer's non-compliance actually impacts the Actual Generation of the System, any Actual Generation from such affected Systems in such month(s) shall be disregarded in the calculation of Annual Deficits for such Systems under Section 3.01, and the Expected Energy for any affected System in any Guarantee Year in which there is a Noncompliance Period shall be reduced by a proportionate amount.

#### **ARTICLE V. EXPECTED ENERGY ADJUSTMENT**

##### **Section 5.01 Adjustment of Expected Energy.**

If, and to the extent, any of the following events results in a change in the production of electricity by the System, Expected Energy for that System shall be adjusted correlatively for the period of such change:

- (a) Subject to Provider's obligations under any warranty it provides in connection with the Systems (including any Provider obligation, with respect to the System, in connection with any requirements under the California Solar Initiative program), a material portion of the components of the System fails, and the manufacturer of such component(s) refuses, or otherwise fails to honor its corresponding warranty;
- (b) Customer fails to perform any of its obligations under the PPA – such as obligations related to maintaining the System's interconnection to the local utility grid or limiting outages (as defined in the Agreement) – and such failure reduces the amount of electricity that the System can generate or deliver.
- (c) There is any failure of the System to perform caused by legislative, administrative or executive action, regulation, order or requisition of any federal, state or local government, local utility or public utilities commission;
- (d) There is an Excused Performance Event; or

- (e) Adjustment to the Expected Energy, or a reduction in the amount of Energy that Provider is obligated to deliver, is permitted or required under the Agreement.

**Section 5.02 Notification of Changes to Expected Energy.**

If Provider determines that any changes to Expected Energy for the System are required based on an event or events described in Section 5.01, then Provider shall notify the Customer, in writing, of the basis for its determination, and Provider shall either provide revised definitions of Expected Energy in exhibits that, upon mutual agreement of the Parties, which shall not be unreasonably denied or delayed, shall replace the current exhibits to this Guarantee, or specify a date by which it shall do so.



### Appendix A – Expected Energy

<b>Guarantee Year</b>	<b>Expected Annual kWh</b>
1	910,975
2	908,697
3	906,426
4	904,160
5	901,899
6	899,645
7	897,395
8	895,152
9	892,914
10	890,682
11	888,455
12	886,234
13	884,018
14	881,808
15	879,604
16	877,405
17	875,211
18	873,023
19	870,841
20	868,664
21	866,492
22	864,326
23	862,165
24	860,009
25	857,859
<b>Total</b>	<b>22,104,059</b>

### Appendix B – Avoided Energy Price

<b>Guarantee Year</b>	<b>Avoided Energy Price per kWh</b>
1	\$0.0048
2	\$0.0049
3	\$0.0051
4	\$0.0052
5	\$0.0054
6	\$0.0056
7	\$0.0057
8	\$0.0059
9	\$0.0061
10	\$0.0063
11	\$0.0065
12	\$0.0066
13	\$0.0068
14	\$0.0070
15	\$0.0073
16	\$0.0075
17	\$0.0077
18	\$0.0079
19	\$0.0082
20	\$0.0084
21	\$0.0087
22	\$0.0089
23	\$0.0092
24	\$0.0095
25	\$0.0098

## **Appendix C – Weather File**

SolarAnywhereTGY2016\_(10km)\_37.95\_-122.15

**Schedule A**

**DESCRIPTION OF SITE**

<b>Facility</b>	<b>System Size (kW DC)</b>	<b>Product Type</b>	<b>Module qty &amp; type - SunPower</b>	<b>Inverters- qty &amp; type-Delta</b>
50 Douglas Dr, Martinez, CA 94553	241.92 <u>324.30</u> 566.22	Carport – Helix 1.5 Rooftop– Helix Dual Tilt	(672) SPR- X21-470- COM / (690) SPR- X22-360- COM	(5) M60U_121 (4) M42U_121

**Schedule B**

**DESCRIPTION OF SYSTEM**

PV System Array Layouts and Electrical Single Line Diagrams

PROJECT SUMMARY			
PROJECT SUMMARY	ROOF	CARRIOT	TOTAL
TOTAL # OF MODULE	672	690	1362
MODULE TYPE	SPR-X21-470-COM		
# OF INVERTER	4	5	9
DC SYSTEM SIZE (KW)	241.92	324.30	566.22
AC SYSTEM SIZE (KW)	224	290	514

**STRUCTURAL DESIGN PARAMETERS**

WIND SPEED (ASCE 7-10) (MPH)	110
EXPOSURE CATEGORY	C
TRANSITIONAL DISTANCE (FT)	0
GROUND SNOW LOAD (PSF)	1.013
SPECTRAL RESPONSE (SDS)	1.52
S <sub>s</sub>	0.6
SEISMIC HAZARD LEVEL	2
SITE CLASS	D
SEISMIC IMPF. FACTOR (IP)	1.0
OCCUPANCY CATEGORY	II

**RACKING TYPE**

HELIX DUAL-TILT	
BACKING TECHNOLOGY	OMG PowerGrip Plus
ANCHOR TYPE	14
BALLAST BLOCK WEIGHT (LBS)	TBD
ROOF MEMBRANE	12
SEISMIC OFFSETS FOR UNANCHORED ARRAY(S)	1.12
MAX ROOF SLOPE	6.15

**BUILDING CHARACTERIZATIONS**

ROOF HEIGHT (FT)	44
ROOF LENGTH (FT)	181
ROOF WIDTH (FT)	177
PARAPET HEIGHT (FT)	3
SPWR AZIMUTH (DEGREES)	-40
MAX ALLOWABLE PRESSURE (PSF)	12
MAX ALLOWABLE WEIGHT (LBS)	TBD

**BALLAST AND ANCHOR SUMMARY**

SYSTEM WEIGHT (LBS)	65475
AVERAGE PSF	5.05
MAX PSF	11.93
TOTAL # OF BALLASTS	2484
TOTAL # OF ANCHORS	90
TOTAL # OF MODULES	672

50 DOUGLAS DRIVE  
CONTRA COSTA COUNTY  
MARTINEZ, CA 94553

ARRAY LAYOUT

ENGINEER'S STAMP

REVISIONS

NO.	DESCRIPTION	DATE
01	FOR PER MARK UPS	03/25/19
02		08/17/18
03		03/25/19



**SUNPOWER® HELIX**

TIER 1

THE PRESENT ARRAY LAYOUT AND ANCHOR REQUIREMENTS ARE BASED ON THE FOLLOWING CONDITIONS AS THEY ARE DESCRIBED ON THIS DRAWING. LAYOUT AND QUANTITIES ARE SUBJECT TO CHANGE BASED ON SUNPOWER VERIFICATION OF ACTUAL SITE CONDITIONS.



**1 ARRAY LAYOUT**  
SCALE: 1/32" = 1'-0"

**ARRAY SUMMARY TABLE - ROOF**

ARRAY	M60U_121 (18 STR)	M60U_121 (14 STR)	M42U_121 (12 STR)	TOTAL	DC POWER (KW)	AC RUN (INV-S58)	AC RUN (SPB-S58)
1	1	1	1	3	12.144	51.84	46
2	1	1	1	3	15.180	64.8	66
3	1	1	1	3	14.168	60.48	66
4	1	1	1	3	12.144	51.84	46
5	1	1	1	3	56.672	241.92	224
<b>TOTAL</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>15</b>	<b>68.216</b>	<b>273.96</b>	<b>260</b>

CANOPY LABEL	#MODULE	WSTRING	KW (DC)	M42U_121 (12 STR)	M60U_121 (15 STR)	CECLUSTING (KW-AC)	TILT	AZIMUTH (H-C)	AC RUN (SPB-S58)
CL	4x60	240	112.8	2	91.984	10°	140°	-40°	260
CZ	6x75	450	211.5	3	196.41	10°	140°	-40°	260
		690	324.3	3	290	288.354			

**LEGEND:**

- PROPOSED LIGHT POLE REMOVAL
- X PROPOSED TREE REMOVAL
- PROPOSED EQUIPMENT PAD
- PROPOSED POINT OF INTERCONNECTION
- AC CONDUITS (SPB-SP8)
- AC CONDUITS (INV-S58)

- NOTES:**
- 110 MPH WIND ZONE (ASCE 7-10) CATEGORY II EXPOSURE C.
  - SNOWLOAD 0 PSF, ELEVATION 188'
  - CORROSION RATE: 2.20mm/YR (CG: 99%, CS: 99%)
  - STANDARD CANOPY LOW-END CLEARANCE: 11' PROVIDED FOR STANDARD STEEL IN ORDER TO ACHIEVE 10-YEAR LIFE BEFORE APPEARANCE OF RUST: 6115
  - REQUIRED COATING FOR PREGALVANIZED STEEL IN ORDER TO ACHIEVE LIFETIME COST OVER 25 YEARS: G210
  - ARRAY SHOWN ON AERIAL IMAGE:
  - STANDARD CANOPY LOW-END CLEARANCE: 11' PROVIDED FOR STANDARD BUILDING CODE REQUIRES 20' MIN. CLEARANCE FROM EXISTING BUILDINGS
  - FIRE DEPARTMENT REQUIRES 20' MIN. CLEARANCE ALONG EMERGENCY ACCESS ROUTES
  - TOTAL OF TREES TO BE REMOVED: 12
  - TOTAL OF LIGHT POLE TO BE REMOVED: 3

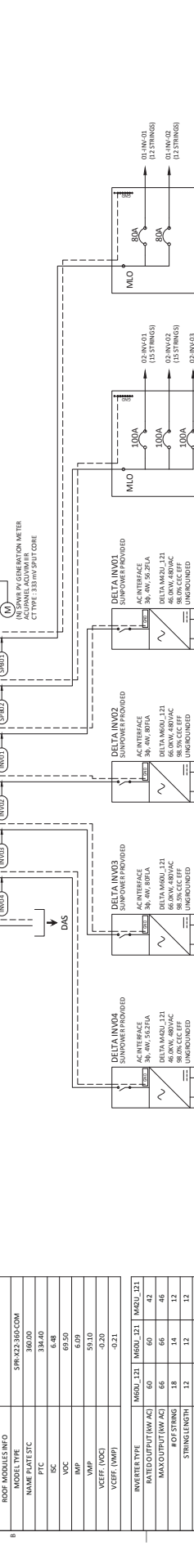
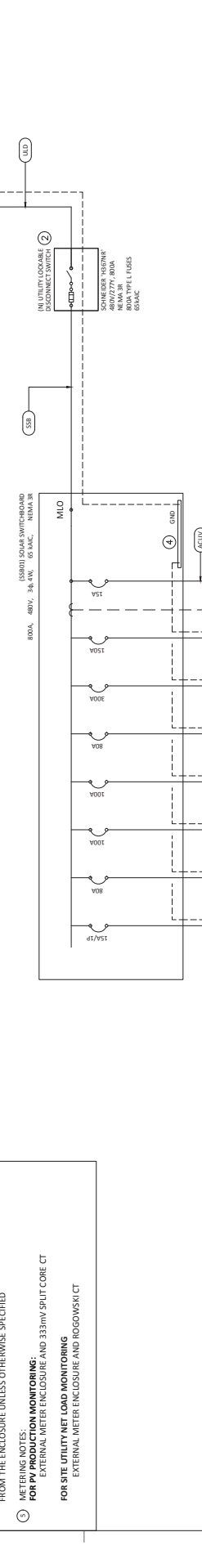
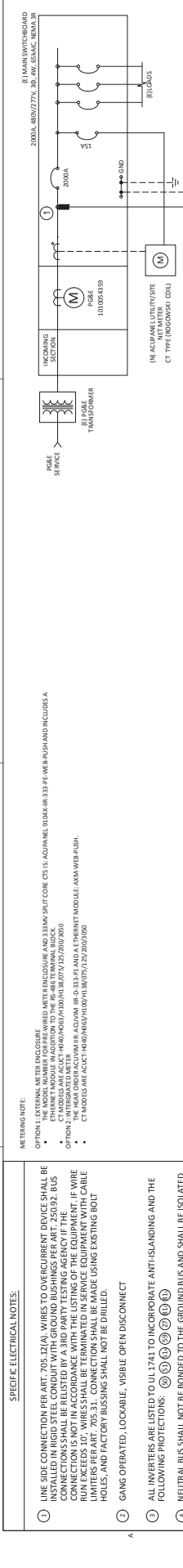
PRELIMINARY  
 NOT FOR  
 CONSTRUCTION

ENGINEER'S STAMP

CONTRA COSTA COUNTY  
 50 DOUGLAS DRIVE  
 MARTINEZ, CA 94553

REV	DATE	DESCRIPTION
E1	08-21-18	FOR PLSA
F1	03-28-19	NEW SITE INFORMATION

DESIGN #	00157288
PROJECT	-----
OPPORTUNITY	00157288
REVISIONS	-----
SHEET	0 OF 1
<p><b>E201</b></p>	



REV	DATE	DESCRIPTION
E1	08-21-18	FOR PLSA
F1	03-28-19	NEW SITE INFORMATION

REV	DATE	DESCRIPTION
E1	08-21-18	FOR PLSA
F1	03-28-19	NEW SITE INFORMATION

REV	DATE	DESCRIPTION
E1	08-21-18	FOR PLSA
F1	03-28-19	NEW SITE INFORMATION

REV	DATE	DESCRIPTION
E1	08-21-18	FOR PLSA
F1	03-28-19	NEW SITE INFORMATION

REV	DATE	DESCRIPTION
E1	08-21-18	FOR PLSA
F1	03-28-19	NEW SITE INFORMATION

REV	DATE	DESCRIPTION
E1	08-21-18	FOR PLSA
F1	03-28-19	NEW SITE INFORMATION

REVISIONS

**Schedule C**

**PV SYSTEM PRICING**

The following pricing is based on the Standard System Design Package described in Exhibit A.

kWh Rate (\$/kWh)	Term (Years)	Annual Rate Escalator (% / Year)
\$0.1344	25	0%



**Schedule D**  
**TERMINATIONS VALUES**

<b>Applicable Date : Years from Commercial Operation Date</b>	<b>Termination Value (\$)</b>
0 Year	\$2,665,367
1 Year	\$2,152,807
2 Years	\$1,929,506
3 Years	\$1,705,261
4 Years	\$1,480,245
5 Years	\$1,253,998
6 Years	\$1,223,975
7 Years	\$1,192,824
8 Years	\$1,160,683
9 Years	\$1,127,123
10 Years	\$1,092,263
11 Years	\$1,056,616
12 Years	\$1,019,798
13 Years	\$981,449
14 Years	\$942,038
15 Years	\$901,633
16 Years	\$860,366
17 Years	\$817,956
18 Years	\$774,522
19 Years	\$730,047
20 Years	\$684,636
21 Years	\$638,049
22 Years	\$590,382
23 Years	\$541,625
24 Years	\$491,858

***EXECUTION VERSION***

*NOTE: 597 Center Ave, Martinez, CA 94553*

**POWER PURCHASE AGREEMENT**

Dated as of June 18, 2019

by and between

Solar Star Co Co 1, LLC  
as Provider

and

Contra Costa County  
as Customer

CONFIDENTIAL

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## POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT (as amended, amended and restated, supplemented or otherwise modified from time to time, this “Agreement”), dated as of June 18, 2019 (the “Effective Date”), is by and between Solar Star Co Co 1, LLC, a limited liability company formed under the laws of the State of Delaware (“Provider”), and Contra Costa County, a political subdivision of the State of California (“Customer”).

### RECITALS:

WHEREAS, Customer leases or owns, directly or indirectly, facilities in that certain location in California as more fully described in Schedule A of the Appendices hereto (the “Site”);

WHEREAS, Customer desires that Provider install, maintain and operate, and Provider desires to install, maintain and operate, the System (as hereinafter defined) to be located on the Site; and

WHEREAS, Provider desires to sell, and Customer desires to purchase, (a) the Solar Services (as hereinafter defined), including the delivery of electrical energy generated by the System (the “Energy”) and (b) other services pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### AGREEMENT:

1. Definitions.

Unless otherwise defined herein: (a) capitalized terms used in this Agreement shall have the respective meanings set forth in this Section 1; (b) the singular shall include the plural and vice versa; (c) the word “including” shall mean “including, without limitation”, (d) references to “Sections,” “Exhibits,” “Appendices” and the like shall be to sections, exhibits, appendices, etc. of or to this Agreement; (e) the words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection hereof; and (f) references to this Agreement shall include a reference to all exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time.

“Agreement” has the meaning set forth in the preamble.

“Annual Rate Escalator” means the percentage set forth in Schedule C.

“Applicable Law” shall mean, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, governmental approval, consent or requirement of such

Governmental Authority, enforceable at law or in equity, along with the interpretation and administration thereof by any Governmental Authority.

“Claim Notice” shall have the meaning set forth in Section 13.3.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Commercial Operation Date” shall have the meaning set forth in Section 3.4.

“Confidential Information” shall have the meaning set forth in Section 15.

“Customer” shall have the meaning set forth in the preamble.

“Customer Default” shall have the meaning set forth in Section 11.1.

“Effective Date” shall have the meaning set forth in the preamble.

“Energy” shall have the meaning set forth in the preamble.

“Environmental Attributes” includes, without limitation, tradable renewable certificates, green-e tags, allowances, reductions or other transferable indicia denoting carbon offset credits or indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility attributed to the Energy during the Term created under a renewable energy, emission reduction, or other reporting program adopted by a Governmental Authority, or for which a registry and a market exists (which, as of the Effective Date are certificates issued by Green-e in accordance with the Green-e Renewable Electric Certification Program, National Standard Version 1.3 administered by the Center of Resource Solutions) or for which a market may exist at a future time.

“Environmental Financial Incentives” shall mean each of the following financial rebates and incentives that is in effect as of the Effective Date or may come into effect in the future: (i) performance-based incentives, rebates and any other incentive programs offered by or in the State of California (or any political subdivision thereof) under the federal government’s, any municipality’s, any utility’s or any other state’s program or initiative (including, if applicable, subsidies available under the Self Generation Incentive Program administered through the California Public Utilities Commission), incentive tax credits (including investment tax credits arising under the Code) other tax benefits or grants in lieu thereof (including without limitation the monetization of tax benefits), and accelerated depreciation (collectively, “Incentives”), howsoever named or referred to, with respect to any and all fuel, emissions, air quality, energy generation, or other environmental or energy characteristics, resulting from the construction, ownership or operation of the System or from the use of solar generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Energy generated by the System; and (ii) all reporting rights with respect to such Incentives.

“Estimated Year 1 Production” shall mean the amount set forth in Schedule B to this Agreement.

“Expiration Date” shall have the meaning set forth in Section 10.1.

“Fair Market Value” shall have the meaning set forth in Section 10.3.2.

“Financing Party” means any third-party entity providing debt or equity financing to Provider (or any successor or assignee thereof) with respect to the System, including without limitation a party providing construction financing, a lessor in a sale-leaseback transaction, a partner in a partnership flip transaction, or a limited liability company member in an equity sale transaction.

“Force Majeure Event” shall mean, when used in connection with the performance of a Party’s obligations under this Agreement, any of the following events to the extent not caused by such Party or its agents or employees, which is not preventable by such Party as of the Effective Date:

- a) war, riot, acts of a public enemy or other civil disturbance;
- b) acts of God, including but not limited to, storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, volcanic eruptions, range or forest fires, and objects striking the earth from space (such as meteorites), sabotage or destruction by a third party (other than any contractor retained by or on behalf of the Party) of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;
- c) acts of federal, state or local government agencies, including changes in Applicable Law, that result in increasing Provider’s costs of construction and installation, or continuing operation, of the System by 15% or more; and
- d) strikes, walkouts, lockouts or similar industrial or labor actions or disputes.

“Governmental Authority” shall mean any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Indemnified Party” shall have the meaning set forth in Section 13.3.

“Indemnifying Party” shall have the meaning set forth in Section 13.3.

“Interconnection Point” shall have the meaning set forth in Section 3.5.

“kWh Rate” shall have the meaning set forth in Section 6.1.

“License” shall have the meaning set forth in Section 2.

“Liens” shall have the meaning set forth in Section 7.1.3.

“Meter” shall have the meaning set forth in Section 4.3.1.



“Monthly Period” shall mean the period commencing on the Commercial Operation Date and ending on the last day of the calendar month in which the Commercial Operation Date occurs, and, thereafter, all subsequent one (1) month periods during the Term.

“Monthly Production” shall mean, for each Monthly Period, the amount of Energy delivered during such Monthly Period.

“O&M Work” shall have the meaning set forth in Section 4.1.1.

“Party” shall mean each of Customer and Provider (and/or any successor or permitted assignee thereof).

“Person” shall mean any individual, corporation, partnership, company, limited liability company, joint venture, association, trust, unincorporated organization or Governmental Authority.

“Provider” shall have the meaning set forth in the preamble (and includes its successor(s) and permitted assignee(s)).

“Provider Default” shall have the meaning set forth in Section 11.2.

“Renewal Rate” shall mean the fair market price for electricity generated by solar photovoltaic systems as determined by agreement of the Parties or through the appraisal process applicable to the purchase option contained in this Agreement.

“Reporting Rights” means the right to report ownership of the Environmental Attributes or the Environmental Financial Incentives associated with the Energy to any federal, state, or local agency, authority or other party, including without limitation under Section 1605(b) of the Energy Policy Act of 1992 and provisions of the Energy Policy Act of 2005, or under any present or future domestic, international or foreign emissions trading program.

“Scheduled Outage” shall have the meaning set forth in Section 4.5.

“Site” has the meaning set forth in the first recital.

“Solar Services” mean all solar services provided to Customer by Provider hereunder, including the provision of Energy.

“Standards” shall have the meaning set forth in Section 3.1.1.

“System” shall mean the solar photovoltaic system installed pursuant to this Agreement at the Site and more fully described in Schedule B hereto; provided, however, that the term “System” shall only include equipment and materials up to but not including the Interconnection Point of the System.

“Term” shall have the meaning set forth in Section 10.1.

“Termination Date” shall have the meaning set forth in Section 10.1.

“Termination Value” shall mean, on any date of determination (or, if such date is not a scheduled termination date, the scheduled termination date immediately preceding such date) the applicable amount specified for such date in Schedule D to this Agreement.

“Transfer Taxes” shall have the meaning set forth in Section 6.2.1.

2. Purchase and Sale of Solar Services; License.

2.1 Purchase and Sale of Solar Services.

Customer hereby engages Provider to provide the services set forth in this Agreement, including the Solar Services to Customer, and Provider agrees to provide the services set forth in this Agreement, including the Solar Services to Customer, all in accordance with the terms and conditions set forth herein. Customer shall provide Provider with access to the Site in accordance with the terms of this Agreement. Provider may retain one or more contractors or subcontractors to fulfill its obligations hereunder; provided that Provider shall remain liable for performance of its obligations hereunder

2.2 License.

Customer hereby grants to Provider and to Provider’s agents, employees and subcontractors an irrevocable, non-exclusive license running with the Site for access to, on, over, under or across the Site (the “License”) for the purpose of (i) installing, constructing, operating, maintaining, accessing, removing and replacing the System; (ii) performing all of Provider’s obligations and enforcing all of Provider’s rights set forth in this Agreement; and (iii) installing, using and maintaining electric lines and equipment, including inverters and meters, necessary to interconnect the System to Customer’s electric system at the Site or to the utility’s electric distribution system or that otherwise may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance, or repair of the System. The term of the License is the Term of this Agreement plus the period of time necessary for Provider to remove the System pursuant to Section 10.3.3, but in no case later than one hundred eighty (180) days after the Expiration Date with respect to the System (the “License Term”). During the License Term, Customer shall preserve and protect Provider’s rights under the License and Provider’s access to the Site and shall not interfere with or permit any third parties to interfere with Provider’s rights or access. Except for an emergency situation as described in Section 4.2.1(a) or (b) (an “Emergency Situation”), Provider shall notify Customer in writing, which may be made via email to Customer’s Energy Manager, 40 Muir Road, Martinez, CA 94553 (Frank.DiMassa@pw.cccounty.us), or to any other address Customer may designate in a written notice to Provider, forty-eight (48) hours before Provider intends to access the Site pursuant to the License. Notwithstanding that the License granted herein is irrevocable, Customer reserves the right to exclude Provider, its agents, employees and subcontractors from the Site in the event that Customer notifies Provider of a breach of the License and Provider fails to cure such breach pursuant to Section 11.2.1 of this Agreement; provided, however, that, Customer

agrees not to exclude Provider, its agents, employees and subcontractors from the Site (A) in the event of an Emergency Situation as described in Section 4.2 so long as Customer has been notified of such an Emergency Situation pursuant to Section 4.2 and (B) in the event that the System is to be removed pursuant to this Agreement.

3. Design, Construction, Installation and Testing of System.

3.1 Installation.

Subject to Section 3.2, Provider will cause the System to be designed, engineered, installed and constructed at the Site substantially in accordance with the terms of this Agreement, including without limitation, the provisions of Exhibit A (System Design and Construction). Customer shall review and approve, such approval not to be unreasonably withheld or delayed, all construction plans, including engineering evaluations of the impact of the System on the structural integrity and strength of the location where the System is installed inside, on or near Customer's buildings. Provider shall organize the procurement of all materials and equipment for the installation work and maintain the same at the Site. Subject to the terms of the License, Provider shall perform installation work at the Site during the times set forth in Exhibit A and Schedule B in a manner that minimizes inconvenience to and interference with Customer's and Customer's invitees' and Customers' use of the Site to the extent commercially practical. Notwithstanding the foregoing, in the event that Provider determines in its sole discretion that it is unable to install the System at the Site, it shall be under no obligation to do so, and this Agreement shall terminate and be of no further force and effect upon written notice from Provider to Customer to that effect.

3.1.1 System Design and Construction. Exhibit A (System Design and Construction) attached hereto sets forth the design, engineering and construction specifications for the System, as well as assumptions made by the Provider regarding the Site conditions, the electrical conditions, and System attributes (such assumptions being referred to herein as the "Standards"). Schedule B (Description of System) sets forth the known actual conditions for the Site and the System, including deviations from the Standards. The Standards are such that the described items for the System will not need repair, replacement, modification or construction beyond that described in Exhibit A and Schedule B in order for Provider to properly construct and install the System. If the construction and installation of the System is required for any reason (except for reasons attributable to Provider) to deviate from the Standards and Schedule B, Provider will notify the Customer and provide an estimate of any incremental cost to Customer and Customer will have the option to (i) pay the incremental cost at the time the cost is incurred and billed to the Customer, (ii) pay the incremental cost over the Term through a calculated increase in the kWh Rate, or (iii) elect an alternative location subject to the conditions of Section 3.1.2.

3.1.2 Alternative Location. Prior to the Commercial Operation Date, if the Customer's interest in the Site is a leasehold interest and the Customer is unable to obtain the landlord's consent in accordance with the License or Customer chooses an alternative location per Section 3.1.1, Customer will have the option to elect an alternative location if Environmental

Attributes and Environmental Financial Incentives financially equivalent to or better than those associated with the original location are available for the alternative location, and if the expected System kWh output and construction cost at the alternative location are equivalent to or superior than those associated with the originally proposed location. Such alternative location is subject to Provider approval, not to be unreasonably withheld. If an alternative location cannot be established, Provider will have the right to terminate per Section 3.2.

### 3.2 Conditions Precedent to Commencement of Construction and Installation.

3.2.1 Commencement by the Provider of construction and installation activities with respect to the System are subject to the satisfaction of the following conditions precedent (in addition to the condition set forth in Section 3.3):

- (a) Provider shall have closed financing for construction and long-term ownership of the System and the Solar Services to be performed at the Site and, to the extent required pursuant to the applicable financing documentation, the third party financing institution providing such financing shall have been provided with the materials referred to in Section 14.17 and Section 16;
- (b) Provider shall have entered into the applicable contract(s) for construction and installation of the System, subject to the terms of the applicable financing, if any;
- (c) Provider shall have obtained the permits, licenses and other approvals required by Applicable Law to be obtained by Provider prior to such commencement;
- (d) Provider shall have received satisfactory notice that the applications for Environmental Financial Incentives for the System have been accepted and approved by the appropriate governing agency; and
- (e) Provider shall have received from Customer satisfactory evidence that the project—including the System, the License, and the work and Solar Services described in this Agreement—is exempt from the regulatory jurisdiction of local agencies (including zoning, building, and land-use requirements) or that all required local agency approvals and permits have been obtained.

provided, however, that if any of the foregoing conditions precedent have not been satisfied on or before June 17, 2020 (the “CP Date”), Provider shall have the option to terminate this Agreement without triggering the default provisions of this Agreement or any liability under this Agreement, and if Provider does not terminate this Agreement one hundred eighty (180) days following the CP Date, Customer may terminate this Agreement without triggering the default provisions of this Agreement or any liability under this Agreement.

Alternatively, in the event that such conditions precedent are not satisfied by such date, the Parties may mutually agree to amend this Agreement to revise the Commercial Operation Date and term of this Agreement.

### 3.3 Utility Approvals.

Notwithstanding that Provider shall have primary responsibility for preparing applications and obtaining all permits, licenses and approvals required for the performance of work under this Agreement, Customer agrees to reasonably assist Provider in obtaining necessary permits, licenses and approvals in connection with the installation, operation and maintenance of the System, including the submission of applications for interconnection of the System with the local electric utility. Customer shall not make any material changes to its electrical equipment at the Site after the date on which the applicable utility interconnection application is submitted unless any such changes, individually or in the aggregate, would not adversely affect the approval by such utility of such interconnection. Should the local electric utility fail to approve the interconnection of the System or require equipment in addition to the equipment set forth in Schedule B in connection with the Site, Provider may, at Provider's option, terminate this Agreement immediately subsequent to notification from the local utility. The Parties shall not be obligated to go forward with installation of the System if the applicable utility approvals are conditioned upon material upgrades to the existing electrical infrastructure and neither Party elects to provide for such upgrades. Customer also agrees to assist Provider and make all necessary repairs or changes to the existing electrical infrastructure so that the Site and System are eligible for the Environmental Financial Incentives.

### 3.4 Energy Delivery.

The date on which the delivery of Energy from the System commences (the "Commercial Operation Date") shall be the date on which all of the following shall have occurred: (a) Provider shall have certified to Customer in writing that the System is substantially complete and available for commercial operation; (b) all permits and licenses required to be obtained under Applicable Law in connection with the operation of the System shall have been obtained and be in full force and effect; and (c) Customer shall have entered into an interconnection agreement with the local electricity utility. In no event shall Provider have any liability to Customer for a delay in the Commercial Operation Date caused by Customer, Customer's electricity provider, a local agency issuing permits for the System or any other third parties outside of Provider's control.

### 3.5 Risk of Loss; Exclusive Control.

As between the Parties, Provider will be deemed to be in exclusive control (and responsible for any property damage or injuries to persons caused thereby) of the Energy up to but excluding the point where the System is interconnected to Customer's electrical intertie; e.g., the Customer's line-side tap (the "Interconnection Point") and Customer will be deemed to be in exclusive control

(and responsible for any property damage or injuries to persons caused thereby) of the Energy at and from the Interconnection Point. Risk of loss related to the Energy will transfer from Provider to Customer at the Interconnection Point.

### 3.6 Termination Values.

The Parties acknowledge and agree that the Termination Values with respect to the applicable System are as set forth in Schedule D of this Agreement.

## 4. Operation and Maintenance of System.

### 4.1 O&M Work; Phone/Data Line.

4.1.1 O&M Work. Provider shall provide operation, repair, monitoring and maintenance services to the System during the Term of this Agreement, including the monitoring and maintenance of metering equipment determining the quantity of electricity produced by the System (collectively, the “O&M Work”). Provider shall perform the O&M Work, either directly or indirectly through a subcontract with SunPower Corporation, Systems, an affiliate of Provider or through a third-party service provider capable of providing comparable services, provided that Provider remains responsible for all O&M Work notwithstanding any such subcontracting. Provider shall perform, or cause to be performed, the O&M Work to ensure that the System is capable of delivering the Energy in accordance with the specifications set forth in Schedule B. Provider shall use commercially reasonable efforts to enforce the terms of any contract for operations and maintenance services to which it is a party and System warranty agreements.

4.1.2 Phone/Data Line. Customer shall properly maintain, pay for and provide access to the necessary phone, computer, or other communication lines necessary to permit Provider to record the electrical output of the System for the entire Term.

### 4.2 Malfunctions and Emergencies.

4.2.1 Each of Customer and Provider shall notify the other within twenty-four (24) hours following the discovery by it of (a) any material malfunction in the operation of the System, (b) an interruption in the supply of Solar Services. Provider and Customer shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Provider’s repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Each Party shall notify the other Party immediately upon the discovery of an emergency condition in the System.

4.2.2 Provider shall commence repairs to the malfunctioning System and restore the supply of the Energy, as soon as reasonably possible after notice or upon its own discovery of any of the conditions specified in Section 4.2.1 during normal business hours and, subject to Section 2, take steps to mobilize personnel to commence repairs after notice or discovery of a condition requiring repair or other corrective action. If an emergency condition exists, Provider shall dispatch the appropriate personnel immediately upon becoming aware thereof to perform the necessary repairs or corrective action in an expeditious and safe manner. For routine and emergency repairs, the Parties shall contact the persons set forth below:

If to Provider:

Wayne Webb, Senior Manager, Operations & Maintenance

2900 Esperanza Crossing, 2nd Floor

Austin, TX 78759

(510) 439 – 4663 or (800) 251-9728

[Wayne.Webb@sunpowercorp.com](mailto:Wayne.Webb@sunpowercorp.com) with a copy to: [customer.service@sunpower.com](mailto:customer.service@sunpower.com)

#### 4.3 Metering.

4.3.1 Meters. For the term of this Agreement, Provider shall install and maintain a utility-grade kilowatt-hour (“kWh”) meter (the “Meter”) at the System for the measurement of Energy provided to Customer, which shall measure the kWh output of the System on a continuous basis. Upon Customer’s written request, Provider shall furnish a copy of all technical specifications and accuracy calibrations for the Meter, as well as all metering data and energy production and consumption calculations. Provider shall test the Meter in compliance with manufacturer’s recommendations.

4.3.2 Customer Audits and Inspections. Once per calendar year, Customer shall have the right to audit all Meter data upon reasonable notice, and any such audit shall be at Customer’s sole cost. Customer shall have a right of access to the Meter at reasonable times and with reasonable prior notice for the purpose of verifying readings and calibrations.

4.3.3 Adjustments. If testing of the Meter pursuant to Section 4.3.1 or Section 4.3.2 indicates that the Meter is in error by more than two percent (2%), then Provider shall promptly repair or replace the Meter. If the Meter is found to be in error by more than two percent (2%), Provider shall make a corresponding adjustment to the records of the amount of Energy based on such test results for (a) the actual period of time when such error caused inaccurate Meter recordings, if such period can be determined to the mutual satisfaction of the Parties, or (b) if such period cannot be so determined, then a period equal to one-half (1/2) of the period from the later of (i) the date of the last previous test confirming accurate metering, and (ii) the date the Meter was placed into service; provided, however, that such period shall in no case exceed two (2) years.

4.3.4 Disputes. Any dispute arising out of the reading or calibration of the Meter shall be resolved in accordance with the procedures set forth in Section 6.3.2.

#### 4.4 Title to System.

Provider, or Provider’s permitted assigns with respect to the System, shall at all times retain title to and be the legal and beneficial owner of the System, including the right to any tax credits available under federal or state law, and the System shall remain the property of Provider or Provider’s assigns. The System shall remain the personal property of Provider or Provider’s assigns and shall not attach to or be deemed a part of, or fixture to, the Site. It is the Parties’ intention that the System shall at all times retain the legal status of personal property. Provider shall be entitled to, and is hereby authorized to, file one or more precautionary Uniform Commercial Code financing statements with the California Secretary of State with

respect to the System in order to protect its rights in the System, provided that no such UCC financing statement shall name Customer as the debtor. The System shall be clearly marked and identified as being the property of the Provider or Provider's assigns. The Parties intend that neither Customer nor any party related to Customer shall acquire the right to operate the System or be deemed to operate the System.

#### 4.5 Outages.

Customer shall be permitted two (2) twenty-four (24) consecutive hour days during which the System may be offline (each, a "Scheduled Outage") per calendar year during the Term, during which days Customer shall not be obligated to accept, and if not accepted, pay for the Energy; provided, however, that Customer shall have notified Provider in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of such Scheduled Outage. In the event that Scheduled Outages at the Site exceed two (2) days per calendar year for a reason other than a Force Majeure Event, and for all unscheduled outages, Provider shall reasonably estimate the amount of Energy that would have been delivered to Customer during each hour of such excess Scheduled Outages or unscheduled outages and shall invoice Customer for such amount, which shall be payable in accordance with Section 6.3. Additionally, as set forth in Exhibit C (Performance Guarantee), Provider shall be relieved of any failure to meet the Performance Guarantee due to any Scheduled Outage or unscheduled outage.

#### 4.6 Compliance with Utility Specifications.

Provider shall ensure that the operation of the System and all Energy generated by the System conform to applicable utility specifications for energy being generated and delivered to the Site's electric distribution system, which shall include the installation of proper power conditioning and safety equipment, submittal of necessary specifications, coordination of utility testing and verification, and all related costs.

### 5. Purchase of Solar Services.

#### 5.1 Purchase Requirement.

Customer agrees to purchase one hundred percent (100%) of the Energy delivered by the System during the Term of this Agreement. While the Solar Services are calculated and billed on the basis of kWh of Energy as set forth in Section 6.1, Customer acknowledges and agrees that such Solar Services represent a package of services including the production and supply of electrical energy output from the System, together with any other services associated with solar energy production that Provider may provide to Customer. The payment for Solar Services (expressed in \$/kWh) is calculated to include all of the above services. Neither Party may claim that by this Agreement Provider is an electric utility subject to regulation as an electric utility or subject to regulated electricity rates. Provider shall not claim to be providing electric utility services to Customer and shall not interfere with Customer's ability to select an electric utility provider except that, to the extent



Customer has a choice in selecting an electric utility provider or electricity provider, Customer shall not select an electric utility provider or electricity provider that requires, as part of their conditions for service, removal or discontinued operation of the System or the sales of Energy hereunder.

## 5.2 Environmental Attributes; Environmental Financial Incentives.

5.2.1 Environmental Attributes. All Environmental Attributes and associated Reporting Rights available in connection with the System are retained and owned by Customer or its assignee. Provider shall take all reasonable measures to assist Customer in obtaining all Environmental Attributes currently available or subsequently made available in connection with the System. At Customer's request and expense, Provider shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Customer's or its assignee right, title and interest in and to the Environmental Attributes. If the standards used to qualify the Environmental Attributes to which Customer is entitled under this Agreement are changed or modified, Provider shall, at Customer's request and expense, use all reasonable efforts to cause the Environmental Attributes to comply with new standards as changed or modified. If Provider fails to act in good faith in completing documentation or taking actions reasonably requested by Customer, and such failure results in the loss of an Environmental Attribute that would otherwise be available, Provider shall reimburse Customer for the full amount of such lost Environmental Attribute.

5.2.2 Environmental Financial Incentives. All Environmental Financial Incentives and associated Reporting Rights available in connection with the System are retained and owned by Provider or its assignee. Customer shall take all reasonable measures to assist Provider in obtaining all Environmental Financial Incentives currently available or subsequently made available in connection with the System. At Provider's request and expense, Customer shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Provider's or its assignee right, title and interest in and to the Environmental Financial Incentives. If the standards used to qualify the Environmental Financial Incentives to which Provider is entitled under this Agreement are changed or modified, Customer shall, at Provider's request and expense, use all reasonable efforts to cause the Environmental Financial Incentives to comply with new standards as changed or modified. If Customer fails to act in good faith in completing documentation or taking actions reasonably requested by Provider, and such failure results in the loss of an Environmental Financial Incentive that would otherwise be available, Customer shall reimburse Provider for the full amount of such lost Environmental Financial Incentive.

5.2.3 Customer shall not take any action or suffer any omission that would have the effect of impairing the value to the Provider of the Environmental Attributes or Environmental Financial Incentives.

5.2.4 Provider or its assignee will at all times retain all tax credits and related tax benefits (including depreciation) associated with the System.

6. Price and Payment.

6.1 Price.

Customer shall pay Provider for the Energy provided pursuant to the terms of this Agreement at the rate per kWh (the "kWh Rate") set forth in Schedule C for the Term of this Agreement, plus any adjustments required pursuant to Section 3.1.1, plus any additional amount required pursuant to Section 6.2. Notwithstanding the foregoing, in the event that Customer elects to renew this Agreement pursuant Section 10.3.1, Customer shall pay the Renewal Rate for Energy delivered during such renewal period.

6.2 Taxes.

6.2.1 Customer Taxes. Provider shall invoice Customer for, and Customer shall pay all sales, use, excise, ad valorem, transfer and other similar taxes ("Transfer Taxes"), but excluding in all events taxes based on or measured by net income, that are imposed by any taxing authority arising out of or with respect to the purchase or sale of the Solar Services (regardless of whether such Transfer Taxes are imposed on Provider or Customer), together with any interest, penalties or additions to tax payable with respect to such Transfer Taxes, unless such interest, penalties or additions to tax payable with respect to such Transfer Taxes are due to Provider's failure to timely remit any such Transfer Taxes or to file any returns required by the appropriate taxing authority, and Provider shall indemnify and hold Customer harmless in such excepted cases. If Customer shall be required to by law to withhold or deduct any Transfer Taxes or other taxes imposed by any jurisdiction or any political subdivision from or in respect of any sum payable hereunder, the sum payable shall be increased as may be necessary so that, after taking all required deductions, Provider shall have received an amount equal to the sum it would have received had no such deductions been made. Provider will pay any ad valorem property tax imposed on the System by any taxing authority.

6.2.2 Provider Taxes. Provider will pay and hold harmless Customer from any sales or use tax imposed upon Customer arising from this Agreement, other than as set forth in the preceding Section 6.2.1, including but not limited to Provider's manufacture, installation and acquisition of the System. Provider will pay and hold harmless Customer from property tax, if any, assessed on (i) Provider's use of the portion of the Site on which the System is installed, to the extent prescribed in the License; (ii) the System or Provider's ownership, installation or use thereof; or (iii) any other aspect of this Agreement. Notwithstanding the foregoing, Customer shall pay and hold harmless Provider from sales and use taxes, if any, arising upon the transfer, if any, of both legal and beneficial ownership of the System to Customer pursuant to this Agreement.

6.3 Billing and Payment.

Billing and payment for the Solar Services sold and purchased under this Agreement and any other amounts due and payable hereunder shall occur as follows:

6.3.1 Payments. Subject to adjustment in accordance with the following sentences of this Section 6.3.1, Customer shall pay to Provider for each Monthly Period during the Term within thirty (30) days after receipt of any invoice a payment for the Energy delivered by the System during each such Monthly Period equal to the product of (a) Monthly Production for the System for the relevant month multiplied by (b) the then applicable kWh Rate.

Customer payments under Sections 6.3.1, above, shall be made by check to:

Solar Star Co Co 1, LLC  
Attn: Commercial Asset Management Group  
c/o SunPower Capital Services, LLC  
2900 Esperanza Crossing  
Austin, TX 78758

Payment may also be made by wire transfer of immediately available funds upon receipt of specific instructions by Provider. Upon receipt of written direction and instructions from Provider and Provider's Financing Party, all payments to be made by the Customer to the Provider under this Agreement shall be made directly to the Provider's Financing Party or its agent designated in a writing addressed to Customer from time to time.

6.3.2 Invoice Errors. Within thirty (30) days after receipt of any invoice, Customer may provide written notice to Provider of any alleged error therein (including any error resulting from Meter adjustments pursuant to Section 4.3.3). Customer shall pay all undisputed amounts, including the undisputed portion of any invoice, in accordance with the instructions set forth for payment under Section 6.3.1. If Provider notifies Customer in writing within thirty (30) days of receipt of such notice that Provider disagrees with the allegation of error in the invoice, the Parties shall meet, by telephone conference call or otherwise, within ten (10) days of Customer's response for the purpose of attempting to resolve the dispute.

6.3.3 Late Payments. All payments hereunder shall be made without setoff or deduction. Any payment not made within the time limits specified in Section 6.3.1 shall bear interest from the date on which such payment was required to have been made through and including the date on which such payment is actually received by the Provider. Such interest shall accrue at a monthly rate equal to the lesser of the then prevailing prime rate of interest as published in The Wall Street Journal or the maximum interest rate permitted by Applicable Law.

## 7. General Covenants.

### 7.1 Provider's Covenants.

Provider covenants and agrees as follows:

7.1.1 Permits and Approvals. While performing this Agreement, Provider shall obtain and maintain all approvals, consents, licenses and permits from relevant Governmental Authorities, utility personnel, and (to the extent known to Provider) the Site's owners, if Customer is not the owner of the Site, and other agreements and consents required to be obtained and maintained by Provider and to enable Provider to perform such work. Provider shall deliver copies of all permits and approvals obtained pursuant to this Section to Customer.

7.1.2 Health and Safety. Provider shall take all reasonably necessary safety precautions in performing this Agreement and shall comply in all material respects with all Applicable Laws pertaining to the safety of persons and real and personal property.

7.1.3 Removal of Liens. Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', laborers' or materialmen's liens), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Site or any interest therein; provided that this Section 7.1.3 shall not limit Liens on the System. If Provider breaches its obligations under this Section, it shall immediately notify Customer in writing, shall promptly cause such Lien to be discharged and released of record without cost to Customer, and shall defend and indemnify Customer against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

7.1.4 Provider Records. Provider shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Customer has the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

## 7.2 Customer's Covenants.

Customer covenants and agrees as follows:

7.2.1 Health and Safety. Customer shall at all times maintain the areas of the Site consistent with all Applicable Laws pertaining to the health and safety of persons and property.

7.2.2 Security. Customer shall provide and take reasonable measures for security of the System, including commercially reasonable monitoring of the Site's alarms, if any.

7.2.3 Notice of Damage. Customer shall promptly notify Provider of any matters of which it becomes aware pertaining to any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System.

7.2.4 Liens. Customer shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein. Customer also shall pay promptly any taxes, charges or fees of whatever type of any relevant Governmental Authority for which Customer is responsible under Section 6.2 before a fine or penalty may attach to the System. If Customer breaches its obligations under this Section, it shall immediately notify Provider in writing, and shall promptly cause such Lien on or with respect to the System (including if such arises in favor of any third party claiming through Customer, such as a lender, mortgagee or encumbrancer of real property) to be removed, discharged and released of record without cost to Provider, and shall defend, indemnify and hold Provider harmless against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in removing, discharging and releasing such Lien.

7.2.5 Consents and Approvals. Customer shall obtain and maintain, and secure and deliver to Provider copies of, all consents, approvals, permits, licenses, and authorizations (or evidence that the project—including the System, and the work and Solar Services described in this Agreement—is exempt from the regulatory jurisdiction of local agencies (including zoning, building, and land-use requirements) or that all required local agency approvals and permits have been obtained) relating to the performance of Customer’s obligations and the rights granted by Customer hereunder, and that are required by the terms, conditions or provisions of any restriction or any agreement or instrument or statute to which Customer is a party or by which Customer is bound, including completing applications for interconnection with Customer’s local electric utility. Customer shall use best efforts to assist Provider in fulfilling Provider’s responsibilities under Section 7.1.1. In addition, as a condition precedent to the effectiveness of this Agreement, Customer covenants that it has obtained all discretionary and other approvals required in connection with the project from its governing board and all applicable Government Authorities and that such board or Governmental Authority complied with the California Environmental Quality Act; or, if no other discretionary approvals were required, such board or Governmental Authority approved this Agreement before it was executed.

7.2.6 Maintenance of Interconnection. Customer shall ensure that all of the facilities to which the Energy is delivered hereunder remain interconnected to the electrical grid during the entire Term, except as permitted under Section 4.5 and Section 9.

7.2.7 Solar Access. Customer shall ensure that the System remains free of overshadowing or other blocked access to sunlight during the Term, and it is acknowledged and agreed by the Parties that the foregoing is a material obligation of the Customer for the purposes of this Agreement. Customer will use best efforts to secure a solar easement for the Site to prevent other buildings, structures or flora from overshadowing or otherwise blocking access of the sunlight to the System. Provider shall provide assistance to Customer in seeking a solar easement; however, Customer shall bear all costs and expenses related to obtaining any such easement.

7.2.8 Customer Records. Customer shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Provider shall have the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

## 8. Insurance Requirements.

### 8.1 Provider’s General Liability Insurance.

Provider shall maintain, at its sole expense, commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of one million dollars (\$1,000,000) per occurrence and in the aggregate, endorsed to provide contractual liability in said amount, specifically covering Provider’s obligations under this Agreement and naming Customer as an additional insured. The minimum coverage amount of \$1,000,000 per occurrence and in the aggregate may be satisfied by a combination of a general liability policy and an excess/umbrella liability policy. Provider, if it has employees, shall also maintain at all times during the term of

this Agreement workers' compensation insurance coverage in accordance with the applicable requirements of federal and state law. Within thirty (30) days after execution of this Agreement and upon Customer's request annually thereafter, Provider shall deliver to Customer certificates of insurance evidencing such coverage, which shall specify that Customer shall be given at least thirty (30) days' prior written notice by the applicable insurer in the event of any material modification, cancellation or termination of coverage, except ten (10) days for non-payment of premium. Such insurance shall be primary coverage without right of contribution from any insurance of Customer.

## 8.2 Customer's Insurance.

Customer shall provide and maintain "all-risk" property insurance covering the buildings on which the System is located during all periods (construction and operation) that Provider is the beneficial owner of the System, and naming Provider or its assignee as the loss payee. The System shall be insured for not less than its Termination Value. All such policies shall be with financially sound and reputable insurance companies that have an (i) A.M. Best rating of A+ and a financial strength category of "XII" or higher, (ii) a Standard & Poor's financial strength rating of A+ or higher, or (iii) are otherwise reasonably satisfactory to the Provider or its assignee; and such policies shall be on terms that are reasonably satisfactory to the Provider or its assignee. Within thirty (30) days after execution of this Agreement and upon Provider's request annually thereafter, Customer shall deliver to Provider certificates of insurance evidencing such coverage, which shall specify that Provider shall be given at least thirty (30) days' prior written notice (10 days' notice for cancellation due to nonpayment of premiums) by the applicable insurer in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Provider. Notwithstanding the foregoing, Customer shall be entitled to self-insure all of its insurance requirements under this Agreement.

## 9. Force Majeure Events.

If either Party is prevented from or delayed in performing any of its obligations under this Agreement by reason of a Force Majeure Event, such Party shall notify the other Party in writing as soon as practicable after the onset of such Force Majeure Event and shall be excused from the performance of its obligations under this Agreement to the extent that such Force Majeure Event interferes with such performance. The Party whose performance under this Agreement is prevented or delayed as the result of a Force Majeure Event shall use reasonable efforts to remedy its inability to perform. If a Party's failure to perform its obligations under this Agreement is due to a Force Majeure Event, then such failure shall not be deemed a Provider Default or a Customer Default, as the case may be. In case a Force Majeure Event continues for at least one (1) year with respect to the System, then either Party may terminate this Agreement by written notice to the other.

10. Term; Customer Options; Termination.

10.1 Term.

The term of this Agreement shall commence on the Effective Date and shall expire on the date that is twenty-five (25) years after the Commercial Operation Date (the “Expiration Date”), unless and until terminated earlier pursuant to Sections 3.1, 3.2, 3.3, 9, 10.2.3, 10.6 or 12 (the date of any such termination, the “Termination Date”, and the “Term” being such period of time commencing on the Effective Date and ending on the earlier of (i) the Termination Date, and (ii) the Expiration Date).

10.2 Customer Options Upon Cessation of Business Operations at Site.

If, prior to the end of the Term, Customer ceases to conduct business operations at the Site, vacates the Site, or is prevented from allowing operation of the System on the Site:

10.2.1 Substitute Site. So long as Customer’s exercise of its rights under this Section 10.2.1 does not impair or reduce any Environmental Financial Incentives that may be available to the Provider, or otherwise have an adverse tax effect on Provider, or in the Provider’s sole discretion and determination, impair Provider’s ability to meet any and all obligations in connection with a Financing Party or a prospective financing transaction, Customer shall have the right to provide Provider with a mutually agreeable substitute Site located within the same utility district, subject to requisite governing agency approvals, to relocate the System, which agreement shall not be unreasonably withheld, or, if not available, in a location with similar solar insolation, utility rates, Environmental Attributes and Environmental Financial Incentives. Any such alternate Site shall have a similar demand charge profile as the Site. If such alternate Site is available and is acceptable to Provider, this Agreement shall be amended to delete the prior Site and add the new Site, but otherwise this Agreement shall remain in full force in accordance with its terms and shall not be deemed otherwise amended. Customer shall pay the reasonable costs arising in connection with the relocation(s) of the System, including removal costs, installation costs, any applicable interconnection fees, costs related to obtaining a site license or lease at the substitute site, other costs of deployment at the substitute Site, and amounts lost that would otherwise be payable under this Agreement due to such relocation(s) to Provider based on delivered Energy averaged over the prior twelve months for the System.

10.2.2 Move and Pay Option. So long as such event does not impair or reduce any Environmental Attributes or Environmental Financial Incentives, Customer may elect to pay or guarantee the payment of the remaining monthly amounts due under this Agreement to Provider, and cause the System to be kept in operation at the Site, in each case through the remainder of the Term.

10.2.3 Termination and Payment of Termination Value. If, beginning in the sixth year following the Commercial Operation Date, a substitute Site cannot be located in accordance with Section 10.2.1 with respect to the System and Customer elects not to avail itself of the provisions of Section 10.2.2 with respect to the System, then Customer shall so notify Provider, Provider shall remove the System (at Customer’s sole cost and expense) and Customer shall pay to Provider the then-applicable Termination Value specified in Column A of Schedule D

as liquidated damages, whereupon this Agreement shall terminate. The Parties agree that actual damages to Provider if this Agreement is terminated as contemplated in this Section 10.2 would be difficult to ascertain, and the applicable Termination Value is a reasonable approximation of the damages suffered by Provider as a result of early termination of this Agreement.

### 10.3 Customer Options Upon Expiration of Term.

10.3.1 Extension of Term. Upon prior written notice to Provider at least one-hundred eighty (180) days prior to the Expiration Date, Customer has the option to renew the term of this Agreement with respect to the System and Solar Services for one (1) additional three (3)-year period at the Renewal Rate.

10.3.2 Purchase of System. If Customer has not elected to renew the term of this Agreement in accordance with Section 10.3.1, Customer may purchase the System by providing Provider written notice of its intent to purchase the System no later than one-hundred and eighty (180) days prior to the Expiration Date, and paying Provider the Fair Market Value thereof no later than the relevant Expiration Date. The “Fair Market Value” of the System shall be the value determined by the mutual agreement of Customer and Provider within ten (10) days after receipt by Provider of Customer’s notice of its election to purchase the System. If Customer and Provider cannot mutually agree to a Fair Market Value, then the Parties shall jointly select a nationally recognized independent appraiser with whom the parties have discussed methods and assumptions, with experience and expertise in the solar photovoltaic industry to value such equipment. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding on the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. To the extent transferable, the remaining period, if any, on all warranties for the System will be transferred from Provider to Customer. If the Parties are unable to agree on the selection of an appraiser, such appraiser shall be jointly selected by the appraiser firm proposed by the Customer and the appraiser firm proposed by the Provider. Upon receipt by Provider of payment of the Fair Market Value, title to the System as well as available Environmental Attributes and Environmental Financial Incentives from the System shall transfer to Customer as-is, where-is.

10.3.3 Return of System. If at the end of a Term, or an Extension of Term pursuant to Section 10.3.1, Customer does not exercise any of the options described in Sections 10.3.1 and 10.3.2, Provider shall remove all of its tangible property comprising the System from the Site by a mutually convenient date but in no case later than one hundred eighty (180) days after the Expiration Date with respect to the System. The cost to remove the System shall be borne by the Provider. The portion of the Site on which the System was installed shall be returned to its original condition, except for ordinary wear and tear, and Provider shall leave the portion of the Site on which the System was installed in neat and clean order.

### 10.4 Customer Purchase Options Prior to Expiration Date.

10.4.1 On the later to occur of the sixth (6th) anniversary of the Commercial Operation Date, provided that no Customer Default shall have occurred and be continuing beyond any applicable period of cure, Customer may elect to purchase all, but not less than all, of the System. If Customer elects to so purchase the System,



the purchase price shall be the higher of the then Fair Market Value of the System (calculated in accordance with the definition of Fair Market Value set forth in Section 10.3.2 for the System, and such determination to be at Customer's sole cost and expense), or the then-current Termination Value specified in Column A of Schedule D. Not less than one-hundred-and-eighty (180) days prior to the exercise of the purchase option for the System, Customer shall provide written notice to Provider of Customer's exercise thereof. Upon the exercise of the foregoing purchase option plus receipt of the Value as determined in Section 10.4 above and all other amounts then owing by Customer to Provider, the Parties will execute all documents necessary to cause title to the System to pass to Customer as-is, where-is; provided, however, that Provider shall remove any encumbrances placed on the System by Provider at Customer's expense.

10.4.2 On the later to occur of the fifteenth (15th) anniversary of the Commercial Operation Date, provided that no Customer Default shall have occurred and be continuing beyond any applicable period of cure, Customer may elect to purchase the System. If Customer elects to so purchase the System, the purchase price shall be the higher of the then Fair Market Value of the System (calculated in accordance with the definition of "Fair Market Value" set forth in Section 10.3.2 for the System, and such determination to be at Customer's sole cost and expense), and the amount specified in Column A of Schedule D. Not less than one-hundred-and-eighty (180) days prior to the exercise of the purchase option for the System, Customer shall provide written notice to Provider of Customer's exercise thereof. Upon the exercise of the foregoing purchase option plus receipt of the Fair Market Value and all other amounts then owing by Customer to Provider, the Parties will execute all documents necessary to cause title to the System to pass to Customer as-is, where-is; provided, however, that Provider shall remove any encumbrances placed on the System by Provider at Customer's expense.

#### 10.5 Payment of Termination Value on Termination Date.

In the event that the Termination Date has occurred for reasons other than pursuant to Sections 3.1.2., 10.6 or 12.1.1, Customer shall be required to pay to Provider the then-applicable Termination Value specified in Column A of Schedule D as liquidated damages. The Parties agree that actual damages to Provider in the event this Agreement terminates prior to the expiration of the Term for causes attributable to Customer would be difficult to ascertain, and the applicable Termination Value is a reasonable approximation of the damages suffered by Provider as a result of early termination of this Agreement.

#### 10.6 Provider Termination.

Provider shall have the right, in Provider's sole and absolute discretion, to terminate this Agreement upon written notice if any of the following occurs:

10.6.1 at any time until construction of the System commences Provider determines in its sole discretion that it is unable to install the System at the Site;

10.6.2 if the occurrence of an unstayed order of a court or administrative agency has the effect of subjecting the sales of the Energy to federal or state regulation of the prices therefor and/or the delivery of the service;

10.6.3 the elimination or alteration of one or more Environmental Financial Incentives or other change in law that results in a material adverse economic impact on Provider; or

10.6.4 if the annual direct beam solar resource availability at the Site is less than or equal to 90% of historical averages as measured by long-term weather data (minimum of five (5) years) collected at the Site and/or other reliable calibrated and appropriate weather station representative of the Site.

In the event of a Provider termination under this Section 10.6, Provider shall remove all of its tangible property comprising the System from the Site by a mutually convenient date but in no case later than one hundred eighty (180) days after the Termination Date. The cost to remove the System shall be borne by the Provider. The portion of the Site on which the System was installed shall be returned to its original condition, except for ordinary wear and tear, and Provider shall leave the portion of the Site on which the System was installed in neat and clean order.

## 11. Defaults.

### 11.1 Customer Default.

The occurrence at any time of any of the following events shall constitute a “Customer Default”:

11.1.1 Failure to Pay. The failure of Customer to pay during the Term any amounts owing to Provider on or before the date on which such amounts are due and payable under the terms of this Agreement and Customer’s failure to cure such failure within fifteen (15) days after Customer receives written notice of each such failure from Provider;

11.1.2 Failure to Maintain Phone/Data Line. Unless due to a Force Majeure Event excused by Section 9, the failure of Customer to maintain and grant Provider access to the phone and other communications lines required to be maintained pursuant to Section 4.1.3 and Customer’s failure to cure such failure within twenty (20) business days after Customer receives written notice of such failure from Provider; provided that in any event if such failure shall continue for at least five (5) days after notice to Customer and shall result in lost revenue to Provider, Provider shall be entitled to reasonably estimate the amount of revenue that would have been obtained and shall invoice Customer therefor;

11.1.3 Failure to Perform Other Obligations. Unless due to (i) a Force Majeure Event excused by Section 9, or (ii) a breach of paragraph 2 of Section 2 (License), the failure of Customer to perform or cause to be performed any other material obligation required to be performed by Customer under this Agreement, or the failure of any representation, covenant, or warranty set forth herein to be true and correct as and when made; provided, however, that if such failure by its nature can be cured, then Customer shall have a period of thirty (30) business

days after receipt of written notice from Provider of such failure to Customer to cure the same and a Customer Default shall not be deemed to exist during such period; provided, further, that if Customer commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for one hundred twenty (120) additional days;

11.1.4 Bankruptcy, Etc. (a) Customer admits in writing its inability to pay its debts generally as they become due; (b) Customer files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof; (c) Customer makes an assignment for the benefit of creditors; (d) Customer consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Customer has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Customer's assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Customer's assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control; or

11.1.5 Failure of Site Access. A breach by Customer of the License occurs and Customer fails to cure such breach within five (5) days after Customer receives written notice of such breach from Provider.

## 11.2 Provider Default.

The occurrence at any time of the following event shall constitute a "Provider Default":

11.2.1 Failure to Perform Obligations. Unless due to a Force Majeure Event excused by Section 9, the failure of Provider to perform or cause to be performed any obligation required to be performed by Provider under this Agreement or the failure of any representation and warranty set forth herein to be true and correct as and when made; provided, however, that if such failure by its nature can be cured, then Provider shall have a period of thirty (30) business days after receipt of written notice from Customer of such failure to Provider to cure the same and a Provider Default shall not be deemed to exist during such period; provided, further, that if Provider commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for one-hundred twenty (120) additional days; or

11.2.2 Bankruptcy, Etc. (a) Provider admits in writing its inability to pay its debts generally as they become due; (b) Provider files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof; (c) Provider makes an assignment for the benefit of creditors; (d) Provider consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Provider has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; (f) a

court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Provider's assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Provider's assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control.

## 12. Remedies Following Default.

### 12.1 Customer's Remedies Upon Occurrence of a Provider Default.

12.1.1 Termination. If a Provider Default has occurred and is continuing, then Customer may terminate this Agreement by providing written notice to Provider thereof, and this Agreement shall terminate and be of no further force or effect as of the date of the notice according to Section 14.1.

12.1.2 Other Rights and Remedies. If any Provider Default described under Section 11.2 has occurred and Customer has terminated this Agreement as a result thereof in accordance with the terms of Section 12.1.1 above, then, subject to Section 12.3, Provider shall pay to Customer an amount not to exceed the then-present value (discounted at the prevailing prime rate of interest as published in *The Wall Street Journal* on the day preceding the date of determination) of (a) the cash flows equal to the product of (i) the positive difference, if any, of the price per kWh for commercially available, utility-provided energy in the applicable market(s) (which shall not include related charges such as delivery, service, distribution, or taxes) minus the kWh Rate of Energy hereunder (as such kWh Rate would have been escalated over time pursuant to the terms hereof) hereof, multiplied by (ii) the number of days remaining in the term of this Agreement had it not been terminated times the expected daily number of kWh of Energy to be delivered under this Agreement, calculated by dividing the Estimated Year 1 Production set forth in Schedule B, adjusted for as-built System, by 365. Provider's payment to Customer of the amounts set forth in this Section 12.1.2 shall not in any way limit the other remedies at law or in equity that Customer may pursue as damages for Provider's breach of this Agreement; provided, however, that such damages pursued by Customer are subject to the limitation provisions of Sections 12.3 and 12.5.

### 12.2 Provider's Remedies Upon Customer Default.

In addition to any other remedies available under this Agreement or at law, if a Customer Default has occurred and is continuing, then Provider may terminate this Agreement by providing written notice to Customer thereof, and this Agreement shall terminate and be of no further force or effect as of the date of the notice according to Section 14.1 and Provider shall have the right to (a) cause Customer to pay (and Customer shall have the obligation to pay to Provider) the applicable Termination Value set forth in Column A of Schedule D and (b) enter onto the Site and remove the System in accordance with the last sentence of Section 10.2.3.

12.3 No Consequential Damages.

Nothing in this Agreement is intended to cause either Party to be, and neither Party shall be, liable to the other Party for any lost business, lost profits or revenues from others or other special or consequential damages, all claims for which are hereby irrevocably waived by Customer and Provider. Notwithstanding the foregoing, none of the payments for the Energy or any other amount specified as payable by Customer to Provider under the terms of this Agreement upon the termination of this Agreement shall be deemed consequential damages

12.4 Effect of Termination of Agreement.

Upon the Termination Date or the Expiration Date, as applicable, any amounts then owing by a Party to the other Party shall become immediately due and payable and the then future obligations of Customer and Provider under this Agreement shall be terminated (other than the indemnity obligations set forth in Section 13). Such termination shall not relieve either Party from obligations accrued prior to the effective date of termination or expiration.

12.5 Limitation of Liability.

THE TOTAL LIABILITY OF A PARTY TO THE OTHER PARTY FOR ALL CLAIMS OR SUITS OF ANY KIND, WHETHER BASED UPON THIS AGREEMENT, TORT (INCLUDING NEGLIGENCE BUT EXCLUDING THIRD PARTY TORT CLAIMS FOR PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM THE PERFORMANCE OF THIS AGREEMENT), WARRANTY, STRICT LIABILITY OR OTHERWISE, FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES OF ANY KIND WHATSOEVER ARISING OUT OF, RESULTING FROM OR RELATED TO THE PERFORMANCE OR BREACH OF THIS AGREEMENT SHALL, UNDER NO CIRCUMSTANCES, EXCEED \$308,072, PROVIDED THAT THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (A) LIABILITY FOR FRAUD OR WILLFUL MISCONDUCT OF ANY PERSON; (B) LIABILITY UNDER THE INDEMNIFICATION PROVISIONS OF THIS AGREEMENT FOR CLAIMS OF THIRD PARTIES FOR PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM THIS AGREEMENT; OR (C) PAYMENT OF THE KWH RATE. THE LIMITATION OF LIABILITY PROVIDED FOR HEREIN SHALL NOT BE USED TO LIMIT OR REDUCE ANY AVAILABLE INSURANCE.

13. Indemnification.

13.1 Indemnification by Provider.

Provider shall fully indemnify, save harmless and defend Customer from and against any and all costs, claims, and expenses incurred by Customer in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (a) the negligence or willful misconduct of Provider or its agents or employees or others under Provider's control in performing this Agreement, and

(b) a Provider Default under this Agreement; provided, however, that nothing in this Section 13.1 is intended to modify the limitation of Provider's liability set forth in Section 12.3 above; provided further that to the extent Customer recovers such damages, losses and expenses under any insurance policy, Customer shall reimburse any payment made by Provider under this indemnity.

13.2 Indemnification by Customer.

Without limiting the provisions of Section 8, Customer shall fully indemnify, save harmless and defend Provider or its assignees and successors from and against any and all costs, claims, and expenses incurred by Provider in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (a) the negligence or willful misconduct of Customer or its agents or employees or others under Customer's control at the Site or (b) a Customer Default hereunder; provided, however, that nothing in this Section 13.2 is intended to modify the limitation of Customer's liability set forth in Section 12.3 above; provided further that to the extent Provider recovers such damages, losses and expenses under any insurance policy, Provider shall reimburse any payment made by Customer under this indemnity.

13.3 Notice of Claims.

Any Party seeking indemnification hereunder (the "Indemnified Party") shall deliver to the other Party (the "Indemnifying Party") a notice describing the facts underlying its indemnification claim and the amount of such claim (each such notice a "Claim Notice"). Such Claim Notice shall be delivered promptly to the Indemnifying Party after the Indemnified Party receives notice that an action at law or a suit in equity has commenced; provided, however, that failure to deliver the Claim Notice as aforesaid shall not relieve the Indemnifying Party of its obligations under this Section 13, except to the extent that such Indemnifying Party has been prejudiced by such failure.

13.4 Defense of Action.

If requested by an Indemnified Party, the Indemnifying Party shall assume on behalf of the Indemnified Party, and conduct with due diligence and in good faith, the defense of such Indemnified Party with counsel reasonably satisfactory to the Indemnified Party; provided, however, that if the Indemnifying Party is a defendant in any such action and the Indemnified Party believes that there may be legal defenses available to it that are inconsistent with those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to participate in its defense of such action at the Indemnifying Party's expense. If any claim, action, proceeding or investigation arises as to which the indemnity provided for in this Section 13 applies, and the Indemnifying Party fails to assume the defense of such claim, action, proceeding or investigation after having been requested to do so by the Indemnified Party, then the Indemnified Party may, at the Indemnifying Party's expense, contest or, with the prior written consent

of the Indemnifying Party, which consent shall not be unreasonably withheld, settle such claim, action, proceeding or investigation. All costs and expenses incurred by the Indemnified Party in connection with any such contest or settlement shall be paid upon demand by the Indemnifying Party.

13.5 Survival of Provisions.

The provisions of this Section 13 shall survive the expiration or termination of this Agreement.

14. Miscellaneous Provisions.

14.1 Notices.

All notices, communications and waivers under this Agreement shall be in writing and shall be (a) delivered in person or (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested or (c) sent by reputable overnight express courier, addressed in each case to the addresses set forth below, or to any other address either of the parties to this Agreement shall designate in a written notice to the other Party:

If to Provider:

Solar Star Co Co 1, LLC  
c/o SunPower Corporation  
1414 Harbour Way South, Suite 1901  
Richmond, CA 94804  
Attention: Julie Williamson, Project Administration  
Phone:510-540-0550  
Fax:510-540-0552

If to Customer:

Contra Costa County Public Works Dept.  
Capital Projects Management Division  
Attn: Energy Manager  
40 Muir Road  
Martinez, CA 94553 Phone: 925-313-2000  
Fax: 925-313-2333

All notices sent pursuant to the terms of this Section 14.1 shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by reputable overnight, express courier, then on the next business day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third (3rd) business day following the day sent or when actually received.

14.2 Authority.

14.2.1 Provider Representations. Provider hereby represents and warrants that:

- (a) It is a Delaware limited liability company duly organized, validly existing and in good standing under the laws of the state of its formation and has all requisite limited liability company power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (b) The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary limited liability company action;
- (c) This Agreement is a legal, valid and binding obligation of Provider enforceable against Provider in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law);
- (d) To the best knowledge of Provider, as of the date of execution hereof, no governmental approval (other than any governmental approvals that have been previously obtained or disclosed in writing to Customer) is required in connection with the due authorization, execution and delivery of this Agreement by Provider or the performance by Provider of its obligations hereunder which Provider has reason to believe that it will be unable to obtain in due course on or before the date required for Provider to perform such obligations; and
- (e) Neither the execution and delivery of this Agreement by Provider nor compliance by Provider with any of the terms and provisions hereof (i) conflicts with, breaches or contravenes the provisions of the articles of formation or operating agreement of Provider or any contractual obligation of Provider or (ii) results in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default under any material contractual obligation of Provider.

14.2.2 Customer Representations. Customer hereby represents and warrants that:



- (a) It is a political subdivision of the State of California, validly existing and in good standing under the laws of the state of its formation and has all requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (b) The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary governmental action;
- (c) This Agreement is a legal, valid and binding obligation of Customer enforceable against Customer in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law);
- (d) No governmental approval (other than any governmental approvals which have been previously obtained or disclosed in writing to Provider) is required in connection with the due authorization, execution and delivery of this Agreement by Customer or the performance by Customer of its obligations hereunder which Customer has reason to believe that it will be unable to obtain in due course;
- (e) Neither the execution and delivery of this Agreement by Customer nor compliance by Customer with any of the terms and provisions of this Agreement results in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default under any contractual obligation of Customer;
- (f) Customer has not entered into any contracts or agreements with any other person regarding the provision of the services at the Site contemplated to be provided by Provider under this Agreement; and
- (g) None of the electricity to be generated by the Provider will be used to generate energy for the purpose of heating a swimming pool.

### 14.3 Assignment

#### 14.3.1 Provider Assignment.

Provider may assign this Agreement upon written notice thereof to Customer, provided that any such assignment shall be to an assignee capable of performing Provider's obligations hereunder. Provider may, without any consent of Customer, sell, transfer, assign or pledge (or grant security interests in) its rights, title and interest in this Agreement, and/or any monies due under this Agreement to a Financing Party, in connection with any financing for the ownership, acquisition, construction, operation or use of the System.

#### 14.3.2 Customer Assignment.

Customer shall not assign all or any part of this Agreement to any entity other than an affiliate of Customer without the prior written consent of the Provider, which shall not be unreasonably withheld. Customer may not assign this Agreement to any Person, including an affiliate, with a credit rating lower than that of Customer without providing matching credit support in the form of cash, letter(s) of credit, or other security reasonably acceptable to Provider. Any assignment by the Customer not permitted under this Section 14.3 shall be void ab initio. In the event that Customer decides to sell or otherwise transfer the Site or a portion thereof upon which the System is located, Customer may (i) with Provider's prior written consent, which will not be unreasonably withheld or delayed, assign this Agreement to the Site purchaser who shall assume all of Customer's obligations under this Agreement and Provider shall release Customer from any further liability associated with this Agreement, or (ii) terminate this Agreement by paying Provider the Termination Value applicable to the date of termination. Upon payment of the Termination Value, the Parties will execute all documents necessary to cause title to the System to pass to Customer as-is, where-is. The Customer does not have the present intention of making any transfer of the Site or that portion of the Site on which the System is located; provided, however, nothing herein shall prohibit Customer from making any transfer of the Site or any portion thereof on which System is located, subject to the provisions set forth above.

#### 14.4 Successors and Assigns.

The rights, powers and remedies of each Party shall inure to the benefit of such party and its successors and permitted assigns.

#### 14.5 Entire Agreement.

This Agreement (including all exhibits and schedules attached hereto) represent the entire agreement between the parties to this Agreement with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous oral and prior written agreements.

14.6 Amendments to Agreement.

This Agreement shall not be amended, modified or supplemented without the written agreement of Provider and Customer at the time of such amendment, modification or supplement.

14.7 Waivers; Approvals.

No waiver of any provision of this Agreement shall be effective unless set forth in writing signed by the Party making such waiver, and any such waiver shall be effective only to the extent it is set forth in such writing. Failure by a Party to insist upon full and prompt performance of any provision of this Agreement, or to take action in the event of any breach of any such provisions or upon the occurrence of any Provider Default or Customer Default, as applicable, shall not constitute a waiver of any rights of such Party, and, subject to the notice requirements of this Agreement, such Party may at any time after such failure exercise all rights and remedies available under this Agreement with respect to such Provider Default or Customer Default. Receipt by a Party of any instrument or document shall not constitute or be deemed to be an approval of such instrument or document. Any approvals required under this Agreement must be in writing, signed by the Party whose approval is being sought.

14.8 Partial Invalidity.

In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of Applicable Law, Provider and Customer shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Agreement (and in the event that Provider and Customer cannot agree then such provisions shall be severed from this Agreement) and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected by such adjustment and shall remain in full force and effect.

14.9 Execution in Counterparts.

This Agreement may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same Agreement.

14.10 Governing Law; Jurisdiction; Forum.

This Agreement shall be governed by and construed in accordance with the internal laws of the State of California. Customer irrevocably agrees that any action, suit or proceeding by or among Provider and Customer may be brought in whichever of the Superior Courts of the State of California, Alameda County, or the Federal Court for the Northern District of California, has subject matter jurisdiction over the dispute and waives any objection that Customer may now or hereafter have regarding the choice of forum whether on personal jurisdiction, venue, forum non conveniens or on any other ground. Customer irrevocably consents to the service

of process outside of the territorial jurisdiction of such courts by mailing copies thereof by registered or certified mail, postage prepaid, to Customer's address set forth herein with the same effect as if Customer were a resident of the State of California and had been lawfully served in such state. Nothing in this Agreement shall affect the right to service of process in any other manner permitted by law.

14.11 Attorneys' Fees.

If any action shall be instituted between Customer and Provider in connection with this Agreement, the Party prevailing in such action shall be entitled to recover from the other Party all of its reasonable costs and expenses incurred in connection with such action by arbitration or other legal proceeding, including reasonable attorneys' fees.

14.12 No Third Party Rights.

This Agreement is only for the benefit of the parties to this Agreement, their successors and permitted assigns (including any lender or lessor of Provider) and Persons expressly benefited by the indemnity provisions of this Agreement. No other Person (including, without limitation, tenants of the Site) shall be entitled to rely on any matter set forth in, or shall have any rights on account of the performance or non-performance by any Party of its obligations under, this Agreement.

14.13 Treatment of Additional Amounts.

The Parties hereto acknowledge and agree that Customer's payment of the Termination Value constitute liquidated damages and not penalties. The Parties further acknowledge that in the case of the payment of the Termination Value: (a) the amount of loss or damages likely to be incurred is incapable or is difficult to precisely estimate, (b) the amounts specified hereunder bear a reasonable proportion and are not plainly or grossly disproportionate to the probable loss likely to be incurred by Customer or Provider as the case may be and (c) the Parties are sophisticated business parties and have been represented by legal counsel and negotiated this Agreement at arm's length.

14.14 No Agency.

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

14.15 No Public Utility.

Nothing contained in this Agreement shall be construed as an intent by Provider to dedicate its property to public use or subject itself to regulation as a “public utility” (as defined in the California Public Utilities Code or any other Applicable Law).

14.16 No Recourse to Affiliates.

This Agreement is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party.

14.17 Cooperation with Financing.

Customer acknowledges that Provider may be financing the Solar Services and the System and Customer agrees that it shall reasonably cooperate with Provider and its financing parties in connection with such financing, including (a) the furnishing of information related to the System and this Agreement, and (b) the giving of a Financing Party acknowledgment in the form attached hereto as Exhibit B (each, a “Consent”); provided, that the foregoing undertaking shall not obligate Customer to materially change any rights or benefits, or materially increase any burdens, liabilities or obligations of Customer, under this Agreement except for providing notices and additional cure periods to a Financing Party with respect to events of default by Provider under this Agreement pursuant to the terms of the Consent.

14.18 Setoff.

Except as otherwise set forth herein, each Party reserves to itself all rights, setoffs, counterclaims and other remedies and/or defenses to which it is or may be entitled, arising from or out of this Agreement.

14.19 Service Contract.

The Parties intend this Agreement to be treated as a service contract within the meaning of Section 7701(e)(3) of the Code.

15. Confidential Information.

15.1 Each Party (the “Receiving Party”) shall not use for any purpose other than performing its obligations under this Agreement, or divulge, disclose, produce, publish, or permit access to, without the prior written consent of the other Party (the “Disclosing Party”), any Confidential Information of the Disclosing Party. As used herein, the term “Confidential Information” means information or materials prepared in connection with this Agreement, designs, drawings, specifications, techniques, models, data, documentation, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans, customer, supplier or personnel names and other information related to customers,

suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets. Confidential Information does not include (a) information known to the Receiving Party prior to obtaining the same from the Disclosing Party; (b) information in the public domain at the time of disclosure by the Receiving Party; or (c) information obtained by the Receiving Party from a third party who did not receive same, directly or indirectly, from the Disclosing Party. The Receiving Party shall use the higher of the standard of care that the Receiving Party uses to preserve its own Confidential Information or a reasonable standard of care to prevent unauthorized use or disclosure of such Confidential Information. Notwithstanding anything herein to the contrary, the Receiving Party has the right to disclose Confidential Information without the prior written consent of the Disclosing Party: (i) as required by any court or other Governmental Authority, or by any stock exchange on which the shares of any Party are listed, (ii) as otherwise required by law, (iii) as advisable or required in connection with any government or regulatory filings, including without limitation, filings with any regulating authorities covering the relevant financial markets, (iv) to its attorneys, accountants, financial advisors or other agents, in each case bound by confidentiality obligations, (v) to banks, investors and other financing sources and their advisors, in each case bound by confidentiality obligations; or (vi) in connection with an actual or prospective merger or acquisition or similar transaction where the party receiving the Confidential Information is bound by confidentiality obligations. If a Receiving Party believes that it will be compelled by the law or a court or other Governmental Authority to disclose Confidential Information of the Disclosing Party, it shall give the Disclosing Party prompt written notice, and in all cases not less than five (5) business days' notice in advance of disclosure, so that the Disclosing Party may determine whether to take steps to oppose such disclosure.

16. Estoppel Certificate.

Either Party hereto, without charge, at any time and from time to time, within twenty (20) days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other relevant person, firm or corporation specified by such requesting party:

- a) If true and correct, that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;
- b) Whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and
- c) Such other information as may be reasonably requested by a Party hereto.

Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the date set forth above.

PROVIDER:

SOLAR STAR CO CO 1, LLC

By: SunPower AssetCo, LLC  
Its member

By: \_\_\_\_\_  
Name: David McIlhenny  
Title: Vice President

CUSTOMER:

CONTRA COSTA COUNTY

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



## EXHIBIT A

### SYSTEM DESIGN AND CONSTRUCTION

This Exhibit A sets forth the design, engineering and construction specifications for the System, as well as assumptions being made by the Provider regarding the existing condition at the Site, including but not limited to the building roof, building structure, ground conditions, electrical system including panels, inverter installation location, and security fencing. Capitalized terms used herein and not otherwise defined have the meaning given in the Agreement to which this exhibit is attached.

#### 1. SYSTEM LOCATION AND DESCRIPTION:

Descriptions of the site and system are located in Schedule A (Description of Site) and Schedule B (Description of System) of the Agreement.

#### 2. PROJECT SCHEDULE:

##### PORTFOLIO MILESTONES

	Tranche	Contract Approval Date	Commercial Operation Date
1000 Ward	1	6-18-2019	6/24/2020
30/40 Muir	1	6-18-2019	5/24/2020
597 Center	1	6-18-2019	6/13/2020
595 Center	2	6-18-2019	10/26/2020
50 Douglas	2	6-18-2019	9/22/2020
30 Douglas	2	6-18-2019	10/30/2020
2530 Arnold	3	6-18-2019	12/14/2020
4545 Delta Fair	3	6-18-2019	12/21/2020
4549 Delta Fair	3	6-18-2019	11/24/2020
1305 MacDonald	3	6-18-2019	12/21/2020

#### 3. SCOPE OF WORK:

##### *System Design & Scope*

##### *Design Documentation*

Provider shall provide comprehensive submittal packages for the 30% and 90% design sets as detailed below. Changes to 30% Customer approved drawings (scope lock) could result a change order. At a minimum, each submittal package shall include the elements required to convey in sufficient detail the following for each phase of the design:

	<b>Submittal Requirement</b>	<b>30% Design Set</b>	<b>90% Design Set</b>
1	Cover Sheet, with Content, Project Details, Directory, etc.	X	X
2	PV System Sizes & Production Estimates.	X	X
3	Overall Site Plan with PV Array Names, Conduit Routes, Tree/Light Removal, etc.	X	X
4	Electrical Site Plan Drawings & General Conduit Routing.	X	X
5	Electrical Single Line Diagrams.	X	X
6	Demolition Plans.		X
7	Structural Drawings.		X
8	Equipment Pad locations.	X	X
9	Mounting Details.		X
10	Signage, Trenching, Installation, and Grounding Details.		X
11	Monitoring System Details.		X
13	Construction Schedule.	Prelim	Detailed
14	Manufacturer's Cut Sheets with Equipment Specifications		X
15	Civil Drawings (if applicable)		X
16	Fire Access Plans		X
17	Carport Lighting Plans		X

Production modeling of the PV system shall accurately simulate energy production for proposed system layouts, sizes, and orientation. Provider shall be responsible for updating the production models each time significant changes are made to the proposed system designs that will impact production.

### ***Solar Electrical Equipment and Conductors***

Conductors will be aluminum or copper according to Electrical Engineer of Record's determination. AC feeder length from panel boards to equipment pad location and from equipment pad location to electrical tie-in is identified on the array layout drawings. AC feeder lengths from electrical equipment pad location to assumed point of interconnection, and length assumptions with equipment amperage ratings are shown on the single line drawing.

Transformers are 480V:12kV, non-Dry-type by manufacturer of Provider's choosing. Secondary containment is not included in the scope of the project.

### ***Battery Energy Storage System Requirements***

For sites with storage to be installed:

- 13.5' by 11' minimum required area per storage unit. Area required includes storage unit, concrete pad, and clearance zone in front of units.
- Storage unit must be located in an area free of combustible materials (nearby foliage and trees would need to be removed).
- Storage unit must be separated from public foot traffic with a fence and must be separated from vehicle traffic with bollards.
- Crane rental required to land up to 24,500 lb units. Location of units must accommodate both crane and semi-trailer truck access.
- PVS5 DAS, Auxiliary Box, Energy Storage System, and all Accuvim meters (Site meter, PV output meter, and Storage meter) must all be located such that hardlined communication lines can connect these devices to the same Local Area Network. CAT5e/6 cable is preferred means of connection between all devices, which has a 330' distance limit. Runs longer than 330' will require additional equipment to accommodate.

### ***Utility Interconnection***

Coordination of shutdown may be required with Customer and local utility. Temporary power generators are excluded. Interconnection is scheduled for a minimum of 4 hours and is assumed to be performed during off-hours with prior written approval from Customer. Additional shutdowns will be required in order to assess physical condition of Customer's switchgear.

The utility will have 24/7 access to existing electric utility meters and the utility lockable disconnect locations for all electrical interconnections related to this project.

### ***Utility Requirements***

A cost of \$172,012.58 is included for utility required electrical upgrades for the System at 30 Douglas Dr., Martinez, CA, as reflected in Pacific Gas & Electric's Supplemental Review, Notification # 114209530; additional utility-required electrical equipment upgrades or replacements are not included.

Any costs and / or schedule delays associated with unforeseen utility interconnection requirements, including but not limited to utility-owned equipment upgrades or additions, relay protection equipment external to the inverters, system impact studies, or telemetry requirements and interconnection studies are not included in this proposal.

### ***Facility Equipment***

Utility required circuit breaker coordination studies are not assumed for this project.

A short-circuit coordination study is not included for this project.

Solar system includes all standard interconnection related equipment on the Customer side of the meter, including panel circuit breakers, utility and/or visible utility lockable disconnect switches, solar metering, conduit, and wiring. Additional Customer-side protection required by the utilities above that provided by the certified inverters is not included.

If harmonic data of the site is not available, Provider shall assume that the Harmonic data are within the acceptable limits of the Institute for Electrical and Electronics Engineers (IEEE) Standard 519.

***Soils and Structural Foundations***

Foundation assumptions are as follows for system options:

- Drilled cast-in-place, 30” round caisson, 12’ Deep, approximately 2.5’ above grade, depending on existing topography.
- Requirements for dewatering, sub grade rock removal, or other unforeseen conditions are not included.

***Canopy Structure Design***

Carport Canopies are at 10 degree tilt with 11 ft clear height.

***Roof Conditions***

Provider assumes no upgrading of the building structures or canopies will be required to support the added live and dead loads from the photovoltaic installation and rooftop equipment, or to resist added lateral or seismic loads. Modifications to the roof system and design and construction of supports, upgrades to the building structure or platforms are not included.

Anchor and ballast counts are based on the wind load gradient method developed by Cermak Peterka Petersen, Inc, (CPP) and SunPower, based on the CPP wind tunnel testing results presented in CPP’s report “CPP7979\_SunPowerEWSsystem\_REP\_SOL\_R08” dated May 17th, 2018.

Increased anchor and ballast counts resulting from other design methods will be the responsibility of the client.

<b>Site Name</b>	<b>Anchor Count</b>
30 Muir	71
595 center	27
50 Douglas	90
1000 Ward	170
597 Center	33

Provider is not responsible for normal wear and tear associated with the installation of the solar system. Provider reserves the right to inspect the roof to verify its condition. In addition, Provider may offer recommendations to the Customer on modifications to the roof system to improve its serviceability. Customer is responsible for any and all modifications to the roof system. Modifications of roof systems fall into four categories:

- Modifications to improve roof condition / serviceability / useful life.
- Modifications required by roofing manufacturer prior to installation of PV system on their roof system. (e.g. slip sheets, strapping, etc.)
- Modifications required by Provider to make the roof a suitable substrate for the installation of PV. (e.g. air seals, batten bars, etc.)
- 3<sup>rd</sup> party engineering and insurance company requirements.
- Proposal assumes Customer-provided information accurately represents the existing site and roof conditions. This includes but is not limited to as-built drawings, roof reports, structural drawings, roof maintenance history, and roof warranty information. Failure to provide as-built drawings and structural drawings will cause schedule delay and added expense for acquisition of documentation through local authority having jurisdiction (“AHJ”). Provider is not responsible for additional costs or schedule delays.

***Drainage***

Special drainage requirements and/or drainage design and interconnection to Customer’s existing storm drain system or any other storm drain discharge system are not included.

Carport designs do not include structural roof deck for storm water collection or protection.

***Permits***

<b>Permit</b>	<b>Provider Permit</b>	<b>Customer Permit</b>	<b>Cost Allocation</b>	<b>Allotted Time following Application</b>
Building	X			
Fire	X			
Electrical	X			
Conditional Use Permit		NA		
Environmental Control		NA		
Storm Water		NA		
Soil Erosion and Sediment Control		NA		
Environmental Impact Report (CEQA)		NA		
Army Corps of Engineers		NA		
Wetlands		NA		
Water Quality		NA		
Archeological		NA		

Endangered Species		NA		
Water Rights		NA		
Mineral Rights		NA		
Redevelopment Agency		NA		
FAA Approvals		NA		

***Permit Allowance Schedule***

<b>Site</b>	<b>Allowance for Permit</b>
1000 Ward St	\$3,000
30 Douglas Dr	\$10,000
50 Douglas Dr	\$5,000
30/40 Muir Dr	\$5,000
597 Center Ave	\$2,500
595 Center Ave	\$7,000
2530 Arnold Dr	\$6,000
4545 Delta Fair Blvd	\$5,000
4549 Delta Fair Blvd	\$2,500
1305 Macdonald	\$3,000

All other permits/approvals are excluded.

Provider includes durations of 50 days for procuring permit and regulatory approvals (per project ). Provider will not be responsible for construction delays caused by permit and approval requirements from local jurisdictions or regulatory review bodies. Any delays in procuring permits will result in a day-for-day construction schedule extension.

***Shading***

The design is based on existing visual conditions on site. Removal of trees or other obstructions to install the solar arrays and system components is included as reflected in the Tier 1 array layouts. Trees and/or other obstructions identified for removal or trimming by Customer must be removed or trimmed prior to substantial completion or performance expectations/guarantees will require adjustment which will be handled as a change to the contract. At Substantial Completion an as-built shade study and performance simulation will be completed to ensure accuracy of initial shading assumptions.

### ***Painting***

Galvanization of canopy columns and primary beams only is included. All other metallic materials are either factory-finished or non-corrosive.

Painting of wall-mounted conduits is not included.

### ***Landscaping***

Site landscaping (e.g. plant restoration or long term weed abatement) is not included.

Irrigation repair and reconfiguration caused by foundation or underground construction is not included.

### ***Fencing***

A 6-0' galvanized, 9 gauge, 2" mesh fencing and chain link fence-with gate around perimeter electrical equipment pad locations is included. Special provisions for privacy slats, special hardware, lock sets, small fabric, etc. are not included. 4" bollards are included only in areas subject to vehicle impact. Additional bollards required by utility or other entities are excluded.

### ***Labor***

#### ***Project Labor Agreement***

Provider shall cause its project contractor to enter into Customer's project labor agreement among Customer, the project contractor, and all subcontractors thereof working on the project (the "PLA").

#### ***Overtime and special shift requirements***

Overtime and special shift requirements are not included, based on schedule submitted with this proposal, except for the interconnection work if shutdown is required. Project hours are based on Monday through Friday 7am – 5pm.

#### ***Prevailing Wages***

Provider shall pay prevailing wages for the project per the PLA and industrial relations requirements of project location.

#### ***Diversity Requirements***

Provider shall comply with Contra Costa County's Construction Outreach Program.

### ***Indirect Construction Costs***

#### ***Taxes and fees***

Taxes or fees, other than permit fees and sales tax, are not included.

### ***Bonds***

Prior to the Effective Date of the Agreement to which this Exhibit A is attached, Provider shall deliver to Customer for approval good and sufficient bonds with sureties, in amounts specified in Section 12.5 (Limitation of Liability) of the Agreement guaranteeing its faithful performance of the Agreement and its payment for all labor and materials thereunder.

### ***Site & Construction Conditions***

#### ***Access***

Design assumes each project site will be constructed in a single phase, set up of construction fencing at beginning of mobilization and removed when construction is completed. Extra time and labor for moving fences to “phase” construction in efforts to minimize parking impacts will have impacts in cost and schedule and will be calculated as a change order.

Customer will provide Site access to Provider to perform all work pursuant to the License granted in the Agreement. Provider will perform all work during regular business hours according to the PLA. Extra time or personnel constraints due to site security beyond daily signing in by workers on a sign in sheet i.e. badging, background checks, tool inventory checks, etc.—is not included.

Provider will be provided a sufficient area for staging materials and locating temporary facilities such as cranes, fork lifts, scaffolding, staintowers, construction trailers, portable toilets and dumpsters.

Existing roads will be capable of handling all required construction equipment such as drilling rigs, concrete trucks, delivery trucks, cranes, and all other equipment necessary to complete the work. Provider will not be responsible for any damage to existing roads, parking lots or playgrounds resulting from normal construction operations and activities.

#### ***Use of Facilities***

On-site water and power will be available for construction with no restrictions and at no charge to Provider. If a Customer initiated power shut down has duration over 4 hours and effects normal construction operations, Provider can rent and install a temporary generator and submit associated costs to Customer for reimbursement. Water quality shall be sufficient for use in dust control, as necessary, and be suitable for Provider’s standard concrete mix design.

#### ***Special handling of site materials***

Testing for removal and disposal of any existing hazardous waste materials, contaminated soils, or any other unforeseen site conditions that require special handling are not included.

#### ***Site utilities and hazards***



Changes resulting from utilities, right of ways, easements, and/or hazards—underground or above ground—or any undocumented building upgrades are not included.

Documented utilities and building upgrades are considered as part of this proposal if as-builts are provided to Provider prior to contract execution in order to confirm locations of these possible hazards. Customers shall supply Provider with a current Title Report with plotted easements, encumbrances, and rights-of-way at all project site locations.

### ***Security and Lighting***

Proposal assumes all parking lot light standards in direct conflict with installation of photovoltaic parking canopies will be removed by Provider. Proposal also assumes that the existing lighting circuits, for those removed parking lot light standards, can be re-used for photovoltaic parking canopies lighting system and that those existing circuits have ample current carrying capacity to provide required lighting at parking canopies, per jurisdictional code requirements. PV canopies located in areas where no existing lights are present will not include lighting unless the Customer requests this for an additional cost.

Temporary lighting during construction is excluded.

New lighting circuit installation is excluded from this proposal as well as any required timing circuit reconfiguration, lighting controllers, relays, or new panel boards. Lighting design and/or installation beyond the footprint of the photovoltaic parking canopies is not included in this proposal. Replacement of existing light standards is not included. Proposal includes LED fixtures for lighting under structures.

Additional security systems or infrastructure are not included in this proposal

### ***Special Conditions***

Proposal assumes modifications and/or reconfiguration of the existing parking lots will not be required to accommodate installation of Provider's photovoltaic parking canopy.

Assumes existing islands in parking lot to remain at area of new carport structure. Proposal excludes any re-striping of the parking lot/hard-court areas, unless specifically related to the construction of the photovoltaic parking canopies, or specifically described in the RFP.

While special care will be taken to locate existing underground utilities (underground survey) and locate carport structures with minimum conflicts, relocation of existing underground utilities due to carport foundations is not included.

Proposal excludes requirements for accessibility upgrades and accessibility design around the photovoltaic parking canopy structures and assumes that current parking lot layout has been reviewed and approved by AHJ and built and closed at the AHJ. If the architect of record recommends addition of new accessible parking stalls under the solar canopies, grade change to meet code, changed path of travel and/or new canopies over existing accessible stalls, design and construction costs will be addressed via Change Order.

Proposal excludes design or installation of any required additional fire hydrants or fire protection apparatuses as required by local first responders or Fire, Life/Safety professionals responsible for review and approval of the design for this project.

Architectural enhancements to the photovoltaic parking canopy structures or ground and roof arrays and mounting systems are not included.

At the detention center located at 1000 Ward in Martinez, the project estimate is based on utilizing existing conduit and equipment from the previous pv installation. The ability utilize existing conduit will be verified during the design phase.

### ***Testing and Inspections***

Provider assumes all Special Inspections/Testing shall be paid for and contracted by the Customer.

### ***Weather conditions***

Provider assumes standard weather patterns and site conditions for planning the project schedule. Instances of excessive climate, weather (greater than the most adverse conditions in the last 3 years) or natural disasters may result in delays and/or unplanned costs (i.e. additional labor, shipping, storage, and logistics costs) which will be the responsibility of the Customer.

### ***Commissioning, Monitoring, Operations & Maintenance***

#### ***Commissioning***

Proposal assumes commissioning requirements for this project is only for the Photovoltaic and energy storage systems. Proposal does not include other building system commissioning costs not related to our work (i.e. HVAC, Plumbing, Fire Alarm, etc.).

**EXHIBIT B**  
**FORM OF FINANCING PARTY ACKNOWLEDGMENT**

*[This Form of Consent contemplates a Sale-Leaseback of the System between the Provider and Provider's Lender and Provider's eventual lender may request changes]*

This CONSENT AND AGREEMENT (this "Consent") dated as of [●], 201 is entered into among (i) Contra Costa County, a political subdivision of the State of California (the "Customer"), (ii) Solar Star Co Co 1, LLC, a limited liability company duly organized and existing under the laws of the State of Delaware (the "Provider"), and (iii) [●], a [●] duly organized and existing under the laws of the State of [●] (together, with its successors in such capacity, the "System Lessor").

WHEREAS, the Provider intends to develop, install, own, operate and maintain a [\_\_\_\_\_] MW [**ground-mounted/rooftop**] photovoltaic solar electric generating facility to be located in [\_\_\_\_\_] (the "Project");

WHEREAS, the Provider and the Customer entered into that certain Power Purchase & Storage Services Agreement, dated as of [●], 2019 (as amended, amended and restated, modified or supplemented from time to time, the "Assigned Agreement");<sup>1</sup>

WHEREAS, the Project will be sold by the Provider to the System Lessor pursuant to that certain Participation Agreement (as amended, the "Participation Agreement") dated as of the date hereof, among the Provider, the System Lessor, [●], not in its individual capacity but as owner trustee, and [●] ("Owner Participant");

WHEREAS, the System Lessor will lease the Project back to the Provider pursuant to that certain Lease Agreement, a related Project Schedule and a Certificate of Acceptance (as amended, the "Lease Agreement") dated as of the date hereof, between the System Lessor and the Provider;

WHEREAS, the Provider will grant the System Lessor a first priority security interest in and to all of the Provider's assets, including the Assigned Agreement, pursuant to a security agreement in form and substance acceptable to the System Lessor (as amended, amended and restated, modified or supplemented from time to time, the "Security Agreement"); and

WHEREAS, it is a condition precedent to the Owner Participant's obligation to make its investment in the System Lessor and for the System Lessor to acquire the Project under the Participation Agreement and lease the Project to the Provider under the Lease Agreement that the Customer execute and deliver this Consent.

NOW, THEREFORE, as an inducement to the Owner Participant to make its investment in the System Lessor and for the System Lessor to acquire the Project under the Participation Agreement and lease the Project to the Provider under the Lease Agreement, and in consideration

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<sup>1</sup> NTD: Can be expanded to include any additional agreements to which the Customer is a party.

of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

**1. CONSENT TO ASSIGNMENT, ETC.**

(a) Consent to Assignment. The Customer (i) acknowledges that the Provider and the System Lessor have entered into the Participation Agreement and the Owner Participant's obligation to make its investment in the System Lessor and for the System Lessor to acquire the Project under the Participation Agreement and lease the Project to the Provider under the Lease Agreement will be made in reliance upon the execution and delivery by the Customer of the Assigned Agreement and this Consent, (ii) consents in all respects to the pledge and assignment to the System Lessor of all of the Provider's right, title and interest in, to and under the Assigned Agreement pursuant to the Security Agreement, and (iii) acknowledges the right, but not the obligation, of the System Lessor or the System Lessor's designee, in the exercise of the System Lessor's rights and remedies under the Lease Agreement, the Security Agreement, and related documents to make all demands, give all notices, take all actions and exercise all rights of the Provider in accordance with the Assigned Agreement, and agrees that in such event the Customer shall continue to perform its obligations under the Assigned Agreement; provided that in the event, with respect to the Assigned Agreement, there exists a conflict between any notice given or action taken by the System Lessor and any notice given or action taken by the Provider, such conflict shall be resolved in favor of the notice given or the action taken by the System Lessor.

(b) Substitute Owner. The Customer agrees that, if the System Lessor notifies the Customer that an event of default under the Lease Agreement has occurred and is continuing and that the System Lessor has exercised its rights (i) to have itself or its designee substituted for the Provider under the Assigned Agreement, (ii) to acquire or have its designee or assignee acquire the Provider, or (iii) to sell, assign, transfer or otherwise dispose of the Assigned Agreement to a third party, including in a judicial or non-judicial foreclosure sale, then the System Lessor, the System Lessor's designee or such third party (each, a "Substitute Owner") shall be substituted for the Provider under the Assigned Agreement and, in such event, the Customer will (x) recognize the Substitute Owner as its counterparty to the Assigned Agreement, (y) take any actions and execute any documents, agreements or instruments reasonably necessary to effect such substitution, and (z) continue to perform its obligations under the Assigned Agreement in favor of the Substitute Owner pursuant to the terms hereof and thereof.

(c) Right to Cure.

(i) Notwithstanding anything to the contrary contained in the Assigned Agreement, the Customer shall not exercise any right it may have under the Assigned Agreement, at law or in equity, to cancel, suspend or terminate the Assigned Agreement or any of its obligations under the Assigned Agreement, as the result of any default or other action or omission of the Provider in the performance of any of its obligations under the Assigned Agreement, or upon the occurrence or non-occurrence of any event or condition under the Assigned Agreement that would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable the Customer to terminate or suspend its obligations or exercise any other right or remedy under the Assigned Agreement or under applicable law (hereinafter an "Assigned Agreement Default"), until it first gives prompt written notice of such Assigned Agreement

Default to the System Lessor and the Owner Participant and affords the System Lessor and the System Lessor's respective successor, assignee and/or designee a period of at least ninety (90) days (or, if such default is a payment default, forty-five (45) days) to cure such default, commencing from the later to occur of (x) the System Lessor's and the Owner Participant's receipt of such notice, and (y) the expiration of any notice periods or cure periods provided for in the Assigned Agreement; provided, however, that if (1) an event of default under the Lease Agreement has occurred and is continuing, the System Lessor has exercised its rights to foreclose on the Project as a result thereof and possession of the Project is necessary to cure any such non-monetary default, then, so long as the System Lessor or the System Lessor's respective successor, assignee and/or designee is diligently pursuing such foreclosure proceedings, the time periods specified in this Section 1(c) for curing an Assigned Agreement Default shall be extended for the time taken to complete foreclosure proceedings, and (2) any such party is prohibited from curing any such Assigned Agreement Default by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding involving the Provider, then the time periods specified in this Section 1(c) for curing an Assigned Agreement Default shall be extended for the period of such prohibition.

(ii) No such cancellation, suspension or termination of the Assigned Agreement by the Customer shall be binding upon the System Lessor without the notice and extended cure period specified in this Section 1(c). Any dispute that may arise under the Assigned Agreement notwithstanding, the Customer shall continue performance under the Assigned Agreement and resolve any dispute without discontinuing such performance until the lapse of the notice and extended cure period specified in this Section 1(c).

(d) No Termination, Assignment or Material Amendments. The Customer shall not enter into any consensual cancellation or termination of the Assigned Agreement (except with respect to termination in the event of a default by the Provider, subject to the limitations and extended cure periods provided for in Section 1(c)), or assign, novate or otherwise transfer any of its right, title or interest thereunder or consent to any such assignment or transfer by the Provider without, in each such case, the written consent of the System Lessor. The Customer shall not enter into or agree to any amendment, supplement, assignment or other modification to, or benefit from any waiver under, the Assigned Agreement without the prior written consent of the System Lessor.

(e) Replacement Agreement. In the event that the Assigned Agreement is rejected or otherwise terminated as a result of any bankruptcy or insolvency proceeding affecting the Provider, the Customer shall, at the option of the System Lessor or the System Lessor's respective successor, assignee and/or designee, enter into a new agreement with the System Lessor or any Substitute Owner (or its transferee or other nominee that owns or leases the Project) having terms substantially the same as the terms of the Assigned Agreement. Thereafter, references in this Consent to the "Assigned Agreement" shall be deemed to refer to such new agreement.

(f) No Liability. The Customer acknowledges and agrees that none of the System Lessor, or the System Lessor's respective successor, assignee and/or designee or the Owner Participant shall have any liability or obligation under the Assigned Agreement as a result of this Consent, the Security Agreement, the Lease Agreement or otherwise, nor shall the System Lessor or the System Lessor's respective successor, assignee and/or designee be obligated or required to (i) perform any of the Provider's obligations under the Assigned Agreement, except, in the case of

the System Lessor or the System Lessor's respective successor, assignee and/or designee, during any period in which the System Lessor or the System Lessor's respective successor, assignee and/or designee is a Substitute Owner pursuant to Section 1(b), in which case the System Lessor or other Substitute Owner shall not be liable for acts or omissions of the Provider and the obligations of such Substitute Owner shall otherwise be no more than those of the Provider under the Assigned Agreement, or (ii) take any action to collect or enforce any claim for payment assigned under the Security Agreement or any related document.

(g) Delivery of Notices. The Customer shall deliver to the System Lessor and the Owner Participant, concurrently with the delivery thereof to the Provider, a copy of each notice, request or demand given by the Customer pursuant to the Assigned Agreement.

(h) Acknowledgements. The Customer agrees to execute such acknowledgements or other similar instruments as the System Lessor may reasonably request in connection with the transactions contemplated by this Consent.

## **2. PAYMENTS UNDER THE ASSIGNED AGREEMENT**

(a) Payments. The Customer will pay all amounts payable by it under the Assigned Agreement, if any, in lawful money of the United States of America, in immediately available funds and in the manner required by, and subject to the terms and conditions of, the Assigned Agreement, directly into the account specified on Exhibit A hereto, or to such other person or account as may be specified from time to time by the System Lessor to the Customer in writing.

(b) No Offset, etc. All payments required to be made by the Customer under the Assigned Agreement shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever.

## **3. REPRESENTATIONS AND WARRANTIES OF THE CUSTOMER**

The Customer makes the following representations and warranties to the System Lessor, the Provider and the Owner Participant as of the date hereof, which shall survive the execution and delivery of this Consent and the Assigned Agreement and the consummation of the transactions contemplated hereby and thereby:

(a) Organization; Power and Authority. The Customer is a political subdivision of the State of California, and is duly qualified, authorized to do business and in good standing in all jurisdictions where it is required to be so qualified and authorized to do business, and has all requisite power and authority to enter into and to perform its obligations under this Consent and the Assigned Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

(b) Authorization. The execution, delivery and performance by the Customer of this Consent and the Assigned Agreement have been duly authorized by all necessary action on the part of the Customer and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of (i) the Customer, or (ii) any other person or entity, except approvals or consents which have previously been obtained.

(c) Execution and Delivery; Binding Agreements. Each of this Consent and the Assigned Agreement is in full force and effect, has been duly executed and delivered on behalf of the Customer and constitutes the legal, valid and binding obligation of the Customer, enforceable against the Customer in accordance with its terms except as the enforceability hereof or thereof may be limited by (i) bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights generally, and (ii) general equitable principles (whether considered in a proceeding in equity or at law).

(d) Litigation. There is no legislation, litigation, action, suit, proceeding or investigation pending or (to the best of the Customer's knowledge after due inquiry) threatened against the Customer before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate, (i) could adversely affect the performance by the Customer of its obligations under this Consent or the Assigned Agreement, or that could modify or otherwise adversely affect the Approvals (as defined in Section 3(f)), (ii) questions the validity, binding effect or enforceability of this Consent or the Assigned Agreement, any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby, or (iii) could have a material adverse effect upon (x) the value, validity, perfection or enforceability of the liens granted to the System Lessor under the Security Agreement and other security documents, or (y) the ability of the System Lessor to enforce any of its rights and remedies under the Assigned Agreement or this Consent.

(e) No Conflict. The execution and delivery of this Consent and the Assigned Agreement and the performance by the Customer under this Consent and the Assigned Agreement will not violate, result in a breach of, default under or conflict with (i) any law, rule, regulation, order, permit or decree applicable to the Customer, (ii) its organizational documents, or (iii) the terms of any other agreement binding on the Customer.

(f) Government Consent. No consent, order, authorization, waiver, approval or any other action, or registration, declaration or filing with, any person, board or body, public or private (collectively, the "Approvals"), is required to be obtained by the Customer in connection with the execution, delivery or performance of this Consent, the Assigned Agreement or the consummation of the transactions contemplated hereunder and thereunder, except any Approvals which have previously been obtained.

(g) No Default or Amendment. Neither the Customer nor, to the Customer's knowledge after due inquiry, the Provider or any other party to the Assigned Agreement is in default of any of its obligations thereunder (or has claimed force majeure, emergency, or any other excuse for performance thereunder which is still ongoing as of the date hereof). The Customer has no existing counterclaims, offsets, defenses, or claims for change orders against the Provider under the Assigned Agreement. To the Customer's knowledge, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either the Customer or the Provider to terminate or suspend its obligations (or the performance of such obligations) under the Assigned Agreement. The Assigned Agreement has not been amended, modified or supplemented in any manner other than as indicated above.

(h) No Previous Assignments. The Customer has no notice of, and has not consented to, any previous assignment of all or any part of its right, title or interest in, to or under the Assigned Agreement.

(i) **[Purchase Option.** The Customer has not taken any official action requiring or authorizing the exercise of any purchase option available to it under the Assigned Agreement, has not decided whether or not it will exercise any such purchase option, and is under no legal or economic compulsion to exercise any such purchase option; provided, however, nothing herein shall prohibit the Customer from exercising any purchase option under the Assigned Agreement when it becomes exercisable in accordance with its term and such exercise shall not be deemed to be a breach of this representation and warranty.]

(j) Liens; Mortgages. The Customer has no knowledge of any existing lease, mortgage, security interest or other interest in or lien upon the **[Premises]**, which could attach to the Project as an interest adverse to the System Lessor's interest therein.

Representations and Warranties. All representations, warranties and other statements made by the Customer in the Assigned Agreement were true and correct in all material respects as of the date when made and, except for those that by their terms speak as of a specific date, are true and correct in all material respects as of the date hereof.

#### **4. ADDITIONAL PROVISIONS<sup>2</sup>**

(a) **[Commercial Operation Date.** The Commercial Operation Date is \_\_\_\_\_.

(b) **Use of Electricity.** None of the electricity to be sold under the Assigned Agreement will be used to generate energy for the purpose of heating a swimming pool.

(c) **Project.** The Customer has approved the Project as installed at the **[Premises]**.

(d) **Access Rights.** The System Lessor and the System Lessor's respective successors, assignees and/or designees shall have the same rights as the Provider to access the Project in order to install, operate, maintain and remove the Project as the right accorded to the System Lessor under the Lease Agreement and the Security Agreement.

(e) **Notice of Ownership.** The Customer will use commercially reasonable efforts to place its successors, assigns and lien holders on notice of the ownership of the Project by the Provider or the System Lessor, the existence of the security interest, and the fact that the Project is not part of the **[Premises]** or a fixture thereof, as necessary and appropriate to avoid confusion or adverse claims.

(f) **Amendments.** The Customer acknowledges that, under the Provider's financing arrangements, the Provider is not permitted to agree to an amendment or assignment of the Assigned Agreement without prior written consent of the System Lessor.]

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<sup>2</sup> NTD: Additional provisions to be added to address specific matters contained in the PPA.



**5. MISCELLANEOUS**

(a) Applicable Law; [Submission to Jurisdiction]. THIS CONSENT, AND ANY INSTRUMENT OR AGREEMENT REQUIRED HEREUNDER (TO THE EXTENT NOT EXPRESSLY PROVIDED FOR THEREIN), SHALL BE GOVERNED BY, AND CONSTRUED UNDER, THE LAWS OF THE STATE OF CALIFORNIA, APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE AND WITHOUT REFERENCE TO CONFLICTS OF LAWS.

(b) [Reserved.]

(c) Notices. All notices and other communications hereunder (i) shall be in writing, (ii) shall be effective upon actual receipt thereof by the party or parties to whom such notice is addressed, except that any communication or notice so transmitted by telecopy or electronic mail shall be deemed to have been validly and effectively given on the day (if a business day and, if not, on the next following business day) on which it is transmitted if transmitted during normal business hours of the recipient, and if transmitted after that time, on the next following business day, in each case as evidenced by transmittal confirmation received by the transmitter, (iii) shall be delivered by hand or overnight courier service or mailed by certified or registered mail, sent by facsimile or via electronic mail, and (iv) shall be directed as follows:

If to the Customer:	[_____] [_____] [_____] Attention: [_____] Telephone: [_____] Facsimile: [_____] Email: [_____]
If to the Provider:	[●]
If to the System Lessor:	[●]

The above parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent.

(d) Amendment, Waiver. Neither this Consent nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the Customer, the Provider and the System Lessor.

(e) Third Party Beneficiary. The Owner Participant shall be an express third-party beneficiary of this Consent. The Owner Participant shall be entitled to enforce the rights of the System Lessor hereunder.

(f) No Waiver; Remedies Cumulative. The waiver of any right, breach or default under this Consent by any party must be made specifically and in writing. No failure or delay on the part of the System Lessor in exercising any right, power or privilege hereunder and no course of dealing between the Customer and the System Lessor shall operate as a waiver thereof; nor shall any single

or partial exercise of any right, power or privilege hereunder preclude any other exercise, or the further exercise, of any other right, power or privilege hereunder. No notice to or demand upon any party will entitle such party to any further, subsequent or other notice or demand in similar or any other circumstances. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies that the System Lessor would otherwise have.

(g) Counterparts. This Consent may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered, including by e-mail or other electronic transmission, shall be deemed an original, but all of which shall together constitute one and the same instrument.

(h) Headings Descriptive. The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

(i) Severability. In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(j) Successors and Assigns. This Consent shall be binding upon the parties hereto and their permitted successors and assigns and shall inure to the benefit of the parties, their designees and their respective permitted successors and assigns; provided, however, that no party or its respective successor or assign shall assign any of its interest in this Consent except in connection with an assignment of its interests in the Assigned Agreement and then only to the same person(s) or entity(ies) to which its interest in the Assigned Agreement is so assigned.

(k) Survival. All agreements, statements, representations and warranties made by the Customer herein shall be considered to have been relied upon by the System Lessor and the Owner Participant and shall survive the execution and delivery of this Consent.

(l) Conflicts. In the event of a conflict between any provision of this Consent and any provision of the Assigned Agreement, the provisions of this Consent shall prevail.

(m) Further Assurances. Each party hereto hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

[SIGNATURE PAGES FOLLOW]

**IN WITNESS WHEREOF**, the parties hereto have caused this Consent to be executed by their respective officers as of the date first above written.

[\_\_\_\_\_]
as the Customer

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

[\_\_\_\_\_]
as the Provider

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

[●],
as the System Lessor

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

**Payment Instructions**

Accounts Bank	
ABA Number	[_____] <sup>3</sup>
Account Number	[_____]
Account Name	[_____]
Reference	[_____]

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<sup>3</sup> Account information to be confirmed and included.

## EXHIBIT C

### SYSTEM PERFORMANCE GUARANTEE (the “Guarantee”)

#### ARTICLE I. ADDITIONAL DEFINED TERMS

**Actual Generation** means, for each Guarantee Year during the Term and with respect to the System, the System’s alternating current or “AC” electricity production in kilowatt-hours (“kWh”) as measured under Section 3.02.

**Annual Deficit** has the meaning set forth in Section 3.01.

**Annual System Performance Report** means the report that summarizes annual system performance in kWh and includes calculations for Weather Adjustment and True-up Period calculations.

**Avoided Energy Price per kWh** means the amount that the Customer will be paid by Provider for each Kilowatt-hour as set out in Appendix B (Avoided Energy Price) of this Guarantee.

**Data Acquisition System** or **DAS** means Provider’s system that displays historical meteorological and production data over an Internet connection and consists of hardware located on-Site and software housed on Provider’s DAS server. The DAS measures and logs, at a minimum, the following parameters on a 15-minute average basis at the Site: actual AC electricity production of the System (in kWh) and solar irradiance (in W/m<sup>2</sup>).

**Expected Energy** means, for the System in a specified Guarantee Year, the kilowatt hours for the System set forth on Appendix A (Expected Energy) of this Guarantee.

**Excused Performance Event** means:

- Force Majeure Event;
- Impingements on solar access by structures or activities on neighboring sites or by facilities that are beyond the control of either Party;
- Externally caused outages, including:
  - Warranty Exclusions: hours during any period when the System or any portion thereof is off-line due to an event that would constitute an exclusion under any applicable manufacturer’s, System, workmanship or other applicable warranty.
  - Network Disturbance Hours: hours during any period when a fluctuation in the utility network parameters (e.g., a frequency or voltage variation) result in the disconnection of the inverters or the System from the utility network and prevented energy from being evacuated from the System.
  - Network Outage Hours: hours during any period when a failure in the distribution network or in the connection infrastructure prevented energy from being evacuated from the System.
  - Third-Party Equipment Servicing Hours: equipment or System outage hours during any period that result from service issues related to non-Provider equipment or delays in procuring non-Provider replacement parts.

- Customer-Caused Hours: hours during any period when the equipment or the System is off-line due to Customer-required outages or Customer-caused delays in Site access.
- Major Maintenance Hours: hours during any period when the equipment or the System is off-line due to Customer-required major maintenance work.

**Guaranteed Level** means 90% of the Expected Energy for a Guarantee Year for the System.

**Guarantee Year** means each successive 12-month period during the Term commencing on the Commercial Operation Date.

**PVSim** means the software program utilized by Provider to predict the amount of energy that the System will produce in an average year which has the following characteristics: (1) based on PVFORM, the photovoltaic simulation software produced by Sandia National Laboratories and the US Department of Energy, (2) all photovoltaic characteristics are modeled, (3) all ancillary array losses are taken into account and (4) PVSim simulations use either measured data or typical meteorological year files from Meteonorm and NREL.

**SEMMY** or “Simulated Energy in a Measured Meteorological Year”, means, with respect to any Guarantee Year, Year 1 AC Energy output of the System simulated by PVSim using measured average hourly irradiance, wind speed, and air temperature as recorded by the Data Acquisition System, holding all other inputs equal to those used in calculating SETMY.

**SETMY** or “Simulated Energy for a Typical Meteorological Year”, means the Year 1 AC Energy output of the System simulated by PVSim using average hourly irradiance, wind speed, and air temperature data contained within the Weather File.

**True-up Period** means each successive one (5)-year period during the Term commencing on the first day of the Term.

**Weather Adjustment** means the ratio described in Section 3.01.

**Weather File** means the typical meteorological year data set specified for the System set forth on Appendix C (Weather File) of this Guarantee.

## **ARTICLE II. PERFORMANCE GUARANTEE CONSIDERATION**

### **Section 2.01 Consideration**

The Parties agree that the consideration set forth in Section 5.1 of the Agreement includes adequate consideration for the terms, conditions and provisions of this Guarantee.

## **ARTICLE III. PERFORMANCE GUARANTEE**

Provider guarantees to Customer that the Actual Generation of the System during any Guarantee Year, subject to the limitations, terms and conditions stated in this Guarantee shall not be less than the Guaranteed Level.

### **Section 3.01 Guaranteed Output Calculations.**

Provider shall calculate the Annual Deficit for the System for each Guarantee Year during the Term:

- (a) Annual Deficit = (Expected Energy x Guaranteed Level) x Weather Adjustment – Actual Generation

Where the Weather Adjustment ratio is as follows:

Simulated Energy in a Measured Meteorological Year (SEMMY)

Simulated Energy for a Typical Meteorological Year (SETMY)

For each Guarantee Year, within thirty (30) days after the end of such Guarantee Year, Provider shall calculate the Annual Deficit for the System. Customer has the right to access all data and information supporting Provider's calculation of the Annual Deficit.

- (b) Guarantee Payment Reimbursement. At the end of each True-up Period:
- (i) if the sum of Annual Deficits > 0, then Provider shall pay to Customer an amount equal to the cumulative product of (y) the Annual Deficits and (z) the Avoided Energy Price per kWh (a "Guarantee Payment");
  - (ii) Provider shall promptly notify Customer of any Guarantee Payment due. Provider shall make Guarantee Payments within thirty (30) days of the date of the notice provided in the first sentence of this paragraph.

### **Section 3.02 Actual Generation Measurement.**

Provider shall measure Actual Generation for the System for each Guarantee Year as follows:

- (a) **Initial Output Data Collection.** During the Term, Provider will collect energy output data using its Data Acquisition System. For each Guarantee Year, Provider will sum the daily kWh output for the System provided by the DAS to calculate the Actual Generation for the System for such Guarantee Year.
- (b) **Equipment Calibration and Replacement.** Provider may request to have the meteorological equipment independently calibrated or replaced at its own expense every eighteen (18) to thirty (30) months. Provider shall notify the Customer of the scheduled calibration date and time no less than 30 days prior, and shall provide the Customer written proof of calibration or replacement.
- (c) **Contingency for Equipment Failure.** In the event of hardware, communication, or other failure affecting the DAS, Provider will make commercially-reasonable efforts to resolve the failure in a timely manner. In the event that data is lost, Actual Generation for each affected System shall be adjusted to compensate for such lost data as follows:
  - (i) In lieu of lost meteorological data, Provider will utilize such data obtained from a nearby meteorological station that Provider monitors and selects for such purpose.
  - (ii) In lieu of lost electricity data, Provider will utilize the cumulative data from System meter readings to calculate the electricity generated by each affected System during the missing interval. In the event that data

from the System meter is inaccurate or missing, Provider will simulate electricity production during the missing interval utilizing measured meteorological data and PVSIm. The simulated electricity production during the missing interval will be added to the Actual Generation for each affected System for the subject Guarantee Year.

#### **ARTICLE IV. CUSTOMER RESPONSIBILITIES**

##### **Section 4.01 Customer's Failure to Uphold Responsibilities.**

Provider shall promptly notify Customer of any breach ("Out of Compliance Letter") of (i) Customer's obligation to pay Provider for the Solar Services pursuant to the Agreement and (ii) any Customer obligations pursuant to the Agreement that directly (A) hinder the amount of Energy delivered by the System or (B) degrade the functionality of the System. Upon Customer's cure of all failures described in an Out of Compliance Letter, Provider will notify Customer ("In Compliance Letter") that Customer is complying with Customer's Responsibilities. For any period between the issuance of an Out of Compliance Letter and of an In Compliance Letter (a "Noncompliance Period"), to the extent that Customer's non-compliance actually impacts the Actual Generation of the System, any Actual Generation from such affected Systems in such month(s) shall be disregarded in the calculation of Annual Deficits for such Systems under Section 3.01, and the Expected Energy for any affected System in any Guarantee Year in which there is a Noncompliance Period shall be reduced by a proportionate amount.

#### **ARTICLE V. EXPECTED ENERGY ADJUSTMENT**

##### **Section 5.01 Adjustment of Expected Energy.**

If, and to the extent, any of the following events results in a change in the production of electricity by the System, Expected Energy for that System shall be adjusted correlatively for the period of such change:

- (a) Subject to Provider's obligations under any warranty it provides in connection with the Systems (including any Provider obligation, with respect to the System, in connection with any requirements under the California Solar Initiative program), a material portion of the components of the System fails, and the manufacturer of such component(s) refuses, or otherwise fails to honor its corresponding warranty;
- (b) Customer fails to perform any of its obligations under the PPA – such as obligations related to maintaining the System's interconnection to the local utility grid or limiting outages (as defined in the Agreement) – and such failure reduces the amount of electricity that the System can generate or deliver.
- (c) There is any failure of the System to perform caused by legislative, administrative or executive action, regulation, order or requisition of any federal, state or local government, local utility or public utilities commission;
- (d) There is an Excused Performance Event; or



- (e) Adjustment to the Expected Energy, or a reduction in the amount of Energy that Provider is obligated to deliver, is permitted or required under the Agreement.

**Section 5.02 Notification of Changes to Expected Energy.**

If Provider determines that any changes to Expected Energy for the System are required based on an event or events described in Section 5.01, then Provider shall notify the Customer, in writing, of the basis for its determination, and Provider shall either provide revised definitions of Expected Energy in exhibits that, upon mutual agreement of the Parties, which shall not be unreasonably denied or delayed, shall replace the current exhibits to this Guarantee, or specify a date by which it shall do so.

### Appendix A – Expected Energy

<b>Guarantee Year</b>	<b>Expected Annual kWh</b>
1	187,395
2	186,926
3	186,459
4	185,993
5	185,528
6	185,064
7	184,601
8	184,140
9	183,679
10	183,220
11	182,762
12	182,305
13	181,849
14	181,395
15	180,941
16	180,489
17	180,038
18	179,588
19	179,139
20	178,691
21	178,244
22	177,798
23	177,354
24	176,911
25	176,468
<b>Total</b>	<b>4,546,974</b>

### Appendix B – Avoided Energy Price

Guarantee Year	Avoided Energy Price per kWh
1	\$0.0048
2	\$0.0049
3	\$0.0051
4	\$0.0052
5	\$0.0054
6	\$0.0056
7	\$0.0057
8	\$0.0059
9	\$0.0061
10	\$0.0063
11	\$0.0065
12	\$0.0066
13	\$0.0068
14	\$0.0070
15	\$0.0073
16	\$0.0075
17	\$0.0077
18	\$0.0079
19	\$0.0082
20	\$0.0084
21	\$0.0087
22	\$0.0089
23	\$0.0092
24	\$0.0095
25	\$0.0098

## **Appendix C – Weather File**

SolarAnywhereTGY2016\_(10km)\_37.95\_-122.15

**Schedule A**

**DESCRIPTION OF SITE**

<b>Facility</b>	<b>System Size (kW DC)</b>	<b>Product Type</b>	<b>Module qty &amp; type - SunPower</b>	<b>Inverters- qty &amp; type-Delta</b>
597 Center Ave, Martinez, CA 94553	120.96	Rooftop – Helix Dual Tilt	(336) SPR- X22-360- COM	(1) M60U_121 (1) M36U_121

**Schedule B**

**DESCRIPTION OF SYSTEM**

PV System Array Layouts and Electrical Single Line Diagrams

REV	DESIGN #	DESCRIPTION	DATE
A	0001447	PROPOSAL	08-27-18
B			03-15-19
C		CHANGE PRODUCT TYPE	03-24-19

PROJECT	000157288
OPPORTUNITY	
SHEET	AL1

**PROJECT SUMMARY**

ROOF	396
TOTAL OF MODULE	396
MODULE TYPE	SPR-2Z-390 COM
# OF INVERTER	2
DC SYSTEM SIZE (KW)	102.96
AC SYSTEM SIZE (KW)	105.207

**STRUCTURAL DESIGN PARAMETERS**

WIND SPEED (ASCE 7) (MPH)	110
WIND EXPOSURE CATEGORY	C
TRANSITIONAL DISTANCE (FT)	0
GROUND SNOW LOAD (PSF)	0
SPECTRAL RESPONSE (SDS)	1.045
SEISMIC HAZARD LEVEL	S1
SEISMIC HAZARD LEVEL	2
SFE CLASS	D
SEISMIC IMPT FACTOR (IP)	1.0
OCCUPANCY CATEGORY	II

**RACKING TYPE**

BACKING TECHNOLOGY	HELIX DUAL-TRIT
ANCHOR TYPE	OMG PowerGrip Plus
BALLAST BLOCK WEIGHT (LBS)	14
ROOF MEMBRANE	TBD
UNWEIGHTED AVERAGE	12
MAX ROOF SLOPE	11.2
MIN. OFFSET FROM ROOF EDGE (FT)	4

**BUILDING CHARACTERIZATIONS**

ROOF HEIGHT (FT)	45
ROOF LENGTH (FT)	196
ROOF WIDTH (FT)	127
PARAMET HEIGHT (FT)	3
SWP AZIMUTH (DEGREES)	-26
MAX ALLOWABLE PRESSURE (PSF)	12
MAX ALLOWABLE WEIGHT (LBS)	180

**BALLAST AND ANCHOR SUMMARY**

SYSTEM WEIGHT (LBS)	37182.95
AVERAGE PFE	1.72
MAX PFE	11.58
BALLAST PER ROOF	1551
# OF ANCHORS PER ROOF	33
# MODULE PER ROOF	396

**LEGEND:**

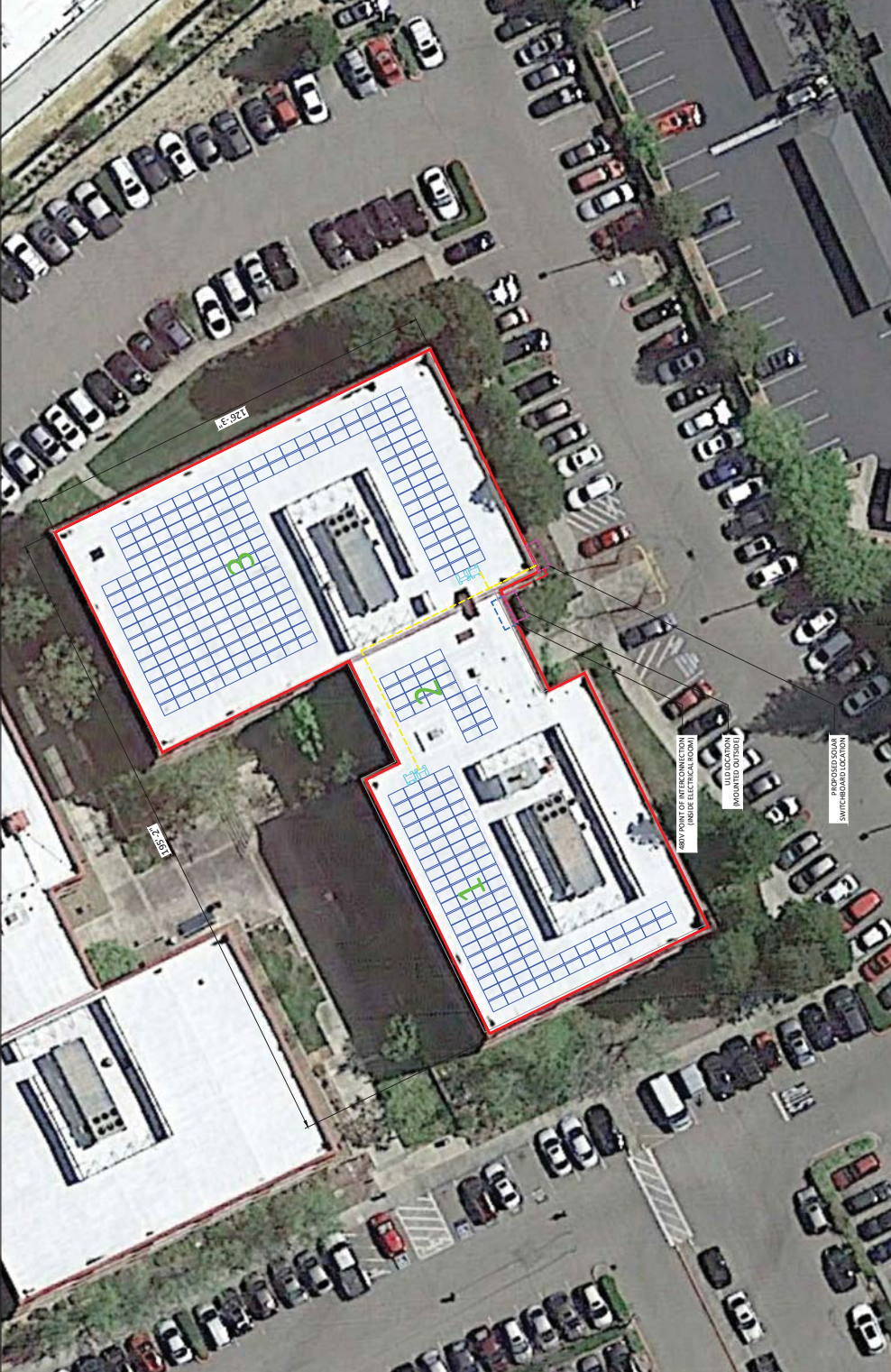
- PROPOSED LIGHT POLE REMOVAL
- PROPOSED TREE REMOVAL
- PROPOSED EQUIPMENT PAD
- PROPOSED POINT OF INTERCONNECTION
- AC CONDUITS (SPR-PC1)
- AC CONDUITS (SPR-SB8)
- AC CONDUITS (INV-SB8)
- AC CONDUITS (INV-SP8)



**SUNPOWER HELIX**

THE PROPOSED ARRAY LAYOUT SHOWN IS DESIGNED TO FIT EXISTING QUANTITIES ARE SUBJECT TO CHANGE BASED ON SUNPOWER VERIFICATION OF ACTUAL SITE CONDITIONS.

**TIER 1**



**1 ARRAY LAYOUT**  
SCALE: 1/16" = 1'-0"

ARRAY	MBBU_121 (LB STR)	MBBU_121 (LB STR)	TOTAL # OF STRINGS	TOTAL # OF MODULE	DC POWER (KW)	AC POWER (KW)	CEC LOADS (KW-AC)	AC RUN (INV-SB8)
1	1	1	8	96	34.56	39.6	38.737	100
2			2	24	8.64	66	65.47	25
3	1	1	18	216	77.76	120.96	105.207	
TOTAL	1	1	28	336	120.96	105.6		

**REVISIONS**

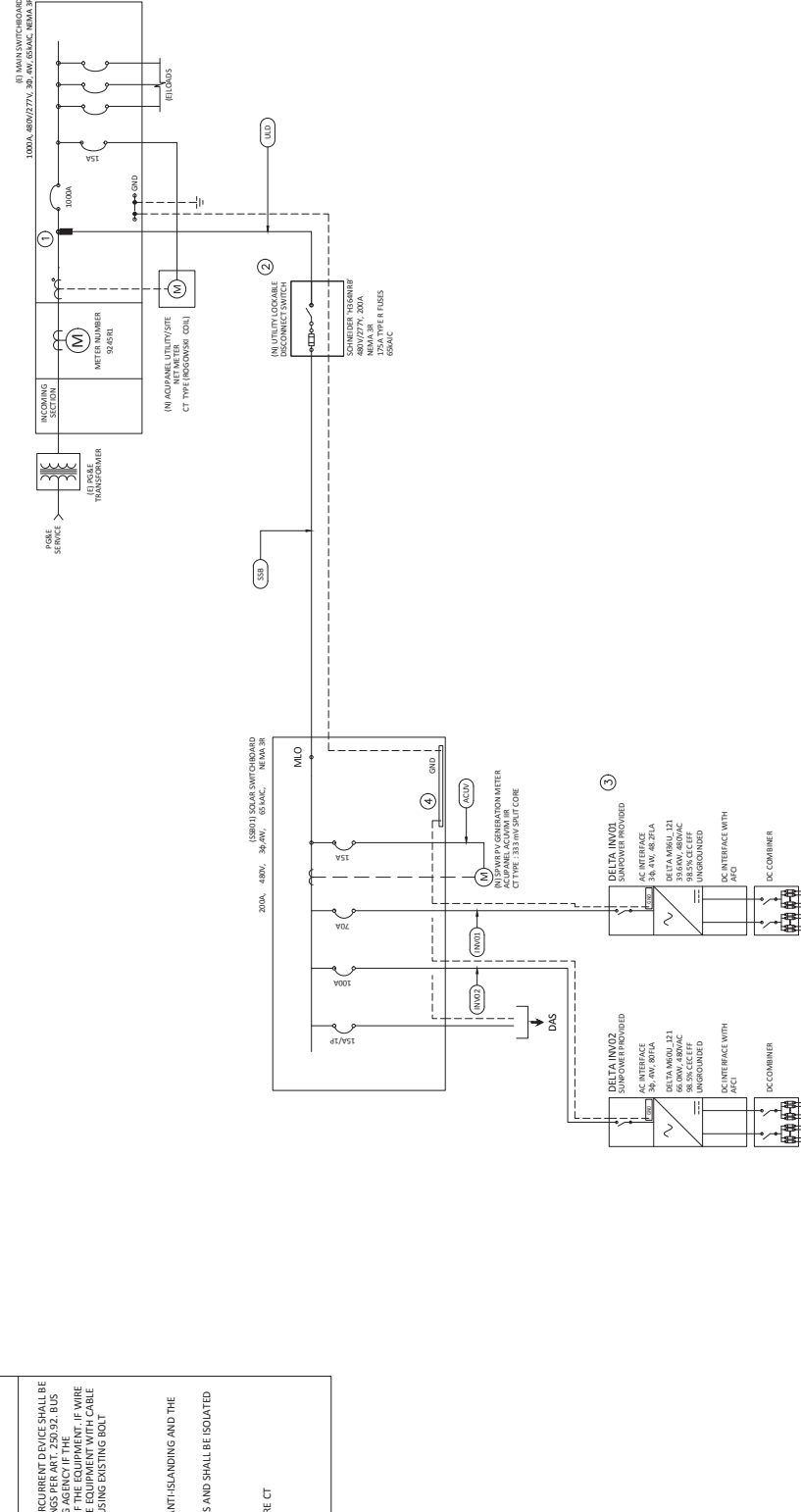
REV	DATE	DESCRIPTION
A	08-27-18	PROPOSAL
B	03-15-19	
C	03-24-19	CHANGE PRODUCT TYPE

**SPECIFIC ELECTRICAL NOTES:**

- ① LINE SIDE CONNECTION PER ART. 705.12(A), WIRES TO OVERCURRENT DEVICE SHALL BE INSTALLED IN RIGID STEEL CONDUIT WITH GROUND BUSHINGS PER ART. 250.52. BUS CONNECTIONS SHALL BE RELIEVED BY A 3RD PARTY TESTING AGENCY IF THE TESTING AGENCY IS NOT APPROVED FOR THE TESTING AGENCY. IF THE TESTING AGENCY IS APPROVED, WIRES SHALL BE TERMINATED IN SERVICE EQUIPMENT WITH CABLE LIMITERS PER ART. 705.31. CONNECTION SHALL BE MADE USING EXISTING BOLT HOLES, AND FACTORY BUSHING SHALL NOT BE DRILLED.
- ② GANG OPERATED, LOCKABLE, VISIBLE OPEN DISCONNECT
- ③ ALL INVERTERS ARE LISTED TO UL 1741 TO INCORPORATE ANTI-ISLANDING AND THE FOLLOWING PROTECTIONS: ④ ⑤ ⑥ ⑦ ⑧ ⑨ ⑩
- ④ NEUTRAL BUS SHALL NOT BE BOND TO THE GROUND BUS AND SHALL BE ISOLATED FROM THE ENCLOSURE UNLESS OTHERWISE SPECIFIED
- ⑤ METERING NOTES:  
FOR PV PRODUCTION MONITORING:  
EXTERNAL METER ENCLOSURE AND 333nV SPLIT CORE CT  
FOUR SITE UTILITY NET LOAD MONITORING  
EXTERNAL METER ENCLOSURE AND ROGOWSKI CT

**FOR PV PRODUCTION MONITORING:**

- EXTERNAL METER ENCLOSURE AND 333nV SPLIT CORE CT
- EXTERNAL METER ENCLOSURE AND ROGOWSKI CT



ROOF MODULES INFO	MODEL TYPE	SFR-K22-360-COM
MODEL TYPE		360.00
NAME PLATE STC		334.40
PTC		6.48
VOC		69.50
VMP		6.09
SC		29.10
TEMP (COE)		-2.00
TEMP (VMP)		-2.21

INVERTER TYPE	MSDU 121	MSDU 121
RATED OUTPUT (W/AC)	60	36
MAX OUTPUT (W/AC)	66	40
MAX OUTPUT (W/DC)	66	40
# OF STRINGS	18	10
STRING LENGTH	12	12
# OF MODULES / INVERTER	216	120
STRING OPERATING VOLTAGE (V/DC)	897.03	897.03
STRING OPERATING VOLTAGE (V/AC)	607.22	607.22
STRING DC SHORT CURRENT (I/SC)	6.48	6.48
STRING OPERATING CURRENT (I/MPP)	6.09	6.09
# OF INVERTERS/TYPE	1	1

INVERTER SUMMARY TABLE			MSDU 121	MSDU 121
INVT	AC POWER (W/AC)	DC POWER (W/DC)	# OF STRINGS	# OF MODULES
INV01	36.56	36.56	8	96
INV02	84.64	84.64	2	24
TOTAL	121.20	121.20	10	120

REV	DESIGN #	DATE	DESCRIPTION
A	ES0013143	02-28-18	PROPOSAL
B		03-28-19	CHANGE MODULE TYPE FROM K21-345 TO K22-360

PROJECT	OPPORTUNITY
01001	000152288



**Schedule C**

**PV SYSTEM PRICING**

The following pricing is based on the Standard System Design Package described in Exhibit A.

kWh Rate (\$/kWh)	Term (Years)	Annual Rate Escalator (% / Year)
\$0.1344	25	0%

**Schedule D**  
**TERMINATIONS VALUES**

<b>Applicable Date : Years from Commercial Operation Date</b>	<b>Termination Value (\$)</b>
0 Year	\$548,288
1 Year	\$442,850
2 Years	\$396,915
3 Years	\$350,786
4 Years	\$304,498
5 Years	\$257,958
6 Years	\$251,782
7 Years	\$245,374
8 Years	\$238,762
9 Years	\$231,858
10 Years	\$224,687
11 Years	\$217,355
12 Years	\$209,781
13 Years	\$201,892
14 Years	\$193,785
15 Years	\$185,473
16 Years	\$176,984
17 Years	\$168,260
18 Years	\$159,325
19 Years	\$150,177
20 Years	\$140,835
21 Years	\$131,252
22 Years	\$121,446
23 Years	\$111,417
24 Years	\$101,179

***EXECUTION VERSION***

*NOTE: 2530 Arnold Dr, Martinez, CA 945533*

**POWER PURCHASE &  
STORAGE SERVICES AGREEMENT**

Dated as of June 18, 2019

by and between

Solar Star Co Co 1, LLC  
as Provider

and

Contra Costa County  
as Customer

CONFIDENTIAL

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### **Exhibits, Schedules**

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Schedule A	-	Description of Site
Schedule B	-	Description of System
Schedule C	-	System Pricing
Schedule D	-	Termination Values

## POWER PURCHASE AND STORAGE SERVICES AGREEMENT

This POWER PURCHASE AND STORAGE SERVICES AGREEMENT (as amended, amended and restated, supplemented or otherwise modified from time to time, this “Agreement”), dated as of June 18, 2019 (the “Effective Date”), is by and between Solar Star Co Co 1, LLC, a limited liability company formed under the laws of the State of Delaware (“Provider”), and Contra Costa County, a political subdivision of the State of California (“Customer”).

### RECITALS:

WHEREAS, Customer leases or owns, directly or indirectly, facilities in that certain location in California as more fully described in Schedule A of the Appendices hereto (the “Site”);

WHEREAS, Customer desires that Provider install, maintain and operate, and Provider desires to install, maintain and operate, the PV System and ESS (each as hereinafter defined) to be located on the Site; and

WHEREAS, Provider desires to sell, and Customer desires to purchase, (a) the Solar Services (as hereinafter defined), including the delivery of electrical energy generated by the PV System (the “Energy”), (b) the Storage Services (as hereinafter defined), and (c) other services pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### AGREEMENT:

1. Definitions.

Unless otherwise defined herein: (a) capitalized terms used in this Agreement shall have the respective meanings set forth in this Section 1; (b) the singular shall include the plural and vice versa; (c) the word “including” shall mean “including, without limitation”, (d) references to “Sections,” “Exhibits,” “Appendices” and the like shall be to sections, exhibits, appendices, etc. of or to this Agreement; (e) the words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection hereof; and (f) references to this Agreement shall include a reference to all exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time.

“Agreement” has the meaning set forth in the preamble.

“Annual Rate Escalator” means the percentage set forth in Schedule C.

“Applicable Law” shall mean, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit,

authorization, guideline, governmental approval, consent or requirement of such Governmental Authority, enforceable at law or in equity, along with the interpretation and administration thereof by any Governmental Authority.

“Claim Notice” shall have the meaning set forth in Section 13.3.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Commercial Operation Date” shall have the meaning set forth in Section 3.4.

“Confidential Information” shall have the meaning set forth in Section 15.

“Customer” shall have the meaning set forth in the preamble.

“Customer Default” shall have the meaning set forth in Section 11.1.

“Effective Date” shall have the meaning set forth in the preamble.

“Energy” shall have the meaning set forth in the preamble.

“Environmental Attributes” includes, without limitation, tradable renewable certificates, green-e tags, allowances, reductions or other transferable indicia denoting carbon offset credits or indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility attributed to the Energy during the Term created under a renewable energy, emission reduction, or other reporting program adopted by a Governmental Authority, or for which a registry and a market exists (which, as of the Effective Date are certificates issued by Green-e in accordance with the Green-e Renewable Electric Certification Program, National Standard Version 1.3 administered by the Center of Resource Solutions) or for which a market may exist at a future time.

“Environmental Financial Incentives” shall mean each of the following financial rebates and incentives that is in effect as of the Effective Date or may come into effect in the future: (i) performance-based incentives, rebates and any other incentive programs offered by or in the State of California (or any political subdivision thereof) under the federal government’s, any municipality’s, any utility’s or any other state’s program or initiative (including, if applicable, subsidies available under the Self Generation Incentive Program administered through the California Public Utilities Commission), incentive tax credits (including investment tax credits arising under the Code) other tax benefits or grants in lieu thereof (including without limitation the monetization of tax benefits), and accelerated depreciation (collectively, “Incentives”), howsoever named or referred to, with respect to any and all fuel, emissions, air quality, energy generation, energy storage, or other environmental or energy characteristics, resulting from the construction, ownership or operation of the System or from the use of solar generation or energy storage or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Energy and Storage Services generated by the System; and (ii) all reporting rights with respect to such Incentives.



“ESS” means the energy storage system and related Site energy monitoring equipment and software installed pursuant to this Agreement at the Site and more fully described in Schedule B hereto.

“ESS kW” shall mean the power rating of the ESS as set forth in Schedule B.

“ESS O&M Work” shall have the meaning set forth in Section 4.1.2.

“ESS Renewal Rate” shall mean the fair market price for Storage Services created by integrated photovoltaic and energy storage systems as determined by agreement of the Parties, or if the parties cannot agree on the fair market price, the fair market price determined by a nationally recognized independent appraiser in the same manner described in Section 10.3.5 (Purchase of ESS).

“Estimated Year 1 Production” shall mean the amount set forth in Schedule B to this Agreement.

“Expiration Date” shall have the meaning set forth in Section 10.1.

“Fair Market Value” shall have the meaning set forth in Section 10.3.2.

“Financing Party” means any third-party entity providing debt or equity financing to Provider (or any successor or assignee thereof) with respect to the System, including without limitation a party providing construction financing, a lessor in a sale-leaseback transaction, a partner in a partnership flip transaction, or a limited liability company member in an equity sale transaction.

“Force Majeure Event” shall mean, when used in connection with the performance of a Party’s obligations under this Agreement, any of the following events to the extent not caused by such Party or its agents or employees, which is not preventable by such Party as of the Effective Date:

- a) war, riot, acts of a public enemy or other civil disturbance;
- b) acts of God, including but not limited to, storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, volcanic eruptions, range or forest fires, and objects striking the earth from space (such as meteorites), sabotage or destruction by a third party (other than any contractor retained by or on behalf of the Party) of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;
- c) acts of federal, state or local government agencies, including changes in Applicable Law, that result in increasing Provider’s costs of construction and installation, or continuing operation, of the System by 15% or more; and
- d) strikes, walkouts, lockouts or similar industrial or labor actions or disputes.

“Governmental Authority” shall mean any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Indemnified Party” shall have the meaning set forth in Section 13.3.

“Indemnifying Party” shall have the meaning set forth in Section 13.3.

“Interconnection Point” shall have the meaning set forth in Section 3.5.

“kWh Rate” shall have the meaning set forth in Section 6.1.

“License” shall have the meaning set forth in Section 2.

“Liens” shall have the meaning set forth in Section 7.1.3. 1

“Meter” shall have the meaning set forth in Section 4.3.1.

“Monthly Period” shall mean the period commencing on the Commercial Operation Date and ending on the last day of the calendar month in which the Commercial Operation Date occurs, and, thereafter, all subsequent one (1) month periods during the Term.

“Monthly Production” shall mean, for each Monthly Period, the amount of Energy delivered during such Monthly Period.

“Party” shall mean each of Customer and Provider (and/or any successor or permitted assignee thereof).

“Person” shall mean any individual, corporation, partnership, company, limited liability company, joint venture, association, trust, unincorporated organization or Governmental Authority.

“Provider” shall have the meaning set forth in the preamble (and includes its successor(s) and permitted assignee(s)).

“Provider Default” shall have the meaning set forth in Section 11.2.

“PV O&M Work” shall have the meaning set forth in Section 4.1.1.

“PV System” shall mean the solar photovoltaic system installed pursuant to this Agreement at the Site and more fully described in Schedule B hereto.

“Renewal Rate” shall mean the fair market price for electricity generated by solar photovoltaic systems as determined by agreement of the Parties or through the appraisal process applicable to the purchase option contained in this Agreement.

“Reporting Rights” means the right to report ownership of the Environmental Attributes or the Environmental Financial Incentives associated with the Energy to any federal, state, or local agency, authority or other party, including without limitation under Section 1605(b)

of the Energy Policy Act of 1992 and provisions of the Energy Policy Act of 2005, or under any present or future domestic, international or foreign emissions trading program.

“Scheduled Outage” shall have the meaning set forth in Section 4.5.

“Site” has the meaning set forth in the first recital.

“Solar Services” mean all solar services provided to Customer by Provider hereunder, including the provision of Energy.

“Standards” shall have the meaning set forth in Section 3.1.1.

“Storage Services” means the energy storage services provided to Customer by Provider hereunder, including operation and maintenance of the ESS.

“Storage Services Termination” means the termination of all Storage Services Provisions under this Agreement, without impacting the effectiveness of the remaining provisions of this Agreement.

“Storage Services Commencement Date” shall mean the first day of the first utility billing cycle after the later to occur of: (a) the Commercial Operation Date, and (b) the date on which Provider shall have certified to Customer that the ESS is substantially complete and available for commercial operation.

“Storage Services Fee” shall be the amount set forth in Schedule C.

“Storage Services Provisions” means those provisions of this Agreement applicable to the Storage Services, but solely as they relate to the Storage Services.

“Storage Services Term” means the period of time commencing on the Storage Services Commencement Date and expiring fifteen (15) years thereafter unless earlier terminated pursuant to this Agreement.

“System” shall mean, collectively, the PV System and the ESS; provided, however, that the term “System” shall only include equipment and materials up to but not including the Interconnection Point of the System.

“Term” shall have the meaning set forth in Section 10.1.

“Termination Date” shall have the meaning set forth in Section 10.1.

“Termination Value” shall mean, on any date of determination (or, if such date is not a scheduled termination date, the scheduled termination date immediately preceding such date) the applicable amount specified for such date in Schedule D to this Agreement.

“Transfer Taxes” shall have the meaning set forth in Section 6.2.1.

2. Purchase and Sale of Solar Services and Storage Services; License.

2.1 Purchase and Sale of Solar Services and Storage Services.

Customer hereby engages Provider to provide the services set forth in this Agreement, including the Solar Services and Storage Services to Customer, and Provider agrees to provide the services set forth in this Agreement, including the Solar Services and Storage Services to Customer, all in accordance with the terms and conditions set forth herein. Customer shall provide Provider with access to the Sites in accordance with the terms of this Agreement. Provider may retain one or more contractors or subcontractors to fulfill its obligations hereunder; provided that Provider shall remain liable for performance of its obligations hereunder

2.2 License.

Customer hereby grants to Provider and to Provider's agents, employees and subcontractors an irrevocable, non-exclusive license running with the Site for access to, on, over, under or across the Site (the "License") for the purpose of (i) installing, constructing, operating, maintaining, accessing, removing and replacing the System; (ii) performing all of Provider's obligations and enforcing all of Provider's rights set forth in this Agreement; and (iii) installing, using and maintaining electric lines and equipment, including inverters and meters, necessary to interconnect the System to Customer's electric system at the Site or to the utility's electric distribution system or that otherwise may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance, or repair of the System. The term of the License is the Term of this Agreement plus the period of time necessary for Provider to remove the PV System and ESS pursuant to Section 10.3.3 and 10.3.6 respectively, but in no case later than one hundred eighty (180) days after the Expiration Date with respect to the PV System and the Storage Services Term with respect to the ESS (the "License Term"). During the License Term, Customer shall preserve and protect Provider's rights under the License and Provider's access to the Site and shall not interfere with or permit any third parties to interfere with Provider's rights or access. Except for an emergency situation as described in Section 4.2.1(a) or (b) (an "Emergency Situation"), Provider shall notify Customer in writing, which may be made via email to Customer's Energy Manager, 40 Muir Road, Martinez, CA 94553 (Frank.DiMassa@pw.cccounty.us), or to any other address Customer may designate in a written notice to Provider, forty-eight (48) hours before Provider intends to access the Site pursuant to the License. Notwithstanding that the License granted herein is irrevocable, Customer reserves the right to exclude Provider, its agents, employees and subcontractors from the Site in the event that Customer notifies Provider of a breach of the License and Provider fails to cure such breach pursuant to Section 11.2.1 of this Agreement; provided, however, that, Customer agrees not to exclude Provider, its agents, employees and subcontractors from the Site (A) in the event of an Emergency Situation as described in Section 4.2 so long as Customer has been notified of such an Emergency Situation pursuant to Section

4.2 and (B) in the event that the System is to be removed pursuant to this Agreement.

### 3. Design, Construction, Installation and Testing of System.

#### 3.1 Installation.

Subject to Section 3.2, Provider will cause the System to be designed, engineered, installed and constructed at the Site substantially in accordance with the terms of this Agreement, including without limitation, the provisions of Exhibit A (System Design and Construction). Customer shall review and approve, such approval not to be unreasonably withheld or delayed, all construction plans, including engineering evaluations of the impact of the System on the structural integrity and strength of the location where the System is installed inside, on or near Customer's buildings. Provider shall organize the procurement of all materials and equipment for the installation work and maintain the same at the Site. Subject to the terms of the License, Provider shall perform installation work at the Site during the times set forth in Exhibit A and Schedule B in a manner that minimizes inconvenience to and interference with Customer's and Customer's invitees' and Customers' use of the Site to the extent commercially practical. Notwithstanding the foregoing, in the event that Provider determines in its sole discretion that it is unable to install the System at the Site, it shall be under no obligation to do so, and this Agreement shall terminate and be of no further force and effect upon written notice from Provider to Customer to that effect.

3.1.1 System Design and Construction. Exhibit A (System Design and Construction) attached hereto sets forth the design, engineering and construction specifications for the System, as well as assumptions made by the Provider regarding the Site conditions, the electrical conditions, and System attributes (such assumptions being referred to herein as the "Standards"). Schedule B (Description of System) sets forth the known actual conditions for the Site and the System, including deviations from the Standards. The Standards are such that the described items for the System will not need repair, replacement, modification or construction beyond that described in Exhibit A and Schedule B in order for Provider to properly construct and install the System. If the construction and installation of the System is required for any reason (except for reasons attributable to Provider) to deviate from the Standards and Schedule B, Provider will notify the Customer and provide an estimate of any incremental cost to Customer and Customer will have the option to (i) pay the incremental cost at the time the cost is incurred and billed to the Customer, (ii) pay the incremental cost over the Term through a calculated increase in the kWh Rate and/or Storage Services Fee, or (iii) elect an alternative location subject to the conditions of Section 3.1.2.

3.1.2 Alternative Location. Prior to the Commercial Operation Date, if the Customer's interest in the Site is a leasehold interest and the Customer is unable to obtain the landlord's consent in accordance with the License or Customer chooses an alternative location per Section 3.1.1, Customer will have the option to elect an alternative location if Environmental Attributes and Environmental Financial Incentives financially equivalent to or better than those associated with the original location are available for the alternative location, and if the expected System kWh output and construction cost at the alternative location are equivalent to or superior

than those associated with the originally proposed location. Such alternative location is subject to Provider approval, not to be unreasonably withheld. If an alternative location cannot be established, Provider will have the right to terminate per Section 3.2.

### 3.2 Conditions Precedent to Commencement of Construction and Installation.

3.2.1 Commencement by the Provider of construction and installation activities with respect to the PV System are subject to the satisfaction of the following conditions precedent (in addition to the condition set forth in Section 3.3):

- (a) Provider shall have closed financing for construction and long-term ownership of the PV System and the Solar Services to be performed at the Site and, to the extent required pursuant to the applicable financing documentation, the third party financing institution providing such financing shall have been provided with the materials referred to in Section 14.17 and Section 16;
- (b) Provider shall have entered into the applicable contract(s) for construction and installation of the PV System, subject to the terms of the applicable financing, if any;
- (c) Provider shall have obtained the permits, licenses and other approvals required by Applicable Law to be obtained by Provider prior to such commencement;
- (d) Provider shall have received satisfactory notice that the applications for Environmental Financial Incentives for the PV System have been accepted and approved by the appropriate governing agency; and
- (e) Provider shall have received from Customer satisfactory evidence that the project—including the System, the License, and the work and Solar Services described in this Agreement—is exempt from the regulatory jurisdiction of local agencies (including zoning, building, and land-use requirements) or that all required local agency approvals and permits have been obtained.

provided, however, that if any of the foregoing conditions precedent have not been satisfied on or before June 17, 2020 (the “CP Date”), Provider shall have the option to terminate this Agreement without triggering the default provisions of this Agreement or any liability under this Agreement, and if Provider does not terminate this Agreement one hundred eighty (180) days following the CP Date, Customer may terminate this Agreement without triggering the default provisions of this Agreement or any liability under this Agreement. Alternatively, in the event that such conditions precedent are not satisfied by such date, the Parties may mutually agree to amend this Agreement to revise the Commercial Operation Date and term of this Agreement.

3.2.2 Commencement by the Provider of construction and installation activities with respect to the ESS shall be subject to the satisfaction of the following conditions precedent (in addition to the condition set forth in Section 3.3):

- (a) Provider shall have closed financing for construction and long-term ownership of the ESS and the Storage Services to be performed at the Site and, to the extent required pursuant to the applicable financing documentation, the third party financing institution providing such financing shall have been provided with the materials referred to in Section 14.17 and Section 16;
- (b) Provider shall have entered into the applicable contract(s) for construction and installation of the ESS, subject to the terms of the applicable financing, if any;
- (c) Provider shall have obtained the permits, licenses and other approvals required by Applicable Law to be obtained by Provider prior to such commencement; and
- (d) Provider shall have received satisfactory notice that the applications for Environmental Financial Incentives for the ESS have been accepted and approved by the appropriate governing agency;

provided, however, that if any of the foregoing conditions precedent have not been satisfied on or before the CP Date, Provider shall have the option to terminate the Storage Services Provisions without triggering the default provisions of this Agreement or any liability under this Agreement with respect to the Storage Services Provisions, and if Provider does not terminate the Storage Services Provisions within one hundred eighty (180) days following the CP Date, Customer may terminate the Storage Services Provisions without triggering the default provisions of this Agreement or any liability under this Agreement with respect to the Storage Services Provisions. In the case that Provider elects not install the ESS and causes a Storage Services Termination, Customer will have no obligations with the respect to payment of the Storage Services Fees or any other Storage Services Provisions. A Storage Services Termination shall not terminate the Solar Services provisions of this Agreement.

### 3.3 Utility Approvals.

Notwithstanding that Provider shall have primary responsibility for preparing applications and obtaining all permits, licenses and approvals required for the performance of work under this Agreement, Customer agrees to reasonably assist Provider in obtaining necessary permits, licenses and approvals in connection with the installation, operation and maintenance of the System, including the submission of applications for interconnection of the System with the local electric utility. Customer shall not make any material changes to its electrical equipment at the Site after the date on which the applicable utility interconnection application is submitted unless any such changes, individually or in the aggregate, would not

adversely affect the approval by such utility of such interconnection. Should the local electric utility fail to approve the interconnection of the PV System or require equipment in addition to the equipment set forth in Schedule B in connection with the Site, Provider may, at Provider's option, terminate this Agreement immediately subsequent to notification from the local utility. Should the local electric utility fail to approve the interconnection of the ESS or require equipment in addition to the equipment set forth in Schedule B in connection with the Site, Provider may, at Provider's option, elect not to install the ESS and cause a Storage Services Termination. The Parties shall not be obligated to go forward with installation of the System if the applicable utility approvals are conditioned upon material upgrades to the existing electrical infrastructure and neither Party elects to provide for such upgrades. Customer also agrees to assist Provider and make all necessary repairs or changes to the existing electrical infrastructure so that the Site and System are eligible for the Environmental Financial Incentives.

#### 3.4 Energy Delivery.

The date on which the delivery of Energy from the System commences (the "Commercial Operation Date") shall be the date on which all of the following shall have occurred: (a) Provider shall have certified to Customer in writing that the PV System is substantially complete and available for commercial operation; (b) all permits and licenses required to be obtained under Applicable Law in connection with the operation of the PV System shall have been obtained and be in full force and effect; and (c) Customer shall have entered into an interconnection agreement with the local electricity utility. In no event shall Provider have any liability to Customer for a delay in the Commercial Operation Date caused by Customer, Customer's electricity provider, a local agency issuing permits for the System or any other third parties outside of Provider's control.

#### 3.5 Risk of Loss; Exclusive Control.

As between the Parties, Provider will be deemed to be in exclusive control (and responsible for any property damage or injuries to persons caused thereby) of the Energy up to but excluding the point where the System is interconnected to Customer's electrical intertie; e.g., the Customer's line-side tap (the "Interconnection Point") and Customer will be deemed to be in exclusive control (and responsible for any property damage or injuries to persons caused thereby) of the Energy at and from the Interconnection Point. Risk of loss related to the Energy will transfer from Provider to Customer at the Interconnection Point.

#### 3.6 Termination Values.

The Parties acknowledge and agree that the Termination Values with respect to the applicable System are as set forth in Schedule D of this Agreement.



#### 4. Operation and Maintenance of System.

##### 4.1 O&M Work; Phone/Data Line.

4.1.1 PV O&M Work. Provider shall provide operation, repair, monitoring and maintenance services to the PV System during the Term of this Agreement, including the monitoring and maintenance of metering equipment determining the quantity of electricity produced by the PV System (collectively, the "PV O&M Work"). Provider shall perform the PV O&M Work, either directly or indirectly through a subcontract with SunPower Corporation, Systems, an affiliate of Provider or through a third-party service provider capable of providing comparable services, provided that Provider remains responsible for all PV O&M Work notwithstanding any such subcontracting. Provider shall perform, or cause to be performed, the PV O&M Work to ensure that the System is capable of delivering the Energy in accordance with the specifications set forth in Schedule B. Provider shall use commercially reasonable efforts to enforce the terms of any contract for operations and maintenance services to which it is a party and PV System warranty agreements.

4.1.2 ESS O&M Work. Provider shall provide operation, repair, monitoring and maintenance services to the ESS System during the Storage Services Term (the "ESS O&M Work"). Provider shall maintain during the Storage Services Term the capability to provide such ESS O&M Work, either directly or indirectly, or through a third-party service provider capable of providing comparable services, provided that Provider remains responsible for all operation, repair, monitoring and maintenance services to the ESS System notwithstanding any such subcontracting. Provider shall use commercially reasonable efforts to enforce the terms of any contract for operations and maintenance services to which it is a party and ESS warranty agreements.

4.1.3 Phone/Data Line. Customer shall properly maintain, pay for and provide access to the necessary phone, computer, or other communication lines necessary to permit Provider to (a) record the electrical output of the PV System for the entire Term, (b) operate the ESS during the Storage Services Term.

##### 4.2 Malfunctions and Emergencies.

4.2.1 Each of Customer and Provider shall notify the other within twenty-four (24) hours following the discovery by it of (a) any material malfunction in the operation of the System, (b) an interruption in the supply of Solar Services or Storage Services. Provider and Customer shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Provider's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Each Party shall notify the other Party immediately upon the discovery of an emergency condition in the System.

4.2.2 Provider shall commence repairs to (a) any malfunctioning PV System and restore the supply of the Energy, and (b) during the Storage Services Term, any malfunctioning ESS and restore the provision of Storage Services, as soon as reasonably possible after notice or upon its own discovery of any of the conditions specified in Section 4.2.1 during normal business hours and, subject to Section 2, take steps to mobilize personnel to commence repairs after notice or discovery of a condition requiring repair or other corrective action. If an

emergency condition exists, Provider shall dispatch the appropriate personnel immediately upon becoming aware thereof to perform the necessary repairs or corrective action in an expeditious and safe manner. For routine and emergency repairs, the Parties shall contact the persons set forth below:

If to Provider:

Wayne Webb, Senior Manager, Operations & Maintenance  
2900 Esperanza Crossing, 2nd Floor  
Austin, TX 78759  
(510) 439 – 4663 or (800) 251-9728  
[Wayne.Webb@sunpowercorp.com](mailto:Wayne.Webb@sunpowercorp.com) with a copy to: [customer.service@sunpower.com](mailto:customer.service@sunpower.com)

#### 4.3 Metering.

4.3.1 Meters. Provider shall install and maintain the following meters (each a “Meter” and collectively, the “Meters”) in connection with the System:

- (a) PV Meter: for the Term of this Agreement, a utility-grade kilowatt-hour (“kWh”) meter (“PV Meter”) at the PV System for the measurement of Energy provided to Customer, which shall measure the kWh output of the PV System on a continuous basis.
- (b) Consumption Meter: for the Storage Services Term, a utility-grade kWh meter (“Consumption Meter”) at the Site’s main utility meter, which shall measure the kWh consumption of the Site.
- (c) ESS Meter: for the Storage Services Term, a utility-grade kWh meter (“ESS Meter”) at the ESS inverter, which shall measure the kWh charge and discharge of the ESS.

Upon Customer’s written request, Provider shall furnish a copy of all technical specifications and accuracy calibrations for the Meters, as well as all metering data and energy production and consumption calculations. Provider shall test the Meters in compliance with manufacturer’s recommendations.

4.3.2 Customer Audits and Inspections. Once per calendar year, Customer shall have the right to audit all Meter data upon reasonable notice, and any such audit shall be at Customer’s sole cost. Customer shall have a right of access to all Meters at reasonable times and with reasonable prior notice for the purpose of verifying readings and calibrations.

4.3.3 Adjustments. If testing of any Meter pursuant to Section 4.3.1 or Section 4.3.2 indicates that any Meter is in error by more than two percent (2%), then Provider shall promptly repair or replace such Meter. If the PV Meter is found to be in error by more than two percent (2%), Provider shall make a corresponding adjustment to the records of the amount of Energy based on such test results for (a) the actual period of time when such error caused

inaccurate PV Meter recordings, if such period can be determined to the mutual satisfaction of the Parties, or (b) if such period cannot be so determined, then a period equal to one-half (1/2) of the period from the later of (i) the date of the last previous test confirming accurate metering, and (ii) the date the Meter was placed into service; provided, however, that such period shall in no case exceed two (2) years. If the Consumption Meter or ESS Meter is found to be in error by more than two percent (2%), Provider shall make a corresponding adjustment to the Actual Demand Savings based on such test results for (a) the actual period of time when such error caused inaccurate Meter recordings, if such period can be determined to the mutual satisfaction of the Parties, or (b) if such period cannot be so determined, then a period equal to one-half (1/2) of the period from the later of (i) the date of the last previous test confirming accurate metering and (ii) the date the Meter was placed into service; provided, however, that such period shall in no case exceed two (2) years.

4.3.4 Disputes. Any dispute arising out of the reading or calibration of a Meter shall be resolved in accordance with the procedures set forth in Section 6.3.2.

4.4 Title to System.

Provider, or Provider's permitted assigns with respect to the System, shall at all times retain title to and be the legal and beneficial owner of the System, including the right to any tax credits available under federal or state law, and the System shall remain the property of Provider or Provider's assigns. The System shall remain the personal property of Provider or Provider's assigns and shall not attach to or be deemed a part of, or fixture to, the Site. It is the Parties' intention that the System shall at all times retain the legal status of personal property. Provider shall be entitled to, and is hereby authorized to, file one or more precautionary Uniform Commercial Code financing statements with the California Secretary of State with respect to the System in order to protect its rights in the System, provided that no such UCC financing statement shall name Customer as the debtor. The System shall be clearly marked and identified as being the property of the Provider or Provider's assigns. The Parties intend that neither Customer nor any party related to Customer shall acquire the right to operate the System or be deemed to operate the System.

4.5 Outages.

Customer shall be permitted two (2) twenty-four (24) consecutive hour days during which the PV System may be offline (each, a "Scheduled Outage") per calendar year during the Term, during which days Customer shall not be obligated to accept, and if not accepted, pay for the Energy; provided, however, that Customer shall have notified Provider in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of such Scheduled Outage. In the event that Scheduled Outages at the Site exceed two (2) days per calendar year for a reason other than a Force Majeure Event, and for all unscheduled outages, Provider shall reasonably estimate the amount of Energy that would have been delivered to Customer during each hour of such excess Scheduled Outages or unscheduled outages and shall invoice Customer for such amount, which shall be payable in accordance with Section 6.3. Additionally, as set forth in Exhibit C (Performance Guarantee), Provider shall be relieved of any failure to meet the Performance Guarantee due to any Scheduled Outage or unscheduled outage.

#### 4.6 Compliance with Utility Specifications.

Provider shall ensure that the operation of the System and all Energy generated by the System conform to applicable utility specifications for energy being generated and delivered to the Site's electric distribution system, which shall include the installation of proper power conditioning and safety equipment, submittal of necessary specifications, coordination of utility testing and verification, and all related costs.

### 5. Purchase of Solar Services.

#### 5.1 Purchase Requirement.

Customer agrees to purchase one hundred percent (100%) of the Energy delivered by the System during the Term of this Agreement and one hundred percent (100%) of the Storage Services provided with respect to the System. While the Solar Services are calculated and billed on the basis of kWh of Energy as set forth in Section 6.1, Customer acknowledges and agrees that such Solar Services and the Storage Services represent a package of services including the production, storage and supply of electrical energy output from the System and the reduction of Customer's electric demand, together with any other services associated with Solar Services and Storage Services that Provider may provide to Customer. The payment for Solar Services (expressed in \$/kWh) and Storage Services (express in \$/kWh) are calculated to include all of the above services. Neither Party may claim that by this Agreement Provider is an electric utility subject to regulation as an electric utility or subject to regulated electricity rates. Provider shall not claim to be providing electric utility services to Customer and shall not interfere with Customer's ability to select an electric utility provider except that, to the extent Customer has a choice in selecting an electric utility provider or electricity provider, Customer shall not select an electric utility provider or electricity provider that requires, as part of their conditions for service, removal or discontinued operation of the System or the sales of Energy or Storage Services hereunder.

#### 5.2 Environmental Attributes; Environmental Financial Incentives.

5.2.1 Environmental Attributes. All Environmental Attributes and associated Reporting Rights available in connection with the System are retained and owned by Customer or its assignee. Provider shall take all reasonable measures to assist Customer in obtaining all Environmental Attributes currently available or subsequently made available in connection with the System. At Customer's request and expense, Provider shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Customer's or its assignee right, title and interest in and to the Environmental Attributes. If the standards used to qualify the Environmental Attributes to which Customer is entitled under this Agreement are changed or modified, Provider shall, at Customer's request and expense, use all reasonable efforts to cause the Environmental Attributes to comply with new standards as changed or modified. If Provider fails to act in good faith in completing documentation or taking actions reasonably requested by Customer, and such failure results in the loss of an Environmental Attribute that

would otherwise be available, Provider shall reimburse Customer for the full amount of such lost Environmental Attribute.

5.2.2 Environmental Financial Incentives. All Environmental Financial Incentives and associated Reporting Rights available in connection with the System are retained and owned by Provider or its assignee. Customer shall take all reasonable measures to assist Provider in obtaining all Environmental Financial Incentives currently available or subsequently made available in connection with the System. At Provider's request and expense, Customer shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Provider's or its assignee right, title and interest in and to the Environmental Financial Incentives. If the standards used to qualify the Environmental Financial Incentives to which Provider is entitled under this Agreement are changed or modified, Customer shall, at Provider's request and expense, use all reasonable efforts to cause the Environmental Financial Incentives to comply with new standards as changed or modified. If Customer fails to act in good faith in completing documentation or taking actions reasonably requested by Provider, and such failure results in the loss of an Environmental Financial Incentive that would otherwise be available, Customer shall reimburse Provider for the full amount of such lost Environmental Financial Incentive.

5.2.3 Customer shall not take any action or suffer any omission that would have the effect of impairing the value to the Provider of the Environmental Attributes or Environmental Financial Incentives.

5.2.4 Provider or its assignee will at all times retain all tax credits and related tax benefits (including depreciation) associated with the System.

## 6. Price and Payment.

### 6.1 Price.

Customer shall pay Provider for (a) the Energy provided pursuant to the terms of this Agreement at the rate per kWh (the "kWh Rate") set forth in Schedule C for the applicable period, and (b) the Storage Services Fee at the rate set forth in Schedule C for the applicable period, plus any adjustments required pursuant to Section 3.1.1, plus any additional amount required pursuant to Section 6.2. Notwithstanding the foregoing, in the event that Customer elects to renew this Agreement pursuant Section 10.3.1, Customer shall pay the Renewal Rate for Energy delivered during such renewal period.

### 6.2 Taxes.

6.2.1 Customer Taxes. Provider shall invoice Customer for, and Customer shall pay all sales, use, excise, ad valorem, transfer and other similar taxes ("Transfer Taxes"), but excluding in all events taxes based on or measured by net income, that are imposed by any taxing authority arising out of or with respect to the purchase or sale of the Solar Services or Storage Services (regardless of whether such Transfer Taxes are imposed on Provider or Customer), together with any interest, penalties or additions to tax payable with respect to such Transfer Taxes, unless such interest, penalties or additions to tax payable with respect to such Transfer Taxes are due to Provider's failure to timely remit any such Transfer Taxes or to file any returns required by

the appropriate taxing authority, and Provider shall indemnify and hold Customer harmless in such excepted cases. If Customer shall be required to by law to withhold or deduct any Transfer Taxes or other taxes imposed by any jurisdiction or any political subdivision from or in respect of any sum payable hereunder, the sum payable shall be increased as may be necessary so that, after taking all required deductions, Provider shall have received an amount equal to the sum it would have received had no such deductions been made. Provider will pay any ad valorem property tax imposed on the System by any taxing authority.

6.2.2 Provider Taxes. Provider will pay and hold harmless Customer from any sales or use tax imposed upon Customer arising from this Agreement, other than as set forth in the preceding Section 6.2.1, including but not limited to Provider's manufacture, installation and acquisition of the System. Provider will pay and hold harmless Customer from property tax, if any, assessed on (i) Provider's use of the portion of the Site on which the System is installed, to the extent prescribed in the License; (ii) the System or Provider's ownership, installation or use thereof; or (iii) any other aspect of this Agreement. Notwithstanding the foregoing, Customer shall pay and hold harmless Provider from sales and use taxes, if any, arising upon the transfer, if any, of both legal and beneficial ownership of the System to Customer pursuant to this Agreement.

### 6.3 Billing and Payment.

Billing and payment for the Solar Services and Storage Services sold and purchased under this Agreement and any other amounts due and payable hereunder shall occur as follows:

6.3.1 Payments. Subject to adjustment in accordance with the following sentences of this Section 6.3.1, Customer shall pay to Provider:

- (a) with respect to the Solar Services, for each Monthly Period during the Term within thirty (30) days after receipt of any invoice a payment for the Energy delivered by the System during each such Monthly Period equal to the product of (a) Monthly Production for the System for the relevant month multiplied by (b) the then applicable kWh Rate.
- (b) with respect to the Storage Services, through the end of the Storage Services Term, within thirty (30) days after receipt of any invoice, a payment in an amount equal to the product of (a) Monthly Production of the System for the relevant month, multiplied by (b) the Storage Services Fee in \$/kWh as set forth in Schedule C.

Customer payments under Sections 6.3.1(a) and (b) above shall be made by check to:

Solar Star Co Co 1, LLC  
Attn: Commercial Asset Management Group  
c/o SunPower Capital Services, LLC  
2900 Esperanza Crossing  
Austin, TX 78758

Payment may also be made by wire transfer of immediately available funds upon receipt of specific instructions by Provider. Upon receipt of written direction and instructions from Provider and Provider's Financing Party, all payments to be made by the Customer to the Provider under this Agreement shall be made directly to the Provider's Financing Party or its agent designated in a writing addressed to Customer from time to time.

6.3.2 Invoice Errors. Within thirty (30) days after receipt of any invoice, Customer may provide written notice to Provider of any alleged error therein (including any error resulting from Meter adjustments pursuant to Section 4.3.3). Customer shall pay all undisputed amounts, including the undisputed portion of any invoice, in accordance with the instructions set forth for payment under Section 6.3.1. If Provider notifies Customer in writing within thirty (30) days of receipt of such notice that Provider disagrees with the allegation of error in the invoice, the Parties shall meet, by telephone conference call or otherwise, within ten (10) days of Customer's response for the purpose of attempting to resolve the dispute.

6.3.3 Late Payments. All payments hereunder shall be made without setoff or deduction. Any payment not made within the time limits specified in Section 6.3.1 shall bear interest from the date on which such payment was required to have been made through and including the date on which such payment is actually received by the Provider. Such interest shall accrue at a monthly rate equal to the lesser of the then prevailing prime rate of interest as published in The Wall Street Journal or the maximum interest rate permitted by Applicable Law.

## 7. General Covenants.

### 7.1 Provider's Covenants.

Provider covenants and agrees as follows:

7.1.1 Permits and Approvals. While performing this Agreement, Provider shall obtain and maintain all approvals, consents, licenses and permits from relevant Governmental Authorities, utility personnel, and (to the extent known to Provider) the Site's owners, if Customer is not the owner of the Site, and other agreements and consents required to be obtained and maintained by Provider and to enable Provider to perform such work. Provider shall deliver copies of all permits and approvals obtained pursuant to this Section to Customer.

7.1.2 Health and Safety. Provider shall take all reasonably necessary safety precautions in performing this Agreement and shall comply in all material respects with all Applicable Laws pertaining to the safety of persons and real and personal property.

7.1.3 Removal of Liens. Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', laborers' or materialmen's liens), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Site or any interest therein; provided that this Section 7.1.3 shall not limit Liens on the System. If Provider breaches its obligations under this Section, it shall immediately notify Customer in writing, shall promptly cause such Lien to be discharged and released of record without cost to Customer, and shall defend and indemnify Customer against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

7.1.4 Provider Records. Provider shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Customer has the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

## 7.2 Customer's Covenants.

Customer covenants and agrees as follows:

7.2.1 Health and Safety. Customer shall at all times maintain the areas of the Site consistent with all Applicable Laws pertaining to the health and safety of persons and property.

7.2.2 Security. Customer shall provide and take reasonable measures for security of the System, including commercially reasonable monitoring of the Site's alarms, if any.

7.2.3 Notice of Damage. Customer shall promptly notify Provider of any matters of which it becomes aware pertaining to any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System.

7.2.4 Liens. Customer shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein. Customer also shall pay promptly any taxes, charges or fees of whatever type of any relevant Governmental Authority for which Customer is responsible under Section 6.2 before a fine or penalty may attach to the System. If Customer breaches its obligations under this Section, it shall immediately notify Provider in writing, and shall promptly cause such Lien on or with respect to the System (including if such arises in favor of any third party claiming through Customer, such as a lender, mortgagee or encumbrancer of real property) to be removed, discharged and released of record without cost to Provider, and shall defend, indemnify and hold Provider harmless against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in removing, discharging and releasing such Lien.

7.2.5 Consents and Approvals. Customer shall obtain and maintain, and secure and deliver to Provider copies of, all consents, approvals, permits, licenses, and authorizations (or evidence that the project—including the System, and the work and Solar Services described in this Agreement—is exempt from the regulatory jurisdiction of local agencies (including zoning, building, and land-use requirements) or that all required local agency approvals



and permits have been obtained) relating to the performance of Customer's obligations and the rights granted by Customer hereunder, and that are required by the terms, conditions or provisions of any restriction or any agreement or instrument or statute to which Customer is a party or by which Customer is bound, including completing applications for interconnection with Customer's local electric utility. Customer shall use best efforts to assist Provider in fulfilling Provider's responsibilities under Section 7.1.1. In addition, as a condition precedent to the effectiveness of this Agreement, Customer covenants that it has obtained all discretionary and other approvals required in connection with the project from its governing board and all applicable Government Authorities and that such board or Governmental Authority complied with the California Environmental Quality Act; or, if no other discretionary approvals were required, such board or Governmental Authority approved this Agreement before it was executed.

7.2.6 Maintenance of Interconnection. Customer shall ensure that all of the facilities to which the Energy is delivered, or with respect to which the Storage Services are provided, hereunder remain interconnected to the electrical grid during the entire Term or Storage Services Term, as applicable, except as permitted under Section 4.5 and Section 9.

7.2.7 Solar Access. Customer shall ensure that the PV System remains free of overshadowing or other blocked access to sunlight during the Term, and it is acknowledged and agreed by the Parties that the foregoing is a material obligation of the Customer for the purposes of this Agreement. Customer will use best efforts to secure a solar easement for the Site to prevent other buildings, structures or flora from overshadowing or otherwise blocking access of the sunlight to the System. Provider shall provide assistance to Customer in seeking a solar easement; however, Customer shall bear all costs and expenses related to obtaining any such easement.

7.2.8 Customer Records. Customer shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Provider shall have the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

7.2.9 Utility Account Information. Customer shall authorize Provider to have full access to Customer's electric utility billing and account information as necessary to measure and validate the Actual Demand Savings provided by the ESS.

## 8. Insurance Requirements.

### 8.1 Provider's General Liability Insurance.

Provider shall maintain, at its sole expense, commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of one million dollars (\$1,000,000) per occurrence and in the aggregate, endorsed to provide contractual liability in said amount, specifically covering Provider's obligations under this Agreement and naming Customer as an additional insured. The minimum coverage amount of \$1,000,000 per occurrence and in the aggregate may be satisfied by a combination of a general liability policy and an excess/umbrella liability policy.

Provider, if it has employees, shall also maintain at all times during the term of this Agreement workers' compensation insurance coverage in accordance with the applicable requirements of federal and state law. Within thirty (30) days after execution of this Agreement and upon Customer's request annually thereafter, Provider shall deliver to Customer certificates of insurance evidencing such coverage, which shall specify that Customer shall be given at least thirty (30) days' prior written notice by the applicable insurer in the event of any material modification, cancellation or termination of coverage, except ten (10) days for non-payment of premium. Such insurance shall be primary coverage without right of contribution from any insurance of Customer.

## 8.2 Customer's Insurance.

Customer shall provide and maintain "all-risk" property insurance covering the buildings on which the System is located during all periods (construction and operation) that Provider is the beneficial owner of the System, and naming Provider or its assignee as the loss payee. The System shall be insured for not less than its Termination Value. All such policies shall be with financially sound and reputable insurance companies that have an (i) A.M. Best rating of A+ and a financial strength category of "XII" or higher, (ii) a Standard & Poor's financial strength rating of A+ or higher, or (iii) are otherwise reasonably satisfactory to the Provider or its assignee; and such policies shall be on terms that are reasonably satisfactory to the Provider or its assignee. Within thirty (30) days after execution of this Agreement and upon Provider's request annually thereafter, Customer shall deliver to Provider certificates of insurance evidencing such coverage, which shall specify that Provider shall be given at least thirty (30) days' prior written notice (10 days' notice for cancellation due to nonpayment of premiums) by the applicable insurer in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Provider. Notwithstanding the foregoing, Customer shall be entitled to self-insure all of its insurance requirements under this Agreement.

## 9. Force Majeure Events.

If either Party is prevented from or delayed in performing any of its obligations under this Agreement by reason of a Force Majeure Event, such Party shall notify the other Party in writing as soon as practicable after the onset of such Force Majeure Event and shall be excused from the performance of its obligations under this Agreement to the extent that such Force Majeure Event interferes with such performance. The Party whose performance under this Agreement is prevented or delayed as the result of a Force Majeure Event shall use reasonable efforts to remedy its inability to perform. If a Party's failure to perform its obligations under this Agreement is due to a Force Majeure Event, then such failure shall not be deemed a Provider Default or a Customer Default, as the case may be. In case a Force Majeure Event continues for at least one (1) year with respect to the System, then either Party may terminate this Agreement by written notice to the other.

10. Term; Customer Options; Termination.

10.1 Term.

The term of this Agreement shall commence on the Effective Date and shall expire on the date that is twenty-five (25) years after the Commercial Operation Date (the “Expiration Date”), unless and until terminated earlier pursuant to Sections 3.1, 3.2, 3.3, 9, 10.2.3, 10.6 or 12 (the date of any such termination, the “Termination Date”, and the “Term” being such period of time commencing on the Effective Date and ending on the earlier of (i) the Termination Date, and (ii) the Expiration Date). Notwithstanding the foregoing, the Storage Services Provisions of this Agreement shall only be in effect during the Storage Services Term.

10.2 Customer Options Upon Cessation of Business Operations at Site.

If, prior to the end of the Term, Customer ceases to conduct business operations at the Site, vacates the Site, or is prevented from allowing operation of the System on the Site:

10.2.1 Substitute Site. So long as Customer’s exercise of its rights under this Section 10.2.1 does not impair or reduce any Environmental Financial Incentives that may be available to the Provider, or otherwise have an adverse tax effect on Provider, or in the Provider’s sole discretion and determination, impair Provider’s ability to meet any and all obligations in connection with a Financing Party or a prospective financing transaction, Customer shall have the right to provide Provider with a mutually agreeable substitute Site located within the same utility district, subject to requisite governing agency approvals, to relocate the System, which agreement shall not be unreasonably withheld, or, if not available, in a location with similar solar insolation, utility rates, Environmental Attributes and Environmental Financial Incentives. Any such alternate Site shall have a similar demand charge profile as the Site. If such alternate Site is available and is acceptable to Provider, this Agreement shall be amended to delete the prior Site and add the new Site, but otherwise this Agreement shall remain in full force in accordance with its terms and shall not be deemed otherwise amended. Customer shall pay the reasonable costs arising in connection with the relocation(s) of the System, including removal costs, installation costs, any applicable interconnection fees, costs related to obtaining a site license or lease at the substitute site, other costs of deployment at the substitute Site, and amounts lost that would otherwise be payable under this Agreement due to such relocation(s) to Provider based on (i) delivered Energy averaged over the prior twelve months for the System and (ii) if during the Storage Services Term, all Storage Services Fees for any Monthly Periods during which the ESS is not operational due to such relocation(s).

10.2.2 Move and Pay Option. So long as such event does not impair or reduce any Environmental Attributes or Environmental Financial Incentives, Customer may elect to pay or guarantee the payment of the remaining monthly amounts due under this Agreement to Provider, and cause the System to be kept in operation at the Site, in each case through the remainder of the Term.

10.2.3 Termination and Payment of Termination Value. If, beginning in the sixth year following the Commercial Operation Date, a substitute Site cannot be located in

accordance with Section 10.2.1 with respect to the System and Customer elects not to avail itself of the provisions of Section 10.2.2 with respect to the System, then Customer shall so notify Provider, Provider shall remove the System (at Customer's sole cost and expense) and Customer shall pay to Provider the then-applicable Termination Value specified in Column A of Schedule D as liquidated damages, whereupon this Agreement shall terminate. The Parties agree that actual damages to Provider if this Agreement is terminated as contemplated in this Section 10.2 would be difficult to ascertain, and the applicable Termination Value is a reasonable approximation of the damages suffered by Provider as a result of early termination of this Agreement.

### 10.3 Customer Options Upon Expiration of Term.

10.3.1 Extension of Term. Upon prior written notice to Provider at least one-hundred eighty (180) days prior to the Expiration Date, Customer has the option to renew the term of this Agreement with respect to the PV System and Solar Services for one (1) additional three (3)-year period at the Renewal Rate.

10.3.2 Purchase of PV System. If Customer has not elected to renew the term of this Agreement in accordance with Section 10.3.1, Customer may purchase the PV System by providing Provider written notice of its intent to purchase the PV System no later than one-hundred and eighty (180) days prior to the Expiration Date, and paying Provider the Fair Market Value thereof no later than the relevant Expiration Date. The "Fair Market Value" of the PV System shall be the value determined by the mutual agreement of Customer and Provider within ten (10) days after receipt by Provider of Customer's notice of its election to purchase the PV System. If Customer and Provider cannot mutually agree to a Fair Market Value, then the Parties shall jointly select a nationally recognized independent appraiser with whom the parties have discussed methods and assumptions, with experience and expertise in the solar photovoltaic industry to value such equipment. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding on the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. To the extent transferable, the remaining period, if any, on all warranties for the PV System will be transferred from Provider to Customer. If the Parties are unable to agree on the selection of an appraiser, such appraiser shall be jointly selected by the appraiser firm proposed by the Customer and the appraiser firm proposed by the Provider. Upon receipt by Provider of payment of the Fair Market Value, title to the PV System as well as available Environmental Attributes and Environmental Financial Incentives from the PV System shall transfer to Customer as-is, where-is.

10.3.3 Return of PV System. If at the end of a Term, or an Extension of Term pursuant to Section 10.3.1, Customer does not exercise any of the options described in Sections 10.3.1 and 10.3.2, Provider shall remove all of its tangible property comprising the PV System from the Site by a mutually convenient date but in no case later than one hundred eighty (180) days after the Expiration Date with respect to the PV System. The cost to remove the PV System shall be borne by the Provider. The portion of the Site on which the PV System was installed shall be returned to its original condition, except for ordinary wear and tear, and Provider shall leave the portion of the Site on which the System was installed in neat and clean order.

10.3.4 Extension of Storage Services Term. Upon prior written notice to Provider at least one-hundred eighty (180) days prior to the end of the Storage Services Term, Parties may mutually agree to extend the Storage Services Term with respect to the ESS and the Storage Services for one (1) additional five (5)-year period at the ESS Renewal Rate.

10.3.5 Purchase of ESS. If Customer has not elected to renew the Storage Services Term in accordance with Section 10.3.4, Customer shall have the option to purchase the ESS by providing Provider written notice of its intent to purchase the ESS no later than one-hundred and eighty (180) days prior to the end of the Storage Services Term, and paying Provider the ESS Fair Market Value thereof no later than the Expiration Date. The “ESS Fair Market Value” of the ESS shall be the value determined by the mutual agreement of Customer and Provider within ten (10) days after receipt by Provider of Customer’s notice of its election to purchase the ESS. If Customer and Provider cannot mutually agree to an ESS Fair Market Value, then the Parties shall jointly select a nationally recognized independent appraiser with whom the parties have discussed methods and assumptions, with experience and expertise in the solar photovoltaic and energy storage industry to value such equipment. Such appraiser shall act reasonably and in good faith to determine the ESS Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding on the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. To the extent transferable, the remaining period, if any, on all warranties for the ESS will be transferred from Provider to Customer at Customer’s sole expense. If the Parties are unable to agree on the selection of an appraiser, such appraiser shall be jointly selected by the appraiser firm proposed by the Customer and the appraiser firm proposed by the Provider. Upon receipt by Provider of payment of the ESS Fair Market Value, title to the ESS as well as available Environmental Financial Incentives from the ESS shall transfer to Customer as-is, where-is.

10.3.6 Return of the ESS. If at the end of Storage Services Term, or an extension thereof pursuant to Section 10.3.4, Customer does not exercise any of the options described in Sections 10.3.4 and 10.3.5, Provider shall remove all of its tangible property comprising the ESS from the Site by a mutually convenient date but in no case later than one hundred eighty (180) days after the expiration of the Storage Services Term. The cost to remove the ESS shall be borne by the Provider. The portion of the Site on which the ESS was installed shall be returned to its original condition, except for ordinary wear and tear, and Provider shall leave the portion of the Site on which the System was installed in neat and clean order.

10.3.7 Amended and Restated Agreement. At the end of the Storage Services Term, Customer agrees that it shall reasonably cooperate with a request from Provider to amend, or amend and restate this Agreement to remove all provisions applicable to the Storage Services and the ESS; provided, that the foregoing undertaking shall not obligate Customer to materially change any rights or benefits, or materially increase any burdens, liabilities or obligations of Customer, under this Agreement.

#### 10.4 Customer Purchase Options Prior to Expiration Date.

10.4.1 On the later to occur of the sixth (6th) anniversary of the Commercial Operation Date and the Storage Services Commencement Date, provided that no Customer Default shall have occurred and be continuing beyond any applicable period of cure, Customer may elect to purchase all, but not less than all, of the

System (including both the ESS and the PV System). If Customer elects to so purchase the System, the purchase price shall be the higher of the then Fair Market Value of the System (calculated in accordance with the definition of Fair Market Value set forth in Section 10.3.2 for the PV System and the ESS Fair Market Value set forth in Section 10.3.5, and such determination to be at Customer's sole cost and expense), or the then-current Termination Value specified in Column A of Schedule D. Not less than one-hundred-and-eighty (180) days prior to the exercise of the purchase option for the System, Customer shall provide written notice to Provider of Customer's exercise thereof. Upon the exercise of the foregoing purchase option plus receipt of the Value as determined in Section 10.4 above and all other amounts then owing by Customer to Provider, the Parties will execute all documents necessary to cause title to the System to pass to Customer as-is, where-is; provided, however, that Provider shall remove any encumbrances placed on the System by Provider at Customer's expense.

10.4.2 On the later to occur of the fifteenth (15th) anniversary of the Commercial Operation Date and the Storage Services Commencement Date, provided that no Customer Default shall have occurred and be continuing beyond any applicable period of cure, Customer may elect to purchase the PV System. If Customer elects to so purchase the PV System, the purchase price shall be the higher of the then Fair Market Value of the PV System (calculated in accordance with the definition of "Fair Market Value" set forth in Section 10.3.2 for the PV System, and such determination to be at Customer's sole cost and expense), and the amount specified in Column A of Schedule D. Not less than one-hundred-and-eighty (180) days prior to the exercise of the purchase option for the PV System, Customer shall provide written notice to Provider of Customer's exercise thereof. Upon the exercise of the foregoing purchase option plus receipt of the Fair Market Value and all other amounts then owing by Customer to Provider, the Parties will execute all documents necessary to cause title to the PV System to pass to Customer as-is, where-is; provided, however, that Provider shall remove any encumbrances placed on the PV System by Provider at Customer's expense.

10.5 Payment of Termination Value on Termination Date.

In the event that the Termination Date has occurred for reasons other than pursuant to Sections 3.1.2., 10.6 or 12.1.1, Customer shall be required to pay to Provider the then-applicable Termination Value specified in Column A of Schedule D as liquidated damages. The Parties agree that actual damages to Provider in the event this Agreement terminates prior to the expiration of the Term for causes attributable to Customer would be difficult to ascertain, and the applicable Termination Value is a reasonable approximation of the damages suffered by Provider as a result of early termination of this Agreement.

10.6 Provider Termination.

Provider shall have the right, in Provider's sole and absolute discretion, to terminate this Agreement upon written notice if any of the following occurs:

10.6.1 at any time until construction of the System commences Provider determines in its sole discretion that it is unable to install the System at the Site;

10.6.2 if the occurrence of an unstayed order of a court or administrative agency has the effect of subjecting the sales of the Energy or the Storage Services to federal or state regulation of the prices therefor and/or the delivery of the service;

10.6.3 the elimination or alteration of one or more Environmental Financial Incentives or other change in law that results in a material adverse economic impact on Provider; or

10.6.4 if the annual direct beam solar resource availability at the Site is less than or equal to 90% of historical averages as measured by long-term weather data (minimum of five (5) years) collected at the Site and/or other reliable calibrated and appropriate weather station representative of the Site.

In the event of a Provider termination under this Section 10.6, Provider shall remove all of its tangible property comprising the System from the Site by a mutually convenient date but in no case later than one hundred eighty (180) days after the Termination Date. The cost to remove the System shall be borne by the Provider. The portion of the Site on which the System was installed shall be returned to its original condition, except for ordinary wear and tear, and Provider shall leave the portion of the Site on which the System was installed in neat and clean order.

## 11. Defaults.

### 11.1 Customer Default.

The occurrence at any time of any of the following events shall constitute a “Customer Default”:

11.1.1 Failure to Pay. The failure of Customer to pay during the Term any amounts owing to Provider on or before the date on which such amounts are due and payable under the terms of this Agreement and Customer’s failure to cure such failure within fifteen (15) days after Customer receives written notice of each such failure from Provider;

11.1.2 Failure to Maintain Phone/Data Line. Unless due to a Force Majeure Event excused by Section 9, the failure of Customer to maintain and grant Provider access to the phone and other communications lines required to be maintained pursuant to Section 4.1.3 and Customer’s failure to cure such failure within twenty (20) business days after Customer receives written notice of such failure from Provider; provided that in any event if such failure shall continue for at least five (5) days after notice to Customer and shall result in lost revenue to Provider, Provider shall be entitled to reasonably estimate the amount of revenue that would have been obtained and shall invoice Customer therefor;

11.1.3 Failure to Perform Other Obligations. Unless due to (i) a Force Majeure Event excused by Section 9, or (ii) a breach of paragraph 2 of Section 2 (License), the failure of Customer to perform or cause to be performed any other material obligation required to

be performed by Customer under this Agreement, or the failure of any representation, covenant, or warranty set forth herein to be true and correct as and when made; provided, however, that if such failure by its nature can be cured, then Customer shall have a period of thirty (30) business days after receipt of written notice from Provider of such failure to Customer to cure the same and a Customer Default shall not be deemed to exist during such period; provided, further, that if Customer commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for one hundred twenty (120) additional days;

11.1.4 Bankruptcy, Etc. (a) Customer admits in writing its inability to pay its debts generally as they become due; (b) Customer files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof; (c) Customer makes an assignment for the benefit of creditors; (d) Customer consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Customer has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Customer's assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Customer's assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control; or

11.1.5 Failure of Site Access. A breach by Customer of the License occurs and Customer fails to cure such breach within five (5) days after Customer receives written notice of such breach from Provider.

## 11.2 Provider Default.

The occurrence at any time of the following event shall constitute a "Provider Default":

11.2.1 Failure to Perform Obligations. Unless due to a Force Majeure Event excused by Section 9, the failure of Provider to perform or cause to be performed any obligation required to be performed by Provider under this Agreement or the failure of any representation and warranty set forth herein to be true and correct as and when made; provided, however, that if such failure by its nature can be cured, then Provider shall have a period of thirty (30) business days after receipt of written notice from Customer of such failure to Provider to cure the same and a Provider Default shall not be deemed to exist during such period; provided, further, that if Provider commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for one-hundred twenty (120) additional days; or

11.2.2 Bankruptcy, Etc. (a) Provider admits in writing its inability to pay its debts generally as they become due; (b) Provider files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof; (c) Provider makes



an assignment for the benefit of creditors; (d) Provider consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Provider has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Provider's assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Provider's assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control.

## 12. Remedies Following Default.

### 12.1 Customer's Remedies Upon Occurrence of a Provider Default.

12.1.1 Termination. If a Provider Default has occurred and is continuing, then Customer may terminate this Agreement by providing written notice to Provider thereof, and this Agreement shall terminate and be of no further force or effect as of the date of the notice according to Section 14.1.

12.1.2 Other Rights and Remedies. If any Provider Default described under Section 11.2 has occurred and Customer has terminated this Agreement as a result thereof in accordance with the terms of Section 12.1.1 above, then, subject to Section 12.3, Provider shall pay to Customer an amount not to exceed the then-present value (discounted at the prevailing prime rate of interest as published in *The Wall Street Journal* on the day preceding the date of determination) of (a) the cash flows equal to the product of (i) the positive difference, if any, of the price per kWh for commercially available, utility-provided energy in the applicable market(s) (which shall not include related charges such as delivery, service, distribution, or taxes) minus the kWh Rate of Energy hereunder (as such kWh Rate would have been escalated over time pursuant to the terms hereof) hereof, multiplied by (ii) the number of days remaining in the term of this Agreement had it not been terminated times the expected daily number of kWh of Energy to be delivered under this Agreement, calculated by dividing the Estimated Year 1 Production set forth in Schedule B, adjusted for as-built System, by 365. Provider's payment to Customer of the amounts set forth in this Section 12.1.2 shall not in any way limit the other remedies at law or in equity that Customer may pursue as damages for Provider's breach of this Agreement; provided, however, that such damages pursued by Customer are subject to the limitation provisions of Sections 12.3 and 12.5.

### 12.2 Provider's Remedies Upon Customer Default.

In addition to any other remedies available under this Agreement or at law, if a Customer Default has occurred and is continuing, then Provider may terminate this Agreement by providing written notice to Customer thereof, and this Agreement shall terminate and be of no further force or effect as of the date of the notice according to Section 14.1 and Provider shall have the right to (a) cause Customer to pay (and Customer shall have the obligation to pay to Provider) the applicable Termination Value set forth in Column A of Schedule D and (b) enter onto the Site and remove the System in accordance with the last sentence of Section 10.2.3.

12.3 No Consequential Damages.

Nothing in this Agreement is intended to cause either Party to be, and neither Party shall be, liable to the other Party for any lost business, lost profits or revenues from others or other special or consequential damages, all claims for which are hereby irrevocably waived by Customer and Provider. Notwithstanding the foregoing, none of the payments for the Energy or any other amount specified as payable by Customer to Provider under the terms of this Agreement upon the termination of this Agreement shall be deemed consequential damages

12.4 Effect of Termination of Agreement.

Upon the Termination Date or the Expiration Date, as applicable, any amounts then owing by a Party to the other Party shall become immediately due and payable and the then future obligations of Customer and Provider under this Agreement shall be terminated (other than the indemnity obligations set forth in Section 13). Such termination shall not relieve either Party from obligations accrued prior to the effective date of termination or expiration.

12.5 Limitation of Liability.

THE TOTAL LIABILITY OF A PARTY TO THE OTHER PARTY FOR ALL CLAIMS OR SUITS OF ANY KIND, WHETHER BASED UPON THIS AGREEMENT, TORT (INCLUDING NEGLIGENCE BUT EXCLUDING THIRD PARTY TORT CLAIMS FOR PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM THE PERFORMANCE OF THIS AGREEMENT), WARRANTY, STRICT LIABILITY OR OTHERWISE, FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES OF ANY KIND WHATSOEVER ARISING OUT OF, RESULTING FROM OR RELATED TO THE PERFORMANCE OR BREACH OF THIS AGREEMENT SHALL, UNDER NO CIRCUMSTANCES, EXCEED \$2,574,015, PROVIDED THAT THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (A) LIABILITY FOR FRAUD OR WILLFUL MISCONDUCT OF ANY PERSON; (B) LIABILITY UNDER THE INDEMNIFICATION PROVISIONS OF THIS AGREEMENT FOR CLAIMS OF THIRD PARTIES FOR PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM THIS AGREEMENT; OR (C) PAYMENT OF THE KWH RATE. THE LIMITATION OF LIABILITY PROVIDED FOR HEREIN SHALL NOT BE USED TO LIMIT OR REDUCE ANY AVAILABLE INSURANCE.

13. Indemnification.

13.1 Indemnification by Provider.

Provider shall fully indemnify, save harmless and defend Customer from and against any and all costs, claims, and expenses incurred by Customer in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (a) the negligence or willful misconduct of Provider or its agents or employees or others under Provider's control in performing this Agreement, and

(b) a Provider Default under this Agreement; provided, however, that nothing in this Section 13.1 is intended to modify the limitation of Provider's liability set forth in Section 12.3 above; provided further that to the extent Customer recovers such damages, losses and expenses under any insurance policy, Customer shall reimburse any payment made by Provider under this indemnity.

13.2 Indemnification by Customer.

Without limiting the provisions of Section 8, Customer shall fully indemnify, save harmless and defend Provider or its assignees and successors from and against any and all costs, claims, and expenses incurred by Provider in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (a) the negligence or willful misconduct of Customer or its agents or employees or others under Customer's control at the Site or (b) a Customer Default hereunder; provided, however, that nothing in this Section 13.2 is intended to modify the limitation of Customer's liability set forth in Section 12.3 above; provided further that to the extent Provider recovers such damages, losses and expenses under any insurance policy, Provider shall reimburse any payment made by Customer under this indemnity.

13.3 Notice of Claims.

Any Party seeking indemnification hereunder (the "Indemnified Party") shall deliver to the other Party (the "Indemnifying Party") a notice describing the facts underlying its indemnification claim and the amount of such claim (each such notice a "Claim Notice"). Such Claim Notice shall be delivered promptly to the Indemnifying Party after the Indemnified Party receives notice that an action at law or a suit in equity has commenced; provided, however, that failure to deliver the Claim Notice as aforesaid shall not relieve the Indemnifying Party of its obligations under this Section 13, except to the extent that such Indemnifying Party has been prejudiced by such failure.

13.4 Defense of Action.

If requested by an Indemnified Party, the Indemnifying Party shall assume on behalf of the Indemnified Party, and conduct with due diligence and in good faith, the defense of such Indemnified Party with counsel reasonably satisfactory to the Indemnified Party; provided, however, that if the Indemnifying Party is a defendant in any such action and the Indemnified Party believes that there may be legal defenses available to it that are inconsistent with those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to participate in its defense of such action at the Indemnifying Party's expense. If any claim, action, proceeding or investigation arises as to which the indemnity provided for in this Section 13 applies, and the Indemnifying Party fails to assume the defense of such claim, action, proceeding or investigation after having been requested to do so by the Indemnified Party, then the Indemnified Party may, at the Indemnifying Party's expense, contest or, with the prior written consent

of the Indemnifying Party, which consent shall not be unreasonably withheld, settle such claim, action, proceeding or investigation. All costs and expenses incurred by the Indemnified Party in connection with any such contest or settlement shall be paid upon demand by the Indemnifying Party.

13.5 Survival of Provisions.

The provisions of this Section 13 shall survive the expiration or termination of this Agreement.

14. Miscellaneous Provisions.

14.1 Notices.

All notices, communications and waivers under this Agreement shall be in writing and shall be (a) delivered in person or (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested or (c) sent by reputable overnight express courier, addressed in each case to the addresses set forth below, or to any other address either of the parties to this Agreement shall designate in a written notice to the other Party:

If to Provider:

Solar Star Co Co 1, LLC  
c/o SunPower Corporation  
1414 Harbour Way South, Suite 1901  
Richmond, CA 94804  
Attention: Julie Williamson, Project Administration  
Phone:510-540-0550  
Fax:510-540-0552

If to Customer:

Contra Costa County Public Works Dept.  
Capital Projects Management Division  
Attn: Energy Manager  
40 Muir Road  
Martinez, CA 94553 Phone: 925-313-2000  
Fax: 925-313-2333

All notices sent pursuant to the terms of this Section 14.1 shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by reputable overnight, express courier, then on the next business day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third (3rd) business day following the day sent or when actually received.

14.2 Authority.

14.2.1 Provider Representations. Provider hereby represents and warrants that:

- (a) It is a Delaware limited liability company duly organized, validly existing and in good standing under the laws of the state of its formation and has all requisite limited liability company power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (b) The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary limited liability company action;
- (c) This Agreement is a legal, valid and binding obligation of Provider enforceable against Provider in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law);
- (d) To the best knowledge of Provider, as of the date of execution hereof, no governmental approval (other than any governmental approvals that have been previously obtained or disclosed in writing to Customer) is required in connection with the due authorization, execution and delivery of this Agreement by Provider or the performance by Provider of its obligations hereunder which Provider has reason to believe that it will be unable to obtain in due course on or before the date required for Provider to perform such obligations; and
- (e) Neither the execution and delivery of this Agreement by Provider nor compliance by Provider with any of the terms and provisions hereof (i) conflicts with, breaches or contravenes the provisions of the articles of formation or operating agreement of Provider or any contractual obligation of Provider or (ii) results in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default under any material contractual obligation of Provider.

14.2.2 Customer Representations. Customer hereby represents and warrants that:

- (a) It is a political subdivision of the State of California, validly existing and in good standing under the laws of the state of its formation and has all requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (b) The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary governmental action;
- (c) This Agreement is a legal, valid and binding obligation of Customer enforceable against Customer in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law);
- (d) No governmental approval (other than any governmental approvals which have been previously obtained or disclosed in writing to Provider) is required in connection with the due authorization, execution and delivery of this Agreement by Customer or the performance by Customer of its obligations hereunder which Customer has reason to believe that it will be unable to obtain in due course;
- (e) Neither the execution and delivery of this Agreement by Customer nor compliance by Customer with any of the terms and provisions of this Agreement results in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default under any contractual obligation of Customer;
- (f) Customer has not entered into any contracts or agreements with any other person regarding the provision of the services at the Site contemplated to be provided by Provider under this Agreement; and
- (g) None of the electricity to be generated by the Provider will be used to generate energy for the purpose of heating a swimming pool.

### 14.3 Assignment

#### 14.3.1 Provider Assignment.

Provider may assign this Agreement upon written notice thereof to Customer, provided that any such assignment shall be to an assignee capable of performing Provider's obligations hereunder. Provider may, without any consent of Customer, sell, transfer, assign or pledge (or grant security interests in) its rights, title and interest in this Agreement, and/or any monies due under this Agreement to a Financing Party, in connection with any financing for the ownership, acquisition, construction, operation or use of the System.

#### 14.3.2 Customer Assignment.

Customer shall not assign all or any part of this Agreement to any entity other than an affiliate of Customer without the prior written consent of the Provider, which shall not be unreasonably withheld. Customer may not assign this Agreement to any Person, including an affiliate, with a credit rating lower than that of Customer without providing matching credit support in the form of cash, letter(s) of credit, or other security reasonably acceptable to Provider. Any assignment by the Customer not permitted under this Section 14.3 shall be void ab initio. In the event that Customer decides to sell or otherwise transfer the Site or a portion thereof upon which the System is located, Customer may (i) with Provider's prior written consent, which will not be unreasonably withheld or delayed, assign this Agreement to the Site purchaser who shall assume all of Customer's obligations under this Agreement and Provider shall release Customer from any further liability associated with this Agreement, or (ii) terminate this Agreement by paying Provider the Termination Value applicable to the date of termination. Upon payment of the Termination Value, the Parties will execute all documents necessary to cause title to the System to pass to Customer as-is, where-is. The Customer does not have the present intention of making any transfer of the Site or that portion of the Site on which the System is located; provided, however, nothing herein shall prohibit Customer from making any transfer of the Site or any portion thereof on which System is located, subject to the provisions set forth above.

#### 14.4 Successors and Assigns.

The rights, powers and remedies of each Party shall inure to the benefit of such party and its successors and permitted assigns.

#### 14.5 Entire Agreement.

This Agreement (including all exhibits and schedules attached hereto) represent the entire agreement between the parties to this Agreement with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous oral and prior written agreements.

14.6 Amendments to Agreement.

This Agreement shall not be amended, modified or supplemented without the written agreement of Provider and Customer at the time of such amendment, modification or supplement.

14.7 Waivers; Approvals.

No waiver of any provision of this Agreement shall be effective unless set forth in writing signed by the Party making such waiver, and any such waiver shall be effective only to the extent it is set forth in such writing. Failure by a Party to insist upon full and prompt performance of any provision of this Agreement, or to take action in the event of any breach of any such provisions or upon the occurrence of any Provider Default or Customer Default, as applicable, shall not constitute a waiver of any rights of such Party, and, subject to the notice requirements of this Agreement, such Party may at any time after such failure exercise all rights and remedies available under this Agreement with respect to such Provider Default or Customer Default. Receipt by a Party of any instrument or document shall not constitute or be deemed to be an approval of such instrument or document. Any approvals required under this Agreement must be in writing, signed by the Party whose approval is being sought.

14.8 Partial Invalidity.

In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of Applicable Law, Provider and Customer shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Agreement (and in the event that Provider and Customer cannot agree then such provisions shall be severed from this Agreement) and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected by such adjustment and shall remain in full force and effect.

14.9 Execution in Counterparts.

This Agreement may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same Agreement.

14.10 Governing Law; Jurisdiction; Forum.

This Agreement shall be governed by and construed in accordance with the internal laws of the State of California. Customer irrevocably agrees that any action, suit or proceeding by or among Provider and Customer may be brought in whichever of the Superior Courts of the State of California, Alameda County, or the Federal Court for the Northern District of California, has subject matter jurisdiction over the dispute and waives any objection that Customer may now or hereafter have regarding the choice of forum whether on personal jurisdiction, venue, forum non conveniens or on any other ground. Customer irrevocably consents to the service



of process outside of the territorial jurisdiction of such courts by mailing copies thereof by registered or certified mail, postage prepaid, to Customer's address set forth herein with the same effect as if Customer were a resident of the State of California and had been lawfully served in such state. Nothing in this Agreement shall affect the right to service of process in any other manner permitted by law.

14.11 Attorneys' Fees.

If any action shall be instituted between Customer and Provider in connection with this Agreement, the Party prevailing in such action shall be entitled to recover from the other Party all of its reasonable costs and expenses incurred in connection with such action by arbitration or other legal proceeding, including reasonable attorneys' fees.

14.12 No Third Party Rights.

This Agreement is only for the benefit of the parties to this Agreement, their successors and permitted assigns (including any lender or lessor of Provider) and Persons expressly benefited by the indemnity provisions of this Agreement. No other Person (including, without limitation, tenants of the Site) shall be entitled to rely on any matter set forth in, or shall have any rights on account of the performance or non-performance by any Party of its obligations under, this Agreement.

14.13 Treatment of Additional Amounts.

The Parties hereto acknowledge and agree that Customer's payment of the Termination Value constitute liquidated damages and not penalties. The Parties further acknowledge that in the case of the payment of the Termination Value: (a) the amount of loss or damages likely to be incurred is incapable or is difficult to precisely estimate, (b) the amounts specified hereunder bear a reasonable proportion and are not plainly or grossly disproportionate to the probable loss likely to be incurred by Customer or Provider as the case may be and (c) the Parties are sophisticated business parties and have been represented by legal counsel and negotiated this Agreement at arm's length.

14.14 No Agency.

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

14.15 No Public Utility.

Nothing contained in this Agreement shall be construed as an intent by Provider to dedicate its property to public use or subject itself to regulation as a “public utility” (as defined in the California Public Utilities Code or any other Applicable Law).

14.16 No Recourse to Affiliates.

This Agreement is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party.

14.17 Cooperation with Financing.

Customer acknowledges that Provider may be financing the Solar Services and the Storage Services and the System and Customer agrees that it shall reasonably cooperate with Provider and its financing parties in connection with such financing, including (a) the furnishing of information related to the System and this Agreement, and (b) the giving of a Financing Party acknowledgment in the form attached hereto as Exhibit B (each, a “Consent”); provided, that the foregoing undertaking shall not obligate Customer to materially change any rights or benefits, or materially increase any burdens, liabilities or obligations of Customer, under this Agreement except for providing notices and additional cure periods to a Financing Party with respect to events of default by Provider under this Agreement pursuant to the terms of the Consent.

14.18 Setoff.

Except as otherwise set forth herein, each Party reserves to itself all rights, setoffs, counterclaims and other remedies and/or defenses to which it is or may be entitled, arising from or out of this Agreement.

14.19 Service Contract.

The Parties intend this Agreement to be treated as a service contract within the meaning of Section 7701(e)(3) of the Code.

15. Confidential Information.

15.1 Each Party (the “Receiving Party”) shall not use for any purpose other than performing its obligations under this Agreement, or divulge, disclose, produce, publish, or permit access to, without the prior written consent of the other Party (the “Disclosing Party”), any Confidential Information of the Disclosing Party. As used herein, the term “Confidential Information” means information or materials prepared in connection with this Agreement, designs, drawings, specifications, techniques, models, data, documentation, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans,

customer, supplier or personnel names and other information related to customers, suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets. Confidential Information does not include (a) information known to the Receiving Party prior to obtaining the same from the Disclosing Party; (b) information in the public domain at the time of disclosure by the Receiving Party; or (c) information obtained by the Receiving Party from a third party who did not receive same, directly or indirectly, from the Disclosing Party. The Receiving Party shall use the higher of the standard of care that the Receiving Party uses to preserve its own Confidential Information or a reasonable standard of care to prevent unauthorized use or disclosure of such Confidential Information. Notwithstanding anything herein to the contrary, the Receiving Party has the right to disclose Confidential Information without the prior written consent of the Disclosing Party: (i) as required by any court or other Governmental Authority, or by any stock exchange on which the shares of any Party are listed, (ii) as otherwise required by law, (iii) as advisable or required in connection with any government or regulatory filings, including without limitation, filings with any regulating authorities covering the relevant financial markets, (iv) to its attorneys, accountants, financial advisors or other agents, in each case bound by confidentiality obligations, (v) to banks, investors and other financing sources and their advisors, in each case bound by confidentiality obligations; or (vi) in connection with an actual or prospective merger or acquisition or similar transaction where the party receiving the Confidential Information is bound by confidentiality obligations. If a Receiving Party believes that it will be compelled by the law or a court or other Governmental Authority to disclose Confidential Information of the Disclosing Party, it shall give the Disclosing Party prompt written notice, and in all cases not less than five (5) business days' notice in advance of disclosure, so that the Disclosing Party may determine whether to take steps to oppose such disclosure.

16. Estoppel Certificate.

Either Party hereto, without charge, at any time and from time to time, within twenty (20) days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other relevant person, firm or corporation specified by such requesting party:

- a) If true and correct, that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;
- b) Whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and
- c) Such other information as may be reasonably requested by a Party hereto.

Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the date set forth above.

PROVIDER:

SOLAR STAR CO CO 1, LLC

By: SunPower AssetCo, LLC  
Its member

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

CUSTOMER:

CONTRA COSTA COUNTY

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

## EXHIBIT A

### SYSTEM DESIGN AND CONSTRUCTION

This Exhibit A sets forth the design, engineering and construction specifications for the System, as well as assumptions being made by the Provider regarding the existing condition at the Site, including but not limited to the building roof, building structure, ground conditions, electrical system including panels, inverter installation location, and security fencing. Capitalized terms used herein and not otherwise defined have the meaning given in the Agreement to which this exhibit is attached.

#### 1. SYSTEM LOCATION AND DESCRIPTION:

Descriptions of the site and system are located in Schedule A (Description of Site) and Schedule B (Description of System) of the Agreement.

#### 2. PROJECT SCHEDULE:

##### PORTFOLIO MILESTONES

	Tranche	Contract Approval Date	Commercial Operation Date
1000 Ward	1	6-18-2019	6/24/2020
30/40 Muir	1	6-18-2019	5/24/2020
597 Center	1	6-18-2019	6/13/2020
595 Center	2	6-18-2019	10/26/2020
50 Douglas	2	6-18-2019	9/22/2020
30 Douglas	2	6-18-2019	10/30/2020
2530 Arnold	3	6-18-2019	12/14/2020
4545 Delta Fair	3	6-18-2019	12/21/2020
4549 Delta Fair	3	6-18-2019	11/24/2020
1305 MacDonald	3	6-18-2019	12/21/2020

#### 3. SCOPE OF WORK:

##### *System Design & Scope*

##### *Design Documentation*

Provider shall provide comprehensive submittal packages for the 30% and 90% design sets as detailed below. Changes to 30% Customer approved drawings (scope lock) could result a change order. At a minimum, each submittal package shall include the elements required to convey in sufficient detail the following for each phase of the design:

	<b>Submittal Requirement</b>	<b>30% Design Set</b>	<b>90% Design Set</b>
1	Cover Sheet, with Content, Project Details, Directory, etc.	X	X
2	PV System Sizes & Production Estimates.	X	X
3	Overall Site Plan with PV Array Names, Conduit Routes, Tree/Light Removal, etc.	X	X
4	Electrical Site Plan Drawings & General Conduit Routing.	X	X
5	Electrical Single Line Diagrams.	X	X
6	Demolition Plans.		X
7	Structural Drawings.		X
8	Equipment Pad locations.	X	X
9	Mounting Details.		X
10	Signage, Trenching, Installation, and Grounding Details.		X
11	Monitoring System Details.		X
13	Construction Schedule.	Prelim	Detailed
14	Manufacturer's Cut Sheets with Equipment Specifications		X
15	Civil Drawings (if applicable)		X
16	Fire Access Plans		X
17	Carport Lighting Plans		X

Production modeling of the PV system shall accurately simulate energy production for proposed system layouts, sizes, and orientation. Provider shall be responsible for updating the production models each time significant changes are made to the proposed system designs that will impact production.

### ***Solar Electrical Equipment and Conductors***

Conductors will be aluminum or copper according to Electrical Engineer of Record's determination. AC feeder length from panel boards to equipment pad location and from equipment pad location to electrical tie-in is identified on the array layout drawings. AC feeder lengths from electrical equipment pad location to assumed point of interconnection, and length assumptions with equipment amperage ratings are shown on the single line drawing.

Transformers are 480V:12kV, non-Dry-type by manufacturer of Provider's choosing. Secondary containment is not included in the scope of the project.

### ***Battery Energy Storage System Requirements***

For sites with storage to be installed:

- 13.5' by 11' minimum required area per storage unit. Area required includes storage unit, concrete pad, and clearance zone in front of units.
- Storage unit must be located in an area free of combustible materials (nearby foliage and trees would need to be removed).
- Storage unit must be separated from public foot traffic with a fence and must be separated from vehicle traffic with bollards.
- Crane rental required to land up to 24,500 lb units. Location of units must accommodate both crane and semi-trailer truck access.
- PVS5 DAS, Auxiliary Box, Energy Storage System, and all Accuvim meters (Site meter, PV output meter, and Storage meter) must all be located such that hardlined communication lines can connect these devices to the same Local Area Network. CAT5e/6 cable is preferred means of connection between all devices, which has a 330' distance limit. Runs longer than 330' will require additional equipment to accommodate.

### ***Utility Interconnection***

Coordination of shutdown may be required with Customer and local utility. Temporary power generators are excluded. Interconnection is scheduled for a minimum of 4 hours and is assumed to be performed during off-hours with prior written approval from Customer. Additional shutdowns will be required in order to assess physical condition of Customer's switchgear.

The utility will have 24/7 access to existing electric utility meters and the utility lockable disconnect locations for all electrical interconnections related to this project.

### ***Utility Requirements***

A cost of \$172,012.58 is included for utility required electrical upgrades for the System at 30 Douglas Dr., Martinez, CA, as reflected in Pacific Gas & Electric's Supplemental Review, Notification # 114209530; additional utility-required electrical equipment upgrades or replacements are not included.

Any costs and / or schedule delays associated with unforeseen utility interconnection requirements, including but not limited to utility-owned equipment upgrades or additions, relay protection equipment external to the inverters, system impact studies, or telemetry requirements and interconnection studies are not included in this proposal.

### ***Facility Equipment***

Utility required circuit breaker coordination studies are not assumed for this project.

A short-circuit coordination study is not included for this project.



Solar system includes all standard interconnection related equipment on the Customer side of the meter, including panel circuit breakers, utility and/or visible utility lockable disconnect switches, solar metering, conduit, and wiring. Additional Customer-side protection required by the utilities above that provided by the certified inverters is not included.

If harmonic data of the site is not available, Provider shall assume that the Harmonic data are within the acceptable limits of the Institute for Electrical and Electronics Engineers (IEEE) Standard 519.

***Soils and Structural Foundations***

Foundation assumptions are as follows for system options:

- Drilled cast-in-place, 30” round caisson, 12’ Deep, approximately 2.5’ above grade, depending on existing topography.
- Requirements for dewatering, sub grade rock removal, or other unforeseen conditions are not included.

***Canopy Structure Design***

Carport Canopies are at 10 degree tilt with 11 ft clear height.

***Roof Conditions***

Provider assumes no upgrading of the building structures or canopies will be required to support the added live and dead loads from the photovoltaic installation and rooftop equipment, or to resist added lateral or seismic loads. Modifications to the roof system and design and construction of supports, upgrades to the building structure or platforms are not included.

Anchor and ballast counts are based on the wind load gradient method developed by Cermak Peterka Petersen, Inc, (CPP) and SunPower, based on the CPP wind tunnel testing results presented in CPP’s report “CPP7979\_SunPowerEWSsystem\_REP\_SOL\_R08” dated May 17th, 2018.

Increased anchor and ballast counts resulting from other design methods will be the responsibility of the client.

<b>Site Name</b>	<b>Anchor Count</b>
30 Muir	71
595 center	27
50 Douglas	90
1000 Ward	170
597 Center	33

Provider is not responsible for normal wear and tear associated with the installation of the solar system. Provider reserves the right to inspect the roof to verify its condition. In addition, Provider may offer recommendations to the Customer on modifications to the roof system to improve its serviceability. Customer is responsible for any and all modifications to the roof system. Modifications of roof systems fall into four categories:

- Modifications to improve roof condition / serviceability / useful life.
- Modifications required by roofing manufacturer prior to installation of PV system on their roof system. (e.g. slip sheets, strapping, etc.)
- Modifications required by Provider to make the roof a suitable substrate for the installation of PV. (e.g. air seals, batten bars, etc.)
- 3<sup>rd</sup> party engineering and insurance company requirements.
- Proposal assumes Customer-provided information accurately represents the existing site and roof conditions. This includes but is not limited to as-built drawings, roof reports, structural drawings, roof maintenance history, and roof warranty information. Failure to provide as-built drawings and structural drawings will cause schedule delay and added expense for acquisition of documentation through local authority having jurisdiction (“AHJ”). Provider is not responsible for additional costs or schedule delays.

***Drainage***

Special drainage requirements and/or drainage design and interconnection to Customer’s existing storm drain system or any other storm drain discharge system are not included.

Carport designs do not include structural roof deck for storm water collection or protection.

***Permits***

<b>Permit</b>	<b>Provider Permit</b>	<b>Customer Permit</b>	<b>Cost Allocation</b>	<b>Allotted Time following Application</b>
Building	X			
Fire	X			
Electrical	X			
Conditional Use Permit		NA		
Environmental Control		NA		
Storm Water		NA		
Soil Erosion and Sediment Control		NA		
Environmental Impact Report (CEQA)		NA		
Army Corps of Engineers		NA		
Wetlands		NA		
Water Quality		NA		
Archeological		NA		

Endangered Species		NA		
Water Rights		NA		
Mineral Rights		NA		
Redevelopment Agency		NA		
FAA Approvals		NA		

***Permit Allowance Schedule***

<b>Site</b>	<b>Allowance for Permit</b>
1000 Ward St	\$3,000
30 Douglas Dr	\$10,000
50 Douglas Dr	\$5,000
30/40 Muir Dr	\$5,000
597 Center Ave	\$2,500
595 Center Ave	\$7,000
2530 Arnold Dr	\$6,000
4545 Delta Fair Blvd	\$5,000
4549 Delta Fair Blvd	\$2,500
1305 Macdonald	\$3,000

All other permits/approvals are excluded.

Provider includes durations of 50 days for procuring permit and regulatory approvals (per project ). Provider will not be responsible for construction delays caused by permit and approval requirements from local jurisdictions or regulatory review bodies. Any delays in procuring permits will result in a day-for-day construction schedule extension.

***Shading***

The design is based on existing visual conditions on site. Removal of trees or other obstructions to install the solar arrays and system components is included as reflected in the Tier 1 array layouts. Trees and/or other obstructions identified for removal or trimming by Customer must be removed or trimmed prior to substantial completion or performance expectations/guarantees will require adjustment which will be handled as a change to the contract. At Substantial Completion an as-built shade study and performance simulation will be completed to ensure accuracy of initial shading assumptions.

### ***Painting***

Galvanization of canopy columns and primary beams only is included. All other metallic materials are either factory-finished or non-corrosive.

Painting of wall-mounted conduits is not included.

### ***Landscaping***

Site landscaping (e.g. plant restoration or long term weed abatement) is not included.

Irrigation repair and reconfiguration caused by foundation or underground construction is not included.

### ***Fencing***

A 6-0' galvanized, 9 gauge, 2" mesh fencing and chain link fence-with gate around perimeter electrical equipment pad locations is included. Special provisions for privacy slats, special hardware, lock sets, small fabric, etc. are not included. 4" bollards are included only in areas subject to vehicle impact. Additional bollards required by utility or other entities are excluded.

### ***Labor***

#### ***Project Labor Agreement***

Provider shall cause its project contractor to enter into Customer's project labor agreement among Customer, the project contractor, and all subcontractors thereof working on the project (the "PLA").

#### ***Overtime and special shift requirements***

Overtime and special shift requirements are not included, based on schedule submitted with this proposal, except for the interconnection work if shutdown is required. Project hours are based on Monday through Friday 7am – 5pm.

#### ***Prevailing Wages***

Provider shall pay prevailing wages for the project per the PLA and industrial relations requirements of project location.

#### ***Diversity Requirements***

Provider shall comply with Contra Costa County's Construction Outreach Program.

### ***Indirect Construction Costs***

#### ***Taxes and fees***

Taxes or fees, other than permit fees and sales tax, are not included.

### ***Bonds***

Prior to the Effective Date of the Agreement to which this Exhibit A is attached, Provider shall deliver to Customer for approval good and sufficient bonds with sureties, in amounts specified in Section 12.5 (Limitation of Liability) of the Agreement guaranteeing its faithful performance of the Agreement and its payment for all labor and materials thereunder.

### ***Site & Construction Conditions***

#### ***Access***

Design assumes each project site will be constructed in a single phase, set up of construction fencing at beginning of mobilization and removed when construction is completed. Extra time and labor for moving fences to “phase” construction in efforts to minimize parking impacts will have impacts in cost and schedule and will be calculated as a change order.

Customer will provide Site access to Provider to perform all work pursuant to the License granted in the Agreement. Provider will perform all work during regular business hours according to the PLA. Extra time or personnel constraints due to site security beyond daily signing in by workers on a sign in sheet i.e. badging, background checks, tool inventory checks, etc.—is not included.

Provider will be provided a sufficient area for staging materials and locating temporary facilities such as cranes, fork lifts, scaffolding, staintowers, construction trailers, portable toilets and dumpsters.

Existing roads will be capable of handling all required construction equipment such as drilling rigs, concrete trucks, delivery trucks, cranes, and all other equipment necessary to complete the work. Provider will not be responsible for any damage to existing roads, parking lots or playgrounds resulting from normal construction operations and activities.

#### ***Use of Facilities***

On-site water and power will be available for construction with no restrictions and at no charge to Provider. If a Customer initiated power shut down has duration over 4 hours and effects normal construction operations, Provider can rent and install a temporary generator and submit associated costs to Customer for reimbursement. Water quality shall be sufficient for use in dust control, as necessary, and be suitable for Provider’s standard concrete mix design.

#### ***Special handling of site materials***

Testing for removal and disposal of any existing hazardous waste materials, contaminated soils, or any other unforeseen site conditions that require special handling are not included.

#### ***Site utilities and hazards***

Changes resulting from utilities, right of ways, easements, and/or hazards—underground or above ground—or any undocumented building upgrades are not included.

Documented utilities and building upgrades are considered as part of this proposal if as-builts are provided to Provider prior to contract execution in order to confirm locations of these possible hazards. Customers shall supply Provider with a current Title Report with plotted easements, encumbrances, and rights-of-way at all project site locations.

### ***Security and Lighting***

Proposal assumes all parking lot light standards in direct conflict with installation of photovoltaic parking canopies will be removed by Provider. Proposal also assumes that the existing lighting circuits, for those removed parking lot light standards, can be re-used for photovoltaic parking canopies lighting system and that those existing circuits have ample current carrying capacity to provide required lighting at parking canopies, per jurisdictional code requirements. PV canopies located in areas where no existing lights are present will not include lighting unless the Customer requests this for an additional cost.

Temporary lighting during construction is excluded.

New lighting circuit installation is excluded from this proposal as well as any required timing circuit reconfiguration, lighting controllers, relays, or new panel boards. Lighting design and/or installation beyond the footprint of the photovoltaic parking canopies is not included in this proposal. Replacement of existing light standards is not included. Proposal includes LED fixtures for lighting under structures.

Additional security systems or infrastructure are not included in this proposal

### ***Special Conditions***

Proposal assumes modifications and/or reconfiguration of the existing parking lots will not be required to accommodate installation of Provider's photovoltaic parking canopy.

Assumes existing islands in parking lot to remain at area of new carport structure. Proposal excludes any re-striping of the parking lot/hard-court areas, unless specifically related to the construction of the photovoltaic parking canopies, or specifically described in the RFP.

While special care will be taken to locate existing underground utilities (underground survey) and locate carport structures with minimum conflicts, relocation of existing underground utilities due to carport foundations is not included.

Proposal excludes requirements for accessibility upgrades and accessibility design around the photovoltaic parking canopy structures and assumes that current parking lot layout has been reviewed and approved by AHJ and built and closed at the AHJ. If the architect of record recommends addition of new accessible parking stalls under the solar canopies, grade change to meet code, changed path of travel and/or new canopies over existing accessible stalls, design and construction costs will be addressed via Change Order.

Proposal excludes design or installation of any required additional fire hydrants or fire protection apparatuses as required by local first responders or Fire, Life/Safety professionals responsible for review and approval of the design for this project.

Architectural enhancements to the photovoltaic parking canopy structures or ground and roof arrays and mounting systems are not included.

At the detention center located at 1000 Ward in Martinez, the project estimate is based on utilizing existing conduit and equipment from the previous pv installation. The ability utilize existing conduit will be verified during the design phase.

### ***Testing and Inspections***

Provider assumes all Special Inspections/Testing shall be paid for and contracted by the Customer.

### ***Weather conditions***

Provider assumes standard weather patterns and site conditions for planning the project schedule. Instances of excessive climate, weather (greater than the most adverse conditions in the last 3 years) or natural disasters may result in delays and/or unplanned costs (i.e. additional labor, shipping, storage, and logistics costs) which will be the responsibility of the Customer.

### ***Commissioning, Monitoring, Operations & Maintenance***

#### ***Commissioning***

Proposal assumes commissioning requirements for this project is only for the Photovoltaic and energy storage systems. Proposal does not include other building system commissioning costs not related to our work (i.e. HVAC, Plumbing, Fire Alarm, etc.).

**EXHIBIT B**  
**FORM OF FINANCING PARTY ACKNOWLEDGMENT**

*[This Form of Consent contemplates a Sale-Leaseback of the System between the Provider and Provider's Lender and Provider's eventual lender may request changes]*

This CONSENT AND AGREEMENT (this "Consent") dated as of [●], 201 is entered into among (i) Contra Costa County, a political subdivision of the State of California (the "Customer"), (ii) Solar Star Co Co 1, LLC, a limited liability company duly organized and existing under the laws of the State of Delaware (the "Provider"), and (iii) [●], a [●] duly organized and existing under the laws of the State of [●] (together, with its successors in such capacity, the "System Lessor").

WHEREAS, the Provider intends to develop, install, own, operate and maintain a [\_\_\_\_\_] MW [**ground-mounted/rooftop**] photovoltaic solar electric generating facility to be located in [\_\_\_\_\_] (the "Project");

WHEREAS, the Provider and the Customer entered into that certain Power Purchase & Storage Services Agreement, dated as of [●], 2019 (as amended, amended and restated, modified or supplemented from time to time, the "Assigned Agreement");<sup>1</sup>

WHEREAS, the Project will be sold by the Provider to the System Lessor pursuant to that certain Participation Agreement (as amended, the "Participation Agreement") dated as of the date hereof, among the Provider, the System Lessor, [●], not in its individual capacity but as owner trustee, and [●] ("Owner Participant");

WHEREAS, the System Lessor will lease the Project back to the Provider pursuant to that certain Lease Agreement, a related Project Schedule and a Certificate of Acceptance (as amended, the "Lease Agreement") dated as of the date hereof, between the System Lessor and the Provider;

WHEREAS, the Provider will grant the System Lessor a first priority security interest in and to all of the Provider's assets, including the Assigned Agreement, pursuant to a security agreement in form and substance acceptable to the System Lessor (as amended, amended and restated, modified or supplemented from time to time, the "Security Agreement"); and

WHEREAS, it is a condition precedent to the Owner Participant's obligation to make its investment in the System Lessor and for the System Lessor to acquire the Project under the Participation Agreement and lease the Project to the Provider under the Lease Agreement that the Customer execute and deliver this Consent.

NOW, THEREFORE, as an inducement to the Owner Participant to make its investment in the System Lessor and for the System Lessor to acquire the Project under the Participation Agreement and lease the Project to the Provider under the Lease Agreement, and in consideration

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<sup>1</sup> NTD: Can be expanded to include any additional agreements to which the Customer is a party.



of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

**1. CONSENT TO ASSIGNMENT, ETC.**

(a) Consent to Assignment. The Customer (i) acknowledges that the Provider and the System Lessor have entered into the Participation Agreement and the Owner Participant's obligation to make its investment in the System Lessor and for the System Lessor to acquire the Project under the Participation Agreement and lease the Project to the Provider under the Lease Agreement will be made in reliance upon the execution and delivery by the Customer of the Assigned Agreement and this Consent, (ii) consents in all respects to the pledge and assignment to the System Lessor of all of the Provider's right, title and interest in, to and under the Assigned Agreement pursuant to the Security Agreement, and (iii) acknowledges the right, but not the obligation, of the System Lessor or the System Lessor's designee, in the exercise of the System Lessor's rights and remedies under the Lease Agreement, the Security Agreement, and related documents to make all demands, give all notices, take all actions and exercise all rights of the Provider in accordance with the Assigned Agreement, and agrees that in such event the Customer shall continue to perform its obligations under the Assigned Agreement; provided that in the event, with respect to the Assigned Agreement, there exists a conflict between any notice given or action taken by the System Lessor and any notice given or action taken by the Provider, such conflict shall be resolved in favor of the notice given or the action taken by the System Lessor.

(b) Substitute Owner. The Customer agrees that, if the System Lessor notifies the Customer that an event of default under the Lease Agreement has occurred and is continuing and that the System Lessor has exercised its rights (i) to have itself or its designee substituted for the Provider under the Assigned Agreement, (ii) to acquire or have its designee or assignee acquire the Provider, or (iii) to sell, assign, transfer or otherwise dispose of the Assigned Agreement to a third party, including in a judicial or non-judicial foreclosure sale, then the System Lessor, the System Lessor's designee or such third party (each, a "Substitute Owner") shall be substituted for the Provider under the Assigned Agreement and, in such event, the Customer will (x) recognize the Substitute Owner as its counterparty to the Assigned Agreement, (y) take any actions and execute any documents, agreements or instruments reasonably necessary to effect such substitution, and (z) continue to perform its obligations under the Assigned Agreement in favor of the Substitute Owner pursuant to the terms hereof and thereof.

(c) Right to Cure.

(i) Notwithstanding anything to the contrary contained in the Assigned Agreement, the Customer shall not exercise any right it may have under the Assigned Agreement, at law or in equity, to cancel, suspend or terminate the Assigned Agreement or any of its obligations under the Assigned Agreement, as the result of any default or other action or omission of the Provider in the performance of any of its obligations under the Assigned Agreement, or upon the occurrence or non-occurrence of any event or condition under the Assigned Agreement that would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable the Customer to terminate or suspend its obligations or exercise any other right or remedy under the Assigned Agreement or under applicable law (hereinafter an "Assigned Agreement Default"), until it first gives prompt written notice of such Assigned Agreement

Default to the System Lessor and the Owner Participant and affords the System Lessor and the System Lessor's respective successor, assignee and/or designee a period of at least ninety (90) days (or, if such default is a payment default, forty-five (45) days) to cure such default, commencing from the later to occur of (x) the System Lessor's and the Owner Participant's receipt of such notice, and (y) the expiration of any notice periods or cure periods provided for in the Assigned Agreement; provided, however, that if (1) an event of default under the Lease Agreement has occurred and is continuing, the System Lessor has exercised its rights to foreclose on the Project as a result thereof and possession of the Project is necessary to cure any such non-monetary default, then, so long as the System Lessor or the System Lessor's respective successor, assignee and/or designee is diligently pursuing such foreclosure proceedings, the time periods specified in this Section 1(c) for curing an Assigned Agreement Default shall be extended for the time taken to complete foreclosure proceedings, and (2) any such party is prohibited from curing any such Assigned Agreement Default by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding involving the Provider, then the time periods specified in this Section 1(c) for curing an Assigned Agreement Default shall be extended for the period of such prohibition.

(ii) No such cancellation, suspension or termination of the Assigned Agreement by the Customer shall be binding upon the System Lessor without the notice and extended cure period specified in this Section 1(c). Any dispute that may arise under the Assigned Agreement notwithstanding, the Customer shall continue performance under the Assigned Agreement and resolve any dispute without discontinuing such performance until the lapse of the notice and extended cure period specified in this Section 1(c).

(d) No Termination, Assignment or Material Amendments. The Customer shall not enter into any consensual cancellation or termination of the Assigned Agreement (except with respect to termination in the event of a default by the Provider, subject to the limitations and extended cure periods provided for in Section 1(c)), or assign, novate or otherwise transfer any of its right, title or interest thereunder or consent to any such assignment or transfer by the Provider without, in each such case, the written consent of the System Lessor. The Customer shall not enter into or agree to any amendment, supplement, assignment or other modification to, or benefit from any waiver under, the Assigned Agreement without the prior written consent of the System Lessor.

(e) Replacement Agreement. In the event that the Assigned Agreement is rejected or otherwise terminated as a result of any bankruptcy or insolvency proceeding affecting the Provider, the Customer shall, at the option of the System Lessor or the System Lessor's respective successor, assignee and/or designee, enter into a new agreement with the System Lessor or any Substitute Owner (or its transferee or other nominee that owns or leases the Project) having terms substantially the same as the terms of the Assigned Agreement. Thereafter, references in this Consent to the "Assigned Agreement" shall be deemed to refer to such new agreement.

(f) No Liability. The Customer acknowledges and agrees that none of the System Lessor, or the System Lessor's respective successor, assignee and/or designee or the Owner Participant shall have any liability or obligation under the Assigned Agreement as a result of this Consent, the Security Agreement, the Lease Agreement or otherwise, nor shall the System Lessor or the System Lessor's respective successor, assignee and/or designee be obligated or required to (i) perform any of the Provider's obligations under the Assigned Agreement, except, in the case of

the System Lessor or the System Lessor's respective successor, assignee and/or designee, during any period in which the System Lessor or the System Lessor's respective successor, assignee and/or designee is a Substitute Owner pursuant to Section 1(b), in which case the System Lessor or other Substitute Owner shall not be liable for acts or omissions of the Provider and the obligations of such Substitute Owner shall otherwise be no more than those of the Provider under the Assigned Agreement, or (ii) take any action to collect or enforce any claim for payment assigned under the Security Agreement or any related document.

(g) Delivery of Notices. The Customer shall deliver to the System Lessor and the Owner Participant, concurrently with the delivery thereof to the Provider, a copy of each notice, request or demand given by the Customer pursuant to the Assigned Agreement.

(h) Acknowledgements. The Customer agrees to execute such acknowledgements or other similar instruments as the System Lessor may reasonably request in connection with the transactions contemplated by this Consent.

## **2. PAYMENTS UNDER THE ASSIGNED AGREEMENT**

(a) Payments. The Customer will pay all amounts payable by it under the Assigned Agreement, if any, in lawful money of the United States of America, in immediately available funds and in the manner required by, and subject to the terms and conditions of, the Assigned Agreement, directly into the account specified on Exhibit A hereto, or to such other person or account as may be specified from time to time by the System Lessor to the Customer in writing.

(b) No Offset, etc. All payments required to be made by the Customer under the Assigned Agreement shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever.

## **3. REPRESENTATIONS AND WARRANTIES OF THE CUSTOMER**

The Customer makes the following representations and warranties to the System Lessor, the Provider and the Owner Participant as of the date hereof, which shall survive the execution and delivery of this Consent and the Assigned Agreement and the consummation of the transactions contemplated hereby and thereby:

(a) Organization; Power and Authority. The Customer is a political subdivision of the State of California, and is duly qualified, authorized to do business and in good standing in all jurisdictions where it is required to be so qualified and authorized to do business, and has all requisite power and authority to enter into and to perform its obligations under this Consent and the Assigned Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

(b) Authorization. The execution, delivery and performance by the Customer of this Consent and the Assigned Agreement have been duly authorized by all necessary action on the part of the Customer and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of (i) the Customer, or (ii) any other person or entity, except approvals or consents which have previously been obtained.

(c) Execution and Delivery; Binding Agreements. Each of this Consent and the Assigned Agreement is in full force and effect, has been duly executed and delivered on behalf of the Customer and constitutes the legal, valid and binding obligation of the Customer, enforceable against the Customer in accordance with its terms except as the enforceability hereof or thereof may be limited by (i) bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights generally, and (ii) general equitable principles (whether considered in a proceeding in equity or at law).

(d) Litigation. There is no legislation, litigation, action, suit, proceeding or investigation pending or (to the best of the Customer's knowledge after due inquiry) threatened against the Customer before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate, (i) could adversely affect the performance by the Customer of its obligations under this Consent or the Assigned Agreement, or that could modify or otherwise adversely affect the Approvals (as defined in Section 3(f)), (ii) questions the validity, binding effect or enforceability of this Consent or the Assigned Agreement, any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby, or (iii) could have a material adverse effect upon (x) the value, validity, perfection or enforceability of the liens granted to the System Lessor under the Security Agreement and other security documents, or (y) the ability of the System Lessor to enforce any of its rights and remedies under the Assigned Agreement or this Consent.

(e) No Conflict. The execution and delivery of this Consent and the Assigned Agreement and the performance by the Customer under this Consent and the Assigned Agreement will not violate, result in a breach of, default under or conflict with (i) any law, rule, regulation, order, permit or decree applicable to the Customer, (ii) its organizational documents, or (iii) the terms of any other agreement binding on the Customer.

(f) Government Consent. No consent, order, authorization, waiver, approval or any other action, or registration, declaration or filing with, any person, board or body, public or private (collectively, the "Approvals"), is required to be obtained by the Customer in connection with the execution, delivery or performance of this Consent, the Assigned Agreement or the consummation of the transactions contemplated hereunder and thereunder, except any Approvals which have previously been obtained.

(g) No Default or Amendment. Neither the Customer nor, to the Customer's knowledge after due inquiry, the Provider or any other party to the Assigned Agreement is in default of any of its obligations thereunder (or has claimed force majeure, emergency, or any other excuse for performance thereunder which is still ongoing as of the date hereof). The Customer has no existing counterclaims, offsets, defenses, or claims for change orders against the Provider under the Assigned Agreement. To the Customer's knowledge, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either the Customer or the Provider to terminate or suspend its obligations (or the performance of such obligations) under the Assigned Agreement. The Assigned Agreement has not been amended, modified or supplemented in any manner other than as indicated above.

(h) No Previous Assignments. The Customer has no notice of, and has not consented to, any previous assignment of all or any part of its right, title or interest in, to or under the Assigned Agreement.

(i) **Purchase Option.** The Customer has not taken any official action requiring or authorizing the exercise of any purchase option available to it under the Assigned Agreement, has not decided whether or not it will exercise any such purchase option, and is under no legal or economic compulsion to exercise any such purchase option; provided, however, nothing herein shall prohibit the Customer from exercising any purchase option under the Assigned Agreement when it becomes exercisable in accordance with its term and such exercise shall not be deemed to be a breach of this representation and warranty.]

(j) Liens; Mortgages. The Customer has no knowledge of any existing lease, mortgage, security interest or other interest in or lien upon the [Premises], which could attach to the Project as an interest adverse to the System Lessor's interest therein.

Representations and Warranties. All representations, warranties and other statements made by the Customer in the Assigned Agreement were true and correct in all material respects as of the date when made and, except for those that by their terms speak as of a specific date, are true and correct in all material respects as of the date hereof.

#### **4. ADDITIONAL PROVISIONS<sup>2</sup>**

(a) **Commercial Operation Date.** The Commercial Operation Date is \_\_\_\_\_.

(b) **Use of Electricity.** None of the electricity to be sold under the Assigned Agreement will be used to generate energy for the purpose of heating a swimming pool.

(c) **Project.** The Customer has approved the Project as installed at the [Premises].

(d) **Access Rights.** The System Lessor and the System Lessor's respective successors, assignees and/or designees shall have the same rights as the Provider to access the Project in order to install, operate, maintain and remove the Project as the right accorded to the System Lessor under the Lease Agreement and the Security Agreement.

(e) **Notice of Ownership.** The Customer will use commercially reasonable efforts to place its successors, assigns and lien holders on notice of the ownership of the Project by the Provider or the System Lessor, the existence of the security interest, and the fact that the Project is not part of the [Premises] or a fixture thereof, as necessary and appropriate to avoid confusion or adverse claims.

(f) **Amendments.** The Customer acknowledges that, under the Provider's financing arrangements, the Provider is not permitted to agree to an amendment or assignment of the Assigned Agreement without prior written consent of the System Lessor.]

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<sup>2</sup> NTD: Additional provisions to be added to address specific matters contained in the PPA.

**5. MISCELLANEOUS**

(a) Applicable Law; [Submission to Jurisdiction]. THIS CONSENT, AND ANY INSTRUMENT OR AGREEMENT REQUIRED HEREUNDER (TO THE EXTENT NOT EXPRESSLY PROVIDED FOR THEREIN), SHALL BE GOVERNED BY, AND CONSTRUED UNDER, THE LAWS OF THE STATE OF CALIFORNIA, APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE AND WITHOUT REFERENCE TO CONFLICTS OF LAWS.

(b) [Reserved.]

(c) Notices. All notices and other communications hereunder (i) shall be in writing, (ii) shall be effective upon actual receipt thereof by the party or parties to whom such notice is addressed, except that any communication or notice so transmitted by telecopy or electronic mail shall be deemed to have been validly and effectively given on the day (if a business day and, if not, on the next following business day) on which it is transmitted if transmitted during normal business hours of the recipient, and if transmitted after that time, on the next following business day, in each case as evidenced by transmittal confirmation received by the transmitter, (iii) shall be delivered by hand or overnight courier service or mailed by certified or registered mail, sent by facsimile or via electronic mail, and (iv) shall be directed as follows:

If to the Customer:	[_____] [_____] [_____] Attention: [_____] Telephone: [_____] Facsimile: [_____] Email: [_____]
If to the Provider:	[●]
If to the System Lessor:	[●]

The above parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent.

(d) Amendment, Waiver. Neither this Consent nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the Customer, the Provider and the System Lessor.

(e) Third Party Beneficiary. The Owner Participant shall be an express third-party beneficiary of this Consent. The Owner Participant shall be entitled to enforce the rights of the System Lessor hereunder.

(f) No Waiver; Remedies Cumulative. The waiver of any right, breach or default under this Consent by any party must be made specifically and in writing. No failure or delay on the part of the System Lessor in exercising any right, power or privilege hereunder and no course of dealing between the Customer and the System Lessor shall operate as a waiver thereof; nor shall any single

or partial exercise of any right, power or privilege hereunder preclude any other exercise, or the further exercise, of any other right, power or privilege hereunder. No notice to or demand upon any party will entitle such party to any further, subsequent or other notice or demand in similar or any other circumstances. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies that the System Lessor would otherwise have.

(g) Counterparts. This Consent may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered, including by e-mail or other electronic transmission, shall be deemed an original, but all of which shall together constitute one and the same instrument.

(h) Headings Descriptive. The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

(i) Severability. In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(j) Successors and Assigns. This Consent shall be binding upon the parties hereto and their permitted successors and assigns and shall inure to the benefit of the parties, their designees and their respective permitted successors and assigns; provided, however, that no party or its respective successor or assign shall assign any of its interest in this Consent except in connection with an assignment of its interests in the Assigned Agreement and then only to the same person(s) or entity(ies) to which its interest in the Assigned Agreement is so assigned.

(k) Survival. All agreements, statements, representations and warranties made by the Customer herein shall be considered to have been relied upon by the System Lessor and the Owner Participant and shall survive the execution and delivery of this Consent.

(l) Conflicts. In the event of a conflict between any provision of this Consent and any provision of the Assigned Agreement, the provisions of this Consent shall prevail.

(m) Further Assurances. Each party hereto hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

[SIGNATURE PAGES FOLLOW]

**IN WITNESS WHEREOF**, the parties hereto have caused this Consent to be executed by their respective officers as of the date first above written.

[\_\_\_\_\_]
as the Customer

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

[\_\_\_\_\_]
as the Provider

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

[●],
as the System Lessor

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



**Payment Instructions**

Accounts Bank	
ABA Number	[_____] <sup>3</sup>
Account Number	[_____]
Account Name	[_____]
Reference	[_____]

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<sup>3</sup> Account information to be confirmed and included.

## EXHIBIT C

### PV SYSTEM PERFORMANCE GUARANTEE (the “Guarantee”)

#### ARTICLE I. ADDITIONAL DEFINED TERMS

**Actual Generation** means, for each Guarantee Year during the Term and with respect to the System, the System’s alternating current or “AC” electricity production in kilowatt-hours (“kWh”) as measured under Section 3.02.

**Annual Deficit** has the meaning set forth in Section 3.01.

**Annual System Performance Report** means the report that summarizes annual system performance in kWh and includes calculations for Weather Adjustment and True-up Period calculations.

**Avoided Energy Price per kWh** means the amount that the Customer will be paid by Provider for each Kilowatt-hour as set out in Appendix B (Avoided Energy Price) of this Guarantee.

**Data Acquisition System** or **DAS** means Provider’s system that displays historical meteorological and production data over an Internet connection and consists of hardware located on-Site and software housed on Provider’s DAS server. The DAS measures and logs, at a minimum, the following parameters on a 15-minute average basis at the Site: actual AC electricity production of the System (in kWh) and solar irradiance (in W/m<sup>2</sup>).

**Expected Energy** means, for the System in a specified Guarantee Year, the kilowatt hours for the System set forth on Appendix A (Expected Energy) of this Guarantee.

**Excused Performance Event** means:

- Force Majeure Event;
- Impingements on solar access by structures or activities on neighboring sites or by facilities that are beyond the control of either Party;
- Externally caused outages, including:
  - Warranty Exclusions: hours during any period when the System or any portion thereof is off-line due to an event that would constitute an exclusion under any applicable manufacturer’s, System, workmanship or other applicable warranty.
  - Network Disturbance Hours: hours during any period when a fluctuation in the utility network parameters (e.g., a frequency or voltage variation) result in the disconnection of the inverters or the System from the utility network and prevented energy from being evacuated from the System.
  - Network Outage Hours: hours during any period when a failure in the distribution network or in the connection infrastructure prevented energy from being evacuated from the System.

- Third-Party Equipment Servicing Hours: equipment or System outage hours during any period that result from service issues related to non-Provider equipment or delays in procuring non-Provider replacement parts.
- Customer-Caused Hours: hours during any period when the equipment or the System is off-line due to Customer-required outages or Customer-caused delays in Site access.
- Major Maintenance Hours: hours during any period when the equipment or the System is off-line due to Customer-required major maintenance work.

**Guaranteed Level** means 90% of the Expected Energy for a Guarantee Year for the System.

**Guarantee Year** means each successive 12-month period during the Term commencing on the Commercial Operation Date.

**PVSim** means the software program utilized by Provider to predict the amount of energy that the System will produce in an average year which has the following characteristics: (1) based on PVFORM, the photovoltaic simulation software produced by Sandia National Laboratories and the US Department of Energy, (2) all photovoltaic characteristics are modeled, (3) all ancillary array losses are taken into account and (4) PVSim simulations use either measured data or typical meteorological year files from Meteonorm and NREL.

**SEMMY** or “Simulated Energy in a Measured Meteorological Year”, means, with respect to any Guarantee Year, Year 1 AC Energy output of the System simulated by PVSim using measured average hourly irradiance, wind speed, and air temperature as recorded by the Data Acquisition System, holding all other inputs equal to those used in calculating SETMY.

**SETMY** or “Simulated Energy for a Typical Meteorological Year”, means the Year 1 AC Energy output of the System simulated by PVSim using average hourly irradiance, wind speed, and air temperature data contained within the Weather File.

**True-up Period** means each successive one (5)-year period during the Term commencing on the first day of the Term.

**Weather Adjustment** means the ratio described in Section 3.01. Section 3.01

**Weather File** means the typical meteorological year data set specified for the System set forth on Appendix C (Weather File) of this Guarantee.

## **ARTICLE II. PERFORMANCE GUARANTEE CONSIDERATION**

### **Section 2.01 Consideration**

The Parties agree that the consideration set forth in Section 5.1 of the Agreement includes adequate consideration for the terms, conditions and provisions of this Guarantee.

### ARTICLE III. PERFORMANCE GUARANTEE

Provider guarantees to Customer that the Actual Generation of the System during any Guarantee Year, subject to the limitations, terms and conditions stated in this Guarantee shall not be less than the Guaranteed Level.

#### **Section 3.01 Guaranteed Output Calculations.**

Provider shall calculate the Annual Deficit for the System for each Guarantee Year during the Term:

- (a) Annual Deficit = (Expected Energy x Guaranteed Level) x Weather Adjustment – Actual Generation

Where the Weather Adjustment ratio is as follows:

Simulated Energy in a Measured Meteorological Year (SEMMY)  
Simulated Energy for a Typical Meteorological Year (SETMY)

For each Guarantee Year, within thirty (30) days after the end of such Guarantee Year, Provider shall calculate the Annual Deficit for the System. Customer has the right to access all data and information supporting Provider's calculation of the Annual Deficit.

- (b) Guarantee Payment Reimbursement. At the end of each True-up Period:
- (i) if the sum of Annual Deficits > 0, then Provider shall pay to Customer an amount equal to the cumulative product of (y) the Annual Deficits and (z) the Avoided Energy Price per kWh (a "Guarantee Payment");
- (ii) Provider shall promptly notify Customer of any Guarantee Payment due. Provider shall make Guarantee Payments within thirty (30) days of the date of the notice provided in the first sentence of this paragraph.

#### **Section 3.02 Actual Generation Measurement.**

Provider shall measure Actual Generation for the System for each Guarantee Year as follows:

- (a) **Initial Output Data Collection.** During the Term, Provider will collect energy output data using its Data Acquisition System. For each Guarantee Year, Provider will sum the daily kWh output for the System provided by the DAS to calculate the Actual Generation for the System for such Guarantee Year.
- (b) **Equipment Calibration and Replacement.** Provider may request to have the meteorological equipment independently calibrated or replaced at its own expense every eighteen (18) to thirty (30) months. Provider shall notify the Customer of the scheduled calibration date and time no less than 30 days prior, and shall provide the Customer written proof of calibration or replacement.
- (c) **Contingency for Equipment Failure.** In the event of hardware, communication, or other failure affecting the DAS, Provider will make commercially-reasonable efforts to resolve the failure in a timely manner.

In the event that data is lost, Actual Generation for each affected System shall be adjusted to compensate for such lost data as follows:

- (i) In lieu of lost meteorological data, Provider will utilize such data obtained from a nearby meteorological station that Provider monitors and selects for such purpose.
- (ii) In lieu of lost electricity data, Provider will utilize the cumulative data from System meter readings to calculate the electricity generated by each affected System during the missing interval. In the event that data from the System meter is inaccurate or missing, Provider will simulate electricity production during the missing interval utilizing measured meteorological data and PVSIM. The simulated electricity production during the missing interval will be added to the Actual Generation for each affected System for the subject Guarantee Year.

#### **ARTICLE IV. CUSTOMER RESPONSIBILITIES**

##### **Section 4.01 Customer's Failure to Uphold Responsibilities.**

Provider shall promptly notify Customer of any breach ("Out of Compliance Letter") of (i) Customer's obligation to pay Provider for the Solar Services and Storage Services pursuant to the Agreement and (ii) any Customer obligations pursuant to the Agreement that directly (A) hinder the amount of Energy or the Storage Services delivered by the System or (B) degrade the functionality of the System. Upon Customer's cure of all failures described in an Out of Compliance Letter, Provider will notify Customer ("In Compliance Letter") that Customer is complying with Customer's Responsibilities. For any period between the issuance of an Out of Compliance Letter and of an In Compliance Letter (a "Noncompliance Period"), to the extent that Customer's non-compliance actually impacts the Actual Generation of the System, any Actual Generation from such affected Systems in such month(s) shall be disregarded in the calculation of Annual Deficits for such Systems under Section 3.01, and the Expected Energy for any affected System in any Guarantee Year in which there is a Noncompliance Period shall be reduced by a proportionate amount.

#### **ARTICLE V. EXPECTED ENERGY ADJUSTMENT**

##### **Section 5.01 Adjustment of Expected Energy.**

If, and to the extent, any of the following events results in a change in the production of electricity by the System, Expected Energy for that System shall be adjusted correlatively for the period of such change:

- (a) Subject to Provider's obligations under any warranty it provides in connection with the Systems (including any Provider obligation, with respect to the System, in connection with any requirements under the California Solar Initiative program), a material portion of the components of the System fails, and the manufacturer of such component(s) refuses, or otherwise fails to honor its corresponding warranty;
- (b) Customer fails to perform any of its obligations under the PPA – such as obligations related to maintaining the System's interconnection to the local

utility grid or limiting outages (as defined in the Agreement) – and such failure reduces the amount of electricity that the System can generate or deliver.

- (c) There is any failure of the System to perform caused by legislative, administrative or executive action, regulation, order or requisition of any federal, state or local government, local utility or public utilities commission;
- (d) There is an Excused Performance Event; or
- (e) Adjustment to the Expected Energy, or a reduction in the amount of Energy that Provider is obligated to deliver, is permitted or required under the Agreement.

**Section 5.02 Notification of Changes to Expected Energy.**

If Provider determines that any changes to Expected Energy for the System are required based on an event or events described in Section 5.01, then Provider shall notify the Customer, in writing, of the basis for its determination, and Provider shall either provide revised definitions of Expected Energy in exhibits that, upon mutual agreement of the Parties, which shall not be unreasonably denied or delayed, shall replace the current exhibits to this Guarantee, or specify a date by which it shall do so.

### Appendix A – Expected Energy

<b>Guarantee Year</b>	<b>Expected Annual kWh</b>
1	883,183
2	880,975
3	878,772
4	876,575
5	874,384
6	872,198
7	870,018
8	867,843
9	865,673
10	863,509
11	861,350
12	859,197
13	857,049
14	854,906
15	852,769
16	850,637
17	848,510
18	846,389
19	844,273
20	842,162
21	840,057
22	837,957
23	835,862
24	833,772
25	831,688
<b>Total</b>	<b>21,429,705</b>

### Appendix B – Avoided Energy Price

<b>Guarantee Year</b>	<b>Avoided Energy Price per kWh</b>
1	\$0.0048
2	\$0.0049
3	\$0.0051
4	\$0.0052
5	\$0.0054
6	\$0.0056
7	\$0.0057
8	\$0.0059
9	\$0.0061
10	\$0.0063
11	\$0.0065
12	\$0.0066
13	\$0.0068
14	\$0.0070
15	\$0.0073
16	\$0.0075
17	\$0.0077
18	\$0.0079
19	\$0.0082
20	\$0.0084
21	\$0.0087
22	\$0.0089
23	\$0.0092
24	\$0.0095
25	\$0.0098



## **Appendix C – Weather File**

SolarAnywhereTGY2016\_(10km)\_37.95\_-122.05

**Schedule A**

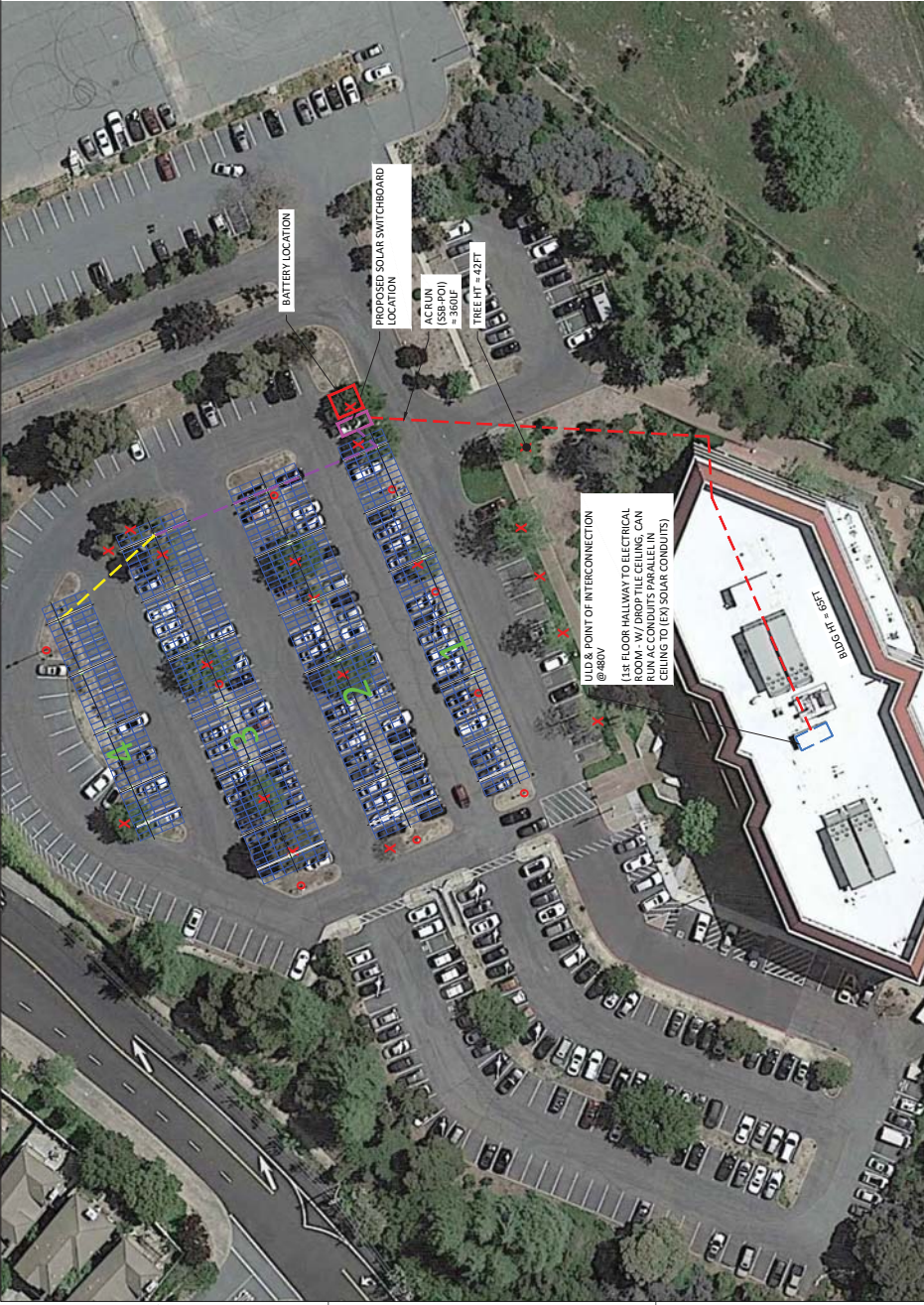
**DESCRIPTION OF SITE**

<b>Facility</b>	<b>System Size (kW DC)</b>	<b>Product Type</b>	<b>Module qty &amp; type - SunPower</b>	<b>Inverters- qty &amp; type-Delta</b>	<b>Battery – Lockheed Martin Energy</b>
2530 Arnold Dr, Martinez, CA 94553	526.40	Carport – Helix 1.5	(1120) SPR- X21-470- COM	(4) M80U_121 (1) M60U_121 (2) M42U_121	Gridstar Lithium ESU -500 kW

**Schedule B**

**DESCRIPTION OF SYSTEM**

PV System Array Layouts and Electrical Single Line Diagrams



1 ARRAY LAYOUT  
SCALE: 1/32" = 1'-0"

- NOTES:
1. 110 MPH WINDZONE (ASCE 7-10) CATEGORY II, EXPOSURE C.
  2. SNOWLOAD PSF ELEVATION 136"
  3. CORROSION RATE: (1.2MPY/1)(C2-4%, C3: 99%)
  4. REQUIRED COATING FOR PREGALVANIZED STEEL IN ORDER TO ACHIEVE 10 YEAR LIFE BEFORE APPEARANCE OF RUST: G90
  5. COST OVER 25 YEARS: G115
  6. METER #K220005F335000705
  7. ARRAY SHOWN ON AERIAL IMAGE
  8. STANDARD CANOPY (LOW-ANGLE CLEARANCE: 11' PROVIDED FOR STANDARD VEHICLE)
  9. BUILDING CODE REQUIRES 20' MIN. CLEARANCE FROM EXISTING BUILDINGS
  10. BUILDING CODE REQUIRES 20' MIN. CLEARANCE ALONG EMERGENCY ACCESS ROUTES
  11. TOTAL OF TREES TO BE REMOVED: 19
  12. TOTAL OF LIGHT POLE TO BE REMOVED: 9
  13. TOTAL OF LIGHT POLE TO BE REMOVED: 9

PANELBOARD-CANOPY REPORT	CANOPY	LABEL	#MODULE	#STRING	KW (DC)	M800-121 (18STR)	M800-121 (18STR)	M800-121 (18STR)	KW (AC)	CEC LISTING (KW-AC)	TILT	AZIMUTH CSI	AZIMUTH SPWR	AC RUN (RV-SFB)	AC RUN (SBB-SBB)
SPB01	1	4x60	240	24	112.8	2	2	2	92	91.944	10°	157°	-23°	30.140	30
SPB01	2	6x60	360	36	169.2	2	2	2	166	165.528	10°	157°	-23°	65.205	65.205
SPB02	3	6x60	360	36	169.2	2	2	2	166	165.528	10°	157°	-23°	30.140	30.140
SPB02	4	4x40	160	16	75.2	1	1	1	66	65.47	10°	157°	-23°	70	150
	TOTAL		1120	112	526.4	4	4	4	490	488.47					

PROJECT SUMMARY	CARPORT
TOTAL LOT MODULE	1120
MODULE TYPE	SPR-K24-470-COM
STRING LENGTH	10
# OF INVERTER	7
DC SYSTEM SIZE (KW)	526.40
AC SYSTEM SIZE (KW)	488.00

REVISIONS	DESCRIPTION	DATE
A	DESIGN # 0001444	08-27-18
B	PROPOSAL	03-22-19
C	NEW SITE INFORMATION	

PROJECT SUMMARY
AC CONDUITS (SBB-POI)
AC CONDUITS (SBB-SBB)
AC CONDUITS (INV-SFB)

- LEGEND:
- PIER LOCATION
  - PROPOSED LIGHT POLE REMOVAL
  - PROPOSED TREE REMOVAL
  - PROPOSED EQUIPMENT PAD
  - PROPOSED POINT OF INTERCONNECTION
  - AC CONDUITS (SBB-POI)
  - AC CONDUITS (SBB-SBB)
  - AC CONDUITS (INV-SFB)

PROJECT SUMMARY

SUNPOWER HELIX TIER 1

SUNPOWER  
1414 HARBOR WAY SOUTH  
RICHMOND, CA 94804 USA  
(510) 540-0550

CONTRA COSTA COUNTY  
2530 ARNOLD DR  
MARTINEZ, CALIFORNIA 94553

REV	DATE	DESCRIPTION
A	08-27-18	PROPOSAL
B	03-22-19	NEW SITE INFORMATION

ENGINEER'S STAMP  
OPPORTUNITY 000152888  
PROJECT 0 1/2" = 1'  
SHEET AL1



**Schedule C**

**PV SYSTEM PRICING**

The following pricing is based on the Standard System Design Package described in Exhibit A.

kWh Rate (\$/kWh)	Term (Years)	Annual Rate Escalator (% / Year)
\$0.1344	25	0%

**STORAGE SERVICES FEE**

The following pricing is based on the Standard System Design Package described in Exhibit A.

Rate (\$/kWh)	Term (Years)
\$0.0424	15

**Schedule D**  
**TERMINATIONS VALUES**

<b>Applicable Date : Years from Commercial Operation Date</b>	<b>Termination Value (\$)</b>
0 Year	\$3,978,630
1 Year	\$3,042,573
2 Years	\$2,681,674
3 Years	\$2,316,780
4 Years	\$1,947,887
5 Years	\$1,574,216
6 Years	\$1,490,225
7 Years	\$1,440,742
8 Years	\$1,389,434
9 Years	\$1,335,799
10 Years	\$1,279,918
11 Years	\$1,222,318
12 Years	\$1,162,495
13 Years	\$1,100,043
14 Years	\$1,035,507
15 Years	\$1,000,648
16 Years	\$964,052
17 Years	\$927,557
18 Years	\$891,392
19 Years	\$855,663
20 Years	\$820,619
21 Years	\$786,142
22 Years	\$752,496
23 Years	\$719,833
24 Years	\$688,446

***EXECUTION VERSION***

*NOTE: 1000 Ward Street, Martinez, CA*

**POWER PURCHASE &  
STORAGE SERVICES AGREEMENT**

Dated as of June 18, 2019

by and between

Solar Star Co Co 1, LLC  
as Provider

and

Contra Costa County  
as Customer



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Exhibit B	-	Form of Financing Party Acknowledgment
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Schedule B	-	Description of System
Schedule C	-	System Pricing
Schedule D	-	Termination Values

## POWER PURCHASE AND STORAGE SERVICES AGREEMENT

This POWER PURCHASE AND STORAGE SERVICES AGREEMENT (as amended, amended and restated, supplemented or otherwise modified from time to time, this “Agreement”), dated as of June 18, 2019 (the “Effective Date”), is by and between Solar Star Co Co 1, LLC, a limited liability company formed under the laws of the State of Delaware (“Provider”), and Contra Costa County, a political subdivision of the State of California (“Customer”).

### RECITALS:

WHEREAS, Customer leases or owns, directly or indirectly, facilities in that certain location in California as more fully described in Schedule A of the Appendices hereto (the “Site”);

WHEREAS, Customer desires that Provider install, maintain and operate, and Provider desires to install, maintain and operate, the PV System and ESS (each as hereinafter defined) to be located on the Site; and

WHEREAS, Provider desires to sell, and Customer desires to purchase, (a) the Solar Services (as hereinafter defined), including the delivery of electrical energy generated by the PV System (the “Energy”), (b) the Storage Services (as hereinafter defined), and (c) other services pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### AGREEMENT:

1. Definitions.

Unless otherwise defined herein: (a) capitalized terms used in this Agreement shall have the respective meanings set forth in this Section 1; (b) the singular shall include the plural and vice versa; (c) the word “including” shall mean “including, without limitation”, (d) references to “Sections,” “Exhibits,” “Appendices” and the like shall be to sections, exhibits, appendices, etc. of or to this Agreement; (e) the words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection hereof; and (f) references to this Agreement shall include a reference to all exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time.

“Agreement” has the meaning set forth in the preamble.

“Annual Rate Escalator” means the percentage set forth in Schedule C.

“Applicable Law” shall mean, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit,

authorization, guideline, governmental approval, consent or requirement of such Governmental Authority, enforceable at law or in equity, along with the interpretation and administration thereof by any Governmental Authority.

“Claim Notice” shall have the meaning set forth in Section 13.3.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Commercial Operation Date” shall have the meaning set forth in Section 3.4.

“Confidential Information” shall have the meaning set forth in Section 15.

“Customer” shall have the meaning set forth in the preamble.

“Customer Default” shall have the meaning set forth in Section 11.1.

“Effective Date” shall have the meaning set forth in the preamble.

“Energy” shall have the meaning set forth in the preamble.

“Environmental Attributes” includes, without limitation, tradable renewable certificates, green-e tags, allowances, reductions or other transferable indicia denoting carbon offset credits or indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility attributed to the Energy during the Term created under a renewable energy, emission reduction, or other reporting program adopted by a Governmental Authority, or for which a registry and a market exists (which, as of the Effective Date are certificates issued by Green-e in accordance with the Green-e Renewable Electric Certification Program, National Standard Version 1.3 administered by the Center of Resource Solutions) or for which a market may exist at a future time.

“Environmental Financial Incentives” shall mean each of the following financial rebates and incentives that is in effect as of the Effective Date or may come into effect in the future: (i) performance-based incentives, rebates and any other incentive programs offered by or in the State of California (or any political subdivision thereof) under the federal government’s, any municipality’s, any utility’s or any other state’s program or initiative (including, if applicable, subsidies available under the Self Generation Incentive Program administered through the California Public Utilities Commission), incentive tax credits (including investment tax credits arising under the Code) other tax benefits or grants in lieu thereof (including without limitation the monetization of tax benefits), and accelerated depreciation (collectively, “Incentives”), howsoever named or referred to, with respect to any and all fuel, emissions, air quality, energy generation, energy storage, or other environmental or energy characteristics, resulting from the construction, ownership or operation of the System or from the use of solar generation or energy storage or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Energy and Storage Services generated by the System; and (ii) all reporting rights with respect to such Incentives.

“ESS” means the energy storage system and related Site energy monitoring equipment and software installed pursuant to this Agreement at the Site and more fully described in Schedule B hereto.

“ESS kW” shall mean the power rating of the ESS as set forth in Schedule B.

“ESS O&M Work” shall have the meaning set forth in Section 4.1.2.

“ESS Renewal Rate” shall mean the fair market price for Storage Services created by integrated photovoltaic and energy storage systems as determined by agreement of the Parties, or if the parties cannot agree on the fair market price, the fair market price determined by a nationally recognized independent appraiser in the same manner described in Section 10.3.5 (Purchase of ESS).

“Estimated Year 1 Production” shall mean the amount set forth in Schedule B to this Agreement.

“Expiration Date” shall have the meaning set forth in Section 10.1.

“Fair Market Value” shall have the meaning set forth in Section 10.3.2.

“Financing Party” means any third-party entity providing debt or equity financing to Provider (or any successor or assignee thereof) with respect to the System, including without limitation a party providing construction financing, a lessor in a sale-leaseback transaction, a partner in a partnership flip transaction, or a limited liability company member in an equity sale transaction.

“Force Majeure Event” shall mean, when used in connection with the performance of a Party’s obligations under this Agreement, any of the following events to the extent not caused by such Party or its agents or employees, which is not preventable by such Party as of the Effective Date:

- a) war, riot, acts of a public enemy or other civil disturbance;
- b) acts of God, including but not limited to, storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, volcanic eruptions, range or forest fires, and objects striking the earth from space (such as meteorites), sabotage or destruction by a third party (other than any contractor retained by or on behalf of the Party) of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;
- c) acts of federal, state or local government agencies, including changes in Applicable Law, that result in increasing Provider’s costs of construction and installation, or continuing operation, of the System by 15% or more; and
- d) strikes, walkouts, lockouts or similar industrial or labor actions or disputes.

“Governmental Authority” shall mean any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Indemnified Party” shall have the meaning set forth in Section 13.3.

“Indemnifying Party” shall have the meaning set forth in Section 13.3.

“Interconnection Point” shall have the meaning set forth in Section 3.5.

“kWh Rate” shall have the meaning set forth in Section 6.1.

“License” shall have the meaning set forth in Section 2.

“Liens” shall have the meaning set forth in Section 7.1.3. 1

“Meter” shall have the meaning set forth in Section 4.3.1.

“Monthly Period” shall mean the period commencing on the Commercial Operation Date and ending on the last day of the calendar month in which the Commercial Operation Date occurs, and, thereafter, all subsequent one (1) month periods during the Term.

“Monthly Production” shall mean, for each Monthly Period, the amount of Energy delivered during such Monthly Period.

“Party” shall mean each of Customer and Provider (and/or any successor or permitted assignee thereof).

“Person” shall mean any individual, corporation, partnership, company, limited liability company, joint venture, association, trust, unincorporated organization or Governmental Authority.

“Provider” shall have the meaning set forth in the preamble (and includes its successor(s) and permitted assignee(s)).

“Provider Default” shall have the meaning set forth in Section 11.2.

“PV O&M Work” shall have the meaning set forth in Section 4.1.1.

“PV System” shall mean the solar photovoltaic system installed pursuant to this Agreement at the Site and more fully described in Schedule B hereto.

“Renewal Rate” shall mean the fair market price for electricity generated by solar photovoltaic systems as determined by agreement of the Parties or through the appraisal process applicable to the purchase option contained in this Agreement.

“Reporting Rights” means the right to report ownership of the Environmental Attributes or the Environmental Financial Incentives associated with the Energy to any federal, state, or local agency, authority or other party, including without limitation under Section 1605(b)

of the Energy Policy Act of 1992 and provisions of the Energy Policy Act of 2005, or under any present or future domestic, international or foreign emissions trading program.

“Scheduled Outage” shall have the meaning set forth in Section 4.5.

“Site” has the meaning set forth in the first recital.

“Solar Services” mean all solar services provided to Customer by Provider hereunder, including the provision of Energy.

“Standards” shall have the meaning set forth in Section 3.1.1.

“Storage Services” means the energy storage services provided to Customer by Provider hereunder, including operation and maintenance of the ESS.

“Storage Services Termination” means the termination of all Storage Services Provisions under this Agreement, without impacting the effectiveness of the remaining provisions of this Agreement.

“Storage Services Commencement Date” shall mean the first day of the first utility billing cycle after the later to occur of: (a) the Commercial Operation Date, and (b) the date on which Provider shall have certified to Customer that the ESS is substantially complete and available for commercial operation.

“Storage Services Fee” shall be the amount set forth in Schedule C.

“Storage Services Provisions” means those provisions of this Agreement applicable to the Storage Services, but solely as they relate to the Storage Services.

“Storage Services Term” means the period of time commencing on the Storage Services Commencement Date and expiring fifteen (15) years thereafter unless earlier terminated pursuant to this Agreement.

“System” shall mean, collectively, the PV System and the ESS; provided, however, that the term “System” shall only include equipment and materials up to but not including the Interconnection Point of the System.

“Term” shall have the meaning set forth in Section 10.1.

“Termination Date” shall have the meaning set forth in Section 10.1.

“Termination Value” shall mean, on any date of determination (or, if such date is not a scheduled termination date, the scheduled termination date immediately preceding such date) the applicable amount specified for such date in Schedule D to this Agreement.

“Transfer Taxes” shall have the meaning set forth in Section 6.2.1.



2. Purchase and Sale of Solar Services and Storage Services; License.

2.1 Purchase and Sale of Solar Services and Storage Services.

Customer hereby engages Provider to provide the services set forth in this Agreement, including the Solar Services and Storage Services to Customer, and Provider agrees to provide the services set forth in this Agreement, including the Solar Services and Storage Services to Customer, all in accordance with the terms and conditions set forth herein. Customer shall provide Provider with access to the Sites in accordance with the terms of this Agreement. Provider may retain one or more contractors or subcontractors to fulfill its obligations hereunder; provided that Provider shall remain liable for performance of its obligations hereunder

2.2 License.

Customer hereby grants to Provider and to Provider's agents, employees and subcontractors an irrevocable, non-exclusive license running with the Site for access to, on, over, under or across the Site (the "License") for the purpose of (i) installing, constructing, operating, maintaining, accessing, removing and replacing the System; (ii) performing all of Provider's obligations and enforcing all of Provider's rights set forth in this Agreement; and (iii) installing, using and maintaining electric lines and equipment, including inverters and meters, necessary to interconnect the System to Customer's electric system at the Site or to the utility's electric distribution system or that otherwise may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance, or repair of the System. The term of the License is the Term of this Agreement plus the period of time necessary for Provider to remove the PV System and ESS pursuant to Section 10.3.3 and 10.3.6 respectively, but in no case later than one hundred eighty (180) days after the Expiration Date with respect to the PV System and the Storage Services Term with respect to the ESS (the "License Term"). During the License Term, Customer shall preserve and protect Provider's rights under the License and Provider's access to the Site and shall not interfere with or permit any third parties to interfere with Provider's rights or access. Except for an emergency situation as described in Section 4.2.1(a) or (b) (an "Emergency Situation"), Provider shall notify Customer in writing, which may be made via email to Customer's Energy Manager, 40 Muir Road, Martinez, CA 94553 (Frank.DiMassa@pw.cccounty.us), or to any other address Customer may designate in a written notice to Provider, forty-eight (48) hours before Provider intends to access the Site pursuant to the License. Notwithstanding that the License granted herein is irrevocable, Customer reserves the right to exclude Provider, its agents, employees and subcontractors from the Site in the event that Customer notifies Provider of a breach of the License and Provider fails to cure such breach pursuant to Section 11.2.1 of this Agreement; provided, however, that, Customer agrees not to exclude Provider, its agents, employees and subcontractors from the Site (A) in the event of an Emergency Situation as described in Section 4.2 so long as Customer has been notified of such an Emergency Situation pursuant to Section

4.2 and (B) in the event that the System is to be removed pursuant to this Agreement.

### 3. Design, Construction, Installation and Testing of System.

#### 3.1 Installation.

Subject to Section 3.2, Provider will cause the System to be designed, engineered, installed and constructed at the Site substantially in accordance with the terms of this Agreement, including without limitation, the provisions of Exhibit A (System Design and Construction). Customer shall review and approve, such approval not to be unreasonably withheld or delayed, all construction plans, including engineering evaluations of the impact of the System on the structural integrity and strength of the location where the System is installed inside, on or near Customer's buildings. Provider shall organize the procurement of all materials and equipment for the installation work and maintain the same at the Site. Subject to the terms of the License, Provider shall perform installation work at the Site during the times set forth in Exhibit A and Schedule B in a manner that minimizes inconvenience to and interference with Customer's and Customer's invitees' and Customers' use of the Site to the extent commercially practical. Notwithstanding the foregoing, in the event that Provider determines in its sole discretion that it is unable to install the System at the Site, it shall be under no obligation to do so, and this Agreement shall terminate and be of no further force and effect upon written notice from Provider to Customer to that effect.

3.1.1 System Design and Construction. Exhibit A (System Design and Construction) attached hereto sets forth the design, engineering and construction specifications for the System, as well as assumptions made by the Provider regarding the Site conditions, the electrical conditions, and System attributes (such assumptions being referred to herein as the "Standards"). Schedule B (Description of System) sets forth the known actual conditions for the Site and the System, including deviations from the Standards. The Standards are such that the described items for the System will not need repair, replacement, modification or construction beyond that described in Exhibit A and Schedule B in order for Provider to properly construct and install the System. If the construction and installation of the System is required for any reason (except for reasons attributable to Provider) to deviate from the Standards and Schedule B, Provider will notify the Customer and provide an estimate of any incremental cost to Customer and Customer will have the option to (i) pay the incremental cost at the time the cost is incurred and billed to the Customer, (ii) pay the incremental cost over the Term through a calculated increase in the kWh Rate and/or Storage Services Fee, or (iii) elect an alternative location subject to the conditions of Section 3.1.2.

3.1.2 Alternative Location. Prior to the Commercial Operation Date, if the Customer's interest in the Site is a leasehold interest and the Customer is unable to obtain the landlord's consent in accordance with the License or Customer chooses an alternative location per Section 3.1.1, Customer will have the option to elect an alternative location if Environmental Attributes and Environmental Financial Incentives financially equivalent to or better than those associated with the original location are available for the alternative location, and if the expected System kWh output and construction cost at the alternative location are equivalent to or superior

than those associated with the originally proposed location. Such alternative location is subject to Provider approval, not to be unreasonably withheld. If an alternative location cannot be established, Provider will have the right to terminate per Section 3.2.

### 3.2 Conditions Precedent to Commencement of Construction and Installation.

3.2.1 Commencement by the Provider of construction and installation activities with respect to the PV System are subject to the satisfaction of the following conditions precedent (in addition to the condition set forth in Section 3.3):

- (a) Provider shall have closed financing for construction and long-term ownership of the PV System and the Solar Services to be performed at the Site and, to the extent required pursuant to the applicable financing documentation, the third party financing institution providing such financing shall have been provided with the materials referred to in Section 14.17 and Section 16;
- (b) Provider shall have entered into the applicable contract(s) for construction and installation of the PV System, subject to the terms of the applicable financing, if any;
- (c) Provider shall have obtained the permits, licenses and other approvals required by Applicable Law to be obtained by Provider prior to such commencement;
- (d) Provider shall have received satisfactory notice that the applications for Environmental Financial Incentives for the PV System have been accepted and approved by the appropriate governing agency; and
- (e) Provider shall have received from Customer satisfactory evidence that the project—including the System, the License, and the work and Solar Services described in this Agreement—is exempt from the regulatory jurisdiction of local agencies (including zoning, building, and land-use requirements) or that all required local agency approvals and permits have been obtained.

provided, however, that if any of the foregoing conditions precedent have not been satisfied on or before June 17, 2020 (the “CP Date”), Provider shall have the option to terminate this Agreement without triggering the default provisions of this Agreement or any liability under this Agreement, and if Provider does not terminate this Agreement one hundred eighty (180) days following the CP Date, Customer may terminate this Agreement without triggering the default provisions of this Agreement or any liability under this Agreement. Alternatively, in the event that such conditions precedent are not satisfied by such date, the Parties may mutually agree to amend this Agreement to revise the Commercial Operation Date and term of this Agreement.

3.2.2 Commencement by the Provider of construction and installation activities with respect to the ESS shall be subject to the satisfaction of the following conditions precedent (in addition to the condition set forth in Section 3.3):

- (a) Provider shall have closed financing for construction and long-term ownership of the ESS and the Storage Services to be performed at the Site and, to the extent required pursuant to the applicable financing documentation, the third party financing institution providing such financing shall have been provided with the materials referred to in Section 14.17 and Section 16;
- (b) Provider shall have entered into the applicable contract(s) for construction and installation of the ESS, subject to the terms of the applicable financing, if any;
- (c) Provider shall have obtained the permits, licenses and other approvals required by Applicable Law to be obtained by Provider prior to such commencement; and
- (d) Provider shall have received satisfactory notice that the applications for Environmental Financial Incentives for the ESS have been accepted and approved by the appropriate governing agency;

provided, however, that if any of the foregoing conditions precedent have not been satisfied on or before the CP Date, Provider shall have the option to terminate the Storage Services Provisions without triggering the default provisions of this Agreement or any liability under this Agreement with respect to the Storage Services Provisions, and if Provider does not terminate the Storage Services Provisions within one hundred eighty (180) days following the CP Date, Customer may terminate the Storage Services Provisions without triggering the default provisions of this Agreement or any liability under this Agreement with respect to the Storage Services Provisions. In the case that Provider elects not to install the ESS and causes a Storage Services Termination, Customer will have no obligations with respect to payment of the Storage Services Fees or any other Storage Services Provisions. A Storage Services Termination shall not terminate the Solar Services provisions of this Agreement.

### 3.3 Utility Approvals.

Notwithstanding that Provider shall have primary responsibility for preparing applications and obtaining all permits, licenses and approvals required for the performance of work under this Agreement, Customer agrees to reasonably assist Provider in obtaining necessary permits, licenses and approvals in connection with the installation, operation and maintenance of the System, including the submission of applications for interconnection of the System with the local electric utility. Customer shall not make any material changes to its electrical equipment at the Site after the date on which the applicable utility interconnection application is submitted unless any such changes, individually or in the aggregate, would not

adversely affect the approval by such utility of such interconnection. Should the local electric utility fail to approve the interconnection of the PV System or require equipment in addition to the equipment set forth in Schedule B in connection with the Site, Provider may, at Provider's option, terminate this Agreement immediately subsequent to notification from the local utility. Should the local electric utility fail to approve the interconnection of the ESS or require equipment in addition to the equipment set forth in Schedule B in connection with the Site, Provider may, at Provider's option, elect not to install the ESS and cause a Storage Services Termination. The Parties shall not be obligated to go forward with installation of the System if the applicable utility approvals are conditioned upon material upgrades to the existing electrical infrastructure and neither Party elects to provide for such upgrades. Customer also agrees to assist Provider and make all necessary repairs or changes to the existing electrical infrastructure so that the Site and System are eligible for the Environmental Financial Incentives.

#### 3.4 Energy Delivery.

The date on which the delivery of Energy from the System commences (the "Commercial Operation Date") shall be the date on which all of the following shall have occurred: (a) Provider shall have certified to Customer in writing that the PV System is substantially complete and available for commercial operation; (b) all permits and licenses required to be obtained under Applicable Law in connection with the operation of the PV System shall have been obtained and be in full force and effect; and (c) Customer shall have entered into an interconnection agreement with the local electricity utility. In no event shall Provider have any liability to Customer for a delay in the Commercial Operation Date caused by Customer, Customer's electricity provider, a local agency issuing permits for the System or any other third parties outside of Provider's control.

#### 3.5 Risk of Loss; Exclusive Control.

As between the Parties, Provider will be deemed to be in exclusive control (and responsible for any property damage or injuries to persons caused thereby) of the Energy up to but excluding the point where the System is interconnected to Customer's electrical intertie; e.g., the Customer's line-side tap (the "Interconnection Point") and Customer will be deemed to be in exclusive control (and responsible for any property damage or injuries to persons caused thereby) of the Energy at and from the Interconnection Point. Risk of loss related to the Energy will transfer from Provider to Customer at the Interconnection Point.

#### 3.6 Termination Values.

The Parties acknowledge and agree that the Termination Values with respect to the applicable System are as set forth in Schedule D of this Agreement.

#### 4. Operation and Maintenance of System.

##### 4.1 O&M Work; Phone/Data Line.

4.1.1 PV O&M Work. Provider shall provide operation, repair, monitoring and maintenance services to the PV System during the Term of this Agreement, including the monitoring and maintenance of metering equipment determining the quantity of electricity produced by the PV System (collectively, the “PV O&M Work”). Provider shall perform the PV O&M Work, either directly or indirectly through a subcontract with SunPower Corporation, Systems, an affiliate of Provider or through a third-party service provider capable of providing comparable services, provided that Provider remains responsible for all PV O&M Work notwithstanding any such subcontracting. Provider shall perform, or cause to be performed, the PV O&M Work to ensure that the System is capable of delivering the Energy in accordance with the specifications set forth in Schedule B. Provider shall use commercially reasonable efforts to enforce the terms of any contract for operations and maintenance services to which it is a party and PV System warranty agreements.

4.1.2 ESS O&M Work. Provider shall provide operation, repair, monitoring and maintenance services to the ESS System during the Storage Services Term (the “ESS O&M Work”). Provider shall maintain during the Storage Services Term the capability to provide such ESS O&M Work, either directly or indirectly, or through a third-party service provider capable of providing comparable services, provided that Provider remains responsible for all operation, repair, monitoring and maintenance services to the ESS System notwithstanding any such subcontracting. Provider shall use commercially reasonable efforts to enforce the terms of any contract for operations and maintenance services to which it is a party and ESS warranty agreements.

4.1.3 Phone/Data Line. Customer shall properly maintain, pay for and provide access to the necessary phone, computer, or other communication lines necessary to permit Provider to (a) record the electrical output of the PV System for the entire Term, (b) operate the ESS during the Storage Services Term.

##### 4.2 Malfunctions and Emergencies.

4.2.1 Each of Customer and Provider shall notify the other within twenty-four (24) hours following the discovery by it of (a) any material malfunction in the operation of the System, (b) an interruption in the supply of Solar Services or Storage Services. Provider and Customer shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Provider’s repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Each Party shall notify the other Party immediately upon the discovery of an emergency condition in the System.

4.2.2 Provider shall commence repairs to (a) any malfunctioning PV System and restore the supply of the Energy, and (b) during the Storage Services Term, any malfunctioning ESS and restore the provision of Storage Services, as soon as reasonably possible after notice or upon its own discovery of any of the conditions specified in Section 4.2.1 during normal business hours and, subject to Section 2, take steps to mobilize personnel to commence repairs after notice or discovery of a condition requiring repair or other corrective action. If an

emergency condition exists, Provider shall dispatch the appropriate personnel immediately upon becoming aware thereof to perform the necessary repairs or corrective action in an expeditious and safe manner. For routine and emergency repairs, the Parties shall contact the persons set forth below:

If to Provider:

Wayne Webb, Senior Manager, Operations & Maintenance  
2900 Esperanza Crossing, 2nd Floor  
Austin, TX 78759  
(510) 439 – 4663 or (800) 251-9728  
[Wayne.Webb@sunpowercorp.com](mailto:Wayne.Webb@sunpowercorp.com) with a copy to: [customer.service@sunpower.com](mailto:customer.service@sunpower.com)

#### 4.3 Metering.

4.3.1 Meters. Provider shall install and maintain the following meters (each a “Meter” and collectively, the “Meters”) in connection with the System:

- (a) PV Meter: for the Term of this Agreement, a utility-grade kilowatt-hour (“kWh”) meter (“PV Meter”) at the PV System for the measurement of Energy provided to Customer, which shall measure the kWh output of the PV System on a continuous basis.
- (b) Consumption Meter: for the Storage Services Term, a utility-grade kWh meter (“Consumption Meter”) at the Site’s main utility meter, which shall measure the kWh consumption of the Site.
- (c) ESS Meter: for the Storage Services Term, a utility-grade kWh meter (“ESS Meter”) at the ESS inverter, which shall measure the kWh charge and discharge of the ESS.

Upon Customer’s written request, Provider shall furnish a copy of all technical specifications and accuracy calibrations for the Meters, as well as all metering data and energy production and consumption calculations. Provider shall test the Meters in compliance with manufacturer’s recommendations.

4.3.2 Customer Audits and Inspections. Once per calendar year, Customer shall have the right to audit all Meter data upon reasonable notice, and any such audit shall be at Customer’s sole cost. Customer shall have a right of access to all Meters at reasonable times and with reasonable prior notice for the purpose of verifying readings and calibrations.

4.3.3 Adjustments. If testing of any Meter pursuant to Section 4.3.1 or Section 4.3.2 indicates that any Meter is in error by more than two percent (2%), then Provider shall promptly repair or replace such Meter. If the PV Meter is found to be in error by more than two percent (2%), Provider shall make a corresponding adjustment to the records of the amount of Energy based on such test results for (a) the actual period of time when such error caused

inaccurate PV Meter recordings, if such period can be determined to the mutual satisfaction of the Parties, or (b) if such period cannot be so determined, then a period equal to one-half (1/2) of the period from the later of (i) the date of the last previous test confirming accurate metering, and (ii) the date the Meter was placed into service; provided, however, that such period shall in no case exceed two (2) years. If the Consumption Meter or ESS Meter is found to be in error by more than two percent (2%), Provider shall make a corresponding adjustment to the Actual Demand Savings based on such test results for (a) the actual period of time when such error caused inaccurate Meter recordings, if such period can be determined to the mutual satisfaction of the Parties, or (b) if such period cannot be so determined, then a period equal to one-half (1/2) of the period from the later of (i) the date of the last previous test confirming accurate metering and (ii) the date the Meter was placed into service; provided, however, that such period shall in no case exceed two (2) years.

4.3.4 Disputes. Any dispute arising out of the reading or calibration of a Meter shall be resolved in accordance with the procedures set forth in Section 6.3.2.

#### 4.4 Title to System.

Provider, or Provider's permitted assigns with respect to the System, shall at all times retain title to and be the legal and beneficial owner of the System, including the right to any tax credits available under federal or state law, and the System shall remain the property of Provider or Provider's assigns. The System shall remain the personal property of Provider or Provider's assigns and shall not attach to or be deemed a part of, or fixture to, the Site. It is the Parties' intention that the System shall at all times retain the legal status of personal property. Provider shall be entitled to, and is hereby authorized to, file one or more precautionary Uniform Commercial Code financing statements with the California Secretary of State with respect to the System in order to protect its rights in the System, provided that no such UCC financing statement shall name Customer as the debtor. The System shall be clearly marked and identified as being the property of the Provider or Provider's assigns. The Parties intend that neither Customer nor any party related to Customer shall acquire the right to operate the System or be deemed to operate the System.

#### 4.5 Outages.

Customer shall be permitted two (2) twenty-four (24) consecutive hour days during which the PV System may be offline (each, a "Scheduled Outage") per calendar year during the Term, during which days Customer shall not be obligated to accept, and if not accepted, pay for the Energy; provided, however, that Customer shall have notified Provider in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of such Scheduled Outage. In the event that Scheduled Outages at the Site exceed two (2) days per calendar year for a reason other than a Force Majeure Event, and for all unscheduled outages, Provider shall reasonably estimate the amount of Energy that would have been delivered to Customer during each hour of such excess Scheduled Outages or unscheduled outages and shall invoice Customer for such amount, which shall be payable in accordance with Section 6.3. Additionally, as set forth in Exhibit C (Performance Guarantee), Provider shall be relieved of any failure to meet the Performance Guarantee due to any Scheduled Outage or unscheduled outage.



#### 4.6 Compliance with Utility Specifications.

Provider shall ensure that the operation of the System and all Energy generated by the System conform to applicable utility specifications for energy being generated and delivered to the Site's electric distribution system, which shall include the installation of proper power conditioning and safety equipment, submittal of necessary specifications, coordination of utility testing and verification, and all related costs.

### 5. Purchase of Solar Services.

#### 5.1 Purchase Requirement.

Customer agrees to purchase one hundred percent (100%) of the Energy delivered by the System during the Term of this Agreement and one hundred percent (100%) of the Storage Services provided with respect to the System. While the Solar Services are calculated and billed on the basis of kWh of Energy as set forth in Section 6.1, Customer acknowledges and agrees that such Solar Services and the Storage Services represent a package of services including the production, storage and supply of electrical energy output from the System and the reduction of Customer's electric demand, together with any other services associated with Solar Services and Storage Services that Provider may provide to Customer. The payment for Solar Services (expressed in \$/kWh) and Storage Services (express in \$/kWh) are calculated to include all of the above services. Neither Party may claim that by this Agreement Provider is an electric utility subject to regulation as an electric utility or subject to regulated electricity rates. Provider shall not claim to be providing electric utility services to Customer and shall not interfere with Customer's ability to select an electric utility provider except that, to the extent Customer has a choice in selecting an electric utility provider or electricity provider, Customer shall not select an electric utility provider or electricity provider that requires, as part of their conditions for service, removal or discontinued operation of the System or the sales of Energy or Storage Services hereunder.

#### 5.2 Environmental Attributes; Environmental Financial Incentives.

5.2.1 Environmental Attributes. All Environmental Attributes and associated Reporting Rights available in connection with the System are retained and owned by Customer or its assignee. Provider shall take all reasonable measures to assist Customer in obtaining all Environmental Attributes currently available or subsequently made available in connection with the System. At Customer's request and expense, Provider shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Customer's or its assignee right, title and interest in and to the Environmental Attributes. If the standards used to qualify the Environmental Attributes to which Customer is entitled under this Agreement are changed or modified, Provider shall, at Customer's request and expense, use all reasonable efforts to cause the Environmental Attributes to comply with new standards as changed or modified. If Provider fails to act in good faith in completing documentation or taking actions reasonably requested by Customer, and such failure results in the loss of an Environmental Attribute that

would otherwise be available, Provider shall reimburse Customer for the full amount of such lost Environmental Attribute.

5.2.2 Environmental Financial Incentives. All Environmental Financial Incentives and associated Reporting Rights available in connection with the System are retained and owned by Provider or its assignee. Customer shall take all reasonable measures to assist Provider in obtaining all Environmental Financial Incentives currently available or subsequently made available in connection with the System. At Provider's request and expense, Customer shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Provider's or its assignee right, title and interest in and to the Environmental Financial Incentives. If the standards used to qualify the Environmental Financial Incentives to which Provider is entitled under this Agreement are changed or modified, Customer shall, at Provider's request and expense, use all reasonable efforts to cause the Environmental Financial Incentives to comply with new standards as changed or modified. If Customer fails to act in good faith in completing documentation or taking actions reasonably requested by Provider, and such failure results in the loss of an Environmental Financial Incentive that would otherwise be available, Customer shall reimburse Provider for the full amount of such lost Environmental Financial Incentive.

5.2.3 Customer shall not take any action or suffer any omission that would have the effect of impairing the value to the Provider of the Environmental Attributes or Environmental Financial Incentives.

5.2.4 Provider or its assignee will at all times retain all tax credits and related tax benefits (including depreciation) associated with the System.

## 6. Price and Payment.

### 6.1 Price.

Customer shall pay Provider for (a) the Energy provided pursuant to the terms of this Agreement at the rate per kWh (the "kWh Rate") set forth in Schedule C for the applicable period, and (b) the Storage Services Fee at the rate set forth in Schedule C for the applicable period, plus any adjustments required pursuant to Section 3.1.1, plus any additional amount required pursuant to Section 6.2. Notwithstanding the foregoing, in the event that Customer elects to renew this Agreement pursuant Section 10.3.1, Customer shall pay the Renewal Rate for Energy delivered during such renewal period.

### 6.2 Taxes.

6.2.1 Customer Taxes. Provider shall invoice Customer for, and Customer shall pay all sales, use, excise, ad valorem, transfer and other similar taxes ("Transfer Taxes"), but excluding in all events taxes based on or measured by net income, that are imposed by any taxing authority arising out of or with respect to the purchase or sale of the Solar Services or Storage Services (regardless of whether such Transfer Taxes are imposed on Provider or Customer), together with any interest, penalties or additions to tax payable with respect to such Transfer Taxes, unless such interest, penalties or additions to tax payable with respect to such Transfer Taxes are due to Provider's failure to timely remit any such Transfer Taxes or to file any returns required by

the appropriate taxing authority, and Provider shall indemnify and hold Customer harmless in such excepted cases. If Customer shall be required to by law to withhold or deduct any Transfer Taxes or other taxes imposed by any jurisdiction or any political subdivision from or in respect of any sum payable hereunder, the sum payable shall be increased as may be necessary so that, after taking all required deductions, Provider shall have received an amount equal to the sum it would have received had no such deductions been made. Provider will pay any ad valorem property tax imposed on the System by any taxing authority.

6.2.2 Provider Taxes. Provider will pay and hold harmless Customer from any sales or use tax imposed upon Customer arising from this Agreement, other than as set forth in the preceding Section 6.2.1, including but not limited to Provider's manufacture, installation and acquisition of the System. Provider will pay and hold harmless Customer from property tax, if any, assessed on (i) Provider's use of the portion of the Site on which the System is installed, to the extent prescribed in the License; (ii) the System or Provider's ownership, installation or use thereof; or (iii) any other aspect of this Agreement. Notwithstanding the foregoing, Customer shall pay and hold harmless Provider from sales and use taxes, if any, arising upon the transfer, if any, of both legal and beneficial ownership of the System to Customer pursuant to this Agreement.

### 6.3 Billing and Payment.

Billing and payment for the Solar Services and Storage Services sold and purchased under this Agreement and any other amounts due and payable hereunder shall occur as follows:

6.3.1 Payments. Subject to adjustment in accordance with the following sentences of this Section 6.3.1, Customer shall pay to Provider:

- (a) with respect to the Solar Services, for each Monthly Period during the Term within thirty (30) days after receipt of any invoice a payment for the Energy delivered by the System during each such Monthly Period equal to the product of (a) Monthly Production for the System for the relevant month multiplied by (b) the then applicable kWh Rate.
- (b) with respect to the Storage Services, through the end of the Storage Services Term, within thirty (30) days after receipt of any invoice, a payment in an amount equal to the product of (a) Monthly Production of the System for the relevant month, multiplied by (b) the Storage Services Fee in \$/kWh as set forth in Schedule C.

Customer payments under Sections 6.3.1(a) and (b) above shall be made by check to:

Solar Star Co Co 1, LLC  
Attn: Commercial Asset Management Group  
c/o SunPower Capital Services, LLC  
2900 Esperanza Crossing  
Austin, TX 78758

Payment may also be made by wire transfer of immediately available funds upon receipt of specific instructions by Provider. Upon receipt of written direction and instructions from Provider and Provider's Financing Party, all payments to be made by the Customer to the Provider under this Agreement shall be made directly to the Provider's Financing Party or its agent designated in a writing addressed to Customer from time to time.

6.3.2 Invoice Errors. Within thirty (30) days after receipt of any invoice, Customer may provide written notice to Provider of any alleged error therein (including any error resulting from Meter adjustments pursuant to Section 4.3.3). Customer shall pay all undisputed amounts, including the undisputed portion of any invoice, in accordance with the instructions set forth for payment under Section 6.3.1. If Provider notifies Customer in writing within thirty (30) days of receipt of such notice that Provider disagrees with the allegation of error in the invoice, the Parties shall meet, by telephone conference call or otherwise, within ten (10) days of Customer's response for the purpose of attempting to resolve the dispute.

6.3.3 Late Payments. All payments hereunder shall be made without setoff or deduction. Any payment not made within the time limits specified in Section 6.3.1 shall bear interest from the date on which such payment was required to have been made through and including the date on which such payment is actually received by the Provider. Such interest shall accrue at a monthly rate equal to the lesser of the then prevailing prime rate of interest as published in The Wall Street Journal or the maximum interest rate permitted by Applicable Law.

## 7. General Covenants.

### 7.1 Provider's Covenants.

Provider covenants and agrees as follows:

7.1.1 Permits and Approvals. While performing this Agreement, Provider shall obtain and maintain all approvals, consents, licenses and permits from relevant Governmental Authorities, utility personnel, and (to the extent known to Provider) the Site's owners, if Customer is not the owner of the Site, and other agreements and consents required to be obtained and maintained by Provider and to enable Provider to perform such work. Provider shall deliver copies of all permits and approvals obtained pursuant to this Section to Customer.

7.1.2 Health and Safety. Provider shall take all reasonably necessary safety precautions in performing this Agreement and shall comply in all material respects with all Applicable Laws pertaining to the safety of persons and real and personal property.

7.1.3 Removal of Liens. Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', laborers' or materialmen's liens), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Site or any interest therein; provided that this Section 7.1.3 shall not limit Liens on the System. If Provider breaches its obligations under this Section, it shall immediately notify Customer in writing, shall promptly cause such Lien to be discharged and released of record without cost to Customer, and shall defend and indemnify Customer against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

7.1.4 Provider Records. Provider shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Customer has the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

## 7.2 Customer's Covenants.

Customer covenants and agrees as follows:

7.2.1 Health and Safety. Customer shall at all times maintain the areas of the Site consistent with all Applicable Laws pertaining to the health and safety of persons and property.

7.2.2 Security. Customer shall provide and take reasonable measures for security of the System, including commercially reasonable monitoring of the Site's alarms, if any.

7.2.3 Notice of Damage. Customer shall promptly notify Provider of any matters of which it becomes aware pertaining to any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System.

7.2.4 Liens. Customer shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein. Customer also shall pay promptly any taxes, charges or fees of whatever type of any relevant Governmental Authority for which Customer is responsible under Section 6.2 before a fine or penalty may attach to the System. If Customer breaches its obligations under this Section, it shall immediately notify Provider in writing, and shall promptly cause such Lien on or with respect to the System (including if such arises in favor of any third party claiming through Customer, such as a lender, mortgagee or encumbrancer of real property) to be removed, discharged and released of record without cost to Provider, and shall defend, indemnify and hold Provider harmless against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in removing, discharging and releasing such Lien.

7.2.5 Consents and Approvals. Customer shall obtain and maintain, and secure and deliver to Provider copies of, all consents, approvals, permits, licenses, and authorizations (or evidence that the project—including the System, and the work and Solar Services described in this Agreement—is exempt from the regulatory jurisdiction of local agencies (including zoning, building, and land-use requirements) or that all required local agency approvals

and permits have been obtained) relating to the performance of Customer's obligations and the rights granted by Customer hereunder, and that are required by the terms, conditions or provisions of any restriction or any agreement or instrument or statute to which Customer is a party or by which Customer is bound, including completing applications for interconnection with Customer's local electric utility. Customer shall use best efforts to assist Provider in fulfilling Provider's responsibilities under Section 7.1.1. In addition, as a condition precedent to the effectiveness of this Agreement, Customer covenants that it has obtained all discretionary and other approvals required in connection with the project from its governing board and all applicable Government Authorities and that such board or Governmental Authority complied with the California Environmental Quality Act; or, if no other discretionary approvals were required, such board or Governmental Authority approved this Agreement before it was executed.

7.2.6 Maintenance of Interconnection. Customer shall ensure that all of the facilities to which the Energy is delivered, or with respect to which the Storage Services are provided, hereunder remain interconnected to the electrical grid during the entire Term or Storage Services Term, as applicable, except as permitted under Section 4.5 and Section 9.

7.2.7 Solar Access. Customer shall ensure that the PV System remains free of overshadowing or other blocked access to sunlight during the Term, and it is acknowledged and agreed by the Parties that the foregoing is a material obligation of the Customer for the purposes of this Agreement. Customer will use best efforts to secure a solar easement for the Site to prevent other buildings, structures or flora from overshadowing or otherwise blocking access of the sunlight to the System. Provider shall provide assistance to Customer in seeking a solar easement; however, Customer shall bear all costs and expenses related to obtaining any such easement.

7.2.8 Customer Records. Customer shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Provider shall have the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

7.2.9 Utility Account Information. Customer shall authorize Provider to have full access to Customer's electric utility billing and account information as necessary to measure and validate the Actual Demand Savings provided by the ESS.

## 8. Insurance Requirements.

### 8.1 Provider's General Liability Insurance.

Provider shall maintain, at its sole expense, commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of one million dollars (\$1,000,000) per occurrence and in the aggregate, endorsed to provide contractual liability in said amount, specifically covering Provider's obligations under this Agreement and naming Customer as an additional insured. The minimum coverage amount of \$1,000,000 per occurrence and in the aggregate may be satisfied by a combination of a general liability policy and an excess/umbrella liability policy.

Provider, if it has employees, shall also maintain at all times during the term of this Agreement workers' compensation insurance coverage in accordance with the applicable requirements of federal and state law. Within thirty (30) days after execution of this Agreement and upon Customer's request annually thereafter, Provider shall deliver to Customer certificates of insurance evidencing such coverage, which shall specify that Customer shall be given at least thirty (30) days' prior written notice by the applicable insurer in the event of any material modification, cancellation or termination of coverage, except ten (10) days for non-payment of premium. Such insurance shall be primary coverage without right of contribution from any insurance of Customer.

## 8.2 Customer's Insurance.

Customer shall provide and maintain "all-risk" property insurance covering the buildings on which the System is located during all periods (construction and operation) that Provider is the beneficial owner of the System, and naming Provider or its assignee as the loss payee. The System shall be insured for not less than its Termination Value. All such policies shall be with financially sound and reputable insurance companies that have an (i) A.M. Best rating of A+ and a financial strength category of "XII" or higher, (ii) a Standard & Poor's financial strength rating of A+ or higher, or (iii) are otherwise reasonably satisfactory to the Provider or its assignee; and such policies shall be on terms that are reasonably satisfactory to the Provider or its assignee. Within thirty (30) days after execution of this Agreement and upon Provider's request annually thereafter, Customer shall deliver to Provider certificates of insurance evidencing such coverage, which shall specify that Provider shall be given at least thirty (30) days' prior written notice (10 days' notice for cancellation due to nonpayment of premiums) by the applicable insurer in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Provider. Notwithstanding the foregoing, Customer shall be entitled to self-insure all of its insurance requirements under this Agreement.

## 9. Force Majeure Events.

If either Party is prevented from or delayed in performing any of its obligations under this Agreement by reason of a Force Majeure Event, such Party shall notify the other Party in writing as soon as practicable after the onset of such Force Majeure Event and shall be excused from the performance of its obligations under this Agreement to the extent that such Force Majeure Event interferes with such performance. The Party whose performance under this Agreement is prevented or delayed as the result of a Force Majeure Event shall use reasonable efforts to remedy its inability to perform. If a Party's failure to perform its obligations under this Agreement is due to a Force Majeure Event, then such failure shall not be deemed a Provider Default or a Customer Default, as the case may be. In case a Force Majeure Event continues for at least one (1) year with respect to the System, then either Party may terminate this Agreement by written notice to the other.

10. Term; Customer Options; Termination.

10.1 Term.

The term of this Agreement shall commence on the Effective Date and shall expire on the date that is twenty-five (25) years after the Commercial Operation Date (the “Expiration Date”), unless and until terminated earlier pursuant to Sections 3.1, 3.2, 3.3, 9, 10.2.3, 10.6 or 12 (the date of any such termination, the “Termination Date”, and the “Term” being such period of time commencing on the Effective Date and ending on the earlier of (i) the Termination Date, and (ii) the Expiration Date). Notwithstanding the foregoing, the Storage Services Provisions of this Agreement shall only be in effect during the Storage Services Term.

10.2 Customer Options Upon Cessation of Business Operations at Site.

If, prior to the end of the Term, Customer ceases to conduct business operations at the Site, vacates the Site, or is prevented from allowing operation of the System on the Site:

10.2.1 Substitute Site. So long as Customer’s exercise of its rights under this Section 10.2.1 does not impair or reduce any Environmental Financial Incentives that may be available to the Provider, or otherwise have an adverse tax effect on Provider, or in the Provider’s sole discretion and determination, impair Provider’s ability to meet any and all obligations in connection with a Financing Party or a prospective financing transaction, Customer shall have the right to provide Provider with a mutually agreeable substitute Site located within the same utility district, subject to requisite governing agency approvals, to relocate the System, which agreement shall not be unreasonably withheld, or, if not available, in a location with similar solar insolation, utility rates, Environmental Attributes and Environmental Financial Incentives. Any such alternate Site shall have a similar demand charge profile as the Site. If such alternate Site is available and is acceptable to Provider, this Agreement shall be amended to delete the prior Site and add the new Site, but otherwise this Agreement shall remain in full force in accordance with its terms and shall not be deemed otherwise amended. Customer shall pay the reasonable costs arising in connection with the relocation(s) of the System, including removal costs, installation costs, any applicable interconnection fees, costs related to obtaining a site license or lease at the substitute site, other costs of deployment at the substitute Site, and amounts lost that would otherwise be payable under this Agreement due to such relocation(s) to Provider based on (i) delivered Energy averaged over the prior twelve months for the System and (ii) if during the Storage Services Term, all Storage Services Fees for any Monthly Periods during which the ESS is not operational due to such relocation(s).

10.2.2 Move and Pay Option. So long as such event does not impair or reduce any Environmental Attributes or Environmental Financial Incentives, Customer may elect to pay or guarantee the payment of the remaining monthly amounts due under this Agreement to Provider, and cause the System to be kept in operation at the Site, in each case through the remainder of the Term.

10.2.3 Termination and Payment of Termination Value. If, beginning in the sixth year following the Commercial Operation Date, a substitute Site cannot be located in



accordance with Section 10.2.1 with respect to the System and Customer elects not to avail itself of the provisions of Section 10.2.2 with respect to the System, then Customer shall so notify Provider, Provider shall remove the System (at Customer's sole cost and expense) and Customer shall pay to Provider the then-applicable Termination Value specified in Column A of Schedule D as liquidated damages, whereupon this Agreement shall terminate. The Parties agree that actual damages to Provider if this Agreement is terminated as contemplated in this Section 10.2 would be difficult to ascertain, and the applicable Termination Value is a reasonable approximation of the damages suffered by Provider as a result of early termination of this Agreement.

### 10.3 Customer Options Upon Expiration of Term.

10.3.1 Extension of Term. Upon prior written notice to Provider at least one-hundred eighty (180) days prior to the Expiration Date, Customer has the option to renew the term of this Agreement with respect to the PV System and Solar Services for one (1) additional three (3)-year period at the Renewal Rate.

10.3.2 Purchase of PV System. If Customer has not elected to renew the term of this Agreement in accordance with Section 10.3.1, Customer may purchase the PV System by providing Provider written notice of its intent to purchase the PV System no later than one-hundred and eighty (180) days prior to the Expiration Date, and paying Provider the Fair Market Value thereof no later than the relevant Expiration Date. The "Fair Market Value" of the PV System shall be the value determined by the mutual agreement of Customer and Provider within ten (10) days after receipt by Provider of Customer's notice of its election to purchase the PV System. If Customer and Provider cannot mutually agree to a Fair Market Value, then the Parties shall jointly select a nationally recognized independent appraiser with whom the parties have discussed methods and assumptions, with experience and expertise in the solar photovoltaic industry to value such equipment. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding on the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. To the extent transferable, the remaining period, if any, on all warranties for the PV System will be transferred from Provider to Customer. If the Parties are unable to agree on the selection of an appraiser, such appraiser shall be jointly selected by the appraiser firm proposed by the Customer and the appraiser firm proposed by the Provider. Upon receipt by Provider of payment of the Fair Market Value, title to the PV System as well as available Environmental Attributes and Environmental Financial Incentives from the PV System shall transfer to Customer as-is, where-is.

10.3.3 Return of PV System. If at the end of a Term, or an Extension of Term pursuant to Section 10.3.1, Customer does not exercise any of the options described in Sections 10.3.1 and 10.3.2, Provider shall remove all of its tangible property comprising the PV System from the Site by a mutually convenient date but in no case later than one hundred eighty (180) days after the Expiration Date with respect to the PV System. The cost to remove the PV System shall be borne by the Provider. The portion of the Site on which the PV System was installed shall be returned to its original condition, except for ordinary wear and tear, and Provider shall leave the portion of the Site on which the System was installed in neat and clean order.

10.3.4 Extension of Storage Services Term. Upon prior written notice to Provider at least one-hundred eighty (180) days prior to the end of the Storage Services Term, Parties may mutually agree to extend the Storage Services Term with respect to the ESS and the Storage Services for one (1) additional five (5)-year period at the ESS Renewal Rate.

10.3.5 Purchase of ESS. If Customer has not elected to renew the Storage Services Term in accordance with Section 10.3.4, Customer shall have the option to purchase the ESS by providing Provider written notice of its intent to purchase the ESS no later than one-hundred and eighty (180) days prior to the end of the Storage Services Term, and paying Provider the ESS Fair Market Value thereof no later than the Expiration Date. The “ESS Fair Market Value” of the ESS shall be the value determined by the mutual agreement of Customer and Provider within ten (10) days after receipt by Provider of Customer’s notice of its election to purchase the ESS. If Customer and Provider cannot mutually agree to an ESS Fair Market Value, then the Parties shall jointly select a nationally recognized independent appraiser with whom the parties have discussed methods and assumptions, with experience and expertise in the solar photovoltaic and energy storage industry to value such equipment. Such appraiser shall act reasonably and in good faith to determine the ESS Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding on the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. To the extent transferable, the remaining period, if any, on all warranties for the ESS will be transferred from Provider to Customer at Customer’s sole expense. If the Parties are unable to agree on the selection of an appraiser, such appraiser shall be jointly selected by the appraiser firm proposed by the Customer and the appraiser firm proposed by the Provider. Upon receipt by Provider of payment of the ESS Fair Market Value, title to the ESS as well as available Environmental Financial Incentives from the ESS shall transfer to Customer as-is, where-is.

10.3.6 Return of the ESS. If at the end of Storage Services Term, or an extension thereof pursuant to Section 10.3.4, Customer does not exercise any of the options described in Sections 10.3.4 and 10.3.5, Provider shall remove all of its tangible property comprising the ESS from the Site by a mutually convenient date but in no case later than one hundred eighty (180) days after the expiration of the Storage Services Term. The cost to remove the ESS shall be borne by the Provider. The portion of the Site on which the ESS was installed shall be returned to its original condition, except for ordinary wear and tear, and Provider shall leave the portion of the Site on which the System was installed in neat and clean order.

10.3.7 Amended and Restated Agreement. At the end of the Storage Services Term, Customer agrees that it shall reasonably cooperate with a request from Provider to amend, or amend and restate this Agreement to remove all provisions applicable to the Storage Services and the ESS; provided, that the foregoing undertaking shall not obligate Customer to materially change any rights or benefits, or materially increase any burdens, liabilities or obligations of Customer, under this Agreement.

#### 10.4 Customer Purchase Options Prior to Expiration Date.

10.4.1 On the later to occur of the sixth (6th) anniversary of the Commercial Operation Date and the Storage Services Commencement Date, provided that no Customer Default shall have occurred and be continuing beyond any applicable period of cure, Customer may elect to purchase all, but not less than all, of the

System (including both the ESS and the PV System). If Customer elects to so purchase the System, the purchase price shall be the higher of the then Fair Market Value of the System (calculated in accordance with the definition of Fair Market Value set forth in Section 10.3.2 for the PV System and the ESS Fair Market Value set forth in Section 10.3.5, and such determination to be at Customer's sole cost and expense), or the then-current Termination Value specified in Column A of Schedule D. Not less than one-hundred-and-eighty (180) days prior to the exercise of the purchase option for the System, Customer shall provide written notice to Provider of Customer's exercise thereof. Upon the exercise of the foregoing purchase option plus receipt of the Value as determined in Section 10.4 above and all other amounts then owing by Customer to Provider, the Parties will execute all documents necessary to cause title to the System to pass to Customer as-is, where-is; provided, however, that Provider shall remove any encumbrances placed on the System by Provider at Customer's expense.

10.4.2 On the later to occur of the fifteenth (15th) anniversary of the Commercial Operation Date and the Storage Services Commencement Date, provided that no Customer Default shall have occurred and be continuing beyond any applicable period of cure, Customer may elect to purchase the PV System. If Customer elects to so purchase the PV System, the purchase price shall be the higher of the then Fair Market Value of the PV System (calculated in accordance with the definition of "Fair Market Value" set forth in Section 10.3.2 for the PV System, and such determination to be at Customer's sole cost and expense), and the amount specified in Column A of Schedule D. Not less than one-hundred-and-eighty (180) days prior to the exercise of the purchase option for the PV System, Customer shall provide written notice to Provider of Customer's exercise thereof. Upon the exercise of the foregoing purchase option plus receipt of the Fair Market Value and all other amounts then owing by Customer to Provider, the Parties will execute all documents necessary to cause title to the PV System to pass to Customer as-is, where-is; provided, however, that Provider shall remove any encumbrances placed on the PV System by Provider at Customer's expense.

10.5 Payment of Termination Value on Termination Date.

In the event that the Termination Date has occurred for reasons other than pursuant to Sections 3.1.2., 10.6 or 12.1.1, Customer shall be required to pay to Provider the then-applicable Termination Value specified in Column A of Schedule D as liquidated damages. The Parties agree that actual damages to Provider in the event this Agreement terminates prior to the expiration of the Term for causes attributable to Customer would be difficult to ascertain, and the applicable Termination Value is a reasonable approximation of the damages suffered by Provider as a result of early termination of this Agreement.

10.6 Provider Termination.

Provider shall have the right, in Provider's sole and absolute discretion, to terminate this Agreement upon written notice if any of the following occurs:

10.6.1 at any time until construction of the System commences Provider determines in its sole discretion that it is unable to install the System at the Site;

10.6.2 if the occurrence of an unstayed order of a court or administrative agency has the effect of subjecting the sales of the Energy or the Storage Services to federal or state regulation of the prices therefor and/or the delivery of the service;

10.6.3 the elimination or alteration of one or more Environmental Financial Incentives or other change in law that results in a material adverse economic impact on Provider;  
or

10.6.4 if the annual direct beam solar resource availability at the Site is less than or equal to 90% of historical averages as measured by long-term weather data (minimum of five (5) years) collected at the Site and/or other reliable calibrated and appropriate weather station representative of the Site.

In the event of a Provider termination under this Section 10.6, Provider shall remove all of its tangible property comprising the System from the Site by a mutually convenient date but in no case later than one hundred eighty (180) days after the Termination Date. The cost to remove the System shall be borne by the Provider. The portion of the Site on which the System was installed shall be returned to its original condition, except for ordinary wear and tear, and Provider shall leave the portion of the Site on which the System was installed in neat and clean order.

## 11. Defaults.

### 11.1 Customer Default.

The occurrence at any time of any of the following events shall constitute a “Customer Default”:

11.1.1 Failure to Pay. The failure of Customer to pay during the Term any amounts owing to Provider on or before the date on which such amounts are due and payable under the terms of this Agreement and Customer’s failure to cure such failure within fifteen (15) days after Customer receives written notice of each such failure from Provider;

11.1.2 Failure to Maintain Phone/Data Line. Unless due to a Force Majeure Event excused by Section 9, the failure of Customer to maintain and grant Provider access to the phone and other communications lines required to be maintained pursuant to Section 4.1.3 and Customer’s failure to cure such failure within twenty (20) business days after Customer receives written notice of such failure from Provider; provided that in any event if such failure shall continue for at least five (5) days after notice to Customer and shall result in lost revenue to Provider, Provider shall be entitled to reasonably estimate the amount of revenue that would have been obtained and shall invoice Customer therefor;

11.1.3 Failure to Perform Other Obligations. Unless due to (i) a Force Majeure Event excused by Section 9, or (ii) a breach of paragraph 2 of Section 2 (License), the failure of Customer to perform or cause to be performed any other material obligation required to

be performed by Customer under this Agreement, or the failure of any representation, covenant, or warranty set forth herein to be true and correct as and when made; provided, however, that if such failure by its nature can be cured, then Customer shall have a period of thirty (30) business days after receipt of written notice from Provider of such failure to Customer to cure the same and a Customer Default shall not be deemed to exist during such period; provided, further, that if Customer commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for one hundred twenty (120) additional days;

11.1.4 Bankruptcy, Etc. (a) Customer admits in writing its inability to pay its debts generally as they become due; (b) Customer files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof; (c) Customer makes an assignment for the benefit of creditors; (d) Customer consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Customer has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Customer's assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Customer's assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control; or

11.1.5 Failure of Site Access. A breach by Customer of the License occurs and Customer fails to cure such breach within five (5) days after Customer receives written notice of such breach from Provider.

## 11.2 Provider Default.

The occurrence at any time of the following event shall constitute a "Provider Default":

11.2.1 Failure to Perform Obligations. Unless due to a Force Majeure Event excused by Section 9, the failure of Provider to perform or cause to be performed any obligation required to be performed by Provider under this Agreement or the failure of any representation and warranty set forth herein to be true and correct as and when made; provided, however, that if such failure by its nature can be cured, then Provider shall have a period of thirty (30) business days after receipt of written notice from Customer of such failure to Provider to cure the same and a Provider Default shall not be deemed to exist during such period; provided, further, that if Provider commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for one-hundred twenty (120) additional days; or

11.2.2 Bankruptcy, Etc. (a) Provider admits in writing its inability to pay its debts generally as they become due; (b) Provider files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof; (c) Provider makes

an assignment for the benefit of creditors; (d) Provider consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Provider has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Provider's assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Provider's assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control.

## 12. Remedies Following Default.

### 12.1 Customer's Remedies Upon Occurrence of a Provider Default.

12.1.1 Termination. If a Provider Default has occurred and is continuing, then Customer may terminate this Agreement by providing written notice to Provider thereof, and this Agreement shall terminate and be of no further force or effect as of the date of the notice according to Section 14.1.

12.1.2 Other Rights and Remedies. If any Provider Default described under Section 11.2 has occurred and Customer has terminated this Agreement as a result thereof in accordance with the terms of Section 12.1.1 above, then, subject to Section 12.3, Provider shall pay to Customer an amount not to exceed the then-present value (discounted at the prevailing prime rate of interest as published in *The Wall Street Journal* on the day preceding the date of determination) of (a) the cash flows equal to the product of (i) the positive difference, if any, of the price per kWh for commercially available, utility-provided energy in the applicable market(s) (which shall not include related charges such as delivery, service, distribution, or taxes) minus the kWh Rate of Energy hereunder (as such kWh Rate would have been escalated over time pursuant to the terms hereof) hereof, multiplied by (ii) the number of days remaining in the term of this Agreement had it not been terminated times the expected daily number of kWh of Energy to be delivered under this Agreement, calculated by dividing the Estimated Year 1 Production set forth in Schedule B, adjusted for as-built System, by 365. Provider's payment to Customer of the amounts set forth in this Section 12.1.2 shall not in any way limit the other remedies at law or in equity that Customer may pursue as damages for Provider's breach of this Agreement; provided, however, that such damages pursued by Customer are subject to the limitation provisions of Sections 12.3 and 12.5.

### 12.2 Provider's Remedies Upon Customer Default.

In addition to any other remedies available under this Agreement or at law, if a Customer Default has occurred and is continuing, then Provider may terminate this Agreement by providing written notice to Customer thereof, and this Agreement shall terminate and be of no further force or effect as of the date of the notice according to Section 14.1 and Provider shall have the right to (a) cause Customer to pay (and Customer shall have the obligation to pay to Provider) the applicable Termination Value set forth in Column A of Schedule D and (b) enter onto the Site and remove the System in accordance with the last sentence of Section 10.2.3.

12.3 No Consequential Damages.

Nothing in this Agreement is intended to cause either Party to be, and neither Party shall be, liable to the other Party for any lost business, lost profits or revenues from others or other special or consequential damages, all claims for which are hereby irrevocably waived by Customer and Provider. Notwithstanding the foregoing, none of the payments for the Energy or any other amount specified as payable by Customer to Provider under the terms of this Agreement upon the termination of this Agreement shall be deemed consequential damages

12.4 Effect of Termination of Agreement.

Upon the Termination Date or the Expiration Date, as applicable, any amounts then owing by a Party to the other Party shall become immediately due and payable and the then future obligations of Customer and Provider under this Agreement shall be terminated (other than the indemnity obligations set forth in Section 13). Such termination shall not relieve either Party from obligations accrued prior to the effective date of termination or expiration.

12.5 Limitation of Liability.

THE TOTAL LIABILITY OF A PARTY TO THE OTHER PARTY FOR ALL CLAIMS OR SUITS OF ANY KIND, WHETHER BASED UPON THIS AGREEMENT, TORT (INCLUDING NEGLIGENCE BUT EXCLUDING THIRD PARTY TORT CLAIMS FOR PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM THE PERFORMANCE OF THIS AGREEMENT), WARRANTY, STRICT LIABILITY OR OTHERWISE, FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES OF ANY KIND WHATSOEVER ARISING OUT OF, RESULTING FROM OR RELATED TO THE PERFORMANCE OR BREACH OF THIS AGREEMENT SHALL, UNDER NO CIRCUMSTANCES, EXCEED **\$1,559,698**, PROVIDED THAT THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (A) LIABILITY FOR FRAUD OR WILLFUL MISCONDUCT OF ANY PERSON; (B) LIABILITY UNDER THE INDEMNIFICATION PROVISIONS OF THIS AGREEMENT FOR CLAIMS OF THIRD PARTIES FOR PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM THIS AGREEMENT; OR (C) PAYMENT OF THE KWH RATE. THE LIMITATION OF LIABILITY PROVIDED FOR HEREIN SHALL NOT BE USED TO LIMIT OR REDUCE ANY AVAILABLE INSURANCE.

13. Indemnification.

13.1 Indemnification by Provider.

Provider shall fully indemnify, save harmless and defend Customer from and against any and all costs, claims, and expenses incurred by Customer in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (a) the negligence or willful misconduct of Provider or its agents or employees or others under Provider's control in performing this Agreement, and

(b) a Provider Default under this Agreement; provided, however, that nothing in this Section 13.1 is intended to modify the limitation of Provider's liability set forth in Section 12.3 above; provided further that to the extent Customer recovers such damages, losses and expenses under any insurance policy, Customer shall reimburse any payment made by Provider under this indemnity.

13.2 Indemnification by Customer.

Without limiting the provisions of Section 8, Customer shall fully indemnify, save harmless and defend Provider or its assignees and successors from and against any and all costs, claims, and expenses incurred by Provider in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (a) the negligence or willful misconduct of Customer or its agents or employees or others under Customer's control at the Site or (b) a Customer Default hereunder; provided, however, that nothing in this Section 13.2 is intended to modify the limitation of Customer's liability set forth in Section 12.3 above; provided further that to the extent Provider recovers such damages, losses and expenses under any insurance policy, Provider shall reimburse any payment made by Customer under this indemnity.

13.3 Notice of Claims.

Any Party seeking indemnification hereunder (the "Indemnified Party") shall deliver to the other Party (the "Indemnifying Party") a notice describing the facts underlying its indemnification claim and the amount of such claim (each such notice a "Claim Notice"). Such Claim Notice shall be delivered promptly to the Indemnifying Party after the Indemnified Party receives notice that an action at law or a suit in equity has commenced; provided, however, that failure to deliver the Claim Notice as aforesaid shall not relieve the Indemnifying Party of its obligations under this Section 13, except to the extent that such Indemnifying Party has been prejudiced by such failure.

13.4 Defense of Action.

If requested by an Indemnified Party, the Indemnifying Party shall assume on behalf of the Indemnified Party, and conduct with due diligence and in good faith, the defense of such Indemnified Party with counsel reasonably satisfactory to the Indemnified Party; provided, however, that if the Indemnifying Party is a defendant in any such action and the Indemnified Party believes that there may be legal defenses available to it that are inconsistent with those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to participate in its defense of such action at the Indemnifying Party's expense. If any claim, action, proceeding or investigation arises as to which the indemnity provided for in this Section 13 applies, and the Indemnifying Party fails to assume the defense of such claim, action, proceeding or investigation after having been requested to do so by the Indemnified Party, then the Indemnified Party may, at the Indemnifying Party's expense, contest or, with the prior written consent



of the Indemnifying Party, which consent shall not be unreasonably withheld, settle such claim, action, proceeding or investigation. All costs and expenses incurred by the Indemnified Party in connection with any such contest or settlement shall be paid upon demand by the Indemnifying Party.

13.5 Survival of Provisions.

The provisions of this Section 13 shall survive the expiration or termination of this Agreement.

14. Miscellaneous Provisions.

14.1 Notices.

All notices, communications and waivers under this Agreement shall be in writing and shall be (a) delivered in person or (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested or (c) sent by reputable overnight express courier, addressed in each case to the addresses set forth below, or to any other address either of the parties to this Agreement shall designate in a written notice to the other Party:

If to Provider:

Solar Star Co Co 1, LLC  
c/o SunPower Corporation  
1414 Harbour Way South, Suite 1901  
Richmond, CA 94804  
Attention: Julie Williamson, Project Administration  
Phone:510-540-0550  
Fax:510-540-0552

If to Customer:

Contra Costa County Public Works Dept.  
Capital Projects Management Division  
Attn: Energy Manager  
40 Muir Road  
Martinez, CA 94553 Phone: 925-313-2000  
Fax: 925-313-2333

All notices sent pursuant to the terms of this Section 14.1 shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by reputable overnight, express courier, then on the next business day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third (3rd) business day following the day sent or when actually received.

14.2 Authority.

14.2.1 Provider Representations. Provider hereby represents and warrants that:

- (a) It is a Delaware limited liability company duly organized, validly existing and in good standing under the laws of the state of its formation and has all requisite limited liability company power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (b) The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary limited liability company action;
- (c) This Agreement is a legal, valid and binding obligation of Provider enforceable against Provider in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law);
- (d) To the best knowledge of Provider, as of the date of execution hereof, no governmental approval (other than any governmental approvals that have been previously obtained or disclosed in writing to Customer) is required in connection with the due authorization, execution and delivery of this Agreement by Provider or the performance by Provider of its obligations hereunder which Provider has reason to believe that it will be unable to obtain in due course on or before the date required for Provider to perform such obligations; and
- (e) Neither the execution and delivery of this Agreement by Provider nor compliance by Provider with any of the terms and provisions hereof (i) conflicts with, breaches or contravenes the provisions of the articles of formation or operating agreement of Provider or any contractual obligation of Provider or (ii) results in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default under any material contractual obligation of Provider.

14.2.2 Customer Representations. Customer hereby represents and warrants that:

- (a) It is a political subdivision of the State of California, validly existing and in good standing under the laws of the state of its formation and has all requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (b) The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary governmental action;
- (c) This Agreement is a legal, valid and binding obligation of Customer enforceable against Customer in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law);
- (d) No governmental approval (other than any governmental approvals which have been previously obtained or disclosed in writing to Provider) is required in connection with the due authorization, execution and delivery of this Agreement by Customer or the performance by Customer of its obligations hereunder which Customer has reason to believe that it will be unable to obtain in due course;
- (e) Neither the execution and delivery of this Agreement by Customer nor compliance by Customer with any of the terms and provisions of this Agreement results in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default under any contractual obligation of Customer;
- (f) Customer has not entered into any contracts or agreements with any other person regarding the provision of the services at the Site contemplated to be provided by Provider under this Agreement; and
- (g) None of the electricity to be generated by the Provider will be used to generate energy for the purpose of heating a swimming pool.

### 14.3 Assignment

#### 14.3.1 Provider Assignment.

Provider may assign this Agreement upon written notice thereof to Customer, provided that any such assignment shall be to an assignee capable of performing Provider's obligations hereunder. Provider may, without any consent of Customer, sell, transfer, assign or pledge (or grant security interests in) its rights, title and interest in this Agreement, and/or any monies due under this Agreement to a Financing Party, in connection with any financing for the ownership, acquisition, construction, operation or use of the System.

#### 14.3.2 Customer Assignment.

Customer shall not assign all or any part of this Agreement to any entity other than an affiliate of Customer without the prior written consent of the Provider, which shall not be unreasonably withheld. Customer may not assign this Agreement to any Person, including an affiliate, with a credit rating lower than that of Customer without providing matching credit support in the form of cash, letter(s) of credit, or other security reasonably acceptable to Provider. Any assignment by the Customer not permitted under this Section 14.3 shall be void ab initio. In the event that Customer decides to sell or otherwise transfer the Site or a portion thereof upon which the System is located, Customer may (i) with Provider's prior written consent, which will not be unreasonably withheld or delayed, assign this Agreement to the Site purchaser who shall assume all of Customer's obligations under this Agreement and Provider shall release Customer from any further liability associated with this Agreement, or (ii) terminate this Agreement by paying Provider the Termination Value applicable to the date of termination. Upon payment of the Termination Value, the Parties will execute all documents necessary to cause title to the System to pass to Customer as-is, where-is. The Customer does not have the present intention of making any transfer of the Site or that portion of the Site on which the System is located; provided, however, nothing herein shall prohibit Customer from making any transfer of the Site or any portion thereof on which System is located, subject to the provisions set forth above.

#### 14.4 Successors and Assigns.

The rights, powers and remedies of each Party shall inure to the benefit of such party and its successors and permitted assigns.

#### 14.5 Entire Agreement.

This Agreement (including all exhibits and schedules attached hereto) represent the entire agreement between the parties to this Agreement with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous oral and prior written agreements.

14.6 Amendments to Agreement.

This Agreement shall not be amended, modified or supplemented without the written agreement of Provider and Customer at the time of such amendment, modification or supplement.

14.7 Waivers; Approvals.

No waiver of any provision of this Agreement shall be effective unless set forth in writing signed by the Party making such waiver, and any such waiver shall be effective only to the extent it is set forth in such writing. Failure by a Party to insist upon full and prompt performance of any provision of this Agreement, or to take action in the event of any breach of any such provisions or upon the occurrence of any Provider Default or Customer Default, as applicable, shall not constitute a waiver of any rights of such Party, and, subject to the notice requirements of this Agreement, such Party may at any time after such failure exercise all rights and remedies available under this Agreement with respect to such Provider Default or Customer Default. Receipt by a Party of any instrument or document shall not constitute or be deemed to be an approval of such instrument or document. Any approvals required under this Agreement must be in writing, signed by the Party whose approval is being sought.

14.8 Partial Invalidity.

In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of Applicable Law, Provider and Customer shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Agreement (and in the event that Provider and Customer cannot agree then such provisions shall be severed from this Agreement) and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected by such adjustment and shall remain in full force and effect.

14.9 Execution in Counterparts.

This Agreement may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same Agreement.

14.10 Governing Law; Jurisdiction; Forum.

This Agreement shall be governed by and construed in accordance with the internal laws of the State of California. Customer irrevocably agrees that any action, suit or proceeding by or among Provider and Customer may be brought in whichever of the Superior Courts of the State of California, Alameda County, or the Federal Court for the Northern District of California, has subject matter jurisdiction over the dispute and waives any objection that Customer may now or hereafter have regarding the choice of forum whether on personal jurisdiction, venue, forum non conveniens or on any other ground. Customer irrevocably consents to the service

of process outside of the territorial jurisdiction of such courts by mailing copies thereof by registered or certified mail, postage prepaid, to Customer's address set forth herein with the same effect as if Customer were a resident of the State of California and had been lawfully served in such state. Nothing in this Agreement shall affect the right to service of process in any other manner permitted by law.

14.11 Attorneys' Fees.

If any action shall be instituted between Customer and Provider in connection with this Agreement, the Party prevailing in such action shall be entitled to recover from the other Party all of its reasonable costs and expenses incurred in connection with such action by arbitration or other legal proceeding, including reasonable attorneys' fees.

14.12 No Third Party Rights.

This Agreement is only for the benefit of the parties to this Agreement, their successors and permitted assigns (including any lender or lessor of Provider) and Persons expressly benefited by the indemnity provisions of this Agreement. No other Person (including, without limitation, tenants of the Site) shall be entitled to rely on any matter set forth in, or shall have any rights on account of the performance or non-performance by any Party of its obligations under, this Agreement.

14.13 Treatment of Additional Amounts.

The Parties hereto acknowledge and agree that Customer's payment of the Termination Value constitute liquidated damages and not penalties. The Parties further acknowledge that in the case of the payment of the Termination Value: (a) the amount of loss or damages likely to be incurred is incapable or is difficult to precisely estimate, (b) the amounts specified hereunder bear a reasonable proportion and are not plainly or grossly disproportionate to the probable loss likely to be incurred by Customer or Provider as the case may be and (c) the Parties are sophisticated business parties and have been represented by legal counsel and negotiated this Agreement at arm's length.

14.14 No Agency.

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

14.15 No Public Utility.

Nothing contained in this Agreement shall be construed as an intent by Provider to dedicate its property to public use or subject itself to regulation as a “public utility” (as defined in the California Public Utilities Code or any other Applicable Law).

14.16 No Recourse to Affiliates.

This Agreement is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party.

14.17 Cooperation with Financing.

Customer acknowledges that Provider may be financing the Solar Services and the Storage Services and the System and Customer agrees that it shall reasonably cooperate with Provider and its financing parties in connection with such financing, including (a) the furnishing of information related to the System and this Agreement, and (b) the giving of a Financing Party acknowledgment in the form attached hereto as Exhibit B (each, a “Consent”); provided, that the foregoing undertaking shall not obligate Customer to materially change any rights or benefits, or materially increase any burdens, liabilities or obligations of Customer, under this Agreement except for providing notices and additional cure periods to a Financing Party with respect to events of default by Provider under this Agreement pursuant to the terms of the Consent.

14.18 Setoff.

Except as otherwise set forth herein, each Party reserves to itself all rights, setoffs, counterclaims and other remedies and/or defenses to which it is or may be entitled, arising from or out of this Agreement.

14.19 Service Contract.

The Parties intend this Agreement to be treated as a service contract within the meaning of Section 7701(e)(3) of the Code.

15. Confidential Information.

15.1 Each Party (the “Receiving Party”) shall not use for any purpose other than performing its obligations under this Agreement, or divulge, disclose, produce, publish, or permit access to, without the prior written consent of the other Party (the “Disclosing Party”), any Confidential Information of the Disclosing Party. As used herein, the term “Confidential Information” means information or materials prepared in connection with this Agreement, designs, drawings, specifications, techniques, models, data, documentation, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans,

customer, supplier or personnel names and other information related to customers, suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets. Confidential Information does not include (a) information known to the Receiving Party prior to obtaining the same from the Disclosing Party; (b) information in the public domain at the time of disclosure by the Receiving Party; or (c) information obtained by the Receiving Party from a third party who did not receive same, directly or indirectly, from the Disclosing Party. The Receiving Party shall use the higher of the standard of care that the Receiving Party uses to preserve its own Confidential Information or a reasonable standard of care to prevent unauthorized use or disclosure of such Confidential Information. Notwithstanding anything herein to the contrary, the Receiving Party has the right to disclose Confidential Information without the prior written consent of the Disclosing Party: (i) as required by any court or other Governmental Authority, or by any stock exchange on which the shares of any Party are listed, (ii) as otherwise required by law, (iii) as advisable or required in connection with any government or regulatory filings, including without limitation, filings with any regulating authorities covering the relevant financial markets, (iv) to its attorneys, accountants, financial advisors or other agents, in each case bound by confidentiality obligations, (v) to banks, investors and other financing sources and their advisors, in each case bound by confidentiality obligations; or (vi) in connection with an actual or prospective merger or acquisition or similar transaction where the party receiving the Confidential Information is bound by confidentiality obligations. If a Receiving Party believes that it will be compelled by the law or a court or other Governmental Authority to disclose Confidential Information of the Disclosing Party, it shall give the Disclosing Party prompt written notice, and in all cases not less than five (5) business days' notice in advance of disclosure, so that the Disclosing Party may determine whether to take steps to oppose such disclosure.

16. Estoppel Certificate.

Either Party hereto, without charge, at any time and from time to time, within twenty (20) days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other relevant person, firm or corporation specified by such requesting party:

- a) If true and correct, that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;
- b) Whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and
- c) Such other information as may be reasonably requested by a Party hereto.



Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the date set forth above.

PROVIDER:

SOLAR STAR CO CO 1, LLC

By: SunPower AssetCo, LLC  
Its member

By: \_\_\_\_\_  
Name: David McIlhenny  
Title: Vice President

CUSTOMER:

CONTRA COSTA COUNTY

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

## EXHIBIT A

### SYSTEM DESIGN AND CONSTRUCTION

This Exhibit A sets forth the design, engineering and construction specifications for the System, as well as assumptions being made by the Provider regarding the existing condition at the Site, including but not limited to the building roof, building structure, ground conditions, electrical system including panels, inverter installation location, and security fencing. Capitalized terms used herein and not otherwise defined have the meaning given in the Agreement to which this exhibit is attached.

#### 1. SYSTEM LOCATION AND DESCRIPTION:

Descriptions of the site and system are located in Schedule A (Description of Site) and Schedule B (Description of System) of the Agreement.

#### 2. PROJECT SCHEDULE:

##### PORTFOLIO MILESTONES

	Tranche	Contract Approval Date	Commercial Operation Date
1000 Ward	1	6-18-2019	6/24/2020
30/40 Muir	1	6-18-2019	5/24/2020
597 Center	1	6-18-2019	6/13/2020
595 Center	2	6-18-2019	10/26/2020
50 Douglas	2	6-18-2019	9/22/2020
30 Douglas	2	6-18-2019	10/30/2020
2530 Arnold	3	6-18-2019	12/14/2020
4545 Delta Fair	3	6-18-2019	12/21/2020
4549 Delta Fair	3	6-18-2019	11/24/2020
1305 MacDonald	3	6-18-2019	12/21/2020

#### 3. SCOPE OF WORK:

##### *System Design & Scope*

##### *Design Documentation*

Provider shall provide comprehensive submittal packages for the 30% and 90% design sets as detailed below. Changes to 30% Customer approved drawings (scope lock) could result a change order. At a minimum, each submittal package shall include the elements required to convey in sufficient detail the following for each phase of the design:

	<b>Submittal Requirement</b>	<b>30% Design Set</b>	<b>90% Design Set</b>
1	Cover Sheet, with Content, Project Details, Directory, etc.	X	X
2	PV System Sizes & Production Estimates.	X	X
3	Overall Site Plan with PV Array Names, Conduit Routes, Tree/Light Removal, etc.	X	X
4	Electrical Site Plan Drawings & General Conduit Routing.	X	X
5	Electrical Single Line Diagrams.	X	X
6	Demolition Plans.		X
7	Structural Drawings.		X
8	Equipment Pad locations.	X	X
9	Mounting Details.		X
10	Signage, Trenching, Installation, and Grounding Details.		X
11	Monitoring System Details.		X
13	Construction Schedule.	Prelim	Detailed
14	Manufacturer's Cut Sheets with Equipment Specifications		X
15	Civil Drawings (if applicable)		X
16	Fire Access Plans		X
17	Carport Lighting Plans		X

Production modeling of the PV system shall accurately simulate energy production for proposed system layouts, sizes, and orientation. Provider shall be responsible for updating the production models each time significant changes are made to the proposed system designs that will impact production.

### ***Solar Electrical Equipment and Conductors***

Conductors will be aluminum or copper according to Electrical Engineer of Record's determination. AC feeder length from panel boards to equipment pad location and from equipment pad location to electrical tie-in is identified on the array layout drawings. AC feeder lengths from electrical equipment pad location to assumed point of interconnection, and length assumptions with equipment amperage ratings are shown on the single line drawing.

Transformers are 480V:12kV, non-Dry-type by manufacturer of Provider's choosing. Secondary containment is not included in the scope of the project.

### ***Battery Energy Storage System Requirements***

For sites with storage to be installed:

- 13.5' by 11' minimum required area per storage unit. Area required includes storage unit, concrete pad, and clearance zone in front of units.
- Storage unit must be located in an area free of combustible materials (nearby foliage and trees would need to be removed).
- Storage unit must be separated from public foot traffic with a fence and must be separated from vehicle traffic with bollards.
- Crane rental required to land up to 24,500 lb units. Location of units must accommodate both crane and semi-trailer truck access.
- PVS5 DAS, Auxiliary Box, Energy Storage System, and all Accuvim meters (Site meter, PV output meter, and Storage meter) must all be located such that hardlined communication lines can connect these devices to the same Local Area Network. CAT5e/6 cable is preferred means of connection between all devices, which has a 330' distance limit. Runs longer than 330' will require additional equipment to accommodate.

### ***Utility Interconnection***

Coordination of shutdown may be required with Customer and local utility. Temporary power generators are excluded. Interconnection is scheduled for a minimum of 4 hours and is assumed to be performed during off-hours with prior written approval from Customer. Additional shutdowns will be required in order to assess physical condition of Customer's switchgear.

The utility will have 24/7 access to existing electric utility meters and the utility lockable disconnect locations for all electrical interconnections related to this project.

### ***Utility Requirements***

A cost of \$172,012.58 is included for utility required electrical upgrades for the System at 30 Douglas Dr., Martinez, CA, as reflected in Pacific Gas & Electric's Supplemental Review, Notification # 114209530; additional utility-required electrical equipment upgrades or replacements are not included.

Any costs and / or schedule delays associated with unforeseen utility interconnection requirements, including but not limited to utility-owned equipment upgrades or additions, relay protection equipment external to the inverters, system impact studies, or telemetry requirements and interconnection studies are not included in this proposal.

### ***Facility Equipment***

Utility required circuit breaker coordination studies are not assumed for this project.

A short-circuit coordination study is not included for this project.

Solar system includes all standard interconnection related equipment on the Customer side of the meter, including panel circuit breakers, utility and/or visible utility lockable disconnect switches, solar metering, conduit, and wiring. Additional Customer-side protection required by the utilities above that provided by the certified inverters is not included.

If harmonic data of the site is not available, Provider shall assume that the Harmonic data are within the acceptable limits of the Institute for Electrical and Electronics Engineers (IEEE) Standard 519.

***Soils and Structural Foundations***

Foundation assumptions are as follows for system options:

- Drilled cast-in-place, 30” round caisson, 12’ Deep, approximately 2.5’ above grade, depending on existing topography.
- Requirements for dewatering, sub grade rock removal, or other unforeseen conditions are not included.

***Canopy Structure Design***

Carport Canopies are at 10 degree tilt with 11 ft clear height.

***Roof Conditions***

Provider assumes no upgrading of the building structures or canopies will be required to support the added live and dead loads from the photovoltaic installation and rooftop equipment, or to resist added lateral or seismic loads. Modifications to the roof system and design and construction of supports, upgrades to the building structure or platforms are not included.

Anchor and ballast counts are based on the wind load gradient method developed by Cermak Peterka Petersen, Inc, (CPP) and SunPower, based on the CPP wind tunnel testing results presented in CPP’s report “CPP7979\_SunPowerEWSsystem\_REP\_SOL\_R08” dated May 17th, 2018.

Increased anchor and ballast counts resulting from other design methods will be the responsibility of the client.

<b>Site Name</b>	<b>Anchor Count</b>
30 Muir	71
595 center	27
50 Douglas	90
1000 Ward	170
597 Center	33

Provider is not responsible for normal wear and tear associated with the installation of the solar system. Provider reserves the right to inspect the roof to verify its condition. In addition, Provider may offer recommendations to the Customer on modifications to the roof system to improve its serviceability. Customer is responsible for any and all modifications to the roof system. Modifications of roof systems fall into four categories:

- Modifications to improve roof condition / serviceability / useful life.
- Modifications required by roofing manufacturer prior to installation of PV system on their roof system. (e.g. slip sheets, strapping, etc.)
- Modifications required by Provider to make the roof a suitable substrate for the installation of PV. (e.g. air seals, batten bars, etc.)
- 3<sup>rd</sup> party engineering and insurance company requirements.
- Proposal assumes Customer-provided information accurately represents the existing site and roof conditions. This includes but is not limited to as-built drawings, roof reports, structural drawings, roof maintenance history, and roof warranty information. Failure to provide as-built drawings and structural drawings will cause schedule delay and added expense for acquisition of documentation through local authority having jurisdiction (“AHJ”). Provider is not responsible for additional costs or schedule delays.

***Drainage***

Special drainage requirements and/or drainage design and interconnection to Customer’s existing storm drain system or any other storm drain discharge system are not included.

Carport designs do not include structural roof deck for storm water collection or protection.

***Permits***

<b>Permit</b>	<b>Provider Permit</b>	<b>Customer Permit</b>	<b>Cost Allocation</b>	<b>Allotted Time following Application</b>
Building	X			
Fire	X			
Electrical	X			
Conditional Use Permit		NA		
Environmental Control		NA		
Storm Water		NA		
Soil Erosion and Sediment Control		NA		
Environmental Impact Report (CEQA)		NA		
Army Corps of Engineers		NA		
Wetlands		NA		
Water Quality		NA		
Archeological		NA		

Endangered Species		NA		
Water Rights		NA		
Mineral Rights		NA		
Redevelopment Agency		NA		
FAA Approvals		NA		

***Permit Allowance Schedule***

<b>Site</b>	<b>Allowance for Permit</b>
1000 Ward St	\$3,000
30 Douglas Dr	\$10,000
50 Douglas Dr	\$5,000
30/40 Muir Dr	\$5,000
597 Center Ave	\$2,500
595 Center Ave	\$7,000
2530 Arnold Dr	\$6,000
4545 Delta Fair Blvd	\$5,000
4549 Delta Fair Blvd	\$2,500
1305 Macdonald	\$3,000

All other permits/approvals are excluded.

Provider includes durations of 50 days for procuring permit and regulatory approvals (per project ). Provider will not be responsible for construction delays caused by permit and approval requirements from local jurisdictions or regulatory review bodies. Any delays in procuring permits will result in a day-for-day construction schedule extension.

***Shading***

The design is based on existing visual conditions on site. Removal of trees or other obstructions to install the solar arrays and system components is included as reflected in the Tier 1 array layouts. Trees and/or other obstructions identified for removal or trimming by Customer must be removed or trimmed prior to substantial completion or performance expectations/guarantees will require adjustment which will be handled as a change to the contract. At Substantial Completion an as-built shade study and performance simulation will be completed to ensure accuracy of initial shading assumptions.



### ***Painting***

Galvanization of canopy columns and primary beams only is included. All other metallic materials are either factory-finished or non-corrosive.

Painting of wall-mounted conduits is not included.

### ***Landscaping***

Site landscaping (e.g. plant restoration or long term weed abatement) is not included.

Irrigation repair and reconfiguration caused by foundation or underground construction is not included.

### ***Fencing***

A 6-0' galvanized, 9 gauge, 2" mesh fencing and chain link fence-with gate around perimeter electrical equipment pad locations is included. Special provisions for privacy slats, special hardware, lock sets, small fabric, etc. are not included. 4" bollards are included only in areas subject to vehicle impact. Additional bollards required by utility or other entities are excluded.

### ***Labor***

#### ***Project Labor Agreement***

Provider shall cause its project contractor to enter into Customer's project labor agreement among Customer, the project contractor, and all subcontractors thereof working on the project (the "PLA").

#### ***Overtime and special shift requirements***

Overtime and special shift requirements are not included, based on schedule submitted with this proposal, except for the interconnection work if shutdown is required. Project hours are based on Monday through Friday 7am – 5pm.

#### ***Prevailing Wages***

Provider shall pay prevailing wages for the project per the PLA and industrial relations requirements of project location.

#### ***Diversity Requirements***

Provider shall comply with Contra Costa County's Construction Outreach Program.

### ***Indirect Construction Costs***

#### ***Taxes and fees***

Taxes or fees, other than permit fees and sales tax, are not included.

### ***Bonds***

Prior to the Effective Date of the Agreement to which this Exhibit A is attached, Provider shall deliver to Customer for approval good and sufficient bonds with sureties, in amounts specified in Section 12.5 Limitation of Liability of the Agreement guaranteeing its faithful performance of the Agreement and its payment for all labor and materials thereunder.

### ***Site & Construction Conditions***

#### ***Access***

Design assumes each project site will be constructed in a single phase, set up of construction fencing at beginning of mobilization and removed when construction is completed. Extra time and labor for moving fences to “phase” construction in efforts to minimize parking impacts will have impacts in cost and schedule and will be calculated as a change order.

Customer will provide Site access to Provider to perform all work pursuant to the License granted in the Agreement. Provider will perform all work during regular business hours according to the PLA. Extra time or personnel constraints due to site security beyond daily signing in by workers on a sign in sheet i.e. badging, background checks, tool inventory checks, etc.—is not included.

Provider will be provided a sufficient area for staging materials and locating temporary facilities such as cranes, fork lifts, scaffolding, staintowers, construction trailers, portable toilets and dumpsters.

Existing roads will be capable of handling all required construction equipment such as drilling rigs, concrete trucks, delivery trucks, cranes, and all other equipment necessary to complete the work. Provider will not be responsible for any damage to existing roads, parking lots or playgrounds resulting from normal construction operations and activities.

#### ***Use of Facilities***

On-site water and power will be available for construction with no restrictions and at no charge to Provider. If a Customer initiated power shut down has duration over 4 hours and effects normal construction operations, Provider can rent and install a temporary generator and submit associated costs to Customer for reimbursement. Water quality shall be sufficient for use in dust control, as necessary, and be suitable for Provider’s standard concrete mix design.

#### ***Special handling of site materials***

Testing for removal and disposal of any existing hazardous waste materials, contaminated soils, or any other unforeseen site conditions that require special handling are not included.

#### ***Site utilities and hazards***

Changes resulting from utilities, right of ways, easements, and/or hazards—underground or above ground—or any undocumented building upgrades are not included.

Documented utilities and building upgrades are considered as part of this proposal if as-builts are provided to Provider prior to contract execution in order to confirm locations of these possible hazards. Customers shall supply Provider with a current Title Report with plotted easements, encumbrances, and rights-of-way at all project site locations.

### ***Security and Lighting***

Proposal assumes all parking lot light standards in direct conflict with installation of photovoltaic parking canopies will be removed by Provider. Proposal also assumes that the existing lighting circuits, for those removed parking lot light standards, can be re-used for photovoltaic parking canopies lighting system and that those existing circuits have ample current carrying capacity to provide required lighting at parking canopies, per jurisdictional code requirements. PV canopies located in areas where no existing lights are present will not include lighting unless the Customer requests this for an additional cost.

Temporary lighting during construction is excluded.

New lighting circuit installation is excluded from this proposal as well as any required timing circuit reconfiguration, lighting controllers, relays, or new panel boards. Lighting design and/or installation beyond the footprint of the photovoltaic parking canopies is not included in this proposal. Replacement of existing light standards is not included. Proposal includes LED fixtures for lighting under structures.

Additional security systems or infrastructure are not included in this proposal

### ***Special Conditions***

Proposal assumes modifications and/or reconfiguration of the existing parking lots will not be required to accommodate installation of Provider's photovoltaic parking canopy.

Assumes existing islands in parking lot to remain at area of new carport structure. Proposal excludes any re-striping of the parking lot/hard-court areas, unless specifically related to the construction of the photovoltaic parking canopies, or specifically described in the RFP.

While special care will be taken to locate existing underground utilities (underground survey) and locate carport structures with minimum conflicts, relocation of existing underground utilities due to carport foundations is not included.

Proposal excludes requirements for accessibility upgrades and accessibility design around the photovoltaic parking canopy structures and assumes that current parking lot layout has been reviewed and approved by AHJ and built and closed at the AHJ. If the architect of record recommends addition of new accessible parking stalls under the solar canopies, grade change to meet code, changed path of travel and/or new canopies over existing accessible stalls, design and construction costs will be addressed via Change Order.

Proposal excludes design or installation of any required additional fire hydrants or fire protection apparatuses as required by local first responders or Fire, Life/Safety professionals responsible for review and approval of the design for this project.

Architectural enhancements to the photovoltaic parking canopy structures or ground and roof arrays and mounting systems are not included.

At the detention center located at 1000 Ward in Martinez, the project estimate is based on utilizing existing conduit and equipment from the previous pv installation. The ability utilize existing conduit will be verified during the design phase.

### ***Testing and Inspections***

Provider assumes all Special Inspections/Testing shall be paid for and contracted by the Customer.

### ***Weather conditions***

Provider assumes standard weather patterns and site conditions for planning the project schedule. Instances of excessive climate, weather (greater than the most adverse conditions in the last 3 years) or natural disasters may result in delays and/or unplanned costs (i.e. additional labor, shipping, storage, and logistics costs) which will be the responsibility of the Customer.

### ***Commissioning, Monitoring, Operations & Maintenance***

#### ***Commissioning***

Proposal assumes commissioning requirements for this project is only for the Photovoltaic and energy storage systems. Proposal does not include other building system commissioning costs not related to our work (i.e. HVAC, Plumbing, Fire Alarm, etc.).

**EXHIBIT B**  
**FORM OF FINANCING PARTY ACKNOWLEDGEMENT**

*[The Form Acknowledgment below contemplates a Sale-Leaseback of the System between the Provider and Provider's Lender and is subject to change based on requirements of the Financing Arrangement]*

This CONSENT AND AGREEMENT (this "Consent") dated as of [●], 2017 is entered into among (i) [\_\_\_\_], a [\_\_\_\_] duly organized and existing under the laws of the State of [\_\_\_\_] (the "Customer"), (ii) *[Insert applicable Provider]*, a [●] duly organized and existing under the laws of the State of [●] (the "Provider"), and (iii) [●], a [●] duly organized and existing under the laws of the State of [●] (together, with its successors in such capacity, the "System Lessor").

WHEREAS, the Provider intends to develop, install, own, operate and maintain a [\_\_\_\_] MW **[ground-mounted/rooftop]** photovoltaic solar electric generating facility to be located in [\_\_\_\_] (the "Project");

WHEREAS, the Provider and the Customer entered into that certain Power Purchase & Storage Services Agreement, dated as of [●], 2017 (as amended, amended and restated, modified or supplemented from time to time, the "Assigned Agreement");<sup>1</sup>

WHEREAS, the Project will be sold by the Provider to the System Lessor pursuant to that certain Participation Agreement (as amended, the "Participation Agreement") dated as of the date hereof, among the Provider, the System Lessor, [●], not in its individual capacity but as owner trustee, and [●] ("Owner Participant");

WHEREAS, the System Lessor will lease the Project back to the Provider pursuant to that certain Lease Agreement, a related Project Schedule and a Certificate of Acceptance (as amended, the "Lease Agreement") dated as of the date hereof, between the System Lessor and the Provider;

WHEREAS, the Provider will grant the System Lessor a first priority security interest in and to all of the Provider's assets, including the Assigned Agreement, pursuant to a security agreement in form and substance acceptable to the System Lessor (as amended, amended and restated, modified or supplemented from time to time, the "Security Agreement"); and

WHEREAS, it is a condition precedent to the Owner Participant's obligation to make its investment in the System Lessor and for the System Lessor to acquire the Project under the Participation Agreement and lease the Project to the Provider under the Lease Agreement that the Customer execute and deliver this Consent.

NOW, THEREFORE, as an inducement to the Owner Participant to make its investment in the System Lessor and for the System Lessor to acquire the Project under the Participation Agreement and lease the Project to the Provider under the Lease Agreement, and in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

**1. CONSENT TO ASSIGNMENT, ETC.**

(a) Consent to Assignment. The Customer (i) acknowledges that the Provider and the System Lessor have entered into the Participation Agreement and the Owner Participant's obligation to make its investment in the System Lessor and for the System Lessor to acquire the Project under the Participation Agreement and lease the Project to the Provider under the Lease Agreement will be made in reliance upon the execution and delivery by the Customer of the Assigned Agreement and this Consent, (ii) consents in all respects to the pledge and assignment to the System Lessor of all of the Provider's right, title and interest in, to and under the Assigned Agreement pursuant to the Security Agreement, and (iii) acknowledges the right, but not the obligation, of the System Lessor or the System Lessor's designee, in the exercise of the System Lessor's rights and remedies under the Lease Agreement, the Security Agreement, and related documents to make all demands, give all notices, take all actions and exercise all rights of the

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<sup>1</sup> NTD: Can be expanded to include any additional agreements to which the Customer is a party.

Provider in accordance with the Assigned Agreement, and agrees that in such event the Customer shall continue to perform its obligations under the Assigned Agreement; provided that in the event, with respect to the Assigned Agreement, there exists a conflict between any notice given or action taken by the System Lessor and any notice given or action taken by the Provider, such conflict shall be resolved in favor of the notice given or the action taken by the System Lessor.

(b) Substitute Owner. The Customer agrees that, if the System Lessor notifies the Customer that an event of default under the Lease Agreement has occurred and is continuing and that the System Lessor has exercised its rights (i) to have itself or its designee substituted for the Provider under the Assigned Agreement, (ii) to acquire or have its designee or assignee acquire the Provider, or (iii) to sell, assign, transfer or otherwise dispose of the Assigned Agreement to a third party, including in a judicial or non-judicial foreclosure sale, then the System Lessor, the System Lessor's designee or such third party (each, a "Substitute Owner") shall be substituted for the Provider under the Assigned Agreement and, in such event, the Customer will (x) recognize the Substitute Owner as its counterparty to the Assigned Agreement, (y) take any actions and execute any documents, agreements or instruments reasonably necessary to effect such substitution, and (z) continue to perform its obligations under the Assigned Agreement in favor of the Substitute Owner pursuant to the terms hereof and thereof.

(c) Right to Cure.

(i) Notwithstanding anything to the contrary contained in the Assigned Agreement, the Customer shall not exercise any right it may have under the Assigned Agreement, at law or in equity, to cancel, suspend or terminate the Assigned Agreement or any of its obligations under the Assigned Agreement, as the result of any default or other action or omission of the Provider in the performance of any of its obligations under the Assigned Agreement, or upon the occurrence or non-occurrence of any event or condition under the Assigned Agreement that would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable the Customer to terminate or suspend its obligations or exercise any other right or remedy under the Assigned Agreement or under applicable law (hereinafter an "Assigned Agreement Default"), until it first gives prompt written notice of such Assigned Agreement Default to the System Lessor and the Owner Participant and affords the System Lessor and the System Lessor's respective successor, assignee and/or designee a period of at least ninety (90) days (or, if such default is a payment default, forty-five (45) days) to cure such default, commencing from the later to occur of (x) the System Lessor's and the Owner Participant's receipt of such notice, and (y) the expiration of any notice periods or cure periods provided for in the Assigned Agreement; provided, however, that if (1) an event of default under the Lease Agreement has occurred and is continuing, the System Lessor has exercised its rights to foreclose on the Project as a result thereof and possession of the Project is necessary to cure any such non-monetary default, then, so long as the System Lessor or the System Lessor's respective successor, assignee and/or designee is diligently pursuing such foreclosure proceedings, the time periods specified in this Section 1(c) for curing an Assigned Agreement Default shall be extended for the time taken to complete foreclosure proceedings, and (2) any such party is prohibited from curing any such Assigned Agreement Default by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding involving the Provider, then the time periods specified in this Section 1(c) for curing an Assigned Agreement Default shall be extended for the period of such prohibition.

(ii) No such cancellation, suspension or termination of the Assigned Agreement by the Customer shall be binding upon the System Lessor without the notice and extended cure period specified in this Section 1(c). Any dispute that may arise under the Assigned Agreement notwithstanding, the Customer shall continue performance under the Assigned Agreement and resolve any dispute without discontinuing such performance until the lapse of the notice and extended cure period specified in this Section 1(c).

(d) No Termination, Assignment or Material Amendments. The Customer shall not enter into any consensual cancellation or termination of the Assigned Agreement (except with respect to termination in the event of a default by the Provider, subject to the limitations and extended cure periods provided for in Section 1(c)), or assign, novate or otherwise transfer any of its right, title or interest thereunder or consent to any such assignment or transfer by the Provider without, in each such case, the written consent of the System Lessor. The Customer shall not enter into or agree to any amendment, supplement, assignment or other modification to, or benefit from any waiver under, the Assigned Agreement without the prior written consent of the System Lessor.

(e) Replacement Agreement. In the event that the Assigned Agreement is rejected or otherwise terminated as a result of any bankruptcy or insolvency proceeding affecting the Provider, the Customer shall, at the option of the System Lessor or the System Lessor's respective successor, assignee and/or designee, enter into a new agreement with the System Lessor or any Substitute Owner (or its transferee or other nominee that owns or leases the Project) having terms substantially the same as the terms of the Assigned Agreement. Thereafter, references in this Consent to the "Assigned Agreement" shall be deemed to refer to such new agreement.

(f) No Liability. The Customer acknowledges and agrees that none of the System Lessor, or the System Lessor's respective successor, assignee and/or designee or the Owner Participant shall have any liability or obligation under the Assigned Agreement as a result of this Consent, the Security Agreement, the Lease Agreement or otherwise, nor shall the System Lessor or the System Lessor's respective successor, assignee and/or designee be obligated or required to (i) perform any of the Provider's obligations under the Assigned Agreement, except, in the case of the System Lessor or the System Lessor's respective successor, assignee and/or designee, during any period in which the System Lessor or the System Lessor's respective successor, assignee and/or designee is a Substitute Owner pursuant to Section 1(b), in which case the System Lessor or other Substitute Owner shall not be liable for acts or omissions of the Provider and the obligations of such Substitute Owner shall otherwise be no more than those of the Provider under the Assigned Agreement, or (ii) take any action to collect or enforce any claim for payment assigned under the Security Agreement or any related document.

(g) Delivery of Notices. The Customer shall deliver to the System Lessor and the Owner Participant, concurrently with the delivery thereof to the Provider, a copy of each notice, request or demand given by the Customer pursuant to the Assigned Agreement.

(h) Acknowledgements. The Customer agrees to execute such acknowledgements or other similar instruments as the System Lessor may reasonably request in connection with the transactions contemplated by this Consent.

## **2. PAYMENTS UNDER THE ASSIGNED AGREEMENT**

(a) Payments. The Customer will pay all amounts payable by it under the Assigned Agreement, if any, in lawful money of the United States of America, in immediately available funds and in the manner required by, and subject to the terms and conditions of, the Assigned Agreement, directly into the account specified on Exhibit A hereto, or to such other person or account as may be specified from time to time by the System Lessor to the Customer in writing.

(b) No Offset, etc. All payments required to be made by the Customer under the Assigned Agreement shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever.

## **3. REPRESENTATIONS AND WARRANTIES OF THE CUSTOMER**

The Customer makes the following representations and warranties to the System Lessor, the Provider and the Owner Participant as of the date hereof, which shall survive the execution and delivery of this Consent and the Assigned Agreement and the consummation of the transactions contemplated hereby and thereby:

(a) Organization; Power and Authority. The Customer is a [type of entity] duly organized, validly existing and in good standing under the laws of the State of [\_\_\_\_\_], and is duly qualified, authorized to do business and in good standing in all jurisdictions where it is required to be so qualified and authorized to do business, and has all requisite power and authority to enter into and to perform its obligations under this Consent and the Assigned Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

(b) Authorization. The execution, delivery and performance by the Customer of this Consent and the Assigned Agreement have been duly authorized by all necessary [corporate]/[limited liability company] action on the part of the Customer and do not require any approval or consent of any holder (or any trustee for any holder) of any

indebtedness or other obligation of (i) the Customer, or (ii) any other person or entity, except approvals or consents which have previously been obtained.

(c) Execution and Delivery; Binding Agreements. Each of this Consent and the Assigned Agreement is in full force and effect, has been duly executed and delivered on behalf of the Customer and constitutes the legal, valid and binding obligation of the Customer, enforceable against the Customer in accordance with its terms except as the enforceability hereof or thereof may be limited by (i) bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights generally, and (ii) general equitable principles (whether considered in a proceeding in equity or at law).

(d) Litigation. There is no legislation, litigation, action, suit, proceeding or investigation pending or (to the best of the Customer's knowledge after due inquiry) threatened against the Customer before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate, (i) could adversely affect the performance by the Customer of its obligations under this Consent or the Assigned Agreement, or that could modify or otherwise adversely affect the Approvals (as defined in Section 3(f)), (ii) questions the validity, binding effect or enforceability of this Consent or the Assigned Agreement, any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby, or (iii) could have a material adverse effect upon (x) the value, validity, perfection or enforceability of the liens granted to the System Lessor under the Security Agreement and other security documents, or (y) the ability of the System Lessor to enforce any of its rights and remedies under the Assigned Agreement or this Consent.

(e) No Conflict. The execution and delivery of this Consent and the Assigned Agreement and the performance by the Customer under this Consent and the Assigned Agreement will not violate, result in a breach of, default under or conflict with (i) any law, rule, regulation, order, permit or decree applicable to the Customer, (ii) its organizational documents, or (iii) the terms of any other agreement binding on the Customer.

(f) Government Consent. No consent, order, authorization, waiver, approval or any other action, or registration, declaration or filing with, any person, board or body, public or private (collectively, the "Approvals"), is required to be obtained by the Customer in connection with the execution, delivery or performance of this Consent, the Assigned Agreement or the consummation of the transactions contemplated hereunder and thereunder, except any Approvals which have previously been obtained.

(g) No Default or Amendment. Neither the Customer nor, to the Customer's knowledge after due inquiry, the Provider or any other party to the Assigned Agreement is in default of any of its obligations thereunder (or has claimed force majeure, emergency, or any other excuse for performance thereunder which is still ongoing as of the date hereof). The Customer has no existing counterclaims, offsets, defenses, or claims for change orders against the Provider under the Assigned Agreement. To the Customer's knowledge, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either the Customer or the Provider to terminate or suspend its obligations (or the performance of such obligations) under the Assigned Agreement. The Assigned Agreement has not been amended, modified or supplemented in any manner other than as indicated above.

(h) No Previous Assignments. The Customer has no notice of, and has not consented to, any previous assignment of all or any part of its right, title or interest in, to or under the Assigned Agreement.

(i) **[Purchase Option. The Customer has not taken any official action requiring or authorizing the exercise of any purchase option available to it under the Assigned Agreement, has not decided whether or not it will exercise any such purchase option, and is under no legal or economic compulsion to exercise any such purchase option; provided, however, nothing herein shall prohibit the Customer from exercising any purchase option under the Assigned Agreement when it becomes exercisable in accordance with its term and such exercise shall not be deemed to be a breach of this representation and warranty.]**



(j) Liens; Mortgages. The Customer has no knowledge of any existing lease, mortgage, security interest or other interest in or lien upon the [Premises], which could attach to the Project as an interest adverse to the System Lessor's interest therein.

Representations and Warranties. All representations, warranties and other statements made by the Customer in the Assigned Agreement were true and correct in all material respects as of the date when made and, except for those that by their terms speak as of a specific date, are true and correct in all material respects as of the date hereof.

#### **4. ADDITIONAL PROVISIONS<sup>2</sup>**

(a) Commercial Operation Date. The Commercial Operation Date is \_\_\_\_\_.

(b) Use of Electricity. None of the electricity to be sold under the Assigned Agreement will be used to generate energy for the purpose of heating a swimming pool.

(c) Project. The Customer has approved the Project as installed at the [Premises].

(d) Access Rights. The System Lessor and the System Lessor's respective successors, assignees and/or designees shall have the same rights as the Provider to access the Project in order to install, operate, maintain and remove the Project as the right accorded to the System Lessor under the Lease Agreement and the Security Agreement.

(e) Notice of Ownership. The Customer will use commercially reasonable efforts to place its successors, assigns and lien holders on notice of the ownership of the Project by the Provider or the System Lessor, the existence of the security interest, and the fact that the Project is not part of the [Premises] or a fixture thereof, as necessary and appropriate to avoid confusion or adverse claims.

(f) Amendments. The Customer acknowledges that, under the Provider's financing arrangements, the Provider is not permitted to agree to an amendment or assignment of the Assigned Agreement without prior written consent of the System Lessor.]

#### **5. MISCELLANEOUS**

(a) Applicable Law; [Submission to Jurisdiction]. THIS CONSENT, AND ANY INSTRUMENT OR AGREEMENT REQUIRED HEREUNDER (TO THE EXTENT NOT EXPRESSLY PROVIDED FOR THEREIN), SHALL BE GOVERNED BY, AND CONSTRUED UNDER, THE LAWS OF THE STATE OF NEW YORK, APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE AND WITHOUT REFERENCE TO CONFLICTS OF LAWS (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW). [Each of the Customer, the Provider and the System Lessor agrees that any legal action or proceeding by or against itself or with respect to or arising out of this Consent may be brought in or removed to the courts of the State of New York, in and for the County of New York, or of the United States of America for the Southern District of New York. By execution and delivery of this Consent, each party hereto accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts. Nothing herein shall affect the right to serve process in any other manner permitted by law or the right of the System Lessor or its designees to bring legal action or proceedings in any other competent jurisdiction. Each of the Customer, the Provider and the System Lessor hereby waives any right to stay or dismiss any action or proceeding under or in connection with this Consent brought before the foregoing courts on the basis of forum non conveniens.]

(b) Waiver of Trial by Jury. EACH PARTY HERETO HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY

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<sup>2</sup> NTD: Additional provisions to be added to address specific matters contained in the PPA.

LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS CONSENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF THE SYSTEM LESSOR, THE CUSTOMER OR THE PROVIDER. THIS PROVISION IS A MATERIAL INDUCEMENT FOR EACH PARTY TO ENTER INTO THIS CONSENT.

(c) Notices. All notices and other communications hereunder (i) shall be in writing, (ii) shall be effective upon actual receipt thereof by the party or parties to whom such notice is addressed, except that any communication or notice so transmitted by telecopy or electronic mail shall be deemed to have been validly and effectively given on the day (if a business day and, if not, on the next following business day) on which it is transmitted if transmitted during normal business hours of the recipient, and if transmitted after that time, on the next following business day, in each case as evidenced by transmittal confirmation received by the transmitter, (iii) shall be delivered by hand or overnight courier service or mailed by certified or registered mail, sent by facsimile or via electronic mail, and (iv) shall be directed as follows:

If to the Customer:	[_____] [_____] [_____] Attention: [_____] Telephone: [_____] Facsimile: [_____] Email: [_____]
If to the Provider:	[●]
If to the System Lessor:	[●]

The above parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent.

(d) Amendment, Waiver. Neither this Consent nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the Customer, the Provider and the System Lessor.

(e) Third Party Beneficiary. The Owner Participant shall be an express third-party beneficiary of this Consent. The Owner Participant shall be entitled to enforce the rights of the System Lessor hereunder.

(f) No Waiver; Remedies Cumulative. The waiver of any right, breach or default under this Consent by any party must be made specifically and in writing. No failure or delay on the part of the System Lessor in exercising any right, power or privilege hereunder and no course of dealing between the Customer and the System Lessor shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other exercise, or the further exercise, of any other right, power or privilege hereunder. No notice to or demand upon any party will entitle such party to any further, subsequent or other notice or demand in similar or any other circumstances. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies that the System Lessor would otherwise have.

(g) Counterparts. This Consent may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered, including by e-mail or other electronic transmission, shall be deemed an original, but all of which shall together constitute one and the same instrument.

(h) Headings Descriptive. The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

(i) Severability. In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(j) Successors and Assigns. This Consent shall be binding upon the parties hereto and their permitted successors and assigns and shall inure to the benefit of the parties, their designees and their respective permitted successors and assigns; provided, however, that no party or its respective successor or assign shall assign any of its interest in this Consent except in connection with an assignment of its interests in the Assigned Agreement and then only to the same person(s) or entity(ies) to which its interest in the Assigned Agreement is so assigned.

(k) Survival. All agreements, statements, representations and warranties made by the Customer herein shall be considered to have been relied upon by the System Lessor and the Owner Participant and shall survive the execution and delivery of this Consent.

(l) Conflicts. In the event of a conflict between any provision of this Consent and any provision of the Assigned Agreement, the provisions of this Consent shall prevail.

(m) Further Assurances. Each party hereto hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

[SIGNATURE PAGES FOLLOW]

**IN WITNESS WHEREOF**, the parties hereto have caused this Consent to be executed by their respective officers as of the date first above written.

[\_\_\_\_\_]   
 as the Customer

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

[\_\_\_\_\_]   
 as the Provider

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

[●],   
 as the System Lessor

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

**Payment Instructions**

Accounts Bank	
ABA Number	[_____]³
Account Number	[_____]
Account Name	[_____]
Reference	[_____]

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³ Account information to be confirmed and included.

## EXHIBIT C

### PV SYSTEM PERFORMANCE GUARANTEE (the “Guarantee”)

#### ARTICLE I. ADDITIONAL DEFINED TERMS

**Actual Generation** means, for each Guarantee Year during the Term and with respect to the System, the System’s alternating current or “AC” electricity production in kilowatt-hours (“kWh”) as measured under Section 3.02.

**Annual Deficit** has the meaning set forth in Section 3.01.

**Annual System Performance Report** means the report that summarizes annual system performance in kWh and includes calculations for Weather Adjustment and True-up Period calculations.

**Avoided Energy Price per kWh** means the amount that the Customer will be paid by Provider for each Kilowatt-hour as set out in Appendix B (Avoided Energy Price) of this Guarantee.

**Data Acquisition System** or **DAS** means Provider’s system that displays historical meteorological and production data over an Internet connection and consists of hardware located on-Site and software housed on Provider’s DAS server. The DAS measures and logs, at a minimum, the following parameters on a 15-minute average basis at the Site: actual AC electricity production of the System (in kWh) and solar irradiance (in W/m<sup>2</sup>).

**Expected Energy** means, for the System in a specified Guarantee Year, the kilowatt hours for the System set forth on Appendix A (Expected Energy) of this Guarantee.

**Excused Performance Event** means:

- Force Majeure Event;
- Impingements on solar access by structures or activities on neighboring sites or by facilities that are beyond the control of either Party;
- Externally caused outages, including:
  - Warranty Exclusions: hours during any period when the System or any portion thereof is off-line due to an event that would constitute an exclusion under any applicable manufacturer’s, System, workmanship or other applicable warranty.
  - Network Disturbance Hours: hours during any period when a fluctuation in the utility network parameters (e.g., a frequency or voltage variation) result in the disconnection of the inverters or the System from the utility network and prevented energy from being evacuated from the System.
  - Network Outage Hours: hours during any period when a failure in the distribution network or in the connection infrastructure prevented energy from being evacuated from the System.
  - Third-Party Equipment Servicing Hours: equipment or System outage hours during any period that result from service issues related to non-Provider equipment or delays in procuring non-Provider replacement parts.

- Customer-Caused Hours: hours during any period when the equipment or the System is off-line due to Customer-required outages or Customer-caused delays in Site access.
- Major Maintenance Hours: hours during any period when the equipment or the System is off-line due to Customer-required major maintenance work.

**Guaranteed Level** means 90% of the Expected Energy for a Guarantee Year for the System.

**Guarantee Year** means each successive 12-month period during the Term commencing on the Commercial Operation Date.

**PVSim** means the software program utilized by Provider to predict the amount of energy that the System will produce in an average year which has the following characteristics: (1) based on PVFORM, the photovoltaic simulation software produced by Sandia National Laboratories and the US Department of Energy, (2) all photovoltaic characteristics are modeled, (3) all ancillary array losses are taken into account and (4) PVSim simulations use either measured data or typical meteorological year files from Meteonorm and NREL.

**SEMMY** or “Simulated Energy in a Measured Meteorological Year”, means, with respect to any Guarantee Year, Year 1 AC Energy output of the System simulated by PVSim using measured average hourly irradiance, wind speed, and air temperature as recorded by the Data Acquisition System, holding all other inputs equal to those used in calculating SETMY.

**SETMY** or “Simulated Energy for a Typical Meteorological Year”, means the Year 1 AC Energy output of the System simulated by PVSim using average hourly irradiance, wind speed, and air temperature data contained within the Weather File.

**True-up Period** means each successive one (5)-year period during the Term commencing on the first day of the Term.

**Weather Adjustment** means the ratio described in Section 3.01.

**Weather File** means the typical meteorological year data set specified for the System set forth on Appendix C (Weather File) of this Guarantee.

## **ARTICLE II. PERFORMANCE GUARANTEE CONSIDERATION**

### **Section 2.01 Consideration**

The Parties agree that the consideration set forth in Section 5.1 of the Agreement includes adequate consideration for the terms, conditions and provisions of this Guarantee.

## **ARTICLE III. PERFORMANCE GUARANTEE**

Provider guarantees to Customer that the Actual Generation of the System during any Guarantee Year, subject to the limitations, terms and conditions stated in this Guarantee shall not be less than the Guaranteed Level.

### **Section 3.01 Guaranteed Output Calculations.**

Provider shall calculate the Annual Deficit for the System for each Guarantee Year during the Term:

- (a) Annual Deficit = (Expected Energy x Guaranteed Level) x Weather Adjustment – Actual Generation

Where the Weather Adjustment ratio is as follows:

Simulated Energy in a Measured Meteorological Year (SEMMY)

Simulated Energy for a Typical Meteorological Year (SETMY)

For each Guarantee Year, within thirty (30) days after the end of such Guarantee Year, Provider shall calculate the Annual Deficit for the System. Customer has the right to access all data and information supporting Provider's calculation of the Annual Deficit.

- (b) Guarantee Payment Reimbursement. At the end of each True-up Period:
- (i) if the sum of Annual Deficits > 0, then Provider shall pay to Customer an amount equal to the cumulative product of (y) the Annual Deficits and (z) the Avoided Energy Price per kWh (a "Guarantee Payment");
  - (ii) Provider shall promptly notify Customer of any Guarantee Payment due. Provider shall make Guarantee Payments within thirty (30) days of the date of the notice provided in the first sentence of this paragraph.

### **Section 3.02 Actual Generation Measurement.**

Provider shall measure Actual Generation for the System for each Guarantee Year as follows:

- (a) **Initial Output Data Collection.** During the Term, Provider will collect energy output data using its Data Acquisition System. For each Guarantee Year, Provider will sum the daily kWh output for the System provided by the DAS to calculate the Actual Generation for the System for such Guarantee Year.
- (b) **Equipment Calibration and Replacement.** Provider may request to have the meteorological equipment independently calibrated or replaced at its own expense every eighteen (18) to thirty (30) months. Provider shall notify the Customer of the scheduled calibration date and time no less than 30 days prior, and shall provide the Customer written proof of calibration or replacement.
- (c) **Contingency for Equipment Failure.** In the event of hardware, communication, or other failure affecting the DAS, Provider will make commercially-reasonable efforts to resolve the failure in a timely manner. In the event that data is lost, Actual Generation for each affected System shall be adjusted to compensate for such lost data as follows:
  - (i) In lieu of lost meteorological data, Provider will utilize such data obtained from a nearby meteorological station that Provider monitors and selects for such purpose.
  - (ii) In lieu of lost electricity data, Provider will utilize the cumulative data from System meter readings to calculate the electricity generated by each affected System during the missing interval. In the event that data



from the System meter is inaccurate or missing, Provider will simulate electricity production during the missing interval utilizing measured meteorological data and PVSIm. The simulated electricity production during the missing interval will be added to the Actual Generation for each affected System for the subject Guarantee Year.

#### **ARTICLE IV. CUSTOMER RESPONSIBILITIES**

##### **Section 4.01 Customer's Failure to Uphold Responsibilities.**

Provider shall promptly notify Customer of any breach ("Out of Compliance Letter") of (i) Customer's obligation to pay Provider for the Solar Services and Storage Services pursuant to the Agreement and (ii) any Customer obligations pursuant to the Agreement that directly (A) hinder the amount of Energy or the Storage Services delivered by the System or (B) degrade the functionality of the System. Upon Customer's cure of all failures described in an Out of Compliance Letter, Provider will notify Customer ("In Compliance Letter") that Customer is complying with Customer's Responsibilities. For any period between the issuance of an Out of Compliance Letter and of an In Compliance Letter (a "Noncompliance Period"), to the extent that Customer's non-compliance actually impacts the Actual Generation of the System, any Actual Generation from such affected Systems in such month(s) shall be disregarded in the calculation of Annual Deficits for such Systems under Section 3.01, and the Expected Energy for any affected System in any Guarantee Year in which there is a Noncompliance Period shall be reduced by a proportionate amount.

#### **ARTICLE V. EXPECTED ENERGY ADJUSTMENT**

##### **Section 5.01 Adjustment of Expected Energy.**

If, and to the extent, any of the following events results in a change in the production of electricity by the System, Expected Energy for that System shall be adjusted correlatively for the period of such change:

- (a) Subject to Provider's obligations under any warranty it provides in connection with the Systems (including any Provider obligation, with respect to the System, in connection with any requirements under the California Solar Initiative program), a material portion of the components of the System fails, and the manufacturer of such component(s) refuses, or otherwise fails to honor its corresponding warranty;
- (b) Customer fails to perform any of its obligations under the PPA – such as obligations related to maintaining the System's interconnection to the local utility grid or limiting outages (as defined in the Agreement) – and such failure reduces the amount of electricity that the System can generate or deliver.
- (c) There is any failure of the System to perform caused by legislative, administrative or executive action, regulation, order or requisition of any federal, state or local government, local utility or public utilities commission;
- (d) There is an Excused Performance Event; or

- (e) Adjustment to the Expected Energy, or a reduction in the amount of Energy that Provider is obligated to deliver, is permitted or required under the Agreement.

**Section 5.02 Notification of Changes to Expected Energy.**

If Provider determines that any changes to Expected Energy for the System are required based on an event or events described in Section 5.01, then Provider shall notify the Customer, in writing, of the basis for its determination, and Provider shall either provide revised definitions of Expected Energy in exhibits that, upon mutual agreement of the Parties, which shall not be unreasonably denied or delayed, shall replace the current exhibits to this Guarantee, or specify a date by which it shall do so.

### Appendix A – Expected Energy

<b>Guarantee Year</b>	<b>Expected Annual kWh</b>
1	540,998
2	539,646
3	538,297
4	536,951
5	535,609
6	534,270
7	532,934
8	531,602
9	530,273
10	528,947
11	527,624
12	526,305
13	524,990
14	523,677
15	522,368
16	521,062
17	519,759
18	518,460
19	517,164
20	515,871
21	514,581
22	513,295
23	512,012
24	510,732
25	509,455
<b>Total</b>	<b>13,126,880</b>

### Appendix B – Avoided Energy Price

<b>Guarantee Year</b>	<b>Avoided Energy Price per kWh</b>
1	\$0.0048
2	\$0.0049
3	\$0.0051
4	\$0.0052
5	\$0.0054
6	\$0.0056
7	\$0.0057
8	\$0.0059
9	\$0.0061
10	\$0.0063
11	\$0.0065
12	\$0.0066
13	\$0.0068
14	\$0.0070
15	\$0.0073
16	\$0.0075
17	\$0.0077
18	\$0.0079
19	\$0.0082
20	\$0.0084
21	\$0.0087
22	\$0.0089
23	\$0.0092
24	\$0.0095
25	\$0.0098

## **Appendix C – Weather File**

SolarAnywhereTGY2016\_(10km)\_37.95\_-122.15

**Schedule A**

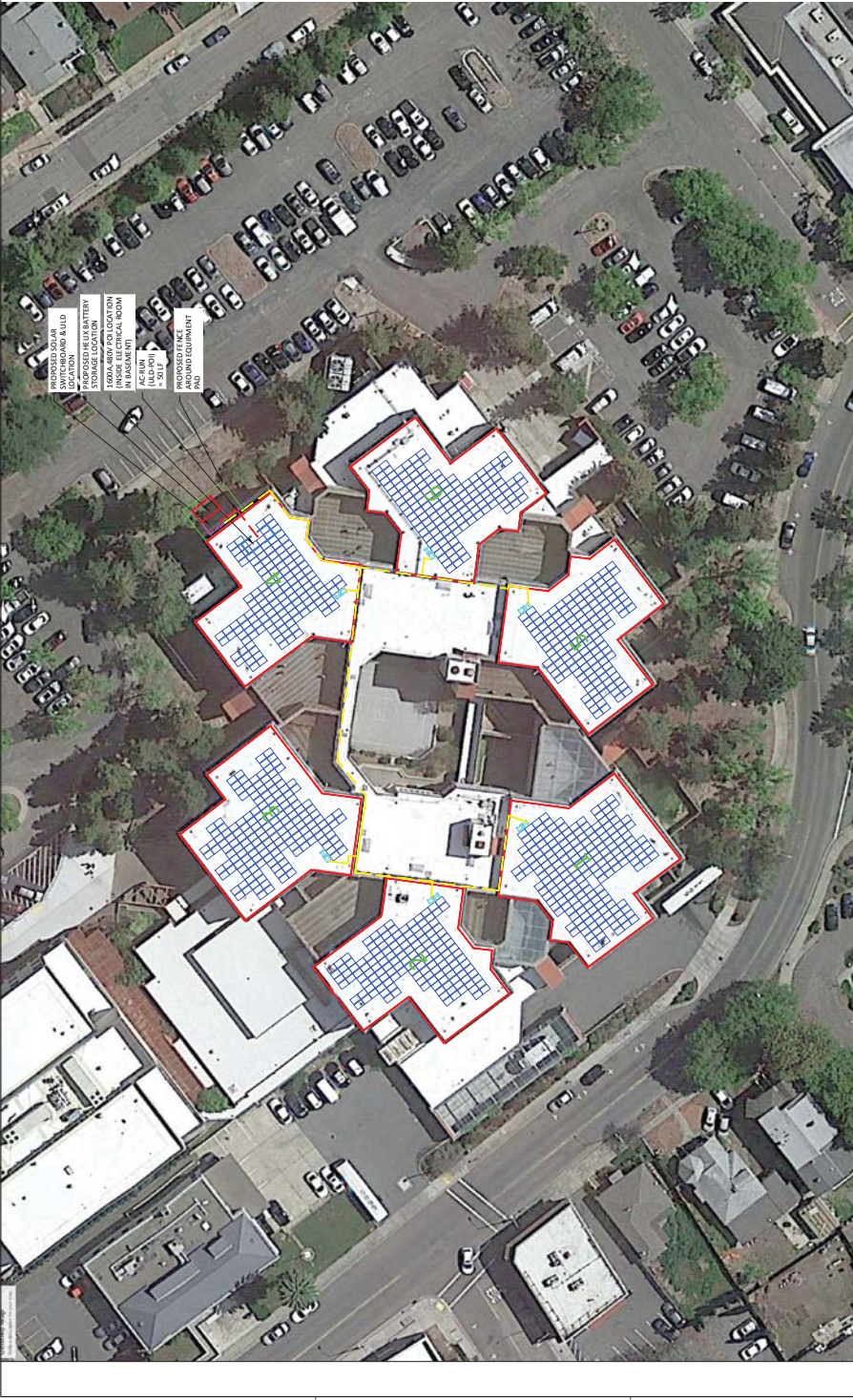
**DESCRIPTION OF SITE**

<b>Facility</b>	<b>System Size (kW DC)</b>	<b>Product Type</b>	<b>Module qty &amp; type - SunPower</b>	<b>Inverters- qty &amp; type-Delta</b>	<b>Battery – Lockheed Martin Energy</b>
1000 Ward St, Martinez, CA 94553	336.96	Rooftop – Helix Dual Tilt	(936) SPR- X22-360- COM	(2) M60U_121 (4) M42U_121	Gridstar Lithium ESU -500 kW

**Schedule B**

**DESCRIPTION OF SYSTEM**

PV System Array Layouts and Electrical Single Line Diagrams



1000A-800V PER LOCATION  
 UNLESS THE CRITICAL ROOM  
 STORAGE LOCATION  
 SWITCHGEAR & I/O  
 LOCATION  
 1000V-800V PER LOCATION  
 UNLESS THE CRITICAL ROOM  
 STORAGE LOCATION  
 SWITCHGEAR & I/O  
 LOCATION  
 1000V-800V PER LOCATION  
 UNLESS THE CRITICAL ROOM  
 STORAGE LOCATION  
 SWITCHGEAR & I/O  
 LOCATION

PROJECT SUMMARY	
ROOF	996
TOTAL OF MODULE	596
MODULE TYPE	SPR-A23-300 COM
# OF INVERTER	6
DC SYSTEM SIZE (KW)	338.96
AC SYSTEM SIZE (KW)	338.96
WIND SPEED (ASCE 7-10) (MPH)	110
TRANSITIONAL DISTANCE (FT)	0
GROUND SNOW LOAD (PSF)	0
SPECTRAL RESPONSE (SRSS)	1.048
SEISMIC HAZARD LEVEL	2
SEISMIC IMPT FACTOR (IP)	1.0
OCCUPANCY CATEGORY	II

STRUCTURAL DESIGN PARAMETERS	
WIND SPEED (ASCE 7-10) (MPH)	110
TRANSITIONAL DISTANCE (FT)	0
GROUND SNOW LOAD (PSF)	0
SPECTRAL RESPONSE (SRSS)	1.048
SEISMIC HAZARD LEVEL	2
SEISMIC IMPT FACTOR (IP)	1.0
OCCUPANCY CATEGORY	II

BUILDING CHARACTERIZATIONS	
MIN. OFFSET FROM ROOF EDGE (IN)	48
MAX ROOF SLOPE	11.32
ROOF HEIGHT (FT)	47
ROOF LENGTH (FT)	97
ROOF WIDTH (FT)	106
SMART HEIGHT (FT)	96
SPWR (SEAL/UT) (REG/RES)	-37
MAX ALLOWABLE PRESSURE (PSF)	12
TOTAL MAX ALLOWABLE (V) (LBS)	170

BALLAST AND ANCHOR SUMMARY	
TOTAL SYSTEM WEIGHT (LBS)	21655
AVERAGE PSF	5.8
MAX PSF	10.2
# BALLAST PER ROOF	908
# OF ANCHOR PER ROOF	34
TOTAL # OF BALLASTS	192
TOTAL # OF ANCHORS	4615
TOTAL # OF MODULES	596

REVISIONS	
REV	DESCRIPTION
01	PROPOSAL
02	REVISION PER MARK-UPS
03	REVISION PER MARK-UPS
04	REVISION PER MARK-UPS
05	DATE

PROJECT SUMMARY	
OPPORTUNITY	000157288
PROJECT	0 - 3/2" = 1"
SHEET	AL1

**SUNPOWER® HELIX™**  
 THE PROPOSED ARRAY LAYOUT SHOWN IS DESIGNED TO FIT EXISTING QUANTITIES ARE SUBJECT TO CHANGE BASED ON SUNPOWER VERIFICATION OF ACTUAL SITE CONDITIONS.  
**TIER 1**



ARRAY SUMMARY TABLE - ROOF						
SUB-ARRAY	M60U_121 (165TR)	M42U_121 (145TR)	#STRING # MODULE (125TR)	KW (DC)	KW (AC)	AC RUN (INV-588)
1	1	16	192	69.12	66	65.47
2	1	12	144	51.84	46	45.972
3	1	14	168	60.48	66	65.47
4	1	12	144	51.84	46	45.972
5	1	12	144	51.84	46	45.972
6	1	12	144	51.84	46	45.972
TOTAL	1	1	4	78	936	336.96

1 ARRAY LAYOUT  
 SCALE: 1/32" = 1'-0"

**SUNPOWER**  
 1414 HARBORWAY SOUTH  
 RICHMOND, CA 94804 USA  
 (510) 540-0550

CONTRA COSTA COUNTY  
 1000 WARD ST  
 MARTINEZ, CA 94553

ENGINEER'S STAMP  
 ARRAY LAYOUT

DATE	08-28-18
DESIGNER	PHYSICAL
REVISION PER MARK-UPS	04-9-19
REVISION PER MARK-UPS	04-9-19

REV	DESIGN #
01	000157288

PROJECT	000157288
SHEET	AL1

THE PROPOSED ARRAY LAYOUT SHOWN IS DESIGNED TO FIT EXISTING QUANTITIES ARE SUBJECT TO CHANGE BASED ON SUNPOWER VERIFICATION OF ACTUAL SITE CONDITIONS.  
**TIER 1**

000157288\_AL\_1000\_WARD\_ST\_INV\_ARRAY





**Schedule C**

**PV SYSTEM PRICING**

The following pricing is based on the Standard System Design Package described in Exhibit A.

kWh Rate (\$/kWh)	Term (Years)	Annual Rate Escalator (% / Year)
\$0.1344	25	0%

**STORAGE SERVICES FEE**

The following pricing is based on the Standard System Design Package described in Exhibit A.

Rate (\$/kWh)	Term (Years)
\$0.0424	15

**Schedule D**  
**TERMINATIONS VALUES**

<b>Applicable Date : Years from Commercial Operation Date</b>	<b>Termination Value (\$)</b>
0 Year	\$2,437,129
1 Year	\$1,863,743
2 Years	\$1,642,672
3 Years	\$1,419,155
4 Years	\$1,193,188
5 Years	\$964,294
6 Years	\$912,844
7 Years	\$882,533
8 Years	\$851,104
9 Years	\$818,250
10 Years	\$784,020
11 Years	\$748,737
12 Years	\$712,092
13 Years	\$673,836
14 Years	\$634,305
15 Years	\$612,952
16 Years	\$590,535
17 Years	\$568,180
18 Years	\$546,026
19 Years	\$524,141
20 Years	\$502,674
21 Years	\$481,555
22 Years	\$460,945
23 Years	\$440,937
24 Years	\$421,711

**SAVINGS GUARANTEE AGREEMENT**

Between

SunPower Corporation, Systems

And

Contra Costa County

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## **SAVINGS GUARANTEE AGREEMENT**

THIS SAVINGS GUARANTEE AGREEMENT (“Agreement”) dated June 18, 2019 (“Effective Date”), is entered into by and between SUNPOWER CORPORATION, SYSTEMS, a Delaware corporation (“SunPower”), with its principal place of business at 1414 Harbour Way South, Richmond, California 94804, and Contra Costa County, a political subdivision of the State of California (“Customer”), with its principal place of business at 40 Muir Road, Martinez, CA 94553. In this Agreement, SunPower and Customer are referred to individually as a “Party” and collectively as the “Parties.”

### **Recitals**

WHEREAS, SunPower’s affiliate, Solar Star Co Co 1, LLC, a Delaware limited liability company (“Provider”), has separately entered into a Power Purchase Agreement , dated June 18, 2019 with Customer (the “Purchase Agreement”) pursuant to which Customer will purchase from Provider the Solar Services from the PV System and the Storage Services from the ESS identified on Exhibit A (Site Information, PV System & ESS) attached hereto and incorporated herein at the site identified on Exhibit A (the “Site”);

WHEREAS, SunPower and Customer desire to enter into an agreement pursuant to which SunPower guarantees that the System will provide the Guaranteed Savings.

WHEREAS, capitalized terms not otherwise defined in this Agreement shall have the meanings given such terms in the Purchase Agreement;

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the receipt and adequacy of which is hereby acknowledged, SunPower and Customer agree as follows:

## **ARTICLE I. DEFINED TERMS**

### **Section 1.01 Defined Terms.**

As used in this Agreement, the following terms shall have the meanings set forth below:

**Actual Savings** has the meaning set forth in Section 2.03.

**Baseline Average Energy Spread** shall be the amount set forth in Exhibit A.

**Baseline Demand Charges** shall mean the annual sum of demand charges paid by Customer at the Site before the installation of the System as set forth in Exhibit A.

**Billing Cycle** means the period, typically monthly, during which the Utility assesses an electricity bill, including demand charges, at the Site.

**Billing Cycle Guaranteed Savings** shall have the meaning set forth in Section 2.01.

**Billing Schedule** shall mean the dates of (a) the Billing Cycles set by the Utility for the Site and (b) the schedule of the exact days of the year which shall be considered holidays by the utility for billing purposes

**Current Average Energy Spread** shall, for any Guarantee Year, be the weighted average difference between on and off peak energy rates in the Utility Tariff in effect during the then-current Guarantee Year, as calculated based on the table set forth in Exhibit B.

**Data Acquisition System or DAS** means Provider's system that displays historical meteorological and production data over an Internet connection and consists of hardware located on-site and software housed on Provider's DAS server. The DAS measures and logs, at a minimum, the following parameters on a 15-minute average basis at the Site: actual AC electricity production of the PV System (in kWh), actual AC electricity charge and discharge of the ESS (in kWh), and actual AC electricity import and export from the grid by the Site (in kWh)

**Exclusion Event** means:

- A Force Majeure Event;
- Any temporary or permanent quarantines, blockades, rules or regulations, enacted or imposed by governmental authorities causing any disruption to System energy generation or impedance to a Party's Site access;
- Changes in any law, ordinance, or regulation relating specifically to the design, construction, installation, interconnection or operation of the System which law is effective after the date of this Agreement that materially and adversely affects the ability of a Party to perform its obligations under this Agreement or under the Purchase Agreement;
- Impingements on solar access by structures or activities on neighboring sites or by facilities that are beyond the control of either Party;
- Loss of telecommunications service to the System for a period exceeding seventy-two (72) hours
- Any curtailment or operation of the System ordered or ordered by the Utility
- Externally caused outages of the System, including outages caused by:
  - a fluctuation in the Utility network parameters (e.g., a frequency or voltage variation) that disconnect the inverters or System from the utility network and prevented energy from being evacuated from the System
  - caused by a manufacturer of any third-party equipment's inability or unwillingness to honor its product warranty to SunPower for the replacement of parts, despite SunPower's commercially reasonable and good faith efforts to enforce such product warranty
  - a failure or outage in the Utility distribution network that prevents energy from being evacuated from the System
  - Disconnection of power or communication lines connected to the System, or activation of the Emergency Stop Button on the System, by anyone other than SunPower or SunPower's representatives, or the Customer or Customer

representatives acting at the explicit direction of SunPower or SunPower’s representatives

- or executed at the request of the Customer

**Guaranteed Demand Savings** shall be the amount set forth in Section 2.01.

**Guaranteed Energy Savings** shall be the amount set forth in Section 2.01.

**Guaranteed Savings** shall be the amount set forth in Section 2.01

**Guarantee Year** shall have the meaning set forth in Section 2.01.

**In Compliance Letter** shall have the meaning set forth in Section 3.03.

**Kilowatt-hour or kWh** means electrical energy expressed in kilowatt-hours and recorded from the kWh interval records of a Revenue-Grade Meter.

**Noncompliance Period** shall have the meaning set forth in Section 3.03.

**On-Peak Period** shall be the period set forth in Exhibit A

**Out of Compliance Letter** shall have the meaning set forth in Section 3.03.

**Purchase Agreement** has the meaning set forth in the recitals.

**Savings Guarantee Payment** has the meaning set forth in Section 2.04.

**Savings Guarantee Term** shall have the meaning set forth in Section 2.02.

**Site** means the site identified in Exhibit A.

**Utility** means the electric distribution company providing electrical service to the Site.

**Utility Tariff** means the tariff under which the Utility provides electrical service to the Site, which is the tariff as set forth in Exhibit A as of the Effective Date.

**Utility Tariff Restructuring** means a material change in the structure of the Utility Tariff. Such changes may include, but are not limited to: changes to time of use periods; the introduction of maximum demand charges, minimum demand charges or “ratchets”; changes to Net Energy Metering affecting System eligibility or energy export valuation; changes to minimum bills or portions of bills; or the elimination of demand charges.

## **ARTICLE II. SAVINGS GUARANTEE**

### **Section 2.01      Savings Guarantee**

During the first twelve (12) complete Billing Cycles following the Storage Services Commencement Date, and for each set of twelve (12) complete Billing Cycles thereafter during the Savings Guarantee Term (each such period, a “Guarantee Year”), SunPower guarantees (the “Savings Guarantee”) to Customer that the Actual Savings will be greater than or equal to the Guaranteed Savings, comprised of both the Guaranteed Demand Savings and the Guaranteed Energy Savings, set forth in the table below.

Guaranteed Demand Savings:      \$16,453



Guaranteed Energy Savings:	\$13,338
<hr/> Guaranteed Savings	<hr/> \$29,791

Exhibit B provides the expected Guaranteed Savings for each Billing Cycle in a Guarantee Year at the Site (for each month, the “Billing Cycle Guaranteed Savings”).

**Section 2.02      Savings Guarantee Term**

The savings guarantee term shall commence on the Storage Services Commencement Date and terminate on the earlier to occur of (a) the end of the fifteenth (15th) Guarantee Year following the Storage Services Commencement Date, or (b) the termination of the Purchase Agreement (the “Savings Guarantee Term”).

**Section 2.03      Calculation of Actual Savings**

During each Billing Cycle in each Guarantee Year during the Savings Guarantee Term, SunPower will calculate the following amounts:

**a) Demand Charge Savings**

- 1) “Gross Demand Charges” which shall be equal to the demand charges that would have been assessed at the Site based on the demand charges in the Utility Tariff in effect during that Billing Cycle and an energy usage profile equal to the sum of (a) the Site’s energy usage measured by Consumption Meter, plus or minus (b) the charge (minus) or discharge (plus) of the ESS as measured by the ESS Meter, plus (c) the PV System’s generation as measured by the PV Meter;
- 2) “Net Demand Charges” which shall be equal to the demand charges assessed at the Site based on the demand charges in the Utility Tariff in effect during that Billing Cycle and the Site’s energy usage measured by Net Load Meter; and
- 3) “Annual Demand Savings” which shall be equal to the sum, for all Billings Cycles in a Guarantee Year, of the difference between the Gross Demand Charges and the Net Demand Charges for each Billing Cycle in that Guarantee Year.

**b) ESS Energy Savings**

- 1) The “Post-PV Energy Charges” which shall be equal to the energy charges that would have been assessed at the Site based on energy prices in the Utility Tariff in effect during that Billing Cycle and an energy usage profile equal to the sum of (a) the Site’s energy usage measured by the Net Load Meter, plus or minus (b) the charge (minus) or discharge (plus) of the ESS as measured by the Storage Meter;
- 2) The “Net Energy Charges” which shall be equal to the energy charges assessed at the Site based on the energy charges in the Utility Tariff in effect during that Billing Cycle and the Site’s energy usage measured by the Net Load Meter; and

- 3) The “Actual ESS Energy Savings” which shall be equal to the sum, for all Billing Cycles in a Guarantee Year, of the difference between the Post-PV Energy Charges and the Net Energy Charges.
- c) **Actual Savings.** The “Actual Savings”, which shall be equal to the sum of the Annual Demand Savings and the Actual ESS Energy Savings for each Guarantee Year.

**Section 2.04      Savings Guarantee Payment**

- a) If in any Guarantee Year, the Actual Savings are less than the Guaranteed Savings, SunPower shall pay Customer an amount equal to the Guaranteed Savings minus the Actual Savings (the “Savings Guarantee Payment”) *provided that* the total Savings Guarantee Payment in any Guarantee Year shall not exceed the Storage Services Fees paid by Customer under the Purchase Agreement in that Guarantee Year.
- b) If the Actual Savings for any Guarantee Year is greater than the Guaranteed Savings (an “Excess Savings Amount”), the Excess Savings Amount shall be credited towards calculation of the Actual Savings in the subsequent Guarantee Year.
- c) SunPower shall pay Customer the Savings Guarantee Payment, if any is payable, , no later than 60 days after the end of the applicable Guarantee Year.

**Section 2.05      Utility Billing Period**

The Actual Savings will be based on the Billing Cycle at the Site, provided that Customer will (a) notify SunPower of the Billing Cycle at the Site when the ESS is installed, and (b) notify SunPower of any changes to the Billing Cycle. If Customer fails to notify SunPower of changes to the Billing Cycle at the Site, the Actual Savings calculations performed will be based on the last Billing Cycle available to SunPower.

**Section 2.06      Savings Guarantee Adjustments.**

The Parties agree that the Savings Guarantee shall be adjusted in the following circumstances as described below.

- a) If, in any Guarantee Year, the total Gross Demand Charges in that Guarantee Year are less than 85% of the Baseline Demand Charges, the Guaranteed Savings to be used in calculating the Savings Guarantee Payment applicable to such Guarantee Year shall be reduced by an amount equal to the product of (1) Guaranteed Demand Savings, times, (2) a fraction equal to (i) the Gross Demand Charges observed in that Guarantee Year, divided by (ii) Baseline Demand Charges.
- b) If in any Guarantee Year, the Current Average Energy Spread is less than 85% of the Baseline Average Energy Spread, then the Annual Guaranteed Savings to be used in calculating the Savings Guarantee Payment applicable to such Guarantee Year shall be reduced by an amount equal to the product of (1) Guaranteed Energy Savings, times, (2) a fraction equal to (i) the Current Average Energy Spread observed in that Guarantee Year, divided by (ii) Baseline Average Energy Spread.
- c) If an Exclusion Event occurs, the Guaranteed Savings to be used in calculating the Savings Guarantee Payment applicable to such Guarantee Year shall be the Guaranteed Savings

minus the Billing Cycle Guaranteed Savings set forth in Exhibit B for the Billing Cycle(s) during which the Exclusion Event(s) occurs.

- d) If Customer or any person other than SunPower or a subcontractor specifically approved by SunPower repairs, modifies or alters the System, the Guaranteed Savings to be used in calculating the Savings Guarantee Payment applicable to such Guarantee Year shall be reduced by the Billing Cycle Guaranteed Savings set forth in Exhibit B for the Billing Cycle(s) during which the unapproved repair, modification or alteration impairs the performance of the System.
- e) If (a) the Utility Tariff under which the Site receives electrical service from the Utility ceases to be the tariff set forth in Exhibit A hereto, (b) a Utility Tariff Restructuring occurs, or (c) the Parties agree to move the PV System or ESS from the Site to another location, the Parties will negotiate in good faith an adjustment to the Guaranteed Savings, provided that SunPower shall not owe Customer any Savings Guarantee Payment in a Guarantee Year to the extent such payment is owed due to the Utility Tariff at the Site ceasing to be the tariff identified in Exhibit A, a Utility Tariff Restructuring or the PV System or ESS being removed from the Site.
- f) The Parties acknowledge and agree that the Guaranteed Savings as set forth in this Agreement are subject to change by SunPower prior to the Storage Services Commencement Date in the event that the PV System or ESS as constructed and installed differs from the initial PV System or ESS designed and specified in the Purchase Agreement.

Sample calculations of the adjustments set forth in Section 2.06 (a) and (b) are provided in Exhibit C, and a sample calculation of the adjustments set forth in Section 2.06 (d) and (e) is provided in Exhibit D.

**ARTICLE III. CUSTOMER RESPONSIBILITIES**

**Section 3.01 Designated Contacts.**

Customer hereby designates an individual as “Primary Contact” and another individual as “Secondary Contact,” each of whom shall be authorized to represent Customer in the administration of this Agreement:

Primary Contact:

Name: Frank V. Di Massa  
Work Phone: (925) 957-2473  
Cell Phone: (925) 374-2491  
Mailing address: 40 Muir Road, Martinez, CA 94553  
Fax: (925) 228-2437  
Email: Frank.DiMassa@pw.cccounty.us

Secondary Contact:

Name: Ramesh Kanzaria  
Work Phone: (925) 957-2468  
Mailing address: (925) 383-2596  
Fax: (925) 228-2437  
Email: Ramesh.Kanzaria@pw.cccounty.us

**Section 3.02      Customer Responsibilities.**

Throughout the Savings Guarantee Term Customer shall:

- (a) not impair SunPower’s ability to maintain the System and allow repairs in a timely fashion as may be recommended from time to time by SunPower;
- (b) not be in breach of (i) Customer’s obligation to pay Provider for the Solar Services and Storage Services pursuant to the Purchase Agreement and (ii) any Customer obligations pursuant to the Purchase Agreement that directly (A) hinder the amount of Energy or the Storage Services delivered by the System or (B) degrade the functionality of the System.
- (c) grant reasonable access to the System by SunPower personnel and representatives;
- (d) ensure that Primary and Secondary Contacts have the capability to resolve any failures of DAS communications;
- (e) ensure any selected demolition agreed to by the Parties prior to construction of the System has been completed and that external shading on the PV System does not increase over the Savings Guarantee Term;
- (f) not modify, alter, damage, service, or repair, without SunPower’s prior written approval, any part of the System, the supporting structure for the System (including building roof, if applicable), or the associated wiring;
- (g) notify SunPower within 30 days if the Utility Tariff ceases to be the tariff set forth in Exhibit A, and
- (h) notify SunPower of changes to the Billing Cycle , at least on an annual basis before December 15<sup>th</sup> of each calendar year.

**Section 3.03      Customer’s Failure to Uphold Responsibilities.**

SunPower shall promptly notify Customer of any failures to perform an obligation under this Agreement (“Out of Compliance Letter”). Upon Customer’s cure of all failures described in an Out of Compliance Letter, SunPower will notify Customer (“In Compliance Letter”) that Customer is complying with Customer’s Responsibilities. For any period between the issuance of an Out of Compliance Letter and of an In Compliance Letter (a “Noncompliance Period”), SunPower shall have no liability under this Agreement. For any Guarantee Year in which there is a Noncompliance Period, the Guaranteed Savings to be used in calculating the Savings Guarantee Payment applicable to such Guarantee Year shall be reduced by the Billing Cycle Guaranteed Savings set forth in Exhibit B for the Billing Cycle(s) during which there is a Noncompliance Period.

**ARTICLE IV. MISCELLANEOUS PROVISIONS.**

**Section 4.01 Limitation of Liability.**

Neither Party shall be liable under this Agreement for any indirect, consequential or punitive damages, including, without limitation, loss of profits, loss of revenue, or loss of use of any equipment or facilities. In no event shall SunPower’s liability hereunder exceed any payment obligations arising under Section 2.04.

**Section 4.02 Technical Disputes.**

In case of any technical dispute between the Parties in a matter related to the calculation of the Actual Savings, Customer has the right to request the appointment of a technical expert in the operation of energy storage systems (the “Expert”) for resolution of the issue. The Expert shall finally determine the technical matter at issue in accordance with the provisions of this Contract, acting as arbitrator. The Expert shall deliver its determination to the Parties in writing, including an explanation of the underlying reasons, within thirty (30) calendar days after the acceptance of the mandate. The Expert’s determination shall be final and binding upon the Parties. The costs of the determination, including fees and expenses of the Expert, shall be borne by the Party the Expert deems is in the wrong.

**Section 4.03 Notices.**

All notices or other communications given, delivered or made under this Agreement by either Party to the other Party shall be in writing and shall be delivered personally, by first-class mail, by reputable overnight delivery company, or by facsimile (with reasonable proof of successful transmission). All such notices or communications to a party shall be mailed, delivered or faxed to such party at its address shown below or to such other address as the Party may designate by ten (10) days’ prior notice:

If to Customer:

Name: Frank V. Di Massa  
Work Phone: (925) 957-2473  
Cell Phone: (925) 374-2491  
Mailing address: 40 Muir Road, Martinez, CA 94553  
Fax: (925) 228-2437  
Email: Frank.DiMassa@pw.cccounty.us

If to SunPower:

SunPower Corporation, Systems  
2900 Esperanza Crossing, Floor 2  
Austin, TX 78758  
Telephone No.: (512) 493-4663  
Facsimile No: (512) 857-1155  
Attention: Wayne Webb

**Section 4.04 Entire Agreement.**

This Agreement and referenced Exhibits and other attachments hereto constitute the entire agreement regarding the subject matter of this Agreement and supersede all prior agreements and understandings between the parties relating to the subject matter of this Agreement.

**Section 4.05 Amendments.**

This Agreement may not be amended, supplemented or otherwise modified except by a written instrument specifically referring to this Agreement and signed by both parties, or as specifically allowed under the terms and conditions outlined in this Agreement

**Section 4.06 No Waiver.**

Failure or delay by a party to exercise any right or remedy under this Agreement shall not constitute a waiver thereof. A waiver of breach or default shall not operate as a waiver of any other breach or default, a waiver of the provision itself, or of the same type of breach or default on a future occasion. No waiver shall be effective unless explicitly set forth in writing and executed by the party making the waiver.

**Section 4.07 Successors and Assigns.**

Except as provided herein, no party may assign this Agreement without the prior written consent of the other party. Such consent shall not be unreasonably withheld. Either party may assign this Agreement without consent to a parent or subsidiary, an acquirer of assets, or a successor by merger. Nothing in this Agreement, expressed or implied, is intended to confer any rights, remedies, obligations or liabilities under or by reason of this Agreement upon any person or entity other than the parties. Notwithstanding anything herein to the contrary, SunPower may assign all of its rights and obligations under this Agreement to an assignee that has comparable experience in operating and maintaining photovoltaic solar and storage systems comparable to the System and providing services comparable to the solar and storage Services.

**Section 4.08 Severability.**

If any part of this Agreement shall be invalid or unenforceable under any applicable law, such invalidity or unenforceability shall not affect the enforceability of any other part hereof.

**Section 4.09 Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

**Section 4.10 Applicable Law.**

This Agreement shall be governed in all respects by the laws of the State of California, in each case without application of conflict of laws principles and without regard to the actual place or places of residence or business of the parties or the actual place or places of negotiation, execution or delivery of this Agreement.

**Section 4.11 Interpretation.**

Each party agrees that this Agreement will be interpreted fairly to carry out its purpose and intent. Each party waives any statute or rule of construction or interpretation, which would require that any ambiguity be interpreted against any party.

**Section 4.12      No Cross-Default or Right of Offset.**

For the avoidance of doubt, each Party agrees that (i) this Agreement does not create any right to terminate the Purchase Agreement, (ii) any failure of either Party to perform any obligations hereunder will not create any rights to offset any amounts owed under the Purchase Agreement, and (iii) any failure of either Party to perform any obligations under the Purchase Agreement will not create any rights to offset any amounts owed hereunder.

[Signature Page Follows]

IN WITNESS WHEREOF, SunPower and Customer have executed this Agreement.

<p><b>SUNPOWER:</b></p> <p>SUNPOWER CORPORATION, SYSTEMS, a Delaware corporation</p> <p>By: _____ Name: _____ Title: _____</p>	<p><b>CUSTOMER:</b></p> <p>Contra Costa County</p> <p>By: _____ Name: _____ Title: _____</p>
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**EXHIBIT A: SITE INFORMATION, PV SYSTEM & ESS**

**Site Name:** 1000 Ward Street

**Site Address:** 1000 Ward Street, Martinez, CA 94553

**Estimated PV System Size:** 337 kWp

**Estimated ESS Size:** 500 kW / 950 kWh

**Utility Providing Electrical Service:** Pacific Gas and Electric (PG&E)

**Utility Tariff to be Effective as of the Storage Services Commencement Date:** PG&E E19S Option R

**Baseline Demand Charges:** \$106,104

**On Peak Period:** 4-9pm

**Baseline Average Energy Spread:**

<b>Season</b>	<b>Off Peak Period</b>	<b>Months per Year</b>	<b>Rate</b>	<b>On Peak Rate</b>	<b>Spread</b>	
Summer	Off-Peak	4	\$0.1174	\$0.34403	\$0.2266	(a)
Winter	Super Off Peak	3	\$0.06384	\$ 0.14197	\$0.0781	(b)
<b>Baseline Average Energy Spread</b> (weighted average of a, b based on months of year in effect):					\$0.1630	

**EXHIBIT B: BILLING CYCLE GUARANTEED SAVINGS**

<b>Billing Cycle<sup>1</sup></b>	<b>Billing Cycle Guaranteed Savings</b>
January	\$1,380
February	\$1,532
March	\$2,499
April	\$2,186
May	\$1,061
June	\$5,040
July	\$4,714
August	\$4,650
September	\$4,386
October	\$1,796
November	\$727
December	\$702
<b>Guaranteed Savings</b>	<b>\$30,674</b>

<sup>1</sup> The months shown in the table above refer to the calendar month during which the majority of a Billing Cycle occurs. For example, a Billing Cycle covering the dates from January 3 – February 2 would correspond to the row labeled January in the table above.

**EXHIBIT C: SAMPLE ADJUSTMENTS TO GUARANTEED SAVINGS UNDER SECTION 2.06 (A) AND (B)**

Section 2.06 (a)

Gross Demand Charges (a)	\$80,000
Baseline Demand Charges (b)	\$106,104
Adjustment Factor $(1 - (a / b)) = (c)$	24.6%
Guaranteed Demand Savings (d)	\$18,101
Guaranteed Demand Savings Adjustment $(d * c) = (e)$	\$4,453
Guaranteed Savings (f)	\$30,674
Adjusted Guaranteed Savings (f-e)	\$26,221

Section 2.06 (b)

Baseline Average Energy Spread (a)	\$0.1630
Current Average Energy Spread (b)	\$0.12
Adjustment Factor $(a / b) = (c)$	26%
Guaranteed Energy Savings (d)	\$12,574
Guaranteed Energy Savings Adjustment $(d * c) = (e)$	\$3,269
Guaranteed Savings (f)	\$30,674
Adjusted Guaranteed Savings (f-e)	\$27,405

**EXHIBIT D: SAMPLE ADJUSTMENT TO GUARANTEED SAVINGS UNDER SECTION 2.06 (B) OR (E)**

Guaranteed	
Month(s) During which Exclusion Applies	May
Billing Cycle Guaranteed Savings in those months (a)	\$1,061
Annual Guaranteed Savings (b)	\$30,674
Adjusted Guaranteed Savings (a – b)	\$29,613

***EXECUTION VERSION***

*NOTE: 1305 Macdonald Ave, Richmond, CA 94801*

**POWER PURCHASE AGREEMENT**

Dated as of June 18, 2019

by and between

Solar Star Co Co 1, LLC  
as Provider

and

Contra Costa County  
as Customer

CONFIDENTIAL

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## POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT (as amended, amended and restated, supplemented or otherwise modified from time to time, this "Agreement"), dated as of June 18, 2019 (the "Effective Date"), is by and between Solar Star Co Co 1, LLC, a limited liability company formed under the laws of the State of Delaware ("Provider"), and Contra Costa County, a political subdivision of the State of California ("Customer").

### RECITALS:

WHEREAS, Customer leases or owns, directly or indirectly, facilities in that certain location in California as more fully described in Schedule A of the Appendices hereto (the "Site");

WHEREAS, Customer desires that Provider install, maintain and operate, and Provider desires to install, maintain and operate, the System (as hereinafter defined) to be located on the Site; and

WHEREAS, Provider desires to sell, and Customer desires to purchase, (a) the Solar Services (as hereinafter defined), including the delivery of electrical energy generated by the System (the "Energy") and (b) other services pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### AGREEMENT:

1. Definitions.

Unless otherwise defined herein: (a) capitalized terms used in this Agreement shall have the respective meanings set forth in this Section 1; (b) the singular shall include the plural and vice versa; (c) the word "including" shall mean "including, without limitation", (d) references to "Sections," "Exhibits," "Appendices" and the like shall be to sections, exhibits, appendices, etc. of or to this Agreement; (e) the words "herein," "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection hereof; and (f) references to this Agreement shall include a reference to all exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time.

"Agreement" has the meaning set forth in the preamble.

"Annual Rate Escalator" means the percentage set forth in Schedule C.

"Applicable Law" shall mean, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, governmental approval, consent or requirement of such

Governmental Authority, enforceable at law or in equity, along with the interpretation and administration thereof by any Governmental Authority.

“Claim Notice” shall have the meaning set forth in Section 13.3.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Commercial Operation Date” shall have the meaning set forth in Section 3.4.

“Confidential Information” shall have the meaning set forth in Section 15.

“Customer” shall have the meaning set forth in the preamble.

“Customer Default” shall have the meaning set forth in Section 11.1.

“Effective Date” shall have the meaning set forth in the preamble.

“Energy” shall have the meaning set forth in the preamble.

“Environmental Attributes” includes, without limitation, tradable renewable certificates, green-e tags, allowances, reductions or other transferable indicia denoting carbon offset credits or indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility attributed to the Energy during the Term created under a renewable energy, emission reduction, or other reporting program adopted by a Governmental Authority, or for which a registry and a market exists (which, as of the Effective Date are certificates issued by Green-e in accordance with the Green-e Renewable Electric Certification Program, National Standard Version 1.3 administered by the Center of Resource Solutions) or for which a market may exist at a future time.

“Environmental Financial Incentives” shall mean each of the following financial rebates and incentives that is in effect as of the Effective Date or may come into effect in the future: (i) performance-based incentives, rebates and any other incentive programs offered by or in the State of California (or any political subdivision thereof) under the federal government’s, any municipality’s, any utility’s or any other state’s program or initiative (including, if applicable, subsidies available under the Self Generation Incentive Program administered through the California Public Utilities Commission), incentive tax credits (including investment tax credits arising under the Code) other tax benefits or grants in lieu thereof (including without limitation the monetization of tax benefits), and accelerated depreciation (collectively, “Incentives”), howsoever named or referred to, with respect to any and all fuel, emissions, air quality, energy generation, or other environmental or energy characteristics, resulting from the construction, ownership or operation of the System or from the use of solar generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Energy generated by the System; and (ii) all reporting rights with respect to such Incentives.

“Estimated Year 1 Production” shall mean the amount set forth in Schedule B to this Agreement.

“Expiration Date” shall have the meaning set forth in Section 10.1.

“Fair Market Value” shall have the meaning set forth in Section 10.3.2.

“Financing Party” means any third-party entity providing debt or equity financing to Provider (or any successor or assignee thereof) with respect to the System, including without limitation a party providing construction financing, a lessor in a sale-leaseback transaction, a partner in a partnership flip transaction, or a limited liability company member in an equity sale transaction.

“Force Majeure Event” shall mean, when used in connection with the performance of a Party’s obligations under this Agreement, any of the following events to the extent not caused by such Party or its agents or employees, which is not preventable by such Party as of the Effective Date:

- a) war, riot, acts of a public enemy or other civil disturbance;
- b) acts of God, including but not limited to, storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, volcanic eruptions, range or forest fires, and objects striking the earth from space (such as meteorites), sabotage or destruction by a third party (other than any contractor retained by or on behalf of the Party) of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;
- c) acts of federal, state or local government agencies, including changes in Applicable Law, that result in increasing Provider’s costs of construction and installation, or continuing operation, of the System by 15% or more; and
- d) strikes, walkouts, lockouts or similar industrial or labor actions or disputes.

“Governmental Authority” shall mean any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Indemnified Party” shall have the meaning set forth in Section 13.3.

“Indemnifying Party” shall have the meaning set forth in Section 13.3.

“Interconnection Point” shall have the meaning set forth in Section 3.5.

“kWh Rate” shall have the meaning set forth in Section 6.1.

“License” shall have the meaning set forth in Section 2.

“Liens” shall have the meaning set forth in Section 7.1.3.

“Meter” shall have the meaning set forth in Section 4.3.1.

“Monthly Period” shall mean the period commencing on the Commercial Operation Date and ending on the last day of the calendar month in which the Commercial Operation Date occurs, and, thereafter, all subsequent one (1) month periods during the Term.

“Monthly Production” shall mean, for each Monthly Period, the amount of Energy delivered during such Monthly Period.

“O&M Work” shall have the meaning set forth in Section 4.1.1.

“Party” shall mean each of Customer and Provider (and/or any successor or permitted assignee thereof).

“Person” shall mean any individual, corporation, partnership, company, limited liability company, joint venture, association, trust, unincorporated organization or Governmental Authority.

“Provider” shall have the meaning set forth in the preamble (and includes its successor(s) and permitted assignee(s)).

“Provider Default” shall have the meaning set forth in Section 11.2.

“Renewal Rate” shall mean the fair market price for electricity generated by solar photovoltaic systems as determined by agreement of the Parties or through the appraisal process applicable to the purchase option contained in this Agreement.

“Reporting Rights” means the right to report ownership of the Environmental Attributes or the Environmental Financial Incentives associated with the Energy to any federal, state, or local agency, authority or other party, including without limitation under Section 1605(b) of the Energy Policy Act of 1992 and provisions of the Energy Policy Act of 2005, or under any present or future domestic, international or foreign emissions trading program.

“Scheduled Outage” shall have the meaning set forth in Section 4.5.

“Site” has the meaning set forth in the first recital.

“Solar Services” mean all solar services provided to Customer by Provider hereunder, including the provision of Energy.

“Standards” shall have the meaning set forth in Section 3.1.1.

“System” shall mean the solar photovoltaic system installed pursuant to this Agreement at the Site and more fully described in Schedule B hereto; provided, however, that the term “System” shall only include equipment and materials up to but not including the Interconnection Point of the System.

“Term” shall have the meaning set forth in Section 10.1.

“Termination Date” shall have the meaning set forth in Section 10.1.

“Termination Value” shall mean, on any date of determination (or, if such date is not a scheduled termination date, the scheduled termination date immediately preceding such date) the applicable amount specified for such date in Schedule D to this Agreement.

“Transfer Taxes” shall have the meaning set forth in Section 6.2.1.

2. Purchase and Sale of Solar Services; License.

2.1 Purchase and Sale of Solar Services.

Customer hereby engages Provider to provide the services set forth in this Agreement, including the Solar Services to Customer, and Provider agrees to provide the services set forth in this Agreement, including the Solar Services to Customer, all in accordance with the terms and conditions set forth herein. Customer shall provide Provider with access to the Site in accordance with the terms of this Agreement. Provider may retain one or more contractors or subcontractors to fulfill its obligations hereunder; provided that Provider shall remain liable for performance of its obligations hereunder

2.2 License.

Customer hereby grants to Provider and to Provider’s agents, employees and subcontractors an irrevocable, non-exclusive license running with the Site for access to, on, over, under or across the Site (the “License”) for the purpose of (i) installing, constructing, operating, maintaining, accessing, removing and replacing the System; (ii) performing all of Provider’s obligations and enforcing all of Provider’s rights set forth in this Agreement; and (iii) installing, using and maintaining electric lines and equipment, including inverters and meters, necessary to interconnect the System to Customer’s electric system at the Site or to the utility’s electric distribution system or that otherwise may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance, or repair of the System. The term of the License is the Term of this Agreement plus the period of time necessary for Provider to remove the System pursuant to Section 10.3.3, but in no case later than one hundred eighty (180) days after the Expiration Date with respect to the System (the “License Term”). During the License Term, Customer shall preserve and protect Provider’s rights under the License and Provider’s access to the Site and shall not interfere with or permit any third parties to interfere with Provider’s rights or access. Except for an emergency situation as described in Section 4.2.1(a) or (b) (an “Emergency Situation”), Provider shall notify Customer in writing, which may be made via email to Customer’s Energy Manager, 40 Muir Road, Martinez, CA 94553 (Frank.DiMassa@pw.cccounty.us), or to any other address Customer may designate in a written notice to Provider, forty-eight (48) hours before Provider intends to access the Site pursuant to the License. Notwithstanding that the License granted herein is irrevocable, Customer reserves the right to exclude Provider, its agents, employees and subcontractors from the Site in the event that Customer notifies Provider of a breach of the License and Provider fails to cure such breach pursuant to Section 11.2.1 of this Agreement; provided, however, that, Customer

agrees not to exclude Provider, its agents, employees and subcontractors from the Site (A) in the event of an Emergency Situation as described in Section 4.2 so long as Customer has been notified of such an Emergency Situation pursuant to Section 4.2 and (B) in the event that the System is to be removed pursuant to this Agreement.

3. Design, Construction, Installation and Testing of System.

3.1 Installation.

Subject to Section 3.2, Provider will cause the System to be designed, engineered, installed and constructed at the Site substantially in accordance with the terms of this Agreement, including without limitation, the provisions of Exhibit A (System Design and Construction). Customer shall review and approve, such approval not to be unreasonably withheld or delayed, all construction plans, including engineering evaluations of the impact of the System on the structural integrity and strength of the location where the System is installed inside, on or near Customer's buildings. Provider shall organize the procurement of all materials and equipment for the installation work and maintain the same at the Site. Subject to the terms of the License, Provider shall perform installation work at the Site during the times set forth in Exhibit A and Schedule B in a manner that minimizes inconvenience to and interference with Customer's and Customer's invitees' and Customers' use of the Site to the extent commercially practical. Notwithstanding the foregoing, in the event that Provider determines in its sole discretion that it is unable to install the System at the Site, it shall be under no obligation to do so, and this Agreement shall terminate and be of no further force and effect upon written notice from Provider to Customer to that effect.

3.1.1 System Design and Construction. Exhibit A (System Design and Construction) attached hereto sets forth the design, engineering and construction specifications for the System, as well as assumptions made by the Provider regarding the Site conditions, the electrical conditions, and System attributes (such assumptions being referred to herein as the "Standards"). Schedule B (Description of System) sets forth the known actual conditions for the Site and the System, including deviations from the Standards. The Standards are such that the described items for the System will not need repair, replacement, modification or construction beyond that described in Exhibit A and Schedule B in order for Provider to properly construct and install the System. If the construction and installation of the System is required for any reason (except for reasons attributable to Provider) to deviate from the Standards and Schedule B, Provider will notify the Customer and provide an estimate of any incremental cost to Customer and Customer will have the option to (i) pay the incremental cost at the time the cost is incurred and billed to the Customer, (ii) pay the incremental cost over the Term through a calculated increase in the kWh Rate, or (iii) elect an alternative location subject to the conditions of Section 3.1.2.

3.1.2 Alternative Location. Prior to the Commercial Operation Date, if the Customer's interest in the Site is a leasehold interest and the Customer is unable to obtain the landlord's consent in accordance with the License or Customer chooses an alternative location per Section 3.1.1, Customer will have the option to elect an alternative location if Environmental

Attributes and Environmental Financial Incentives financially equivalent to or better than those associated with the original location are available for the alternative location, and if the expected System kWh output and construction cost at the alternative location are equivalent to or superior than those associated with the originally proposed location. Such alternative location is subject to Provider approval, not to be unreasonably withheld. If an alternative location cannot be established, Provider will have the right to terminate per Section 3.2.

### 3.2 Conditions Precedent to Commencement of Construction and Installation.

3.2.1 Commencement by the Provider of construction and installation activities with respect to the System are subject to the satisfaction of the following conditions precedent (in addition to the condition set forth in Section 3.3):

- (a) Provider shall have closed financing for construction and long-term ownership of the System and the Solar Services to be performed at the Site and, to the extent required pursuant to the applicable financing documentation, the third party financing institution providing such financing shall have been provided with the materials referred to in Section 14.17 and Section 16;
- (b) Provider shall have entered into the applicable contract(s) for construction and installation of the System, subject to the terms of the applicable financing, if any;
- (c) Provider shall have obtained the permits, licenses and other approvals required by Applicable Law to be obtained by Provider prior to such commencement;
- (d) Provider shall have received satisfactory notice that the applications for Environmental Financial Incentives for the System have been accepted and approved by the appropriate governing agency; and
- (e) Provider shall have received from Customer satisfactory evidence that the project—including the System, the License, and the work and Solar Services described in this Agreement—is exempt from the regulatory jurisdiction of local agencies (including zoning, building, and land-use requirements) or that all required local agency approvals and permits have been obtained.

provided, however, that if any of the foregoing conditions precedent have not been satisfied on or before June 17, 2020 (the “CP Date”), Provider shall have the option to terminate this Agreement without triggering the default provisions of this Agreement or any liability under this Agreement, and if Provider does not terminate this Agreement one hundred eighty (180) days following the CP Date, Customer may terminate this Agreement without triggering the default provisions of this Agreement or any liability under this Agreement.

Alternatively, in the event that such conditions precedent are not satisfied by such date, the Parties may mutually agree to amend this Agreement to revise the Commercial Operation Date and term of this Agreement.

### 3.3 Utility Approvals.

Notwithstanding that Provider shall have primary responsibility for preparing applications and obtaining all permits, licenses and approvals required for the performance of work under this Agreement, Customer agrees to reasonably assist Provider in obtaining necessary permits, licenses and approvals in connection with the installation, operation and maintenance of the System, including the submission of applications for interconnection of the System with the local electric utility. Customer shall not make any material changes to its electrical equipment at the Site after the date on which the applicable utility interconnection application is submitted unless any such changes, individually or in the aggregate, would not adversely affect the approval by such utility of such interconnection. Should the local electric utility fail to approve the interconnection of the System or require equipment in addition to the equipment set forth in Schedule B in connection with the Site, Provider may, at Provider's option, terminate this Agreement immediately subsequent to notification from the local utility. The Parties shall not be obligated to go forward with installation of the System if the applicable utility approvals are conditioned upon material upgrades to the existing electrical infrastructure and neither Party elects to provide for such upgrades. Customer also agrees to assist Provider and make all necessary repairs or changes to the existing electrical infrastructure so that the Site and System are eligible for the Environmental Financial Incentives.

### 3.4 Energy Delivery.

The date on which the delivery of Energy from the System commences (the "Commercial Operation Date") shall be the date on which all of the following shall have occurred: (a) Provider shall have certified to Customer in writing that the System is substantially complete and available for commercial operation; (b) all permits and licenses required to be obtained under Applicable Law in connection with the operation of the System shall have been obtained and be in full force and effect; and (c) Customer shall have entered into an interconnection agreement with the local electricity utility. In no event shall Provider have any liability to Customer for a delay in the Commercial Operation Date caused by Customer, Customer's electricity provider, a local agency issuing permits for the System or any other third parties outside of Provider's control.

### 3.5 Risk of Loss; Exclusive Control.

As between the Parties, Provider will be deemed to be in exclusive control (and responsible for any property damage or injuries to persons caused thereby) of the Energy up to but excluding the point where the System is interconnected to Customer's electrical intertie; e.g., the Customer's line-side tap (the "Interconnection Point") and Customer will be deemed to be in exclusive control



(and responsible for any property damage or injuries to persons caused thereby) of the Energy at and from the Interconnection Point. Risk of loss related to the Energy will transfer from Provider to Customer at the Interconnection Point.

### 3.6 Termination Values.

The Parties acknowledge and agree that the Termination Values with respect to the applicable System are as set forth in Schedule D of this Agreement.

## 4. Operation and Maintenance of System.

### 4.1 O&M Work; Phone/Data Line.

4.1.1 O&M Work. Provider shall provide operation, repair, monitoring and maintenance services to the System during the Term of this Agreement, including the monitoring and maintenance of metering equipment determining the quantity of electricity produced by the System (collectively, the “O&M Work”). Provider shall perform the O&M Work, either directly or indirectly through a subcontract with SunPower Corporation, Systems, an affiliate of Provider or through a third-party service provider capable of providing comparable services, provided that Provider remains responsible for all O&M Work notwithstanding any such subcontracting. Provider shall perform, or cause to be performed, the O&M Work to ensure that the System is capable of delivering the Energy in accordance with the specifications set forth in Schedule B. Provider shall use commercially reasonable efforts to enforce the terms of any contract for operations and maintenance services to which it is a party and System warranty agreements.

4.1.2 Phone/Data Line. Customer shall properly maintain, pay for and provide access to the necessary phone, computer, or other communication lines necessary to permit Provider to record the electrical output of the System for the entire Term.

### 4.2 Malfunctions and Emergencies.

4.2.1 Each of Customer and Provider shall notify the other within twenty-four (24) hours following the discovery by it of (a) any material malfunction in the operation of the System, (b) an interruption in the supply of Solar Services. Provider and Customer shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Provider’s repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Each Party shall notify the other Party immediately upon the discovery of an emergency condition in the System.

4.2.2 Provider shall commence repairs to the malfunctioning System and restore the supply of the Energy, as soon as reasonably possible after notice or upon its own discovery of any of the conditions specified in Section 4.2.1 during normal business hours and, subject to Section 2, take steps to mobilize personnel to commence repairs after notice or discovery of a condition requiring repair or other corrective action. If an emergency condition exists, Provider shall dispatch the appropriate personnel immediately upon becoming aware thereof to perform the necessary repairs or corrective action in an expeditious and safe manner. For routine and emergency repairs, the Parties shall contact the persons set forth below:

If to Provider:

Wayne Webb, Senior Manager, Operations & Maintenance  
2900 Esperanza Crossing, 2nd Floor  
Austin, TX 78759  
(510) 439 – 4663 or (800) 251-9728

[Wayne.Webb@sunpowercorp.com](mailto:Wayne.Webb@sunpowercorp.com) with a copy to: [customer.service@sunpower.com](mailto:customer.service@sunpower.com)

#### 4.3 Metering.

4.3.1 Meters. For the term of this Agreement, Provider shall install and maintain a utility-grade kilowatt-hour (“kWh”) meter (the “Meter”) at the System for the measurement of Energy provided to Customer, which shall measure the kWh output of the System on a continuous basis. Upon Customer’s written request, Provider shall furnish a copy of all technical specifications and accuracy calibrations for the Meter, as well as all metering data and energy production and consumption calculations. Provider shall test the Meter in compliance with manufacturer’s recommendations.

4.3.2 Customer Audits and Inspections. Once per calendar year, Customer shall have the right to audit all Meter data upon reasonable notice, and any such audit shall be at Customer’s sole cost. Customer shall have a right of access to the Meter at reasonable times and with reasonable prior notice for the purpose of verifying readings and calibrations.

4.3.3 Adjustments. If testing of the Meter pursuant to Section 4.3.1 or Section 4.3.2 indicates that the Meter is in error by more than two percent (2%), then Provider shall promptly repair or replace the Meter. If the Meter is found to be in error by more than two percent (2%), Provider shall make a corresponding adjustment to the records of the amount of Energy based on such test results for (a) the actual period of time when such error caused inaccurate Meter recordings, if such period can be determined to the mutual satisfaction of the Parties, or (b) if such period cannot be so determined, then a period equal to one-half (1/2) of the period from the later of (i) the date of the last previous test confirming accurate metering, and (ii) the date the Meter was placed into service; provided, however, that such period shall in no case exceed two (2) years.

4.3.4 Disputes. Any dispute arising out of the reading or calibration of the Meter shall be resolved in accordance with the procedures set forth in Section 6.3.2.

#### 4.4 Title to System.

Provider, or Provider’s permitted assigns with respect to the System, shall at all times retain title to and be the legal and beneficial owner of the System, including the right to any tax credits available under federal or state law, and the System shall remain the property of Provider or Provider’s assigns. The System shall remain the personal property of Provider or Provider’s assigns and shall not attach to or be deemed a part of, or fixture to, the Site. It is the Parties’ intention that the System shall at all times retain the legal status of personal property. Provider shall be entitled to, and is hereby authorized to, file one or more precautionary Uniform Commercial Code financing statements with the California Secretary of State with

respect to the System in order to protect its rights in the System, provided that no such UCC financing statement shall name Customer as the debtor. The System shall be clearly marked and identified as being the property of the Provider or Provider's assigns. The Parties intend that neither Customer nor any party related to Customer shall acquire the right to operate the System or be deemed to operate the System.

#### 4.5 Outages.

Customer shall be permitted two (2) twenty-four (24) consecutive hour days during which the System may be offline (each, a "Scheduled Outage") per calendar year during the Term, during which days Customer shall not be obligated to accept, and if not accepted, pay for the Energy; provided, however, that Customer shall have notified Provider in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of such Scheduled Outage. In the event that Scheduled Outages at the Site exceed two (2) days per calendar year for a reason other than a Force Majeure Event, and for all unscheduled outages, Provider shall reasonably estimate the amount of Energy that would have been delivered to Customer during each hour of such excess Scheduled Outages or unscheduled outages and shall invoice Customer for such amount, which shall be payable in accordance with Section 6.3. Additionally, as set forth in Exhibit C (Performance Guarantee), Provider shall be relieved of any failure to meet the Performance Guarantee due to any Scheduled Outage or unscheduled outage.

#### 4.6 Compliance with Utility Specifications.

Provider shall ensure that the operation of the System and all Energy generated by the System conform to applicable utility specifications for energy being generated and delivered to the Site's electric distribution system, which shall include the installation of proper power conditioning and safety equipment, submittal of necessary specifications, coordination of utility testing and verification, and all related costs.

### 5. Purchase of Solar Services.

#### 5.1 Purchase Requirement.

Customer agrees to purchase one hundred percent (100%) of the Energy delivered by the System during the Term of this Agreement. While the Solar Services are calculated and billed on the basis of kWh of Energy as set forth in Section 6.1, Customer acknowledges and agrees that such Solar Services represent a package of services including the production and supply of electrical energy output from the System, together with any other services associated with solar energy production that Provider may provide to Customer. The payment for Solar Services (expressed in \$/kWh) is calculated to include all of the above services. Neither Party may claim that by this Agreement Provider is an electric utility subject to regulation as an electric utility or subject to regulated electricity rates. Provider shall not claim to be providing electric utility services to Customer and shall not interfere with Customer's ability to select an electric utility provider except that, to the extent

Customer has a choice in selecting an electric utility provider or electricity provider, Customer shall not select an electric utility provider or electricity provider that requires, as part of their conditions for service, removal or discontinued operation of the System or the sales of Energy hereunder.

5.2 Environmental Attributes; Environmental Financial Incentives.

5.2.1 Environmental Attributes. All Environmental Attributes and associated Reporting Rights available in connection with the System are retained and owned by Customer or its assignee. Provider shall take all reasonable measures to assist Customer in obtaining all Environmental Attributes currently available or subsequently made available in connection with the System. At Customer's request and expense, Provider shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Customer's or its assignee right, title and interest in and to the Environmental Attributes. If the standards used to qualify the Environmental Attributes to which Customer is entitled under this Agreement are changed or modified, Provider shall, at Customer's request and expense, use all reasonable efforts to cause the Environmental Attributes to comply with new standards as changed or modified. If Provider fails to act in good faith in completing documentation or taking actions reasonably requested by Customer, and such failure results in the loss of an Environmental Attribute that would otherwise be available, Provider shall reimburse Customer for the full amount of such lost Environmental Attribute.

5.2.2 Environmental Financial Incentives. All Environmental Financial Incentives and associated Reporting Rights available in connection with the System are retained and owned by Provider or its assignee. Customer shall take all reasonable measures to assist Provider in obtaining all Environmental Financial Incentives currently available or subsequently made available in connection with the System. At Provider's request and expense, Customer shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Provider's or its assignee right, title and interest in and to the Environmental Financial Incentives. If the standards used to qualify the Environmental Financial Incentives to which Provider is entitled under this Agreement are changed or modified, Customer shall, at Provider's request and expense, use all reasonable efforts to cause the Environmental Financial Incentives to comply with new standards as changed or modified. If Customer fails to act in good faith in completing documentation or taking actions reasonably requested by Provider, and such failure results in the loss of an Environmental Financial Incentive that would otherwise be available, Customer shall reimburse Provider for the full amount of such lost Environmental Financial Incentive.

5.2.3 Customer shall not take any action or suffer any omission that would have the effect of impairing the value to the Provider of the Environmental Attributes or Environmental Financial Incentives.

5.2.4 Provider or its assignee will at all times retain all tax credits and related tax benefits (including depreciation) associated with the System.

6. Price and Payment.

6.1 Price.

Customer shall pay Provider for the Energy provided pursuant to the terms of this Agreement at the rate per kWh (the "kWh Rate") set forth in Schedule C for the Term of this Agreement, plus any adjustments required pursuant to Section 3.1.1, plus any additional amount required pursuant to Section 6.2. Notwithstanding the foregoing, in the event that Customer elects to renew this Agreement pursuant Section 10.3.1, Customer shall pay the Renewal Rate for Energy delivered during such renewal period.

6.2 Taxes.

6.2.1 Customer Taxes. Provider shall invoice Customer for, and Customer shall pay all sales, use, excise, ad valorem, transfer and other similar taxes ("Transfer Taxes"), but excluding in all events taxes based on or measured by net income, that are imposed by any taxing authority arising out of or with respect to the purchase or sale of the Solar Services (regardless of whether such Transfer Taxes are imposed on Provider or Customer), together with any interest, penalties or additions to tax payable with respect to such Transfer Taxes, unless such interest, penalties or additions to tax payable with respect to such Transfer Taxes are due to Provider's failure to timely remit any such Transfer Taxes or to file any returns required by the appropriate taxing authority, and Provider shall indemnify and hold Customer harmless in such excepted cases. If Customer shall be required to by law to withhold or deduct any Transfer Taxes or other taxes imposed by any jurisdiction or any political subdivision from or in respect of any sum payable hereunder, the sum payable shall be increased as may be necessary so that, after taking all required deductions, Provider shall have received an amount equal to the sum it would have received had no such deductions been made. Provider will pay any ad valorem property tax imposed on the System by any taxing authority.

6.2.2 Provider Taxes. Provider will pay and hold harmless Customer from any sales or use tax imposed upon Customer arising from this Agreement, other than as set forth in the preceding Section 6.2.1, including but not limited to Provider's manufacture, installation and acquisition of the System. Provider will pay and hold harmless Customer from property tax, if any, assessed on (i) Provider's use of the portion of the Site on which the System is installed, to the extent prescribed in the License; (ii) the System or Provider's ownership, installation or use thereof; or (iii) any other aspect of this Agreement. Notwithstanding the foregoing, Customer shall pay and hold harmless Provider from sales and use taxes, if any, arising upon the transfer, if any, of both legal and beneficial ownership of the System to Customer pursuant to this Agreement.

6.3 Billing and Payment.

Billing and payment for the Solar Services sold and purchased under this Agreement and any other amounts due and payable hereunder shall occur as follows:

6.3.1 Payments. Subject to adjustment in accordance with the following sentences of this Section 6.3.1, Customer shall pay to Provider for each Monthly Period during the Term within thirty (30) days after receipt of any invoice a payment for the Energy delivered by the System during each such Monthly Period equal to the product of (a) Monthly Production for the System for the relevant month multiplied by (b) the then applicable kWh Rate.

Customer payments under Sections 6.3.1, above, shall be made by check to:

Solar Star Co Co 1, LLC  
Attn: Commercial Asset Management Group  
c/o SunPower Capital Services, LLC  
2900 Esperanza Crossing  
Austin, TX 78758

Payment may also be made by wire transfer of immediately available funds upon receipt of specific instructions by Provider. Upon receipt of written direction and instructions from Provider and Provider's Financing Party, all payments to be made by the Customer to the Provider under this Agreement shall be made directly to the Provider's Financing Party or its agent designated in a writing addressed to Customer from time to time.

6.3.2 Invoice Errors. Within thirty (30) days after receipt of any invoice, Customer may provide written notice to Provider of any alleged error therein (including any error resulting from Meter adjustments pursuant to Section 4.3.3). Customer shall pay all undisputed amounts, including the undisputed portion of any invoice, in accordance with the instructions set forth for payment under Section 6.3.1. If Provider notifies Customer in writing within thirty (30) days of receipt of such notice that Provider disagrees with the allegation of error in the invoice, the Parties shall meet, by telephone conference call or otherwise, within ten (10) days of Customer's response for the purpose of attempting to resolve the dispute.

6.3.3 Late Payments. All payments hereunder shall be made without setoff or deduction. Any payment not made within the time limits specified in Section 6.3.1 shall bear interest from the date on which such payment was required to have been made through and including the date on which such payment is actually received by the Provider. Such interest shall accrue at a monthly rate equal to the lesser of the then prevailing prime rate of interest as published in The Wall Street Journal or the maximum interest rate permitted by Applicable Law.

## 7. General Covenants.

### 7.1 Provider's Covenants.

Provider covenants and agrees as follows:

7.1.1 Permits and Approvals. While performing this Agreement, Provider shall obtain and maintain all approvals, consents, licenses and permits from relevant Governmental Authorities, utility personnel, and (to the extent known to Provider) the Site's owners, if Customer is not the owner of the Site, and other agreements and consents required to be obtained and maintained by Provider and to enable Provider to perform such work. Provider shall deliver copies of all permits and approvals obtained pursuant to this Section to Customer.

7.1.2 Health and Safety. Provider shall take all reasonably necessary safety precautions in performing this Agreement and shall comply in all material respects with all Applicable Laws pertaining to the safety of persons and real and personal property.

7.1.3 Removal of Liens. Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', laborers' or materialmen's liens), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Site or any interest therein; provided that this Section 7.1.3 shall not limit Liens on the System. If Provider breaches its obligations under this Section, it shall immediately notify Customer in writing, shall promptly cause such Lien to be discharged and released of record without cost to Customer, and shall defend and indemnify Customer against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

7.1.4 Provider Records. Provider shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Customer has the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

## 7.2 Customer's Covenants.

Customer covenants and agrees as follows:

7.2.1 Health and Safety. Customer shall at all times maintain the areas of the Site consistent with all Applicable Laws pertaining to the health and safety of persons and property.

7.2.2 Security. Customer shall provide and take reasonable measures for security of the System, including commercially reasonable monitoring of the Site's alarms, if any.

7.2.3 Notice of Damage. Customer shall promptly notify Provider of any matters of which it becomes aware pertaining to any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System.

7.2.4 Liens. Customer shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein. Customer also shall pay promptly any taxes, charges or fees of whatever type of any relevant Governmental Authority for which Customer is responsible under Section 6.2 before a fine or penalty may attach to the System. If Customer breaches its obligations under this Section, it shall immediately notify Provider in writing, and shall promptly cause such Lien on or with respect to the System (including if such arises in favor of any third party claiming through Customer, such as a lender, mortgagee or encumbrancer of real property) to be removed, discharged and released of record without cost to Provider, and shall defend, indemnify and hold Provider harmless against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in removing, discharging and releasing such Lien.

7.2.5 Consents and Approvals. Customer shall obtain and maintain, and secure and deliver to Provider copies of, all consents, approvals, permits, licenses, and authorizations (or evidence that the project—including the System, and the work and Solar Services described in this Agreement—is exempt from the regulatory jurisdiction of local agencies (including zoning, building, and land-use requirements) or that all required local agency approvals and permits have been obtained) relating to the performance of Customer’s obligations and the rights granted by Customer hereunder, and that are required by the terms, conditions or provisions of any restriction or any agreement or instrument or statute to which Customer is a party or by which Customer is bound, including completing applications for interconnection with Customer’s local electric utility. Customer shall use best efforts to assist Provider in fulfilling Provider’s responsibilities under Section 7.1.1. In addition, as a condition precedent to the effectiveness of this Agreement, Customer covenants that it has obtained all discretionary and other approvals required in connection with the project from its governing board and all applicable Government Authorities and that such board or Governmental Authority complied with the California Environmental Quality Act; or, if no other discretionary approvals were required, such board or Governmental Authority approved this Agreement before it was executed.

7.2.6 Maintenance of Interconnection. Customer shall ensure that all of the facilities to which the Energy is delivered hereunder remain interconnected to the electrical grid during the entire Term, except as permitted under Section 4.5 and Section 9.

7.2.7 Solar Access. Customer shall ensure that the System remains free of overshadowing or other blocked access to sunlight during the Term, and it is acknowledged and agreed by the Parties that the foregoing is a material obligation of the Customer for the purposes of this Agreement. Customer will use best efforts to secure a solar easement for the Site to prevent other buildings, structures or flora from overshadowing or otherwise blocking access of the sunlight to the System. Provider shall provide assistance to Customer in seeking a solar easement; however, Customer shall bear all costs and expenses related to obtaining any such easement.

7.2.8 Customer Records. Customer shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Provider shall have the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

## 8. Insurance Requirements.

### 8.1 Provider’s General Liability Insurance.

Provider shall maintain, at its sole expense, commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of one million dollars (\$1,000,000) per occurrence and in the aggregate, endorsed to provide contractual liability in said amount, specifically covering Provider’s obligations under this Agreement and naming Customer as an additional insured. The minimum coverage amount of \$1,000,000 per occurrence and in the aggregate may be satisfied by a combination of a general liability policy and an excess/umbrella liability policy. Provider, if it has employees, shall also maintain at all times during the term of



this Agreement workers' compensation insurance coverage in accordance with the applicable requirements of federal and state law. Within thirty (30) days after execution of this Agreement and upon Customer's request annually thereafter, Provider shall deliver to Customer certificates of insurance evidencing such coverage, which shall specify that Customer shall be given at least thirty (30) days' prior written notice by the applicable insurer in the event of any material modification, cancellation or termination of coverage, except ten (10) days for non-payment of premium. Such insurance shall be primary coverage without right of contribution from any insurance of Customer.

## 8.2 Customer's Insurance.

Customer shall provide and maintain "all-risk" property insurance covering the buildings on which the System is located during all periods (construction and operation) that Provider is the beneficial owner of the System, and naming Provider or its assignee as the loss payee. The System shall be insured for not less than its Termination Value. All such policies shall be with financially sound and reputable insurance companies that have an (i) A.M. Best rating of A+ and a financial strength category of "XII" or higher, (ii) a Standard & Poor's financial strength rating of A+ or higher, or (iii) are otherwise reasonably satisfactory to the Provider or its assignee; and such policies shall be on terms that are reasonably satisfactory to the Provider or its assignee. Within thirty (30) days after execution of this Agreement and upon Provider's request annually thereafter, Customer shall deliver to Provider certificates of insurance evidencing such coverage, which shall specify that Provider shall be given at least thirty (30) days' prior written notice (10 days' notice for cancellation due to nonpayment of premiums) by the applicable insurer in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Provider. Notwithstanding the foregoing, Customer shall be entitled to self-insure all of its insurance requirements under this Agreement.

## 9. Force Majeure Events.

If either Party is prevented from or delayed in performing any of its obligations under this Agreement by reason of a Force Majeure Event, such Party shall notify the other Party in writing as soon as practicable after the onset of such Force Majeure Event and shall be excused from the performance of its obligations under this Agreement to the extent that such Force Majeure Event interferes with such performance. The Party whose performance under this Agreement is prevented or delayed as the result of a Force Majeure Event shall use reasonable efforts to remedy its inability to perform. If a Party's failure to perform its obligations under this Agreement is due to a Force Majeure Event, then such failure shall not be deemed a Provider Default or a Customer Default, as the case may be. In case a Force Majeure Event continues for at least one (1) year with respect to the System, then either Party may terminate this Agreement by written notice to the other.

10. Term; Customer Options; Termination.

10.1 Term.

The term of this Agreement shall commence on the Effective Date and shall expire on the date that is twenty-five (25) years after the Commercial Operation Date (the “Expiration Date”), unless and until terminated earlier pursuant to Sections 3.1, 3.2, 3.3, 9, 10.2.3, 10.6 or 12 (the date of any such termination, the “Termination Date”, and the “Term” being such period of time commencing on the Effective Date and ending on the earlier of (i) the Termination Date, and (ii) the Expiration Date).

10.2 Customer Options Upon Cessation of Business Operations at Site.

If, prior to the end of the Term, Customer ceases to conduct business operations at the Site, vacates the Site, or is prevented from allowing operation of the System on the Site:

10.2.1 Substitute Site. So long as Customer’s exercise of its rights under this Section 10.2.1 does not impair or reduce any Environmental Financial Incentives that may be available to the Provider, or otherwise have an adverse tax effect on Provider, or in the Provider’s sole discretion and determination, impair Provider’s ability to meet any and all obligations in connection with a Financing Party or a prospective financing transaction, Customer shall have the right to provide Provider with a mutually agreeable substitute Site located within the same utility district, subject to requisite governing agency approvals, to relocate the System, which agreement shall not be unreasonably withheld, or, if not available, in a location with similar solar insolation, utility rates, Environmental Attributes and Environmental Financial Incentives. Any such alternate Site shall have a similar demand charge profile as the Site. If such alternate Site is available and is acceptable to Provider, this Agreement shall be amended to delete the prior Site and add the new Site, but otherwise this Agreement shall remain in full force in accordance with its terms and shall not be deemed otherwise amended. Customer shall pay the reasonable costs arising in connection with the relocation(s) of the System, including removal costs, installation costs, any applicable interconnection fees, costs related to obtaining a site license or lease at the substitute site, other costs of deployment at the substitute Site, and amounts lost that would otherwise be payable under this Agreement due to such relocation(s) to Provider based on delivered Energy averaged over the prior twelve months for the System.

10.2.2 Move and Pay Option. So long as such event does not impair or reduce any Environmental Attributes or Environmental Financial Incentives, Customer may elect to pay or guarantee the payment of the remaining monthly amounts due under this Agreement to Provider, and cause the System to be kept in operation at the Site, in each case through the remainder of the Term.

10.2.3 Termination and Payment of Termination Value. If, beginning in the sixth year following the Commercial Operation Date, a substitute Site cannot be located in accordance with Section 10.2.1 with respect to the System and Customer elects not to avail itself of the provisions of Section 10.2.2 with respect to the System, then Customer shall so notify Provider, Provider shall remove the System (at Customer’s sole cost and expense) and Customer shall pay to Provider the then-applicable Termination Value specified in Column A of Schedule D

as liquidated damages, whereupon this Agreement shall terminate. The Parties agree that actual damages to Provider if this Agreement is terminated as contemplated in this Section 10.2 would be difficult to ascertain, and the applicable Termination Value is a reasonable approximation of the damages suffered by Provider as a result of early termination of this Agreement.

### 10.3 Customer Options Upon Expiration of Term.

10.3.1 Extension of Term. Upon prior written notice to Provider at least one-hundred eighty (180) days prior to the Expiration Date, Customer has the option to renew the term of this Agreement with respect to the System and Solar Services for one (1) additional three (3)-year period at the Renewal Rate.

10.3.2 Purchase of System. If Customer has not elected to renew the term of this Agreement in accordance with Section 10.3.1, Customer may purchase the System by providing Provider written notice of its intent to purchase the System no later than one-hundred and eighty (180) days prior to the Expiration Date, and paying Provider the Fair Market Value thereof no later than the relevant Expiration Date. The “Fair Market Value” of the System shall be the value determined by the mutual agreement of Customer and Provider within ten (10) days after receipt by Provider of Customer’s notice of its election to purchase the System. If Customer and Provider cannot mutually agree to a Fair Market Value, then the Parties shall jointly select a nationally recognized independent appraiser with whom the parties have discussed methods and assumptions, with experience and expertise in the solar photovoltaic industry to value such equipment. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding on the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. To the extent transferable, the remaining period, if any, on all warranties for the System will be transferred from Provider to Customer. If the Parties are unable to agree on the selection of an appraiser, such appraiser shall be jointly selected by the appraiser firm proposed by the Customer and the appraiser firm proposed by the Provider. Upon receipt by Provider of payment of the Fair Market Value, title to the System as well as available Environmental Attributes and Environmental Financial Incentives from the System shall transfer to Customer as-is, where-is.

10.3.3 Return of System. If at the end of a Term, or an Extension of Term pursuant to Section 10.3.1, Customer does not exercise any of the options described in Sections 10.3.1 and 10.3.2, Provider shall remove all of its tangible property comprising the System from the Site by a mutually convenient date but in no case later than one hundred eighty (180) days after the Expiration Date with respect to the System. The cost to remove the System shall be borne by the Provider. The portion of the Site on which the System was installed shall be returned to its original condition, except for ordinary wear and tear, and Provider shall leave the portion of the Site on which the System was installed in neat and clean order.

### 10.4 Customer Purchase Options Prior to Expiration Date.

10.4.1 On the later to occur of the sixth (6th) anniversary of the Commercial Operation Date, provided that no Customer Default shall have occurred and be continuing beyond any applicable period of cure, Customer may elect to purchase all, but not less than all, of the System. If Customer elects to so purchase the System,

the purchase price shall be the higher of the then Fair Market Value of the System (calculated in accordance with the definition of Fair Market Value set forth in Section 10.3.2 for the System, and such determination to be at Customer's sole cost and expense), or the then-current Termination Value specified in Column A of Schedule D. Not less than one-hundred-and-eighty (180) days prior to the exercise of the purchase option for the System, Customer shall provide written notice to Provider of Customer's exercise thereof. Upon the exercise of the foregoing purchase option plus receipt of the Value as determined in Section 10.4 above and all other amounts then owing by Customer to Provider, the Parties will execute all documents necessary to cause title to the System to pass to Customer as-is, where-is; provided, however, that Provider shall remove any encumbrances placed on the System by Provider at Customer's expense.

10.4.2 On the later to occur of the fifteenth (15th) anniversary of the Commercial Operation Date, provided that no Customer Default shall have occurred and be continuing beyond any applicable period of cure, Customer may elect to purchase the System. If Customer elects to so purchase the System, the purchase price shall be the higher of the then Fair Market Value of the System (calculated in accordance with the definition of "Fair Market Value" set forth in Section 10.3.2 for the System, and such determination to be at Customer's sole cost and expense), and the amount specified in Column A of Schedule D. Not less than one-hundred-and-eighty (180) days prior to the exercise of the purchase option for the System, Customer shall provide written notice to Provider of Customer's exercise thereof. Upon the exercise of the foregoing purchase option plus receipt of the Fair Market Value and all other amounts then owing by Customer to Provider, the Parties will execute all documents necessary to cause title to the System to pass to Customer as-is, where-is; provided, however, that Provider shall remove any encumbrances placed on the System by Provider at Customer's expense.

#### 10.5 Payment of Termination Value on Termination Date.

In the event that the Termination Date has occurred for reasons other than pursuant to Sections 3.1.2., 10.6 or 12.1.1, Customer shall be required to pay to Provider the then-applicable Termination Value specified in Column A of Schedule D as liquidated damages. The Parties agree that actual damages to Provider in the event this Agreement terminates prior to the expiration of the Term for causes attributable to Customer would be difficult to ascertain, and the applicable Termination Value is a reasonable approximation of the damages suffered by Provider as a result of early termination of this Agreement.

#### 10.6 Provider Termination.

Provider shall have the right, in Provider's sole and absolute discretion, to terminate this Agreement upon written notice if any of the following occurs:

10.6.1 at any time until construction of the System commences Provider determines in its sole discretion that it is unable to install the System at the Site;

10.6.2 if the occurrence of an unstayed order of a court or administrative agency has the effect of subjecting the sales of the Energy to federal or state regulation of the prices therefor and/or the delivery of the service;

10.6.3 the elimination or alteration of one or more Environmental Financial Incentives or other change in law that results in a material adverse economic impact on Provider;  
or

10.6.4 if the annual direct beam solar resource availability at the Site is less than or equal to 90% of historical averages as measured by long-term weather data (minimum of five (5) years) collected at the Site and/or other reliable calibrated and appropriate weather station representative of the Site.

In the event of a Provider termination under this Section 10.6, Provider shall remove all of its tangible property comprising the System from the Site by a mutually convenient date but in no case later than one hundred eighty (180) days after the Termination Date. The cost to remove the System shall be borne by the Provider. The portion of the Site on which the System was installed shall be returned to its original condition, except for ordinary wear and tear, and Provider shall leave the portion of the Site on which the System was installed in neat and clean order.

## 11. Defaults.

### 11.1 Customer Default.

The occurrence at any time of any of the following events shall constitute a “Customer Default”:

11.1.1 Failure to Pay. The failure of Customer to pay during the Term any amounts owing to Provider on or before the date on which such amounts are due and payable under the terms of this Agreement and Customer’s failure to cure such failure within fifteen (15) days after Customer receives written notice of each such failure from Provider;

11.1.2 Failure to Maintain Phone/Data Line. Unless due to a Force Majeure Event excused by Section 9, the failure of Customer to maintain and grant Provider access to the phone and other communications lines required to be maintained pursuant to Section 4.1.3 and Customer’s failure to cure such failure within twenty (20) business days after Customer receives written notice of such failure from Provider; provided that in any event if such failure shall continue for at least five (5) days after notice to Customer and shall result in lost revenue to Provider, Provider shall be entitled to reasonably estimate the amount of revenue that would have been obtained and shall invoice Customer therefor;

11.1.3 Failure to Perform Other Obligations. Unless due to (i) a Force Majeure Event excused by Section 9, or (ii) a breach of paragraph 2 of Section 2 (License), the failure of Customer to perform or cause to be performed any other material obligation required to be performed by Customer under this Agreement, or the failure of any representation, covenant, or warranty set forth herein to be true and correct as and when made; provided, however, that if such failure by its nature can be cured, then Customer shall have a period of thirty (30) business

days after receipt of written notice from Provider of such failure to Customer to cure the same and a Customer Default shall not be deemed to exist during such period; provided, further, that if Customer commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for one hundred twenty (120) additional days;

11.1.4 Bankruptcy, Etc. (a) Customer admits in writing its inability to pay its debts generally as they become due; (b) Customer files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof; (c) Customer makes an assignment for the benefit of creditors; (d) Customer consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Customer has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Customer's assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Customer's assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control; or

11.1.5 Failure of Site Access. A breach by Customer of the License occurs and Customer fails to cure such breach within five (5) days after Customer receives written notice of such breach from Provider.

## 11.2 Provider Default.

The occurrence at any time of the following event shall constitute a "Provider Default":

11.2.1 Failure to Perform Obligations. Unless due to a Force Majeure Event excused by Section 9, the failure of Provider to perform or cause to be performed any obligation required to be performed by Provider under this Agreement or the failure of any representation and warranty set forth herein to be true and correct as and when made; provided, however, that if such failure by its nature can be cured, then Provider shall have a period of thirty (30) business days after receipt of written notice from Customer of such failure to Provider to cure the same and a Provider Default shall not be deemed to exist during such period; provided, further, that if Provider commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for one-hundred twenty (120) additional days; or

11.2.2 Bankruptcy, Etc. (a) Provider admits in writing its inability to pay its debts generally as they become due; (b) Provider files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof; (c) Provider makes an assignment for the benefit of creditors; (d) Provider consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Provider has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; (f) a

court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Provider's assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Provider's assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control.

## 12. Remedies Following Default.

### 12.1 Customer's Remedies Upon Occurrence of a Provider Default.

12.1.1 Termination. If a Provider Default has occurred and is continuing, then Customer may terminate this Agreement by providing written notice to Provider thereof, and this Agreement shall terminate and be of no further force or effect as of the date of the notice according to Section 14.1.

12.1.2 Other Rights and Remedies. If any Provider Default described under Section 11.2 has occurred and Customer has terminated this Agreement as a result thereof in accordance with the terms of Section 12.1.1 above, then, subject to Section 12.3, Provider shall pay to Customer an amount not to exceed the then-present value (discounted at the prevailing prime rate of interest as published in *The Wall Street Journal* on the day preceding the date of determination) of (a) the cash flows equal to the product of (i) the positive difference, if any, of the price per kWh for commercially available, utility-provided energy in the applicable market(s) (which shall not include related charges such as delivery, service, distribution, or taxes) minus the kWh Rate of Energy hereunder (as such kWh Rate would have been escalated over time pursuant to the terms hereof) hereof, multiplied by (ii) the number of days remaining in the term of this Agreement had it not been terminated times the expected daily number of kWh of Energy to be delivered under this Agreement, calculated by dividing the Estimated Year 1 Production set forth in Schedule B, adjusted for as-built System, by 365. Provider's payment to Customer of the amounts set forth in this Section 12.1.2 shall not in any way limit the other remedies at law or in equity that Customer may pursue as damages for Provider's breach of this Agreement; provided, however, that such damages pursued by Customer are subject to the limitation provisions of Sections 12.3 and 12.5.

### 12.2 Provider's Remedies Upon Customer Default.

In addition to any other remedies available under this Agreement or at law, if a Customer Default has occurred and is continuing, then Provider may terminate this Agreement by providing written notice to Customer thereof, and this Agreement shall terminate and be of no further force or effect as of the date of the notice according to Section 14.1 and Provider shall have the right to (a) cause Customer to pay (and Customer shall have the obligation to pay to Provider) the applicable Termination Value set forth in Column A of Schedule D and (b) enter onto the Site and remove the System in accordance with the last sentence of Section 10.2.3.

12.3 No Consequential Damages.

Nothing in this Agreement is intended to cause either Party to be, and neither Party shall be, liable to the other Party for any lost business, lost profits or revenues from others or other special or consequential damages, all claims for which are hereby irrevocably waived by Customer and Provider. Notwithstanding the foregoing, none of the payments for the Energy or any other amount specified as payable by Customer to Provider under the terms of this Agreement upon the termination of this Agreement shall be deemed consequential damages

12.4 Effect of Termination of Agreement.

Upon the Termination Date or the Expiration Date, as applicable, any amounts then owing by a Party to the other Party shall become immediately due and payable and the then future obligations of Customer and Provider under this Agreement shall be terminated (other than the indemnity obligations set forth in Section 13). Such termination shall not relieve either Party from obligations accrued prior to the effective date of termination or expiration.

12.5 Limitation of Liability.

THE TOTAL LIABILITY OF A PARTY TO THE OTHER PARTY FOR ALL CLAIMS OR SUITS OF ANY KIND, WHETHER BASED UPON THIS AGREEMENT, TORT (INCLUDING NEGLIGENCE BUT EXCLUDING THIRD PARTY TORT CLAIMS FOR PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM THE PERFORMANCE OF THIS AGREEMENT), WARRANTY, STRICT LIABILITY OR OTHERWISE, FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES OF ANY KIND WHATSOEVER ARISING OUT OF, RESULTING FROM OR RELATED TO THE PERFORMANCE OR BREACH OF THIS AGREEMENT SHALL, UNDER NO CIRCUMSTANCES, EXCEED \$890,823, PROVIDED THAT THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (A) LIABILITY FOR FRAUD OR WILLFUL MISCONDUCT OF ANY PERSON; (B) LIABILITY UNDER THE INDEMNIFICATION PROVISIONS OF THIS AGREEMENT FOR CLAIMS OF THIRD PARTIES FOR PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM THIS AGREEMENT; OR (C) PAYMENT OF THE KWH RATE. THE LIMITATION OF LIABILITY PROVIDED FOR HEREIN SHALL NOT BE USED TO LIMIT OR REDUCE ANY AVAILABLE INSURANCE.

13. Indemnification.

13.1 Indemnification by Provider.

Provider shall fully indemnify, save harmless and defend Customer from and against any and all costs, claims, and expenses incurred by Customer in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (a) the negligence or willful misconduct of Provider or its agents or employees or others under Provider's control in performing this Agreement, and



(b) a Provider Default under this Agreement; provided, however, that nothing in this Section 13.1 is intended to modify the limitation of Provider's liability set forth in Section 12.3 above; provided further that to the extent Customer recovers such damages, losses and expenses under any insurance policy, Customer shall reimburse any payment made by Provider under this indemnity.

13.2 Indemnification by Customer.

Without limiting the provisions of Section 8, Customer shall fully indemnify, save harmless and defend Provider or its assignees and successors from and against any and all costs, claims, and expenses incurred by Provider in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (a) the negligence or willful misconduct of Customer or its agents or employees or others under Customer's control at the Site or (b) a Customer Default hereunder; provided, however, that nothing in this Section 13.2 is intended to modify the limitation of Customer's liability set forth in Section 12.3 above; provided further that to the extent Provider recovers such damages, losses and expenses under any insurance policy, Provider shall reimburse any payment made by Customer under this indemnity.

13.3 Notice of Claims.

Any Party seeking indemnification hereunder (the "Indemnified Party") shall deliver to the other Party (the "Indemnifying Party") a notice describing the facts underlying its indemnification claim and the amount of such claim (each such notice a "Claim Notice"). Such Claim Notice shall be delivered promptly to the Indemnifying Party after the Indemnified Party receives notice that an action at law or a suit in equity has commenced; provided, however, that failure to deliver the Claim Notice as aforesaid shall not relieve the Indemnifying Party of its obligations under this Section 13, except to the extent that such Indemnifying Party has been prejudiced by such failure.

13.4 Defense of Action.

If requested by an Indemnified Party, the Indemnifying Party shall assume on behalf of the Indemnified Party, and conduct with due diligence and in good faith, the defense of such Indemnified Party with counsel reasonably satisfactory to the Indemnified Party; provided, however, that if the Indemnifying Party is a defendant in any such action and the Indemnified Party believes that there may be legal defenses available to it that are inconsistent with those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to participate in its defense of such action at the Indemnifying Party's expense. If any claim, action, proceeding or investigation arises as to which the indemnity provided for in this Section 13 applies, and the Indemnifying Party fails to assume the defense of such claim, action, proceeding or investigation after having been requested to do so by the Indemnified Party, then the Indemnified Party may, at the Indemnifying Party's expense, contest or, with the prior written consent

of the Indemnifying Party, which consent shall not be unreasonably withheld, settle such claim, action, proceeding or investigation. All costs and expenses incurred by the Indemnified Party in connection with any such contest or settlement shall be paid upon demand by the Indemnifying Party.

13.5 Survival of Provisions.

The provisions of this Section 13 shall survive the expiration or termination of this Agreement.

14. Miscellaneous Provisions.

14.1 Notices.

All notices, communications and waivers under this Agreement shall be in writing and shall be (a) delivered in person or (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested or (c) sent by reputable overnight express courier, addressed in each case to the addresses set forth below, or to any other address either of the parties to this Agreement shall designate in a written notice to the other Party:

If to Provider:

Solar Star Co Co 1, LLC  
c/o SunPower Corporation  
1414 Harbour Way South, Suite 1901  
Richmond, CA 94804  
Attention: Julie Williamson, Project Administration  
Phone:510-540-0550  
Fax:510-540-0552

If to Customer:

Contra Costa County Public Works Dept.  
Capital Projects Management Division  
Attn: Energy Manager  
40 Muir Road  
Martinez, CA 94553 Phone: 925-313-2000  
Fax: 925-313-2333

All notices sent pursuant to the terms of this Section 14.1 shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by reputable overnight, express courier, then on the next business day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third (3rd) business day following the day sent or when actually received.

14.2 Authority.

14.2.1 Provider Representations. Provider hereby represents and warrants that:

- (a) It is a Delaware limited liability company duly organized, validly existing and in good standing under the laws of the state of its formation and has all requisite limited liability company power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (b) The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary limited liability company action;
- (c) This Agreement is a legal, valid and binding obligation of Provider enforceable against Provider in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law);
- (d) To the best knowledge of Provider, as of the date of execution hereof, no governmental approval (other than any governmental approvals that have been previously obtained or disclosed in writing to Customer) is required in connection with the due authorization, execution and delivery of this Agreement by Provider or the performance by Provider of its obligations hereunder which Provider has reason to believe that it will be unable to obtain in due course on or before the date required for Provider to perform such obligations; and
- (e) Neither the execution and delivery of this Agreement by Provider nor compliance by Provider with any of the terms and provisions hereof (i) conflicts with, breaches or contravenes the provisions of the articles of formation or operating agreement of Provider or any contractual obligation of Provider or (ii) results in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default under any material contractual obligation of Provider.

14.2.2 Customer Representations. Customer hereby represents and warrants that:

- (a) It is a political subdivision of the State of California, validly existing and in good standing under the laws of the state of its formation and has all requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (b) The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary governmental action;
- (c) This Agreement is a legal, valid and binding obligation of Customer enforceable against Customer in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law);
- (d) No governmental approval (other than any governmental approvals which have been previously obtained or disclosed in writing to Provider) is required in connection with the due authorization, execution and delivery of this Agreement by Customer or the performance by Customer of its obligations hereunder which Customer has reason to believe that it will be unable to obtain in due course;
- (e) Neither the execution and delivery of this Agreement by Customer nor compliance by Customer with any of the terms and provisions of this Agreement results in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default under any contractual obligation of Customer;
- (f) Customer has not entered into any contracts or agreements with any other person regarding the provision of the services at the Site contemplated to be provided by Provider under this Agreement; and
- (g) None of the electricity to be generated by the Provider will be used to generate energy for the purpose of heating a swimming pool.

### 14.3 Assignment

#### 14.3.1 Provider Assignment.

Provider may assign this Agreement upon written notice thereof to Customer, provided that any such assignment shall be to an assignee capable of performing Provider's obligations hereunder. Provider may, without any consent of Customer, sell, transfer, assign or pledge (or grant security interests in) its rights, title and interest in this Agreement, and/or any monies due under this Agreement to a Financing Party, in connection with any financing for the ownership, acquisition, construction, operation or use of the System.

#### 14.3.2 Customer Assignment.

Customer shall not assign all or any part of this Agreement to any entity other than an affiliate of Customer without the prior written consent of the Provider, which shall not be unreasonably withheld. Customer may not assign this Agreement to any Person, including an affiliate, with a credit rating lower than that of Customer without providing matching credit support in the form of cash, letter(s) of credit, or other security reasonably acceptable to Provider. Any assignment by the Customer not permitted under this Section 14.3 shall be void ab initio. In the event that Customer decides to sell or otherwise transfer the Site or a portion thereof upon which the System is located, Customer may (i) with Provider's prior written consent, which will not be unreasonably withheld or delayed, assign this Agreement to the Site purchaser who shall assume all of Customer's obligations under this Agreement and Provider shall release Customer from any further liability associated with this Agreement, or (ii) terminate this Agreement by paying Provider the Termination Value applicable to the date of termination. Upon payment of the Termination Value, the Parties will execute all documents necessary to cause title to the System to pass to Customer as-is, where-is. The Customer does not have the present intention of making any transfer of the Site or that portion of the Site on which the System is located; provided, however, nothing herein shall prohibit Customer from making any transfer of the Site or any portion thereof on which System is located, subject to the provisions set forth above.

#### 14.4 Successors and Assigns.

The rights, powers and remedies of each Party shall inure to the benefit of such party and its successors and permitted assigns.

#### 14.5 Entire Agreement.

This Agreement (including all exhibits and schedules attached hereto) represent the entire agreement between the parties to this Agreement with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous oral and prior written agreements.

14.6 Amendments to Agreement.

This Agreement shall not be amended, modified or supplemented without the written agreement of Provider and Customer at the time of such amendment, modification or supplement.

14.7 Waivers; Approvals.

No waiver of any provision of this Agreement shall be effective unless set forth in writing signed by the Party making such waiver, and any such waiver shall be effective only to the extent it is set forth in such writing. Failure by a Party to insist upon full and prompt performance of any provision of this Agreement, or to take action in the event of any breach of any such provisions or upon the occurrence of any Provider Default or Customer Default, as applicable, shall not constitute a waiver of any rights of such Party, and, subject to the notice requirements of this Agreement, such Party may at any time after such failure exercise all rights and remedies available under this Agreement with respect to such Provider Default or Customer Default. Receipt by a Party of any instrument or document shall not constitute or be deemed to be an approval of such instrument or document. Any approvals required under this Agreement must be in writing, signed by the Party whose approval is being sought.

14.8 Partial Invalidity.

In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of Applicable Law, Provider and Customer shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Agreement (and in the event that Provider and Customer cannot agree then such provisions shall be severed from this Agreement) and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected by such adjustment and shall remain in full force and effect.

14.9 Execution in Counterparts.

This Agreement may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same Agreement.

14.10 Governing Law; Jurisdiction; Forum.

This Agreement shall be governed by and construed in accordance with the internal laws of the State of California. Customer irrevocably agrees that any action, suit or proceeding by or among Provider and Customer may be brought in whichever of the Superior Courts of the State of California, Alameda County, or the Federal Court for the Northern District of California, has subject matter jurisdiction over the dispute and waives any objection that Customer may now or hereafter have regarding the choice of forum whether on personal jurisdiction, venue, forum non conveniens or on any other ground. Customer irrevocably consents to the service

of process outside of the territorial jurisdiction of such courts by mailing copies thereof by registered or certified mail, postage prepaid, to Customer's address set forth herein with the same effect as if Customer were a resident of the State of California and had been lawfully served in such state. Nothing in this Agreement shall affect the right to service of process in any other manner permitted by law.

14.11 Attorneys' Fees.

If any action shall be instituted between Customer and Provider in connection with this Agreement, the Party prevailing in such action shall be entitled to recover from the other Party all of its reasonable costs and expenses incurred in connection with such action by arbitration or other legal proceeding, including reasonable attorneys' fees.

14.12 No Third Party Rights.

This Agreement is only for the benefit of the parties to this Agreement, their successors and permitted assigns (including any lender or lessor of Provider) and Persons expressly benefited by the indemnity provisions of this Agreement. No other Person (including, without limitation, tenants of the Site) shall be entitled to rely on any matter set forth in, or shall have any rights on account of the performance or non-performance by any Party of its obligations under, this Agreement.

14.13 Treatment of Additional Amounts.

The Parties hereto acknowledge and agree that Customer's payment of the Termination Value constitute liquidated damages and not penalties. The Parties further acknowledge that in the case of the payment of the Termination Value: (a) the amount of loss or damages likely to be incurred is incapable or is difficult to precisely estimate, (b) the amounts specified hereunder bear a reasonable proportion and are not plainly or grossly disproportionate to the probable loss likely to be incurred by Customer or Provider as the case may be and (c) the Parties are sophisticated business parties and have been represented by legal counsel and negotiated this Agreement at arm's length.

14.14 No Agency.

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

14.15 No Public Utility.

Nothing contained in this Agreement shall be construed as an intent by Provider to dedicate its property to public use or subject itself to regulation as a “public utility” (as defined in the California Public Utilities Code or any other Applicable Law).

14.16 No Recourse to Affiliates.

This Agreement is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party.

14.17 Cooperation with Financing.

Customer acknowledges that Provider may be financing the Solar Services and the System and Customer agrees that it shall reasonably cooperate with Provider and its financing parties in connection with such financing, including (a) the furnishing of information related to the System and this Agreement, and (b) the giving of a Financing Party acknowledgment in the form attached hereto as Exhibit B (each, a “Consent”); provided, that the foregoing undertaking shall not obligate Customer to materially change any rights or benefits, or materially increase any burdens, liabilities or obligations of Customer, under this Agreement except for providing notices and additional cure periods to a Financing Party with respect to events of default by Provider under this Agreement pursuant to the terms of the Consent.

14.18 Setoff.

Except as otherwise set forth herein, each Party reserves to itself all rights, setoffs, counterclaims and other remedies and/or defenses to which it is or may be entitled, arising from or out of this Agreement.

14.19 Service Contract.

The Parties intend this Agreement to be treated as a service contract within the meaning of Section 7701(e)(3) of the Code.

15. Confidential Information.

15.1 Each Party (the “Receiving Party”) shall not use for any purpose other than performing its obligations under this Agreement, or divulge, disclose, produce, publish, or permit access to, without the prior written consent of the other Party (the “Disclosing Party”), any Confidential Information of the Disclosing Party. As used herein, the term “Confidential Information” means information or materials prepared in connection with this Agreement, designs, drawings, specifications, techniques, models, data, documentation, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans, customer, supplier or personnel names and other information related to customers,



suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets. Confidential Information does not include (a) information known to the Receiving Party prior to obtaining the same from the Disclosing Party; (b) information in the public domain at the time of disclosure by the Receiving Party; or (c) information obtained by the Receiving Party from a third party who did not receive same, directly or indirectly, from the Disclosing Party. The Receiving Party shall use the higher of the standard of care that the Receiving Party uses to preserve its own Confidential Information or a reasonable standard of care to prevent unauthorized use or disclosure of such Confidential Information. Notwithstanding anything herein to the contrary, the Receiving Party has the right to disclose Confidential Information without the prior written consent of the Disclosing Party: (i) as required by any court or other Governmental Authority, or by any stock exchange on which the shares of any Party are listed, (ii) as otherwise required by law, (iii) as advisable or required in connection with any government or regulatory filings, including without limitation, filings with any regulating authorities covering the relevant financial markets, (iv) to its attorneys, accountants, financial advisors or other agents, in each case bound by confidentiality obligations, (v) to banks, investors and other financing sources and their advisors, in each case bound by confidentiality obligations; or (vi) in connection with an actual or prospective merger or acquisition or similar transaction where the party receiving the Confidential Information is bound by confidentiality obligations. If a Receiving Party believes that it will be compelled by the law or a court or other Governmental Authority to disclose Confidential Information of the Disclosing Party, it shall give the Disclosing Party prompt written notice, and in all cases not less than five (5) business days' notice in advance of disclosure, so that the Disclosing Party may determine whether to take steps to oppose such disclosure.

16. Estoppel Certificate.

Either Party hereto, without charge, at any time and from time to time, within twenty (20) days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other relevant person, firm or corporation specified by such requesting party:

- a) If true and correct, that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;
- b) Whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and
- c) Such other information as may be reasonably requested by a Party hereto.

Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the date set forth above.

PROVIDER:

SOLAR STAR CO CO 1, LLC

By: SunPower AssetCo, LLC  
Its member

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

CUSTOMER:

CONTRA COSTA COUNTY

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

## EXHIBIT A

### SYSTEM DESIGN AND CONSTRUCTION

This Exhibit A sets forth the design, engineering and construction specifications for the System, as well as assumptions being made by the Provider regarding the existing condition at the Site, including but not limited to the building roof, building structure, ground conditions, electrical system including panels, inverter installation location, and security fencing. Capitalized terms used herein and not otherwise defined have the meaning given in the Agreement to which this exhibit is attached.

#### 1. SYSTEM LOCATION AND DESCRIPTION:

Descriptions of the site and system are located in Schedule A (Description of Site) and Schedule B (Description of System) of the Agreement.

#### 2. PROJECT SCHEDULE:

##### PORTFOLIO MILESTONES

	Tranche	Contract Approval Date	Commercial Operation Date
1000 Ward	1	6-18-2019	6/24/2020
30/40 Muir	1	6-18-2019	5/24/2020
597 Center	1	6-18-2019	6/13/2020
595 Center	2	6-18-2019	10/26/2020
50 Douglas	2	6-18-2019	9/22/2020
30 Douglas	2	6-18-2019	10/30/2020
2530 Arnold	3	6-18-2019	12/14/2020
4545 Delta Fair	3	6-18-2019	12/21/2020
4549 Delta Fair	3	6-18-2019	11/24/2020
1305 MacDonald	3	6-18-2019	12/21/2020

#### 3. SCOPE OF WORK:

##### *System Design & Scope*

##### *Design Documentation*

Provider shall provide comprehensive submittal packages for the 30% and 90% design sets as detailed below. Changes to 30% Customer approved drawings (scope lock) could result a change order. At a minimum, each submittal package shall include the elements required to convey in sufficient detail the following for each phase of the design:

	<b>Submittal Requirement</b>	<b>30% Design Set</b>	<b>90% Design Set</b>
1	Cover Sheet, with Content, Project Details, Directory, etc.	X	X
2	PV System Sizes & Production Estimates.	X	X
3	Overall Site Plan with PV Array Names, Conduit Routes, Tree/Light Removal, etc.	X	X
4	Electrical Site Plan Drawings & General Conduit Routing.	X	X
5	Electrical Single Line Diagrams.	X	X
6	Demolition Plans.		X
7	Structural Drawings.		X
8	Equipment Pad locations.	X	X
9	Mounting Details.		X
10	Signage, Trenching, Installation, and Grounding Details.		X
11	Monitoring System Details.		X
13	Construction Schedule.	Prelim	Detailed
14	Manufacturer's Cut Sheets with Equipment Specifications		X
15	Civil Drawings (if applicable)		X
16	Fire Access Plans		X
17	Carport Lighting Plans		X

Production modeling of the PV system shall accurately simulate energy production for proposed system layouts, sizes, and orientation. Provider shall be responsible for updating the production models each time significant changes are made to the proposed system designs that will impact production.

### ***Solar Electrical Equipment and Conductors***

Conductors will be aluminum or copper according to Electrical Engineer of Record's determination. AC feeder length from panel boards to equipment pad location and from equipment pad location to electrical tie-in is identified on the array layout drawings. AC feeder lengths from electrical equipment pad location to assumed point of interconnection, and length assumptions with equipment amperage ratings are shown on the single line drawing.

Transformers are 480V:12kV, non-Dry-type by manufacturer of Provider's choosing. Secondary containment is not included in the scope of the project.

### ***Battery Energy Storage System Requirements***

For sites with storage to be installed:

- 13.5' by 11' minimum required area per storage unit. Area required includes storage unit, concrete pad, and clearance zone in front of units.
- Storage unit must be located in an area free of combustible materials (nearby foliage and trees would need to be removed).
- Storage unit must be separated from public foot traffic with a fence and must be separated from vehicle traffic with bollards.
- Crane rental required to land up to 24,500 lb units. Location of units must accommodate both crane and semi-trailer truck access.
- PVS5 DAS, Auxiliary Box, Energy Storage System, and all Accuvim meters (Site meter, PV output meter, and Storage meter) must all be located such that hardlined communication lines can connect these devices to the same Local Area Network. CAT5e/6 cable is preferred means of connection between all devices, which has a 330' distance limit. Runs longer than 330' will require additional equipment to accommodate.

### ***Utility Interconnection***

Coordination of shutdown may be required with Customer and local utility. Temporary power generators are excluded. Interconnection is scheduled for a minimum of 4 hours and is assumed to be performed during off-hours with prior written approval from Customer. Additional shutdowns will be required in order to assess physical condition of Customer's switchgear.

The utility will have 24/7 access to existing electric utility meters and the utility lockable disconnect locations for all electrical interconnections related to this project.

### ***Utility Requirements***

A cost of \$172,012.58 is included for utility required electrical upgrades for the System at 30 Douglas Dr., Martinez, CA, as reflected in Pacific Gas & Electric's Supplemental Review, Notification # 114209530; additional utility-required electrical equipment upgrades or replacements are not included.

Any costs and / or schedule delays associated with unforeseen utility interconnection requirements, including but not limited to utility-owned equipment upgrades or additions, relay protection equipment external to the inverters, system impact studies, or telemetry requirements and interconnection studies are not included in this proposal.

### ***Facility Equipment***

Utility required circuit breaker coordination studies are not assumed for this project.

A short-circuit coordination study is not included for this project.

Solar system includes all standard interconnection related equipment on the Customer side of the meter, including panel circuit breakers, utility and/or visible utility lockable disconnect switches, solar metering, conduit, and wiring. Additional Customer-side protection required by the utilities above that provided by the certified inverters is not included.

If harmonic data of the site is not available, Provider shall assume that the Harmonic data are within the acceptable limits of the Institute for Electrical and Electronics Engineers (IEEE) Standard 519.

***Soils and Structural Foundations***

Foundation assumptions are as follows for system options:

- Drilled cast-in-place, 30” round caisson, 12’ Deep, approximately 2.5’ above grade, depending on existing topography.
- Requirements for dewatering, sub grade rock removal, or other unforeseen conditions are not included.

***Canopy Structure Design***

Carport Canopies are at 10 degree tilt with 11 ft clear height.

***Roof Conditions***

Provider assumes no upgrading of the building structures or canopies will be required to support the added live and dead loads from the photovoltaic installation and rooftop equipment, or to resist added lateral or seismic loads. Modifications to the roof system and design and construction of supports, upgrades to the building structure or platforms are not included.

Anchor and ballast counts are based on the wind load gradient method developed by Cermak Peterka Petersen, Inc, (CPP) and SunPower, based on the CPP wind tunnel testing results presented in CPP’s report “CPP7979\_SunPowerEWSsystem\_REP\_SOL\_R08” dated May 17th, 2018.

Increased anchor and ballast counts resulting from other design methods will be the responsibility of the client.

<b>Site Name</b>	<b>Anchor Count</b>
30 Muir	71
595 center	27
50 Douglas	90
1000 Ward	170
597 Center	33

Provider is not responsible for normal wear and tear associated with the installation of the solar system. Provider reserves the right to inspect the roof to verify its condition. In addition, Provider may offer recommendations to the Customer on modifications to the roof system to improve its serviceability. Customer is responsible for any and all modifications to the roof system. Modifications of roof systems fall into four categories:

- Modifications to improve roof condition / serviceability / useful life.
- Modifications required by roofing manufacturer prior to installation of PV system on their roof system. (e.g. slip sheets, strapping, etc.)
- Modifications required by Provider to make the roof a suitable substrate for the installation of PV. (e.g. air seals, batten bars, etc.)
- 3<sup>rd</sup> party engineering and insurance company requirements.
- Proposal assumes Customer-provided information accurately represents the existing site and roof conditions. This includes but is not limited to as-built drawings, roof reports, structural drawings, roof maintenance history, and roof warranty information. Failure to provide as-built drawings and structural drawings will cause schedule delay and added expense for acquisition of documentation through local authority having jurisdiction (“AHJ”). Provider is not responsible for additional costs or schedule delays.

***Drainage***

Special drainage requirements and/or drainage design and interconnection to Customer’s existing storm drain system or any other storm drain discharge system are not included.

Carport designs do not include structural roof deck for storm water collection or protection.

***Permits***

<b>Permit</b>	<b>Provider Permit</b>	<b>Customer Permit</b>	<b>Cost Allocation</b>	<b>Allotted Time following Application</b>
Building	X			
Fire	X			
Electrical	X			
Conditional Use Permit		NA		
Environmental Control		NA		
Storm Water		NA		
Soil Erosion and Sediment Control		NA		
Environmental Impact Report (CEQA)		NA		
Army Corps of Engineers		NA		
Wetlands		NA		
Water Quality		NA		
Archeological		NA		



Endangered Species		NA		
Water Rights		NA		
Mineral Rights		NA		
Redevelopment Agency		NA		
FAA Approvals		NA		

***Permit Allowance Schedule***

<b>Site</b>	<b>Allowance for Permit</b>
1000 Ward St	\$3,000
30 Douglas Dr	\$10,000
50 Douglas Dr	\$5,000
30/40 Muir Dr	\$5,000
597 Center Ave	\$2,500
595 Center Ave	\$7,000
2530 Arnold Dr	\$6,000
4545 Delta Fair Blvd	\$5,000
4549 Delta Fair Blvd	\$2,500
1305 Macdonald	\$3,000

All other permits/approvals are excluded.

Provider includes durations of 50 days for procuring permit and regulatory approvals (per project ). Provider will not be responsible for construction delays caused by permit and approval requirements from local jurisdictions or regulatory review bodies. Any delays in procuring permits will result in a day-for-day construction schedule extension.

***Shading***

The design is based on existing visual conditions on site. Removal of trees or other obstructions to install the solar arrays and system components is included as reflected in the Tier 1 array layouts. Trees and/or other obstructions identified for removal or trimming by Customer must be removed or trimmed prior to substantial completion or performance expectations/guarantees will require adjustment which will be handled as a change to the contract. At Substantial Completion an as-built shade study and performance simulation will be completed to ensure accuracy of initial shading assumptions.

### ***Painting***

Galvanization of canopy columns and primary beams only is included. All other metallic materials are either factory-finished or non-corrosive.

Painting of wall-mounted conduits is not included.

### ***Landscaping***

Site landscaping (e.g. plant restoration or long term weed abatement) is not included.

Irrigation repair and reconfiguration caused by foundation or underground construction is not included.

### ***Fencing***

A 6-0' galvanized, 9 gauge, 2" mesh fencing and chain link fence-with gate around perimeter electrical equipment pad locations is included. Special provisions for privacy slats, special hardware, lock sets, small fabric, etc. are not included. 4" bollards are included only in areas subject to vehicle impact. Additional bollards required by utility or other entities are excluded.

### ***Labor***

#### ***Project Labor Agreement***

Provider shall cause its project contractor to enter into Customer's project labor agreement among Customer, the project contractor, and all subcontractors thereof working on the project (the "PLA").

#### ***Overtime and special shift requirements***

Overtime and special shift requirements are not included, based on schedule submitted with this proposal, except for the interconnection work if shutdown is required. Project hours are based on Monday through Friday 7am – 5pm.

#### ***Prevailing Wages***

Provider shall pay prevailing wages for the project per the PLA and industrial relations requirements of project location.

#### ***Diversity Requirements***

Provider shall comply with Contra Costa County's Construction Outreach Program.

### ***Indirect Construction Costs***

#### ***Taxes and fees***

Taxes or fees, other than permit fees and sales tax, are not included.

### ***Bonds***

Prior to the Effective Date of the Agreement to which this Exhibit A is attached, Provider shall deliver to Customer for approval good and sufficient bonds with sureties, in amounts specified in Section 12.5 (Limitation of Liability) of the Agreement guaranteeing its faithful performance of the Agreement and its payment for all labor and materials thereunder.

### ***Site & Construction Conditions***

#### ***Access***

Design assumes each project site will be constructed in a single phase, set up of construction fencing at beginning of mobilization and removed when construction is completed. Extra time and labor for moving fences to “phase” construction in efforts to minimize parking impacts will have impacts in cost and schedule and will be calculated as a change order.

Customer will provide Site access to Provider to perform all work pursuant to the License granted in the Agreement. Provider will perform all work during regular business hours according to the PLA. Extra time or personnel constraints due to site security beyond daily signing in by workers on a sign in sheet i.e. badging, background checks, tool inventory checks, etc.—is not included.

Provider will be provided a sufficient area for staging materials and locating temporary facilities such as cranes, fork lifts, scaffolding, staintowers, construction trailers, portable toilets and dumpsters.

Existing roads will be capable of handling all required construction equipment such as drilling rigs, concrete trucks, delivery trucks, cranes, and all other equipment necessary to complete the work. Provider will not be responsible for any damage to existing roads, parking lots or playgrounds resulting from normal construction operations and activities.

#### ***Use of Facilities***

On-site water and power will be available for construction with no restrictions and at no charge to Provider. If a Customer initiated power shut down has duration over 4 hours and effects normal construction operations, Provider can rent and install a temporary generator and submit associated costs to Customer for reimbursement. Water quality shall be sufficient for use in dust control, as necessary, and be suitable for Provider’s standard concrete mix design.

#### ***Special handling of site materials***

Testing for removal and disposal of any existing hazardous waste materials, contaminated soils, or any other unforeseen site conditions that require special handling are not included.

#### ***Site utilities and hazards***

Changes resulting from utilities, right of ways, easements, and/or hazards—underground or above ground—or any undocumented building upgrades are not included.

Documented utilities and building upgrades are considered as part of this proposal if as-builts are provided to Provider prior to contract execution in order to confirm locations of these possible hazards. Customers shall supply Provider with a current Title Report with plotted easements, encumbrances, and rights-of-way at all project site locations.

### ***Security and Lighting***

Proposal assumes all parking lot light standards in direct conflict with installation of photovoltaic parking canopies will be removed by Provider. Proposal also assumes that the existing lighting circuits, for those removed parking lot light standards, can be re-used for photovoltaic parking canopies lighting system and that those existing circuits have ample current carrying capacity to provide required lighting at parking canopies, per jurisdictional code requirements. PV canopies located in areas where no existing lights are present will not include lighting unless the Customer requests this for an additional cost.

Temporary lighting during construction is excluded.

New lighting circuit installation is excluded from this proposal as well as any required timing circuit reconfiguration, lighting controllers, relays, or new panel boards. Lighting design and/or installation beyond the footprint of the photovoltaic parking canopies is not included in this proposal. Replacement of existing light standards is not included. Proposal includes LED fixtures for lighting under structures.

Additional security systems or infrastructure are not included in this proposal

### ***Special Conditions***

Proposal assumes modifications and/or reconfiguration of the existing parking lots will not be required to accommodate installation of Provider's photovoltaic parking canopy.

Assumes existing islands in parking lot to remain at area of new carport structure. Proposal excludes any re-striping of the parking lot/hard-court areas, unless specifically related to the construction of the photovoltaic parking canopies, or specifically described in the RFP.

While special care will be taken to locate existing underground utilities (underground survey) and locate carport structures with minimum conflicts, relocation of existing underground utilities due to carport foundations is not included.

Proposal excludes requirements for accessibility upgrades and accessibility design around the photovoltaic parking canopy structures and assumes that current parking lot layout has been reviewed and approved by AHJ and built and closed at the AHJ. If the architect of record recommends addition of new accessible parking stalls under the solar canopies, grade change to meet code, changed path of travel and/or new canopies over existing accessible stalls, design and construction costs will be addressed via Change Order.

Proposal excludes design or installation of any required additional fire hydrants or fire protection apparatuses as required by local first responders or Fire, Life/Safety professionals responsible for review and approval of the design for this project.

Architectural enhancements to the photovoltaic parking canopy structures or ground and roof arrays and mounting systems are not included.

At the detention center located at 1000 Ward in Martinez, the project estimate is based on utilizing existing conduit and equipment from the previous pv installation. The ability utilize existing conduit will be verified during the design phase.

### ***Testing and Inspections***

Provider assumes all Special Inspections/Testing shall be paid for and contracted by the Customer.

### ***Weather conditions***

Provider assumes standard weather patterns and site conditions for planning the project schedule. Instances of excessive climate, weather (greater than the most adverse conditions in the last 3 years) or natural disasters may result in delays and/or unplanned costs (i.e. additional labor, shipping, storage, and logistics costs) which will be the responsibility of the Customer.

### ***Commissioning, Monitoring, Operations & Maintenance***

#### ***Commissioning***

Proposal assumes commissioning requirements for this project is only for the Photovoltaic and energy storage systems. Proposal does not include other building system commissioning costs not related to our work (i.e. HVAC, Plumbing, Fire Alarm, etc.).

**EXHIBIT B**  
**FORM OF FINANCING PARTY ACKNOWLEDGMENT**

*[This Form of Consent contemplates a Sale-Leaseback of the System between the Provider and Provider's Lender and Provider's eventual lender may request changes]*

This CONSENT AND AGREEMENT (this "Consent") dated as of [●], 201 is entered into among (i) Contra Costa County, a political subdivision of the State of California (the "Customer"), (ii) Solar Star Co Co 1, LLC, a limited liability company duly organized and existing under the laws of the State of Delaware (the "Provider"), and (iii) [●], a [●] duly organized and existing under the laws of the State of [●] (together, with its successors in such capacity, the "System Lessor").

WHEREAS, the Provider intends to develop, install, own, operate and maintain a [\_\_\_\_\_] MW [**ground-mounted/rooftop**] photovoltaic solar electric generating facility to be located in [\_\_\_\_\_] (the "Project");

WHEREAS, the Provider and the Customer entered into that certain Power Purchase & Storage Services Agreement, dated as of [●], 2019 (as amended, amended and restated, modified or supplemented from time to time, the "Assigned Agreement");<sup>1</sup>

WHEREAS, the Project will be sold by the Provider to the System Lessor pursuant to that certain Participation Agreement (as amended, the "Participation Agreement") dated as of the date hereof, among the Provider, the System Lessor, [●], not in its individual capacity but as owner trustee, and [●] ("Owner Participant");

WHEREAS, the System Lessor will lease the Project back to the Provider pursuant to that certain Lease Agreement, a related Project Schedule and a Certificate of Acceptance (as amended, the "Lease Agreement") dated as of the date hereof, between the System Lessor and the Provider;

WHEREAS, the Provider will grant the System Lessor a first priority security interest in and to all of the Provider's assets, including the Assigned Agreement, pursuant to a security agreement in form and substance acceptable to the System Lessor (as amended, amended and restated, modified or supplemented from time to time, the "Security Agreement"); and

WHEREAS, it is a condition precedent to the Owner Participant's obligation to make its investment in the System Lessor and for the System Lessor to acquire the Project under the Participation Agreement and lease the Project to the Provider under the Lease Agreement that the Customer execute and deliver this Consent.

NOW, THEREFORE, as an inducement to the Owner Participant to make its investment in the System Lessor and for the System Lessor to acquire the Project under the Participation Agreement and lease the Project to the Provider under the Lease Agreement, and in consideration

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<sup>1</sup> NTD: Can be expanded to include any additional agreements to which the Customer is a party.

of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

**1. CONSENT TO ASSIGNMENT, ETC.**

(a) Consent to Assignment. The Customer (i) acknowledges that the Provider and the System Lessor have entered into the Participation Agreement and the Owner Participant's obligation to make its investment in the System Lessor and for the System Lessor to acquire the Project under the Participation Agreement and lease the Project to the Provider under the Lease Agreement will be made in reliance upon the execution and delivery by the Customer of the Assigned Agreement and this Consent, (ii) consents in all respects to the pledge and assignment to the System Lessor of all of the Provider's right, title and interest in, to and under the Assigned Agreement pursuant to the Security Agreement, and (iii) acknowledges the right, but not the obligation, of the System Lessor or the System Lessor's designee, in the exercise of the System Lessor's rights and remedies under the Lease Agreement, the Security Agreement, and related documents to make all demands, give all notices, take all actions and exercise all rights of the Provider in accordance with the Assigned Agreement, and agrees that in such event the Customer shall continue to perform its obligations under the Assigned Agreement; provided that in the event, with respect to the Assigned Agreement, there exists a conflict between any notice given or action taken by the System Lessor and any notice given or action taken by the Provider, such conflict shall be resolved in favor of the notice given or the action taken by the System Lessor.

(b) Substitute Owner. The Customer agrees that, if the System Lessor notifies the Customer that an event of default under the Lease Agreement has occurred and is continuing and that the System Lessor has exercised its rights (i) to have itself or its designee substituted for the Provider under the Assigned Agreement, (ii) to acquire or have its designee or assignee acquire the Provider, or (iii) to sell, assign, transfer or otherwise dispose of the Assigned Agreement to a third party, including in a judicial or non-judicial foreclosure sale, then the System Lessor, the System Lessor's designee or such third party (each, a "Substitute Owner") shall be substituted for the Provider under the Assigned Agreement and, in such event, the Customer will (x) recognize the Substitute Owner as its counterparty to the Assigned Agreement, (y) take any actions and execute any documents, agreements or instruments reasonably necessary to effect such substitution, and (z) continue to perform its obligations under the Assigned Agreement in favor of the Substitute Owner pursuant to the terms hereof and thereof.

(c) Right to Cure.

(i) Notwithstanding anything to the contrary contained in the Assigned Agreement, the Customer shall not exercise any right it may have under the Assigned Agreement, at law or in equity, to cancel, suspend or terminate the Assigned Agreement or any of its obligations under the Assigned Agreement, as the result of any default or other action or omission of the Provider in the performance of any of its obligations under the Assigned Agreement, or upon the occurrence or non-occurrence of any event or condition under the Assigned Agreement that would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable the Customer to terminate or suspend its obligations or exercise any other right or remedy under the Assigned Agreement or under applicable law (hereinafter an "Assigned Agreement Default"), until it first gives prompt written notice of such Assigned Agreement

Default to the System Lessor and the Owner Participant and affords the System Lessor and the System Lessor's respective successor, assignee and/or designee a period of at least ninety (90) days (or, if such default is a payment default, forty-five (45) days) to cure such default, commencing from the later to occur of (x) the System Lessor's and the Owner Participant's receipt of such notice, and (y) the expiration of any notice periods or cure periods provided for in the Assigned Agreement; provided, however, that if (1) an event of default under the Lease Agreement has occurred and is continuing, the System Lessor has exercised its rights to foreclose on the Project as a result thereof and possession of the Project is necessary to cure any such non-monetary default, then, so long as the System Lessor or the System Lessor's respective successor, assignee and/or designee is diligently pursuing such foreclosure proceedings, the time periods specified in this Section 1(c) for curing an Assigned Agreement Default shall be extended for the time taken to complete foreclosure proceedings, and (2) any such party is prohibited from curing any such Assigned Agreement Default by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding involving the Provider, then the time periods specified in this Section 1(c) for curing an Assigned Agreement Default shall be extended for the period of such prohibition.

(ii) No such cancellation, suspension or termination of the Assigned Agreement by the Customer shall be binding upon the System Lessor without the notice and extended cure period specified in this Section 1(c). Any dispute that may arise under the Assigned Agreement notwithstanding, the Customer shall continue performance under the Assigned Agreement and resolve any dispute without discontinuing such performance until the lapse of the notice and extended cure period specified in this Section 1(c).

(d) No Termination, Assignment or Material Amendments. The Customer shall not enter into any consensual cancellation or termination of the Assigned Agreement (except with respect to termination in the event of a default by the Provider, subject to the limitations and extended cure periods provided for in Section 1(c)), or assign, novate or otherwise transfer any of its right, title or interest thereunder or consent to any such assignment or transfer by the Provider without, in each such case, the written consent of the System Lessor. The Customer shall not enter into or agree to any amendment, supplement, assignment or other modification to, or benefit from any waiver under, the Assigned Agreement without the prior written consent of the System Lessor.

(e) Replacement Agreement. In the event that the Assigned Agreement is rejected or otherwise terminated as a result of any bankruptcy or insolvency proceeding affecting the Provider, the Customer shall, at the option of the System Lessor or the System Lessor's respective successor, assignee and/or designee, enter into a new agreement with the System Lessor or any Substitute Owner (or its transferee or other nominee that owns or leases the Project) having terms substantially the same as the terms of the Assigned Agreement. Thereafter, references in this Consent to the "Assigned Agreement" shall be deemed to refer to such new agreement.

(f) No Liability. The Customer acknowledges and agrees that none of the System Lessor, or the System Lessor's respective successor, assignee and/or designee or the Owner Participant shall have any liability or obligation under the Assigned Agreement as a result of this Consent, the Security Agreement, the Lease Agreement or otherwise, nor shall the System Lessor or the System Lessor's respective successor, assignee and/or designee be obligated or required to (i) perform any of the Provider's obligations under the Assigned Agreement, except, in the case of



the System Lessor or the System Lessor's respective successor, assignee and/or designee, during any period in which the System Lessor or the System Lessor's respective successor, assignee and/or designee is a Substitute Owner pursuant to Section 1(b), in which case the System Lessor or other Substitute Owner shall not be liable for acts or omissions of the Provider and the obligations of such Substitute Owner shall otherwise be no more than those of the Provider under the Assigned Agreement, or (ii) take any action to collect or enforce any claim for payment assigned under the Security Agreement or any related document.

(g) Delivery of Notices. The Customer shall deliver to the System Lessor and the Owner Participant, concurrently with the delivery thereof to the Provider, a copy of each notice, request or demand given by the Customer pursuant to the Assigned Agreement.

(h) Acknowledgements. The Customer agrees to execute such acknowledgements or other similar instruments as the System Lessor may reasonably request in connection with the transactions contemplated by this Consent.

## **2. PAYMENTS UNDER THE ASSIGNED AGREEMENT**

(a) Payments. The Customer will pay all amounts payable by it under the Assigned Agreement, if any, in lawful money of the United States of America, in immediately available funds and in the manner required by, and subject to the terms and conditions of, the Assigned Agreement, directly into the account specified on Exhibit A hereto, or to such other person or account as may be specified from time to time by the System Lessor to the Customer in writing.

(b) No Offset, etc. All payments required to be made by the Customer under the Assigned Agreement shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever.

## **3. REPRESENTATIONS AND WARRANTIES OF THE CUSTOMER**

The Customer makes the following representations and warranties to the System Lessor, the Provider and the Owner Participant as of the date hereof, which shall survive the execution and delivery of this Consent and the Assigned Agreement and the consummation of the transactions contemplated hereby and thereby:

(a) Organization; Power and Authority. The Customer is a political subdivision of the State of California, and is duly qualified, authorized to do business and in good standing in all jurisdictions where it is required to be so qualified and authorized to do business, and has all requisite power and authority to enter into and to perform its obligations under this Consent and the Assigned Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

(b) Authorization. The execution, delivery and performance by the Customer of this Consent and the Assigned Agreement have been duly authorized by all necessary action on the part of the Customer and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of (i) the Customer, or (ii) any other person or entity, except approvals or consents which have previously been obtained.

(c) Execution and Delivery; Binding Agreements. Each of this Consent and the Assigned Agreement is in full force and effect, has been duly executed and delivered on behalf of the Customer and constitutes the legal, valid and binding obligation of the Customer, enforceable against the Customer in accordance with its terms except as the enforceability hereof or thereof may be limited by (i) bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights generally, and (ii) general equitable principles (whether considered in a proceeding in equity or at law).

(d) Litigation. There is no legislation, litigation, action, suit, proceeding or investigation pending or (to the best of the Customer's knowledge after due inquiry) threatened against the Customer before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate, (i) could adversely affect the performance by the Customer of its obligations under this Consent or the Assigned Agreement, or that could modify or otherwise adversely affect the Approvals (as defined in Section 3(f)), (ii) questions the validity, binding effect or enforceability of this Consent or the Assigned Agreement, any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby, or (iii) could have a material adverse effect upon (x) the value, validity, perfection or enforceability of the liens granted to the System Lessor under the Security Agreement and other security documents, or (y) the ability of the System Lessor to enforce any of its rights and remedies under the Assigned Agreement or this Consent.

(e) No Conflict. The execution and delivery of this Consent and the Assigned Agreement and the performance by the Customer under this Consent and the Assigned Agreement will not violate, result in a breach of, default under or conflict with (i) any law, rule, regulation, order, permit or decree applicable to the Customer, (ii) its organizational documents, or (iii) the terms of any other agreement binding on the Customer.

(f) Government Consent. No consent, order, authorization, waiver, approval or any other action, or registration, declaration or filing with, any person, board or body, public or private (collectively, the "Approvals"), is required to be obtained by the Customer in connection with the execution, delivery or performance of this Consent, the Assigned Agreement or the consummation of the transactions contemplated hereunder and thereunder, except any Approvals which have previously been obtained.

(g) No Default or Amendment. Neither the Customer nor, to the Customer's knowledge after due inquiry, the Provider or any other party to the Assigned Agreement is in default of any of its obligations thereunder (or has claimed force majeure, emergency, or any other excuse for performance thereunder which is still ongoing as of the date hereof). The Customer has no existing counterclaims, offsets, defenses, or claims for change orders against the Provider under the Assigned Agreement. To the Customer's knowledge, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either the Customer or the Provider to terminate or suspend its obligations (or the performance of such obligations) under the Assigned Agreement. The Assigned Agreement has not been amended, modified or supplemented in any manner other than as indicated above.

(h) No Previous Assignments. The Customer has no notice of, and has not consented to, any previous assignment of all or any part of its right, title or interest in, to or under the Assigned Agreement.

(i) **Purchase Option.** The Customer has not taken any official action requiring or authorizing the exercise of any purchase option available to it under the Assigned Agreement, has not decided whether or not it will exercise any such purchase option, and is under no legal or economic compulsion to exercise any such purchase option; provided, however, nothing herein shall prohibit the Customer from exercising any purchase option under the Assigned Agreement when it becomes exercisable in accordance with its term and such exercise shall not be deemed to be a breach of this representation and warranty.]

(j) Liens; Mortgages. The Customer has no knowledge of any existing lease, mortgage, security interest or other interest in or lien upon the [Premises], which could attach to the Project as an interest adverse to the System Lessor's interest therein.

Representations and Warranties. All representations, warranties and other statements made by the Customer in the Assigned Agreement were true and correct in all material respects as of the date when made and, except for those that by their terms speak as of a specific date, are true and correct in all material respects as of the date hereof.

#### **4. ADDITIONAL PROVISIONS<sup>2</sup>**

(a) **Commercial Operation Date.** The Commercial Operation Date is \_\_\_\_\_.

(b) **Use of Electricity.** None of the electricity to be sold under the Assigned Agreement will be used to generate energy for the purpose of heating a swimming pool.

(c) **Project.** The Customer has approved the Project as installed at the [Premises].

(d) **Access Rights.** The System Lessor and the System Lessor's respective successors, assignees and/or designees shall have the same rights as the Provider to access the Project in order to install, operate, maintain and remove the Project as the right accorded to the System Lessor under the Lease Agreement and the Security Agreement.

(e) **Notice of Ownership.** The Customer will use commercially reasonable efforts to place its successors, assigns and lien holders on notice of the ownership of the Project by the Provider or the System Lessor, the existence of the security interest, and the fact that the Project is not part of the [Premises] or a fixture thereof, as necessary and appropriate to avoid confusion or adverse claims.

(f) **Amendments.** The Customer acknowledges that, under the Provider's financing arrangements, the Provider is not permitted to agree to an amendment or assignment of the Assigned Agreement without prior written consent of the System Lessor.]

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<sup>2</sup> NTD: Additional provisions to be added to address specific matters contained in the PPA.

**5. MISCELLANEOUS**

(a) Applicable Law; [Submission to Jurisdiction]. THIS CONSENT, AND ANY INSTRUMENT OR AGREEMENT REQUIRED HEREUNDER (TO THE EXTENT NOT EXPRESSLY PROVIDED FOR THEREIN), SHALL BE GOVERNED BY, AND CONSTRUED UNDER, THE LAWS OF THE STATE OF CALIFORNIA, APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE AND WITHOUT REFERENCE TO CONFLICTS OF LAWS.

(b) [Reserved.]

(c) Notices. All notices and other communications hereunder (i) shall be in writing, (ii) shall be effective upon actual receipt thereof by the party or parties to whom such notice is addressed, except that any communication or notice so transmitted by telecopy or electronic mail shall be deemed to have been validly and effectively given on the day (if a business day and, if not, on the next following business day) on which it is transmitted if transmitted during normal business hours of the recipient, and if transmitted after that time, on the next following business day, in each case as evidenced by transmittal confirmation received by the transmitter, (iii) shall be delivered by hand or overnight courier service or mailed by certified or registered mail, sent by facsimile or via electronic mail, and (iv) shall be directed as follows:

If to the Customer:	[_____] [_____] [_____] Attention: [_____] Telephone: [_____] Facsimile: [_____] Email: [_____]
If to the Provider:	[●]
If to the System Lessor:	[●]

The above parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent.

(d) Amendment, Waiver. Neither this Consent nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the Customer, the Provider and the System Lessor.

(e) Third Party Beneficiary. The Owner Participant shall be an express third-party beneficiary of this Consent. The Owner Participant shall be entitled to enforce the rights of the System Lessor hereunder.

(f) No Waiver; Remedies Cumulative. The waiver of any right, breach or default under this Consent by any party must be made specifically and in writing. No failure or delay on the part of the System Lessor in exercising any right, power or privilege hereunder and no course of dealing between the Customer and the System Lessor shall operate as a waiver thereof; nor shall any single

or partial exercise of any right, power or privilege hereunder preclude any other exercise, or the further exercise, of any other right, power or privilege hereunder. No notice to or demand upon any party will entitle such party to any further, subsequent or other notice or demand in similar or any other circumstances. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies that the System Lessor would otherwise have.

(g) Counterparts. This Consent may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered, including by e-mail or other electronic transmission, shall be deemed an original, but all of which shall together constitute one and the same instrument.

(h) Headings Descriptive. The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

(i) Severability. In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(j) Successors and Assigns. This Consent shall be binding upon the parties hereto and their permitted successors and assigns and shall inure to the benefit of the parties, their designees and their respective permitted successors and assigns; provided, however, that no party or its respective successor or assign shall assign any of its interest in this Consent except in connection with an assignment of its interests in the Assigned Agreement and then only to the same person(s) or entity(ies) to which its interest in the Assigned Agreement is so assigned.

(k) Survival. All agreements, statements, representations and warranties made by the Customer herein shall be considered to have been relied upon by the System Lessor and the Owner Participant and shall survive the execution and delivery of this Consent.

(l) Conflicts. In the event of a conflict between any provision of this Consent and any provision of the Assigned Agreement, the provisions of this Consent shall prevail.

(m) Further Assurances. Each party hereto hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

[SIGNATURE PAGES FOLLOW]

**IN WITNESS WHEREOF**, the parties hereto have caused this Consent to be executed by their respective officers as of the date first above written.

[\_\_\_\_\_]
as the Customer

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

[\_\_\_\_\_]
as the Provider

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

[●],
as the System Lessor

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

**Payment Instructions**

Accounts Bank	
ABA Number	[_____] <sup>3</sup>
Account Number	[_____]
Account Name	[_____]
Reference	[_____]

---

<sup>3</sup> Account information to be confirmed and included.

## EXHIBIT C

### SYSTEM PERFORMANCE GUARANTEE (the “Guarantee”)

#### ARTICLE I. ADDITIONAL DEFINED TERMS

**Actual Generation** means, for each Guarantee Year during the Term and with respect to the System, the System’s alternating current or “AC” electricity production in kilowatt-hours (“kWh”) as measured under Section 3.02.

**Annual Deficit** has the meaning set forth in Section 3.01.

**Annual System Performance Report** means the report that summarizes annual system performance in kWh and includes calculations for Weather Adjustment and True-up Period calculations.

**Avoided Energy Price per kWh** means the amount that the Customer will be paid by Provider for each Kilowatt-hour as set out in Appendix B (Avoided Energy Price) of this Guarantee.

**Data Acquisition System** or **DAS** means Provider’s system that displays historical meteorological and production data over an Internet connection and consists of hardware located on-Site and software housed on Provider’s DAS server. The DAS measures and logs, at a minimum, the following parameters on a 15-minute average basis at the Site: actual AC electricity production of the System (in kWh) and solar irradiance (in W/m<sup>2</sup>).

**Expected Energy** means, for the System in a specified Guarantee Year, the kilowatt hours for the System set forth on Appendix A (Expected Energy) of this Guarantee.

**Excused Performance Event** means:

- Force Majeure Event;
- Impingements on solar access by structures or activities on neighboring sites or by facilities that are beyond the control of either Party;
- Externally caused outages, including:
  - Warranty Exclusions: hours during any period when the System or any portion thereof is off-line due to an event that would constitute an exclusion under any applicable manufacturer’s, System, workmanship or other applicable warranty.
  - Network Disturbance Hours: hours during any period when a fluctuation in the utility network parameters (e.g., a frequency or voltage variation) result in the disconnection of the inverters or the System from the utility network and prevented energy from being evacuated from the System.
  - Network Outage Hours: hours during any period when a failure in the distribution network or in the connection infrastructure prevented energy from being evacuated from the System.
  - Third-Party Equipment Servicing Hours: equipment or System outage hours during any period that result from service issues related to non-Provider equipment or delays in procuring non-Provider replacement parts.



- Customer-Caused Hours: hours during any period when the equipment or the System is off-line due to Customer-required outages or Customer-caused delays in Site access.
- Major Maintenance Hours: hours during any period when the equipment or the System is off-line due to Customer-required major maintenance work.

**Guaranteed Level** means 90% of the Expected Energy for a Guarantee Year for the System.

**Guarantee Year** means each successive 12-month period during the Term commencing on the Commercial Operation Date.

**PVSim** means the software program utilized by Provider to predict the amount of energy that the System will produce in an average year which has the following characteristics: (1) based on PVFORM, the photovoltaic simulation software produced by Sandia National Laboratories and the US Department of Energy, (2) all photovoltaic characteristics are modeled, (3) all ancillary array losses are taken into account and (4) PVSim simulations use either measured data or typical meteorological year files from Meteornorm and NREL.

**SEMMY** or “Simulated Energy in a Measured Meteorological Year”, means, with respect to any Guarantee Year, Year 1 AC Energy output of the System simulated by PVSim using measured average hourly irradiance, wind speed, and air temperature as recorded by the Data Acquisition System, holding all other inputs equal to those used in calculating SETMY.

**SETMY** or “Simulated Energy for a Typical Meteorological Year”, means the Year 1 AC Energy output of the System simulated by PVSim using average hourly irradiance, wind speed, and air temperature data contained within the Weather File.

**True-up Period** means each successive one (5)-year period during the Term commencing on the first day of the Term.

**Weather Adjustment** means the ratio described in Section 3.01. Section 3.01

**Weather File** means the typical meteorological year data set specified for the System set forth on Appendix C (Weather File) of this Guarantee.

## **ARTICLE II. PERFORMANCE GUARANTEE CONSIDERATION**

### **Section 2.01 Consideration**

The Parties agree that the consideration set forth in Section 5.1 of the Agreement includes adequate consideration for the terms, conditions and provisions of this Guarantee.

## **ARTICLE III. PERFORMANCE GUARANTEE**

Provider guarantees to Customer that the Actual Generation of the System during any Guarantee Year, subject to the limitations, terms and conditions stated in this Guarantee shall not be less than the Guaranteed Level.

### **Section 3.01 Guaranteed Output Calculations.**

Provider shall calculate the Annual Deficit for the System for each Guarantee Year during the Term:

- (a) Annual Deficit = (Expected Energy x Guaranteed Level) x Weather Adjustment – Actual Generation

Where the Weather Adjustment ratio is as follows:

Simulated Energy in a Measured Meteorological Year (SEMMY)

Simulated Energy for a Typical Meteorological Year (SETMY)

For each Guarantee Year, within thirty (30) days after the end of such Guarantee Year, Provider shall calculate the Annual Deficit for the System. Customer has the right to access all data and information supporting Provider's calculation of the Annual Deficit.

- (b) Guarantee Payment Reimbursement. At the end of each True-up Period:
- (i) if the sum of Annual Deficits > 0, then Provider shall pay to Customer an amount equal to the cumulative product of (y) the Annual Deficits and (z) the Avoided Energy Price per kWh (a "Guarantee Payment");
  - (ii) Provider shall promptly notify Customer of any Guarantee Payment due. Provider shall make Guarantee Payments within thirty (30) days of the date of the notice provided in the first sentence of this paragraph.

### **Section 3.02 Actual Generation Measurement.**

Provider shall measure Actual Generation for the System for each Guarantee Year as follows:

- (a) **Initial Output Data Collection.** During the Term, Provider will collect energy output data using its Data Acquisition System. For each Guarantee Year, Provider will sum the daily kWh output for the System provided by the DAS to calculate the Actual Generation for the System for such Guarantee Year.
- (b) **Equipment Calibration and Replacement.** Provider may request to have the meteorological equipment independently calibrated or replaced at its own expense every eighteen (18) to thirty (30) months. Provider shall notify the Customer of the scheduled calibration date and time no less than 30 days prior, and shall provide the Customer written proof of calibration or replacement.
- (c) **Contingency for Equipment Failure.** In the event of hardware, communication, or other failure affecting the DAS, Provider will make commercially-reasonable efforts to resolve the failure in a timely manner. In the event that data is lost, Actual Generation for each affected System shall be adjusted to compensate for such lost data as follows:
  - (i) In lieu of lost meteorological data, Provider will utilize such data obtained from a nearby meteorological station that Provider monitors and selects for such purpose.
  - (ii) In lieu of lost electricity data, Provider will utilize the cumulative data from System meter readings to calculate the electricity generated by each affected System during the missing interval. In the event that data

from the System meter is inaccurate or missing, Provider will simulate electricity production during the missing interval utilizing measured meteorological data and PVSIM. The simulated electricity production during the missing interval will be added to the Actual Generation for each affected System for the subject Guarantee Year.

#### **ARTICLE IV. CUSTOMER RESPONSIBILITIES**

##### **Section 4.01 Customer's Failure to Uphold Responsibilities.**

Provider shall promptly notify Customer of any breach ("Out of Compliance Letter") of (i) Customer's obligation to pay Provider for the Solar Services pursuant to the Agreement and (ii) any Customer obligations pursuant to the Agreement that directly (A) hinder the amount of Energy delivered by the System or (B) degrade the functionality of the System. Upon Customer's cure of all failures described in an Out of Compliance Letter, Provider will notify Customer ("In Compliance Letter") that Customer is complying with Customer's Responsibilities. For any period between the issuance of an Out of Compliance Letter and of an In Compliance Letter (a "Noncompliance Period"), to the extent that Customer's non-compliance actually impacts the Actual Generation of the System, any Actual Generation from such affected Systems in such month(s) shall be disregarded in the calculation of Annual Deficits for such Systems under Section 3.01, and the Expected Energy for any affected System in any Guarantee Year in which there is a Noncompliance Period shall be reduced by a proportionate amount.

#### **ARTICLE V. EXPECTED ENERGY ADJUSTMENT**

##### **Section 5.01 Adjustment of Expected Energy.**

If, and to the extent, any of the following events results in a change in the production of electricity by the System, Expected Energy for that System shall be adjusted correlatively for the period of such change:

- (a) Subject to Provider's obligations under any warranty it provides in connection with the Systems (including any Provider obligation, with respect to the System, in connection with any requirements under the California Solar Initiative program), a material portion of the components of the System fails, and the manufacturer of such component(s) refuses, or otherwise fails to honor its corresponding warranty;
- (b) Customer fails to perform any of its obligations under the PPA – such as obligations related to maintaining the System's interconnection to the local utility grid or limiting outages (as defined in the Agreement) – and such failure reduces the amount of electricity that the System can generate or deliver.
- (c) There is any failure of the System to perform caused by legislative, administrative or executive action, regulation, order or requisition of any federal, state or local government, local utility or public utilities commission;
- (d) There is an Excused Performance Event; or

- (e) Adjustment to the Expected Energy, or a reduction in the amount of Energy that Provider is obligated to deliver, is permitted or required under the Agreement.

**Section 5.02 Notification of Changes to Expected Energy.**

If Provider determines that any changes to Expected Energy for the System are required based on an event or events described in Section 5.01, then Provider shall notify the Customer, in writing, of the basis for its determination, and Provider shall either provide revised definitions of Expected Energy in exhibits that, upon mutual agreement of the Parties, which shall not be unreasonably denied or delayed, shall replace the current exhibits to this Guarantee, or specify a date by which it shall do so.

### Appendix A – Expected Energy

<b>Guarantee Year</b>	<b>Expected Annual kWh</b>
1	464,810
2	463,648
3	462,489
4	461,333
5	460,179
6	459,029
7	457,881
8	456,737
9	455,595
10	454,456
11	453,320
12	452,186
13	451,056
14	449,928
15	448,804
16	447,682
17	446,562
18	445,446
19	444,332
20	443,221
21	442,113
22	441,008
23	439,906
24	438,806
25	437,709
<b>Total</b>	<b>11,278,237</b>

### Appendix B – Avoided Energy Price

Guarantee Year	Avoided Energy Price per kWh
1	\$0.0048
2	\$0.0049
3	\$0.0051
4	\$0.0052
5	\$0.0054
6	\$0.0056
7	\$0.0057
8	\$0.0059
9	\$0.0061
10	\$0.0063
11	\$0.0065
12	\$0.0066
13	\$0.0068
14	\$0.0070
15	\$0.0073
16	\$0.0075
17	\$0.0077
18	\$0.0079
19	\$0.0082
20	\$0.0084
21	\$0.0087
22	\$0.0089
23	\$0.0092
24	\$0.0095
25	\$0.0098

## **Appendix C – Weather File**

SolarAnywhereTGY2016\_(10km)\_37.95\_-122.35

**Schedule A**

**DESCRIPTION OF SITE**

<b>Facility</b>	<b>System Size (kW DC)</b>	<b>Product Type</b>	<b>Module qty &amp; type - SunPower</b>	<b>Inverters- qty &amp; type-Delta</b>
1305 Macdonald Ave, Richmond, CA 94801	282.00	Carport – Helix 1.5	(600) SPR-X21-470-COM	(2) M60U_121 (2) M42U_121



**Schedule B**

**DESCRIPTION OF SYSTEM**

PV System Array Layouts and Electrical Single Line Diagrams



- LEGEND:**
- PROPOSED LIGHT POLE REMOVAL
  - ✕ PROPOSED TREE REMOVAL
  - PIER LOCATION
  - PROPOSED EQUIPMENT PAD
  - PROPOSED POINT OF INTERCONNECTION
  - AC CONDUITS (SSB-PO)
  - AC CONDUITS (SPB-SSB)
  - AC CONDUITS (INV-SPB)

1 ARRAY LAYOUT  
 SCALE: 1/32" = 1'-0"

- NOTES:**
1. 110 MPH WINDSPEED (ASCE 7-10) CATEGORY II, EXPOSURE C.
  2. SNOWLOAD PSF, ELEVATION 20'
  3. CORROSION RATE: (5.3MPY/VI)(C4: 20%, C5: 99%)
  4. REQUIRED COATING FOR PREGALVANIZED STEEL IN ORDER TO ACHIEVE 10 YEAR LIFE BEFORE APPEARANCE OF RUST: G235
  5. REQUIRED COATING FOR GALVANIZED STEEL IN ORDER TO ACHIEVE LIFETIME COST OVER 25 YEARS: G235
  6. METER # 1009380327
  7. ARRAY SHOWN ON AERIAL IMAGE
  8. ARRAY TO BE MOUNTED ON SOLAR CARPORT V. 5
  9. STANDARD CANOPY (LOW-END CLEARANCE: 11' PROVIDED FOR STANDARD VEHICLE)
  10. BUILDING CODE REQUIRES 20' MIN. CLEARANCE FROM EXISTING BUILDINGS
  11. FIRE DEPARTMENT REQUIRES 20' MIN. CLEARANCE ALONG EMERGENCY ACCESS ROUTES
  12. TOTAL OF TREES TO BE REMOVED: 4
  13. TOTAL OF LIGHT POLE TO BE REMOVED: 0

**PROJECT SUMMARY**

PROJECT SUMMARY	CARPORT
TOTAL LOT MODULE	600
MODULE TYPE	SPR-XL120U.COM
STRING LENGTH	30
DC SYSTEM SIZE (kW)	282.00
AC SYSTEM SIZE (kW)	224.88



**SUNPOWER® | HELIX™**  
**TIER 1**

PANEBOARD-CARPORT LABEL	CANOPY	# MODULE	#STRING	KW (DC)	MIBOUL_121 (USSTR)	MIBOUL_121 (L2STR)	KW (AC)	CEC (AC)	TILT	AZIMUTH CSI	AZIMUTH SPWR	AC RUN (INV-SPB)	AC RUN (SPB-SSB)
SPB01	1	300	30	141	1	1	112	111.44	10°	180°	0°	30,130	17.5
SPB02	2	300	30	141	1	1	112	111.44	10°	180°	0°	30,130	12.0
<b>TOTAL</b>		<b>600</b>	<b>60</b>	<b>282</b>	<b>2</b>	<b>2</b>	<b>224</b>	<b>222.88</b>					

**SUNPOWER**  
 1414 HARBORWAY SOUTH  
 RICHMOND, CA 94804 USA  
 (510) 540-0550

ENGINEER'S STAMP  
 1305 MACDONALD AVE  
 RICHMOND, CA 94803

**CONTRA COSTA COUNTY**  
**1305 MACDONALD AVE**  
**ARRAY LAYOUT**

**REVISIONS**

REV	DESIGN #	DESCRIPTION	DATE
A		PROPOSAL	03-22-19

PROJECT: 001152788  
 OPPORTUNITY: 001152788  
 SHEET: AL1

SCALE: 1/32" = 1'-0"

**SPECIFIC ELECTRICAL NOTES:**

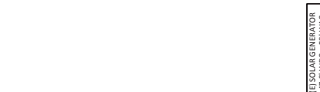
- LINE SIDE CONNECTION PER ART. 705.12(A). WIRES TO OVERCURRENT DEVICE SHALL BE INSTALLED IN RIGID STEEL CONDUIT WITH GROUND BUSHINGS PER ART. 250.92. BUS CONNECTIONS SHALL BE RELIEST BY A 3RD PARTY TESTING AGENCY IF THE RIGID STEEL CONDUIT IS NOT LISTED FOR THIS USE. IF WIRE BUNDLES EXCEED 30, WIRES SHALL BE TERMINATED IN SERVICE EQUIPMENT WITH CABLE LIMITERS PER ART. 705.31. CONNECTION SHALL BE MADE USING EXISTING BOLT HOLES, AND FACTORY BUSHING SHALL NOT BE DRILLED.
- GANG OPERATED, LOCKABLE, VISIBLE OPEN DISCONNECT
- ALL INVERTERS ARE LISTED TO UL 1741 TO INCORPORATE ANTI-ISLANDING AND THE FOLLOWING PROTECTIONS: (1) (2) (3) (4) (5) (6) (7) (8) (9)
- NEUTRAL BUS SHALL NOT BE BONDED TO THE GROUND BUS AND SHALL BE ISOLATED FROM THE ENCLOSURE UNLESS OTHERWISE SPECIFIED
- METERING NOTES:  
**FOR PV PRODUCTION MONITORING:**  
 EXTERNAL METER ENCLOSURE AND 333mV SPLIT CORE CT  
 EXTERNAL METER ENCLOSURE AND ROGOWSKI CT  
**FOR SITE UTILITY NET LOAD MONITORING**  
 EXTERNAL METER ENCLOSURE AND ROGOWSKI CT  
 REFER TO AS-BUILT DRAWINGS FOR EXISTING SOLAR SYSTEM DETAIL SCHEMATICS.

**METERING NOTE:**

- OPTION 1: EXTERNAL METER ENCLOSURE
- ETHERNET MODULE IN ADDITION TO THE ES-486 TERMINAL BLOCK
- OPTION 2: INTEGRATED METER
- ETHERNET MODULE IN ADDITION TO THE ES-486 TERMINAL BLOCK
- OPTION 3: INTEGRATED METER
- ETHERNET MODULE IN ADDITION TO THE ES-486 TERMINAL BLOCK

**METERING NOTE:**

- OPTION 1: EXTERNAL METER ENCLOSURE
- ETHERNET MODULE IN ADDITION TO THE ES-486 TERMINAL BLOCK
- OPTION 2: INTEGRATED METER
- ETHERNET MODULE IN ADDITION TO THE ES-486 TERMINAL BLOCK
- OPTION 3: INTEGRATED METER
- ETHERNET MODULE IN ADDITION TO THE ES-486 TERMINAL BLOCK



**SUNPOWER**  
 1414 HARBORWAY SOUTH  
 RICHMOND, CA 94804 USA  
 (510) 540-0550

PRELIMINARY  
 NOT FOR  
 CONSTRUCTION

ENGINEER'S STAMP  
**1305 MACDONALD AVE**  
**CONTRA COSTA COUNTY**  
 RICHMOND, CA 94803  
**ELECTRICAL SINGLE LINE DIAGRAM**

REV	DATE	DESCRIPTION
01	05-18-18	PROPOSAL
02	03-22-19	CHANGE TO DELTA INVERTER

OPPORTUNITY	PROJECT	SHEET
000157288	0	E201



String	Inverter	Max (A)	Max (V)	Phase (kW)	Circuit
INV TYPE 1	(1) H3	80	480	65.47	SPB01
INV TYPE 2	(1) H4	56.2	480	45.972	SPB02
SPB01	(1) H4/0	136.2	480	111.442	ACDU
SPB02	(1) H4/0	136.2	480	111.442	ACDU
ACDU	(1) H1/4	5	480	-	SPB02
SPB02	(2) H4/0	272.4	480	222.884	ULID
ULID	(2) H4/0	338.2	480	272.884	ULID

Rev	Design #	Date	Description	Opportunity	Project	Sheet
A	KS-0019916	05-18-18	PROPOSAL	000157288	0	E201
B	-	-	-	-	-	-
C	-	-	-	-	-	-

Rev	Design #	Date	Description	Opportunity	Project	Sheet
A	KS-0019916	05-18-18	PROPOSAL	000157288	0	E201
B	-	-	-	-	-	-
C	-	-	-	-	-	-

Rev	Design #	Date	Description	Opportunity	Project	Sheet
A	KS-0019916	05-18-18	PROPOSAL	000157288	0	E201
B	-	-	-	-	-	-
C	-	-	-	-	-	-

Rev	Design #	Date	Description	Opportunity	Project	Sheet
A	KS-0019916	05-18-18	PROPOSAL	000157288	0	E201
B	-	-	-	-	-	-
C	-	-	-	-	-	-

Rev	Design #	Date	Description	Opportunity	Project	Sheet
A	KS-0019916	05-18-18	PROPOSAL	000157288	0	E201
B	-	-	-	-	-	-
C	-	-	-	-	-	-

Rev	Design #	Date	Description	Opportunity	Project	Sheet
A	KS-0019916	05-18-18	PROPOSAL	000157288	0	E201
B	-	-	-	-	-	-
C	-	-	-	-	-	-

Rev	Design #	Date	Description	Opportunity	Project	Sheet
A	KS-0019916	05-18-18	PROPOSAL	000157288	0	E201
B	-	-	-	-	-	-
C	-	-	-	-	-	-

Rev	Design #	Date	Description	Opportunity	Project	Sheet
A	KS-0019916	05-18-18	PROPOSAL	000157288	0	E201
B	-	-	-	-	-	-
C	-	-	-	-	-	-

Rev	Design #	Date	Description	Opportunity	Project	Sheet
A	KS-0019916	05-18-18	PROPOSAL	000157288	0	E201
B	-	-	-	-	-	-
C	-	-	-	-	-	-

**Schedule C**

**PV SYSTEM PRICING**

The following pricing is based on the Standard System Design Package described in Exhibit A.

kWh Rate (\$/kWh)	Term (Years)	Annual Rate Escalator (% / Year)
\$0.1344	25	0%

**Schedule D**  
**TERMINATIONS VALUES**

<b>Applicable Date : Years from Commercial Operation Date</b>	<b>Termination Value (\$)</b>
0 Year	\$1,359,959
1 Year	\$1,098,435
2 Years	\$984,499
3 Years	\$870,081
4 Years	\$755,271
5 Years	\$639,832
6 Years	\$624,513
7 Years	\$608,619
8 Years	\$592,220
9 Years	\$575,096
10 Years	\$557,309
11 Years	\$539,121
12 Years	\$520,335
13 Years	\$500,768
14 Years	\$480,659
15 Years	\$460,043
16 Years	\$438,988
17 Years	\$417,349
18 Years	\$395,187
19 Years	\$372,495
20 Years	\$349,324
21 Years	\$325,554
22 Years	\$301,233
23 Years	\$276,355
24 Years	\$250,962

**CONSENT AND AGREEMENT**

This CONSENT AND AGREEMENT (this “Consent”) dated as of August [●], 2020 is entered into among (i) Contra Costa County, a political subdivision of the State of California (the “Customer”), (ii) Solar Star Co Co 1, LLC, a limited liability company duly organized and existing under the laws of the State of Delaware (the “Provider”), and (iii) Wilmington Trust, National Association (together, with its successors in such capacity, the “Collateral Agent”) in its capacity as collateral agent for the secured parties under the Financing Agreement referred to below (such secured parties together with their successors and assigns in such capacity, the “Secured Parties”). Capitalized terms not otherwise defined herein have the meaning set forth in the Assigned Agreements (defined below).

WHEREAS, the Provider intends to develop, install, own, operate and maintain the following rooftop and carport photovoltaic solar electric generating facilities and, in certain cases, energy storage systems to be located at the following Sites: (i) 30 Muir Rd., Martinez, CA 94553 (the “Muir Project”); (ii) 50 Douglas Dr., Martinez, CA 94553 (the “50 Douglas Project”); (iii) 597 Center Ave., Martinez, CA 94553 (the “597 Center Project”); (iv) 595 Center Ave., Martinez, CA 94553 (the “595 Center Project”) and (v) 1000 Ward St., Martinez, CA 94553 (the “1000 Ward Project” and, collectively with the Muir Project, the 50 Douglas Project, the 597 Center Project and the 595 Center Project, the “Project”);

**Commented [A1]:** Frank – please confirm addresses and locations

**Commented [A2R1]:** Confirmed.

WHEREAS, the Provider and the Customer entered into the following agreements in connection with the Project: (i) Power Purchase Agreement, dated as of June 18, 2019 in connection with the Muir Project (the “Muir PPA”); (ii) Power Purchase Agreement, dated as of June 18, 2019 in connection with the 50 Douglas Project (the “50 Douglas PPA”); (iii) Power Purchase Agreement, dated as of June 18, 2019 in connection with the 597 Center Project (the “597 Center PPA”); (iv) Power Purchase & Storage Services Agreement, dated as of June 18, 2019 in connection with the 595 Center Project (the “595 Center PPA”); and (v) Power Purchase & Storage Services Agreement, dated as of June 18, 2019 in connection with the 1000 Ward Project (the “1000 Ward PPA”, and, collectively with the Muir PPA, 50 Douglas PPA, the 597 Center PPA and the 595 Center PPA, all as amended, amended and restated, modified or supplemented from time to time, the “Assigned Agreements” and, individually, each an “Assigned Agreement”);

**Commented [A3]:** Frank – please confirm that the locations jive with whether it is PV only or also Storage. Confirmed.

**Commented [A4R3]:** Confirmed

**Commented [A5]:** Not registered with Cal SOS. Needs to be registered.

**Commented [A6R5]:** Note – Borrower entity is only a holding company without operations / presence in CA. Upon closing of construction financing, the Provider will join the Financing Agreement as a “Guarantor” of the debt and the proceeds will flow from Borrower to the Provider. For this reason we kindly request that the LLC remain unregistered in CA to avoid additional costs.

**Commented [A7]:** Is this correct? National Association? Missing a word?

**Commented [A8R7]:** The entity is, in fact, named “Truist Bank”.

**Commented [A9]:** Please provide a copy.

**Commented [A10R9]:** See answer below for comfort on the security interest given to the Collateral Agent pursuant to the transaction. Along with the deletion of Section 4(e), SPWR believes the County should have the assurances it needs in connection with Lender’s security interests without reviewing the financing documents.

WHEREAS, the Customer has been advised by Provider that TOTAL Strong Construction Holdco, LLC, a Delaware limited liability company (“Borrower”), the direct owner of the Provider, has entered into that certain Financing Agreement, dated as of April 29, 2020 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Financing Agreement”), by and among the Borrower, Collateral Agent, Truist Bank, as the Administrative Agent, each guarantor from time to time party thereto, and the lenders from time to time party thereto (the “Lenders”), pursuant to which, among other things, the Lenders will commit to extend credit to Borrower for the benefit of Provider;

WHEREAS, the Customer has been advised by Provider that Provider has also entered into that certain Security Agreement, dated on or around the date hereof (as amended, supplemented or otherwise modified from time to time, the “Security Agreement”) with Collateral Agent, under which Provider will, as security for the Borrower’s obligations under the Financing Agreement and the other Financing Documents (as the term is defined therein), grant a first-priority security

interest in all of Provider's right, title and interest in the Systems and the Assigned Agreements to Collateral Agent for the benefit of the Secured Parties under (and as defined in) the Financing Agreement; and

WHEREAS, it is a condition precedent to the Lenders' commitment to extend credit to Borrower for the benefit of Provider that the Customer execute and deliver this Consent.

NOW, THEREFORE, as an inducement to the Lenders' commitment to extend credit to Borrower for the benefit of Provider under the Financing Agreement, and in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

**1. CONSENT TO ASSIGNMENT, ETC.**

(a) Consent to Collateral Assignment. The Customer (i) acknowledges (x) the previous assignment of the 50 Douglas PPA and the 595 Center PPA from Provider to Solar Star Co Co 2, LLC on March 26, 2020 and (y) assignment of the 50 Douglas PPA and the 595 Center PPA from Solar Star Co Co 2, LLC to Provider as of the date hereof, (ii) acknowledges that the Lenders commitment to extend credit to Borrower for the benefit of Provider under the Financing Agreement will be made in reliance upon the execution and delivery by the Customer of this Consent, (iii) consents in all respects to the pledge and collateral assignment to the Collateral Agent of all of the Provider's right, title and interest in, to and under the Assigned Agreements pursuant to the Security Agreement, and (iv) acknowledges the right, but not the obligation, of the Collateral Agent or the Collateral Agent's designee, in the exercise of the Collateral Agent's rights and remedies under the Financing Agreement, the Security Agreement, and related documents to make all demands, give all notices, take all actions and exercise all rights of the Provider in accordance with the Assigned Agreements, and agrees that in such event the Customer shall continue to perform its obligations under the Assigned Agreements; provided that in the event, with respect to each Assigned Agreement, there exists a conflict between any notice given or action taken by the Collateral Agent and any notice given or action taken by the Provider, such conflict shall be resolved in favor of the notice given or the action taken by the Collateral Agent.

(b) Substitute Owner. The Customer agrees that, if the Collateral Agent notifies the Customer that an event of default under the Financing Agreement has occurred and is continuing and that the Collateral Agent has exercised its rights (i) to have itself or its designee substituted for the Provider under any Assigned Agreement, (ii) to acquire or have its designee or assignee acquire the Provider, or (iii) to sell, assign, transfer or otherwise dispose of any Assigned Agreement to a third party, including in a judicial or non-judicial foreclosure sale, then the Collateral Agent, the Collateral Agent's designee or such third party (each, a "Substitute Owner") shall be substituted for the Provider under such Assigned Agreement and, in such event, the Customer will (x) recognize the Substitute Owner as its counterparty to such Assigned Agreement, (y) take any actions and execute any documents, agreements or instruments reasonably necessary to effect such substitution, and (z) continue to perform its obligations under such Assigned Agreement in favor of the Substitute Owner pursuant to the terms hereof and thereof.

(c) Right to Cure.

**Commented [A11]:** Is Collateral Agent filing a UCC-1? Is Collateral Agent filing a fixture filing in real property records?

**Commented [A12R11]:** Is Collateral Agent filing a UCC-1? - yes  
Is Collateral Agent filing a fixture filing in real property records? - no

**Commented [A13]:** Right?

**Commented [A14]:** Frank - please provide me with copies of these two notices of assignment from SP.

**Commented [A15R14]:** These will follow in a subsequent email.

**Commented [A16]:** County already signed the Agreements and isn't delivering them.

(i) Notwithstanding anything to the contrary contained in any Assigned Agreement, the Customer shall not exercise any right it may have under an Assigned Agreement, at law or in equity, to cancel, suspend or terminate such Assigned Agreement or any of its obligations under such Assigned Agreement, as the result of any default or other action or omission of the Provider in the performance of any of its obligations under such Assigned Agreement, or upon the occurrence or non-occurrence of any event or condition under such Assigned Agreement that would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable the Customer to terminate or suspend its obligations or exercise any other right or remedy under such Assigned Agreement or under applicable law (hereinafter an “Assigned Agreement Default”), until it first gives prompt written notice of such Assigned Agreement Default to the Collateral Agent and affords the Collateral Agent and the Collateral Agent’s respective successor, assignee and/or designee a period of at least ninety (90) days (or, if such default is a payment default, forty-five (45) days) to cure such default, commencing from the later to occur of (x) the Collateral Agent’s receipt of such notice, and (y) the expiration of any notice periods or cure periods provided for in such Assigned Agreement; provided, however, that if (1) an event of default under the Financing Agreement has occurred and is continuing, the Collateral Agent has exercised its rights to foreclose on the Project as a result thereof and possession of the Project is necessary to cure any such non-monetary default, then, so long as the Collateral Agent or the Collateral Agent’s respective successor, assignee and/or designee is diligently pursuing such foreclosure proceedings, the time periods specified in this Section 1(c) for curing an Assigned Agreement Default shall be extended for the time taken to complete foreclosure proceedings, and (2) any such party is prohibited from curing any such Assigned Agreement Default by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding involving the Provider, then the time periods specified in this Section 1(c) for curing an Assigned Agreement Default shall be extended for the period of such prohibition.

**Commented [A17]:** Frank / Warren – this paragraph changes to whom County has obligations to under the PPAs.  
**Commented [A18R17]:** understood

**Commented [A19]:** Please delete. Customer doesn’t know who these are, and point of Collateral Agent is to have one point of contact who can advise SPs, and who can tell Collateral Agent how to proceed.

(ii) No such cancellation, suspension or termination of an Assigned Agreement by the Customer shall be binding upon the Collateral Agent without the notice and extended cure period specified in this Section 1(c). Any dispute that may arise under such Assigned Agreement notwithstanding, the Customer shall continue performance under such Assigned Agreement and resolve any dispute without discontinuing such performance until the lapse of the notice and extended cure period specified in this Section 1(c).

(d) No Termination, Assignment or Material Amendments. The Customer shall not enter into any consensual cancellation or termination of any Assigned Agreement (except with respect to termination in the event of a default by the Provider, subject to the limitations and extended cure periods provided for in Section 1(c)), or assign, novate or otherwise transfer any of its right, title or interest thereunder or consent to any such assignment or transfer by the Provider without, in each such case, the written consent of the Collateral Agent. The Customer shall not enter into or agree to any amendment, supplement, assignment or other modification to, or benefit from any waiver under any Assigned Agreement without the prior written consent of the Collateral Agent.

**Commented [A20]:** Frank / Warren - County can’t terminate or amend agreement without Collateral Agent’s consent.  
**Commented [A21R20]:** understood

(e) Replacement Agreement. In the event that any Assigned Agreement is rejected or otherwise terminated as a result of any bankruptcy or insolvency proceeding affecting the Provider, the Customer shall, at the option of the Collateral Agent or the Collateral Agent’s respective successor, assignee and/or designee, enter into a new agreement with the Collateral Agent or any



Substitute Owner (or its transferee or other nominee that owns or leases the Project) having terms substantially the same as the terms of such Assigned Agreement. Thereafter, references in this Consent to such “Assigned Agreement” shall be deemed to refer to such new agreement.

(f) No Liability. The Customer acknowledges and agrees that none of the Collateral Agent, or the Collateral Agent’s respective successor, assignee and/or designee or the Secured Parties shall have any liability or obligation under any Assigned Agreement as a result of this Consent, the Security Agreement, or otherwise, nor shall the Collateral Agent or the Collateral Agent’s respective successor, assignee and/or designee be obligated or required to (i) perform any of the Provider’s obligations under any Assigned Agreement, except, in the case of the Collateral Agent or the Collateral Agent’s respective successor, assignee and/or designee, during any period in which the Collateral Agent or the Collateral Agent’s respective successor, assignee and/or designee is a Substitute Owner pursuant to Section 1(b), in which case the Collateral Agent or other Substitute Owner shall not be liable for the acts or omissions of the Provider and the obligations of such Substitute Owner shall otherwise be no more than those of the Provider under such Assigned Agreement, or (ii) take any action to collect or enforce any claim for payment assigned under the Security Agreement or any related document.

(g) Delivery of Notices. The Customer shall deliver to the Collateral Agent and the Secured Parties, concurrently with the delivery thereof to the Provider, a copy of each notice, request or demand given by the Customer pursuant to any Assigned Agreement.

(h) Acknowledgements. The Customer agrees to execute such acknowledgements or other similar instruments as the Collateral Agent may reasonably request in connection with the transactions contemplated by this Consent.

## **2. PAYMENTS UNDER THE ASSIGNED AGREEMENTS**

(a) Payments. The Customer will pay all amounts payable by it under each Assigned Agreement, if any, in lawful money of the United States of America, in immediately available funds and in the manner required by, and subject to the terms and conditions of, such Assigned Agreement, directly into the account specified on Exhibit A (Payment Instructions) hereto, or to such other person or account as may be specified from time to time by the Collateral Agent to the Customer in writing.

(b) No Offset, etc. All payments required to be made by the Customer under any Assigned Agreement shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever.

## **3. REPRESENTATIONS AND WARRANTIES OF THE CUSTOMER**

The Customer makes the following representations and warranties to the Collateral Agent, the Provider and the Secured Parties as of the date hereof:

(a) Organization; Power and Authority. The Customer is a political subdivision of the State of California, and has all requisite power and authority to enter into and to perform its obligations under this Consent and the Assigned Agreements, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

Commented [A22]: Reps and warranties speak as of date made.

Commented [A23]: These are corp reps. Gov entity doesn't qualify to do biz.

(b) Authorization. The execution, delivery and performance by the Customer of this Consent and the Assigned Agreements have been duly authorized by all necessary action on the part of the Customer and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of (i) the Customer, or (ii) any other person or entity, except approvals or consents which have previously been obtained.

(c) Execution and Delivery; Binding Agreements. Each of this Consent and the Assigned Agreements is in full force and effect, has been duly executed and delivered on behalf of the Customer and constitutes the legal, valid and binding obligation of the Customer, enforceable against the Customer in accordance with its terms except as the enforceability hereof or thereof may be limited by (i) bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights generally, and (ii) general equitable principles (whether considered in a proceeding in equity or at law).

(d) Litigation. To the Customer's knowledge, there is no legislation, litigation, action, suit, proceeding or investigation pending or threatened against the Customer before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate, (i) could adversely affect the performance by the Customer of its obligations under this Consent or the Assigned Agreements, or that could modify or otherwise adversely affect the Approvals (as defined in Section 3(f)), (ii) questions the validity, binding effect or enforceability of this Consent or the Assigned Agreements, any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby, or (iii) could have a material adverse effect upon (x) the value, validity, perfection or enforceability of the liens granted against Provider's interest in the Systems or the Assigned Agreements to the Collateral Agent under the Security Agreement and other security documents, or (y) the ability of the Collateral Agent to enforce any of its rights and remedies under the Assigned Agreements or this Consent.

(e) No Conflict. The execution and delivery of this Consent and the Assigned Agreements and the performance by the Customer under this Consent and the Assigned Agreements will not violate, result in a breach of, default under or conflict with (i) any law, rule, regulation, order, permit or decree applicable to the Customer, (ii) its organizational documents, or (iii) the terms of any other agreement binding on the Customer.

(f) Government Consent. No consent, order, authorization, waiver, approval or any other action, or registration, declaration or filing with, any person, board or body, public or private (collectively, the "Approvals"), is required to be obtained by the Customer in connection with the execution, delivery or performance of this Consent, the Assigned Agreements or the consummation of the transactions contemplated hereunder and thereunder, except any Approvals which have previously been obtained.

(g) No Default or Amendment. Neither the Customer nor, to the Customer's knowledge after due inquiry, the Provider is in default of any of its obligations thereunder (or has claimed force majeure, emergency, or any other excuse for performance thereunder which is still ongoing as of the date hereof). The Customer has no existing counterclaims, offsets, defenses, or claims for change orders against the Provider under the Assigned Agreements. To the Customer's knowledge, no event or condition exists that would either immediately or with the passage of any applicable

grace period or giving of notice, or both, enable either the Customer or the Provider to terminate or suspend its obligations (or the performance of such obligations) under the Assigned Agreements. The Assigned Agreements have not been amended, modified or supplemented in any manner other than as indicated above.

(h) No Previous Assignments. The Customer has no notice of, and has not consented to, any previous assignment of all or any part of its right, title or interest in, to or under the Assigned Agreements except as set forth in Section 1(a) above.

(i) Purchase Option. The Customer has not taken any official action requiring or authorizing the exercise of any purchase option available to it under the Assigned Agreements, has not decided whether or not it will exercise any such purchase option, and is under no legal or economic compulsion to exercise any such purchase option; provided, however, nothing herein shall prohibit the Customer from exercising any purchase option under the Assigned Agreements when it becomes exercisable in accordance with its term and such exercise shall not be deemed to be a breach of this representation and warranty.

(j) Liens; Mortgages. The Customer has no knowledge of any existing lease, mortgage, security interest or other interest in or lien upon any of the Sites, which could attach to the Project as an interest adverse to the Collateral Agent's interest therein.

(k) Representations and Warranties. All representations, warranties and other statements made by the Customer in the Assigned Agreements were true and correct in all material respects as of the date when made and, except for those that by their terms speak as of a specific date, are true and correct in all material respects as of the date hereof.

#### 4. ADDITIONAL PROVISIONS

(a) Use of Electricity. None of the electricity to be sold under the Assigned Agreements will be used to generate energy for the purpose of heating a swimming pool.

(b) Project. The Customer has approved the design of the Project to be installed at the Sites.

(c) Access Rights. The Collateral Agent and the Collateral Agent's respective successors, assignees and/or designees shall have the same rights as the Provider to access the Project in order to install, operate, maintain and remove the Project as the right accorded to the Provider pursuant to the Assigned Agreements.

(d) Notice of Ownership. The Customer will use commercially reasonable efforts to place its successors, assigns and lien holders on notice of the ownership of the Project by the Provider or the Collateral Agent, the existence of the security interest, and the fact that the Project is not part of any Site or a fixture thereof, as necessary and appropriate to avoid confusion or adverse claims.

**Commented [A24]:** Frank – you need to look at Section 14.2.2 of the PPA to see if you can bring down those reps and warranties.

**Commented [A25R24]:** I've reviewed that section and all appears to be in order.

**Commented [A26]:** Frank – correct?

**Commented [A27R26]:** We have approved all of their designs.

5. **MISCELLANEOUS**

(a) Applicable Law. THIS CONSENT, AND ANY INSTRUMENT OR AGREEMENT REQUIRED HEREUNDER (TO THE EXTENT NOT EXPRESSLY PROVIDED FOR THEREIN), SHALL BE GOVERNED BY, AND CONSTRUED UNDER, THE LAWS OF THE STATE OF CALIFORNIA, APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE AND WITHOUT REFERENCE TO CONFLICTS OF LAWS.

(b) Notices. All notices and other communications hereunder (i) shall be in writing, (ii) shall be effective upon actual receipt thereof by the party or parties to whom such notice is addressed, except that any communication or notice so transmitted by telecopy or electronic mail shall be deemed to have been validly and effectively given on the day (if a business day and, if not, on the next following business day) on which it is transmitted if transmitted during normal business hours of the recipient, and if transmitted after that time, on the next following business day, in each case as evidenced by transmittal confirmation received by the transmitter, (iii) shall be delivered by hand or overnight courier service or mailed by certified or registered mail, sent by facsimile or via electronic mail, and (iv) shall be directed as follows:

If to the Customer: Contra Costa County Public Works Dept.  
Capital Projects Management Division  
40 Muir Road  
Martinez, CA 94553  
Attention: Energy Manager  
Telephone: (925) 313-2000  
Facsimile: (925) 313-2333  
Email: [ ] *[NTD: Email notice?]*

If to the Provider: TOTAL Strong Construction Holdco, LLC  
c/o Total Solar International  
575 Market Street, Suite 1900  
San Francisco, CA 94105  
Attention: Ali Mirza  
Email: ali.mirza@total.com  
Telephone: (415) 259-2510

with a copy to:

TOTAL Strong Construction Holdco, LLC  
c/o HA Allstrong LLC  
1906 Towne Centre Boulevard, Suite 370  
Annapolis, MD 21401  
Attention: General Counsel  
Email: generalcounsel@hannonarmstrong.com  
Facsimile: (410) 571-6199

**Commented [A28]:** Frank / Warren – do you want to agree to notice by email?

**Commented [A29R28]:** I'll defer to Warren, but notice to me is best.

Solar Star Co Co 1, LLC  
c/o SunPower Capital Services, LLC  
8900 Amberglen Blvd., Suite 325  
Austin, TX 78729  
Attn: Asset Management  
Fax: 510-540-0552  
Email: assetmanagement@sunpowercorp.com

If to the Collateral Agent: Wilmington Trust, National Association  
1100 N. Market Street  
Wilmington, DE 19890-1605  
Attn: Steve Barone  
Tel: 302-636-6973  
Email: SBarone@WilmingtonTrust.com

The above parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent.

(c) Amendment, Waiver. Neither this Consent nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the Customer, the Provider and the Collateral Agent.

(d) No Waiver; Remedies Cumulative. The waiver of any right, breach or default under this Consent by any party must be made specifically and in writing. No failure or delay on the part of the Collateral Agent in exercising any right, power or privilege hereunder and no course of dealing between the Customer and the Collateral Agent shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other exercise, or the further exercise, of any other right, power or privilege hereunder. No notice to or demand upon any party will entitle such party to any further, subsequent or other notice or demand in similar or any other circumstances. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies that the Collateral Agent would otherwise have.

(e) Counterparts. This Consent may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered, including by e-mail or other electronic transmission, shall be deemed an original, but all of which shall together constitute one and the same instrument.

(f) Headings Descriptive. The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

(g) Severability. In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(h) Successors and Assigns. This Consent shall be binding upon the parties hereto and their permitted successors and assigns and shall inure to the benefit of the parties, their designees and their respective permitted successors and assigns; provided, however, that no party or its respective successor or assign shall assign any of its interest in this Consent except in connection with an assignment of its interests in an Assigned Agreement and then only to the same person(s) or entity(ies) to which its interest in such Assigned Agreement is so assigned.

(i) Survival. All agreements, statements, representations and warranties made by the Customer herein shall be considered to have been relied upon by the Collateral Agent and the Secured Parties and shall survive the execution and delivery of this Consent.

(j) Conflicts. In the event of a conflict between any provision of this Consent and any provision of the Assigned Agreements, the provisions of this Consent shall prevail.

(k) Further Assurances. Each party hereto hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

\_\_\_\_\_

[SIGNATURE PAGES FOLLOW]

**Commented [A30]:** County is in the process of adopting an electronic signature policy and service provider.

**Commented [A31R30]:** That is fine – we will just need to coordinate wet signatures for closing.

**IN WITNESS WHEREOF**, the parties hereto have caused this Consent to be executed by their respective officers as of the date first above written.

Contra Costa County  
as the Customer

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

Solar Star Co Co 1, LLC  
as the Provider

By: TOTAL Strong Construction Holdco,  
LLC, its manager

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

Wilmington Trust, National Association, not in  
its individual capacity but solely as Collateral  
Agent for the Secured Parties

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

**Exhibit A**  
to Consent

**Payment Instructions**

Accounts Bank	Wilmington Trust, National Association / M&T Bank
ABA Number	031100092
Account Number	140939-000
Account Name	Total Strong – Revenue AC
Reference	Steve Barone





**Contra  
Costa  
County**

To: Board of Supervisors  
From: Brian M. Balbas, Public Works Director/Chief Engineer  
Date: September 22, 2020

Subject: Approve a Contract Amendment with ProPose, LLC (dba Sagent) for public information and strategic outreach

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**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Chief Engineer, Contra Costa County Flood Control and Water Conservation District, or designee, to execute, on behalf of the Contra Costa Clean Water Program, a contract amendment with ProPose, LLC (dba Sagent), to increase the payment limit by \$380,000 to a new payment limit of \$890,000 and extend the term from September 30, 2020 to September 30, 2022 for continued public information and outreach services necessary to comply with State stormwater permit requirements, Countywide. (100% Stormwater Utility Assessment Funds)

**FISCAL IMPACT:**

All costs associated with this contract will not exceed \$890,000 and will be funded 100% by Stormwater Utility Assessment fees collected by the Cities/Towns and County, proportional to their respective populations.

**BACKGROUND:**

The Contra Costa Clean Water Program (the "CCCWP") consists of Contra Costa County, its 19 incorporated cities/towns and the Contra Costa County Flood Control and Water Conservation District (hereinafter referred to collectively as "Permittees").

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APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Andrea Bullock,  
925-313-2194

cc:

## BACKGROUND: (CONT'D)

The CCCWP was established in 1991 through a Program Agreement in response to the 1987 amendments to the federal Clean Water Act (the “CWA”), which established a framework for regulating municipal stormwater discharges under the National Pollutant Discharge Elimination System (“NPDES”) Permit Program. The United States Environmental Protection Agency (the “USEPA”) published final rules implementing the 1987 CWA amendments in November 1990. The rules mandate that Permittees obtain and implement stormwater permits designed to reduce and eliminate the discharge of pollutants into and from Municipal Separate Storm Sewer Systems (the “MS4s”) they own and operate. Through the CCCWP, Permittees conduct many of the mandated activities collectively (referred to as “Group Activities”), such as water quality monitoring, special studies, and public education. The roles and responsibilities of the CCCWP and Permittees are outlined in the Contra Costa Clean Water Program Agreement, which was last updated and adopted by all Permittees in June 2010. The current San Francisco Bay Region Municipal Regional Stormwater NPDES Permit No. CAS612008, Order R2-2015-0049 (“Permit”), was issued in November of 2015.

A 2017 Outreach Strategic Plan was prepared by Sagent in order to identify target populations and opportunities to influence behaviors to accomplish these goals and to meet the requirements of the Municipal Regional Permit issued to the CCCWP and its Permittees by the Regional Water Quality Control Board. In order to conduct required public information and outreach within budget limits, CCCWP seeks the continued help of Sagent to actualize the Outreach Strategic Plan which will help: (1) to increase the knowledge of the target audiences about the watershed system, the adverse impacts of stormwater pollution on receiving waters, and potential solutions to mitigate the impacts; (2) to change the waste disposal and stormwater pollution generation behavior of target audiences by encouraging implementation of appropriate solutions; (3) to involve and engage the communities in Contra Costa County to participate in mitigating the impacts of stormwater pollution; and (4) to meet critical Permit requirements.

## CONSEQUENCE OF NEGATIVE ACTION:

Without the approval of the Board of Supervisors, the CCCWP, 19 Cities and Towns, Contra Costa County, and the Flood Control District will be unable to meet the outreach requirements set forth by the San Francisco Bay Region Municipal Regional Stormwater NPDES Permit No. CAS612008, Order R2-2015-0049.



Contra  
Costa  
County

To: Board of Supervisors  
From: Brian M. Balbas, Public Works Director/Chief Engineer  
Date: September 22, 2020

Subject: Contract with Valley Air Conditioning & Repair, Inc., a California Corporation, Countywide.

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**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Public Works Director, or designee, to execute a contract with Valley Air Conditioning & Repair, Inc., a California Corporation, in an amount not to exceed \$1,000,000, to provide on-call repairs and scheduled maintenance of cogeneration plants at four (4) County facilities, for the period October 1, 2020 through September 30, 2023, Countywide.

**FISCAL IMPACT:**

75% General Fund, 25% Hospital Enterprise Funds.

**BACKGROUND:**

Public Works Facilities Services is responsible for maintenance, repairs and small construction for all County buildings and facilities. Cogeneration plants offer combine heat and power in one system. Originally bid on BidSync #2006-413, Valley Air Conditioning & Repair, Inc., was the lowest, responsive and responsible vendor awarded for this contract.

Government Code Section 25358 authorizes the County to contract for maintenance and upkeep of County facilities. Facilities Services is requesting a contract with Valley Air Conditioning & Repair, Inc., to be approved for a period covering the next three years.

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APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Kevin Lachapelle, (925)  
313-7082

cc:

CONSEQUENCE OF NEGATIVE ACTION:

If this contract is not approved, Facilities Services may not be able to keep up with scheduled maintenance and repairs of cogeneration plants at four (4) County facilities.



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Kathy Gallagher, Employment & Human Services Director  
Date: September 22, 2020

Subject: Contract with Ombudsman Services of Contra Costa, Inc. for Long-Term Ombudsman Services

---

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Employment and Human Services Director, or designee, to execute a contract with Ombudsman Services of Contra Costa, Inc., in an amount not to exceed \$511,262 to provide countywide ombudsman services to seniors, for the period July 1, 2020 through June 30, 2021.

**FISCAL IMPACT:**

This will increase department expenditures by \$511,262, funded 19% by Federal revenues from the Federal Older Americans Act Title III-B and Title VII-A revenue (CFDA# 93.044, 93.042), and 81% by the State Public Health Licensing and Certification Program, Health Facilities Citation Penalties Account, Skilled Nursing Facilities Quality and Accountability Funds, and State Older Americans Act Title III-B. There is no required County match.

**BACKGROUND:**

This Contract was awarded from the Request For Proposal (RFP) 1171. Ombudsman Services of Contra Costa, Inc. provides long-term care ombudsman services for adults including mediation and conciliation services, creation of Family Councils for support of families of long-term care residents, documentation and reporting of investigations of physical abuse of all dependent adult and elder residents of long-term care facilities, education and training on seniors' rights, benefits, and entitlements.

---

APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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ATTESTED: September 22, 2020

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

Contact: Gina Chenoweth 608-4961  
or 812-6795

By: Laura Cassell, Deputy

cc:

CONSEQUENCE OF NEGATIVE ACTION:

Seniors in Contra Costa County will not receive the assistance of ombudsman services.

CLERK'S ADDENDUM

**Adopted as modified to read under Fiscal Impact: ~~This will increase department expenditures by \$511,262,~~ Funded 19% by Federal revenues from the Federal Older Americans Act Title III-B and Title VII-A revenue (CFDA# 93.044, 93.042), and 81% by the State Public Health Licensing and Certification Program, Health Facilities Citation Penalties Account, Skilled Nursing Facilities Quality and Accountability Funds, and State Older Americans Act Title III-B. There is no required County match.**



Contra  
Costa  
County

To: Board of Supervisors  
From: Anna Roth, Health Services Director  
Date: September 22, 2020

Subject: Contract #27-825-5 with Parham Gharagozlou, M.D., Inc.

---

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Health Services Director, or designee, to execute on behalf of the County Contract #27-825-5 with Parham Gharagozlou, M.D., Inc., a corporation, in an amount not to exceed \$1,800,000, to provide primary care and sleep study services to Contra Costa Health Plan (CCHP) members for the period from November 1, 2020 through October 31, 2023.

**FISCAL IMPACT:**

This Contract is funded 100% by CCHP Enterprise Fund II.

**BACKGROUND:**

On November 6, 2018, the Board of Supervisors approved Contract #27-825-4 with Parham Gharagozlou, M.D., Inc., for the provision of primary care and sleep study services to CCHP members, for the period from November 1, 2018 through October 31, 2020.

Approval of Contract #27-825-5 will allow the Contractor to continue to provide primary care and sleep study services for CCHP members through October 31, 2023.

---

APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Sharron Mackey,  
925-313-6104

cc: Kimberley Mullen, Marcy Wilhelm

CONSEQUENCE OF NEGATIVE ACTION:

If this contract is not approved, certain specialty health care services for its members under the terms of their Individual and Group Health Plan membership contracts with the County will not be provided.





Contra  
Costa  
County

To: Board of Supervisors  
From: Anna Roth, Health Services Director  
Date: September 22, 2020

Subject: Contract #27-954-3 with Philip R. Mill, O.D. and Michael D. Sutton, O.D., Inc., A Professional Corporation

---

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Health Services Director, or designee, to execute on behalf of the County Contract #27-954-3 with Philip R. Mill, O.D. and Michael D. Sutton, O.D., Inc., A Professional Corporation, in an amount not to exceed \$225,000, to provide optometry services to Contra Costa Health Plan (CCHP) members for the period from November 1, 2020 through October 31, 2023.

**FISCAL IMPACT:**

This Contract is funded 100% by CCHP Enterprise Fund II.

**BACKGROUND:**

On November 6 2018, the Board of Supervisors approved Contract #27-954-2 with Philip R. Mill, O.D. and Michael D. Sutton, O.D., Inc., A Professional Corporation for the provision of optometry services to CCHP members, for the period from November 1, 2018 through October 31, 2020.

Approval of Contract #27-954-3 will allow the Contractor to continue to provide optometry services for CCHP members through October 31, 2023.

**CONSEQUENCE OF NEGATIVE ACTION:**

If this contract is not approved, certain specialty health care services for its members under the terms of their Individual and Group Health Plan membership contracts with the County will not be provided.

- 
- APPROVE  OTHER
  - RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE
- 

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

- AYE:
- John Gioia, District I Supervisor
  - Candace Andersen, District II Supervisor
  - Diane Burgis, District III Supervisor
  - Karen Mitchoff, District IV Supervisor
  - Federal D. Glover, District V Supervisor

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ATTESTED: September 22, 2020

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

By: Laura Cassell, Deputy

Contact: Sharron Mackey,  
925-313-6104





**Contra  
Costa  
County**

To: Board of Supervisors  
From: Anna Roth, Health Services Director  
Date: September 22, 2020

Subject: Amendment #74-610-2 with WestCare California, Inc.

---

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Health Services Director, or designee, to execute on behalf of the County Contract Amendment Agreement #74-610-2 with WestCare California, Inc., a non-profit corporation, effective July 1, 2020, to amend Contract #74-610 (as amended by Amendment Agreement #74-610-1) to increase the payment limit by \$291,285, from \$2,028,824 to a new payment limit of \$2,320,109, with no change in the term of October 1, 2019 through September 30, 2020.

**FISCAL IMPACT:**

This Amendment is funded by 57% Substance Abuse Treatment and Prevention Block Grant, and 43% Federal Medi-Cal. (No Rate increase)

**BACKGROUND:**

On November 5, 2019, the Board of Supervisors approved Contract #74-610 (as amended by Amendment Agreement #74-610-1), with WestCare California, Inc., to provide substance use disorder prevention, treatment, and detoxification treatment services for County residents in West County who are referred through the Behavioral Health Access Line, for the period October 1, 2019 through September 30, 2020.

Approval of Amendment #74-610-2 will allow the Contractor to provide additional services through September 30, 2020.

---

APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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ATTESTED: September 22, 2020

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

Contact: Suzanne Tavano, Ph.D.,  
925-957-5169

By: Laura Cassell, Deputy

CONSEQUENCE OF NEGATIVE ACTION:

If this amendment is not approved, County's Clients will not receive substance use disorder treatment from Contractor, resulting in an overall reduction of services to a community at risk for incarceration.

CHILDREN'S IMPACT STATEMENT:

This Alcohol and Drug Abuse prevention program supports the Board of Supervisors' "Families that are Safe, Stable, and Nurturing" and "Communities that are Safe and Provide a High Quality of Life for Children and Families" community outcomes by providing individual, group, and family counseling; substance abuse education; rehabilitation support services; and substance abuse prevention services. Expected outcomes include increased knowledge about the impact of addiction; decreased use of alcohol, tobacco and other drugs; increased use of community-based resources; and increased school and community support for youth and parents in recovery.



**Contra  
Costa  
County**

To: Board of Supervisors  
From: David Twa, County Administrator  
Date: September 22, 2020

Subject: Recommendation on President's Memorandum on Deferring Payroll Tax

---

**RECOMMENDATION(S):**

ACKNOWLEDGE that the Auditor-Controller, County Administrator, and the County's labor partners recommend that the President's Executive Order allowing deferments of federal payroll taxes for qualifying individuals not be implemented and therefore DIRECT the Auditor-Controller not to implement deferrals.

**FISCAL IMPACT:**

This is an administrative action with no fiscal impact.

**BACKGROUND:**

On August 8, 2020 the President issued a memorandum on deferring certain payroll tax obligations in light of the ongoing COVID-19 disaster. In summary, the deferral is for the FICA portion of the Social Security Tax (6.2%) and is intended for employees whose bi-weekly wages are less than \$4,000 (or the equivalent amount with respect to other pay periods). After a thorough review of the memorandum and the subsequent guidance issued by the Internal Revenue Service (IRS), it would appear that for County of Contra Costa employees the negative consequences outstrip the positive.

---

APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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ATTESTED: September 22, 2020

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

Contact: Lisa Driscoll, County Finance  
Director (925) 335-1023

By: June McHuen, Deputy

## BACKGROUND: (CONT'D)

### Pros:

- By deferring the payroll tax for the months of September through December of 2020, eligible employees would receive what amounts to a short term loan over the course of four months.

### Cons:

-Employees who defer their payroll tax contributions for the months of September through December of 2020 will be required to pay twice their normal payroll tax contribution amounts for the months of January through April of 2021. This double tax deduction would result in extreme financial hardship for many employees. This hardship would be compounded by the fact that the deferral only applies to employees earning less than \$4,000 per bi-weekly pay, which could include employees with relatively less income and tighter budgets.

-Employees who defer their payroll taxes would not have the option for a convenient repayment schedule. IRS guidance indicates that all owed taxes must be repaid before May 1, 2021 in order to avoid interest and penalties.

-Employees who are absent without pay (AWOP) or separate from the County during the first four months of 2021 would be unable to pay back the deferred payroll taxes through the normal means. IRS guidance indicates that employers should make arrangements with employees if they separate from employment during the repayment period, which is not a practical solution for the County.

-Although the County would attempt to educate employees on the negative consequences of the payroll tax deferral, if provided the option to defer, it is inevitable that a significant portion of employees who choose to defer their payroll taxes would not fully understand the negative implications outlined above. This situation would result in frustration and financial hardship for County employees.

-The deferral would require re-programing our payroll system, which we anticipate would take several weeks making implementation impractical.

County labor staff discussed the issue with our labor partners and the Auditor-Controller and a consensus was reached regarding not implementing the deferral in Contra Costa.



Contra  
Costa  
County

To: Board of Supervisors  
From: John Kopchik, Director, Conservation & Development Department  
Date: September 22, 2020

Subject: APPROVE Submittal of Letter of Support for CCTA Grant for Electric Vehicle Implementation Activities

---

**RECOMMENDATION(S):**

AUTHORIZE the Chair of the Board of Supervisors to submit the letter of support for the Contra Costa Transportation Authority grant application for electric vehicle implementation activities.

**FISCAL IMPACT:**

There is no fiscal impact to County resources beyond staff time spent assisting Contra Costa Transportation Authority in developing the grant application. Receipt of this grant would bring up to \$2.5 million to Contra Costa County that would facilitate deployment of electric vehicles and build out electric vehicle workforce development programs.

**BACKGROUND:**

In 2018, the County partnered with the Contra Costa Transportation Authority (CCTA) to secure a grant from the California Energy Commission (CEC) to develop an Electric Vehicle Readiness Blueprint (Blueprint). The Blueprint was completed in 2019. CCTA and County sustainability staff continue to collaborate on opportunities and strategies to implement the Blueprint.

---

APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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ATTESTED: September 22, 2020

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

By: June McHuen, Deputy

Contact: Jody London,  
925-674-7871

cc:

### BACKGROUND: (CONT'D)

Because CCTA received the 2018 grant, it is now eligible to compete for up to \$2.5 million in Phase II funds. CCTA will be competing for these funds with the other Phase I grant recipients in this region, Santa Clara County and the City and County of San Francisco. The grant application is due October 2, 2020. CCTA will propose to implement some of the activities identified in the Blueprint, including but not limited to: (1) Provide charging infrastructure incentives at publicly accessible and multi-residential units located in priority communities considered “disadvantaged” under the State’s CalEnviroScreen tool; (2) Provide workforce training for electric vehicle mechanics in partnership with the Contra Costa Community College District; (3) Leverage the secondary electric vehicle market to create more opportunities for low-income households to access electric vehicles; (4) Leverage CCTA’s 511 Contra Costa electric bicycle rebate program with a bonus for the priority communities included in this grant; and (5) Educate County residents about how to access opportunities for electric vehicle use and/or ownership, whether it be a car or a bicycle.

### CONSEQUENCE OF NEGATIVE ACTION:

Failure to authorize the letter of support means the CCTA application will not be as robust as it could be.

### AGENDA ATTACHMENTS

Support Ltr. for CCTA Electric Vehicle Grant Application

### MINUTES ATTACHMENTS

Signed Letter for CCTA Vehicle Grant Application



# The Board of Supervisors

County Administration Building  
1025 Escobar Street  
Martinez, California 94553-1293

**John M. Gioia**, 1<sup>st</sup> District  
**Candace Andersen**, 2<sup>nd</sup> District  
**Diane Burgis**, 3<sup>rd</sup> District  
**Karen Mitchoff**, 4<sup>th</sup> District  
**Federal D. Glover**, 5<sup>th</sup> District

# Contra Costa County



**David J. Twa**  
Clerk of the Board  
And  
County Administrator  
(925) 655-2000

September 22, 2020

Randy Iwasaki, Executive Director  
Contra Costa Transportation Authority  
2999 Oak Road, Suite 100  
Walnut Creek, California 94597

Subject: Support for the Contra Costa Transportation Authority's Electric Vehicle Ready Communities Phase II – Blueprint Implementation Grant

Dear Mr..Iwasaki:

The Contra Costa County Board of Supervisors supports the Contra Costa Transportation Authority's (CCTA) application for the California Energy Commission's Electric Vehicle Ready Communities Phase II – Blueprint Implementation grant to provide funds to deploy strategies outlined in CCTA's 2019 Electric Vehicle Readiness Blueprint for Contra Costa County (Blueprint). The grant will facilitate the implementation of the following key activities identified in the Blueprint:

- 1) Provide charging infrastructure incentives at publicly accessible and multi-residential units located in priority communities considered "disadvantaged" under the State's CalEnviroScreen tool;
- 2) Provide workforce training for electric vehicle mechanics in partnership with the Contra Costa Community College District;
- 3) Leverage the secondary electric vehicle market to create more opportunities for low-income household to access electric vehicles;
- 4) Leverage CCTA's 511 Contra Costa electric bicycle rebate program with a bonus for the priority communities included in this grant; and
- 5) Educate County residents about how to access opportunities for electric vehicle use and/or ownership, whether it be a car or a bicycle.

As outlined in CCTA's Blueprint, this grant provides the opportunity to implement electrification strategies in underinvested communities, enhance workforce training, develop and amplify

educational outreach campaigns, and install EV charging infrastructure in communities that need it the most. In light of the COVID-19 pandemic, this grant will help provide zero emission personal transportation and valuable workforce skills to the communities hit hardest by the economic consequences of the pandemic and in greatest need of reliable transport.

As a partner in the development of the Contra Costa Electric Vehicle Readiness Blueprint, the Contra Costa County Board of Supervisors values this work and its relevance to the County's complementary efforts to reduce greenhouse gases, improve air quality and community health, and encourage equitable economic prosperity.

Sincerely,

Candace Andersen  
Chair, Board of Supervisors

# The Board of Supervisors

County Administration Building  
1025 Escobar Street  
Martinez, California 94553-1293

**John M. Gioia**, 1<sup>st</sup> District  
**Candace Andersen**, 2<sup>nd</sup> District  
**Diane Burgis**, 3<sup>rd</sup> District  
**Karen Mitchoff**, 4<sup>th</sup> District  
**Federal D. Glover**, 5<sup>th</sup> District

# Contra Costa County



**David J. Twa**  
Clerk of the Board  
And  
County Administrator  
(925) 655-2000

September 22, 2020

Randy Iwasaki, Executive Director  
Contra Costa Transportation Authority  
2999 Oak Road, Suite 100  
Walnut Creek, California 94597

Subject: Support for the Contra Costa Transportation Authority's Electric Vehicle Ready Communities Phase II – Blueprint Implementation Grant

Dear Mr..Iwasaki:

The Contra Costa County Board of Supervisors supports the Contra Costa Transportation Authority's (CCTA) application for the California Energy Commission's Electric Vehicle Ready Communities Phase II – Blueprint Implementation grant to provide funds to deploy strategies outlined in CCTA's 2019 Electric Vehicle Readiness Blueprint for Contra Costa County (Blueprint). The grant will facilitate the implementation of the following key activities identified in the Blueprint:

- 1) Provide charging infrastructure incentives at publicly accessible and multi-residential units located in priority communities considered "disadvantaged" under the State's CalEnviroScreen tool;
- 2) Provide workforce training for electric vehicle mechanics in partnership with the Contra Costa Community College District;
- 3) Leverage the secondary electric vehicle market to create more opportunities for low-income household to access electric vehicles;
- 4) Leverage CCTA's 511 Contra Costa electric bicycle rebate program with a bonus for the priority communities included in this grant; and
- 5) Educate County residents about how to access opportunities for electric vehicle use and/or ownership, whether it be a car or a bicycle.

As outlined in CCTA's Blueprint, this grant provides the opportunity to implement electrification strategies in underinvested communities, enhance workforce training, develop and amplify

educational outreach campaigns, and install EV charging infrastructure in communities that need it the most. In light of the COVID-19 pandemic, this grant will help provide zero emission personal transportation and valuable workforce skills to the communities hit hardest by the economic consequences of the pandemic and in greatest need of reliable transport.

As a partner in the development of the Contra Costa Electric Vehicle Readiness Blueprint, the Contra Costa County Board of Supervisors values this work and its relevance to the County's complementary efforts to reduce greenhouse gases, improve air quality and community health, and encourage equitable economic prosperity.

Sincerely,



Candace Andersen  
Chair, Board of Supervisors



Contra  
Costa  
County

To: Board of Supervisors  
From: Anna Roth, Health Services Director  
Date: September 22, 2020

Subject: Approve New and Recredentialing Providers in Contra Costa Health Plan's Community Provider Network

---

**RECOMMENDATION(S):**

APPROVE the list of providers recommended by Contra Costa Health Plan's (CCHP) Peer Review and Credentialing Committee on August 11, 2020, and by the Medical Director on August 27, 2020 and by the Health Services Director, as required by the State Departments of Health Care Services and Managed Health Care, and the Centers for Medicare and Medicaid Services.

**FISCAL IMPACT:**

There is no fiscal impact for this item.

**BACKGROUND:**

The National Committee on Quality Assurance (NCQA) requires that evidence of Board of Supervisors approval must be contained within each CCHP provider's credentials file. Approval of this list of providers as recommended by the CCHP Medical Director will enable Contra Costa Health Plan to comply with this requirement.

**CONSEQUENCE OF NEGATIVE ACTION:**

If this action is not approved, CCHP Providers would not be appropriately credentialed and not be in compliance with the NCQA.

---

APPROVE
  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR
  RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
 Candace Andersen, District II Supervisor  
 Diane Burgis, District III Supervisor  
 Karen Mitchoff, District IV Supervisor  
 Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: June McHuen, Deputy

Contact: Sharron Mackey,  
925-613-6104

cc: Heather Wong, Marcy Wilhelm

ATTACHMENTS

Provider List

**Contra Costa Health Plan  
 Providers Approved by Medical Director  
 August 11, 2020**

<b>CREDENTIALING PROVIDERS AUGUST 2020</b>	
<b>Name</b>	<b>Specialty</b>
Baumann, Mary Jo, NP	Mid-Level Family Planning
Becker, Edward, MD	Dermatology
Contreras, Anaraly, M.Ed.	Qualified Autism Provider
Fabillar, Rose Anne, BCBA, M.Ed.	Qualified Autism Provider
Fellows, Zachary, MD	Rheumatology
Gomez, Angelique, RBT	Qualified Autism Paraprofessional
Gourlie, Chelsea, BCBA	Qualified Autism Provider
Granger, Angela, RBT, BA	Qualified Autism Professional
Harmon, Jennifer, BCBA	Qualified Autism Provider
Heidarzadeh, Taban, BCBA	Qualified Autism Provider
Henry, Richard, RBT, MA	Qualified Autism Provider
Hubik, Katie, BCBA	Qualified Autism Provider
Hurt, Catherine, MD	Wound Care
Martinez, Miriam, RBT	Qualified Autism Paraprofessional
Mendoza, Deona, RBT, BA	Qualified Autism Professional
Nwankwu, Josephine RBT, BA	Qualified Autism Professional
Oliveira, Dawn, BCBA	Qualified Autism Provider
Patel, Vikas, MD	Dermatology

Contra Costa Health Plan  
 Providers Approved by PRCC and Medical Director  
 August 11 and 27, 2020

<b>CREDENTIALING PROVIDERS AUGUST 2020</b>	
<b>Name</b>	<b>Specialty</b>
Pisio, Madeleine, RBT	Qualified Autism Paraprofessional
Ram, Parnian, BCBA	Qualified Autism Provider
Rudd, Shelby, BCBA, M.Ed.	Qualified Autism Provider
Ryan, Patrick, MD	Radiology
Santos, Talita, RBT	Qualified Autism Paraprofessional
Silva, Oscar, BCBA	Qualified Autism Provider
Soto, Mary, RBT, M.Ed.	Qualified Autism Provider
Suazo, Giselle, NP	Primary Care Family Medicine
Thompson, Benjamin, Au.D.	Audiology
Tirado, Gabriela, CNM	Midwife
Valtierra, Laura, BCBA	Qualified Autism Provider
Vanguri, Poornima, MD	Surgery - Colon & Rectal
Watkins, Angela, BCBA	Qualified Autism Provider

<b>CREDENTIALING ORGANIZATIONAL PROVIDERS AUGUST 2020</b>		
<b>Provider Name</b>	<b>Provide the Following Services</b>	<b>Location</b>
MedicalOne Health	Home Health/Hospice	Antioch



Contra Costa Health Plan  
 Providers Approved by PRCC & Medical Director  
 August 11, and 27, 2020

<b>RECREREDENTIALING PROVIDERS AUGUST 2020</b>	
<b>Name</b>	<b>Specialty</b>
Aramian, Armela, NP	Primary Care Family Medicine
Armstrong, Ingrid, AuD	Audiology
Asta, Lisa, MD	Primary Care Pediatrician
Barcenas, Olivia, MFT	Mental Health Services
Brinton, Daniel, MD	Ophthalmology
Burack, Jeffrey, MD	HIV/Aids
Cobbs, Yvonne, NP	Primary Care Internal Medicine
Crawford, Douglass, MD	Primary Care Family Medicine
Du, Perpetualyn, BCaBA	Qualified Autism Professional
Golden, Donald, MD	Primary Care Family Medicine
Hourany, Johanna, MFT	Mental Health Services
Jaye, Lyssa, NP	Mid-Level Family Planning
Jerdee, Valerie, MD	Allergy & Immunology

Contra Costa Health Plan  
 Providers Approved by PRCC and Medical Director  
 August 11 and 27, 2020

<b>RECREREDENTIALING PROVIDERS AUGUST 2020</b>	
<b>Name</b>	<b>Specialty</b>
Kiff, Natalie, LCSW	Mental Health Services
Kim, Ran, MD	Surgery – Colon & Rectal
Lacocque, Patricia, LCSW	Mental Health Services
Lavelle, Laura, NP	Primary Care Pediatrician
Legaspi, Sonia, BCBA	Qualified Autism Provider
Lit, Eugene, MD	Ophthalmology
Lobao, Jeannette, PsyD	Bariatric Evaluations
Locke, Breanna, BCBA	Qualified Autism Provider
Makooi, Mahmood, DC	Chiropractic Medicine
Michas, Gregory, DO	Psychiatry
Nelson, Lisa Ingrid, NP	Primary Care/ Internal Medicine/HIV Aids
Paduraru, Adeline, BCBA	Qualified Autism Provider
Piedrahita, Monica, BCBA	Qualified Autism Provider
Ramakrishnan, Sampath, MD	Primary Care Internal Medicine
Ross, Joel, MD	Otolaryngology
Schall, Sandra, PT	Physical Therapy
Shell, Amy, NP	Mid-Level Allergy & Immunology

Contra Costa Health Plan  
 Providers Approved by PRCC & Medical Director  
 August 11, and 27, 2020

<b>RECREREDENTIALING PROVIDERS AUGUST 2020</b>	
<b>Name</b>	<b>Specialty</b>
Silva, Suzanne, NP	Primary Care Family Medicine
Simmons, Halsey, MFT	Mental Health Services
Trombla, Laurie. PA	Primary Care Family Medicine
Vallejo, Greg, RDO	Dispensing Optician

<b>RECREREDENTIALING ORGANIZATIONAL PROVIDERS AUGUST 2020</b>		
<b>Provider Name</b>	<b>Provide the Following Services</b>	<b>Location</b>
Aspen Surgery Center, LLC dba: Aspen Surgery Center	Outpatient Surgery	Walnut Creek
Bio-Medical Applications of California, Inc. dba: Bio-Medical Applications Ardenwood	Dialysis	Newark
Crescent Healthcare, Inc. dba: Crescent Healthcare	Infusion Therapy	Hayward
Fresenius Medical Care Diablo Nephrology Clinics, LLC Fresenius Medical Care - Diablo Walnut Creek	Dialysis	Walnut Creek
John Muir Behavioral Health dba: John Muir Behavioral Health Center	Mental Health	Concord

Contra Costa Health Plan  
 Providers Approved by PRCC and Medical Director  
 August 11 and 27, 2020

<b>RECREREDENTIALING ORGANIZATIONAL PROVIDERS AUGUST 2020</b>		
<b>Provider Name</b>	<b>Provide the Following Services</b>	<b>Location</b>
NorCal Care Centers, Inc. dba: Antioch Convalescent Hospital	Skilled Nursing Facility	Antioch
Richmond Post Acute Care	Skilled Nursing Facility	Richmond

**Contra Costa Health Plan  
 Providers Approved by Medical Director  
 AUGUST 27, 2020**

<b>RECREREDENTIALING PROVIDER AUGUST 2020</b>	
<b>Name</b>	<b>Specialty</b>
Gugessa, Amsale, NP	Primary Care Family Medicine

Bopl-August 11 and 27, 2020



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Anna Roth, Health Services Director  
Date: September 22, 2020

Subject: Interagency Agreement #28-329-2 with Pittsburg Unified School District

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**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Health Services Director, or designee, to execute on behalf of the County Interagency Agreement #28-329-2, including indemnification, with Pittsburg Unified School District (District), a government agency, to provide school-based mobile clinic services, for the period from September 1, 2020 through August 31, 2025.

**FISCAL IMPACT:**

There is no fiscal impact for this item.

**BACKGROUND:**

This Contract meets the social needs of County's population by providing mobile clinic services, including comprehensive physical exams, immunizations, tuberculosis testing, sports physicals, dental services and well-child care to low-income and disadvantaged school children and youth within the District.

On March 21, 2017 the Board of Supervisors approved Interagency Agreement #28-329-1, with the District, to provide school-based mobile clinic services to children within the District for the period from March 1, 2017 through August 31, 2020, including County's agreement to indemnify the District.

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APPROVE
  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR
  RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
 Candace Andersen, District II Supervisor  
 Diane Burgis, District III Supervisor  
 Karen Mitchoff, District IV Supervisor  
 Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: June McHuen, Deputy

Contact: Daniel Peddycord,  
925-313-6712

BACKGROUND: (CONT'D)

Approval of Contract #28-329-2 allows the Contractor to continue providing services through August 31, 2025

CONSEQUENCE OF NEGATIVE ACTION:

If this contract is not approved, low-income and disadvantaged school children and youth in East Contra Costa County will not receive preventive health screenings, well-child examinations, and primary health care services from County's mobile clinics.

CHILDREN'S IMPACT STATEMENT:

This program supports the following Board of Supervisors' community outcomes: "Children Ready For and Succeeding in School" and "Communities that are Safe and Provide a High Quality of Life for Children and Families". Expected program outcomes include an increase in the number of healthy children within the District.



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Kathy Gallagher, Employment & Human Services Director  
Date: September 22, 2020

Subject: Family and Children's Trust Committee (FACT) Policies and Procedures Revisions

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**RECOMMENDATION(S):**

APPROVE the revised Policies and Procedures of the Family and Children's Trust (FACT) Committee, and APPROVE recommendation to extend by one additional year any second year 2020-2021 FACT contracts that meet the criteria for renewal.

**FISCAL IMPACT:**

There is no fiscal impact.

**BACKGROUND:**

Employment and Human Services, on behalf of the Family and Children's Trust (FACT) Committee, is requesting the following:

Amendment of the FACT Policies and Procedures. Over the course of the last year, the FACT Committee has taken on the task to update the FACT Policies and Procedures to reflect current practices, membership make up, alignment with County and EHSD contract policies as well as ensure document consistency. The revised amendment was presented to the Family and Human Services (FHS) Committee on August 24, 2020 for recommendation and approval to move forward to the Board of Supervisors. FHS supported the recommendation and approved the amended Policies and Procedures to proceed with a noted correction to Article II, Paragraph 2 included in the attached. This board order

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APPROVE
  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR
  RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
 Candace Andersen, District II Supervisor  
 Diane Burgis, District III Supervisor  
 Karen Mitchoff, District IV Supervisor  
 Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: June McHuen, Deputy

Contact: Elaine Burres  
608-4960

cc:

BACKGROUND: (CONT'D)

is in compliance with the current FACT Policies and Procedures, Article IX. The FACT Committee members approved the Policies and Procedures amendment on August 3, 2020 with the required 2/3 majority vote, and unanimously accepted the recommended changes to the FACT Policies and Procedures.

Approval to allow the FACT Committee to offer current second year FACT contract recipients the option to be extended a third year contract renewal. This action is requested to support funding stability to these agencies as we continue to navigate through the COVID-19 pandemic, continue to allow these agencies to provide needed services to our community, as well as aligning the third year renewal with that reflected in the recommended FACT Policies and Procedure modification. The FACT Committee voted on August 3, 2020, with a unanimous vote to accept the recommended move to a third year contract renewal for existing FACT contract recipients that meet the criteria for renewal.

CONSEQUENCE OF NEGATIVE ACTION:

Policies and Procedures will not accurately reflect the FACT Committee composition and current day practices. Current second year FACT recipients will not have the option to have stable funding in light of the COVID-19 crisis thus securing funding for a third year and the FACT Committee and EHSD Staff will initiate the RFP process for the 2021-2020 contract year.

ATTACHMENTS

FACT Policies and Procedures Redlined

FACT Policies and Procedures Final



# **POLICIES AND PROCEDURES**

## **FAMILY AND CHILDREN'S TRUST COMMITTEE (FACT) CONTRA COSTA COUNTY**

ARTICLE I:		Name, Purpose, Origin
ARTICLE	II:	Membership
ARTICLE	III:	Officers
ARTICLE	IV:	Committees
ARTICLE	V:	Role and Relationship of Contra Costa Employment and Human Services Department and the FACT Committee
ARTICLE	VI:	Meetings
ARTICLE	VII:	Established Procedures
ARTICLE	VIII:	Conflict of Interest Guidelines
ARTICLE	IX:	Amendments to Policies and Procedures

### **ARTICLE I**

#### **NAME, PURPOSE, ORIGIN**

##### *Section 1* NAME

The name of this committee shall be the Family and Children's Trust Committee (FACT).

##### *Section 2* PURPOSE

The purpose of this Committee is to establish priorities and make funding

recommendations to the Board of Supervisors on the allocation of specific funds for the prevention, **intervention and treatment** of child abuse and neglect, and the promotion of positive family functioning. These funds include: The Child Abuse Prevention, Intervention, and Treatment funds (CAPIT) funds, (AB 1733), Birth Certificate funds (AB2994), the Family and Children's Trust funds, the Community-Based Child Abuse Prevention funds (CBCAP), the Child Care Affordability funds, and other funds as may be subsequently directed by the Board of Supervisors.

The FACT Committee also provides information and data to the Employment and Human Services Department on the effectiveness of current and proposed programs for families and children.

**The FACT Committee also provides public information activities and coordination/collaboration discussions to inform and educate the community about child abuse and neglect as well as the promotion of positive family functioning.**

### *Section 3* ORIGIN OF COMMITTEE

On April 6, 1985 the Contra Costa County Board of Supervisors established the Family and Children's Trust Committee (FACT) to make funding recommendations to the Board of Supervisors on allocation of the CAPIT Funds (AB1733), Birth Certificate Funds (AB2994), and the Family and Children's Trust Fund monies. Previously, there were three Committees providing recommendations to the Board of Supervisors for the use of these funds. The Board also directed the FACT Committee to make funding recommendations on the Child Care Affordability funds and the Community-Based Child Abuse Prevention funds (CBCAP) at a later date.

In 2005, the Board of Supervisors directed that the Family and Children's Services Advisory Committee (FACSAC) be merged with FACT as the federal mandate for FACSAC had ceased to exist and many of the functions of the committee had been assumed by other programs within the Employment and Human Services Department or other county entities.

All decision making authority is retained by the Board of Supervisors. The Board of Supervisors is the appointing authorities to FACT.

## ARTICLE II

### MEMBERSHIP

#### *Section 1* MEMBERSHIP CATEGORIES

The membership of the FACT Committee shall consist of:

1. A total of five (5) sector representatives from the following Committees, Councils, Groups or qualified individuals representing a sector:
  - a. Mental Health Commission
  - b. Local Planning Council
  - c. First 5 Commission
  - d. Child Abuse Prevention Council (ex officio)
  - e. Faith-Based Community
  - f. Substance Abuse Advisory Committee or Council
  - g. Early Childhood Education/Child Development (group or individual)
  - h. Education/School Based Programs
  - i. Programs and Services for Children with Special Needs
2. One representative from each of the five Supervisorial Districts. Supervisors will recruit and appoint, subject to the confirmation process specified in Article II, Section 8 herein, their own representative or, if requested, staff to FACT will provide recruitment assistance.
3. Five At-Large members shall be recruited from representative community groups including, but not limited to, the following:
  - a. Service clubs
  - b. Faith-based organizations
  - c. Civic organizations
  - d. Ethnic and cultural clubs/groups
  - e. Chambers of Commerce
  - f. Parent/Teacher Associations/other educational entities
  - g. Health care provider, payer and service organizations

All At-Large members shall be recruited to bring expertise in child care, out-of-home placement, homelessness, alcohol/substance abuse treatment, family systems or family preservation, child abuse/neglect services, parent education, multi-ethnic systems or programs and/or program planning, analysis, and evaluation.

The five (5) At-Large members will be selected and replaced when needed from the community through a recruitment, application and interview process, by members of the FACT Committee and staff.

## *Section 2* REQUIREMENTS

Each entity listed in Article II, Section 1 (1.) above which has a sector representative on the FACT Committee will have first option to recommend a replacement for that individual should he/she leave for any reason. New appointment recommendations must be made within 45 days or the FACT Committee may select another organization, commission, or council from the list to appoint someone to fill the vacancy, subject to the appointment confirmation process specified in Article II, Section 8 herein. FACT will request that said organization, commission, or council select a representative that:

1. Has knowledge of child abuse/child development or family functioning issues and programs, if possible;
2. Will commit self to attend all FACT meetings and read all materials; and
3. Will regularly seek input from, and report back to, the appointing body about the issues discussed and the decisions made by the FACT committee.

## *Section 3* TERM of MEMBERSHIP

One term of Committee membership shall be two years. The FACT committee will develop a schedule whereby no more than fifty (50) percent of FACT members terminate membership in any one year. An ethnic, economic, and geographic balance among members shall be maintained as much as possible.

## *Section 4* ABSENCES

Absences:

1. *Excused* absences are those reported beforehand, if possible, and are due to emergency, illness, work schedule conflicts, or scheduled vacation. After three (3) such consecutive absences in one year, an evaluation will be made by the FACT Committee to determine if this should constitute a resignation from the Committee.
2. Three (3) *unexcused* consecutive absences in one year shall constitute a resignation from the Committee. Following the third unexcused absence, the Chairperson will contact the organization or individual in question and request a new representative.

#### *Section 5* RESIGNATIONS

Voluntary resignation is accomplished by writing to the Chairperson, EHSD Staff and/or District Supervisor. The resignation will be effective at the time of **submission** unless otherwise specified.

#### *Section 6* CONFLICT-FREE REQUIREMENTS

All FACT Committee members shall be conflict-free according to Contra Costa County's and the State Department of Social Service Conflict of Interest Guidelines (see Article VIII, Conflict of Interest Guidelines).

#### *Section 7* LIABILITY

A member of the Committee shall not, solely because of such membership, be personally liable for any debts, obligations, or liabilities of the Committee.

#### *Section 8* REVIEW OF APPOINTMENTS

All prospective At-Large **or Discipline Specific Sector** appointments shall be sent to the Family and Human Services Committee (FHS) for review prior to appointment by the Board of Supervisors. The FACT Committee shall forward to FHS the resumes of qualified individuals. District specific seat appointments will be reviewed and approved by the corresponding District supervisor and be submitted to the Board of Supervisors for approval. The FACT committee shall review and provide recommendation on District appointees.

### **ARTICLE III**

## **OFFICERS**

### *Section 1 OFFICERS*

The officers of this Committee shall be a Chairperson and, if deemed necessary by the Committee, a Vice-Chairperson.

### *Section 2 DUTIES*

The duties of the officer(s) shall be the usual duties of such officers as provided in Roberts Rules of Order. The Vice-Chairperson shall perform such other duties as may be assigned by the Chairperson.

### *Section 3 TERM OF OFFICE*

The term of office shall be two years. Officers may be elected for one or more following terms in the same office.

### *Section 4 OFFICER ELECTIONS*

1. Officers shall be elected by majority vote of the membership.
2. Vacancies occurring between elections shall be filled by election, in like manner, at the next meeting after the vacancy occurs.

## **ARTICLE IV**

### **COMMITTEES**

#### *Section 1 COMMITTEES*

The Chairperson shall appoint such Subcommittees as may be required for the furtherance of the purpose of the Committee.

## ARTICLE V

### ROLE, RESPONSIBILITIES AND RELATIONSHIP OF CONTRA COSTA EMPLOYMENT AND HUMAN SERVICES DEPARTMENT WITH THE FACT COMMITTEE

#### Section 1 ROLES

The Board of Supervisors delegated to the Employment and Human Services Department the responsibility to administer certain State and County funds disbursed by Board orders based on the recommendations of this FACT Committee. This task involves meeting State and County requirements related to AB 1733 (CAPIT funds), AB 2994 (Birth Certificate funds), the Ann Adler Family and Children's Trust Funds, the federal Community- Based Child Abuse Prevention funds (CBCAP), and the Child Care Affordability Funds. The Board of Supervisors also directed the Employment and Human Services Department to provide staff support to the FACT Committee.

#### Section 2 RESPONSIBILITIES

All FACT Committee members, save ex officio (non-voting) members if currently sitting, shall be responsible for preparing, reviewing, and rating all proposals resulting from the annual RFP process and recommending to the Employment and Human Services Director and the Board of Supervisors the award of family and children's services contracts, including the appropriate level of funding for such contracts, with non-profit community agencies pursuant to:

1. CAPIT (AB 1733) and Birth Certificate-funded (AB 2994) programs for child abuse prevention and early intervention services;
2. The Family and Children's Trust Funds, for leveraging with other community resources to maximize public benefit in family and children's service programs;
3. The federal CBCAP (Community-Based Child Abuse Prevention) funds;
4. The Child Care Affordability funds to improve, expand, and make child care more affordable and accessible to low-income families; and
5. Other funds as subsequently directed by the Board of Supervisors.

#### Section 3 EHSD SUPPORT SERVICES

Staff support to the FACT Committee includes:

- (a) Providing clerical support, e.g., prepare and distribute committee's agendas, prepare minutes of all meetings, notify members of meetings, draft correspondence, etc., for the Chairperson's approval, prepare and send written materials at the Chairperson's direction, and maintain a current membership roster. (See Article VII, Section 6);
- (b) Implementing the instructions of the Chairperson relative to public hearings or other tasks as assigned;
- (c) Advising the Committee about political or contractual ramifications of any decision being considered by this Committee or its members; and
- (d) Reporting to the Committee regularly about contract timelines, monitoring procedures and any problems with contracts or contractors, distributing all contract service plans and budgets and all written reports required from contractors or by the State.

Staff support to the FACT Committee does not include:

- (a) acting unilaterally at any time relative to FACT Committee business or issues;
- (b) voting on the funding priorities, the RFP process, funding decisions, or any other motion before the Committee.

## **ARTICLE VI MEETINGS**

### *Section 1*

All meetings of the FACT Committee shall be governed by the Brown Act (Government Code section 54950, et seq.) and Better Government Ordinance.

### *Section 2*

The Committee shall meet regularly and as often as needed during the RFP allocation period.

### *Section 3*



Meetings shall be held at a regularly scheduled date and time of the month as established by the Committee in order to better accommodate attendance by Committee members and the public. Notice of the meeting shall be posted in a prominent place.

#### *Section 4*

A quorum is defined as fifty percent plus one (50%+1) of authorized seats. No voting shall take place without a quorum present. Unless otherwise required by these policies, a majority of the total membership is required to pass any proposed action of the FACT committee.

#### *Section 5*

Special meetings of this Committee may be called by the Chairperson, Vice-Chairperson, or any three members in concert. Special meetings can be held following four-work days' notice to all members if a quorum is present at the designated date and time.

## **ARTICLE VII**

### **ESTABLISHED PROCEDURES**

#### *Section 1*

Every three years the FACT Committee shall establish a minimum of two specific priority areas for allocating available FACT funds based on information/data from a County self-assessment or equivalent, public hearing or other needs assessment mechanism, a review of additional surveys/reports from other groups, and/or interviews with key child abuse/neglect professionals.

#### *Section 2*

- (1) The FACT Committee will adhere to the following decision-making process for the allocation of CAPIT (AB1733), Birth Certificate (AB2994) and Community-Based Child Abuse Prevention funds. These monies derive from the State Department of Social Services and any requirements of that Department will be adhered to, in addition to the following procedures:

- a. These monies are for child abuse and neglect prevention and early intervention services, which meet the needs of children at high-risk, especially those aged 0 - 14, operated by private non-profit organizations.
- b. Unless otherwise required by the Office of Child Abuse Prevention, or the State Department of Social Services Systems Improvement Plan, every three years a needs assessment process, which may include community member and professional surveys (web-based and in-person), community and professional discussions/meetings and review/analysis of other current studies and information, will be used to establish a minimum of two priority areas for funding of services.
- c. The Employment and Human Services Department will implement a competitive RFP/RFI process for the allocation of funds.
- d. The FACT Committee will review, rate, and recommend approval of contracts to the Board of Supervisors following the guidelines outlined in the current RFP.
- e. Monies contributed to the Family and Children's Trust fund will be allocated to public/private non-profit agencies which provide services that meet the needs of families and children in Contra Costa County. These funds will generally be combined with the State funds described in (a), above, and will be allocated via the same process, but they may, at the FACT Committee's discretion, be used to support small programs whose goals are slightly broader than those of the aforementioned state program.

### *Section 3*

The general timeline for the work of the Committee in an RFP funding year is as follows:

- September: Committee officer terms begin; agencies are notified of public hearings/interviews/other needs assessment activities.
- October: Begin contractor site-visits; complete needs assessment.
- Oct. – Nov.: Identify overall county needs and establish funding priorities.
- Nov. – Dec.: FACT Committee, staff and Contracts Unit prepares RFP/RFI for distribution; RFP/RFI released mid-December.
- January: Proposals due; begin second round of site-visits.

- February: Committee members rate and review proposals.
- March: Rating and Review meeting (open) held; following two week appeal period, funding recommendations forwarded to Employment and Human Services Director and Board of Supervisors for final approval.
- April: Contracts and Grants Unit of the Employment and Human Services Department prepares and submits contract documents to selected agencies.
- July: Review of overall RFP process to identify required modifications; tax insert approved.
- August: No FACT meeting

In addition to this RFP-focused timeline, other pertinent activities, including program review meetings and meetings with community members occur throughout the year. Public information activities and coordination/collaboration discussions with related programs/agencies serve as a mechanism to inform and educate the community about the issues and problems facing low-income families and children. A legislative report is provided quarterly by the Director of the Child Abuse Prevention Council (sitting on the FACT Committee as an ex-officio member).

This general timeline will serve as the basis for developing the FACT Committee's annual work plan by October 15 of each year.

#### *Section 4*

The County Employment and Human Services Department will establish a work plan with the State regarding CAPIT (AB 1733) and Community-Based Child Abuse Prevention Funds (CBCAP), to be reviewed by the committee.

The County Employment and Human Services Department will not establish a work plan with the State regarding funds raised through Birth Certificates (AB2993) or other funds within the purview of this Committee without prior review of such plan by the Committee as such decisions directly impact the FACT Committee's work plan and timelines.

#### *Section 5*

The County liaison from the Office of Child Abuse Prevention (OCAP) will be invited to meet with The FACT membership at least annually in order to maintain communication and a current understanding of OCAP's expectations.

#### *Section 6*

Employment and Human Services staff to the FACT Committee shall maintain a roster of attendance, including excused and unexcused absences (as defined herein) and will notify the Chairperson when any member has two consecutive unexcused absences.

If the FACT Committee decides on a course of action, staff to the Committee will follow through on that decision as soon as possible. Staff will raise any issues or problems he/she sees with a course of action while it is still under discussion. The Committee and Employment and Human Services staff will work together to ensure that all issues and potential problems are addressed before decisions are made. Should a problem arise for Employment and Human Services staff while executing a Committee decision, the Chairperson will be contacted as soon as possible. That problem or item will then be placed on the next agenda so members can be kept informed of the outcome of their decisions.

#### *Section 7*

Staff to this Committee and EHSD Contracts and Grants Unit staff who deal with the State Office of Child Abuse Prevention, or contractors allocated monies via Committee recommendations, will submit directly to the Chairperson requisite documents and reports received pertaining to CAPIT, Birth Certificate, CBCAP, or Trust Fund monies, as well as other relevant documents under the purview of the committee.

#### *Section 8*

Members entitled to vote shall not be permitted to vote or act by proxy.

## **ARTICLE VIII**

### **CONFLICT OF INTEREST GUIDELINES**

*Section 1*

All members of the FACT Committee shall be conflict-free according to Contra Costa County's and the State Department of Social Services' Conflict of Interest Guidelines.

To be conflict-free, FACT membership shall not include anyone who:

1. Is a board member or an employee of an agency receiving monies recommended by FACT.
2. Is a board member or an employee of an agency applying for FACT funding.
3. Has been a board member or an employee of an agency during a 12 month period measured either from the dated he or she resigned from an agency which received FACT funds at any time during the preceding year or after the end of the fiscal year in which that agency received any FACT funds.

*Section 2*

Contract monitoring is not to be conducted by any member of FACT who has a conflict of interest in that the member, or the member's spouse or business partner, is a board member or an employee of the contract agency he or she is monitoring.

**ARTICLE IX**

**AMENDMENT OF POLICIES AND PROCEDURES**

*Section 1*

These Policies and Procedures may be amended once the following actions have occurred:

1. The proposed amendment has been introduced in writing by one or more FACT members at a meeting with a quorum present; and

2. The amendment has been discussed by the membership in at least one regular meeting prior the regularly scheduled meeting at which a vote is taken; and
3. Any suggested changes in wording have been accepted by the one or more FACT members who originally introduced the amendment; and
4. A 2/3 vote of the total membership approves the amendment either by a count of hands or by written ballot as determined by a majority of the members present on a case-by-case basis, and:
5. The amendment(s) is approved by the Board of Supervisors.

# **POLICIES AND PROCEDURES**

## **FAMILY AND CHILDREN'S TRUST COMMITTEE (FACT) CONTRA COSTA COUNTY**

ARTICLE I:		Name, Purpose, Origin
ARTICLE	II:	Membership
ARTICLE	III:	Officers
ARTICLE	IV:	Committees
ARTICLE	V:	Role and Relationship of Contra Costa Employment and Human Services Department and the FACT Committee
ARTICLE	VI:	Meetings
ARTICLE	VII:	Established Procedures
ARTICLE	VIII:	Conflict of Interest Guidelines
ARTICLE	IX:	Amendments to Policies and Procedures

### **ARTICLE I**

#### **NAME, PURPOSE, ORIGIN**

##### *Section 1* NAME

The name of this committee shall be the Family and Children's Trust Committee (FACT).

##### *Section 2* PURPOSE

The purpose of this Committee is to establish priorities and make funding

recommendations to the Board of Supervisors on the allocation of specific funds for the prevention, intervention and treatment of child abuse and neglect, and the promotion of positive family functioning. These funds include: The Child Abuse Prevention, Intervention, and Treatment funds (CAPIT) funds, (AB 1733), Birth Certificate funds (AB2994), the Family and Children's Trust funds, the Community-Based Child Abuse Prevention funds (CBCAP), the Child Care Affordability funds, and other funds as may be subsequently directed by the Board of Supervisors.

The FACT Committee also provides information and data to the Employment and Human Services Department on the effectiveness of current and proposed programs for families and children.

The FACT Committee also provides public information activities and coordination/collaboration discussions to inform and educate the community about child abuse and neglect as well as the promotion of positive family functioning.

### *Section 3* ORIGIN OF COMMITTEE

On April 6, 1985 the Contra Costa County Board of Supervisors established the Family and Children's Trust Committee (FACT) to make funding recommendations to the Board of Supervisors on allocation of the CAPIT Funds (AB1733), Birth Certificate Funds (AB2994), and the Family and Children's Trust Fund monies. Previously, there were three Committees providing recommendations to the Board of Supervisors for the use of these funds. The Board also directed the FACT Committee to make funding recommendations on the Child Care Affordability funds and the Community-Based Child Abuse Prevention funds (CBCAP) at a later date.

In 2005, the Board of Supervisors directed that the Family and Children's Services Advisory Committee (FACSAC) be merged with FACT as the federal mandate for FACSAC had ceased to exist and many of the functions of the committee had been assumed by other programs within the Employment and Human Services Department or other county entities.

All decision making authority is retained by the Board of Supervisors. The Board of Supervisors is the appointing authorities to FACT.



## ARTICLE II

### MEMBERSHIP

#### *Section 1* MEMBERSHIP CATEGORIES

The membership of the FACT Committee shall consist of:

1. A total of five (5) sector representatives from the following Committees, Councils, Groups or qualified individuals representing a sector:
  - a. Mental Health Commission
  - b. Local Planning Council
  - c. First 5 Commission
  - d. Child Abuse Prevention Council (ex officio)
  - e. Faith-Based Community
  - f. Substance Abuse Advisory Committee or Council
  - g. Early Childhood Education/Child Development (group or individual)
  - h. Education/School Based Programs
  - i. Programs and Services for Children with Special Needs
2. One representative from each of the five Supervisorial Districts. Supervisors will recruit and appoint, subject to the confirmation process specified in Article II, Section 8 herein, their own representative or, if requested, staff to FACT will provide recruitment assistance.
3. Five At-Large members shall be recruited from representative community groups including, but not limited to, the following:
  - a. Service clubs
  - b. Faith-based organizations
  - c. Civic organizations
  - d. Ethnic and cultural clubs/groups
  - e. Chambers of Commerce
  - f. Parent/Teacher Associations/other educational entities
  - g. Health care provider, payer and service organizations

All At-Large members shall be recruited to bring expertise in child care, out-of-home placement, homelessness, alcohol/substance abuse treatment, family systems or family preservation, child abuse/neglect services, parent education, multi-ethnic systems or programs and/or program planning, analysis, and evaluation.

The five (5) At-Large members will be selected and replaced when needed from the community through a recruitment, application and interview process, by members of the FACT Committee and staff, subject to the confirmation process specified in Article II, Section 8 herein.

### *Section 2* REQUIREMENTS

Each entity listed in Article II, Section 1 (1.) above which has a sector representative on the FACT Committee will have first option to recommend a replacement for that individual should he/she leave for any reason. New appointment recommendations must be made within 45 days or the FACT Committee may select another organization, commission, or council from the list to appoint someone to fill the vacancy, subject to the appointment confirmation process specified in Article II, Section 8 herein. FACT will request that said organization, commission, or council select a representative that:

1. Has knowledge of child abuse/child development or family functioning issues and programs, if possible;
2. Will commit self to attend all FACT meetings and read all materials; and
3. Will regularly seek input from, and report back to, the appointing body about the issues discussed and the decisions made by the FACT committee.

### *Section 3* TERM of MEMBERSHIP

One term of Committee membership shall be two years. The FACT committee will develop a schedule whereby no more than fifty (50) percent of FACT members terminate membership in any one year. An ethnic, economic, and geographic balance among members shall be maintained as much as possible.

### *Section 4* ABSENCES

Absences:

1. *Excused* absences are those reported beforehand, if possible, and are due to emergency, illness, work schedule conflicts, or scheduled vacation. After three (3) such consecutive absences in one year, an evaluation will be made by the FACT Committee to determine if this should constitute a resignation from the Committee.
2. Three (3) *unexcused* consecutive absences in one year shall constitute a resignation from the Committee. Following the third unexcused absence, the Chairperson will contact the organization or individual in question and request a new representative.

#### *Section 5* RESIGNATIONS

Voluntary resignation is accomplished by writing to the Chairperson, EHSD Staff and/or District Supervisor. The resignation will be effective at the time of submission unless otherwise specified.

#### *Section 6* CONFLICT-FREE REQUIREMENTS

All FACT Committee members shall be conflict-free according to Contra Costa County's and the State Department of Social Service Conflict of Interest Guidelines (see Article VIII, Conflict of Interest Guidelines).

#### *Section 7* LIABILITY

A member of the Committee shall not, solely because of such membership, be personally liable for any debts, obligations, or liabilities of the Committee.

#### *Section 8* REVIEW OF APPOINTMENTS

All prospective At-Large or Discipline Specific Sector appointments shall be sent to the Family and Human Services Committee (FHS) for review prior to appointment by the Board of Supervisors. The FACT Committee shall forward to FHS the resumes of qualified individuals. District specific seat appointments will be reviewed and approved by the corresponding District supervisor and be submitted to the Board of Supervisors for approval. The FACT committee shall review and provide recommendation on District appointees.

## **ARTICLE III**

### **OFFICERS**

#### *Section 1* OFFICERS

The officers of this Committee shall be a Chairperson and, if deemed necessary by the Committee, a Vice-Chairperson.

#### *Section 2* DUTIES

The duties of the officer(s) shall be the usual duties of such officers as provided in Roberts Rules of Order. The Vice-Chairperson shall perform such other duties as may be assigned by the Chairperson.

#### *Section 3* TERM OF OFFICE

The term of office shall be two years. Officers may be elected for one or more following terms in the same office.

#### *Section 4* OFFICER ELECTIONS

1. Officers shall be elected by majority vote of the membership.
2. Vacancies occurring between elections shall be filled by election, in like manner, at the next meeting after the vacancy occurs.

## **ARTICLE IV**

### **COMMITTEES**

#### *Section 1* COMMITTEES

The Chairperson shall appoint such Subcommittees as may be required for the furtherance of the purpose of the Committee.

## ARTICLE V

### ROLE, RESPONSIBILITIES AND RELATIONSHIP OF CONTRA COSTA EMPLOYMENT AND HUMAN SERVICES DEPARTMENT WITH THE FACT COMMITTEE

#### *Section 1* ROLES

The Board of Supervisors delegated to the Employment and Human Services Department the responsibility to administer certain State and County funds disbursed by Board orders based on the recommendations of this FACT Committee. This task involves meeting State and County requirements related to AB 1733 (CAPIT funds), AB 2994 (Birth Certificate funds), the Ann Adler Family and Children's Trust Funds, the federal Community- Based Child Abuse Prevention funds (CBCAP), and the Child Care Affordability Funds. The Board of Supervisors also directed the Employment and Human Services Department to provide staff support to the FACT Committee.

#### *Section 2* RESPONSIBILITIES

All FACT Committee members, save ex officio (non-voting) members if currently sitting, shall be responsible for preparing, reviewing, and rating all proposals resulting from the annual RFP process and recommending to the Employment and Human Services Director and the Board of Supervisors the award of family and children's services contracts, including the appropriate level of funding for such contracts, with non-profit community agencies pursuant to:

1. CAPIT (AB 1733) and Birth Certificate-funded (AB 2994) programs for child abuse prevention and early intervention services;
2. The Family and Children's Trust Funds, for leveraging with other community resources to maximize public benefit in family and children's service programs;
3. The federal CBCAP (Community-Based Child Abuse Prevention) funds;
4. The Child Care Affordability funds to improve, expand, and make child care more affordable and accessible to low-income families; and
5. Other funds as subsequently directed by the Board of Supervisors.

#### *Section 3* EHSD SUPPORT SERVICES

Staff support to the FACT Committee includes:

- (a) Providing clerical support, e.g., prepare and distribute committee's agendas, prepare minutes of all meetings, notify members of meetings, draft correspondence, etc., for the Chairperson's approval, prepare and send written materials at the Chairperson's direction, and maintain a current membership roster. (See Article VII, Section 6);
- (b) Implementing the instructions of the Chairperson relative to public hearings or other tasks as assigned;
- (c) Advising the Committee about political or contractual ramifications of any decision being considered by this Committee or its members; and
- (d) Reporting to the Committee regularly about contract timelines, monitoring procedures and any problems with contracts or contractors, distributing all contract service plans and budgets and all written reports required from contractors or by the State.

Staff support to the FACT Committee does not include:

- (a) acting unilaterally at any time relative to FACT Committee business or issues;
- (b) voting on the funding priorities, the RFP process, funding decisions, or any other motion before the Committee.

## **ARTICLE VI MEETINGS**

### *Section 1*

All meetings of the FACT Committee shall be governed by the Brown Act (Government Code section 54950, et seq.) and Better Government Ordinance.

### *Section 2*

The Committee shall meet regularly and as often as needed during the RFP allocation period.

### *Section 3*

Meetings shall be held at a regularly scheduled date and time of the month as established by the Committee in order to better accommodate attendance by Committee members and the public. Notice of the meeting shall be posted in a prominent place.

### *Section 4*

A quorum is defined as fifty percent plus one (50%+1) of authorized seats. No voting shall take place without a quorum present. Unless otherwise required by these policies, a majority of the total membership is required to pass any proposed action of the FACT committee.

### *Section 5*

Special meetings of this Committee may be called by the Chairperson, Vice-Chairperson, or any three members in concert. Special meetings can be held following four-work days' notice to all members if a quorum is present at the designated date and time.

## **ARTICLE VII**

### **ESTABLISHED PROCEDURES**

#### *Section 1*

Every three years the FACT Committee shall establish a minimum of two specific priority areas for allocating available FACT funds based on information/data from a County self-assessment or equivalent, public hearing or other needs assessment mechanism, a review of additional surveys/reports from other groups, and/or interviews with key child abuse/neglect professionals.

#### *Section 2*

- (1) The FACT Committee will adhere to the following decision-making process for the allocation of CAPIT (AB1733), Birth Certificate (AB2994) and Community-Based Child Abuse Prevention funds. These monies derive from the State Department of Social Services and any requirements of that Department will be

adhered to, in addition to the following procedures:

- a. These monies are for child abuse and neglect prevention and early intervention services, which meet the needs of children at high-risk, especially those aged 0 - 14, operated by private non-profit organizations.
- b. Unless otherwise required by the Office of Child Abuse Prevention, or the State Department of Social Services Systems Improvement Plan, every three years a needs assessment process, which may include community member and professional surveys (web-based and in-person), community and professional discussions/meetings and review/analysis of other current studies and information, will be used to establish a minimum of two priority areas for funding of services.
- c. The Employment and Human Services Department will implement a competitive RFP/RFI process for the allocation of funds.
- d. The FACT Committee will review, rate, and recommend approval of contracts to the Board of Supervisors following the guidelines outlined in the current RFP.
- e. Monies contributed to the Family and Children's Trust fund will be allocated to public/private non-profit agencies which provide services that meet the needs of families and children in Contra Costa County. These funds will generally be combined with the State funds described in (a), above, and will be allocated via the same process, but they may, at the FACT Committee's discretion, be used to support small programs whose goals are slightly broader than those of the aforementioned state program.

### *Section 3*

The general timeline for the work of the Committee in an RFP funding year is as follows:

September: Committee officer terms begin; agencies are notified of public hearings/interviews/other needs assessment activities.

October: Begin contractor site-visits; complete needs assessment.

Oct. – Nov.: Identify overall county needs and establish funding priorities.

Nov. – Dec.: FACT Committee, staff and Contracts Unit prepares RFP/RFI for distribution; RFP/RFI released mid-December.



- January: Proposals due; begin second round of site-visits.
- February: Committee members rate and review proposals.
- March: Rating and Review meeting (open) held; following two week appeal period, funding recommendations forwarded to Employment and Human Services Director and Board of Supervisors for final approval.
- April: Contracts and Grants Unit of the Employment and Human Services Department prepares and submits contract documents to selected agencies.
- July: Review of overall RFP process to identify required modifications; tax insert approved.
- August: No FACT meeting

In addition to this RFP-focused timeline, other pertinent activities, including program review meetings and meetings with community members occur throughout the year. Public information activities and coordination/collaboration discussions with related programs/agencies serve as a mechanism to inform and educate the community about the issues and problems facing low-income families and children. A legislative report is provided quarterly by the Director of the Child Abuse Prevention Council (sitting on the FACT Committee as an ex-officio member).

This general timeline will serve as the basis for developing the FACT Committee's annual work plan by October 15 of each year.

#### *Section 4*

The County Employment and Human Services Department will establish a work plan with the State regarding CAPIT (AB 1733) and Community-Based Child Abuse Prevention Funds (CBCAP), to be reviewed by the committee.

The County Employment and Human Services Department will not establish a work plan with the State regarding funds raised through Birth Certificates (AB2993) or other funds within the purview of this Committee without prior review of such plan by the Committee as such decisions directly impact the FACT Committee's work plan and timelines.

#### *Section 5*

The County liaison from the Office of Child Abuse Prevention (OCAP) will be invited to meet with The FACT membership at least annually in order to maintain communication and a current understanding of OCAP's expectations.

#### *Section 6*

Employment and Human Services staff to the FACT Committee shall maintain a roster of attendance, including excused and unexcused absences (as defined herein) and will notify the Chairperson when any member has two consecutive unexcused absences.

If the FACT Committee decides on a course of action, staff to the Committee will follow through on that decision as soon as possible. Staff will raise any issues or problems he/she sees with a course of action while it is still under discussion. The Committee and Employment and Human Services staff will work together to ensure that all issues and potential problems are addressed before decisions are made. Should a problem arise for Employment and Human Services staff while executing a Committee decision, the Chairperson will be contacted as soon as possible. That problem or item will then be placed on the next agenda so members can be kept informed of the outcome of their decisions.

#### *Section 7*

Staff to this Committee and EHSD Contracts and Grants Unit staff who deal with the State Office of Child Abuse Prevention, or contractors allocated monies via Committee recommendations, will submit directly to the Chairperson requisite documents and reports received pertaining to CAPIT, Birth Certificate, CBCAP, or Trust Fund monies, as well as other relevant documents under the purview of the committee.

#### *Section 8*

Members entitled to vote shall not be permitted to vote or act by proxy.

## **ARTICLE VIII**

### **CONFLICT OF INTEREST GUIDELINES**

*Section 1*

All members of the FACT Committee shall be conflict-free according to Contra Costa County's and the State Department of Social Services' Conflict of Interest Guidelines.

To be conflict-free, FACT membership shall not include anyone who:

1. Is a board member or an employee of an agency receiving monies recommended by FACT.
2. Is a board member or an employee of an agency applying for FACT funding.
3. Has been a board member or an employee of an agency during a 12 month period measured either from the date he or she resigned from an agency which received FACT funds at any time during the preceding year or after the end of the fiscal year in which that agency received any FACT funds.

*Section 2*

Contract monitoring is not to be conducted by any member of FACT who has a conflict of interest in that the member, or the member's spouse or business partner, is a board member or an employee of the contract agency he or she is monitoring.

**ARTICLE IX**

**AMENDMENT OF POLICIES AND PROCEDURES**

*Section 1*

These Policies and Procedures may be amended once the following actions have occurred:

1. The proposed amendment has been introduced in writing by one or more FACT members at a meeting with a quorum present; and

2. The amendment has been discussed by the membership in at least one regular meeting prior the regularly scheduled meeting at which a vote is taken; and
3. Any suggested changes in wording have been accepted by the one or more FACT members who originally introduced the amendment; and
4. A 2/3 vote of the total membership approves the amendment either by a count of hands or by written ballot as determined by a majority of the members present on a case-by-case basis, and:
5. The amendment(s) is approved by the Board of Supervisors.



Contra  
Costa  
County

To: Board of Supervisors  
From: Brian M. Balbas, Public Works Director/Chief Engineer  
Date: September 22, 2020

Subject: Accepting and Giving Notice of Completion for Abatement Contract, 1750 Oak Park Boulevard and 75 Santa Barbara Road, Pleasant Hill.

**RECOMMENDATION(S):**

ADOPT Resolution No. 2020/249 accepting as complete the contracted work performed by Sterling Environmental Corporation for the abatement of Assessor's Parcel No. 149-271-014, also identified as 1750 Oak Park Boulevard and 75 Santa Barbara Road in Pleasant Hill, as recommended by the Public Works Director.

Direct the Real Estate Division of the Public Works Department to record a certified copy of the Resolution in the office of the County Clerk- Recorder. (Project No.:0928-WH113B)

**FISCAL IMPACT:**

The cost of this Abatement work is \$353,268. 100% General Fund. The cost incurred by the County under this Contract will be paid from the County's General Fund. Proceeds from the sale of the property located at 1750 Oak Park Blvd. will be used to reimburse the General Fund.

APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: June McHuen, Deputy

Contact: Scarlett Torres, (925)  
957-2466

cc:

BACKGROUND:

The Public Works Director reports that said work has been inspected and complies with the special provisions and standard specifications and recommends its acceptance as completed as of August 31, 2020 for Assessor's Parcel No. 149-271-014 also identified as 1750 Oak Park Boulevard & 75 Santa Barbara Road in Pleasant Hill.

CONSEQUENCE OF NEGATIVE ACTION:

Sterling Environmental Corporation will not be paid and acceptance notification will not be recorded.

AGENDA ATTACHMENTS

Resolution No. 2020/249

Notice of Completion

MINUTES ATTACHMENTS

Signed Resolution No. 2020/249

Recorded at the request of: Contra Costa County

Return To: Public Works Real Estate Division, Scarlett Torres

THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA  
and for Special Districts, Agencies and Authorities Governed by the Board

Adopted this Resolution on 09/22/2020 by the following vote:

AYE: John Gioia, District I Supervisor Candace Andersen, District II Supervisor Diane Burgis, District III Supervisor Karen Mitchoff, District IV Supervisor Federal D. Glover, District V Supervisor

NO:

ABSENT:

ABSTAIN:

RECUSE:

Resolution No. 2020/249

IN THE MATTER OF: Accepting and Giving Notice of Completion for Abatement services located at 1750 Oak Park Boulevard and 75 Santa Barbara Road, Pleasant Hill, also identified as Assessor's Parcel Number 149-271-014, Project No.: 0928-WH113B.

WHEREAS the County of Contra Costa on July 13, 2020, issued a Notice to Proceed to Sterling Environmental Corporation, for abatement services to be performed on County owned property; and

WHEREAS the Public Works Director reports that said work work has been inspected and complies with the approved special provisions and standard specifications and recommends its acceptance as complete as of August 31, 2020.

NOW, THEREFORE BE IT RESOLVED said work is ACCEPTED as complete on said date, and the Real Estate Division of Public Works shall file with the County Recorder a copy of this Resolution and Notice of Completion for said contract.

Contact: Scarlett Torres, (925) 957-2466

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: September 22, 2020

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

By: June McHuen, Deputy

cc:

Recorded at the request of: Contra Costa County

Return To: Public Works Real Estate Division, Scarlett Torres

THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA  
and for Special Districts, Agencies and Authorities Governed by the Board

Adopted this Resolution on 09/22/2020 by the following vote:

AYE: John Gioia, District I Supervisor Candace Andersen, District II Supervisor Diane Burgis, District III Supervisor Karen Mitchoff, District IV Supervisor Federal D. Glover, District V Supervisor

NO:

ABSENT:

ABSTAIN:

RECUSE:

Resolution No. 2020/249

IN THE MATTER OF: Accepting and Giving Notice of Completion for Abatement services located at 1750 Oak Park Boulevard and 75 Santa Barbara Road, Pleasant Hill, also identified as Assessor's Parcel Number 149-271-014, Project No.: 0928-WH113B.

WHEREAS the County of Contra Costa on July 13, 2020, issued a Notice to Proceed to Sterling Environmental Corporation, for abatement services to be performed on County owned property; and

WHEREAS the Public Works Director reports that said work work has been inspected and complies with the approved special provisions and standard specifications and recommends its acceptance as complete as of August 31, 2020.

NOW, THEREFORE BE IT RESOLVED said work is ACCEPTED as complete on said date, and the Real Estate Division of Public Works shall file with the County Recorder a copy of this Resolution and Notice of Completion for said contract.

Contact: Scarlett Torres, (925) 957-2466

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: September 22, 2020

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

By: June McHuen, Deputy

cc:





Recorded at the request of:  
Contra Costa County

Return to:  
Contra Costa County Public Works  
Real Estate Division  
255 Glacier Drive  
Martinez, CA 94553  
Attn: Scarlett Torres

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## NOTICE OF COMPLETION

Resolution No. 2020/249

Accepting and Giving Notice of Completion for Abatement of Assessor's Parcel Numbers 149-271-014, also identified as 1750 Oak Park Boulevard and 75 Santa Barbara Road. Work completed as of August 31, 2020.

Contractor: Sterling Environmental Corporation

Project: 1750 Oak Park Boulevard & 75 Santa Barbara Road Project



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Anna Roth, Health Services Director  
Date: September 22, 2020

Subject: Legal documents for grant of Mental Health Services Act funds for Virginia Avenue and 9th Street Properties

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**RECOMMENDATION(S):**

(1) APPROVE a grant of \$1,180,000 in Mental Health Services Act (MHSA) funds to West County MHSA, LLC (Service Provider) to acquire two adjacent properties, one at 903-919 Virginia Avenue, and one at 360-366 South 9th Street, Richmond.

(2) CONSENT to the sale of real property located at 903-919 Virginia Avenue in Richmond by Rubicon Programs (Rubicon) to Service Provider, in accordance with the requirements of a MHSA Revocable Grant Agreement between the County and Rubicon dated March 12, 2008.

(3) APPROVE the assignment of Rubicon's obligations under the MHSA Revocable Grant Agreement between the County and Rubicon dated March 12, 2008, and related documents, from Rubicon to Service Provider as part of the transfer of ownership of the Virginia Avenue property.

(4) APPROVE and AUTHORIZE the Director of Health Services to execute the necessary legal documents to effect the above actions.

**FISCAL IMPACT:**

No impact to the General Fund. The County receives MHSA funds from the State of California.

APPROVE

OTHER

RECOMMENDATION OF CNTY ADMINISTRATOR

RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

Contact: Suzanne Tavano, Ph.D.,  
925-957-5212

By: June McHuen, Deputy

## BACKGROUND:

The Mental Health Services Act (MHSA) Housing Program was jointly launched by the former California Department Mental Health (State DMH) and the California Housing Finance Agency (CalHFA) in August 2007. The MHSA Housing Program funds were administered for the benefit of counties by State DMH and CalHFA until May 2016, when MHSA's original housing program ended. The Special Needs Housing Program (SNHP) was initiated on June 24, 2016, by CalHFA. With the introduction of SNHP, counties were given the opportunity to have their share of funds sent to the county for direct management or to have funds remain with CalHFA in its SNHP program. Through a board order dated September 20, 2016, the Board of Supervisors authorized staff to request Contra Costa County's funds be sent to the County for direct management. As a result of that action, the County received \$1,736,694 in December 2016 (\$1,735,224) and May 2017 (\$1,470). The funds are sometimes referred to as MHSA funds and sometimes as SNHP funds, but the source of funds is MHSA.

The acquisition proposed to be completed with this \$1,180,000 grant of MHSA funds was previously approved by the Board of Supervisors to be completed using a grant of SNHP funds, through a Board action taken November 19, 2019. Except for the change in the name of the source of funds and the name of the entity organized to acquire the properties being changed from Housing Consortium of the East Bay to West County MHSA LLC, all other terms of the transaction approved by the Board on November 19, 2019, remain unchanged.

The properties being acquired with the proposed MHSA grant are currently owned by Rubicon Programs, Inc. (Rubicon). Rubicon is selling its residential properties in order to focus on providing services to the homeless. The properties are located on adjacent lots, one at 903-919 Virginia Avenue and one at 360-366 South 9th Street. Together these properties provide ten units of housing affordable to extremely low-income households with special needs.

Rubicon and the County are parties to a Revocable Grant Agreement dated March 12, 2008, under which the County granted Rubicon \$564,332 in MHSA funds to pay for the renovation of the 6-unit residential building located at 903-919 Virginia Avenue (one of the properties being sold by Rubicon). In consideration for the 2008 grant of MHSA funds, the property located at 903-919 Virginia Avenue is subject to a Regulatory Agreement that restricts, through March 2028, the occupancy of the apartments to low income households that have a member who is MHSA eligible. Rubicon's obligations under the March 12, 2008 Revocable Grant Agreement and the Regulatory Agreement are secured by a Deed of Trust. As part of the acquisition of the property by the West County MHSA LLC, Rubicon's obligations under the March 12, 2008 Revocable Grant Agreement and the Regulatory Agreement are being assigned to West County MHSA LLC.

Staff requests that the Board of Supervisors approve the attached documents in their substantially final form. The MHSA funds will be deposited into an escrow account with Old Republic Title that the buyer opened for this transaction. Escrow is expected to close no later than December 31, 2020.

## CONSEQUENCE OF NEGATIVE ACTION:

Rubicon Programs, Inc. no longer includes housing in its core organizational mission. Failure to transfer the properties and Rubicon's obligations under the March 12, 2008 Revocable Grant Agreement to West County MHSA LLC may result in diminished services to tenants residing in these properties.

## ATTACHMENTS

Assignment and Assumption Agreement Virginia Ave  
MHSA Deed of Trust - Virginia Ave and South 9th Street

MHSA Regulatory Agreement Virginia Ave and South 9th Street  
MHSA Revocable Grant - Virginia Ave and South 9th Street  
Substitution of Trustee Full Reconveyance Rubicon Grant  
Termination and Release of Rubicon Regulatory Agreement

ASSIGNMENT, ASSUMPTION AND CONSENT AGREEMENT  
(Virginia Avenue Apartments MHSA Grant)

This Assignment, Assumption and Consent Agreement (“Agreement”) is dated \_\_\_\_\_, 2020, and is by and among the County of Contra Costa, a political subdivision of the State of California (the “County”), Rubicon Programs Incorporated, a California nonprofit public benefit corporation (“Seller”), and West County MHSA, LLC, a California limited liability company (“Buyer”).

RECITALS

- A. Seller is the owner of certain real property located at 903-919 Virginia Avenue in the City of Richmond, County of Contra Costa, State of California, as more particularly described in Exhibit A (the “Virginia Property”). The Virginia Property has been improved with a six-unit multifamily housing structure, together with a separate building containing an office and a community room. Seller is also the owner of certain real property located at 360-366 South 9th Street in the City of Richmond, County of Contra Costa, State of California, as more particularly described in Exhibit B (the “West Richmond Property”). The West Richmond Property has been improved with a four-unit multifamily housing structure. Together, the Virginia Property and the West Richmond Property are the “Property.”
- B. On March 12, 2008, the County made a revocable grant to Seller in the amount of Five Hundred Sixty-Four Thousand Three Hundred Thirty-Two Dollars (\$564,332) (the “Rubicon Grant”) in Proposition 63 (2004) Mental Health Services Act (“MHSA”) funds to enable Seller to rehabilitate the six-unit multifamily housing structure on the Virginia Property. The Rubicon Grant is evidenced by a MHSA Revocable Grant Agreement dated as of March 12, 2008 (the “Rubicon Grant Agreement”).
- C. As consideration for the Rubicon Grant, in addition to the Rubicon Grant Agreement, Seller entered into a Regulatory Agreement and Declaration of Restrictive Covenants dated as of March 12, 2008, which was recorded as Document Number 2008-0066594-00, in the official records of Contra Costa County (the “Rubicon Regulatory Agreement”). The term of the Rubicon Regulatory Agreement expires March 11, 2028.
- D. Seller’s obligations under the Rubicon Grant Agreement and the Rubicon Regulatory Agreement are secured by a Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing dated as of March 12, 2008, recorded as Document Number 2008-0066593-00, in the official records of Contra Costa County (the “Rubicon Deed of Trust”).
- E. Seller and Housing Consortium of the East Bay are parties to a Purchase and Sale Agreement dated as of October 18, 2019, as amended and assigned to Buyer, under which Buyer is acquiring the Property from Seller. To facilitate Buyer’s purchase of the Property from Seller, the County is making a revocable grant to Buyer in the amount of

One Million One Hundred Seventy-Five Thousand Dollars (\$1,175,000) (the “Grant”) pursuant to a MHSA Revocable Grant Agreement between the County and Buyer of even date herewith (the “West County Grant Agreement”).

- F. As consideration for the Grant and the County’s consent to Buyer’s acquisition of the Virginia Property, Buyer is entering into, among other agreements, (i) this Agreement, under which Buyer is assuming Seller’s rights and obligations under the Rubicon Grant Agreement, (ii) a Regulatory Agreement and Declaration of Restrictive Covenants of even date herewith, between the County and Buyer, evidencing County requirements applicable to the Grant and the Rubicon Grant, to be recorded against the Property (the “Regulatory Agreement”), and (iii) a Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing of even date herewith among Buyer, as trustor, Old Republic Title Company, as trustee, and the County, as beneficiary, that will encumber the Property to secure Grantee’s obligations and covenants under the West County Grant Agreement, the Rubicon Grant Agreement, and the Regulatory Agreement (the “Deed of Trust”).
  
- G. Simultaneously with the acquisition of the Virginia Property by Buyer, the County will reconvey the Rubicon Deed of Trust and terminate the Rubicon Regulatory Agreement.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

#### AGREEMENT

- 1. Representations of Seller. Seller represents and warrants that:
  - a. It has not previously assigned, pledged, hypothecated or otherwise transferred any of its rights, title, or interest in the Virginia Property, or its rights, title, or interest in the Rubicon Grant Agreement.
  - b. It has received the consent of all other existing lenders on the Virginia Property to the transfer of the Virginia Property, and the assignment and assumptions contemplated by this Agreement and that such actions will not constitute a default under any of such lenders’ loan documents.
  - c. No event has occurred and is continuing that would constitute a default and no event has occurred and is continuing that, with notice or the passage of time or both, would be an event of default under any of the documents evidencing the Rubicon Grant.
  
- 2. Consent to Transfer of Property. Subject to Buyer’s execution of this Agreement, the Regulatory Agreement, and the Deed of Trust, the County consents to the Assignment.

3. Assignment of Rubicon Grant.
  - a. Assignment. Seller hereby assigns to Buyer all of Seller's rights, title, and interest in and obligations under the Rubicon Grant Agreement effective upon the closing of Buyer's acquisition of the Virginia Property (the "Assignment").
  - b. Assumption. Buyer hereby accepts the Assignment and assumes Seller's obligation to repay the Rubicon Grant in accordance with the terms of the Rubicon Grant Agreement.
4. No Change. Except for the Assignment, the terms of the Rubicon Grant Agreement are unchanged.
5. Title of Parts and Sections. The titles of the sections and subsections of this Agreement are inserted for convenience of reference only and are to be disregarded in interpreting any part of the Agreement's provisions.
6. Attorneys' Fees Enforcement. If any attorney is engaged by any party hereto to enforce or defend any provision of this Agreement, the prevailing party or parties are entitled to costs and reasonable attorneys' fees.
7. Successors and Assigns. This Agreement binds and inures to the benefit of the legal representatives, heirs, successors and assigns of the parties.
8. California Law. The laws of the State of California govern all matters arising out of this Agreement.
9. Counterparts. This Agreement may be signed by the different parties hereto in counterpart, each of which is deemed an original but all of which together constitute one and the same agreement.

***Remainder of Page Left Intentionally Blank***

IN WITNESS WHEREOF, the parties are executing this Agreement as of the day first above written.

Rubicon Programs Incorporated, a California nonprofit public benefit corporation

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**BUYER:**

WEST COUNTY MHSA, LLC,  
a California limited liability company

By: Housing Consortium of the East Bay,  
a California nonprofit public benefit corporation, its sole member and manager

By: \_\_\_\_\_  
Darin Lounds, Executive Director



**COUNTY:**

COUNTY OF CONTRA COSTA, a political  
subdivision of the State of California

By: \_\_\_\_\_  
Anna Roth  
Director, Contra Costa County Health  
Services

APPROVED AS TO FORM:

SHARON L. ANDERSON  
County Counsel

By: \_\_\_\_\_  
Kathleen Andrus  
Deputy County Counsel

EXHIBIT A

LEGAL DESCRIPTION OF THE VIRGINIA PROPERTY

The land is situated in the State of California, County of Contra Costa, and is described as follows:

Lots 23, 24 and 25 in Block 46, as shown on the map of "Santa Fe", filed March 17, 1900, Map Book E, Page 102, Contra Costa County Records.

APN: 550-310-013

EXHIBIT B

LEGAL DESCRIPTION OF THE WEST RICHMOND PROPERTY

The land is situated in the State of California, County of Contra Costa, and is described as follows:

Lots 21 and 22 in Block 46, as shown on the Map of Santa Fe, filed March 17, 1900 in Book E of Maps, Page 102, in the Office of the County Recorder of Contra Costa County.

APN: 550-310-012

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

County of Contra Costa  
Department of Conservation and Development  
30 Muir Road  
Martinez, California 94553  
Attention: Affordable Housing Program Manager

No fee for recording pursuant to  
Government Code Section 27383 and 27388.1

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DEED OF TRUST WITH ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT, AND FIXTURE FILING

(Virginia Apartments and West Richmond Apartments)

THIS DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FIXTURE FILING ("Deed of Trust") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2020, by and among West County MHSA, LLC, a California limited liability company ("Trustor"), Old Republic Title Company, a California corporation, ("Trustee"), and the County of Contra Costa, a political subdivision of the State of California ("Beneficiary").

FOR GOOD AND VALUABLE CONSIDERATION, including the revocable grant herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, Trustor's fee interest in the property located in the County of Contra Costa, State of California, that is described in the attached Exhibit A and Exhibit B, incorporated herein by this reference (the "Property").

TOGETHER WITH all interest, estates or other claims, both in law and in equity which Trustor now has or may hereafter acquire in the Property and the rents;

TOGETHER WITH all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, including (without limiting the generality of the foregoing) all tenements, hereditaments and appurtenances thereof and thereto;

TOGETHER WITH any and all buildings and improvements of every kind and description now or hereafter erected thereon, and all property of Trustor now or hereafter affixed to or placed upon the Property;

TOGETHER WITH all building materials and equipment now or hereafter delivered to said property and intended to be installed therein;

TOGETHER WITH all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys and strips and areas of land adjacent to or used in connection with the Property;

TOGETHER WITH all estate, interest, right, title, other claim or demand, of every nature, in and to such property, including the Property, both in law and in equity, including, but not limited to, all deposits made with or other security given by Trustor to utility companies, the proceeds from any or all of such property, including the Property, claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Trustor now has or may hereafter acquire, any and all awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the whole or any part of such property, including without limitation, any awards resulting from a change of grade of streets and awards for severance damages to the extent Beneficiary has an interest in such awards for taking as provided in Section 4.1 herein;

TOGETHER WITH all of Trustor's interest in all articles of personal property or fixtures now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to said building or buildings in any manner; and

TOGETHER WITH all of Trustor's interest in all building materials, fixtures, equipment, work in process and other personal property to be incorporated into the Property; all goods, materials, supplies, fixtures, equipment, machinery, furniture and furnishings, signs and other personal property now or hereafter appropriated for use on the Property, whether stored on the Property or elsewhere, and used or to be used in connection with the Property; all rents, issues and profits, and all inventory, accounts, accounts receivable, contract rights, general intangibles, chattel paper, instruments, documents, notes drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds, trade names, trademarks and service marks arising from or related to the Property and any business conducted thereon by Trustor; all replacements, additions, accessions and proceeds; and all books, records and files relating to any of the foregoing.

All of the foregoing, together with the Property, is herein referred to as the "Security." To have and to hold the Security together with acquittances to the Trustee, its successors and assigns forever.

FOR THE PURPOSE OF SECURING THE FOLLOWING OBLIGATIONS (the "Secured Obligations"):

A. Payment to Beneficiary of all sums at any time owing under or in connection with the Grant (defined in Section 1.1 below) until paid or cancelled and any other amounts owing

under the Grant Documents (defined in Section 1.3 below). The Grant and other payments shall be due and payable as provided in the Grant Agreement or other Grant Documents, as applicable. The Grant Agreement and the Rubicon Grant Agreement and all their terms are incorporated herein by reference, and this conveyance shall secure any and all extensions thereof, however evidenced;

B. Payment of any sums advanced by Beneficiary to protect the Security pursuant to the terms and provisions of this Deed of Trust following a breach of Trustor's obligation to advance said sums and the expiration of any applicable cure period, with interest thereon as provided herein;

C. Performance of every obligation, covenant or agreement of Trustor contained herein and in the Grant Documents; and

D. All modifications, extensions and renewals of any of the Secured Obligations

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR  
COVENANTS AND AGREES:

#### ARTICLE 1: DEFINITIONS

In addition to the terms defined elsewhere in this Deed of Trust, the following terms have the following meanings in this Deed of Trust:

Section 1.1 The term "Grant" means (i) through March 11, 2028, the MHSA Grant and the Rubicon Grant, and (ii) beginning March 12, 2028, the MHSA Grant.

Section 1.2 The term "Grant Agreement" means that certain MHSA Revocable Grant Agreement between Trustor and Beneficiary, of even date herewith, providing for Beneficiary to grant to Trustor One Million One Hundred Seventy-Five Thousand Dollars (\$1,175,000) for the acquisition of the Property.

Section 1.3 The term "Grant Documents" means this Deed of Trust, the Grant Agreement, the Regulatory Agreement, the Rubicon Grant Agreement, and any other debt, loan or security instruments between Trustor and Beneficiary relating to the Property.

Section 1.4 The term "MHSA Grant" means the grant in the amount of One Million One Million One Hundred Seventy-Five Thousand Dollars (\$1,175,000) from Beneficiary to Trustor, made pursuant to the Grant Agreement.

Section 1.5 The term "Regulatory Agreement" means that certain regulatory agreement of even date herewith by and between Beneficiary and Trustor evidencing County requirements applicable to the Grant and recorded against the Property.

Section 1.6 The term "Rubicon Grant" means the grant in the amount of Five Hundred Sixty-Four Thousand Three Hundred Thirty-Two Dollars (\$564,332) made by Beneficiary pursuant to the Rubicon Grant Agreement.

Section 1.7 The term "Rubicon Grant Agreement" means the MHSA Revocable Grant Agreement dated as of March 12, 2008 pertaining to the Rubicon Grant, as assumed by Trustor pursuant to an Assignment, Assumption, and Consent Agreement of even date herewith among Beneficiary, Trustor, and Rubicon Programs Incorporated, a California nonprofit public benefit corporation.

ARTICLE 2:  
MAINTENANCE AND MODIFICATION OF  
THE PROPERTY AND SECURITY

Section 2.1 Maintenance and Modification of the Property by Trustor.

Trustor agrees that at all times prior to full payment and performance of the Secured Obligations, Trustor will, at Trustor's own expense, maintain, preserve and keep the Security or cause the Security to be maintained and preserved in good condition. Trustor will from time to time make or cause to be made all repairs, replacements and renewals deemed proper and necessary by it. Beneficiary shall have no responsibility in any of these matters or for the making of improvements or additions to the Security.

Trustor agrees to pay fully and discharge (or cause to be paid fully and discharged) all claims for labor done and for material and services furnished in connection with the Security, diligently to file or procure the filing of a valid notice of cessation upon the event of a cessation of labor on the work or construction on the Security for a continuous period of thirty (30) days or more, and to take all other reasonable steps to forestall the assertion of claims of lien against the Security of any part thereof. Trustor irrevocably appoints, designates and authorizes Beneficiary as its agent (said agency being coupled with an interest) with the authority, but without any obligation, to file for record any notices of completion or cessation of labor or any other notice that Beneficiary deems necessary or desirable to protect its interest in and to the Security or the Grant Documents; provided, however, that Beneficiary shall exercise its rights as agent of Trustor only in the event that Trustor shall fail to take, or shall fail to diligently continue to take, those actions as hereinbefore provided.

Upon demand by Beneficiary, Trustor shall make or cause to be made such demands or claims as Beneficiary shall specify upon laborers, materialmen, subcontractors or other persons who have furnished or claim to have furnished labor, services or materials in connection with the Security. Nothing herein contained shall require Trustor to pay any claims for labor, materials or services which Trustor in good faith disputes and is diligently contesting provided that Trustor shall, within thirty (30) days after the filing of any claim of lien, record in the Office of the Recorder of Contra Costa County, a surety bond in an amount 1 and 1/2 times the amount of such claim item to protect against a claim of lien.

## Section 2.2 Granting of Easements.

Trustor may not grant easements, licenses, rights-of-way or other rights or privileges in the nature of easements with respect to any property or rights included in the Security except those required or desirable for installation and maintenance of public utilities including, without limitation, water, gas, electricity, sewer, telephone and telegraph, or those required by law, and as approved, in writing, by Beneficiary.

## Section 2.3 Assignment of Rents.

As part of the consideration for the revocable grant evidenced by the Grant Documents, Trustor hereby absolutely and unconditionally assigns and transfers to Beneficiary all the rents and revenues of the Property including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property, regardless of to whom the rents and revenues of the Property are payable. Trustor hereby authorizes Beneficiary or Beneficiary's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Property to pay such rents to Beneficiary or Beneficiary's agents; provided, however, that prior to written notice given by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Grant Documents, Trustor shall collect and receive all rents and revenues of the Property as trustee for the benefit of Beneficiary and Trustor to apply the rents and revenues so collected to the Secured Obligations with the balance, so long as no such breach has occurred, to the account of Trustor, it being intended by Trustor and Beneficiary that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Grant Documents, and without the necessity of Beneficiary entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Beneficiary shall immediately be entitled to possession of all rents and revenues of the Property as specified in this Section 2.3 as the same becomes due and payable, including but not limited to rents then due and unpaid, and all such rents shall immediately upon delivery of such notice be held by Trustor as trustee for the benefit of Beneficiary only; provided, however, that the written notice by Beneficiary to Trustor of the breach by Trustor shall contain a statement that Beneficiary exercises its rights to such rents. Trustor agrees that commencing upon delivery of such written notice of Trustor's breach by Beneficiary to Trustor, each tenant of the Property shall make such rents payable to and pay such rents to Beneficiary or Beneficiary's agents on Beneficiary's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of a default by Trustor.

Trustor hereby covenants that Trustor has not executed any prior assignment of said rents, that Trustor has not performed, and will not perform, any acts or has not executed and will not execute, any instrument which would prevent Beneficiary from exercising its rights under this Section 2.3, and that at the time of execution of this Deed of Trust, there has been no anticipation or prepayment of any of the rents of the Property for more than two (2) months prior to the due dates of such rents. Trustor covenants that Trustor will not hereafter collect or accept payment of any rents of the Property more than two (2) months prior to the due dates of such



rents. Trustor further covenant that Trustor will execute and deliver to Beneficiary such further assignments of rents and revenues of the Property as Beneficiary may from time to time request.

Upon Trustor's breach of any covenant or agreement of Trustor in the Grant Documents, Beneficiary may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Beneficiary's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Deed of Trust. In the event Beneficiary elects to seek the appointment of a receiver for the Property upon Trustor's breach of any covenant or agreement of Trustor in this Deed of Trust, Trustor hereby expressly consents to the appointment of such receiver. Beneficiary or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

All rents and revenues collected subsequent to delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Grant Documents shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Trustor as lessor or landlord of the Property and then to the sums secured by this deed of Trust. Beneficiary or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Beneficiary shall not be liable to Trustor, anyone claiming under or through Trustor or anyone having an interest in the Property by reason of anything done or left undone by Beneficiary under this Section 2.3.

If the rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the rents, any funds expended by Beneficiary for such purposes shall become part of the Secured Obligations pursuant to Section 3.3 hereof. Unless Beneficiary and Trustor agree in writing to other terms of payment, such amounts shall be payable upon notice from Beneficiary to Trustor requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in Section 3.3.

Any entering upon and taking and maintaining of control of the Property by Beneficiary or the receiver and any application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Beneficiary under applicable law or provided herein. This assignment of rents of the Property shall terminate at such time as this Deed of Trust ceases to secure the Secured Obligations.

ARTICLE 3:  
TAXES AND INSURANCE; ADVANCES

Section 3.1 Taxes, Other Governmental Charges and Utility Charges.

Trustor shall pay, or cause to be paid, prior to the date of delinquency, all taxes, assessments, charges and levies imposed by any public authority or utility company which are or may become a lien affecting the Security or any part thereof; provided, however, that Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as (a) the legality thereof shall be promptly and actively contested in good faith and by appropriate proceedings, and (b) Trustor maintains reserves adequate to pay any liabilities contested pursuant to this Section 3.1. With respect to taxes, special assessments or other similar governmental charges, Trustor shall pay such amount in full prior to the attachment of any lien therefor on any part of the Security; provided, however, if such taxes, assessments or charges may be paid in installments, Trustor may pay in such installments. Except as provided in clause (b) of the first sentence of this paragraph, the provisions of this Section 3.1 shall not be construed to require that Trustor maintain a reserve account, escrow account, impound account or other similar account for the payment of future taxes, assessments, charges and levies.

In the event that Trustor shall fail to pay any of the foregoing items required by this Section 3.1 to be paid by Trustor, Beneficiary may (but shall be under no obligation to) pay the same, after Beneficiary has notified Trustor of such failure to pay and Trustor fails to fully pay such items within seven (7) business days after receipt of such notice. Any amount so advanced therefor by Beneficiary, together with interest thereon from the date of such advance at the maximum rate permitted by law, shall become part of the Secured Obligations secured hereby, and Trustor agrees to pay all such amounts.

Section 3.2 Provisions Respecting Insurance.

Trustor agrees to provide insurance conforming in all respects to that required under the Grant Documents during the course of construction and following completion, and at all times until all amounts secured by this Deed of Trust have been paid and all Secured Obligations secured hereunder fulfilled, and this Deed of Trust reconveyed.

All such insurance policies and coverages shall be maintained at Trustor's sole cost and expense. Certificates of insurance for all of the above insurance policies, showing the same to be in full force and effect, shall be delivered to Beneficiary upon demand therefor at any time prior to Trustor's satisfaction of the Secured Obligations.

Section 3.3 Advances.

In the event Trustor shall fail to maintain the full insurance coverage required by this Deed of Trust or shall fail to keep the Security in accordance with the Grant Documents, Beneficiary, after at least seven (7) days prior notice to Trustor, may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all

amounts so advanced therefor by Beneficiary shall become part of the Secured Obligations (together with interest as set forth below) and shall be secured hereby, which amounts Trustor agrees to pay on the demand of Beneficiary, and if not so paid, shall bear interest from the date of the advance at the lesser of ten percent (10%) per annum or the maximum rate permitted by law.

ARTICLE 4:  
DAMAGE, DESTRUCTION OR CONDEMNATION

Section 4.1 Awards and Damages.

All judgments, awards of damages, settlements and compensation made in connection with or in lieu of (1) taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain, (2) any damage to or destruction of the Property or in any part thereof by insured casualty, and (3) any other injury or damage to all or any part of the Property (collectively, the "Funds") are hereby assigned to and shall be paid to Beneficiary by a check made payable to Beneficiary. Beneficiary is authorized and empowered (but not required) to collect and receive any Funds and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as Beneficiary shall determine at its sole option. Beneficiary shall be entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. All or any part of the amounts so collected and recovered by Beneficiary may be released to Trustor upon such conditions as Beneficiary may impose for its disposition. Application of all or any part of the Funds collected and received by Beneficiary or the release thereof shall not cure or waive any default under this Deed of Trust. The rights of Beneficiary under this Section 4.1 are subject to the rights of any senior mortgage lender. Beneficiary shall release the Funds to Trustor to be used to reconstruct the improvements on the Property provided that Beneficiary reasonably determines that Trustor (taking into account the Funds) has sufficient funds to rebuild the improvements in substantially the form existing prior to the casualty or condemnation.

ARTICLE 5:  
AGREEMENTS AFFECTING THE PROPERTY;  
FURTHER ASSURANCES; PAYMENT OF GRANT AND INTEREST

Section 5.1 Other Agreements Affecting Property.

Trustor shall duly and punctually perform all terms, covenants, conditions and agreements binding upon it under the Grant Documents and any other agreement of any nature whatsoever now or hereafter involving or affecting the Security or any part thereof.

Section 5.2 Agreement to Pay Attorneys' Fees and Expenses.

In the event of any Event of Default (as defined in Section 7.1) hereunder, and if

Beneficiary should employ attorneys or incur other expenses for the collection of amounts due or the enforcement of performance or observance of an obligation or agreement on the part of Trustor in this Deed of Trust, Trustor agrees that it will, on demand therefor, pay to Beneficiary the reasonable fees of such attorneys and such other reasonable expenses so incurred by Beneficiary (including, but not limited to, other professional service fees and costs); and any such amounts paid by Beneficiary shall be added to the Secured Obligations, and shall bear interest from the date such expenses are incurred at the lesser of ten percent (10%) per annum or the maximum rate permitted by law.

### Section 5.3 Payment of the Grant.

Trustor shall pay to Beneficiary the Grant and any other payments as set forth in the Grant Documents in the amounts and by the times set out therein.

### Section 5.4 Personal Property.

To the maximum extent permitted by law, the personal property subject to this Deed of Trust shall be deemed to be fixtures and part of the real property and this Deed of Trust shall constitute a fixtures filing under the California Commercial Code. As to any personal property not deemed or permitted to be fixtures, this Deed of Trust shall constitute a security agreement under the California Commercial Code. Trustor hereby grants Beneficiary a security interest in such items.

### Section 5.5 Financing Statement.

Trustor shall execute and deliver to Beneficiary such financing statements pursuant to the appropriate statutes, and any other documents or instruments as are required to convey to Beneficiary a valid perfected security interest in the Security. Trustor agrees to perform all acts which Beneficiary may reasonably request so as to enable Beneficiary to maintain such valid perfected security interest in the Security in order to secure the payment of the Grant in accordance with its terms in the Grant Documents. Beneficiary is authorized to file a copy of any such financing statement in any jurisdiction(s) as it shall deem appropriate from time to time in order to protect the security interest established pursuant to this instrument. Trustor shall pay all costs of filing such financing statements and any extensions, renewals, amendments, and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements, and releases thereof, as Beneficiary may reasonably require. Without the prior written consent of Beneficiary, Trustor shall not create or suffer to be created pursuant to the California Commercial Code any other security interest in the Security, including replacements and additions thereto.

### Section 5.6 Operation of the Security.

Trustor shall operate the Security (and, in case of a transfer of a portion of the Security subject to this Deed of Trust, the transferee shall operate such portion of the Security) in full compliance with the Grant Documents.

Section 5.7 Inspection of the Security.

At any and all reasonable times upon seventy-two (72) hours' notice, Beneficiary and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right, without payment of charges or fees, to inspect the Security.

Section 5.8 Nondiscrimination.

Trustor herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, age, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Security, nor shall Trustor itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Security. The foregoing covenants shall run with the land.

ARTICLE 6:  
HAZARDOUS WASTE

Trustor shall keep and maintain the Property in compliance with, and shall not cause or permit the Property to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Property including, but not limited to, soil and ground water conditions. Trustor shall not use, generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") except such of the foregoing as may be customarily used in construction or operation of a multifamily residential development.

Trustor shall immediately advise Beneficiary in writing if at any time it receives written notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Trustor or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("Hazardous Materials Law"); (ii) all claims made or threatened by any third party against Trustor or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to a "Hazardous Materials Claims"); and (iii) Trustor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be classified as "border-zone property" (as defined in California Health and Safety Code Section 25117.4) under the provision of California Health and Safety Code, Sections 25220 et seq., or any regulation adopted in accordance

therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

Beneficiary shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Trustor. Trustor shall indemnify and hold harmless Beneficiary and its board members, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Property including without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (c) all reasonable costs and expenses incurred by Beneficiary in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees and consultant's fees. This indemnification applies whether or not any government agency has issued a cleanup order. Losses, claims, costs, suits, liability, and expenses covered by this indemnification provision include, but are not limited to: (1) losses attributable to diminution in the value of the Property; (2) loss or restriction of use of rentable space on the Property; (3) adverse effect on the marketing of any rental space on the Property; and (4) penalties and fines levied by, and remedial or enforcement actions of any kind issued by any regulatory agency (including but not limited to the costs of any required testing, remediation, repair, removal, cleanup or detoxification of the Property and surrounding properties).

Without Beneficiary's prior written consent, which shall not be unreasonably withheld, Trustor shall not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in Beneficiary's reasonable judgement, impair the value of Beneficiary's security hereunder; provided, however, that Beneficiary's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain Beneficiary's consent before taking such action, provided that in such event Trustor shall notify Beneficiary as soon as practicable of any action so taken. Beneficiary agrees not to withhold its consent, where such consent is required hereunder, if (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) Trustor will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Trustor establishes to the reasonable satisfaction of Beneficiary that there is no reasonable alternative to such remedial action which would result in less impairment of Beneficiary's security hereunder; or (iv) the action has been agreed to by Beneficiary.

Trustor hereby acknowledges and agrees that (i) this Article is intended as Beneficiary's written request for information (and Trustor's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Deed of Trust or any of the other Grant Documents (together with any indemnity applicable to a breach of any such representation and warranty) with respect

to the environmental condition of the property is intended by Beneficiary and Trustor to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting Beneficiary's or the Trustee's rights and remedies under this Deed of Trust, Beneficiary may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (a) the rights and remedies of an unsecured creditor, including reduction of its claim against Trustor to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining Beneficiary's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), Trustor shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and Trustor knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by Beneficiary in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the default rate specified in the Grant Documents, until paid, shall be added to the indebtedness secured by this Deed of Trust and shall be due and payable to Beneficiary upon its demand made at any time following the conclusion of such action.

Trustor is aware that California Civil Code Section 2955.5(a) provides as follows: "No lender shall require a borrower, as a condition of receiving or maintaining a loan secured by real property, to provide hazard insurance coverage against risks to the improvements on that real property in an amount exceeding the replacement value of the improvements on the property."

## ARTICLE 7: EVENTS OF DEFAULT AND REMEDIES

### Section 7.1 Events of Default.

The following shall constitute events of default ("Events of Default") following the expiration of any applicable notice and cure periods: (1) failure to make any payment to be paid by Trustor under the Grant Documents; (2) failure to observe or perform any of Trustor's other covenants, agreements or obligations under the Grant Documents, including, without limitation, the provisions concerning discrimination; or (3) failure to make any payment or observe or perform any of Trustor's other covenants, agreements, or obligations under any Secured Obligations, which default shall not be cured within the times and in the manner provided therein.

Section 7.2 Acceleration of Maturity.

If an Event of Default shall have occurred and be continuing, then at the option of Beneficiary, the amount of any payment related to the Event of Default and all unpaid Secured Obligations shall immediately become due and payable, upon written notice by Beneficiary to Trustor (or automatically where so specified in the Grant Documents), and no omission on the part of Beneficiary to exercise such option when entitled to do so shall be construed as a waiver of such right.

Section 7.3 Beneficiary's Right to Enter and Take Possession.

If an Event of Default shall have occurred and be continuing, Beneficiary may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any Event of Default or Notice of Default and Election to Sell (as defined in Section 7.3(c)) hereunder or invalidate any act done in response to such Event of Default or pursuant to such Notice of Default and Election to Sell and, notwithstanding the continuance in possession of the Security, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust, or by law upon occurrence of any Event of Default, including the right to exercise the power of sale;

(b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(c) Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Security to be sold ("Notice of Default and Election to Sell"), which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of Contra Costa County; or

(d) Exercise all other rights and remedies provided herein, in the instruments by which Trustor acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing the Secured Obligations.

Section 7.4 Foreclosure by Power of Sale.

Should Beneficiary elect to foreclose by exercise of the power of sale herein contained, Beneficiary shall give notice to the Trustee (the "Notice of Sale") and shall deposit with Trustee this Deed of Trust which is secured hereby (and the deposit of which shall be deemed to constitute evidence that the Secured Obligations are immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.



(a) Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Election to Sell as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and Election to Sell and after Notice of Sale having been given as required by law, sell the Security, at the time and place of sale fixed by it in the Notice of Sale, whether as a whole or in separate lots or parcels or items as Trustee shall deem expedient and in such order as it may determine unless specified otherwise by Trustor according to California Civil Code Section 2924g(b), at public auction to the highest bidder, for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed or any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale.

(b) After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale to payment of: (i) the unpaid Grant amount; (ii) all other Secured Obligations owed to Beneficiary under the Grant Documents; (iii) all other sums then secured hereby; and (iv) the remainder, if any, to Trustor.

(c) Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new Notice of Sale.

#### Section 7.5 Receiver.

If an Event of Default shall have occurred and be continuing, Beneficiary, as a matter of right and without further notice to Trustor or anyone claiming under the Security, and without regard to the then value of the Security or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Security (or a part thereof), and Trustor hereby irrevocably consents to such appointment and waives further notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein, and shall continue as such and exercise all such powers until the date of confirmation of sale of the Security, unless such receivership is sooner terminated.

#### Section 7.6 Remedies Cumulative.

No right, power or remedy conferred upon or reserved to Beneficiary by this Deed of Trust is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

Section 7.7 No Waiver.

(a) No delay or omission of Beneficiary to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy, or shall be construed to be a waiver of any such Event of Default or acquiescence therein; and every right, power and remedy given by this Deed of Trust to Beneficiary may be exercised from time to time and as often as may be deemed expeditious by Beneficiary. Beneficiary's express or implied consent to breach, or waiver of, any obligation of Trustor hereunder shall not be deemed or construed to be a consent to any subsequent breach, or further waiver, of such obligation or of any other obligations of Trustor hereunder. Failure on the part of Beneficiary to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Beneficiary of its right hereunder or impair any rights, power or remedies consequent on any Event of Default by Trustor.

(b) If Beneficiary (i) grants forbearance or an extension of time for the payment or performance of any Secured Obligations, (ii) takes other or additional security or the payment of any sums secured hereby, (iii) waives or does not exercise any right granted in the Grant Documents, (iv) releases any part of the Security from the lien of this Deed of Trust, or otherwise changes any of the terms, covenants, conditions or agreements in the Grant Documents, (v) consents to the granting of any easement or other right affecting the Security, or (vi) makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under this Deed of Trust, or any other obligation of Trustor or any subsequent purchaser of the Security or any part thereof, or any maker, co-signer, endorser, surety or guarantor (unless expressly released); nor shall any such act or omission preclude Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in any Event of Default then made or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by Beneficiary shall the lien of this Deed of Trust be altered thereby.

Section 7.8 Suits to Protect the Security.

Beneficiary shall have power to (a) institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Security and the rights of Beneficiary as may be unlawful or any violation of this Deed of Trust, (b) preserve or protect its interest (as described in this Deed of Trust) in the Security, and (c) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement for compliance with such enactment, rule or order would impair the Security thereunder or be prejudicial to the interest of Beneficiary.

Section 7.9 Trustee May File Proofs of Claim.

In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Trustor, its creditors or its property, the Trustee and/or Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Beneficiary allowed in such proceedings and for any additional amount which may become due and payable by Trustor hereunder after such date.

Section 7.10 Waiver.

Trustor waives presentment, demand for payment, notice of dishonor, notice of protest and nonpayment, protest, notice of interest on interest and late charges, and diligence in taking any action to collect any Secured Obligations or in proceedings against the Security, in connection with the delivery, acceptance, performance, default, endorsement or guaranty of this Deed of Trust.

ARTICLE 8:  
MISCELLANEOUS

Section 8.1 Obligations Regarding Rubicon Grant and Rubicon Grant Agreement.

All obligations of Trustor regarding the Rubicon Grant and Rubicon Grant Agreement terminate on March 11, 2028.

Section 8.2 Amendments.

This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by Beneficiary and Trustor.

Section 8.3 Reconveyance by Trustee.

Upon written request of Beneficiary stating that all Secured Obligations have been paid or forgiven, and upon surrender of this Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey the Security to Trustor, or to the person or persons legally entitled thereto.

Section 8.4 Notices.

If at any time after the execution of this Deed of Trust it shall become necessary or convenient for one of the parties hereto to serve any notice, demand or communication upon the other party, such notice, demand or communication shall be in writing and shall be served personally, by reputable overnight delivery service (which provides a delivery receipt) or by depositing the same in the registered United States mail, return receipt requested, postage prepaid and (1) if intended for Beneficiary shall be addressed to:

Contra Costa County  
Department of Conservation and Development  
30 Muir Road  
Martinez, CA 94553  
Attn: Affordable Housing Program Manager

and (2) if intended for Trustor shall be addressed to:

West County MHSA, LLC  
c/o Housing Consortium of the East Bay  
410 7th Street  
Oakland, CA 94607  
Attn: Executive Director

Any notice, demand or communication shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed in the manner herein specified, on the delivery date or date delivery is refused by the addressee, as shown on the return receipt. Either party may change its address at any time by giving written notice of such change to Beneficiary or Trustor as the case may be, in the manner provided herein, at least ten (10) days prior to the date such change is desired to be effective.

Section 8.5 Successors and Joint Trustors.

Where an obligation created herein is binding upon Trustor, the obligation shall also apply to and bind any transferee or successors in interest. Where the terms of the Deed of Trust have the effect of creating an obligation of Trustor and a transferee, such obligation shall be deemed to be a joint and several obligation of Trustor and such transferee. Where Trustor is more than one entity or person, all obligations of Trustor shall be deemed to be a joint and several obligation of each and every entity and person comprising Trustor.

Section 8.6 Captions.

The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

Section 8.7 Invalidity of Certain Provisions.

Every provision of this Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court or other body of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Security, the unsecured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid or applied to the full payment of that portion of the debt which is not secured or partially secured by the lien of this Deed of Trust.

Section 8.8 Governing Law.

This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California.

Section 8.9 Gender and Number.

In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

Section 8.10 Deed of Trust, Mortgage.

Any reference in this Deed of Trust to a mortgage shall also refer to a deed of trust and any reference to a deed of trust shall also refer to a mortgage.

Section 8.11 Actions.

Trustor agrees to appear in and defend any action or proceeding purporting to affect the Security.

Section 8.12 Substitution of Trustee.

Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the Property is situated, shall be conclusive proof of proper appointment of the successor trustee.

Section 8.13 Statute of Limitations.

The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law.

Section 8.14 Acceptance by Trustee.

Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law, the Trustee is not obligated to notify any party hereto of a pending sale under this Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee is a party unless brought by Trustee.

*[signature appears on the following page]*

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

TRUSTOR:

WEST COUNTY MHSA, LLC,  
a California limited liability company

By: Housing Consortium of the East Bay,  
a California nonprofit public benefit  
corporation, its sole member and  
manager

By: \_\_\_\_\_  
Darin Lounds  
Executive Director

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE VIRGINIA PROPERTY

THE LAND IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA, AND IS DESCRIBED AS FOLLOWS:

LOTS 23, 24 AND 25 IN BLOCK 46, AS SHOWN ON THE MAP OF "SANTA FE", FILED MARCH 17, 1900, MAP BOOK E, PAGE 102, CONTRA COSTA COUNTY RECORDS.

APN: 550-310-013



EXHIBIT B

LEGAL DESCRIPTION OF THE WEST RICHMOND PROPERTY

THE LAND IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA, AND IS DESCRIBED AS FOLLOWS:

LOTS 21 AND 22 IN BLOCK 46, AS SHOWN ON THE MAP OF SANTA FE, FILED MARCH 17, 1900 IN BOOK E OF MAPS, PAGE 102, IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY.

APN: 550-310-012

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Contra Costa County  
Department of Conservation and Development  
30 Muir Road  
Martinez, CA 94553  
Attn: Affordable Housing Program Manager

No fee for recording pursuant to  
Government Code Section 27383 and 27388.1

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REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS

(Virginia Apartments and West Richmond Apartments)

This Regulatory Agreement and Declaration of Restrictive Covenants ("Agreement") is dated as of \_\_\_\_\_, 2020, and is by and between the County of Contra Costa, a political subdivision of the State of California ("County"), and West County MHSA, LLC, a California limited liability company ("Grantee").

RECITALS

A. In accordance with the MHSA Revocable Grant Agreement of even date herewith between County and Grantee (the "Grant Agreement"), the County is providing a revocable grant to Grantee in the amount of One Million One Hundred Seventy-Five Thousand Dollars (\$1,175,000) (the "Grant") using funds received by the County from the Mental Health Services Act (the "MHSA"), originally through the California Housing Finance Agency, and administered by the County's Health Services Department. Grantee is using the Grant to acquire the real property located at (i) 903-919 Virginia Avenue in the City of Richmond, County of Contra Costa, State of California, as more particularly described in Exhibit A (the "Virginia Property") and (ii) the real property located at 360-366 South 9th Street in the City of Richmond, County of Contra Costa, State of California, as more particularly described in Exhibit B (the "West Richmond Property") (together, the "Property"). The Virginia Property is the site of a six-unit residential building. The West Richmond Property is the site of a four-unit residential building.

B. The County has the authority to provide the Grant to Grantee pursuant to Government Code Section 26227, which authorizes counties to spend county funds for programs that further a county's public purposes. The Grant is also consistent with the County's "Mental Health Services Act Three-Year Program and Expenditure Plan" for fiscal years 2017-2018 through 2019-2020, as such plan is updated.

C. As consideration for the Grant, Grantee has agreed to enter into this Agreement, and the Deed of Trust, which secures Grantee's obligations under this Agreement.

D. The County has agreed to make the Grant to Grantee on the condition that the Units are maintained and operated as rental housing in accordance with restrictions concerning affordability, operation, and maintenance that are specified in this Agreement and the Grant Agreement.

E. Capitalized terms used but not defined in this Agreement have the meanings ascribed to them in the Grant Agreement.

THEREFORE, the County and Grantee hereby agree as follows.

## ARTICLE 1 DEFINITIONS

### 1.1 Definitions

When used in this Agreement, the following terms have the following meanings.

- (a) "Actual Household Size" means the actual number of persons in the applicable household.
- (b) "Adjusted Income" means the total anticipated annual income of all persons in a household as calculated in the manner prescribed pursuant to Title 25, Section 6914 of the California Code of Regulations.
- (c) "Agreement" has the meaning set forth in the first paragraph of this agreement.
- (d) "Assumed Household Size" means, (i) two persons for a one-bedroom Unit, and (ii) three persons for a two-bedroom Unit.
- (e) "County Designee" means a service provider designated by the County in writing as the person or entity qualified to determine MHSA Eligibility for Tenants to reside in the Units.
- (f) "County Grant" shall mean all funds granted to Grantee by the County pursuant to the Grant Agreement.
- (g) "Deed of Trust" means the Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing of even date herewith among Grantee, as trustor, Old Republic Title Company, as trustee, and the County, as beneficiary, that will encumber the Property to secure Grantee's obligations and covenants under this Agreement and the Grant Agreement.
- (h) "DMH" shall mean the California Department of Mental Health.
- (i) "Existing Tenants" means the tenants that occupy the Units on the date of Grantee's acquisition of the Property.

(j) "Grant" has the meaning set forth in paragraph A of the Recitals.

(k) "Grant Agreement" has the meaning set forth in paragraph A of the Recitals.

(l) "HCD" means the California Department of Housing and Community Development.

(m) "Master Lease" has the meaning in Section 2.1(c) below.

(n) "Master Tenant" has the meaning in Section 2.1(c) below.

(o) "Median Income" means the median gross yearly income, adjusted for Actual Household Size or Assumed Household Size as specified herein, in the County of Contra Costa, California, as published from time to time by HCD. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the County shall provide the Borrower with other income determinations that are reasonably similar with respect to methods of calculation to those previously published by HCD.

(p) "MHSA" has the meaning set forth in paragraph A of the Recitals.

(q) "MHSA Eligible" means a person certified by the County or the County Designee as having a serious mental disorder as defined in Welfare and Institutions Code Section 5600.3(a)(b) and (c), Unserved or Underserved, and eligible to occupy a unit financed with MHSA funds.

(r) "MHSA Eligible Tenant" means a Tenant where one or more members of the household are MHSA Eligible.

(s) "Property" has the meaning set forth in paragraph A of the Recitals.

(t) "Rent" means the total of monthly payments by a Tenant for the following: use and occupancy of a Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by Grantee that are required of all Tenants, other than security deposits; an allowance for the cost of an adequate level of service for utilities paid by the Tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV; and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Grantee, and paid by the Tenant.

(u) "Tenant" means the household legally occupying a Unit.

(v) "Term" means the term of this Agreement, which commences on the date of this Agreement and continues for fifty-five (55) years.

(w) "Underserved" has the meaning set forth in the California Code of Regulations Title 9, Section 3200.300, or any successor regulation thereto. In the event that DMH no longer publishes the definition of Underserved, the County shall provide Grantee with a definition of Underserved that is reasonably similar to the DMH definition in effect as of the date of this Agreement.

(x) "Unit" means a residential unit on the Property.

(y) "Unserved" has the meaning set forth in the California Code of Regulations Title 9, Section 3200.310. In the event that DMH no longer publishes the definition of Unserved, the County shall provide Grantee with a definition of Unserved that is reasonably similar to the DMH definition in effect as of the date of this Agreement.

(z) "Very Low-Income Rent" means the maximum allowable rent for a Very Low-Income Unit pursuant to Section 2.2(a) below.

(aa) "Very Low-Income Tenant" means a Tenant with an Adjusted Income which does not exceed the maximum income for a very low-income household, adjusted for Actual Household Size, as published by HCD.

(bb) "Very Low-Income Units" means the Units which, pursuant to Section 2.1 below, are required to be occupied by Very Low-Income Tenants.

## ARTICLE 2 AFFORDABILITY AND OCCUPANCY COVENANTS

### 2.1 Occupancy Requirements.

(a) Very Low-Income Units. During the Term, Grantee shall cause all ten (10) Units on the Property to be rented to and occupied by, or, if vacant, available for occupancy by, Very Low-Income Tenants that are MHSA Eligible Tenants.

(b) Existing Tenants. Grantee shall provide the County a written report of the income and rent amount of all Existing Tenants within thirty (30) days of acquisition of the Property. Any Existing Tenant lawfully residing in the Property as of the date of this Agreement is entitled to remain a resident of the Property if such Tenant does not meet the income and other eligibility criteria of this Section 2.1. If and when such non-qualifying Existing Tenant voluntarily vacates the Unit, Borrower shall rent, or cause such Unit to be rented, to a Very Low-Income Household that is MHSA Eligible as necessary to meet the provisions of this Section 2.1.

(c) Master Lease. Grantee has entered into, or intends to enter into, a master lease agreement (the "Master Lease") with a service provider (the "Master Tenant") pursuant to which the Master Tenant will sublease the Units to Very Low-Income Tenants that are MHSA Eligible Tenants. The Master Tenant may be the same entity as the County Designee. Grantee shall ensure that the Master Lease contains such provisions to allow Grantee to comply with the provisions of this Agreement. If the Master Tenant is not the same entity as the County

Designee such Master Tenant and the Master Lease shall be subject to the review and approval of the County. Grantee shall notify the County of any default of the Master Tenant under the Master Lease or termination of the Master Lease.

## 2.2 Allowable Rent

(a) Very Low-Income Rent. Subject to the provisions of Subsection (c) below, the Rent charged by Grantee or the Master Tenant, as applicable, for the Units must be equal to the higher of (i) one-twelfth (1/12<sup>th</sup>) of thirty percent (30%) of fifty percent (50%) of Median Income, adjusted for Assumed Household Size, and (ii) if the household is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the household's actual housing costs, is specifically designated by the agency to meet the household's housing costs, the portion of the payment that is disbursed to the household by the public agency in addition to one-twelfth (1/12<sup>th</sup>) of thirty percent (30%) of the households monthly Adjusted Income.

(b) County Approval of Rents. The initial Rent for all Units must be approved by the County, or the County Designee prior to occupancy. All Rent increases are subject to County, or the County Designee approval. The County, or the County Designee shall provide Grantee with a schedule of maximum permissible Rents for the Units annually.

### (c) Rental Subsidy

(i) It is the intent of the County and Grantee that each Very Low-Income Tenant who is MHSA Eligible is only obligated to pay thirty percent (30%) of such Tenant's actual income in Rent. The County and Grantee further intend that the difference between thirty percent (30%) of Tenant's actual income and the Rent charged by Grantee or the Master Tenant, as applicable, in accordance with Section 2.2(a) above, be paid for with rent subsidies, rent assistance, or other housing assistance received by the Tenant.

(ii) In the event the annual report provided by Grantee pursuant to Section 3.2 demonstrates that the funds in the operating reserve for the Units exceed six (6) months' worth of operating expenses or the funds in the replacement reserves for the Units exceed fifty percent (50%) of the replacement value of the improvements on the Property, the County may, in its discretion, direct Grantee to reduce the Rent charged pursuant to Section 2.2(a). If requested by the County, such Rent reduction will be memorialized in an amendment to this Agreement that is recorded against title to the Property. The County agrees that if it directs Grantee to reduce the Rent that may be charged to Tenants pursuant to Section 2.2(a), the reduction will be limited to an amount that will permit Grantee to pay for the operating expenses reasonably expected to be incurred in the operation of the Units as rental housing.

## 2.3 Increased Income of Tenants

(a) Non-Qualifying Household. If, upon recertification of the income of a Tenant of a Unit, the County or the County Designee determines that a former Very Low-Income Tenant has an Adjusted Income exceeding the maximum qualifying income for a Very Low-Income Tenant (and the Tenant remains MHSA Eligible), such Tenant will be permitted to

continue occupying the Unit and the Rent paid by such Tenant will remain at the level set forth in Section 2.2 above.

(b) Termination of Occupancy. Upon termination of occupancy of a Unit by a Tenant, such Unit will be deemed to be continuously occupied by a Very Low-Income Tenant, who is also MHSA Eligible, until such Unit is reoccupied, at which time the Unit will be rented to a Very Low-Income Tenant, who is also MHSA Eligible. If the Units are not subject to a Master Lease, or the Master Tenant is not the same entity as the County Designee, Grantee shall provide the County Designee notice of any vacancies within ten (10) days of such vacancy.

#### 2.4 MHSA Eligibility.

Each Tenant occupying a Unit must include at least one MHSA Eligible household member and such household member must occupy the Unit at least ten (10) months out of each calendar year. If a Tenant fails to remain certified as MHSA Eligible due to the vacation of the Unit by the only MHSA Eligible household member (including by reason of the death of the only MHSA Eligible household member), the continuing or surviving members of such household will be permitted continued occupancy for a reasonable period of up to one (1) year from the time of the death or vacation of the MHSA Eligible Tenant (the "Grace Period"). Grantee shall cause the Tenant to be provided with notice of the applicable Grace Period and with assistance to obtain information about other available housing assistance programs. The Unit will be considered to be in compliance with the provisions of Section 2.1(a) above during the Grace Period. After the Grace Period or earlier termination of the tenancy by the Tenant, Grantee shall rent, or shall cause the Master Tenant to rent the next available Unit to a Very Low-Income Household that is MHSA Eligible, to comply with the requirements of Section 2.1(a) above.

### ARTICLE 3 MHSA AND INCOME CERTIFICATION AND REPORTING

#### 3.1 Income and MHSA Eligibility Certification.

(a) Grantee acknowledges that the County Designee will income certify Tenants renting any of the Units.

(b) Grantee acknowledges that the County Designee will determine if applicant households for the Units contain at least one member who is MHSA Eligible and will confirm on an annual basis that each Unit is occupied by a Tenant with at least one member who is MHSA Eligible and that such member actually resides in the Unit in accordance with Section 2.4 of this Agreement. Grantee shall maintain copies of such information.

#### 3.2 Annual Report to County.

Grantee shall submit to the County not later than the forty-fifth (45<sup>th</sup>) day after the close of each calendar year, or such other date as may be requested by the County, a statement of the fiscal condition of the operation of the Units as rental housing, including a financial statement indicating surpluses or deficits in operating accounts for the period covered, a detailed itemized

listing of income and expenses, and the amounts of any fiscal reserves. If Master Tenant is not the same entity as the County Designee, Grantee shall cause the Master Tenant to provide the County a statistical report, including income and rent data for all Tenants, setting forth the information called for therein, not later than the forty-fifth (45<sup>th</sup>) day after the close of each calendar year, or such other date as may be requested by the County.

### 3.3 Additional Information.

Grantee shall provide to the County, within fifteen (15) days after receipt of a written request, any other information or completed forms requested by the County in order to comply with reporting requirements of DMH, the State of California, or the County.

Grantee shall also provide any additional information reasonably requested by the County. The County has the right to examine and make copies of all books, records or other documents of Grantee which pertain to the operation of the Units as rental housing.

### 3.4 Records.

Grantee shall maintain complete, accurate and current records pertaining to the operation of the Units as rental housing and shall permit any duly authorized representative of the County to inspect such records. All Tenant lists, applications and waiting lists relating to the Units in Grantee's possession must at all times be kept separate and identifiable from any other business of Grantee and maintained as required by the County, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the County. Grantee shall retain copies of all materials obtained or produced with respect to occupancy of the Units for a period of at least five (5) years.

### 3.5 On-site Inspection.

The County has the right to perform an on-site inspection of the Property at least one (1) time per year after reasonable notice to Grantee including such time as Grantee requires to notice Tenants. Grantee shall cooperate in such inspection.

## ARTICLE 4 OPERATION OF THE PROPERTY

### 4.1 Use of Units.

(a) Grantee shall cause the Units to be operated only as permanent housing for MHSA Eligible Tenants.

(b) Grantee shall ensure that supportive services are provided to the Tenants in compliance with all requirements applicable to the MHSA funds, which services may be provided by the Master Tenant or County Designee. In the event the anticipated operating and service support funds for MHSA Eligible Tenants are terminated by the State of California due to no fault of Grantee, the County and Grantee may amend the Grant Documents to permit Very



Low-Income Tenants (regardless of whether the Very Low-Income Tenants are MHSA Eligible) to reside in one or more of the Units.

#### 4.2 Taxes and Assessments.

Grantee shall pay all real and personal property taxes, assessments and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any line or charge from attaching to the Property; provided, however, that Grantee has the right to contest in good faith, any such taxes, assessments, or charges. In the event Grantee exercises its right to contest any tax, assessment, or charge against it, Grantee, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

#### 4.3 Property Tax Exemption.

Grantee may not apply for a property tax exemption for the property under any provision of law except California Revenue and Taxation Section 214(g) or Section 214(h), without the prior written consent of the County.

### ARTICLE 5 PROPERTY MANAGEMENT AND MAINTENANCE

#### 5.1 Management Responsibilities.

Grantee is responsible for all management functions with respect to the Units and the Property, including without limitation maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The County has no responsibility for management of the Units or the Property. Grantee shall also be responsible for the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits from Tenants (the "Tenant Responsibilities"), provided that the County acknowledges that at the time of this Agreement the County Designee and or the Master Tenant, will be responsible for the Tenant Responsibilities and Grantee will have no obligation for the Tenant Responsibilities while the County Designee or Master Tenant retains such obligations.

#### 5.2 Management Agent; Periodic Reports.

Grantee shall cause the Units to be managed at all times as rental housing by a professional property management company and an experienced management agent reasonably acceptable to County, with demonstrated ability to operate residential facilities like the Units in a manner that will provide decent, safe, and sanitary housing (as approved, the "Management Agent"). Grantee shall submit for County's approval the identity of any proposed Management Agent. Grantee shall also submit such additional information about the background, experience and financial condition of any proposed management agent as is reasonably necessary for County to determine whether the proposed management agent meets the standard for a qualified management agent set forth above. If the proposed management agent meets the standard for a

qualified management agent set forth above, County shall approve the proposed management agent by notifying Grantee in writing. Unless the proposed management agent is disapproved by County within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved. As of the date of this Agreement the County approves Grantee as the Management Agent.

### 5.3 Periodic Performance Review – Property Management.

The County reserves the right to conduct an annual (or more frequently, if deemed necessary by the County) review of the management practices and financial status of the operation of the Units. The purpose of each periodic review will be to enable the County to determine if the operation of the Units is being operated and managed in accordance with the requirements and standards of this Agreement. Grantee shall cooperate with the County in such reviews.

### 5.4 Replacement of Management Agent.

If, as a result of a periodic review, the County determines in its reasonable judgment that the Units are not being operated and managed in accordance with any of the material requirements and standards of this Agreement, the County shall deliver notice to Grantee of its intention to require the Management Agent to be replaced, or, if Grantee is managing the Units, to require Grantee to retain an independent Management Agent, and the reasons therefor. Within fifteen (15) days of receipt by Grantee of such written notice, County staff and Grantee shall meet in good faith to consider methods for improving the financial and operating status of the Units, including, without limitation, replacing the Management Agent.

If, after such meeting, County staff recommends in writing the Management Agent be replaced, Grantee shall promptly dismiss the current Management Agent or cease self-management if the Units are managed by Grantee, and appoint as the Management Agent a person or entity meeting the standards for a management agent set forth in Section 5.2 above and approved by the County pursuant to Section 5.2 above.

Any contract for the operation or management of the Units as rental housing entered into by Grantee must include a provision to the effect that the contract can be terminated as set forth above. Failure to remove the Management Agent or to appoint a Management Agent instead of self-managing, in accordance with the provisions of this Section 5.4 will constitute default under this Agreement, and the County may enforce this provision through legal proceedings as specified in Section 6.7, below.

### 5.5 Approval of Management Policies.

Upon request, Grantee shall submit its written management policies with respect to the operation of the Units as rental housing in conformance with this Agreement to the County for its review, and shall amend such policies in any way necessary to ensure that the policies comply with this Agreement.

### 5.6 Property Maintenance.

Grantee agrees, for the entire Term of this Agreement, to maintain all interior and exterior improvements, including landscaping, on the Property in good condition and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials, and in accordance with the following maintenance conditions.

County places prime importance on quality maintenance to protect its investment and to ensure that all County-assisted affordable housing projects within the County are not allowed to deteriorate due to below-average maintenance. Normal wear and tear of the improvements on the Property is acceptable to the County, provided the improvements are maintained in good condition. Grantee shall make all repairs and replacements as necessary to keep the improvements in good condition and repair.

In the event that Grantee breaches any of the covenants contained in this Section 5.6 and such default continues for a period of five (5) days after written notice from the County with respect to graffiti, debris, waste material, and general maintenance or thirty (30) days after written notice from the County with respect to landscaping and building improvements, then the County, in addition to whatever other remedy it may have at law or in equity, has the right to enter upon the Property and perform or cause to be performed all such acts and work necessary to cure the default. Pursuant to such right of entry, the County is permitted (but is not required) to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Property, and to attach a lien on the Property, or to assess the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the County and/or costs of such cure, which amount Grantee shall promptly pay to the County upon demand.

## ARTICLE 6 MISCELLANEOUS

### 6.1 Lease Provisions.

In making the Units available for lease, Grantee shall use, and if the Units are subject to a Master Lease, cause the Master Tenant to use, a form of Tenant lease approved by the County. The form of Tenant lease must, among other matters include a provision for terminating the lease and the Tenant consenting to immediate eviction for Tenant's failure: (1) to provide any information required under this Agreement or reasonably requested by Grantee to establish or recertify the Tenant's qualification, or the qualification of the Tenant for occupancy in the a Unit in accordance with the standards set forth in this Agreement, or (2) to qualify as a Very Low-Income Tenant, or (3) to qualify as a MHSA Eligible Tenant as a result of any material misrepresentation made by such Tenant with respect to the income computation or certification of MHSA Eligible status.

## 6.2 Nondiscrimination.

All Units must be available for occupancy on a continuous basis to members of the general public who are MHSA Eligible and income eligible. Grantee may not give preference to any particular class or group of persons in renting the Units, except to the extent that the Units are required to be leased to income-eligible households and MHSA Eligible Tenants pursuant to this Agreement. No discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, source of income (e.g., SSI), ancestry, or disability, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit is allowed. Neither Grantee nor any person claiming under or through Grantee (including the Master Tenant), may establish or permit any practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of any Unit or in connection with the employment of persons for the operation and management of any Unit.

Grantee shall cause the Property to be operated at all times in compliance with all applicable federal, state, and local disabled persons accessibility requirements including, but not limited to the applicable provisions of: (i) the Unruh Act, (ii) the California Fair Employment and Housing Act, (iii) Section 504 of the Rehabilitation Act of 1973, (iv) the United States Fair Housing Act, as amended, (v) the Americans With Disabilities Act of 1990, and (vi) Chapters 11A and 11B of Title 24 of the California Code of Regulations, which relate to disabled persons access (collectively, the "Accessibility Requirements"). Grantee shall indemnify, protect, hold harmless and defend (with counsel reasonably satisfactory to the County) the County, and its board members, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of Grantee's failure to comply with the Accessibility Requirements. The provisions of this subsection will survive expiration of the Term or other termination of this Regulatory Agreement, and remain in full force and effect.

## 6.3 Term.

The provisions of this Agreement apply to the Property for the entire Term even if the entire Grant is repaid in full prior to the end of the Term. This Agreement binds any successor, heir or assign of Grantee, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the County. The County makes the Grant on the condition, and in consideration of, this provision, and would not do so otherwise.

## 6.4 Compliance with Grant Agreement and Program Requirements.

(a) Grantee's actions with respect to the Property must at all times be in full conformity with: (i) all requirements of the Grant Agreement; and (ii) all requirements imposed on projects under the Act and the DMH MHSA Regulations located at California Code of Regulations Title 9, Section 3100, et seq.

(b) In the event DMH publishes or causes to be published any regulation or requirement concerning the use of MHSA funds that are applicable to the Grant, and such regulation or requirement is inconsistent with the Grant Documents, upon request of the County,

the parties shall amend the terms of the Grant Documents to comply with such regulations.

#### 6.5 Notice of Expiration of Term.

(a) At least six (6) months prior to the expiration of the Term, Grantee shall provide by first-class mail, postage prepaid, a notice to all Tenants containing (i) the anticipated date of the expiration of the Term, (ii) any anticipated increase in Rent upon the expiration of the Term, (iii) a statement that a copy of such notice will be sent to the County, and (iv) a statement that a public hearing may be held by the County on the issue and that the Tenant will receive notice of the hearing at least fifteen (15) days in advance of any such hearing. Grantee shall also file a copy of the above-described notice with the County's Affordable Housing Program Manager.

(b) In addition to the notice required above, Grantee shall comply with the requirements set forth in California Government Code Sections 65863.10 and 65863.11. Such notice requirements include: (i) a twelve (12) month notice to existing tenants, prospective tenants and Affected Public Agencies (as defined in California Government Code Section 65863.10(a)) prior to the expiration of the Term, (ii) a six (6) month notice requirement to existing tenants, prospective tenants and Affected Public Agencies prior to the expiration of the Term; (iii) a notice of an offer to purchase the Property to "qualified entities" (as defined in California Government Code Section 65863.11(d)), if the Property is to be sold within five (5) years of the end of the Term; (iv) a notice of right of first refusal within the one hundred eighty (180) day period that qualified entities may purchase the Property.

#### 6.6 Covenants to Run with the Land.

The County and Grantee hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property, provided, however, that on the expiration of the Term of this Agreement said covenants and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the County expressly releases such conveyed portion of the Property from the requirements of this Agreement.

#### 6.7 Enforcement by the County.

If Grantee fails to perform any obligation under this Agreement, and fails to cure the default within thirty (30) days after the County has notified Grantee in writing of the default or, if the default cannot be cured within thirty (30) days, failed to commence to cure within thirty (30) days and thereafter diligently pursue such cure and complete such cure within ninety (90) days, the County shall have the right to enforce this Agreement by any or all of the following actions, or any other remedy provided by law:

(a) Calling the County Grant. The County may declare a default under the Grant Agreement, accelerate the indebtedness evidenced by the Grant Agreement, and proceed with foreclosure under the County Deed of Trust.

(b) Action to Compel Performance or for Damages. The County may bring an action at law or in equity to compel Grantee's performance of its obligations under this Agreement, and/or for damages.

(c) Remedies Provided Under Grant Agreement. The County may exercise any other remedy provided under the Grant Agreement.

6.8 Attorneys' Fees and Costs.

In any action brought to enforce this Agreement, the prevailing party is entitled to all costs and expenses of suit, including attorneys' fees. This Section 6.8 shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

6.9 Recording and Filing.

The County and Grantee shall cause this Agreement, and all amendments and supplements to it, to be recorded in the Official Records of the County of Contra Costa.

6.10 Governing Law.

This Agreement is governed by the laws of the State of California.

6.11 Waiver of Requirements.

Any of the requirements of this Agreement may be expressly waived by the County in writing, but no waiver by the County of any requirement of this Agreement will, or will be deemed to, extend to or affect any other provision of this Agreement.

6.12 Amendments.

This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the real property records of the County of Contra Costa.

6.13 Notices.

Any notice requirement set forth herein shall be deemed to be satisfied three (3) days after mailing of the notice first-class United States certified mail, postage prepaid, addressed to the appropriate party as follows:

Grantee: West County MHSA, LLC  
c/o Housing Consortium of the East Bay  
410 7th Street, Suite 203  
Oakland, CA 94607  
Attn: Executive Director

County: County of Contra Costa  
Department of Conservation and Development  
30 Muir Road  
Martinez, CA 94553  
Attention: Affordable Housing Program Manager

Such addresses may be changed by notice to the other party given in the same manner as provided above.

6.14 Severability.

If any provision of this Agreement is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement will not in any way be affected or impaired thereby.

6.15 Multiple Originals; Counterparts.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

*[signatures on following page]*

The Parties are signing this Agreement as of the date first above written.

COUNTY:

COUNTY OF CONTRA COSTA, a political  
subdivision of the State of California

By: \_\_\_\_\_  
Anna Roth  
Health Services Director

GRANTEE:

WEST COUNTY MHSA, LLC,  
a California limited liability company

By: Housing Consortium of the East Bay,  
a California nonprofit public benefit  
corporation, its sole member and  
manager

By: \_\_\_\_\_  
Darin Lounds, Executive Director

APPROVED AS TO FORM:

SHARON L. ANDERSON,  
County Counsel

By: \_\_\_\_\_  
Kathleen M. Andrus,  
Deputy County Counsel



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE VIRGINIA PROPERTY

The land is situated in the State of California, County of Contra Costa, and is described as follows:

Lots 23, 24 and 25 in Block 46, as shown on the map of "Santa Fe", filed March 17, 1900, Map Book E, Page 102, Contra Costa County Records.

APN: 550-310-013

EXHIBIT B

LEGAL DESCRIPTION OF THE WEST RICHMOND PROPERTY

The land is situated in the State of California, County of Contra Costa, and is described as follows:

Lots 21 and 22 in Block 46, as shown on the Map of Santa Fe, filed March 17, 1900 in Book E of Maps, Page 102, in the Office of the County Recorder of Contra Costa County.

APN: 550-310-012

MHSA REVOCABLE GRANT AGREEMENT

Between

COUNTY OF CONTRA COSTA

and

WEST COUNTY MHSA, LLC

VIRGINIA APARTMENTS AND WEST RICHMOND APARTMENTS

\_\_\_\_\_, 2020

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## MHSA REVOCABLE GRANT AGREEMENT

### Virginia Apartments and West Richmond Apartments

This MHSA Revocable Grant Agreement (the “Agreement”) is dated \_\_\_\_\_, 2020, and is between the COUNTY OF CONTRA COSTA, a political subdivision of the State of California (the “County”), and WEST COUNTY MHSA, LLC, a California limited liability company (“Grantee”).

### RECITALS

A. Defined terms used but not defined in these recitals are as defined in Article 1 of this Agreement.

B. The County receives funds from the Mental Health Services Act (the “MHSA”) (originally through the California Housing Finance Agency) for housing purposes, which MHSA funds (“MHSA Funds”) are disbursed for various projects in the County and are administered by the County’s Health Services Department.

C. Rubicon Programs Incorporated, a California nonprofit public benefit corporation (“Rubicon”) is the owner of certain real property located at 903-919 Virginia Avenue in the City of Richmond, County of Contra Costa, State of California, as more particularly described in Exhibit A (the “Virginia Property”). Rubicon is also the owner of certain real property located at 360-366 South 9th Street in the City of Richmond, County of Contra Costa, State of California, as more particularly described in Exhibit B (the “West Richmond Property”). Together, the Virginia Property and the West Richmond Property are the “Property.” Grantee and Housing Consortium of the East Bay are parties to a purchase and sale agreement dated October 18, 2019, as amended and assigned to Grantee, under which Grantee is acquiring the Property from Rubicon (the “Purchase and Sale Agreement”).

D. Pursuant to a MHSA Revocable Grant Agreement dated as of March 12, 2008 (the “Rubicon Grant Agreement”), and a Regulatory Agreement and Declaration of Restrictive Covenants dated as of March 12, 2008, recorded as Document Number 2008-0066594-00, in the official records of Contra Costa County (the “Rubicon Regulatory Agreement”), the County granted to Rubicon MHSA funds in the amount of \$564,332 (the “Rubicon Grant”) to finance the rehabilitation of the six-unit residential building located on the Virginia Property (the “Virginia Improvements”). The Rubicon Grant Agreement and the Rubicon Regulatory Agreement are secured by a Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing dated as of March 12, 2008, recorded as Document Number 2008-0066593-00, in the official records of Contra Costa County (the “Rubicon Deed of Trust”). Under the terms of the Rubicon Regulatory Agreement, Rubicon agreed to maintain all six residential units on the Virginia Property for occupancy by Very Low Income Tenants who are also MHSA Eligible Tenants through March 11, 2028.

E. The West Richmond Property is the site of a four-unit residential building (the “West Richmond Improvements”). All four units are occupied by tenants who qualify as Very



Low Income Tenants who are MHSA Eligible Tenants, despite the West Richmond Property not being subject to the Rubicon Regulatory Agreement.

F. Grantee desires to accept from the County and the County desires to extend to Grantee a grant in the amount of One Million One Hundred Seventy-Five Thousand Dollars (\$1,175,000) of MHSA funds to assist in Grantee's acquisition of the Property from Rubicon, including closing costs. Acquisition of the Property is intended to assist in maintaining the supply of permanent supportive housing for persons who are homeless or at risk of chronic homelessness and are eligible for services under the MHSA.

G. As consideration for the Grant, simultaneous with the acquisition of the Property, Grantee is entering into (i) this Agreement, (ii) the Regulatory Agreement, which has a term of fifty-five (55) years and supersedes the Rubicon Regulatory Agreement, (iii) the Deed of Trust, which secures Grantee's obligations under this Agreement, the Rubicon Grant Agreement, and the Regulatory Agreement, and (iv) an Assignment, Assumption, and Consent Agreement of even date herewith with respect to the Rubicon Grant Agreement (the "Assignment and Assumption Agreement"), under which Grantee is assuming the Rubicon Grant and Rubicon's rights and obligations under the Rubicon Grant Agreement.

H. Simultaneously with the acquisition of the Property by Grantee, the County will reconvey the Rubicon Deed of Trust and terminate the Rubicon Regulatory Agreement.

The parties therefore agree as follows:

## ARTICLE 1 DEFINITIONS AND EXHIBITS

### Section 1.1 Definitions.

The following capitalized terms have the meanings set forth in this Section 1.1 wherever used in this Agreement, unless otherwise provided:

(a) "Agreement" has the meaning set forth in the first paragraph of this agreement.

(b) "County" has the meaning set forth in the first paragraph of this Agreement.

(c) "County Designee" means a service provider designated by the County in writing as the person or entity qualified to determine if prospective tenants for the Units are MHSA Eligible.

(d) "Deed of Trust" means the Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing of even date herewith among Grantee, as trustor, Old Republic Title Company, as trustee, and the County, as beneficiary, that will encumber the Development to secure Grantee's obligations and covenants under this Agreement, the Rubicon Grant Agreement, and the Regulatory Agreement.

- (e) “Default” has the meaning set forth in Section 5.1 below.
- (f) “Default Rate” means the lesser of the maximum rate permitted by law and ten percent (10%) per annum.
- (g) “Development” means the Improvements and the Property.
- (h) “Grant” has the meaning set forth in Section 2.1 below.
- (i) “Grant Documents” means this Agreement, the Regulatory Agreement and the Deed of Trust.
- (j) “Grantee” has the meaning set forth in the first paragraph of this Agreement.
- (k) “Hazardous Materials” has the meaning set forth in Section 3.5 below.
- (l) “Hazardous Materials Claim” has the meaning set forth in Section 3.5 below.
- (m) “Hazardous Materials Law” has the meaning set forth in Section 3.5 below.
- (n) “Improvements” means collectively, the Virginia Improvements and the West Richmond Improvements.
- (o) “MHSA” has the meaning set forth in paragraph B of the Recitals.
- (p) “MHSA Eligible” means a person certified by the County or the County Designee as having a serious mental disorder as defined in Welfare and Institutions Code Section 5600.3(a)(b) and (c), Unserved or Underserved (as defined in the Regulatory Agreement), and eligible to occupy a Unit financed with MHSA Funds or MHSA Funds.
- (q) “MHSA Eligible Tenant” means a Tenant that has at least one household member who is MHSA Eligible.
- (r) “MHSA Funds” has the meaning set forth in paragraph B of the Recitals.
- (s) “Parties” means the County and Grantee.
- (t) “Property” has the meaning set forth in paragraph C of the Recitals.
- (u) “Regulatory Agreement” means the Regulatory Agreement and Declaration of Restrictive Covenants of even date herewith, between the County and Grantee, evidencing County requirements applicable to the Grant and the Rubicon Grant to be recorded against the Property.
- (v) “Rubicon Deed of Trust” has the meaning set forth in paragraph D of the Recitals.

- (w) “Rubicon Grant” has the meaning set forth in paragraph D of the Recitals.
- (x) “Rubicon Grant Agreement” has the meaning set forth in paragraph D of the Recitals.
- (y) “Rubicon Regulatory Agreement” has the meaning set forth in paragraph D of the Recitals.
- (z) “Tenant” means the tenant household occupying a Unit.
- (aa) “Term” has the meaning set forth in Section 2.6 below.
- (bb) “Transfer” has the meaning set forth in Section 3.11 below.
- (cc) “Unit” means a residential unit on the Property.

Section 1.2 Exhibits.

The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

- Exhibit A: Legal Description of the Virginia Property
- Exhibit B: Legal Description of the West Richmond Property

ARTICLE 2 GRANT PROVISIONS

Section 2.1 Grant.

The County hereby grants to Grantee the Grant in the amount of up to One Million One Hundred Seventy-Five Thousand Dollars (\$1,175,000) (the “Grant”) consisting of MHSA Funds for the purposes set forth in Section 2.3 of this Agreement.

Section 2.2 Interest.

In the event of a Default, interest on the Grant will accrue at the Default Rate, beginning on the date the Default occurs and continuing until (i) the Grant is repaid in full or (ii) the Default is cured.

Section 2.3 Use of Grant Funds.

- (a) Grantee shall use the Grant to fund the acquisition of the Property, including closing costs.
- (b) Grantee may not use the Grant for any other purpose without the prior written consent of the County.

Section 2.4 Security.

Grantee shall secure its obligation to repay the Grant and the Rubicon Grant in the event of a default under this Agreement or the Rubicon Grant Agreement (as applicable) by executing the Deed of Trust and causing, or permitting, it to be recorded as a lien against the Property. All obligations of Grantee regarding the Rubicon Grant will terminate on March 11, 2028.

Section 2.5 Conditions Precedent to Disbursement of Grant Funds.

The County is not obligated to disburse the Grant, or to take any other action under the Grant Documents unless the following conditions precedent are satisfied prior to the disbursement:

- (a) There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under the Grant Documents.
- (b) Grantee has executed and delivered the Grant Documents to the County and any other instruments and policies required under the Grant Documents.
- (c) Grantee has delivered to the County a copy of a corporate authorizing resolution authorizing Grantee's execution of the Grant Documents.
- (d) A title insurer reasonably acceptable to the County is unconditionally and irrevocably committed to issuing an ALTA Lender's Policy of title insurance insuring the priority of the Deed of Trust in the amount of the Grant and the Rubicon Grant, subject only to such exceptions and exclusions as may be reasonably acceptable to the County, and containing such endorsements as the County may reasonably require.
- (e) The Deed of Trust and the Regulatory Agreement have been recorded against the Property in the Office of the Recorder of the County of Contra Costa.
- (f) Grantee has furnished the County with evidence of the insurance coverage meeting the requirements of Section 3.12 below.
- (g) The County has received a written draw request from Grantee, including certification that the condition set forth in Section 2.5(a) continues to be satisfied, and setting forth the amount of funds needed, and, where applicable, a copy of the bill or invoice covering a cost incurred.

Section 2.6 Repayment Schedule.

No repayment of the Grant is required if Grantee complies with the requirements of the Grant Documents for a term commencing on the date of this Agreement and continuing for fifty-five (55) years (the "Term"). The Regulatory Agreement will remain in effect for the entire Term, regardless of any repayment of the Grant.

Section 2.7 Non-Recourse.

Except as provided below, Grantee does not have any direct or indirect personal liability

for payment of the principal of, and interest on, the Grant and/or the Rubicon Grant, or the performance of the covenants of Grantee under the Deed of Trust. Following recordation of the Deed of Trust, the sole recourse of the County with respect to the amount of the Grant and the Rubicon Grant, interest on the Grant and the Rubicon Grant, and defaults by Grantee in the performance of its covenants under the Deed of Trust is to the property described in the Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability (a) limits or impairs enforcement against all such security for the Grant Agreement and Rubicon Grant Agreement of all the rights and remedies of the County thereunder, or (b) may be deemed in any way to impair the right of the County to assert the unpaid principal amount of the Grant and/or the Rubicon Grant as demand for money within the meaning and intendment of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the Grant and the Rubicon Grant, and payment of interest on the Grant and the Rubicon Grant and the performance of Grantee's obligations under the Deed of Trust, except as hereafter set forth; nothing contained herein is intended to relieve Grantee of its obligation to indemnify the County under Sections 3.5, and 6.4 of this Agreement, or liability for (i) fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges that may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by Grantee, other than in accordance with the Deed of Trust; and (iv) the misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property.

### ARTICLE 3 GRANT REQUIREMENTS

#### Section 3.1 Annual Operating Budget.

At least ninety (90) days prior to the close of each calendar year, Grantee shall provide to the County an annual budget for the operation of the Units as rental housing on the Property. The County shall review and approve or reject such budget provided by Grantee. If rejected by the County in whole or in part, Grantee shall submit a new or corrected budget within thirty (30) calendar days of notification of the County's rejection and the reasons therefor. The provisions of this Section 3.1 relating to time periods for resubmission of new or corrected budgets will continue to apply until the budget is approved by the County.

#### Section 3.2 Information.

Grantee shall provide any information reasonably requested by the County in connection with the Property and compliance with the Grant Documents, including (but not limited to) information related to Grantee's use of the Grant funds.

#### Section 3.3 Records.

(a) Grantee shall keep and maintain at the Property, or elsewhere with the County's written consent, full, complete and appropriate books, records and accounts relating to

the operation of the Units as rental housing at the Property, including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail Grantee's compliance with the terms and provisions of the Grant Documents. Books, records and accounts relating to Grantee's compliance with the terms, provisions, covenants and conditions of the Grant Documents are to be kept and maintained in accordance with generally accepted accounting principles consistently applied, and are to be consistent with the requirements of this Agreement. All such books, records, and accounts are to be open to and available for inspection and copying by the County, its auditors or other authorized representatives at reasonable intervals during normal business hours. Copies of all tax returns and other reports that Grantee may be required to furnish to any government agency are to be open for inspection by the County at all reasonable times at the place that the books, records and accounts of Grantee are kept. Grantee shall preserve such records for a period of not less than five (5) years after the creation of such records. If any litigation, claim, negotiation, audit exception, monitoring, inspection or other action relating to the use of the Grant is pending at the end of the record retention period stated herein, then Grantee shall retain the records until the action and all related issues are resolved. Records must be kept accurate and current. Required records include but are not limited to Records documenting compliance with the fair housing and equal opportunity requirements, as applicable.

(b) The County shall notify Grantee of any records it deems insufficient. Grantee will have fifteen (15) calendar days after the receipt of such notice to correct any deficiency in the records specified by the County in the notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Grantee shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

#### Section 3.4 Audits.

Each year, Grantee shall provide the County with a copy of Grantee's annual audit, which must include information on all of Grantee's activities and not just those pertaining to the Property. In addition, the County or any designated agent or employee of the County at any time is entitled to audit all of Grantee's books, records, and accounts pertaining thereto. The audit will be conducted during normal business hours at the principal place of business of Grantee and other places where records are kept. Immediately after the completion of an audit, the County will deliver a copy of the results of the audit to Grantee.

#### Section 3.5 Hazardous Materials.

(a) Grantee shall keep and maintain the Property in compliance with, and may not cause or permit the Property to be in violation of, federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Property including, but not limited to, soil and ground water conditions. Grantee may not use, generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") except as may be customarily kept and used in and about residential property of this type.

(b) Grantee shall immediately advise the County in writing if at any time it receives written notice of (i) an enforcement, cleanup, removal or other government or regulatory action instituted, completed or threatened against Grantee or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, (“Hazardous Materials Law”); (ii) all claims made or threatened by any third party against Grantee or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as “Hazardous Materials Claims”); and (iii) Grantee’s discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be classified as “border-zone property” (as defined in California Health and Safety Code Section 25117.4) under the provision of California Health and Safety Code, Sections 25220 et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

(c) The County has the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys’ fees in connection therewith paid by Grantee. Grantee shall indemnify and hold harmless the County and its board members, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Property including without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (c) all reasonable costs and expenses incurred by the County in connection with clauses (a) and (b), including but not limited to reasonable attorneys’ fees and consultant’s fees. This indemnification applies whether or not any government agency has issued a cleanup order. Losses, claims, costs, suits, liability, and expenses covered by this indemnification provision include, but are not limited to: (1) losses attributable to diminution in the value of the Property; (2) loss or restriction of use of rentable space on the Property; (3) adverse effect on the marketing of any rental space on the Property; and (4) penalties and fines levied by, and remedial or enforcement actions of any kind issued by any regulatory agency (including but not limited to the costs of any required testing, remediation, repair, removal, cleanup or detoxification of the Property and surrounding properties). This obligation to indemnify shall survive termination of this Agreement.

(d) Without the County’s prior written consent, Grantee may not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, and may not enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in the County’s reasonable judgment, impair the value of the County’s security hereunder; provided, however, that the County’s prior consent is not necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain the County’s consent before taking such action, provided that in such event Grantee shall notify the County as

soon as practicable of any action so taken. The County agrees not to withhold its consent, where such consent is required hereunder, if (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) Grantee will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; or (iii) Grantee establishes to the reasonable satisfaction of the County that there is no reasonable alternative to such remedial action that would result in less impairment of the County's security hereunder.

(e) Grantee hereby acknowledges and agrees that (i) this Section 3.5 is intended as the County's written request for information (and Grantee's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Agreement (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by the Parties to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

(f) In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the County's or the trustee's rights and remedies under the Deed of Trust, the County may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (i) the rights and remedies of an unsecured creditor, including reduction of its claim against Grantee to judgment, and (ii) any other rights and remedies permitted by law. For purposes of determining the County's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), Grantee will be deemed to have willfully permitted or acquiesced in a release or threatened release of Hazardous Materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of Hazardous Materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and Grantee knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the County in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the lesser of ten percent (10%) and the maximum rate permitted by law, until paid, will be added to the indebtedness secured by the Deed of Trust and will be due and payable to the County upon its demand made at any time following the conclusion of such action.

### Section 3.6 Maintenance and Damage.

(a) During the operation of the rental housing on the Property, Grantee shall maintain the Development and the Property in good repair and in a neat, clean and orderly condition. If there arises a condition in contravention of this requirement, and if Grantee has not cured the condition within thirty (30) days after receiving a County notice of the condition, then in addition to any other rights available to the County, the County has the right to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Property.



(b) If economically feasible in the County's reasonable judgment after consultation with Grantee, if any improvement now or in the future on the Property is damaged or destroyed, then Grantee shall, at its cost and expense, diligently undertake to repair or restore such improvement consistent with the plans and specifications approved by the County with such changes as have been approved by the County. Such work or repair is to be commenced no later than the later of one hundred twenty (120) days, or such longer period approved by the County in writing, after the damage or loss occurs or thirty (30) days following receipt of the insurance proceeds, and is to be completed within one year thereafter. Any insurance proceeds collected for such damage or destruction are to be applied to the cost of repairs or restoration and, if the insurance proceeds are insufficient for such purpose, then Grantee is to make up the deficiency.

Section 3.7 Fees and Taxes.

Grantee is solely responsible for the payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Development to the extent owned by Grantee, and shall pay such charges prior to delinquency. However, Grantee is not required to pay and discharge any such charge so long as (a) the legality of the charge is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by the County, Grantee deposits with the County any funds or other forms of assurance that the County in good faith from time to time determines appropriate to protect the County from the consequences of the contest being unsuccessful.

Section 3.8 Notice of Litigation.

Grantee shall promptly notify the County in writing of any litigation that has the potential to materially affect Grantee or the Property and of any claims or disputes that involve a material risk of such litigation.

Section 3.9 Operation of Units as MHSA Eligible Housing.

Grantee shall operate the Units as permanent affordable housing for MHSA Eligible Tenants consistent with (i) any State of California requirements for use of the MHSA Funds, and (ii) the Regulatory Agreement.

Section 3.10 Nondiscrimination.

Grantee covenants by and for itself and its successors and assigns that there will be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor may Grantee or any person claiming under or through Grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property. The foregoing covenant shall run with the land.

Section 3.11 Transfer.

(a) For purposes of this Agreement, "Transfer" means any sale, assignment,

or transfer, whether voluntary or involuntary, of (i) any rights and/or duties under this Agreement, and/or (ii) any interest in the Development, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which possession of the Development is transferred and Grantee retains title. The term "Transfer" excludes the leasing of any single Unit to an occupant in compliance with the Regulatory Agreement.

(b) No Transfer is permitted without the prior written consent of the County, which the County may withhold in its sole discretion. The Grant is automatically due in full upon any Transfer made without the prior written consent of the County.

### Section 3.12 Insurance Requirements.

Grantee shall maintain the following insurance coverage throughout the Term of the Grant:

(a) Worker's Compensation insurance to the extent required by law, including Employer's Liability coverage, with limits not less than One Million Dollars (\$1,000,000) each accident.

(b) Commercial General Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations.

(c) Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable.

(d) Property insurance covering the Development, in form appropriate for the nature of such property, covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the County, naming the County as a Loss Payee, as its interests may appear.

(e) The required insurance is to be provided under an occurrence form, and Grantee shall maintain the coverage described in subsections (a) through (d) continuously throughout the Term. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs is included in the annual aggregate limit, the annual aggregate limit must be three times the occurrence limits specified above.

(f) Commercial General Liability, Automobile Liability and Property insurance policies must be endorsed to name as an additional insured the County and its officers, agents, employees and members of the County Board of Supervisors.

(g) All policies must contain (a) an agreement that the policies are primary and non-contributing with any insurance that may be carried by the County; (b) a provision that no act or omission of Grantee affects or limits the obligation of the insurance carrier to pay the

amount of any loss sustained; and (c) a waiver by the insurer of all rights of subrogation against the County and its authorized parties in connection with any loss or damage thereby insured against.

#### ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF GRANTEE

##### Section 4.1 Representations and Warranties.

Grantee hereby represents and warrants to the County as follows:

(a) Organization. Grantee is duly organized, validly existing and in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) Authority of Grantee. Grantee has full power and authority to execute and deliver this Agreement and to accept the Grant, to execute and deliver the Grant Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement and the Grant Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement are being executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Grantee, and all actions required under Grantee's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and the Grant Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(d) Valid Binding Agreements. This Agreement and the Grant Documents and all other documents or instruments being executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered, constitute, legal, valid and binding obligations of Grantee enforceable against it in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement and the Grant Documents or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, conflicts with or will result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on Grantee, or any provision of the organizational documents of Grantee, or constitute a breach of or a default under any agreement to which Grantee is a party, or result in the creation or imposition of any lien upon any assets or property of Grantee, other than liens established pursuant hereto.

(f) Pending Proceedings. Grantee is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there

are no claims, actions, suits or proceedings pending or, to the knowledge of Grantee, threatened against or affecting Grantee, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Grantee, materially impair the security to be given to the County pursuant hereto.

(g) Title to Land. At the time of recordation of the Deed of Trust, Grantee will have good and marketable fee title to the Development and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than liens for current real property taxes and liens in favor of the County or approved in writing by the County.

(h) Financial Statements. The financial statements of Grantee and other financial data and information furnished by Grantee to the County fairly and accurately present the information contained therein. As of the date of this Agreement, there has not been any adverse, material change in the financial condition of Grantee from that shown by such financial statements and other data and information.

(i) Sufficient Funds. Grantee holds sufficient funds and/or binding commitments for sufficient funds to complete the acquisition of the Property.

(j) Taxes. Grantee and its subsidiaries have filed all federal and other material tax returns and reports required to be filed, and have paid all federal and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their income or the Property otherwise due and payable, except those that are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with generally accepted accounting principles. There is no proposed tax assessment against Grantee or any of its subsidiaries that could, if made, be reasonably expected to have a material adverse effect upon the Property, liabilities (actual or contingent), operations, condition (financial or otherwise) or prospects of Grantee and its subsidiaries, taken as a whole, that would be expected to result in a material impairment of the ability of Grantee to perform under any Grant Document to which it is a party, or a material adverse effect upon the legality, validity, binding effect or enforceability against Grantee of any Grant Document.

## ARTICLE 5 DEFAULT AND REMEDIES

### Section 5.1 Events of Default.

Each of the following shall constitute a “Default” by Grantee under this Agreement:

(a) Breach of Covenants. Failure by Grantee to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of the Grant Documents, and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from the County to Grantee or, if the breach cannot be cured within thirty (30) days, Grantee will not be in breach so long as Grantee is diligently undertaking to cure such breach and such breach is cured within ninety (90) days; provided, however, that if a different period or notice requirement is specified under any other section of this Article 5, the specific provisions control.

(b) Default Under Loans. A default is declared under any other financing for the Property by the lender of such financing.

(c) Insolvency. A court having jurisdiction makes or enters any decree or order (i) adjudging Grantee to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Grantee or seeking any arrangement for Grantee under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of Grantee in bankruptcy or insolvency or for any of their properties, (iv) directing the winding up or liquidation of Grantee if any such decree or order described in clauses (i) to (iv), inclusive, continues unstayed or undischarged for a period of ninety (90) days; or (v) Grantee admits in writing its inability to pay its debts as they fall due or voluntarily submits to or files a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive. The occurrence of any of the events of Default in this paragraph will automatically trigger, without the need for any action by the County, Grantee's obligation to repay the Grant in accordance with the terms of the Grant Documents.

(d) Assignment; Attachment. Grantee assigns its assets for the benefit of its creditors or suffers a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon is returned or released within ninety (90) calendar days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution. The occurrence of any of the events of Default in this paragraph will automatically trigger, without the need for any action by the County, Grantee's obligation to repay the Grant in accordance with the terms of the Grant Documents.

(e) Suspension; Termination. Grantee voluntarily suspends its business or commences termination or dissolution.

(f) Liens on Property and the Project. Any claim of lien (other than liens approved in writing by the County) is filed against the Property or any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold proceeds of the Grant and the continued maintenance of the claim of lien or notice to withhold for a period of twenty (20) days, without discharge or satisfaction thereof or provision therefor (including, without limitation, the posting of bonds) satisfactory to the County.

(g) Condemnation. The condemnation, seizure, or appropriation of all or the substantial part of the Property.

(h) Unauthorized Transfer. Any Transfer other than as permitted by Section 3.11.

(i) Representation or Warranty Incorrect. Any Grantee representation or warranty contained in this Agreement, or in any application, financial statement, certificate, or report submitted to the County in connection with any of the Grant Documents, proving to have been incorrect in any material respect when made. Default may be declared under this subsection only if the failure of representation or warranty has a material adverse effect on the rental of the Units in compliance with the Grant Documents.

If Grantee is a limited partnership or limited liability company, then the occurrence of any of the events set forth in subsections (c), (d), or (e) by Grantee's general partner or managing member, as applicable, shall also constitute a Default under this Agreement.

#### Section 5.2 Remedies.

The occurrence of any Default hereunder following the expiration of all applicable notice and cure periods will, either at the option of the County or automatically where so specified, relieve the County of any obligation to make or continue the Grant and give the County the right to proceed with any and all remedies set forth in this Agreement and the Grant Documents, including but not limited to the following:

(a) Repayment of Grant. The right to cause the Grant, together with any accrued interest thereon as described in Section 2.2, to become immediately due and payable. Grantee waives all right to presentment, demand, protest or notice of protest or dishonor. The County may proceed to enforce repayment of the Grant and to exercise any or all rights afforded to the County as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure under the Deed of Trust. Grantee will be liable to pay the County on demand all reasonable expenses, costs and fees (including, without limitation, reasonable attorney's fees) paid or incurred by the County in connection with the collection of the Grant and the preservation, maintenance, protection, sale, or other disposition of the security given for the Grant.

(b) Specific Performance. The right to mandamus or other suit, action or proceeding at law or in equity to require Grantee to perform its obligations and covenants under the Grant Documents or to enjoin acts on things that may be unlawful or in violation of the provisions of the Grant Documents.

(c) Right to Cure at Grantee's Expense. The right (but not the obligation) to cure any monetary default by Grantee under a grant or loan secured by the Development. Grantee agrees to reimburse the County for any funds advanced by the County to cure a monetary default by Grantee upon demand therefor, together with interest thereon at the Default Rate from the date of expenditure until the date of reimbursement.

#### Section 5.3 Right of Contest.

Grantee has the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute a Default hereunder. Any such contest must be prosecuted diligently and in a manner unprejudicial to the County or the rights of the County hereunder.

#### Section 5.4 Remedies Cumulative.

No right, power, or remedy given to the County by the this Agreement or the Grant Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the County by the terms of any such instrument, or by any statute or otherwise against Grantee and any other person. The failure or delay on the part of the County to exercise any such rights and remedies does not operate as a waiver thereof, and any single or partial

exercise by the County of any such right or remedy does not preclude any other or further exercise of such right or remedy, or any other right or remedy.

## ARTICLE 6 GENERAL PROVISIONS

### Section 6.1 Relationship of Parties.

Nothing contained in this Agreement may be interpreted or understood by any of the Parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the County and Grantee or its agents, employees or contractors, and Grantee will at all times be deemed an independent contractor and to be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement. Grantee has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under the Agreement. With respect to the operation of the Units as rental housing, Grantee is solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding, and all other laws and regulations governing such matters, and is to include requirements in each contract that contractors are solely responsible for similar matters relating to their employees. Grantee is solely responsible for its own acts and those of its agents and employees.

### Section 6.2 No Claims.

Nothing contained in this Agreement creates or justifies any claim against the County by any person that Grantee may have employed or with whom Grantee may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the purchase of the Property, the operation of the Units as rental housing, and Grantee shall include similar requirements in any contracts entered into for the operation of the Units.

### Section 6.3 Amendments.

No alteration or variation of the terms of this Agreement is valid unless made in writing by the Parties.

### Section 6.4 Indemnification.

Grantee shall indemnify, defend and hold the County harmless against any and all claims, suits, actions, losses and liability of every kind, nature and description made against it and expenses (including reasonable attorneys' fees) that arise out of or in connection with this Agreement, including but not limited to the purchase of the Property, and operation of the Units as rental housing, except to the extent such claim arises from the grossly negligent or willful misconduct of the County, its agents, and its employees. The provisions of this Section shall survive the expiration of the Term and the reconveyance of the Deed of Trust.

Section 6.5 Non-Liability of County Officials, Employees and Agents.

No member, official, employee or agent of the County is personally liable to Grantee in the event of any default or breach by the County under the terms of this Agreement.

Section 6.6 No Third-Party Beneficiaries.

There shall be no third-party beneficiaries to this Agreement.

Section 6.7 Notices, Demands and Communications.

Formal notices, demands, and communications between the Parties shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the Parties as follows:

County: County of Contra Costa  
Department of Conservation and Development  
30 Muir Road  
Martinez, CA 94553  
Attention: Affordable Housing Program Manager

Grantee: West County MHSA, LLC  
c/o Housing Consortium of the East Bay  
410 7th Street, Suite 203  
Oakland, CA 94607  
Attn: Executive Director

Notices, demands and communications may be sent in the same manner to any other address the affected Party may from time to time designate by mail, as provided in this Section 6.7. Receipt will be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

Section 6.8 Applicable Law.

This Agreement is governed by the laws of the State of California.

Section 6.9 Parties Bound.

Except as otherwise limited herein, the provisions of this Agreement bind and inure to the benefit of the Parties and their heirs, executors, administrators, legal representatives, successors, and assigns. This Agreement is intended to run with the land and binds Grantee and its successors and assigns in the Property for the entire Term, and the benefit hereof inures to the benefit of the County and its successors and assigns.

Section 6.10 Attorneys' Fees.

If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing



Party has the right to recover its reasonable attorneys' fees and costs of suit from the other Party.

Section 6.11 Severability.

If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions will continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 6.12 Waivers.

Any waiver by the County of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the County to act on any breach or default of Grantee or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Grantee to perform any obligation under this Agreement does not operate as a waiver or release from any of its obligations under this Agreement. Consent by the County to any act or omission by Grantee may not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the County's written consent to future waivers.

Section 6.13 Title of Parts and Sections.

Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and are to be disregarded in interpreting any part of the Agreement's provisions.

Section 6.14 Entire Understanding of the Parties.

This Agreement, the Regulatory Agreement and the Deed of Trust constitute the entire understanding and agreement of the Parties with respect to the Grant.

Section 6.15 Multiple Originals; Counterpart.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

***Remainder of Page Intentionally Left Blank***

The Parties are signing this Agreement as of the first above written.

COUNTY:

COUNTY OF CONTRA COSTA, a political  
subdivision of the State of California

By: \_\_\_\_\_  
Anna Roth  
Health Services Director

GRANTEE:

WEST COUNTY MHSA, LLC,  
a California limited liability company

By: Housing Consortium of the East Bay,  
a California nonprofit public benefit corporation,  
its sole member and manager

By: \_\_\_\_\_  
Darin Lounds, Executive Director

APPROVED AS TO FORM:

SHARON L. ANDERSON,  
County Counsel

By: \_\_\_\_\_  
Kathleen M. Andrus,  
Deputy County Counsel

EXHIBIT A

LEGAL DESCRIPTION OF THE VIRGINIA PROPERTY

The land is situated in the State of California, County of Contra Costa, and is described as follows:

Lots 23, 24 and 25 in Block 46, as shown on the map of "Santa Fe", filed March 17, 1900, Map Book E, Page 102, Contra Costa County Records.

APN: 550-310-013

EXHIBIT B

LEGAL DESCRIPTION OF THE WEST RICHMOND PROPERTY

The land is situated in the State of California, County of Contra Costa, and is described as follows:

Lots 21 and 22 in Block 46, as shown on the Map of Santa Fe, filed March 17, 1900 in Book E of Maps, Page 102, in the Office of the County Recorder of Contra Costa County.

APN: 550-310-012

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:  
County of Contra Costa  
Department of Conservation and  
Development  
30 Muir Road  
Martinez, California 94553  
Attention: Affordable Housing Program  
Manager**

**No fee document pursuant to  
Government Code Section 27383 and 27388.1**

Space Above This Line for Recorder's Use Only

## **SUBSTITUTION OF TRUSTEE AND FULL RECONVEYANCE**

**(Virginia Avenue Property)**

The Undersigned, present Beneficiary under that certain Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing dated **March 12, 2008** executed by **Rubicon Programs Incorporated, a California nonprofit public benefit corporation**, as Trustor to **North American Title Company** as original Trustee and recorded on **March 28, 2008** as Instrument **No. 2008-0066593-00**, in the Official Records of the County of **Contra Costa**, State of **California**, **HEREBY APPOINTS AND SUBSTITUTES THE UNDERSIGNED** as the new and substituted Trustee thereunder in accordance with the terms and provisions contained therein, whose address is **30 Muir Road, Martinez, California 94553**.

As such duly appointed and substituted Trustee thereunder, the undersigned **DOES HEREBY RECONVEY** to the person or persons legally entitled thereto, without warranty all the estate, title and interest acquired by the original Trustee and by the undersigned as the said substituted Trustee under said Deed of Trust. Wherever the text of this document so requires, the singular includes the plural.

Dated: \_\_\_\_\_, 2020

COUNTY OF CONTRA COSTA, a political subdivision of the  
State of California

By: \_\_\_\_\_  
Anna Roth  
Health Services Director

Substitution of Trustee and  
Full Reconveyance - continued

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE \_\_\_\_\_ )SS

COUNTY \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally appeared

\_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

This area for official notarial seal.

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

**The land is situated in the State of California, County of Contra Costa, and is described as follows:**

**Lots 23, 24 and 25 in Block 46, as shown on the map of "Santa Fe", filed March 17, 1900, Map Book E, Page 102, Contra Costa County Records.**

**APN: 550-310-013**

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

County of Contra Costa  
Department of Conservation and Development  
30 Muir Road  
Martinez, CA 94553  
Attention: Affordable Housing Program Manager

No fee document pursuant to  
Government Code Section 27383 and 27388.1

---

THIS SPACE FOR RECORDERS USE ONLY

**TERMINATION AND RELEASE OF  
REGULATORY AGREEMENT**  
(Virginia Avenue Property)

This Termination and Release of Regulatory Agreement (the "Release"), dated as of December 31, 2019 and effective as of recordation, is made by the County of Contra Costa, a political subdivision of the State of California (the "County"). This Release pertains to that certain real property located at 903-919 Virginia Avenue in the City of Richmond, County of Contra Costa, State of California (the "Property") described in Exhibit A attached hereto, which exhibit is hereby incorporated herein by this reference.

WHEREAS, the County previously made a grant to Rubicon Programs Incorporated, a California nonprofit public benefit corporation ("Rubicon") in the amount of \$564,332 (the "Original Grant"). The Original Grant was secured in part by a Regulatory Agreement and Declaration of Restrictive Covenants by and between the County and Rubicon dated March 12, 2008, recorded in the official records against the Property on March 28, 2008 as instrument number 2008-0066594-00 (the "Original County Regulatory Agreement");

WHEREAS, pursuant to an Assignment, Assumption, and Consent Agreement of even date herewith among the County, Rubicon, and West County MHSA, LLC, a California limited liability company ("West County LLC"), the Original Grant has been assigned to and assumed by West County LLC;

WHEREAS, concurrently with the release of the Original County Regulatory Agreement in connection with the assumption of the Original Grant, and the making of a new grant to West County LLC by the County in the amount of \$1,175,000, the County and West County LLC will enter into a new regulatory agreement which will be recorded against the Property, restricting the occupancy of the improvements on the Property; and

WHEREAS, in order to cause the removal of the Original County Regulatory Agreement from the Property, the County has agreed to enter into this Release, as hereinafter set forth.



NOW, THEREFORE, the County hereby acknowledges and agrees that the Original County Regulatory Agreement is terminated and the County hereby releases the Property from the restrictions of the Original County Regulatory Agreement and directs that the Original County Regulatory Agreement be removed as an encumbrance on the Property.

*signature on following page*

IN WITNESS WHEREOF, the County hereby executes this Release as of the date first written above.

COUNTY:

County of Contra Costa, a political subdivision of the State of California

By: \_\_\_\_\_  
Anna Roth  
Health Services Director

EXHIBIT A

(Legal Description of the Virginia Property)

The land is situated in the State of California, County of Contra Costa, and is described as follows:

Lots 23, 24 and 25 in Block 46, as shown on the map of "Santa Fe", filed March 17, 1900, Map Book E, Page 102, Contra Costa County Records.

APN: 550-310-013

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 )  
COUNTY OF CONTRA COSTA )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public



Contra  
Costa  
County

To: Board of Supervisors  
From: David O. Livingston, Sheriff-Coroner  
Date: September 22, 2020

Subject: Renewal of Cardroom License

---

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Sheriff-Coroner, or designee, to renew Cardroom License Number 6, known as "California Grand Casino" currently located at 5988 Pacheco Blvd., Pacheco, California, for the period of November 26, 2020 through November 25, 2021.

**FISCAL IMPACT:**

\$10,500; \$1,000 application fees plus \$500 per table for licensing of nineteen (19) card tables. 100% Revenue.

**BACKGROUND:**

In accordance with County Ordinance No. 82-44, Chapter 52-3, Article 52-3.3, Section 52-3.321, an application has been submitted by Mr. Lamar V. Wilkinson and Ms. Elizabeth Wilkinson for the renewal of Cardroom License Number 6, known as "California Grand Casino". The Office of the Sheriff conducted a background investigation of the applicants. The investigation produced no adverse information, which would preclude approval of this application. This Cardroom License will be issued to Mr. Lamar V. Wilkinson and Ms. Elizabeth Wilkinson, owners of the cardroom establishment.

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APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: June McHuen, Deputy

Contact: Sandra Brown,  
925-655-0004

cc:

CONSEQUENCE OF NEGATIVE ACTION:

Negative action will result in Cardroom License Number 6 not being renewed and expiring on November 25, 2020. Once expired, the Cardroom will no longer be able to operated until such time that a new license has been approved.



Contra  
Costa  
County

To: Board of Supervisors  
From: John Kopchik, Director, Conservation & Development Department  
Date: September 22, 2020

Subject: Allocation of Funds from the Livable Communities Trust to the Heritage Point Commercial Project

---

**RECOMMENDATION(S):**

ALLOCATE \$505,336 from the Livable Communities Trust (District 1 Portion) to the Heritage Point Commercial Project in North Richmond and AUTHORIZE the Conservation and Development Director, or designee, to execute a contract, subject to approval by the County Administrator and approval as to form by County Counsel, with Community Housing Development Corporation of North Richmond for the construction of a training facility/resource center on the ground floor of Heritage Point Apartments and a grocery store located next to the apartments on the corner lot of Chesley Ave and Fred Jackson Way in North Richmond.

**FISCAL IMPACT:**

No impact to the General Fund. This action allocates \$505,336 from the District I portion of the Livable Communities Trust Fund (Fund), out of the current balance of \$581,564.63.

**BACKGROUND:**

The Livable Communities Trust Fund (Fund) is a Special Revenue Mitigation Fund that was established by the Board of Supervisors on November 15, 2005, following the approval of the Camino Tassajara Combined General Plan Amendment Project, also known as the Alamo Creek and Intervening Property residential projects, and was required as a condition of approval. The Fund was established to implement

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APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: June McHuen, Deputy

Contact: Kristin Sherk,  
925-674-7887

cc:

## BACKGROUND: (CONT'D)

the County's Smart Growth Action Plan. The residential developers pay an \$8,000 per market-rate unit fee into the Fund.

On December 3, 2013, the Board of Supervisors determined that revenue from the Fund should be spent equally among supervisorial districts. At complete build-out, deposits to the Fund will total \$8,448,000. As of August 2020, the account has collected \$8,264,000 in revenue fees and \$824,661 in accrued interest with \$6,438,849 remaining in uncommitted funds. The approved expenditures to date are attached.

The Livable Community Trust funds will be used to help build out ground floor commercial space at Heritage Point Apartments, an affordable housing development in North Richmond. While the total project cost for the commercial development will exceed the Livable Communities Trust allocation, the grant amount will serve as anchor funding to help attract additional investors who support healthy neighborhood grocery and training space/resource center for the North Richmond community. CHDC is actively applying for funding for these two projects and developing networks. The grocery store site is next to the apartments on the corner lot of Chesley Ave and Fred Jackson Way. The goal is to build a high quality, affordable, and walkable neighborhood grocery in the heart of North Richmond that will improve the quality of life of residents. The neighborhood grocery store will cater to North Richmond residents and workers. The store will provide fresh local affordable produce, limited bakery/milk case merchandise, and household products. Among other options, CHDC is exploring a cooperative model to economically empower future operators. Heritage Point Commercial supports Smart Growth goal number four: To promote economic revitalization and urban infill communities.

## CONSEQUENCE OF NEGATIVE ACTION:

Without the allocation of funds, the project will have fewer funds to leverage for attracting additional investors or sponsors.

## CHILDREN'S IMPACT STATEMENT:

This project supports the following children programs' outcomes: Families that are safe, stable and nurturing, and Communities that are safe and provide a high quality of life for children and families.

## ATTACHMENTS

LCT Project List



Livable Communities Trust Funds Project Expenditure List											
Project No.	Board Date	Grant Recipient	Project	District I	District II	District III	District IV	District V	Total Expenditures*	Remaining Balance	Rate of Expenditure
2013-01	10/22/2013	DCD	Northern Waterfront	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000	\$ 250,000.00	\$ -	100%
2016-01	6/14/2016	Community Housing Development Corp.	Heritage Point Apartments	\$ 927,494	\$ -	\$ -	\$ -	\$ -	\$ 927,493.66	\$ -	100%
2016-02	12/20/2016	DCD	Marsh Creek Trail	\$ -	\$ -	\$ 250,000	\$ -	\$ -	\$ 145,770.28	\$ 104,229.72	58%
2016-03	12/20/2016	DCD	Agriculture Policy Study	\$ -	\$ -	\$ 150,000	\$ -	\$ -	\$ 111,681.84	\$ 38,318.16	74%
2017-01	3/7/2017	Aglantis	Agra Tech Solar Light Greenhouse	\$ -	\$ -	\$ -	\$ 25,000	\$ 25,000	\$ 50,000.00	\$ -	100%
2017-02	3/14/2017	Mobility Matters	Rides for Veterans	\$ -	\$ 33,458	\$ -	\$ 50,187	\$ -	\$ 83,645.00	\$ -	100%
2017-03	9/19/2017	Garden Park Apartments Community	Garden Park Apartments	\$ -	\$ -	\$ -	\$ 125,000	\$ -	\$ 125,000.00	\$ -	100%
2018-01	1/16/2018	PWD	SRV Street Smarts - 2018	\$ -	\$ 20,000	\$ -	\$ -	\$ -	\$ 20,000.00	\$ -	100%
2018-02	2/27/2018	HSD	Contra Costa Housing Security Fund	\$ -	\$ 10,000	\$ -	\$ -	\$ -	\$ 10,000.00	\$ -	100%
2018-03	3/27/2018	PWD	Newell Avenue Pathway	\$ -	\$ 75,000	\$ -	\$ -	\$ -	\$ 75,000.00	\$ -	100%
2018-04	3/27/2018	Innovation Tri Valley	Tri Valley Rising Report	\$ -	\$ 10,000	\$ -	\$ -	\$ -	\$ 10,000.00	\$ -	100%
2018-05	6/12/2018	PWD	RYSE Acquisition - Phase 1	\$ 25,000	\$ -	\$ -	\$ -	\$ -	\$ 25,000.00	\$ -	100%
2018-06	12/4/2018	PWD	SRV Street Smarts - 2019	\$ -	\$ 20,000	\$ -	\$ -	\$ -	\$ 20,000.00	\$ -	100%
2018-07	12/18/2018	Choice in Aging	Infrastructure Workforce Development Project	\$ -	\$ -	\$ -	\$ 40,000	\$ -	\$ 13,200.00	\$ 26,800.00	33%
2019-01	1/15/2019	PWD	Friends of the El Sobrante Library	\$ 140,000	\$ -	\$ -	\$ -	\$ -	\$ 140,000.00	\$ -	100%
2019-02	3/26/2019	PWD	RYSE Acquisition - Phase 2	\$ 42,500	\$ -	\$ -	\$ -	\$ -	\$ 42,500.00	\$ -	100%
2019-03	3/26/2019	RYSE Center	RYSE Center Capital Expansion Project	\$ 51,174	\$ -	\$ -	\$ -	\$ -	\$ 51,174.00	\$ -	100%
2019-04	6/18/2019	Innovation Tri Valley	2040 Tri Valley Vision Plan Investment	\$ -	\$ 10,000	\$ -	\$ -	\$ -	\$ 10,000.00	\$ -	100%
2019-05	7/30/2019	Sheriff's Office	Bay Point Resident Deputy Program	\$ -	\$ -	\$ -	\$ -	\$ 200,000	\$ 200,000.00	\$ -	100%
2019-06	7/30/2019	PWD	PWD - Beautification Bay Point	\$ -	\$ -	\$ -	\$ -	\$ 50,000	\$ 50,000.00	\$ -	100%
2019-07	7/30/2019	DCD	District V Code Enforcement	\$ -	\$ -	\$ -	\$ -	\$ 100,000	\$ 100,000.00	\$ -	100%
2019-08	10/22/2019	PWD	SRV Street Smarts - 2020	\$ -	\$ 20,000	\$ -	\$ -	\$ -	\$ 20,000.00	\$ -	100%
2020-01	9/22/2020	Community Housing Development Corp.	Heritage Point Commercial/Grocery Store	\$ 505,336	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%
				<b>\$ 1,741,504</b>	<b>\$ 248,458</b>	<b>\$ 450,000</b>	<b>\$ 290,187</b>	<b>\$ 425,000</b>	<b>\$ 2,480,464.78</b>	<b>\$ 169,347.88</b>	<b>79%</b>

\* Reflects expenditures made by DCD, including payments to other County departments or non-profit organizations.



Contra  
Costa  
County

To: Board of Supervisors  
From: John Kopchik, Director, Conservation & Development Department  
Date: September 22, 2020

Subject: Approval of \$2,200,400 HOME loan and related legal documents for Veterans Square, an affordable housing development in Pittsburg

**RECOMMENDATION(S):**

In the matter of making a loan of \$2,200,400 in HOME Investment Partnership Program (HOME) funds to Veterans Square L.P., a California limited partnership, for Veterans Square, a 30 unit affordable housing development in Pittsburg:

1. FIND, as the responsible agency, that on the basis of the whole record before the County including the California Environmental Quality Act (CEQA) review prepared by the City of Pittsburg as the lead agency that the development is exempt under Sections 15332 and 15061(b)(3) of CEQA; and
2. DIRECT the Director of Conservation and Development, or designee, to file a Notice of Exemption for Veterans Square with the County Clerk, and pay any required fee for the filing; and
3. APPROVE and AUTHORIZE the Conservation and Development Director, or designee, to execute legal documents subject to approval by the County Administrator and approval as to form by County Counsel, to effect the loan.

**FISCAL IMPACT:**

No General Fund impact. HOME funds are provided to the County on a formula allocation basis through the U.S. Department of Housing and Urban Development (HUD). HOME - CFDA# 14.239.

APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: June McHuen, Deputy

Contact: Amalia Cunningham,  
925-674-7869

cc:

## BACKGROUND:

This proposed project has been in development for approximately 10 years and has received funding recommendations from the Affordable Housing Finance Committee in multiple cycles. Most recently, its HOME funding allocation was approved by the Board of Supervisors on December 11, 2018. The developer is a wholly owned subsidiary of Satellite Affordable Housing Associates (SAHA), which has a long track record of affordable housing development in the Bay Area. Veterans Square will have 30 apartments in downtown Pittsburg, 29 affordable to low-income residents and one manager's unit. The HOME funds will support 14 of those units, 11 apartments at no more than 30% of Area Median Income (AMI), and three at no more than 40% AMI.

Many other financing sources are involved in the construction, including a proposed bond issuance through Contra Costa County (scheduled for a separate review by the Board of Supervisors), City of Pittsburg funds, and Silicon Valley Housing Trust. SAHA has also expressed interest in applying for HOPWA funds through the Department of Conservation and Development as part of the next annual cycle for federal funds, which will open in Fall 2020. The development will utilize a State of California No Place Like Home (NPLH) grant through a partnership with the County. Contra Costa Health Services will provide the NPLH services and DCD will provide administrative support for the NPLH grant. NPLH is a new State program and this is the first project in Contra Costa County to use it.

HOME funds will be provided in the form of a 55-year, residual receipts loan with a zero percent interest rate. The low interest rate was requested by SAHA due to financing challenges during COVID-19. Even at zero percent interest, there may be some payments if the project has surplus cash flow. Affordability and use restrictions are incorporated into the County loan documents. The County will have a HOME Regulatory Agreement with a 20 year term and an additional County Regulatory Agreement that will maintain the affordability following the expiration of the HOME affordability term for an additional 35 years. The loan agreement (Agreement) and related documents are attached in their substantially final form and will be executed in a form approved by County Counsel.

Due to the high construction costs and limited revenue from the restricted rents, the total amount of the financing provided to the project will likely exceed the value of the completed project. Even though the proposed equity investment from low income housing tax credits is substantial compared to the amount of long term debt, the partnership agreement will have numerous safeguards of the investor's equity. These safeguards essentially subordinate the County's debt to the investor's equity. Therefore, the County's HOME funds may not be fully secured by the value of the property; however, HOME funds are dedicated to providing affordable housing options for low-income households and the same risk would be present in any comparable project using tax credits. Further, the HOME funds to be used are granted, not loaned, to the County by HUD.

HOME projects are subject to National Environmental Policy Act (NEPA) and 24 CFR Part 58 review, in addition to CEQA review for which the City of Pittsburg as lead agency has determined the project was exempt as an infill development. The County's NEPA review for this project is complete and required mitigation actions are included in the Agreement. The County, as a responsible agency under CEQA, concurs with the City's CEQA determination and will file the appropriate notice with the Recorder's Office.

## CONSEQUENCE OF NEGATIVE ACTION:

Without the approval and execution of the HOME legal documents, the project will not be able to move forward. Veterans Square, L.P. must close the transaction in October 2020, or forgo the housing tax credit allocation upon which the project's financing depends.

CHILDREN'S IMPACT STATEMENT:

Long-term affordable housing such as that to be provided by Veterans Square is consistent with Children's Report Card outcome #3: Families are Economically Self-Sufficient.

ATTACHMENTS

HOME Loan Agreement

HOME Loan Deed of Trust

HOME Loan Promissory Note

HOME Loan Subordination and Intercreditor Agreement

County Regulatory Agreement

HOME Regulatory Agreement

DEVELOPMENT LOAN AGREEMENT  
Veterans Square Apartments  
(HOME Funds)

This Development Loan Agreement (the "Agreement") is dated September \_\_\_\_, 2020, and is between the County of Contra Costa, a political subdivision of the State of California (the "County"), and Veterans Square, L.P., a California limited partnership ("Borrower").

RECITALS

A. Defined terms used but not defined in these recitals are as defined in Article 1 of this Agreement.

B. The County has received Home Investment Partnerships Act funds from the United States Department of Housing and Urban Development ("HUD") pursuant to the Cranston-Gonzales National Housing Act of 1990 ("HOME Funds"). The HOME Funds must be used by the County in accordance with 24 C.F.R. Part 92 (the "HOME Regulations").

C. Pursuant to a Purchase and Sale Agreement dated July 22, 2020, between Satellite Affordable Housing Associates, a California nonprofit public benefit corporation ("SAHA") and Borrower, Borrower intends to purchase that certain real property located at 901 Los Medanos Street and 295 East 10th Street, in the City of Pittsburg, County of Contra Costa, State of California, as more particularly described in Exhibit A (the "Property"). Borrower intends to construct (30) housing units on the Property, twenty-nine (29) of which are for rental to extremely low, very low and low income households, and one (1) manager's unit (the "Development"). The Development, as well as all landscaping, roads and parking spaces on the Property and any additional improvements on the Property, are the "Improvements".

D. Borrower desires to borrow from the County Two Million Two Hundred Thousand Four Hundred Dollars (\$2,200,400) of HOME Funds (the "Loan").

E. The HOME Funds being used for the Loan are funds that have been set aside for entities designated as a Community Housing Development Organization ("CHDO") as defined in 24 C.F.R. 92.2.

F. The Loan is evidenced by this Agreement, the Note, the Regulatory Agreements, and the Intercreditor Agreement, and is secured by the Deed of Trust.

G. The Loan is being made to finance acquisition and construction costs of the Development. Construction of the Development is intended to maintain the supply of affordable rental housing in Contra Costa County. Due to the assistance provided Borrower through the Loan, the County is designating fourteen (14) units as HOME-assisted units (the "HOME-Assisted Units").

H. The City has determined the Development to be \_\_\_\_\_ on \_\_\_\_\_ and prepared an \_\_\_\_\_ pursuant to the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.) ("CEQA").

I. In accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321-4347) ("NEPA"), the County has completed and approved all applicable environmental review for the activities proposed to be undertaken under this Agreement.

The parties therefore agree as follows:

## AGREEMENT

### ARTICLE 1 DEFINITIONS AND EXHIBITS

#### Section 1.1 Definitions.

The following terms have the following meanings:

(a) "Accessibility Requirements" has the meaning set forth in Section 3.9 below.

(b) "Agreement" means this Development Loan Agreement.

(c) "Annual Operating Budget" has the meaning set forth in Section 4.4.

(d) "Annual Operating Expenses" means for each calendar year, the following costs reasonably and actually incurred for operation and maintenance of the Development:

(i) property taxes and assessments imposed on the Development;

(ii) debt service currently due on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Development) on the HTSV Loan;

(iii) on-site service provider fees for tenant social services, provided the County has approved, in writing, the plan and budget for such services before such services begin;

(iv) fees paid to the Issuer with respect to the Bonds;

(v) payment to HCD of a portion of the accrued interest on the NPLH HCD Loan and HCD MHP Loan pursuant to California Code of Regulations, Title 25, Section 7308;

(vi) property management fees and reimbursements, on-site property management office expenses, and salaries of property management and maintenance personnel, not to exceed amounts that are standard in the industry and which are pursuant to a management contract approved by the County;

(vii) the Partnership/Asset Fee;

(viii) fees for accounting, audit, and legal services incurred by Borrower's general partner in the asset management of the Development, not to exceed amounts that are standard in the industry, to the extent such fees are not included in the Partnership/Asset Fee;

(ix) premiums for insurance required for the Improvements to satisfy the requirements of any lender of Approved Financing;

(x) utility services not paid for directly by tenants, including water, sewer, and trash collection;

(xi) maintenance and repair expenses and services;

(xii) any annual license or certificate of occupancy fees required for operation of the Development;

(xiii) security services;

(xiv) advertising and marketing;

(xv) cash deposited into the Replacement Reserve Account in the amount set forth in Section 4.2(a);

(xvi) cash deposited into the Operating Reserve Account to maintain the amount set forth in Section 4.2(b) (excluding amounts deposited to initially capitalize the account);

(xvii) payment of any previously unpaid portion of Developer Fee (without interest), not to exceed the amount set forth in Section 3.18;

(xviii) extraordinary operating costs specifically approved in writing by the County;

(xix) payments of deductibles in connection with casualty insurance claims not normally paid from reserves, the amount of uninsured losses actually replaced, repaired or restored, and not normally paid from reserves, and other ordinary and reasonable operating expenses approved in writing by the County and not listed above.

Annual Operating Expenses do not include the following: depreciation, amortization, depletion or other non-cash expenses, initial deposits to capitalize a reserve account, any amount expended from a reserve account, and any capital cost associated with the Development.

(e) "Annual Payment" has the meaning in Section 2.8(a).

(f) "Approved Development Budget" means the proforma

development budget, including sources and uses of funds, as approved by the County, and attached hereto and incorporated herein as Exhibit B.

(g) "Approved Financing" means all of the following loans, grants, equity and subsidy obtained by Borrower and approved by the County for the purpose of financing the acquisition of the Property and construction of the Development:

(i) construction/permanent loan from the City in the approximate amount of Seven Hundred Eighty Thousand Dollars (\$780,000) (the "Housing Authority Loan");

(ii) multi-family housing revenue tax exempt bonds in the approximate amount of Eleven Million Four Hundred Thirty-Four Thousand Six Hundred Ten Dollars (\$11,434,610) (the "Bonds") issued by the County of Contra Costa (the "Issuer") that are purchased by the Bank and the sale proceeds of which are loaned to Borrower (the "Bank Tax-Exempt Construction Loan");

(iii) a taxable construction loan from the Bank in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Bank Taxable Loan");

(iv) construction/permanent loan from the Housing Trust of Silicon Valley in the approximate amount of One Million Three Hundred Thirty-One Thousand Dollars (\$1,331,000) (the "HTSV Loan");

(v) permanent loan of No Place Like Home program ("NPLH") funds from the California Department of Housing and Community Development ("HCD") in the approximate amount of One Million Eight Hundred Four Thousand Nine Hundred Twenty Dollars (\$1,804,920) (the "NPLH HCD Loan");

(vi) permanent loan of Multifamily Housing Program funds from HCD in the approximate amount of Four Million Four Hundred Twenty-Seven Thousand Six Hundred Fifty-Three Dollars (\$4,427,653) (the "MHP HCD Loan");

(vii) seller carry-back loan from SAHA in the approximate amount of Three Hundred Twenty-Five Thousand Dollars (\$325,000) (the "Seller Loan");

(viii) Low Income Housing Tax Credit investor equity funds in the approximate amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Tax Credit Investor Equity") provided by the Investor Limited Partner;

(ix) capital contribution from Borrower's general partner in the approximate amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "GP Capital Contribution"); and

(x) NPLH Capitalized Operating Subsidy from HCD in the approximate amount of One Million Eight Hundred Four Thousand Nine Hundred Twenty Dollars (\$1,804,920) (the "NPLH COSR").



(h) "Available Net Proceeds" means the result obtained by multiplying the Net Proceeds of Permanent Financing by 0.75.

(i) "Bank" means JP Morgan Chase Bank, N.A., and its successors and assigns.

(j) "Bank Taxable Construction Loan" has the meaning set forth in Section 1.1(g)(iii).

(k) "Bank Tax-Exempt Construction Loan" has the meaning set forth in Section 1.1(g)(ii).

(l) "Bid Package" means the package of documents Borrower's general contractor is required to distribute to potential bidders as part of the process of selecting subcontractors for the Development. The Bid Package is to include the following: (i) an invitation to bid; (ii) copy of the proposed construction contract; (iii) a form of bid guarantee that is reasonably acceptable to the County that guarantees, at a minimum, an amount equal to five percent (5%) of the bid price; and (iv) all Construction Plans.

(m) "Bonds" has the meaning set forth in Section 1.1(g)(ii).

(n) "Borrower" has the meaning set forth in the first paragraph of this Agreement.

(o) "Borrower's Shared Portion of Residual Receipts" means twenty-five percent (25%) of Residual Receipts.

(p) "CEQA" has the meaning set forth in Paragraph H of the Recitals.

(q) "CHDO" has the meaning set forth in Paragraph E of the Recitals.

(r) "City" means the City of Pittsburg, California, a municipal corporation.

(s) "Commencement of Construction" has the meaning set forth in Section 3.5.

(t) "Completion Date" means the date a final certificate of occupancy, or equivalent document is issued by the City to certify that the Development may be legally occupied.

(u) "Construction Plans" means all construction documentation upon which Borrower and Borrower's general contractor rely in constructing all the Improvements on the Property (including the units in the Development, landscaping, parking, and common areas) and includes, but is not limited to, final architectural drawings, landscaping plans and specifications, final elevations, building plans and specifications (also known as "working drawings").

(v) "County" has the meaning set forth in the first paragraph of this Agreement.

(w) "County Additional Prorata Share" means the result obtained by dividing the Loan by the sum of the Loan and the Housing Authority Loan.

(x) "County Loan Prorata Percentage" means the result, expressed as a percentage, obtained by dividing the Loan minus any Special County Loan Repayment by the sum of the Loan minus any Special County Loan Repayment, the Housing Authority Loan minus any Special Housing Authority Loan Repayment, the NPLH HCD Loan, and the MHP HCD Loan, to the extent such loan funds are disbursed.

(y) "County Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants of even date herewith, between the County and Borrower evidencing County requirements applicable to the Loan, to be recorded against the Property.

(z) "Deed of Trust" means the Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing of even date herewith among Borrower, as trustor, Old Republic Title Company, as trustee, and the County, as beneficiary, that will encumber the Property to secure repayment of the Loan and performance of the covenants of the Loan Documents.

(aa) "Default Rate" means the lesser of the maximum rate permitted by law and ten percent (10%) per annum.

(bb) "Developer Fee" has the meaning set forth in Section 3.18.

(cc) "Development" has the meaning set forth in Paragraph C of the Recitals.

(dd) "Development Fiscal Year" shall mean for the Development, the annual period commencing on January 1 and concluding on December 31 each year.

(ee) "Eligible Household" means a household qualified to occupy a HOME-Assisted Unit pursuant to Section 2.1(a) of the HOME Regulatory Agreement.

(ff) "Event of Default" has the meaning set forth in Section 6.1.

(gg) "Fifteen Year Compliance Period" means the fifteen (15) year compliance period as described in Section 42(i)(1) of the Internal Revenue Code of 1986, as amended.

(hh) "Final Cost Certification" has the meaning set forth in Section 4.3.

(ii) "Final Development Cost" means the total of the cost of acquisition and construction of the Development as shown on the Final Cost Certification.

(jj) "GP Capital Contribution" has the meaning set forth in

Section 1.1(g)(ix).

(kk) "Gross Revenue" means for each calendar year, all revenue, income, receipts, and other consideration actually received from the operation and leasing of the Development. Gross Revenue includes, but is not limited to:

- (i) all rents, fees and charges paid by tenants;
- (ii) Section 8 payments and other rental or operating subsidy payments received for the dwelling units;
- (iii) deposits forfeited by tenants;
- (iv) all cancellation fees;
- (v) price index adjustments and any other rental adjustments to leases or rental agreements;
- (vi) net proceeds from vending and laundry room machines;
- (vii) the proceeds of business interruption or similar insurance not paid to senior lenders;
- (viii) the proceeds of casualty insurance not used to rebuild the Development and not paid to senior lenders; and
- (ix) condemnation awards for a taking of part or all of the Development for a temporary period.

Gross Revenue does not include tenants' security deposits, loan proceeds, unexpended amounts (including interest) in any reserve account, required deposits to reserve accounts, capital contributions or similar advances.

(ll) "Hazardous Materials" means: (i) any substance, material, or waste that is petroleum, petroleum-related, or a petroleum by-product, asbestos or asbestos-containing material, polychlorinated biphenyls, flammable, explosive, radioactive, freon gas, radon, or a pesticide, herbicide, or any other agricultural chemical, and (ii) any waste, substance or material defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "toxic materials", "toxic waste", "toxic substances," or words of similar import under any Hazardous Materials Law.

(mm) "Hazardous Materials Claims" means with respect to the Property (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Borrower or the Property pursuant to any Hazardous Materials Law; and (ii) all claims made or threatened by any third party against Borrower or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials.

(nn) "Hazardous Materials Law" means any federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, health, industrial hygiene, environmental conditions, or the regulation or protection of the environment, and all amendments thereto as of this date and to be added in the future and any successor statute or rule or regulation promulgated thereto.

(oo) "HCD" has the meaning set forth in Section 1.1(g)(v).

(pp) "HOME" means the HOME Investment Partnership Act Program pursuant to the Cranston-Gonzales National Affordable Housing Act of 1990 (42 U.S.C. 12705 et seq.), as amended.

(qq) "HOME-Assisted Units" has the meaning set forth in Paragraph G of the Recitals.

(rr) "HOME Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants of even date herewith, between the County and Borrower evidencing HUD requirements applicable to the Loan, to be recorded against the Property.

(ss) "HOME Funds" has the meaning set forth in Paragraph B of the Recitals.

(tt) "HOME Regulations" has the meaning set forth in Paragraph B of the Recitals.

(uu) "Housing Authority" means the City of Pittsburg Housing Authority.

(vv) "Housing Authority Loan" has the meaning set forth in Section 1.1(g)(i).

(ww) "HTSV Loan" has the meaning set forth in Section 1.1(g)(iii).

(xx) "HUD" has the meaning set forth in Paragraph B of the Recitals.

(yy) "Improvements" has the meaning set forth in Paragraph C of the Recitals.

(zz) "Intercreditor Agreement" means that certain Subordination and Intercreditor Agreement of even date herewith entered into by and among the Housing Authority, the County, and Borrower related to the Loan and the Housing Authority Loan, to be recorded against the Property.

(aaa) "Investor Limited Partner" means Raymond James Tax Credit Fund XX, LLC, a \_\_\_\_\_ limited liability company, its successors and assigns.

(bbb) "Issuer" has the meaning set forth in Section 1.1(k)(ii).

(ccc) "Lenders' Share of Residual Receipts" means fifty percent (50%)

of Residual Receipts.

(ddd) "Loan Documents" means this Agreement, the Note, the Regulatory Agreements, the Intercreditor Agreement, and the Deed of Trust.

(eee) "Loan" has the meaning set forth in Paragraph D of the Recitals.

(fff) "MHP HCD Loan" has the meaning set forth in Section 1.1(g)(vi).

(ggg) "NEPA" has the meaning set forth in Paragraph I of the Recitals.

(hhh) "Net Proceeds of Permanent Financing" means the amount by which Permanent Financing exceeds the Final Development Costs.

(iii)"Note" means the promissory note of even date herewith that evidences Borrower's obligation to repay the Loan.

(jjj) "NPLH" has the meaning set forth in Section 1.1(g)(v).

(kkk) "NPLH COSR" has the meaning set forth in Section 1.1(g)(x).

(lll) "NPLH HCD Loan" has the meaning set forth in Section 1.1(g)(v).

(mmm) "Operating Reserve Account" has the meaning set forth in Section 4.2(b).

(nnn) "Partnership Agreement" means the agreement between Borrower's general partner and the Investor Limited Partner that governs the operation and organization of Borrower as a California limited partnership.

(ooo) "Partnership/Asset Fee" means: (i) partnership management fees (including any asset management fees) payable pursuant to the Partnership Agreement to any partner or affiliate of Borrower or any affiliate of a partner of Borrower, if any, during the Fifteen Year Compliance Period; and (ii) after expiration of the Fifteen Year Compliance Period, asset management fees payable to Borrower, in the amounts approved by the County as set forth in Section 3.19.

(ppp) "Permanent Conversion" means the date the Bank Tax-Exempt Construction Loan and Bank Taxable Construction Loan is paid off in full.

(qqq) "Permanent Financing" means the sum of the following amounts: (i) the Loan; (ii) the Housing Authority Loan; (iii) the NPLH HCD Loan; (iv) the MHP HCD Loan; (v) the HTSV Loan; (vi) the Seller Loan; (vii) the Tax Credit Investor Equity; and (viii) the GP Capital Contribution.

(rrr) "Property" has the meaning set forth in Paragraph C of the Recitals.

(sss) "Regulatory Agreements" means the County Regulatory

Agreement and the HOME Regulatory Agreement.

(ttt) "Rental Shortfall Due Date" has the meaning set forth in Section 2.8(c).

(uuu) "Rental Shortfall Payment" has the meaning set forth in Section 2.8(c).

(vvv) "Replacement Reserve Account" has the meaning set forth in Section 4.2(a).

(www) "Residual Receipts" means for each calendar year, the amount by which Gross Revenue exceeds Annual Operating Expenses.

(xxx) "Retention Amount" means Fifty Thousand Dollars (\$50,000) of the Loan, the disbursement of which is described in Section 2.7.

(yyy) "SAHA" has the meaning set forth in Paragraph C of the Recitals.

(zzz) "Seller Loan" has the meaning set forth in Section 1.1(g)(vii).

(aaaa) "Senior Loan" has the meaning set forth in Section 2.5.

(bbbb) "Special Housing Authority Loan Payment" has the meaning in Section 3(b) of the Intercreditor Agreement.

(cccc) "Special County Loan Payment" has the meaning in Section 2.8(b).

(dddd) "Statement of Residual Receipts" means an itemized statement of Residual Receipts.

(eeee) "Tax Credit Investor Equity" has the meaning set forth in Section 1.1(g)(viii).

(ffff) "TCAC" means the California Tax Credit Allocation Committee.

(gggg) "Tenant" means the tenant household that occupies a unit in the Development.

(hhhh) "Term" means the period of time that commences on the date of this Agreement, and expires, unless sooner terminated in accordance with this Agreement, on the fifty-fifth (55<sup>th</sup>) anniversary of the Completion Date; provided, however, if a record of the Completion Date cannot be located or established, the Term will expire on the fifty-seventh (57<sup>th</sup>) anniversary of this Agreement.

(iiii) "Transfer" has the meaning set forth in Section 6.1 of the Regulatory Agreements.

Section 1.2      Exhibits

The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

- Exhibit A:      Legal Description of the Property
- Exhibit B:      Approved Development Budget
- Exhibit C:      NEPA Mitigation Requirements

ARTICLE 2    LOAN PROVISIONS

Section 2.1    Loan.

Upon satisfaction of the conditions set forth in Section 2.6 and Section 2.7 of this Agreement, the County shall lend to Borrower the Loan for the purposes set forth in Section 2.3 of this Agreement. Borrower's obligation to repay the Loan is evidenced by the Note.

Section 2.2    Interest.

(a) Subject to the provisions of subsection (b) below, the Loan will not accrue interest.

(b) Upon the occurrence of an Event of a Default, interest on the outstanding principal balance of the Loan will accrue at the Default Rate, beginning on the date of such occurrence and continuing until the date the Loan is repaid in full or the Event of Default is cured.

Section 2.3    Use of Loan Funds.

(a) Borrower shall use the Loan for closing costs, permits, fees, and construction costs, consistent with the Approved Development Budget. Use of the Loan for reimbursement of costs incurred prior to the date of this Agreement is subject to Section 92.206(d)(1) of the HOME Regulations.

(b) Borrower may not use the Loan proceeds for any other purposes without the prior written consent of the County.

Section 2.4    Security.

In consideration of the Loan, Borrower shall (i) secure its obligation to repay the Loan, as evidenced by the Note, by executing the Deed of Trust, and cause or permit it to be recorded as a lien against the Property, junior to the Bank Loan and HTSV Loan (and upon Permanent Conversion, to the NPLH HCD Loan, and the MHP HCD Loan) pursuant to Section 2.5 below, senior to the Seller Loan and the Housing Authority Loan, and (ii) execute the Regulatory Agreements, and the Intercreditor Agreement, and cause or permit them to be recorded against the Property.

Section 2.5      Subordination.

(a) Any agreement by the County to subordinate the Deed of Trust and/or Regulatory Agreements to an encumbrance securing and/or evidencing the NPLH HCD Loan, the MHP HCD Loan, the Bank Tax-Exempt Construction Loan, the Bank Taxable Construction Loan, the HTSV Loan, or any loan obtained by Borrower to refinance the Bank Construction Loan (collectively, the "Senior Loan") will be subject to the satisfaction of each of the following conditions:

(i) All of the proceeds of the Senior Loan, less any transaction costs, are used to provide acquisition, construction and/or permanent financing for the Development.

(ii) The lender of the Senior Loan is a state or federally chartered financial institution, a nonprofit corporation or a public entity that is not affiliated with Borrower or any of Borrower's affiliates, other than as a depositor or a lender.

(iii) Borrower demonstrates to the County's satisfaction that subordination of the Deed of Trust and the Regulatory Agreements is necessary to secure adequate acquisition, construction, and/or permanent financing to ensure the viability of the Development, including the operation of the Development as affordable housing, as required by the Loan Documents. To satisfy this requirement, Borrower must provide to the County, in addition to any other information reasonably required by the County, evidence demonstrating that the proposed amount of the Senior Loan is necessary to provide adequate acquisition, construction, and/or permanent financing to ensure the viability of the Development, and adequate financing for the Development would not be available without the proposed subordination.

(iv) The subordination agreement(s) is structured to minimize the risk that the Deed of Trust and the Regulatory Agreements will be extinguished as a result of a foreclosure by the Bank or other holder of the Senior Loan. To satisfy this requirement, the subordination agreement must provide the County with adequate rights to cure any defaults by Borrower, including: (1) providing the County or its successor with copies of any notices of default at the same time and in the same manner as provided to Borrower; and (2) providing the County with a cure period of at least sixty (60) days to cure any default.

(v) The subordination(s) of the Loan is effective only during the original term of the Senior Loan and any extension of its term that is approved in writing by the County.

(vi) The subordination does not limit the effect of the Deed of Trust and the Regulatory Agreements before a foreclosure, nor require the consent of the holder(s) of the Senior Loan prior to the County exercising any remedies available to the County under the Loan Documents.

(b) Upon a determination by the County's Director – Department of Conservation and Development that the conditions in Subsection (a) have been satisfied, the Director – Department of Conservation and Development or his/her designee will be authorized



to execute the approved subordination agreement without the necessity of any further action or approval.

Section 2.6 Conditions Precedent to Disbursement of Loan Funds for Construction.

Until the conditions set forth in Section 2.7 have been met, the disbursements made pursuant to this Agreement may not exceed Two Million One Hundred Fifty Thousand Four Hundred Dollars (\$2,150,400). The County is not obligated to disburse any portion of the Loan, or to take any other action under the Loan Documents unless all of the following conditions have been and continue to be satisfied:

- (a) There exists no Event of Default nor any act, failure, omission or condition that would constitute an Event of Default under this Agreement;
- (b) Borrower holds title to the Property or is acquiring title to the Property simultaneously with the disbursement of the Loan proceeds;
- (c) Borrower has delivered to the County copies of all of Borrower's organizational documents, and a copy of a corporate resolution authorizing Borrower to obtain the Loan and all other Approved Financing, and execute the Loan Documents;
- (d) There exists no material adverse change in the financial condition of Borrower from that shown by the financial statements and other data and information furnished by Borrower to the County prior to the date of this Agreement;
- (e) Borrower has furnished the County with evidence of the insurance coverage meeting the requirements of Section 4.13 below;
- (f) Borrower has executed and delivered to the County the Loan Documents and has caused all other documents, instruments, and policies required under the Loan Documents to be delivered to the County;
- (g) The Deed of Trust, the Regulatory Agreements, and the Intercreditor Agreement, have been recorded against the Property in the Office of the Recorder of the County of Contra Costa;
- (h) A title insurer reasonably acceptable to the County is unconditionally and irrevocably committed to issuing an LP-10 2006 ALTA Lender's Policy of title insurance insuring the priority of the Deed of Trust in the amount of the Loan, subject only to such exceptions and exclusions as may be reasonably acceptable to the County, and containing such endorsements as the County may reasonably require. Borrower shall provide whatever documentation (including an indemnification agreement), deposits or surety is reasonably required by the title company in order for the County's Deed of Trust to be senior in lien priority to any mechanics liens in connection with any start of construction that has occurred prior to the recordation of the Deed of Trust against the Property in the Office of the Recorder of the County of Contra Costa;

(i) All environmental review necessary for the construction of the Development has been completed, and Borrower has provided the County evidence of planned compliance with all NEPA and CEQA requirements and mitigation measures applicable to construction, and evidence of compliance with all NEPA and CEQA requirements and mitigation measures applicable to preconstruction;

(j) The County has determined the undisbursed proceeds of the Loan, together with other funds or firm commitments for funds that Borrower has obtained in connection with the construction of the Development, are not less than the amount the County determines is necessary to pay for the construction of the Development and to satisfy all of the covenants contained in this Agreement and the Regulatory Agreements;

(k) Borrower has obtained all permits and approvals necessary for the construction of the Development;

(l) The County has received and approved the Bid Package for the subcontractors for the construction of the Development pursuant to Section 3.2 below;

(m) The County has received and approved the general contractor's construction contract that Borrower has entered or proposed to enter for the construction of the Development pursuant to Section 3.3 below;

(n) The County has received and approved labor and material (payment) bonds and performance bonds as required pursuant to Section 3.4 below;

(o) Borrower has closed the loans and obtained the equity financings that comprise the Approved Financing described in Section 1.1(g), subsections (i)-(iv), and (vii)-(ix) and has already received, or is eligible to receive, the funds;

(p) The County has received a fully executed copy of the Partnership Agreement, in which the Investor Limited Partner is obligated to provide Borrower the Tax Credit Investor Equity;

(q) The County has received fully executed Standard Agreements between the Borrower and HCD governing the commitment of the NPLH HCD Loan, the MHP HCD Loan, and the NPLH COSR;

(r) Borrower has provided the County a certification from the Development architect or qualified accessibility specialist that the construction plans are in conformance with the Accessibility Requirements;

(s) The County has received a fully executed copy of the Agreement to Enter Housing Assistance Payment Contract between Borrower and the Housing Authority governing the commitment by the Housing Authority of project-based section 8 rental assistance for ten (10) units and Veterans Affairs Supportive Housing (VASH) vouchers for nineteen (19) units in the Development;

(t) The County has received reasonable evidence that the local match

requirements set forth in 24 C.F.R. Section 92.218 et seq., have been satisfied pursuant to Section 4.1 of this Agreement; and

(u) The County has received a written draw request from Borrower, including: (i) certification that the condition set forth in Section 2.6(a) continues to be satisfied; (ii) certification that the proposed uses of funds is consistent with the Approved Development Budget; (iii) the amount of funds needed; and, (iv) where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred. When a disbursement is requested to pay any contractor in connection with improvements on the Property, the written request must be accompanied by: (1) certification by Borrower's architect reasonably acceptable to the County that the work for which disbursement is requested has been completed (although the County reserves the right to inspect the Property and make an independent evaluation); and (2) lien releases and/or mechanics lien title insurance endorsements reasonably acceptable to the County.

#### Section 2.7 Conditions Precedent to Disbursement of Retention.

The County is not obligated to disburse the Retention Amount unless the following conditions precedent are satisfied:

(a) The County has received a completion report from Borrower setting forth: (i) the income, household size, race, and ethnicity of Tenants of the HOME-Assisted Units; (ii) and the unit address, unit size, rent amount and utility allowance for all HOME-Assisted Units;

(b) The County has received a draft of the Final Cost Certification for the Development from Borrower showing all uses and sources;

(c) The County has received from Borrower copies of the certificate of occupancy or equivalent final permit sign-offs for the Development;

(d) The County has received from Borrower current evidence of the insurance coverage meeting the requirements of Section 4.13 below;

(e) The County has received from Borrower a form of Tenant lease;

(f) The County has received from Borrower a Marketing Plan and Tenant Selection Plan as defined in the HOME Regulatory Agreement;

(g) The County has received a copy of a social services plan and social services budget for the provision of social services to Tenants;

(h) The County has received from Borrower evidence of marketing for any vacant HOME-Assisted Unit in the Development such as copies of flyers, list of media ads, list of agencies and organizations receiving information on availability of such units, as applicable;

(i) The County has received from Borrower all relevant contract activity information, including compliance with Section 3 requirements as set forth in Section 4.6(b)(9) of the HOME Regulatory Agreement, and minority-owned (MBE) and women-owned (WBE) business requirements;

(j) If Borrower was required to comply with relocation requirements as set forth in Section 3.10 below, the County has received from Borrower evidence of compliance with all applicable relocation requirements;

(k) The County has received from Borrower a copy of the management agreement and contact information for the property manager of the Development and the name and phone number of the on-site property manager;

(l) If Borrower is required to pay prevailing wages under the Davis-Bacon Act (40 U.S.C. 3141-3148) by the HUD regulations governing the Loan, the County has received confirmation that Borrower has submitted all certified payrolls to the County, and any identified payment issues have been resolved, or Borrower is working diligently to resolve any such issues;

(m) The County has received from Borrower evidence of compliance with all NEPA mitigation requirements as set forth in Exhibit C;

(n) The County has received fully executed copy of the Housing Assistance Payment Contract between Borrower and the Housing Authority governing the provision by the Housing Authority of project-based section 8 rental assistance for ten (10) units and Veterans Affairs Supportive Housing (VASH) vouchers for nineteen (19) units in the Development; and

(o) The County has received a written draw request from Borrower, including certification that the condition set forth in Section 2.6(a) continues to be satisfied, and setting forth the proposed uses of funds consistent with the Approved Development Budget, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred. Borrower shall apply the disbursement for the purpose(s) requested.

## Section 2.8 Repayment Schedule.

(a) Annual Payments of Loan. Commencing on June 1, 2023 and on June 1 of each year thereafter during the Term, Borrower shall make a Loan payment in an amount equal to the sum of (1) the County Loan Prorata Percentage of the Lenders' Share of Residual Receipts and (2) the County Additional Prorata Share multiplied by Borrower's Shared Portion of Residual Receipts (each such payment, an "Annual Payment"). The County shall apply all Annual Payments first, to accrued interest; and second, to principal.

(b) Special Repayments of Loan from Net Proceeds of Permanent Financing. To the extent consistent with the regulations applicable to the NPLH HCD Loan and MHP HCD Loan, no later than ten (10) days after the date Borrower receives its final capital contribution from the Investor Limited Partner, Borrower shall pay to the County as a special repayment of the Loan, an amount equal to the result obtained by multiplying the County Additional Prorata Share by the Available Net Proceeds (the "Special County Loan Payment"). No later than one hundred eighty (180) days following completion of construction of the Development, Borrower shall submit to the County for its review a preliminary calculation of the Net Proceeds of Permanent Financing and a draft of the Final Cost Certification as defined Section 4.3 below. The County shall approve or disapprove Borrower's determination of the amount of the Net Proceeds of Permanent Financing in writing within thirty (30) days after receipt. If Borrower's determination is disapproved by the County, Borrower shall re-submit documentation to the

County until the County approval is obtained.

(c) Special Repayment of the Loan for Failure to Lease. If on or before the Rental Shortfall Due Date, Borrower fails to cause each of the HOME-Assisted Units to be rented to and occupied by an Eligible Household in accordance with the HOME Regulatory Agreement, Borrower shall pay the County the Rental Shortfall Payment, plus accrued interest, on the Rental Shortfall Due Date.

(i) The "Rental Shortfall Due Date" is the date that occurs eighteen (18) months after the Completion Date.

(ii) The "Rental Shortfall Payment" is an amount equal to the result obtained by multiplying (1) the number of HOME-Assisted Units that have not been rented to and occupied by an Eligible Household on or before the Rental Shortfall Due Date, by (2) a fraction, the numerator of which is the then-outstanding principal balance of the Loan and the denominator of which is the number of HOME-Assisted Units.

(iii) Interest on the Rental Shortfall Payment will accrue in accordance with Section 2.2(a) through the Rental Shortfall Due Date. If the Rental Shortfall Payment is not paid on or before the Rental Shortfall Due Date, interest on the Rental Shortfall Payment will accrue at the Default Rate beginning on the day after the Rental Shortfall Due Date and continuing until the Rental Shortfall Payment is paid in full with interest.

(d) Payment in Full of Loan. Borrower shall pay all outstanding principal and accrued interest on the Loan, in full, on the earliest to occur of: (i) any Transfer other than as permitted pursuant to Section 6.1 of the Regulatory Agreements; (ii) an Event of Default; and (iii) the expiration of the Term.

(e) Prepayment. Borrower may prepay the Loan at any time without premium or penalty. However, the Regulatory Agreements and the Deed of Trust (as security for the Regulatory Agreements) will remain in effect for the entire Term, regardless of any prepayment or Transfer.

## Section 2.9 Reports and Accounting of Residual Receipts.

(a) Borrower shall keep and maintain at the principal place of business of Borrower set forth in Section 7.9 below, or elsewhere with the County's written consent, full, complete and appropriate books, records and accounts necessary or prudent to evidence and substantiate in full detail Borrower's calculation of Residual Receipts and disbursements of Residual Receipts.

(b) In connection with the Annual Payment, Borrower shall furnish to the County:

(i) The Statement of Residual Receipts for the relevant period. The first Statement of Residual Receipts will cover the period that begins on January 1, 2022 and ends on December 31st of that same year. Subsequent statements of Residual Receipts will cover the twelve-month period that ends on December 31 of each year;

(ii) A statement from the independent public accountant that audited Borrower's financial records for the relevant period, which statement must confirm that Borrower's calculation of the Lenders' Share of Residual Receipts and Borrower's Shared Portion of Residual Receipts is accurate based on Gross Revenue and Annual Operating Expenses; and

(iii) Any additional documentation reasonably required by the County to substantiate Borrower's calculation of Lenders' Share of Residual Receipts and Borrower's Shared Portion of Residual Receipts.

(c) The receipt by the County of any statement pursuant to subsection (b) above or any payment by Borrower or acceptance by the County of any Loan repayment for any period does not bind the County as to the correctness of such statement or payment. The County may audit the Residual Receipts and all books, records, and accounts pertaining thereto pursuant to Section 4.6 below.

#### Section 2.10 Non-Recourse.

Except as provided below, neither Borrower, nor any partner of Borrower, has any direct or indirect personal liability for payment of the principal of, and interest on, the Loan. Following recordation of the Deed of Trust, the sole recourse of the County with respect to the principal of, or interest on, the Note will be to the property described in the Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability limits or impairs the enforcement of all the rights and remedies of the County against all such security for the Note, or impairs the right of County to assert the unpaid principal amount of the Note as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation to repay the principal and interest on the Note. Nothing contained herein is intended to relieve Borrower of its obligation to indemnify the County under the Loan Documents and Borrower shall be fully and personally liable for: (i) loss or damage of any kind resulting from waste, fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the Deed of Trust; (iv) willful or grossly negligent violation of applicable law; and (v) the misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property.

### ARTICLE 3 CONSTRUCTION OF THE DEVELOPMENT

#### Section 3.1 Permits and Approvals.

Borrower shall obtain all permits or permit ready letter and approvals necessary for the commencement of construction of the Development no later than October 31, 2020, or such later

date that the County approves in writing.

### Section 3.2 Bid Package.

Not later than thirty (30) days prior to Borrower's proposed date for advertising the Bid Package, Borrower shall submit to the County a copy of Borrower's general contractor's proposed Bid Package. The County's Director, Department of Conservation and Development, or his or her designee, shall approve or disapprove the Bid Package within fifteen (15) days after receipt of the Bid Package by the County. If the County rejects the proposed Bid Package the reasons therefore must be given to Borrower. Borrower will then have fifteen (15) days to revise the proposed Bid Package and resubmit it to the County. The County will then have fifteen (15) days to review and approve Borrower's new or corrected Bid Package. The provisions of this Section will continue to apply until a proposed Bid Package has been approved by the County. Borrower may not publish a proposed Bid Package until it has been approved by the County.

### Section 3.3 Construction Contract.

(a) Not later than fifteen (15) days prior to the proposed Commencement of Construction, Borrower shall submit to the County for its approval a draft of the proposed construction contract for the Development. All construction work and professional services are to be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California. Each contract that Borrower enters for construction of the Development is to provide that at least ten percent (10%) of the costs incurred will be payable only upon completion of the construction, subject to early release of retention for specified subcontractors upon approval by the County. The construction contract will include all applicable HOME requirements set forth in Section 4.6 of the HOME Regulatory Agreement. The County's approval of the construction contract may not be deemed to constitute approval of or concurrence with any term or condition of the construction contract except as such term or condition may be required by this Agreement.

(b) Upon receipt by the County of the proposed construction contract, the County shall promptly review same and approve or disapprove it within fifteen (15) days. If the construction contract is not approved by the County, the County shall set forth in writing and notify Borrower of the County's reasons for withholding such approval. Borrower shall thereafter submit a revised construction contract for County approval, which approval is to be granted or denied in fifteen (15) days in accordance with the procedures set forth above. Any construction contract executed by Borrower for the Development is to be in the form approved by the County.

### Section 3.4 Construction Bonds.

Not later than thirty (30) days prior to the proposed Commencement of Construction Borrower shall deliver to the County copies of labor and material bonds and performance bonds for the construction of the Development in an amount equal to one hundred percent (100%) of the scheduled cost of the construction of the Development. Such bonds must name the County as a co-obligee.

Section 3.5 Commencement of Construction.

Borrower shall cause the Commencement of Construction of the Development to occur no later than October 31, 2020, or such later date that the County approves in writing, but in no event later than 1 year from date of this Agreement. For the purposes of this Agreement, "Commencement of Construction" means the date set for the start of construction of the Development in the notice to proceed issued by Borrower to Borrower's general contractor.

Section 3.6 Completion of Construction.

(a) Borrower shall diligently prosecute construction of the Development to completion, and shall cause the construction of the Development to be completed no later than January 31, 2022, or such later date that the County approves in writing.

Section 3.7 Changes; Construction Pursuant to Plans and Laws.

(a) Changes. Borrower shall construct the Development in conformance with (i) the plans and specifications approved by the City's building department, and (ii) the Approved Development Budget. Borrower shall notify the County in a timely manner of any changes in the work required to be performed under this Agreement, including any additions, changes, or deletions to the plans and specifications approved by the City. Written authorization from the County must be obtained before any of the following changes, additions, or deletions in work for the Development may be performed: (i) any change in the work the cost of which exceeds One Hundred Thousand Dollars (\$100,000); or (ii) any set of changes in the work the cost of which cumulatively Two Hundred Fifty Thousand Dollars (\$250,000) or ten percent (10%) of the Loan amount, whichever is less; or (iii) any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the Development as provided for in the plans and specifications approved by the County. The County's consent to any additions, changes, or deletions to the work does not relieve or release Borrower from any other obligations under this Agreement, or relieve or release Borrower or its surety from any surety bond.

(b) Compliance with Laws. Borrower shall cause all work performed in connection with the Development to be performed in compliance with:

(i) all applicable laws, codes (including building codes and codes applicable to mitigation of disasters such as earthquakes), ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter;

(ii) the HOME Regulations including the property standards set out in 24 C.F.R. 92.251 as implemented by Section 5.6 of the HOME Regulatory Agreement;

(iii) the requirement of the Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4821 et seq.), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. 4851 et seq.), and implementing regulations at 24 C.F.R. Part 35; and



(iv) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. Borrower may permit the work to proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and Borrower is responsible to the County for the procurement and maintenance thereof.

Section 3.8 Prevailing Wages.

(a) Davis Bacon. To the extent required by applicable law Borrower shall cause construction of the Development to be in compliance with the prevailing wage requirements of the federal Davis-Bacon Act (40 U.S.C. 3141-3148). Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the County) the County against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Borrower, its contractor and subcontractors) to pay prevailing wages as determined pursuant to the prevailing wage provisions of the federal Davis-Bacon Act and implementing rules and regulations in connection with the construction of the Development or any other work undertaken or in connection with the Property. This obligation to indemnify survives termination of this Agreement, repayment of the Loan, and the reconveyance of the Deed of Trust.

(b) State Prevailing Wages.

(i) To the extent required by applicable law Borrower shall:

(1) pay, and shall cause any consultants or contractors to pay, prevailing wages in the construction of the Development as those wages are determined pursuant to California Labor Code Section 1720 et seq.;

(2) cause any consultants or contractors to employ apprentices as required by California Labor Code Section 1777.5 et seq., and the implementing regulations of the Department of Industrial Relations (the "DIR"), and to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and implementing regulations of the DIR;

(3) keep and retain, and shall cause any consultants and contractors to keep and retain, such records as are necessary to determine if such prevailing wages have been paid as required pursuant to California Labor Code Section 1720 et seq., and apprentices have been employed are required by California Labor Code Section 1777.5 et seq.;

(4) post at the Property, or shall cause the contractor to post at the Property, the applicable prevailing rates of per diem wages. Copies of the currently applicable current per diem prevailing wages are available from DIR;

(5) cause contractors and subcontractors constructing the Development to be registered as set forth in California Labor Code Section 1725.5;

(6) cause its contractors and subcontractors, in all calls for bids, bidding materials and the construction contract documents for the construction of the Development to specify that:

(A) no contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for the construction of the Development unless registered with the DIR pursuant to California Labor Code Section 1725.5; and

(B) the construction of the Development is subject to compliance monitoring and enforcement by the DIR.

(7) provide the County all information required by California Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within 2 days of the award of any contract (<https://www.dir.ca.gov/pwc100ext/>);

(8) cause its contractors to post job site notices, as prescribed by regulation by the DIR; and

(9) cause its contractors to furnish payroll records required by California Labor Code Section 1776 directly to the Labor Commissioner, at least monthly in the electronic format prescribed by the Labor Commissioner.

(ii) Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the County) the County against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Borrower, its contractor and subcontractors) to pay prevailing wages as determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices pursuant to California Labor Code Section 1777.5 et seq., to meet the conditions of California Labor Code Section 1771.4, and implementing regulations of the DIR, or to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and 1771.4, and the implementing regulations of the DIR, in connection with the construction of the Development or any other work undertaken or in connection with the Property. This obligation to indemnify survives termination of this Agreement, repayment of the Loan, and the reconveyance of the Deed of Trust.

### Section 3.9 Accessibility.

(a) Borrower shall cause the Development to be constructed and operated at all times in compliance with all applicable federal, state, and local disabled persons accessibility requirements including, but not limited to the applicable provisions of: (i) the Unruh Act, (ii) the California Fair Employment and Housing Act, (iii) Section 504 of the Rehabilitation Act of 1973, (iv) the United States Fair Housing Act, as amended, (v) the Americans with Disabilities Act of 1990, and (vi) Chapters 11A and 11B of Title 24 of the California Code of Regulations, which relate to disabled persons access (collectively, the "Accessibility Requirements").

(b) In compliance with the Accessibility Requirements, a minimum of two (2) units in the Development must be constructed to be fully accessible to households with a

mobility impaired member and an additional one (1) unit in the Development must be constructed to be fully accessible to hearing and/or visually impaired persons. In compliance with the Accessibility Requirements Borrower shall provide the County with a certification from the Development architect that to the best of the architect's knowledge, the Development complies with all federal and state accessibility requirements applicable to the Development. Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the County) the County against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Borrower, its architect, contractor and subcontractors) to construct the Development in accordance with the Accessibility Requirements. This obligation to indemnify survives termination of this Agreement, repayment of the Loan and the reconveyance of the Deed of Trust.

Section 3.10      Relocation.

(a) If and to the extent that acquisition and development of the Property will result in the permanent or temporary displacement of residential tenants, homeowners, or businesses, then Borrower shall comply with all applicable local, state, and federal statutes and regulations, (including without limitation the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.), and implementing regulations at 49 C.F.R. Part 24; Section 104(d) of the Housing and Community Development Act of 1974 and implementing regulations at 24 C.F.R. 42 et seq.; 24 C.F.R. 92.353; and California Government Code Section 7260 et seq. and implementing regulations at 25 California Code of Regulations Sections 6000 et seq.) with respect to preparation of a relocation plan, relocation planning, advisory assistance, and payment of monetary benefits. Borrower shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with such relocation laws.

(b) Borrower shall indemnify, defend and hold harmless, (with counsel reasonably acceptable to the County), the County and its board members, supervisors, directors, officers, employees, agents, successors and assigns against any claim for damages, compensation, fines, penalties, relocation payments or other amounts and expenses (including reasonable attorneys' fees) arising out of the failure or alleged failure of any person or entity (including Borrower, or the County) to satisfy relocation obligations related to the acquisition and development of the Property. This obligation to indemnify survives termination of this Agreement, repayment of the Loan and the reconveyance of the Deed of Trust.

Section 3.11      Equal Opportunity.

During the construction of the Development discrimination on the basis of race, color, creed, religion, age, sex, sexual orientation, marital status, national origin, ancestry, or disability in the hiring, firing, promoting, or demoting of any person engaged in the construction work is not allowed.

Section 3.12      Minority and Women-Owned Contractors.

Borrower shall use its best efforts to afford minority-owned and women-owned business enterprises the maximum practicable opportunity to participate in the construction of the Development. Borrower shall, at a minimum, notify applicable minority-owned and women-

owned business firms located in Contra Costa County of bid opportunities for the construction of the Development. A listing of minority owned and women owned businesses located in the County and neighboring counties is available from the County. Documentation of such notifications must be maintained by Borrower and available to the County upon request.

Section 3.13 Progress Reports.

Until such time as Borrower has received a certificate of occupancy from the City for the Development, Borrower shall provide the County with quarterly progress reports regarding the status of the construction of the Development, including a certification that the actual construction costs to date conform to the Approved Development Budget, as it may be amended from time to time pursuant to Section 3.16 below.

Section 3.14 Construction Responsibilities.

(a) Borrower is responsible for the coordination and scheduling of the work to be performed so that commencement and completion of the construction of the Development takes place in accordance with this Agreement.

(b) Borrower is solely responsible for all aspects of Borrower's conduct in connection with the Development, including (but not limited to) the quality and suitability of the plans and specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by the County with reference to the Development is solely for the purpose of determining whether Borrower is properly discharging its obligations to the County, and may not be relied upon by Borrower or by any third parties as a warranty or representation by the County as to the quality of the design or construction of the Development.

Section 3.15 Mechanics Liens, Stop Notices, and Notices of Completion.

(a) If any claim of lien is filed against the Property or a stop notice affecting the Loan is served on the County or any other lender or other third party in connection with the Development, then Borrower shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the County a surety bond in sufficient form and amount, or provide the County with other assurance satisfactory to the County that the claim of lien or stop notice will be paid or discharged.

(b) If Borrower fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section, then in addition to any other right or remedy, the County may (but is under no obligation to) discharge such lien, encumbrance, charge, or claim at Borrower's expense. Alternately, the County may require Borrower to immediately deposit with the County the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The County may use such deposit to satisfy any claim or lien that is adversely determined against Borrower.

(c) Borrower shall file a valid notice of cessation or notice of completion

upon cessation of construction work on the Development for a continuous period of thirty (30) days or more, and take all other steps necessary to forestall the assertion of claims of lien against the Property. Borrower authorizes the County, but the County has no obligation, to record any notices of completion or cessation of labor, or any other notice that the County deems necessary or desirable to protect its interest in the Development and Property.

Section 3.16 Inspections.

(a) Borrower shall permit and facilitate, and shall require its contractors to permit and facilitate, observation and inspection at the Development by the County and by public authorities during reasonable business hours during the Term, for the purposes of determining compliance with this Agreement.

(b) The County will perform inspections both during and upon completion of construction of the Development to determine if the Development is being constructed in accordance with the HOME Regulations, including the property standards set forth in 24 C.F.R. 92.251. Borrower shall give the County notice when the construction of the Development is complete. If the County determines the Development is not being constructed in accordance with the HOME Regulations, the County will provide Borrower with a written report of the deficiencies. Borrower shall correct such deficiencies within the timeframe set forth in the notice provided to Borrower by the County. The Development may not be occupied until such deficiencies have been corrected to the satisfaction of the County.

Section 3.17 Approved Development Budget; Revisions to Budget.

As of the date of this Agreement, the County has approved the Approved Development Budget set forth in Exhibit B. Borrower shall submit any required amendments to the Approved Development Budget to the County for approval within five (5) days after the date Borrower receives information indicating that actual costs of the Development vary or will vary from the costs shown on the Approved Development Budget. Written consent of the County will be required to amend the Approved Development Budget.

Section 3.18 Developer Fee.

The maximum cumulative Developer Fee that may be paid to any entity or entities providing development services to the Development, whether paid up front or on a deferred basis, is not to exceed the amount allowed by TCAC and as approved by the County. For the purposes of this Agreement "Developer Fee" has the meaning set forth in California Code of Regulations, Title 4, Section 10302(l). In no event may amount of Developer Fee payable to the Developer out of development sources exceed One Million Five Hundred Thousand Dollars (\$1,500,000).

Section 3.19 Partnership/Asset Fee.

During the Fifteen Year Compliance Period, the Partnership/Asset Fee is not to exceed Thirty-Four Thousand Four Hundred Twenty-Five Dollars (\$34,425) per year. After the expiration of the Fifteen Year Compliance Period, the Partnership/Asset Management Fee may continue but will convert to a Partnership/Asset Management Fee payable to the general partner

of Borrower in an amount to be approved by the County. The Partnership/Asset Fee may accrue for a period not to exceed three (3) fiscal years following the year during which it is earned.

Section 3.20      NEPA Mitigation Requirements.

Borrower shall comply with the NEPA mitigation requirements set forth in the attached Exhibit C in the construction of the Development.

ARTICLE 4    LOAN REQUIREMENTS

Section 4.1      Match Requirement.

The Borrower shall ensure that the Loan is matched with a minimum of Five Hundred Fifty Thousand One Hundred Dollars (\$550,100) in other, non-federal sources, pursuant to and eligible under applicable HOME Regulations.

Section 4.2      Reserve Accounts.

(a) Replacement Reserve Account. Borrower shall establish and maintain an account that is available for capital expenditures for repairs and replacement necessary to maintain the Development in the condition required by the Loan Documents (the "Replacement Reserve Account"). Borrower shall make annual deposits to the Replacement Reserve Account and replenish the Replacement Reserve Account in the amounts required in the Partnership Agreement and/or the documents evidencing the Permanent Loan, whichever is greater. In no event shall the annual amount deposited in the Replacement Reserve Account exceed Six Hundred Dollars (\$600) per unit, increasing by the applicable consumer price index every five (5) years, or such greater amount required in connection with the Partnership Agreement or any permanent financing, and approved by the County.

(b) Operating Reserve Account. Borrower shall establish and maintain an account that is available to fund operating deficits (which is the amount by which Annual Operating Expenses exceed Gross Revenue for any period) (the "Operating Reserve Account"). Borrower shall capitalize the Operating Reserve Account in the amount required by TCAC (currently three months of Annual Operating Expenses); provided, however that if the Partnership Agreement or the documents evidencing the HTSV Loan require the Operating Reserve Account to be capitalized and replenished in an amount greater than the TCAC requirement, Borrower shall capitalize and replenish the Operating Reserve Account as required by the Partnership Agreement or the documents evidencing the HTSV Loan, as applicable, for as long as the Partnership Agreement or the HTSV Loan, as applicable, is outstanding. In no event may the amount held in the Operating Reserve Account exceed six (6) months gross rent from the Development (as such rent may vary from time to time).

Section 4.3      Financial Accountings and Post-Completion Audits.

(a) No later than ninety (90) days following completion of construction of the Development, Borrower shall provide to the County for its review and approval a financial accounting of all sources and uses of funds for the Development.

(b) No later than one hundred twenty (120) days after Permanent Conversion, Borrower shall submit an audited financial report showing the sources and uses of all funds utilized for the Development. This requirement may be satisfied by providing the Final Cost Certification to the County. "Final Cost Certification" means the Final Cost Certification Sources and Uses of Funds prepared by Borrower for the Development that: (i) Borrower submits to TCAC; and (ii) has been prepared using generally accepted accounting standards in effect in the United States of America from time to time, consistently applied.

Section 4.4                    Approval of Annual Operating Budget.

Borrower shall provide the following to the County for its review and approval: (i) by not later than sixty (60) days prior to commencement of each Development Fiscal Year for the Term, the estimated annual budget for the upcoming Development Fiscal Year for the operations of the Development which shall include projected income from all sources, projected expenses, including operating expenses, debt service, and deposits to and withdrawals from Development reserves (the "Annual Operating Budget"); and (ii) within ninety (90) days following the end of each Development Fiscal Year, a report showing the actual income and expenditures with respect to the Development for the immediately preceding Development Fiscal Year and the status of Development reserves. The County's review shall be limited to whether the Development is being operated and managed in accordance with the requirements and standards of the Loan Documents. The County may request additional information to assist the County in evaluating the financial viability of the Development. Unless rejected by the County in writing within thirty (30) days after receipt of the budget, the budget will be deemed accepted. If rejected by the County in whole or in part, Borrower shall submit a new or corrected budget within thirty (30) calendar days after notification of the County's rejection and the reasons therefor. The provisions of this Section relating to time periods for resubmission of new or corrected budgets will continue to apply until such budget has been approved by the County.

Section 4.5                    Information.

Borrower shall provide any information reasonably requested by the County in connection with the Development, including (but not limited to) any information required by HUD in connection with Borrower's use of the Loan funds.

Section 4.6                    County Audits.

(a) Each year, Borrower shall provide the County with a copy of Borrower's annual audit, which is to include information on all of Borrower's activities and not just those pertaining to the Development.

(b) In addition, the County may, at any time, audit all of Borrower's books, records, and accounts pertaining to the Development including but not limited to the Residual Receipts of the Development. Any such audit is to be conducted during normal business hours at the principal place of business of Borrower and wherever records are kept. Immediately after the completion of an audit, the County shall deliver a copy of the results of the audit to Borrower.

(c) If it is determined as a result of an audit that there has been a deficiency in a loan repayment to the County then such deficiency will become immediately due and payable,

with interest at the Default Rate from the date the deficient amount should have been paid. In addition, if the audit determines that Residual Receipts have been understated for any year by the greater of: (i) Two Thousand Five Hundred Dollars (\$2,500); and (ii) an amount that exceeds five percent (5%) of the Residual Receipts, then, in addition to paying the deficiency with interest, Borrower shall pay all of the County's costs and expenses connected with the audit and review of Borrower's accounts and records.

Section 4.7 Hazardous Materials.

(a) Borrower shall keep and maintain the Property (including but not limited to, soil and ground water conditions) in compliance with all Hazardous Materials Laws and may not cause or permit the Property to be in violation of any Hazardous Materials Law. Borrower may not cause or permit the use, generation, manufacture, storage or disposal of on, under, or about the Property or transportation to or from the Property of any Hazardous Materials, except such of the foregoing as may be customarily used in construction of projects like the Development or kept and used in and about residential property of this type.

(b) Borrower shall immediately advise the County in writing if at any time it receives written notice of any Hazardous Materials Claims, and Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law including but not limited to the provisions of California Health and Safety Code, Section 25220 et seq., or any regulation adopted in accordance therewith.

(c) The County has the right to join and participate in, as a party if it so elects, and be represented by counsel acceptable to the County (or counsel of its own choice if a conflict exists with Borrower) in any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Borrower.

(d) Borrower shall indemnify and hold harmless the County and its board members, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, fine, penalty, judgment, award, settlement, expense or liability, directly or indirectly arising out of or attributable to: (i) any actual or alleged past or present violation of any Hazardous Materials Law; (ii) any Hazardous Materials Claim; (iii) any actual or alleged past or present use, generation, manufacture, storage, release, threatened release, discharge, disposal, transportation, or presence of Hazardous Materials on, under, or about the Property; (iv) any investigation, cleanup, remediation, removal, or restoration work of site conditions of the Property relating to Hazardous Materials (whether on the Property or any other property); and (v) the breach of any representation of warranty by or covenant of Borrower in this Section 4.7, and Section 5.1(m). Such indemnity shall include, without limitation: (x) all consequential damages; (y) the costs of any required or necessary investigation, repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (z) all reasonable costs and expenses incurred by the County in connection with clauses (x) and (y), including but not limited to reasonable attorneys' fees and consultant fees. This indemnification applies whether or not any government agency has issued a cleanup order. Losses, claims, costs, suits, liability, and expenses covered by this



indemnification provision include, but are not limited to: (1) losses attributable to diminution in the value of the Property, (2) loss or restriction of use of rentable space on the Property, (3) adverse effect on the marketing of any rental space on the Property, and (4) penalties and fines levied by, and remedial or enforcement actions of any kind issued by any regulatory agency (including but not limited to the costs of any required testing, remediation, repair, removal, cleanup or detoxification of the Property and surrounding properties). This obligation to indemnify survives termination of this Agreement, repayment of the Loan and the reconveyance of the Deed of Trust, and will not be diminished or affected in any respect as a result of any notice, disclosure, knowledge, if any, to or by the County of Hazardous Materials.

(e) Without the County's prior written consent, which will not be unreasonably withheld, Borrower may not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in the County's judgment, impair the value of the County's security hereunder; provided, however, that the County's prior consent is not necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain the County's consent before taking such action, provided that in such event Borrower shall notify the County as soon as practicable of any action so taken. The County agrees not to withhold its consent, where such consent is required hereunder, if: (i) a particular remedial action is ordered by a court of competent jurisdiction; (ii) Borrower will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Borrower establishes to the satisfaction of the County that there is no reasonable alternative to such remedial action which would result in less impairment of the County's security hereunder; or (iv) the action has been agreed to by the County.

(f) Borrower hereby acknowledges and agrees that: (i) this Section is intended as the County's written request for information (and Borrower's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5; and (ii) each representation and warranty in this Agreement (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by the Parties to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

(g) In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the County's or the trustee's rights and remedies under the Deed of Trust, the County may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to: (i) waive its lien on such environmentally impaired or affected portion of the Property; and (ii) exercise, (1) the rights and remedies of an unsecured creditor, including reduction of its claim against Borrower to judgment, and (2) any other rights and remedies permitted by law. For purposes of determining the County's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), Borrower will be deemed to have willfully permitted or

acquiesced in a release or threatened release of Hazardous Materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of Hazardous Materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and Borrower knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the County in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the Default Rate, until paid, will be added to the indebtedness secured by the Deed of Trust and is due and payable to the County upon its demand made at any time following the conclusion of such action.

Section 4.8            Maintenance; Damage and Destruction.

(a) During the course of both construction and operation of the Development, Borrower shall maintain the Development and the Property in good repair and in a neat, clean and orderly condition, and in accordance with the Regulatory Agreements.

(b) Subject to the requirements of senior lenders, and if economically feasible in the County's judgment after consultation with Borrower, if any improvement now or in the future on the Property is damaged or destroyed, then Borrower shall, at its cost and expense, diligently undertake to repair or restore such improvement consistent with the plans and specifications approved by the County with such changes as have been approved by the County. Such work or repair is to be commenced no later than the later of one hundred twenty (120) days, or such longer period approved by the County in writing, after the damage or loss occurs or thirty (30) days following receipt of the insurance or condemnation proceeds, and is to be complete within one (1) year thereafter. Any insurance or condemnation proceeds collected for such damage or destruction are to be applied to the cost of such repairs or restoration and, if such insurance or condemnation proceeds are insufficient for such purpose, then Borrower shall make up the deficiency. If Borrower does not promptly make such repairs then any insurance or condemnation proceeds collected for such damage or destruction are to be promptly delivered by Borrower to the County as a special repayment of the Loan, subject to the rights of the senior lenders, if any.

Section 4.9            Fees and Taxes.

Borrower is solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Development, and shall pay such charges prior to delinquency and at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property. Borrower is also solely responsible for payment of all personal property taxes, and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, and shall pay such charges prior to delinquency and at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property.

However, Borrower is not required to pay and discharge any such charge so long as: (i) the legality thereof is being contested diligently and in good faith and by appropriate

proceedings; and (ii) if requested by the County, Borrower deposits with the County any funds or other forms of assurance that the County in good faith from time to time determines appropriate to protect the County from the consequences of the contest being unsuccessful.

In the event Borrower exercises its right to contest any tax, assessment, or charge against it, Borrower, on final determination of the proceeding or contest, will immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

Borrower shall not apply for a property tax exemption for the Property under any provision of law except California Revenue and Taxation Section 214(g) without the prior written consent of the County.

#### Section 4.10 Notices.

Borrower shall promptly notify the County in writing of any and all of the following:

- (a) Any litigation known to Borrower materially affecting Borrower, or the Property and of any claims or disputes that involve a material risk of litigation;
- (b) Any written or oral communication Borrower receives from any governmental, judicial, or legal authority giving notice of any claim or assertion that the Property or Improvements fail in any respect to comply with any applicable governmental law;
- (c) Any material adverse change in the physical condition of the Property (including any damage suffered as a result of fire, earthquakes, or floods);
- (d) Any material adverse change in Borrower's financial condition, any material adverse change in Borrower's operations, or any change in the management of Borrower;
- (e) That any of the statements in Section 5.1(m) regarding Hazardous Materials are no longer accurate;
- (f) Any Default or event which, with the giving of notice or the passage of time or both, would constitute a Default; and
- (g) Any other circumstance, event, or occurrence that results in a material adverse change in Borrower's ability to timely perform any of its obligations under any of the Loan Documents.

#### Section 4.11 Operation of Development as Affordable Housing.

Borrower shall operate the Development (i) in accordance with all applicable laws, codes, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, and (ii) as an affordable housing development consistent with: (1) HUD's requirements for use of HOME Funds; (2) the Regulatory Agreements; (3) any other regulatory requirements imposed on Borrower including but not

limited to regulatory agreements associated with the Housing Authority Loan, NPLH HCD Loan, MHP HCD Loan, and Low Income Housing Tax Credits provided by TCAC; and (4) any regulatory requirements imposed on Borrower related to the rental subsidies provided to the Development.

Section 4.12      Nondiscrimination.

(a) Borrower covenants by and for itself and its successors and assigns that there will be no discrimination against or segregation of a person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, source of income (e.g., SSI), ancestry, age, familial status (except for lawful senior housing in accordance with state and federal law), or disability, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor may Borrower or any person claiming under or through Borrower establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property. The foregoing covenant will run with the land.

(b) Nothing in this Section prohibits Borrower from requiring the HOME-Assisted Units in the Development to be available to and occupied by income eligible households in accordance with the Regulatory Agreements.

Section 4.13      Insurance Requirements.

(a) Borrower shall maintain the following insurance coverage throughout the Term of the Loan:

(i) Workers' Compensation insurance to the extent required by law, including Employer's Liability coverage, with limits not less than One Million Dollars (\$1,000,000) each accident.

(ii) Commercial General Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations (which limits may be met through excess/umbrella coverage).

(iii) Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable.

(iv) Builders' Risk insurance during the course of construction, and upon completion of construction, property insurance covering the Development, in form appropriate for the nature of such property, covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the County, naming the County as a Loss Payee, as its interests may appear. Flood insurance must be obtained if required by applicable federal regulations.

(v) Commercial crime insurance covering all officers and employees, for loss of Loan proceeds caused by dishonesty, in an amount approved by the County, naming the County a Loss Payee, as its interests may appear.

(b) Borrower shall cause any general contractor, agent, or subcontractor working on the Development under direct contract with Borrower or subcontract to maintain insurance of the types and in at least the minimum amounts described in subsections (i), (ii), and (iii) above, except that the limit of liability for commercial general liability insurance for subcontractors must be One Million Dollars (\$1,000,000), and must require that such insurance will meet all of the general requirements of subsections (d) and (e) below.

(c) The required insurance must be provided under an occurrence form, and Borrower shall maintain the coverage described in subsection (a) continuously throughout the Term. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit must be three times the occurrence limits specified above.

(d) Commercial General Liability, Automobile Liability and Property insurance policies must be endorsed to name as an additional insured the County and its officers, agents, employees and members of the County Board of Supervisors.

(e) All policies and bonds are to contain: (i) the agreement of the insurer to give the County at least ten (10) days' notice prior to cancellation or material change for non-payment of premium, and thirty (30) days' notice prior to cancellation for any other change or cancellation in said policies; (ii) an agreement that such policies are primary and non-contributing with any insurance that may be carried by the County; (iii) a provision that no act or omission of Borrower shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; and (iv) a waiver by the insurer of all rights of subrogation against the County and its authorized parties in connection with any loss or damage thereby insured against.

Section 4.14 Covenants Regarding Approved Financing and Partnership Agreement.

(a) Borrower shall promptly pay the principal and interest when due on any Approved Financing.

(b) Borrower shall promptly notify the County in writing of the existence of any default under any documents evidencing Approved Financing whether or not a default has been declared by the lender, and any defaults under the Partnership Agreement, and provide the County copies of any notice of default.

(c) Borrower may not amend, modify, supplement, cancel or terminate the Partnership Agreement or any documents related to any loan that is part of the Approved Financing without the prior written consent of the County except for amendments solely to effectuate Transfers permitted under Section 6.1 of the Regulatory Agreements. Borrower shall provide the County copies of all amendments, modifications, and supplements to the Partnership

Agreement and any document related to any loan that is part of Approved Financing.

(d) Borrower may not incur any indebtedness of any kind other than Approved Financing or encumber the Development with any liens (other than liens for Approved Financing approved by the County) without the prior written consent of the County.

(e) To the extent the Partnership Agreement is inconsistent with this Agreement with respect to the repayment of the Loan including, without limitation, the Residual Receipts definition and the payment provisions of Section 2.8 above, this Agreement will control. Any payments made in conflict with the Residual Receipts definition and payment requirements of this Agreement will be considered an Event of Default.

## ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BORROWER

### Section 5.1 Representations and Warranties.

Borrower hereby represents and warrants to the County as follows and acknowledges, understands, and agrees that the representations and warranties set forth in this Article 5 are deemed to be continuing during all times when any portion of the Loan remains outstanding:

(a) Organization. Borrower is duly organized, validly existing and in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) Authority of Borrower. Borrower has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) CHDO Requirement. Borrower's managing general partner is wholly owned and controlled by a qualified CHDO in good standing as defined in 24 C.F.R. 92.2, and required in 24 C.F.R. 92.300 (a)(1).

(d) Authority of Persons Executing Documents. This Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Borrower, and all actions required under Borrower's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(e) Valid Binding Agreements. The Loan Documents and all other documents or instruments executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered

constitute, legal, valid and binding obligations of Borrower enforceable against it in accordance with their respective terms.

(f) No Breach of Law or Agreement. Neither the execution nor delivery of the Loan Documents or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will: (i) conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever that is binding on Borrower, or conflict with any provision of the organizational documents of Borrower, or conflict with any agreement to which Borrower is a party; or (ii) result in the creation or imposition of any lien upon any assets or property of Borrower, other than liens established pursuant hereto.

(g) Compliance with Laws; Consents and Approvals. The construction of the Development will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency.

(h) Pending Proceedings. Borrower is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting Borrower or the Development, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Borrower, materially affect Borrower's ability to repay the Loan or impair the security to be given to the County pursuant hereto.

(i) Title to Land. At the time of recordation of the Deed of Trust, Borrower will have good and marketable fee title to the Development and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than liens shown on the County's title policy provided pursuant to Section 2.6(h) above, or approved in writing by the County.

(j) Financial Statements. The financial statements of Borrower and other financial data and information furnished by Borrower to the County fairly and accurately present the information contained therein. As of the date of this Agreement, there has not been any material adverse change in the financial condition of Borrower from that shown by such financial statements and other data and information.

(k) Sufficient Funds. Borrower holds sufficient funds and/or binding commitments for sufficient funds to complete the acquisition of the Property and the construction of the Development in accordance with the terms of this Agreement.

(l) Taxes. Borrower and its subsidiaries have filed all federal and other material tax returns and reports required to be filed, and have paid all federal and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their income or the Property otherwise due and payable, except those that are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in

accordance with generally accepted accounting principles. There is no proposed tax assessment against Borrower or any of its subsidiaries that could, if made, be reasonably expected to have a material adverse effect on the property, liabilities (actual or contingent), operations, condition (financial or otherwise) or prospects of Borrower and its subsidiaries, taken as a whole, or which could result in (i) a material impairment of the ability of Borrower to perform under any loan document to which it is a party, or (ii) a material adverse effect upon the legality, validity, binding effect or enforceability against Borrower of any Loan Document.

(m) Hazardous Materials. To the best of Borrower's knowledge, except as disclosed in writing by Borrower to the County prior to the date of this Agreement: (i) no Hazardous Material has been disposed of, stored on, discharged from, or released to or from, or otherwise now exists in, on, under, or around, the Property; (ii) neither the Property nor Borrower is in violation of any Hazardous Materials Law; and (iii) neither the Property nor Borrower is subject to any existing, pending or threatened Hazardous Materials Claims.

## ARTICLE 6 DEFAULT AND REMEDIES

### Section 6.1 Events of Default.

Any one or more of the following constitutes an "Event of Default" by Borrower under this Agreement:

(a) Failure to Construct. If Borrower fails to obtain permits, or to commence and prosecute construction of the Development to completion, within the times set forth in Article 3 above.

(b) Failure to Make Payment. If Borrower fails to make any payment when such payment is due pursuant to the Loan Documents.

(c) Failure to Submit Plans. If Borrower fails to submit a Marketing Plan or Tenant Selection Plan that is approved by the County in accordance with the Regulatory Agreements.

(d) Breach of Covenants. If Borrower fails to duly perform, comply with, or observe any other condition, term, or covenant contained in this Agreement (other than as set forth in Section 6.1(a) through Section 6.1(c), and Section 6.1(e) through Section 6.1(m)), or in any of the other Loan Documents, and Borrower fails to cure such default within thirty (30) days after receipt of written notice thereof from the County to Borrower.

(e) Default Under Other Loans. If a default is declared under any other financing for the Development by the lender of such financing and such default remains uncured following any applicable notice and cure period.

(f) Insolvency. If a court having jurisdiction makes or enters any decree or order: (i) adjudging Borrower to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization of Borrower, or seeking any arrangement for Borrower under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any



state or other jurisdiction; (iii) appointing a receiver, trustee, liquidator, or assignee of Borrower in bankruptcy or insolvency or for any of their properties; (iv) directing the winding up or liquidation of Borrower if any such decree or order described in clauses (i) to (iv), inclusive, is unstayed or undischarged for a period of ninety (90) calendar days; or (v) Borrower admits in writing its inability to pay its debts as they fall due or will have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive. The occurrence of any of the Events of Default in this paragraph will act to accelerate automatically, without the need for any action by the County, the indebtedness evidenced by the Note.

(g) Assignment; Attachment. If Borrower assigns its assets for the benefit of its creditors or suffers a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon is returned or released within ninety (90) calendar days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution. The occurrence of any of the events of default in this paragraph shall act to accelerate automatically, without the need for any action by the County, the indebtedness evidenced by the Note.

(h) Suspension; Termination. If Borrower voluntarily suspends its business or, the partnership is dissolved or terminated, other than a technical termination of the partnership for tax purposes.

(i) Liens on Property and the Development. If any claim of lien (other than liens allowed pursuant to any Loan Document or approved in writing by the County) is filed against the Development or any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold proceeds of the Loan and the continued maintenance of said claim of lien or notice to withhold for a period of twenty (20) days, without discharge or satisfaction thereof or provision therefor (including, without limitation, the posting of bonds) satisfactory to the County.

(j) Condemnation. If there is a condemnation, seizure, or appropriation of all or the substantial part of the Property and the Development other than by the County.

(k) Unauthorized Transfer. If any Transfer occurs other than as permitted pursuant to Section 6.1 of the Regulatory Agreements.

(l) Representation or Warranty Incorrect. If any Borrower representation or warranty contained in this Agreement, or in any application, financial statement, certificate, or report submitted to the County in connection with any of the Loan Documents, proves to have been incorrect in any material respect when made.

(m) Applicability to General Partner. The occurrence of any of the events set forth in Section 6.1(f), through Section 6.1(h) in relation to Borrower's managing general partner, unless the removal and replacement of Borrower's managing general partner in accordance with Section 6.1(f) of the Regulatory Agreements within the time frame set forth in Section 6.5 cures such a default.

Section 6.2            Remedies.

Upon the occurrence of an Event of Default and until such Event of Default is cured or waived, the County is relieved of any obligation to disburse any portion of the Loan. In addition, upon the occurrence of an Event of Default and following the expiration of all applicable notice and cure periods the County may proceed with any and all remedies available to it under law, this Agreement, and the other Loan Documents. Such remedies include but are not limited to the following:

(a) Acceleration of Note. The County may cause all indebtedness of Borrower to the County under this Agreement and the Note, together with any accrued interest thereon, to become immediately due and payable. Borrower waives all right to presentment, demand, protest or notice of protest or dishonor. The County may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the County as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure under the Deed of Trust. Borrower is liable to pay the County on demand all reasonable expenses, costs and fees (including, without limitation, reasonable attorney's fees and expenses) paid or incurred by the County in connection with the collection of the Loan and the preservation, maintenance, protection, sale, or other disposition of the security given for the Loan.

(b) Specific Performance. The County has the right to mandamus or other suit, action or proceeding at law or in equity to require Borrower to perform its obligations and covenants under the Loan Documents or to enjoin acts on things that may be unlawful or in violation of the provisions of the Loan Documents.

(c) Right to Cure at Borrower's Expense. The County has the right (but not the obligation) to cure any monetary default by Borrower under a loan other than the Loan. Upon demand therefor, Borrower shall reimburse the County for any funds advanced by the County to cure such monetary default by Borrower, together with interest thereon from the date of expenditure until the date of reimbursement at the Default Rate.

Section 6.3            Right of Contest.

Borrower may contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute an Event of Default hereunder. Any such contest is to be prosecuted diligently and in a manner unprejudicial to the County or the rights of the County hereunder.

Section 6.4            Remedies Cumulative.

No right, power, or remedy given to the County by the terms of this Agreement or the other Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy is cumulative and in addition to every other right, power, or remedy given to the County by the terms of any such instrument, or by any statute or otherwise against Borrower and any other person. Neither the failure nor any delay on the part of the County to exercise any such rights and remedies will operate as a waiver thereof, nor does any single or partial exercise by the County of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

Section 6.5      Notice and Cure Rights of Limited Partner.

The County shall provide the Investor Limited Partner and any limited partner of Borrower who has requested written notice from the County ("Permitted Limited Partner") a duplicate copy of all notices of default that the County may give to or serve in writing upon Borrower pursuant to the terms of the Loan Documents, at the address set forth in Section 7.9, provided, the County shall have no liability to the Permitted Limited Partner for its failure to do so. The Permitted Limited Partner has the right, but not the obligation, to cure any default of Borrower set forth in such notice, during the applicable cure period described in the Loan Documents, and the County will accept tender of such cure as if delivered by Borrower. If the Permitted Limited Partner is unable to cure a default because Borrower's general partner is in bankruptcy and/or because the cure requires removal of the general partner of Borrower and the Permitted Limited Partner is proceeding diligently to remove the general partner of Borrower in order to effect a cure of the Default, the cure period will be extended for such reasonable time as is necessary for the Permitted Limited Partner to effect a cure of the Default, but in no event longer than sixty (60) days after the date of receipt by the Permitted Limited Partner of written notice of the default.

ARTICLE 7    GENERAL PROVISIONS

Section 7.1      Relationship of Parties.

Nothing contained in this Agreement is to be interpreted or understood by any of the Parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the County and Borrower or its agents, employees or contractors, and Borrower will at all times be deemed an independent contractor and to be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement. Borrower has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under the Agreement. In regards to the construction and operation of the Development, Borrower is solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding, and all other laws and regulations governing such matters, and must include requirements in each contract that contractors are solely responsible for similar matters relating to their employees. Borrower is solely responsible for its own acts and those of its agents and employees.

Section 7.2      No Claims.

Nothing contained in this Agreement creates or justifies any claim against the County by any person that Borrower may have employed or with whom Borrower may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the purchase of the Property, the construction or operation of the Development, and Borrower shall include similar requirements in any contracts entered into for the construction or operation of the Development.

Section 7.3      Amendments.

No alteration or variation of the terms of this Agreement is valid unless made in writing

by the Parties. The County Director of the Department of Conservation and Development is authorized to execute on behalf of the County amendments to the Loan Documents or amended and restated Loan Documents as long as any discretionary change in the amount or terms of this Agreement is approved by the County's Board of Supervisors.

Section 7.4        Indemnification.

Borrower shall indemnify, defend and hold the County and its board members, supervisors, directors, officers, employees, agents, successors and assigns harmless against any and all claims, suits, actions, losses and liability of every kind, nature and description made against it and expenses (including reasonable attorneys' fees) which arise out of or in connection with this Agreement, including but not limited to the purchase of the Property and the development, construction, marketing and operation of the Development, except to the extent such claim arises from the gross negligence or willful misconduct of the County, its agents, and its employees. This obligation to indemnify survives termination of this Agreement, repayment of the Loan, and the reconveyance of the Deed of Trust.

Section 7.5        Non-Liability of County Officials, Employees and Agents.

No member, official, employee or agent of the County is personally liable to Borrower in the event of any default or breach of this Agreement by the County or for any amount that may become due from the County pursuant to this Agreement.

Section 7.6        No Third Party Beneficiaries.

There are no third party beneficiaries to this Agreement.

Section 7.7        Discretion Retained By County.

The County's execution of this Agreement in no way limits any discretion the County may have in the permit and approval process related to the construction of the Development.

Section 7.8        Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in Section 7.8(b) below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have a financial interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have immediate family or business ties, during, or at any time after, such person's tenure. Borrower shall exercise due diligence to ensure that the prohibition in this Section 7.8(a) is followed.

(b) The conflict of interest provisions of Section 7.8(a) above apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the County.

(c) In accordance with California Government Code Section 1090 and the Political Reform Act, California Government Code section 87100 et seq., no person who is a director, officer, partner, trustee or employee or consultant of Borrower, or immediate family member of any of the preceding, may make or participate in a decision, made by the County or a County board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Borrower. Interpretation of this section is governed by the definitions and provisions used in the Political Reform Act, California Government Code Section 87100 et seq., its implementing regulations manual and codes, and California Government Code Section 1090.

Section 7.9      Notices, Demands and Communications.

All notices required or permitted by any provision of this Agreement must be in writing and sent by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the Parties as follows:

County:                      County of Contra Costa  
                                    Department of Conservation and Development  
                                    30 Muir Road  
                                    Martinez, CA 94553  
                                    Attention: Assistant Deputy Director

Borrower:                    Veterans Square, L.P.  
                                    c/o Satellite Affordable Housing Associates  
                                    1835 Alcatraz Avenue  
                                    Berkeley, CA 94703  
                                    Attention: Chief Executive Officer

Investor Limited  
Partner:                      Raymond James Tax Credit Fund XX L.L.C.  
                                    c/o Raymond James Tax Credit Funds, Inc.  
                                    880 Carillon Parkway  
                                    St. Petersburg, Florida 33716  
                                    Facsimile No.: 727-567-8455  
                                    Attention: Steven J. Kropf, President

with a copy to:            Nixon Peabody LLP  
                                    Exchange Place  
                                    53 State Street  
                                    Boston, MA 02109  
                                    Attn: Nathan A. Bernard  
                                    Facsimile No.: 617-345-1000

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this

Section. Receipt will be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

Section 7.10 Applicable Law.

This Agreement is governed by the laws of the State of California.

Section 7.11 Parties Bound.

Except as otherwise limited herein, this Agreement binds and inures to the benefit of the parties and their heirs, executors, administrators, legal representatives, successors, and assigns. This Agreement is intended to run with the land and to bind Borrower and its successors and assigns in the Property and the Development for the entire Term, and the benefit hereof is to inure to the benefit of the County and its successors and assigns.

Section 7.12 Attorneys' Fees.

If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing party will have the right to recover its reasonable attorneys' fees and costs of suit from the other party.

Section 7.13 Severability.

If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions will continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 7.14 Force Majeure.

In addition to specific provisions of this Agreement, performance by either party will not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, quarantine restrictions, freight embargoes, lack of transportation, or court order. An extension of time for any cause will be deemed granted if notice by the party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other party within ten (10) days after receipt of the notice. In no event will the County be required to agree to cumulative delays in excess of one hundred eighty (180) days.

Section 7.15 County Approval.

The County has authorized the County Director, Department of Conservation and Development to execute the Loan Documents and deliver such approvals or consents as are required by this Agreement, and to execute estoppel certificates concerning the status of the Loan and the existence of Borrower defaults under the Loan Documents.

Section 7.16      Waivers.

Any waiver by the County of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the County to take action on any breach or default of Borrower or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Borrower to perform any obligation under this Agreement does not operate as a waiver or release from any of its obligations under this Agreement. Consent by the County to any act or omission by Borrower may not be construed to be consent to any other or subsequent act or omission or to waive the requirement for the County's written consent to future waivers.

Section 7.17      Title of Parts and Sections.

Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and are to be disregarded in interpreting any part of the Agreement's provisions.

Section 7.18      Entire Understanding of the Parties.

The Loan Documents constitute the entire agreement of the parties with respect to the Loan.

Section 7.19      Multiple Originals; Counterpart.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

***Remainder of Page Left Intentionally Blank***

The parties are entering into this Agreement as of the last date set forth below.

**COUNTY:**

COUNTY OF CONTRA COSTA, a political  
subdivision of the State of California

By: \_\_\_\_\_  
John Kopchik  
Director, Department of Conservation and  
Development

Date: September \_\_\_\_\_, 2020

APPROVED AS TO FORM:

SHARON L. ANDERSON  
County Counsel

By: \_\_\_\_\_  
Kathleen Andrus  
Deputy County Counsel

**BORROWER:**

VETERANS SQUARE, L.P.,  
a California limited partnership

By: Veterans Square LLC,  
a California limited liability company,  
its general partner

By: Satellite Affordable Housing Associates,  
a California nonprofit public benefit  
corporation, its manager

By: \_\_\_\_\_  
Susan Friedland,  
Chief Executive Officer

Date: September \_\_\_\_\_, 2020



EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

The land referred to is situated in the County of Contra Costa, City of Pittsburg, State of California, and is described as follows:

Parcel One:

Lots 1, 2, 15 and 16 Block 79, Map of Resubdivision of Block 79, City of Pittsburg, filed May 18, 1926 in Map Book 19, Page 504, Contra Costa County Records.

APN: 085-182-001

Parcel Two:

Lots 8 and 9, Block 78, as delineated upon the certain Map entitled "Official Map of the City of Pittsburg", filed March 23, 1914, Contra Costa County Records.

APN: 085-196-001

EXHIBIT B

APPROVED DEVELOPMENT BUDGET

**EXHIBIT C**  
**NEPA MITIGATION REQUIREMENTS**

NEPA Mitigation and Monitoring Plan – Veterans Square – 901 Los Medanos Street, Pittsburg

All mitigations / conditions of approval must be included in project agreement and/or legal documents.  
Compliance with mitigations / conditions of approval must be documented prior to final payment of County funds

Mitigation Measure(s)	Source	Method and date County staff informed Project Sponsor	Included in County loan document and /or project agreement	Verification of Mitigation Measure(s)	Responsible for implementation	Mitigation Timing	Responsible for monitoring and reporting on implementation	Monitoring and reporting frequency	Verification of compliance
<b>Historic Preservation</b> MM - 1	Determination of Eligibility and Effect for the Proposed Veterans Square Housing Project (Peak & Associates, 2016)		<input type="checkbox"/>	<input type="checkbox"/> City of Pittsburg Approved Construction Plans	Project Sponsor, architect, contractor	Pre and post ground disturbing activities	Architect and contractor	Ongoing	<input type="checkbox"/> Letter from Peak & Associates  <input type="checkbox"/> Copy of final building permit
<b>Air Quality</b> MM - 2	BAAQMD Screening Thresholds		<input type="checkbox"/>	<input type="checkbox"/> City of Pittsburg Approved Construction Plans	Project Sponsor, architect, contractor	Pre and post construction	Architect and contractor	Ongoing	<input type="checkbox"/> Letter from Architect  <input type="checkbox"/> Copy of final building permit
<b>Noise</b> MM - 3	Noise Assessment (J.C. Brennan & Associates, 2016)		<input type="checkbox"/>	<input type="checkbox"/> City of Pittsburg Approved Construction Plans	Project Sponsor, architect, contractor	Pre and post construction	Project sponsor, architect and contractor	Ongoing	<input type="checkbox"/> Letter from Architect  <input type="checkbox"/> Copy of Final Building Permit <input type="checkbox"/> Letter

									from architect
<b>Erosion</b> MM – 4 MM – 5 MM – 6 MM – 7 MM – 8 MM – 9 MM - 10	Custom Soils Resource Report (2016)  City of Pittsburg Planning Commission Resolution No. 9879 (June 28, 2011)		<input type="checkbox"/>	<input type="checkbox"/> City of Pittsburg Approved Construction Plans	Project Sponsor, architect, contractor	Pre and post construction	Architect and contractor	Ongoing	<input type="checkbox"/> Letter from Architect  <input type="checkbox"/> Copy of final building permit
<b>Soil Suitability</b> MM - 11	Custom Soils Resource Report (2016)		<input type="checkbox"/>	<input type="checkbox"/> City of Pittsburg Approved Construction Plans	Project Sponsor, architect, contractor	Pre and post construction	Architect and contractor	Ongoing – during construction	<input type="checkbox"/> Letter from Architect  <input type="checkbox"/> Copy of final building permit
<b>Utilities</b> MM – 12 MM – 13 MM - 14	City of Pittsburg Planning Commission Resolution No. 9879 (June 28, 2011)		<input type="checkbox"/>	<input type="checkbox"/> City of Pittsburg Approved Construction Plans	Project Sponsor, architect, contractor	Pre and post construction	Project sponsor, architect and contractor	Once – after construction has been completed.	<input type="checkbox"/> Copy of Final Building Permit  <input type="checkbox"/> Letter from architect
<b>Water Efficiency</b> MM – 15 MM - 16	City of Pittsburg Planning Commission Resolution No. 9879 (June 28, 2011)		<input type="checkbox"/>	<input type="checkbox"/> City of Pittsburg Approved Construction Plans	Project Sponsor, architect, contractor	Pre and post construction	Project sponsor, architect and contractor	Once – after construction has been completed.	<input type="checkbox"/> Copy of Final Building Permit  <input type="checkbox"/> Letter from architect
<b>Public Safety</b> MM – 17	City of Pittsburg Planning Commission Resolution No. 9879 (June 28, 2011)		<input type="checkbox"/>	<input type="checkbox"/> City of Pittsburg Approved Construction Plans	Project Sponsor, architect, contractor	Pre and post construction	Project sponsor, architect and contractor	Once – after construction has been completed.	<input type="checkbox"/> Copy of Final Building Permit  <input type="checkbox"/> Letter from architect
<b>Park Maintenance</b>	City of Pittsburg Planning		<input type="checkbox"/>	<input type="checkbox"/> City of Pittsburg	Project Sponsor, architect,	Pre and post construction	Project sponsor, architect and	Once – after construction	<input type="checkbox"/> Copy of Final Building

MM - 18	Commission Resolution No. 9879 (June 28, 2011)			Approved Construction Plans	contractor		contractor	has been completed.	Permit <input type="checkbox"/> Letter from architect
<b>Endangered Species</b> MM - 19	Biological Assessment, Veterans Square (DeNovo Planning Group, 2016)		<input type="checkbox"/>	<input type="checkbox"/> City of Pittsburg Approved Construction Plans	Project Sponsor, architect, contractor	Pre and post construction	Project sponsor, architect and contractor	Ongoing	<input type="checkbox"/> Copy of Final Building Permit  <input type="checkbox"/> Letter from architect

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# DEVELOPMENT LOAN AGREEMENT

Between

COUNTY OF CONTRA COSTA

And

VETERANS SQUARE, L.P.

Veterans Square Apartments

dated September\_\_\_\_, 2020



RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Contra Costa County  
Department of Conservation and Development  
30 Muir Road  
Martinez, CA 94553  
Attn: Assistant Deputy Director

No fee for recording pursuant to  
Government Code Sections 27383 and 27388.1

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DEED OF TRUST WITH ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT, AND FIXTURE FILING  
(Veterans Square Apartments)

THIS DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FIXTURE FILING ("Deed of Trust") is made as of September\_\_\_\_, 2020, by and among Veterans Square, L.P., a California limited partnership ("Trustor"), Old Republic Title Company, a California corporation ("Trustee"), and the County of Contra Costa, a political subdivision of the State of California ("Beneficiary").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, Trustor's fee interest in the property located in the County of Contra Costa, State of California, that is described in the attached Exhibit A, incorporated herein by this reference (the "Property").

TOGETHER WITH all interest, estates or other claims, both in law and in equity which Trustor now has or may hereafter acquire in the Property and the rents;

TOGETHER WITH all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, including (without limiting the generality of the foregoing) all tenements, hereditaments and appurtenances thereof and thereto;

TOGETHER WITH any and all buildings and improvements of every kind and description now or hereafter erected thereon, and all property of Trustor now or hereafter affixed to or placed upon the Property;

TOGETHER WITH all building materials and equipment now or hereafter delivered to said property and intended to be installed therein;

TOGETHER WITH all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed,

adjoining the Property, and any and all sidewalks, alleys and strips and areas of land adjacent to or used in connection with the Property;

TOGETHER WITH all estate, interest, right, title, other claim or demand, of every nature, in and to such property, including the Property, both in law and in equity, including, but not limited to, all deposits made with or other security given by Trustor to utility companies, the proceeds from any or all of such property, including the Property, claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Trustor now has or may hereafter acquire, any and all awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the whole or any part of such property, including without limitation, any awards resulting from a change of grade of streets and awards for severance damages to the extent Beneficiary has an interest in such awards for taking as provided in Paragraph 4.1 herein;

TOGETHER WITH all of Trustor's interest in all articles of personal property or fixtures now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or will be, attached to said building or buildings in any manner; and

TOGETHER WITH all of Trustor's interest in all building materials, fixtures, equipment, work in process and other personal property to be incorporated into the Property; all goods, materials, supplies, fixtures, equipment, machinery, furniture and furnishings, signs and other personal property now or hereafter appropriated for use on the Property, whether stored on the Property or elsewhere, and used or to be used in connection with the Property; all rents, issues and profits, and all inventory, accounts, accounts receivable, contract rights, general intangibles, chattel paper, instruments, documents, notes drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds, trade names, trademarks and service marks arising from or related to the Property and any business conducted thereon by Trustor; all replacements, additions, accessions and proceeds; and all books, records and files relating to any of the foregoing.

All of the foregoing, together with the Property, is herein referred to as the "Security." To have and to hold the Security together with acquittances to the Trustee, its successors and assigns forever.

FOR THE PURPOSE OF SECURING THE FOLLOWING OBLIGATIONS (together, the "Secured Obligations"):

A. Payment to Beneficiary of all sums at any time owing under or in connection with (i) the Note (defined in Section 1.6 below) until paid in full or cancelled, and (ii) any other amounts owing under the Loan Documents (defined in Section 1.5 below). Principal and other payments are due and payable as provided in the Note or other Loan Documents, as applicable.

The Note and all its terms are incorporated herein by reference, and this conveyance secures any and all extensions thereof, however evidenced;

B. Payment of any sums advanced by Beneficiary to protect the Security pursuant to the terms and provisions of this Deed of Trust following a breach of Trustor's obligation to advance said sums and the expiration of any applicable cure period, with interest thereon as provided herein;

C. Performance of every obligation, covenant or agreement of Trustor contained herein and in the Loan Documents; and

D. All modifications, extensions and renewals of any of the Secured Obligations (including without limitation, (i) modifications, extensions or renewals at a different rate of interest, or (ii) deferrals or accelerations of the required principal payment dates or interest payment dates or both, in whole or in part), however evidenced, whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes.

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES:

#### ARTICLE 1 DEFINITIONS

In addition to the terms defined elsewhere in this Deed of Trust, the following terms have the following meanings in this Deed of Trust:

Section 1.1 The term "Default Rate" means the lesser of the maximum rate permitted by law and ten percent (10%) per annum.

Section 1.2 The term "Intercreditor Agreement" means that certain Subordination and Intercreditor Agreement of even date herewith, among Trustor, Beneficiary, and the City of Pittsburg Housing Authority, recorded concurrently herewith.

Section 1.3 The term "Loan" means the loan made by Beneficiary to Trustor in the amount of Two Million Two Hundred Thousand Four Hundred Dollars (\$2,200,400).

Section 1.4 The term "Loan Agreement" means that certain Development Loan Agreement between Trustor and Beneficiary, of even date herewith, as such may be amended from time to time, providing for the Beneficiary to loan to Trustor the Loan.

Section 1.5 The term "Loan Documents" means this Deed of Trust, the Note, the Loan Agreement, the Intercreditor Agreement, the Regulatory Agreement, and any other agreements, debt, loan or security instruments between Trustor and Beneficiary relating to the Loan.

Section 1.6 The term "Note" means the promissory note of even date herewith, executed by Trustor in favor of Beneficiary, as it may be amended or restated in the amount of

the Loan, the payment of which is secured by this Deed of Trust. The terms and provisions of the Note are incorporated herein by reference.

Section 1.7 The term "Principal" means the amounts required to be paid under the Note.

Section 1.8 The term "Regulatory Agreement" means collectively, the following documents of even date herewith by and between Beneficiary and Trustor and recorded concurrently herewith: (i) the County Regulatory Agreement and Declaration of Restrictive Covenants; and (ii) the HOME Regulatory Agreement and Declaration of Restrictive Covenants.

## ARTICLE 2 MAINTENANCE AND MODIFICATION OF THE PROPERTY AND SECURITY

### Section 2.1 Maintenance and Modification of the Property by Trustor.

The Trustor agrees that at all times prior to full payment and performance of the Secured Obligations, the Trustor will, at the Trustor's own expense, maintain, preserve and keep the Security or cause the Security to be maintained and preserved in good condition. The Trustor will from time to time make or cause to be made all repairs, replacements and renewals deemed proper and necessary by it. The Beneficiary has no responsibility in any of these matters or for the making of improvements or additions to the Security.

Trustor agrees to pay fully and discharge (or cause to be paid fully and discharged) all claims for labor done and for material and services furnished in connection with the Security, diligently to file or procure the filing of a valid notice of cessation upon the event of a cessation of labor on the work or construction on the Security for a continuous period of thirty (30) days or more, and to take all other reasonable steps to forestall the assertion of claims of lien against the Security or any part thereof. Trustor irrevocably appoints, designates and authorizes Beneficiary as its agent (said agency being coupled with an interest) with the authority, but without any obligation, to file for record any notices of completion or cessation of labor or any other notice that Beneficiary deems necessary or desirable to protect its interest in and to the Security or the Loan Documents; provided, however, that Beneficiary exercises its rights as agent of Trustor only in the event that Trustor fails to take, or fails to diligently continue to take, those actions as hereinbefore provided.

Upon demand by Beneficiary, Trustor shall make or cause to be made such demands or claims as Beneficiary specifies upon laborers, materialmen, subcontractors or other persons who have furnished or claim to have furnished labor, services or materials in connection with the Security. Nothing herein contained requires Trustor to pay any claims for labor, materials or services which Trustor in good faith disputes and is diligently contesting provided that Trustor shall, within thirty (30) days after the filing of any claim of lien, record in the Office of the Recorder of Contra Costa County, a surety bond in an amount 1 and 1/2 times the amount of such claim item to protect against a claim of lien.

### Section 2.2 Granting of Easements.

Trustor may not grant easements, licenses, rights-of-way or other rights or privileges in the nature of easements with respect to any property or rights included in the Security except those required or desirable for installation and maintenance of public utilities including, without limitation, water, gas, electricity, sewer, telephone and telegraph, or those required by law, and as approved, in writing, by Beneficiary.

### Section 2.3 Assignment of Rents.

As part of the consideration for the indebtedness evidenced by the Note, Trustor hereby absolutely and unconditionally assigns and transfers to Beneficiary all the rents and revenues of the Property including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property, regardless of to whom the rents and revenues of the Property are payable, subject to the rights of senior lenders that are approved by the Beneficiary pursuant to the Loan Agreement. Trustor hereby authorizes Beneficiary or Beneficiary's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Property to pay such rents to Beneficiary or Beneficiary's agents; provided, however, that prior to written notice given by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents, Trustor shall collect and receive all rents and revenues of the Property as trustee for the benefit of Beneficiary and Trustor to apply the rents and revenues so collected to the Secured Obligations with the balance, so long as no such breach has occurred and is continuing, to the account of Trustor, it being intended by Trustor and Beneficiary that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents, and without the necessity of Beneficiary entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Beneficiary shall immediately be entitled to possession of all rents and revenues of the Property as specified in this Section 2.3 as the same becomes due and payable, including but not limited to, rents then due and unpaid, and all such rents will immediately upon delivery of such notice be held by Trustor as trustee for the benefit of Beneficiary only; provided, however, that the written notice by Beneficiary to Trustor of the breach by Trustor contains a statement that Beneficiary exercises its rights to such rents. Trustor agrees that commencing upon delivery of such written notice of Trustor's breach by Beneficiary to Trustor, each tenant of the Property shall make such rents payable to and pay such rents to Beneficiary or Beneficiary's agents on Beneficiary's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of a default by Trustor.

Trustor hereby covenants that Trustor has not executed any prior assignment of said rents, other than as security to lenders approved by Beneficiary pursuant to the Loan Agreement, that Trustor has not performed, and will not perform, any acts or has not executed and will not execute, any instrument which would prevent Beneficiary from exercising its rights under this Section 2.3, and that at the time of execution of this Deed of Trust, there has been no anticipation or prepayment of any of the rents of the Property for more than two (2) months prior to the due dates of such rents. Trustor covenants that Trustor will not hereafter collect or accept payment of any rents of the Property more than two (2) months prior to the due dates of such rents. Trustor further covenants that, so long as the Secured Obligations are outstanding, Trustor will

execute and deliver to Beneficiary such further assignments of rents and revenues of the Property as Beneficiary may from time to time request.

Upon Trustor's breach of any covenant or agreement of Trustor in the Loan Documents, Beneficiary may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Beneficiary's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Deed of Trust. In the event Beneficiary elects to seek the appointment of a receiver for the Property upon Trustor's breach of any covenant or agreement of Trustor in this Deed of Trust, Trustor hereby expressly consents to the appointment of such receiver. Beneficiary or the receiver will be entitled to receive a reasonable fee for so managing the Property.

All rents and revenues collected subsequent to delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents are to be applied first to the costs, if any, of taking control of and managing the Property and collecting the rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Trustor as lessor or landlord of the Property and then to the sums secured by this deed of Trust. Beneficiary or the receiver is to have access to the books and records used in the operation and maintenance of the Property and will be liable to account only for those rents actually received. Beneficiary is not liable to Trustor, anyone claiming under or through Trustor or anyone having an interest in the Property by reason of anything done or left undone by Beneficiary under this Section 2.3.

If the rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the rents, any funds expended by Beneficiary for such purposes will become part of the Secured Obligations pursuant to Section 3.3 hereof. Unless Beneficiary and Trustor agree in writing to other terms of payment, such amounts are payable by Trustor to Beneficiary upon notice from Beneficiary to Trustor requesting payment thereof and will bear interest from the date of disbursement at the rate stated in Section 3.3.

If the Beneficiary or the receiver enters upon and takes and maintains control of the Property, neither that act nor any application of rents as provided herein will cure or waive any default under this Deed of Trust or invalidate any other right or remedy available to Beneficiary under applicable law or under this Deed of Trust. This assignment of rents of the Property will terminate at such time as this Deed of Trust ceases to secure the Secured Obligations.

ARTICLE 3  
TAXES AND INSURANCE; ADVANCES

Section 3.1 Taxes, Other Governmental Charges and Utility Charges.

Trustor shall pay, or cause to be paid, prior to the date of delinquency, all taxes, assessments, charges and levies imposed by any public authority or utility company that are or may become a lien affecting the Security or any part thereof; provided, however, that Trustor is not required to pay and discharge any such tax, assessment, charge or levy so long as (a) the legality thereof is promptly and actively contested in good faith and by appropriate proceedings, and (b) Trustor maintains reserves adequate to pay any liabilities contested pursuant to this Section 3.1. With respect to taxes, special assessments or other similar governmental charges, Trustor shall pay such amount in full prior to the attachment of any lien therefor on any part of the Security; provided, however, if such taxes, assessments or charges can be paid in installments, Trustor may pay in such installments. Except as provided in clause (b) of the first sentence of this paragraph, the provisions of this Section 3.1 may not be construed to require that Trustor maintain a reserve account, escrow account, impound account or other similar account for the payment of future taxes, assessments, charges and levies.

In the event that Trustor fails to pay any of the items required by this Section to be paid by Trustor, Beneficiary may (but is under no obligation to) pay the same, after the Beneficiary has notified the Trustor of such failure to pay and the Trustor fails to fully pay such items within seven (7) business days after receipt of such notice. Any amount so advanced therefor by Beneficiary, together with interest thereon from the date of such advance at the maximum rate permitted by law, will become part of the Secured Obligations secured hereby, and Trustor agrees to pay all such amounts.

Section 3.2 Provisions Respecting Insurance.

Trustor agrees to provide insurance conforming in all respects to that required under the Loan Documents during the course of construction and following completion, and at all times until all amounts secured by this Deed of Trust have been paid, all Secured Obligations secured hereunder have been fulfilled, and this Deed of Trust has been reconveyed.

All such insurance policies and coverages are to be maintained at Trustor's sole cost and expense. Certificates of insurance for all of the above insurance policies, showing the same to be in full force and effect, are to be delivered to the Beneficiary upon demand therefor at any time prior to Trustor's satisfaction of the Secured Obligations.

Section 3.3 Advances.

In the event the Trustor fails to maintain the full insurance coverage required by this Deed of Trust or fails to keep the Security in accordance with the Loan Documents, the Beneficiary, after at least seven (7) days prior notice to Trustor, may (but is under no obligation to) (i) take out the required policies of insurance and pay the premiums on the same, and (ii) make any repairs or replacements that are necessary and provide for payment thereof. All

amounts so advanced by the Beneficiary will become part of the Secured Obligations (together with interest as set forth below) and will be secured hereby, which amounts the Trustor agrees to pay on the demand of the Beneficiary, and if not so paid, will bear interest from the date of the advance at the Default Rate.

ARTICLE 4  
DAMAGE, DESTRUCTION OR CONDEMNATION

Section 4.1 Awards and Damages.

Subject to the rights of senior lenders, all judgments, awards of damages, settlements and compensation made in connection with or in lieu of (1) the taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain, (2) any damage to or destruction of the Property or any part thereof by insured casualty, and (3) any other injury or damage to all or any part of the Property (collectively, the "Funds") are hereby assigned to and are to be paid to the Beneficiary by a check made payable to the Beneficiary. The Beneficiary is authorized and empowered (but not required) to collect and receive any Funds and is authorized to apply them in whole or in part to any indebtedness or obligation secured hereby, in such order and manner as the Beneficiary determines at its sole option, subject to the provisions of Section 4.8 of the Loan Agreement regarding restoration of improvements following damage or destruction. The Beneficiary is entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. Application of all or any part of the Funds collected and received by the Beneficiary or the release thereof will not cure or waive any default under this Deed of Trust.

ARTICLE 5  
AGREEMENTS AFFECTING THE PROPERTY; FURTHER  
ASSURANCES; PAYMENT OF PRINCIPAL AND INTEREST

Section 5.1 Other Agreements Affecting Property.

Trustor shall duly and punctually perform all terms, covenants, conditions and agreements binding upon it under the Loan Documents and any other agreement of any nature whatsoever now or hereafter involving or affecting the Security or any part thereof.

Section 5.2 Agreement to Pay Attorneys' Fees and Expenses.

In the event of any Event of Default (as defined in Section 7.1) hereunder, and if the Beneficiary employs attorneys or incurs other expenses for the collection of amounts due hereunder or the enforcement of performance or observance of an obligation or agreement on the part of the Trustor in this Deed of Trust, the Trustor agrees that it will, on demand therefor, pay to the Beneficiary the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Beneficiary. Any such amounts paid by the Beneficiary will be added to the Secured Obligations, and will bear interest from the date such expenses are incurred at the Default Rate.



Section 5.3 Payment of the Principal.

The Trustor shall pay to the Beneficiary the Principal and any other payments as set forth in the Note in the amounts and by the times set out therein.

Section 5.4 Personal Property.

To the maximum extent permitted by law, the personal property subject to this Deed of Trust is deemed to be fixtures and part of the real property and this Deed of Trust constitutes a fixtures filing under the California Commercial Code. As to any personal property not deemed or permitted to be fixtures, this Deed of Trust constitutes a security agreement under the California Commercial Code.

Section 5.5 Financing Statement.

The Trustor shall execute and deliver to the Beneficiary such financing statements pursuant to the appropriate statutes, and any other documents or instruments as are required to convey to the Beneficiary a valid perfected security interest in the Security. The Trustor shall perform all acts that the Beneficiary reasonably requests so as to enable the Beneficiary to maintain a valid perfected security interest in the Security in order to secure the payment of the Note in accordance with its terms. The Beneficiary is authorized to file a copy of any such financing statement in any jurisdiction(s) as it deems appropriate from time to time in order to protect the security interest established pursuant to this instrument.

Section 5.6 Operation of the Security.

The Trustor shall operate the Security (and, in case of a transfer of a portion of the Security subject to this Deed of Trust, the transferee shall operate such portion of the Security) in full compliance with the Loan Documents.

Section 5.7 Inspection of the Security.

At any and all reasonable times upon seventy-two (72) hours' notice, the Beneficiary and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, may inspect the Security, without payment of charges or fees.

Section 5.8 Nondiscrimination.

The Trustor herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there will be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, age, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Security, nor will the Trustor itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Security. The foregoing covenants run with the land.

ARTICLE 6  
HAZARDOUS WASTE

Trustor shall keep and maintain the Property (including, but not limited to, soil and ground water conditions) in compliance with all Hazardous Materials Laws and shall not cause or permit the Property to be in violation of any Hazardous Materials Law (defined below). Trustor may not cause or permit the use, generation, manufacture, storage or disposal of on, under, or about the Property or transportation to or from the Property of (i) any substance, material, or waste that is petroleum, petroleum-related, or a petroleum by-product, asbestos or asbestos-containing material, polychlorinated biphenyls, flammable, explosive, radioactive, freon gas, radon, or a pesticide, herbicide, or any other agricultural chemical, and (ii) any waste, substance or material defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "toxic materials", "toxic waste", "toxic substances," or words of similar import under any Hazardous Materials Law (collectively referred to hereinafter as "Hazardous Materials"), except such of the foregoing as may be customarily used in construction or operation of a multi-family residential development.

Trustor shall immediately advise Beneficiary in writing if at any time it receives written notice of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Trustor or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, health, industrial hygiene, environmental conditions, or the regulation or protection of the environment, and all amendments thereto as of this date and to be added in the future and any successor statute or rule or regulation promulgated thereto ("Hazardous Materials Law"); (ii) all claims made or threatened by any third party against Trustor or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as "Hazardous Materials Claims"); and (iii) Trustor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law including but not limited to the provisions of California Health and Safety Code, Section 25220 et seq., or any regulation adopted in accordance therewith.

Beneficiary has the right to join and participate in, as a party if it so elects, and be represented by counsel acceptable to Beneficiary (or counsel of its own choice if a conflict exists with Trustor) in, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims, and to have its reasonable attorneys' fees in connection therewith paid by Trustor.

Trustor shall indemnify and hold harmless Beneficiary and its boardmembers, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, fine, penalty, judgment, award, settlement, expense or liability, directly or indirectly arising out of or attributable to: (i) any actual or alleged past or present violation of any Hazardous Materials Law; (ii) any Hazardous Materials Claim; (iii) any actual or alleged past or present use, generation, manufacture, storage, release, threatened release, discharge, disposal, transportation,

or presence of Hazardous Materials on, under, or about the Property; (iv) any investigation, cleanup, remediation, removal, or restoration work of site conditions of the Property relating to Hazardous Materials (whether on the Property or any other property); and (v) the breach of any representation of warranty by or covenant of Trustor in this Article, and Section 5.1(l) of the Loan Agreement. Such indemnity must include, without limitation: (x) all consequential damages; (y) the costs of any required or necessary investigation, repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (z) all reasonable costs and expenses incurred by Beneficiary in connection with clauses (x) and (y), including but not limited to reasonable attorneys' fees and consultant fees. This indemnification applies whether or not any government agency has issued a cleanup order. Losses, claims, costs, suits, liability, and expenses covered by this indemnification provision include, but are not limited to: (1) losses attributable to diminution in the value of the Property; (2) loss or restriction of use of rentable space on the Property; (3) adverse effect on the marketing of any rental space on the Property; and (4) penalties and fines levied by, and remedial or enforcement actions of any kind issued by any regulatory agency (including but not limited to the costs of any required testing, remediation, repair, removal, cleanup or detoxification of the Property and surrounding properties). This obligation to indemnify will survive reconveyance of this Deed of Trust and will not be diminished or affected in any respect as a result of any notice, disclosure, knowledge, if any, to or by Beneficiary of Hazardous Materials.

Without Beneficiary's prior written consent, which may not be unreasonably withheld, Trustor may not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in Beneficiary's reasonable judgment, impairs the value of the Beneficiary's security hereunder; provided, however, that Beneficiary's prior consent is not necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain Beneficiary's consent before taking such action, provided that in such event Trustor notifies Beneficiary as soon as practicable of any action so taken. Beneficiary agrees not to withhold its consent, where such consent is required hereunder, if (i) a particular remedial action is ordered by a court of competent jurisdiction; (ii) Trustor will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Trustor establishes to the reasonable satisfaction of Beneficiary that there is no reasonable alternative to such remedial action which would result in less impairment of Beneficiary's security hereunder; or (iv) the action has been agreed to by Beneficiary.

The Trustor hereby acknowledges and agrees that (i) this Article is intended as the Beneficiary's written request for information (and the Trustor's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Deed of Trust or any of the other Loan Documents (together with any indemnity applicable to a breach of any such representation and warranty) with respect to the environmental condition of the property is intended by the Beneficiary and the Trustor to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1), then, without otherwise limiting or in any way affecting the Beneficiary's or the Trustee's rights and remedies under this Deed of Trust, the Beneficiary may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (a) the rights and remedies of an unsecured creditor, including reduction of its claim against the Trustor to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the Beneficiary's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Trustor will be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and the Trustor knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the Beneficiary in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the Default Rate until paid, will be added to the indebtedness secured by this Deed of Trust and will be due and payable to the Beneficiary upon its demand made at any time following the conclusion of such action.

## ARTICLE 7 EVENTS OF DEFAULT AND REMEDIES

### Section 7.1 Events of Default.

The following are events of default following the expiration of any applicable notice and cure periods (each an "Event of Default"): (i) failure to make any payment to be paid by Trustor under the Loan Documents; (ii) failure to observe or perform any of Trustor's other covenants, agreements or obligations under the Loan Documents, including, without limitation, the provisions concerning discrimination; (iii) failure to make any payment or observe or perform any of Trustor's other covenants, agreements, or obligations under any Secured Obligations, which default is not cured within the times and in the manner provided therein; and (iv) failure to make any payments or observe or perform any of Trustor's other covenants, agreements or obligations under any other debt instrument or regulatory agreement secured by the Property, which default is not cured within the time and in the manner provided therein.

The notice and cure rights of Trustor's limited partner are set forth in Section 6.5 of the Loan Agreement.

### Section 7.2 Acceleration of Maturity.

If an Event of Default has occurred and is continuing, then at the option of the Beneficiary, the amount of any payment related to the Event of Default and all unpaid Secured

Obligations are immediately due and payable, and no omission on the part of the Beneficiary to exercise such option when entitled to do so may be construed as a waiver of such right.

### Section 7.3 The Beneficiary's Right to Enter and Take Possession.

If an Event of Default has occurred and is continuing, the Beneficiary may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Property and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts that it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security will not cure or waive any Event of Default or Notice of Sale (as defined in Section 7.3(c), below) hereunder or invalidate any act done in response to such Event of Default or pursuant to such Notice of Sale, and, notwithstanding the continuance in possession of the Security, Beneficiary will be entitled to exercise every right provided for in this Deed of Trust, or by law upon occurrence of any Event of Default, including the right to exercise the power of sale;

(b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(c) Deliver to Trustee a written declaration of an Event of Default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Security to be sold ("Notice of Sale"), which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of Contra Costa County; or

(d) Exercise all other rights and remedies provided herein, in the instruments by which the Trustor acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing the Secured Obligations.

### Section 7.4 Foreclosure By Power of Sale.

Should the Beneficiary elect to foreclose by exercise of the power of sale herein contained, the Beneficiary shall deliver to the Trustee the Notice of Sale and shall deposit with Trustee this Deed of Trust which is secured hereby (and the deposit of which will be deemed to constitute evidence that the Secured Obligations are immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.

(a) Upon receipt of the Notice of Sale from the Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Sale as is then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after the lapse of that amount of time as is then required by law and after recordation of such Notice of Sale as required by law, sell the Security, at the time and place of sale set forth in the Notice of Sale, whether as a whole or in separate lots or parcels or items, as Trustee deems expedient and in such order as it determines, unless specified otherwise by the Trustor according to California

Civil Code Section 2924g(b), at public auction to the highest bidder, for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed or any matters of facts will be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale.

(b) After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale to payment of: (i) the unpaid Principal amount of the Note; (ii) all other Secured Obligations owed to Beneficiary under the Loan Documents; (iii) all other sums then secured hereby; and (iv) the remainder, if any, to Trustor.

(c) Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new Notice of Sale.

#### Section 7.5 Receiver.

If an Event of Default occurs and is continuing, Beneficiary, as a matter of right and without further notice to Trustor or anyone claiming under the Security, and without regard to the then value of the Security or the interest of Trustor therein, may apply to any court having jurisdiction to appoint a receiver or receivers of the Security (or a part thereof), and Trustor hereby irrevocably consents to such appointment and waives further notice of any application therefor. Any such receiver or receivers will have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein, and will continue as such and exercise all such powers until the date of confirmation of sale of the Security, unless such receivership is sooner terminated.

#### Section 7.6 Remedies Cumulative.

No right, power or remedy conferred upon or reserved to the Beneficiary by this Deed of Trust is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy will be cumulative and concurrent and will be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

#### Section 7.7 No Waiver.

(a) No delay or omission of the Beneficiary to exercise any right, power or remedy accruing upon any Event of Default will exhaust or impair any such right, power or remedy, and may not be construed to be a waiver of any such Event of Default or acquiescence therein; and every right, power and remedy given by this Deed of Trust to the Beneficiary may be exercised from time to time and as often as may be deemed expeditious by the Beneficiary. Beneficiary's express or implied consent to breach, or waiver of, any obligation of the Trustor hereunder will not be deemed or construed to be a consent to any subsequent breach, or further waiver, of such obligation or of any other obligations of the Trustor hereunder. Failure on the part of the Beneficiary to complain of any act or failure to act or to declare an Event of Default,

irrespective of how long such failure continues, will not constitute a waiver by the Beneficiary of its right hereunder or impair any rights, power or remedies consequent on any Event of Default by the Trustor.

(b) If the Beneficiary (i) grants forbearance or an extension of time for the payment or performance of any Secured Obligation, (ii) takes other or additional security or the payment of any sums secured hereby, (iii) waives or does not exercise any right granted in the Loan Documents, (iv) releases any part of the Security from the lien of this Deed of Trust, or otherwise changes any of the terms, covenants, conditions or agreements in the Loan Documents, (v) consents to the granting of any easement or other right affecting the Security, or (vi) makes or consents to any agreement subordinating the lien hereof, any such act or omission will not release, discharge, modify, change or affect the original liability under this Deed of Trust, or any other obligation of the Trustor or any subsequent purchaser of the Security or any part thereof, or any maker, co-signer, endorser, surety or guarantor (unless expressly released); nor will any such act or omission preclude the Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in any Event of Default then made or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Beneficiary, will the lien of this Deed of Trust be altered thereby.

#### Section 7.8 Suits to Protect the Security.

The Beneficiary has the power to (a) institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Security and the rights of the Beneficiary as may be unlawful or any violation of this Deed of Trust, (b) preserve or protect its interest (as described in this Deed of Trust) in the Security, and (c) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement for compliance with such enactment, rule or order would impair the Security thereunder or be prejudicial to the interest of the Beneficiary.

#### Section 7.9 Trustee May File Proofs of Claim.

In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Trustor, its creditors or its property, the Beneficiary, to the extent permitted by law, will be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Beneficiary allowed in such proceedings and for any additional amount that becomes due and payable by the Trustor hereunder after such date.

#### Section 7.10 Waiver.

The Trustor waives presentment, demand for payment, notice of dishonor, notice of protest and nonpayment, protest, notice of interest on interest and late charges, and diligence in taking any action to collect any Secured Obligations or in proceedings against the Security, in connection with the delivery, acceptance, performance, default, endorsement or guaranty of this Deed of Trust.

ARTICLE 8  
MISCELLANEOUS

Section 8.1 Amendments.

This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by Beneficiary and Trustor.

Section 8.2 Reconveyance by Trustee.

Upon written request of Beneficiary stating that all Secured Obligations have been paid or forgiven, and all obligations under the Loan Documents have been performed in full, and upon surrender of this Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey the Security to Trustor, or to the person or persons legally entitled thereto.

Section 8.3 Notices.

If at any time after the execution of this Deed of Trust it becomes necessary or convenient for one of the parties hereto to serve any notice, demand or communication upon the other party, such notice, demand or communication must be in writing and is to be served personally or by depositing the same in the registered United States mail, return receipt requested, postage prepaid and (1) if intended for Beneficiary is to be addressed to:

County of Contra Costa  
Department of Conservation and Development  
30 Muir Road  
Martinez, CA 94553  
Attention: Assistant Deputy Director

and (2) if intended for Trustor is to be addressed to:

Veterans Square, L.P.  
c/o Satellite Affordable Housing Associates  
1835 Alcatraz Avenue  
Berkeley, CA 94703  
Attention: Chief Executive Officer

with a copy to:

Raymond James Tax Credit Fund XX L.L.C.  
c/o Raymond James Tax Credit Funds, Inc.  
880 Carillon Parkway  
St. Petersburg, Florida 33716  
Facsimile No.: 727-567-8455  
Attention: Steven J. Kropf, President

Nixon Peabody LLP  
Exchange Place  
53 State Street



Boston, MA 02109  
Attn: Nathan A. Bernard  
Facsimile No.: 617-345-1000

Any notice, demand or communication will be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed in the manner herein specified, on the delivery date or date delivery is refused by the addressee, as shown on the return receipt. Either party may change its address at any time by giving written notice of such change to Beneficiary or Trustor as the case may be, in the manner provided herein, at least ten (10) days prior to the date such change is desired to be effective.

Section 8.4 Successors and Joint Trustors.

Where an obligation created herein is binding upon Trustor, the obligation also applies to and binds any transferee or successors in interest. Where the terms of the Deed of Trust have the effect of creating an obligation of the Trustor and a transferee, such obligation will be deemed to be a joint and several obligation of the Trustor and such transferee. Where Trustor is more than one entity or person, all obligations of Trustor will be deemed to be a joint and several obligation of each and every entity and person comprising Trustor.

Section 8.5 Captions.

The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

Section 8.6 Invalidity of Certain Provisions.

Every provision of this Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court or other body of competent jurisdiction, such illegality or invalidity will not affect the balance of the terms and provisions hereof, which terms and provisions will remain binding and enforceable. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Security, the unsecured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, will be considered to have been first paid or applied to the full payment of that portion of the debt that is not secured or partially secured by the lien of this Deed of Trust.

Section 8.7 Governing Law.

This Deed of Trust is governed by the laws of the State of California.

Section 8.8 Gender and Number.

In this Deed of Trust the singular includes the plural and the masculine includes the feminine and neuter and vice versa, if the context so requires.

Section 8.9 Deed of Trust, Mortgage.

Any reference in this Deed of Trust to a mortgage also refers to a deed of trust and any reference to a deed of trust also refers to a mortgage.

Section 8.10 Actions.

Trustor shall appear in and defend any action or proceeding purporting to affect the Security.

Section 8.11 Substitution of Trustee.

Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter will be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution is to be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the Property is situated, will be conclusive proof of proper appointment of the successor trustee.

Section 8.12 Statute of Limitations.

The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law.

Section 8.13 Acceptance by Trustee.

Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law, the Trustee is not obligated to notify any party hereto of a pending sale under this Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee is a party unless brought by Trustee.

Section 8.14 Tax Credit Provisions.

Notwithstanding anything to the contrary contained herein or in any documents secured by this Deed of Trust or contained in any subordination agreement, and to the extent applicable, the Beneficiary acknowledges and agrees that in the event of a foreclosure or deed-in-lieu of foreclosure (collectively, "Foreclosure") with respect to the Security encumbered by this Deed of Trust, the following rule contained in 26 U.S.C. Section 42(h)(6)(E)(ii), as amended, applies:

For a period of three (3) years from the date of Foreclosure, with respect to an existing tenant of any low-income unit, (i) such tenant may not be subject to eviction or termination of their tenancy (other than for good cause), (ii) nor may such tenant's gross rent with respect to such unit be increased, except as otherwise permitted under Section 42 of the Internal Revenue Code.

***Remainder of Page Left Intentionally Blank***

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

VETERANS SQUARE, L.P.,  
a California limited partnership

By: Veterans Square LLC,  
a California limited liability company,  
its general partner

By: Satellite Affordable Housing Associates,  
a California nonprofit public benefit corporation,  
its manager

By: \_\_\_\_\_  
Susan Friedland,  
Chief Executive Officer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public

EXHIBIT A

LEGAL DESCRIPTION

The land referred to is situated in the County of Contra Costa, City of Pittsburg, State of California, and is described as follows:

Parcel One:

Lots 1, 2, 15 and 16 Block 79, Map of Resubdivision of Block 79, City of Pittsburg, filed May 18, 1926 in Map Book 19, Page 504, Contra Costa County Records.

APN: 085-182-001

Parcel Two:

Lots 8 and 9, Block 78, as delineated upon the certain Map entitled "Official Map of the City of Pittsburg", filed March 23, 1914, Contra Costa County Records.

APN: 085-196-001

PROMISSORY NOTE  
(HOME Loan)

\$2,200,400

Martinez, California  
September \_\_\_\_, 2020

FOR VALUE RECEIVED, the undersigned Veterans Square, L.P., a California limited partnership ("Borrower") hereby promises to pay to the order of the County of Contra Costa, a political subdivision of the State of California ("Holder"), the principal amount of Two Million Two Hundred Thousand Four Hundred Dollars (\$2,200,400) plus interest thereon pursuant to Section 2 below.

All capitalized terms used but not defined in this Note have the meanings set forth in the Development Loan Agreement between Borrower and Holder of even date herewith (the "Loan Agreement").

1. Borrower's Obligation. This promissory note (the "Note") evidences Borrower's obligation to repay Holder the principal amount of Two Million Two Hundred Thousand Four Hundred Dollars (\$2,200,400) with interest for the funds loaned to Borrower by Holder to finance the rehabilitation of the Development pursuant to the Development Loan Agreement.

2. Interest.

(a) Subject to the provisions of Subsection (b) below, the Loan will not accrue interest.

(b) If an Event of Default occurs, interest will accrue on all amounts due under this Note at the Default Rate until such Event of Default is cured by Borrower or waived by Holder.

3. Term and Repayment Requirements. Principal and interest under this Note is due and payable as set forth in Section 2.8 of the Loan Agreement. The unpaid principal balance hereunder, together with accrued interest thereon, is due and payable no later than the date that is the fifty-fifth (55<sup>th</sup>) anniversary of the Completion Date; provided, however, if a record of the Completion Date cannot be located or established, the Loan is due and payable on the fifty-seventh (57<sup>th</sup>) anniversary of the date of this Note.

4. No Assumption. This Note is not assumable by the successors and assigns of Borrower without the prior written consent of Holder, except as provided in the Loan Agreement.

5. Security. This Note, with interest, is secured by the Deed of Trust. Upon execution, the Deed of Trust will be recorded in the official records of Contra Costa County, California. Upon recordation of the Deed of Trust, this Note will become nonrecourse to Borrower, pursuant to and except as provided in Section 2.10 of the Loan Agreement which

Section 2.10 is hereby incorporated into this Note. The terms of the Deed of Trust are hereby incorporated into this Note and made a part hereof.

6. Terms of Payment.

(a) Borrower shall make all payments due under this Note in currency of the United States of America to Holder at Department of Conservation and Development, 30 Muir Road, Martinez, CA 94553, Attention: Assistant Deputy Director, or to such other place as Holder may from time to time designate.

(b) All payments on this Note are without expense to Holder. Borrower shall pay all costs and expenses, including re-conveyance fees and reasonable attorney's fees of Holder, incurred in connection with the enforcement of this Note and the release of any security hereof.

(c) Notwithstanding any other provision of this Note, or any instrument securing the obligations of Borrower under this Note, if, for any reason whatsoever, the payment of any sums by Borrower pursuant to the terms of this Note would result in the payment of interest that exceeds the amount that Holder may legally charge under the laws of the State of California, then the amount by which payments exceed the lawful interest rate will automatically be deducted from the principal balance owing on this Note, so that in no event is Borrower obligated under the terms of this Note to pay any interest that would exceed the lawful rate.

(d) The obligations of Borrower under this Note are absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

7. Event of Default; Acceleration.

(a) Upon the occurrence of an Event of Default, the entire unpaid principal balance, together with all interest thereon, and together with all other sums then payable under this Note and the Deed of Trust will, at the option of Holder, become immediately due and payable without further demand.

(b) Holder's failure to exercise the remedy set forth in Subsection 7(a) above or any other remedy provided by law upon the occurrence of an Event of Default does not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other Event of Default. The acceptance by Holder of any payment that is less than the total of all amounts due and payable at the time of such payment does not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of Holder, except as and to the extent otherwise provided by law.

(c) The notice and cure rights of Borrower's limited partner are set forth in Section 6.5 of the Loan Agreement.

8. Waivers.

(a) Borrower hereby waives diligence, presentment, protest and demand, and notice of protest, notice of demand, notice of dishonor and notice of non-payment of this Note. Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time, and that Holder may accept further security or release any security for this Note, all without in any way affecting the liability of Borrower.

(b) Any extension of time for payment of this Note or any installment hereof made by agreement of Holder with any person now or hereafter liable for payment of this Note must not operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part.

9. Miscellaneous Provisions.

(a) All notices to Holder or Borrower are to be given in the manner and at the addresses set forth in the Loan Agreement, or to such addresses as Holder and Borrower may therein designate.

(b) Borrower promises to pay all costs and expenses, including reasonable attorney's fees, incurred by Holder in the enforcement of the provisions of this Note, regardless of whether suit is filed to seek enforcement.

(c) This Note is governed by the laws of the State of California.

(d) The times for the performance of any obligations hereunder are to be strictly construed, time being of the essence.

(e) The Loan Documents, of which this Note is a part, contain the entire agreement between the parties as to the Loan. This Note may not be modified except upon the written consent of the parties.

*signature on following page*



IN WITNESS WHEREOF, Borrower is executing this Promissory Note as of the day and year first above written.

VETERANS SQUARE, L.P.,  
a California limited partnership

By: Veterans Square LLC,  
a California limited liability company,  
its general partner

By: Satellite Affordable Housing Associates,  
a California nonprofit public benefit corporation,  
its manager

By: \_\_\_\_\_  
Susan Friedland,  
Chief Executive Officer

RECORDING REQUESTED PURSUANT  
AND WHEN RECORDED MAIL TO:

Contra Costa County  
Department of Conservation and Development  
30 Muir Road  
Martinez, CA 94553  
Attn: Assistant Deputy Director

No fee for recording pursuant to  
Government Code Section 27383 and 27388.1

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SUBORDINATION AND INTERCREDITOR AGREEMENT

(Veterans Square Apartments)

This Subordination and Intercreditor Agreement (the "Agreement") is dated September \_\_\_\_\_, 2020, and is among the City of Pittsburg Housing Authority, a public body corporate and politic (the "Housing Authority"), the County of Contra Costa, a political subdivision of the State of California (the "County"), and Veterans Square, L.P., a California limited partnership ("Borrower"), with reference to the following facts:

RECITALS

A. Defined terms used but not defined in these recitals are as defined in Section 1 of this Agreement.

B. Pursuant to a Purchase and Sale Agreement dated July 22, 2020 between Satellite Affordable Housing Associates, a California nonprofit public benefit corporation ("SAHA") and Borrower, Borrower intends to purchase that certain real property located at 901 Los Medanos Street and 295 East 10th Street, in the City of Pittsburg, County of Contra Costa, State of California, as more particularly described in Exhibit A (the "Property"). Borrower intends to construct thirty (30) housing units on the Property, twenty-nine (29) of which are for rental to extremely low, very low and low income households, and one (1) manager's unit (the "Development"). The Development, as well as all landscaping, roads and parking spaces on the Property and any additional improvements on the Property, are the "Improvements".

C. The County has agreed to provide a loan of HOME Funds to Borrower in the amount of Two Million Two Hundred Thousand Four Hundred Dollars (\$2,200,400) (the "County Loan").

D. The County Loan is evidenced by the following documents: (i) a Development Loan Agreement between the County and Borrower of even date herewith (the "County Loan Agreement"), (ii) a promissory note executed by Borrower for the benefit of the County in the amount of the County Loan (the "County Note"), (iii) a Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing of even date herewith among Borrower, as trustor, Old

Republic Title Company, as trustee, and the County, as beneficiary, recorded against the Property concurrently herewith (the "County Deed of Trust"), (iv) a County Regulatory Agreement and Declaration of Restrictive Covenants of even date herewith, between the County and Borrower recorded against the Property concurrently herewith (the "County Regulatory Agreement"), and (v) a HOME Regulatory Agreement and Declaration of Restrictive Covenants of even date herewith, between the County and Borrower recorded against the Property concurrently herewith (the "HOME Regulatory Agreement"). The County Deed of Trust, the County Regulatory Agreement, and the HOME Regulatory Agreement are collectively referred to as the "County Recorded Documents."

E. The Housing Authority has agreed to provide a loan to Borrower in the amount of Seven Hundred Eighty Thousand Dollars (\$780,000) (the "Housing Authority Loan").

F. The Housing Authority Loan is evidenced by the following documents (among others): (i) a Loan Agreement by and between the Housing Authority and Borrower of even date herewith (the "Housing Authority Loan Agreement"); (ii) a Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing executed by Borrower for the benefit of the Housing Authority recorded against the Property concurrently herewith (the "Housing Authority Deed of Trust"); (iii) a Regulatory Agreement and Declaration of Restrictive Covenants between the Housing Authority and Borrower recorded against the Property concurrently herewith (the "Housing Authority Regulatory Agreement"), and (iv) a Promissory Note executed by Borrower for the benefit of the Housing Authority in the amount of the Housing Authority Loan (the "Housing Authority Note"). The Housing Authority Deed of Trust and the Housing Authority Regulatory Agreement are collectively referred to as the "Housing Authority Recorded Documents."

G. The Housing Authority and the County desire to (i) subordinate the Housing Authority Recorded Documents to the County Recorded Documents, and (iii) divide the Lenders' Share of Residual Receipts and Borrower's Shared Portion of Residual Receipts, as described herein.

NOW, THEREFORE, the Parties agree as follows:

#### AGREEMENT

1. Definitions. The following terms have the following meanings:
  - (a) "Annual County Loan Payment" has the meaning in Section 2(a).
  - (b) "Annual Housing Authority Loan Payment" has the meaning in Section 2(b).
  - (c) "Annual Operating Expenses" means for each calendar year, the following costs reasonably and actually incurred for operation and maintenance of the Development:
    - i. property taxes and assessments imposed on the Development;
    - ii. debt service currently due on a non-optional basis (excluding debt

service due from residual receipts or surplus cash of the Development) on the HTSV Loan;

iii. on-site service provider fees for tenant social services, provided the County and Housing Authority have approved, in writing, the plan and budget for such services before such services begin;

iv. fees paid to the Issuer with respect to the Bonds;

v. payment to HCD of a portion of the accrued interest on the NPLH HCD Loan and HCD MHP Loan pursuant to California Code of Regulations, Title 25, Section 7308;

vi. property management fees and reimbursements, on-site property management office expenses, and salaries of property management and maintenance personnel, not to exceed amounts that are standard in the industry and which are pursuant to a management contract approved by the County and the Housing Authority;

vii. the Partnership/Asset Fee;

viii. fees for accounting, audit, and legal services incurred by Borrower's general partner in the asset management of the Development, not to exceed amounts that are standard in the industry, to the extent such fees are not included in the Partnership/Asset Fee;

ix. premiums for insurance required for the Improvements to satisfy the requirements of any lender of Approved Financing;

x. utility services not paid for directly by tenants, including water, sewer, and trash collection;

xi. maintenance and repair expenses and services;

xii. any annual license or certificate of occupancy fees required for operation of the Development;

xiii. security services;

xiv. advertising and marketing;

xv. cash deposited into the Replacement Reserve Account in the amount set forth in Section 4.2(a) of the County Loan Agreement;

xvi. cash deposited into the Operating Reserve Account to maintain the amount set forth in Section 4.2(b) of the County Loan Agreement (excluding amounts deposited to initially capitalize the account);

xvii. payment of any previously unpaid portion of Developer Fee (without interest), not to exceed the amount set forth in Section 3.18 of the County Loan

Agreement;

xviii. extraordinary operating costs specifically approved in writing by the County and the Housing Authority;

xix. payments of deductibles in connection with casualty insurance claims not normally paid from reserves, the amount of uninsured losses actually replaced, repaired or restored, and not normally paid from reserves, and other ordinary and reasonable operating expenses approved in writing by the County and the Housing Authority and not listed above.

Annual Operating Expenses do not include the following: depreciation, amortization, depletion or other non-cash expenses, initial deposits to capitalize a reserve account, any amount expended from a reserve account, and any capital cost associated with the Development.

(d) "Approved Financing" means all of the following loans, grants, equity, and operating subsidy obtained by Borrower and approved by the County and the Housing Authority for the purpose of financing the acquisition of the Property and construction of the Development in addition to the County Loan and the Housing Authority Loan:

(i) multi-family housing revenue tax exempt bonds in the approximate amount of Eleven Million Four Hundred Thirty-Four Thousand Six Hundred Ten Dollars (\$11,434,610) (the "Bonds") issued by the County of Contra Costa (the "Issuer") that are purchased by the Bank and the sale proceeds of which are loaned to Borrower;

(ii) a taxable construction loan from the Bank in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_);

(iii) construction/permanent loan from the Housing Trust of Silicon Valley in the approximate amount of One Million Three Hundred Thirty-One Thousand Dollars (\$1,331,000) (the "HTSV Loan");

(iv) permanent loan of No Place Like Home program ("NPLH") funds from the California Department of Housing and Community Development ("HCD") in the approximate amount of One Million Eight Hundred Four Thousand Nine Hundred Twenty Dollars (\$1,804,920) (the "NPLH HCD Loan");

(v) permanent loan of Multifamily Housing Program funds from HCD in the approximate amount of Four Million Four Hundred Twenty-Seven Thousand Six Hundred Fifty-Three Dollars (\$4,427,653) (the "MHP HCD Loan");

(vi) seller carry-back loan from SAHA in the approximate amount of Three Hundred Twenty-Five Thousand Dollars (the "Seller Loan");

(vii) Low Income Housing Tax Credit investor equity funds in the approximate amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) provided by the Investor Limited Partner (the "Tax Credit Investor Equity");

(viii) capital contribution from Borrower's general partner in the approximate amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "GP Capital Contribution"); and

(ix) NPLH Capitalized Operating Subsidy from HCD in the approximate amount of One Million Eight Hundred Four Thousand Nine Hundred Twenty Dollars (\$1,804,920).

(e) "Available Net Proceeds" means the result obtained by multiplying the Net Proceeds of Permanent Financing by 0.75.

(f) "Bank" means JP Morgan Chase Bank, N.A., and its successors and assigns.

(g) "Bonds" has the meaning set forth in Section 1.1(d)(i).

(h) "Borrower" has the meaning set forth in the first paragraph of this Agreement.

(i) "Borrower's Shared Portion of Residual Receipts" means twenty-five percent (25%) of Residual Receipts.

(j) "City" means the City of Pittsburg, California, a municipal corporation.

(k) "County Loan" has the meaning set forth in Paragraph C of the Recitals.

(l) "Completion Date" means the date a final certificate of occupancy, or equivalent document is issued by the City to certify that the Development may be legally occupied.

(m) "County" has the meaning set forth in the first paragraph of this Agreement.

(n) "County Additional Prorata Share" means the result obtained by dividing County Loan by the sum of the County Loan and the Housing Authority Loan.

(o) "County Deed of Trust" has the meaning set forth in Paragraph D of the Recitals.

(p) "County Loan Agreement" has the meaning set forth in Paragraph D of the Recitals.

(q) "County Prorata Percentage" means the result, expressed as a percentage, obtained by dividing the County Loan minus any Special County Loan Repayment, by the sum of the County Loan minus any Special County Loan Repayment, the Housing Authority Loan minus any Special Housing Authority Loan Repayment, the NPLH HCD Loan, and the MHP HCD Loan, to the extent such loan funds are disbursed.

- (r) "County Note" has the meaning set forth in Paragraph D of the Recitals.
- (s) "County Recorded Documents" has the meaning set forth in Paragraph D of the Recitals.
- (t) "County Regulatory Agreement" has the meaning set forth in Paragraph D of the Recitals.
- (u) "Default Rate" means a rate of interest equal to the lesser of the maximum rate permitted by law and ten percent (10%) per annum.
- (v) "Developer Fee" has the meaning set forth in Section 3.18 of the County Loan Agreement.
- (w) "Development" has the meaning set forth in Paragraph B of the Recitals.
- (x) "Fifteen Year Compliance Period" means the fifteen (15)-year compliance period as described in Section 42(i)(1) of the Internal Revenue Code of 1986, as amended.
- (y) "Final Cost Certification" means the Final Cost Certification Sources and Uses of Funds prepared by Borrower for the Development that (1) Borrower submits to the California Tax Credit Allocation Committee, and (2) has been prepared using generally accepted accounting standards in effect in the United States of America from time to time, consistently applied.
- (z) "Final Development Cost" means the total of the cost of acquisition and construction of the Development as shown on the Final Cost Certification.
- (aa) GP Capital Contribution has the meaning set forth in Section 1.1(d)(vii).
- (bb) "Gross Revenue" means for each calendar year, all revenue, income, receipts, and other consideration actually received from the operation and leasing of the Development. Gross Revenue includes, but is not limited to:
  - i. all rents, fees and charges paid by tenants;
  - ii. Section 8 payments and other rental or operating subsidy payments received for the dwelling units;
  - iii. deposits forfeited by tenants;
  - iv. all cancellation fees;
  - v. price index adjustments and any other rental adjustments to leases or rental agreements;
  - vi. net proceeds from vending and laundry room machines;

vii. the proceeds of business interruption or similar insurance not paid to senior lenders;

viii. the proceeds of casualty insurance not used to rebuild the Development and not paid to senior lenders; and

ix. condemnation awards for a taking of part or all of the Development for a temporary period.

Gross Revenue does not include tenants' security deposits, loan proceeds, unexpended amounts (including interest) in any reserve account, required deposits to reserve accounts, capital contributions or similar advances.

(cc) "HCD" has the meaning set forth in Section 1(d)(iv).

(dd) "HOME Funds" means Home Investment Partnerships Act funds provided from HUD to the County pursuant to the Cranston-Gonzales National Housing Act of 1990, which must be used in accordance with 24 C.F.R. Part 92.

(ee) "HOME Regulatory Agreement" has the meaning set forth in Paragraph D of the Recitals.

(ff) "Housing Authority" has the meaning set forth in the first paragraph of this Agreement.

(gg) "Housing Authority Additional Prorata Share" means the result obtained by dividing Housing Authority Loan by the sum of the County Loan and the Housing Authority Loan.

(hh) "Housing Authority Deed of Trust" has the meaning set forth in Paragraph F of the Recitals.

(ii) "Housing Authority Loan" has the meaning set forth in Paragraph E of the Recitals.

(jj) "Housing Authority Loan Agreement" has the meaning set forth in Paragraph F of the Recitals.

(kk) "Housing Authority Note" has the meaning set forth in Paragraph F of the Recitals.

(ll) "Housing Authority Prorata Percentage" means the result, expressed as a percentage, obtained by dividing the Housing Authority Loan minus any Special Housing Authority Loan Repayment, by the sum of the Housing Authority Loan minus any Special Housing Authority Loan Repayment, the County Loan minus any Special County Loan Repayment, the NPLH HCD Loan, and the MHP HCD Loan, to the extent such loan funds are disbursed.



(mm) "Housing Authority Recorded Documents" has the meaning set forth in Paragraph F of the Recitals.

(nn) "Housing Authority Regulatory Agreement" has the meaning set forth in Paragraph F of the Recitals.

(oo) "HTSV Loan" has the meaning set forth in Section 1.1(d)(iii).

(pp) "HUD" means the United States Department of Housing and Urban Development.

(qq) "Improvements" has the meaning set forth in Paragraph B of the Recitals.

(rr) "Investor Limited Partner" means, Raymond James Tax Credit Fund XX, LLC, a \_\_\_\_\_ limited liability company, and its permitted successors and assigns.

(ss) "Lenders' Share of Residual Receipts" means fifty percent (50%) of Residual Receipts.

(tt) "MHP HCD Loan" has the meaning set forth in Section 1.1(d)(v).

(uu) "Net Proceeds of Permanent Financing" means the amount by which Permanent Financing exceeds the Final Development Costs.

(vv) "NPLH HCD Loan" has the meaning set forth in Section 1.1(d)(iv).

(ww) "Parties" means the Housing Authority, the County, and Borrower.

(xx) "Partnership Agreement" means the agreement between Borrower's general partner and the Investor Limited Partner that governs the operation and organization of Borrower as a California limited partnership.

(yy) "Partnership/Asset Fee" means (i) partnership management fees (including any asset management fees) payable pursuant to the Partnership Agreement to any partner or affiliate of Borrower or any affiliate of a partner of Borrower, if any, during the Fifteen Year Compliance Period, and (ii) after the expiration of the Fifteen Year Compliance Period asset management fees payable to partners of Borrower, in the amounts approved by the County as set forth in Section 3.19 of the County Loan Agreement.

(zz) "Permanent Financing" means the sum of the following amounts: (i) the County Loan; (ii) the Housing Authority Loan; (iii) the NPLH HCD Loan; (iv) the MHP HCD Loan; (v) the HTSV Loan; (vi) the Seller Loan; (vii) the Tax Credit Investor Equity; and (viii) the GP Capital Contribution.

(aaa) "Property" has the meaning set forth in Paragraph B of the Recitals.

(bbb) "Residual Receipts" means for each calendar year, the amount by which Gross Revenue exceeds Annual Operating Expenses.

(ccc) "SAHA" has the meaning set forth in Paragraph B of the Recitals.

(ddd) "Seller Loan" has the meaning set forth in Section 1.1(d)(vi).

(eee) "Special County Loan Payment" has the meaning set forth in Section 3(a).

(fff) "Special Housing Authority Loan Payment" has the meaning in Section 3(b).

(ggg) "Statement of Residual Receipts" means an itemized statement of Residual Receipts.

(hhh) "Tax Credit Investor Equity" has the meaning set forth in Section 1.1(d)(vii).

(iii) "Term" means the period of time that commences on the date of this Agreement, and expires, unless sooner terminated in accordance with this Agreement, on the fifty-fifth (55<sup>th</sup>) anniversary of the Completion Date; provided, however, if a record of the Completion Date cannot be located or established, the Term will expire on the fifty-seventh (57<sup>th</sup>) anniversary of this Agreement.

## 2. Annual Payments to County and Housing Authority.

### (a) County Loan.

i. Commencing on June 1, 2023, and on June 1 of each year thereafter during the Term, Borrower shall make a loan payment to the County in an amount equal to the sum of (1) the County Loan Prorata Percentage of the Lenders' Share of Residual Receipts, and (2) the results obtained by multiplying the County Additional Prorata Share by Borrower's Shared Portion of Residual Receipts (each such payment, an "Annual County Loan Payment"). A numerical example of the methodology to be used to calculate the Annual County Loan Payment is shown in Exhibit B attached hereto. In the event of a conflict between the text of this Section 2(a) and Exhibit B, the text of this Section 2(a) will prevail. The County shall apply all Annual County Loan Payments to the County Loan as follows: (1) first, to accrued interest, and (2) second, to principal.

ii. Borrower shall repay the County Loan pursuant to the terms of the County Loan Agreement and the County Note. In the event of any conflict between the repayment terms and provisions of the County Loan Agreement and this Agreement, the provisions of this Agreement apply. The County may not consent to any amendment or waiver of the terms of the County Loan Agreement or the County Note if such amendment or waiver could reasonably be deemed to materially adversely affect the Housing Authority, without the Housing Authority's prior written approval, which the Housing Authority may withhold in its sole discretion.

(b) Housing Authority Loan.

i. Commencing on June 1, 2023, and on June 1 of each year thereafter during the Term, Borrower shall make a loan payment to the Housing Authority in an amount equal to the sum of (1) the Housing Authority Loan Prorata Percentage of the Lenders' Share of Residual Receipts, and (2) the results obtained by multiplying the Housing Authority Additional Prorata Share by Borrower's Shared Portion of Residual Receipts (each such payment, an "Annual Housing Authority Loan Payment"). A numerical example of the methodology to be used to calculate the Annual Housing Authority Loan Payment is shown in Exhibit B attached hereto. In the event of a conflict between the text of this Section 2(b) and Exhibit B, the text of this Section 2(b) will prevail. The Housing Authority shall apply all Annual Housing Authority Loan Payments to the Housing Authority Loan as follows: (1) first, to accrued interest, and (2) second, to principal for the Housing Authority Loan.

ii. Borrower shall repay the Housing Authority Loan pursuant to the terms of the Housing Authority Loan Agreement and the Housing Authority Note. In the event of any conflict between the repayment terms of the Housing Authority Loan Agreement and this Agreement, the provisions of this Agreement apply. The Housing Authority may not consent to any amendment or waiver of the terms of the Housing Authority Loan Agreement or the Housing Authority Note, if such amendment or waiver could reasonably be deemed to materially adversely affect the County, without the County's prior written approval, which the County may withhold in its sole discretion.

3. Special Repayment from Net Proceeds of Permanent Financing.

(a) To the extent consistent with the regulations applicable to the NPLH HCD Loan and MHP HCD Loan, no later than ten (10) days after the date Borrower receives its final capital contribution from the Investor Limited Partner, Borrower shall pay to the County as a special repayment of the County Loan, an amount equal to the result obtained by multiplying the County Additional Prorata Percentage by the Available Net Proceeds (the "Special County Loan Payment").

(b) To the extent consistent with the regulations applicable to the NPLH HCD Loan and MHP HCD Loan, no later than ten (10) days after the date Borrower receives its final capital contribution from the Investor Limited Partner, Borrower shall pay to the Housing Authority as a special repayment of the Housing Authority Loan, an amount equal to the result obtained by multiplying the Housing Authority Additional Prorata Percentage by the Available Net Proceeds (the "Special Housing Authority Loan Payment").

(c) No later than one hundred eighty (180) days following completion of construction of the Development, Borrower shall submit to the County and the Housing Authority a preliminary calculation of the Net Proceeds of Permanent Financing and a draft of the Final Cost Certification. The County and the Housing Authority shall approve or disapprove Borrower's determination of the amount of the Net Proceeds of Permanent Financing in writing within thirty (30) days of receipt. If Borrower's determination is disapproved by the County or the Housing Authority, Borrower shall re-submit documentation to the County and the Housing Authority until approval of the County and the Housing Authority is obtained.

4. Reports and Accounting of Residual Receipts.

(a) Annual Reports. In connection with the Annual County Loan Payment and the Annual Housing Authority Loan Payment, Borrower shall furnish to the Housing Authority and the County:

i. The Statement of Residual Receipts for the relevant period. The first Statement of Residual Receipts will cover the period that begins on January 1, 2022 and ends on December 31 of that same year. Subsequent statements of Residual Receipts will cover the twelve-month period that ends on December 31 of each year;

ii. A statement from the independent public accountant that audited Borrower's financial records for the relevant period, which statement must confirm that Borrower's calculation of the Lender's Share of Residual Receipts and Borrower's Shared Portion of Residual Receipts is accurate based on Operating Income and Annual Operating Expenses; and

iii. Any additional documentation reasonably required by the County or the Housing Authority to substantiate Borrower's calculation of Lender's Share of Residual Receipts and Borrower's Shared Portion of Residual Receipts.

(b) Books and Records. Borrower shall keep and maintain at the principal place of business of Borrower set forth in Section 5 below, or elsewhere with the written consent of the County and the Housing Authority, full, complete and appropriate books, record and accounts relating to the Development, including all books, records and accounts necessary or prudent to evidence and substantiate in full detail Borrower's calculation of Residual Receipts and disbursements of Residual Receipts. Borrower shall cause all books, records and accounts relating to its compliance with the terms, provisions, covenants and conditions of this Agreement to be kept and maintained in accordance with generally accepted accounting principles consistently applied, and to be consistent with requirements of this Agreement, which provide for the calculation of Residual Receipts on a cash basis. Borrower shall cause all books, records, and accounts to be open to and available for inspection by the County and the Housing Authority, their auditors or other authorized representatives at reasonable intervals during normal business hours. Borrower shall cause copies of all tax returns and other reports that Borrower may be required to furnish to any government agency to be open for inspection by the County and the Housing Authority at all reasonable times at the place that the books, records and accounts of Borrower are kept. Borrower shall preserve records on which any statement of Residual Receipts is based for a period of not less than five (5) years after such statement is rendered, and for any period during which there is an audit undertaken pursuant to subsection (c) below then pending.

(c) County and Housing Authority Audits.

i. The receipt by the County or the Housing Authority of any statement pursuant to subsection (a) above or any payment by Borrower or acceptance by the County or the Housing Authority of any loan repayment for any period does not bind the County or the Housing Authority as to the correctness of such statement or such payment. The County or the Housing Authority or any designated agent or employee of the County or the Housing

Authority is entitled at any time to audit the Residual Receipts and all books, records, and accounts pertaining thereto. The County and/or the Housing Authority may conduct such audit during normal business hours at the principal place of business of Borrower and other places where records are kept. Immediately after the completion of an audit, the County or the Housing Authority, as the case may be, shall deliver a copy of the results of the audit to Borrower.

ii. If it is determined as a result of an audit that there has been a deficiency in a loan repayment to the County and/or the Housing Authority, then such deficiency will become immediately due and payable, with interest at the Default Rate from the date the deficient amount should have been paid. In addition, if the audit determines that Residual Receipts have been understated for any year by the greater of (i) \$2,500, and (ii) an amount that exceeds five percent (5%) of the Residual Receipts, then, in addition to paying the deficiency with interest, Borrower shall pay all of the costs and expenses connected with the audit and review of Borrower's accounts and records incurred by the County and/or the Housing Authority.

5. Subordination.

(a) The County Recorded Documents will unconditionally be and at all times remain a lien or charge on the Property prior and superior to the Housing Authority Recorded Documents.

(b) The Housing Authority intentionally and unconditionally subordinates all of its rights, titles and interests in and to the Property that result from the Housing Authority Recorded Documents, to the lien or charge of the County Recorded Documents upon the Property and understands that in reliance upon, and in consideration of, this subordination, specific loan modifications are being and will be made by the County and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this subordination.

6. Notice of Default. The County and the Housing Authority shall each notify the other promptly upon declaring a default or learning of the occurrence of any material event of default, or any event which with the lapse of time would become a material event of default, under its respective loan documents for the Housing Authority Loan and the County Loan.

7. Notices. All notices required or permitted by any provision of this Agreement must be in writing and sent by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the Parties as follows:

Housing Authority:      Housing Authority of the  
   City of Pittsburg  
   65 Civic Avenue  
   Pittsburg, CA 94565  
   Attn: Executive Director

County:                      County of Contra Costa  
   Department of Conservation and Development  
   30 Muir Road

Martinez, California 94553  
Attention: Assistant Deputy Director

Borrower: Veterans Square, L.P.  
c/o Satellite Affordable Housing Associates  
1835 Alcatraz Avenue  
Berkeley, CA 94703  
Attention: Chief Executive Officer

Investor Limited  
Partner: Raymond James Tax Credit Fund XX L.L.C.  
c/o Raymond James Tax Credit Funds, Inc.  
880 Carillon Parkway  
St. Petersburg, Florida 33716  
Facsimile No.: 727-567-8455  
Attention: Steven J. Kropf, President

with a copy to: Nixon Peabody LLP  
Exchange Place  
53 State Street  
Boston, MA 02109  
Attn: Nathan A. Bernard  
Facsimile No.: 617-345-1000

Such written notices, demands, and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate as provided in this Section. Receipt will be deemed to have occurred on the date marked on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

8. Titles. Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and are to be disregarded in interpreting any part of the Agreement's provisions.

9. California Law. This Agreement is governed by the laws of the State of California.

10. Severability. If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions will continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

11. Legal Actions. If any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach of this Agreement, then the Party prevailing in any such action shall be entitled to recover against the Party not prevailing all reasonable attorneys' fees and costs incurred in such action.

12. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the subordination of the Housing Authority Recorded Documents to the lien or charge of the County Recorded Documents and the division of the

Lenders' Share of Residual Receipts, and Borrower's Shared Portion of Residual Receipts between the Housing Authority and the County.

13. Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

14. Amendments. This Agreement may not be modified except by written instrument executed by and amongst the Parties.

*[Remainder of Page Left Intentionally Blank]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

**BORROWER:**

VETERANS SQUARE, L.P.,  
a California limited partnership

By: Veterans Square LLC,  
a California limited liability company,  
its general partner

By: Satellite Affordable Housing Associates,  
a California nonprofit public benefit  
corporation, its manager

By: \_\_\_\_\_  
Susan Friedland,  
Chief Executive Officer

**APPROVED AS TO FORM:**

SHARON L. ANDERSON  
County Counsel

By: \_\_\_\_\_  
Kathleen Andrus  
Deputy County Counsel

**COUNTY:**

COUNTY OF CONTRA COSTA, a political  
subdivision of the State of California

By: \_\_\_\_\_  
John Kopchik  
Director, Department of Conservation and  
Development

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Donna Mooney  
Authority Attorney

**HOUSING AUTHORITY:**

CITY OF PITTSBURG HOUSING  
AUTHORITY, a public body corporate and politic

By: \_\_\_\_\_  
Garrett Evans, Executive Director



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public

EXHIBIT A  
LEGAL DESCRIPTION OF THE PROPERTY

The land referred to is situated in the County of Contra Costa, City of Pittsburg, State of California, and is described as follows:

Parcel One:

Lots 1, 2, 15 and 16 Block 79, Map of Resubdivision of Block 79, City of Pittsburg, filed May 18, 1926 in Map Book 19, Page 504, Contra Costa County Records.

APN: 085-182-001

Parcel Two:

Lots 8 and 9, Block 78, as delineated upon the certain Map entitled "Official Map of the City of Pittsburg", filed March 23, 1914, Contra Costa County Records.

APN: 085-196-001

EXHIBIT B  
COUNTY/HOUSING AUTHORITY  
RESIDUAL RECEIPTS NUMERICAL EXPLANATION

[To be Attached]

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Contra Costa County  
Department of Conservation and Development  
30 Muir Road  
Martinez, CA 94553  
Attn: Assistant Deputy Director

No fee for recording pursuant to  
Government Code Section 27383 and 27388.1

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COUNTY REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS  
**(Veterans Square)**

This County Regulatory Agreement and Declaration of Restrictive Covenants (the "County Regulatory Agreement") is dated September \_\_, 2020 and is between the County of Contra Costa, a political subdivision of the State of California (the "County"), and Veterans Square, L.P., a California limited partnership ("Borrower").

RECITALS

A. Defined terms used but not defined in these recitals are as defined in Article 1 of this County Regulatory Agreement.

B. The County has received Home Investment Partnerships Act ("HOME") funds from the United States Department of Housing and Urban Development ("HUD") pursuant to the Cranston-Gonzales National Housing Act of 1990 ("HOME Funds"). The HOME Funds must be used by the County in accordance with 24 C.F.R. Part 92.

C. Pursuant to a Purchase and Sale Agreement dated July 22, 2020, between Satellite Affordable Housing Associates, a California nonprofit public benefit corporation ("SAHA") and Borrower, Borrower intends to purchase that certain real property located at 901 Los Medanos Street and 295 East 10th Street, in the City of Pittsburg, County of Contra Costa, State of California, as more particularly described in Exhibit A (the "Property"). Borrower intends to construct thirty (30) housing units on the Property, twenty-nine (29) of which are for rental to extremely low, very low and low income households, and one (1) manager's unit (the "Development"). The Development, as well as all landscaping, roads and parking spaces on the Property and any additional improvements on the Property, are the "Improvements".

D. Pursuant to a Development Loan Agreement of even date herewith between the County and Borrower (the "Loan Agreement"), the County is lending Borrower Two Million Two Hundred Thousand Four Hundred Dollars (\$2,200,400) of HOME Funds (the "County Loan") to assist in the construction of the Development. The County Loan funds are HOME

Funds that have been are set aside for entities designated as a Community Housing Development Organization ("CHDO") as defined in 24 C.F.R. 92.2.

E. In addition to the Loan Agreement, the County Loan is evidenced by the following documents: (i) a deed of trust with assignment of rents, security agreement, and fixture filing of even date herewith, among Borrower, as trustor, Old Republic Title Company, as trustee, and the County, as beneficiary; (ii) an intercreditor agreement of even date herewith among the Housing Authority of the City of Pittsburg, the County, and Borrower; (iii) a promissory note executed by Borrower of even date herewith in the amount of the County Loan; and (iv) the County Regulatory Agreement, executed by Borrower of even date herewith, (collectively, the "Loan Documents"). The Loan Documents are described in more detail in the Loan Agreement.

F. The County has the authority to lend the County Loan to Borrower pursuant to Government Code Section 26227, which authorizes counties to spend county funds for programs that will further a county's public purposes. In addition, the County has the authority to loan the HOME Funds pursuant to 24 C.F.R. 92.205.

G. The County has agreed to make the County Loan on the condition that Borrower maintain and operate the Development in accordance with restrictions set forth in this County Regulatory Agreement and the HOME Regulatory Agreement, and in the related documents evidencing the County Loan. Fourteen (14) of the Units are restricted by the County pursuant to this County Regulatory Agreement, which are the same fourteen (14) Units restricted by the County pursuant the HOME Regulatory Agreement.

H. As it applies to the County-Assisted Units this County Regulatory Agreement will be in effect for the Term. The HOME Regulatory Agreement as it applies to the HOME-Assisted Units will be in effect for the HOME Term. Pursuant to Section 6.16 below, compliance with the terms of the HOME Regulatory Agreement will be deemed compliance with this County Regulatory Agreement during the HOME Term.

I. In consideration of receipt of the County Loan at an interest rate substantially below the market rate, Borrower agrees to observe all the terms and conditions set forth below.

The parties therefore agree as follows:

## AGREEMENT

### ARTICLE 1 DEFINITIONS

#### 1.1 Definitions.

The following terms have the following meanings:

- (a) "Accessibility Requirements" has the meaning set forth in Section 2.1(e).

(b) "Actual Household Size" means the actual number of persons in the applicable household.

(c) "Adjusted Income" means with respect to the Tenant of each Unit, the Tenant's total anticipated annual income as defined in 24 CFR 5.609 and as calculated pursuant to 24 CFR 5.611.

(d) "Assumed Household Size" means the household size "adjusted for family size appropriate to the unit" as such term is defined in Health & Safety Code Section 50052.5(h), used to calculate Rent.

(e) "CHDO" has the meaning set forth in Paragraph E of the Recitals.

(f) "City" means the City of Pittsburg, California, a municipal corporation.

(g) "Completion Date" means the date a final certificate of occupancy, or equivalent document is issued by the City to certify that the Development may be legally occupied.

(h) "County-Assisted Units" means the fourteen (14) Units to be constructed on the Property that are restricted to occupancy by Extremely Low Income Households in compliance with Section 2.1 below.

(i) "County Loan" has the meaning set forth in Paragraph D of the Recitals.

(j) "County Regulatory Agreement" has the meaning set forth in the first paragraph of this County Regulatory Agreement.

(k) "Deed of Trust" means the Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing of even date herewith by and among Borrower, as trustor, Old Republic Title Company, as trustee, and the County, as beneficiary, that encumbers the Property to secure repayment of the County Loan and Borrower's performance of the Loan Documents.

(l) "Development" has the meaning set forth in Paragraph C of the Recitals.

(m) "Development Regulatory Documents" has the meaning set forth in Section 4.2(a).

(n) "Extremely Low Income Household" means a household with an Adjusted Income that does not exceed thirty percent (30%) of Median Income, adjusted for Actual Household Size.

(o) "Extremely Low Income Rent" means one-twelfth (1/12) of thirty percent (30%) of thirty percent (30%) of Median Income, adjusted for Assumed Household Size.

(p) "Extremely Low Income Units" means the Units which, pursuant to Section 2.1(a) below, are required to be occupied by Extremely Low Income Households.



(q) "Fifteen Year Compliance Period" means the fifteen (15) year compliance period as described in Section 42(i)(1) of the Internal Revenue Code of 1986, as amended.

(r) "HOME" has the meaning set forth in Paragraph B of the Recitals.

(s) "HOME Funds" has the meaning set forth in Paragraph B of the Recitals.

(t) "HOME Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants of even date herewith, between the County and Borrower evidencing County requirements applicable to the County Loan, to be recorded against the Property concurrently herewith.

(u) "HOME Term" means the term of the HOME Regulatory Agreement which commences as of the date of the HOME Regulatory Agreement, and unless sooner terminated pursuant to the terms of the HOME Regulatory Agreement, expires on the twenty-first (21st) anniversary of the Completion Date; provided, however, if a record of the Completion Date cannot be located or established, the HOME Term will expire on the twenty-third (23rd) anniversary of the HOME Regulatory Agreement.

(v) "HUD" has the meaning set forth in Paragraph B of the Recitals.

(w) "Investor Limited Partner" means, Raymond James Tax Credit Fund XX, LLC, a \_\_\_\_\_ limited liability company, its successors and assigns.

(x) "Loan Agreement" has the meaning set forth in Paragraph D of the Recitals.

(y) "Loan Documents" has the meaning set forth in Paragraph E of the Recitals.

(z) "Low Income Household" means a Tenant with an Adjusted Income that does not exceed eighty percent (80%) of Median Income, adjusted for Actual Household Size.

(aa) "Low Income Rent" means one-twelfth (1/12) of thirty percent (30%) of sixty-five percent (65%) of Median Income, adjusted for Assumed Household Size.

(bb) "Maintenance Standards" has the meaning set forth in Section 5.6(a).

(cc) "Marketing Plan" has the meaning set forth in Section 4.3(a).

(dd) "Median Income" means the median gross yearly income, adjusted for Actual Household Size as specified herein, in the County of Contra Costa, California, as published from time to time by HUD. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the County shall provide Borrower with other income determinations that are reasonably similar with respect to methods of calculation to those previously published by HUD.

(ee) "Operating Budget" has the meaning set forth in Section 2.6(a).

(ff) "Partnership Agreement" means the Amended and Restated Agreement of Limited Partnership that governs the operation and organization of Borrower as a California limited partnership.

(gg) "Property" has the meaning set forth in Paragraph C of the Recitals.

(hh) "Rent" means the total monthly payments by the Tenant of a Unit for the following: use and occupancy of the Unit and land and associated facilities; any separately charged fees or service charges assessed by Borrower which are customarily charged in rental housing and required of all Tenants, other than security deposits; an allowance for the cost of an adequate level of service for utilities paid by the Tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV; and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Borrower, and paid by the Tenant.

(ii) "Rental Subsidy" has the meaning set forth in Section 2.6(a).

(jj) " SAHA" has the meaning set forth in Paragraph C of the Recitals.

(kk) "Subsidy Units" has the meaning set forth in Section 2.6(a).

(ll) "Tenant" means the tenant household that occupies a Unit in the Development.

(mm) "Tenant Selection Plan" has the meaning set forth in Section 4.3(b).

(nn) "Term" means the term of this County Regulatory Agreement which commences as of the date of this County Regulatory Agreement, and unless sooner terminated pursuant to the terms of this County Regulatory Agreement, expires on the fifty-fifth (55th) anniversary of the Completion Date; provided, however, if a record of the Completion Date cannot be located or established, the Term will expire on the fifty-seventh (57th) anniversary of this County Regulatory Agreement.

(oo) "Transfer" has the meaning set forth in Section 6.1.

(pp) "Unit(s)" means one (1) or more of the units in the Development.

## ARTICLE 2 AFFORDABILITY AND OCCUPANCY COVENANTS

### 2.1 Occupancy Requirements.

(a) Extremely Low Income Units. During the Term Borrower shall cause fourteen (14) Units to be rented to and occupied by or, if vacant, available for occupancy by, Extremely Low Income Households.

(b) Intermingling of Units. Borrower shall cause the County-Assisted Units to be intermingled throughout the Development and of comparable quality to all other Units. All Tenants must have equal access to and enjoyment of all common facilities in the Development. The County-Assisted Units are all one bedroom Units.

(c) Disabled Persons Occupancy.

(1) Borrower shall cause the Development to be operated at all times in compliance with all applicable federal, state, and local disabled persons accessibility requirements including, but not limited to the applicable provisions of: (i) the Unruh Act, (ii) the California Fair Employment and Housing Act, (iii) Section 504 of the Rehabilitation Act of 1973, (iv) the United States Fair Housing Act, as amended, (v) the Americans With Disabilities Act of 1990, and (vi) Chapters 11A and 11B of Title 24 of the California Code of Regulations, which relate to disabled persons access (collectively, the "Accessibility Requirements").

(2) Borrower shall indemnify, protect, hold harmless and defend (with counsel reasonably satisfactory to the County) the County, and its board members, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of Borrower's failure to comply with the Accessibility Requirements. This obligation to indemnify survives termination of this HOME Regulatory Agreement, repayment of the County Loan and the reconveyance of the Deed of Trust.

2.2 Allowable Rent.

(a) Extremely Low Income Rent. Subject to the provisions of Section 2.5 below, the Rent paid by Tenants of Extremely Low Income Units may not exceed the Extremely Low Income Rent.

(b) No Additional Fees. Borrower may not charge any fee, other than Rent, to any Tenant of the County-Assisted Units for any housing or other services provided by Borrower.

2.3 Compliance with TCAC Requirements. During the term of any regulatory agreement associated with the provision of low income housing tax credits by the California Tax Credit Allocation Committee ("TCAC") and recorded against the Property (the "TCAC Regulatory Agreement"), Borrower may use the occupancy standards, occupancy assumptions, income limits, and rent levels that are permitted by TCAC in the TCAC Regulatory Agreement, in place of such requirements imposed by this County Regulatory Agreement.

2.4 Rent Increases.

(a) Rent Amount. The initial Rent for all County-Assisted Units must be approved by the County prior to occupancy. The County will provide Borrower with a schedule of maximum permissible Rents for the County-Assisted Units and the maximum monthly allowances for utilities and services (excluding telephone) annually.

(b) Rent Increases. All Rent increases for all County-Assisted Units are subject to County approval. No later than sixty (60) days prior to the proposed implementation

of any Rent increase affecting a County Assisted Unit, Borrower shall submit to the County a schedule of any proposed increase in the Rent charged for County-Assisted Units. The Rent for such Units may be increased no more than once annually based upon the annual income certification described in Article 3. The County will disapprove a Rent increase if it violates the schedule of maximum permissible Rents for the County-Assisted Units provided to Borrower by the County, or is greater than a 5% increase over the previous year's Rent, provided that the County may approve a request from Borrower for a rent increase greater than 5%, with a written explanation for the request from Borrower. Borrower shall give Tenants written notice at least thirty (30) days prior to any Rent increase, following completion of the County approval process set forth above.

## 2.5 Increased Income of Tenants.

(a) Increased Income above Extremely Low Income but below Low Income Limit. If, upon the annual certification of the income of a Tenant of an Extremely Low Income Unit, Borrower determines that the income of the Tenant has increased above the qualifying limit for an Extremely Low Income Household, but not above the qualifying income for a Low Income Household, the Tenant may continue to occupy the Unit and the Tenant's Rent will remain at the Extremely Low Income Rent. Borrower shall then rent the next available Unit to an Extremely Low Income Household to comply with the requirements of Section 2.1(a) above, at a Rent not exceeding the maximum Rent specified in Section 2.2(a), or re-designate another comparable Unit in the Development with an Extremely Low Income Household an Extremely Low Income Unit, to comply with the requirements of Section 2.1(a) above. Upon renting the next available Unit in accordance with Section 2.1(a) or re-designating another Unit in the Development as an Extremely Low Income Unit, the Unit with the over-income Tenant will no longer be considered a County-Assisted Unit.

(b) Non-Qualifying Household. If, upon the annual certification of the income a Tenant of a County Assisted Unit, Borrower determines that the Tenant's income has increased above the qualifying limit for a Low Income Household, the Tenant may continue to occupy the Unit. Upon the expiration of such Tenant's lease, Borrower may:

(1) With 60 days' advance written notice, increase such Tenant's Rent to the lesser of (i) one-twelfth (1/12) of thirty percent (30%) of the actual Adjusted Income of the Tenant, and (ii) the fair market rent, and

(2) Rent the next available Unit to an Extremely Low Income Household to comply with the requirements of Section 2.1 above, at a Rent not exceeding the maximum Rent specified in Section 2.2, or designate another comparable Unit that is occupied by an Extremely Low Income Household as a County Assisted Unit, to meet the requirements of Section 2.1 above. On the day that Borrower complies with Section 2.1 in accordance with this Section 2.4(e), the Unit with the over-income Tenant will no longer be considered a County Assisted Unit.

(c) Termination of Occupancy. Upon termination of occupancy of a County Assisted Unit by a Tenant, such Unit will be deemed to be continuously occupied by a household of the same income level as the initial income level of the vacating Tenant, until such unit is

reoccupied, at which time categorization of the Unit will be established based on the occupancy requirements of Section 2.1.

## 2.6 Loss of Subsidy.

(a) It is anticipated that certain Units in the Development (the "Subsidy Units") will receive Project-Based Section 8 or other rental subsidy payments (the "Rental Subsidy") throughout the Term, as reflected in the Approved Development Budget. Notwithstanding Section 2.4(b), if any change in federal law occurs, or any action (or inaction) by Congress or any federal or State agency occurs, which results in a reduction, termination or nonrenewal of the Rental Subsidy through no fault of the Borrower, such that the Rental Subsidy shown on the Approved Development Budget is no longer available, Borrower may increase the Rent on one or more of the County-Assisted Units that overlap with a Subsidy Unit, to the Low Income Rent, subject to the following requirements:

(1) At the time Borrower requests an increase in the Rent, Borrower shall provide the County with an operating budget for the Development for the County's approval pursuant to Section 4.4 of the Loan Agreement, showing the impact of the loss or reduction of the Rental Subsidy (the "Operating Budget");

(2) The number of County-Assisted Units subject to the Rent increase and the level of rent increase may not be greater than the amount required to ensure that the Development generates sufficient income to cover its operating costs and debt service as shown on the Operating Budget, and as is necessary to maintain the financial stability of the Development; and

(3) Any such Rent increase must be pursuant to a transition plan approved by the County, consistent with remedial measures set forth in California Code of Regulations Title 4, Division 17, Chapter 1, Section 10337(a)(3) or successor regulation applicable to California's Federal and State Low Income Housing Tax Credit Program.

(b) Borrower shall use good faith efforts to obtain alternative sources of rental subsidies and shall provide the County with annual progress reports on efforts to obtain alternative sources of rental subsidies that would allow the rents on the County-Assisted Units to be reduced back to the Rents set out in Section 2.2. Upon receipt of any alternative rental subsidies, Borrower shall reduce the rents on the County-Assisted Units back to the Rents set out in Section 2.2, to the extent that the alternative rental subsidies provide sufficient income to cover the operating costs and debt service of the Development as shown on the Operating Budget.

## ARTICLE 3 INCOME CERTIFICATION; REPORTING; RECORDS

3.1 Income Certification. Borrower shall obtain, complete, and maintain on file, within sixty (60) days before expected occupancy and annually thereafter, income certifications from each Tenant renting any of the County-Assisted Units. Borrower shall make a good faith effort to verify the accuracy of the income provided by the applicant or occupying household, as

the case may be, in an income certification. To verify the information, Borrower shall take two or more of the following steps: (i) obtain a pay stub for the most recent pay period; (ii) obtain an income tax return for the most recent tax year; (iii) conduct a credit agency or similar search; (iv) obtain an income verification form from the applicant's current employer; (v) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (vi) if the applicant is unemployed and does not have a tax return, obtain another form of independent verification. Where applicable, Borrower shall examine at least two (2) months of relevant source documentation. Copies of Tenant income certifications are to be available to the County upon request.

### 3.2 Reporting Requirements.

(a) Borrower shall submit to the County within one hundred eighty (180) days after the Completion Date, and not later than forty-five (45) days after the close of each calendar year, or such other date as may be requested by the County, a report that includes the following data for each Unit and specifically identifies which Units are County-Assisted Units: (i) Tenant income, (ii) the number of occupants, (iii) the Rent, (iv) the number of bedrooms, and (v) the initial address of each Tenant. To demonstrate continued compliance with Section 2.1 Borrower shall cause each annual report after the initial report to include a record of any subsequent Tenant substitutions and any vacancies in County-Assisted Units that have been filled.

(b) Borrower shall submit to the County within forty-five (45) days after receipt of a written request, or such other time agreed to by the County, any other information or completed forms requested by the County in order to comply with reporting requirements of HUD, the State of California, and the County.

3.3 Tenant Records. Borrower shall maintain complete, accurate and current records pertaining to income and household size of Tenants. All Tenant lists, applications and waiting lists relating to the Development are to be at all times: (i) separate and identifiable from any other business of Borrower, (ii) maintained as required by the County, in a reasonable condition for proper audit, and (iii) subject to examination during business hours by representatives of the County. Borrower shall retain copies of all materials obtained or produced with respect to occupancy of the Units for a period of at least five (5) years. The County may examine and make copies of all books, records or other documents of Borrower that pertain to the Development.

### 3.4 Development Records.

(a) Borrower shall keep and maintain at the principal place of business of the Borrower set forth in Section 6.11 below, or elsewhere with the County's written consent, full, complete and appropriate books, records and accounts relating to the Development. Borrower shall cause all books, records and accounts relating to its compliance with the terms, provisions, covenants and conditions of the Loan Documents to be kept and maintained in accordance with generally accepted accounting principles consistently applied, and to be consistent with requirements of this County Regulatory Agreement. Borrower shall cause all books, records, and accounts to be open to and available for inspection and copying by HUD, the County, its auditors or other authorized representatives at reasonable intervals during normal business hours.

Borrower shall cause copies of all tax returns and other reports that Borrower may be required to furnish to any government agency to be open for inspection by the County at all reasonable times at the place that the books, records and accounts of Borrower are kept. Borrower shall preserve such records (including the records required under the HOME Regulatory Agreement) for a period of not less than five (5) years after their creation in compliance with all HUD records and accounting requirements. If any litigation, claim, negotiation, audit exception, monitoring, inspection or other action relating to the use of the County Loan is pending at the end of the record retention period stated herein, then Borrower shall retain the records until such action and all related issues are resolved. Borrower shall cause the records to include all invoices, receipts, and other documents related to expenditures from the County Loan funds. Borrower shall cause records to be accurate and current and in a form that allows the County to comply with the record keeping requirements contained in 24 C.F.R. 92.508. Such records are to include but are not limited to:

(i) Records providing a full description of the activities undertaken with the use of the County Loan funds;

(ii) Records demonstrating compliance with the maintenance requirements set forth in Section 5.6;

(iii) Records documenting compliance with the fair housing, equal opportunity, and affirmative fair marketing requirements;

(iv) Financial records; and

(v) Records demonstrating compliance with the marketing, tenant selection, affordability, and income requirements.

(b) The County shall notify Borrower of any records it deems insufficient. Borrower has fifteen (15) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the County in such notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Borrower must begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

#### ARTICLE 4 OPERATION OF THE DEVELOPMENT

4.1 Residential Use. Borrower shall operate the Development for residential use only. No part of the Development may be operated as transient housing.

4.2 Compliance with Loan Documents and Regulatory Requirements.

(a) Borrower's actions with respect to the Property shall at all times be in full conformity with: (i) all requirements of the Loan Documents; (ii) all requirements imposed on projects assisted with HOME Funds as contained in 42 U.S.C. Section 12701, et seq., 24 C.F.R. Part 92, and other implementing rules and regulations; and (iii) any other regulatory requirements imposed on the Development including but not limited to regulatory agreements

associated with the Low Income Housing Tax Credits provided by the California Tax Credit Allocation Committee, and rental subsidies provided to the Development (the "Development Regulatory Documents").

(b) Borrower shall promptly notify the County in writing of the existence of any default under any Development Regulatory Documents, and provide the County copies of any such notice of default.

#### 4.3 Marketing Plan; Tenant Selection Plan.

##### (a) Marketing Plan.

(1) No later than six (6) months prior to the date construction of the Development is projected to be complete, Borrower shall submit to the County for approval its plan for marketing the Development to income-eligible households as required by this County Regulatory Agreement (the "Marketing Plan"). The Marketing Plan must include information on affirmative marketing efforts and compliance with fair housing laws and 24 C.F.R. 92.351(a).

(2) Upon receipt of the Marketing Plan, the County will promptly review the Marketing Plan and will approve or disapprove it within fifteen (15) days after receipt. If the Marketing Plan is not approved, the County will give Borrower specific reasons for such disapproval and Borrower shall submit a revised Marketing Plan within fifteen (15) days of notification of the County's disapproval. Borrower shall follow this procedure for resubmission of a revised Marketing Plan until the Marketing Plan is approved by the County. If the Borrower does not submit a revised Marketing Plan that is approved by the County at least three (3) months prior to the date construction of the Development is projected to be complete, Borrower will be in default of this County Regulatory Agreement.

##### (b) Tenant Selection Plan.

(1) No later than six (6) months prior to the date construction of the Development is projected to be complete, Borrower shall submit to the County, for its review and approval, Borrower's written tenant selection plan (the "Tenant Selection Plan"). Borrower's Tenant Selection Plan must, at a minimum, meet the requirements for tenant selection set out in 24 C.F.R. 92.253(d), and any modifications thereto.

(2) Upon receipt of the Tenant Selection Plan, the County will promptly review the Tenant Selection Plan and will approve or disapprove it within fifteen (15) days after receipt. If the Tenant Selection Plan is not approved, the County will give Borrower specific reasons for such disapproval and Borrower shall submit a revised Tenant Selection Plan within fifteen (15) days of notification of the County's disapproval. Borrower shall follow this procedure for resubmission of a revised Tenant Selection Plan until the Tenant Selection Plan is approved by the County. If the Borrower does not submit a revised Tenant Selection Plan that is approved by the County at least three (3) months prior to the date construction of the Development is projected to be complete, Borrower will be in default of this County Regulatory Agreement.



#### 4.4 Lease Provisions.

(a) No later than four (4) months prior to the date construction of the Development is projected to be complete, Borrower shall submit to the County for approval Borrower's proposed form of lease agreement for the County's review and approval. When leasing Units within the Development, Borrower shall use the form of lease approved by the County. The form of lease must comply with all requirements of this County Regulatory Agreement, the other Loan Documents and must, among other matters:

(1) provide for termination of the lease for failure to: (i) provide any information required under this County Regulatory Agreement or reasonably requested by Borrower to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, for occupancy in the Development in accordance with the standards set forth in this County Regulatory Agreement, or (ii) qualify as an Extremely Low Income Household as a result of any material misrepresentation made by such Tenant with respect to the income computation;

(2) be for an initial term of not less than one (1) year, unless by mutual agreement between the Tenant and Borrower, and provide for no increase in Rent during such year. After the initial year of tenancy, the lease may be month-to-month by mutual agreement of Borrower and the Tenant. Notwithstanding the above, any rent increases are subject to the requirements of Section 2.3 above; and

(3) include a provision that requires a Tenant who is residing in a Unit required to be accessible pursuant to Section 3.9(b) of the Loan Agreement, and who is not in need of an accessible Unit to move to a non-accessible Unit when a non-accessible Unit becomes available and another Tenant or prospective Tenant is in need of an accessible Unit.

(b) During the Term, Borrower shall comply with the Marketing Plan and Tenant Selection Plan approved by the County.

(c) Any termination of a lease or refusal to renew a lease for a County Assisted Unit within the Development must be preceded by not less than thirty (30) days written notice to the Tenant by Borrower specifying the grounds for the action.

### ARTICLE 5 PROPERTY MANAGEMENT AND MAINTENANCE

5.1 Management Responsibilities. Borrower is responsible for all management functions with respect to the Development, including without limitation the selection of Tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The County has no responsibility for management of the Development. Borrower shall retain a professional property management company approved by the County in its reasonable discretion to perform Borrower's management duties hereunder. An on-site property management representative shall reside at the Property.

5.2 Management Agent. Borrower shall cause the Development to be managed by an experienced management agent reasonably acceptable to the County, with a demonstrated ability to operate residential facilities like the Development in a manner that will provide decent, safe, and sanitary housing (the "Management Agent"). The County has approved Satellite Affordable Housing Associates Property Management as the Management Agent. Borrower shall submit for the County's approval the identity of any proposed subsequent management agent. Borrower shall also submit such additional information about the background, experience and financial condition of any proposed management agent as is reasonably necessary for the County to determine whether the proposed management agent meets the standard for a qualified management agent set forth above. If the proposed management agent meets the standard for a qualified management agent set forth above, the County shall approve the proposed management agent by notifying Borrower in writing. Unless the proposed management agent is disapproved by the County within thirty (30) days, which disapproval is to state with reasonable specificity the basis for disapproval, it shall be deemed approved.

5.3 Periodic Performance Review. The County reserves the right to conduct an annual (or more frequently, if deemed necessary by the County) review of the management practices and financial status of the Development. The purpose of each periodic review will be to enable the County to determine if the Development is being operated and managed in accordance with the requirements and standards of this County Regulatory Agreement. Borrower shall cooperate with the County in such reviews.

5.4 Replacement of Management Agent. If, as a result of a periodic review, the County determines in its reasonable judgment that the Development is not being operated and managed in accordance with any of the material requirements and standards of this County Regulatory Agreement, the County shall deliver notice to Borrower of its intention to cause replacement of the Management Agent, including the reasons therefor. Within fifteen (15) days after receipt by Borrower of such written notice, the County staff and Borrower shall meet in good faith to consider methods for improving the financial and operating status of the Development, including, without limitation, replacement of the Management Agent.

If, after such meeting, County staff recommends in writing the replacement of the Management Agent, Borrower shall promptly dismiss the then-current Management Agent, and shall appoint as the Management Agent a person or entity meeting the standards for a management agent set forth in Section 5.2 above and approved by the County pursuant to Section 5.2 above.

Any contract for the operation or management of the Development entered into by Borrower shall provide that the Management Agent may be dismissed and the contract terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Section constitutes a default under this County Regulatory Agreement, and the County may enforce this provision through legal proceedings as specified in Section 6.6 below.

5.5 Approval of Management Policies. Borrower shall submit its written management policies with respect to the Development to the County for its review, and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this County Regulatory Agreement.

## 5.6 Property Maintenance.

(a) Borrower shall maintain, for the entire Term of this County Regulatory Agreement, all interior and exterior improvements, including landscaping: (i) in decent, safe and sanitary condition, (ii) in good condition and repair, and (iii) free of all health and safety defects. Such maintenance must be in accordance with (i) all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials; and (ii) any other standards provided by the County (collectively, the "Maintenance Standards"). Borrower shall correct any life-threatening maintenance deficiencies immediately upon notification.

(b) At the beginning of each year of the Term, Borrower shall certify to the County that the Development is in compliance with the Maintenance Standards.

## 5.7 Property Inspections.

(a) On-Site Physical Inspections. The County will perform on-site inspections of the Development during the Term to ensure compliance with the Maintenance Standards. The County will perform an on-site inspection within twelve months after completion of construction of the Development and at least once every three (3) years during the Term. If the Development is found to have health and safety violations, the County may perform more frequent inspections. Borrower shall cooperate in such inspections.

(b) Violation of Maintenance Standards. If after an inspection, the County determines that Borrower is in violation of the Maintenance Standards, the County will provide Borrower a written report of the violations. Borrower shall correct the violations set forth in the report provided to Borrower by County. The County will perform a follow-up inspection to verify that the violations have been corrected. If such violations continue for a period of ten (10) days after delivery of the report to Borrower by the County with respect to graffiti, debris, waste material, and general maintenance, or thirty (30) days after delivery of the report to Borrower by the County with respect to landscaping and building improvements, then the County, in addition to whatever other remedy it may have at law or in equity, has the right to enter upon the Property and perform or cause to be performed all such acts and work necessary to cure the violation. Pursuant to such right of entry, the County is permitted (but is not required) to enter upon the Property and to perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Property, and to attach a lien on the Property, or to assess the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the County and/or costs of such cure, which amount Borrower shall promptly pay to the County upon demand.

ARTICLE 6  
MISCELLANEOUS

6.1 Transfers.

(a) For purposes of this Agreement, "Transfer" means any sale, assignment, or transfer, whether voluntary or involuntary, of: (i) any rights and/or duties under the Loan Documents; and/or (ii) any interest in the Development, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which possession of the Development is transferred and Borrower retains title. The term "Transfer" excludes the leasing of any single unit in the Development to an occupant in compliance with this County Regulatory Agreement. The County Director – Department of Conservation and Development is authorized to execute assignment and assumption agreements on behalf of the County to implement any approved Transfer.

(b) Except as otherwise permitted in this Section 6.1, no Transfer is permitted without the prior written consent of the County, which the County may withhold in its sole discretion. The County Loan will automatically accelerate and be due in full upon any Transfer made without the prior written consent of the County.

(c) The County hereby approves the admission of the Investor Limited Partner to Borrower as a limited partner. The County hereby approves future Transfers of the limited partner interest of Borrower provided that: (i) such Transfers do not affect the timing and amount of the Investor Limited Partner capital contributions provided for in the Partnership Agreement; and (ii) in subsequent Transfers, the Investor Limited Partner or an affiliate thereof, retains a membership or partnership interest and serves as a managing member or managing general partner of the successor limited partner.

(d) The County hereby approves a Transfer of the Property from Borrower to SAHA, or a non-profit affiliate of SAHA, and an assumption of the County Loan by such transferee at or prior to the end of the Fifteen Year Compliance Period, provided that: (i) such Transfer is pursuant to an option or right of first refusal agreement referenced in the Partnership Agreement, (ii) the assignment and assumption agreement evidencing such Transfer requires the transferee to expressly assume the obligations of Borrower under the Loan Documents, and (iii) the County is provided executed copies of all documents evidencing the Transfer.

(e) The County hereby approves the purchase of the Investor Limited Partner interest by SAHA, or a non-profit affiliate of SAHA at or prior to the end of the Fifteen Year Compliance Period, provided that (i) such Transfer is pursuant to an option or right of first refusal agreement referenced in the Partnership Agreement, and (ii) the County is provided executed copies of all documents evidencing the Transfer.

(f) In the event the general partner of Borrower is removed by the limited partner of Borrower for cause following default under the Partnership Agreement, the County hereby approves the Transfer of the general partner interest to (i) a 501(c)(3) tax exempt nonprofit corporation or other entity with a 501(c)(3) tax exempt nonprofit corporation member

or partner, which entity is also a qualified CHDO entity, that is selected by the Investor Limited Partner and approved by the County, and (ii) the Investor Limited Partner or an affiliate thereof, but only for a period not to exceed ninety (90) days from the date of removal of the general partner, during which time such entity shall diligently seek a replacement general partner meeting the requirements of subsection (i) above. If any Transfer results in the removal or withdrawal of Borrower's general partner (except for a Transfer to the Investor Limited Partner for a period not to exceed ninety (90) days as set forth in Subsection (ii) above), Borrower agrees to repay all principal and accrued interest on the County Loan in full if the general partner is not replaced with a qualified CHDO entity in accordance with this Subsection.

(g) The County hereby approves the grant of the security interests in the Development for Approved Financing as such term is defined in Section 1.1(g) of the Loan Agreement.

## 6.2 Nondiscrimination.

(a) All of the Units must be available for occupancy on a continuous basis to members of the general public who are income eligible. Borrower may not give preference to any particular class or group of persons in renting or selling the Units, except to the extent that the Units are required to be leased to income eligible households pursuant to this County Regulatory Agreement and the HOME Regulatory Agreement. Borrower herein covenants by and for Borrower, assigns, and all persons claiming under or through Borrower, that there exist no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, source of income (e.g., SSI), ancestry, age, familial status (except for lawful senior housing in accordance with state and federal law), or disability, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any unit nor will Borrower or any person claiming under or through Borrower, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of any unit or in connection with the employment of persons for the construction, operation and management of any unit.

(b) Borrower shall accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. Borrower may not apply selection criteria to Section 8 certificate or voucher holders that is more burdensome than criteria applied to all other prospective Tenants, nor will Borrower apply or permit the application of management policies or lease provisions with respect to the Development which have the effect of precluding occupancy of units by such prospective Tenants.

6.3 Application of Provisions. The provisions of this County Regulatory Agreement apply to the Property for the entire Term even if the County Loan is paid in full prior to the end of the Term. This County Regulatory Agreement binds any successor, heir or assign of Borrower, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the County. The County is making the County Loan on the condition, and in consideration of, this provision, and would not do so otherwise.

#### 6.4 Notice of Expiration of Term.

(a) At least six (6) months prior to the expiration of the Term, Borrower shall provide by first-class mail, postage prepaid, a notice to all Tenants containing (i) the anticipated date of the expiration of the Term, (ii) any anticipated increase in Rent upon the expiration of the Term, (iii) a statement that a copy of such notice will be sent to the County, and (iv) a statement that a public hearing may be held by the County on the issue and that the Tenant will receive notice of the hearing at least fifteen (15) days in advance of any such hearing. Borrower shall also file a copy of the above-described notice with the County Assistant Deputy Director, Department of Conservation and Development.

(b) In addition to the notice required above, Borrower shall comply with the requirements set forth in California Government Code Sections 65863.10 and 65863.11. Such notice requirements include: (i) a twelve (12) month notice to existing tenants, prospective tenants and Affected Public Agencies (as defined in California Government Code Section 65863.10(a)) prior to the expiration of the Term, (ii) a six (6) month notice requirement to existing tenants, prospective tenants and Affected Public Agencies prior to the expiration of the Term; (iii) a notice of an offer to purchase the Development to "qualified entities" (as defined in California Government Code Section 65863.11(d)), if the Development is to be sold within five (5) years of the end of the Term; (iv) a notice of right of first refusal within the one hundred eighty (180) day period that qualified entities may purchase the Development.

6.5 Covenants to Run With the Land. The County and Borrower hereby declare their express intent that the covenants and restrictions set forth in this County Regulatory Agreement run with the land, and bind all successors in title to the Property, provided, however, that on the expiration of the Term said covenants and restrictions expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof, is to be held conclusively to have been executed, delivered and accepted subject to the covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the County expressly releases such conveyed portion of the Property from the requirements of this County Regulatory Agreement.

#### 6.6 Enforcement by the County.

(a) If Borrower fails to perform any obligation under this County Regulatory Agreement, and fails to cure the default within thirty (30) days after the County has notified Borrower in writing of the default, the County may enforce this County Regulatory Agreement by any or all of the following actions, or any other remedy provided by law:

(1) Calling the County Loan. The County may declare a default under the Loan Documents, accelerate the indebtedness evidenced by the Loan Documents, and proceed with foreclosure under the Deed of Trust.

(2) Action to Compel Performance or for Damages. The County may bring an action at law or in equity to compel Borrower's performance of its obligations under this County Regulatory Agreement, and may seek damages.

(3) Remedies Provided Under Loan Documents. The County may exercise any other remedy provided under the Loan Documents.

(b) The County shall provide notice of a default to the Investor Limited Partner and any limited partner of Borrower who has requested written notice from the County in the manner set forth in Section 6.5 of the Loan Agreement.

6.7 Attorneys' Fees and Costs. In any action brought to enforce this County Regulatory Agreement, the prevailing party must be entitled to all costs and expenses of suit, including reasonable attorneys' fees. This section must be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

6.8 Recording and Filing. The County and Borrower shall cause this County Regulatory Agreement, and all amendments and supplements to it, to be recorded in the Official Records of the County of Contra Costa.

6.9 Governing Law. This County Regulatory Agreement is governed by the laws of the State of California.

6.10 Waiver of Requirements. Any of the requirements of this County Regulatory Agreement may be expressly waived by the County in writing, but no waiver by the County of any requirement of this County Regulatory Agreement extends to or affects any other provision of this County Regulatory Agreement, and may not be deemed to do so.

6.11 Amendments. This County Regulatory Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title that is duly recorded in the official records of the County of Contra Costa.

6.12 Notices. Any notice requirement set forth herein will be deemed to be satisfied three (3) days after mailing of the notice first-class United States certified mail, postage prepaid, addressed to the appropriate party as follows:

County: County of Contra Costa  
Department of Conservation and Development  
30 Muir Road  
Martinez, CA 94553  
Attn: Assistant Deputy Director

Borrower: Veterans Square, L.P.  
c/o Satellite Affordable Housing Associates  
1835 Alcatraz Avenue  
Berkeley, CA 94703  
Attention: Chief Executive Officer

Investor Limited  
Partner: Raymond James Tax Credit Fund XX L.L.C.  
c/o Raymond James Tax Credit Funds, Inc.

880 Carillon Parkway  
St. Petersburg, Florida 33716  
Facsimile No.: 727-567-8455  
Attention: Steven J. Kropf, President

with a copy to: Nixon Peabody LLP  
Exchange Place  
53 State Street  
Boston, MA 02109  
Attn: Nathan A. Bernard  
Facsimile No.: 617-345-1000

Such addresses may be changed by notice to the other party given in the same manner as provided above.

6.13 Severability. If any provision of this County Regulatory Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this County Regulatory Agreement will not in any way be affected or impaired thereby.

6.14 Multiple Originals; Counterparts. This County Regulatory Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

6.15 Revival of Agreement after Foreclosure. In the event there is a foreclosure of the Property, this County Regulatory Agreement will revive according to its original terms if, during the Term, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Development or Property.

6.16 County Regulatory Agreement. The County and Borrower are entering into this County Regulatory Agreement concurrently with the HOME Regulatory Agreement. This County Regulatory Agreement applies to all the County-Assisted Units including the HOME-Assisted Units. The HOME Regulatory Agreement includes HOME requirements applicable to the use of HOME Funds and will be in effect for the HOME Term. Compliance with the terms of the HOME Regulatory Agreement will be deemed compliance with this County Regulatory Agreement during the HOME Term. In the event of a conflict between the HOME Regulatory Agreement and this County Regulatory Agreement during the HOME Term, the terms of the HOME Regulatory Agreement will prevail.

*[remainder of page intentionally left blank]*



WHEREAS, this County Regulatory Agreement has been entered into by the undersigned as of the date first written above.

**COUNTY:**

COUNTY OF CONTRA COSTA, a political subdivision of the State of California

By: \_\_\_\_\_  
John Kopchik  
Director, Department of Conservation and Development

Approved as to form:

SHARON L. ANDERSON  
County Counsel

By: \_\_\_\_\_  
Kathleen Andrus  
Deputy County Counsel

**BORROWER:**

VETERANS SQUARE, L.P.,  
a California limited partnership

By: Veterans Square LLC,  
a California limited liability company,  
its general partner

By: Satellite Affordable Housing Associates,  
a California nonprofit public benefit  
corporation, its manager

By: \_\_\_\_\_  
Susan Friedland,  
Chief Executive Officer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public

EXHIBIT A

Legal Description

The land referred to is situated in the County of Contra Costa, City of Pittsburg, State of California, and is described as follows:

Parcel One:

Lots 1, 2, 15 and 16 Block 79, Map of Resubdivision of Block 79, City of Pittsburg, filed May 18, 1926 in Map Book 19, Page 504, Contra Costa County Records.

APN: 085-182-001

Parcel Two:

Lots 8 and 9, Block 78, as delineated upon the certain Map entitled "Official Map of the City of Pittsburg", filed March 23, 1914, Contra Costa County Records.

APN: 085-196-001

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Contra Costa County  
Department of Conservation and Development  
30 Muir Road  
Martinez, CA 94553  
Attn: Assistant Deputy Director

No fee for recording pursuant to  
Government Code Section 27383 and 27388.1

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HOME REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS  
(Veterans Square - HOME)

This HOME Regulatory Agreement and Declaration of Restrictive Covenants (the "HOME Regulatory Agreement") is dated September \_\_, 2020 and is between the County of Contra Costa, a political subdivision of the State of California (the "County"), and Veterans Square, L.P., a California limited partnership ("Borrower").

RECITALS

A. Defined terms used but not defined in these recitals are as defined in Article 1 of this HOME Regulatory Agreement.

B. The County has received Home Investment Partnerships Act ("HOME") funds from the United States Department of Housing and Urban Development ("HUD") pursuant to the Cranston-Gonzales National Housing Act of 1990 ("HOME Funds"). The HOME Funds must be used by the County in accordance with 24 C.F.R. Part 92.

C. Pursuant to a Purchase and Sale Agreement dated July 22, 2020, between Satellite Affordable Housing Associates, a California nonprofit public benefit corporation ("SAHA") and Borrower, Borrower intends to purchase that certain real property located at 901 Los Medanos Street and 295 East 10th Street, in the City of Pittsburg, County of Contra Costa, State of California, as more particularly described in Exhibit A (the "Property"). Borrower intends to construct thirty (30) housing units on the Property, twenty-nine (29) of which are for rental to extremely low, very low and low income households, and one (1) manager's unit (the "Development"). The Development, as well as all landscaping, roads and parking spaces on the Property and any additional improvements on the Property, are the "Improvements".

D. Pursuant to a Development Loan Agreement of even date herewith between the County and Borrower (the "Loan Agreement"), the County is lending Borrower Two Million Two Hundred Thousand Four Hundred Dollars (\$2,200,400) of HOME Funds (the "County Loan") to assist in the construction of the Development. The County Loan funds are HOME

Funds that have been set aside for entities designated as a Community Housing Development Organization ("CHDO") as defined in 24 C.F.R. 92.2.

E. In addition to the Loan Agreement, the County Loan is evidenced by the following documents: (i) a deed of trust with assignment of rents, security agreement, and fixture filing of even date herewith, among Borrower, as trustor, Old Republic Title Company, as trustee, and the County, as beneficiary; (ii) an intercreditor agreement of even date herewith among the Housing Authority of the City of Pittsburg, the County, and Borrower; (iii) a promissory note executed by Borrower of even date herewith in the amount of the County Loan; and (iv) the County Regulatory Agreement, executed by Borrower of even date herewith, (collectively, the "Loan Documents"). The Loan Documents are described in more detail in the Loan Agreement.

F. The County has the authority to lend the County Loan to Borrower pursuant to Government Code Section 26227, which authorizes counties to spend county funds for programs that will further a county's public purposes. In addition, the County has the authority to loan the HOME Funds pursuant to 24 C.F.R. 92.205.

G. The County has agreed to make the County Loan on the condition that Borrower maintain and operate the Development in accordance with restrictions set forth in this HOME Regulatory Agreement and the County Regulatory Agreement, and in the related documents evidencing the County Loan. Fourteen (14) of the Units are restricted by the County pursuant to this HOME Regulatory Agreement.

H. As it applies to the HOME-Assisted Units this HOME Regulatory Agreement will be in effect for the HOME Term. The County Regulatory Agreement as it applies to the HOME-Assisted Units will be in effect for fifty-five (55) years from the Completion Date which term overlaps with but is longer than the HOME Term. Pursuant to Section 6.16 below, compliance with the terms of this HOME Regulatory Agreement will be deemed compliance with the County Regulatory Agreement during the HOME Term with respect to the HOME-Assisted Units.

I. In consideration of receipt of the County Loan at an interest rate substantially below the market rate, Borrower agrees to observe all the terms and conditions set forth below.

The parties therefore agree as follows:

## AGREEMENT

### ARTICLE 1 DEFINITIONS

#### 1.1 Definitions.

The following terms have the following meanings:

- (a) "Accessibility Requirements" has the meaning set forth in Section 2.1(c).

(b) "Actual Household Size" means the actual number of persons in the applicable household.

(c) "Adjusted Income" means with respect to the Tenant of each HOME-Assisted Unit, the Tenant's total anticipated annual income as defined in 24 CFR 5.609 and calculated pursuant to 24 CFR 5.611, and as further referenced in 24 CFR 92.203(b)(1).

(d) "Assumed Household Size" means the household size "adjusted for family size appropriate to the unit" as such term is defined in Health & Safety Code Section 50052.5(h), used to calculate Rent, provided that if a different calculation is required by the HOME regulations, such calculation must be used for the HOME-Assisted Units.

(e) "CHDO" has the meaning set forth in Paragraph D of the Recitals.

(f) "City" means the City of Pittsburg, California, a municipal corporation.

(g) "Completion Date" means the date a final certificate of occupancy, or equivalent document is issued by the City to certify that the Development may be legally occupied.

(h) "County Loan" has the meaning set forth in Paragraph D of the Recitals.

(i) "County Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants of even date herewith, between the County and Borrower evidencing County requirements applicable to the County Loan, to be recorded against the Property concurrently herewith.

(j) "Deed of Trust" means the Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing of even date herewith by and among Borrower, as trustor, Old Republic Title Company, as trustee, and the County, as beneficiary, that encumbers the Property to secure repayment of the County Loan and Borrower's performance of the Loan Documents.

(k) "Development" has the meaning set forth in Paragraph C of the Recitals.

(l) "Development Regulatory Documents" has the meaning set forth in Section 4.2(a).

(m) "Extremely Low Income Household" means a household with an Adjusted Income that does not exceed thirty percent (30%) of Median Income, adjusted for Actual Household Size.

(n) "Extremely Low Income Rent" means one-twelfth (1/12) of thirty percent (30%) of thirty percent (30%) of Median Income, adjusted for Assumed Household Size.

(o) "Extremely Low Income Units" means the Units which, pursuant to Section 2.1(a) below, are required to be occupied by Extremely Low Income Households.

(p) "Fifteen Year Compliance Period" means the fifteen (15) year compliance period as described in Section 42(i)(1) of the Internal Revenue Code of 1986, as amended.

(q) "High HOME Rent" means a monthly Rent that does not exceed the maximum rent published by HUD for a Low Income Household for the applicable bedroom size as set forth in 24 C.F.R. 92.252(a).

(r) "HOME" has the meaning set forth in Paragraph B of the Recitals.

(s) "HOME-Assisted Units" means the fourteen (14) Units to be constructed on the Property that are (i) restricted to occupancy by Extremely Low Income Households in compliance with Section 2.1 below, and (ii) are "floating" Units as defined in 24 C.F.R. 92.252(j).

(t) "HOME Funds" has the meaning set forth in Paragraph B of the Recitals.

(u) "HOME Term" means the term of this HOME Regulatory Agreement which commences as of the date of this HOME Regulatory Agreement, and unless sooner terminated pursuant to the terms of this HOME Regulatory Agreement, expires on the twenty-first (21st) anniversary of the Completion Date; provided, however, if a record of the Completion Date cannot be located or established, the HOME Term will expire on the twenty-third (23rd) anniversary of this HOME Regulatory Agreement.

(v) "HOME Regulatory Agreement" has the meaning set forth in the first paragraph of this HOME Regulatory Agreement.

(w) "HUD" has the meaning set forth in Paragraph B of the Recitals.

(x) "Improvements" has the meaning set forth in Paragraph C of the Recitals.

(y) "Investor Limited Partner" means, Raymond James Tax Credit Fund XX, LLC, a \_\_\_\_\_ limited liability company, its successors and assigns.

(z) "Loan Agreement" has the meaning set forth in Paragraph D of the Recitals.

(aa) "Loan Documents" has the meaning set forth in Paragraph E of the Recitals.

(bb) "Low HOME Rent" means a monthly Rent that does not exceed the maximum rent published by HUD for a Very Low Income Household for the applicable bedroom size as set forth in 24 C.F.R. 92.252(b).

(cc) "Low Income Household" means a Tenant (i) with an Adjusted Income that does not exceed eighty percent (80%) of Median Income, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than eighty percent (80%) of Median Income on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low



family incomes, as such definition may be amended pursuant to 24 C.F.R. Section 92.2, and (ii) that is not an individual student not eligible to receive Section 8 assistance under 24 C.F.R. 5.612.

(dd) "Maintenance Standards" has the meaning set forth in Section 5.6 (a).

(ee) "Marketing Plan" has the meaning set forth in Section 4.3(a).

(ff) "Median Income" means the median gross yearly income, adjusted for Actual Household Size as specified herein, in the County of Contra Costa, California, as published from time to time by HUD. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the County shall provide Borrower with other income determinations that are reasonably similar with respect to methods of calculation to those previously published by HUD.

(gg) "Operating Budget" has the meaning set forth in Section 2.5(a).

(hh) "Partnership Agreement" means the Amended and Restated Agreement of Limited Partnership that governs the operation and organization of Borrower as a California limited partnership.

(ii) "Property" has the meaning set forth in Paragraph C of the Recitals.

(jj) "Rent" means the total monthly payments by the Tenant of a Unit for the following: use and occupancy of the Unit and land and associated facilities; any separately charged fees or service charges assessed by Borrower which are customarily charged in rental housing and required of all Tenants (subject to the limitations set forth in 24 C.F.R. 92.214(b)(3)), other than security deposits; an allowance for the cost of an adequate level of service for utilities paid by the Tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV; and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Borrower, and paid by the Tenant.

(kk) "Rental Subsidy" has the meaning set forth in Section 2.5(a).

(ll) "SAHA" has the meaning set forth in Paragraph C of the Recitals.

(mm) "Subsidy Units" has the meaning set forth in Section 2.5(a).

(nn) "Tenant" means the tenant household that occupies a Unit in the Development.

(oo) "Tenant Selection Plan" has the meaning set forth in Section 4.3(b).

(pp) "Transfer" has the meaning set forth in Section 6.1.

(qq) "Unit(s)" means one (1) or more of the units in the Development.

(rr) "Very Low Income Household" means a household (i) with an Adjusted Income that does not exceed fifty percent (50%) of Median Income, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than fifty percent (50%) of Median Income on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes as set forth in 24 C.F.R. Section 92.2, and (ii) that is not an individual student not eligible to receive Section 8 assistance under 24 C.F.R. 5.612.

## ARTICLE 2 AFFORDABILITY AND OCCUPANCY COVENANTS

### 2.1 Occupancy Requirements.

(a) Extremely Low Income Units. During the HOME Term Borrower shall cause fourteen (14) Units to be rented to and occupied by or, if vacant, available for occupancy by, Extremely Low Income Households.

(b) Intermingling of Units. Borrower shall cause the HOME-Assisted Units to be intermingled throughout the Development and of comparable quality to all other Units. All Tenants must have equal access to and enjoyment of all common facilities in the Development. The HOME-Assisted Units are all one bedroom Units.

(c) Disabled Persons Occupancy.

(1) Borrower shall cause the Development to be operated at all times in compliance with all applicable federal, state, and local disabled persons accessibility requirements including, but not limited to the applicable provisions of: (i) the Unruh Act, (ii) the California Fair Employment and Housing Act, (iii) Section 504 of the Rehabilitation Act of 1973, (iv) the United States Fair Housing Act, as amended, (v) the Americans With Disabilities Act of 1990, and (vi) Chapters 11A and 11B of Title 24 of the California Code of Regulations, which relate to disabled persons access (collectively, the "Accessibility Requirements").

(2) Borrower shall indemnify, protect, hold harmless and defend (with counsel reasonably satisfactory to the County) the County, and its board members, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of Borrower's failure to comply with the Accessibility Requirements. This obligation to indemnify survives termination of this HOME Regulatory Agreement, repayment of the County Loan and the reconveyance of the Deed of Trust.

(d) HOME-Assisted Unit Compliance Deadline. Each HOME-Assisted Unit must be rented to and occupied by an Extremely Low Income Household pursuant to Section 2.1(a) on or before the date that occurs eighteen (18) months after the Completion Date. If Borrower fails to comply with this requirement, Borrower shall repay a portion of the New County Loan Funds, with interest, in accordance with Section 2.8(c) of the Loan Agreement.

## 2.2 Allowable Rent.

(a) Extremely Low Income Rent. Subject to the provisions of Section 2.4 below, the Rent paid by Tenants of Extremely Low Income Units may not exceed the Extremely Low Income Rent.

(b) No Additional Fees. Borrower may not charge any fee, other than Rent, to any Tenant of the HOME-Assisted Units for any housing or other services provided by Borrower.

## 2.3 Rent Increases.

(a) Rent Amount. The initial Rent for all HOME-Assisted Units must be approved by the County prior to occupancy. The County will provide Borrower with a schedule of maximum permissible Rents for the HOME-Assisted Units and the maximum monthly allowances for utilities and services (excluding telephone) annually. The method of calculation of utility allowances will be determined by mutual agreement of the County and Borrower, using one of the methodologies permitted by the HOME Regulations.

(b) Rent Increases. All Rent increases for all HOME-Assisted Units are subject to County approval. No later than sixty (60) days prior to the proposed implementation of any Rent increase affecting a HOME-Assisted Unit, Borrower shall submit to the County a schedule of any proposed increase in the Rent charged for HOME-Assisted Units. The Rent for such Units may be increased no more than once annually based upon the annual income certification described in Article 3. The County will disapprove a Rent increase if it violates the schedule of maximum permissible Rents for the HOME-Assisted Units provided to Borrower by the County, or is greater than a 5% increase over the previous year's Rent, provided that the County may approve a request from Borrower for a rent increase greater than 5%, with a written explanation for the request from Borrower. Borrower shall give Tenants written notice at least thirty (30) days prior to any Rent increase, following completion of the County approval process set forth above.

## 2.4 Increased Income of Tenants.

(a) Increased Income above Extremely Low Income but below Low Income Limit. If, upon the annual certification of the income of a Tenant of an Extremely Low Income Unit, Borrower determines that the income of the Tenant has increased above the qualifying limit for an Extremely Low Income Household, but not above the qualifying income for a Low Income Household, the Tenant may continue to occupy the Unit and the Tenant's Rent will remain at the Extremely Low Income Rent. Borrower shall then rent the next available Unit to an Extremely Low Income Household to comply with the requirements of Section 2.1(a) above, at a Rent not exceeding the maximum Rent specified in Section 2.2(a), or re-designate another comparable Unit in the Development with an Extremely Low Income Household an Extremely Low Income Unit, to comply with the requirements of Section 2.1(a) above. Upon renting the next available Unit in accordance with Section 2.1(a) or re-designating another Unit in the Development as an Extremely Low Income Unit, the Unit with the over-income Tenant will no longer be considered a HOME-Assisted Unit.

(b) Non-Qualifying Household. If, upon the annual certification of the income a Tenant of a HOME-Assisted Unit, Borrower determines that the Tenant's income has increased above the qualifying limit for a Low Income Household, the Tenant may continue to occupy the Unit. Upon the expiration of such Tenant's lease, Borrower shall:

(1) With 60 days' advance written notice, increase such Tenant's Rent to the lesser of (i) one-twelfth (1/12) of thirty percent (30%) of the actual Adjusted Income of the Tenant, and (ii) the fair market rent (subject to 24 C.F.R. 92.252(i)(2) regarding low income housing tax credit requirements), and

(2) Rent the next available Unit to an Extremely Low Income Household to comply with the requirements of Section 2.1(a) above, at a Rent not exceeding the maximum Rent specified in Section 2.2(a), or designate another comparable Unit that is occupied by an Extremely Low Income Household as a HOME-Assisted Unit, to meet the requirements of Section 2.1(a) above. On the day that Borrower complies with Section 2.1(a) in accordance with this Section 2.4(b), the Unit with the over-income Tenant will no longer be considered a HOME-Assisted Unit.

(c) Termination of Occupancy. Upon termination of occupancy of a HOME-Assisted Unit by a Tenant, such Unit will be deemed to be continuously occupied by a household of the same income level as the initial income level of the vacating Tenant, until such unit is reoccupied, at which time categorization of the Unit will be established based on the occupancy requirements of Section 2.1.

## 2.5 Loss of Subsidy.

(a) It is anticipated that certain Units in the Development (the "Subsidy Units") will receive Project-Based Section 8 or other rental subsidy payments (the "Rental Subsidy") throughout the Term, as reflected in the Approved Development Budget. Notwithstanding Section 2.3(b), if any change in federal law occurs, or any action (or inaction) by Congress or any federal or State agency occurs, which results in a reduction, termination or nonrenewal of the Rental Subsidy through no fault of the Borrower, such that the Rental Subsidy shown on the Approved Development Budget is no longer available, Borrower may increase the Rent on one or more of the HOME-Assisted Units that overlap with a Subsidy Unit, to the Low HOME Rent and/or High HOME Rent as applicable, subject to the following requirements:

(1) At the time Borrower requests an increase in the Rent, Borrower shall provide the County with an operating budget for the Development for the County's approval pursuant to Section 4.4 of the Loan Agreement, showing the impact of the loss or reduction of the Rental Subsidy (the "Operating Budget");

(2) The number of HOME-Assisted Units subject to the Rent increase and the level of rent increase (i.e. Low HOME Rent or High HOME Rent) may not be greater than the amount required to ensure that the Development generates sufficient income to cover its operating costs and debt service as shown on the Operating Budget, and as is necessary to maintain the financial stability of the Development;

(3) The Rent of at least one (1) of the HOME-Assisted Units may not exceed the Low HOME Rent;

(4) Borrower shall use good faith efforts to ensure that the Tenants whose Rents are increased to the High HOME Rent have the highest incomes of the Tenants occupying the HOME-Assisted Units; and

(5) Any such Rent increase must be pursuant to a transition plan approved by the County, consistent with remedial measures set forth in California Code of Regulations Title 4, Division 17, Chapter 1, Section 10337(a)(3) or successor regulation applicable to California's Federal and State Low Income Housing Tax Credit Program.

(b) Borrower shall use good faith efforts to obtain alternative sources of rental subsidies and shall provide the County with annual progress reports on efforts to obtain alternative sources of rental subsidies that would allow the rents on the HOME Assisted Units to be reduced back to the Extremely Low Income Rent. Upon receipt of any alternative rental subsidies, Borrower shall reduce the rents on the County-Assisted Units back to the Extremely Low Income Rent, to the extent that the alternative rental subsidies provide sufficient income to cover the operating costs and debt service of the Development as shown on the Operating Budget.

### ARTICLE 3 INCOME CERTIFICATION; REPORTING; RECORDS

3.1 Income Certification. Borrower shall obtain, complete, and maintain on file, within sixty (60) days before expected occupancy and annually thereafter, income certifications from each Tenant renting any of the HOME-Assisted Units. Borrower shall make a good faith effort to verify the accuracy of the income provided by the applicant or occupying household, as the case may be, in an income certification. To verify the information, Borrower shall take two or more of the following steps: (i) obtain a pay stub for the most recent pay period; (ii) obtain an income tax return for the most recent tax year; (iii) conduct a credit agency or similar search; (iv) obtain an income verification form from the applicant's current employer; (v) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (vi) if the applicant is unemployed and does not have a tax return, obtain another form of independent verification. Where applicable, Borrower shall examine at least two (2) months of relevant source documentation. Copies of Tenant income certifications are to be available to the County upon request.

#### 3.2 Reporting Requirements.

(a) Borrower shall submit to the County within one hundred eighty (180) days after the Completion Date, and not later than forty-five (45) days after the close of each calendar year, or such other date as may be requested by the County, a report that includes the following data for each Unit and specifically identifies which Units are HOME-Assisted Units: (i) Tenant income, (ii) the number of occupants, (iii) the Rent, (iv) the number of bedrooms, and (v) the

initial address of each Tenant. To demonstrate continued compliance with Section 2.1 Borrower shall cause each annual report after the initial report to include a record of any subsequent Tenant substitutions and any vacancies in HOME-Assisted Units that have been filled.

(b) Borrower shall submit to the County within forty-five (45) days after receipt of a written request, or such other time agreed to by the County, any other information or completed forms requested by the County in order to comply with reporting requirements of HUD, the State of California, and the County.

3.3 Tenant Records. Borrower shall maintain complete, accurate and current records pertaining to income and household size of Tenants. All Tenant lists, applications and waiting lists relating to the Development are to be at all times: (i) separate and identifiable from any other business of Borrower, (ii) maintained as required by the County, in a reasonable condition for proper audit, and (iii) subject to examination during business hours by representatives of the County. Borrower shall retain copies of all materials obtained or produced with respect to occupancy of the Units for a period of at least five (5) years. The County may examine and make copies of all books, records or other documents of Borrower that pertain to the Development.

### 3.4 Development Records.

(a) Borrower shall keep and maintain at the principal place of business of the Borrower set forth in Section 6.11 below, or elsewhere with the County's written consent, full, complete and appropriate books, records and accounts relating to the Development. Borrower shall cause all books, records and accounts relating to its compliance with the terms, provisions, covenants and conditions of the Loan Documents to be kept and maintained in accordance with generally accepted accounting principles consistently applied, and to be consistent with requirements of this HOME Regulatory Agreement. Borrower shall cause all books, records, and accounts to be open to and available for inspection and copying by HUD, the County, its auditors or other authorized representatives at reasonable intervals during normal business hours. Borrower shall cause copies of all tax returns and other reports that Borrower may be required to furnish to any government agency to be open for inspection by the County at all reasonable times at the place that the books, records and accounts of Borrower are kept. Borrower shall preserve such records for a period of not less than five (5) years after their creation in compliance with all HUD records and accounting requirements. If any litigation, claim, negotiation, audit exception, monitoring, inspection or other action relating to the use of the County Loan is pending at the end of the record retention period stated herein, then Borrower shall retain the records until such action and all related issues are resolved. Borrower shall cause the records to include all invoices, receipts, and other documents related to expenditures from the County Loan funds. Borrower shall cause records to be accurate and current and in a form that allows the County to comply with the record keeping requirements contained in 24 C.F.R. 92.508. Such records are to include but are not limited to:

(1) Records providing a full description of the activities undertaken with the use of the County Loan funds;

- (2) Records demonstrating compliance with the HUD property standards and lead-based paint requirements and the maintenance requirements set forth in Section 5.6 (which implements 24 C.F.R. 92.251);
- (3) Records documenting compliance with the fair housing, equal opportunity, and affirmative fair marketing requirements;
- (4) Financial records as required by 24 C.F.R. 92.505, and 2 C.F.R. Part 200;
- (5) Records demonstrating compliance with the HOME marketing, tenant selection, affordability, and income requirements;
- (6) Records demonstrating compliance with MBE/WBE requirements;
- (7) Records demonstrating compliance with 24 C.F.R. Part 135 which implements Section 3 of the Housing Development Act of 1968;
- (8) Records demonstrating compliance with applicable relocation requirements, which must be retained for at least five (5) years after the date by which persons displaced from the property have received final payments; and
- (9) Records demonstrating compliance with labor requirements including certified payrolls from Borrower's general contractor evidencing that applicable prevailing wages have been paid.

(b) The County shall notify Borrower of any records it deems insufficient. Borrower has fifteen (15) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the County in such notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Borrower must begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

#### ARTICLE 4 OPERATION OF THE DEVELOPMENT

4.1 Residential Use. Borrower shall operate the Development for residential use only. No part of the Development may be operated as transient housing.

4.2 Compliance with Loan Documents and Regulatory Requirements.

(a) Borrower's actions with respect to the Property shall at all times be in full conformity with: (i) all requirements of the Loan Documents; (ii) all requirements imposed on projects assisted with HOME Funds as contained in 42 U.S.C. Section 12701, et seq., 24 C.F.R. Part 92, and other implementing rules and regulations; and (iii) any other regulatory requirements imposed on the Development including but not limited to regulatory agreements associated with the Low Income Housing Tax Credits provided by the California Tax Credit

Allocation Committee, and rental subsidies provided to the Development (the "Development Regulatory Documents").

(b) Borrower shall promptly notify the County in writing of the existence of any default under any Development Regulatory Documents, and provide the County copies of any such notice of default.

4.3 Marketing Plan; Tenant Selection Plan.

(a) Marketing Plan.

(1) No later than six (6) months prior to the date construction of the Development is projected to be complete, Borrower shall submit to the County for approval its plan for marketing the Development to income-eligible households as required by this HOME Regulatory Agreement (the "Marketing Plan"). The Marketing Plan must include information on affirmative marketing efforts and compliance with fair housing laws and 24 C.F.R. 92.351(a).

(2) Upon receipt of the Marketing Plan, the County will promptly review the Marketing Plan and will approve or disapprove it within fifteen (15) days after receipt. If the Marketing Plan is not approved, the County will give Borrower specific reasons for such disapproval and Borrower shall submit a revised Marketing Plan within fifteen (15) days of notification of the County's disapproval. Borrower shall follow this procedure for resubmission of a revised Marketing Plan until the Marketing Plan is approved by the County. If the Borrower does not submit a revised Marketing Plan that is approved by the County at least three (3) months prior to the date construction of the Development is projected to be complete, Borrower will be in default of this HOME Regulatory Agreement.

(3) If any HOME-Assisted Units have not been rented in accordance with Section 2.1 above on or before the date that is five (5) months after the Completion Date Borrower shall submit to the County a detailed report of ongoing marketing efforts, and if deemed appropriate by the County, any necessary amendments or updates to the Marketing Plan to cause the vacant HOME-Assisted Units to be rented in compliance with Section 2.1.

(4) If any HOME-Assisted Units have not been rented to in accordance with Section 2.1 above on or before the date that is twelve (12) months after the Completion Date Borrower shall submit to the County a detailed report of ongoing marketing efforts, and if deemed appropriate by the County, any necessary amendments or updates to the Marketing Plan to cause the vacant HOME-Assisted Units to be rented in compliance with Section 2.1.

(b) Tenant Selection Plan.

(1) No later than six (6) months prior to the date construction of the Development is projected to be complete, Borrower shall submit to the County, for its review and approval, Borrower's written tenant selection plan (the "Tenant Selection Plan"). Borrower's Tenant Selection Plan must, at a minimum, meet the requirements for tenant selection set out in 24 C.F.R. 92.253(d), and any modifications thereto.



(2) Upon receipt of the Tenant Selection Plan, the County will promptly review the Tenant Selection Plan and will approve or disapprove it within fifteen (15) days after receipt. If the Tenant Selection Plan is not approved, the County will give Borrower specific reasons for such disapproval and Borrower shall submit a revised Tenant Selection Plan within fifteen (15) days of notification of the County's disapproval. Borrower shall follow this procedure for resubmission of a revised Tenant Selection Plan until the Tenant Selection Plan is approved by the County. If the Borrower does not submit a revised Tenant Selection Plan that is approved by the County at least three (3) months prior to the date construction of the Development is projected to be complete, Borrower will be in default of this HOME Regulatory Agreement.

#### 4.4 Lease Provisions.

(a) No later than four (4) months prior to the date construction of the Development is projected to be complete, Borrower shall submit to the County for approval Borrower's proposed form of lease agreement for the County's review and approval. When leasing Units within the Development, Borrower shall use the form of lease approved by the County. Borrower may not permit the lease to contain any provision that is prohibited by 24 C.F.R. Section 92.253(b) and any amendments thereto. Borrower's form of lease must include any provisions necessary to comply with the requirements of the Violence Against Women Reauthorization Act of 2013 (Pub. L. 113-4, 127 Stat. 54) applicable to HUD-funded programs. The form of lease must comply with all requirements of this HOME Regulatory Agreement, the other Loan Documents and must, among other matters:

(1) provide for termination of the lease for failure to: (i) provide any information required under this HOME Regulatory Agreement or reasonably requested by Borrower to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, for occupancy in the Development in accordance with the standards set forth in this HOME Regulatory Agreement, or (ii) qualify as an Extremely Low Income Household as a result of any material misrepresentation made by such Tenant with respect to the income computation;

(2) be for an initial term of not less than one (1) year, unless by mutual agreement between the Tenant and Borrower, and provide for no increase in Rent during such year. After the initial year of tenancy, the lease may be month-to-month by mutual agreement of Borrower and the Tenant. Notwithstanding the above, any rent increases are subject to the requirements of Section 2.3 above; and

(3) include a provision that requires a Tenant who is residing in a Unit required to be accessible pursuant to Section 3.9(b) of the Loan Agreement, and who is not in need of an accessible Unit to move to a non-accessible Unit when a non-accessible Unit becomes available and another Tenant or prospective Tenant is in need of an accessible Unit.

(b) During the HOME Term, Borrower shall comply with the Marketing Plan and Tenant Selection Plan approved by the County.

4.5 Lease Termination. Any termination of a lease or refusal to renew a lease for a HOME-Assisted Unit within the Development must be in conformance with 24 C.F.R. 92.253(c) and the requirements of the Violence Against Women Reauthorization Act of 2013 ((Pub. L. 113-4, 127 Stat. 54) applicable to HUD-funded programs, and must be preceded by not less than thirty (30) days written notice to the Tenant by Borrower specifying the grounds for the action.

4.6 HOME Requirements.

(a) Borrower shall comply with all applicable laws and regulations governing the use of the HOME Funds as set forth in 24 C.F.R. Part 92. In the event of any conflict between this HOME Regulatory Agreement and applicable laws and regulations governing the use of the County Loan funds, the applicable laws and regulations govern.

(b) The laws and regulations governing the use of the County Loan funds include (but are not limited to) the following:

(1) Environmental and Historic Preservation. 24 C.F.R. Part 58, which prescribes procedures for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4361), and the additional laws and authorities listed at 24 C.F.R. 58.5;

(2) Applicability of Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The applicable policies, guidelines, and requirements of 2 C.F.R. Part 200 and 24 C.F.R. 92.505;

(3) Debarred, Suspended or Ineligible Contractors. The prohibition on the use of debarred, suspended, or ineligible contractors set forth in 24 C.F.R. Part 24;

(4) Civil Rights, Housing and Community Development, and Age Discrimination Acts. The Fair Housing Act (42 U.S.C. 3601 et seq.) and implementing regulations at 24 C.F.R. Part 100; Title VI of the Civil Rights Act of 1964 as amended; Title VIII of the Civil Rights Act of 1968 as amended; Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended; Section 504 of the Rehabilitation Act of 1973 (29 USC 794, et seq.); the Age Discrimination Act of 1975 (42 USC 6101, et seq.); Executive Order 11063 as amended by Executive Order 12259 and implementing regulations at 24 C.F.R. Part 107; Executive Order 11246 as amended by Executive Orders 11375, 12086, 11478, 12107; Executive Order 11625 as amended by Executive Order 12007; Executive Order 12432; Executive Order 12138 as amended by Executive Order 12608;

(5) Lead-Based Paint. The requirement of the Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4821 et seq.), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. 4851 et seq.), and implementing regulations at 24 C.F.R. Part 35;

(6) Relocation. The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.), and implementing regulations at 49 C.F.R. Part 24; Section 104(d) of the Housing and Community Development Act of 1974 and implementing regulations at 24 C.F.R. 42 et seq. (if applicable); and 24 C.F.R. 92.353;

(7) Discrimination against the Disabled. The requirements of the Fair Housing Act (42 U.S.C. 3601 et seq.) and implementing regulations at 24 C.F.R. Part 100; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and federal regulations issued pursuant thereto, which prohibit discrimination against the disabled in any federally assisted program, the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and the applicable requirements of Title II and/or Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 et seq.), and federal regulations issued pursuant thereto;

(8) Clean Air and Water Acts. The Clean Air Act, as amended, 42 U.S.C. 7401 et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 C.F.R. Part 1500, as amended from time to time;

(9) Training Opportunities. The requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u ("Section 3"), requiring that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project. Borrower agrees to include the following language in all subcontracts executed under this HOME Regulatory Agreement:

(i) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(ii) The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(iii) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause; and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference; shall set forth minimum number and job titles subject to hire; availability of apprenticeship and training positions; the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(iv) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in

24 C.F.R. Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.

(v) The contractor will certify that any vacant employment positions, including training positions, that are filled (A) after the contractor is selected but before the contract is executed, and (B) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 C.F.R. Part 135.

(vi) Noncompliance with HUD's regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(vii) With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

(10) Labor Standards. The labor requirements set forth in 24 C.F.R. 92.354; the prevailing wage requirements of the Davis-Bacon Act and implementing rules and regulations (40 U.S.C. 3141-3148); the Copeland "Anti-Kickback" Act (40 U.S.C. 276(c)) which requires that workers be paid at least once a week without any deductions or rebates except permissible deductions; the Contract Work Hours and Safety Standards Act – CWHSSA (40 U.S.C. 3701-3708) which requires that workers receive "overtime" compensation at a rate of 1-1/2 times their regular hourly wage after they have worked forty (40) hours in one (1) week; and Title 29, Code of Federal Regulations, Subtitle A, Parts 1, 3 and 5 are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended;

(11) Drug Free Workplace. The requirements of the Drug Free Workplace Act of 1988 (P.L. 100-690) and implementing regulations at 24 C.F.R. Part 24;

(12) Anti-Lobbying; Disclosure Requirements. The disclosure requirements and prohibitions of 31 U.S.C. 1352 and implementing regulations at 24 C.F.R. Part 87;

(13) Historic Preservation. The historic preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. Section 470) and the procedures set forth in 36 C.F.R. Part 800. If archeological, cultural, or historic period resources are discovered during construction, all construction work must come to a halt and Borrower shall immediately notify the County. Borrower shall not shall alter or move the

discovered material(s) until all appropriate procedures for "post-review discoveries" set forth in Section 106 of the National Historic Preservation Act have taken place, which include, but are not limited to, consultation with the California State Historic Preservation Officer and evaluation of the discovered material(s) by a qualified professional archeologist;

(14) Religious Organizations. If the Borrower is a religious organization, as defined by the HOME requirements, the Borrower shall comply with all conditions prescribed by HUD for the use of HOME Funds by religious organizations, including the First Amendment of the United States Constitution regarding church/state principles and the applicable constitutional prohibitions set forth in 24 C.F.R. 92.257;

(15) Violence Against Women. The requirements of the Violence Against Women Reauthorization Act of 2013 (Pub. L. 113–4, 127 Stat. 54) applicable to HUD-funded programs;

(16) Conflict of Interest. The conflict of interest provisions set forth in 24 C.F.R. 92.356; and

(17) HUD Regulations. Any other HUD regulations present or as may be amended, added, or waived in the future pertaining to the County Loan funds.

## ARTICLE 5 PROPERTY MANAGEMENT AND MAINTENANCE

5.1 Management Responsibilities. Borrower is responsible for all management functions with respect to the Development, including without limitation the selection of Tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The County has no responsibility for management of the Development. Borrower shall retain a professional property management company approved by the County in its reasonable discretion to perform Borrower's management duties hereunder. An on-site property management representative is required to reside at the Property.

5.2 Management Agent. Borrower shall cause the Development to be managed by an experienced management agent reasonably acceptable to the County, with a demonstrated ability to operate residential facilities like the Development in a manner that will provide decent, safe, and sanitary housing (the "Management Agent"). The County has approved Satellite Affordable Housing Associates Property Management as the Management Agent. Borrower shall submit for the County's approval the identity of any proposed subsequent management agent. Borrower shall also submit such additional information about the background, experience and financial condition of any proposed management agent as is reasonably necessary for the County to determine whether the proposed management agent meets the standard for a qualified management agent set forth above. If the proposed management agent meets the standard for a qualified management agent set forth above, the County shall approve the proposed management agent by notifying Borrower in writing. Unless the proposed management agent is disapproved

by the County within thirty (30) days, which disapproval is to state with reasonable specificity the basis for disapproval, it shall be deemed approved.

5.3 Periodic Performance Review. The County reserves the right to conduct an annual (or more frequently, if deemed necessary by the County) review of the management practices and financial status of the Development. The purpose of each periodic review will be to enable the County to determine if the Development is being operated and managed in accordance with the requirements and standards of this HOME Regulatory Agreement. Borrower shall cooperate with the County in such reviews.

5.4 Replacement of Management Agent. If, as a result of a periodic review, the County determines in its reasonable judgment that the Development is not being operated and managed in accordance with any of the material requirements and standards of this HOME Regulatory Agreement, the County shall deliver notice to Borrower of its intention to cause replacement of the Management Agent, including the reasons therefor. Within fifteen (15) days after receipt by Borrower of such written notice, the County staff and Borrower shall meet in good faith to consider methods for improving the financial and operating status of the Development, including, without limitation, replacement of the Management Agent.

If, after such meeting, County staff recommends in writing the replacement of the Management Agent, Borrower shall promptly dismiss the then-current Management Agent, and shall appoint as the Management Agent a person or entity meeting the standards for a management agent set forth in Section 5.2 above and approved by the County pursuant to Section 5.2 above.

Any contract for the operation or management of the Development entered into by Borrower shall provide that the Management Agent may be dismissed and the contract terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Section constitutes a default under this HOME Regulatory Agreement, and the County may enforce this provision through legal proceedings as specified in Section 6.5 below.

5.5 Approval of Management Policies. Borrower shall submit its written management policies with respect to the Development to the County for its review, and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this HOME Regulatory Agreement.

5.6 Property Maintenance.

(a) Borrower shall maintain, for the entire HOME Term of this HOME Regulatory Agreement, all interior and exterior improvements, including landscaping: (i) in decent, safe and sanitary condition, (ii) in good condition and repair, and (iii) free of all health and safety defects. Such maintenance must be in accordance with: (i) 24 C.F.R. Section 92.251, (ii) the lead-based paint requirements in 24 C.F.R. part 35, and (iii) all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials, (collectively, the "Maintenance Standards"). Borrower shall

correct any life-threatening maintenance deficiencies, including those set forth in the Maintenance Standards immediately upon notification.

(b) At the beginning of each year of the HOME Term, Borrower shall certify to the County that the Development is in compliance with the Maintenance Standards.

#### 5.7 Property Inspections.

(a) On-Site Physical Inspections. The County will perform on-site inspections of the Development during the HOME Term to ensure compliance with the Maintenance Standards. The County will perform an on-site inspection within twelve months after completion of construction of the Development and at least once every three (3) years during the HOME Term. If the Development is found to have health and safety violations, the County may perform more frequent inspections. Borrower shall cooperate in such inspections.

(b) Violation of Maintenance Standards. If after an inspection, the County determines that Borrower is in violation of the Maintenance Standards, the County will provide Borrower a written report of the violations. Borrower shall correct the violations set forth in the report provided to Borrower by County. The County will perform a follow-up inspection to verify that the violations have been corrected. If such violations continue for a period of ten (10) days after delivery of the report to Borrower by the County with respect to graffiti, debris, waste material, and general maintenance, or thirty (30) days after delivery of the report to Borrower by the County with respect to landscaping and building improvements, then the County, in addition to whatever other remedy it may have at law or in equity, has the right to enter upon the Property and perform or cause to be performed all such acts and work necessary to cure the violation. Pursuant to such right of entry, the County is permitted (but is not required) to enter upon the Property and to perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Property, and to attach a lien on the Property, or to assess the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the County and/or costs of such cure, which amount Borrower shall promptly pay to the County upon demand.

## ARTICLE 6 MISCELLANEOUS

#### 6.1 Transfers.

(a) For purposes of this Agreement, "Transfer" means any sale, assignment, or transfer, whether voluntary or involuntary, of: (i) any rights and/or duties under the Loan Documents; and/or (ii) any interest in the Development, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which possession of the Development is transferred and Borrower retains title. The term "Transfer" excludes the leasing of any single unit in the Development to an occupant in compliance with this HOME Regulatory Agreement. The County Director – Department of Conservation and Development is authorized

to execute assignment and assumption agreements on behalf of the County to implement any approved Transfer.

(b) Except as otherwise permitted in this Section 6.1, no Transfer is permitted without the prior written consent of the County, which the County may withhold in its sole discretion. The County Loan will automatically accelerate and be due in full upon any Transfer made without the prior written consent of the County.

(c) The County hereby approves the admission of the Investor Limited Partner to Borrower as a limited partner. The County hereby approves future Transfers of the limited partner interest of Borrower provided that: (i) such Transfers do not affect the timing and amount of the Investor Limited Partner capital contributions provided for in the Partnership Agreement; and (ii) in subsequent Transfers, the Investor Limited Partner or an affiliate thereof, retains a membership or partnership interest and serves as a managing member or managing general partner of the successor limited partner.

(d) The County hereby approves a Transfer of the Property from Borrower to SAHA, or a non-profit affiliate of SAHA, and an assumption of the County Loan by such transferee at or prior to the end of the Fifteen Year Compliance Period, provided that: (i) such Transfer is pursuant to an option or right of first refusal agreement referenced in the Partnership Agreement, (ii) the assignment and assumption agreement evidencing such Transfer requires the transferee to expressly assume the obligations of Borrower under the Loan Documents, and (iii) the County is provided executed copies of all documents evidencing the Transfer.

(e) The County hereby approves the purchase of the Investor Limited Partner interest by SAHA, or a non-profit affiliate of SAHA at or prior to the end of the Fifteen Year Compliance Period, provided that (i) such Transfer is pursuant to an option or right of first refusal agreement referenced in the Partnership Agreement, and (ii) the County is provided executed copies of all documents evidencing the Transfer.

(f) In the event the general partner of Borrower is removed by the limited partner of Borrower for cause following default under the Partnership Agreement, the County hereby approves the Transfer of the general partner interest to (i) a 501(c)(3) tax exempt nonprofit corporation or other entity with a 501(c)(3) tax exempt nonprofit corporation member or partner, which entity is also a qualified CHDO entity, that is selected by the Investor Limited Partner and approved by the County, and (ii) the Investor Limited Partner or an affiliate thereof, but only for a period not to exceed ninety (90) days from the date of removal of the general partner, during which time such entity shall diligently seek a replacement general partner meeting the requirements of subsection (i) above. If any Transfer results in the removal or withdrawal of Borrower's general partner (except for a Transfer to the Investor Limited Partner for a period not to exceed ninety (90) days as set forth in Subsection (ii) above), Borrower agrees to repay all principal and accrued interest on the County Loan in full if the general partner is not replaced with a qualified CHDO entity in accordance with this Subsection.

(g) The County hereby approves the grant of the security interests in the Development for Approved Financing as such term is defined in Section 1.1(g) of the Loan Agreement.



## 6.2 Nondiscrimination.

(a) All of the Units must be available for occupancy on a continuous basis to members of the general public who are income eligible. Borrower may not give preference to any particular class or group of persons in renting or selling the Units, except to the extent that the Units are required to be leased to income eligible households pursuant to this HOME Regulatory Agreement. Borrower herein covenants by and for Borrower, assigns, and all persons claiming under or through Borrower, that there exist no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, source of income (e.g., SSI), ancestry, age, familial status (except for lawful senior housing in accordance with state and federal law), or disability, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any unit nor will Borrower or any person claiming under or through Borrower, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of any unit or in connection with the employment of persons for the construction, operation and management of any unit.

(b) Borrower shall accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. Borrower may not apply selection criteria to Section 8 certificate or voucher holders that is more burdensome than criteria applied to all other prospective Tenants, nor will Borrower apply or permit the application of management policies or lease provisions with respect to the Development which have the effect of precluding occupancy of units by such prospective Tenants.

6.3 Application of Provisions. The provisions of this HOME Regulatory Agreement apply to the Property for the entire HOME Term even if the County Loan is paid in full prior to the end of the HOME Term. This HOME Regulatory Agreement binds any successor, heir or assign of Borrower, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the County. The County is making the County Loan on the condition, and in consideration of, this provision, and would not do so otherwise.

6.4 Covenants to Run With the Land. The County and Borrower hereby declare their express intent that the covenants and restrictions set forth in this HOME Regulatory Agreement run with the land, and bind all successors in title to the Property, provided, however, that on the expiration of the HOME Term said covenants and restrictions expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof, is to be held conclusively to have been executed, delivered and accepted subject to the covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the County expressly releases such conveyed portion of the Property from the requirements of this HOME Regulatory Agreement.

## 6.5 Enforcement by the County.

(a) If Borrower fails to perform any obligation under this HOME Regulatory Agreement, and fails to cure the default within thirty (30) days after the County has notified Borrower in writing of the default, the County may enforce this HOME Regulatory Agreement by any or all of the following actions, or any other remedy provided by law:

(1) Calling the County Loan. The County may declare a default under the Loan Documents, accelerate the indebtedness evidenced by the Loan Documents, and proceed with foreclosure under the Deed of Trust.

(2) Action to Compel Performance or for Damages. The County may bring an action at law or in equity to compel Borrower's performance of its obligations under this HOME Regulatory Agreement, and may seek damages.

(3) Remedies Provided Under Loan Documents. The County may exercise any other remedy provided under the Loan Documents.

(b) The County shall provide notice of a default to the Investor Limited Partner and any limited partner of Borrower who has requested written notice from the County in the manner set forth in Section 6.5 of the Loan Agreement.

#### 6.6 Anti-Lobbying Certification.

(a) Borrower certifies, to the best of Borrower's knowledge or belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

(b) This certification is a material representation of fact upon which reliance was placed when the Loan Documents were made or entered into. Submission of this certification is a prerequisite for making or entering into the Loan Documents imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than Ten Thousand Dollars (\$10,000) and no more than One Hundred Thousand Dollars (\$100,000) for such failure.

6.7 Attorneys' Fees and Costs. In any action brought to enforce this HOME Regulatory Agreement, the prevailing party must be entitled to all costs and expenses of suit,

including reasonable attorneys' fees. This section must be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

6.8 Recording and Filing. The County and Borrower shall cause this HOME Regulatory Agreement, and all amendments and supplements to it, to be recorded in the Official Records of the County of Contra Costa.

6.9 Governing Law. This HOME Regulatory Agreement is governed by the laws of the State of California.

6.10 Waiver of Requirements. Any of the requirements of this HOME Regulatory Agreement may be expressly waived by the County in writing, but no waiver by the County of any requirement of this HOME Regulatory Agreement extends to or affects any other provision of this HOME Regulatory Agreement, and may not be deemed to do so.

6.11 Amendments. This HOME Regulatory Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title that is duly recorded in the official records of the County of Contra Costa.

6.12 Notices. Any notice requirement set forth herein will be deemed to be satisfied three (3) days after mailing of the notice first-class United States certified mail, postage prepaid, addressed to the appropriate party as follows:

County: County of Contra Costa  
Department of Conservation and Development  
30 Muir Road  
Martinez, CA 94553  
Attn: Assistant Deputy Director

Borrower: Veterans Square, L.P.  
c/o Satellite Affordable Housing Associates  
1835 Alcatraz Avenue  
Berkeley, CA 94703  
Attention: Chief Executive Officer

Investor Limited  
Partner: Raymond James Tax Credit Fund XX L.L.C.  
c/o Raymond James Tax Credit Funds, Inc.  
880 Carillon Parkway  
St. Petersburg, Florida 33716  
Facsimile No.: 727-567-8455  
Attention: Steven J. Kropf, President

with a copy to: Nixon Peabody LLP  
Exchange Place  
53 State Street  
Boston, MA 02109  
Attn: Nathan A. Bernard

Such addresses may be changed by notice to the other party given in the same manner as provided above.

6.13 Severability. If any provision of this HOME Regulatory Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this HOME Regulatory Agreement will not in any way be affected or impaired thereby.

6.14 Multiple Originals; Counterparts. This HOME Regulatory Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

6.15 Revival of Agreement after Foreclosure. In the event there is a foreclosure of the Property, this HOME Regulatory Agreement will revive according to its original terms if, during the HOME Term, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Development or Property.

6.16 County Regulatory Agreement. The County and Borrower are entering into this HOME Regulatory Agreement concurrently with the County Regulatory Agreement. The County Regulatory Agreement as it applies to the HOME-Assisted Units will be in effect for fifty-five (55) years from the Completion Date which term overlaps with but is longer than the HOME Term. Compliance with the terms of this HOME Regulatory Agreement will be deemed compliance with the County Regulatory Agreement during the HOME Term as it applies to the HOME-Assisted Units. In the event of a conflict between this HOME Regulatory Agreement and the County Regulatory Agreement during the HOME Term as it applies to the HOME-Assisted Units, the terms of this HOME Regulatory Agreement will prevail.

*[remainder of page intentionally left blank]*

*[signatures on following pages]*

WHEREAS, this HOME Regulatory Agreement has been entered into by the undersigned as of the date first written above.

**COUNTY:**

COUNTY OF CONTRA COSTA, a political subdivision of the State of California

By: \_\_\_\_\_  
John Kopchik  
Director, Department of Conservation and Development

Approved as to form:

SHARON L. ANDERSON  
County Counsel

By: \_\_\_\_\_  
Kathleen Andrus  
Deputy County Counsel

**BORROWER:**

VETERANS SQUARE, L.P.,  
a California limited partnership

By: Veterans Square LLC,  
a California limited liability company,  
its general partner

By: Satellite Affordable Housing Associates,  
a California nonprofit public benefit  
corporation, its manager

By: \_\_\_\_\_  
Susan Friedland,  
Chief Executive Officer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public

EXHIBIT A

Legal Description

The land referred to is situated in the County of Contra Costa, City of Pittsburg, State of California, and is described as follows:

Parcel One:

Lots 1, 2, 15 and 16 Block 79, Map of Resubdivision of Block 79, City of Pittsburg, filed May 18, 1926 in Map Book 19, Page 504, Contra Costa County Records.

APN: 085-182-001

Parcel Two:

Lots 8 and 9, Block 78, as delineated upon the certain Map entitled "Official Map of the City of Pittsburg", filed March 23, 1914, Contra Costa County Records.

APN: 085-196-001





Contra  
Costa  
County

To: Board of Supervisors  
From: Esa Ehmen-Krause, County Probation Officer  
Date: September 22, 2020

Subject: Payments to Non-Minor Dependents

---

**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Auditor-Controller, or designee, to make monthly payments, upon submission of payment demands from the Probation Department, to three (3) 21-year-old Non-Minor Dependents (NMD) in Supervised Independent Living Placements (SILP) for the period starting June 29, 2020 through October 31, 2020.

**FISCAL IMPACT:**

Payment to be made at a rate of \$1037/per full calendar month and \$34.09/day of partial months since the NMD's 21st birthday, or since June 29, 2020, whichever occurred latest. 1. NMD T. Charles turned 21 on May 28, 2020. 2. NMD T. Richardson turned 21 on June 28, 2020. 3. NMD S. Castro-Corona turned 21 on July 27, 2020. This action will be funded 100% with County General Fund.

**BACKGROUND:**

On June 29, 2020, the Governor of California passed AB 89. Item 5180-151-0001 of Section 2.00 of the Budget Act of 2020, provision 19 reads: Of the funds appropriated in Schedule (1), \$2,979,000 shall be available to fund the administrative costs associated with continuing an extended foster care benefit assistance payment for any non-minor dependent who met eligibility

APPROVE

OTHER

RECOMMENDATION OF CNTY ADMINISTRATOR

RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: June McHuen, Deputy

Contact: Danielle Fokkema,  
925-313-4195

cc:

BACKGROUND: (CONT'D)

requirements for the Extended Foster Care program, has lost their employment or has experienced a disruption in their education program resulting from COVID-19, and cannot otherwise meet any of the participation requirements, as described in All County Letter 20-45, and extend foster care eligibility for non-minor dependents who turn 21 years of age while in extended foster care on or after April 17, 2020, through June 30, 2021, beyond the maximum age limit of Sections 11400 and 11403 of the Welfare and Institutions Code and accompanying rules or regulations. At this time, the California Department of Social Services (CDSS) has not released an associated All County Letter (ACL) regarding instructions for continuing the extended foster care benefits for NMD's as described in AB 89. Therefore, EHSD will not release payments to the three aforementioned youth who have turned 21 years old during the period of coverage per the enactment of this bill.

CONSEQUENCE OF NEGATIVE ACTION:

These youth are at risk for homelessness and recidivism without support.



**Contra  
Costa  
County**

To: Board of Supervisors  
From: David Twa, County Administrator  
Date: September 22, 2020

Subject: Walnut Creek School District General Obligation Bonds, Election of 2016, Series C (2020)

---

**RECOMMENDATION(S):**

ADOPT Resolution No. 2020/238 authorizing the issuance and sale of "Walnut Creek School District General Obligation Bonds, Election of 2016, Series C (2020)" in an amount not to exceed \$20,000,000 by the Walnut Creek School District on its own behalf pursuant to Section 15140(b) of the Education Code.

**FISCAL IMPACT:**

There is no fiscal impact to the County.

**BACKGROUND:**

The Walnut Creek School District intends to issue General Obligation bonds to fund capital improvements throughout the District. The District has requested that the Board of Supervisors adopt a resolution authorizing the direct issuance and sale of bonds by the District on its own behalf as authorized by Section 15140(b) of the Education Code.

The District adopted a resolution on September 8, 2020 authorizing the sale and issuance of the bonds (copy attached). This issuance was approved by the voters as part of a \$60,000,000 bond measure listed on the June 7, 2016 ballot.

**CONSEQUENCE OF NEGATIVE ACTION:**

Without the Contra Costa County Board of Supervisors authorization, the School District would not be able to issue the bonds as proposed.

---

APPROVE

OTHER

RECOMMENDATION OF CNTY ADMINISTRATOR

RECOMMENDATION OF BOARD COMMITTEE

---

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: June McHuen, Deputy

Contact: Timothy Ewell,  
925-655-2043

cc:



CHILDREN'S IMPACT STATEMENT:

The recommendation supports the following Children's Report Card outcome: Communities that are Safe and Provide a High Quality of Life for Children and Families.

AGENDA ATTACHMENTS

Resolution 2020/238

District Resolution

MINUTES ATTACHMENTS

Signed Resolution No. 2020/238

**THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA**  
**and for Special Districts, Agencies and Authorities Governed by the Board**

Adopted this Resolution on 09/22/2020 by the following vote:

		<b>John Gioia</b>
		<b>Candace Andersen</b>
<b>AYE:</b>	<input checked="" type="checkbox"/>	<b>Diane Burgis</b>
		<b>Karen Mitchoff</b>
		<b>Federal D. Glover</b>
<b>NO:</b>	<input type="checkbox"/>	
<b>ABSENT:</b>	<input type="checkbox"/>	
<b>ABSTAIN:</b>	<input type="checkbox"/>	
<b>RECUSE:</b>	<input type="checkbox"/>	



**Resolution No. 2020/238**

**RESOLUTION OF THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY CONSENTING TO AND AUTHORIZING THE WALNUT CREEK SCHOOL DISTRICT TO ISSUE ITS GENERAL OBLIGATION BONDS, ELECTION OF 2016, SERIES C (2020)**

**RESOLVED** by the Board of Supervisors (the "Board") of Contra Costa County (the "County"), State of California:

**WHEREAS**, sections 53506 *et seq.* of the California Government Code, including section 53508.7 thereof, provide that California public school district may issue and sell bonds on its own behalf at private sale pursuant to sections 15140 and 15146 of the California Education Code the Education Code;

**WHEREAS**, section 15140(b) of the California Education Code provides that the board of supervisors of county may authorize California public school district in the county to issue and sell its own bonds without the further action of the board of supervisors or officers of the county;

**WHEREAS**, the Board of Trustees of the Walnut Creek School District (the "District"), a California public school district under the jurisdiction of the County, has heretofore adopted and filed with the Clerk of this Board, a resolution (the "District Resolution") providing for the issuance and sale of its Walnut Creek School District General Obligation Bonds, Election of 2016, Series C (2020), in an amount not to exceed \$20,000,000 (the "Bonds"), through competitive sale pursuant to sections 53506 *et seq.* of the California Government Code; and

**WHEREAS**, it has been requested on behalf of the District that this Board consent to such issuance of the Bonds and authorize the District to issue and sell the Bonds on its own behalf at competitive sale pursuant to sections 15140 and 15146 of the California Education Code as permitted by section 53508.7 of the California Government Code and the terms set forth in the District Resolution;

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Supervisors of the County of Contra Costa, State of California, as follows:

*Section 1. Recitals.* All of the foregoing recitals are true and correct.

*Section 2. Consent and Authorization of Competitive Sale.* This Board hereby consents to and authorizes the issuance and competitive sale by the District on its own behalf of the Bonds pursuant to sections 15140 and 15146 of the California Education Code, as permitted by section 53508.7 of the California Government Code and the terms and conditions set forth in the District Resolution. This consent and authorization set forth herein shall only apply to the Bonds.

*Section 3. Source of Payment.* The County acknowledges receipt of the District Resolution as adopted and the requests made by the District to levy collect and distribute *ad valorem* tax revenues pursuant to section 15250 *et seq.* of the California Education Code to pay for principal of and interest on the Bonds when and if sold. Correspondingly, and subject to the issuance and sale of the Bonds and transmittal of information concerning the debt service requirements thereof to the appropriate County officers, there shall be levied by the County on all of the taxable property in the District in addition to all other taxes, a continuing direct *ad valorem* tax annually during the period the Bonds are outstanding commencing with fiscal year 2020-21 in an amount

sufficient to pay the principal of and interest on the Bonds when due which tax revenues when collected will be placed in the Interest and Sinking Fund of the District, as defined in the District Resolution, which Interest and Sinking Fund has been irrevocably pledged for the payment of the principal of and interest on the Bonds when and as the same fall due. The monies in the Interest and Sinking Fund, to the extent necessary to pay the principal of and interest on the Bonds as the same become due and payable, shall be transferred by the County to the Paying Agent, as defined in the District Resolution, as necessary to pay the principal of and interest on the Bonds as set out in California law and in the District Resolution.

*Section 4. Approval of Actions.* Officers of the Board and County officials and staff are authorized to do any and all things and are hereby authorized and directed jointly and severally to execute and deliver any and all documents which they may deem necessary or advisable in order to assist the District with the issuance of the Bonds and otherwise carry out give effect to and comply with the terms and intent of this Resolution. Such actions heretofore taken by such officers and officials and staff are hereby ratified confirmed and approved.

*Section 5. Indemnification of County.* The County acknowledges and relies upon the fact that the District has represented that it shall indemnify and hold harmless, to the extent permitted by law, the County and its officers and employees (“Indemnified Parties”), against any and all losses, claims, damages or liabilities, joint or several, to which such Indemnified Parties may become subject because of action or inaction related to the adoption of this resolution, or related to the proceedings for sale, award, issuance and delivery of the Bonds in accordance herewith and with the District’s resolution and that the District shall also reimburse any such Indemnified Parties for any legal or other expenses incurred in connection with investigating or defending any such claims or actions.

*Section 6. Limited Responsibility for Official Statement.* Neither the Board nor any officer of the County has prepared or reviewed the official statement of the District describing the Bonds (the “Official Statement”) and this Board and the various officers of the County take no responsibility for the contents or distribution thereof; provided, however, that solely with respect to a section contained or to be contained therein describing the County’s investment policy, current portfolio holdings and valuation procedures, as they may relate to funds of the District held by the County Treasurer-Tax Collector, the County Treasurer-Tax Collector is hereby authorized and directed to prepare and review such information for inclusion in the Official Statement and in a preliminary official statement, and to certify in writing prior to or upon the issuance of the Bonds that the information contained in such section does not contain any untrue statement of material fact or omit to state any material fact necessary in order to make the statements made therein in the light of the circumstances under which they are made not misleading.

*Section 7. Limited Liability.* Notwithstanding anything to the contrary contained herein in the Bonds or in any other document mentioned herein, neither the County nor the Board shall have any liability hereunder or by reason hereof or in connection with the transactions contemplated hereby and the Bonds shall be payable solely from the moneys of the District available therefore as set forth in the District Resolution and herein.

*Section 8. Effective Date.* This Resolution shall take effect immediately upon its passage.

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: September 22, 2020**

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

**Contact: Timothy Ewell, 925-655-2043**

By: June McHuen, Deputy

**cc:**

THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA  
and for Special Districts, Agencies and Authorities Governed by the Board

Adopted this Resolution on 09/22/2020 by the following vote:

AYE:  5  John Gioia  
 Candace Andersen  
 Diane Burgis  
 Karen Mitchoff  
 Federal D. Glover

NO:  /

ABSENT:  /

ABSTAIN:  /

RECUSE:  /



Resolution No. 2020/238

RESOLUTION OF THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY CONSENTING TO AND AUTHORIZING THE WALNUT CREEK SCHOOL DISTRICT TO ISSUE ITS GENERAL OBLIGATION BONDS, ELECTION OF 2016, SERIES C (2020)

RESOLVED by the Board of Supervisors (the "Board") of Contra Costa County (the "County"), State of California:

WHEREAS, sections 53506 *et seq.* of the California Government Code, including section 53508.7 thereof, provide that California public school district may issue and sell bonds on its own behalf at private sale pursuant to sections 15140 and 15146 of the California Education Code the Education Code;

WHEREAS, section 15140(b) of the California Education Code provides that the board of supervisors of county may authorize California public school district in the county to issue and sell its own bonds without the further action of the board of supervisors or officers of the county;

WHEREAS, the Board of Trustees of the Walnut Creek School District (the "District"), a California public school district under the jurisdiction of the County, has heretofore adopted and filed with the Clerk of this Board, a resolution (the "District Resolution") providing for the issuance and sale of its Walnut Creek School District General Obligation Bonds, Election of 2016, Series C (2020), in an amount not to exceed \$20,000,000 (the "Bonds"), through competitive sale pursuant to sections 53506 *et seq.* of the California Government Code; and

WHEREAS, it has been requested on behalf of the District that this Board consent to such issuance of the Bonds and authorize the District to issue and sell the Bonds on its own behalf at competitive sale pursuant to sections 15140 and 15146 of the California Education Code as permitted by section 53508.7 of the California Government Code and the terms set forth in the District Resolution;

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Contra Costa, State of California, as follows:

Section 1. Recitals. All of the foregoing recitals are true and correct.

Section 2. Consent and Authorization of Competitive Sale. This Board hereby consents to and authorizes the issuance and competitive sale by the District on its own behalf of the Bonds pursuant to sections 15140 and 15146 of the California Education Code, as permitted by section 53508.7 of the California Government Code and the terms and conditions set forth in the District Resolution. This consent and authorization set forth herein shall only apply to the Bonds.

Section 3. Source of Payment. The County acknowledges receipt of the District Resolution as adopted and the requests made by the District to levy collect and distribute *ad valorem* tax revenues pursuant to section 15250 *et seq.* of the California Education Code to pay for principal of and interest on the Bonds when and if sold. Correspondingly, and subject to the issuance and sale of the Bonds and transmittal of information concerning the debt service requirements thereof to the appropriate County officers, there shall be levied by the County on all of the taxable property in the District in addition to all other taxes, a continuing direct *ad valorem* tax annually during the period the Bonds are outstanding commencing with fiscal year 2020-21 in an amount



sufficient to pay the principal of and interest on the Bonds when due which tax revenues when collected will be placed in the Interest and Sinking Fund of the District, as defined in the District Resolution, which Interest and Sinking Fund has been irrevocably pledged for the payment of the principal of and interest on the Bonds when and as the same fall due. The monies in the Interest and Sinking Fund, to the extent necessary to pay the principal of and interest on the Bonds as the same become due and payable, shall be transferred by the County to the Paying Agent, as defined in the District Resolution, as necessary to pay the principal of and interest on the Bonds as set out in California law and in the District Resolution.

*Section 4. Approval of Actions.* Officers of the Board and County officials and staff are authorized to do any and all things and are hereby authorized and directed jointly and severally to execute and deliver any and all documents which they may deem necessary or advisable in order to assist the District with the issuance of the Bonds and otherwise carry out give effect to and comply with the terms and intent of this Resolution. Such actions heretofore taken by such officers and officials and staff are hereby ratified confirmed and approved.

*Section 5. Indemnification of County.* The County acknowledges and relies upon the fact that the District has represented that it shall indemnify and hold harmless, to the extent permitted by law, the County and its officers and employees (“Indemnified Parties”), against any and all losses, claims, damages or liabilities, joint or several, to which such Indemnified Parties may become subject because of action or inaction related to the adoption of this resolution, or related to the proceedings for sale, award, issuance and delivery of the Bonds in accordance herewith and with the District’s resolution and that the District shall also reimburse any such Indemnified Parties for any legal or other expenses incurred in connection with investigating or defending any such claims or actions.

*Section 6. Limited Responsibility for Official Statement.* Neither the Board nor any officer of the County has prepared or reviewed the official statement of the District describing the Bonds (the “Official Statement”) and this Board and the various officers of the County take no responsibility for the contents or distribution thereof; provided, however, that solely with respect to a section contained or to be contained therein describing the County’s investment policy, current portfolio holdings and valuation procedures, as they may relate to funds of the District held by the County Treasurer-Tax Collector, the County Treasurer-Tax Collector is hereby authorized and directed to prepare and review such information for inclusion in the Official Statement and in a preliminary official statement, and to certify in writing prior to or upon the issuance of the Bonds that the information contained in such section does not contain any untrue statement of material fact or omit to state any material fact necessary in order to make the statements made therein in the light of the circumstances under which they are made not misleading.

*Section 7. Limited Liability.* Notwithstanding anything to the contrary contained herein in the Bonds or in any other document mentioned herein, neither the County nor the Board shall have any liability hereunder or by reason hereof or in connection with the transactions contemplated hereby and the Bonds shall be payable solely from the moneys of the District available therefore as set forth in the District Resolution and herein.

*Section 8. Effective Date.* This Resolution shall take effect immediately upon its passage.

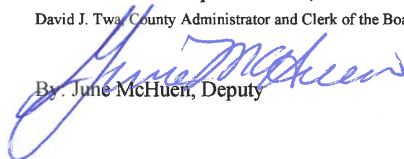
I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

Contact: Timothy Ewell, 925-655-2043

ATTESTED: September 22, 2020

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

By: June McHuen, Deputy



cc:

---

---

**WALNUT CREEK SCHOOL DISTRICT**

**RESOLUTION NO. 20-21-02**

**RESOLUTION OF THE BOARD OF TRUSTEES OF THE WALNUT CREEK  
SCHOOL DISTRICT AUTHORIZING THE ISSUANCE AND SALE OF THE  
DISTRICT'S GENERAL OBLIGATION BONDS, ELECTION OF 2016,  
SERIES C (2020), IN AN AMOUNT NOT TO EXCEED \$20,000,000**

Adopted September 8, 2020

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**WALNUT CREEK SCHOOL DISTRICT**

**RESOLUTION NO. 20-21-02**

**RESOLUTION OF THE BOARD OF TRUSTEES OF THE WALNUT CREEK  
SCHOOL DISTRICT AUTHORIZING THE ISSUANCE AND SALE OF THE  
DISTRICT'S GENERAL OBLIGATION BONDS, ELECTION OF 2016,  
SERIES C (2020), IN AN AMOUNT NOT TO EXCEED \$20,000,000**

RESOLVED, by the Board of Trustees (the "Board of Trustees") of the Walnut Creek School District (the "District"), as follows:

WHEREAS, a duly called special municipal election was held in the District on June 7, 2016, and thereafter canvassed pursuant to law;

WHEREAS, at such election there was submitted to and approved by the requisite fifty-five percent (55%) vote of the qualified electors of the District a question as to the issuance and sale of general obligation bonds of the District to address critical renovation, modernization and safety needs at District schools, upgrade classrooms, libraries and computer networks to provide students with 21st Century classrooms, improve energy efficiency of classrooms and buildings, and replace, acquire, construct and renovate school facilities (the "Project"), in the maximum aggregate principal amount of \$60,000,000 (the "Bonds") payable from the levy of an *ad valorem* tax against the taxable property in the District;

WHEREAS, pursuant to Title 1, Division 1, Part 10, Chapter 2 (commencing with section 15100) of the California Education Code and Article 4.5 of Chapter 3 of Part 1 of Division 2 of Title 5 (commencing with section 53506) of the California Government Code, the District is empowered to issue general obligation bonds;

WHEREAS, in 2016, the District issued its \$20,000,000 Walnut Creek School District (Contra Costa County, California) General Obligation Bonds, Election of 2016, Series A (2016) for the purpose of raising moneys for the Project and other authorized costs

WHEREAS, in 2019, the District issued its \$20,000,000 Walnut Creek School District (Contra Costa County, California) General Obligation Bonds, Election of 2016, Series B (2019) for the purpose of raising moneys for the Project and other authorized costs

WHEREAS, the District wishes at this time to authorize the issuance and sale of the third and final series of general obligation bonds under the Authorization in the aggregate principal amount of not to exceed \$20,000,000, its Walnut Creek School District (Contra Costa County, California) General Obligation Bonds, Election of 2016, Series C (2020) (the "Series C Bonds") for the purpose of raising moneys for the Project and other authorized costs; and

NOW, THEREFORE, it is hereby RESOLVED, by the Board of Trustees of the Walnut Creek School District, as follows:

## ARTICLE I

### DEFINITIONS; AUTHORITY

Section 1.01. Definitions. The terms defined in this Section 1.01, as used and capitalized herein, shall, for all purposes of this Resolution, have the meanings ascribed to them below, unless the context clearly requires some other meaning.

*“Act”* means Article 4.5 of Chapter 3 of Part 1 of Division 2 of Title 5 (commencing with section 53506) of the California Government Code, as is in effect on the date of adoption hereof and as amended hereafter.

*“Articles,” “Sections”* and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Resolution, and the words *“herein,” “hereof,” “hereunder”* and other words of similar import refer to this Resolution as a whole and not to any particular Article, Section or subdivision hereof.

*“Authorized Investments”* means the Contra Costa County Investment Pool, the Contra Costa County Educational Investment Pool (or other investment pools of Contra Costa County into which the District may lawfully invest its funds), any investment authorized pursuant to sections 16429.1 and 53601 of the California Government Code, or any investment authorized in the Official Statement.

*“Board”* means the Board of Trustees of the District.

*“Bond Counsel”* means any attorney or firm of attorneys nationally recognized for expertise in rendering opinions as to the legality and tax exempt status of securities issued by public entities.

*“Bond Register”* means the registration books for the Series C Bonds maintained by the Paying Agent.

*“Closing Date”* means the date upon which there is an exchange of the Series C Bonds for the proceeds representing the purchase of the Series C Bonds by the Original Purchaser.

*“Code”* means the Internal Revenue Code of 1986 as in effect on the date of issuance of the Series C Bonds or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the date of issuance of the Series C Bonds, together with applicable temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

*“Continuing Disclosure Certificate”* shall mean that certain Continuing Disclosure Certificate executed by the District and dated the date of issuance and delivery of the Series C Bonds, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

*“Costs of Issuance”* means all items of expense directly or indirectly reimbursable to the District relating to the issuance, execution and delivery of the Series C Bonds including, but not limited to, filing and recording costs, settlement costs, printing costs, reproduction and binding costs, legal fees and charges, fees and expenses of the Paying Agent, financial and other professional consultant fees, costs of obtaining credit ratings, fees for execution, transportation and safekeeping of the Series C Bonds and charges and fees in connection with the foregoing.

*“County”* means Contra Costa County, California.

*“Debt Service”* means the scheduled amount of interest and amortization of principal payable on the Series C Bonds during the period of computation, excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

*“District Representative”* means the Superintendent, the Chief Business Official, or any other person authorized by resolution of the Board of Trustees of the District to act on behalf of the District with respect to this Resolution and the Series C Bonds.

*“Fair Market Value”* means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm’s length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of section 1273 of the Code) and, otherwise, the term *“Fair Market Value”* means the acquisition price in a bona fide arm’s length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (iii) the investment is a United States Treasury Security—State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) any commingled investment fund in which the District and related parties do not own more than a ten percent (10%) beneficial interest therein if the return paid by the fund is without regard to the source of the investment.

*“Federal Securities”* means United States Treasury Bonds, bills or certificates of indebtedness or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

*“Information Services”* means the Electronic Municipal Market Access System (referred to as *“EMMA”*), a facility of the Municipal Securities Rulemaking Board (at <http://emma.msrb.org>) or, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other national information services providing information with respect to called bonds as the District may designate to the Paying Agent.

*“Interest Payment Date”* means with respect to interest, March 1 and September 1 of each year commencing on March 1, 2021, and with respect to principal, September 1, of each year commencing on September 1 in such year as shall be set forth in the Notice of Sale.

*“Municipal Advisor”* means Isom Advisors, A Division of Urban Futures Incorporated, Walnut Creek, California, as Municipal Advisor to the District in connection with the issuance of the Series C Bonds.

*“Notice of Sale”* means the official notice of sale relating to the Series C Bonds.

*“Office”* means the office or offices of the Paying Agent for the payment of the Series C Bonds and the administration of its duties hereunder. Initially, the Office of the Paying Agent is 2001 Bryan Street, Dallas, Texas. The Office may be re-designated from time to time under written notice filed with the District by the Paying Agent.

*“Original Purchaser”* means the first purchaser of the Series C Bonds from the District.

*“Outstanding”* means, when used as of any particular time with reference to Series C Bonds, all Series C Bonds except:

(a) Series C Bonds theretofore canceled by the Paying Agent or surrendered to the Paying Agent for cancellation;

(b) Series C Bonds paid or deemed to have been paid within the meaning of Section 9.02 hereof; and

(c) Series C Bonds in lieu of or in substitution for which other Series C Bonds shall have been authorized, executed, issued and delivered by the District pursuant to this Resolution.

*“Owner”* or *“Bondowner”* mean any person who shall be the registered owner of any Outstanding Series C Bond.

*“Participating Underwriter”* shall have the meaning ascribed thereto in the Continuing Disclosure Certificate.

*“Paying Agent”* means The Bank of New York Mellon Trust Company, N.A., the Paying Agent appointed by the District and acting as paying agent, registrar and authenticating agent for the Series C Bonds, or such other paying agent as shall be appointed by the District prior to the delivery of the Series C Bonds, its successors and assigns, and any other corporation or association which may at any time be substituted in its place, as provided in Section 6.01 hereof.

*“Paying Agent Agreement”* means the Paying Agent/Bond Registrar/Costs of Issuance Agreement, dated the Closing Date, by and between the District and the Paying Agent.

*“Principal Office”* means the principal corporate trust office of the Paying Agent in Dallas, Texas.

*“Record Date”* means the 15th day of the month preceding each Interest Payment Date.

*“Regulations”* means temporary and permanent regulations promulgated under the Code.

*“Resolution”* means this Resolution, including all amendments hereto and supplements hereof which are duly adopted by the Board of Trustees from time to time in accordance herewith.

*“Securities Depositories”* means The Depository Trust Company, 55 Water Street, 50th Floor, New York, NY 10041-0099, Attention: Call Notification Department, Fax (212) 855-7232; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the District may designate to the Paying Agent.

*“Series C Bonds”* means the Walnut Creek School District (Contra Costa County, California) General Obligation Bonds, Election of 2016, Series C (2020), issued and at any time Outstanding pursuant to this Resolution.



*"Supplemental Resolution"* means any resolution supplemental to or amendatory of this Resolution, adopted by the District in accordance with Article VIII hereof.

*"Term Bonds"* means those Series C Bonds for which mandatory redemption dates have been established pursuant to the Notice of Sale.

*"Treasurer"* means the Contra Costa County Treasurer-Tax Collector.

*"Written Request of the District"* means an instrument in writing signed by the District Representative or by any other officer of the District duly authorized by the District and listed on a Written Request of the District for that purpose.

Section 1.02. Authority for this Resolution. This Resolution is entered into pursuant to the provisions of the Act.

## ARTICLE II

### THE SERIES C BONDS

Section 2.01. Authorization. Series C Bonds are hereby authorized to be issued by the District under and subject to the terms of the Act and this Resolution. The amount of Series C Bonds shall be determined on the date of sale thereof in accordance with the Notice of Sale. This Resolution constitutes a continuing agreement with the Owners of all of the Series C Bonds issued or to be issued hereunder and then Outstanding to secure the full and final payment of principal of and the interest on all Series C Bonds which may from time to time be executed and delivered hereunder, subject to the covenants, agreements, provisions and conditions herein contained. The Series C Bonds shall be designated the "Walnut Creek School District (Contra Costa County, California) General Obligation Bonds, Election of 2016, Series C (2020)."

#### Section 2.02. Terms of Series C Bonds.

(a) *Form; Numbering*. The Series C Bonds shall be issued as fully registered Series C Bonds, without coupons, in the denomination of \$5,000 each or any integral multiple thereof, but in an amount not to exceed the aggregate principal amount of Series C Bonds maturing in the year of maturity of the Series C Bond for which the denomination is specified. Series C Bonds shall be lettered and numbered as the Paying Agent shall prescribe.

(b) *Date of Series C Bonds*. The Series C Bonds shall be dated as of the Closing Date.

(c) *CUSIP Identification Numbers*. "CUSIP" identification numbers shall be imprinted on the Series C Bonds, but such numbers shall not constitute a part of the contract evidenced by the Series C Bonds and any error or omission with respect thereto shall not constitute cause for refusal of any purchaser to accept delivery of and pay for the Series C Bonds. In addition, failure on the part of the District to use such CUSIP numbers in any notice to Owners of the Series C Bonds shall not constitute an Event of Default (hereinafter defined) or any violation of the District's contract with such Owners and shall not impair the effectiveness of any such notice.

(d) *Maturities; Interest*. The Series C Bonds shall mature (or, alternatively, be subject to mandatory sinking fund redemption as hereinafter provided) and become payable on September 1 in the years and in the amounts set forth in, and subject to the alteration thereof permitted by, the Notice of Sale. The Series C Bonds shall bear interest at such rate or rates as shall be determined upon the sale thereof, payable semi-annually on each Interest Payment Date.

Each Series C Bond shall bear interest from the Interest Payment Date next preceding the date of registration and authentication thereof unless (i) it is registered and authenticated as of an Interest Payment Date, in which event it shall bear interest from such date, or (ii) it is registered and authenticated prior to an Interest Payment Date and after the close of business on the fifteenth day of the month preceding such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or (iii) it is registered and authenticated prior to February 15, 2021, in which event it shall bear interest from the date described in paragraph (b) of this Section 2.02; *provided, however*, that if at the time of authentication of a Series C Bond, interest is in default thereon, such Series C Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

Interest on the Series C Bonds shall be calculated on the basis of a 360-day year comprised of twelve 30-day months.

(e) *Payment.* Interest on the Series C Bonds (including the final interest payment upon maturity or earlier redemption) is payable by check of the Paying Agent mailed via first-class mail to the Owner thereof at such Owner's address as it appears on the Bond Register on each Record Date or at such other address as the Owner may have filed with the Paying Agent for that purpose; provided however, that payment of interest may be by wire transfer in immediately available funds to an account in the United States of America to any Owner of Series C Bonds in the aggregate principal amount of \$1,000,000 or more who shall furnish written wire instructions to the Paying Agent at least five (5) days before the applicable Record Date. Principal of the Series C Bonds is payable in lawful money of the United States of America at the Principal Office.

### Section 2.03. Redemption.

(a) *Optional Redemption.* The Series C Bonds are subject to optional redemption on the dates and at the redemption prices set forth in the Notice of Sale. The District shall be required to give the Paying Agent written notice of its intention to redeem Series C Bonds.

(b) *Mandatory Sinking Fund Redemption.* In the event and to the extent specified in the Notice of Sale, any maturity of Series C Bonds may be designated as "Term Bonds" and shall be subject to mandatory sinking fund redemption. If some but not all of such Term Bonds have been redeemed pursuant to the preceding subsection (a) of this Section 2.03, the aggregate principal amount of such Term Bonds to be redeemed in each year pursuant to this subsection (b) shall be reduced on a *pro rata* basis in integral multiples of \$5,000, or as shall be designated pursuant to written notice filed by the District with the Paying Agent.

(c) *Notice of Redemption.* The Paying Agent on behalf and at the expense of the District shall mail (by first class mail) notice of any redemption to: (i) the respective Owners of any Series C Bonds designated for redemption, at least thirty (30) but not more than sixty (60) days prior to the redemption date, at their respective addresses appearing on the Bond Register, and (ii) the Securities Depositories and to one or more Information Services, at least thirty (30) but not more than sixty (60) days prior to the redemption; *provided, however,* that neither failure to receive any such notice so mailed nor any defect therein shall affect the validity of the proceedings for the redemption of such Series C Bonds or the cessation of the accrual of interest thereon. Such notice shall state the date of the notice, the redemption date, the redemption place and the redemption price and shall designate the CUSIP numbers, the Series C Bond numbers and the maturity or maturities (in the event of redemption of all of the Series C Bonds of such maturity or maturities in whole) of the Series C Bonds to be redeemed, and shall require that such Series C Bonds be then surrendered at the Principal Office for redemption at the redemption price, giving notice also that further interest on such Series C Bonds will not accrue from and after the redemption date.

Notwithstanding the foregoing, in the case of any optional redemption of the Series C Bonds, the notice of redemption shall state that the redemption is conditioned upon receipt by the Paying Agent of sufficient moneys to redeem the Series C Bonds on the scheduled redemption date, and that the optional redemption shall not occur if, by no later than the scheduled redemption date, sufficient moneys to redeem the Series C Bonds have not been deposited with the Paying Agent. In the event that the Paying Agent does not receive sufficient funds by the scheduled optional redemption date to so redeem the Series C Bonds to be optionally redeemed, the Paying Agent shall send written notice to the Owners, to the Securities Depositories and to one or more of the Information Services to the effect that the redemption

did not occur as anticipated, and the Series C Bonds for which notice of optional redemption was given shall remain Outstanding for all purposes.

(d) *Selection of Series C Bonds for Redemption.* Whenever provision is made for the redemption of Series C Bonds of more than one maturity, the Series C Bonds to be redeemed shall be selected by the District evidenced by a Written Request of the District filed with the Paying Agent or, absent such selection by the District, on a *pro rata* basis among the maturities subject to redemption; and in each case, the Paying Agent shall select the Series C Bonds to be redeemed within any maturity by lot in any manner which the Paying Agent in its sole discretion shall deem appropriate and fair. For purposes of such selection, all Series C Bonds shall be deemed to be comprised of separate \$5,000 portions and such portions shall be treated as separate Series C Bonds which may be separately redeemed.

(e) *Partial Redemption of Series C Bonds.* In the event only a portion of any Series C Bond is called for redemption, then upon surrender of such Series C Bond the District shall execute and the Paying Agent shall authenticate and deliver to the Owner thereof, at the expense of the District, a new Series C Bond or Bonds of the same maturity date, of authorized denominations in aggregate principal amount equal to the unredeemed portion of the Series C Bond to be redeemed. Series C Bonds need not be presented for mandatory sinking fund redemptions.

(f) *Effect of Redemption.* From and after the date fixed for redemption, if funds available for the payment of the principal of and interest (and premium, if any) on the Series C Bonds so called for redemption shall have been duly provided, such Series C Bonds so called shall cease to be entitled to any benefit under this Resolution other than the right to receive payment of the redemption price, and no interest shall accrue thereon from and after the redemption date specified in such notice. All Series C Bonds redeemed pursuant to this Section 2.03 shall be canceled and shall be destroyed by the Paying Agent.

Section 2.04. Form of Series C Bonds. The Series C Bonds, the form of the Paying Agent's certificate of authentication and registration and the form of assignment to appear thereon shall be substantially in the forms, respectively, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Resolution, as are set forth in Exhibit A attached hereto.

Section 2.05. Execution of Series C Bonds. The Series C Bonds shall be executed on behalf of the District by the facsimile signatures of the President of its Board of Trustees and its Secretary who are in office on the date of adoption of this Resolution or at any time thereafter. If any officer whose signature appears on any Series C Bond ceases to be such officer before delivery of the Series C Bonds to the purchaser, such signature shall nevertheless be as effective as if the officer had remained in office until the delivery of the Series C Bonds to the purchaser. Any Series C Bond may be signed and attested on behalf of the District by such persons as at the actual date of the execution of such Series C Bond shall be the proper officers of the District although at the nominal date of such Series C Bond any such person shall not have been such officer of the District.

Only such Series C Bonds as shall bear thereon a certificate of authentication and registration in the form set forth in Exhibit A attached hereto, executed and dated by the Paying Agent, shall be valid or obligatory for any purpose or entitled to the benefits of this Resolution, and such certificate of the Paying Agent shall be conclusive evidence that the Series C Bonds so registered have been duly authenticated, registered and delivered hereunder and are entitled to the benefits of this Resolution.

Section 2.06. Transfer of Series C Bonds. Any Series C Bond may, in accordance with its terms, be transferred, upon the books required to be kept pursuant to the provisions of Section 2.08 hereof, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Series C Bond for cancellation at the Principal Office, accompanied by delivery of a written instrument of transfer in a form approved by the Paying Agent, duly executed. The Paying Agent shall require the payment by the Owner requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer.

Whenever any Series C Bond or Bonds shall be surrendered for transfer, the District shall execute and the Paying Agent shall authenticate and deliver a new Series C Bond or Bonds, for like aggregate principal amount.

No transfers of Series C Bonds shall be required to be made (a) fifteen days prior to the date established by the Paying Agent for selection of Series C Bonds for redemption or (b) with respect to a Series C Bond after such Series C Bond has been selected for redemption.

Section 2.07. Exchange of Series C Bonds. Series C Bonds may be exchanged at the Principal Office for a like aggregate principal amount of Series C Bonds of authorized denominations and of the same maturity. The Paying Agent shall require the payment by the Owner requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange.

No exchanges of Series C Bonds shall be required to be made (a) fifteen days prior to the date established by the Paying Agent for selection of Series C Bonds for redemption or (b) with respect to a Series C Bond after such Series C Bond has been selected for redemption.

Section 2.08. Bond Register. The Paying Agent shall keep or cause to be kept sufficient books for the registration and transfer of the Series C Bonds, which shall at all times be open to inspection by the District upon reasonable notice; and, upon presentation for such purpose, the Paying Agent shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, Series C Bonds as herein before provided.

Section 2.09. Temporary Series C Bonds. The Series C Bonds may be initially issued in temporary form exchangeable for definitive Series C Bonds when ready for delivery. The temporary Series C Bonds may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the District, and may contain such reference to any of the provisions of this Resolution as may be appropriate. Every temporary Series C Bond shall be executed by the District upon the same conditions and in substantially the same manner as the definitive Series C Bonds. If the District issues temporary Series C Bonds it will execute and furnish definitive Series C Bonds without delay, and thereupon the temporary Series C Bonds may be surrendered, for cancellation, in exchange therefor at the Principal Office and the Paying Agent shall deliver in exchange for such temporary Series C Bonds an equal aggregate principal amount of definitive Series C Bonds of authorized denominations. Until so exchanged, the temporary Series C Bonds shall be entitled to the same benefits pursuant to this Resolution as definitive Series C Bonds executed and delivered hereunder.

Section 2.10. Series C Bonds Mutilated, Lost, Destroyed or Stolen. If any Series C Bond shall become mutilated the District, at the expense of the Owner of said Series C Bond, shall execute, and the Paying Agent shall thereupon authenticate and deliver, a new Series C Bond of like maturity and principal amount in exchange and substitution for the Series C Bond so mutilated, but only upon surrender to the Paying Agent of the Series C Bond so mutilated.

Every mutilated Series C Bond so surrendered to the Paying Agent shall be canceled by it and delivered to, or upon the order of, the District. If any Series C Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the District and, if such evidence be satisfactory to the District and indemnity satisfactory to it shall be given, the District, at the expense of the Owner, shall execute, and the Paying Agent shall thereupon authenticate and deliver, a new Series C Bond of like maturity and principal amount in lieu of and in substitution for the Series C Bond so lost, destroyed or stolen. The District may require payment of a sum not exceeding the actual cost of preparing each new Series C Bond issued under this Section and of the expenses which may be incurred by the District and the Paying Agent in the premises. Any Series C Bond issued under the provisions of this Section 2.10 in lieu of any Series C Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the District whether or not the Series C Bond so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Resolution with all other Series C Bonds issued pursuant to this Resolution.

Section 2.11. Book Entry System. Except as provided below, the owner of all of the Series C Bonds shall be The Depository Trust Company, New York, New York ("DTC"), and the Series C Bonds shall be registered in the name of Cede & Co., as nominee for DTC. The Series C Bonds shall be initially executed and delivered in the form of a single fully registered Series C Bond for each maturity date of the Series C Bonds in the full aggregate principal amount of the Series C Bonds maturing on such date. The Paying Agent and the District may treat DTC (or its nominee) as the sole and exclusive owner of the Series C Bonds registered in its name for all purposes of this Resolution, and neither the Paying Agent nor the District shall be affected by any notice to the contrary. The Paying Agent and the District shall not have any responsibility or obligation to any participant of DTC (a "Participant"), any person claiming a beneficial ownership interest in the Series C Bonds under or through DTC or a Participant, or any other person which is not shown on the register of the District as being an owner, with respect to the accuracy of any records maintained by DTC or any Participant or the payment by DTC or any Participant by DTC or any Participant of any amount in respect of the principal or interest with respect to the Series C Bonds. The Paying Agent shall cause to be paid all principal and interest with respect to the Series C Bonds received from the District only to DTC, and all such payments shall be valid and effective to fully satisfy and discharge the District's obligations with respect to the principal and interest with respect to the Series C Bonds to the extent of the sum or sums so paid. Except under the conditions noted below, no person other than DTC shall receive a Series C Bond. Upon delivery by DTC to the District of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the term "Cede & Co." in this Resolution shall refer to such new nominee of DTC.

If the District determines that it is in the best interest of the beneficial owners that they be able to obtain Series C Bonds and delivers a written certificate to DTC to that effect, DTC shall notify the Participants of the availability through DTC of Series C Bonds. In such event, the District shall issue, transfer and exchange Series C Bonds as requested by DTC and any other owners in appropriate amounts. DTC may determine to discontinue providing its services with respect to the Series C Bonds at any time by giving notice to the District and discharging its responsibilities with respect thereto under applicable law. Under such circumstances (if there is no successor securities depository), the District shall be obligated to deliver Series C Bonds as described in this Resolution. Whenever DTC requests the District to do so, the District will cooperate with DTC in taking appropriate action after reasonable notice to (a) make available one or more separate Series C Bonds evidencing the Series C Bonds to any DTC Participant having Series C Bonds credited to its DTC account or (b) arrange for another securities depository to maintain custody of certificates evidencing the Series C Bonds.

Notwithstanding any other provision of this Resolution to the contrary, so long as any Series C Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to the principal and interest with respect to such Series C Bond and all notices with respect to such Series C Bond shall be made and given, respectively, to DTC as provided as in the representation letter delivered by the District to DTC.

## ARTICLE III

### ISSUE OF SERIES C BONDS; APPLICATION OF SERIES C BOND PROCEEDS; SECURITY FOR THE SERIES C BONDS

Section 3.01. Issuance, Award and Delivery of Series C Bonds. At any time after the execution of this Resolution the District may issue and deliver Series C Bonds in any principal amount, not to exceed \$20,000,000.

The District Representatives shall be, and are hereby, directed to cause the Series C Bonds to be printed, signed and delivered to the Underwriter on receipt of the purchase price therefor and upon performance of the conditions contained in the Notice of Sale.

The Paying Agent is hereby authorized to deliver the Series C Bonds to the Original Purchaser, upon receipt of a Written Request of the District.

#### Section 3.02. Funds and Accounts.

(a) *Building Fund.* The fund, known as the "Walnut Creek School District, General Obligation Bonds, Election of 2016, Series C (2020) Building Fund" (the "Building Fund"), is hereby established and maintained by the Treasurer for the Series C Bonds. Moneys deposited therein from the proceeds of the Series C Bonds shall be used solely for the purpose for which the Series C Bonds are being issued and shall be applied solely to authorized purposes which relate to the acquisition or improvement of real property and for the payment of Costs of Issuance of the Series C Bonds insufficient moneys are available therefor in the Costs of Issuance Fund. The interest earned on the moneys deposited to the Building Fund shall be retained in the Building Fund and used for the purposes thereof. At the written request of the District filed with the Treasurer, any amounts remaining on deposit in the Building Fund and not needed for the purposes of the Series C Bonds shall be withdrawn from the Building Fund and transferred to the Interest and Sinking Fund, to be applied to the payment of Debt Service. By receipt of a copy of this resolution, the Treasurer is hereby requested to establish and maintain the Building Fund. The Treasurer is not responsible for the use of funds disbursed from the Building Fund. The District shall, from time to time, disburse or cause to be disbursed amounts from the Building Fund to pay Project Costs. Amounts in the Building Fund shall be invested so as to be available for the aforementioned disbursements. The District shall keep a written record of disbursements from the Building Fund.

(b) *Interest and Sinking Fund.* The fund, known as the "Walnut Creek School District, General Obligation Bonds Interest and Sinking Fund" (the "Interest and Sinking Fund"), previously established and maintained by the Treasurer for the bonds of the Authorization is hereby continued. Moneys deposited therein shall be used only for payment of principal and interest on all general obligation bonds of the District. If, after payment in full of the Series C Bonds, there remain excess proceeds, any such excess amounts shall be transferred to the general fund of the District. Notwithstanding the foregoing provisions of this Section 3.02(b), any excess proceeds of the Series C Bonds not needed for the authorized purposes set forth herein for which the Series C Bonds are being issued shall be applied solely in a manner which is consistent with the requirements of applicable state and federal tax law, including but not limited to the requirements of federal tax law (if any) relating to the yield at which such proceeds are permitted to be invested. The interest earned on the moneys deposited to the Interest and Sinking Fund shall be retained in the Interest and Sinking Fund and used for the purposes thereof.



(c) *Costs of Issuance Fund.* A fund, to be known as the “Walnut Creek School District, General Obligation Bonds, Election of 2016, Series C (2020) Costs of Issuance Fund” (the “Costs of Issuance Fund”), is hereby created and established with the Paying Agent, acting as costs of issuance custodian (the “Custodian”) for the Series C Bonds. Moneys deposited therein shall be used solely for the payment of costs of issuance of the Series C Bonds, as provided in the Paying Agent Agreement. The Board authorizes the payment to the County of out-of-pocket expenses and other costs incurred by the County in connection with the County’s participation in the issuance and delivery of the Series C Bonds.

(d) *Application of Proceeds.* Upon the sale of the Series C Bonds and at the further written instruction of a District Representative, the Treasurer is hereby directed to apply or deposit a portion of the net proceeds thereof, exclusive of accrued interest and any original issue premium, into the Building Fund. The District shall, from time to time, disburse or cause to be disbursed amounts from the Building Fund to pay Project Costs. Amounts in the Building Fund shall be invested so as to be available for the aforementioned disbursements. The District shall keep a written record of disbursements from the Building Fund. All funds held in the Interest and Sinking Fund shall be invested at the sole discretion of the Treasurer. Proceeds of the Series C Bonds held by the Treasurer shall be invested at the sole Treasurer’s discretion pursuant to law and the investment policy of Contra Costa County, unless otherwise directed in writing by a District Representative. The Treasurer is hereby authorized and requested to invest any or all funds held hereunder at the Treasurer’s discretion pursuant to law and the investment policy of Contra Costa County, both of which may be amended or supplemented from time to time. In addition, to the extent permitted by law at the written request of a District Representative, each of whom is hereby expressly authorized to make such request, all or any portion of the Building Fund may be invested on behalf of the District in Permitted Investments (ii) at the written request of an District Representative, each of whom is hereby expressly authorized to make such request, the Treasurer shall deposit any investment of all or any portion of the Building Fund made pursuant to section 41015 of the California Education Code in accordance with the instructions of District Representative and section 41016 of the California Education Code.

Section 3.03. Application of Proceeds of Sale of Series C Bonds. On the Closing Date, the proceeds of sale of the Series C Bonds shall be paid by the Original Purchaser as follows:

(a) to the Treasurer, an amount equal to the premium received by the District, if any, on the Series C Bonds, for deposit in the Interest and Sinking Fund;

(b) to the Custodian, an amount equal to the amounts required for the payment of Costs of Issuance, for deposit in the Costs of Issuance Fund; and

(c) the remaining proceeds of the Series C Bonds shall be transferred to the Treasurer for deposit in the Building Fund.

Section 3.04. Security for the Series C Bonds. There shall be levied by the County on all the taxable property in the District, in addition to all other taxes, a continuing direct and *ad valorem* tax annually during the period the Series C Bonds are outstanding in an amount sufficient to pay the principal of and interest on the Series C Bonds when due, which moneys when collected will be placed in the Interest and Sinking Fund of the District, which fund is irrevocably pledged for the payment of the principal of and interest on the Series C Bonds when and as the same fall due. The moneys in the Interest and Sinking Fund, to the extent necessary to pay the principal of and interest on the Series C Bonds as the same become due and payable, shall be transferred by the Treasurer to the Paying Agent as necessary to pay the principal of and interest on the Series C Bonds. The property taxes and amounts held in the Interest and Sinking Fund of the District shall immediately be subject to this pledge and the pledge shall

constitute a lien and security interest which shall be effective, binding, and enforceable against the District, its successors, creditors and all others irrespective of whether those parties have notice of the pledge and without the need of any physical delivery, recordation, filing or further act. The pledge is an agreement between the District and the Owners of the Series C Bonds in addition to the statutory lien that exists (as described below), and the Series C Bonds were issued to finance one or more capital projects authorized by the voters of the District and not to finance the general purposes of the District.

Additionally, in accordance with section 53515(a) of the Government Code, the Series C Bonds shall be secured by a statutory lien on all revenues received pursuant to the levy and collection of the tax for the payment of bonds authorized by the voters of the District. The lien shall automatically attach without further action or authorization by the District or the County. The lien shall be valid and binding from the time the Series C Bonds are executed and delivered. The revenues received pursuant to the levy and collection of the tax shall be immediately subject to the lien, and the lien shall automatically attach to the revenues and be effective, binding, and enforceable against the District, its successors, transferees, and creditors, and all others asserting rights therein, irrespective of whether those parties have notice of the lien and without the need for any physical delivery, recordation, filing, or further act.

## ARTICLE IV

### SALE OF BONDS; APPROVAL OF PAYING AGENT AGREEMENT; APPROVAL OF OFFICIAL STATEMENT

#### Section 4.01. Sale of the Series C Bonds.

(a) *Notice of Intention to Sell Series C Bonds.* The Notice of Intention, in the form attached hereto as Exhibit B and by this reference incorporated herein, is hereby approved. The Secretary of the Board is hereby authorized and directed to cause to be published, once at least fifteen (15) days prior to the date to receive bids, the Notice of Intention in the *Bond Buyer*, a financial publication reasonably expected to be disseminated among prospective bidders for the Series C Bonds.

(b) *Notice of Sale.* The Notice of Sale, in the form attached hereto as Exhibit C and by this reference incorporated herein, is hereby approved.

(c) *Terms and Conditions of Sale.* The terms and conditions of the offering and the sale of the Series C Bonds shall be as specified in said Notice of Sale.

(d) *Furnishing of Official Notice of Sale.* The Secretary of the Board and the Financial Advisor are hereby authorized to cause to be furnished to prospective bidders a reasonable number of copies of the Notice of Sale.

(e) *Receipt of Bids.* The Municipal Advisor is hereby authorized and directed, on behalf of the Board, to receive the bids at the time and place specified in the Notice of Sale, to examine said bids for compliance with the Notice of Sale and to verify the bid with the lowest true interest cost as provided in the Notice of Sale. In the event two or more bids setting forth identical true interest cost are received, a District Representative may award the Series C Bonds on a pro rata basis in such denominations as he or she shall determine. A District Representative may reject any and all bids and waive any irregularity or informality in any bid. A District Representative shall award the Series C Bonds or reject all bids not later than 26 hours after the expiration of the time prescribed for the receipt of bids unless such time of award is waived by the successful bidder. The maximum true interest cost on the Series C Bonds shall not exceed 8% per annum.

(f) *Option for a Negotiated Sale.* If, at any time, it is determined by a District Representative, or the designee thereof, that the competitive sale of the Series C Bonds is not in the best interest of the District or, if at the time of the competitive sale of the Series C Bonds, no bids are received or it is determined by a District Representative, or the designee thereof, that all received bids are unsatisfactory, the Board hereby authorizes the sale of the Series C Bonds to an underwriter identified by the Municipal Advisor and approved by a District Representative, or the designee thereof. In such event, the Board hereby authorizes the preparation of a bond purchase agreement between such underwriter and the District, with such terms and conditions as shall be approved by a District Representative, or the designee thereof. In such case, a District Representative, or the designee thereof, is hereby authorized and directed to execute a bond purchase agreement for and in the name and on behalf of the District; *provided, however*, that in connection with such negotiated sale of the Series C Bonds, the net underwriter's discount, excluding reimbursable expenses of the Underwriter, shall not exceed 1.5% of the aggregate principal amount of Series C Bonds issued. The maximum true interest cost on the Series C Bonds shall not exceed 8% per annum.

Section 4.02. Approval of Paying Agent Agreement. The Paying Agent Agreement, in the form attached hereto as Exhibit D, together with any additions thereto or changes therein deemed necessary or advisable by a District Representative, is hereby approved by the Board. Any District Representative is hereby authorized and directed to execute the Paying Agent Agreement for and in the name and on behalf of the District. The Board hereby authorizes the delivery and performance of the Paying Agent Agreement.

Section 4.03. Official Statement. The Board hereby approves a preliminary official statement describing the financing (the "Preliminary Official Statement") in the form on file with the Secretary of the Board, together with any changes therein or additions thereto deemed advisable by a District Representative. The Board authorizes and directs the District Representatives, on behalf of the District, to deem "final" pursuant to Rule 15c2-12 under the Securities Exchange Act of 1934 (the "Rule") the Preliminary Official Statement prior to its distribution to prospective purchasers of the Series C Bonds.

The Municipal Advisor, on behalf of the District, is authorized and directed to cause the Preliminary Official Statement to be distributed to such persons as may be interested in purchasing the Series C Bonds therein offered for sale.

Any District Representative is authorized and directed to cause the Preliminary Official Statement to be brought into the form of a final official statement (the "Final Official Statement") and to execute the Final Official Statement, dated as of the date of the sale of the Series C Bonds, and a statement that the facts contained in the Preliminary Official Statement, and any supplement or amendment thereto (which shall be deemed an original part thereof for the purpose of such statement) were, at the time of its date, true and correct in all material respects and that the facts contained in the Final Official Statement, and any supplement or amendment thereto (which shall be deemed an original part thereof for the purpose of such statement) were, at the time of sale of the Series C Bonds, true and correct in all material respects and that the Final Official Statement did not, on the date of sale of the Series C Bonds, and does not, as of the date of delivery of the Series C Bonds, contain any untrue statement of a material fact or omit to state material facts required to be stated where necessary to make any statement made therein not misleading in light of the circumstances under which it was made. The District Representatives shall take such further actions prior to the signing of the Final Official Statement as are deemed necessary or appropriate to verify the accuracy thereof. The execution of the Final Official Statement, which shall include such changes and additions thereto deemed advisable by the District Representatives, and such information permitted to be excluded from the Preliminary Official Statement pursuant to the Rule, shall be conclusive evidence of the approval of the Final Official Statement by the District.

The Final Official Statement, when prepared, is approved for distribution in connection with the offering and sale of the Series C Bonds.

Section 4.04. Official Action. All actions heretofore taken by the officers and agents of the District with respect to the sale and issuance of the Series C Bonds are hereby approved, and the President of the Board of Trustees, the Superintendent, the Chief Business Official, and any and all other officers of the District are hereby authorized and directed for and in the name and on behalf of the District, to do any and all things and take any and all actions relating to the execution and delivery of any and all certificates, requisitions, agreements and other documents, which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and delivery of the Series C Bonds in accordance with this Resolution.

## ARTICLE V

### OTHER COVENANTS OF THE DISTRICT

Section 5.01. Punctual Payment. The District will punctually pay, or cause to be paid, the principal of and interest on the Series C Bonds, in strict conformity with the terms of the Series C Bonds and of this Resolution, and it will faithfully observe and perform all of the conditions, covenants and requirements of this Resolution and of the Series C Bonds. Nothing herein contained shall prevent the District from making advances of its own moneys, howsoever derived, to any of the uses or purposes permitted by law.

Section 5.02. Extension of Time for Payment. In order to prevent any accumulation of claims for interest after maturity, the District will not, directly or indirectly, extend or consent to the extension of the time for the payment of any claim for interest on any of the Series C Bonds and will not, directly or indirectly, approve any such arrangement by purchasing or funding said claims for interest or in any other manner. In case any such claim for interest shall be extended or funded, whether or not with the consent of the District, such claim for interest so extended or funded shall not be entitled, in case of default hereunder, to the benefits of this Resolution, except subject to the prior payment in full of the principal of all of the Series C Bonds then Outstanding and of all claims for interest which shall not have so extended or funded.

Section 5.03. Protection of Security and Rights of Bondowners. The District will preserve and protect the security of the Series C Bonds and the rights of the Bondowners and will warrant and defend their rights against all claims and demands of all persons. From and after the sale and delivery of any of the Series C Bonds by the District, the Series C Bonds shall be incontestable by the District.

Section 5.04. Further Assurances. The District will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Resolution, and for the better assuring and confirming unto the Owners of the Series C Bonds of the rights and benefits provided in this Resolution.

Section 5.05. Tax Covenants.

(a) *Private Activity Bond Limitation*. The District shall assure that the proceeds of the Series C Bonds are not so used as to cause the Series C Bonds to satisfy the private business tests of section 141(b) of the Code or the private loan financing test of section 141(c) of the Code.

(b) *Federal Guarantee Prohibition*. The District shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause any of the Series C Bonds to be "federally guaranteed" within the meaning of section 149(b) of the Code.

(c) *Rebate Requirement*. The District shall take any and all actions necessary to assure compliance with section 148(f) of the Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the Series C Bonds.

(d) *No Arbitrage*. The District shall not take, or permit or suffer to be taken, any action with respect to the proceeds of the Series C Bonds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of

issuance of the Series C Bonds would have caused the Series C Bonds to be “arbitrage bonds” within the meaning of section 148 of the Code.

(e) *Maintenance of Tax-Exemption.* The District shall take all actions necessary to assure the exclusion of interest on the Series C Bonds from the gross income of the Owners of the Series C Bonds to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect on the date of issuance of the Series C Bonds.

Section 5.06. Acquisition, Disposition and Valuation of Investments.

(a) Except as otherwise provided in subsection (b) of this Section 5.06, the District covenants that all investments of amounts deposited in any fund or account created by or pursuant to this Resolution, or otherwise containing gross proceeds of the Series C Bonds (within the meaning of section 148 of the Code) shall be acquired, disposed of, and valued (as of the date that valuation is required by this Resolution or the Code) at Fair Market Value.

(b) Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Code shall be valued at their present value (within the meaning of section 148 of the Code).

Section 5.07. Continuing Disclosure. The District hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate, substantially in the form attached hereto as Exhibit E. Notwithstanding any other provision of this Resolution, failure of the District to comply with the Continuing Disclosure Certificate shall not be considered an Event of Default; however, any holder or beneficial owner of the Series C Bonds may take such actions as may be necessary and appropriate to compel performance, including seeking mandate of specific performance by court order.

Section 5.08. Requirements of Section 15146(b) of the California Education Code. As required by section 15146(b) of the California Education Code (AB 1482, 2006), the District hereby states and certifies the following information:

(a) *Express Approval of Sale.* The Board hereby approves the competitive sale of the Series C Bonds.

(b) *Statement of Reason for Method of Sale Selected.* Competitive sales have been successfully employed by the District in the past.

(c) *Disclosure of Consultants.* The Bond Counsel to the District in connection with the issuance of the Series C Bonds will be Quint & Thimmig LLP, Larkspur, California. The disclosure counsel to the District in connection with the issuance of the Series C Bonds will be Quint & Thimmig LLP, Larkspur, California. The Municipal Advisor to the District in connection with the issuance of the Series C Bonds will be the Isom Advisors, A Division of Urban Futures Incorporated. The Underwriter will be selected at the time of the sale of the Series C Bonds.

(d) *Costs Associated with the Sale of the Series C Bonds.* Estimates of the costs associated with the issuance of the Series C Bonds are shown below:

Role	Firm	Estimated Fee
Municipal Advisor and Expenses	Isom Advisors, A Division of Urban Futures Incorporated	\$62,500
Bond/Disclosure Counsel and Expenses	Quint & Thimmig LLP	60,000
Rating Agency	S&P Global Ratings	23,000
Paying Agent	The Bank of New York Mellon Trust Company, N.A.	2,500
POS/OS Printer	AVIA	1,500
Bidding Platform	iPreo	1,500
Miscellaneous and Contingency		4,000
Total		<u>\$155,000</u>

(e) *No Capital Appreciation Bonds*. The Series C Bonds will be issued as current interest bonds.

Section 5.09. Requirements of Section 5852.1 of the California Government Code. As required by section 5852.1 of the California Government Code, the District hereby provides the following good faith estimates regarding the Series C Bonds:

(a) The true interest cost of the Series C Bonds: 2.29276%.

(b) The finance charge of the Series C Bonds (the sum of all fees and charges paid to third parties): \$255,000.

(c) The amount of proceeds to be received less the sum of all fees and charges paid to third parties, any reserves or capitalized interest: \$19,845,000.

(d) The sum total of all payments the District will make to pay debt service on the Series C Bonds, calculated to the final maturity of the Bonds: \$29,580,835.38.

The foregoing constitute good faith estimates only.

The principal amount of the Series C Bonds, the true interest cost of the Series C Bonds, the finance charges thereof, the amount of proceeds received therefrom and total payment amount with respect thereto may differ from such good faith estimates due to (a) the actual date of the sale of the Series C Bonds being different than the date assumed for purposes of such estimates, (b) the actual principal amount of Series C Bonds sold being different from the estimated amount used for purposes of such estimates, (c) the actual amortization of the Series C Bonds being different than the amortization assumed for purposes of such estimates, (d) the actual market interest rates at the time of sale of the Series C Bonds being different than those estimated for purposes of such estimates, (e) other market conditions, or (f) alterations in the District's financing plan, or a combination of such factors. The actual date of sale of the Series C Bonds and the actual principal amount of Series C Bonds sold will be determined based on the timing of the need for proceeds of the Series C Bonds and other factors. The actual interest rates with respect to the Series C Bonds will depend on market interest rates at the time of sale thereof. The actual amortization of the Series C Bonds will also depend, in part, on market

interest rates at the time of sale thereof. Market interest rates are affected by economic and other factors beyond the control of the District.



## ARTICLE VI

### THE PAYING AGENT

Section 6.01. Appointment of Paying Agent. The Bank of New York Mellon Trust Company, N.A. is hereby appointed to act as Paying Agent for the Series C Bonds and, in such capacity, shall also act as registration agent and authentication agent for the Series C Bonds. The Paying Agent undertakes to perform such duties, and only such duties, as are specifically set forth in this Resolution, and even during the continuance of an event of default with respect to the Series C Bonds, no implied covenants or obligations shall be read into this Resolution against the Paying Agent. The Paying Agent shall signify its acceptance of the duties and obligations imposed upon it by this Resolution by executing and delivering to the District a certificate to that effect.

The District may remove the Paying Agent initially appointed, and any successor thereto, and may appoint a successor or successors thereto, but any such successor shall be a bank or trust company doing business and having an office in the State of California, having a combined capital (exclusive of borrowed capital) and surplus of at least \$50,000,000, and subject to supervision or examination by federal or state authority. If such bank or trust company publishes a report of condition at least annually, under law or to the requirements of any supervising or examining authority above referred to, then for the purposes of this Section the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

The Paying Agent may at any time resign by giving written notice to the District and the Series C Bond Owners of such resignation. Upon receiving notice of such resignation, the District shall promptly appoint a successor Paying Agent by an instrument in writing. Any resignation or removal of the Paying Agent and appointment of a successor Paying Agent will become effective upon acceptance of appointment by the successor Paying Agent.

Section 6.02. Paying Agent May Hold Series C Bonds. The Paying Agent may become the owner of any of the Series C Bonds in its own or any other capacity with the same rights it would have if it were not Paying Agent.

Section 6.03. Liability of Agents. The recitals of facts, covenants and agreements herein and in the Series C Bonds contained shall be taken as statements, covenants and agreements of the District, and the Paying Agent assumes no responsibility for the correctness of the same, nor makes any representations as to the validity or sufficiency of this Resolution or of the Series C Bonds, nor shall incur any responsibility in respect thereof, other than as set forth in this Resolution. The Paying Agent is not liable in connection with the performance of its duties hereunder, except for its own negligence or willful default.

In the absence of bad faith, the Paying Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Paying Agent and conforming to the requirements of this Resolution.

The Paying Agent is not liable for any error of judgment made in good faith by a responsible officer of its corporate trust department in the absence of the negligence of the Paying Agent.

No provision of this Resolution shall require the Paying Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties

hereunder, or in the exercise of any of its rights or powers, if it has reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

The Paying Agent may execute any of the powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Paying Agent is not responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

Section 6.04. Notice to Agents. The Paying Agent may rely and shall be protected in acting or refraining from acting upon any notice, resolution, request, consent, order, certificate, report, warrant, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or proper parties. The Paying Agent may consult with counsel, who may be counsel to the District, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

Whenever in the administration of its duties under this Resolution the Paying Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of the Paying Agent, be deemed to be conclusively proved and established by a certificate of the District, and such certificate shall be full warrant to the Paying Agent for any action taken or suffered under the provisions of this Resolution upon the faith thereof, but in its discretion the Paying Agent may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

Section 6.05. Compensation, Indemnification. The District shall pay to the Paying Agent from time to time reasonable compensation for all services rendered under this Resolution, and also all reasonable expenses, charges, counsel fees and other disbursements, including those of their attorneys, agents and employees, incurred in and about the performance of their powers and duties under this Resolution. The District further agrees to indemnify and save the Paying Agent harmless against any liabilities which it may incur in the exercise and performance of its powers and duties hereunder which are not due to its negligence or bad faith.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES OF BONDOWNERS

Section 7.01. Events of Default. The following events (“Events of Default”) shall be events of default hereunder:

(a) if default shall be made in the due and punctual payment of the principal of on any Series C Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by declaration or otherwise;

(b) if default shall be made in the due and punctual payment of any installment of interest on any Series C Bond when and as such interest installment shall become due and payable;

(c) if default shall be made by the District in the observance of any of the covenants, agreements or conditions on its part in this Resolution or in the Series C Bonds contained, and such default shall have continued for a period of thirty (30) days after written notice thereof to the District; or

(d) if the District shall file a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America, or if a court of competent jurisdiction shall approve a petition, seeking reorganization of the District under the federal bankruptcy laws or any other applicable law of the United States of America, or if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the District or of the whole or any substantial part of its property.

Section 7.02. Remedies of Bondowners. Any Bondowner shall have the right, for the equal benefit and protection of all Bondowners similarly situated:

(a) by mandamus, suit, action or proceeding, to compel the District and its members, officers, agents or employees to perform each and every term, provision and covenant contained in this Resolution and in the Series C Bonds, and to require the carrying out of any or all such covenants and agreements of the District and the fulfillment of all duties imposed upon it;

(b) by suit, action or proceeding in equity, to enjoin any acts or things which are unlawful, or the violation of any of the Bondowners’ rights; or

(c) upon the happening of any Event of Default, by suit, action or proceeding in any court of competent jurisdiction, to require the District and its members and employees to account as if it and they were the trustees of an express trust.

Section 7.03. Non-Waiver. Nothing in this Article VII or in any other provision of this Resolution, or in the Series C Bonds, shall affect or impair the obligation of the District, which is absolute and unconditional, to pay the principal of and interest on the Series C Bonds to the respective Owners of the Series C Bonds at the respective dates of maturity, as herein provided, or affect or impair the right of action, which is also absolute and unconditional, of such Owners to institute suit to enforce such payment by virtue of the contract embodied in the Series C Bonds.

A waiver of any default by any Bondowner shall not affect any subsequent default or impair any rights or remedies on the subsequent default. No delay or omission of any Owner of any of the Series C Bonds to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every power and remedy conferred upon the Bondowners by this Article VI may be enforced and exercised from time to time and as often as shall be deemed expedient by the Owners of the Series C Bonds.

If a suit, action or proceeding to enforce any right or exercise any remedy be abandoned or determined adversely to the Bondowners, the District and the Bondowners shall be restored to their former positions, rights and remedies as if such suit, action or proceeding had not been brought or taken.

Section 7.04. Remedies Not Exclusive. No remedy herein conferred upon the Owners of Series C Bonds shall be exclusive of any other remedy and that each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or thereafter conferred on the Bondowners.

## ARTICLE VIII

### SUPPLEMENTAL RESOLUTIONS

Section 8.01. Supplemental Resolutions Effective Without Consent of the Owners. For any one or more of the following purposes and at any time or from time to time, a Supplemental Resolution of the District may be adopted, which, without the requirement of consent of the Owners of the Series C Bonds, shall be fully effective in accordance with its terms:

(a) to add to the covenants and agreements of the District in this Resolution, other covenants and agreements to be observed by the District which are not contrary to or inconsistent with this Resolution as theretofore in effect;

(b) to add to the limitations and restrictions in this Resolution, other limitations and restrictions to be observed by the District which are not contrary to or inconsistent with this Resolution as theretofore in effect;

(c) to confirm, as further assurance, any pledge under, and the subjection to any lien or pledge created or to be created by, this Resolution, of any moneys, securities or funds, or to establish any additional funds or accounts to be held under this Resolution;

(d) to cure any ambiguity, supply and omission, or cure or correct any defect or inconsistent provision in this Resolution; or

(e) to make such additions, deletions or modifications as may be necessary or desirable to assure exemption from federal income taxation of interest on the Series C Bonds.

Section 8.02. Supplemental Resolutions Effective with Consent to the Owners. Any modification or amendment of this Resolution and of the rights and obligations of the District and of the Owners of the Series C Bonds, in any particular, may be made by a Supplemental Resolution, with the written consent of the Owners of at least two-thirds in aggregate principal amount of the Series C Bonds Outstanding at the time such consent is given. No such modification or amendment shall permit a change in the terms of maturity of the principal of any Outstanding Series C Bonds or of any interest payable thereon or a reduction in the principal amount thereof or in the rate of interest thereon, or shall reduce the percentage of Series C Bonds the consent of the Owners of which is required to effect any such modification or amendment, or shall change any of the provisions in Section 7.01 hereof relating to Events of Default, or shall reduce the amount of moneys pledged for the repayment of the Series C Bonds without the consent of all the Owners of such Series C Bonds, or shall change or modify any of the rights or obligations of any Paying Agent without its written assent thereto.

ARTICLE IX  
MISCELLANEOUS

Section 9.01. Benefits of Resolution Limited to Parties. Nothing in this Resolution, expressed or implied, is intended to give to any person other than the District, the Paying Agent and the Owners of the Series C Bonds, any right, remedy, claim under or by reason of this Resolution. Any covenants, stipulations, promises or agreements in this Resolution contained by and on behalf of the District shall be for the sole and exclusive benefit of the Owners of the Series C Bonds.

Section 9.02. Defeasance.

(a) *Discharge of Resolution*. Series C Bonds may be paid by the District in any of the following ways, provided that the District also pays or causes to be paid any other sums payable hereunder by the District:

(i) by paying or causing to be paid the principal or redemption price of and interest on Series C Bonds Outstanding, as and when the same become due and payable;

(ii) by depositing, in trust with an escrow holder, at or before maturity, money or securities in the necessary amount (as provided in Section 9.02(c) to pay or redeem Series C Bonds Outstanding; or

(iii) by delivering to the Paying Agent, for cancellation by it, Series C Bonds Outstanding.

then and in that case, at the election of the District (evidenced by a certificate of a District Representative, filed with the Paying Agent, signifying the intention of the District to discharge all such indebtedness and this Resolution), and notwithstanding that any Series C Bonds shall not have been surrendered for payment, this Resolution and all covenants, agreements and other obligations of the District under this Resolution shall cease, terminate, become void and be completely discharged and satisfied, except only as provided in Section 9.02(b). In such event, upon request of the District, the Paying Agent shall cause an accounting for such period or periods as may be requested by the District to be prepared and filed with the District and shall execute and deliver to the District all such instruments as may be necessary to evidence such discharge and satisfaction, and the Paying Agent shall pay over, transfer, assign or deliver to the District all moneys or securities or other property held by it pursuant to this Resolution which are not required for the payment or redemption of Series C Bonds not theretofore surrendered for such payment or redemption.

(b) *Discharge of Liability on Series C Bonds*. Upon the deposit, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 9.02(c) to pay or redeem any Outstanding Series C Bond (whether upon or prior to its maturity or the redemption date of such Series C Bond), provided that, if such Series C Bond is to be redeemed prior to maturity, notice of such redemption shall have been given as in Section 2.03 provided or provision satisfactory to the Paying Agent shall have been made for the giving of such notice, then all liability of the District in respect of such Series C Bond shall cease and be completely discharged, except only that thereafter the Owner thereof shall be entitled only to payment of the principal of and interest on such Series C Bond by the District, and the District shall remain liable for such payment, but only out of such money or securities deposited in trust with an

escrow holder as aforesaid for such payment, provided further, however, that the provisions of Section 9.02(d) shall apply in all events.

The District may at any time surrender to the Paying Agent for cancellation by it any Series C Bonds previously issued and delivered, which the District may have acquired in any manner whatsoever, and such Series C Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

(c) *Deposit of Money or Securities with Paying Agent.* Whenever in this Resolution it is provided or permitted that there be deposited with or held in trust with an escrow holder money or securities in the necessary amount to pay or redeem any Series C Bonds, the money or securities so to be deposited or held may include money or securities held by the Paying Agent in the funds and accounts established pursuant to this Resolution and shall be:

(i) lawful money of the United States of America in an amount equal to the principal amount of such Series C Bonds and all unpaid interest thereon to maturity, except that, in the case of Series C Bonds which are to be redeemed prior to maturity and in respect of which notice of such redemption shall have been given as in Section 2.03 provided or provision satisfactory to the Paying Agent shall have been made for the giving of such notice, the amount to be deposited or held shall be the principal amount or redemption price of such Series C Bonds and all unpaid interest thereon to the redemption date; or

(ii) Federal Securities (not callable by the issuer thereof prior to maturity) the principal of and interest on which when due, in the opinion of a certified public accountant delivered to the District, will provide money sufficient to pay the principal or redemption price of and all unpaid interest to maturity, or to the redemption date, as the case may be, on the Series C Bonds to be paid or redeemed, as such principal or redemption price and interest become due, provided that, in the case of Series C Bonds which are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as in Section 2.03 provided or provision satisfactory to the Paying Agent shall have been made for the giving of such notice;

provided, in each case, that the Paying Agent shall have been irrevocably instructed (by the terms of this Resolution or by request of the District) to apply such money to the payment of such principal or redemption price and interest with respect to such Series C Bonds.

(d) *Payment of Series C Bonds After Discharge of Resolution.* Notwithstanding any provisions of this Resolution, any moneys held in trust with an escrow holder for the payment of the principal or redemption price of, or interest on, any Series C Bonds and remaining unclaimed for one year after the principal of all of the Series C Bonds has become due and payable (whether at maturity or upon call for redemption or by acceleration as provided in this Resolution), if such moneys were so held at such date, or one year after the date of deposit of such moneys if deposited after said date when all of the Series C Bonds became due and payable, shall, upon request of the District, be repaid to the District free from the trusts created by this Resolution, and all liability of the escrow holder with respect to such moneys shall thereupon cease; *provided, however,* that before the repayment of such moneys to the District as aforesaid, the Paying Agent may (at the cost of the District) first mail to the Owners of all Series C Bonds which have not been paid at the addresses shown on the registration books maintained by the Paying Agent a notice in such form as may be deemed appropriate by the Paying Agent, with respect to the Series C Bonds so payable and not presented and with respect to the provisions relating to the repayment to the District of the moneys held for the payment thereof.

Section 9.03. Execution of Documents and Proof of Ownership by Bondowners. Any request, declaration or other instrument which this Resolution may require or permit to be executed by Bondowners may be in one or more instruments of similar tenor and shall be executed by Bondowners in person or by their attorneys appointed in writing.

Except as otherwise herein expressly provided, the fact and date of the execution by any Bondowner or his attorney of such request, declaration or other instrument, or of such writing appointing such attorney, may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he purports to act, that the person signing such request, declaration or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer.

Except as otherwise herein expressly provided, the ownership of registered Series C Bonds and the amount, maturity, number and date of holding the same shall be proved by the registry books.

Any request, declaration or other instrument or writing of the Owner of any Series C Bond shall bind all future Owners of such Series C Bond in respect of anything done or suffered to be done by the District or the Paying Agent in good faith and in accordance therewith.

Section 9.04. Waiver of Personal Liability. No boardmember, officer, agent or employee of the District shall be individually or personally liable for the payment of the principal or interest on the Series C Bonds; but nothing herein contained shall relieve any such boardmember, officer, agent or employee from the performance of any official duty provided by law.

Section 9.05. Destruction of Canceled Series C Bonds. Whenever in this Resolution provision is made for the surrender to the District of any Series C Bonds which have been paid or canceled pursuant to the provisions of this Resolution, a certificate of destruction duly executed by the Paying Agent shall be deemed to be the equivalent of the surrender of such canceled Series C Bonds and the District shall be entitled to rely upon any statement of fact contained in any certificate with respect to the destruction of any such Series C Bonds therein referred to.

Section 9.06. Partial Invalidity. If any Section, paragraph, sentence, clause or phrase of this Resolution shall for any reason be held illegal or unenforceable, such holding shall not affect the validity of the remaining portions of this Resolution. The District hereby declares that it would have adopted this Resolution and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issue of the Series C Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses, or phrases of this Resolution may be held illegal, invalid or unenforceable. If, by reason of the judgment of any court, the District is rendered unable to perform its duties hereunder, all such duties and all of the rights and powers of the District hereunder shall be assumed by and vest in the District in trust for the benefit of the Bondowners.

Section 9.07. Effective Date of Resolution. This Resolution shall take effect from and after the date of its passage and adoption.




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THE FOREGOING RESOLUTION is approved and adopted by the Board of Trustees of the Walnut Creek School District this 8th day of September, 2020.

  
\_\_\_\_\_  
President of the Board of Trustees

ATTEST:

  
\_\_\_\_\_  
Superintendent and  
Secretary of the Board of Trustees

# EXHIBIT A TO RESOLUTION

## FORM OF SERIES C BOND

United States of America  
State of California  
Contra Costa County

WALNUT CREEK SCHOOL DISTRICT  
GENERAL OBLIGATION BONDS, ELECTION OF 2016, SERIES C (2020)

INTEREST RATE:	MATURITY DATE:	ISSUE DATE:	CUSIP:
_____ %	September 1, _____	October 20, 2020	_____

REGISTERED OWNER: CEDE & CO.

PRINCIPAL SUM: \_\_\_\_\_ DOLLARS

The WALNUT CREEK SCHOOL DISTRICT, a school district, duly organized and existing under and by virtue of the Constitution and laws of the State of California (the "District"), for value received hereby promises to pay to the Registered Owner stated above, or registered assigns (the "Owner"), on the Maturity Date stated above (subject to any right of prior redemption hereinafter provided for), the Principal Sum stated above, in lawful money of the United States of America, and to pay interest thereon in like lawful money from the interest payment date next preceding the date of authentication of this Bond (unless (i) this Bond is authenticated on an interest payment date, in which event it shall bear interest from such date of authentication, or (ii) this Bond is authenticated prior to an interest payment date and after the close of business on the fifteenth day of the month preceding such interest payment date, in which event it shall bear interest from such interest payment date, or (iii) this Bond is authenticated on or prior to February 15, 2021, in which event it shall bear interest from the Issue Date stated above; provided however, that if at the time of authentication of this Bond, interest is in default on this Bond, this Bond shall bear interest from the interest payment date to which interest has previously been paid or made available for payment on this Bond) until payment of such Principal Sum in full, at the rate per annum stated above, payable on March 1 and September 1 in each year, commencing March 1, 2021, calculated on the basis of 360-day year comprised of twelve 30-day months. Principal hereof is payable at the office of The Bank of New York Mellon Trust Company, N.A., as paying agent (the "Paying Agent"), in Dallas, Texas. Interest hereon (including the final interest payment upon maturity or earlier redemption) is payable by check or draft of the Paying Agent mailed by first-class mail to the Owner at the Owner's address as it appears on the registration books maintained by the Paying Agent as of the close of business on the fifteenth day of the month next preceding such interest payment date (the "Record Date"), or at such other address as the Owner may have filed with the Paying Agent for that purpose; provided however, that payment of interest may be by wire transfer in immediately available funds to an account in the United States of America to any Owner of Bonds in the aggregate principal amount of \$1,000,000 or more who shall furnish written wire instructions to the Paying Agent at least five (5) days before the applicable Record Date.

This Bond is one of a duly authorized issue of Bonds of the District designated as "Walnut Creek School District (Contra Costa County, California) General Obligation Bonds, Election of 2016, Series C (2020)" (the "Bonds"), in an aggregate principal amount of twenty million dollars (\$20,000,000), all of like tenor and date (except for such variation, if any, as may be required to designate varying numbers, maturities, interest rates or redemption and other provisions) and all issued pursuant to the provisions of Article 4.5 of Chapter 3 of Part 1 of Division 2 of Title 5 (commencing with section 53506) of the California Government Code (the "Act"), and pursuant to Resolution No. \_\_\_ of the District adopted September 8, 2020 (the "Resolution"), authorizing the issuance of the Bonds. Reference is hereby made to the Resolution (copies of which are on file at the office of the Secretary of the Board of Trustees of the

District) and the Act for a description of the terms on which the Bonds are issued and the rights thereunder of the owners of the Bonds and the rights, duties and immunities of the Paying Agent and the rights and obligations of the District thereunder, to all of the provisions of which Resolution the Owner of this Bond, by acceptance hereof, assents and agrees.

A duly called election was held in the District on June 7, 2016, and thereafter canvassed pursuant to law. At such election there was submitted to and approved by the requisite 55% vote of the qualified electors of the District a question as to the issuance and sale of general obligation bonds of the District to address critical renovation, modernization and safety needs at District schools, upgrade classrooms, libraries and computer networks to provide students with 21st Century classrooms, improve energy efficiency of classrooms and buildings, and replace, acquire, construct and renovate school facilities, in the maximum aggregate principal amount of \$60,000,000 (the "Authorization") payable from the levy of an *ad valorem* tax against the taxable property in the District. The Series C Bonds represent the third and final issue under the Authorization.

This Bond and the interest hereon and on all other Bonds and the interest thereon (to the extent set forth in the Resolution) are general obligations of the District and do not constitute an obligation of Contra Costa County, California. The District has the power and is obligated to cause the Contra Costa County Treasurer-Tax Collector to levy *ad valorem* taxes for the payment of the Bonds and the interest thereon upon all property within the District subject to taxation by the District. No part of any fund of Contra Costa County is pledged or obligated to the payment of the Bonds.

The Bonds maturing on or before September 1, \_\_\_\_, are non-callable. The Bonds maturing on September 1, \_\_\_\_, or any time thereafter, are callable for redemption prior to their stated maturity date at the option of the District, as a whole, or in part on any date on or after September 1, \_\_\_\_ (in such maturities as are designated by the District, or, if the District fails to designate such maturities, on a proportional basis), and may be redeemed prior to the maturity thereof by payment of all principal, plus accrued interest to date of redemption, without premium.

[If applicable:] The Bonds maturing on September 1, 20\_\_ (the "Term Bonds") are also subject to mandatory sinking fund redemption on September 1 in the years, and in the amounts, as set forth in the following table, at a redemption price equal to one hundred percent (100%) of the principal amount thereof to be redeemed (without premium), together with interest accrued thereon to the date fixed for redemption; provided, however, that if some but not all of the Term Bonds have been redeemed pursuant to the preceding paragraph, the aggregate principal amount of Term Bonds to be redeemed under this paragraph shall be reduced on a pro rata basis in integral multiples of \$5,000, as shall be designated pursuant to written notice filed by the District with the Paying Agent:

Sinking Fund Redemption Date (September 1)	Principal Amount to be Redeemed
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†Maturity

The Paying Agent shall give notice of the redemption of the Bonds at the expense of the District. Such notice shall specify: (a) that the Bonds or a designated portion thereof are to be redeemed, (b) the numbers and CUSIP numbers of the Bonds to be redeemed, (c) the date of notice and the date of redemption, (d) the place or places where the redemption will be made, and (e) descriptive information regarding the Bonds including the dated date, interest rate and stated maturity date. Such notice shall further state that on the specified date there shall become due and payable upon each Bond to be redeemed, the portion of the principal amount of such Bond to be redeemed, together with interest accrued to said date, and that from and after such date interest with respect thereto shall cease to accrue and be payable.

If an Event of Default, as defined in the Resolution, shall occur, the principal of all Bonds may be declared due and payable upon the conditions, in the manner and with the effect provided in the Resolution, but such declaration and its consequences may be rescinded and annulled as further provided in the Resolution.

The Bonds are issuable as fully registered Bonds, without coupons, in denominations of \$5,000 and any integral multiple thereof. Subject to the limitations and conditions and upon payment of the charges, if any, as provided in the Resolution. Bonds may be exchanged for a like aggregate principal amount of Bonds of other authorized denominations and of the same maturity.

This Bond is transferable by the Owner hereof, in person or by his attorney duly authorized in writing, at said office of the Paying Agent in Dallas, Texas, but only in the manner and subject to the limitations provided in the Resolution, and upon surrender and cancellation of this Bond. Upon registration of such transfer a new Bond or Bonds, of authorized denomination or denominations, for the same aggregate principal amount and of the same maturity will be issued to the transferee in exchange herefor.

The District and the Paying Agent may treat the Owner hereof as the absolute owner hereof for all purposes, and the District and the Paying Agent shall not be affected by any notice to the contrary.

The Resolution may be amended without the consent of the Owners of the Bonds to the extent set forth in the Resolution.

It is hereby certified that all of the things, conditions and acts required to exist, to have happened or to have been performed precedent to and in the issuance of this Bond do exist, have happened or have been performed in due and regular time and manner as required by the laws of the State of California, and that the amount of this Bond, together with all other indebtedness of the District, does not exceed any limit prescribed by any laws of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Resolution.

This Bond shall not be entitled to any benefit under the Resolution or become valid or obligatory for any purpose until the Certificate of Authentication hereon shall have been signed manually by the Paying Agent.

Unless this certificate is presented by an authorized representative of The Depository Trust Company; a New York corporation ("DTC"), to the District or the Paying Agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

IN WITNESS WHEREOF, the Walnut Creek School District has caused this Bond to be executed in its name and on its behalf with the facsimile signatures of the President of its Board of Trustees and the Superintendent and Secretary of the Board of Trustees, all as of the Issue Date stated above.

WALNUT CREEK SCHOOL DISTRICT

By \_\_\_\_\_  
President of the Board of Trustees

ATTEST:

\_\_\_\_\_  
Superintendent and  
Secretary of the Board of Trustees

**CERTIFICATE OF AUTHENTICATION**

This is one of the Series C Bonds described in the within-mentioned Resolution.

Authentication Date:

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Paying Agent

By \_\_\_\_\_  
Authorized Signatory

**ASSIGNMENT**

For value received, the undersigned do(es) hereby sell, assign and transfer unto

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(Name, Address and Tax Identification or Social Security Number of Assignee)

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the within Series C Bond and do(es) hereby irrevocably constitute(s) and appoint(s)

attorney, to transfer the same on the registration books of the Paying Agent with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed:

\_\_\_\_\_  
Notice: Signature(s) must be guaranteed by a qualified guarantor institution.

\_\_\_\_\_  
Notice: The signature on this assignment must correspond with the name(s) as written on the face of the within bond in every particular without alteration or enlargement or any change whatsoever.

**EXHIBIT B TO RESOLUTION**  
**FORM OF NOTICE OF INTENTION**

**\$20,000,000**  
**(Preliminary, subject to change)**  
**WALNUT CREEK SCHOOL DISTRICT**  
**(Contra Costa County, California)**  
**General Obligation Bonds, Election of 2016, Series C (2020)**

NOTICE IS HEREBY GIVEN, pursuant to section 53692 of the California Government Code, that the Walnut Creek School District (the "District") invites bids for the purchase of \$20,000,000 (preliminary, subject to change) aggregate principal amount of Walnut Creek School District (Contra Costa County, California) General Obligation Bonds, Election of 2016, Series C (2020) (the "Bonds"). Bids will be received on

**TUESDAY, OCTOBER 6, 2020**

until 9:30 A.M., Pacific Daylight time, *electronically only* through the I-Deal LLC BiDCOMP/PARITY® system, and the sale will be awarded by the District within 26 hours after the expiration of the time prescribed for the receipt of bids. The sale of the Bonds will be conducted upon the terms and conditions set forth in the Official Notice of Sale for the Bonds. Such Official Notice of Sale and the Preliminary Official Statement describing the Bonds will be distributed to prospective bidders by the municipal advisor to the District, Isom Advisors, A Division of Urban Futures Incorporated, 1470 Maria Lane, Suite 315, Walnut Creek, CA 94596, telephone (925) 478-7450. Bids will be entertained only from bidders to whom such Official Notice of Sale and Preliminary Official Statement have been distributed. Legal opinion: Quint & Thimmig LLP, Larkspur, California.

EXHIBIT C TO RESOLUTION

FORM OF NOTICE OF SALE

**\$20,000,000\***

**WALNUT CREEK SCHOOL DISTRICT  
(Contra Costa County, California)**

**General Obligation Bonds, Election of 2016, Series C (2020)**

NOTICE IS HEREBY GIVEN that *electronic bids only* for the purchase of \$20,000,000\* aggregate principal amount of Walnut Creek School District (Contra Costa County, California) General Obligation Bonds, Election of 2016, Series C (2020) (the "Bonds"), will be received by the Walnut Creek School District (the "District") at the time and in the form below specified:

**DATE AND TIME:** TUESDAY, OCTOBER 6, 2020, until 9:30 A.M. (Pacific Daylight time).

**SUBMISSION OF BIDS:** Bids may be submitted (for receipt not later than the time set forth above) *electronically only* through the I-Deal LLC BiDCOMP/PARITY® system ("PARITY®"). See "FORM OF BID" herein.

**ISSUE; BOOK ENTRY:** \$20,000,000\* consisting of fully registered bonds. The Bonds will be dated as of their date of delivery, expected to be October 20, 2020, and will be issued in minimum denominations of \$5,000. The Bonds will be issued in a book entry only system with no physical distribution of the Bonds made to the public. The Depository Trust Company ("DTC"), will act as depository for the Bonds which will be immobilized in its custody. The Bonds will be registered in the name of Cede & Co., as nominee for DTC, on behalf of the participants in the DTC system and the subsequent beneficial owners of the Bonds.

**MATURITIES:** The Bonds will mature, or be subject to mandatory sinking fund redemption, on the dates and in the amounts, as set forth in the following table. *Each bidder is required to specify in its bid whether, for any particular year, the Bonds will mature or, alternately, be subject to mandatory sinking fund redemption in such year:*

<u>Maturity Date (September 1)</u>	<u>Principal Amount*</u>	<u>Maturity Date (September 1)</u>	<u>Principal Amount*</u>
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**INTEREST:** The Bonds shall bear interest, calculated on a 30/360 day basis, at a rate or rates to be fixed upon the sale thereof but not to exceed 6% per annum, payable semiannually on each March 1 and September 1, commencing March 1, 2021.

**PAYMENT:** Principal of the Bonds will be payable upon surrender to The Bank of New York Mellon Trust Company, N.A., Dallas, Texas (the "Paying Agent"). Interest on the Bonds will be payable by check or draft mailed by first class mail to the owner at the address listed on the registration books maintained by the Paying Agent for such purpose.

**REGISTRATION:** The Bonds will be issued as fully registered bonds as to both principal and interest. The Bonds will be issued in the book-entry system of The Depository Trust Company ("DTC"), and the ownership of the Bonds will be registered to the nominee of DTC.



**OPTIONAL REDEMPTION:** The Bonds maturing on and prior to September 1, \_\_\_\_, are not callable for redemption prior to their stated maturity date. The Bonds maturing on and after September 1, \_\_\_\_, are callable for redemption prior to their stated maturity date at the option of the District, in whole or in part on any date on or after September 1, \_\_\_\_ (in such order as shall be selected by the District and by lot with a maturity), from any source lawfully available therefor, at a redemption price equal to the principal amount of the Bonds called for redemption, together with accrued interest to the date fixed for redemption without premium.

**SINKING FUND REDEMPTION:** Any bidder may, at its option, specify that one or more maturities of the Bonds will consist of term Bonds which are subject to mandatory sinking fund redemption in consecutive years immediately preceding the maturity thereof, as designated in the bid of such bidder. In the event that the bid of the successful bidder specifies that any maturity of Bonds will be term Bonds, such term Bonds will be subject to mandatory sinking fund redemption on September 1 in each year so designated in the bid, in the respective amounts for such years as set forth above under the heading "MATURITIES," at a redemption price equal to the principal amount thereof to be redeemed together with accrued interest thereon to the redemption date, without premium.

**PURPOSE:** A duly called special municipal election was held in the District on June 7, 2016, and thereafter canvassed pursuant to law. At such election there was submitted to and approved by the requisite fifty-five percent (55%) vote of the qualified electors of the District a question as to the issuance and sale of general obligation bonds of the District to address critical renovation, modernization and safety needs at District schools, upgrade classrooms, libraries and computer networks to provide students with 21st Century classrooms, improve energy efficiency of classrooms and buildings, and replace, acquire, construct and renovate school facilities (the "Project"), in the maximum aggregate principal amount of \$60,000,000 (the "Authorization") payable from the levy of an *ad valorem* tax against the taxable property in the District. In 2016, the District issued its \$20,000,000 Walnut Creek School District (Contra Costa County, California) General Obligation Bonds, Election of 2016, Series A (2016), under the Authorization. In 2019, the District issued its \$20,000,000 Walnut Creek School District (Contra Costa County, California) General Obligation Bonds, Election of 2016, Series B (2019), under the Authorization. The Bonds represent the third and final issue under the Authorization and are being issued for the purpose of raising moneys for the Project and other authorized costs.

**SECURITY:** The Bonds are general obligations of the District. The Contra Costa County Board of Supervisors has the power and is obligated to levy *ad valorem* taxes for the payment of the Bonds and the interest thereon without limitation as to rate or amount upon all property within the District subject to taxation (except for certain classes of personal property).

**RATING:** S&P Global Ratings, a Standard & Poor's Financial Services LLC business, has assigned the rating of "\_\_" to the Bonds. **The cost of obtaining such rating will be borne entirely by the District and not by the successful bidder.**

#### TERMS OF SALE

**INTEREST RATE:** No rate of interest may be bid which exceeds 6% per annum. Each rate bid must be a multiple of one-twentieth of one percent (1/20%) or one-eighth of one percent (1/8%). No Bond shall bear more than one interest rate, and all Bonds of the same maturity shall bear the same rate. Each Bond must bear interest at the rate specified in the bid from its date to its fixed maturity date.

**FORM OF BID; MINIMUM PURCHASE PRICE:** No bid shall be for less than 101% of the aggregate principal amount of the Bonds. No bid shall generate more bid premium than an amount equal to the interest due on the Bonds in the first three years.

To the extent any instructions or directions set forth in BiDCOMP/PARITY® conflict with this Official Notice of Sale, the terms of this Official Notice of Sale shall control. For further information about BiDCOMP/PARITY®, bidders may contact Isom Advisors, A Division of Urban Futures Incorporated (the “Municipal Advisor”) at (925) 478-7450 or BiDCOMP/PARITY® at (212) 404-8102.

THE DISTRICT RETAINS ABSOLUTE DISCRETION TO DETERMINE WHETHER ANY BID IS TIMELY AND COMPLETE. NONE OF THE DISTRICT, THE MUNICIPAL ADVISOR, OR QUINT & THIMMIG LLP (“BOND COUNSEL”) TAKES ANY RESPONSIBILITY FOR INFORMING ANY BIDDER PRIOR TO THE TIME FOR RECEIVING BIDS THAT ITS BID IS INCOMPLETE OR NOT RECEIVED.

EACH BIDDER SUBMITTING AN ELECTRONIC BID UNDERSTANDS AND AGREES BY DOING SO THAT IT IS SOLELY RESPONSIBLE FOR ALL ARRANGEMENTS WITH BiDCOMP/PARITY® AND THAT BiDCOMP/PARITY® IS NOT ACTING AS AN AGENT OF THE DISTRICT. INSTRUCTIONS AND FORMS FOR SUBMITTING ELECTRONIC BIDS MUST BE OBTAINED FROM BiDCOMP/PARITY® AND THE DISTRICT ASSUMES NO RESPONSIBILITY FOR ENSURING OR VERIFYING BIDDER COMPLIANCE WITH THE PROCEDURES OF BiDCOMP/PARITY®. THE DISTRICT SHALL ASSUME THAT ANY BID RECEIVED THROUGH BiDCOMP/PARITY® HAS BEEN MADE BY A DULY AUTHORIZED AGENT OF THE BIDDER.

THE DISTRICT WILL MAKE ITS BEST EFFORTS TO ACCOMMODATE ELECTRONIC BIDS; HOWEVER, THE DISTRICT, THE MUNICIPAL ADVISOR AND BOND COUNSEL ASSUME NO RESPONSIBILITY FOR ANY ERROR CONTAINED IN ANY BID SUBMITTED ELECTRONICALLY, OR FOR FAILURE OF ANY BID TO BE TRANSMITTED, RECEIVED OR ACCEPTED AT THE OFFICIAL TIME FOR RECEIPT OF BIDS. THE OFFICIAL TIME FOR RECEIPT OF BIDS WILL BE DETERMINED BY THE DISTRICT AND THE DISTRICT SHALL NOT BE REQUIRED TO ACCEPT THE TIME KEPT BY BiDCOMP/PARITY® AS THE OFFICIAL TIME.

**BEST BID:** The Bonds will be awarded to the responsible bidder or bidders offering to purchase the Bonds at the *lowest true interest cost* to the District. The true interest cost of each bid will be determined on the basis of the present value of the aggregate future semiannual payments resulting from the interest rates specified by the bidder. The present value will be calculated to the dated date of the Bonds (assumed to be October 20, 2020) and will be based on the proposed bid amount (par value plus any premium). For the purpose of making such determination, it shall be assumed that any Bond designated as term bonds by the bidder shall be deemed to be payable on the dates and in the amounts as shown under the section entitled “MATURITIES” herein. Each bidder is requested, but not required, to state in his bid the percentage true interest cost to the District, which shall be considered as informative only and shall not be binding on either the bidder or the District. The determination of the best bid by the District’s municipal advisor shall be binding and conclusive on all bidders.

**RIGHT OF CANCELLATION OF SALE BY DISTRICT:** The District reserves the right, in its sole discretion, at any time to cancel the public sale of the Bonds. In such event, the District shall cause notice of cancellation of this invitation for bids and the public sale of the Bonds to be communicated through PARITY® as promptly as practicable. However, no failure

to publish such notice or any defect or omission therein shall affect the cancellation of the public sale of the Bonds.

**RIGHT TO MODIFY OR AMEND:** The District reserves the right, in its sole discretion, to modify or amend this official Notice of Sale including, but not limited to, the right to adjust and change the principal amount and principal amortization schedule of the Bonds being offered, at any time prior to the date and time for the receipt of bids, communicated through PARITY®.

**RIGHT OF POSTPONEMENT BY DISTRICT:** The District reserves the right, in its sole discretion, to postpone, from time to time, the date established for the receipt of bids. Any such postponement will be communicated through PARITY® prior to the date and time for the receipt of bids. If any date is postponed, any alternative sale date will be announced through PARITY® at least 24 hours prior to such alternative sale date. On any such alternative sale date, any bidder may submit a bid for the purchase of the Bonds in conformity in all respects with the provisions of this Official Notice of Sale, except for the date of sale and except for the changes announced by through PARITY® at the time the sale date and time are announced.

**RIGHT OF REJECTION:** The District reserves the right, in its sole discretion, to reject any and all bids and to waive any irregularity or informality in any bid except that no bids will be accepted later than 9:30 A.M. (Pacific Daylight time) on the date set for receipt of bids.

**PROMPT AWARD:** Pursuant to authority granted by the Board of Trustees of the District (the "Board"), the Superintendent, or the Superintendent's designee, will take action awarding the Bonds or rejecting all bids not later than the close of business on the date for the receipt of bids; provided, that the award may be made after the expiration of the specified time if the bidder shall not have given to said Board notice in writing of the withdrawal of such proposal. Any bid submitted pursuant to this Notice of Sale shall be considered a firm offer for the purchase of the Bonds, as specified in the bid.

**PLACE OF DELIVERY; CANCELLATION FOR LATE DELIVERY:** It is expected that said Bonds will be delivered to DTC for the account of the successful bidder within thirty (30) days from the date of sale thereof. The successful bidder shall have the right, at his option, to cancel its obligation to purchase the Bonds if the Bonds are not tendered for delivery within thirty (30) days from the date of the sale thereof, and in such event the successful bidder shall be entitled to the return of the deposit accompanying his bid.

**GOOD FAITH DEPOSIT:** A good faith deposit (the "Deposit") in the form of a certified or cashier's check or a wire transfer, in the amount of \$100,000, payable to the order of the Paying Agent, must be remitted by the winning bidder within 48 hours after the acceptance of its bid. The Deposit shall be cashed by the Paying Agent on behalf of the District and shall then be applied toward the purchase price of the Bonds. If after the award of the Bonds the successful bidder or bidders fail to complete their purchase on the terms stated in their bid, the Deposit will be retained by the District. No interest on the Deposit will accrue to any bidder.

**CHANGE IN TAX EXEMPT STATUS:** At any time before the Bonds are tendered for delivery, the successful bidder may disaffirm and withdraw his proposal if the interest received by private holders from Bonds of the same type and character shall be declared to be taxable income under present federal income tax laws, either by a ruling of the Internal Revenue Service or by a decision of any federal court, or shall be declared taxable, or be required to be taken into account in computing federal income taxes (except alternative minimum taxes and environmental taxes payable by corporations) by any federal income tax law enacted subsequent to the date of this notice.

**CLOSING PAPERS; BOND PRINTING:** Each proposal will be understood to be conditioned upon the District furnishing to the purchaser, without charge, concurrently with payment for and delivery of the Bonds, the following closing papers, each dated the date of delivery:

(a) The opinion of Quint & Thimmig LLP, Larkspur, California, Bond Counsel, approving the validity of the Bonds and stating that, subject to the District's compliance with certain covenants, the interest on the Bonds is excluded from gross income for federal income tax purposes, such interest is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals, and interest on the Bonds is exempt from State of California personal income taxes. Other tax consequences to holders of the Bonds, if any, are not addressed in the opinion;

(b) A certificate of the District certifying that on the basis of the facts, estimates and circumstances in existence on the date of issue, it is not expected that the proceeds of the Bonds will be used in a manner that would cause the Bonds to be arbitrage bonds;

(c) A certificate of the District, signed by officers and representatives of the District, certifying that the officers and representatives have signed the Bonds whether by facsimile or manual signature, and that they were respectively duly authorized to execute the same;

(d) The receipt of the District evidencing the receipt of the purchase price of the Bonds;

(e) A certificate of the District, certifying that there is no known litigation threatened or pending affecting the validity of the Bonds; and

(f) A certificate of the District, signed by an officer of the District, acting in his official capacity, to the effect that at the time of the sale of the Bonds, and at all times subsequent thereto up to and including the time of the delivery of the Bonds, the Official Statement relating to the Bonds did not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

**CUSIP NUMBERS:** It is anticipated that CUSIP numbers will be printed on the Bonds, but neither the failure to print such numbers on any Bond nor error with respect thereto shall constitute cause for a failure or refusal by the purchaser thereof to accept delivery of and pay for the Bonds in accordance with the terms of the purchase contract. All expenses of printing CUSIP numbers on the Bonds and the CUSIP Service Bureau charge for the assignment of said numbers shall be paid by the successful bidder.

**ESTABLISHMENT OF ISSUE PRICE:** The winning bidder shall assist the District in establishing the issue price of the Bonds and shall execute and deliver to the District at closing an "issue price" or similar certificate setting forth the reasonably expected initial offering price to the public of the Bonds, together with the supporting pricing wires or equivalent communications, substantially in the form attached hereto as Exhibit A, with such modifications as may be appropriate or necessary, in the reasonable judgment of the winning bidder, the District and Bond Counsel. All actions to be taken by the District under this Notice of Sale to establish the issue price of the Bonds may be taken on behalf of the District by the Municipal Advisor and any notice or report to be provided to the District may be provided to the Municipal Advisor.

Any bid submitted pursuant to this Notice of Sale shall be considered a firm offer for the purchase of the Bonds, as specified in the bid.

The District may choose to apply either the "Competitive Bid" method or the "General Method" in determining the "Issue Price" of the Bonds. If the District does not receive bids from at least three underwriters who have established industry reputations for underwriting new issuances of municipal bonds, the District will use the "General Method" based on actual sale prices of at least 10% of each maturity of the Bonds.

**CALIFORNIA DEBT AND INVESTMENT ADVISORY COMMISSION:** The successful bidder will be required, pursuant to State law, to pay any fees to the California Debt and Investment Advisory Commission when due.

**DTC FEES:** All fees due DTC with respect to the Bonds shall be paid by the successful bidder or bidders.

**OFFICIAL STATEMENT:** The District has caused to be prepared a Preliminary Official Statement describing the Bonds in a form deemed final by the District within the meaning of Rule 15c2-12 of the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended, except for certain information which is permitted under said Rule 15c2-12 to be omitted from the Preliminary Official Statement. A copy of the Preliminary Official Statement will be furnished upon request to Isom Advisors, A Division of Urban Futures Incorporated, 1470 Maria Lane, Suite 315, Walnut Creek, CA 94596, telephone (925) 478-7450. The District will furnish to the successful bidder within seven business days following the date of award, at no charge, not in excess of 25 copies of the Official Statement for use in connection with any resale of the Bonds.

**DISCLOSURE CERTIFICATE:** The District will deliver to the purchaser of the Bonds a certificate of an official of the District, dated the date of Bond delivery, stating that as of the date thereof, to the best of the knowledge and belief of said official, the Official Statement does not contain an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading, and further certifying that the signatory knows of no material adverse change in the condition of the District which would make it unreasonable for the purchaser of the Bonds to rely upon the Official Statement in connection with the resale of the Bonds.

**CONTINUING DISCLOSURE:** In order to assist bidders in complying with S.E.C. Rule 15c2-12(b)(5), the District will undertake, pursuant to the resolution authorizing issuance of the Bonds and a Continuing Disclosure Certificate, to provide annual reports and notices of certain events. A description of this undertaking is set forth in the preliminary Official Statement and will also be set forth in the final Official Statement.

## EXHIBIT A

### FORM OF ISSUE PRICE CERTIFICATE

**\$20,000,000**  
**WALNUT CREEK SCHOOL DISTRICT**  
**(Contra Costa County, California)**  
**General Obligation Bonds, Election of 2016, Series C (2020)**

#### ISSUE PRICE CERTIFICATE

The undersigned, on behalf of \_\_\_\_\_ (the "Bidder"), hereby certifies as set forth below with respect to the sale of the above-captioned obligations (the "Bonds").

1. Reasonably Expected Initial Offering Prices.

(a) As of the Sale Date, the reasonably expected initial offering prices of the Bonds to the Public by the Bidder are the prices listed in Schedule A (the "Expected Offering Prices"). The Expected Offering Prices are the prices for the Maturities of the Bonds used by the Bidder in formulating its bid to purchase the Bonds. Attached as Schedule B is a true and correct copy of the bid provided by the Bidder to purchase the Bonds.

(b) the Bidder was not given the opportunity to review other bids prior to submitting its bid.

(c) The bid submitted by the Bidder constituted a firm offer to purchase the Bonds.

2. Defined Terms.

(a) "Maturity" means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate Maturities.

(b) "Public" means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an underwriter or a related party to an underwriter. The term "related party" for purposes of this certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

(c) "Sale Date" means the first day on which there is a binding contract in writing for the sale of a Maturity of the Bonds. The Sale Date of the Bonds is October 6, 2020.

(d) "underwriter" means (i) any person that agrees pursuant to a written contract with the Walnut Creek School District (the "District") (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents the Bidder's interpretation of any laws, including specifically sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the District with respect to certain of the representations set forth in the Certificate as to Arbitrage and with respect to compliance with the federal income tax rules affecting the Bonds, and by Quint & Thimmig LLP in connection with rendering its opinion that the interest with respect to the Bonds is excluded from gross income for federal

income tax purposes, the preparation of the Internal Revenue Service Form 8038-G and other federal income tax advice that it may give to the District from time to time relating to the Bonds.

Dated: October 20, 2020

\_\_\_\_\_, *as Bidder*

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

**SCHEDULE A TO ISSUE PRICE CERTIFICATE**

**\$20,000,000**  
**WALNUT CREEK SCHOOL DISTRICT**  
**(Contra Costa County, California)**  
**General Obligation Bonds, Election of 2016, Series C (2020)**

**REASONABLY EXPECTED INITIAL OFFERING PRICES**

<u>Maturity Date (August 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Yield</u>	<u>Price</u>
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**SCHEDULE B TO ISSUE PRICE CERTIFICATE**

**\$20,000,000**  
**WALNUT CREEK SCHOOL DISTRICT**  
**(Contra Costa County, California)**  
**General Obligation Bonds, Election of 2016, Series C (2020)**

**UNDERWRITER'S BID**

**EXHIBIT D TO RESOLUTION**  
**FORM OF PAYING AGENT AGREEMENT**

**\$20,000,000**  
**WALNUT CREEK SCHOOL DISTRICT**  
**(Contra Costa County, California)**  
**General Obligation Bonds,**  
**Election of 2016, Series C (2020)**

**PAYING AGENT/BOND REGISTRAR/COSTS OF ISSUANCE AGREEMENT**

THIS PAYING AGENT/BOND REGISTRAR/COSTS OF ISSUANCE AGREEMENT (this "Agreement"), is entered into as of October 1, 2020, by and between the WALNUT CREEK SCHOOL DISTRICT (the "District") and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. (the "Paying Agent"), relating to the \$20,000,000 Walnut Creek School District (Contra Costa County, California) General Obligation Bonds, Election of 2016, Series C (2020) (the "Bonds"). The District hereby appoints the Paying Agent to act in such capacity as Paying Agent, Transfer Agent and Bond Registrar for the Bonds and Custodian and Disbursing Agent for the payment of costs of issuance relating to the Bonds (all such capacities referred to herein as "Paying Agent").

RECITALS

WHEREAS, the District has duly authorized and provided for the issuance of the Bonds as fully registered bonds without coupons;

WHEREAS, the District will ensure all things necessary to make the Bonds the valid obligations of the District, in accordance with their terms, will be done upon the issuance and delivery thereof;

WHEREAS, the District and the Paying Agent wish to provide the terms under which the Paying Agent will act to pay the principal of and interest on the Bonds, in accordance with the terms thereof, and under which the Paying Agent will act as Bond Registrar for the Bonds;

WHEREAS, the District and the Paying Agent also wish to provide the terms under which the Paying Agent will act as Custodian and Disbursing Agent for the payment of costs of issuance relating to the Bonds;

WHEREAS, the Paying Agent has agreed to serve in such capacities for and on behalf of the District and has full power and authority to perform and serve as Paying Agent, Transfer Agent and Bond Registrar for the Bonds and as Custodian and Disbursing Agent for the payment of costs of issuance relating to the Bonds; and

WHEREAS, the District has duly authorized the execution and delivery of this Agreement; and all things necessary to make this Agreement a valid agreement have been done.

NOW, THEREFORE, it is mutually agreed as follows:

ARTICLE ONE

DEFINITIONS

Section 1.01. Definitions.

For all purposes of this Agreement except as otherwise expressly provided or unless the context otherwise requires:

*"Bond Register"* means the book or books of registration kept by the Paying Agent in which are maintained the names and addresses and principal amounts registered to each Registered Owner.

*"Bond Registrar"* means the Paying Agent when it is performing the function of registrar for the Bonds.

*"Bond Resolution"* means the resolution of the District pursuant to which the Bonds were issued.

*"Bond"* or *"Bonds"* means any one or all of the \$20,000,000 Walnut Creek School District (Contra Costa County, California) General Obligation Bonds, Election of 2016, Series C (2020).

*"Closing Date"* means October 20, 2020, the date of delivery of the Bonds.

*"Custodian and Disbursing Agent"* means the Paying Agent when it is performing the function of custodian and disbursing agent for the payment of costs of issuance relating to the Bonds.

*"District"* means Walnut Creek School District.

*"District Request"* means a written request signed in the name of the District and delivered to the Paying Agent.

*"Fiscal Year"* means the fiscal year of the District ending on June 30 of each year.

*"Paying Agent"* means The Bank of New York Mellon Trust Company, N.A., a national banking association organized and existing under the laws of the United States of America.

*"Person"* means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision of a government or any entity whatsoever.

*"Registered Owner"* means a Person in whose name a Bond is registered in the Bond Register.

*"Stated Maturity"* when used with respect to any Bond means the date specified in the Bond Resolution as the date on which the principal of such Bond is due and payable.

*"Transfer Agent"* means the Paying Agent when it is performing the function of transfer agent for the Bonds.

*"Treasurer-Tax Collector"* means the Contra Costa County Treasurer-Tax Collector.

*"Underwriter"* means \_\_\_\_\_.

## ARTICLE TWO

### APPOINTMENT OF BANK AS PAYING AGENT, TRANSFER AGENT, BOND REGISTRAR AND CUSTODIAN AND DISBURSING AGENT

Section 2.01. Appointment and Acceptance. The District hereby appoints the Paying Agent to act as Paying Agent and Transfer Agent with respect to the Bonds, to pay to the Registered Owners in accordance with the terms and provisions of this Agreement and the Bond Resolution, the principal of, redemption premium (if any) and interest on all or any of the Bonds.

The District hereby appoints the Paying Agent as Bond Registrar with respect to the Bonds. As Bond Registrar, the Paying Agent shall keep and maintain for and on behalf of the District, books and records as to the ownership of the Bonds and with respect to the transfer and exchange thereof as provided herein and in the Bond Resolution.

The District hereby appoints the Paying Agent as Custodian and Disbursing Agent.

The Paying Agent hereby accepts its appointment, and agrees to act as Paying Agent, Transfer Agent, Bond Registrar and Custodian and Disbursing Agent.

Section 2.02. Compensation. As compensation for the Paying Agent's services as Paying Agent and Bond Registrar, the District hereby agrees to pay the Paying Agent the fees and amounts set forth in a separate agreement between the District and the Paying Agent.

In addition, the District agrees to reimburse the Paying Agent, upon its request, for all reasonable and necessary out-of-pocket expenses, disbursements, and advances, including without limitation the reasonable fees, expenses, and disbursements of its agents and attorneys, made or incurred by the Paying Agent in connection with entering into and performing under this Agreement and in connection with investigating and defending itself against any claim or liability in connection with its performance hereunder.

## ARTICLE THREE

### PAYING AGENT

Section 3.01. Duties of Paying Agent. As Paying Agent, the Paying Agent, provided sufficient collected funds have been provided to it for such purpose by or on behalf of the District, shall pay on behalf of the District the principal of, and interest on each Bond in accordance with the debt service schedule attached hereto as Exhibit A.

Section 3.02. Payment Dates. The District hereby instructs the Paying Agent to pay the principal of and interest on the Bonds on the dates specified in the Bond Resolution.

## ARTICLE FOUR

### BOND REGISTRAR

Section 4.01. Initial Delivery of Bonds. The Bonds will be initially registered and delivered to the purchaser designated by the District as one Bond for each maturity. If such purchaser delivers a written request to the Paying Agent not later than five business days prior to the date of initial delivery, the Paying Agent will, on the date of initial delivery, deliver Bonds of authorized denominations, registered in accordance with the instructions in such written request.

Section 4.02. Duties of Bond Registrar. The Paying Agent in its capacity as Bond Registrar shall provide for the proper registration of transfer, exchange and replacement of the Bonds. Every Bond surrendered for transfer or exchange shall be duly endorsed or be accompanied by a written instrument

of transfer, the signature on which has been guaranteed by an eligible guarantor institution, in form acceptable to the Paying Agent, duly executed by the Registered Owner thereof or his attorney duly authorized in writing. The Bond Registrar may request any supporting documentation it deems necessary or appropriate to effect a re-registration.

Section 4.03. Unauthenticated Bonds. The District shall provide to the Paying Agent on a continuing basis, an adequate inventory of unauthenticated Bonds to facilitate transfers. The Paying Agent agrees that it will maintain such unauthenticated Bonds in safekeeping.

Section 4.04. Form of Bond Register. The Paying Agent as Bond Registrar will maintain its records as Bond Registrar in accordance with the Paying Agent's general practices and procedures in effect from time to time.

Section 4.05. Reports. The District may request the information in the Bond Register at any time the Paying Agent is customarily open for business, provided that reasonable time is allowed the Paying Agent to provide an up-to-date listing and to convert the information into written form.

The Paying Agent will not release or disclose the content of the Bond Register to any person other than to the District at its written request, except upon receipt of a subpoena or court order or as may otherwise be required by law. Upon receipt of a subpoena or court order the Paying Agent will notify the District to the extent it is allowed by law to do so.

Section 4.06. Cancelled Bonds. All Bonds surrendered for payment, transfer, exchange, or replacement, if surrendered to the Paying Agent, shall be promptly cancelled by it and, if surrendered to the District, shall be delivered to the Paying Agent, shall be promptly cancelled by the Paying Agent. The District may at any time deliver to the Paying Agent for cancellation any Bonds previously authenticated and delivered which the District may have acquired in any manner whatsoever, and all Bonds so delivered shall be promptly cancelled by the Paying Agent. All cancelled Bonds held by the Paying Agent for its retention period then in effect and shall thereafter be destroyed and evidence of such destruction furnished to the District upon its written request.

## ARTICLE FIVE

### CUSTODIAN AND DISBURSING AGENT

Section 5.01. Receipt of Moneys. On October 6, 2020, the date of sale of the Bonds (the "Sale Date"), the Paying Agent, in its capacity as custodian, received the sum of \$100,000.00 from the Underwriter, representing the good faith deposit paid by the Underwriter, and deposited such amount in a bond proceeds account (the "Bond Proceeds Account"), established pursuant to that certain Good Faith Deposit Custody Agreement, dated the Sale Date, by and between the District and the Paying Agent, as custodian. The Paying Agent, as custodian, is hereby directed to transfer such amount from the Bond Proceeds Account to a special fund to be held and maintained by the Custodian and Disbursing Agent in the name of the District (the "Costs of Issuance Fund") for the payment of Costs of Issuance. In addition, on the Closing Date, the Paying Agent, as custodian, received, from the Underwriter, the additional sum of \$\_\_\_\_\_. The Paying Agent, as custodian, is hereby directed to deposit such amount in the Costs of Issuance Fund, for a total deposit therein of \$\_\_\_\_\_.

Section 5.02. No Investment. The Custodian and Disbursing Agent shall hold monies in the Costs of Issuance Fund in cash uninvested.

Section 5.03. Payment of Costs of Issuance. The Custodian and Disbursing Agent will pay costs of issuance of the Bonds as directed by the District from time to time via a written requisition of the District stating the person to whom payment is to be made, the amount to be paid, that such payment is proper charge against said fund and that payment for such charge has not previously been made and that such payments shall be made by check or wire transfer in accordance with the payment instructions set forth in such requisition and the Custodian and Disbursing Agent shall rely on such payment

instructions with no duty to investigate or inquire as to the authenticity of the payment instructions or the authority under which they were given.

Section 5.04. Transfer of Remaining Amounts. Any balances remaining in the Costs of Issuance Fund (including any earnings) on January 20, 2021, or upon the earlier written order of the District, will be transferred to the Treasurer-Tax Collector for deposit in the Interest and Sinking Fund maintained for the District and the Costs of Issuance Fund shall be closed.

Section 5.05. Limited Liability. The liability of the Custodian and Disbursing Agent as custodian and disbursing agent is limited to the duties listed above. The Custodian and Disbursing Agent in such capacity will not be liable for any action taken or neglected to be taken by it in good faith in any exercise of reasonable care and believed by it to be within the discretion of power conferred upon it by this Agreement.

## ARTICLE SIX

### THE PAYING AGENT

Section 6.01. Duties of the Paying Agent. The Paying Agent undertakes to perform the duties set forth herein. No implied duties or obligations shall be read into this Agreement against the Paying Agent. The Paying Agent hereby agrees to use the funds deposited with it for payment of the principal of and interest on the Bonds to pay the same as it shall become due and further agrees to establish and maintain such accounts and funds as may be required for the Paying Agent to function as Paying Agent and in its capacity as custodian and disbursing agent to use the funds deposited with it for payment of costs of issuance as set forth in Article V hereof.

Section 6.02. Reliance on Documents, Etc.

(a) The Paying Agent may conclusively rely, as to the truth of the statements and correctness of the opinions expressed therein, on certificates or opinions expressed therein, on certificates or opinions furnished to the Paying Agent by the District.

(b) The Paying Agent shall not be liable for any error of judgment made in good faith. The Paying Agent shall not be liable for other than its negligence or willful misconduct in connection with any act or omission hereunder.

(c) No provision of this Agreement shall require the Paying Agent to expend or risk its own funds or otherwise incur any financial liability for performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

(d) The Paying Agent may rely, or be protected in acting or refraining from acting, upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, security or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Paying Agent need not examine the ownership of any Bond, but shall be protected in acting upon receipt of Bonds containing an endorsement or instruction of transfer or power of transfer which appears on its face to be signed by the Registered Owner or agent of the Registered Owner.

(e) The Paying Agent may consult with counsel, and the written advice or opinion of counsel shall be full authorization and protection with respect to any action taken, suffered or omitted by it hereunder in good faith and reliance thereon.

(f) The Paying Agent may exercise any of the powers hereunder and perform any duties hereunder either directly or by or through agents or attorneys and shall not be liable for the actions of such agent or attorney if appointed by it with reasonable care.

(g) The Paying Agent shall not be responsible or liable for any failure or delay in the performance of its obligation under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; wars; terrorism; military disturbances; sabotage; epidemic; riots; interruptions; loss or malfunctions of utilities; computer (hardware or software) or communications services; accidents; labor disputes; acts of civil or military authority or governmental action; it being understood that Paying Agent shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

(h) The Paying Agent agrees to accept and act upon instructions or directions pursuant to this Agreement sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that the District shall provide to the Paying Agent an incumbency certificate listing designated persons authorized to provide such instructions, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the District elects to give the Paying Agent e-mail or facsimile instructions (or instructions by a similar electronic method) and the Paying Agent in its discretion elects to act upon such instructions, the Paying Agent's understanding of such instructions shall be deemed controlling. The Paying Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Paying Agent's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The District agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Paying Agent, including without limitation the risk of the Paying Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 6.03. Recitals of District. The recitals contained in the Bond Resolution and the Bonds shall be taken as the statements of the District, and the Paying Agent assumes no responsibility for their correctness.

Section 6.04. May Own Bonds. The Paying Agent, in its individual or any other capacity, may become the owner or pledgee of Bonds with the same rights it would have if it were not the Paying Agent and Bond Registrar for the Bonds.

Section 6.05. Money Held by the Paying Agent. Money held by the Paying Agent hereunder need not be segregated from other funds. The Paying Agent shall have no duties with respect to investment of funds deposited with it, except as expressly set forth herein, and shall be under no obligation to pay interest on any money received by it hereunder.

Any money deposited with or otherwise held by the Paying Agent for the payment of the principal of or interest on any Bond and remaining unclaimed for two years after such deposit will be paid by the Paying Agent to the District, and the District and the Paying Agent agree that the Registered Owner of such Bond shall thereafter look only to the District for payment thereof, and that all liability of the Paying Agent with respect to such moneys shall thereupon cease.

The Paying Agent shall furnish the District periodic cash transaction statements which include detail for all investment transactions effected by the Paying Agent or brokers selected by the District. Upon the District's election, such statements will be delivered via the Paying Agent's online service and upon electing such service, paper statements will be provided only upon request. The District waives the right to receive brokerage confirmations of security transactions effected by the Paying Agent as they occur, to the extent permitted by law. The District further understands that trade confirmations for securities transactions effected by the Paying Agent will be available upon request and at no additional cost and other trade confirmations may be obtained from the applicable broker.

Section 6.06. Other Transactions. The Paying Agent may engage in or be interested in any financial or other transaction with the District.

Section 6.07. Interpleader. The District and the Paying Agent agree that the Paying Agent may seek adjudication of any adverse claim, demand, or controversy over its person as well as funds on deposit, in a court of competent jurisdiction. The District and the Paying Agent further agree that the

Paying Agent has the right to file an action in interpleader in any court of competent jurisdiction to determine the rights of any person claiming any interest herein.

Section 6.08. Indemnification. To the extent permitted by law, the District shall indemnify the Paying Agent, its officers, directors, employees and agents (“Indemnified Parties”) for, and hold them harmless against any loss, cost, claim, liability or expense arising out of or in connection with the Paying Agent’s acceptance or administration of the Paying Agent’s duties hereunder in its capacities as Paying Agent, Registrar, Transfer Agent or Custodian or under the Bond Resolution (except any loss, liability or expense as may be adjudged by a court of competent jurisdiction to be attributable to the Paying Agent’s negligence or willful misconduct), including the cost and expense (including its counsel fees) of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties under this Agreement. Such indemnity shall survive the termination or discharge of this Agreement or discharge of the Bonds.

## ARTICLE SEVEN

### MISCELLANEOUS PROVISIONS

Section 7.01. Amendment. This Agreement may be amended only by an agreement in writing signed by both of the parties hereto.

Section 7.02. Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party.

Section 7.03. Notices. Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted hereby to be given or furnished to the District or the Paying Agent shall be mailed or delivered to the District or the Paying Agent, respectively, at the following addresses, or such other address as may have been given by one party to the other by fifteen (15) days written notice.

If to the District: Walnut Creek School District  
960 Ygnacio Valley Road  
Walnut Creek, CA 94596  
(925) 944-6850

If to the Paying Agent: The Bank of New York Mellon Trust Company, N.A.  
Attn: Corporate Trust Department  
2001 Bryan Street, 11<sup>th</sup> Floor  
Dallas, TX 75201  
(215) 468-6145

Section 7.04. Effect of Headings. The Article and Section headings herein are for convenience of reference only and shall not affect the construction hereof.

Section 7.05. Successors and Assigns. All covenants and agreements herein by the District and the Paying Agent shall bind their successors and assigns, whether so expressed or not.

Section 7.06. Severability. If any provision of this Agreement shall be determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

Section 7.07. Benefits of Agreement. Nothing herein, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, any benefit or any legal or equitable right, remedy or claim hereunder.

Section 7.08. Entire Agreement. This Agreement and the Bond Resolution constitute the entire agreement between the parties hereto relative to the Paying Agent acting in the capacities as Paying



Agent, Transfer Agent and Bond Registrar for the Bonds and as Custodian and Disbursing Agent for the payment of costs of issuance relating to the Bonds.

Section 7.09. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

Section 7.10. Term and Termination. This Agreement shall be effective from and after its date and until the Paying Agent resigns or is removed in accordance with the Bond Resolution; provided, however, that no such termination shall be effective until a successor has been appointed and has accepted the duties of the Paying Agent hereunder.

The Paying Agent may resign at any time by giving written notice thereof to the District. If the Paying Agent shall resign, be removed or become incapable of acting, the District shall promptly appoint a successor Paying Agent and Bond Registrar. If an instrument of acceptance by a successor Paying Agent and Bond Registrar shall not have been delivered to the Paying Agent within thirty 30 days after the Paying Agent gives notice of resignation, the Paying Agent may petition any court of competent jurisdiction at the expense of the District for the appointment of a successor Paying Agent and Bond Registrar. In the event of resignation or removal of the Paying Agent as Paying Agent and Bond Registrar, upon the written request of the District and upon payment of all amounts owing to the Paying Agent hereunder the Paying Agent shall deliver to the District or its designee all funds and unauthenticated Bonds, and a copy of the Bond Register. The provisions of Section 2.02 and Section 6.08 hereof shall survive and remain in full force and effect following the termination of this Agreement.

Section 7.11. Governing Law. This Agreement shall be construed in accordance with and shall be governed by the laws of the State of California.

Section 7.12. Documents to be Filed with Paying Agent. The District shall file with the Paying Agent the following documents: (a) a certified copy of the Bond Resolution and a specimen Bond; (b) a copy of the opinion of bond counsel provided to the District in connection with the issuance of the Bonds; and (c) a District Request containing written instructions to the Paying Agent with respect to the issuance and delivery of the Bonds, including the name of the Registered Owners and the denominations of the Bonds.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

WALNUT CREEK SCHOOL DISTRICT

By \_\_\_\_\_  
Marie Morgan,  
Superintendent

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Paying Agent

By \_\_\_\_\_  
Juliana Haidary,  
Associate Client Service Manager

**EXHIBIT A**

**DEBT SERVICE SCHEDULE**

<u>Interest Payment Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
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## EXHIBIT E TO RESOLUTION

### FORM OF CONTINUING DISCLOSURE CERTIFICATE

This Continuing Disclosure Certificate (the “Disclosure Certificate”) is executed and delivered by the WALNUT CREEK SCHOOL DISTRICT (the “District”) in connection with the issuance by the District of its \$20,000,000 Walnut Creek School District (County of Contra Costa, California) General Obligation Bonds, Election of 2016, Series C (2020) (the “Bonds”). The Bonds are being issued pursuant to a resolution adopted by the Board of Trustees of the District on September 8, 2020 (the “Resolution”). The District covenants and agrees as follows:

Section 1. Definitions. In addition to the definitions set forth above and, in the Indenture, which apply to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section 1, the following capitalized terms shall have the following meanings:

“*Annual Report*” means any Annual Report provided by the District pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

“*Annual Report Date*” means March 31 after the end of the District’s fiscal year.

“*Dissemination Agent*” shall mean, initially, Isom Advisors, A Division of Urban Futures Incorporated, or any successor Dissemination Agent designed in writing by the District and which has been filed with the then current Dissemination Agent a written acceptance of such designation.

“*Fiscal Year*” means any twelve-month period beginning on July 1 in any year and extending to the next succeeding June 30, both dates inclusive, or any other twelve-month period selected and designated by the District as its official fiscal year period under a Certificate of the District filed with the Trustee.

“*MSRB*” means the Municipal Securities Rulemaking Board, which has been designated by the Securities and Exchange Commission as the sole repository of disclosure information for purposes of the Rule, or any other repository of disclosure information that may be designated by the Securities and Exchange Commission as such for purposes of the Rule in the future.

“*Official Statement*” means the final official statement executed by the District in connection with the issuance of the Bonds.

“*Participating Underwriter*” means the original underwriter of the Bonds.

“*Rule*” means Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as it may be amended from time to time.

“*Significant Events*” means any of the events listed in Section 5(a) of this Disclosure Certificate.

Section 2. Purpose of the Disclosure Certificate. This Disclosure Certificate is being executed and delivered by the District for the benefit of the holders and beneficial owners of the Bonds and in order to assist the Participating Underwriter in complying with S.E.C. Rule 15c2-12(b)(5).

Section 3. Provision of Annual Reports.

(a) The District shall, or shall cause the Dissemination Agent to, not later than the Annual Report Date, commencing March 31, 2021, with the report for fiscal year 2018-19 provide to the MSRB, in an electronic format as prescribed by the MSRB, an Annual Report that is consistent with the requirements of Section 4 of this Disclosure Certificate. Not later than 15 Business Days prior to the Annual Report Date, the District shall provide the Annual Report to the Dissemination Agent (if other than the District). If by 15 Business Days prior to the Annual Report Date the Dissemination Agent (if other than the

District) has not received a copy of the Annual Report, the Dissemination Agent shall contact the District to determine if the District is in compliance with the previous sentence. The Annual Report may be submitted as a single document or as separate documents comprising a package and may include by reference other information as provided in Section 4 of this Disclosure Certificate; provided that the audited financial statements of the District may be submitted separately from the balance of the Annual Report, and later than the Annual Report Date, if not available by that date. If the District's fiscal year changes, it shall give notice of such change in the same manner as for a Significant Event under Section 5(c). The District shall provide a written certification with each Annual Report furnished to the Dissemination Agent to the effect that such Annual Report constitutes the Annual Report required to be furnished by the District hereunder.

(b) If the District does not provide (or cause the Dissemination Agent to provide) an Annual Report by the Annual Report Date, the District in a timely manner shall provide (or cause the Dissemination Agent to provide) to the MSRB, in an electronic format as prescribed by the MSRB, a notice in substantially the form attached as Exhibit A.

(c) With respect to each Annual Report, the Dissemination Agent shall:

(i) determine each year prior to the Annual Report Date the then-applicable rules and electronic format prescribed by the MSRB for the filing of annual continuing disclosure reports; and

(ii) if the Dissemination Agent is other than the District, file a report with the District certifying that the Annual Report has been provided pursuant to this Disclosure Certificate, and stating the date it was provided.

Section 4. Content of Annual Reports. The District's Annual Report shall contain or incorporate by reference the following:

(a) The District's audited financial statements prepared in accordance with generally accepted accounting principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board. If the District's audited financial statements are not available by the Annual Report Date, the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

(b) Unless otherwise provided in the audited financial statements filed on or prior to the annual filing deadline for Annual Reports provided for in Section 3 above, financial information and operating data with respect to the District for preceding fiscal year, substantially similar to that provided in the Official Statement, as follows:

- (i) The District's approved budget for the then current fiscal year;
- (ii) Assessed value of taxable property in the District as shown on the recent equalized assessment role; and
- (iii) Property tax levies, collections and delinquencies for the District, for the most recent completed fiscal year.

(c) In addition to any of the information expressly required to be provided under this Disclosure Certificate, the District shall provide such further material information, if any, as may be necessary to make the specifically required statements, in the light of the circumstances under which they are made, not misleading.

(d) Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the District or related public entities, which are available to the public on the MSRB's Internet web site or filed with the Securities and Exchange Commission. The District shall clearly identify each such other document so included by reference.

Section 5. Reporting of Significant Events.

(a) The District shall give, or cause to be given, notice of the occurrence of any of the following Significant Events with respect to the Bonds:

- (i) Principal and interest payment delinquencies;
- (ii) Non-payment related defaults, if material;
- (iii) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) Substitution of credit or liquidity providers, or their failure to perform;
- (vi) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
- (vii) Modifications to rights of security holders, if material;
- (viii) Bond calls, if material, and tender offers;
- (ix) Defeasances;
- (x) Release, substitution, or sale of property securing repayment of the securities, if material;
- (xi) Rating changes;
- (xii) Bankruptcy, insolvency, receivership or similar event of the District or other obligated person;
- (xiii) The consummation of a merger, consolidation, or acquisition involving the District or an obligated person, or the sale of all or substantially all of the assets of the District or an obligated person (other than in the ordinary course of business), the entry into a definitive agreement to undertake such an action, or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; or
- (xiv) Appointment of a successor or additional trustee or the change of name of a trustee, if material;
- (xv) The incurrence of a financial obligation of the District or other obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the District or other obligated person, any of which affect security holders, if material; or
- (xvi) A default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the District or other obligated person, any of which reflect financial difficulties.

(b) Whenever the District obtains knowledge of the occurrence of a Significant Event, the District shall, or shall cause the Dissemination Agent (if not the District) to, file a notice of such occurrence with the MSRB, in an electronic format as prescribed by the MSRB, in a timely manner not in excess of 10 business days after the occurrence of the Significant Event. Notwithstanding the foregoing, notice of Significant Events described in subsection (a)(viii) above need not be given under this subsection any

earlier than the notice (if any) of the underlying event is given to holders of affected Bonds under the Indenture.

(c) The District acknowledges that the events described in subparagraphs (a)(ii), (a)(vii), (a)(viii) (if the event is a bond call), (a)(x), (a)(xiii), (a)(xiv) and (a)(xv) of this Section 5 contain the qualifier “if material.” The District shall cause a notice to be filed as set forth in paragraph (b) above with respect to any such event only to the extent that the District determines the event’s occurrence is material for purposes of U.S. federal securities law. The District intends that the words used in paragraphs (xv) and (xvi) and the definition of “financial obligation” to have the meanings ascribed thereto in SEC Release No. 34-83885 (September 20, 2018) and/or any further guidance or releases provided by the SEC.

(d) For purposes of this Disclosure Certificate, any event described in paragraph (a)(xii) above is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the District in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the District, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the District.

Section 6. Identifying Information for Filings with the MSRB. All documents provided to the MSRB under this Disclosure Certificate shall be accompanied by identifying information as prescribed by the MSRB.

Section 7. Termination of Reporting Obligation. The District’s obligations under this Disclosure Certificate shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the District shall give notice of such termination in the same manner as for a Significant Event under Section 5(b).

Section 8. Dissemination Agent. The District may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Certificate, and may discharge any Dissemination Agent, with or without appointing a successor Dissemination Agent. Any Dissemination Agent may resign by providing 30 days’ written notice to the District.

Section 9. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Certificate, the District may amend this Disclosure Certificate, and any provision of this Disclosure Certificate may be waived, provided that the following conditions are satisfied:

(a) if the amendment or waiver relates to the provisions of Sections 3(a), 4 or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature, or status of an obligated person with respect to the Bonds, or type of business conducted;

(b) the undertakings herein, as proposed to be amended or waived, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the primary offering of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) the proposed amendment or waiver either (i) is approved by holders of the Bonds in the manner provided in the Indenture for amendments to the Indenture with the consent of holders, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the holders or beneficial owners of the Bonds.

If the annual financial information or operating data to be provided in the Annual Report is amended pursuant to the provisions hereof, the first annual financial information filed pursuant hereto containing the amended operating data or financial information shall explain, in narrative form, the

reasons for the amendment and the impact of the change in the type of operating data or financial information being provided.

If an amendment is made to the undertaking specifying the accounting principles to be followed in preparing financial statements, the annual financial information for the year in which the change is made shall present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. The comparison shall include a qualitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information, in order to provide information to investors to enable them to evaluate the ability of the District to meet its obligations. To the extent reasonably feasible, the comparison shall be quantitative.

The Dissemination Agent shall not be obligated to enter into any amendment increasing or affecting its duties or obligations hereunder.

A notice of any amendment made pursuant to this Section 9 shall be filed in the same manner as for a Significant Event under Section 5(b).

Section 10. Additional Information. Nothing in this Disclosure Certificate shall be deemed to prevent the District from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Significant Event, in addition to that which is required by this Disclosure Certificate. If the District chooses to include any information in any Annual Report or notice of occurrence of a Significant Event in addition to that which is specifically required by this Disclosure Certificate, the District shall have no obligation under this Disclosure Certificate to update such information or include it in any future Annual Report or notice of occurrence of a Significant Event.

Section 11. Default. If the District fails to comply with any provision of this Disclosure Certificate, the Participating Underwriter or any holder or beneficial owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the District to comply with its obligations under this Disclosure Certificate. A default under this Disclosure Certificate shall not be deemed an Event of Default under the Indenture, and the sole remedy under this Disclosure Certificate in the event of any failure of the District to comply with this Disclosure Certificate shall be an action to compel performance.

Section 12. Duties, Immunities and Liabilities of Dissemination Agent. (a) Article VIII of the Indenture is hereby made applicable to this Disclosure Certificate as if this Disclosure Certificate were (solely for this purpose) contained in the Indenture. The Dissemination Agent shall be entitled to the protections and limitations from liability afforded to the Trustee thereunder. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Certificate, and the District agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which they may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys' fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The Dissemination Agent shall have no duty or obligation to review any information provided to it by the District hereunder and shall not be deemed to be acting in any fiduciary capacity for the District, the Bond holders or any other party. The obligations of the District under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

(b) The Dissemination Agent shall be paid compensation by the District for its services provided hereunder in accordance with its schedule of fees as amended from time to time, and shall be reimbursed for all expenses, legal fees and advances made or incurred by the Dissemination Agent in the performance of its duties hereunder.

Section 13. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the District, the Dissemination Agent, the Participating Underwriter and the owners and Beneficial Owners from time to time of the Bonds and shall create no rights in any other person or entity.

Date: October 20, 2020

WALNUT CREEK SCHOOL DISTRICT

By \_\_\_\_\_  
Marie Morgan,  
Superintendent

ACKNOWLEDGED:

ISOM ADVISORS, A Division of Urban Futures  
Incorporated, as Dissemination Agent

By \_\_\_\_\_  
Authorized Signatory



**EXHIBIT A**

**NOTICE TO EMMA OF FAILURE TO FILE ANNUAL REPORT**

Name of Issuer: Walnut Creek School District

Name of Issue: \$20,000,000 Walnut Creek School District (County of Contra Costa, California)  
General Obligation Bonds, Election of 2016, Series C (2020)

Date of Issuance: October 20, 2020

NOTICE IS HEREBY GIVEN that the Obligor has not provided an Annual Report with respect to the above-named Issue as required by the Continuing Disclosure Certificate, dated October 20, 2020, furnished by the Issuer in connection with the Issue. The Issuer anticipates that the Annual Report will be filed by \_\_\_\_\_.

Dated: \_\_\_\_\_

ISOM ADVISORS, A Division of Urban Futures  
Incorporated, Dissemination Agent

By \_\_\_\_\_  
Authorized Officer

cc: Paying Agent



Contra  
Costa  
County

To: Board of Supervisors  
From: John Kopchik, Director, Conservation & Development Department  
Date: September 22, 2020

Subject: Resolution of Intention to Form Zone 1204 of County Service Area P-6 in the unincorporated Concord area of the County. (District IV)

**RECOMMENDATION(S):**

1. ADOPT Resolution No. 2020/252, initiating proceedings for the formation of a new zone, Zone 1204, within County Service Area P-6, in the unincorporated Concord area of the County.
2. FIX a public hearing for November 3, 2020, at 9:30 a.m., on the formation of Zone 1204 within County Service Area P-6.
3. FIX a public hearing for November 3, 2020, at 9:30 a.m., to consider the adoption of Ordinance 2020-24, which would authorize the levy of a special tax to augment funding for police protection services in proposed Zone 1204, and to authorize submission of the ordinance to the voters for approval at the January 5, 2021 election.

**FISCAL IMPACT:**

The cost of establishing the proposed Police Services Special Tax District is paid for by the developer of the subdivision.

APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
 Candace Andersen, District II Supervisor  
 Diane Burgis, District III Supervisor  
 Karen Mitchoff, District IV Supervisor  
 Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: June McHuen, Deputy

Contact: Jennifer Cruz, (925)  
674-7790

cc:

## BACKGROUND:

Per the conditions of approval for Subdivision 9495 (County File #SD18-9495), the developer of the property located at 5175 Laurel Drive in the unincorporated Concord area is required to establish a Special Police Services Tax District for the 8-lot subdivision prior to recording the final map for the subdivision. The proposed special tax district would fund an increase in the level of police protection services that is provided in the unincorporated Concord area.

Adoption of a resolution of intent to form a new tax district (Resolution No. 2020/252) is required by Government Code Section 25217, subdivision (b), as the first step in forming the proposed zone, which will serve as the vehicle to collect special taxes within the proposed zone if the tax measure is approved by the voters at the January 5, 2021, ballot. The resolution includes information regarding the name and boundaries of the zone, the different level of services to be provided, and the method by which the increased level of service is to be funded. The resolution also directs the Clerk of the Board to publish and mail notice of a public hearing regarding the proposed zone formation. It is recommended that the Board set this hearing for 9:30 a.m. on November 3, 2020. If at the conclusion of that public hearing the Board determines that more than 50% of the total number of voters residing within the proposed zone have filed written objections to the formation, Government Code Section 25217.1, subdivision (b)(1), would require the Board to determine that a majority protest exists and to terminate the proceedings. The proposed police service district currently consists of a single 3.6-acre property owned by the Estate of Pamela Harrel Trust, who per the conditions of approval for the subdivision is required to establish the police service district prior to recording the final map.

If there is no majority protest and the Board elects to proceed with the formation of the zone, a second public hearing would be required to consider the approval of Ordinance No. 2020-24, pertaining to the proposed levy of a special tax on the subject parcel within Zone 1204 for police protection services and submission of the measure to the voters, pursuant to Government Code Section 50077, subdivision (a). It is recommended that this hearing be set at 9:30 a.m. on November 3, 2020, immediately following the hearing on the zone formation. If the Board thereafter adopts Ordinance No. 2020-24, then the tax measure would be submitted for placement on the January 5, 2021 ballot.

## CONSEQUENCE OF NEGATIVE ACTION:

If not approved, Ordinance No. 2020-24 will not be adopted, formation of Special Tax Zone 1204 will not occur, and the Special Tax District will not be established at the November 3, 2020 hearing.

## AGENDA ATTACHMENTS

Resolution 2020/252

Exhibit A - Legal Description

Exhibit B - Plat Map

## MINUTES ATTACHMENTS

Signed Resolution No. 2020/252

**THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA**  
**and for Special Districts, Agencies and Authorities Governed by the Board**

Adopted this Resolution on 09/22/2020 by the following vote:

		<b>John Gioia</b>
		<b>Candace Andersen</b>
<b>AYE:</b>	<input type="text" value="5"/>	<b>Diane Burgis</b>
		<b>Karen Mitchoff</b>
		<b>Federal D. Glover</b>
<b>NO:</b>	<input type="text"/>	
<b>ABSENT:</b>	<input type="text"/>	
<b>ABSTAIN:</b>	<input type="text"/>	
<b>RECUSE:</b>	<input type="text"/>	



**Resolution No. 2020/252**

**RESOLUTION OF INTENTION TO FORM ZONE 1204 OF COUNTY SERVICE AREA P-6 IN THE UNINCORPORATED CONCORD AREA**

The Board of Supervisors of Contra Costa County RESOLVES:

1. The Board of Supervisors of Contra Costa County proposes the formation of new zone in the unincorporated Concord area of County Service Area (CSA) P-6, pursuant to Article 8 of Chapter 2.3 of Part 2 of Division 2 of Title 3 of the California Government Code.
2. The boundaries of the territory to be included in the zone area are described in 'Exhibit A' and shown in 'Exhibit B', both of which are attached hereto and incorporated herein by this reference.
3. The formation of Zone 1204 is proposed to provide the County of Contra Costa with a method of financing an increased level of police protection services to the area within the zone.
4. The proposed zone would provide a level of police protection services that exceeds the level of service outside the zone, and if approved by the voters, the proposed zone would generate additional revenue in the form of special taxes to fund the increase in this level of service.
5. The increase in the level of service would be financed through the levy of a voter-approved special tax on all taxable parcels within the zone.
6. The name proposed for the zone is "Zone 1204" of CSA P-6.

NOW, THEREFORE, BE IT RESOLVED THAT at 9:30 a.m. on November 3, 2020, in the Chamber of the Board of Supervisors, County Administration Building, 1025 Escobar Street, Martinez, CA 94553, this Board will conduct a public hearing upon the proposed formation of Zone 1204 of CSA P-6. The Clerk of the Board is hereby directed to give notice of the public hearing by (1) publishing a notice that complies with Government Code Section 25217, subdivision (d)(1), pursuant to Government Code Section 6061; (2) mailing the notice to all owners of property within the proposed zone; (3) mailing the notice to each city and special district that contains, or whose sphere of influence contains the proposed zone; and (4) verifying that the notice is posted in at least three public places within the territory of the proposed zone.

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: September 22, 2020**

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

Contact: Jennifer Cruz, (925) 674-7790

By: June McHuen, Deputy

cc:

**THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA**  
and for Special Districts, Agencies and Authorities Governed by the Board

Adopted this Resolution on 09/22/2020 by the following vote:

		<b>John Gioia</b>
		<b>Candace Andersen</b>
<b>AYE:</b>	<input type="text" value="5"/>	<b>Diane Burgis</b>
		<b>Karen Mitchoff</b>
		<b>Federal D. Glover</b>
<b>NO:</b>	<input type="text" value="/"/>	
<b>ABSENT:</b>	<input type="text" value="/"/>	
<b>ABSTAIN:</b>	<input type="text" value="/"/>	
<b>RECUSE:</b>	<input type="text" value="/"/>	



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2. The boundaries of the territory to be included in the zone area are described in 'Exhibit A' and shown in 'Exhibit B', both of which are attached hereto and incorporated herein by this reference.
3. The formation of Zone 1204 is proposed to provide the County of Contra Costa with a method of financing an increased level of police protection services to the area within the zone.
4. The proposed zone would provide a level of police protection services that exceeds the level of service outside the zone, and if approved by the voters, the proposed zone would generate additional revenue in the form of special taxes to fund the increase in this level of service.
5. The increase in the level of service would be financed through the levy of a voter-approved special tax on all taxable parcels within the zone.
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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: September 22, 2020**

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

By: *June McHuen*  
June McHuen, Deputy

Contact: Jennifer Cruz, (925) 674-7790

cc:

**EXHIBIT 'A'**  
**LEGAL DESCRIPTION**

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE UNINCORPORATED AREA OF THE COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

(THE BEARINGS FOR THIS DESCRIPTION ARE BASED ON THE CENTERLINE OF LAUREL DRIVE BETWEEN FOUND MONUMENTS AS SHOWN ON THE CCCO COUNTY RIGHT OF WAY DWG F 5167 E-71)

BEING ALL OF THAT PARCEL OF LAND DESCRIBED IN THE DEED TO DESCO DEVELOPMENT CO. LLC RECORDED ON JANUARY 21, 2020 UNDER RECORDERS SERIES NUMBER 2020-0012290 IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHEASTERLY CORNER OF SAID PARCEL (20-0012290) THENCE ALONG THE NORTHERLY RIGHT OF WAY LINE OF LAUREL DRIVE NORTH 58°41'36" WEST, 389.00 FEET;

THENCE LEAVING SAID RIGHT OF WAY LINE NORTH 31°18'24" EAST, 402.66 FEET TO A POINT ON THE SOUTHERLY BOUNDARY LINE OF TRACT 7934 FILED ON JUNE 2, 2000 IN BOOK 420 OF MAPS AT PAGE 26 IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, STATE OF CALIFORNIA;

THENCE ALONG SAID SOUTHERLY LINE AND THE EASTERLY PROLONGATION THEREOF SOUTH 58°41'36" EAST, 389.00 FEET;

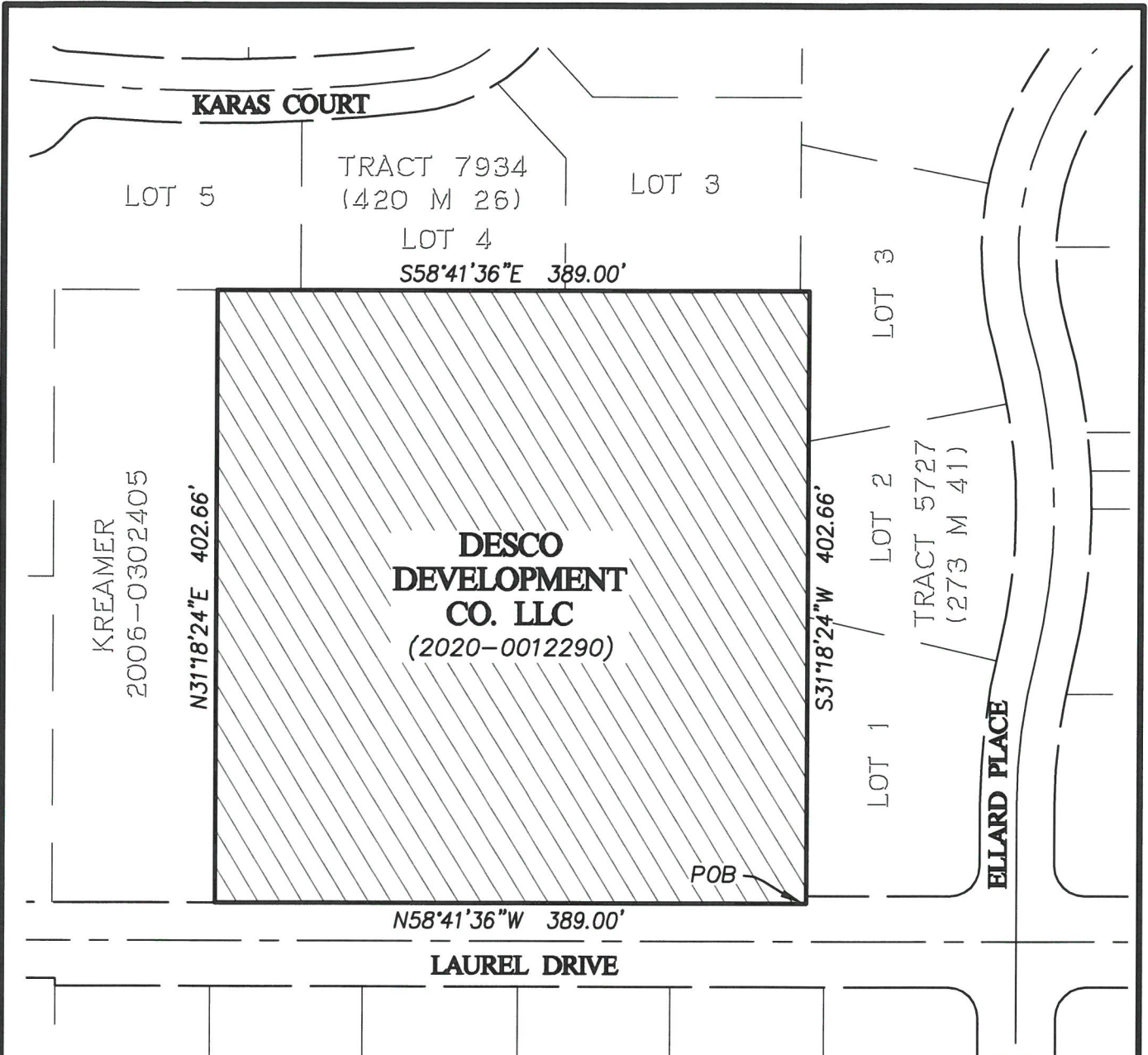
THENCE SOUTH 31°18'24" WEST, 402.66 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 3.60 ACRES OF LAND, MORE OR LESS.

THIS REAL PROPERTY DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT

  
\_\_\_\_\_  
BOB J. LEZCANO-LS8514





**LEGEND**

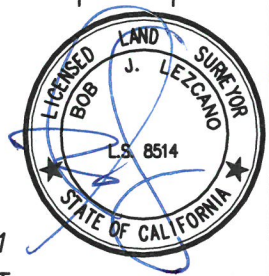
POB POINT OF BEGINNING

 ANNEXATION AREA = 3.60 AC±



**BASIS OF BEARINGS**

BEARINGS ARE BASED ON THE CENTERLINE OF LAUREL DRIVE BETWEEN FOUND MONUMENTS AS SHOWN ON THE CCCO COUNTY RIGHT OF WAY DWG F 5167 E-71 TAKEN AS NORTH 58°41'36" WEST




817 Arnold Drive Ste. 50  
Martinez, CA 94553  
Ph: (925) 476-8499

**EXHIBIT 'B'**  
PLAT TO  
ACCOMPANY LEGAL  
DESCRIPTION

DRAWN BY:  
BJL  
PROJECT NO:  
16119  
SCALE:  
1"=100'

SHEET  
1 OF 1  
DATE:  
6-9-2020



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Brian M. Balbas, Public Works Director/Chief Engineer  
Date: September 22, 2020

Subject: Proposed Service Plan Report on the Proposed Dissolution of Knightsen Town Community Services District, Knightsen area.

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**RECOMMENDATION(S):**

APPROVE and AUTHORIZE the Public Works Director, or designee, to submit the Proposed Service Plan Report to the Contra Costa Local Agency Formation Commission (LAFCO) in connection with the proposed dissolution of the Knightsen Town Community Services District, Knightsen area.

**FISCAL IMPACT:**

The proposed actions will utilize Knightsen Town Community Services District's (KTCS D's) current fund balance to complete the anticipated dissolution and provide any future services in the Knightsen area. No County General Funds or Public Works funds are anticipated to be spent related to the dissolution.

**BACKGROUND:**

On May 21, 2020, LAFCO notified the County that Knightsen Town Community Services District (KTCS D) submitted an application requesting dissolution. As part of the dissolution process, LAFCO will be designating a successor agency (by statute, the County) to receive any excess KTCS D funds and to use the funds to complete dissolution, and then, to the extent practicable,

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APPROVE  OTHER  
 RECOMMENDATION OF CNTY ADMINISTRATOR  RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  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: September 22, 2020

Contact: Gus Amirzehni, (925) 313-2128

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

By: , Deputy

cc: Allison Knapp, Deputy Public Works Director, Tim Jensen, Flood Control, Paul Detjens, Flood Control, Gus Amirzehni, Flood Control, Catherine Windham, Flood Control



## BACKGROUND: (CONT'D)

for benefit of the Knightsen area. In response, the Public Works Department has prepared the attached Proposed Service Plan outlining recommended drainage services for the community of Knightsen, should the proposed dissolution of KTCSD be approved with the County being designated as the successor agency.

KTCSD was formed in 2005 by local Measure Z to provide the community with the authority to levy and collect a parcel tax to fund water quality and flood control/drainage improvements. On May 7, 2020, the KTCSD passed resolutions approving an application to LAFCO for dissolution and reducing the parcel tax to zero. LAFCO has tentatively scheduled a hearing on the proposed dissolution for October 14, 2020.

In the event that LAFCO approves dissolution of KTCSD and names the County as the successor agency to wrap up and/or continue the KTCSD affairs, staff recommends that LAFCO include the following terms and conditions:

1. **Successor Agency.** It is recommended that the Contra Costa County Public Works Department be appointed the agent to perform Contra Costa County's successor agency's obligations.
2. **Taxing Authority.** The 2005 Measure Z authorized the KTCSD to levy special parcel taxes to fund "constructing, operating, maintaining, and servicing flood control and water quality improvements" in the Knightsen area. This taxing authority is recommended to be transferred to and retained by the County. There are no plans in the immediate future to raise this parcel tax above zero. However, the County proposes to continue providing some drainage services to the community, and when the remaining funds from the KTCSD run out, the County will need to increase the tax rate to continue providing drainage services. In addition, should the community decide to request and support future stormwater/drainage related improvements/services, this tax may be increased by the County to fund those improvements/services, subject to approval of the Board, and subject to the limitations imposed by Measure Z.
3. **Remaining KTCSD Fund Balance and Continued Services.** The KTCSD's current fund balance is about \$280,000. Government Code sections §57457(b) and §57463 indicate that any funds remaining after the KTCSD's dissolution are to be distributed to the successor agency and should be used for the benefit of the district and its residents, to the extent practicable. Staff recommends that portions of remaining KTCSD funds be used to pay for ongoing drainage services needed by the community and for one-time expenditures to wind up the affairs of the KTCSD.
  - a. **Ongoing Drainage Services.** Staff recommends utilizing portions of remaining KTCSD funds to pay for future costs of pumping excess stormwater from the community that collects on East Bay Regional Park District (EBRPD) property, formerly known as Nunn Farms property, into No Name Slough. The KTCSD had an agreement with the prior property owner, Nunn Farms, to pay them to pump excess community stormwater from the property into No Name Slough, and this arrangement worked well for many years. Staff recommends continuing this service. Costs to provide drainage services includes coordinating with the Knightsen Town Advisory Council (KTAC) as the community liaison with the successor agency, preparing and presenting a report to the KTAC each fiscal year on activities performed during the prior year, and other administrative duties as required.
  - b. **KTCSD Formation Costs.** Staff recommends funding reimbursement owed to the County Public Works Department in the amount of \$26,754.72 spent on Measure Z preparation costs. KTAC initiated the request to form a community services district and the County Public Works Department hired

consultants and performed other support services in processing the formation of the KTCSD. Grant funds paid for part of the formation costs, but the County paid almost \$27,000 to finish the formation when the grant funds ran out. Upon formation, the KTCSD agreed to reimburse the County for its formation costs, as outlined in a July 12, 2005, letter from the County Public Works Department to the KTAC.

c. KTCSD Dissolution Costs. The County does not seek the position of successor agency, yet with the dissolution of the KTCSD, finds itself most likely having the role and responsibility of successor agency. The County is not opposed to the dissolution of the KTCSD, but is incurring costs associated with the dissolution by preparing a service plan and financial plan to define its role and responsibility as successor agency with the community, and the County will incur staff costs to administer the dissolution. Staff recommends the County be reimbursed for costs it is incurring and will incur to dissolve the KTCSD, estimated at \$60,000.

d. EBRPD Agreement. Paying for pumping excess water from the EBRPD property will require an agreement between the County and EBRPD. Staff recommends using KTCSD funds to pay for the preparation costs of the agreement, estimated at \$15,000.

e. Knightsen Stormwater Resources Plan. KTCSD invested about \$50,000 to develop a study of potential stormwater improvement projects, but terminated it prior to completion. Staff recommends that the study, Knightsen Stormwater Resources Plan, be finalized and placed into County files for future reference, at an estimated cost of \$6,000.

f. Potential Claim. During the 2018/19 rainy season, EBRPD provided stormwater-pumping services for the community, but was partially reimbursed by KTCSD. An agreement had not been reached between the EBRPD and the KTCSD specifying how pumping would be paid for. EBRPD may submit a claim to the County, as successor agency, to cover the remaining costs, estimated at \$5,500.

4. Citizen Advisory Committee: In its application to dissolve the district, the KTCSD Board requested that LAFCO form a citizens advisory committee consisting of KTCSD Board members or their appointees. It is recommended that the KTAC be designated as the citizens advisory committee. The KTAC already exists as a community advisory body and reports to the Board of Supervisors on issues involving the Knightsen area. In addition, the KTAC served as the advisory body for drainage related issues prior to the formation of the KTCSD and worked with County staff on developing the concept for the Knightsen Bio-Filter project, seeking and being awarded grant funds to determine the feasibility of the project concept and form a community services district to further develop the project, and contracting for the feasibility study and community services district formation.

If KTAC is designated to serve as the citizens advisory committee, KTAC's primary role would be to facilitate an annual presentation on the County's activities over the prior year. Secondly, the KTAC would get involved if Knightsen residents ask the County to perform drainage studies or improvements that utilize KTCSD remaining funds. Its role would be to work with the community to develop priorities and then submit a formal request to the Public Works Department to perform the actions requested following any required approvals by the Board of Supervisors. Finally, if there is a request or need to increase the Measure Z tax rate, KTAC would facilitate that process and provide recommended actions, such as the recommended tax rate to the Board of Supervisors for their consideration.

5. Liability. Dissolution of the KTCSD is not expected to create new liability risks for the County or the Contra Costa County Flood Control and Water Conservation District when compared to the time period when KTCSD existed.

Staff requests the Board approve and authorize the Public Works Director, or designee, to submit the report and a certified copy of this board order to LAFCO for its consideration in connection with KTCSD's dissolution.

CONSEQUENCE OF NEGATIVE ACTION:

The County will be unable to timely submit formal comments and proposed conditions of KTCSD dissolution to LAFCO.

CLERK'S ADDENDUM

C.80 was removed from agenda indefinitely. Knightsen has pulled the proposed dissolution.

ATTACHMENTS

KTCSD Successor Agency Plan Doc

**Proposed Drainage Services and Financial Plan for  
Contra Costa County Public Works Department  
As Proposed Successor Agency to Knightsen Town Community Services District**

**Purpose:** This Plan is prepared to propose limited storm drainage services for the community of Knightsen by the Contra Costa County Public Works Department after the dissolution of the Knightsen Town Community Services District (KTCSD). The Contra Costa Local Agency Formation Commission (LAFCO) is scheduled to consider KTCSD's request to dissolve the KTCSD and may designate the County as the successor agency to KTCSD. The County is not opposed to dissolution; however, the County proposes several conditions should LAFCO designate the County as the successor agency to the KTCSD.

**Background:** The KTCSD was formed in 2005 through Ballot Measure Z, which authorized the KTCSD to levy special parcel taxes to fund "constructing, operating, maintaining, and servicing flood control and water quality improvements" in the Knightsen area. On May 7, 2020, the KTCSD Board approved a resolution to request that LAFCO dissolve the district.

The KTCSD includes approximately 5,100 acres of land and approximately 600 parcels. Measure Z authorized the KTCSD to levy a parcel tax up to \$100 annually per unimproved parcel, and up to \$200 annually per improved parcel. The KTCSD has collected about \$27,000 annually with the tax rate of \$25 for unimproved parcels and \$50 for improved parcels, except for higher amounts in FY 17-18 and FY 18-19 when the tax was increased. KTCSD currently has a fund balance of approximately \$280,000.

The Knightsen area is relatively flat and generally drains northeasterly toward Delta levees. It does not have public storm drain infrastructure other than public road culverts and roadside ditches. The County currently does not have any drainage plans for the Knightsen area, and, currently, the only funding source for any such plans would be County General Funds. The KTCSD hired a professional engineering firm to study the drainage and recommend drainage improvements, but terminated the contract prior to completion of the report – the Knightsen Stormwater Resources Plan (SWRP). This report is a statutory requirement to apply for State stormwater grants; thus we recommend the report be completed to meet that requirement.

Upon KTCSD's dissolution, the Knightsen Town Advisory Council (KTAC) is recommended to serve in an advisory body regarding any future drainage issues in Knightsen. We recommend the KTAC be provided an annual report of the County's activities in Knightsen, specifically concerning use of KTCSD funds following all dissolution activities, and any future drainage issues. We have observed that low-lying areas in the Delta with similar drainage issues have formed reclamation districts to pump stormwater into the Delta and with rising sea levels. We anticipate that drainage issues will persist; thus we recommend that some drainage services continue.

The County Public Works Department has and will continue to be responsible for maintenance of public road culverts and some roadside ditches in the community. If determined to be the Successor Agency for KTCSD, the County Public Works Department is proposing the Drainage Services Plan and Financial Plan below.

### **Drainage Services Plan:**

1. Continue supplemental pumping of surface runoff that collects on East Bay Regional Parks District (EBRPD) property, formerly known as Nunn Farms property, into No Name Slough, as determined on a case-by-case basis.
  - a. KTCSO partially funded this activity in the past.
  - b. EBRPD uses fixed pumps to remove excess water annually from their property.
  - c. When EBRPD pumps are overtaxed and cannot keep up with Knightsen stormwater coming onto the property, then supplemental pumping will start.
  - d. The County will seek to enter into an agreement with EBRPD to set the scope of services, list what is paid for, and give an estimate of the frequency of needed pumping.
2. Complete the SWRP and retain it in County files for future reference.
  - a. The County will contract with the same consultant that KTCSO used, and oversee the process.
  - b. The estimated cost to complete the SWRP is \$6,000.
3. Respond to any KTAC requests to discuss drainage issues and respond with recommendations.
4. Provide an annual report to KTAC regarding Successor Agency actions and KTCSO remaining funds.
5. This plan will remain in effect until terminated by the County Board of Supervisors.

### **Financial Plan:**

1. Transfer Measure Z taxing authority to the County.
2. Retain current tax rate set by KTCSO at zero with no current plan to increase it.
3. Increase tax rate only upon KTAC recommendation and approval by Board of Supervisors and subject to Measure Z requirements.
4. Use KTCSO funds to review, negotiate, and enter into an agreement with EBRPD for pumping excess community stormwater from their property, estimated staff cost of \$15,000.
5. Use KTCSO funds to pay for supplemental pumping of community runoff collected on EBRPD property into No Name Slough, according to the agreement with EBRPD, estimated at \$7,000 every three years on average (annually, about 0.8% of KTCSO current fund balance).
6. Use KTCSO funds to reimburse the Public Works Department for staff costs of \$26,754.72 for KTCSO startup costs, according to the July 12, 2005, letter.
7. Use KTCSO funds to reimburse the County for staff costs to administer the KTCSO dissolution, estimated at \$60,000.
8. Use KTCSO funds to complete the SWRP, estimated at \$6,000.
9. Use KTCSO funds for County administration of the drainage services plan, estimated at \$4,000 per year (about 1.4% of KTCSO current fund balance).

Below is a calculation of the estimated KTCSO fund balance after dissolution for the end of the 2020-21 fiscal year.

Fund Balance as of 7/1/2020:	\$281,367.00	From KTCSO website
KTCSO FY 2020/21 Operating Expenses:	-\$29,980.00	From KTCSO website
County Dissolution Costs:	-\$60,000.00	Estimated County staff costs
2005 Amount Reimbursed to PWD:	-\$26,754.72	Requested in 7/12/05 letter
Develop Agreement with EBRPD:	-\$15,000.00	Estimated County staff costs
Completion of SWRP Report:	-\$6,000.00	Estimated consultant and County staff costs
Fund Balance as of 6/30/2021:	\$143,632.28	

The remaining fund balance is anticipated to allow for County annual administration and occasional pumping costs for approximately 22 years prior to exhausting all KTCSO funds (\$143,600 / \$6,334 = 22).

Prepared 9/08/2020

GA:cw

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Contra  
Costa  
County

To: Board of Supervisors  
From: Russell Watts, Treasurer-Tax Collector  
Date: September 22, 2020

Subject: APPOINTMENT OF CHAIR AND VICE CHAIR TO THE TREASURY OVERSIGHT COMMITTEE

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**RECOMMENDATION(S):**

CONFIRM the election of Julie Bautista, County School and Community College Districts Representative (2020 to 2024), as Committee Chair of the Treasury Oversight Committee, and CONFIRM the election of John Phillips, Public Representative, Seat 3 (2020 to 2024), as Committee Vice Chair, in accordance with the Treasury Oversight Committee Bylaws.

**FISCAL IMPACT:**

None.

**BACKGROUND:**

Section VI, paragraph E. of the Treasury Oversight Committee Bylaws states: The Chair and Vice Chair will take office immediately after the Board of Supervisors confirms their election. The term of office for Chair and a Vice Chair is one year.

Nomination and election to the office of Chair and Vice Chair of the Treasury Oversight Committee is normally held at the regularly scheduled May meeting of the Committee, when the current term of each office is expected to expire. The May 2020 Committee meeting was canceled due to the effects of the COVID-19 pandemic. Nominations and election of both

APPROVE

OTHER

RECOMMENDATION OF CNTY ADMINISTRATOR

RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **09/22/2020**  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

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: September 22, 2020

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

By: June McHuen, Deputy

Contact: Ronda Boler, (925)  
957-2806

cc:

BACKGROUND: (CONT'D)

the Chair and Vice Chair were later held at the August 18, 2020 Committee meeting.

In accordance with the Committee Bylaws, the Chair and Vice Chair will take office immediately after the Board of Supervisors confirms their election and will serve a term of one year. The Chair will preside at all meetings and proceed with the business of the Committee in the manner prescribed in the Bylaws. The Chair will also decide questions of parliamentary procedure, call special meetings and perform other functions and duties as required by law. The Vice Chair will perform the functions and duties of the Chair in the Chair's absence.

Should the Chair or Vice Chair cease to be a member of the Committee, the remaining members of the Committee will elect a Chair or Vice Chair at the next meeting of the Committee. The officer will serve for the unexpired portion of the term of Chair or Vice Chair.

CONSEQUENCE OF NEGATIVE ACTION:

In the event that neither Chair nor Vice Chair is approved by the Board of Supervisors, we will be out of compliance with the Bylaws. The members of the Committee present at the Committee meeting will by an order entered into the minutes select one of the members to act as Chair Pro Tem. The Chair Pro Tem will have all the powers and duties of the Chair during the Chair's absence or inability to act.