

CITY COUNCIL / LRA BOARD

Mayor/Chair

Richard D. O'Brien

Vice Mayor/Chair (CM-D3) Cal Campbell

Council/Authority Members:

District 1 Luis Uribe

District 2 Rachel Hernandez

District 4 Darlene Barber-Martinez



City of Riverbank
Regular City Council and
Local Redevelopment Authority
Board Hybrid Meetings
(In-Person: Face Covering Required)
(Virtual via ZOOM)

Council Chambers, 6707 Third St., Suite B
Riverbank, CA 95367



AGENDA

TUESDAY, FEBRUARY 8, 2022– 6:00 P.M.

(THE AGENDA PACKET IS ONLINE AT [HTTP://WWW.RIVERBANK.ORG/AGENDACENTER](http://www.riverbank.org/agendacenter))

NOTICE: THIS MEETING WILL BE HELD IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTION 59453, SUBDIVISION (e) OF THE RALPH M. BROWN ACT (CALIFORNIA GC § 54950, ET SEQ.), THE FEDERAL AMERICANS WITH DISABILITIES ACT AND THE RECENT STANISLAUS COUNTY HEALTH OFFICER'S MANDATORY FACE COVERING ORDER (Sept.2, 2021). WHILE THIS MEETING WILL BE PHYSICALLY OPEN TO THE PUBLIC, GIVEN THE STATE OF EMERGENCY REGARDING THE THREAT OF COVID-19, MEMBERS OF THE PUBLIC MAY ALSO PARTICIPATE AND COMMENT VIA THE ZOOM VIRTUAL PLATFORM. REFER TO THE LAST PAGE OF THE AGENDA FOR PARTICIPATION INFORMATION.

1. CALL TO ORDER

2. FLAG SALUTE

3. ROLL CALL

4. INVOCATION

5. AGENDA CHANGES

6. CONFLICT OF INTEREST: *Any Council/Authority Member or Staff who has a direct Conflict of Interest on any scheduled agenda item to be considered is to declare their conflict at this time.*

7. PUBLIC COMMENTS (No action can be taken)

At this time, members of the public may comment on any item not appearing on the agenda, and within the subject matter jurisdiction of the City Council/LRA Board. Individual comments will be limited to a **maximum of 3 minutes (or as stated by the presiding Officer)** and time cannot be yielded to another person. Under State Law, matters presented during the public comment period cannot be discussed or acted upon.

Refer to the last page of this agenda for the Public Comment Procedures via ZOOM.

8. CONSENT CALENDAR

All items listed on the Consent Calendar are to be acted upon by a single action of the City Council/LRA Board unless requested by an individual Council/Authority Member or member of the public for special consideration. Otherwise, the recommendation of staff will be accepted and acted upon by motion of the City Council/LRA Board.

Item 8.1 Waive Readings. All Readings of ordinances and resolutions, except by title, are waived.

Item 8.2 Consideration of a **Resolution** of the City Council of the City of Riverbank, Authorizing Submittal of Application(s) for all CalRecycle Grants for Which the City of Riverbank is Eligible and Authorize the City Manager to Execute Said Application(s).

9. PUBLIC HEARINGS

The Public Hearing Notice was published in the Riverbank News on 01/26/2022.

- Item 9.1** **Public Hearing – Adopting Certain Findings and approving Energy Service Contract for energy related improvements to City facilities with SITELOGIQ, INC.** – It is recommended that the City Council hold a Public Hearing and consider adopting a Resolution which authorizes the Interim City Manager to execute a Facility Solutions Master Agreement and Operations & Maintenance Agreement with SitelogIQ, Inc.

10. NEW BUSINESS

- Item 10.1** **A Resolution Authorizing an Additional Appropriation of \$100,000 for the Construction of the Public Works Administration Building from the Water and Sewer Operating Funds** - It is recommended that the City Council consider adoption of a Resolution allocating an additional \$100,000 for the Public Works Administration Building 50% from the Water Operating Fund and 50% from the Sewer Operating Fund for the construction of the Public Works Administration Building.

- Item 10.2** **A Resolution to Award a Contract for Preparation of the Environmental Package for the Regional Recycled Water Project – Phase I to Ascent Environmental, Inc., and Authorize a Budget Appropriation in the amount of \$216,000 from the Wastewater Enterprise Fund for Said Contract** – It is recommended that the City Council consider adoption of a Resolution to award the contract for preparation of the Environmental Package for the State Water Resources Control Board Clean Water State Revolving Fund Financial Assistance application for the Riverbank Regional Recycled Water Project – Phase I to Ascent Environmental, Inc., authorize the City Manager to execute a contract with said firm in the amount of \$196,400, authorize a contingency amount of \$19,600 (approximately 10%), and authorize a budget appropriation of \$216,000 from the Wastewater Enterprise Fund for said contract.

- Item 10.3** **A Resolution to Award a Contract for Preparation of a Financial Security Package and Wastewater Rate Study for the Regional Recycled Water Project – Phase I to Bartle Wells Associates, and Authorize a Budget Appropriation in the amount of \$55,000 from the Wastewater Enterprise Fund for Said Contract** – It is recommended that the City Council award the contract for preparation of the Financial Security Package for the State Water Resources Control Board Clean Water State Revolving Fund Financial Assistance application and Wastewater Rate Study for the Riverbank Regional Recycled Water Project – Phase I to Bartle Wells Associates, Inc., authorize the City Manager to execute a contract with said firm in the amount of \$49,600, authorize a contingency amount of \$5,400, and authorize a budget appropriation of \$55,000 from the Wastewater Enterprise Fund for said contract.

11. COMMENTS/REPORTS

A brief report on notable attendance of a meeting or conference or other notable topics of City business shall be made. The Brown Act does not allow for discussion or action of items by the City Council/LRA Board during this time.

Item 11.1 Staff

Item 11.2 Council/Authority Member

Item 11.3 Mayor/Chair

12. CLOSED SESSION

The public will have a limit of **3 minutes** to comment on Closed Session item(s) as set forth on the agenda prior to the City Council/LRA Board recessing to Closed Session.

Item 12.1 **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

(Government Code §54956.9)

Name of Case: City of Riverbank v. Schneider Electric Buildings
America, Inc.

Item 12.2 **CONFERENCE WITH LABOR NEGOTIATORS**

(Pursuant to Government Code §54957.6)

Agency representative: Interim City Manager Marisela Garcia

Employee organizations: Riverbank Miscellaneous Employees

13. RECONVENE – REPORT FROM CLOSED SESSION**14. ADJOURNMENT**

- The next regular City Council meeting will be on February 22, 2022 at 6 p.m.

AFFIDAVIT OF POSTING
I hereby certify under penalty of perjury, under the laws of the State of California that the foregoing agenda was posted at the meeting location, on the North City Hall public exterior bulletin board, and the City's website 72 hours prior to the meeting in accordance to the California Ralph M. Brown Act. Posted this February 3, 2022. <i>/s/ Kathy L. Teixeira, Interim City Clerk</i>

**ADA COMPLIANCE STATEMENT**

In compliance with the Americans with Disabilities Act, and the Governor's Executive Order N-29-20, the City will make every effort to make reasonable modifications or accommodations from individuals with disabilities. Contact the Administration Dept. at (209) 863-7122 or the City Clerk at cityclerk@riverbank.org at least (48) hours prior to the meeting to enable the City to make reasonable arrangements for accessibility.

NOTICE REGARDING NON-ENGLISH SPEAKERS

Pursuant to California Constitution Article III, Section IV, establishing English as the official language for the State of California, and in accordance with California Code of Civil Procedures Section 185, which requires proceedings before any State Court to be in English, notice is hereby given that all proceedings before the City of Riverbank City Council/LRA Board shall be in English and anyone wishing to address the Council is required to have a translator present who will take an oath to make an accurate translation from any language not English into the English language.



**TELECONFERENCE/VIRTUAL PLATFORM PUBLIC PARTICIPATION COMMENT
PROCEDURES FOR THE HYBRID CITY COUNCIL MEETING HELD IN
CONFORMANCE WITH THE BROWN ACT AS AMENDED BY SB 361**

PUBLIC “LIVE” VIEWING

- Government Channels: Charter– 2 and AT&T U-VERSE – 99
- YouTube Live – is no longer available due to technical difficulties, which is being worked on.
- Via ZOOM Platform (See instructions below)

SUBMITTING PUBLIC COMMENTS FOR THE RECORD

Written comments must be received before 4:00 p.m. on the date of the meeting in order for them to be distributed to the Council prior to consideration of the matter. Written comments will not be read aloud at the meeting, but will be reported as received for the record. If you do not receive an acknowledgement of receipt within an hour of submission or by 5:00 pm, please call the City Clerk’s Office at (209) 863-7198 or the Administration Dept. at (209) 863-7122.

ACCEPTABLE METHODS OF SUBMITTING COMMENTS BEFORE THE 4:00 PM DEADLINE

- **Via Mail Service:** Mail comments to City of Riverbank, Attn. City Clerk, 6707 Third Street, Suite A, Riverbank, CA 95367. (Call 209-863-7198 / 209-863-7122 to ensure they were received.)
- **Via Email:** Mail to cityclerk@riverbank.org (Note: This technology is not a guaranteed method.)
 - Indicate Agenda Item # in the **subject line**. (Call 209-863-7198 /209-863-7122 to ensure receipt)
- **Oral Comments In-Person:** The Mayor will ask the audience if anyone wishes to comment, at that time you may approach the podium. (A Spanish language interpreter is available for assistance.)
- **Oral Comments Via Zoom:** The Mayor will announce when public comments may be made for a limit of 3 minutes on the agenda item being considered, at which time you will:
(please make sure the volume on your video device or any nearby device is turned down.)
 - **Using a computer** – click on the “raise hand” feature in the webinar controls. This will alert staff that you wish to speak, and you will be unmuted.
 - **Using a Phone** – press *9 to “raise the hand”. This will alert staff that you wish to speak, and you will be unmuted.

Teleconference Phone Number (This system is a backup for ZOOM technical difficulties only when providing oral comments.) If there are technical difficulties or disconnection with ZOOM while making oral comments, please immediately call the teleconference phone number (209) 863-7151 so that Council may receive your comments. Council will be waiting for your call. Thank you

JOIN THE MEETING VIA ZOOM PLATFORM

- Join by this link: <https://us02web.zoom.us/j/84647405857>
- Join by accessing website: <https://zoom.us/join>, enter **Webinar ID: 846 4740 5857**
- Join by telephone: **1 669 900 9128 or 1 346 248 7799, plus Webinar ID**

Learn about using ZOOM - Visit <https://zoom.us/j/94943925973?status=success> for a free account or to download the app.

RIVERBANK CITY COUNCIL / LRA AGENDA ITEM NO. 8.1

SECTION 8: CONSENT CALENDAR

Meeting Date:	February 8, 2022
Subject:	Waiver of Readings
From:	Marisela H. Garcia, Interim City Manager
Submitted by:	Kathy L. Teixeira, Interim City Clerk/LRA Secretary

RECOMMENDATION

It is recommended that the City Council / LRA Board approve the waiver of readings of any proposed ordinances and resolutions for consideration, except by title.

SUMMARY

In lieu of reading the entire text of a proposed ordinance or resolution that is introduced for consideration for adoption and approval, by majority vote, the City Council/LRA Board may waive the reading of the text and introduce the ordinance or resolution by title only for the record.

The full text of the proposed ordinances and resolutions, and any related documents that are part of the agenda packet, are available for review by the public on the City's website and in the City Clerk's office at City Hall (North) upon distribution to a majority of the City Council/LRA Board; typically 72 hours prior to the scheduled date and time of the meeting.

FINANCIAL IMPACT

There is no financial impact to this item.

ATTACHMENTS

There are no attachments to this report.

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 8.2

SECTION 8: CONSENT CALENDAR

Meeting Date:	February 8, 2022
Subject:	Resolution of the City Council of the City of Riverbank, Authorizing Submittal of Application(s) for all CalRecycle Grants for Which the City of Riverbank is Eligible and Authorize the City Manager to Execute Said Application(s).
From:	Marisela Garcia, Interim City Manager
Submitted by:	Kathleen Cleek, Development Services Administration Manager

RECOMMENDATION

It is recommended that the City Council authorize submittal of application(s) for all CalRecycle grants for which the City of Riverbank is Eligible and authorize the City Manager to execute said application(s).

STAFF SUMMARY

The Public Resources Code sections 48000 et seq. authorize the Department of Resources Recycling and Recovery (CalRecycle) to administer various grant programs (grants) in furtherance of the State of California's (state) efforts to reduce, recycle and reuse solid waste generated in the state thereby preserving landfill capacity and protecting public health and safety and the environment.

CalRecycle grant application procedures require an applicant's governing body to declare by resolution certain authorizations related to the administration of CalRecycle grants. The Resolution states that the City Council of the City of Riverbank authorizes the submittal of application(s) to CalRecycle for all grants, and authorizes the City Manager or his/her designee to execute all grant documents, including but not limited to, applications, agreements, amendments and requests for payment necessary to secure grant funds and implement the approved grant project.

The grants the City will apply for can assist the City with assessing our current solid waste, recycling and organics recycling programs; identify any program gaps and create programs where needed as establishing an Edible Food Recovery Program. The grants can also assist the City with monitoring and inspecting sites including food generators.

FINANCIAL IMPACT

No financial impact to the City of Riverbank's budget.

ATTACHMENTS

1. Resolution 2022-XXXX

CITY OF RIVERBANK

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK,
CALIFORNIA, AUTHORIZING SUBMITTAL OF APPLICATION(S) FOR ALL
CALRECYCLE GRANTS FOR WHICH THE CITY OF RIVERBANK IS ELIGIBLE AND
AUTHORIZE THE CITY MANAGER TO EXECUTE SAID APPLICATION(S)**

WHEREAS, Public Resources Code sections 48000 et seq. authorizes the Department of Resources Recycling and Recovery (CalRecycle) to administer various grant programs (grants) in furtherance of the State of California's (state) efforts to reduce, recycle and reuse solid waste generated in the state thereby preserving landfill capacity and protecting public health and safety and the environment; and

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

WHEREAS, CalRecycle grant application procedures require, among other things, an applicant's governing body to declare by resolution certain authorizations related to the administration of CalRecycle grants.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Riverbank authorizes the submittal of application(s) to CalRecycle for all grants for which City of Riverbank is eligible; and

BE IT FURTHER RESOLVED that the City Manager, or his/her designee is hereby authorized and empowered to execute in the name of the City of Riverbank all grant documents, including but not limited to, applications, agreements, amendments and requests for payment, necessary to secure grant funds and implement the approved grant project; and

BE IT FURTHER RESOLVED that these authorizations are effective for five (5) years from the date of adoption of this resolution.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 8th day of February, 2022; motioned by Councilmember _____, seconded by Councilmember _____, and upon roll call was carried by the following City Council vote of _____ :

AYES:

NAYS:

ABSENT:

ABSTAINED:

ATTEST:

Kathy L. Teixeira
Interim City Clerk

APPROVED:

Richard D. O'Brien
Mayor

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 9.1

SECTION 8: PUBLIC HEARINGS

Meeting Date: February 8, 2022

Subject: A Resolution Adopting Required Findings and Authorizing the Interim City Manager to Execute a Facility Solutions Master Agreement and Operations & Maintenance Agreement with SitelogIQ, Inc. for the Riverbank Energy Efficiency Project

From: Marisela H. Garcia, Interim City Manager

RECOMMENDATION

It is recommended that the City Council hold a Public Hearing and consider adopting a Resolution which authorizes the Interim City Manager to execute a Facility Solutions Master Agreement and Operations & Maintenance Agreement with SitelogIQ, Inc. for the Riverbank Energy Efficiency Project.

SUMMARY

On September 28, 2021 the City Council approved a Letter of Agreement with SitelogIQ, Inc. to begin the design and engineering phase of the proposed improvements for the Riverbank Energy Efficiency Project. For consideration is the final Facility Solutions Master Agreement and Operations & Maintenance Agreement which set forth the Terms & Conditions of this project.

BACKGROUND

At the 2021 Riverbank City Council Strategic Planning Session the Council expressed a desire to consider new & innovative energy efficiency and micro grid projects. Similarly, many times over the past number of years Council has discussed a desire to see developments, as well as City operations, find alternative sources of energy in addition to finding ways to lower the City of Riverbank's carbon footprint. Additionally, staff is always tasked with staying aware of opportunities to reduce costs for more efficient municipal operations.

At the August 24th City Council meeting the Council considered the general scope and project financing details for a solar and energy efficiency project within Riverbank. SitelogIQ performed an energy audit of all City facilities and was tasked with creating a smaller scale project for City consideration. After a significant amount of analysis SitelogIQ met with City staff to propose a handful of solar locations, as well as lighting and HVAC upgrades. The sites proposed for solar array locations include Whorton Park (adjacent to the city's water well), the Community Center parking lot, and the Police

Department parking lot to offset power usage at those locations. Subsequently, SitelogIQ has also proposed a project location at the Wastewater Treatment Facility for solar at the Wastewater Treatment Facility, which is the City largest power user. All four locations would provide an added benefit of covered area for shaded parking, equipment storage, or covered park area.

The City Council directed the City Attorney to move forward with negotiating the Letter of Agreement (LOA) to allow Site Logic to move into the design and engineering phase of the project. At the September 28th City Council meeting the City Council approved an LOA with Site Logic. Since that time Site Logic has been performing the in-depth engineering design and analysis of the project to prepare the project for eventual financing and construction.

GOVERNMENT CODE SECTION 4217 REQUIREMENTS

California Government Code 4217 requires that a public hearing be held for the energy efficiency project and consideration of the Facility Solutions Master Agreement during a regularly scheduled City Council meeting. The two week public notice required for the Public Hearing for the Energy Services Contract was published on January 26, 2022.

The project is authorized to proceed with the use of pool approved contractor without formal bidding requirements pursuant to California Government Code 4217.10 et seq. SitelogIQ assures Yuba County that the expenditures of the county will be recouped through energy savings within the life of the retrofitted system, which is required by California Government code 4217. SitelogIQ completed a site survey and provided the required energy savings data from the proposed system installation and insures the data complies with the formal requirements of the government code and that data was presented for the required public hearing.

The attached Facility Solutions Master Agreement is the approval and execution of the project scope which includes:

1. Lighting Improvements at multiple city locations, including City Hall, Community Center, Corporation Yard, Jacob Myers Park, Museum, Whorton Park, amongst others,
2. HVAC Upgrades at multiple city locations,
3. Solar Systems at the Waste Water Treatment Facility, Community Center, Police Station, and Whorton Park.

California Government Code Section 4217.10 to 4217.18, authorizes the City Council to enter into a Facility Solutions Master Agreement ("Agreement") for the implementation of energy related improvements. The Council must find that it is in the best interest of the City to enter into such Agreement and that the anticipated cost to the City for the electrical energy or conservation services provided by SitelogIQ under the contract will be less than the anticipated marginal cost to the City of the electrical energy that would have been consumed by the City absent of those improvements. The Interim City Manager, or her designee, is also requesting authorization to sign and execute the Facility Solutions Master Agreement, and any related documents, upon review and approval to form by the City Attorney.

STRATEGIC PLAN

This is directly related to the City Council's Strategic Plan Goal to "Ensure the City's Continued Financial Stability" which has as an objective to "Explore the use of renewable energy for City operations/vehicles".

FINANCIAL IMPACT

Fixed price for the proposed scope of work is \$5,954,805. On January 11, 2022 the City Council allocated \$2,000,000 in American Rescue Plan Act Funds towards this project. The additional \$3,954,805 will be financed.

For the continual maintenance of the system, SitelogIQ will be paid an initial fee of \$27,210 with an annual 3% increase each year thereafter.

ATTACHMENT

1. Resolution 2022-XXXX
2. Facility Solutions Master Agreement
3. Exhibit C to the Facility Solutions Master Agreement
4. Operations & Maintenance Agreement

CITY OF RIVERBANK

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK,
CALIFORNIA, ADOPTING REQUIRED FINDINGS AND AUTHORIZING THE INTERIM
CITY MANAGER TO EXECUTE A FACILITY SOLUTIONS MASTER AGREEMENT
AND OPERATIONS & MAINTENANCE AGREEMENT WITH SITELOGIQ, INC. FOR
THE RIVERBANK ENERGY EFFICIENCY PROJECT**

WHEREAS, the City desires to reduce energy consumption and operational expenses through the installation of energy conservation and energy generation technologies (“System”); and

WHEREAS, California Government Code Section 4217.10 et seq. authorizes Cities, Counties, and Special Districts to enter into agreements, contracts, and related documents with private sector entities for developing energy generation and conservation projects upon City’s finding that the anticipated costs for such services provided under this Agreement, together with any financing costs, will be less than the anticipated marginal energy costs to City; and

WHEREAS, City has assigned specific areas on City properties (each one, a “Site”) on which the solar and energy conservation measures (each one a “System”) will be constructed; and

WHEREAS, City desires to engage SitelogIQ, Inc. to design, supply, and install selected and listed scope of work at each Site; and

WHEREAS, Contractor desires to provide such turnkey upgrades, design, supply, and installation services, all in accordance with the terms and conditions set forth in the Facility Solutions Master Agreement; and

WHEREAS, Contractor is a full-service energy company with the technical and financial capabilities to provide services to the City, including, but not limited to, energy and energy system auditing, engineering, design, procurement, construction management, installation, construction, financing, monitoring and verification, maintenance, operation, and repair.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Riverbank hereby authorizes the Interim City Manager to execute a Facility Solutions Master Agreement and Operations & Maintenance Agreement with SitelogIQ, Inc. for the Riverbank Energy Efficiency Project.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 8th day of February, 2022; motioned by Councilmember , seconded by Councilmember , and upon roll call was carried by the following City Council vote of :

AYES:

NAYS:

ABSENT:

ABSTAINED:

ATTEST:

APPROVED:

Kathy L. Teixeira
Interim City Clerk

Richard D. O'Brien
Mayor

Attachment: Facility Solutions Master Agreement
Operations & Maintenance Agreement

4217 FACILITY SOLUTIONS MASTER AGREEMENT

by and between

City of Riverbank

and

SitelogIQ, Inc.

1651 Response Rd., Suite 300

Sacramento, California, 95815

CA Contractor License #: 1054171

January 6th, 2022

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Exhibit F	Certificate of Substantial / Final Completion and Acceptance
Exhibit G	Notice to Proceed

FACILITY SOLUTIONS AGREEMENT

This FACILITY SOLUTIONS AGREEMENT ("Agreement"), dated as of January 6, 2022, ("Effective Date"), is by and between City of Riverbank, a City organized and existing under the laws of the State of California ("City") and SitelogIQ, Inc., a Delaware corporation ("Contractor") (each a "Party" and collectively, the "Parties").

RECITALS

WHEREAS, City desires to reduce energy consumption and operational expenses through the installation of energy conservation and energy generation technologies ("System");

WHEREAS, California Government Code § 4217.10 et seq. authorizes Cities, Counties, and Special Districts to enter into agreements, contracts and related documents with private sector entities for developing energy generation and conservation projects upon City's finding that the anticipated costs for such services provided under this Agreement, together with any financing costs, will be less than the anticipated marginal energy costs to City;

WHEREAS, City has assigned specific areas on City properties (each one, a "Site") on which the solar and energy conservation measures (each one, a "System") will be constructed;

WHEREAS, City desires to engage Contractor to design, supply and install selected and listed scope of work at each Site; and

WHEREAS, Contractor desires to provide such turnkey upgrades, design, supply and installation services, all in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, Contractor is a full-service energy services company with the technical and financial capabilities to provide services to the City, including, but not limited to, energy and energy system auditing, engineering, design, procurement, construction management, installation, construction, financing, training, monitoring and verification, maintenance, operation, and repair.

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 required by the context in which any term appears: (a) capitalized terms used in this Agreement shall have the respective meanings set forth in **Exhibit A**; (b) the singular shall include the plural and vice versa; (c) the word “including” shall mean “including, without limitation,” (d) references to “Sections” and “Exhibits” shall be to sections and exhibits of 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; and (f) references to this Agreement shall include a reference to all attached Exhibits, as the same may be amended, modified, supplemented or replaced from time to time.

2. CONTRACTOR CERTIFICATIONS

This Agreement includes the following contractor certifications, the forms of which are attached in **Exhibit B**, which must be completed by Contractor prior to commencement of the work on the Systems:

- i. Drug-Free Workplace / Tobacco-Free Environment Certification (**Exhibit B-1**)
- ii. Non-collusion Declaration (**Exhibit B-2**)

3. GENERAL

3.1. Scope of Work

- (a)** Contractor shall furnish to City turnkey energy efficiency upgrades and the engineering, design, procurement, construction management, installation, construction, monitoring, and commissioning of energy generation systems (each one a "System") installed at various sites (collectively, the upgrades and Systems shall be referred to as the "Project").
- (b)** Operations and maintenance are not a part of this Agreement. City shall enter into a separate contract for operations and maintenance.
- (c)** Project will be executed by individual Work Orders for each Project that will be independently executed and attached in **Exhibit C (“Work”)**.
- (d)** Work shall be performed in accordance with this Agreement, Energy Conservation Findings, and Exhibits attached hereto.

3.2. Contract Price

- (a) Contract Price. Subject to adjustments and/or the issuance of additional of Work Orders as set forth in this Agreement, Contractor agrees to perform the Work for the price as defined in each Work Order ("Work Order Price") as detailed in **Exhibit C**. The total value of the Contract is the summation of the Work Order Prices, as updated from time to time ("Contract Price"):
- (i) Payment of the Contract Price shall be made in compliance with the process described in **Exhibit C**.

3.3. Protective Measures.

- (a) Contractor shall be responsible for all injury or damage to individuals or property that may occur as a result of its fault or negligence, or that of its Subcontractors, in connection with the performance of the Work, subject to the limitation of liability contained in Section 7.5.
- (b) Contractor shall take all reasonably necessary precautions for the safety of its employees and any and all other individuals present on the Site where the System is located and prevent accidents or injury to individuals on, about, or adjacent to the premises where the Work is being performed.
- (c) Contractor shall keep the relevant part of the Site where the System is located and surrounding areas free from accumulation of waste materials or rubbish caused by the Work, and at the end of each Day that the Contractor performs the Work, Contractor shall remove any debris, store such debris in containers at its sole expense, and leave the Site in a clean and orderly condition. Upon Final Completion, Contractor shall remove from the relevant part of the Site where the System is located all waste materials, rubbish, debris, debris containers, tools, Equipment, machinery and surplus materials from the Site and leave the Site in a clean and orderly condition.

3.4. Prevailing Wage.

- (a) California Labor Code. Contractor shall comply with all applicable provisions of the California Labor Code, Division 2, Part 7, Chapter 1, Articles 1-5, including (without limitation) the payment of the general prevailing per diem wage rates for public work projects in excess of \$1,000. In addition, Contractor and each Subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the California Labor Code, commencing with Section 1720, and including Sections 1735, 1777.5 and 1777.6

forbidding discrimination, and Sections 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or Subcontractor.

- (b) Certified Payroll Records. This Project is subject to the requirements of Subchapter 4.5 of Chapter 8 of Title 8 of the California Code of Regulations. Contractor and all subcontractors must furnish certified payroll records to the Department of Industrial Relations' Compliance Monitoring Unit at least monthly, or within ten (10) Business Days of any separate request by the Compliance Monitoring Unit, in the manner required by the Compliance Monitoring Unit.
- (c) Payment Withholding. Pursuant to 8 CCR 16463(e), the City may withhold contract payments when payroll records are delinquent or inadequate or as required by the Labor Commissioner. The amount withheld shall be limited to those payments due or estimated to be due to the Contractor or Subcontractor whose payroll records are delinquent or inadequate, plus any additional amount that the Labor Commissioner has reasonable cause to believe may be needed to cover a back wage and penalty assessment against the Contractor or Subcontractor whose payroll records are delinquent or inadequate; provided that the Contractor shall be required in turn to cease all payments to a Subcontractor whose payroll records are delinquent or inadequate until the Labor Commissioner provides notice that the Subcontractor has cured the delinquency or deficiency.
- (d) Site Access.

 - (i) Contractor shall provide site access to Department of Industrial Relations personnel upon request.
 - (ii) Construction staging areas, storage areas, access, parking, Site use, etc. must be acceptable to City at all times. Site access and use will be limited. At no times shall public roads or sidewalks be blocked.
 - (iii) Driveways and Entrances: Contractor shall keep driveways, entrances, and fire access roads clear and available to City, City's employees, and emergency vehicles. Contractor shall not use these areas for parking or storage of materials.
 - (iv) Contractor shall schedule deliveries to minimize use of driveways and entrances.

- (v) Contractor shall schedule deliveries to minimize space and time requirements for storage of materials and equipment on-site.
 - (vi) Parking: Designated Contractor parking areas will be assigned. All vehicles should be locked as the City cannot guarantee observation of Contractor or public vehicles.
 - (vii) Contractor shall confine operations on the Site to areas indicated in the Contract Documents and as directed by City. Portions of the Site beyond areas on which Work is indicated are not to be disturbed. Contractor shall conform to Site rules and regulations affecting the Work while engaged in project construction.
- (e) Prevailing Wage Notice. On each job site that is subject to compliance monitoring and enforcement by the Department of Industrial Relations, the Contractor shall post at appropriate, conspicuous, weatherproof points at the site the Notice of Projects Subject to Requirements of Subchapter provided in Title 8, section 16451(d) of the California Code of Regulations.
- (f) Prevailing Rate Penalty. Contractor shall, as a penalty, forfeit not less than Two Hundred Dollars (\$200.00) to the City for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the Department of Industrial Relations for such work or craft in which such worker is employed for the Work by the Contractor or by any Subcontractor, of any tier, in connection with the Work. Pursuant to California Labor Code §1775, the difference between prevailing wage rates and the amount paid to each worker each calendar day, or portion thereof, for which each worker paid less than the prevailing wage rate, shall be paid to each worker by Contractor.

3.5. Site Conditions.

- (a) Prior to the start of construction, Contractor will conduct a full and complete visual inspection of each Site, including (a) the readily apparent surface conditions of any areas where a System will be installed in or on the ground, including areas where utilities are located such as manhole covers, pull boxes, marked underground service areas, etc., (b) all staging, storage, delivery, and other areas necessary to perform the Work, (c) ingress to and egress from each Site for all supplies, personnel and Equipment, (d) all as-built drawings, Site layout, easement and other documentation provided by City to Contractor, (e) extent of the Work,

locality, actual conditions, as built conditions, and all local conditions and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the design and the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto, and (f) has considered the physical conditions at or contiguous to the sites or otherwise that may affect the cost, progress, performance or furnishing of the Work, as Contractor considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of Contract Documents.

- (b) Contractor will document and provide to City all findings in regards to the aforementioned inspection. If any conditions exist, arise, or are discovered at the Sites that differ materially from those conditions that Contractor discovered or should have reasonably discovered based on the inspections set forth in this Section, including without limitation, conditions related to Hazardous Materials or archeological findings, soils conditions, ground water, rock, caving, or subsurface obstructions of which Contractor was not aware on the date of this Agreement or could not reasonably be expected to anticipate based on the inspection described above, and such conditions involve the incurrence by Contractor of any material expenses to correct or accommodate such conditions (hereinafter, "Unanticipated Condition"), Contractor shall submit a request for a Change Order to City. City and Contractor may mutually agree to modify the Work to offset the Change Order request to comply with City budget limits.

3.6. Labor.

Contractor shall be responsible for all Contractor labor-related delays or disruption of the progress of the Work. Contractor shall promptly take any and all reasonable steps that may be available in connection with the resolution of violations of collective bargaining agreements or labor jurisdictional disputes. Contractor shall advise City promptly in writing of any actual or threatened labor dispute of which Contractor has knowledge that might materially affect the performance of the Work by Contractor or by any of its Subcontractors. Notwithstanding the foregoing, (a) the settlement of strikes, walkouts, lockouts or other labor disputes shall be at the discretion of the Party having the difficulty, (b) a labor-related delay shall not give rise to a change in the Construction Schedule unless such delay constitutes a Force Majeure Event under paragraph (c) of the definition thereof, and (c) in no event will labor-related delays or difficulties give rise to additional payments to Contractor.

3.7. Insurance.

- (a) Contractor and City, at their own expense, shall procure or cause to be procured and maintain or cause to be maintained in full force and effect at all times commencing no later than commencement of the Work at the Site and until Final Completion, all insurance coverage specified in Exhibit E.
- (b) City and any lenders to the City shall be added as additional insureds under the commercial general liability, automobile liability and umbrella/excess liability insurance procured and maintained by Contractor in connection with the Work. Contractor shall not add City or any lender as additional insureds under its worker's compensation insurance policy.
- (c) Each Party shall furnish current certificates indicating that the insurance required under this Agreement is being maintained. Each Party's certificate shall contain a provision whereby the insurer agrees to give the other Party thirty (30) Calendar days (or ten (10) Calendar days in the event of failure to pay premiums) written notice before the insurance is cancelled.

3.8. Performance of the Work.

- (a) Contractor shall supervise and direct the Work, using Contractor's best skill and attention. Contractor shall be solely responsible for all methods, techniques, sequences and procedures, and shall coordinate all portions of the Work. City will deal only through Contractor, who shall be responsible for the proper execution of the entire Work.

A subcontractor ("Subcontractor") is a person or organization that has a direct contract with Contractor to perform any of the Work. Contractor agrees that it is as fully responsible to City for the acts and omissions of Subcontractors and of persons either directly or indirectly employed by Contractor as it is for the acts and omissions of persons directly employed by it. Nothing contained in this Agreement or any other document associated with the performance of the work shall create any contractual relation between any Subcontractor and City.

Contractor agrees to bind every Subcontractor by the terms of this Agreement as to that portion of the Work performed by Subcontractor, unless specifically noted to the contrary in a subcontract approved in writing by City. Contractor agrees to be bound to the Subcontractor by all of the obligations that City assumes to Contractor under this Agreement as to the portion of the Work performed by Subcontractor.

- (b) Contractor agrees to use, and agrees that it shall require each of its Subcontractors to use, only personnel who are qualified and properly trained and who possess every license, permit, registration, certificate or other approval required by Applicable Law or any Governmental Authority to enable such Persons to perform their Work involving any part of Contractor's obligations under this Agreement.
- (c) Contractor agrees that all materials and Equipment to be supplied or used by Contractor or its Subcontractors in the performance of its obligations under this Agreement shall be new (if being incorporated into the System) or in good operating condition (if not being incorporated into the System) and fit for the use(s) for which they are employed by Contractor or its Subcontractors. Such materials and Equipment shall at all times be maintained, inspected and operated pursuant to Industry Standards and as required by Applicable Law. Contractor further agrees that all licenses, permits, registrations and certificates or other approvals required by Applicable Law or any Governmental Authority will be procured and maintained for such materials and Equipment at all times during the use of the same by Contractor or its Subcontractors in the performance of any of Contractor's obligations under this Agreement.

3.9. Hazardous Materials.

- (a) Contractor hereby specifically agrees to indemnify, defend and hold City, their present and future Board members, administrators, employees, agents, representatives, successors and assigns harmless from and against any and all losses, liabilities, claims, demands, damages, causes of action, fines, penalties, costs and expenses (including, but not limited to, all reasonable consulting, engineering, attorneys' or other professional fees), that they may incur or suffer by reason of:
 - (i) any release of a Hazardous Material brought on to the Site by Contractor, or any pre-existing Hazardous Materials that, through Contractor's sole negligence, are released or disturbed at the Site;
 - (ii) any enforcement or compliance proceeding commenced by or in the name of any Governmental Authority because of an alleged, threatened or actual violation of any Applicable Law by Contractor; and
 - (iii) any action reasonably necessary to abate, remediate or prevent a violation or threatened violation of any Applicable Law by Contractor.

- (b)** City hereby specifically agrees to indemnify, defend and hold Contractor, its present and future direct or indirect parents, subsidiaries, affiliates, divisions, and their respective directors, officers, employees, shareholders, agents, representatives, successors and assigns harmless from and against any and all losses, liabilities, claims, demands, damages, causes of action, fines, penalties, costs and expenses (including, but not limited to, all reasonable consulting, engineering, attorneys' or other professional fees), that they may incur or suffer by reason of:
- (i) any release of a Hazardous Material brought on to the Site by City, City Representative, or Third Party and any pre-existing Hazardous Material except pre-existing Hazardous Material released or disturbed at the Site through Contractor's negligence;
 - (ii) any enforcement or compliance proceeding commenced by or in the name of any Governmental Authority because of an alleged, threatened or actual violation of any Applicable Law by City or City Representative; and
 - (iii) any action reasonably necessary to abate, remediate or prevent a violation or threatened violation of any Applicable Law by City or City Representative.

3.10. Suspension of the Work.

- (a)** If Contractor does not receive payment of any undisputed invoices submitted in accordance with Section 4.2, Contractor shall have the right, upon not less than fifteen (15) Business days written notice, to suspend the Work under this Agreement. Contractor shall be entitled to compensation for all undisputed amounts under this Agreement. If City issues full payment of the undisputed invoice within fifteen (15) Business days of written notice of intention to suspend, the notice of intention to suspend shall have no further force or effect and Contractor shall continue to perform the services hereunder as if the notice of intention to suspend had not been given. In the event of any such suspension, Contractor shall be entitled to request (i) an extension of the deadlines of this Agreement for the same period of the suspension, and (ii) the reimbursement of the additional costs and expenses, if any, reasonably incurred and substantiated by Contractor (provided Contractor undertakes reasonable efforts to mitigate such costs and expenses) in protecting, securing or insuring the Work, the delay resulting from such suspension, and in resumption of the Work. If a suspension of the Work

under this Section continues for more than two (2) months, Contractor shall be entitled to, at its sole discretion, terminate this Agreement.

- (b)** City may suspend the Work temporarily at its discretion. In the event of any such suspension, Contractor shall be entitled to request (i) an extension of the deadlines of this Agreement for the same period of the suspension, and (ii) the reimbursement of the additional costs and expenses, if any, reasonably incurred and substantiated by Contractor (provided Contractor undertakes reasonable efforts to mitigate such costs and expenses) in protecting, securing or insuring the Work, the delay resulting from such suspension, and in resumption of the Work. If a suspension of the Work under this Section 3 continues for more than six (6) months, Contractor shall be entitled, at its sole discretion, to terminate this Agreement.
- (c)** In the event that the Work is totally or partially suspended, the Party that has caused the suspension (whether by reason of an act, omission or default) shall bear all the damages, costs and expenses caused by the suspension. If the suspension is not due to an act, omission or default of any of the Parties, and such delay falls under the definition of an Excusable Delay, then the deadlines of this Agreement will be extended for the same period of the suspension, or for such other period that the Parties deem reasonable in view of the circumstances, and City shall assume any costs arising under the effects of the suspension on the obligations of the Parties under this Agreement. Notwithstanding the occurrence or continuation of any Force Majeure Event, the provisions of this Section shall apply.
- (d)** After the resumption of the performance of the Work, Contractor shall, after due notice to City, examine the Work affected by the suspension. Contractor shall make good any defect, deterioration or loss of the construction or the Work affected that may have occurred during the suspension period. Costs properly incurred by Contractor (including but not limited to demobilization and mobilization costs, insurance fees, and repair cost) shall be added to the Work Order Price, so long as the suspension did not arise due to any act, omission or default on the part of Contractor.

3.11. Taxes.

The Work Order Price includes (and Contractor assumes exclusive liability for and shall pay before delinquency) all federal, state or local sales, use, value added, excise and other taxes, charges or contributions imposed on, or with respect to all Equipment and Contractor's services contemplated by this Agreement, provided that City shall pay and

have exclusive liability with respect to any taxes payable with respect to City's income. Contractor shall hold harmless, indemnify and defend City, together with any and all its governing board, administrators, agents and employees from any liability, penalty, interest and expense by reason of Contractor's failure to pay such taxes, charges or contributions. Contractor and City shall cooperate with each other to minimize the tax liability of both Parties to the extent legally permissible.

3.12. Liens.

Contractor warrants good title, free and clear of all liens, claims, charges, security interests, and encumbrances whatsoever, to all Equipment and other items furnished by it or any of its Subcontractors that become part of the System to the extent payment therefore has been received by Contractor from City.

3.13. Compliance with Applicable Laws.

- (a) Contractor specifically agrees that it shall at all times fully comply with Applicable Laws and that it shall perform the Work in accordance with the Applicable Laws.

3.14. Energy Credits.

- (a) City acknowledges that Contractor shall own, and may assign or sell in its sole discretion, all rights, title, and interest associated with or resulting from the development, construction, installation and ownership of the System or the production, sale, purchase or use of the energy output including, without limitation:
 - (i) All Environmental Incentives arising from the Environmental Attributes associated with the System;
 - (ii) The reporting rights and exclusive rights to claim that: (i) the energy output was generated by the System (except as stated in paragraph (a)), (ii) Contractor is responsible for the reductions in emissions of pollution and greenhouse gases resulting from the System, (iii) Contractor is entitled to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing;
 - (iii) All carbon reduction tonnage as defined under the Climate Action Reserve or similar definition as enacted by the State of California or the U.S. Federal Government ("Carbon Credits");
 - (iv) All "renewable energy credits" (as such term is defined in Section 399.12(h)(2) of the California Public Utilities Code);
 - (v) All Environmental Incentives hereafter enacted into law, whether under federal, state or local law, arising from the Environmental

Attributes of the System or the energy output or production, sale, purchase, consumption or use of the energy output from the System, expressly excluding, however, any future Environmental Incentives that are or may be dependent on ownership of the System for federal tax purposes.

- (b)** The Carbon Credits, renewable energy credits, grants and future Environmental Incentives as described herein shall be referred to collectively as “Energy Credits”. The Contractor may assign, sell, transfer or otherwise convey all or any part of its right, title, and interest in and to the Energy Credits from time to time as it may determine to be in its best interest. City shall take such steps as Contractor shall reasonably request to confirm Contractor's ownership of Energy Credits as herein provided and shall cooperate with Contractor, to the extent Contractor reasonably requests and at Contractor's expense, in the sale or other disposition of Energy Credits.
- (c)** City recognizes that the designer/contractor under this project may be eligible for a tax deduction for energy efficient commercial buildings under §179D of the Internal Revenue Code. City agrees and recognize that Contractor will be the designer of this project for purposes of the §179D deduction. City shall cooperate with Contractor in completing the paperwork and certifications necessary to allow Contractor to claim any §179D or other energy efficient commercial buildings tax deduction” provided credits cannot be used by or benefit City. Performance & Payment Bonds.

3.15. Performance and Payment Bonds.

Contractor shall submit a Performance Bond and Payment Bond in accordance with Exhibit C.

3.16. Title; Risk of Loss.

- (a)** From Effective Date and until the date of Substantial Completion for the Work subject to the applicable Work Order, Contractor assumes risk of loss and full responsibility for the cost of replacing or repairing any damage to the System and all damages to and defects in materials, Equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) that are purchased by Contractor for permanent installation in or for use during construction of the System.
- (b)** City shall bear the risk of loss and full responsibility with respect of the System from and after the date of Substantial Completion of the Work subject to the Work Order.
- (c)** Notwithstanding anything herein to the contrary, City shall bear the risk of loss and full responsibility for the cost of replacing or repairing any damage to that portion of the System applicable to the Work Order and

all materials, Equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) that are purchased by Contractor or City for permanent installation in or for use during construction of the System to the extent caused by the negligent, grossly negligent or willful acts of City or its agents, employees or representatives.

- (d)** Title to all materials, Equipment, supplies and maintenance equipment required by this Agreement, to be purchased by Contractor for permanent installation as part of the System or for ownership by City in the operation of that portion of the System subject to the particular Work Order shall pass to the City upon the achievement of Substantial Completion of the Work required by that Work Order.

4. PRICE AND PAYMENT

4.1. Contract Price.

- (a)** The Work Order Price is firm fixed price for the scope proposed and includes all expenses expected to be incurred by Contractor including, but not limited to, equipment and materials, erection, construction, commissioning, inclusive of cost of travel and lodging expenses, applicable permits (other than the City Permits), services, supplies, labor, appurtenances, fees, charges, and taxes, related to Contractor's performance of its obligations under this Agreement.
- (b)** Any Changes to the System or Work above and beyond code requirements and Industry Standards requested by the City shall be resolved through a Change Order to this Agreement.
- (c)** If applicable and approved by City, any additional Work not otherwise specified in Exhibit C shall be resolved through a Change Order to this Agreement.
- (d)** City and Contractor may mutually agree to reduce portions of the Work to offset the Change Order request to comply with City budget limits.
- (e)** The Work Order Price shall only be changed by Change Order approved by Contractor and City.

4.2. Payment.

- (a) City shall pay to Contractor the progress payments set forth in Exhibit C when Contractor has completed the Work associated with such payment. Contractor must submit documentation at the time of invoicing for related progress payments.
- (b) City shall pay one hundred percent (100%) of each progress payment.
- (c) The following minimum content will be contained in, or delivered together with, any payment request from Contractor to City:

 - (i) Contractor address, phone number, and fax
 - (ii) Contractor invoice number and date
 - (iii) Project Site address(es)
 - (iv) Description of completed milestones since the immediately preceding payment request
 - (v) Total invoice amount
 - (vi) "Remit to" details (for wire transfer)
 - (vii) Lien waivers from major Subcontractors (>5% of Work Order Price)
 - (viii) Signature of authorized representative of Contractor, certifying as to the accuracy of the payment request.
- (d) Overdue payment obligations of City hereunder shall bear interest from the date due until the date paid at a rate per annum equal to the rate published by the *Wall Street Journal* as the "prime rate" on the date on which such interest begins to accrue plus two percent (2%). City shall allow Contractor to submit the CEC reimbursement documents to the CEC within ten (10) Business days after City's receipt of Contractor's invoice. If the CEC delays payment to City for longer than thirty (30) Business days, or modifies the requirements for reimbursement, Parties shall negotiate in good faith to develop a solution that is acceptable to all Parties.
- (e) City may withhold or, on account of subsequently discovered evidence, nullify and require repayment of the whole or part of any payment to the extent necessary to protect City from loss, including costs and actual attorneys' fees, on account of (1) any breach of this Agreement by Contractor; (2) claims filed or reasonable evidence indicating probable filing of claims; (3) failure of Contractor to make payments properly to its

Subcontractors or for material, labor or fringe benefits; (4) a reasonable doubt that the Work to be completed as a condition to a payment has properly been completed; (5) penalties assessed against City for failure of Contractor to comply with state, federal or local laws and regulations; or (6) any other ground for withholding payment allowed by state or federal law, or as otherwise provided in this Agreement. When the above matters are rectified, such amounts as then due and owing shall be paid or credited to Contractor.

- (f)** City agrees, and Contractor shall be entitled to, an increase in the Contract Price where the cost to Contractor for any raw-material or component (including without limitation, solar panels, tracking equipment, inverters, lighting and mechanical system components or any other equipment necessary to complete the work required by this Agreement) increases greater than two percent (2%) after the date of this Agreement. Contractor shall be entitled to an equitable adjustment in time and money for any costs that it incurs directly or indirectly that arise out of or relate to changes in taxes, tariffs, or similar charges due to such changes including, without limitation, escalation, delay damages, costs to re-procure, costs to change suppliers, costs of manufactured equipment or system components, or other costs of any kind resulting from the changes.
- (g)** For any non-Contractor caused delay or suspension lasting longer than 90 Calendar days, Contractor shall be entitled to a reasonable increase in the Contract Price for an increase in cost for materials, equipment, labor, taxes, tariffs, or other items necessary to complete the work. Should an increase arise; a fair and equitable solution will be negotiated in good faith between the City and Contractor for any additional costs required.

5. **COMMENCEMENT & COMPLETION**

5.1. **Commencement and Substantial Completion.**

- (a)** Contractor shall perform the Work as soon as practicable following the receipt of City Notice to Proceed.
- (b)** City shall provide access to the sites to complete the Work.
- (c)** The Contractor shall achieve Substantial Completion as set forth in Work Order. Contractor may claim a justified extension of the Substantial Completion Date if it is or will be delayed in completing the Work for one or more of the following causes:

- (i) Unanticipated Conditions which directly affect the Project Milestones;
 - (ii) Changes in the design, scope, or schedule of the Project required by the City;
 - (iii) Breach of this Agreement by City;
 - (iv) Suspension of the Work for more than 90 Calendar Days; or
 - (v) Force Majeure Event.
- (d)** The following are conditions precedent to Substantial Completion:
- (i) the System is mechanically, electrically, and structurally constructed in accordance with the requirements of this Agreement, the Work and Industry Standards, except for non-critical punchlist items that do not affect operations;
 - (ii) the electrical infrastructure and the grid connection for the System is mechanically, electrically and functionally complete and capable of interconnection with the local utility;
 - (iii) City and Contractor shall have agreed on the punchlist items. For clarity purposes, the punchlist shall include final as-built drawings, operation and maintenance manuals, operation and maintenance training, permission to operate by local utility, Performance Test, and final lien waivers; and
 - (iv) all necessary documents have been submitted to the local public utility and all Work has been completed to the extent necessary for the local utility to issue a permission to operate.
- (e)** When Contractor believes it has achieved Substantial Completion, Contractor shall provide notice to City containing sufficient detail to enable City to determine that Contractor has complied fully with the requirements of Section 5.1(d). Within ten (10) Business days after receipt of such notice, City shall either issue to Contractor the Certificate of Substantial Completion in a form similar to Exhibit E, or, if reasonable cause exists for doing so, advise Contractor by notice (stating the reasons therefore) that Substantial Completion has not been achieved. In the event City determines that Substantial Completion has not been achieved in accordance with the conditions precedent in Section 5.1(d), Contractor shall promptly take such action or perform such Work as is required to achieve Substantial Completion and shall thereupon issue to City another

notice as set forth above. This procedure shall be repeated until such time as City has acknowledged Substantial Completion subject to Section 5.1(f).

- (f)** All punchlist items shall be completed no later than sixty (60) Business Days after Substantial Completion Date unless otherwise delayed by the local utility. Failure of Contractor to fulfill this obligation shall entitle City to complete the pending works on its own. City shall issue final payment to Contractor minus the cost to complete remaining or incomplete punchlist items.
- (g)** Any dispute between City and Contractor with respect to the projected achievement of Substantial Completion as contemplated by this Section 5.1 shall be resolved in accordance with Section 8.5.

5.2. Final Completion.

- (a)** Final Completion of the System shall be deemed to have occurred only if:
 - (i)** all punchlist items contemplated in Section 5.1(d)(iii) have been completed or waived;
 - (ii)** all manuals, drawings and other documents expressly required to be delivered by Contractor hereunder have been delivered to City;
 - (iii)** on-site operation and maintenance training as required has occurred;
 - (iv)** all final Lien waivers have been obtained;
 - (v)** a Certificate of Final Completion in a form similar to Exhibit F is duly signed and recorded by City's Representative and the Contractor's Representative; and
 - (vi)** local utility has provided a permission to operate.
- (b)** Upon Final Completion, Contractor shall submit to City a Certificate of Final Completion in a form similar to Exhibit F certifying that all of the foregoing conditions have been satisfied. City shall, within ten (10) Business Days after the receipt by City of such written certificate, shall execute an acknowledgment of such certificate if Contractor has achieved Final Completion or provide written notice of Contractor's failure to achieve Final Completion. Contractor shall promptly take such action or perform such Work as is required to achieve Final Completion and shall

thereupon issue to City another notice as set forth above. This procedure shall be repeated until such time as City has acknowledged Final Completion .

- (c) Any dispute between City and Contractor with respect to the projected achievement of Final Completion as contemplated by this Section 5.2 shall be resolved in accordance with Section 8.5.

5.3. Inspection.

All Work performed by Contractor and all Equipment shall be subject to inspection by City, but such right of inspection of the Work or Equipment shall not relieve Contractor of responsibility for the proper performance of the Work or Equipment to the extent provided under this Agreement. Contractor shall provide to City or City's designee access to Contractor's facility or facilities where the Work is being performed during business hours, and subject to compliance with Site safety rules and policies. City shall ensure that the inspections do not affect the normal performance of this Agreement unless Work is not in compliance with this Agreement.

6. REPRESENTATIONS & WARRANTIES

6.1. Representations and Warranties of Contractor.

Contractor represents and warrants to City that:

- (a) Contractor is a Delaware corporation, duly organized, validly existing, and in good standing under the laws of the State of Delaware, and has full power to engage in the business it presently conducts and contemplates conducting, and is and will be duly licensed or qualified and in good standing under the laws of the State of California and in each other jurisdiction wherein the nature of the business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder.
- (b) Contractor has (either directly or through a Subcontractor) all the required authority, ability, skills, experience and capacity necessary to perform and shall diligently perform the Work in a timely and professional manner, utilizing sound procurement principles, project management procedures, construction procedures and supervisory procedures, all in accordance with Industry Standards. Contractor has (either directly or through a Subcontractor) the experience and skills

necessary to determine, and Contractor has reasonably determined, that Contractor can perform the Work for the Work Order Price.

- (c) The execution, delivery and performance by Contractor of this Agreement will not (i) violate or conflict with any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected, or its organizational documents or (ii) subject the System or any component part thereof to any lien other than as contemplated or permitted by this Agreement.
- (d) There are no undisclosed actions, suits, proceedings, patent or license infringements or investigations pending or, to Contractor's knowledge, threatened against it before any court or arbitrator that individually or in the aggregate could result in any materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Contractor or in any impairment of its ability to perform its obligations under this Agreement.
- (e) All goods, services, equipment, parts, and materials furnished in connection with the Work related to the System are new, unused and undamaged at the time of delivery to the Site.
- (f) The individual executing this Agreement on behalf of Contractor is duly authorized to execute and deliver this Agreement on behalf of Contractor and this Agreement is binding upon Contractor in accordance with its terms.
- (g) Contractor Not Employee of City: It is understood and agreed that in no instance is any party, signing this Contract for or on behalf of City or acting as an employee or representative of City, liable on this Contract, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of City is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.
- (h) Non-Discrimination: Contractor shall provide all services under this Agreement without discrimination, and shall not discriminate against any employee or applicant for employment, on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation. Contractor will comply with Section 1735 of the Labor Code and all provisions of Executive Order No. 10925 of March 6, 1961, as amended, and all rules, regulations and relevant orders of the President's Committee on Equal Opportunity created thereby. Contractor shall also

comply with the California Fair Employment and Housing Act (Government Code, Section 12900 and following).

- (i) Severability: The invalidity of any provision of this Agreement, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.
- (k) Retention of Records. Pursuant to Government Code Section 8546.7, the performance of any work under this Agreement is subject to the examination and audit of the State Auditor at the request of City or as part of any audit of City for a period of three years after final payment under the Agreement. Each party hereto shall retain all records relating to the performance of the Work and the administration of the Agreement for three years after final payment hereunder.

6.2. Representations and Warranties of City.

City represents and warrants to Contractor that:

- (a) City is a California City, duly organized, validly existing, and in good standing under the laws of the State of California, and has full legal capacity and standing to pursue its purpose (including the capacity to dispose of and encumber all of its assets) and full power to engage in the business it presently conducts and contemplates conducting.
- (b) The execution, delivery and performance by City of this Agreement will not (i) violate or conflict with any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected, or its organizational documents or (ii) subject the System or any component part thereof or the Site or any portion thereof to any lien other than as contemplated or permitted by this Agreement.
- (c) There are no undisclosed actions, suits, proceedings, patent or license infringements or investigations pending or, to City's knowledge, threatened against it before any court or arbitrator that individually or in the aggregate could result in any materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of City or in any impairment of its ability to perform its obligations under this Agreement.
- (d) City will exercise commercially reasonable efforts to procure funding for the Project within three-hundred and sixty-five (365) Calendar days of the Effective Date.

- (e) City has proof of funds, to the satisfaction of the Contractor, that are necessary from time to time to pay Contractor the Work Order Price in accordance with the terms of this Agreement.
- (f) The individual executing this Agreement on behalf of City is duly authorized to execute and deliver this Agreement on behalf of City and this Agreement is binding upon City in accordance with its terms.

7. **BREACH & TERMINATION**

7.1. **Termination by City for Cause.**

- (a) Contractor agrees that City shall be entitled to terminate this Agreement for cause upon the occurrence of any of the following circumstances:
 - (i) Except as otherwise permitted under this Agreement, Contractor abandons the entire Work for more than ninety (90) Calendar days or fails to commence the Work within one-hundred and eighty (180) Calendar days after receiving the Notice to Proceed, and after expiration of said period fails to commence or continue performance of the Work within ten (10) Business days of Contractor's written notice from City to commence or continue performance of the Work;
 - (ii) Contractor commits a material breach of this Agreement, and Contractor does not commence the cure of said breach and thereafter diligent pursuant to completion the cure of said breach, within thirty (30) Calendar days following Contractor's receipt of written notice thereof from City, or
 - (iii) Contractor makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency, or it becomes the subject of any proceeding commenced under any federal or state insolvency statute or law for the relief of debtors.
- (b) Upon the occurrence of any of the foregoing, City may instruct Contractor to discontinue all or any part of the Work, and Contractor shall thereupon discontinue the Work of such parts thereof. City shall thereupon have the right to continue and complete the Work or any part thereof, by contract or otherwise. City shall also pay Contractor for all services rendered up to and including the date of termination; plus all costs incurred with respect to equipment or materials ordered (which order cannot be refunded, terminated or such costs otherwise recovered by Contractor) prior to the date of termination; plus, if applicable, amounts payable to

Subcontractors arising from costs or expenses reasonably incurred by such Subcontractor and directly resulting from such termination; plus, if applicable, costs incurred by Contractor in demobilizing its work force from Site; plus all engineering and development cost incurred by Contractor prior to the Effective Date.

7.2. Termination by City for Convenience.

- (a)** Contractor agrees that City shall be entitled to terminate this Agreement for Convenience upon the occurrence of any of the following circumstances:

 - (i) Upon exercising commercially reasonable efforts, City shall be entitled to terminate this Agreement if it is unable to procure funding for the Project within three-hundred and sixty-five (365) Calendar days of the Effective Date.
 - (ii) If any covenant, condition or restriction upon the Site prohibits the installation of the System at the Site, City has the right to terminate this Agreement.
 - (iii) For unanticipated site conditions that are beyond the contemplation of the parties that create any additional costs to City.
- (b)** Upon the occurrence of any of the foregoing, City may instruct Contractor to discontinue all or any part of the Work, and Contractor shall thereupon discontinue the Work of such parts thereof. City shall also pay Contractor for all services rendered up to and including the date of termination; plus all costs incurred with respect to equipment or materials ordered (which order cannot be refunded, terminated or such costs otherwise recovered by Contractor) prior to the date of termination; plus, if applicable, amounts payable to Subcontractors arising from costs or expenses reasonably incurred by such Subcontractor and directly resulting from such termination; plus, if applicable, costs incurred by Contractor in demobilizing its work force from Site; plus all engineering and development cost incurred by Contractor prior to the Effective Date.

7.3. Termination by Contractor.

- (a)** Contractor may terminate this Agreement, for any of the following causes:

- (i) If City makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency, or it becomes the subject of any proceeding commenced under any federal or state insolvency statute or law for the relief of debtors.
- (ii) If City fails to make any payment to Contractor hereunder when due and defined in Section 4, which failure remains uncured for thirty (30) Calendar days following City's receipt of written notice thereof from Contractor, the City shall be in breach and Contractor shall have all rights and remedies that may be available under Applicable Law against City with respect thereto, including without limitation the right to suspend performance of the Work or terminate this Agreement as set forth in this Agreement.
- (iii) City shall reimburse Contractor for all services rendered up to and including the date of termination; plus all costs incurred with respect to equipment or materials ordered (which order cannot be refunded, terminated or such costs otherwise recovered by Contractor) prior to the date of termination; plus, if applicable, amounts payable to Subcontractors arising from costs or expenses reasonably incurred by such Subcontractor and directly resulting from such termination; plus, if applicable, costs incurred by Contractor in demobilizing its work force from Site; plus all engineering and development cost incurred by Contractor prior to the Effective Date.

7.4. Indemnity.

- (a) Contractor shall indemnify, defend (upon the request of City) and hold harmless City and City's agents, board members, elected and appointed officials and officers, employees, volunteers and authorized representatives from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, and expenses (including, but not limited to, reasonable attorney's fees of City Counsel and counsel retained by City, expert fees, costs and staff time, and investigation costs) of whatever kind or nature (collectively "Claims"), that arise out of or are in any way connected with the performance of this Contract by Contractor or Contractor's officers, agents, employees, independent contractors, subcontractors, or authorized representatives, except where caused by the sole negligence, active negligence or willful

misconduct of City. Without limiting the generality of the foregoing, the same shall include injury, or death to any person or persons, damage to any property, regardless of where located, including the property of City, and any workers' compensation claim or suit arising from or connected with any services performed pursuant to this Contract on behalf of Contractor by any person or entity. Notwithstanding the foregoing, the indemnification obligations of Contractor set forth in this Section shall not apply when the claim of infringement arises from a particular design, process or product of a particular manufacturer or manufacturers that Contractor is directed by City to use in connection with the Contract Documents, unless the Contractor has reason to believe there is an infringement of such intellectual property right.

- (b)** City shall fully indemnify, save harmless and defend Contractor and its successors, assigns, officers, directors, members, managers, employees, agents, affiliates and partners 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 (other than Affiliates of Contractor or Subcontractors) arising from or relating to this Agreement, but only to the extent caused by (a) the negligence, gross negligence or willful misconduct of City or its agents or employees or others under City's control or (b) a breach by City of its obligations hereunder.
- (c)** City shall indemnify, defend and hold Contractor and its present and future direct and indirect parents, subsidiaries and Affiliates and their directors, officers, shareholders, employees, agents and representatives harmless from against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, damages, costs or expenses (including attorneys' fees and disbursements) of any kind whatsoever arising from the challenge to the procedures under which this Agreement was approved by the City.
- (d)** Each Party shall indemnify, defend and hold the other Party, and its present and future governing board members, administrators, direct and indirect parents, subsidiaries and Affiliates and their directors, officers, shareholders, employees, agents and representatives harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, damages, costs or expenses (including attorneys' fees and disbursements) of any kind whatsoever arising from (a) actual or alleged infringement or misappropriation by such Party (or in the case of Contractor, any Subcontractor) of any patent, copyright, trade secret, trademark, service mark, trade name, or other intellectual property right in connection with the System, including without limitation, any

deliverable, (b) such Party's (and in the case of Contractor, any Subcontractor's) violation of any third-party license to use intellectual property in connection with the Work, including, without limitation, any deliverable.

- (e) If any claim is brought against a Party (the "Indemnified Party") that gives rise to a potential indemnity claim under this Section, then the Indemnified Party shall give written notice of said claim to the other Party (the "Indemnifying Party"). Upon receipt of written notice of the claim, the Indemnifying Party shall be entitled to participate in, and, unless in the opinion of counsel for the Indemnifying Party a conflict of interest between the Parties may exist with respect to such claim, assume the defense of such claim, with counsel reasonably acceptable to the Indemnified Party. Where the Indemnifying Party has elected not to assume the defense of a claim that gives rise to a potential indemnity claim under this Section, the Indemnifying Party shall reimburse the Indemnified Party for its reasonable and necessary defense expenses to the extent said claim is adjudged to be covered under the indemnity obligations. Even if the Indemnifying Party assumes the defense of the Indemnified Party with acceptable counsel, the Indemnified Party, at its sole option, may participate in the defense, at its own expense, with counsel of its own choice without relieving the Indemnifying Party of any of its obligations hereunder.

7.5. Limitations of Liability.

- (f) No Consequential Damages. IN NO CIRCUMSTANCES SHALL THE CONTRACTOR OR CITY OR ANY OF THEIR RESPECTIVE OFFICERS, MEMBERS OR EMPLOYEES BE LIABLE FOR PUNITIVE, CONSEQUENTIAL OR EXEMPLARY DAMAGES OF ANY NATURE INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOST PROFITS OR REVENUES OR THE LOSS OF USE OF SUCH PROFITS OR REVENUE, LOSS BY REASON OF PLANT SHUTDOWN OR INABILITY TO OPERATE AT RATED CAPACITY, COSTS OF REPLACEMENT POWER OR CAPITAL, DEBT SERVICE FEES OR PENALTIES, INVENTORY OR USE CHARGES, DAMAGES TO REPUTATION, DAMAGES FOR LOST OPPORTUNITIES, REGARDLESS OF WHETHER SAID CLAIM IS BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHER THEORY OF LAW. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS ON PARTIES' LIABILITY FOR CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES IN THIS SECTION SHALL NOT APPLY TO THE PARTIES' RESPECTIVE INDEMNITY OBLIGATIONS AS SET FORTH IN THIS AGREEMENT FOR SUCH DAMAGES WHEN SUCH DAMAGES ARE SOUGHT BY THIRD PARTIES.

(g) Maximum Liability. Whether an action or claim is based on warranty, contract, tort or otherwise, under no circumstance shall either Party's total liability arising out of or related to this Agreement exceed the greater of (a) one-hundred percent (100%) of the Contract Price, or (b) the minimum insurance limits as defined in Exhibit E.

8. MISCELLANEOUS

8.1. Representatives.

- (a) City Representative. City designates, and Contractor agrees to accept Maricela Garcia, as City Representative for all matters relating to Contractor's performance of the Work. The actions taken by City Representative regarding such performance shall be deemed the acts of City and shall be fully binding for City. City may, upon written notice to Contractor, pursuant to Section 8.6 hereof, change the designated City Representative.
- (b) Contractor Representative. Contractor designates, and City agrees to accept, Kecia Davison as Contractor Representative for all matters relating to Contractor's performance under this Agreement. The actions taken by Contractor Representative shall be deemed the acts of Contractor and shall be fully binding for Contractor. Contractor may, upon written approval of City, such approval shall not be unreasonably approved pursuant to Section 8.6 hereof, change the designated Contractor Representative.
- (c) Power of Representatives. The Parties shall vest their Representatives with sufficient powers to enable them to assume the obligations and exercise the rights of Contractor or City, as applicable, under this Agreement.
- (d) Notices to Representative. Notwithstanding Sections 8.1(a) and 8.1(b), all amendments, Change Orders, notices and other communications between Contractor and City contemplated herein shall be delivered in writing and otherwise in accordance with Section 8.6.

8.2. Ownership of Plans, Data, Reports and Material.

- (a) Subject to Sections 8.2(b), Contract Documents developed by Contractor under this Agreement shall become the property of City when prepared and shall be delivered to City upon completion of the Work; provided that nothing in the foregoing shall impair, alter or otherwise affect Contractor's proprietary rights in its patents, products or other intellectual property.

- (b) Any additional inventions or intellectual property created during performance of this Agreement shall be owned by Contractor.
- (c) Contractor further agrees to grant and hereby grants to City an revocable, non-exclusive, royalty-free license under all patents, copyrights and other proprietary information of Contractor related to the Work now or hereafter owned or controlled by Contractor to the extent reasonably necessary for the operation, maintenance or repair of the System or any subsystem or component thereof designed, specified, or constructed by Contractor under this Agreement. No other license in such patents and proprietary information is granted pursuant to this Agreement.

8.3. Governing Law.

The formation, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event of any Dispute that is not resolved pursuant to Section 8.5, the Parties hereto agree to submit to the jurisdiction of any court of competent jurisdiction and shall comply with all requirements necessary to give such court jurisdiction.

8.4. Force Majeure.

Contractor shall promptly notify City in writing of any delay or anticipated delay in Contractor's performance of this Agreement due to a Force Majeure Event, and the reason for and anticipated length of the delay. Contractor shall deliver such notice as soon as reasonably practicable, but in any event within forty-eight (48) hours of Contractor's becoming aware of such delay. Contractor shall be excused for any delays or defaults in the performance of its obligations under this Agreement that are the result of a Force Majeure Event. Contractor shall be entitled to a reasonable extension of time for delays due to a Force Majeure Event.

8.5. Dispute Resolution.

- (a) Good faith negotiations. In the event that any question, dispute, difference or claim arises out of or in connection with this Agreement, including any question regarding its existence, validity, performance or termination (a "Dispute"), which either Party has notified to the other, senior management personnel from both Contractor and City shall meet and diligently attempt in good faith to resolve the Dispute for a period of thirty (30) Calendar days following one Party's written request to the other Party for such a meeting.
- (b) Technical Dispute. Technical Disputes shall be resolved by an independent expert. For the purposes of this Agreement, a "Technical Dispute" shall mean a Dispute regarding whether the System conforms

to the Industry Standards and applicable Building Codes, whether the relevant part of the Site where the System is located meets the required Site characteristics, and any other Disputes of a technical or engineering nature. All Technical Disputes shall be resolved on an accelerated basis by a nationally recognized professional expert unless otherwise agreed in writing by Contractor and City. Parties will share equally in the cost of the independent expert engaged to resolve Technical Disputes.

- (c) Non-Binding Mediation. If the Dispute remains unresolved, a Party may require that a non-binding mediation take place with a mediator mutually chosen by City and Contractor. If City and Contractor are unable to agree on a mediator, then either may request that the American Arbitration Association (the "AAA") to appoint a mediator. The mediator's fee and expenses shall be paid one-half by City, and one-half by Contractor. In any such mediation, representatives of the Parties with authority to resolve the dispute shall meet for at least three hours with mediator. The obligation to mediate shall not be binding upon any Party with respect to (i) requests for preliminary injunctions, temporary restraining orders, specific performance, or other procedures in a court of competent jurisdiction to obtain interim relief deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by mediation of the actual Dispute; (ii) actions to collect payments not subject to bona fide Dispute; or (iii) claims involving third parties who have not agreed to participate in the mediation of the Dispute. The provisions of this Section shall survive any termination of this Agreement.
- (a) Attorneys' Fees. The prevailing Party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with such an action from the other Party.

8.6. Notices and Demands.

Any notice, request, demand or other communication required or permitted under this Agreement, shall be deemed to be properly given by the sender and received by the addressee if made in writing (a) the same day if personally delivered; (b) three (3) Business days after deposit in the mail if mailed by certified or registered air mail, post prepaid, with a return receipt requested; or (c) the same day if sent by facsimile or electronic mail with confirmation. Mailed notices, facsimile notices or electronic notices shall be addressed as follows to:

City:

Name: City of Riverbank
Attention: Maricela Garcia

Address: 6707 3rd Street Riverbank, CA. 95367

Phone: (209) 863-7110

Email: mhgarcia@riverbank.org

With a copy to: City Counsel

Name: Churchwell White LLP
Attention: Tom Hallinan
Address: 1414 K Street, 3rd Floor, Sacramento, CA.95814
Phone: (916) 468-0950
Email: tom@churchwellwhite.com

Contractor:

Name: SitelogIQ, Inc.
Attention: Kecia Davison, President, West Energy
Address: 1651 Response Rd. Suite 300
Sacramento, CA 95815
Phone: (888) 819-0041
E-mail: kecia.davison@sitelogiq.com

8.7. Public Records Act Disclosure.

Contractor has been advised and is aware that all reports, documents, information and data including, but not limited to, computer tapes, discs or files furnished or prepared by Contractor, or any of its subcontractors, and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 et seq.). Exceptions to public disclosure may be those documents or other information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Contractor informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. City shall provide Contractor five (5) Business days written notice if City intends to disclose any information which Contractor has identified as trade secret, and provide Contractor ten (10) Business days to take steps to oppose such disclosure.

8.8. Time of Essence.

Time is expressly agreed to be of the essence of this Agreement and each, every and all of the terms, conditions and provisions herein.

8.9. Validity.

The provisions contained in each section, subsection and clause of this Agreement shall be enforceable independently of each of the others and their validity shall not be affected if any of the others are invalid. If any of those provisions is void but would be valid if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid. The Parties shall, if necessary, negotiate in good faith and make any necessary amendments to ensure the enforceable terms of this Agreement reflect the true intent of the Parties as of the date of execution of this Agreement.

8.10. Binding Effect.

This Agreement shall be binding on the Parties hereto and on their respective permitted successors, heirs and assigns.

8.11. Modifications.

No oral or written amendment or modification of this Agreement by any administrator, Board member, officer, agent or employee of Contractor or City, either before or after execution of this Agreement, shall be of any force or effect unless such amendment or modification is in writing and is signed by any duly authorized representative of both Parties to be bound thereby.

8.12. Headings.

The headings in this Agreement are for convenience of reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

8.13. Counterparts; Signature Pages.

This Agreement may be executed in counterparts which, taken together, shall constitute a single instrument. Facsimile and other electronically transmitted signature pages shall be effective to bind a Party to this Agreement.

8.14. Announcements and Publications.

Contractor shall coordinate with City with respect to, and provide advance copies to City for review of, the text of any proposed announcements or publications that include any non-public information concerning the Work prior to the dissemination thereof to the public or to any Person other than Subcontractors or advisors of Contractor, in each case,

who agree to keep such information confidential. If City delivers written notice to Contractor rejecting any such proposed announcement or publication within ten (10) Business Days after receiving such advance copies, the Contractor shall not make such public announcement or publication; provided, however, that Contractor may disseminate or release such information in response to requirements of Governmental Authority.

8.15. Complete Agreement.

This Agreement together with the Exhibits hereto completely and exclusively states the agreement of the Parties regarding its subject matter and its terms govern, all prior proposals, agreements, or other communications between the Parties, oral or written, regarding such subject matter. No oral agreement or conversation with any officer or employee of either Party or any or all prior proposals shall affect or modify any of the terms and conditions of this Agreement. This Agreement shall not be modified except by written amendment signed on behalf of the City and Contractor by their duly authorized representatives. Any purported oral amendment to the Agreement shall have no effect.

8.16. 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.

8.17. Priority of Documents.

In the event of conflicting provisions between any of the Contract Documents, the provisions shall govern in the following priority: first, duly executed amendments to this Agreement (to the extent not superseded by a subsequent amendment); second, this Agreement; third, Work Order in Exhibit C, and fourth, the other Contract Documents.

8.18. Assignment.

No Party shall be entitled to assign or subcontract this Agreement or any of its rights or obligations under this Agreement, nor shall it enter into any transaction as a result of which it may transfer, assign, charge or dispose by any title of any of those rights and obligations, without the prior written consent of the other Party, which shall not be unreasonably withheld, provided that Contractor may subcontract that portion of the Work to Subcontractors. Notwithstanding the foregoing, (i) without the consent of the Contractor, City shall be entitled to assign its right, title and interest in and to this Agreement (and, in particular, any rights arising in relation to any insurance policy and any other right to collect any amount from Contractor) to any lenders by way of security for the performance of obligations to such lenders; (ii) without consent of the City,

Contractor shall be entitled to assign its right, obligation, title and interest in and to this Agreement in connection with a merger or acquisition of Contractor; and (iii) without consent of City, Contractor shall be entitled to assign its right, obligation, title and interest in and to this Agreement to an Affiliate of the Contractor.

8.19. No Waiver.

Either Party's failure to enforce any provision of this Agreement of the waiver thereof in a particular instance shall not be construed as a general waiver of any part of such provision. The provision shall remain in full force and effect.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have duly executed and delivered this Agreement as of the date set forth above.

City of Riverbank,
a City organized and existing under the laws
of the State of California

By: _____
Name: Marisela Garcia
Title: Interim City Manager

SitelogIQ, Inc.,
a Delaware corporation

By: _____
Name: Kecia Davison
Title: President, West Energy
Contractor's License #: 1054171

EXHIBIT A DEFINITIONS

"Affiliate" of a specified Person means any Person that directly or indirectly through one or more intermediaries' controls, is controlled by, or is under common control with, such specified Person. As used in this definition of Affiliate, the term "**control**" of a specified Person including, with correlative meanings, the terms, "controlled by" and "under common control with," means (a) the ownership, directly or indirectly, of 50% or more of the equity interest in a Person or (b) the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

"Agreement" shall have the meaning set forth in the preamble.

"Applicable Law" shall mean, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, injunction, registration, license, permit, authorization, guideline, governmental approval, consent or requirement of such Governmental Authority, as construed from time to time by any Governmental Authority.

"Applicable Permits" means those permits identified as the responsibility of Contractor as determined in Exhibit C.

"Authority Having Jurisdiction (AHJ)" means those local, state, or federal entities having regulatory authority over a specific aspect of the Project, such as building officials, Department of State Architecture, and fire departments.

"Business Day" means Mondays to Fridays, except such days on which banks are permitted or required to close in California.

"Certificate of Substantial Completion" shall mean a document in similar form to Exhibit F.

"Certificate of Final Completion" shall mean a document in similar form to Exhibit E.

"Change" shall mean any addition to, deletion from, suspension of, or other modification to the quality, function, or intent of the Work, including without limitation any such addition, deletion, suspension, or other modification that effects a change in the scope of the Work. An "Unanticipated Condition" as defined in Section 3.5 hereof, experienced by Contractor during the course of the Work is included within the definition of "Change".

"Change Order" shall mean a written document signed by City and Contractor to adjust the Work Order Price or Construction Schedule as a result of a Change issued after execution of this Agreement.

“Commencement of Work” shall mean the commencement of Work for each Work Order.

“Construction Schedule” shall mean the schedule for implementation of the Work as determined by the Contractor to meet the Project Milestones as set forth on Exhibit C.

“Construction Documents” shall mean construction documents prepared by Contractor and approved by City.

“Contract Documents” shall mean this Agreement and Exhibits hereto, and drawings, specifications, plans, calculations, models and designs that are part of this Agreement and the Construction Documents prepared by Contractor and approved by City.

“Contractor” shall have the meaning set forth in the preamble.

“Contractor Representative” shall mean the individual designated by the Contractor in accordance with Section 8.1(b).

“Day” means calendar day unless it is specified that it means a “Business Day”.

“Dispute” shall have the meaning set forth in Section 8.5(a).

“City” shall have the meaning set forth in the Preamble to this Agreement.

“City Permits” means those permits identified as the responsibility of City in Exhibit C.

“City’s Representative” shall mean the individual designated by City in accordance with Section 8.1(a).

“Dollar” and “\$” shall mean the lawful currency of the United States of America.

“Effective Date” shall mean the date first set forth in the preamble.

“Environmental Attributes” means all environmental and other attributes that differentiate the System or the energy generated by fossil-fuel based generation units, fuels or resources, characteristics of the System that may result in the avoidance of environmental impacts on air, soil or water, such as the absence of emission of any oxides of nitrogen, sulfur or carbon or of mercury, or other gas or chemical, soot, particulate matter or other substances attributable to the System or the compliance of the System or the energy output with the law, rules and standards of the United Nations Framework Convention on Climate Change (the “UNFCCC”) or the Kyoto Protocol to the UNFCCC or crediting “early action” with a view thereto, or laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency or successor administrator or any state or federal entity given jurisdiction over a program involving transferability of Environmental Attributes and Reporting Rights.

“Environmental Incentives” means all rights, credits (including tax credits), grants, rebates, benefits, reductions, offsets and allowances and entitlements of any kind, howsoever entitled or

named (including carbon credits and allowances), whether arising under federal, state or local law, international treaty, trade association membership or the like arising from the Environmental Attributes of the System on each Site or the energy output or otherwise from the development, construction, installation or ownership of the System on each Site or the production, sale, purchase, consumption or use of the energy output from each Site. Without limiting the forgoing, “Environmental Incentives” includes green tags, renewable energy credits, grants, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentive programs offered by the State of California and the right to claim federal income tax credits under Section 45 or 48 of the Code as such credits are available arising from the Environmental Attributes of the system on each Site or the energy output or otherwise from the development, construction, installation or ownership of the System on each Site or the production, sale, purchase, consumption or use of the energy output from each Site.

“Equipment” shall mean (a) all materials, supplies, apparatus, machinery, equipment, parts, tools, components, instruments, appliances, spare parts and appurtenances thereto that are required for prudent design, construction or operation of the System in accordance with Industry Standards and (b) all materials, supplies, apparatus, machinery, equipment, parts, tools, components, instruments, appliances, spare parts and appurtenances thereto described in, required by, reasonably inferable from or incidental to the Work or the Contract Documents.

“Excusable Delay” shall mean a Delay outside of Contractor’s control that prevents Contractor from achieving the Commercial Operation Date for any System in accordance with the Project Schedule, and to the extent that such Delay adversely affects the Work such that the performance of the Work is prevented or delayed, Contractor shall be entitled to an adjustment in the Construction Schedule and deadlines of this Agreement. For purposes of this Agreement, an Excusable Delay shall include any of the following events:

- (a) an act or failure to act of, or other delay caused by, or negligence of, City or its agents or employees;
- (b) changes in the design, scope or schedule of the Project unilaterally required by the City;
- (c) the suspension of Work in whole or in part by City;
- (d) labor disputes, fire, vandalism, delay in manufacturing and deliveries;
- (e) adverse weather conditions not reasonably anticipated and in excess of 150% of the normal weather (*e.g.*, rain, snow, sleet) for the local geographic area for the past ten (10) years as measured in a given month;
- (f) unforeseen conditions at any Site, including discovery or existence of Hazardous Substances;

- (g) the occurrence of a Force Majeure, or other unavoidable casualties or other causes beyond Contractor's control;
- (h) the failure to obtain any Utility Interconnection Agreement, permission to operate, Applicable Permit, CEQA/NEPA approval or approval of a Governmental Authority or delays caused by changes and/or modifications to the Scope of Work as required by any Governmental Authority having jurisdiction over the Project;
- (i) any equipment or material delays caused by suppliers or vendors;
- (j) adverse changes to regulatory requirements;
- (k) any breach of this Agreement or the Utility Interconnection Agreement or any information provided to the Contractor by City or Utility is inaccurate or incomplete; or
- (l) any other cause outside Contractor's control after Contractor's best efforts to mitigate that delay, to the extent that Contractor is able to mitigate such delay, provided that a failure to perform of Contractor's subcontractors' shall not be an Excusable Delay, unless such subcontractors are unable to perform the Work as a result of any of the events described in this definition of "Excusable Delay".

"Facility" shall mean any and all properties of the City upon which the System shall be constructed or to which the System shall be connected, including land, buildings, structures, equipment, and electrical tie-in points.

"Final Completion" shall mean satisfaction or waiver of all of the conditions for completion of that portion of the System applicable to a particular Work Order as set forth in Section 5.2.

"Force Majeure Event" shall mean, when used in connection with the performance of a Party's obligations under this Agreement, any act or event (to the extent not caused by such Party or its agents or employees) which is reasonably unforeseeable, or being reasonably foreseeable, reasonably unavoidable (including by taking prudent protective and preventative measures) and outside the control of the Party which invokes it, and which renders said Party unable to comply totally or partially with its obligations under this Agreement. In particular, any of the following shall be considered a Force Majeure Event:

- a. war (whether or not war is declared), hostilities, revolution, rebellion, insurrection against any Governmental Authority, riot, terrorism, acts of a public enemy or other civil disturbance;
- b. acts of God, including but not limited to, unusually severe storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, volcanic eruptions, winds in excess of ninety (90) miles per hour, drought, 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 FACILITY and equipment relating to the performance by the affected Party of its obligations under this Agreement;
- c. strikes, walkouts, lockouts or similar industrial or labor actions or disputes, in each case of a regional or national nature;
- d. changes in Applicable Law after the Effective Date that materially impact a Party's ability to perform under this Agreement; and
- e. acts of any Governmental Authority that materially restrict or limit Contractor's access to the Site.
- f. plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other restrictions.
- g. explosion, fire, destruction of machines, equipment, factories and of any kind of installation, prolonged break-down of transport, telecommunication or electric current

"Governmental Authority" shall mean any national, autonomic, regional, province, town, City, or municipal government, or other administrative, regulatory or judicial body of any of the foregoing.

"Hazardous Material" shall mean oil or petroleum and petroleum products, asbestos and any asbestos containing materials, radon, polychlorinated biphenyl's ("PCBs"), urea formaldehyde insulation, lead paints and coatings, and all of those chemicals, substances, materials, controlled substances, objects, conditions and waste or combinations thereof which are now listed, defined or regulated in any manner by any federal, state or Applicable Law.

"Indemnified Party" shall have the meaning set forth in Section 7.4.

"Indemnifying Party" shall have the meaning set forth in Section 7.4.

“Industry Standards” shall mean those standards of care and diligence normally practiced by a majority of engineering, construction and installation firms in performing services of a similar nature in jurisdictions in which the Work will be performed and in accordance with good construction practices, Applicable Permits, and other standards established for such Work.

“Manufacturer Warranty” shall have the meaning set forth in Exhibit C.

“Notice to Proceed Date” shall mean the date that City has granted Contractor the Notice to Proceed for the Work.

“Party” shall mean, individually, each of the parties to this Agreement.

“Performance Tests” means, the tests of the System, as more particularly described in Exhibit C.

“Person” shall mean any individual, corporation, partnership, company, joint venture, association, trust, unincorporated organization or Governmental Authority.

“Project” shall mean the entirety of Work to be performed by Contractor pursuant to the terms and conditions of the Work and any Change Orders.

“Representatives” shall mean the Contractor Representative and the City Representative and each may individually be referred to as a "Representative".

“Rock” is defined as limestone, sandstone, granite or similar rocks in solid beds or masses in original or stratified position which can be removed only by continuous drilling, blasting or the use of pneumatic tools, and all boulders of 1 cubic yard in volume or larger. Material which can be loosened with a pick, frozen materials, soft laminated shale and hardpan, which for convenience or economy is loosened by drilling, blasting, wedging or the use of pneumatic tools, shall not be classified as “Rock”.

“City” shall have the meaning set forth in preamble.

“Site” shall have the meaning set forth in the first recital, and is more fully described in Exhibit C. An individual Site shall mean any area of a property owned by the City upon which a System is constructed.

“Solar Plant” shall mean that portion of the System only related to converting solar radiation into electricity and explicitly excludes all energy conservation technologies.

“Subcontractor” shall mean any Person, other than Contractor and Suppliers, retained by Contractor to perform any portion of the Work (including any Subcontractor of any tier) in furtherance of Contractor’s obligations under this Agreement.

“Substantial Completion” shall mean satisfaction or waiver of all of the conditions for completion of that portion of the System applicable to a particular Work Order as set forth in Section 5.1(d).

“Substantial Completion Date” shall mean the actual date on which the Substantial Completion of the System, as defined in Section 5.1(d), has occurred.

“Suppliers” shall mean those Equipment suppliers with which Contractor contracts to build the System.

“System” shall have the meaning ascribed in the Recitals to this Agreement.

“Technical Dispute” shall have the meaning set forth in Section 8.5(b).

“Third Party” shall have the meaning of any persons or entity not affiliated with Contractor or City.

“Unanticipated Condition” shall have the meaning set forth in Section 3.5.

“Work” shall mean all obligations, duties, and responsibilities assigned to or undertaken by Contractor and described in Exhibit C with respect to the System.

“Work Order” shall mean the assigned Work for each Site as described in Exhibit C.

“Work Order Price” shall mean the amount for performing the Work that is payable to Contractor as set forth in Section 3.2, as the same may be modified from time to time in accordance with the terms hereof, and as described in Exhibit C.

EXHIBIT B

CERTIFICATIONS

Exhibit B-1 Drug-Free Workplace / Tobacco-Free Environment Certification

Exhibit B-2 Non-Collusion Declaration

**DRUG-FREE WORKPLACE / TOBACCO-FREE ENVIRONMENT CERTIFICATION
(EXHIBIT B-1)**

Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990, requires that every person or organization awarded a contract or grant for the procurement of any property or service from any state agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a state agency may be subject to suspension of payments or termination of the contract or grant, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred. The City of Riverbank is not a "state agency" as defined in the applicable section(s) of the Government Code, but the City is a local agency and City under California law and requires all contractors on City projects to comply with the provisions and requirements of Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990. Contractor shall certify that it will provide a drug-free workplace by doing all of the following:

- 1 Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions which will be taken against employees for violations of the prohibition;
- 2 Establishing a drug-free awareness program to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace.
 - b. The person's or organization's policy of maintaining a drug-free workplace.
 - c. The availability of drug counseling, rehabilitation, and employee-assistance programs.
 - d. The penalties that may be imposed upon employees for drug abuse violations.
- 3 Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required above, and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I understand that if the City determines that I have either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements of section 8355, that the Contract awarded herein is subject to termination, suspension of payments, or both. I further understand that, should I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of section 8350 et seq.

I acknowledge that I am aware of the provisions of Government Code section 8350 et seq. and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990.

In addition, and pursuant to, without limitation, 20 U.S.C section 6083, Labor Code section 6400 et seq., Health & Safety Code section 104350 et seq. and City Board Policies, all City sites, including the Sites, are tobacco-free environments. Smoking and the use of tobacco products by all persons is

prohibited on or in City property. City Property includes buildings, grounds, owned vehicles and vehicles owned by others while on City property. I acknowledge that I am aware of the City policy regarding tobacco-free environments and hereby certify that I will adhere to the requirements of that policy and not permit any of my firm's employees, agents, subcontractors, or my firm's subcontractors' employees or agents to use tobacco and/or smoke on the Sites.

Date:

Proper Name of Contractor: SitelogIQ

Signature: _____

Print Name: Kecia Davison

(Public Contract Code § 7106)

**EXHIBIT C
WORK ORDERS**

EXHIBIT E INSURANCE

Contractor Insurance Requirements

1. Required Coverages. Contractor shall carry and maintain with carriers or self-insurance, as a minimum, the following insurance coverage:
 - i. Workers Compensation Insurance and Employers Liability. In accordance with the laws of the state of where work may be done with limits for employers liability in the minimum amount of one million dollars (\$1,000,000) for each occurrence and one million dollars (\$1,000,000) for each occurrence of bodily injury on a per employee basis;
 - ii. Commercial General Liability. One million dollars (\$1,000,000) per occurrence/two million dollars (\$2,000,000) in the aggregate for bodily injury, personal injury and property damage, products and completed operations;
 - iii. Commercial Automobile Liability, Any Auto. One million dollars (\$1,000,000) per accident including owned, non-owned, and hired automobiles.
 - iv. Excess coverage of four million dollars (\$4,000,000) per occurrence and aggregate, or any other equivalent, available insurance coverage of the Contractor.
2. Policy Endorsements. Insurance coverage required to be maintained by Contractor under this Agreement shall:
 - i. provide a severability of interests or cross liability clause for Commercial General Liability Insurance;
 - ii. except in the case of worker's compensation insurance and other statutory insurances where it would be inappropriate, name City and others as may be reasonably required by City, as additional insured's; and to the extent permissible in accordance with the policy, include a waiver of subrogation by the insurers in favor of City and each of its respective assignees, Affiliates, agents, officers, directors, employees, insurers or policy issuers and a waiver of any right of the insurers to any set-off or counterclaim, whether by endorsement or otherwise, in respect of any type of liability of any of the Persons insured under any such policies.
3. Certificates. Contractor shall throughout the Agreement Term provide certificate(s) and/or memoranda of insurance evidencing the coverage specified in this Attachment E to City upon City's reasonable request.

City Insurance Requirements

1. **Required Coverage.** City shall carry and maintain with carriers or self insurance, as a minimum, the following insurance coverage:
 - i. **Workers Compensation Insurance and Employers Liability.** In accordance with the laws of the state of where work may be done with limits for employers liability in the minimum amount of one million dollars (\$1,000,000) for each occurrence and one million dollars (\$1,000,000) for each occurrence of bodily injury on a per employee basis;
 - ii. **Commercial General Liability.** One million dollars (\$1,000,000) per occurrence/two million dollars (\$2,000,000) in the aggregate for bodily injury, personal injury and property damage, products and completed operations:
 - iii. **Commercial Automobile Liability, Any Auto.** One million dollars (\$1,000,000) per accident including owned, non-owned, and hired automobiles.
 - iv. Excess coverage of four million dollars (\$4,000,000) per occurrence and aggregate, or any other equivalent, available insurance coverage of the Contractor.
2. **Policy Endorsements.** Insurance coverage required to be maintained by City under this Agreement shall provide a severability of interests or cross liability clause for Commercial General Liability Insurance;
3. **Certificates.** City shall throughout the Agreement Term provide certificate(s) and/or memoranda of insurance evidencing the coverage specified in this Attachment E to Contractor upon Contractor's reasonable request.

EXHIBIT F
CERTIFICATE OF SUBSTANTIAL/FINAL COMPLETION AND ACCEPTANCE

The undersigned, City of Riverbank ("the City"), having its office at 6707 3rd Street Riverbank, CA. 95367, having entered into the Facility Solutions Agreement ("Agreement") dated January 6th, 2022, with SitelogIQ, ("Contractor"), does hereby certify as follows:

1. I am authorized to issue this [Substantial][Final] Completion Certificate on behalf of the City.
2. As of the date hereof, all the requirements for achievement of [Substantial][Final] Completion pursuant to the Agreement have been met.

ACCEPTANCE

Contractor: SitelogIQ

By: _____

Name:

Title:

City:

City of _____

By: _____

Name:

Title:

EXHIBIT G
NOTICE TO PROCEED

SitelogIQ, Inc.
1651 Response Rd, Suite 300
Sacramento, CA 95815
Kecia Davison, President, West Energy

Re: Notice to Proceed

Dear Kecia Davison:

This Notice to Proceed is being issued by City of Riverbank ("City") to SitelogIQ, Inc. ("Contractor") pursuant to the 4217 Facility Solutions Agreement, entered into on January 6th, 2022

This Notice to Proceed authorizes the Work described by Exhibit C of the Agreement.

By signing and dating this Notice to Proceed, the parties hereto agree to these terms and represent and warrant they have the authority to execute this Notice to Proceed on behalf of their respective organizations.

ACKNOWLEDGED & AGREED TO:

City of Riverbank

SitelogIQ

Signature: _____

Signature: _____

Name: Marisela Garcia

Name: Kecia Davison

Title: Interim City Manager

Title: President, West Energy

Date: _____

Date: _____

EXHIBIT C

Work Order #1

Energy Conservation Work Including Photovoltaic Renewable Energy System Installation, Lighting Retrofit and HVAC Unit Replacements

PROJECT SCOPE OF WORK INDEX

<u>Section 1</u>	Basis of Energy Engineering
<u>Section 2</u>	Lighting Scope of Work
<u>Section 3</u>	HVAC Scope of Work
<u>Section 4</u>	Solar Plant Scope of Work
<u>Section 5</u>	Proposed Project Installation Timeline & Coordination
<u>Section 6</u>	Work Milestones
<u>Section 7</u>	Fixed Price Amount
<u>Section 8</u>	Progress Payment Schedule
<u>Section 9</u>	Performance and Payment Bonds
<u>Section 10</u>	Terms and Conditions

1.0 BASIS OF ENERGY ENGINEERING

Forecasted energy savings are the difference between the pre- and post-retrofit period consumption for the equipment included in the scope of Work. The pre-retrofit (or Baseline) data for this project covers the period from March 2020 through February 2021. The Baseline data takes into consideration the quantity of facilities and size; 2020/2021 building operational schedules; occupancy factors and utilization; utility usage, costs and utility rates along with the available average ASHRAE weather files for the closest weather station. Except weather files, this data has been obtained from the City.

Since Contractor does not control/follow the building operations on a day-by-day basis, it is virtually impossible to track the energy consumption and savings from utility bills due to many dynamic factors that are out of Contractor's control. These factors (permanent or temporary) include, but are not limited to: weather changes; changes in the use of any facility and number of occupants; changes to the hours of operation of any facility; changes to the control system scheduling; changes or modifications to the equipment or services provided under this Agreement; changes in utility suppliers, method of utility billing, number of days in the billing cycle, utility rates or method of utility purchasing; improper maintenance of the equipment or of any energy-consuming equipment; changes to the equipment or to any facility required by changes to building codes; additions or deletions of energy-consuming equipment; personal portable heaters; refrigerators and vending machines and/or additions or deletions of any facilities (i.e. portable buildings), etc.

Therefore, engineering calculations approach is based on a measure-by-measure (ECM-by-ECM) basis and is to be derived by comparing the specific value of physical parameters after the installation to its value prior to the installations. For example: lighting systems retrofit (see below) will result in lower wattage consumption than Baseline scenario. This measure is not affected by weather changes, HVAC or other unrelated equipment energy consumption that are reflected in the utility bills. Below are some key characteristics and features of the measure-by-measure energy saving calculations method:

- It calculates savings based on City inputs, field measurements, and agreed upon assumptions and stipulations.
- It does not involve utility bill comparisons; however, utility bills may be analyzed to identify energy consuming trends and correlations.
- It is structured so that the individual measure's savings, as described in Scope of Work, shall not be affected by unrelated building modifications.

In any event, the overall energy use of the facility would be lower than if the energy saving measures (retrofits) identified in the facility solutions project herein had not been implemented.

If desired, Contractor may provide additional utility data analysis and benchmarking based on the standard engineering principals for an additional fee (excluded from this Scope of Work). The City is to notify Contractor in writing no later than thirty (30) days after any changes as outlined above made to the Property that would affect the energy usage at the Property. The City shall make available to Contractor no later than thirty (30) days upon receipt, on a monthly basis for at least one year after Completion and Acceptance Date, copies of required energy bills, energy usage data, and any other such documentation related to changes to energy usage as outlined above.

Scope of Work presented herein is based on retrofits feasibility, cost effectiveness and maximum energy savings for the different ECM's. Equipment brand and/or materials noted herein can be substituted with equal equipment/materials based on the availability and costs at the time of the scheduled installation, constructability and other considerations as determined by the engineer and project manager.

In order to achieve energy savings in the future years and for trouble-free operation, City agrees to maintain and service the equipment and systems included in the Scope of Work per equipment manufacturer's guidelines and in accordance with industry standards as applicable to the specific systems. The City may need to provide accurate preventative maintenance and repair records for any work performed on the systems included herein.

2.0 GENERAL LIGHTING SCOPE OF WORK

Energy savings are realized as result of the total input watts of the lighting fixtures being reduced. Energy savings resulting from the Lighting System Retrofit have been estimated for each individual light fixture type based on the following simple formula:

Annual Saving, \$ = (Existing Watts – New Watts) /1000 x Hours/Year x Utility Rate x N

Where,

Existing Watts – Wattage rating for the existing (Baseline) light fixture

New Watts – New wattage rating for the existing light fixture

Hours/Year – Annual number of “burn-hours” (run hours for different areas)

Utility Rate – Actual weighted composite utility rate, \$/kWh

N – Number of light fixtures of the particular type (see below for the actual quantities).

Currently the (13) sites have a mixture of lighting technologies. In general, past modernization and retrofit projects included the upgrading of several sites with first generation electronic ballasts and T8 fluorescent lamps. Areas not inclusive of these past projects are still using older style inefficient magnetic/older ballasts and T12 fluorescent lamps.

This project will provide a significant energy reduction while greatly improving the overall quality and quantity of light. Magnetic/older ballasts and T12 fluorescent lamps included in the Lighting Scope of Work below will be replaced with High Efficiency low wattage 4th generation electronic ballasts coupled with L.E.D. lamps. In addition to the linear fluorescent fixture retrofits, incandescent and CFL lamps identified in the scope of work below will be replaced with L.E.D. lamps or fixtures unless specifically excluded.

Exterior lighting included in this project will be replaced with new L.E.D. fixtures or lamps as applicable.

In areas (if any) with bi-level lighting in linear lamp applications, our standard retrofit practice includes "checker-boarding" luminaires.

Expended lighting lamps and ballasts will be disposed of per current EPA regulations. Any lighting ballasts removed that contain PCB's will be treated as Hazardous waste and disposed of per EPA hazardous waste regulations.

Unless specifically requested by the City, the intent of lighting retrofit Work is not to increase the light levels but rather to maintain the existing or better lighting levels while maximize energy savings without re-designing the overall system. In some cases, where the areas are over illuminated (per Illumination Engineering Society recommendations), Contractor may reduce light levels to the recommended levels.

Scope of Work presented herein is based on retrofits feasibility, cost effectiveness and maximum energy savings for the different options. The presented retrofits will not affect the usability of the buildings or facilities and therefore are not alterations, additions, new construction or modification of the existing systems. The proposed Lighting Retrofits predominantly use Type A LED lamps combined with high efficiency ballast. This retrofit will not modify or alter the existing T-Bar ceiling, electrical circuits and existing fixtures. Therefore, this scope is considered general maintenance and not a modification and/or replacement of the fixture.

As a result, the scope of work is considered maintenance replacement of the existing outdated lighting system components with like-kind components of higher efficiency and longer useful life. Maintenance related items are not considered lighting alterations and are exempted from many Title 24 provisions for the new installations. Due to the possibility of dissimilar interpretations of regulations, additional cost-incurring system upgrades may be requested. Upon the City requesting changes based on interpretations, the Contractor will provide a written change order to the City for review and approval.

The following rooms at the listed sites below were locked at the time of the lighting audit. As a result, Contractor has assumed fixture type and quantity based on surrounding areas. If those assumptions are incorrect, Contractor will notify City of any additional costs or credits.

- Teen Center: Locked Room.

All the new fixtures listed below are covered with 1-year parts & labor warranty by Contractor and additional 4-year manufacturer's materials warranty.

Below is the Itemized Scope of work below for specific retrofit strategies and fixture totals for each site:

City Hall

ITEMIZED LIGHTING FIXTURES			
Existing Lamp Type	QTY	Proposed Lamp Type	QTY
1'x1' Canopy Fixture- 60w Incandescent	3	(1) 9415 FX10SCM28/850/BK / (1) P10036 SEN-PHO-BT-MT/MV W/ PLT-SCM/14x14/WH	3
2x2 Troffer T8 2 U-Lamps	4	(2) L48T8/840/14G-EB / (1) VEL100BN-4C	4
2x4 Troffer T8 4 Lamps	61	(4) L48T8/840/14G-EB / (1) VEL100BN-4C	61
4' Wrap T8 2 Lamp	3	(2) L48T8/840/14G-EB / (1) VEL50BN-2C	3
Totals			71

City Hall South

ITEMIZED LIGHTING FIXTURES			
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Existing Lamp Type	QTY	Proposed Lamp Type	QTY
1'x1' Canopy Fixture- 60w Incandescent	3	(1) 9415 FX10SCM28/850/BK / (1) P10036 SEN-PHO-BT-MT/MV W/ PLT-SCM/14x14/WH	3
2x2 Troffer T8 2 U-Lamps	4	(2) L48T8/840/14G-EB / (1) VEL100BN-4C	4
2x4 Troffer T8 3 Lamps	42	(3) L48T8/840/14G-EB / (1) VEL100BN-4C	42
4' Wrap T8 2 Lamp	8	(2) L48T8/840/14G-EB / (1) VEL50BN-2C	8
6" Recessed Can w/ 60w Incandescent	8	9466 LED6CRL15SW-127L9CCT3/MV-	8
HPS250 Wallpack	7	(1) 9452 FXTWP80/50K/BZ-PHO / (1) P10234 SEN-MC605V-D	7
MH175 Canopy	4	CP46127	4
Totals			76

Community Center

ITEMIZED LIGHTING FIXTURES			
Existing Lamp Type	QTY	Proposed Lamp Type	QTY
1'x1' Canopy Fixture- 60w Incandescent	14	(1) 9415 FX10SCM28/850/BK / (1) P10036 SEN-PHO-BT-MT/MV W/ PLT-SCM/14x14/WH	14
1x4 Troffer T8 2 Lamp	30	(2) L48T8/840/14G-EB / (1) VEL50BN-2C	30
26w CFL A-Lamp	2	L60A19D2541KCQ	2
26w CFL Mini Wallpack	1	Aleo LED Mini Wall Pack LED WPM-15/40K	1
4' Strip T8 2 Lamp	6	(2) L48T8/840/14G-EB / (1) VEL50BN-2C	6
60w Incandescent	1	L60A19D2541KCQ	1
8' Strip T8 2-4' Lamps	3	(2) L48T8/840/14G-EB / (1) VEL50BN-2C	3
CFL A-Lamp	4	L60A19D2541KCQ	4
CFL A-Lamp (2 Lamps)	6	L60A19D2541KCQ	6
Floodlight- Par38CFL	4	7031 LED-FXBFD20/850/BK-SEN	4
MH175 Barnlight	1	(11) 9448 FXTWP38/50K/BZ-PHO / P10234 SEN-MC605V-D	1
MH400 Shoeboxes	6	9568 FXFDL150SW/66/50K/BZ-YK K141030 REC3PLK/PHO	6
Totals			78

Corp Yard

ITEMIZED LIGHTING FIXTURES			
Existing Lamp Type	QTY	Proposed Lamp Type	QTY
1x1 Recessed Canopy 2/ (2) 4 Pin PL	4	(1) 9415 FX10SCM28/850/BK / (1) P10036 SEN-PHO-BT-MT/MV W/ PLT-SCM/14x14/WH	4
26w CFL Mini Wallpack	9	Aleo LED Mini Wall Pack LED WPM-15/40K	9

2x4 Troffer T12 4 Lamp	20	(4) L48T8/840/14G-EB / (1) VEL100BN-4C	20
2x4 Troffer T8 3 Lamps	19	(3) L48T8/840/14G-EB / (1) VEL100BN-4C	19
4' Strip T8 2 Lamp	2	(2) L48T8/840/14G-EB / (1) VEL50BN-2C	2
4' Vaportite T12 2 Lamps	2	(2) L48T8/840/14G-EB / (1) VEL50BN-2C	2
4' Wrap T8 2 Lamp	15	(2) L48T8/840/14G-EB / (1) VEL50BN-2C	15
4' Wrap T8 3 Lamps	16	(3) L48T8/840/14G-EB / (1) VEL100BN-4C	16
8' Strip T12 2 Lamps	9	(2) L96T8HO/850/42G-ID DE	9
8' Strip T8 4-4' Lamps	10	(4) L48T8/840/14G-EB / (1) VEL100BN-4C	10
8' Vaportite w/ 4-4' T12s	4	(4) L48T8/840/14G-EB / (1) VEL100BN-4C	4
CFL A-Lamp (2 Lamps)	1	L60A19D2541KCQ	1
Floodlight- Par38CFL	1	7031 LED-FXBFD20/850/BK-SEN	1
HPS 150 Wallpack	16	(1) 9452 FXTWP80/50K/BZ-PHO / (1) P10234 SEN-MC605V-D	16
HPS 70 Canopy	5	(1) 9415 FX10SCM28/850/BK / (1) P10036 SEN-PHO-BT-MT/MV W/ PLT-SCM/14x14/WH	5
MH150 Canopy	2	CP46127	2
MH250 Cobrahead	1	9568 FXFDL150SW/66/50K/BZ-YK K141030 REC3PLK/PHO	1
MH400 Hibay	12	XLB2-150/850/F UXE G4 ECO OSDL	12
Vanity w 3' T5 Lamp	4	Excluded from Scope	4
Totals			152

Jacob Meyers Park

ITEMIZED LIGHTING FIXTURES			
Existing Lamp Type	QTY	Proposed Lamp Type	QTY
26w CFL Mini Wallpack	2	Aleo LED Mini Wall Pack LED WPM-15/40K	2
1'x1' Canopy Fixture- 26w CFL PL	6	(1) 9415 FX10SCM28/850/BK / (1) P10036 SEN-PHO-BT-MT/MV W/ PLT-SCM/14x14/WH	6
MH250 Cobrahead	1	(1) 9415 FX10SCM28/850/BK / (1) P10036 SEN-PHO-BT-MT/MV W/ PLT-SCM/14x14/WH	1
MH250 Barnlight	1	9568 FXFDL150SW/66/50K/BZ-YK K141030 REC3PLK/PHO	1
Totals			10

Police Department

ITEMIZED LIGHTING FIXTURES			
Existing Lamp Type	QTY	Proposed Lamp Type	QTY
2x4 Troffer T8 2 Lamps	37	(2) L48T8/840/14G-EB / (1) VEL50BN-2C	37

2x4 Troffer T8 3 Lamps	13	(3) L48T8/840/14G-EB / (1) VEL100BN-4C	13
2x4 Troffer T8 4 Lamps	31	(4) L48T8/840/14G-EB / (1) VEL100BN-4C	31
4' Wrap T12 4 Lamps	5	(4) L48T8/840/14G-EB / (1) VEL100BN-4C	5
4' Wrap T8 2 Lamp	39	(2) L48T8/840/14G-EB / (1) VEL50BN-2C	39
6" Recessed Can 2x26w CFL PL	12	9466 LED6CRL15SW-127L9CCT3/MV-	12
60w Incandescent	11	L60A19D2541KCQ	11
8' Strip T12 2 Lamps	1	(2) L96T8HO/850/42G-ID DE	1
Totals			149

Museum

ITEMIZED LIGHTING FIXTURES			
Existing Lamp Type	QTY	Proposed Lamp Type	QTY
60w Incandescent	3	L60A19D2541KCQ	3
8'Strip T12 4 Lamp	3	(4) L96T8HO/850/42G-ID DE	3
CFL A-Lamp	2	L60A19D2541KCQ	2
Totals			8

Scout Hall

ITEMIZED LIGHTING FIXTURES			
Existing Lamp Type	QTY	Proposed Lamp Type	QTY
1'x1' Canopy Fixture- 13w CFL	1	(1) 9415 FX10SCM28/850/BK / (1) P10036 SEN-PHO-BT-MT/MV W/ PLT-SCM/14x14/WH	1
26w CFL Mini Wallpack	2	Aleo LED Mini Wall Pack LED WPM-15/40K	2
4' Wrap T12 2 Lamps	10	(2) L48T8/840/14G-EB / (1) VEL50BN-2C	10
60w Incandescent	2	L60A19D2541KCQ	2
8' Strip T12 2 Lamps	6	(4) L48T8/840/14G-EB / (1) VEL100BN-4C	6
Ceiling Fans- (5) 13w CFL's	15	L60A19D2541KCQ	15
MH175 Barnlight	1	(11) 9448 FXTWP38/50K/BZ-PHO / P10234 SEN-MC605V-D	1
MH175 Wallpack	2	(1) 9452 FXTWP80/50K/BZ-PHO / (1) P10234 SEN-MC605V-D	2
Totals			39

Silva Park

ITEMIZED LIGHTING FIXTURES			
Existing Lamp Type	QTY	Proposed Lamp Type	QTY
26w CFL Mini Wallpack	11	Aleo LED Mini Wall Pack LED WPM-15/40K	11

Totals	11
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Sports Complex

ITEMIZED LIGHTING FIXTURES			
Existing Lamp Type	QTY	Proposed Lamp Type	QTY
26w CFL Mini Wallpack	8	Aleo LED Mini Wall Pack LED WPM-15/40K	8
4' Strip T8 2 Lamp	1	(2) L48T8/840/14G-EB / (1) VEL50BN-2C	1
4' Vaportite T8 2 Lamp	4	(2) L48T8/840/14G-EB / (1) VEL50BN-2C	4
Floodlight- Par38CFL	1	7031 LED-FXBFD20/850/BK-SEN	1
MH250 Shoebox	20	9568 FXFDL150SW/66/50K/BZ-YK K141030 REC3PLK/PHO	20
Totals			34

Teen Center Complex

ITEMIZED LIGHTING FIXTURES			
Existing Lamp Type	QTY	Proposed Lamp Type	QTY
4' Wrap T8 2 Lamp	6	(2) L48T8/840/14G-EB / (1) VEL50BN-2C	6
6" Recessed Can 2x26w CFL PL	12	9466 LED6CRL15SW-127L9CCT3/MV-	12
6" Recessed Cans- Emergency	1	9466 LED6CRL15SW-127L9CCT3/MV-EMRG	1
Low Bays W/ 1x36w PL (4 Pin)	15	16.5PLV/840/BYP	15
MH100 Wallpack	2	(11) 9448 FXTWP38/50K/BZ-PHO / P10234 SEN- MC605V-D	2
MR16 Track Lites	23	L50MR16D2530KFLCQ	23
Vanity w/ 2x26w PL (4 pin)	2	CLQ18WH/840-EB	2
Totals			61

Wastewater Treatment Plant

ITEMIZED LIGHTING FIXTURES			
Existing Lamp Type	QTY	Proposed Lamp Type	QTY
1x4 Troffer T8 2 Lamp	1	(2) L48T8/840/14G-EB / (1) VEL50BN-2C	1
2'x4' Troffer T8 3 Lamps	18	(3) L48T8/840/14G-EB / (1) VEL100BN-4C	18

4' Vaportite T8 3 Lamp	12	(3) L48T8/840/14G-EB / (1) VEL100BN-4C	12
40w Incandescents (3 Total Lamps)	3	L60A19D2541KCQ	3
8' Strip T12 2 Lamps	7	(2) L96T8HO/850/42G-ID DE	7
8' Strip T5 4 Lamp	5	(4) L48T5/840/24G-EB / (2) VEL100BN-4C	5
HPS150 Shoebox	2	(1) 7629 LED-FXSAL100/50K/DB/3S / (1) P10101 MT-SAL/SF/DB / (1) K134178 PLT/SDB/9SWC / (1) P10164 SEN-SRP280	2
Totals			48

Whorton Park/Well 6

ITEMIZED LIGHTING FIXTURES			
Existing Lamp Type	QTY	Proposed Lamp Type	QTY
MH250 Cobrahead	1	9568 FXFDL150SW/66/50K/BZ-YK K141030 REC3PLK/PHO	1
Totals			1

2.1 Lighting System Terms and Definitions

- INC Standard Incandescent style lamp
- LED Light Emitting Diode technology
- EB Electronic Ballast
- T-8 High Efficient 8/8" diameter lamp
- T-12 Inefficient 12/8" (1.5") diameter lamp
- CF Compact Fluorescent Lamp
- HPS High Pressure Sodium lamp
- Flood A type of exterior lighting fixture possessing directional capabilities.

2.2 Lighting Scope of Work Exclusions

The above Scope of Work excludes the following:

- Repair of any preexisting electrical distribution problems. Upgrade of pre-existing power quality issues including but not limited to LED flickering due to grounding issues, etc. Repair or replacement of any existing lighting controls & scheduling (to remain as-is) including older controls incompatibility; new lighting controls; incompatible technology; dimmable ballasts.
- Any and all existing LED fixtures; Any and all stadium lighting; Tennis courts; Zerillo Park; Castleberg Park.
- Asbestos, ballasts leaking PCB, lead removal.

- Title 24 design & documentation (exempted); permits, reviews, and approvals (exempted).
- New acoustical ceiling tiles for the existing T-bar grid unless broken by Contractor; Seismic Strapping.
- Any additional costs associated with COVID-19 (this includes, but not limited to, safety training, sanitizing equipment, limitation on number of workers in a space, etc.).
- All work is to be completed during normal working hours Monday to Friday (excluding holidays) work week, 40 hours per week between 6:00 AM and 6:00 PM. Any request by City to change working times may result in a change order for added overtime rates.
- Any items not specified in this scope of work.

3.0 HVAC SCOPE OF WORK

3.1 Basis of Design and Engineering

The intent of this project is to reduce the City's utility costs and operational expenses by replacing the HVAC equipment at the Police Department, City Hall, City Hall South, and the Community Center with new high energy efficient units identified in the HVAC scope of work below.

As requested, Contractor will be replacing the existing units listed below in Section 3.2 with new high efficient equipment of equal capacity. These in-kind replacements are based on the assumption that the original units have been sized properly for the local weather conditions, current occupancy levels and space use. Unless specifically requested, it is not Contractor's intent to re-design or to modify these systems. Unless specified otherwise, it is Contractor's intent to maximally re-use the existing air distribution systems, rooftop units' platforms or any pre-existing supports, electrical, gas & condensate drain connections and other existing HVAC system components. It is assumed that that these system components to be re-used are in good operational order and no repairs are needed.

In the absence of the reliable as-built drawings, Contractor has made certain design engineering and estimating assumptions for applicable work finished prior to completion of the final engineering and construction. Though unanticipated, there may be some changes to the scope of work based on the unknown pre-existing conditions. Should they arise; a fair and equitable solution will be negotiated in good faith between the City and Contractor for any additional costs required.

Contractor will use the current 2019 Title-24, 2019 California Building Code (CBC), 2019 California Plumbing Code (CPC), 2019 California Mechanical Code (CMC), the California Electrical Code (CEC), Sheet Metal & Air Conditioning Contractors' National Association (SMACNA) standards.

3.2 Mechanical Scope of Work

The following lists in detail the mechanical Scope of Work to be performed for unit replacements included in this project:

- Provide necessary rigging and trucking of new/old equipment to/from the project site.
- Provide and install new package and split system HVAC units as detailed below. As required, new gas fired equipment will meet Ultra Low NOx emissions standards. As applicable, new equipment will be provided with or ready for installation of MERV-13 filters.
- Provide sheet metal transitions as required to connect new unit to existing opening.
- Furnish and install weather tight sealant on seams, joints and connections on equipment and ductwork replaced in this project to ensure full weather seal.
- Reconnect existing electrical service to new equipment, replace disconnects as required.
- Reconnect existing controls, flue pipes, condensate, and refrigerant lines as required.
- Contractor's technicians will perform a complete start-up and test of new equipment to ensure proper system operation.
- Daily removal of debris created by Contractor personnel.
- All work is to be completed during normal working hours Monday to Friday (excluding holidays) work week, 40 hours per week between 6:00 AM and 6:00 PM. Any request by City to change working times may result in a change order for added overtime rates.
- One-year warranty on Contractor's provided equipment and workmanship. Warranty starts from the day of equipment start-up.

The quantities, sizes and location of new HVAC units included in this project are listed below:

Police Department						
Proposed Equipment						
Area	Qty	Nominal Tons	Type	Brand	Cooling Efficiency SEER/EER Meets T-24 Requirements?	Heating Efficiency AFUE % Meets T-24 Requirements?
Police Station	1	2.0	Pkg/GE	Day & Night or Equal	Yes	Yes
	2	4.0	Pkg/GE	Day & Night or Equal	Yes	Yes
	2	5.0	Pkg/GE	Day & Night or Equal	Yes	Yes
	1	6.0	Pkg/GE	Day & Night or Equal	Yes	Yes

City Hall North						
Proposed Equipment						
Area	Qty	Nominal Tons	Type	Brand	Cooling Efficiency SEER/EER Meets T-24 Requirements?	Heating Efficiency AFUE % Meets T-24 Requirements?
City Hall North	1	5.0	Pkg/GE	Day & Night or Equal	Yes	Yes
	1	5.0	Pkg/GE	Day & Night or Equal	Yes	Yes

City Hall South						
Proposed Equipment						
Area	Qty	Nominal Tons	Type	Brand	Cooling Efficiency SEER/EER Meets T-24 Requirements?	Heating Efficiency AFUE % Meets T-24 Requirements?
City Hall South	1	4.0	Pkg/GE	Day & Night or Equal	Yes	Yes
	1	10.0	Pkg/GE	Day & Night or Equal	Yes	Yes
	1	5.0	CRAC	Day & Night or Equal	Yes	Yes

Community Center						
Proposed Equipment						
Area	Qty	Nominal Tons	Type	Brand	Cooling Efficiency SEER/EER Meets T-24 Requirements?	Heating Efficiency AFUE % Meets T-24 Requirements?
West Unit	1	17.5	Pkg/GE	Day & Night or Equal	Yes	Yes
East Unit	1	17.5	Pkg/GE	Day & Night or Equal	Yes	Yes

Notes:

- * - H/P – denotes Heat Pump system unit.
- ** - G/E – denotes Gas Electric system unit.
- *** - Equipment brand noted above can be substituted with equal equipment based on the availability at the time of the scheduled installation (per Section 6.0 below), constructability and other considerations as determined by the Project Manager.

3.3 HVAC Scope of Work Exclusions

The above Scope of Work excludes the following:

- The price does not include any amounts for changes in taxes, commodity pricing fluctuations, tariffs, or other similar charges that are enacted after the date of this quotation. Contractor shall be entitled to an equitable adjustment in time and money for any costs that it incurs directly or indirectly that arise out of or relate to changes in taxes, commodity pricing fluctuations, tariffs, or similar charges due to such changes including, without limitation, escalation, delay damages, costs to re-procure, costs to change suppliers, costs of manufactured equipment or goods, or other costs of any kind resulting from the changes.
- Humidity controls, new thermostats, DDC controls, economizers where not required by code; existing gas piping & pressure regulators upgrades; upgrade of the existing overall site electrical service capacity, if required for the new units.
- Plumbing, Fire Sprinklers, Design Engineering, Acoustical engineering and noise reduction provisions, Fire and Life Safety equipment and its components.
- Warranty, repair and/or upgrade of the existing mechanical, plumbing and electrical systems, air distribution and control systems found in disrepair or not compliant to code; duct leakage

testing or repairs; structural upgrades. Any and all systems and defects which require repairs/replacements as a result of pre-existing conditions.

- Any and all hazardous materials work, i.e., asbestos, lead etc.
- Overtime costs, any additional costs associated with COVID-19 (this includes, but not limited to, safety training, sanitizing equipment, limitation on number of workers in a space, etc.).
- Permit fees, fully engineered drawings (not required for maintenance related in-kind equipment replacements).
- Any items not specified in this Scope.

4.0 SOLAR PLANT SCOPE OF WORK

General

The scope of work for the new systems include engineering, permitting, procurement, construction, and commissioning, supervision, materials and supplies, labor, tools, construction equipment and machinery, utilities and transportation for the proper execution and completion of a fully integrated and operational System, unless otherwise excluded in this Scope of Work. Contractor shall perform, supervise and direct the Work in accordance with Industry Standards, Applicable Law and Project Milestone dates.

4.1 Solar System Summary

The solar PV systems installations will be installed as illustrated in the Site Layout Plans provided in Section 4.13. Any changes to the location, size, or orientation shall constitute a Change Order. In summary, the solar PV systems will include the following:

1. Community Center solar installation will include one (1) electricity grid-connected carport structure photovoltaic system with a total rated approximate capacity of 69.1 kW-DC-STC.
2. City Hall / Police Station solar installation will include one (1) electricity grid-connected carport structure photovoltaic system with a total rated approximate capacity of 67.2 kW-DC-STC.
3. Whorton Park solar installation will include one (1) electricity grid-connected carport structure photovoltaic system with a total rated approximate capacity of 114.2 kW-DC-STC.
4. Waste Water Treatment Plant solar installation will include one (1) electricity grid-connected carport structure photovoltaic system & one (1) ballasted ground mounted photovoltaic system with a total rated approximate capacity of 656.6 kW-DC-STC.

Included is the relocation of existing road. New road area to be 20ft wide and 6" deep of gravel road base. Relocation of abandoned existing pump/blower motors by City.

- a. Contractor is not licensed to provide and explicitly excludes from its scope of work any and all environmental mitigation or controls with respect to the former landfill site. Our scope of work for the solar project does not include inspection, assessment, review, or consultation services with respect to either the adequacy of the site for its intended purpose (other than geotechnical engineering and subsurface utility survey) nor the development of any control plan for the mitigation or reporting of environmental hazards associated with prior landfill operations

In general, the PV Systems will consist of the following:

- a. PV modules
- b. PV module support structure
- c. Inverter(s)
- d. System electrical protection
- e. Electrical disconnects
- f. Switchgear
- g. Control and monitoring systems
- h. Computer Monitoring for system information installed in main office (City to provide internet access)
- i. Outdoor rated equipment enclosures
- j. Cables, wires, jumpers, connectors, system grounding and associated trenching and/or boring (No trenching or boring to be performed within landfill ground mount area)
- k. Equipment foundations
- l. Lighting
- m. Signage

4.2 Engineering Design Services

Contractor shall be responsible for detailed design and operational coordination of equipment and materials installed for the System. Contractor shall conform to Industry Standard and Applicable Law. The following design services shall be provided by Contractor:

- A. Civil Engineering design, including the preparation of the following:
 - Site Plan
 - Geotechnical Report (if required)
- B. Structural Engineering Design, including:
 - Foundations and other structural concrete
 - PV module support structural design

- Structural design calculations, as required
- C. Mechanical Systems design, as required.
- D. Electrical Systems design, including:
 - PV modules
 - Inverter
 - DC combiners, disconnects, fuses, and wiring
 - AC breakers and disconnects
 - Revenue metering
 - Enclosures, conduit, and wiring
 - Communications and control systems as described herein
 - Other electrical systems included in the scope of work

4.3 Permits

Contractor shall obtain and shall file on a timely basis any documents required to obtain Applicable Permits except those permits that are the responsibility of the City (“City Permits”). City shall obtain, and shall file on a timely basis, any documents required to obtain all such City Permits. City shall pay for all taxes, fees, and costs required to obtain all Permits.

Applicable Permits include:

- o Fire Marshall
- o General Construction and Building Permits

City Permits include:

- o CEQA (Categorical Exemption certified by the City is assumed for this project)
- o Easements required to complete the work.
- o All other permits required for construction of the System, except for Applicable Permits

4.4 Procurement

Contractor shall procure all materials and equipment included in the Scope of Work for the installation of a complete System under this Scope of Work

4.5 Construction Services

The following services shall be provided by Contractor as part of the general construction activities:

- A. Civil construction, including surveying, clearing, grubbing, tree removal (10 trees total), excavation, trenching, backfill, and fencing,
- B. Structural construction, including foundations, concrete work, grouting, anchors, erection of PV racks, shade structures, and other support structures
- C. Mechanical construction (if required)

- D. Electrical construction, including PV modules, combiners, inverter, disconnects, wiring, breakers, metering, control and monitoring systems, telecom systems, and lighting systems as required for a complete System
- E. Safety services, including on-site safety equipment, personnel training, and safety monitoring of construction activities
- F. Support services, including Contractor's trailers, shaded worker rest areas, restroom facilities, and security
- G. Coordination with City's staff for site access, laydown, and storage with minimal interference with building operations
- H. Operator training services
- I. Restoration of landscape and hardscape to pre-construction condition, or in accordance with new design, as needed (excludes area above landfill)
- J. Standard City/County permit and construction inspections, material verification, and testing as required. (Does not include 3rd party or special inspections).
- K. Lawful Disposal of refuse, spoils, chemicals, and waste materials associated with construction activities
- L. Testing and start-up services for electrical and control systems included in the scope of work. Testing shall include pre-operational functional tests, equipment calibration, and insulation resistance tests. All necessary test equipment and instrumentation will be provided.
- M. Miscellaneous consumable materials required to erect the System
- N. Coordination with City's Staff and Representatives, including Inspector of Record ("IOR") for all inspections and submittals.

4.6 Documentation Submittals

Contractor will prepare and submit designs, drawings, and specifications to the City for review and approval. City shall review the documents and provide any comments in writing to Contractor within ten (10) Business Days after receipt of such documents (the "Design Review Period"). Contractor will proceed with the assumption that City has approved the documents if no comments are received within ten (10) Business Days. Any comments provided by City after ten (10) Business Days that result in re-work shall constitute a Change Order. City shall consolidate all comments for each review cycle such that Contractor does not receive comments in separate submittals at different times from various City personnel. Any re-work as a result of receiving comments in separate submittals shall constitute a Change Order. To the extent consistent with Applicable Law and Industry Standards, Contractor will incorporate City comments into the final designs, drawings, and specifications (the "Construction Documents"), as applicable. Contractor shall submit such revised documents to City for additional Design

Review Periods, which shall not extend longer than ten (10) Business Days, until City approves such revised documents subject to the terms of the Agreement.

The following list is not all inclusive but defines the Contract Documents that are required to be submitted by Contractor for review and approval by the City.

- A. Facility drawing with Project improvements drawn to scale (Site Plan)
- B. Electrical design package including:
 - Single Line AC and DC diagrams
 - Communication, Monitoring and Control schematics
 - Electrical Circuit and Conduit schedule
 - Electrical Equipment installation plans
 - Lighting plan, if required
 - Placard schedule
 - Equipment data sheets
- C. Structural Calculations package including:
 - Ground structural elements for ground-mount systems
 - Equipment foundations and enclosures
 - Security fencing
- D. System energy production calculations and software model based on Site Plan
- E. Approved Applicable Permits
- F. Geotechnical report including Project applicable soil properties (if required)
- G. Project Schedule
- H. Environment, Health and Safety Plan
- I. System Manual with specifications, startup, commissioning and testing procedures for relevant equipment.
- J. System Operation and Maintenance manual (O&M plan)
- K. As-Builts (Record Drawings)
- L. Professional Engineer Wet Stamps and signatures on final design documents:
 - Electrical Design package
 - Structural Calculation package
- M. Interconnection Agreement with Local Utility
- N. Documentation for Rate Change with Local Utility

4.7 Workmanship Warranty

Commencing on the Final Completion Date and for a period of one (1) year thereafter, Contractor warrants that the Systems will be free from defects (“Workmanship Warranty”). If a System has a defect, and City provides written notification of said defect within the one (1) year workmanship warranty period, Contractor will, at its option, either repair or replace the portion of the System that is defective at no cost to City within forty-five (45) days of notification. The

Workmanship Warranty shall not apply to the extent such defect is caused by any of the following:

- (a) Alterations or repairs made to the supporting structure of any System or associated wiring and parts without Contractor's prior written approval;
- (b) Failure of a System to perform caused by legislative, administrative, or executive regulation, order or requisition of the government, local utility or public utilities commission, or any state, provincial or municipal government or official;
- (c) Use of a System beyond the scope contemplated in its operating manuals or technical specifications;
- (d) Damage to a System not caused directly or indirectly by Contractor or its subcontractors under any agreement between Contractor and City;
- (e) Force Majeure Events;
- (f) A change in usage of that portion of the Site on which the System is located which may affect building or site permits and related requirements, without the written approval of Contractor, or a change in ownership of building or property and the new owner has not signed an assumption agreement of the terms and conditions herein,
- (g) Any defect of deficiency to the extent the same results from a specific written direction from the City if, prior to implementing such written direction, Contractor advised City that City's written direction would so affect the warranty provided by Contractor hereunder.

4.8 Manufacturer Warranties

Contractor shall procure and assign to City warranties from the equipment manufacturers (the "Manufacturer Warranty") to the extent said equipment is purchased and provided for the Solar Plant by Contractor. Solar energy equipment included in the scope of work for electricity generation (PV modules, inverters) shall have a minimum ten (10) year manufacturer performance warranty to protect against degradation of electrical generation output of more than 15% from their originally rated electrical output. Except as expressly provided in this Agreement, Contractor's obligations under this warranty do not apply to any defects whatsoever in the equipment purchased and provided by Contractor for the Solar Plant, provided Contractor has procured and assigned to City the Manufacturer Warranty of such equipment. Contractor makes no representation or warranty, and City shall seek no recourse from Contractor, regarding the Manufacturer Warranties, including, without limitation, any degradation in electrical generation output of the PV modules.

Contractor shall require that Manufacturers provide the following warranties:

- a. Inverters shall have a ten (10) year standard Manufacturer Warranty.
- b. PV modules shall have the following standard Manufacturer Warranties:
 - i. Five (5) year material and workmanship warranty;
 - ii. Ten (10) year power output warranty at ninety percent (90%) of rated nominal power output; and

- iii. Twenty-five (25) year power output warranty at eighty percent (80%) of rated nominal power output.
- c. Meters shall have a one (1) year standard Manufacturer Warranty.

4.9 Project Closeout

- a. Contractor shall deliver to City an owner's manual, operator's manual and as-built drawings for the System no later than ninety (90) days after Substantial Completion occurs. For the avoidance of doubt, the as-built drawings shall be included in the punchlist items.
- b. At City's request, Contractor shall provide City's personnel with no less than one (1) full Day of detailed and complete on-site operation training with respect to the System. City's personnel shall have the qualifications necessary to perform their activities and will be hired by City or its Affiliate. Contractor shall provide City reasonable assistance in soliciting and obtaining any subsidies, rebates or incentives that may be available from any Governmental Authority pursuant to or in connection with the purchase or operation of the System or otherwise. Contractor makes no representation nor warranty to City as to the availability or amount of any such subsidies, rebates or incentives.

4.10 City Responsibilities

Contractor shall not be obligated to perform any work or activity beyond the scope of the work and its other obligations under this Agreement. In particular, the following shall not be included in the Scope of Work and therefore shall be performed by City:

- a. The City shall furnish, to the extent not already provided to Contractor: (a) all surveys or other information in City's possession that describe the physical characteristics, legal limitations, and utility locations in and around the Site; (b) any prior environmental review documentation and all known information in City's possession concerning subsurface conditions, including without limitation the existence of any known Hazardous Materials, in or around the general area of the Site where the Work will be performed; (c) all relevant information in City's possession, including any structural or other relevant as-built drawings and photographs, of prior construction undertaken in the general area where the Work will be performed; (d) title reports less than one (1) year in age; and (e) any and all easements, zoning variances, planning approvals, including any resolution of any environmental impact issues, and any other legal authorization regarding utilization of the Site essential to the execution of the Work.

- b. City shall provide continuous access to the Site to perform the Work according to the Construction Schedule;
- c. City shall make water source available at the Site for construction water;
- d. City shall obtain the City Permits;
- e. City shall select its own personnel so that it is present at the date of Substantial Completion;
- f. City shall pay for and provide communication access for system monitoring;
- g. City shall pay for all taxes, fees, and costs required to obtain all Permits;
- h. City shall provide access to, and allow Contractor the use of, water lines, sewer lines, storm water lines, power lines, fuel lines, telephone and communication lines, pipelines, and drainage ditches; and
- i. City shall be responsible for operating the System from and after Substantial Completion.
- j. Because of the potential that site 36-CR-0029 could contain toxic or hazardous wastes that were disposed of before regulations and standards were created for their safe disposal, The City of Riverbank will be responsible for any and all regulatory requirements of the unregulated landfill, including inspections, permitting, reporting of any work performed at the former landfill. Any preventative measures, emergency response, spill release or cleanup activities will be the responsibility of The City of Riverbank.

4.11 General Clarifications & Qualifications to Scope of Work

- a. Scope of Work Price assumes one (1) review cycle by City of the equipment layout drawings, one (1) review cycle by City of final design documentation, and one (1) final set of as-built drawings delivered to City in electronic format and hard copy.
- b. Schedule and Scope of Work Price assumes City will review and provide comments on drawings within 10 business days.
- c. Scope of Work Price is based on code approved conduit and wiring methods.
- d. Scope of Work Price assumes that Contractor will not encounter any Rock during trenching and excavating.
- e. Scope of Work Price assumes that Contractor will not encounter any ground water during trenching and excavating.
- f. Wiring from PV panels to combiners is USE cable and not placed in raceways.
- g. Grounding as required by NEC.
- h. AC and DC wiring to be aluminum where possible.

- i. Scope of Work Price is based on the COMEX and The Steel Index (TSI) material pricing as of the Effective Date. Increases to COMEX and The Steel Index (TSI) may result in an increase in the Contract Price.
- j. Scope of Work Price is based on site parking being available to all Contractor and Subcontractor employees.
- k. Scope of Work Price is based on straight time Monday to Friday (no holidays) work week, 40 hours per week between 6:00 AM and 6:00 PM.
- l. Scope of Work Price and schedule assumes that City will receive all necessary easements within 45 business days after the Effective Date.
- m. Scope of Work assumes there are no existing encumbrances or easements on the site.

4.12 Solar Scope of Work Exclusions

The Solar Work excludes the following:

- a. Plumbing, Fire Sprinklers, Fire and Life Safety equipment and its components.
- b. Warranty, repair and/or upgrade of the existing mechanical, plumbing and electrical systems, air distribution and control systems found in disrepair or not compliant to code. Any and all systems and structure defects repairs/replacements as a result of pre-existing condition.
- c. Upgrade of the existing site electrical service capacity and transformer.
- d. Any upgrades to existing parking lots, sidewalks, etc. unless otherwise included in scope.
- e. Drill hole casing, water mitigation, or Rock drilling.
- f. Hazardous material abatement and/or removal of any kind.
- g. Plan Check Fees (to be paid directly by the City or waived).
- h. Inspector of Record fees.
- i. Storm Water Pollution Prevention Plan (SWPPP).
- j. Americans with Disabilities Act (ADA) improvements including curb cutting, truncated dome installation, repainting, restriping, or installation of new signs.
- k. California Solar Initiative (CSI) Incentive application fees.
- l. Tree Mitigation Costs.
- m. String level monitoring.
- n. Relocation and modification of underground utilities.
- o. Premium time (except for utility tie-in).
- p. Field painting – lot striping, conduit painting, etc. above and beyond any items altered during construction or otherwise specified in the scope of work. Specifically

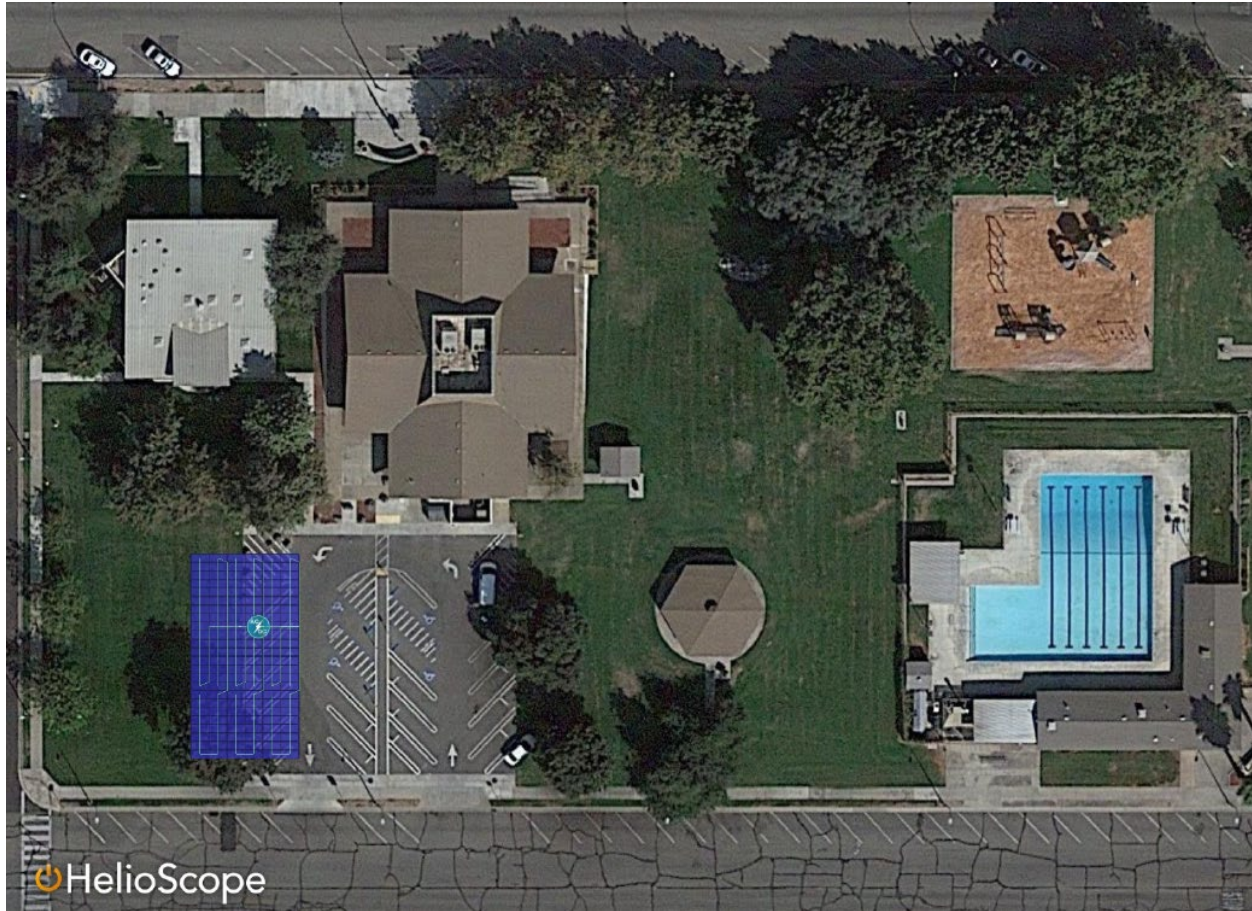
excludes painting of items such as transformers, panelboards, enclosures, conduit, purlins, and endcaps.

- q. Paint for carport structures outside of columns and beams
- r. Asphalt (fog, coating, and striping)
- s. Operation and Maintenance services.
- t. Other Fees (plan check, utility permits, parking, etc.).
- u. Any Fees related to Landfill permits, inspections, Post Closure costs or other reports. (To be paid directly by City)
- v. County inspections state that the landfill predates TSCA, CERCLA or Uniform Waste regulations. Therefore, we take exception to any potential liability, resulting from any settling, release, exposure, of any waste from the site 39-CR-0029, because the site could contain toxic or hazardous wastes that were disposed of before regulations and standards were created for their safe disposal.
- w. Any added requirements for methane and landfill gas monitoring or safety measures such as explosion proof wiring.
- x. Any repairs or maintenance to damage of landfill or wastewater treatment plant caps, covers, or liners.
- y. Additional costs for switch gear re-certification
- z. Any additional costs associated with COVID-19 (this includes, but not limited to, safety training, sanitizing equipment, limitation on number of workers in a space, etc.).
- aa. Any items not specified in this scope.

Contractor will notify the City of any excluded work or repairs which are necessary to the function of the Work as soon as Contractor becomes aware of such, and before proceeding with related work.

4.13 Site Plans

Community Center PV Layout



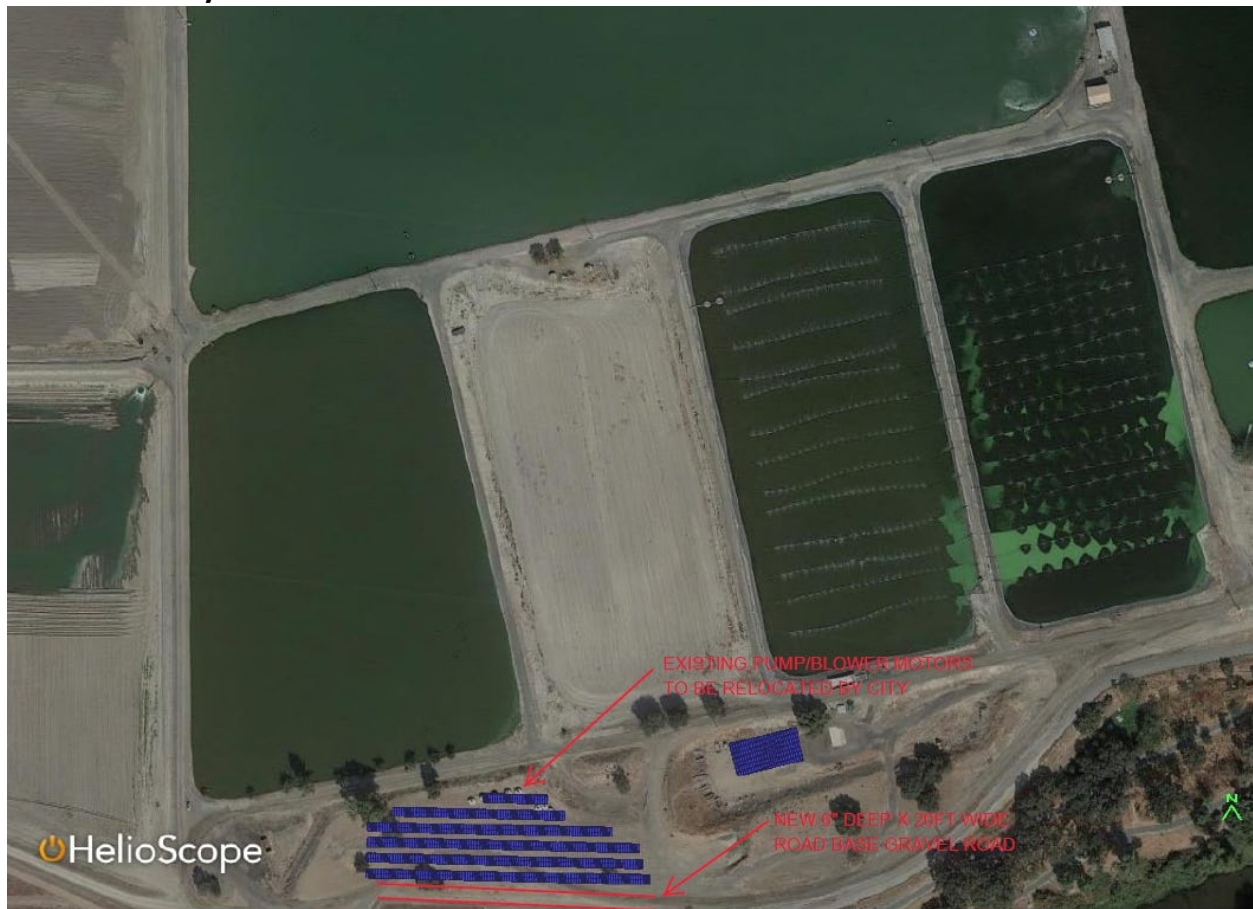
City Hall / Police Station PV Layout



Whorton Park PV Layout



WWTP PV Layout



5.0 **PROPOSED PROJECT INSTALLATION TIMELINE & COORDINATION**

This project will require extensive scheduling and coordination to ensure the efficient implementation of the Work shown herein. Contractor will provide retrofit services in Phases. Each construction Phase will include a complete PV, HVAC and/or Lighting system retrofit at a given building or site.

The City shall provide safe access to the buildings and provide the necessary security for staff safety during the rigging and equipment handling process. During the retrofit services, areas of the building designated by Contractor may need to be vacated to ensure the safety of the occupants. It will be the City's responsibility to temporarily relocate the occupants to other locations or buildings and/or, if needed, provide temporary facilities for the duration of the given phase of each project.

Contractor's work methods and schedule is not anticipated to be impacted or delayed by the work of others or by other work that may be ongoing at the City. If Contractor is required to modify, delay, or otherwise alter its proposed methods and schedule, Contractor shall be entitled to an equitable adjustment in Schedule and Contract Price to account for additional costs of delay and/or coordination.

In order to minimize the disruption of City's operation, coordination and scheduling items shall include but are not limited to multiple trips to the job site, multiple equipment riggings, temporary relocation of the tenants, etc. Contractor will work with the City to develop a detailed project schedule. Once the project schedule is confirmed, Contractor will provide the City with a Schedule of Values and a progress payment schedule, which corresponds to the project schedule. The installation of mechanical systems will start upon executing this Agreement and ordering and obtaining necessary equipment, parts and materials needed for installation, as listed in the scope of work. It is anticipated the construction phase of this project would be performed in 2022.

City and its representatives shall coordinate all the project activities with Contractor's Project Manager only.

6.0 **WORK MILESTONES**

Estimated Work Milestone Schedule	
Milestone	Milestone Date
Notice to Proceed	TBD
Construction Mobilization	Notice to Proceed + 16 weeks
Substantial Completion	Notice to Proceed + 48 weeks

Final Completion

Notice to Proceed + 60 weeks

Contractor shall be given a day-for-day slip in the Work Milestone Schedule for a delay in the Notice to Proceed beyond the date shown above. These construction milestones are based on current estimates of equipment delivery and may be adjusted based on actual availability and required utility upgrade schedules.

7.0 FIXED PRICE AMOUNT

The fixed price for this Scope of Work is **\$5,954,805.00**

Contractor shall be entitled to an increase in the Contract Price where the cost to Contractor for any labor, raw-material, or component (including without limitation, solar panels, tracking equipment, inverters, lighting and mechanical system components or any other equipment or materials necessary to complete the work required by this Work Order) increases after the Execution Date of the Facility Solutions Master Agreement. Such increase may be determined by the relative index for such labor, equipment, or material component including but limited to Consumer Price Index, The Steel Index, Commodity Indexes, etc. Contractor shall be entitled to an equitable adjustment in time and money for any costs that it incurs directly or indirectly that arise out of or relate to changes in taxes, tariffs, or similar charges due to such changes including, without limitation, escalation, delay damages, costs to re-procure, costs to change suppliers, costs of manufactured equipment or system components, or other costs of any kind resulting from the changes.

8.0 PROGRESS PAYMENT SCHEDULE

The City shall pay to Contractor the progress payments set forth below when Contractor has completed the Work associated with such payment. Contractor must submit documentation at the time of invoicing for related progress payments.

Progress Payments Schedule	
Payment Milestone	% of Total Task Order Price
Notice to Proceed	10%
Equipment Deposit	25%
Progress Payments	50%
Substantial Completion	10%
Final Completion/Retainage	5%

9.0 PERFORMANCE AND PAYMENT BONDS

Upon the written request of the City prior to commencement of work, Contractor shall provide evidence of the following bonds to City:

a. Performance Bond. A bond issued by a corporate surety authorized to issue surety insurance in California, and reasonably acceptable to City, in an amount equal to one-hundred percent (100%) of this Scope of Work Price payable under the Agreement securing the faithful performance of this Scope of Work; and

b. Payment Bond. A bond issued by a corporate surety authorized to issue surety insurance in California, and reasonably acceptable to City, in an amount equal to one-hundred percent (100%) of this Scope of Work Price payable under the Agreement securing the payment of all claims for the performance of labor or services on, or the furnishing of materials for, the performance of this Scope of Work.

The Performance and Payment Bonds shall guarantee timely completion of the Work in accordance with this Scope of Work and shall cover the installation period. The warranty period shall extend one (1) year following Final Completion.

The surety, having provided the Performance and Payment Bonds under this Scope of Work, shall assume no liability to Contractor, City or any third parties, should Contractor fail, for any reason, to deliver acceptable warranties beyond the one (1) year warranty period following Final Completion.

10.0 TERMS AND CONDITIONS

Unless otherwise stated, this Work Order shall be completed within the terms of the Government Code Section 4217 Facility Solutions Master Agreement executed on _____ between SiteLogIQ, and the City.

[Signatures to follow]



IN WITNESS, WHEREOF, the Parties hereto have duly executed and delivered this Work Order as of the date set forth below.

SitelogIQ, Inc
a Delaware Corporation

By: _____ Date: _____

Name: Kecia Davison
Title: President, West Energy
Contract License # 1054171

City of Riverbank,
a city organized and existing under the laws of the State of California

By: _____ Date: _____

Name:
Title:

OPERATIONS & MAINTENANCE AGREEMENT

by and between

City of Riverbank

and

SitelogIQ, Inc.

1651 Response Road., Suite 300

Sacramento, California 95815

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EXHIBITS

Exhibit A	Definitions
Exhibit B	System Services
Exhibit C	Insurance
Exhibit D	Permits
Exhibit E	Annual Energy Production Evaluation
Exhibit F	Rates for Additional Services
Exhibit G	Energy Reporting and Management Services

OPERATION AND MAINTENANCE AGREEMENT

This Operation and Maintenance Agreement (“Agreement”) is entered into as of February 8th, 2022, between the City of Riverbank, a City organized and existing under the laws of the State of California (“City”) and SitelogIQ, Inc., a Delaware corporation doing business as SitelogIQ, Inc (“Operator”).

RECITALS

WHEREAS, City intends to construct, install, and commission a small-scale photovoltaic solar electric facilities (individually called System, together called “Systems”).

WHEREAS, the Systems will be constructed at various client sites (individually called Site, together called Sites).

WHEREAS, the Systems and Sites are as follows:

System	Site
114.2 kW DC	Well 6 (Whorton Park) 6082 Tennessee Ave, Riverbank, CA 95367
69.1 kW DC	Community Center 3600 Santa Fe St., Riverbank, CA 95367
67.2 kW DC	Police Headquarters 6727 3rd St., Riverbank, CA 95367
656.6 kW DC	Riverbank WWTP 23865 Santa Fe Rd., Riverbank, CA 95367

WHEREAS, SitelogIQ, Inc., and City have entered into a Facility Solutions Agreement (“FSA”) pursuant to which Installer has agreed to design, construct and deliver the Systems on behalf of City; and

WHEREAS, Operator, in its capacity as operator hereunder, has agreed to operate and maintain the Systems under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and for 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 required by the context in which any term appears: (a) capitalized terms used in this Agreement shall have the respective meanings set forth in Exhibit A; (b) the singular shall include the plural and vice versa; (c) the word “including” shall mean “including, without limitation”, (d) references to “Sections” and “Exhibits” shall be to sections and exhibits hereof; (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.

2. SERVICES

2.1. System Services

- (a)** Throughout the Term of this Agreement, Operator shall provide System Services as set forth in Exhibit B for the Systems.
- (b)** Operator shall perform an Annual Energy Production Evaluation for each System.
- (c)** System Services shall be performed in accordance with Industry Standards and Applicable Law for photovoltaic solar projects in California.
- (d)** All periodic maintenance and inspection services shall be performed at regular intervals as described in Exhibit B
- (e)** All maintenance and inspection services shall be performed by qualified technical personnel in accordance with the operation and maintenance manuals.
- (f)** Operator personnel and agents will check-in at offices during business hours prior to beginning Work.
- (g)** Repair of damaged/vandalized Systems shall be performed by Operator, as directed by City, at the rates specified in Exhibit F.
- (h)** Any other City requested services not defined in this Agreement shall be billed at the rates specified in Exhibit F on a time and materials basis.

2.2. Annual Reports and Meeting

Throughout the Term, Operator shall furnish to City the Annual maintenance/inspection report ("Annual Report") covering all Systems for the twelve-month period ending on December 31 of each calendar year. The first reporting period of the Term shall begin upon Final Completion (as set forth in the FSA) and extend through December 31. The Annual Report shall be submitted

within two (2) months from the period ending. The Annual Report shall include the following:

- a. Summary of operations;
- b. Weather and energy production data;
- c. Calculation of Cumulative Annual Energy Production;
- d. System performance data;
- e. Reports of any environmental disturbances (e.g. chemical spills);
- f. Safety/accident reports;
- g. Summary of Additional Services, if any;
- h. Maintenance and inspection logs; and
- i. Proposal of actions required to be taken by Operator, if any.

2.3. Warranty

- (a) Subject to the limitations set forth in this Section 2.3, commencing on the Final Completion Date, and for a period of ten (10) years, Operator warrants that the System will be free from defects in materials and workmanship under normal operating conditions and shall conform to the final System design provided by the Operator under the FSA. If the System has a defect that causes it to fail to conform to any of the foregoing Warranties, Operator will, at its option, either repair or replace the portion of the System that is defective at no cost to the City.

Subject to the limitations set forth in this Section 2.3, commencing on the Final Completion Date for each system, Operator shall provide a ten (10) year warranty to protect against defects and undue degradation of electrical generation output of the Solar Plant ("Operator Warranty") in compliance with the California Public Utility Code 387.5(d)(4). Operator Warranty shall include the following:

- (i) Ten (10) year warranty to protect City against more than 15% degradation of electrical generation output that may occur as a result of faulty installation.
- (ii) Ten (10) year warranty to provide for no-cost repair or replacement of a defect not otherwise covered by Manufacturer Warranties provided such defect causes more than fifteen percent (15%) degradation of electrical generation output.

If the System has a defect that causes it to fail to conform to any of the foregoing Warranties, Operator will, at its option, either repair or replace the portion of the Solar Plant that is defective at no cost to the City.

- (b) This Warranty shall not cover any defects to the extent such defect is caused by any of the following:

- (i) Alterations or repairs made to the System by anyone except for Operator or Operator's Subcontractors without Operator's prior written approval;
- (ii) Failure of the System to perform caused by legislative, administrative, or executive regulation, order or requisition of the government, local utility or public utilities commission, or any state, provincial or municipal government or official;
- (iii) Use of the System by anyone except for Operator or Operator's Subcontractors beyond the scope contemplated in its operating manuals or technical specifications;
- (iv) Damage to the System not caused directly or indirectly by Operator or its Subcontractors under any agreement between Operator and City;
- (v) Damage or property loss to the System caused by third parties including, but not limited to, vandalism and theft.
- (vi) Manufacture defects or Return merchandise authorization (RMA) of equipment.
- (vii) Force Majeure Events; and
- (viii) A change in usage of the Site, which may affect building or site permits and related requirements, without the written approval of Operator, or a change in Ownership of building or property and the new City has not signed an assumption agreement of the terms and conditions herein.

Corrections, repairs, or replacement covering the equipment, materials, and labor as a result of the defects above shall be billed at the rates specified in Exhibit F, on a time and materials basis

- (c) The Operator Warranty assumes that all Manufacturer Warranties have been assigned to the City under the FSA. Operator's obligations under the Operator Warranty do not apply to defects in materials or equipment provided by Manufacturer Warranty. Operator makes no representation or warranty, and City shall seek no recourse from Operator, regarding the warranties of the manufacturers, including, without limitation, the power output of the PV modules.
- (d) To the extent that Equipment Warranties cover replacement and/or repair of any System equipment during the Term, it shall be Operator's responsibility under this Agreement to use commercially reasonable efforts to submit, process and pursue, at Operator's sole cost and expense, warranty coverage; provided, however, that, because warranty claims may

need to be submitted in the name of City, City shall provide such full and complete cooperation as Operator may reasonably require in connection with such submission, processing and pursuit of warranty coverage.

- (e) Operator agrees to act as agent on behalf of City for purposes of Section 2.3(d). If, in the event the equipment manufacturer denies responsibility for warranty service and Operator is instructed by City to pursue action against the equipment manufacturer, whether through litigation or otherwise, City shall reimburse Operator for any of the costs, expenses, or repairs incurred by Operator in this context, even if such attempt to recover from the equipment manufacturer fails, provided that such failure is not the result of errors or omissions by Operator. Such costs shall be reimbursed by City to Operator within thirty (30) days of receipt of invoice.
- (f) This Warranty shall expire ten (10) years (one hundred twenty (120) months) after Final Completion Date for each System.
- (g) Except as expressly provided herein or in the Agreement, Operator expressly disclaims any and all warranties of any kind, express, implied or statutory, including without limitation any implied warranties of merchantability and/or fitness for a particular purpose.

2.4. Insurance

Without limiting any of the obligations or liabilities of either of the Parties, each of the Parties shall at all times throughout the Term of this Agreement and any renewal thereof, carry and maintain, or cause to be carried and maintained, at its own expense, such insurances coverage in Exhibit C.

2.5. General Obligations of City

City shall ensure that Operator and its authorized agents, employees or Subcontractors shall have reasonable access to the Site in order to provide scheduled or unscheduled maintenance activities, maintenance of the grounds, emergency services, or to conduct other System Services, in all cases, to the extent that such activities and/or services are within the scope of this Agreement and are provided in accordance with the terms of this Agreement. Except in the case of an emergency, Operator shall give 48 hours prior written notice to the appropriate client site administrator, whose name and contact information shall be provided to Operator, before any entry onto the Site by Operator's employees, agents or contractors.

2.6. Permits

- (a) Subject to Section 2.6(c), Operator shall be responsible, at its sole cost and expense, for procuring, obtaining, maintaining and complying with all Operator Acquired Permits (Exhibit D) required to perform System Services under this Agreement;

- (b) Subject to Section 2.6(c), City shall be responsible for procuring, obtaining, maintaining and complying with all City Acquired Permits (Exhibit D) applicable as of the date hereof. If any new City Acquired Permits shall become required for the operation of the System due to a change in the Applicable Law after the date of this Agreement, City shall obtain such permits in a timely manner and at its sole cost and expense, except where such additional City Acquired Permits arise as a result of any omission, neglect or default of Operator, in which case Operator shall reimburse City for any costs or losses arising as a result of or in connection with procuring, obtaining, maintaining and complying with such City Acquired Permits.
- (c) To the extent that a Party is required to obtain any Applicable Permits, the other Party agrees to cooperate with and assist that Party in obtaining the same and the Party which is required to obtain such Applicable Permits shall reimburse the other Party for its reasonable costs in providing such assistance. Notwithstanding anything in this Agreement to the contrary, Operator shall be required to comply with Applicable Law as in effect on the date of this Agreement at no additional charge to City. Following the date of this Agreement, any costs incurred by Operator in performing its obligations hereunder resulting from changes in Applicable Permit conditions or requirements, or changes in Applicable Law, shall be borne by City except to the extent it does not involve an increase in the scope of System Services.

2.7. Telephone & Data Communication

City shall directly pay any utility or other third party service provider invoices as become due as may be required for Operator's remote access to telephone and/or data communications service available at the Site to the extent necessary for the performance by Operator of System Services under this Agreement. City will be responsible for all monthly service charges related to telephone and data communications services.

2.8. Storage

To the extent Operator has established space on the Site and to the extent that any such use is permitted under Applicable Law, Operator may use such space for storing parts and supplies necessary for the performance of System Services. At Operator's option and upon the written approval of City, additional storage sheds may be installed at the Site at Operator's expense. Operator must seek and obtain building permits and other local permits and approvals required in connection therewith (which shall be designated as Operator Acquired Permits) and City shall reasonably cooperate in obtaining such permits and approvals. Operator shall maintain any space utilized in accordance with this Agreement as if it were part of System Services and shall be required (at its own cost), if requested by City, to remove any storage sheds installed at the Site at the end of the Term.

2.9. Duty to Cooperate

City shall cooperate with Operator in taking all actions reasonably requested by Operator (i) to ensure that parties with whom City has agreements or relationships that are essential to System Services are available and able to perform as contemplated in this Agreement. City shall be directly responsible for all utility costs (water, communication, electricity) of the System except to the extent that such costs arise as a result of the omission, neglect or default of Operator.

3. TERM

3.1. Term

- (a) The term of this Agreement ("Term") includes the period during which System Services are to be provided for the Systems and shall commence when the first System has achieved Final Completion (as defined in the FSA); and expire (i) one hundred twenty (120) months after the last System has achieved Final Completion.
- (b) The Term shall be subject to the provisions of Section 3.2 (Termination).
- (c) Termination of this Agreement shall be without prejudice to Operator's right to receive a proportional amount of the Service Fees that have accrued up to the date of Termination.
- (d) No later than one hundred eighty (180) calendar days prior to the end of the Term, City may request that the Term of this Agreement be extended by an additional period specified in such request. Parties shall negotiate an extension in good faith and in a timely fashion prior to the expiration of the Term, though neither Party shall not be obligated to enter into an extension.

3.2. Termination

- (a) City may terminate this Agreement in the event of any of the following:
 - (i) Operator becomes Insolvent; or
 - (ii) Failure by Operator to perform any of its material obligations under this Agreement, which failure is not remedied within thirty (30) calendar days of written notice of such failure from City to Operator; provided that if such failure can be remedied, and (1) such failure cannot reasonably be remedied within such thirty (30) calendar day period, and (2) Operator commences cure of such failure within such thirty (30) calendar day period and thereafter diligently seeks to remedy such failure, then City shall not be entitled to terminate this Agreement until such time as Operator ceases all reasonable endeavors to cure such failure unless such failure continues for a period of a ninety (90) calendar days from the original written notice from City; or

- (iii) A Force Majeure Event occurs which prevents Operator from providing a material part of System Services for a continuous period of at least one hundred eighty (180) calendar days and City reasonably concludes such prevention is not reasonably likely to be remedied within a further period of one hundred eighty (180) calendar days. Subject to Section 6.5, City shall compensate Operator for all System Services completed prior to the termination date.
- (b) Operator may terminate this Agreement in the event of any of the following:
 - (i) City fails to pay to Operator any amounts due under this Agreement (other than any amounts which are the subject of a good faith dispute) within fifteen (15) calendar days of written notice of such failure from Operator to City, provided that failure to pay shall not be on account of the negligence or willful action or inaction of Operator; or
 - (ii) Material breach by City of any of its obligations under this Agreement, which materially impairs Operator's ability to perform its obligations under this Agreement, and which breach is not remedied within thirty (30) calendar days of written notice of such failure from Operator to City; provided that (1) if such failure can be remedied, and (A) such failure cannot reasonably be remedied within such thirty (30) calendar day period, and (B) City commences cure of such failure within such thirty (30) calendar day period, and thereafter diligently seeks to remedy such failure, then Operator shall not be entitled to terminate this Agreement until such time as City ceases reasonable efforts to cure such failure unless such failure continues for a period of ninety (90) calendar days from the original written notice from Operator; and (2) failure of City to perform its obligations is not on account of the negligence or willful action or inaction of City; or
 - (iii) City becomes Insolvent.
- (c) Parties may terminate this Agreement, either partially or in whole, by mutual written consent. Termination by mutual consent may be initiated by either Party at any time by written means. Upon such termination, City shall compensate Operator for all System Services completed prior to the termination date.
- (d) A notice of termination given pursuant to the foregoing provisions of this Section 3.2 ("Termination Notice") shall specify in reasonable detail the circumstances giving rise to the Termination Notice. Except to the extent

otherwise provided herein, this Agreement shall terminate on the date specified in the Termination Notice, which date shall not be earlier than the date upon which the applicable Party is entitled to effect such termination as provided above.

- (e) Termination of this Agreement shall not affect any rights or obligations as between the Parties which may have accrued prior to such termination or which expressly or by implication are intended to survive termination whether resulting from the event giving rise to termination or otherwise, including, without limitation, Sections 6.7 and 6.8.

4. SERVICE FEES

4.1. Compensation

As compensation for provision of System Services by Operator, City shall pay Operator an annual fee of **twenty-seven thousand, two hundred and ten dollars (\$27,210) inflating at 3.0% annually**, for each year during the Term ("Service Fees"). Service Fees are due within thirty (30) calendar days of Invoice Date. First annual invoice will be submitted to the City upon Final Completion of the Project as defined in the FSA. All subsequent invoices will be submitted annually.

4.2. Late Payments

Overdue payment obligations of City hereunder shall bear interest from the date due until the date paid at a rate per annum equal to the rate published by the Wall Street Journal as the "prime rate" on the date on which such interest begins to accrue plus two percent (2%).

4.3. Disputed Payments

In the event that City disputes any portion of an invoice submitted by Operator, City shall pay the undisputed portion thereof when due. All disputed payments shall be resolved in accordance Section 6.5.

5. OPERATOR'S GUARANTEE

- (a) Operator shall conduct and provide to City an evaluation each calendar year during the effective Term of the Agreement to determine the Cumulative Annual Energy Production from all the Systems combined.
- (b) The Cumulative Annual Energy Production shall be measured for each complete calendar year, January 1 to December 31 ("Annual Production Period"). No evaluation will be performed for the first partial period (Final Completion for all Systems to the first December 31 of the Term) and the final partial period evaluation will be prorated (Jan 1 of the Term to Term expiration).

- (c) The Cumulative Annual Energy Production shall be compared to the Expected Annual Energy Production calculated upon Final completion for all the Systems combined to evaluate the performance of the Systems.
- (d) Operator hereby guarantees to City an energy output of ninety percent (90%) of the Expected Annual Energy Production for the aggregate of the Systems for each Annual Production Period ("Energy Production Guarantee"), subject to the adjustments in Section 5(g), 5(h), 5(i), and 5(j).
- (e) The evaluation shall be conducted in accordance with the procedures provided in Exhibit E.
- (f) If the Systems fail to meet the Energy Production Guarantee, then within ninety (90) calendar days after the failure is identified, the Operator shall pay the City the difference between the Cumulative Annual Energy Production and the Energy Production Guarantee for such period multiplied by the Power Payment (\$0.17/kWh) ("True-Up Refund"). The True-Up Refund shall increase three percent (3%) Annually upon commencement of the Term.
- (g) If the Cumulative Annual Energy Production is more than one hundred five percent (105%) of the Expected Annual Energy Production, then the City shall give a kWh credit to the Operator for every kWh between the measured Cumulative Annual Energy Production and one hundred five percent (105%) of the Expected Annual Energy Production for such Annual Production Period. Operator shall be entitled to apply this credit to any future Annual Production Period at the Operator's sole discretion.
- (h) The Expected Annual Energy Production for the combined Systems shall be reduced accordingly for the period of time any System is not in operation in connection with (a) temporary removal of the System, a movement to an alternate location, or a temporary shutdown of the System or any portion thereof; (b) the occurrence of an event of Force Majeure has temporarily impaired or disabled the operation of any System or any portion thereof; (c) City interferes with the System; (d) vandalism or theft, (e) Utility caused outages, or (f) any manufacturer defects that cause outages. Operator shall provide and justify data verifying the loss of generation using the System Model defined in Exhibit E.
- (i) Operator's Expected Annual Energy Production shall proportionately terminate and be of no further force or effect if any System, or any portion thereof, is subject to a permanent shutdown or an event of Force Majeure occurs, the effect of which to permanently impair or interfere with the operation of the System, or any portion thereof.
- (j) The Parties agree that City shall avoid activities that result in overshadowing or shading of the Systems in a manner that would prevent

Operator from satisfying its Energy Production Guarantee. In the event the Systems, or any portion thereof, is overshadowed or shaded in a manner that prevents Operator from satisfying its Energy Production Guarantee for any reason beyond the control of Operator, City agrees that Operator's Expected Annual Energy Production shall be reduced accordingly. Operator shall provide and justify data verifying the loss of generation using the System Model of the System due to overshadowing or shading.

6. MISCELLANEOUS

6.1. No Partnership

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between or among the Parties or to impose any such obligation or liability upon any Party. No Party shall have any right, power or authority to enter into any contract or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party or Parties.

6.2. Party Representatives

- (a) City Representative. City designates, and Operator agrees to accept, Marisela Garcia, as "City Representative" for all matters relating to City's performance under this Agreement. The actions taken by City Representative regarding such performance shall be City the acts of City and shall be fully binding on City. City may, upon written notice to Operator, change the designated City Representative.
- (b) Operator Representative. Operator designates, and City agrees to accept, John Gajan, as "Operator Representative" for all matters relating to Operator's performance under this Agreement. The actions taken by Operator Representative shall be deemed the acts of Operator. Operator may, upon written notice to City, change the designated Operator Representative.

6.3. Notices and Demands.

Any notice, request, demand or other communication required or permitted under this Agreement, shall be deemed to be properly given by the sender and received by the addressee if made in writing and (a) if personally delivered; (b) three (3) days after deposit in the mail if mailed by certified or registered air mail, post prepaid, with a return receipt requested; or (c) if sent by facsimile with confirmation. Mailed notices and facsimile notices shall be addressed as follows to:

City:

Name: City of Riverbank
Attention: Marisela Garcia
Address: 6707 3rd St., Riverbank, CA 95367

Phone: (209) 869-7101
Facsimile: (209) 869-726
Email: mhgarcia@riverbank.org

With a copy to:

Name: Chruchwell White LLP
Attention: Tom Hallinan
Address: 1414 K Street, 3rd Floor, Sacramento, CA.95814
Email: tom@churchwellwhite.com

Operator:

SitelogIQ Inc.
Attention: John Gajan, Senior VP of Operations
1651 Response Road, Suite 300
Sacramento, CA 95815
Phone: (925) 307-4461
Email: john.gajan@sitelogiq.com

6.4. Fingerprinting.

Unless exempted, Operator and its Subcontractors shall comply with the applicable requirements of Education Code Sections 45125.1 and 45125.2 with respect to fingerprinting of Operator and Subcontractor's employees and representatives who perform Work at the Site.

6.5. Force Majeure Event

- (a) Neither Party shall be considered to be in default of its obligations under this Agreement when and to the extent that performance of such obligations is prevented by any Force Majeure Event which arises after the date of this Agreement.
- (b) If either Party shall rely on the occurrence of a Force Majeure Event as a basis for being excused from the performance of its obligations under this Agreement, then the Party relying on the event or condition shall (i) provide prompt notice to the other Party of the occurrence of the Force Majeure Event, giving an estimation of its expected duration and the probable impact on the performance of its obligations hereunder; (ii) exercise all commercially reasonable efforts to continue to perform its obligations hereunder; (iii) expeditiously take any action within its reasonable control to correct or cure the Force Majeure Event excusing performance; (iv) exercise all commercially reasonable efforts to mitigate or limit damages to the other Party to the extent such action will not adversely affect its own interests; and (v) provide periodic notices to the other Party with respect to its actions and plans for actions in accordance with (ii), (iii) and (iv) above and promptly notify to the other Party of the

cessation of the event or condition giving rise to it being excused from performance.

- (c) In the event that Operator is prevented from providing all or part of System Services as a result of a Force Majeure Event for a period of thirty (30) consecutive days and it is reasonably expected that Operator will not be able to resume full performance of System Services within an additional thirty (30) days, City shall be entitled to require Operator to reduce the scope of System Services commencing as of the date of such notice by City until such time as Operator can demonstrate, to the reasonable satisfaction of City, that Operator is able to resume full performance of System Services. As from the date on which City reduces System Services until the date on which Operator resumes full performance of System Services, the obligation of City to pay the fee pursuant to Section 4 shall be reduced proportionately to take account of the level of System Services that Operator is actually performing.
- (d) Operator shall document any Force Majeure Event and its consequences so that costs which are directly attributable to such Force Majeure Event may be claimed by City from any insurance carried by City.

6.6. Dispute Resolution

- (a) Good faith negotiations. In the event that any question, dispute, difference or claim arises out of or in connection with this Agreement, including any question regarding its existence, validity, performance or termination (a “Dispute”), which either Party has notified to the other, senior management personnel from both Operator and City shall meet and diligently attempt in good faith to resolve the Dispute for a period of thirty (30) days following one Party’s written request to the other Party for such a meeting. If, however, either Party refuses or fails to so meet, or the Dispute is not resolved by negotiation, the provisions of Subsections (b), (c) and (d) of this Section shall apply to the extent applicable to the Dispute.
- (b) Technical Dispute. Technical Disputes shall be resolved by an independent expert. For the purposes of this Agreement, a “Technical Dispute” shall mean a Dispute regarding whether the System conforms to the Industry Standards related to operation and maintenance. All Technical Disputes shall be resolved on an accelerated basis by a nationally recognized professional expert mutually agreed in writing by Operator and City. Parties will share equally in the cost of the independent expert engaged to resolve Technical Disputes.
- (c) Non-Binding Mediation. If the Dispute remains unresolved, a Party may require that a non-binding mediation take place with a mediator mutually chosen by City and Operator. If City and Operator are unable to agree on

a mediator, then either may request that the American Arbitration Association (the “AAA”) to appoint a mediator. The mediator’s fee and expenses shall be paid one-half by City, and one-half by Operator. In any such mediation, representatives of the Parties with authority to resolve the dispute shall meet for at least three hours with mediator. The obligation to mediate shall not be binding upon any Party with respect to (i) requests for preliminary injunctions, temporary restraining orders, specific performance, or other procedures in a court of competent jurisdiction to obtain interim relief deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual Dispute; (ii) actions to collect payments not subject to bona fide Dispute; or (iii) claims involving third parties who have not agreed to participate in the mediation of the Dispute. The provisions of this Section 6.5 shall survive any termination of this Agreement.

- (d) Attorneys’ Fees. The prevailing Party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorneys’ fees expended in connection with such an action from the other Party.

6.7. Indemnification.

The Parties hereto agree to defend, indemnify and hold one another harmless from and against any and all liability, loss, expense, attorneys’ fees, or claims for injury and/or damages arising from or in any way connected to the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys’ fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the indemnifying party, its officers, agents or employees.

6.8. Consequential Damages.

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the City nor Operator, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied Warranty.

6.9. Limit of Liability.

To the maximum extent permitted by law, City agrees to limit Operator’s liability for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys’ fees and costs and expert-witness fees and costs, so that the total aggregate liability of Operator to the City shall not exceed the equivalent to one (1) year Service Fee as calculated for the first twelve (12) months of the Agreement. It is intended that this

limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

6.10. Governing Law.

The formation, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event of any Dispute that is not resolved pursuant to Section 6.5, the Parties hereto agree to submit to the jurisdiction of any court of competent jurisdiction within Stanislaus County, California and shall comply with all requirements necessary to give such court jurisdiction.

6.11. Tax Matters

Notwithstanding anything to the contrary set forth herein or in any other agreement to which the parties hereto are parties or by which they are bound, the obligations of confidentiality contained herein and therein, as they relate to the transactions described in and contemplated by such agreements, shall not apply to the U.S. Federal tax structure or U.S. Federal tax treatment of the System, and each of the parties hereto (and any employee, representative or agent of any party hereto) may disclose to any and all persons without limitation of any kind, the U.S. Federal tax structure and U.S. Federal tax treatment of such transactions. The preceding sentence is intended to cause the System or the interests in them pursuant to the agreements between the Parties not to be treated as having been offered under conditions of confidentiality for purposes of section 1.6011-4(b)(3) (or any successor provision) of the Treasury Regulations promulgated under Section 6011 of the Internal Revenue Code of 1986, as amended, and shall be construed in a manner consistent with such purpose. In addition, each of the Parties acknowledges that it has no proprietary or exclusive rights to the tax structure of the transactions described in and contemplated by the agreements between the Parties or any tax matter or tax idea related to such transactions.

6.12. Successors and Assigns

- (a) Except as set forth in this Agreement, no Party shall be entitled to assign this Agreement or any of its rights or obligations under this Agreement, nor shall it enter into any transaction as a result of which it may transfer, assign, charge or dispose by any title of any of those rights and obligations, without the prior written consent of the other Party, which may be withheld in its sole and absolute discretion; provided that nothing herein shall prohibit City's Membership Interests from being sold to an Affiliate of City, or an entity which has, in whole or in part, common Ownership, directly or indirectly, with the Ownership of City.
- (b) Notwithstanding the foregoing, (i) City shall be entitled to assign its right, title and interest in and to this Agreement (and, in particular, any rights arising in relation to any insurance policy and any other right to collect any amount from Operator) to any lenders by way of security for the performance of obligations to such lenders without the consent of Operator; and (ii) Operator shall be entitled to assign its right, obligation, title and interest in and to this Agreement to any of its Affiliates or in

connection with a merger or acquisition of Operator. Parties shall provide a written notice at least 30 days prior to assigning the rights, title, and interest in and to this Agreement.

6.13. Announcements and Publications.

Operator shall coordinate with City with respect to, and provide advance copies to City for review of, the text of any proposed announcements or publications that include any non-public information concerning the Work prior to the dissemination thereof to the public or to any Person other than Subcontractors or advisors of Operator, in each case, who agree to keep such information confidential. If City delivers written notice to Operator rejecting any such proposed announcement or publication within two (2) Business Days after receiving such advance copies, the Operator shall not make such public announcement or publication; provided, however, that Operator may disseminate or release such information in response to requirements of Governmental Authority.

6.14. No Waiver

No provision of this Agreement shall be considered waived by either Party except when such waiver is made in writing. The failure of either Party to insist, on one or more occasions, upon strict performance of any of the provisions of this Agreement or to take advantage of its rights hereunder or the delay or failure in exercising totally or partially any right or remedy under this Agreement, shall not be construed as a waiver of any such provisions or the relinquishment of any such rights or any other rights for the future, but the same shall continue and remain in full force and effect.

6.15. Validity.

The provisions contained in each section, subsection and clause of this Agreement shall be enforceable independently of each of the others and their validity shall not be affected if any of the others are invalid. If any of those provisions is void but would be valid if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid. The Parties shall, if necessary, negotiate in good faith and make any necessary amendments to ensure the enforceable terms of this Agreement reflect the true intent of the Parties as of the date of execution of this Agreement.

6.16. Priority of Documents.

In the event of conflicting provisions in the Agreement, the provisions shall govern in the following priority: first, duly executed amendments to this Agreement (to the extent not superseded by a subsequent amendment), second, this Agreement, and third, Exhibits.

6.17. Time of Essence.

Time is expressly agreed to be of the essence of this Agreement and each, every and all of the terms, conditions and provisions herein.

6.18. Headings.

The headings in this Agreement are for convenience of reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

6.19. Binding Effect.

This Agreement shall be binding on the Parties hereto and on their respective permitted successors, heirs and assigns.

6.20. Counterparts; Signature Pages.

This Agreement may be executed in counterparts which, taken together, shall constitute a single instrument. Facsimile and other electronically transmitted signature pages shall be effective to bind a Party to this Agreement.

6.21. Complete Agreement.

- (a) This Agreement together with the Exhibits hereto completely and exclusively states the agreement of the Parties regarding its subject matter and its terms govern, all prior proposals, agreements, or other communications between the Parties, oral or written, regarding such subject matter. No verbal, or written agreement nor conversation with any officer or employee of either Party nor any or all prior proposals shall affect or modify any of the terms and conditions of this Agreement. This Agreement shall not be modified except by written amendment signed on behalf of the City and Operator by their duly authorized representatives. Any purported oral amendment to the Agreement shall have no effect.
- (b) Each Party acknowledges that it has not relied on any representation, warranty, collateral contract or other assurance made by or on behalf of any other party at any time before the signature of this Agreement. Each Party waives all rights and remedies which, but for this clause (ii), might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Operation and Maintenance Agreement as of the date first above written.

City:

Operator:

City of Riverbank
Name: Marisela Garcia
Title: Interim City Manager

SitelogIQ, Inc
Name: John Gajan
Title: Senior VP of Operations

**EXHIBIT A
TO
OPERATION AND MAINTENANCE AGREEMENT**

DEFINED TERMS

As used in the attached Agreement, the following terms shall have the meanings set forth below:

Additional Services means any other services not defined in this Agreement which shall be billed at the rates specified in Exhibit F on a time and materials basis.

Affiliate of a specified Person means any Person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, such specified Person. As used in this definition of Affiliate, the term "control" of a specified Person including, with correlative meanings, the terms, "controlled by" and "under common control with," means (a) the Ownership, directly or indirectly, of 50% or more of the equity interest in a Person or (b) the power to direct or cause the direction of the management and policies of a Person, whether through Ownership of voting securities, by contract or otherwise.

Agreement means this Operation and Maintenance Agreement as it may be amended and/or restated from time to time.

Annual Energy Production Evaluation is an analysis which measures and compares the Cumulative Annual Energy Production with the Energy Production Guarantee based on Exhibit E.

Annual Production Period is the period between January 1 and December 31.

Annual Reports has the meaning given in Section 2.2.

Applicable Law shall mean, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, injunction, registration, license, permit, authorization, guideline, governmental approval, consent or requirement of such Governmental Authority, as construed from time to time by any Governmental Authority.

Applicable Permits shall mean, collectively, Operator Acquired Permits and the City Acquired Permits.

Business Day means a day (other than a Saturday or Sunday) on which banks are generally open in California for normal business.

Cumulative Annual Energy Production means the actual AC electrical output in kilowatt-hours (kWh) for the Annual Production Period as measured and recorded by all the Systems revenue meters and adjusted for meter calibration error, if required.

Energy Production Guarantee is the guaranteed energy production output as defined in Section 5(d).

Expected Annual Energy Production means the expected AC electrical output in kilowatt-hours (kWh) for the Annual Production Period as calculated by the System Model that represents the final design of the Systems and adjusted for Annual weather data and degradation.

Force Majeure Event shall mean, when used in connection with the performance of a Party's obligations under this Agreement, any act or event (to the extent not caused by such Party or its agents or employees) which is unforeseeable, or being foreseeable, unavoidable and outside the control of the Party which invokes it, and which renders said Party unable to comply totally or partially with its obligations under this Agreement. In particular, any of the following shall be considered a Force Majeure Event:

(a) war (whether or not war is declared), hostilities, revolution, rebellion, insurrection against any Governmental Authority, riot, terrorism, 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, fires, winds in excess of ninety (90) miles per hour, and objects striking the earth from space (such as meteorites);

(c) acts of sabotage or destruction by a third party (other than any Operator 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;

(d) regional or national strikes, walkouts, lockouts or similar industrial or labor actions or disputes; and

(e) acts of any Governmental Authority that materially restrict or limit a Party's performance under this Agreement, including Operator's access to the Site or its activities at the Site.

Governmental Authority shall mean any national, autonomic, state, regional, province, town, city, or municipal government, whether domestic or foreign, or other administrative, regulatory or judicial body of any of the foregoing.

Industry Standards shall mean those standards of care and diligence normally practiced by small-scale solar engineering, construction and installation firms in performing services of a similar nature in jurisdictions in which System Services will be performed and in accordance with good engineering design practices, Applicable Laws, Applicable Permits, and other standards established for such Work. Industry Standards are not intended to be limited to optimum practice or methods to the exclusion of all others, but rather to be a spectrum of reasonable and prudent practices and methods that must take the conditions specific to any given facility into consideration.

Insolvent means (a) a Party shall file a voluntary petition in bankruptcy or shall be adjudicated as bankrupt or insolvent, or shall file any petition or answer or consent seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under the present or future applicable federal, state or other statute or law relative to bankruptcy, insolvency or other relief for debtors, or shall seek or consent to or acquiesce in the appointment

of any trustee, receiver, conservator or liquidator of such party or of all or any Final part of its properties (the term "acquiesce", as used in this definition, includes the failure to file a petition or motion to vacate or discharge any order, judgment or decree within fifteen (15) days after entry of such order, judgment or decree); (b) a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against a Party seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy act, or any other present or future applicable Federal, state or other statute or law relating to bankruptcy, insolvency or other relief for debtors, and such party shall acquiesce and such decree shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof, or a trustee, receiver, conservator or liquidator of such party shall be appointed with the consent or acquiescence of such party and such appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days, whether or not consecutive; (c) a Party shall admit in writing its inability to pay its debts as they mature; (d) a Party shall give notice to any Governmental Authority of insolvency or pending insolvency, or suspension or pending suspension of operations; or (e) a Party shall make an assignment for the benefit of creditors or take any other similar action for the protection or benefit of creditors.

Installer shall mean the contractor responsible for the procurement, installation, startup, and testing of the System under separate contract with the City.

Manufacturer Warranty shall mean all warranties provided by the equipment manufacturers and assigned to City under the FSA..

O&M Manual shall mean the set of System operational and maintenance documents provided by the Installer to the City and by the City to the Operator for the purpose of instruction in the operation and maintenance needs of the System and its components.

Operator has the meaning given in the preamble to this Agreement.

Operator Acquired Permits shall mean those permits set forth in Exhibit D hereto.

Operator Representative shall mean the representative of Operator appointed pursuant to Section 6.2(b).

City has the meaning given in the preamble of this Agreement.

City Acquired Permits shall mean those permits set forth in Exhibit D hereto.

City Representative shall mean the representative of Operator appointed pursuant to Section 6.2(a).

Parties means each of Operator and City.

Party means either Operator or City.

Permits shall mean, collectively, Operator Acquired Permits and the City Acquired Permits.

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

Power Payment shall have the meaning set forth in Section 5.

Site has the meaning given in the Recitals of this Agreement.

Subcontractor means any person to whom Operator subcontracts any of its obligations under this Agreement pursuant to a Subcontract, including the Suppliers and any person to whom such obligations are further subcontracted of any tier.

Final Completion shall have the meaning defined in the Facility Solutions Agreement between Operator and City.

System has the meaning set forth in the Recitals.

System Services means, collectively, the services set forth in Exhibit B.

Technical Dispute has the meaning given in Section 6.6(b).

Term has the meaning given in Section 3.1(a).

Termination Notice has the meaning given in Section 3.2(c).

True-Up Refund has the meaning given in Section 5(f).

True-Up Fee has the meaning given in Section 5(g).

Warranty means the Warranty Requirements set forth in the California Public Utilities Commission California Solar Initiative Program Handbook dated December 2011 (Section 2.4 – Warranty Requirements).

EXHIBIT B
TO
OPERATION AND MAINTENANCE AGREEMENT
SYSTEM SERVICES

Annual Inspection Services

Complete inspection, system maintenance, and recommissioning services in each year of this agreement term as detailed below. Report inspection finding, required repairs, and repair recommendations, including estimated costs for each maintenance visit. As part of our system maintenance, the following services will be completed and reported to the City during the Annual report period.

a) Visual Inspection

- a. Visually inspect structures, arrays, and enclosures for excessive wear, damage, defects, rust/corrosion, etc.
- b. Verify new and/or existing shade concerns for the photovoltaic array.
- c. Verify module cleanliness and/or soiling issues; perform washing if requested by the City
- d. Verify that all signage and placards are firmly attached and legible.
- e. Verify condition of all wall & pad mounted switchgear, meters and inverters for corrosion and security of attachment to wall/structure/pad, etc. Note any new access issues.
- f. Verify condition of ac and dc disconnect(s).
- g. Confirm that the System is online and that the output is at the expected level.
- h. Confirm that the monitoring system is in service and functioning properly.

b) Photo Documentation

- a. Take digital photos of all major system components
- b. Submit digital images along with checklist and other documentation following visit.

c) Array – Structure & Modules

- a. Complete inspection of array.
- b. Inspect and tighten structure ground bonding straps/fasteners.
- c. Verify secure module attachment by random torque testing or visual test.
- d. Verify condition of racking hardware connections, splices, etc.
- e. Verify condition of inter-module array wiring for aging and corrosion.
- f. Inspect visible random sampling of wiring connections.
- g. Inspect visible conduit system.

d) Electrical Connection – Inverters & Combiner Box

- a. Verify condition of inverters.
- b. Note condition of all circuit boards and electrical components.
- c. Check Voc & Isc of all strings (if required).
- d. Verify that all manufacturer updates and service bulletins have been performed.
- e. Coordinate inverter manufacturer service, if necessary.

- f. Perform all electrical connection torque tests.
- g. Inspect and clean heatsink, if applicable.
- h. Inspect and clean inverter exhaust fan and vents.
- i. Inspect and tighten connectors and lugs (inverter, transformer, disconnects).
- j. Oil and lubricate disconnects.
- k. Check all fuses for cleared fuse and replace any cleared fuses.
- l. Verify condition of wire transition junction boxes for weatherproofing, corrosion, and security of internal wiring connections.
- m. Verify condition of all DC and AC conduits and connections.
- n. Verify interior and exterior condition of DC combiner box(es).

e) Data Acquisition System (DAS)

- a. Clean all instrumentation and sensors and lubricate moving parts.
- b. Inspect and tighten connections.
- c. Check input signals.
- d. Confirm that pyranometer/sensor is aligned with the plane of the PV array.
- e. Log kWh readings from Inverters to meters, and compare data in a 24-hour increment to monitoring system to verify proper calibration of meters and monitoring system.
- f. Check calibration of the weather station instruments, as necessary.

System Services Not Included

- a. Weed abatement around array and immediate vicinity.
- b. Repair of fencing.
- c. Repair, replacement, or cleaning due to vandalism, theft, or accidental damage.
- d. Repair or replacement of light bulbs or lighting fixtures.
- e. Repairs not explicitly defined in this Exhibit B.
- f. Any services not included in this Agreement.
- g. Repairs not stated in the Agreement or in the FSA (Contractor Warranty) are considered Additional Services and shall be billed on a time and materials basis per the rates in Exhibit E.
- h. Panel washing (Operator will advise City on panel washing frequency as needed maintain performance – Panel washing costs provided in Exhibit F)

**EXHIBIT C
TO
OPERATION AND MAINTENANCE AGREEMENT

INSURANCE**

Operator Insurance Requirements

1. Required Coverages. Operator shall carry and maintain with carriers or self-insurance, as a minimum, the following insurance coverages:
 - i. Workers Compensation Insurance and Employers Liability. In accordance with the laws of the state of where work may be done with limits for employers liability in the minimum amount of one million dollars (\$1,000,000) for each occurrence and one million dollars (\$1,000,000) for each occurrence of disease on a per employee basis;
 - ii. Commercial General Liability. One million dollars (\$1,000,000) per occurrence/two million dollars (\$2,000,000) in the aggregate for bodily injury, personal injury and property damage, products and completed operations;
 - iii. Commercial Automobile Liability, Any Auto. One million dollars (\$1,000,000) per accident including owned, non-owned, and hired automobiles.
 - iv. Excess coverage of four million dollars (\$4,000,000) per occurrence and aggregate, or any other equivalent, available insurance coverage of the Operator.
2. Policy Endorsements. Insurance coverages required to be maintained by Operator under this Agreement shall:
 - i. provide a severability of interests or cross liability clause for Commercial General Liability Insurance;
 - ii. except in the case of worker's compensation insurance and other statutory insurances where it would be inappropriate, name City and others as may be reasonably required by City, as additional insured's; and to the extent permissible in accordance with the policy, include a waiver of subrogation by the insurers in favor of City and each of its respective assignees, Affiliates, agents, officers, directors, employees, insurers or policy issuers and a waiver of any right of the insurers to any set-off or counterclaim, whether by endorsement or otherwise, in respect of any type of liability of any of the Persons insured under any such policies.
3. Certificates. Operator shall throughout the Agreement Term provide certificate(s) and/or memoranda of insurance evidencing the coverage's specified in this Attachment C to City upon City's reasonable request.

City Insurance Requirements

1. Required Coverages. City shall carry and maintain with carriers or self insurance, as a minimum, the following insurance coverages:
 - i. Workers Compensation Insurance and Employers Liability. In accordance with the laws of the state of where work may be done with limits for employers liability in the minimum amount of one million dollars (\$1,000,000) for each occurrence and one million dollars (\$1,000,000) for each occurrence of disease on a per employee basis;
 - ii. Commercial General Liability. One million dollars (\$1,000,000) per occurrence/two million dollars (\$2,000,000) in the aggregate for bodily injury, personal injury and property damage, products and completed operations;
 - iii. Commercial Automobile Liability, Any Auto. One million dollars (\$1,000,000) per accident including owned, non-owned, and hired automobiles.
 - iv. Property Risk Insurance. Amount equal to the replacement value of the Systems for loss or damage to the System by fire and lightning, vandalism, theft, malicious mischief, and extended coverage endorsement for all risks of physical loss.
 - v. Excess coverage of four million (\$4,000,000) per occurrence and aggregate, or any other equivalent, available insurance coverage of the Operator.
2. Policy Endorsements. Insurance coverages required to be maintained by City under this Agreement shall provide a severability of interests or cross liability clause for Commercial General Liability Insurance;
3. Certificates. City shall throughout the Agreement Term provide certificate(s) and/or memoranda of insurance evidencing the coverage's specified in this Attachment C to Operator upon Operator's reasonable request.

**EXHIBIT D
TO
OPERATION AND MAINTENANCE AGREEMENT**

PERMITS

Operator Required Permits

No Operating Permits Required

City Required Permits

No Operating Permits Required

**EXHIBIT E
TO
OPERATION AND MAINTENANCE AGREEMENT**

Annual Energy Production Evaluation

Cumulative Annual Energy Production Measurement

The Cumulative Annual Energy Production is the actual AC electrical output in kilowatt-hours (kWh) for the Annual Production Period as measured and recorded by all of the Systems revenue meter(s) and adjusted for meter calibration error, if required.

Expected Annual Energy Production Calculation

At the completion of each Annual Production Period, the Operator shall update the software model of the Systems to calculate the Expected Annual Energy Production of the Systems for that period for comparison with the Cumulative Annual Energy Production of the same period. Operator shall use the final software model developed by the Installer as part of the FSA ("System Model").

The model shall use the actual meteorological data from the System weather station at the Site. The calibration of the weather station instruments shall be checked as recommended by the manufacturer by a qualified testing agency using test instruments traceable to recognized national calibration standards. A report of the instrument calibration status shall be prepared by the testing agency detailing any deviation in meter values from the standard outside of the meter manufacturer's acceptable range. Data affected by instruments found out of calibration may be reviewed and adjusted by mutual agreement between the City and Operator.

The input values used in the System Model shall include the following parameters based on the final installed System:

- Albedo
- Module orientation
- Shading
- Equipment models and configuration
- Module thermal parameters
- Ohmic losses
- Module quality and mismatch losses
- Soiling losses, adjusted for calendar month and washing frequency
- IAM losses

Hidden parameters and preferences within the model shall remain at default values unless noted and justified. All input parameter values and assumptions shall be provided with the model for review, and shall remain consistent from year to year.

The following factors shall be adjusted in the System Model each year of operation:

- Actual weather data for the Annual Production Period

- Manufacturer Module degradation factors (Manufacturer Module Power Output Warranty)
- Adjustments per Section 5(g), 5(h), 5(i), and 5(j)

The final model calculation shall detail the Expected Annual Energy Production on an hourly basis (8760 hours per year) in addition to a total output value in kilowatt-hours (kWh).

Annual Energy Production Evaluation

The measured Cumulative Annual Energy Production value for the System shall be compared with the calculated Expected Annual Energy Production value and evaluated as described in Section 5, Operator's Guarantee, of this Agreement.

A. Modeled Annual Energy Production Calculation

The temperature-derate model used by Operator to determine the modeled level of production a system. The system losses, DC system size, CEC inverter efficiency, and the panel temperature coefficient is the accumulation of losses, degradation rates, and efficiencies which are evaluated on an annual basis. These losses are initially calculated upon project commissioning and will only be re-calculated if components fail, degrade, or are changed. Cell temperature and POA irradiance are real-time calculations based on measurements from a reference cell.

Our system model is a combination of system specifications, estimated soiling, shade expectations, degradation expectations. This model is calculated by using the single line as-built plans and a production summary report from HelioScope and are re-evaluated for accuracy on an Annual basis. The Modeled Energy equation is:

$$\text{Modeled Energy}(kW AC) = \sigma \times (1 - S) \times \frac{I}{1000} \times P \times (1 + \gamma \times (T - 25))$$

Where:

T = Cell Temperature

S = System Model Loss

I = POA Irradiance

P = DC System Size

σ = CEC Inverter Efficiency

γ = Temperature Coefficient of the Panel

This modeled production will be compared to actual measured production to calculate operational performance of the system. Unplanned system outages and soiling above expectations will be evaluated and included in system losses.

**EXHIBIT F
TO
OPERATION AND MAINTENANCE AGREEMENT**

RATES FOR ADDITIONAL SERVICES

2022 RATE SCHEDULE

<u>Maintenance Services</u>	
<i>Lead Technician</i>	<i>\$150</i>
<i>Electrician</i>	<i>\$150</i>
<i>Laborer</i>	<i>\$85</i>
<u>Professional and Technical Services</u>	
<i>Project Manager/Engineer</i>	<i>\$180</i>
<i>Project Assistant</i>	<i>\$85</i>
<u>Supplemental Services</u>	
<i>Module Cleaning</i>	<i>\$5/kW-dc</i>

Other Costs

1. *Cost per truck roll for services above and beyond this agreement to be invoiced at time and materials (T&M) rate listed above and dispatched per City's request.*
2. *Daily/Saturday Overtime will be billed at 1.5 times the hourly rates. Sunday/Holiday Overtime will be billed at 2 times the rates.*
3. *Direct Expenses (non-equipment) will be billed at cost plus 10%.*
4. *Mileage will be billed at the published IRS mileage rates in effect.*
5. *Travel time to and from City sites will be billed at hourly rates shown above.*
6. *Federal published per diem rates (GSA) will apply if applicable.*
7. *Subcontractors will be billed at invoice price plus 15%.*
8. *Rates will escalate at 3% per calendar year.*

**EXHIBIT G
TO
OPERATION AND MAINTENANCE AGREEMENT**

ENERGY REPORTING AND MANAGEMENT SERVICES

An energy specialist will provide the following services:

ENERGY MANAGEMENT

Responsibility is to improve energy efficiency by evaluating our client's energy use and help craft energy policies, strategies, programs, and support energy measures.

- Evaluate the Client's energy use and offer assistance for energy saving policies, strategies, and programs.
- Quarterly utility bill analysis and energy monitoring report.
- Annual utility rate analysis for all electric service accounts to ensure and optimize utility cost.

QUARTERLY REPORT CREATION AND UPDATE

- Develop quarterly utility summary report in coordination with client's needs
- Update and deliver quarterly report to client with Energy Engineer review of trends, interval data usage, and anomalies.
- Develop and create an external accessible dashboard for communication with key stakeholders, staff, or customers about projects and performance.

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 10.1

SECTION 10: NEW BUSINESS

Meeting Date: February 8, 2022

Subject: Resolution Authorizing an Additional Appropriation of \$100,000 for the Construction of the Public Works Administration Building from the Water and Sewer Operating Funds

From: Marisela H. Garcia, Interim City Manager

Submitted by: Michael Riddell, Public Works Director

RECOMMENDATION

It is recommended that the City Council consider adopting a resolution which will allocate an additional \$100,000 for the Public Works Administration Building 50% from the Water Operating Fund and 50% from the Sewer Operating Fund.

SUMMARY

Due to rising construction costs staff is requesting an additional appropriation of \$100,000 for the Public Works Administration Building for a total budget of \$500,000 which is equally shared by the Sewer Operating Fund and the Water Operating Fund.

BACKGROUND

In July 2020 the City was able to purchase property adjacent to the Public Works Corporation Yard in order to expand the footprint of the Administration Building. Through the adoption of the Fiscal Year 2021-22 Annual Budget, the City Council allocated \$400,000 in funding from both the Water and Sewer Operating Funds towards the construction of a new Public Works Administration Building. Since this time, staff has been working on a design of this new building to be constructed by Pacific Mobile Structures.

Due to rising construction costs, the final quote for the desired building was above the allocated amount and came in at \$467,762.67. This quote expires on 2/15/2022 which is prior to the Council's consideration of the Mid-Year Budget. In order to avoid additional costs staff is requesting an additional amount of \$100,000 in order to cover the additional costs as well as to cover any potential contingency costs which may arise. This cost will be equally shared by the Sewer Operating Fund 106 and the Water Operating Fund 114.

STRATEGIC PLAN

While not directly related to the City Council's Strategic Plan, this report is in line with the City Council's desire to ensure that our City buildings can adequately accommodate current and future staff.

FINANCIAL IMPACT

\$100,000 to be allocated as follows:

1. Sewer Operating Fund Reserve (106): \$50,000
2. Water Operating Fund Reserve (114): \$50,000

ATTACHMENT

1. Resolution
2. Project Quote

CITY OF RIVERBANK

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK,
CALIFORNIA, AUTHORIZING AN ADDITIONAL APPROPRIATION OF \$100,000 FOR
THE CONSTRUCTION OF THE PUBLIC WORKS ADMINISTRATION BUILDING
FROM THE WATER AND SEWER OPERATING FUNDS**

WHEREAS, in 2019 the City underwent a spatial analysis study which identified a lack of adequate space to house the City's current and future employees; and

WHEREAS, in 2020 the City was able to purchase additional land adjacent to the Public Works Corporation Yard in order to expand the Public Works Administration Building; and

WHEREAS, as part of the annual budget, the City Council allocated \$400,000 in funding towards the construction of a new Public Works Administration Building; and

WHEREAS, due to rising construction costs the Proposed Quotation for the desired building was over the allocated amount; and

WHEREAS, in order to avoid additional construction costs an additional allocation of \$100,000 is being requested in order to complete the construction of the Public Works Administration Building; and

WHEREAS, the additional allocated will be funded equally by the Sewer Operating Fund Reserve 106 and Water Operating Fund Reserve 114.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Riverbank hereby authorizes the additional appropriation of \$100,000 to be funded 50% by the Sewer Operating Fund 106 and 50% by the Water Operating Fund 114.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 8th day of February, 2022; motioned by Councilmember , seconded by Councilmember , and upon roll call was carried by the following City Council vote of :

AYES:

NAYS:

ABSENT:

ABSTAINED:

ATTEST:

APPROVED:

Kathy L. Teixeira
Interim City Clerk

Richard D. O'Brien
Mayor

Attachment:

Project quotation #Q028924



Date: 1/14/22

Tom Ruth
Direct: 209.846.7275

Company: City of Riverbank
6617 3RD ST
RIVERBANK, CA 95367-2303
Laura Graybill 209-863-7155

Site: Riverbank - Public Works
3012 HIGH ST
RIVERBANK, CA 95367-2027
Laura Graybill 209-863-7155

Project Description: New 48x60 Modular Building (see below)

Item No.	Description	Qty	Price	Tax	Total
13-100	TIPS: 12x60 Left-hand Floor (std. multi-plex left-floor)	1	\$75,157.13	\$5,918.62	\$81,075.75
13-100	TIPS: 12x60 Right-hand Floor (std. multi-plex right-floor)	1	\$73,356.38	\$5,776.81	\$79,133.19
13-100	TIPS: 12x60 Center Floor (std. multi-plex center-floor)	2	\$65,959.93	\$10,388.69	\$142,308.55
13-100	TIPS: Interior HC Door (Each) 3068 woodgrain finish	10	\$458.93	\$361.40	\$4,950.70
13-100	TIPS: HPL base cabinet and top (linear foot)	9	\$397.19	\$281.51	\$3,856.22
13-100	TIPS: HPL wall cabinet (linear foot)	9	\$310.76	\$220.25	\$3,017.09
13-100	TIPS: Add sink with water heater inside base cabinet	1	\$1,289.34	\$101.53	\$1,390.87
13-100	TIPS: 110V Duplex outlet	39	\$132.74	\$407.68	\$5,584.54
13-100	TIPS: 110V Dedicated outlet	4	\$458.93	\$144.56	\$1,980.28
13-100	TIPS: Empty data box with conduit	16	\$74.08	\$93.34	\$1,278.62
13-100	RS Means: building mods (buildout, restrooms, etc...)	1	\$53,560.88	\$4,217.92	\$57,778.80
01-940	TIPS: Transportation (Mfg to site w/ pilots & permits)	4	\$5,083.26	\$1,601.22	\$21,934.26
02-130	Steel Pier Foundation - Included	94	\$0.00	\$0.00	\$0.00
02-140	TIPS: Block & Level (Approx. 36" above grade)	1	\$11,268.58	\$0.00	\$11,268.58
02-140	TIPS: Tie-down - Provide & Install (all surfaces except concrete)	36	\$170.81	\$0.00	\$6,149.16
02-140	RS Means: retaining wall for pit (excavation not included)	1	\$40,725.06	\$0.00	\$40,725.06
01-440	Engineering - Building/Foundation - Included	1	\$0.00	\$0.00	\$0.00
01-160	Performance & Payment Bonds	1	\$5,331.00	\$0.00	\$5,331.00

Quote valid until 2/15/22

Sub Total \$438,249.14
Sales Tax \$29,513.53
Total Due **\$467,762.67**

New Building

Warranty:

- (2) Year Pacific Mobile Warranty, (5) Year HVAC Limited Warranty

Payment Terms:

- Invoices due upon receipt.
- 35% Due upon signed contract, payment must be received to reserve production time.
- 55% Due when completed at factory, payment must be received prior to delivery.
- 8% Due upon initial punch list walk-through.
- 2% Due upon final completion.

Authorized Representative Signature / Date

THIS AGREEMENT CONTAINS THE ENTIRE UNDERSTANDING BETWEEN BUYER AND SELLER AND NO OTHER REPRESENTATION OR INDUCEMENT, VERBAL OR WRITTEN, HAS BEEN MADE WHICH IS NOT CONTAINED IN THIS AGREEMENT, Buyer and Seller certify that the additional terms and conditions printed on the other side of this agreement are agreed to as a part of this agreement, the same as if printed above the signatures.

Project quotation #Q028924



Date: 1/14/22

Tom Ruth
Direct: 209.846.7275

Company: City of Riverbank
6617 3RD ST
RIVERBANK, CA 95367-2303
Laura Graybill 209-863-7155

Site: Riverbank - Public Works
3012 HIGH ST
RIVERBANK, CA 95367-2027
Laura Graybill 209-863-7155

Project Description: New 48x60 Modular Building

NOT included/exclusions

Floors sloping to drains.
Title 24 calculations.
All local fire and health code requirements.
Fire sprinkler system (design, materials, installation, and warranty).
Fire rating of any interior or exterior walls, roof, floor, etc. unless otherwise noted.
(It is assumed that the minimum required distances from any and all structures and assumed or common property lines are met. If fire rating is required, additional charges will be incurred.)
Connection to site utilities (electrical, water, sewer, etc.).
Horizontal sewer lines under modular building.
Gutters, downspouts, window security bars, interior window coverings, awnings or plumbing tree.
Site required restrooms or dumpsters.
Signage except as otherwise noted in the spec sheets.
All telephone/data/alarm/and any other low voltage wiring, design, devices, and installation.
Plumbing manifold assembly, parts & installation (note: water closet flange is not connected to san-T drain or vent). Plumbing line chlorination and/or sterilization.
All furniture, workstations, and cubicles - BUT can be provided at additional cost..
Obtaining required County/City building permits, fees, and inspections.
Site improvements (fence, landscape, sidewalk, parking, lighting, etc.).
Site survey or soils testing.
Site security.
Proper site drainage or SWPPP plan.
All costs to skate manually, crane, or forklift of the building into position.
Preparation of modular building pad.
Excavation for pit; approach for buildings to back into pit (scope falls under City of Riverbank)
Backfill of dirt after building is set inside of pit
Removal of dirt from site
Refer to attached floor plan & elevations for further clarification.

Assumptions/Clarifications

Quote valid until 1/28/2022.

Building location is assumed to be level; minimum of 1500 psf required, and no more than +/- 6" grade discrepancy. Assume access on all sides of the building set location.
Customer site must be dry and accessible by normal truck delivery.
Any special site required escorts, safety meetings, or other site related down-time would be an additional cost.
Extra trip charges may incur if customer decides to stop work on site.
Pit to be dug by City of Riverbank to required specifications (specifications provided by Pacific Mobile)
Retaining wall installation to happen prior to electrical or plumbing manifold
If retaining wall needs to be installed after electrical or plumbing, additional cost will apply for custom cuts

Project quotation #Q028924



Date: 1/14/22

Tom Ruth
Direct: 209.846.7275

Company: City of Riverbank
6617 3RD ST
RIVERBANK, CA 95367-2303
Laura Graybill 209-863-7155

Site: Riverbank - Public Works
3012 HIGH ST
RIVERBANK, CA 95367-2027
Laura Graybill 209-863-7155

Project Description: New 48x60 Modular Building

CODE COMPLIANCE AND APPLICABLE STANDARDS:

California:

2019 Building Administrative Code (CAC), Part 1, Title 24 C.C.R.
2019 California Building Code (CBC), Volumes 1 & 2, Part 2, Title 24 C.C.R.
(2018 International Building Code Volumes 1-2 & 2016 California Amendments)
2019 California Electrical Code (CEC), Part 3, Title 24 C.C.R.
(2017 National Electric Code & 2016 California Amendments) 2019 California Mechanical Code
(CMC), Part 4, Title 24 C.C.R.
(2018 IAPMO Uniform Mechanical Code & 2016 California Amendments)
2019 California Plumbing Code (CPC), Part 5, Title 24 C.C.R.
(2018 IAPMO Uniform Plumbing Code & 2019 California Amendments)
2019 California Energy Code, Part 6, Title 24 C.C.R.
2019 California Fire Code, Part 9, Title 24 C.C.R.
(2018 International Fire Code & 2019 California Amendments)
2019 California Green Building Standards Code, Part 11, Title 24 C.C.R.
2019 California Referenced Standards Code, Part 12, Title 24 C.C.R.
NFPA 13 Automatic Sprinkler Systems 2016 Edition (where applicable)
NFPA 72 National Fire Alarm Code 2016 Edition (where applicable). (Note: See UL Standard 1971
For "Visual Devices")

IF YOU DO NOT SEE A SPECIFIED ITEM WRITTEN IN THE PROPOSAL, IT IS NOT INCLUDED.

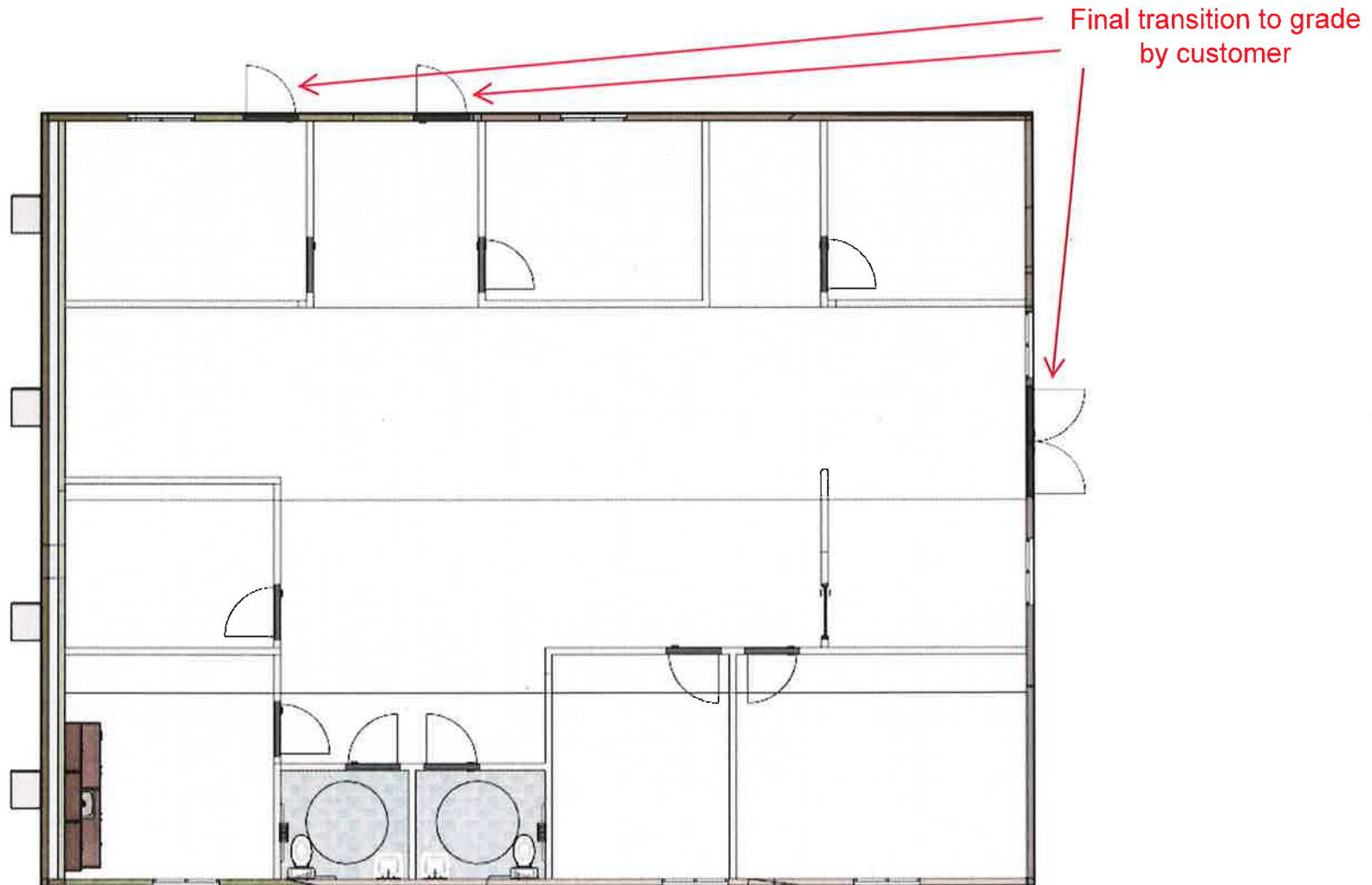
NO PROVISIONS FOR EXTERIOR FIRE RATING ARE INCLUDED.
PACIFIC MOBILE ASSUMES THE MINIMUM REQUIRED DISTANCE FROM ANY
OTHER COMMON OR ASSUMED PROPERTY LINES.

PACIFIC MOBILE TAKES EXCEPTION TO LIQUIDATED DAMAGES, DAVIS
BACON, PREVAILING WAGES-INCLUSIVE OF ANY SERVICE WORK THAT
WOULD BE REQUIRED. IF SPECIALTY TRAINING OR NON STANDARD
REQUIREMENTS ARE NECESSARY FOR SITE ACCESS THEY MUST BE
DISCLOSED WITH BID REQUEST. IF THIS IS NOT DISCLOSED WITH BID
REQUEST AND THESE CONDITIONS APPLY THE CUSTOMER WILL BE RESPONSIBLE
FOR ANY COSTS INCURRED.

CUSTOM - 48x60 MOBILE OFFICE, PUBLIC WORKS

PACIFIC
MOBILE STRUCTURES

This drawing is the property of Pacific Mobile Structures, Inc. and may not be duplicated without approval. Actual features may vary due to available inventory.



CUSTOM - 48x60 MOBILE OFFICE, PUBLIC WORKS

PACIFIC
MOBILE STRUCTURES

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WWW.PACIFICMOBILE.COM

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 10.2

SECTION 10: NEW BUSINESS

Meeting Date: February 8, 2022

Subject: A **Resolution** to Award a Contract for Preparation of the Environmental Package for the Regional Recycled Water Project – Phase I to Ascent Environmental, Inc., and Authorize a Budget Appropriation in the amount of \$216,000 from the Wastewater Enterprise Fund for Said Contract

From: Maricela Garcia, Interim City Manager

Submitted by: Michael Riddell, Public Works Director

RECOMMENDATION

It is recommended that the City Council award the contract for preparation of the Environmental Package for the State Water Resources Control Board Clean Water State Revolving Fund Financial Assistance application for the Riverbank Regional Recycled Water Project – Phase I to Ascent Environmental, Inc., authorize the City Manager to execute a contract with said firm in the amount of \$196,400, authorize a contingency amount of \$19,600 (approximately 10%), and authorize a budget appropriation of \$216,000 from the Wastewater Enterprise Fund for said contract.

SUMMARY

Upon completion of the City of Riverbank Recycled Water Production Study and Recycled Water Use Study reports and as directed by the City Council, applications for financial assistance for proceeding with the Phase I Regional Recycled Water Project (RRRWP) have been prepared and submitted to the State Water Resources Control Board under the Clean Water State Revolving Fund (CWSRF). Additional application documentation has been submitted to the United States Bureau of Reclamation (USBR) for consideration of funding under the Title XVI and funding from other sources will be identified and pursued. To complete the CWSRF financial assistance application for project implementation, preparation of an Environmental Package, which includes environmental studies and reports, preparation of documentation as required by the California Environmental Quality Act (CEQA) and certain Federal cross-cutter documents as required by the CWSRF, is necessary. Following an open Request for Proposals (RFP) process for preparation of these necessary Environmental Package documents and a review committee's selection of Ascent Environmental, Inc. based on qualifications and experience, tonight's request is to proceed with awarding the contract to Ascent Environmental, Inc. for preparation of the required environmental studies and CWRSF

Environmental Package documents. Because applications for additional funding sources are currently being pursued, it is further recommended that the City Council authorize a 10% budget contingency to allow the City Manager to negotiate additional environmental study scope or documents to support such additional funding applications.

BACKGROUND

The City has completed a feasibility level study of expanding the Wastewater Treatment Plant (WWTP) to produce recycled water as well as provide for capacity to meet expected wastewater treatment needs of the City for the next 30 years. The feasibility study also evaluated treatment process improvements to provide for nitrogen control and improved effluent quality for continued discharge to land of a portion of the flow, not otherwise delivered to recycled water users. Based on input and direction from the City Council, a Phase I program of implementation of the alternatives evaluated in the feasibility study is being developed for implementation, including preparation of financial assistance applications to multiple funding sources. The Phase I recommended program of the RRRWP is envisioned as a program for the production and use of recycled water in south-eastern San Joaquin County. Wastewater generated within the City is the proposed source of recycled water in this proposed project and has the potential to capture and reuse wastewater to supplement fresh water sources, including in-lieu recharge of groundwater. The proposed project includes improvements to the City of Riverbank WWTP, and recycled water distribution facilities within the vicinity of the WWTP. It is envisioned that this water will be used to offset water used for agricultural needs. The Phase I project is proposed to include the following facilities improvements:

1. Facilities improvements at the WWTP to provide the level of treatment required to produce recycled water from wastewater originating at the City of Riverbank, including upgrades to the secondary treatment process and addition of tertiary treatment and disinfection; modifications of existing percolation ponds and/or construction of new seasonal storage ponds; and construction of a new distribution pump station. Improvements to the secondary treatment process include biological nutrient removal to reduce effluent nitrogen for continued use of the on-site percolation ponds.
2. Recycled water distribution facilities for agricultural irrigation using recycled water in the vicinity of the City of Riverbank. The distribution of recycled water is expected to be phased with initial phase delivering recycled water directly to one or more individual agricultural users in close proximity to the Riverbank WWTP. A later phase delivering recycled water to the South San Joaquin Irrigation District Lower Lateral #2 may be completed once additional agreements are in place.

It is the City's goal to have a complete application for financial assistance, including the Environmental Package, before December 31, 2022.

The projected total capital cost (including allowance for engineering, environmental, permitting, and administration) of the recommended improvements are summarized below.

Facility Component	Projected Total Capital Cost
Headworks and Secondary Improvements to WWTP	\$39,740,000
Recycled Water Filtration and Disinfection	\$8,800,000
Phase I Recycled Water Storage, Pumping, and Distribution	\$16,500,000
Total	\$65,040,000

Application was made to the State Water Resources Control Board for financial assistance under the CWSRF program. The submitted application included the general application form and project information as well as the priority scoring sheet. To complete the application, and allow for a project scoring that would result in project funding in 2023, the following additional detailed information must be prepared and submitted no later than December 31, 2022:

Technical Package, to include: review of water rights, water conservation measures, the Project Report (the feasibility studies prepared in 2021), updated project details (as needed for preparation of the other application packages) and worksheets.

Environmental Package, (which is the scope of services for this item) to include CEQA documentation (requiring additional project engineering definition), project evaluation under federal environmental requirements (additional alternatives analysis and archeological/historic preservation review, clean air act review, and biological resources and water quality/wetland resources review.

Financial Security Package, to include City demographic information, funding sources, projected annual operation and maintenance costs, revenue source determinations and associated rate study and rate adoption, and additional financial management policies and projections.

Concurrent development of the Technical Package (to include a more detailed preliminary design to support both environmental and financial analysis and review), Environmental Package, and Financial Security Package is planned to allow the City to have a complete CWSRF financial assistance package by December 31, 2022. This will allow consideration of project finding, including design completion, in 2023.

At the same time the CWSRF detailed application information is being developed, additional information may be prepared and submitted to the USBR for consideration of funding under the Title XVI program and/or to the United States Environmental Protection Agency under the WIFIA Program (Water Infrastructure Finance and Innovation Act) and other applicable funding programs that the RRRWP may be eligible under.

In order to solicit proposals for preparation of the Environmental Package, as RFP was prepared and published on the City's website December 16, 2021. Several environmental consultants known to City staff to prepare these types of documents were also directly contacted to provide notice of availability of the RFP. The RFP requested that proposals be submitted to the City by no later than 3:00 pm on January 19, 2022. Two proposals were received before the date and time from:

1. Ascent Environmental, Inc.
2. ECorp Consulting, Inc.

A committee of City staff reviewed the proposals based on the proposing firm's understanding of the project, experience with related work, firm's project manager experience and qualifications, overall team's experience and qualifications, and proposed schedule and ability to complete the project within the timeframe requested. Based on the committee's review of consultant qualifications, Ascent Environmental, Inc. was selected for negotiation of the final scope and fee.

STRATEGIC PLAN

The RRRWP and this action addresses the following August 10, 2021 Strategic Plan Goals:

Goal 1.3 Continue to seek local, regional and federal grant opportunities to support City projects, programs and initiatives.

Goal 6, Promoting Sustainable Development, by providing for facilities that sustainably support the City's thoughtful and careful planning.

FINANCIAL IMPACT

Cost of this element of the project is \$196,400, with the potential to add an additional \$19,600 supporting pursuit of additional funding sources, to be appropriated from the City's Wastewater Enterprise Fund 106.

ATTACHMENT

- 1) Resolution
- 2) Ascent Environmental, Inc. Proposal
- 3) Ascent Environmental, Inc. Consultant Agreement - DRAFT

CITY OF RIVERBANK

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, TO AWARD A CONTRACT FOR THE ENVIRONMENTAL PACKAGE FOR THE REGIONAL RECYCLED WATER PROJECT – PHASE I TO ASCENT ENVIRONMENTAL, INC., AUTHORIZE THE CITY MANAGER TO EXECUTE A CONTRACT WITH SAID FIRM, AND AUTHORIZE A BUDGET APPROPRIATION OF \$216,000 FROM THE WASTE WATER ENTERPRISE FUND 106 RESERVES FOR SAID CONTRACT

WHEREAS, the City has submitted an application to the State Water Resources Control Board for financial assistance in implementing the Regional Recycled Water Project – Phase I; and

WHEREAS, in order to complete the application for financial assistance certain environmental documents must be prepared and submitted to the State Water Resources Control Board; and

WHEREAS, Preparation of environmental documents including documents required pursuant to the California Environmental Quality Act are necessary for project implementation; and

WHEREAS, in addition to submitting to the State Water Resources Control Board for financial assistance the City will also submit applications for funding under other programs to be determined; and

WHEREAS, preparation of the Environmental Package under the State Water Resources Control Board Clean Water State Revolving Fund Program will meet these requirements; and

WHEREAS, after issuance of a Request for Proposals, it is the City Council's desire to award the contract for preparation of the Environmental Package to Ascent Environmental, Inc. at an approximate cost of \$196,400, with a 10% budget contingency amount of \$19,600 for potential additional services to be administered by the City Manager, for a total of \$216,000 to be allocated from the Wastewater Enterprise Fund.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Riverbank hereby awards the Environmental Package for the Regional Recycled Water Project – Phase I contract to Ascent Environmental, Inc, authorizes the City Manager to execute this contract, and appropriates \$216,000 from the Wastewater Enterprise Fund 106.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 8th day of February, 2022; motioned by Councilmember _____, seconded by Councilmember _____, and upon roll call was carried by the following City Council vote of :

AYES:

NAYS:

ABSENT:

ABSTAINED:

ATTEST:

APPROVED:

Kathy L. Teixeira
Interim City Clerk

Richard D. O'Brien
Mayor

Attachment: Consultant Agreement



JANUARY 19, 2022

PROPOSAL

**ENVIRONMENTAL PACKAGE TO SUPPORT
A FINANCIAL ASSISTANCE APPLICATION
FOR THE CITY OF RIVERBANK REGIONAL
RECYCLED WATER PROJECT**

SUBMITTED TO:
Michael Riddell
6707 3rd Street
Riverbank, CA 95367



PROJECT UNDERSTANDING

The City of Riverbank Regional Recycled Water Project (RRRWP) is envisioned as a program for the production and use of recycled water in southeastern San Joaquin County. The project would capture and reuse treated wastewater from the Riverbank Wastewater Treatment Plant (WWTP) to offset water used for agricultural needs.

There is a significant cone of depression in the Eastern San Joaquin Subbasin located east of Stockton that has led to the overall decline of groundwater elevation in the subbasin. The RRRWP would create a source of high-quality irrigation water that could contribute to greater water balance in the subbasin by replacing some of the groundwater that would otherwise be used for irrigation.

Based on our review of the Recycled Water Production Study prepared by KSN and Brown and Caldwell and the Recycled Water Use Study prepared by KSN, the proposed project is expected to involve two phases. The initial phase would include upgrading the existing WWTP with new secondary and tertiary treatment and disinfection facilities sized to accommodate 2.29 million gallons per day (mgd) average dry weather flow (ADWF) and construction of a 900,000-gallon recycled water storage tank and approximately 0.65 miles of distribution piping to accommodate current flows of 1.6 mgd. A later phase would involve reconfiguration of the existing percolation ponds to provide additional seasonal recycled water storage, construction of additional redundant tertiary treatment facilities to handle flows up to 4.6 mgd and allow maintenance and servicing of equipment at 2.29 mgd ADWF, and expansion of the distribution system to serve additional agricultural users in the South San Joaquin Irrigation District.

The first phase is anticipated to produce approximately 1,800 acre-feet per year (AFY) of recycled water at current WWTP flows of 1.6 mgd, which would be enough recycled water to irrigate 210 acres based on a 2,610-gpm [gallons per minute] peak irrigation demand from 30-acre irrigating blocks (irrigated agricultural land area). The recycled water production capacity of the later phase would be approximately 2,500 AFY based on the projected buildout flow rate of 2.29 mgd. This capacity would meet irrigation demands for 350 acres based on a 4,350-mgd peak irrigation demand from 50-acre irrigating blocks.

SCOPE OF SERVICES

The work to be performed by Ascent Environmental (Ascent) is described in detail, by task, in the following work plan. Because the State Water Resources Control Board's (SWRCB) Clean Water State Revolving Fund (CWSRF) program is partially supported by federal funding, CEQA-Plus [California Environmental Quality Act Plus] environmental review requirements include compliance with all federal cross-cutting environmental regulations to satisfy National Environmental Policy Act (NEPA) requirements. Our approach to preparing an adequate CEQA-Plus Initial Study/Mitigated Negative Declaration (IS/MND), while allowing the design team to work concurrently to move the conceptual project through preliminary and final design, will rely upon close coordination with the City and the City's project design consulting team led by KSN to ensure that mitigation or design modifications are identified to avoid, minimize, or offset potential significant environmental impacts that may result from project construction or operations.

Task 1: Project Management and Quality Control

Subtask 1.1: Project Management

Ascent's project manager will provide CEQA team coordination, task management, and communication with the City and its engineer regarding scope, schedule, and budget and will assist with preparation of Ascent's monthly invoices and progress summaries.

Subtask 1.2: Meetings

Kickoff Meeting

Ascent's project manager will participate in person at a 2-hour kickoff meeting with the City and its engineer in Riverbank to discuss project design features, including the project footprint and construction schedule and methods; identify/confirm project purpose, need, and objectives; identify key contacts and communication protocols; discuss any areas of controversy and potential strategies; and review the schedule and expectations for deliverables and project meetings. The kickoff meeting will also give Ascent an opportunity to discuss initial CEQA activities such as gathering available project and resource information, issuing the Notice of Intent (NOI) to Adopt an MND, and the status of tribal consultation required by Assembly Bill (AB) 52; to inquire further about project details; and to receive applicable background information. Following the kickoff meeting, Ascent will review information provided for the project and will notify the City and its engineer of any requests for additional information needed to prepare the IS/MND.

Progress Meetings

Ascent's project manager and one additional technical staff member will participate by video conference in up to 12 progress meetings during the project. The meetings will provide an opportunity to discuss CEQA-related issues and ensure the environmental compliance strategy is consistent with the proposed project as it develops, discuss review comments on project deliverables and determine the appropriate approach to document revisions and/or responses, and review other project issues. Each meeting is assumed to last 1 hour, require 30 minutes of preparation by each Ascent team member in attendance, and require 30 minutes of meeting notes preparation by the Ascent project manager following the meeting.

Public Meetings

Ascent's project manager will participate in up to three public meetings in person before the City Council in Riverbank to present documents and receive input. It is assumed that one of these meetings will be the public City Council meeting to adopt the MND and Mitigation Monitoring and Reporting Program and to approve the project, at which Ascent will summarize the findings and any public or agency comments (if necessary) and be available to answer questions. This scope of work assumes each public meeting will require 2 hours of preparation time and each meeting will last up to 2 hours.

Subtask 1.3: Quality Control Program

Ascent understands that it is our responsibility to ensure our environmental documents are of high quality and our comments are accurate, complete, clear, supported by substantial evidence, and professionally presented. Quality is the cornerstone of what we do, and we achieve this through rigorous attention to our quality management process. Our approach includes a comprehensive internal kickoff meeting to convey quality expectations to all team members (hours included under this task), regular coordination with the team throughout the process (hours embedded in project management and meetings under Tasks 1.1 and 1.2) and multiple reviews of deliverables by the project manager, senior technical specialists, and the principal-in-charge to ensure they exceed industry standards and client expectations (hours embedded in deliverables throughout Task 2). Ascent's rigorous QA/QC process ensures that documents are complete, technically accurate, and legally defensible, and that the analysis is consistent and coherent and presented with one voice despite being the work of multiple authors.

DELIVERABLES

- ✓ One (1) project kickoff meeting in Riverbank
- ✓ Request for project information memo (electronic submittal in MS Word format)
- ✓ Up to twelve (12) progress meetings by video conference call
- ✓ Progress meeting notes with list of action items (electronic submittal in MS Word or Adobe PDF format)
- ✓ Up to three (3) public meetings in Riverbank
- ✓ Monthly invoices and progress summaries (electronic submittal in Adobe PDF format)

Task 2: Preparation of the Environmental Package

Ascent will lead preparation of the Environmental Package in support of an application for financial assistance from the CWSRF program administered by the State Water Resources Control Board, Division of Financial Assistance. The Environmental Package includes general information, CEQA status and documentation, and also addresses compliance with federal cross-cutting environmental regulations as required. The subtasks that follow are required to develop some of the information and documentation necessary to complete the Environmental Package.

Subtask 2.1: Project and Alternatives Description

Draft Project and Alternatives Description

An important early step in the preparation of an adequate environmental document is clearly defining the proposed project. Ascent understands that the current project, as defined in the Request for Proposal (RFP) and associated feasibility reports, is at a conceptual level of design and that detailed design will occur concurrent with the CEQA process. A key initial step to the IS/MND process will be a discussion between the City, KSN, and the Ascent team to discuss the components of the project (both defined and yet-to-be-defined) to determine how best to characterize the project to fulfill CEQA's mandate for a stable and finite project description but allow the engineers flexibility to refine project design features. Our intent is to "bookend" the project such that certain aspects/components can continue to evolve without creating an issue from a CEQA perspective.

CEQA-Plus requirements include an environmental alternatives analysis. To comply with this requirement, the CEQA-Plus IS/MND will address the proposed project and the "no-project/no-action" alternative. Ascent will develop the description of the proposed project and the no-project/no-action alternative and the project purpose, need, and objectives statement in conjunction with the City and KSN. The project and alternatives description will include the project location; a summary of the project background and history; the statement of project purpose, need, and objectives; and a discussion of all components of the proposed project, including project footprint, staging and laydown areas, haul routes, and other areas where ground-

disturbing activities may be conducted, along with needed maps and drawings. Construction methods, schedule, and phasing will also be described for the project, along with proposed project operations and maintenance activities, and any design features or other environmental commitments that are intended to mitigate potential impacts. The project and alternatives description will also describe the no-project/no-action alternative and will also identify potential permits and approvals that may be required to implement the proposed project.

Ascent will submit the draft project and alternatives description to the City and KSN for review. We assume that one set of consolidated and reconciled comments from the review team will be provided.

Final Project and Alternatives Description

Review comments on the draft project and alternatives description will be addressed and a final project and alternatives description will be submitted to the City and KSN for approval prior to initiating the environmental impact analysis to avoid the potential for rework.

Once project and alternatives description elements are defined, Ascent will conduct an internal project kickoff meeting with team members before the analysis begins (included in Task 1.3). The meeting is an opportunity for the team to discuss the details and key issues of the project and for the senior project manager to identify the thresholds of significance; project-specific writing conventions, including preferred terminology and abbreviations; document-specific outline and format template; and internal team schedule requirements. Our authors will also use Ascent's Style Guide to improve consistency. Clarifying the project and alternatives description and sharing project-specific guidance with staff at an early stage gives the analysts the foundation they need to perform their work effectively and improves the accuracy and consistency of the analysis.

DELIVERABLES

- ✓ Draft project and alternatives description (electronic submittal in MS Word format)
- ✓ Final project and alternatives description (electronic submittal in MS Word format)

Subtask 2.2: Special Studies

The SWRCB CEQA-Plus environmental review process requires compliance with various federal regulations and statutes as applicable to the project. Based on Ascent's understanding of the proposed project as described in the RFP and feasibility studies, it is anticipated that the following federal regulations and statutes may be applicable to the proposed project:

- | | |
|--|---|
| ▶ Archaeological and Historic Preservation Act | ▶ Farmland Protection Policy Act |
| ▶ Bald and Golden Eagle Protection Act | ▶ Floodplain Management: Executive Orders 11988, 12148, and 13690 |
| ▶ Clean Air Act | ▶ Migratory Bird Treaty Act |
| ▶ Endangered Species Act | ▶ National Historic Preservation Act |
| ▶ Environmental Justice: Executive Order 12898 | ▶ Protection of Wetlands: Executive Order 11990 |

A summary of required permits and approvals is also required for the Environmental Package.

The following special studies are included in the scope of work to address applicable federal cross-cutting requirements. The results of these studies will be incorporated into the IS/MND analyses and included as appendices as appropriate.

Air Quality and Climate Change Studies

General Conformity Applicability Analysis. Ascent will prepare a Federal General Conformity Applicability Analysis to satisfy CEQA-Plus requirements for air quality. The analysis will consist of air quality modeling that will be attached to the IS/MND as an appendix. It is assumed that the project's emissions would be below the federally established de minimis emissions thresholds (less than 10 percent of the area's inventory specified for each criteria pollutant in a nonattainment or maintenance area), and therefore an additional detailed general conformity determination will not be required.

Climate Change Worksheet. In addition to the Environmental Package, the application for financial assistance under the CWSRF program also requires submittal of a Technical Package. Among the requirements of the Technical Package is a Climate Change Worksheet that identifies how the proposed facility is vulnerable to the effects of climate change and the impacts the facility may have on the climate and measures incorporated into the project to address these concerns. Including this information in the application is intended to improve the investments made by the State and demonstrate the project's consistency with the State Water Board's CWSRF Intended Use Plan (IUP) and Comprehensive Response to Climate Change adopted under Resolution 2017-0012.

The Climate Change Worksheet is separated into three sections: vulnerability, adaptation, and mitigation. The vulnerability section is used to identify potential climate change effects to which the facility may be susceptible. The adaptation section is used to identify measures and design features responsive to the anticipated climate change effects that will allow the facility

to continue to provide reliable service once operational. The mitigation section will evaluate measures and technologies that reduce greenhouse gas (GHG) emissions during project construction and operation.

To understand the vulnerabilities of the project, Ascent will perform a localized analysis of modeled climate change impacts using the latest version of Cal-Adapt. This analysis will consider impacts from drought, heat, and flooding. The analysis will also reference and incorporate information from other regional planning documents that have been adopted pertaining to water quality, water supply, and air quality. Once these vulnerabilities are understood, Ascent will develop a suite of adaptation measures that can be incorporated into the project, drawing from our extensive experience developing climate action and adaptation plans for local agencies.

The mitigation section will pull from analyses performed for the CEQA-Plus analysis for the project. As part of this analysis, the potential impacts of the project on energy and GHG emissions will be evaluated pursuant to the State CEQA Guidelines. This evaluation will include modeling that quantifies energy consumption and GHG emissions for project construction and operation, an assessment of consistency with applicable state policy and regulations (including but not limited to the CWSRF IUP and Resolution 2017-0012), an overview of energy conservation and GHG-reducing design features included in the project, and, if necessary, recommended mitigation measures. Should the CWSRF application need to be submitted in advance of completing the CEQA document, this analysis can be front-loaded and used for the application package, and later for CEQA compliance for the project.

Biological Resources Studies

Biological Constraints and Preliminary Design Evaluation Report Memorandum. Ascent will conduct records searches of the California Natural Diversity Database, California Native Plant Society Rare Plant Program database, and California Aquatic Resource Inventory of the project site and surrounding area and obtain an official species letter from the US Fish and Wildlife Service (USFWS) Information for Planning and Consultation system. A reconnaissance-level field survey will be conducted to evaluate existing conditions on the project site. The land cover types will be categorized and mapped based on dominant vegetation and will be used to describe habitat suitability for special-status species, sensitive natural communities, and potential wetlands. The likelihood for sensitive biological resources to be present on the project site will be evaluated based on habitat suitability, site reconnaissance, and documented occurrences. Key laws and regulations that protect biological resources in the area will be summarized in a report memorandum. The report will address federal cross-cutting regulations, such as the Endangered Species Act (ESA), that apply to biological resources. Recommendations to avoid or minimize impacts to sensitive biological resources will be included. Specifically, the report memorandum will identify whether design or siting modifications could avoid or minimize impacts to biological resources. This scope of work assumes that take of federally listed species, such as California tiger salamander, vernal pool branchiopods, and steelhead, can be avoided, and there will be a may affect/not likely to adversely affect determination so that only informal consultation will be required. The report will be prepared to support informal consultation between SWRCB and USFWS/National Marine Fisheries Service and obtain concurrence that the project is not likely to adversely affect species listed as threatened or endangered under the ESA.

Aquatic Resources Delineation. Ascent biologists will conduct a field delineation, concurrent with the biological reconnaissance survey, to identify all aquatic resources in the project area that may meet the definition of waters of the United States or waters of the state. The area delineated will consist of the project construction and impact areas as depicted in the project description for the CEQA document. The delineation will follow methods established in the USACE Wetlands Delineation Manual (Environmental Laboratories 1987) and Arid West Supplement (Environmental Laboratories 2008) as well as the State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (California Water Boards 2019). Ascent will delineate the jurisdictional extent of waters of the United States and waters of the state within the project boundaries by identifying the ordinary high water mark and assessing soils, vegetation, and hydrologic features of aquatic resources. Routine wetland determination data forms or ordinary high water mark forms will be completed, as appropriate, for each aquatic resource in the project area. Data recorded to demarcate and establish the jurisdictional boundaries will be recorded with highly accurate GPS units and digitized by geographic information system (GIS) staff in ArcGIS format. A map showing the extent and location of all aquatic features will be prepared in accordance with the 2016 USACE Map and Drawing Standards for the South Pacific Division Regulatory Program.

Upon completion of the field delineation, Ascent will prepare a jurisdictional delineation report summarizing the methods and results. The report will be prepared in accordance with reporting standards acceptable to the US Army Corps of Engineers (USACE) Sacramento District and the Regional Water Quality Control Board (RWQCB) and will include all required maps, copies of data forms, representative photographs, and a completed USACE aquatic resources Excel file with the submittal. If requested by USACE or RWQCB, an Ascent wetland specialist will coordinate and attend a one-day site verification of the delineation map with the agencies.

Cultural Resources Studies

Cultural Resources Records Search. Ascent will conduct a California Historical Resources Information System (CHRIS) records search for the proposed project area (including a 0.5-mile radius surrounding the site) at the Central California Information Center (CCIC) at the California State University, Stanislaus. The CCIC houses cultural resources records, and the primary purpose of the CHRIS records search is to identify any previously recorded cultural resources known to exist within or adjacent to the project area. In addition to the archaeological inventory records and reports, an examination will be made of historic maps, the National Register of Historic Places, the California Register of Historical Resources, and the listing of California Historical Landmarks. The records search will also reveal the nature and extent of any cultural resources work previously conducted in the project area.

Additionally, Ascent will contact the Native American Heritage Commission (NAHC) for a review of its Sacred Lands File. NAHC will determine if any NAHC-listed Native American sacred lands are located within or adjacent to the project area. In addition, NAHC will provide a list of Native American contacts for the project that they believe should be contacted for additional information. As part of the Section 106 process, Ascent will submit a project information letter and location map to each individual, tribe, and organization on the NAHC list, via email and certified letter. A tracking sheet showing all correspondence and comments/questions will be appended to the technical report (described below).

Assembly Bill 52 Consultation Assistance. AB 52 established a consultation process with California Native American tribes for proposed projects in geographic areas that are traditionally and culturally affiliated with that tribe. As the lead agency under CEQA, the City must begin consultation with California Native American tribes traditionally and culturally affiliated with the project area prior to the release of the IS/MND if: (1) the tribe requested in writing to be formally notified of projects in the tribe's traditionally and culturally affiliated area; and (2) the tribe responds, in writing, within 30 days after formal notification from the City requesting consultation (Public Resources Code [PRC] Section 21080.3.1[b]). The City is required to begin the consultation process within 30 days of receiving a tribe's request (PRC Section 21080.3.1[d–e]). Ascent will assist the City with the AB 52 process by drafting the notification letter to interested Native American tribes for use by City.

Cultural Resources Pedestrian Survey. Upon completion of the CHRIS and NAHC records searches, Ascent will perform a pedestrian survey of the project area. Archaeologists will conduct the survey using pedestrian transects spaced at maximum intervals of 15 meters, covering all portions of the project area. Areas that are inaccessible due to dense vegetation, unstable geologic conditions, or other obstructions will be surveyed at a reconnaissance level, typically at 20- to 40-meter transects.

For the purposes of this scope and cost estimate, Ascent assumes that the cultural resources survey will be negative for newly identified cultural resources and that the WWTP does not need to be evaluated as a built environment resource. No testing or excavation will be conducted, nor will any artifacts, samples or specimens be collected during the survey.

Section 106–Compliant Cultural Resources Technical Report. Upon completion of the CHRIS and NAHC searches and the pedestrian survey, Ascent will prepare a technical report meeting all federal cross-cutting requirements. The report will document the results of the CHRIS and NAHC searches, Native American outreach, and field survey, as well as provide management recommendations for resources within or near the project area. The report will meet the Secretary of the Interior's Standards and Guidelines and will follow Archaeological Resource Management Reports: Recommended Contents and Format Guidelines. If the locations of sensitive archaeological sites or Native American cultural resources will be depicted or described in the report, the report will be considered confidential; it may not be distributed to the public. In order to protect these sensitive resources, the confidential technical report must be made available only to qualified cultural resources personnel, the landowner, and project management personnel on a need-to-know basis. The technical report will be prepared and provided to SWRCB to support National Historic Preservation Act Section 106 compliance.

SHPO Letter. Ascent will prepare a draft letter for use by SWRCB, in Word format with accompanying figures, to the California State Historic Preservation Officer (SHPO) seeking concurrence on Section 106 findings.

Required Permits, Approvals, and Certifications Assessment

Based on the approved project description and results of the field investigations and special studies, as well as the environmental analyses conducted for the IS/MND described below, Ascent will prepare a brief memorandum summarizing environmental permits, approvals, and certifications required for the project, including those issued by local, state, and federal agencies. The memorandum will include brief descriptions of each requirement and a schedule summarizing the estimated timeline and relative dependencies for each requirement. This memorandum will be uploaded to the FAAST system in support of the Environmental Package.

DELIVERABLES

- ✓ Project construction and operational emissions assumptions and results (electronic submittal in MS Word and Adobe PDF formats)

- ✓ Climate change worksheet (electronic submittal in MS Word format)
- ✓ Draft wetland delineation report (electronic submittal in MS Word format)
- ✓ Final wetland delineation report (electronic submittal in MS Word and Adobe PDF formats)
- ✓ AB 52 notification letter template (electronic submittal in MS Word format)
- ✓ Draft cultural resources technical report (electronic submittal in MS Word format)
- ✓ Final cultural resources technical report (electronic submittal in MS Word and Adobe PDF formats)
- ✓ Draft SHPO letter (electronic submittal in MS Word)
- ✓ Environmental permits, approvals, and certifications memorandum (electronic submittal in MS Word format)

Subtask 2.3: Initial Study/Mitigated Negative Declaration

Administrative Draft IS/MND

Ascent will prepare an administrative draft IS/MND in accordance with SWRCB CEQA-Plus Guidelines and submit an electronic copy to the City and KSN for review and comment. The administrative draft IS/MND will be prepared using the IS checklist in accordance with Appendix G of the State CEQA Guidelines, including explanations and analysis for each response. The IS will cover all topic areas in the checklist. For each environmental topic, Ascent will briefly describe existing conditions, assess potential environmental impacts of the proposed project and the no-project/no-action alternative, and recommend feasible mitigation measures, where applicable. The level of analysis and degree of impact will vary depending upon the environmental topic and the potential for thresholds of significance to be triggered. Other federal, state, regional, or local agencies with permit requirements or other approval authority will be identified where appropriate.

The administrative draft IS/MND will include the following:

- ▶ Notice of Intent to Adopt an MND
- ▶ Introduction
- ▶ Description of the proposed project and the no-project/no-action alternative, including project background, need, and objectives and the regional and specific location of the proposed project
- ▶ Discussion of environmental impacts and mitigation measures, including:
 - identification of the environmental and regulatory setting (i.e., existing conditions that will serve as the baseline to assess impacts);
 - identification of environmental effects of the proposed project and the no-project/no-action alternative by use of the State CEQA Guidelines, scientific and factual data, legislative or regulatory performance standards of federal, state, regional, or local agencies relevant to the impact analysis;
 - identification of mitigation measures to avoid or reduce any significant or potentially significant effects, if any, to less-than-significant levels; and
 - discussion of mandatory findings of significance related to the project's potential to degrade the quality of the environment, result in cumulatively considerable impacts, or result in substantial adverse impacts on humans
- ▶ References cited in the analysis
- ▶ Document distribution list
- ▶ List of report preparers
- ▶ Appendices containing supporting information and analysis

The administrative draft IS/MND will be prepared based on the approved project and alternatives description. It will be a complete pre-publication version of the IS/MND to allow a full review for accuracy, completeness, and treatment of sensitive topics. Ascent will submit an electronic copy of the administrative draft IS/MND to the City and KSN for review and comment.

The analysis is presumed to focus on the environmental issue areas described below.

Air Quality. The project is located in San Joaquin County and is in the jurisdiction of the San Joaquin Valley Air Pollution Control District (SJVAPCD). SJVAPCD has established thresholds of significance for CEQA analyses to ensure compliance with ambient air quality standards. The air quality analysis will rely on SJVAPCD's adopted thresholds of significance for the impact determination.

Existing conditions and the applicable regulatory framework (e.g., Riverbank General Plan, California Air Resources Board [CARB] 2017 Scoping Plan) will be summarized. Ascent will quantify construction and operational air (and GHG emissions) using the latest version of the California Emissions Estimator Model (CalEEMod), and any unique project-related emissions will be calculated in a separate spreadsheet. Model inputs will be based on project-specific information (e.g., anticipated construction schedule, proposed land use type/size), reasonable assumptions, and model defaults. Many of the proposed

facilities would have the potential to emit volatile organic compounds, toxic air contaminants (TACs), and odors. The project is located within 1,000 feet of sensitive receptors, as residential land uses are located between 700 and 1,400 feet south of the WWTP. This distance is within SJVAPCD's screening distance of 2 miles for odors from wastewater treatment facilities (SJVAPCD 2015). Although SJVAPCD does not have screening distances for health risks, both odors and TACs are dispersed through the air and are affected by the same local meteorology. Consequently, this scope assumes a screening-level health risk assessment for TAC exposure and a more detailed analysis for assessing odor impacts to sensitive receptors, per SJVAPCD guidance. The health screening assessment will be based on SJVAPCD's Prioritization Calculator. Air dispersion modeling and local site conditions (e.g., meteorology, topography) would not be considered in this conservative analysis. If the screening analysis does not exceed the SJVAPCD-established screening levels, no further analysis would be required. If screening levels are exceeded, a comprehensive health risk assessment (HRA) would be required. A comprehensive Health Risk Assessment is not included. However, Ascent can prepare this with a modification to the scope and cost.

Biological Resources. The Biological Resources section will include summaries of federal, state, and local plans, policies, and regulations related to the protection of biological resources. The section will describe the existing conditions for biological resources in the project area based on background research and the reconnaissance field survey described above. Species likely to be addressed include valley elderberry longhorn beetle, burrowing owl, and Swainson's hawk, as well as other sensitive species. Potential issues related to applicable federal regulations for CEQA-Plus compliance, including the Bald and Golden Eagle Protection Act, ESA, Migratory Bird Treaty Act, and Executive Order 11990, Protection of Wetlands will be evaluated. Mitigation for any potentially significant impacts will be identified and described. This scope of work assumes that take of species listed as threatened or endangered pursuant to the state or federal ESA can be avoided.

Cultural and Tribal Cultural Resources. The Cultural and Tribal Cultural Resources section will rely on information contained in the cultural resources technical report and the outcome of AB 52 (Statutes of 2014) consultation. The section will summarize federal, state, and local plans, policies, and regulations related to protecting cultural and tribal cultural resources, as well as summarize the inventory findings, discuss potential for significant impacts to resources, and outline mitigation measures for unanticipated discoveries.

Energy. The energy analysis will evaluate potential impacts based on State CEQA Guidelines Appendix G, analyzing whether the project may result in wasteful, inefficient, or unnecessary consumption of energy or conflict with a plan for renewable energy or energy efficiency. Ascent will quantify energy consumption for construction (e.g., fuel use) and operation (e.g., electricity, natural gas) of the project. Energy estimates will be calculated using CalEEMod and generally based on outputs from the emissions modeling conducted for the air quality and GHG analyses. Fuel consumption rates for on- and off-road vehicles will be obtained from EMFAC and OFFROAD models.

Environmental Justice. The Environmental Package requires an environmental justice analysis to comply with NEPA. Therefore, the CEQA-Plus IS/MND will include a section on environmental justice. This section will consider whether the proposed project could create new or exacerbate existing disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations. If such impacts would occur, the section will discuss how the project would address these.

Greenhouse Gas Emissions. The GHG analysis will evaluate whether GHG emissions would conflict with any applicable plans, policies, or regulations adopted for the purpose of reducing GHGs, including but not limited to, consistency with SJVAPCD guidance, the Riverbank General Plan, and the CARB 2017 Scoping Plan. Ascent will use the latest version of CalEEMod and, if needed, off-model calculations to conduct the GHG estimates for the project. The emissions modeling will quantify project construction and operational sources (e.g., building energy, mobile, water and wastewater, solid waste). We will consider all existing and applicable guidance and policies from state and local agencies (e.g., SJVAPCD, City of Riverbank) and will coordinate with the City regarding the most appropriate thresholds of significance to use. All feasible mitigation measures will be presented if potential impacts are identified.

Hydrology and Water Quality. This section will include summaries of federal, state, and local plans, policies, and regulations related to controlling hydrology-related factors (e.g., stormwater and flooding) and water quality, and current hydrologic and water quality conditions in affected areas and the groundwater basin underlying the current and proposed land application areas. Groundwater aquifer and recharge will be characterized. Based on our current understanding of the project, the hydrology assessment will focus on construction- and operations-related effects on groundwater hydrology, site drainage, and flooding risk. The hydrology assessment will be largely qualitative. The water quality assessment will address construction-related stormwater runoff impacts and operations-related effluent impacts to groundwater quality. The construction-related impacts to water quality will be determined from qualitative evaluation of potential contaminant sources and implementation of best management practices. Operations-related impacts will be determined based on quantitative and qualitative analyses contained in the Antidegradation Analysis reports prepared to support waste discharge requirements as provided by the City or KSN. The analysis will consider the potential for the discharge to cause exceedance of water quality standards and to degrade water quality relative to existing conditions.

Noise. This section will generally describe the existing noise environment on and near the project site based on existing environmental documentation and review of aerial photographs. It will include identification of the nearest existing noise-sensitive receptors (e.g., nearby residences) and major noise sources, ambient levels, and natural factors that relate to the attenuation thereof. For the proposed project, construction noise and potential new stationary noise sources (e.g., pump station, diesel generators) would be the focus of the analysis. Noise levels of specific construction and operational equipment will be determined and resultant noise levels at sensitive receptors will be calculated based on published reference noise levels and standard attenuation rates. The significance of short- and long-term noise impacts will be determined based on comparisons with applicable local noise standards.

Other Issues. Ascent will provide brief qualitative analyses, relying on published data and a site visit, to briefly address the following issues, recognizing that potentially significant effects are not anticipated:

- ▶ Aesthetics
- ▶ Agriculture and Forestry Resources
- ▶ Geology, Soils, and Paleontological Resources
- ▶ Hazards and Hazardous Materials
- ▶ Land Use and Planning
- ▶ Population and Housing
- ▶ Public Services
- ▶ Recreation
- ▶ Transportation
- ▶ Utilities and Service Systems
- ▶ Wildfire
- ▶ Mandatory Findings of Significance
- ▶ Mineral Resources

CEQA-Plus Analyses and Compliance with Federal Laws and Regulations. The IS/MND will also include a stand-alone section documenting project compliance with federal laws and regulations, in accordance with the State Environmental Review Process State Water Resources Control Board CWSRF Program (April 2017), Clean Water & Drinking Water State Revolving Fund Environmental Review Requirements (October 2018), and the SRF Financial Assistance Application Environmental Package (as revised December 2019). As defined in those guidelines, this section will briefly describe each of the federal laws or regulations listed below and its applicability (or lack thereof, as indicated by the asterisk [*] below) to the proposed project and will present the facts supporting the compliance determination.

- ▶ Archaeological and Historic Preservation Act
- ▶ Bald and Golden Eagle Protection Act
- ▶ Clean Air Act, General Conformity Determination
- ▶ Coastal Barriers Resources Act*
- ▶ Coastal Zone Management Act*
- ▶ Endangered Species Act (ESA), Section 7
- ▶ Environmental Justice: Executive Order 12898
- ▶ Farmland Protection Policy Act
- ▶ Fish and Wildlife Coordination Act*
- ▶ Floodplain Management: Executive Orders 11988, 12148, and 13690
- ▶ Magnuson-Stevens Fishery Conservation and Management Act*
- ▶ Marine Mammal Protection Act*
- ▶ Migratory Bird Treaty Act
- ▶ National Historic Preservation Act, Section 106
- ▶ Protection of Wetlands: Executive Order 11990
- ▶ Rivers and Harbors Act, Section 10*
- ▶ Safe Drinking Water Act, Source Water Protection*
- ▶ Wild and Scenic Rivers Act*
- ▶ Wilderness Act*

Public Review IS/MND

Following review of the administrative draft IS/MND by the City and KSN and receipt of one set of consolidated comments electronically in tracked changes, Ascent will convene a video conference call (included in Subtask 1.2) with the City to discuss comments and agree on revisions to the administrative draft IS/MND. After resolving any issues related to the comments, we will incorporate revisions and prepare the public IS/MND for distribution. Ascent will submit an electronic print-ready screencheck IS/MND to the City for final approval, and the City will provide final changes electronically in tracked changes. Ascent will then incorporate the necessary revisions in the public IS/MND.

IS/MND Distribution and Notices

Ascent, in conjunction with the City, will develop a distribution list to facilitate public and agency review of the IS/MND. Ascent will provide the draft distribution list during review of the administrative draft IS/MND for approval. Following City approval of the public IS/MND, we will provide the public IS/MND electronically to the City for posting on its website for a 30-day public review period. Ascent will also prepare the required CEQA notices to support the public review process, including the draft and final NOI and the Notice of Completion (NOC). The draft NOI and NOC will be submitted to the City with the draft distribution list, and the final NOI and NOC will be submitted to the City with the public IS/MND for distribution and filing with the San Joaquin Recorder-County Clerk. Ascent will file the IS/MND and NOC with the State Clearinghouse on behalf of the City.

Ascent will also prepare an abbreviated version of the NOI for publication by the City in a newspaper of general circulation in the project area.

DELIVERABLES

- ✓ Administrative draft CEQA-Plus IS/MND (electronic submittal in MS Word format)
- ✓ Screencheck IS/MND (electronic submittal in MS Word and Adobe PDF formats)
- ✓ Public IS/MND (electronic submittal in MS Word and Adobe PDF formats)
- ✓ Draft and final distribution list (electronical submittal in MS Word or MS Excel format)
- ✓ Draft and final NOI (electronical submittal in MS Word and Adobe PDF formats)
- ✓ Newspaper notice (electronic submittal in MS Word format)
- ✓ NOC (electronic submittal in MS Word and Adobe PDF formats)

Subtask 2.4: Mitigation Monitoring and Reporting Program

Draft MMRP

Ascent will prepare a draft Mitigation Monitoring and Reporting Program (MMRP) for review by the City and KSN. The MMRP will identify the mitigation measures proposed as part of the project, implementation procedures, monitoring and reporting actions, responsibility, and schedule associated with each mitigation measure. Timing, implementation, and monitoring responsibilities for the mitigation measures will be shown in tabular format. The draft MMRP will be submitted to the City and KSN following release of the public IS/MND.

Final MMRP

Upon completion of the public review process for the IS/MND and after discussing any comments received on the environmental analysis with the City and KSN, Ascent will prepare the final MMRP. The final MMRP will include the mitigation measures included in the public IS/MND and any revisions as a result of public comment on the public IS/MND and consolidated comments received from the City on the draft MMRP. We will submit the final MMRP electronically to the City for adoption with the MND.

DELIVERABLES

- ✓ Draft MMRP (electronic submittal in MS Word format)
- ✓ Final MMRP (electronic submittal in MS Word and Adobe PDF formats)

Subtask 2.5: IS/MND Adoption and Project Approval

Response Memorandum

Under CEQA, the lead agency is not required to prepare formal responses to any comments received on the public IS/MND but must “consider” such comments in its decision-making. At the close of the public review period, Ascent will review comments received on the public IS/MND and convene a video conference call (included in Task 1.2) with the City and KSN to discuss any responses. If desired by the City, we will prepare a memorandum responding to the comments received on the public IS/MND. The draft memo will be submitted to the City for review. If necessary, Ascent will incorporate comments and submit a final memo to the City. There is always uncertainty regarding the nature and extent of comments. For the purposes of this scope of work, 16 hours of technical staff effort have been allocated to respond to comments. It is assumed that only one draft response to comments memo will be prepared.

Presentation to City Council

Ascent’s project manager will prepare a brief PowerPoint presentation and attend the IS/MND and MMRP adoption hearing before the City Council to present the findings of the IS/MND, summarize public comments and responses, and address any questions. Attendance at this meeting is included in Task 1.2.

NOD Filing

Ascent will prepare a Notice of Determination (NOD) and provide it with the draft response to comments memorandum. Upon approving the project, the City will sign the NOD and will file the NOD with Stanislaus County and pay any required County administrative fee and the required California Department of Fish and Wildlife (CDFW) filing fee. Upon receipt of an electronic copy of the County date-stamped NOD and the CDFW filing fee receipt from the City, Ascent will file the NOD with the State Clearinghouse (SCH) on behalf of the City and provide the City with an electronic copy of the date-stamped NOD. Please note that to avoid extension of the statute of limitations on legal challenges to the project under CEQA, the NOD must be filed with the County and SCH within 5 days of City approval of the project.

If funding is sought from other federal agencies, it is assumed that these federal agencies will be responsible for preparation of any NEPA documentation and associated noticing in accordance with federal requirements. Because the CEQA-Plus IS/MND will address all applicable federal cross-cutting requirements, it may be relied upon to support those NEPA processes.



DELIVERABLES

- ✓ Draft and final responses to comments memo (electronic submittal in MS Word format)
 - ✓ Draft and final IS/MND presentation (electronic submittal in MS PowerPoint and Adobe PDF format)
 - ✓ Draft and final NOD (electronic submittal in Adobe PDF format)
-



ASCENT ENVIRONMENTAL, INC.
2022 RATE SCHEDULE
(EFFECTIVE UNTIL MARCH 1, 2023)

After March 1, 2023, budget augmentations and contract amendments will be calculated using updated billing rates, unless precluded by contract terms.

Labor Classification	Billing Rate
Principal, Director	\$210 to \$355
Senior Project Manager, Senior Environmental Planner/Planner/Scientist/Biologist	\$175 to \$250
Project Manager, Project Environmental Planner/Planner/Scientist/Biologist	\$130 to \$200
Staff Environmental Planner/Planner/Scientist/Biologist	\$115 to \$160
Graphics/GIS	\$100 to \$145
Document Production/Word Processor/ Administrative Assistant	\$100 to \$135
Project Assistant	\$80 to \$120
Direct Costs	Rates
Reproduction: 8½" by 11"	\$0.07/page (black and white); \$0.27/page (color)
Reproduction: 11" by 17"	\$0.15/page B&W; \$0.54/page color
Reproduction: Plotter	\$5/square foot
Reproduction: CDs/Thumb Drives	\$10/disc or thumb drive
Automobile Mileage (IRS rate in effect)	\$0.585/mile
Noise Meter	\$105/half day, \$155/day, \$210/day plus overnight, \$500/week
GPS Unit	\$105/half day, \$155/day, \$210/day plus overnight, \$520/week
Lodging and/or Per Diem	Government rates or as negotiated
Other Direct Costs	As incurred

CONSULTANT SERVICES AGREEMENT

THIS CONSULTANT SERVICES AGREEMENT (“Agreement”) is made and entered into this ____ day of _____ 2022, (the “Effective Date”) by and between the City of Riverbank, a California municipal corporation (“City”), and Ascent Environmental, Inc., a California Corporation (“Consultant”). City and Consultant may herein be referred to individually as a “Party” and collectively as the “Parties”. There are no other parties to this Agreement.

RECITALS

A. City has issued a request for proposals (“RFP”) for consultant services / determined that consultant services are required for the preparation of environmental documents in connection with the Regional Recycled Water Project – Phase I (the “Project”).

B. Consultant has submitted a proposal to City that includes a scope of proposed consultant services, attached hereto and described more fully in **Exhibit A** (“Services”).

C. Consultant represents that it is qualified, willing and able to provide the Services to City, and that it will perform Services related to the Project according to the rate schedule attached hereto and described more fully in **Exhibit B** (the “Rates”).

NOW, THEREFORE, in consideration of the promises and covenants set forth below, the Parties agree as follows:

AGREEMENT

1. Consulting Services. Consultant agrees, during the term of this Agreement, to perform the Services for City in connection with the Project. Any request for services in addition to the Services described in **Exhibit A** will be considered a request for additional consulting services and not compensated unless the Parties otherwise agree in writing. No subcontract shall be awarded or an outside consultant engaged by Consultant unless prior written approval is obtained from City.

2. Compensation. City shall pay Consultant according to the fee schedule set forth in the Rates, as full remuneration for the performance of the Services, with a **total cost not to exceed \$196,400.00** for the Services described in Exhibit A. Consultant agrees to maintain a log of time spent in connection with performing the Services. On a monthly basis, Consultant shall provide City, in reasonable and understandable detail, a description of the services rendered pursuant to the Services and in accordance with the Rates. If the work is satisfactorily completed, City shall pay such invoice within thirty (30) days of its receipt. If City disputes any portion of any invoice, City shall pay the undisputed portion within the time stated above, and at the same time advise Consultant in writing of the disputed portion.

3. Reimbursement. Reimbursable expenses related to travel, lodging, conference calls, reproduction and other costs incurred related to Consultant's performance of the Services in accordance with the Rates with the total fee not to exceed that stipulated in Paragraph 2.

4. Confidential Information. Consultant understands and agrees that, in the performance of Services under this Agreement or in the contemplation thereof, Consultant may have access to private or confidential information that may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City ("Confidential Information").

Consultant shall not, either during or after the Term, disclose to any third party any Confidential Information without the prior written consent of City. If City gives Consultant written authorization to make any such disclosure, Consultant shall do so only within the limits and to the extent of that authorization. Such authorization does not guarantee that the City will grant any further disclosure of Confidential Information. Consultant may be directed or advised by the City Attorney on various matters relating to the performance of the Services on the Project or on other matters pertaining to the Project, and in such event, Consultant agrees that it will treat all communications between itself, its employees and its subcontractors as being communications which are within the attorney-client privilege.

5. Term. This Agreement shall become effective on the Effective Date and will continue in effect until the Services provided herein have been completed, unless terminated earlier as provided in Section 6 or 7 below (the "Term").

6. Termination. City may terminate this Agreement prior to the expiration of the Term ("Termination"), without cause or reason, by notifying Consultant in writing of City's desire to terminate this Agreement (the "Termination Notice"). Upon receipt of a Termination Notice, Consultant shall immediately cease performing the Services. Consultant will be entitled to compensation, as of the date Consultant receives the Termination Notice, only for Services actually performed.

7. Termination for Cause. Notwithstanding Section 6 above, this Agreement may be terminated by City for cause based on the loss or suspension of any licenses, permits or registrations required for the continued provision of the Services, or Consultant's malfeasance. Termination of the Agreement for cause as set forth in this Section shall relieve City from compensating Consultant.

8. Performance by Key Employee. Consultant has represented to City that **Andrea Shephard** will be the person primarily responsible for the performance of the Services and all communications related to the Services. City has entered into this Agreement in reliance on that representation by Consultant.

9. Property of City. The following will be considered and will remain the property of City:

A. Documents. All reports, drawings, graphics, working papers and Confidential Information furnished by City in connection with the Services (“Documents”). Nothing herein shall be interpreted as prohibiting or limiting City’s right to assign all or some of City’s interests in the Documents.

B. Data. All data collected by Consultant and produced in connection with the Services including, but not limited to, drawings, plans, specifications, models, flow diagrams, visual aids, calculations, and other materials (“Data”). Nothing herein shall be interpreted as prohibiting or limiting City’s right to assign all or some of City’s interests in the Data.

C. Delivery of Documents and Data. Consultant agrees, at its expense and in a timely manner, to return to City all Documents and Data upon the conclusion of the Term or in the event of Termination.

10. Duties of City. In order to permit Consultant to render the services required hereunder, City shall, at its expense and in a timely manner:

A. Provide such information as Consultant may reasonably require to undertake or perform the Services;

B. Promptly review any and all documents and materials submitted to City by Consultant in order to avoid unreasonable delays in Consultant’s performance of the Services; and

C. Promptly notify Consultant of any fault or defect in the performance of Consultant’s services hereunder.

11. Representations of Consultant. City relies upon the following representations by Consultant in entering into this Agreement:

A. Qualifications. Consultant represents that it is qualified to perform the Services and that it possesses the necessary licenses, permits and registrations required to perform the Services or will obtain such licenses or permits prior to the time such licenses or permits are required. Consultant represents and warrants to City that Consultant shall, at Consultant’s sole cost and expense, keep in effect or obtain at all times during the Term of this Agreement, any licenses, permits, and registrations that are legally required for Consultant to practice Consultant’s profession at the time the Services are rendered.

B. Consultant Performance. Consultant represents and warrants that all Services under this Agreement shall be performed in a professional manner and shall conform to the customs and standards of practice observed on similar, successfully completed projects by specialists in the Services to be provided. Consultant shall adhere to accepted professional standards as set forth by relevant professional associations and shall perform all Services required under this Agreement in a manner consistent with generally accepted professional customs,

procedures and standards for such Services. All work or products completed by Consultant shall be completed using the best practices available for the profession and shall be free from any defects. Consultant agrees that, if a Service is not so performed, in addition to all of its obligations under this Agreement and at law, Consultant shall re-perform or replace unsatisfactory Service at no additional expense to City.

12. Compliance with Laws and Standards. Consultant shall insure compliance with all applicable federal, state, and local laws, ordinances, regulations and permits, including but not limited to federal, state, and county safety and health regulations. Consultant shall perform all work according to generally accepted standards within the industry. Consultant shall comply with all ordinances, laws, orders, rules, and regulations, including the administrative policies and guidelines of Client pertaining to the work.

13. Independent Contractor; Subcontracting. Consultant will employ, at its own expense, all personnel reasonably necessary to perform the Services. All acts of Consultant, its agents, officers, employees and all others acting on behalf of Consultant relating to this Agreement will be performed as independent contractors. Consultant, its agents and employees will represent and conduct themselves as independent contractors and not as employees of City. Consultant has no authority to bind or incur any obligation on behalf of City. Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever. Consultant is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is expressly approved by City in writing.

14. Insurance. Consultant and all of Consultant's contractors and subcontractors shall obtain and maintain insurance of the types and in the amounts described in this paragraph and its subparagraphs with carriers reasonably satisfactory to City.

A. General Liability Insurance. Consultant shall maintain occurrence version commercial general liability insurance or an equivalent form with a limit of not less than Two Million Dollars (\$2,000,000) per claim and Two Million Dollars (\$2,000,000) for each occurrence.

B. Workers' Compensation Insurance. Consultant shall carry workers' compensation insurance as required by the State of California under the Labor Code. Consultant shall also carry employer's liability insurance in the amount of One Million Dollars (\$1,000,000.00) per accident, with a One Million Dollar (\$1,000,000.00) policy limit for bodily injury by disease, and a One Million Dollar (\$1,000,000.00) limit for each employee's bodily injury by disease.

C. Errors and Omissions Liability. Consultant shall carry errors and omissions liability insurance in the amount of no less than One Million Dollars (\$1,000,000.00) per occurrence or greater if appropriate for the Consultant's profession. Architects and engineers coverage is to be endorsed to include contractual liability. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the

insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, elected and appointed councils, commissions, directors, officers, employees, agents, and representatives ("City's Agents"); or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claims administration and defense expenses.

D. Other Insurance Requirements. Within five (5) days of the Effective Date, Consultant shall provide City with certificates of insurance for all of the policies required under this Agreement ("Certificates"), excluding the required worker's compensation insurance. Such Certificates shall be kept current for the Term of the Agreement and Consultant shall be responsible for providing updated copies and notifying City if a policy is cancelled, suspended, reduced, or voided. With the exception of the worker's compensation insurance, all of the insurance policies required in this Agreement shall: (a) provide that the policy will not be cancelled, allowed to expire, or materially reduced in coverage without at least thirty (30) days' prior written notice to City of such cancellation, expiration, or reduction and each policy shall be endorsed to state such; (b) name City, and City's Agents as additional insureds with respect to liability arising out of Services, work or operations performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied, or used by the Consultant, or automobiles owned, leased, or hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City; (c) be primary with respect to any insurance or self-insurance programs covering City or City's Agents and any insurance or self-insurance maintained by City or City's Agents shall be in excess of Consultant's insurance and shall not contribute to it; (d) contain standard separation of insured provisions; and (e) state that any failure to comply with reporting or other provisions of the policy including breaches of warranties shall not affect the coverage provided to the City.

15. Indemnification. Consultant hereby agrees to indemnify and hold harmless City, its agents, officers, employees and volunteers, against all liability, obligations, claims, loss, and expense (a) caused or created by Consultant, its subcontractors, or the agents or employees of either, whether negligent or not, pertaining to or related to acts or omissions of Consultant in connection with the Services, or (b) arising out of injuries suffered or allegedly suffered by employees of Consultant or its subcontractors (i) in the course of their employment, (ii) in the performance of work hereunder, or (iii) upon premises owned or controlled by City. Consultant's obligation to defend, indemnify and hold City and its agents, officers, employees and volunteers harmless is not terminated by any requirement in this Agreement for Consultant to procure and maintain a policy of insurance.

16. Consequential Damages. Notwithstanding any other provision of this Agreement, in no event shall City be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement.

17. Litigation. In the event that either Party brings an action under this Agreement for the breach or enforcement hereof, or must incur any collection expenses for any amounts due

hereunder the prevailing Party in such action shall be entitled to its costs including reasonable attorney's fees, whether or not such action is prosecuted to judgment.

18. Notices. Any notice or communication required hereunder between City or Consultant must be in writing, and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Notices given by registered or certified mail shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, (b) on the date delivered as shown on a receipt issued by the courier, or (c) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at the addresses in this paragraph set forth below:

If to City:

City of Riverbank
6707 Third Street
Riverbank, CA 95367
Attn: City Clerk

With courtesy copies to:

City of Riverbank
6707 Third Street
Riverbank, CA 95367
Attn: City Manager

And to:

Churchwell White LLP
1414 K Street, 3rd Floor
Sacramento, California 95814
Attention: Douglas L. White, Esq.

If to Consultant:

Ascent Environmental, Inc.
455 Capitol Mall, Suite 30
Sacramento, CA 95814
Attention: Sydney Coatsworth

19. General Provisions.

A. Modification. No alteration, modification, or termination of this Agreement shall be valid unless made in writing and executed by all Parties.

B. Waiver. The waiver by any Party of a breach of any provision hereof shall be in writing and shall not operate or be construed as a waiver of any other or subsequent breach hereof unless specifically stated in writing.

C. Assignment. No Party shall assign, transfer, or otherwise dispose of this Agreement in whole or in part to any individual, firm, or corporation without the prior written consent of the other Party. Subject to the forgoing provisions, this Agreement shall be binding upon, and inure to the benefit of, the respective successors and assigns of the Parties.

D. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of California.

E. Venue. Venue for all legal proceedings shall be in the Superior Court of California for the County of Stanislaus.

F. Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

G. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which shall be deemed a single agreement.

H. Severability. If any term, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, the remainder of this Agreement shall remain in effect.

I. Audit. City shall have access at all reasonable times to all reports, contract records, contract documents, contract files, and personnel necessary to audit and verify Consultant's charges to City under this Agreement.

J. Entire Agreement. This Agreement sets forth the entire understanding between the Parties as to the subject matter of this Agreement and merges all prior discussions, negotiations, proposal letters or other promises, whether oral or in writing.

K. Headings Not Controlling. Headings used in this Agreement are for reference purposes only and shall not be considered in construing this Agreement.

L. Time is of the Essence. Time is of the essence in this Agreement for each covenant and term of a condition herein.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the last day and date below written.

CITY:

CITY OF RIVERBANK, a California
municipal corporation

By: _____
Marisela Garcia, Interim City Manager

Date: _____

Approved as to Form:

Tom Hallinan, City Attorney

CONSULTANT:

ASCENT ENVIRONMENTAL, INC., a
California Corporation

By: _____

Name: _____

Date: _____

DRAFT

EXHIBIT A

Services

DRAFT

EXHIBIT B

Rate Schedule

DRAFT

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 10.3

SECTION 10: NEW BUSINESS

Meeting Date: February 8, 2022

Subject: A **Resolution** to Award a Contract for Preparation of a Financial Security Package and Wastewater Rate Study for the Regional Recycled Water Project – Phase I to Bartle Wells Associates, and Authorize a Budget Appropriation in the amount of \$55,000 from the Wastewater Enterprise Fund for Said Contract

From: Maricela Garcia, Interim City Manager

Submitted by: Michael Riddell, Public Works Director

RECOMMENDATION

It is recommended that the City Council award the contract for preparation of the Financial Security Package for the State Water Resources Control Board Clean Water State Revolving Fund Financial Assistance application and Wastewater Rate Study for the Riverbank Regional Recycled Water Project – Phase I to Bartle Wells Associates, Inc., authorize the City Manager to execute a contract with said firm in the amount of \$49,600, authorize a contingency amount of \$5,400, and authorize a budget appropriation of \$55,000 from the Wastewater Enterprise Fund for said contract.

SUMMARY

Upon completion of the City of Riverbank Recycled Water Production Study and Recycled Water Use Study reports and as directed by the City Council, applications for financial assistance for proceeding with the Phase I Regional Recycled Water Project (RRRWP) have been prepared and submitted to the State Water Resources Control Board under the Clean Water State Revolving Fund (CWSRF). Additional application documentation has been submitted to the United States Bureau of Reclamation (USBR) for consideration of funding under the Title XVI program and funding from other sources will be identified and pursued.

To complete the CWSRF financial assistance application for project implementation, preparation of a Financial Security Package, a Wastewater Rate Study and Recycled Water Fee Study, and completion of rate setting under the requirements of Prop. 218, are necessary. Following an open Request for Proposals (RFP) process for preparation of these necessary financial documents and a review committee's selection of Bartle Wells Associates based on submitted proposals and the firm's qualifications and experience, tonight's request is to proceed with awarding the contract to Bartle Wells for preparation

of the required financial and rate study documents and CWRSF Financial Security Package documents. Because applications for additional funding sources are currently being pursued, it is further recommended that the City Council authorize a \$5,400 budget contingency to allow the City Manager to negotiate additional financial or rate study scope or documents to support such additional finding applications.

BACKGROUND

The City has completed a feasibility level study of expanding the Wastewater Treatment Plant (WWTP) to produce recycled water as well as provide for capacity to meet expected wastewater treatment needs of the City for the next 30 years. The feasibility study also evaluated treatment process improvements to provide for nitrogen control and improved effluent quality for continued discharge to land of a portion of the flow, not otherwise delivered to recycled water users. Based on input and direction from the City Council, a Phase I program of implementation of the alternatives evaluated in the feasibility study is being developed for implementation, including preparation of financial assistance applications to multiple funding sources. The Phase I recommended program of the RRRWP is envisioned as a program for the production and use of recycled water in south-eastern San Joaquin County. Wastewater generated within the City is the proposed source of recycled water in this proposed project and has the potential to capture and reuse wastewater to supplement fresh water sources, including in-lieu recharge of groundwater. The proposed project includes improvements to the City of Riverbank WWTP, and recycled water distribution facilities within the vicinity of the WWTP. It is envisioned that this water will be used to offset water used for agricultural needs. The Phase I project is proposed to include the following facilities improvements:

1. Facilities improvements at the WWTP to provide the level of treatment required to produce recycled water from wastewater originating at the City of Riverbank, including upgrades to the secondary treatment process and addition of tertiary treatment and disinfection; modifications of existing percolation ponds and/or construction of new seasonal storage ponds; and construction of a new distribution pump station. Improvements to the secondary treatment process include biological nutrient removal to reduce effluent nitrogen for continued use of the on-site percolation ponds.
2. Recycled water distribution facilities for agricultural irrigation using recycled water in the vicinity of the City of Riverbank. The distribution of recycled water is expected to be phased with initial phase delivering recycled water directly to one or more individual agricultural users in close proximity to the Riverbank WWTP. A later phase delivering recycled water to the South San Joaquin Irrigation District Lower Lateral #2 may be completed once additional agreements are in place.

In addition to delivering recycled water to agricultural users, it is expected that the completed program will include a recycled water fee charged to recycled water users to recuperate a portion of the operating cost of the recycled water systems. Therefore, development of a new recycled water fee is expected to be necessary and will be evaluated under this study.

It is the City's goal to have a complete application for financial assistance, including the Financial Security Package, before December 31, 2022.

The projected total capital cost (including allowance for engineering, environmental, permitting, and administration) of the recommended improvements are summarized below.

Facility Component	Projected Total Capital Cost
Headworks and Secondary Improvements to WWTP	\$39,740,000
Recycled Water Filtration and Disinfection	\$8,800,000
Phase I Recycled Water Storage, Pumping, and Distribution	\$16,500,000
Total	\$65,040,000

Application was made to the State Water Resources Control Board for financial assistance under the CWSRF program. The submitted application included the general application form and project information as well as the priority scoring sheet. To complete the application, and allow for a project scoring that would result in project funding in 2023, the following additional detailed information must be prepared and submitted no later than December 31, 2022:

Technical Package, to include: review of water rights, water conservation measures, the Project Report (the feasibility studies prepared in 2021), updated project details (as needed for preparation of the other application packages) and worksheets.

Environmental Package, (which is the scope of services for this item) to include CEQA documentation (requiring additional project engineering definition), project evaluation under federal environmental requirements (additional alternatives analysis and archeological/historic preservation review, clean air act review, and biological resources and water quality/wetland resources review.

Financial Security Package, to include City demographic information, funding sources, projected annual operation and maintenance costs, revenue source determinations and associated rate study and rate adoption, and additional financial management policies and projections.

Concurrent development of the Technical Package (to include a more detailed preliminary design to support both environmental and financial analysis and review), Environmental Package, and Financial Security Package is planned to allow the City to have a complete CWSRF financial assistance package by December 31, 2022. This will allow consideration of project funding, including design completion, in 2023.

At the same time the CWSRF detailed application information is being developed, additional information may be prepared and submitted to the USBR for consideration of funding under the Title XVI program and/or to the United States Environmental Protection Agency under the WIFIA Program (Water Infrastructure Finance and Innovation Act) and other applicable funding programs that the RRRWP may be eligible under.

In order to solicit proposals for preparation of the Financial Security Package, an RFP was prepared and published on the City's website December 16, 2021. Several municipal finance and rate study consultants known to City staff to prepare these types of studies were also directly contacted to provide notice of availability of the RFP. The RFP requested that proposals be submitted to the City by no later than 3:00 pm on January 18, 2022. One proposal was received before the date and time from Bartle Wells Associates.

Since only one proposal was submitted, the committee of City staff reviewed the proposal for the firm's understanding of the project, experience with related work, firm's project manager experience and qualifications, overall team's experience and qualifications, and proposed schedule and ability to complete the project within the timeframe requested. Based on the committee's review of consultant qualifications, Bartle Wells Associates meet the RFP requirements and final scope and fee was negotiated.

STRATEGIC PLAN

The RRRWP and this action addresses the following August 10, 2021 Strategic Plan Goals:

Goal 1.1 Maintain sound, responsible fiscal policies regulating debt and establishing parameters for reserves.

Goal 1.3 Continue to seek local, regional and federal grant opportunities to support City projects, programs and initiatives.

Goal 1.5 Provide transparency in all activities related to municipal finance and ensure that financial records are accurate, reliable and timely.

Goal 6, Promoting Sustainable Development, by providing for facilities that sustainably support the City's thoughtful and careful planning.

FINANCIAL IMPACT

Cost of this element of the project is \$49,600, with the potential to add an additional \$5,400 supporting pursuit of additional funding sources, to be appropriated from the City's Wastewater Enterprise Fund.

ATTACHMENT

- 1) Resolution
- 2) Bartle Wells Associates Proposal
- 3) Bartle Wells Associates Consultant Agreement - DRAFT

CITY OF RIVERBANK

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, TO AWARD A CONTRACT FOR THE FINANCIAL SECURITY PACKAGE FOR THE REGIONAL RECYCLED WATER PROJECT – PHASE I TO BARTLE WELLS ASSOCIATES, INC., AUTHORIZE THE CITY MANAGER TO EXECUTE A CONTRACT WITH SAID FIRM, AND AUTHORIZE A BUDGET APPROPRIATION OF \$55,000 FROM THE WASTEWATER ENTERPRISE FUND 106 RESERVES FOR SAID CONTRACT

WHEREAS, the City has submitted an application to the State Water Resources Control Board for financial assistance in implementing the Regional Recycled Water Project – Phase I; and

WHEREAS, in order to complete the application for financial assistance certain financial security and rate study documents must be prepared and submitted to the State Water Resources Control Board; and

WHEREAS, Preparation of financial security documents including wastewater rate study and recycled water rate study are necessary for project implementation; and

WHEREAS, in addition to submitting to the State Water Resources Control Board for financial assistance the City will also submit applications for funding under other programs to be determined; and

WHEREAS, preparation of the Financial Security Package under the State Water Resources Control Board Clean Water State Revolving Fund Program will meet these requirements; and

WHEREAS, after issuance of a Request for Proposals, it is the City Council's desire to award the contract for preparation of the Financial Security Package to Bartle Wells Associates, Inc. at an approximate cost of \$49,600, with a budget contingency amount of \$5,400 for potential additional services to be administered by the City Manager, for a total of \$55,000 to be allocated from the Wastewater Enterprise Fund 106.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Riverbank hereby awards the Financial Security Package for the Regional Recycled Water Project – Phase I contract to Bartle Wells Associates, Inc., authorizes the City Manager to execute this contract, and appropriates \$55,000 from the Wastewater Enterprise Fund.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 8th day of February, 2022; motioned by Councilmember _____, seconded by Councilmember _____, and upon roll call was carried by the following City Council vote of :

AYES:

NAYS:

ABSENT:

ABSTAINED:

ATTEST:

APPROVED:

Kathy L. Teixeira
Interim City Clerk

Richard D. O'Brien
Mayor

Attachment: Consultant Agreement



Proposal for Financial Security Package Preparation



January 18th, 2022



BARTLE WELLS ASSOCIATES
INDEPENDENT PUBLIC FINANCE ADVISORS



BARTLE WELLS ASSOCIATES
INDEPENDENT PUBLIC FINANCE ADVISORS

2625 Alcatraz Ave, #602
Berkeley, CA 94705
Tel 510 653 3399
www.bartlewells.com

January 18, 2022

City of Riverbank
6707 3rd Street
Riverbank, CA 95367

Attn: Michael Riddell

Re: Request for Proposals for Financial Security Package Preparation

Bartle Wells Associates (BWA) is pleased to submit this proposal for Financial Security Package Preparation to the City of Riverbank (City). For more than 50 years, our firm has specialized in providing independent financial and utility rate consulting services to California water and wastewater agencies. We offer an unmatched level of financial planning expertise and are the only firm in California to provide both financial advisory services for project financing as well as utility rate consulting services.

We have helped a number of agencies develop strategic financial plans to address escalating costs related to operating and long-term infrastructure needs. We have also assisted many agencies in modifying their existing rate structures to provide a better balance of revenue stability, customer equity, and to compliance with the evolving interpretations of Proposition 218. Our rate studies are based on a comprehensive analysis of each agency's costs, customer base characteristics, and demands to ensure rate structure recommendations reflect local needs and objectives.

We are very interested in working with the City on this project and hope this proposal provides a suitable basis for our selection.

Sincerely,

Douglas Dove, PE, CIPMA
Principal/ President

Erik Helgeson, MBA
Assistant Vice President

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Project Process & Objectives

BWA will develop a comprehensive, cost of service based sewer rate study with the goal of helping the City implement a series of rates for upcoming years that a) fund the City's projected costs of providing service, b) maintain financial stability, and c) are fair to all customers. Our general rate study process is summarized in the following graphic:

Key tasks of our study will include:

- **Determination of the Recycled Water Enterprise Fund Formation:** BWA will provide assistance and support to City for the formation of a recycled water rate structure. City assistance would include an initial evaluation of whether a separate enterprise fund should be developed, and if so, Consultant shall make a determination of rates for the recycled water delivery in satisfaction of the Proposition 218 process.
- **Preparation of the Financial Security Package:** BWA will provide preparation and completion of the Financial Security Package responsibilities shall follow the general format as required by the CWSRF.
- **10-year Financial Plan:** Develop comprehensive 10-year financial plan for the City's and sewer utility. The plans will facilitate evaluation of a range of scenarios and assumptions, and serve as financial roadmaps for funding projected operating, maintenance and capital programs while maintaining long-term financial stability. The financial plan will include evaluation of financing alternatives for capital projects, recommendation of fund reserve targets, and development of a strategy for funding long-term repairs, replacements, and other capital needs.
- **Cost of Service Rate Analysis:** Develop an updated cost-of-service analysis to support proposed sewer rates. The goal will be to recommend rates that a) reflect the underlying costs of providing service, b) are fair and equitable to all customers, c) are easy to understand and administer, d) provide a prudent balance of conservation incentive and revenue stability, and e) comply with the substantive legal requirements
- **Build Consensus for Final Recommendations:** BWA has a strong track record of building consensus and public acceptance for final recommendations. Rate and fee adjustments can be controversial. We have found that ratepayers are more accepting of rate increases when they both understand the need for the increases and believe they are being treated fairly. BWA will present a summary of recommendations at Council meetings and can assist with public outreach efforts. Our goal will be to build consensus and public acceptance for final recommendations.

Section 1: Detailed Work Plan



This section presents our methodology and proposed scope of services that we believe will form a sound basis for completing this assignment as well as a schedule to complete the scope. We will work with the City to finalize a scope of services that meets the objectives and schedule desired. Our completed study will provide a set of legally defensible documents that outline a comprehensive, reasonable financial plan attainable through sound, industry-standard recommendations for the City. Our proposal takes into account variable and fixed charges, different assumptions regarding future capital investments, recent court rulings, and Proposition 218 compliance. Assistance from the project team will be required to gather data and to provide feedback on rate recommendations at regularly scheduled progress calls.

TASK A. PROJECT INITIATION & DATA COLLECTION

1. Project Team Orientation

To initiate our work, hold a kickoff meeting with City staff and others as appropriate, to accomplish the following:

- Identify members of City staff, City Council members/subcommittees, engineering consultants, and other consultants/advisors who will participate in the project
- Determine the roles and responsibilities of all project participants
- Identify other parties who may have a significant interest in the project, such as community groups, business organizations, and large customers
- Establish project schedule and key milestone dates
- Confirm the key goals and expectations of the project team

2. Investigation and Data Collection

Assemble the information necessary to understand the wastewater system, finances, customers and usage, rate and fee structures, and legal agreements with other agencies. Assistance and cooperation of staff will be needed to assemble the relevant background information. The objectives of investigation and data collection are to develop a complete understanding of each utility and its costs, and to reach an agreement on basic assumptions to be used in the study. Information to be reviewed includes the following:

- Cost information: budgets, audits, financial statements, internal finance projections, capital improvement plans, and engineering master plans
- Revenue sources: schedule of fees and rates, interest earnings, grants and/or debt proceeds

TASK B. Determination of the Recycled Water Enterprise Fund Formation

BWA will provide assistance and support to City for the formation of a recycled water rate structure. City assistance would include an initial evaluation of whether a separate enterprise fund should be developed, and if so, Consultant shall make a determination of rates for the recycled water delivery in satisfaction of the Proposition 218 process.

TASK C. Preparation of the Financial Security Package

BWA will provide preparation and completion of the Financial Security Package responsibilities shall follow the general format as required by the CWSRF.

TASK D. LONG-RANGE FINANCIAL PLAN

1. Develop Forecasts and Projections

Based on evaluation of the data assembled and input provided by staff and other members of the project team, prepare forecasts and projections to be used in the development of financial projections for the City's enterprises. Develop projections for the following areas (and others as appropriate):

Capital Improvement Funding Needs: Identify latest capital improvement plan costs by year. Work with staff to identify key alternatives for financial evaluation. Based on input from City staff, determine a reasonable amount to include for future, ongoing capital repairs and replacements. BWA often recommends that agencies phase in funding for long-term system rehabilitation as rates are gradually increased.

Growth and Development/Redevelopment: Evaluate historical growth trends and develop appropriate and conservative assumption for future development and redevelopment that can be incorporated into the financial plan/rate model. Evaluate impact of faster and slower growth rates.

Cost Escalation Factors: Review historical cost trends and work with project team to develop reasonable cost escalation factors for both operating and capital expenditures. Work with staff to estimate potential new operating costs, such as new staffing projections and O&M costs related to planned capital improvements, or costs for complying with future permit requirements.

Review projections with City staff for agreements on assumptions, interpretation of data, and completeness of approach.

2. Evaluate Financing Alternatives for Capital Improvements

Evaluate options for financing proposed capital improvement projects. Our evaluation will:

- Estimate the amount and timing of any debt, if needed, to finance capital projects.
- Evaluate the alternative borrowing methods available including bonds, COPs, state and federal funding programs, bank loans and lines of credit, and other options.
- Recommend the appropriate type of debt and its term and structure (for financial planning purposes).
- Evaluate possible combinations of financing methods, such as prudent use of pay-as-you-go cash funding supplemented by debt financing, when appropriate

3. Review and Update Fund Reserve Targets

Evaluate the adequacy of the City's current fund reserves. As warranted, identify alternatives and update minimum fund reserve targets based on updated operating and capital funding projections. Develop an implementation plan for achieving and maintaining the recommended reserve fund levels.

4. Develop Long-Range Cash Flow Projections

BWA will develop cash flow projections showing the financial position of the City over the next ten years. The cash flows will project fund balances, revenues, expenses, and debt service coverage, and will incorporate the forecasts developed with staff input, including funding needs for future repairs and replacements. After developing a base-case cash flow scenario, we can develop alternatives for additional evaluation such as capital project alternatives, project financing alternatives and the impacts of different levels of growth etc. During this phase, BWA will work closely with the project team to develop financial and

rate projections under alternative scenarios. BWA typically recommends that rate increases be phased in over time to minimize the annual impact on ratepayers.

5. Evaluate Financial Scenarios & Rate Increase Options

Based on the cash flow projections, determine the annual revenue requirements and project overall required rate increases. Evaluate the financial impact of various financial and rate adjustment alternatives, such as phasing in required rate increases over a number of years. If appropriate, develop a reduced rate alternative and evaluate impacts on the City's ability to fund capital projects.

TASK E. COST-OF-SERVICE ALLOCATION

Task C is the “meat” of the rate study that will provide the legal justification for the rates and charges of the City. BWA will allocate costs based on industry standard practice, guidance from recent court cases, and ease of implementation/practicality.

BWA will provide a detailed, functional cost allocation for operating, capital, debt service, fixed and variable costs. Functionalized cost categories may include collection, treatment, and customer costs. BWA will determine the units of service and assign costs to each unit of service. Typical units of service for the wastewater utilities are sewer flow and pollutant loading (BOD and TSS). We may want to include nitrogen, phosphorous, and ammonia in order to accurately allocate costs.

TASK F. RATE DESIGN

1. Review of the Existing Utility Rate Structures and Rate Models

Perform a review of the existing utility rate structures and discuss advantages and disadvantages compared to other rate approaches. Summarize and discuss finding with the project team. Review the existing rate models and most recent rate update. Evaluate the cost allocation and rate design included in the model for compatibility with BWA recommendations.

2. Conduct Rate Fee Survey of Comparable Utility Agencies

Review and summarize other regional and/or comparable agencies. Summarize results in easily understandable tables and/or charts.

3. Analyze Utility Consumption Data

Evaluate current and historical water usage, winter water consumption for sewer billed flow, utility billing data, and production data to determine reasonable and conservative estimates of demand to use in developing rate options. Ideally, we would prefer to analyze three years of utility billing data in order to determine slightly conservative demand projections.

4. Identify Utility Rate Structure Modifications and Alternatives

Identify alternative rate structures or modifications to the City's existing rates designed to improve equity and/or better achieve your objectives. Discuss pros and cons of different rate structure options and their general impacts on different types of customers. Rate structure options will be refined as the study

progresses based on input from the study project team and will be evaluated to ensure that any modifications can be accommodated within the City's billing systems. Some potential rate structure modifications may include the following:

- Redesigning how much of the revenue is collected from fixed vs. variable charges.
- Establishing different wastewater rates for different customer classes with different effluent strength characteristics.

5. Evaluate Customer Equity

Review the fairness of each rate and charge across all customer groups. Confirm that all customers are charged for service proportional to how they use the utility systems. If desired, review options to aid in affordability for disadvantaged customers. Compare typical/sample bills from each customer class to the bills of other local public utilities. As needed, seek input from vocal customers such as business groups and developers.

6. Develop Preliminary and Final Rate Recommendations

Based on the rate analysis and the financial plan update, develop draft rate recommendations. The recommendations include a multi-year phase in of both overall rate increases and proposed rate structure adjustments. Review preliminary recommendations and key alternatives with the project team and Council. Based on input received, develop final draft utility rate recommendations.

Final rate recommendations will be designed to a) fund the long-term costs of providing service, b) be fair and equitable to all customers, c) provide a prudent balance of fixed and variable rates, and d) comply with the substantive requirements of Proposition 218 and recent court cases. Based on input from staff, develop a plan for implementing any rate structure modifications and/or rate adjustments.

7. Evaluate Rate Impacts on Customers

Calculate the rate impacts of each rate alternative on a range of utility customers (e.g. different customer classes, customers with different levels of use, seasonal impacts etc.). Work with the project team to identify customer and usage profiles to use for calculating the rate impacts. Discuss additional rate structure adjustments that may reduce the impact on certain customers if warranted and/or requested by the project team.

TASK G. PRESENTATIONS & PUBLIC OUTREACH

1. Meetings

Meet with the project team to present findings, discuss alternatives and their impacts, gain ongoing input, and develop and hone recommendations. Meet with and present findings to City. Our proposal includes a total of five trips to the City. The final schedule and number of meetings will be determined with input from the project team. A preliminary meeting/presentation schedule could include: one staff meeting, one community meeting, one workshop/presentation with the City Council/ public, and the Proposition 218 hearing. The meetings can be determined as needed by the City (e.g., a workshop could be substituted for a project meeting). BWA will participate in conference calls as needed. Additional project meetings, meetings/workshops with committees and citizens groups, may also be included if

warranted by staff. Meetings can also be combined, e.g. progress meetings can be scheduled on the same day as Council meetings, to reduce costs.

Presentations will provide brief background and study objectives, make a clear case why rate increases are needed, describe the rate structure (and potentially key alternatives) approved by the project team, show rate impacts on various customer profiles, present findings of the rate survey, and discuss related financial and policy recommendations. We have substantial experience in presenting our findings to both technical and governing boards and to audiences without a background in utility rates or finances.

2. Prepare Draft and Final Reports

Submit a draft summary report for project team review and feedback. The report will summarize key findings and recommendations and discuss key alternatives when applicable. Receive input on draft report from the project team and Council. Prepare final reports incorporating feedback received. We will provide copies of both the draft and final reports and electronic versions to the entities.

3. Compliance with Proposition 218

Proposition 218 establishes requirements for adopting or increasing property-related fees and charges. In July 2006, the California Supreme Court ruled that rates are subject to Proposition 218 (Articles XIII C and XIII D of the State constitution). Proposition 218 requires that the City: 1) mail notification of proposed rate increases and the date, time, and place of public hearing to all affected property owners (and potentially ratepayers who are renters that pay utility bills); 2) hold a public hearing not less than 45 days after the notices are mailed; and 3) subject the rate increases to majority protest; if more than 50% of property owners submit written protests, the proposed rate increases cannot be adopted.

BWA remains available to assist staff with drafting the Proposition 218 rate notice. BWA recommends the notice go beyond the minimum legal requirements and provide clear and concise explanation of the reasons for any rate adjustments. We have found that ratepayers are generally much more accepting of rate increases when they understand why they are being implemented.

4. Public Education and Consensus-Building

Rate and fee adjustments are often controversial. BWA has extensive experience developing clear presentations that facilitate public understanding of the need for rate increases. We understand the importance of building consensus and public acceptance for our recommendations and can assist staff in developing public education materials. Holding community workshops or open houses are effective tools to help to help the community understand the needs of the agency. BWA is always willing to support and attend additional community outreach meetings on a time and expense basis.

Section 2: QUALIFICATIONS AND PERSONNEL



BARTLE WELLS ASSOCIATES

Leaders in Water, Wastewater & Stormwater Rates and Finance

Bartle Wells Associates (BWA) is an independent financial advisory firm with expertise in the areas of water, wastewater, and solid waste finance. BWA was established in 1964 and has over 50 years of experience advising cities, special districts, and other agencies on the complexities and challenges in public finance. We have advised over 600 public agency clients throughout California and the western United States. We have a diversity of abilities and experience to evaluate all types of financial issues faced by local governments and to recommend the best and most-practical solutions.

Bartle Wells Associates has a highly qualified professional team of five consultants. Our educational backgrounds include finance, civil engineering, business, public administration, public policy, and economics.

BWA specializes in three professional services: utility cost-of-service rate and fee studies, financial plans, and project financing. We are one of the few independent financial advisors providing *all three* of these interrelated services to public agencies.

BWA Key Services

- *Rate & Fee Studies*
- *Financial Plans*
- *Project Financing*

RATE AND FEE STUDIES Our rate studies employ a cost-of-service approach and are designed to maintain the long-term financial health of a utility enterprise while being fair to all customers. We develop practical recommendations that are easy to implement and often phase in rate adjustments over time to minimize the impact on ratepayers. We also have extensive experience developing impact fees that equitably recover the costs of infrastructure required to serve new development. BWA has completed hundreds of utility rate and fee studies. We have helped communities implement a wide range of rate structures and are knowledgeable about the legal requirements governing rates and impact fees. We develop clear, effective presentations and have represented public agencies at hundreds of public hearings to build consensus for our recommendations.

FINANCIAL PLANS Our financial plans provide agencies with a flexible roadmap for funding long-term operating and capital needs. We evaluate the wide range of financing options available, develop a plan that recommends the best financing approach, and clearly identify the sources of revenue for funding projects and repaying any debt. We also help agencies develop prudent financial policies, such as fund reserve targets, to support sound financial management. BWA has developed over 2,000 utility enterprise financial plans to help public agencies fund their operating and capital programs, meet debt service requirements, and maintain long-term financial health.

PROJECT FINANCING Our project financing experience includes over 300 bond sales and numerous bank loans, lines of credit, and a range of state and federal grant and loan programs. We generally recommend issuing debt via a competitive sale process to achieve the lowest cost financing possible. To date, we have helped California agencies obtain over \$5 billion of financing via bonds, bank loans/private



placements, lines of credit, low-rate State Revolving Fund Loans, and other funding programs. We work only for public agencies; we are independent financial advisors and do not buy, trade, or resell bonds. Our work is concentrated on providing independent advice that enables our clients to finance their projects on the most favorable terms—lowest interest rates, smallest issue size, and greatest flexibility.

Bartle Wells Associates is a charter member of the **National Association of Municipal Advisors** (NAMA), which establishes strict criteria for independent advisory firms. All of our lead consultants are *Certified Independent Professional Municipal Advisors* and are Registered Municipal Advisors.



BWA has served over 550 public agencies throughout California and the western United States.

Bartle Wells Associates is committed to providing value and the best advice to our clients. Our strength is *quality*—the quality of advice, service, and work we do for all our clients.

EXPERIENCE BWA has extensive experience developing long-term financial plans, utility rates, and capacity fees for public agencies from all areas of California and the western U.S. In recent years, we have completed assignments for many agencies including:

Sample Water/Sewer/ Stormwater Districts

- San Miguel Community Services District
- Union Sanitary District
- Monterey One Water
- Alameda County Water District
- Cambria Community Services District
- Sonoma County Water Agency
- Mid-Peninsula Water District
- Silicon Valley Clean Water
- Napa Sanitation District
- East Bay Municipal Utility District
- Sausalito-Marín City Sanitary District
- Union Sanitary District
- Novato Sanitary District
- Montara Water & Sanitary District
- West Valley Sanitation District
- Joshua Basin Water District
- Ramona Municipal Water District
- South San Luis Obispo County San District
- San Francisco Public Utilities Commission

Sample Cities

- City of Modesto
- City of Petaluma
- City of Fresno
- City of Davis
- City of Benicia
- City of Solvang
- City of Morro Bay
- City of Berkeley
- City of San Carlos
- City of Monterey
- City of Sunnyvale
- City of Millbrae
- City of Vacaville
- City of Santa Clara
- City of Glendale
- Town of Woodside
- City of Calistoga
- City of San Mateo
- City of Mountain View

PROJECT TEAM

BWA uses a **team approach** for most projects, typically assigning two consultants to each assignment, including at least one principal consultant. Our general project approach is to work closely with staff and other members of the project team to: identify objectives, set milestones, have frequent communication, and remain flexible to resolve unanticipated issues.

Bartle Wells Associates has a highly qualified professional team. Our education and backgrounds include finance, civil engineering, business, public administration, public policy, and economics. Bartle Wells Associates has a long track record of completing projects on time and on or under budget.

Our consulting staff is available to assist on this project as needed to ensure all project work and deliverables are completed on schedule.



Principal in Charge
Doug Dove, PE, CIPMA

Project Manager
Erik Helgeson

Analytical Support
Additional BWA Staff
Available as Needed

Doug Dove, Principal in Charge

Doug Dove is President of BWA and one of BWA's principal consultants. He has more than 30 years of professional experience, specializing in all areas of public finance, including utility rate setting, capacity fee implementation, strategic financial planning, and infrastructure financing. He has extensive experience developing strategic financial plans and utility rate studies and has consulted for more than 150 California agencies. Doug has substantial experience working with public agency staff and governing bodies to build understanding and consensus for recommendations.



Erik Helgeson, Senior Project Manager

Erik Helgeson is an Assistant Vice President of BWA with 11 years of experience. He specializes in developing long-term financial models and utility rates based on a cost of service approach. His experience includes working as a senior finance analyst for Denver Water in the rates and charges group and as a utility rate consultant in Colorado and California. His prior experience working for a utility gives him a unique perspective on the internal challenges a utility faces when implementing a study's recommendations. He currently serves on American Water Works Association's Rates and Charges Committee.



RESUMES

DOUGLAS R. DOVE

Principal Consultant



Douglas R. Dove is President of Bartle Wells Associates and directs the operation of the firm while maintaining a principal consultant's role. With over 30 years of consulting experience, he specializes in utility rate analysis, strategic financial planning, and project financing. Mr. Dove has developed utility rate structures and financing plans for a wide variety of public infrastructure programs. He has managed the procurement of over \$1 billion in municipal debt and over \$300 million in state and federal grants and low-interest loans. Mr. Dove frequently shares his expertise and has given presentations at conferences including the Association of California Water Agencies (ACWA), the American Water Works Association (AWWA), the California Association of Sanitation Agencies (CASA), the California Municipal Rates Group (CMRG), the California Special District's Association (CSDA), the California Municipal Treasurers Association (CMTA), the California Water Environment Association (CWEA) and Water Reuse. By special request in July 2015, Mr. Dove made a presentation to the California Water Resources Control Board regarding water conservation pricing. Mr. Dove is also a published author of a water rate paper in the Journal of the American Water Works Association (*Implementing Consumption-Based Fixed Rates in Davis, Calif.*). Mr. Dove's expertise also includes assisting agencies in securing state and federal grants and loans and in issuing certificates of participation (COPs), revenue bonds, general obligation bonds, assessment district bonds, Marks-Roos revenue bonds, CFD (Mello-Roos) bonds, private placement loans and other types of debt. Mr. Dove recently finished his term on the board of directors of the National Association of Municipal Advisors (NAMA).

Education

M.S., Civil Engineering - University of California, Berkeley

B.S., Civil Engineering – Drexel University, Philadelphia, PA

Representative Projects

- **City of Modesto:** Provided rate expert litigation support in wastewater rate litigation. Developed water and wastewater cost-of-service and capacity fee studies.
- **Modesto Irrigation District:** Developed cost allocation methodology between the district's domestic water, irrigation, and electric enterprises.
- **City of Davis:** Comprehensive water rate study developed with a 15-member Water Advisory Committee. Completed a water capacity fee study for the City as well.
- **Big Bear City CSD, CA:** Water, sewer and solid waste cost-of-service rate studies
- **Pico Water District, CA:** Water financial plan and cost-of-service rate study
- **City of Placerville:** Wastewater rate study and capacity fees
- **Napa-Berryessa Resort Improvement District:** Developed financing plan for water and wastewater public-private partnership (P3). Prepared assessment engineers report. Formed an assessment district and secured \$11.1 million in federal funding from US Department of Agriculture.
- **City of American Canyon:** Comprehensive, multi-year water and wastewater rate study.
- **Madera County, CA:** Rate studies for twenty-three of the county's water and sewer special service districts
- **City of Patterson:** Water and wastewater rate studies and five-year financing plans.
- **City of San Juan Bautista:** Water and Wastewater rate and capacity fee studies, DIF study, Revenue bonds for water and wastewater projects, continuing disclosure services.
- **Del Paso Manor Water District:** Comprehensive water financial plan and rate study.

- **Browns Valley ID:** Water rate study
- **Rio Linda/ Elverta Community Water District:** Comprehensive water financial plan, connection fee and rate study.
- **City of Imperial, CA:** Water and wastewater financial plans and rate studies.
- **East Bay Municipal Utility District:** Comprehensive water rate study and AB 1600 capacity fee review, Wastewater cost-of-service review and capacity fee review, various other financial studies
- **City of Santa Barbara:** Comprehensive water rate and capacity fee study.
- **Newhall County Water District:** Provided rate expert litigation support in water rate litigation.
- **City of Monterey:** Developed financing plan and rate study for \$20 million wastewater pipeline rehabilitation project.
- **San Miguel Community Services District, CA:** Water and wastewater financial plans and rate studies.
- **City of Santa Clara:** Wastewater rate and capacity fee study.
- **City of Gilroy:** Water and wastewater rate studies.
- **West Valley Sanitation District (Campbell, CA):** Wastewater rate study, financing plan and bond issuance.
- **City of Calistoga:** Long range utility financial plan, water and wastewater rates, secured financing for WW treatment plant upgrade (\$6 million SRF loan, \$3 million Small Community Grant, \$3.5 million revenue bonds).
- **El Dorado Irrigation District:** Water and wastewater rate studies.
- **Lake Arrowhead Community Services District:** Financial master plan, \$28 million revenue bond refinancing and water and wastewater rate studies.
- **California Statewide Communities Development Authority:** Financial advisor for statewide pooled revenue bond program (over \$250 million issued for over 32 borrowers).
- **South Bay Water Recycling Program, Phases 1 & 2:** Financial plan and rate study for \$200+ million regional (San Jose area) wastewater recycling program.
- **City of Tulare:** Financial advisor to the city, sale of \$63 million in bonds (3 issues), water and wastewater rate studies.
- **Big Bear Area Regional Wastewater Agency:** Regional wastewater rate study, sale of bonds (2 issues) and bank loans (2 loans).

Professional Memberships

- National Association of Municipal Advisors (former Board Member)
- League of California Cities
- American Water Works Association
- Association of California Water Agencies
- California Water Environment Association
- California Association of Sanitation Agencies
- California Special Districts Association
- Water Reuse Association

Certifications

Certified Independent Professional Municipal Advisor (CIPMA), Registered Professional Engineer (PE) in California (PE# 45642) and MSRB -Registered Municipal Advisor – Series 50

ERIK W. HELGESON

Senior Project Manager



Erik Helgeson is an assistant vice president of Bartle Wells and Associates. His areas of expertise include the development of financial plans, ratemaking, and policy solutions for water, stormwater and wastewater utilities. He has eleven years of utility finance experience as a finance analyst at Denver Water and now as a utility rate consultant. Erik has extensive expertise in working with executive level staff and assisting in strategic decisions. He serves on the American Water Works Association (AWWA) Rates and Charges Committee and has presented at the Utility Management Conference.

Education

M.B.A., Entrepreneurship – University of Colorado, Denver

B.A., Business Administration – Gonzaga University

Representative Projects

- **City of Modesto, CA:** Analytical support for water and wastewater financial plans and rate studies
- **Modesto Irrigation District:** Designed an allocation methodology between the district's domestic water, irrigation, and electric enterprises.
- **City of Placerville, CA:** Analytical support for water financial plans and rate studies.
- **Big Bear City CSD, CA:** Water, sewer and solid waste cost-of-service rate studies
- **Pico Water District, CA:** Water financial plan and cost-of-service rate study
- **City of Hemet, CA:** Water budget rate design and cost of service study
- **City of Vacaville, CA:** Water and wastewater capacity fee studies
- **Union Sanitary District, CA:** Wastewater capacity fee study
- **San Luis Water District, CA:** Prop. 218 Assessment Election
- **City of Imperial, CA:** Lead consultant providing water and wastewater financial plans and rate studies
- **Madera County, CA:** Lead consultant providing rate studies for twenty-three of the county's water and sewer special service districts

Public Utility Experience

Denver Water, Denver, CO:

Senior Finance Analyst- Assisted with the annual cost of service study and financial plan, provided regular revenue reports, and oversaw the gathering and reporting of metrics to support Denver Water's organizational improvement initiatives. As the lead analyst on the initiative to change the rate design he facilitated research (customer survey and affordability study), performed rate design analysis, and assisted with stakeholder outreach (municipalities, customers, business representatives, non-profits, and Denver Water executives and Board) which led to the adoption of new rate structures. He coordinated the implementation efforts between various business units to ensure a successful rollout of the new rates and rate structures.

Professional Memberships

American Water Works Association – Member of Rates and Charges Committee

Certifications

MSRB-Registered Municipal Advisor (Series 50)

Section 3: References



West Valley Sanitation District, CA

WVSD provides wastewater collection and disposal services for the cities of Campbell, Monte Sereno, Los Gatos, much of Saratoga and unincorporated areas of the county, serving a population of approximately 109,000. BWA performed a wastewater rate study for the District in 2018. A critical component of this study was ensuring rates would continue to be sufficient to fund the necessary level of infrastructure improvements. A significant component of the infrastructure cost was WVSD's share of San Jose-Santa Clara Regional Wastewater Facility costs which had deviated from significantly from the original projection in 2013.

Agency Contact:

John Newby, District Manager

(408) 378-2407

jnewby@westvalleysan.org



Pico Water District, CA

Pico Water District (District) provides water distribution and maintenance service to 5,600 customers in Pico Rivera, CA. The District pumps all of its water from the underground aquifer known as the Central Basin, which is an adjudicated water basin. The District contracted Bartle Wells Associates (BWA) to conduct a water rate study which recommended rates sufficient to support capital projects and complied with Proposition 218. BWA provided several rate structure recommendations including transitioning to a uniform rate structure. The Pico Water District Board adopted the BWA recommended rates after a successful 218 process.

Contact:

Mark Grajeda, General Manager

Pico Water District

(562) 692-3756

msgrajeda@picowaterdistrict.net



Big Bear City Community Services District, CA

In 2019, BWA performed comprehensive water, wastewater and solid waste cost-of-service rate studies. BWA recommended a series of rate increases designed to meet each utility's operating and capital funding needs. BWA also reviewed the water and solid waste rate structures and customers classes and recommended modifications designed to equitably recover the costs of providing service, comply with Proposition 218, and achieve the District's objectives. BWA assisted the District with the Proposition 218 noticing and the rate adoption process which ultimately resulted in Board's adoption of recommended rate increases and cost-of-service based rate structure modifications.

Contact:

Shari Strain

Finance Officer

909-585-6525

sstrain@bbccsd.org



City of Modesto, CA

In 2015, BWA was retained to work with the City and the Industrial customers to develop a new wastewater rate structure based on the 2014 Tolling Agreement. Working closely with an accountant hired by the City's large industrial customers, BWA developed a separate large industrial wastewater rate structure and capacity fee schedule for cannery customers. BWA also developed new rates reflecting the City's tertiary treatment stream and secondary treatment "scalping." We met with stakeholder groups, the wastewater master planning engineering team, Finance Committee, and City Council on many occasions to vet our recommendations and gain consensus. Our rate study was implemented by City Council April 2016. In 2015, the City retained BWA to conduct a comprehensive water rate study. The City had not raised rates since 2013 and experienced reduced revenue due to drought conditions. BWA developed drought surcharges and analyzed individualized rate structures for each of the City's outlying service areas. A Proposition 218 hearing to adopt proposed rates was successfully completed in Fall 2016. In 2021 BWA was retained again to perform water and sewer rate studies. BWA is in the process of completing these studies.

Agency Contact:

William Wong, P.E., Sr. Engineer
(209) 571-5801
wwong@modestogov.com



City of Davis, CA

For over a year, BWA worked closely with City staff and a 15-member Water Advisory Committee (WAC) to review water rate structure alternatives, evaluate various financing scenarios, and develop a gradually phased-in set of rate increases to support the new Woodland-Davis surface water project. The 2013 water rate study recommended rate increases through 2017/18 to assist the City in obtaining State loans and grants and other debt financing to fund the Woodland-Davis supply project.

The approved water rate structure and increases were subjected to a legal challenge posed by opponents of the surface water project. In January 2014, the Yolo County Superior Court ruled in favor of the City and found that the water rates complied with the requirements of the CA Constitution (Proposition 218). In June 2014, the citizens of Davis repealed the March 2013 rates through a ballot Initiative. Accordingly, BWA worked with the newly formed Utilities Rate Advisory Commission (URAC) to update the projections used in the 2013 study and to develop a new water rate structure. The 2014 update included a uniform block volume rate by customer class and a drought surcharge based on the City's Water Shortage Contingency Plan. BWA updated the water rate study in 2017 using the rate model developed in 2014. We are currently contracted to conduct the 2019 Water Rate and Cost of Service Study.

Contact:

Stan Gryczko, Public Works Utilities and Operations Director
(530) 757-5686
sgryczko@cityofdavis.org



Additional References are Available Upon Request

Section 4: Study Schedule



Provided below is a draft timeframe for completion of the Project. BWA will work with the City to develop a final schedule designed to meet the City's objectives. BWA has the capacity to complete the projected on a compressed timeline if necessary.

Proposed Project Schedule

PROJECT TASK	Q1 2022				Q2 2022				Q3 2022				Q4 2022			
Data Collection																
Recycled Water Review																
Financial security Package																
10-Year Financial Plans																
Cost of Service Rate Analysis																
Draft, Revised, & Final Reports																
Council Meetings and 218 Hearing																

Note: Individual project milestones will be established based on consultation with the project team.

CONSULTANT SERVICES AGREEMENT

THIS CONSULTANT SERVICES AGREEMENT (“Agreement”) is made and entered into this ____ day of _____ 2022, (the “Effective Date”) by and between the City of Riverbank, a California municipal corporation (“City”), and Bartle Wells Associates Inc., a California Corporation (“Consultant”). City and Consultant may herein be referred to individually as a “Party” and collectively as the “Parties”. There are no other parties to this Agreement.

RECITALS

A. City has issued a request for proposals (“RFP”) for consultant services / determined that consultant services are required for the preparation of financial and rate study documents in connection with the Regional Recycled Water Project – Phase I (the “Project”).

B. Consultant has submitted a proposal to City that includes a scope of proposed consultant services, attached hereto and described more fully in **Exhibit A** (“Services”).

C. Consultant represents that it is qualified, willing and able to provide the Services to City, and that it will perform Services related to the Project according to the rate schedule attached hereto and described more fully in **Exhibit B** (the “Rates”).

NOW, THEREFORE, in consideration of the promises and covenants set forth below, the Parties agree as follows:

AGREEMENT

1. Consulting Services. Consultant agrees, during the term of this Agreement, to perform the Services for City in connection with the Project. Any request for services in addition to the Services described in **Exhibit A** will be considered a request for additional consulting services and not compensated unless the Parties otherwise agree in writing. No subcontract shall be awarded or an outside consultant engaged by Consultant unless prior written approval is obtained from City.

2. Compensation. City shall pay Consultant according to the fee schedule set forth in the Rates, as full remuneration for the performance of the Services, with a **total cost not to exceed \$49,600.00** for the Services described in Exhibit A. Consultant agrees to maintain a log of time spent in connection with performing the Services. On a monthly basis, Consultant shall provide City, in reasonable and understandable detail, a description of the services rendered pursuant to the Services and in accordance with the Rates. If the work is satisfactorily completed, City shall pay such invoice within thirty (30) days of its receipt. If City disputes any portion of any invoice, City shall pay the undisputed portion within the time stated above, and at the same time advise Consultant in writing of the disputed portion.

3. Reimbursement. Reimbursable expenses related to travel, lodging, conference calls, reproduction and other costs incurred related to Consultant's performance of the Services in accordance with the Rates with the total fee not to exceed that stipulated in Paragraph 2.

4. Confidential Information. Consultant understands and agrees that, in the performance of Services under this Agreement or in the contemplation thereof, Consultant may have access to private or confidential information that may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City ("Confidential Information").

Consultant shall not, either during or after the Term, disclose to any third party any Confidential Information without the prior written consent of City. If City gives Consultant written authorization to make any such disclosure, Consultant shall do so only within the limits and to the extent of that authorization. Such authorization does not guarantee that the City will grant any further disclosure of Confidential Information. Consultant may be directed or advised by the City Attorney on various matters relating to the performance of the Services on the Project or on other matters pertaining to the Project, and in such event, Consultant agrees that it will treat all communications between itself, its employees and its subcontractors as being communications which are within the attorney-client privilege.

5. Term. This Agreement shall become effective on the Effective Date and will continue in effect until the Services provided herein have been completed, unless terminated earlier as provided in Section 6 or 7 below (the "Term").

6. Termination. City may terminate this Agreement prior to the expiration of the Term ("Termination"), without cause or reason, by notifying Consultant in writing of City's desire to terminate this Agreement (the "Termination Notice"). Upon receipt of a Termination Notice, Consultant shall immediately cease performing the Services. Consultant will be entitled to compensation, as of the date Consultant receives the Termination Notice, only for Services actually performed.

7. Termination for Cause. Notwithstanding Section 6 above, this Agreement may be terminated by City for cause based on the loss or suspension of any licenses, permits or registrations required for the continued provision of the Services, or Consultant's malfeasance. Termination of the Agreement for cause as set forth in this Section shall relieve City from compensating Consultant.

8. Performance by Key Employee. Consultant has represented to City that **Erik Helgeson** will be the person primarily responsible for the performance of the Services and all communications related to the Services. City has entered into this Agreement in reliance on that representation by Consultant.

9. Property of City. The following will be considered and will remain the property of City:

A. Documents. All reports, drawings, graphics, working papers and Confidential Information furnished by City in connection with the Services (“Documents”). Nothing herein shall be interpreted as prohibiting or limiting City’s right to assign all or some of City’s interests in the Documents.

B. Data. All data collected by Consultant and produced in connection with the Services including, but not limited to, drawings, plans, specifications, models, flow diagrams, visual aids, calculations, and other materials (“Data”). Nothing herein shall be interpreted as prohibiting or limiting City’s right to assign all or some of City’s interests in the Data.

C. Delivery of Documents and Data. Consultant agrees, at its expense and in a timely manner, to return to City all Documents and Data upon the conclusion of the Term or in the event of Termination.

10. Duties of City. In order to permit Consultant to render the services required hereunder, City shall, at its expense and in a timely manner:

A. Provide such information as Consultant may reasonably require to undertake or perform the Services;

B. Promptly review any and all documents and materials submitted to City by Consultant in order to avoid unreasonable delays in Consultant’s performance of the Services; and

C. Promptly notify Consultant of any fault or defect in the performance of Consultant’s services hereunder.

11. Representations of Consultant. City relies upon the following representations by Consultant in entering into this Agreement:

A. Qualifications. Consultant represents that it is qualified to perform the Services and that it possesses the necessary licenses, permits and registrations required to perform the Services or will obtain such licenses or permits prior to the time such licenses or permits are required. Consultant represents and warrants to City that Consultant shall, at Consultant’s sole cost and expense, keep in effect or obtain at all times during the Term of this Agreement, any licenses, permits, and registrations that are legally required for Consultant to practice Consultant’s profession at the time the Services are rendered.

B. Consultant Performance. Consultant represents and warrants that all Services under this Agreement shall be performed in a professional manner and shall conform to the customs and standards of practice observed on similar, successfully completed projects by specialists in the Services to be provided. Consultant shall adhere to accepted professional standards as set forth by relevant professional associations and shall perform all Services required under this Agreement in a manner consistent with generally accepted professional customs,

procedures and standards for such Services. All work or products completed by Consultant shall be completed using the best practices available for the profession and shall be free from any defects. Consultant agrees that, if a Service is not so performed, in addition to all of its obligations under this Agreement and at law, Consultant shall re-perform or replace unsatisfactory Service at no additional expense to City.

12. Compliance with Laws and Standards. Consultant shall insure compliance with all applicable federal, state, and local laws, ordinances, regulations and permits, including but not limited to federal, state, and county safety and health regulations. Consultant shall perform all work according to generally accepted standards within the industry. Consultant shall comply with all ordinances, laws, orders, rules, and regulations, including the administrative policies and guidelines of Client pertaining to the work.

13. Independent Contractor; Subcontracting. Consultant will employ, at its own expense, all personnel reasonably necessary to perform the Services. All acts of Consultant, its agents, officers, employees and all others acting on behalf of Consultant relating to this Agreement will be performed as independent contractors. Consultant, its agents and employees will represent and conduct themselves as independent contractors and not as employees of City. Consultant has no authority to bind or incur any obligation on behalf of City. Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever. Consultant is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is expressly approved by City in writing.

14. Insurance. Consultant and all of Consultant's contractors and subcontractors shall obtain and maintain insurance of the types and in the amounts described in this paragraph and its subparagraphs with carriers reasonably satisfactory to City.

A. General Liability Insurance. Consultant shall maintain occurrence version commercial general liability insurance or an equivalent form with a limit of not less than Two Million Dollars (\$2,000,000) per claim and Two Million Dollars (\$2,000,000) for each occurrence.

B. Workers' Compensation Insurance. Consultant shall carry workers' compensation insurance as required by the State of California under the Labor Code. Consultant shall also carry employer's liability insurance in the amount of One Million Dollars (\$1,000,000.00) per accident, with a One Million Dollar (\$1,000,000.00) policy limit for bodily injury by disease, and a One Million Dollar (\$1,000,000.00) limit for each employee's bodily injury by disease.

C. Errors and Omissions Liability. Consultant shall carry errors and omissions liability insurance in the amount of no less than One Million Dollars (\$1,000,000.00) per occurrence or greater if appropriate for the Consultant's profession. Architects and engineers coverage is to be endorsed to include contractual liability. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the

insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, elected and appointed councils, commissions, directors, officers, employees, agents, and representatives ("City's Agents"); or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claims administration and defense expenses.

D. Other Insurance Requirements. Within five (5) days of the Effective Date, Consultant shall provide City with certificates of insurance for all of the policies required under this Agreement ("Certificates"), excluding the required worker's compensation insurance. Such Certificates shall be kept current for the Term of the Agreement and Consultant shall be responsible for providing updated copies and notifying City if a policy is cancelled, suspended, reduced, or voided. With the exception of the worker's compensation insurance, all of the insurance policies required in this Agreement shall: (a) provide that the policy will not be cancelled, allowed to expire, or materially reduced in coverage without at least thirty (30) days' prior written notice to City of such cancellation, expiration, or reduction and each policy shall be endorsed to state such; (b) name City, and City's Agents as additional insureds with respect to liability arising out of Services, work or operations performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied, or used by the Consultant, or automobiles owned, leased, or hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City; (c) be primary with respect to any insurance or self-insurance programs covering City or City's Agents and any insurance or self-insurance maintained by City or City's Agents shall be in excess of Consultant's insurance and shall not contribute to it; (d) contain standard separation of insured provisions; and (e) state that any failure to comply with reporting or other provisions of the policy including breaches of warranties shall not affect the coverage provided to the City.

15. Indemnification. Consultant hereby agrees to indemnify and hold harmless City, its agents, officers, employees and volunteers, against all liability, obligations, claims, loss, and expense (a) caused or created by Consultant, its subcontractors, or the agents or employees of either, whether negligent or not, pertaining to or related to acts or omissions of Consultant in connection with the Services, or (b) arising out of injuries suffered or allegedly suffered by employees of Consultant or its subcontractors (i) in the course of their employment, (ii) in the performance of work hereunder, or (iii) upon premises owned or controlled by City. Consultant's obligation to defend, indemnify and hold City and its agents, officers, employees and volunteers harmless is not terminated by any requirement in this Agreement for Consultant to procure and maintain a policy of insurance.

16. Consequential Damages. Notwithstanding any other provision of this Agreement, in no event shall City be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement.

17. Litigation. In the event that either Party brings an action under this Agreement for the breach or enforcement hereof, or must incur any collection expenses for any amounts due

hereunder the prevailing Party in such action shall be entitled to its costs including reasonable attorney's fees, whether or not such action is prosecuted to judgment.

18. Notices. Any notice or communication required hereunder between City or Consultant must be in writing, and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Notices given by registered or certified mail shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, (b) on the date delivered as shown on a receipt issued by the courier, or (c) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at the addresses in this paragraph set forth below:

If to City:

City of Riverbank
6707 Third Street
Riverbank, CA 95367
Attn: City Clerk

With courtesy copies to:

City of Riverbank
6707 Third Street
Riverbank, CA 95367
Attn: City Manager

And to:

Churchwell White LLP
1414 K Street, 3rd Floor
Sacramento, California 95814
Attention: Douglas L. White, Esq.

If to Consultant:

Bartle Wells Associates, Inc.
2625 Alcatraz Ave., #602
Berkeley, CA 94705
Attention: Douglas Dove

19. General Provisions.

A. Modification. No alteration, modification, or termination of this Agreement shall be valid unless made in writing and executed by all Parties.

B. Waiver. The waiver by any Party of a breach of any provision hereof shall be in writing and shall not operate or be construed as a waiver of any other or subsequent breach hereof unless specifically stated in writing.

C. Assignment. No Party shall assign, transfer, or otherwise dispose of this Agreement in whole or in part to any individual, firm, or corporation without the prior written consent of the other Party. Subject to the forgoing provisions, this Agreement shall be binding upon, and inure to the benefit of, the respective successors and assigns of the Parties.

D. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of California.

E. Venue. Venue for all legal proceedings shall be in the Superior Court of California for the County of Stanislaus.

F. Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

G. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which shall be deemed a single agreement.

H. Severability. If any term, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, the remainder of this Agreement shall remain in effect.

I. Audit. City shall have access at all reasonable times to all reports, contract records, contract documents, contract files, and personnel necessary to audit and verify Consultant's charges to City under this Agreement.

J. Entire Agreement. This Agreement sets forth the entire understanding between the Parties as to the subject matter of this Agreement and merges all prior discussions, negotiations, proposal letters or other promises, whether oral or in writing.

K. Headings Not Controlling. Headings used in this Agreement are for reference purposes only and shall not be considered in construing this Agreement.

L. Time is of the Essence. Time is of the essence in this Agreement for each covenant and term of a condition herein.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the last day and date below written.

CITY:

CITY OF RIVERBANK, a California
municipal corporation

CONSULTANT:

BARTLE WELLS ASSOCIATES, INC., a
California Corporation

By: _____
Marisela Garcia, Interim City Manager

By: _____

Name: _____

Date: _____

Date: _____

Approved as to Form:

Tom Hallinan, City Attorney

DRAFT

EXHIBIT A

Services

DRAFT

Detailed Work Plan



This section presents our methodology and proposed scope of services that we believe will form a sound basis for completing this assignment as well as a schedule to complete the scope. We will work with the City to finalize a scope of services that meets the objectives and schedule desired. Our completed study will provide a set of legally defensible documents that outline a comprehensive, reasonable financial plan attainable through sound, industry-standard recommendations for the City. Our proposal takes into account variable and fixed charges, different assumptions regarding future capital investments, recent court rulings, and Proposition 218 compliance. Assistance from the project team will be required to gather data and to provide feedback on rate recommendations at regularly scheduled progress calls.

TASK A. PROJECT INITIATION & DATA COLLECTION

1. Project Team Orientation

To initiate our work, hold a kickoff meeting with City staff and others as appropriate, to accomplish the following:

- Identify members of City staff, City Board members/subcommittees, engineering consultants, and other consultants/advisors who will participate in the project
- Determine the roles and responsibilities of all project participants
- Identify other parties who may have a significant interest in the project, such as community groups, business organizations, and large customers
- Establish project schedule and key milestone dates
- Confirm the key goals and expectations of the project team

2. Investigation and Data Collection

Assemble the information necessary to understand the wastewater system, finances, customers and usage, rate and fee structures, and legal agreements with other agencies. Assistance and cooperation of staff will be needed to assemble the relevant background information. The objectives of investigation and data collection are to develop a complete understanding of each utility and its costs, and to reach an agreement on basic assumptions to be used in the study. Information to be reviewed includes the following:

- Cost information: budgets, audits, financial statements, internal finance projections, capital improvement plans, and engineering master plans
- Revenue sources: schedule of fees and rates, interest earnings, grants and/or debt proceeds

TASK B. Determination of the Recycled Water Enterprise Fund Formation

BWA will provide assistance and support to City for the formation of a recycled water rate structure. City assistance would include an initial evaluation of whether a separate enterprise fund should be developed, and if so, Consultant shall make a determination of rates for the recycled water delivery in satisfaction of the Proposition 218 process.

TASK C. Preparation of the Financial Security Package

BWA will provide preparation and completion of the Financial Security Package responsibilities shall follow the general format as required by the CWSRF.

TASK D. LONG-RANGE FINANCIAL PLAN

1. Develop Forecasts and Projections

Based on evaluation of the data assembled and input provided by staff and other members of the project team, prepare forecasts and projections to be used in the development of financial projections for the City's enterprises. Develop projections for the following areas (and others as appropriate):

Capital Improvement Funding Needs: Identify latest capital improvement plan costs by year. Work with staff to identify key alternatives for financial evaluation. Based on input from City staff, determine a reasonable amount to include for future, ongoing capital repairs and replacements. BWA often recommends that agencies phase in funding for long-term system rehabilitation as rates are gradually increased.

Growth and Development/Redevelopment: Evaluate historical growth trends and develop appropriate and conservative assumption for future development and redevelopment that can be incorporated into the financial plan/rate model. Evaluate impact of faster and slower growth rates.

Cost Escalation Factors: Review historical cost trends and work with project team to develop reasonable cost escalation factors for both operating and capital expenditures. Work with staff to estimate potential new operating costs, such as new staffing projections and O&M costs related to planned capital improvements, or costs for complying with future permit requirements.

Review projections with City staff for agreements on assumptions, interpretation of data, and completeness of approach.

2. Evaluate Financing Alternatives for Capital Improvements

Evaluate options for financing proposed capital improvement projects. Our evaluation will:

- Estimate the amount and timing of any debt, if needed, to finance capital projects.
- Evaluate the alternative borrowing methods available including bonds, COPs, state and federal funding programs, bank loans and lines of credit, and other options.
- Recommend the appropriate type of debt and its term and structure (for financial planning purposes).
- Evaluate possible combinations of financing methods, such as prudent use of pay-as-you-go cash funding supplemented by debt financing, when appropriate

3. Review and Update Fund Reserve Targets

Evaluate the adequacy of the City's current fund reserves. As warranted, identify alternatives and update minimum fund reserve targets based on updated operating and capital funding projections. Develop an implementation plan for achieving and maintaining the recommended reserve fund levels.

4. Develop Long-Range Cash Flow Projections

BWA will develop cash flow projections showing the financial position of the City over the next ten years. The cash flows will project fund balances, revenues, expenses, and debt service coverage, and will incorporate the forecasts developed with staff input, including funding needs for future repairs and replacements. After developing a base-case cash flow scenario, we can develop alternatives for additional

evaluation such as capital project alternatives, project financing alternatives and the impacts of different levels of growth etc. During this phase, BWA will work closely with the project team to develop financial and rate projections under alternative scenarios. BWA typically recommends that rate increases be phased in over time to minimize the annual impact on ratepayers.

5. Evaluate Financial Scenarios & Rate Increase Options

Based on the cash flow projections, determine the annual revenue requirements and project overall required rate increases. Evaluate the financial impact of various financial and rate adjustment alternatives, such as phasing in required rate increases over a number of years. If appropriate, develop a reduced rate alternative and evaluate impacts on the City's ability to fund capital projects.

TASK E. COST-OF-SERVICE ALLOCATION

Task C is the "meat" of the rate study that will provide the legal justification for the rates and charges of the City. BWA will allocate costs based on industry standard practice, guidance from recent court cases, and ease of implementation/practicality.

BWA will provide a detailed, functional cost allocation for operating, capital, debt service, fixed and variable costs. Functionalized cost categories may include collection, treatment, and customer costs. BWA will determine the units of service and assign costs to each unit of service. Typical units of service for the wastewater utilities are sewer flow and pollutant loading (BOD and TSS). We may want to include nitrogen, phosphorous, and ammonia in order to accurately allocate costs.

TASK F. RATE DESIGN

1. Review of the Existing Utility Rate Structures and Rate Models

Perform a review of the existing utility rate structures and discuss advantages and disadvantages compared to other rate approaches. Summarize and discuss finding with the project team. Review the existing rate models and most recent rate update. Evaluate the cost allocation and rate design included in the model for compatibility with BWA recommendations.

2. Conduct Rate Fee Survey of Comparable Utility Agencies

Review and summarize other regional and/or comparable agencies. Summarize results in easily understandable tables and/or charts.

3. Analyze Utility Consumption Data

Evaluate current and historical water usage, winter water consumption for sewer billed flow, utility billing data, and production data to determine reasonable and conservative estimates of demand to use in developing rate options. Ideally, we would prefer to analyze three years of utility billing data in order to determine slightly conservative demand projections.

4. Identify Utility Rate Structure Modifications and Alternatives

Identify alternative rate structures or modifications to the City's existing rates designed to improve equity and/or better achieve your objectives. Discuss pros and cons of different rate structure options and their general impacts on different types of customers. Rate structure options will be refined as the study progresses based on input from the study project team and will be evaluated to ensure that any modifications can be accommodated within the City's billing systems. Some potential rate structure modifications may include the following:

- Redesigning how much of the revenue is collected from fixed vs. variable charges.
- Establishing different wastewater rates for different customer classes with different effluent strength characteristics.

5. Evaluate Customer Equity

Review the fairness of each rate and charge across all customer groups. Confirm that all customers are charged for service proportional to how they use the utility systems. If desired, review options to aid in affordability for disadvantaged customers. Compare typical/sample bills from each customer class to the bills of other local public utilities. As needed, seek input from vocal customers such as business groups and developers.

6. Develop Preliminary and Final Rate Recommendations

Based on the rate analysis and the financial plan update, develop draft rate recommendations. The recommendations include a multi-year phase in of both overall rate increases and proposed rate structure adjustments. Review preliminary recommendations and key alternatives with the project team and Board. Based on input received, develop final draft utility rate recommendations.

Final rate recommendations will be designed to a) fund the long-term costs of providing service, b) be fair and equitable to all customers, c) provide a prudent balance of fixed and variable rates, and d) comply with the substantive requirements of Proposition 218 and recent court cases. Based on input from staff, develop a plan for implementing any rate structure modifications and/or rate adjustments.

7. Evaluate Rate Impacts on Customers

Calculate the rate impacts of each rate alternative on a range of utility customers (e.g. different customer classes, customers with different levels of use, seasonal impacts etc.). Work with the project team to identify customer and usage profiles to use for calculating the rate impacts. Discuss additional rate structure adjustments that may reduce the impact on certain customers if warranted and/or requested by the project team.

TASK G. PRESENTATIONS & PUBLIC OUTREACH

1. Meetings

Meet with the project team to present findings, discuss alternatives and their impacts, gain ongoing input, and develop and hone recommendations. Meet with and present findings to City Board. Our proposal includes a total of four (3) trips to the City. The final schedule and number of meetings will be determined with input from the project team. A preliminary meeting/presentation schedule could

include: one staff meeting, one community meeting, one workshop/presentation with the City Board/public, and the Proposition 218 hearing. The meetings can be determined as needed by the City (e.g., a Board workshop could be substituted for a project meeting). BWA will participate in conference calls as needed. Additional project meetings, meetings/workshops with committees and citizens groups, may also be included if warranted by staff. Meetings can also be combined, e.g. progress meetings can be scheduled on the same day as Board meetings, to reduce costs.

Presentations will provide brief background and study objectives, make a clear case why rate increases are needed, describe the rate structure (and potentially key alternatives) approved by the project team, show rate impacts on various customer profiles, present findings of the rate survey, and discuss related financial and policy recommendations. We have substantial experience in presenting our findings to both technical and governing boards and to audiences without a background in utility rates or finances.

2. Prepare Draft and Final Reports

Submit a draft summary report for project team review and feedback. The report will summarize key findings and recommendations and discuss key alternatives when applicable. Receive input on draft report from the project team and Board. Prepare final reports incorporating feedback received. We will provide copies of both the draft and final reports and electronic versions to the entities.

3. Compliance with Proposition 218

Proposition 218 establishes requirements for adopting or increasing property-related fees and charges. In July 2006, the California Supreme Court ruled that rates are subject to Proposition 218 (Articles XIII C and XIII D of the State constitution). Proposition 218 requires that the City: 1) mail notification of proposed rate increases and the date, time, and place of public hearing to all affected property owners (and potentially ratepayers who are renters that pay utility bills); 2) hold a public hearing not less than 45 days after the notices are mailed; and 3) subject the rate increases to majority protest; if more than 50% of property owners submit written protests, the proposed rate increases cannot be adopted.

BWA remains available to assist staff with drafting the Proposition 218 rate notice. BWA recommends the notice go beyond the minimum legal requirements and provide clear and concise explanation of the reasons for any rate adjustments. We have found that ratepayers are generally much more accepting of rate increases when they understand why they are being implemented.

4. Public Education and Consensus-Building

Rate and fee adjustments are often controversial. BWA has extensive experience developing clear presentations that facilitate public understanding of the need for rate increases. We understand the importance of building consensus and public acceptance for our recommendations and can assist staff in developing public education materials. Holding community workshops or open houses are effective tools to help the community understand the needs of the agency. BWA is always willing to support and attend additional community outreach meetings on a time and expense basis.

Availability & Fees

1. Bartle Wells Associates is prepared to begin work upon authorization to proceed.
2. During the project development period, Bartle Wells Associates will be available at all reasonable times and on reasonable notice for meetings and for consultation with staff, attorneys, consulting engineers, and others as necessary.
3. Bartle Wells Associates will perform all work related to the assignment. Douglas Dove, a firm principal, will be assigned as project manager on this assignment. He will serve as the lead contact person for BWA and will be involved with the project a day-to-day basis. Doug will be assisted by Erik Helgeson, project consultant. This project team may be assisted by other BWA analysts as needed.
4. The fees for services outlined in this proposal will not exceed \$49,600. The fee is based on the following assumptions:
 - a. All necessary information will be provided by the City in a timely manner.
 - b. Development of a draft, final draft, and final versions of tables, presentations, and reports. Time and expenses involved in revising tables and assumptions may constitute additional services if not achievable within the budget.
 - c. Five trips (or Zoom presentations) to the City for meetings and/or presentations. Additional meetings or presentations may constitute additional services if not achievable within the budget.
5. Progress payments and direct expenses are payable monthly on a time and materials basis as the work proceeds as provided in our Billing Rate Schedule 2022, which will remain in effect through the duration of this assignment.
6. Bartle Wells Associates will maintain in force, during the full term of the assignment, insurance as provided in the Certificate of Insurance attached.
7. If the project is terminated for any reason, we are to be reimbursed for professional services and direct expenses incurred up to the time we receive notification of such termination.
8. This proposal may be withdrawn or amended if not accepted within 90 days of its date.
9. We will not require a formal contract of employment and will consider a letter or e-mail from an appropriate official as sufficient authority to proceed.

EXHIBIT B

Rate Schedule

DRAFT



BARTLE WELLS ASSOCIATES

BILLING RATE SCHEDULE 2022

Rates Effective 1/1/2022

Professional Services

Financial Analyst I	\$110 per hour
Financial Analyst II	\$135 per hour
Consultant.....	\$165 per hour
Senior Consultant.....	\$195 per hour
Senior Project Manager	\$225 per hour
Principal Consultant.....	\$265 per hour

The hourly rates for professional services include all overhead and indirect expenses. Bartle Wells Associates does not charge for administrative support services. Expert witness, legal testimony, or other special limited assignments will be billed at one and one-half times the consultant's hourly rate.

The above rates will be in effect through December 31, 2022 at which time they will be subject to change.

Direct Expenses

Subconsultants will be billed at cost plus ten percent. Word processing and computer-assisted services related to official statement production are charged as direct expenses at \$75 per hour. Other reimbursable direct expenses incurred on behalf of the agency will be billed at cost plus ten percent. These reimbursable costs include, but are not limited to:

- Travel, meals, lodging
- Printing and photocopying
- Special statistical analysis
- Outside computer services
- Bond ratings
- Automobile mileage
- Messenger services and mailing costs
- Graphic design and photography
- Special legal services
- Legal advertisements

Insurance

Bartle Wells Associates maintains insurance in the amounts and coverage as provided in the attached schedule of insurance. Additional or special insurance, licensing, or permit requirements beyond what is shown on the schedule of insurance are billed in addition to the contract amount.

Payment

Fees are typically billed monthly for the preceding month and will be payable within 30 days of the date of the invoice. A late charge of 1.0 percent per month may be applied to balances unpaid after 60 days.