



# Willows City Council Regular Meeting

April 23, 2024  
Willows City Hall  
6:00 PM

City Council  
Gary Hansen, Mayor  
Evan Hutson, Vice Mayor  
Rick Thomas, Council Member  
David Vodden, Council Member  
Forrest Sprague, Council Member

City Manager  
Marti Brown

City Clerk  
Amos Hoover

201 North Lassen Street  
Willows, CA 95988  
(530) 934-7041

## Agenda

Watch the Council meeting online via Zoom (Passcode 95988):

<https://us06web.zoom.us/j/85154817452?pwd=sOfEeqCmSLNGHCrezvNm0fwEQYaFJb.1>

Remote viewing of the City Council meeting for members of the public is provided for convenience only. In the event that the remote viewing connection malfunctions for any reason, the City Council reserves the right to conduct the meeting without remote viewing.

1. **CALL TO ORDER**

2. **PLEDGE OF ALLEGIANCE**

3. **ROLL CALL**

4. **CHANGES TO THE AGENDA**

5. **CEREMONIAL MATTERS**

- a. Proclamation – Poppy Day Proclamation

6. **PRESENTATION**

a. **Senior Fair Presentation**

Recommended Action: Receive presentation from Supervisor Yoder on the upcoming Senior Fair.  
Requested by: Councilmember Sprague

7. **PUBLIC COMMENT & CONSENT CALENDAR FORUM**

All matters on the Consent Calendar are considered routine and are approved by one motion and vote, unless Councilmembers or the City Manager first requests that a matter be removed for separate discussion and action. Individuals wishing to address the City Council concerning Consent Calendar items or regarding matters that are not already on the agenda are invited to make oral comments of up to three minutes at this time. Please address your comments to the Mayor and Councilmembers, and not to staff and/or the audience. By State law, the Council is not permitted to undertake any action or discussion on any item not appearing on the posted agenda. If you have any documentation that you would like distributed to the City Council, please mail it to the City Clerk at 201 North Lassen Street, Willows, CA 95988 or email it to: [ahoover@cityofwillows.org](mailto:ahoover@cityofwillows.org).

a. **Register Approval**

Recommended Action: Approve general checking, payroll, and direct deposit check registers.  
Contact: Amos Hoover, City Clerk, [ahoover@cityofwillows.org](mailto:ahoover@cityofwillows.org)

b. **Minutes Approval**

Recommended Action: Approve the April 9, 2024, meeting minutes.

Contact: Amos Hoover, City Clerk, [ahoover@cityofwillows.org](mailto:ahoover@cityofwillows.org)

c. **Emergency Vehicle Operations Course (EVO) Liability Waiver**

Recommended Action: Authorize the City Manager, or her designee, to sign an indemnification agreement, to allow for use of the county facility located at 453 East County Road 49 1/2, Willows CA, for EVO training.

Contact: Nate Monck, Fire Chief, [nmonck@cityofwillows.org](mailto:nmonck@cityofwillows.org)

d. **Annual Weed and Rubbish Abatement Schedule**

Recommended Action: Adopt a resolution declaring weeds, rubbish, refuse, and dirt public nuisances; and approve the Weed and Rubbish Abatement Schedule for the 2024 fire season.

Contact: Nate Monck, Fire Chief, [nmonck@cityofwillows.org](mailto:nmonck@cityofwillows.org)

8. **DISCUSSION & ACTION CALENDAR**

All matters in this section of the agenda are discussed and will be acted on individually. Individuals wishing to address the City Council concerning any of these items are invited to make oral comments of up to three minutes at this time. Please address your comments to the Mayor and Councilmembers, and not to staff and/or the audience. When the Mayor calls for public comment, please raise your hand to be acknowledged. While not required, the City requests that you please state your name clearly for the audio recording. By State law, the Council is not permitted to undertake any action or discussion on any item not appearing on the posted agenda. If you have any documentation that you would like distributed to the City Council, please mail it to the City Clerk at 201 North Lassen Street, Willows, CA 95988 or email it to: [ahoover@cityofwillows.org](mailto:ahoover@cityofwillows.org).

a. **Solar Power Purchase Agreement - Wastewater Treatment Plant**

Recommended Action: Authorize the City Manager to execute a Power Purchase Agreement with RP Willows Solar 1, LLC to install ground mount solar panels at the City's Wastewater Treatment Plant to offset the City's PG&E bill.

Contact: Joe Bettencourt, Community Development & Services Director, [jbettencourt@cityofwillows.org](mailto:jbettencourt@cityofwillows.org)

b. **Financial Sustainability Advisory Committee**

Recommended Action: Establish a Financial Sustainability Advisory Committee ('Committee') consisting of Council invited civic groups to discuss and learn more about the status of the city's budget and assist staff with executing the Council approved Education Action Plan regarding City finances.

Contact: Marti Brown, City Manager, [mbrown@cityofwillows.org](mailto:mbrown@cityofwillows.org)

c. **Library Board of Trustees Vacancy and Appointment Process**

Recommended Action: Direct staff to solicit applications to fill a Library Board of Trustees vacancy.

Contact: Amos Hoover, City Clerk, [ahoover@cityofwillows.org](mailto:ahoover@cityofwillows.org)

9. **COMMENTS & REPORTS**

a. Council Correspondence

- b. City Council Comments & Reports
- c. City Manager's Report

**10. CLOSED SESSION**

Pursuant to Government Code Sections §54954.3, the public will have an opportunity to directly address the legislative body on the item below prior to the Council convening into closed session. Public Comments are generally restricted to three minutes.

- a. **Public Employee Performance Evaluation (§ 54957)**

Title: City Manager

**11. ADJOURNMENT**

**This agenda was posted on April 18, 2024.**

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Amos Hoover, City Clerk

A complete agenda packet, including staff reports and back-up information, is available for public inspection during normal work hours at City Hall at 201 North Lassen Street in Willows or on the City's website at [www.cityofwillows.org](http://www.cityofwillows.org).

In compliance with the Americans with Disabilities Act, the City of Willows will make available to members of the public any special assistance necessary to participate in this meeting. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132). The public should contact the City Clerk's office at 934-7041 to make such a request. Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

*The City of Willows is an Equal Opportunity Provider.*



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# CEREMONIAL MATTERS

*City of Willows*

*Proclamation*

*National Poppy Day*

**WHEREAS**, America is the land of freedom, preserved and protected willingly and freely by citizen soldiers; and

**WHEREAS**, Millions who have answered the call to arms have died on the field of battle; and

**WHEREAS**, A nation at peace must be reminded of the price of war and the debt owed to those who have died in war; and

**WHEREAS**, The red poppy has been designated as a symbol of sacrifice of lives in all wars; and

**WHEREAS**, The American Legion Auxiliary has pledged to remind America annually of this debt through the distribution of the memorial flower.

**NOW THEREFORE**, I, Gary Hansen, Mayor of the City of Willows and on behalf of the Willows City Council and the Citizens of Willows, do hereby proclaim May 24, 2024, as National Poppy Day and urge all citizens of Willows to pay tribute to those who have made the ultimate sacrifice in the name of freedom by wearing the Memorial Poppy on the Friday before Memorial Day.

**IN WITNESS WHEREOF**, I have hereunto set my hand and official seal this 23rd day of April 2024.

\_\_\_\_\_  
Gary Hansen, Mayor





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# PRESENTATION



# PUBLIC COMMENT & CONSENT CALENDAR FORUM



	<u>PERIOD</u>		
	4/12/2024	TO	4/16/2024
Payroll	543	TO	576
Payroll Check Register	40908	TO	40914
Check Register	54286	TO	54330

APPROVAL DATE 4/23/2024

APPROVED \_\_\_\_\_





City of Willows

# Check Register

Packet: APPKT00193 - PAYROLL AP CHECK RUN 03/11/24-03/24/24

By Check Number

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
1194	CALIFORNIA STATE DISBURSE	04/16/2024	Regular	0.00	162.92	54286

### Bank Code Gen Chk Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	1	1	0.00	162.92
Manual Checks	0	0	0.00	0.00
Voided Checks	0	0	0.00	0.00
Bank Drafts	0	0	0.00	0.00
EFT's	0	0	0.00	0.00
	<b>1</b>	<b>1</b>	<b>0.00</b>	<b>162.92</b>



City of Willows

# Check Register

Packet: APPKT00194 - A/P CHECK RUN 4/16/24

By Check Number

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
<b>Bank Code: Gen Chk-General Checking</b>						
1004	3CORE	04/16/2024	Regular	0.00	250.00	54287
1014	ACCESS	04/16/2024	Regular	0.00	95.05	54288
1052	AMAZON CAPITAL SERVICES	04/16/2024	Regular	0.00	1,747.76	54289
2388	APPLEBOOKS	04/16/2024	Regular	0.00	908.91	54290
2411	APS ENVIRONMENTAL, INC	04/16/2024	Regular	0.00	27,021.06	54291
1103	BAKER & TAYLOR BOOKS	04/16/2024	Regular	0.00	386.02	54292
1193	CALIFORNIA BUILDING STAND	04/16/2024	Regular	0.00	65.70	54293
1243	CITY OF ORLAND	04/16/2024	Regular	0.00	25,763.66	54294
1261	COMCAST CABLE	04/16/2024	Regular	0.00	152.94	54295
1325	DEMCO, INC.	04/16/2024	Regular	0.00	290.06	54296
1334	DEPT. OF CONSERVATION	04/16/2024	Regular	0.00	3.71	54297
2364	FP Mailing Solutions	04/16/2024	Regular	0.00	421.46	54298
1463	GANDY-STALEY OIL CO.	04/16/2024	Regular	0.00	3,191.14	54299
1503	GLENN CO. SHERIFFS DEPT.	04/16/2024	Regular	0.00	488,962.12	54300
1495	GLENN COUNTY SOLID WASTE	04/16/2024	Regular	0.00	72.00	54301
1517	GRAY ROCK TRUCKING	04/16/2024	Regular	0.00	315.00	54302
1532	HELENA CHEMICAL COMPANY	04/16/2024	Regular	0.00	2,576.68	54303
1566	INFRAMARK, LLC	04/16/2024	Regular	0.00	57,874.77	54304
1606	JEREMY'S PEST STOMPERS	04/16/2024	Regular	0.00	40.00	54305
1975	JOSHUA REED	04/16/2024	Regular	0.00	837.87	54306
1638	JUNIOR LIBRARY GUILD	04/16/2024	Regular	0.00	434.41	54307
2363	LACO Associates	04/16/2024	Regular	0.00	18,122.57	54308
1680	LANNIE'S SEPTIC TANK SERV	04/16/2024	Regular	0.00	144.79	54309
1760	MATSON & ISOM TECHNOLOGY	04/16/2024	Regular	0.00	553.00	54310
1770	MENDES SUPPLY COMPANY	04/16/2024	Regular	0.00	129.41	54311
1780	MIDWEST TAPE	04/16/2024	Regular	0.00	138.29	54312
1792	MJB WELDING SUPPLY, INC.	04/16/2024	Regular	0.00	53.32	54313
2312	NAPA AUTO PARTS	04/16/2024	Regular	0.00	49.29	54314
1822	NATIONAL FIRE SYSTEMS, IN	04/16/2024	Regular	0.00	1,266.43	54315
1828	NBS	04/16/2024	Regular	0.00	4,609.06	54316
1852	NORTHERN CALIF. GLOVES	04/16/2024	Regular	0.00	175.74	54317
2332	Prentice Long, PC	04/16/2024	Regular	0.00	20,036.66	54318
2390	QUENCH USA, INC	04/16/2024	Regular	0.00	189.84	54319
2041	SACRAMENTO VALLEY MIRROR	04/16/2024	Regular	0.00	634.80	54320
2044	SAFETY TIRE SERVICE	04/16/2024	Regular	0.00	219.39	54321
2089	SMITH & NEWELL CERTIFIED	04/16/2024	Regular	0.00	40,103.00	54322
2232	US BANK	04/16/2024	Regular	0.00	322.50	54323
2395	US BANK CORPORATE PAYMENT SY	04/16/2024	Regular	0.00	6,034.27	54324
	**Void**	04/16/2024	Regular	0.00	0.00	54325
2233	US BANK ST. PAUL CM-9703	04/16/2024	Regular	0.00	125.00	54326
2238	VALLEY ROCK PRODUCTS	04/16/2024	Regular	0.00	695.44	54327
2248	VERIZON WIRELESS	04/16/2024	Regular	0.00	403.01	54328
2295	WILLOWS ACE HARDWARE	04/16/2024	Regular	0.00	482.45	54329

Check Register

Packet: APPKT00194-A/P CHECK RUN 4/16/24

<b>Vendor Number</b>	<b>Vendor Name</b>	<b>Payment Date</b>	<b>Payment Type</b>	<b>Discount Amount</b>	<b>Payment Amount</b>	<b>Number</b>
1902	WYATT PAXTON	04/16/2024	Regular	0.00	5,680.74	54330

Bank Code Gen Chk Summary

<b>Payment Type</b>	<b>Payable Count</b>	<b>Payment Count</b>	<b>Discount</b>	<b>Payment</b>
Regular Checks	100	43	0.00	711,579.32
Manual Checks	0	0	0.00	0.00
Voided Checks	0	1	0.00	0.00
Bank Drafts	0	0	0.00	0.00
EFT's	0	0	0.00	0.00
	<b>100</b>	<b>44</b>	<b>0.00</b>	<b>711,579.32</b>



City of Willows

# Payroll Check Register

## Employee Pay Summary

Pay Period: 3/25/2024-4/7/2024

Packet: PYPKT00204 - PAYROLL 03/25/24 - 04/07/24

Payroll Set: Payroll Set 01 - 01

Employee	Employee #	Payment Date	Number	Earnings
ABOLD, STEVEN B	<a href="#">ABO00</a>	04/12/2024	569	2,130.09
AMBRIZ- ROMER , RODRIGO	<a href="#">AMB00</a>	04/12/2024	40908	232.50
ARELLANES, ASHLEY MARIE	<a href="#">ARE00</a>	04/12/2024	555	1,368.93
BEATTY, RYAN	<a href="#">BEA00</a>	04/12/2024	40909	44.00
BETTENCOURT, JOSEPH	<a href="#">BET01</a>	04/12/2024	574	4,750.62
BOBADILLA, TAVIAN	<a href="#">BOB02</a>	04/12/2024	562	72.00
BOBADILLA, PEDRO D	<a href="#">BOB00</a>	04/12/2024	561	50.00
BRIONES, BRENDA VALENZU	<a href="#">BRI00</a>	04/12/2024	556	288.00
BROTT, SHERRY	<a href="#">BRO02</a>	04/12/2024	550	50.00
BROWN, MARTHA	<a href="#">BRO01</a>	04/12/2024	547	5,576.92
CANO, GABRIELA M	<a href="#">CAN01</a>	04/12/2024	40910	68.00
CASTORENA, SOFIA	<a href="#">CAST01</a>	04/12/2024	40911	108.00
EHORN, CAITLIN A	<a href="#">EHO02</a>	04/12/2024	557	1,468.00
EHORN, MARIA ANNETTE	<a href="#">EHO00</a>	04/12/2024	551	50.00
ENOS, KYLE	<a href="#">ENO00</a>	04/12/2024	565	2,294.24
FLOWERDEW, NICK	<a href="#">FLO00</a>	04/12/2024	564	96.00
FUENTES, JAIME	<a href="#">FUE01</a>	04/12/2024	566	2,063.84
GALLARDO-CANO, NATALY	<a href="#">GAL01</a>	04/12/2024	563	52.00
GAMBOA, YADIRA	<a href="#">GAM00</a>	04/12/2024	558	352.00
HANSEN, GARY L	<a href="#">HAN02</a>	04/12/2024	543	250.00
HOOVER , AMOS	<a href="#">HOO00</a>	04/12/2024	548	2,388.00
HUTSON, EVAN C	<a href="#">HUT01</a>	04/12/2024	567	250.00
JIMENEZ, LUIS	<a href="#">JIM001</a>	04/12/2024	40912	96.00
LOMBARD, TYLER JOSEPH	<a href="#">LOM00</a>	04/12/2024	568	2,317.22
MCDERMOTT, ELLA G	<a href="#">MCDE01</a>	04/12/2024	40913	16.00
MINGS, MICHAEL E	<a href="#">MIN00</a>	04/12/2024	570	2,040.21
MONCK, NATHANIAL T	<a href="#">MON00</a>	04/12/2024	575	4,621.38
MOORE, JOANNE	<a href="#">MOO01</a>	04/12/2024	549	4,040.15
MYERS, HOLLY	<a href="#">MEY00</a>	04/12/2024	552	50.00
PFYL, NATISA N	<a href="#">PFY00</a>	04/12/2024	576	2,973.82
RANDOLPH, MATTHEW	<a href="#">RAN01</a>	04/12/2024	571	1,676.15
RANDOLPH, CORA	<a href="#">RAN02</a>	04/12/2024	40914	100.00
REED, JOSHUA	<a href="#">REE00</a>	04/12/2024	572	1,676.15
RUSTENHOVEN, TARA L	<a href="#">RUS01</a>	04/12/2024	554	2,265.89
SPENCE, KYLIEGH C	<a href="#">SPE02</a>	04/12/2024	559	544.00
SPRAGUE , FORREST	<a href="#">SPR00</a>	04/12/2024	544	250.00
THOMAS, RICHARD	<a href="#">THO00</a>	04/12/2024	545	250.00
VALENCIA, LLANIRA	<a href="#">VAL01</a>	04/12/2024	553	50.00
VARGAS, GIOVANI	<a href="#">VAR00</a>	04/12/2024	560	504.00
VASQUEZ, PEDRO CEASAR	<a href="#">VAS01</a>	04/12/2024	573	1,933.69
VODDEN, DAVID	<a href="#">VOD00</a>	04/12/2024	546	250.00
			<b>Totals:</b>	<b>49,657.80</b>



# Willows City Council Regular Meeting Action Minutes

Agenda Item #7b.

April 9, 2024  
Willows City Hall  
6:00 PM

City Council  
Gary Hansen, Mayor  
Evan Hutson, Vice Mayor  
Rick Thomas, Council Member  
David Vodden, Council Member  
Forrest Sprague, Council Member

City Manager  
Marti Brown

City Clerk  
Amos Hoover

201 North Lassen Street  
Willows, CA 95988  
(530) 934-7041

## 1. CALL TO ORDER – 6:00 PM

## 2. PLEDGE OF ALLEGIANCE

## 3. ROLL CALL

Councilmembers Present: Mayor Hansen, Vice Mayor Hutson and Councilmembers Thomas, Vodden, and Sprague

Councilmembers Absent: None

## 4. CHANGES TO THE AGENDA

## 5. PUBLIC COMMENT & CONSENT CALENDAR FORUM

### a. Register Approval

Action: Approved general checking, payroll, and direct deposit check registers.

### b. Minutes Approval

Action: Approved the March 26, 2024, meeting minutes with the addition of a letter submitted by councilmember Sprague.

### c. Wastewater Treatment Plant (WWTP) Bar Screen and Slide Gate

Pulled by Councilmember Vodden

Action: Approved an allocation of \$142,029 and authorize Inframark to repair the WWTP's bar screen, electrical and slide gate.

### d. Annual Pavement & Construction Project (FY22-23)

Pulled by Councilmember Sprague

Action: Approved a resolution authorizing the City Manager to execute an agreement with Pavement Coatings Company in the amount of \$633,642 for the FY22-23 Annual Pavement & Construction Project; execute a contract amendment with Coastland Civil Engineering for \$105,550 to provide construction management and inspection services for the project; establish an overall budget for the project of \$801,556; and approve a budget amendment to provide additional funding from Fund 310 (RSTP funds).

e. **Willows Public Library – HVAC Unit Replacement**

Action: Approved a resolution accepting the improvements associated with replacement of three HVAC units in the Willows Public Library and authorized the filing of the Project’s Notice of Completion.

f. **Emergency Work Authorization - Road 57 Sink Hole**

Action: Approved a resolution ratifying the actions taken by staff and retroactively authorizing the City Manager to pay Walberg Inc. for emergency repairs on Road 57.

Public Comment

Denis Feehan

**Moved/Seconded:** Councilmember Sprague and Vice-Mayor Hutson

**Yes:** Councilmembers Thomas, Vodden, and Sprague, Vice Mayor Hutson, and Mayor Hansen

**No:** None

6. **DISCUSSION AND ACTION CALENDAR**

a. **November 2024 Sales Tax Ballot Measure**

Action: Adopted a resolution approving the placement of a 1.5% Sales Tax measure on the November 5, 2024, Presidential election ballot.

**Moved/Seconded:** Councilmembers Thomas and Vodden

**Yes:** Councilmembers Thomas and Vodden, Vice Mayor Hutson, and Mayor Hansen

**No:** Councilmember Sprague

b. **Educational Action Plan Regarding City Finances**

Action: Approved the education action plan regarding the City's finances and authorized the City Manager to spend up to \$10,000 on related plan materials.

**Moved/Seconded:** Councilmember Vodden and Vice Mayor Hutson

**Yes:** Councilmembers Thomas and Vodden, Vice Mayor Hutson, and Mayor Hansen

**No:** Councilmember Sprague

c. **City Council Goal and Priority Setting Workshop**

Action: Authorized the City Manager to execute an agreement with Ria Collaboratories for an amount not to exceed \$4,000 to facilitate a Council Goal and Priority Setting Workshop.

Public Comment

Lorri Pride

**Moved/Seconded:** Councilmember Thomas and Vice Mayor Hutson

**Yes:** Councilmembers Thomas, Vodden, and Sprague, Vice Mayor Hutson, and Mayor Hansen

**No:** None

7. **COMMENTS & REPORTS**

a. Council Correspondence

- b. City Council Comments & Reports
- c. City Manager's Report

**8. CLOSED SESSION**

- a. **Public Employee Performance Evaluation (§ 54957)**  
**Report Out:** Information was given to staff.

**9. ADJOURNMENT - 8:53PM**

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Amos Hoover, City Clerk



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Date: April 23, 2024  
To: Honorable Mayor and Councilmembers  
From: Nathan Monck, Fire Chief  
Marti Brown, City Manager  
Subject: Emergency Vehicle Operations Course (EVOC) Liability Waiver

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**Recommendation:**

Authorize the City Manager, or her designee, to sign an indemnification agreement, to allow for use of the county facility located at 453 East County Road 49 1/2, Willows CA, for EVOC training.

**Rationale for Recommendation:**

The Willows Fire Department is mandated to conduct EVOC training for its apparatus operators. This facility is available to city at no cost and is local, allowing fire department equipment to remain available in the city's primary response area while conducting training.

**Background:**

EVOC training is mandated and reduces liability to the City of Willows. The course covers a variety of topics including emergency response driving techniques, apparatus maintenance, apparatus operation, legalities, and other topics related to driving and operating fire apparatus. The training requires a large open area where traffic cones and delineators can be set up to conduct driving evolutions. This site has been used in the past for the same purpose.

**Discussion & Analysis:**

The proposed site has been successfully used for this purpose in the past. There is no alternative site for the training known to staff other than in the Orland area, which would be logistically challenging.

**Fiscal Impact:**

There is no fiscal impact.

**Attachments:**

- Attachment 1: Indemnification Agreement



## **INDEMNIFICATION AGREEMENT**

This Indemnification Agreement ("Agreement") is entered into between the County of Glenn ("County") and the City of Willows ("City"). This Agreement is effective as of the date last signed below.

### **RECITALS:**

A. City has a need to conduct a driver operating training course for emergency operations and would like to utilize the northeast portion of the County Road Yard in Willows, California to conduct such training; and

B. County is the owner of the County Road Yard which is located at 453 East County Road 49 ½ in Willows, California; and

C. County is willing to allow City to conduct the driver operating training course for emergency operations if City agrees to indemnify and hold County harmless for any claims or losses occasioned therefrom; and

D. City is willing to indemnify and hold County harmless for any claims or losses occasioned therefrom.

### **AGREEMENT:**

County and City agree as follows:

1. Indemnification. City agrees to defend (with legal counsel reasonably acceptable to the County), indemnify and hold harmless County, its officers, employees, and agents, from and against any and all claims, losses, costs, damages, injuries (including injury to or death), expenses and liabilities of every kind, nature and description (including incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in the connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the use of the County Road Yard ("Premises") by City and its agents, representatives, employees and/or subcontractors. To the extent that County is required to use any of its resources to respond to such claim, action, or proceeding, City will reimburse County upon demand and upon presentation of an invoice describing the work done, the time spent on such work, and the hourly rate for such work by the employee or agent of County.

2. Insurance Requirements. City shall procure and maintain for the duration of the Agreement and throughout City's use of the Premises, insurance against claims for injuries to persons or damages to property which may arise from or in connection with such use by the City, its agents, representatives, employees or subcontractors.

A. **Minimum Scope and Limit of Insurance**. Coverage shall be at least as broad as:

i. *Commercial General Liability (CGL)*: Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this

project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

ii. *Automobile Liability*: ISO Form Number CA 00 01 covering any auto (Code 1), or if City has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

iii. *Workers' Compensation*: As required by the State of California, with Statutory limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

iv. *Professional Liability (Errors and Omissions)*: Insurance appropriate to the City's profession, with limit no less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the City maintains broader coverage and/or higher limits than the minimums shown above, the County requires, and shall be entitled to, the broader coverage and/or the higher limits maintained by the City. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

B. **Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, Additional Insured Status.

3. Cooperation. County will promptly notify City of any claim, action, or proceeding that would trigger the applicability of this Agreement and cooperate fully with City and City's counsel in defending such claim, action, or proceeding. If County should fail to cooperate fully in the defense, City shall not thereafter be responsible to defend, indemnify, and hold harmless County or its agents, officers, and employees pursuant to this Agreement.

4. Notices. Any notice required to be given under this Agreement shall be given by U.S. Mail first class postage prepaid or overnight courier addressed to the following:

COUNTY: County of Glenn  
Attention: Scott H. De Moss, CAO  
525 W. Sycamore Street, Suite B1  
Willows, California 95988  
Telephone: (530) 934-6400  
Facsimile: (530) 934-6419

CITY: City of Willows

Telephone:  
Facsimile:

5. Amendments. Modifications or amendments to this Agreement shall be in writing and executed by both parties.

6. Entire Agreement. This agreement represents the final agreement between the parties regarding the matters set forth herein and supersedes all prior and contemporaneous oral and written communications.

7. Successors and Assigns. This agreement shall be binding upon and shall inure to the benefit of any successors to or assigns of the parties.

8. Construction. This agreement reflects the contributions of both parties and accordingly the provisions of Civil Code Section 1654 shall not apply in interpreting this Agreement.

WILLOWS CITY COUNCIL

\_\_\_\_\_  
Mayor Date: \_\_\_\_\_

GLENN COUNTY BOARD OF SUPERVISORS:

\_\_\_\_\_  
Chairman Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Carolyn Walker Date: \_\_\_\_\_  
City Attorney, City of Willows

APPROVED AS TO FORM:

\_\_\_\_\_  
William J. Vanasek Date: \_\_\_\_\_  
County Counsel, Glenn County



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# DISCUSSION & ACTION CALENDAR



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Date: April 23, 2024  
To: Honorable Mayor and Councilmembers  
From: Joe Bettencourt, Community Development & Services Director  
Marti Brown, City Manager  
Subject: Solar Power Purchase Agreement - Wastewater Treatment Plant

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**Recommendation:**

Authorize the City Manager to execute a Power Purchase Agreement (Attachment 1) with RP Willows Solar 1, LLC to install ground mount solar panels at the City's Wastewater Treatment Plant to offset the City's PG&E bill.

**Rationale for Recommendation:**

The City's current solar array at the Wastewater Treatment Plant (WWTP) provides approximately 50% of electrical demand. Staff recommends augmenting the existing solar array with a new additional solar array to offset the WWTP's entire energy use resulting in overall operational cost savings.

**Background:**

The WWTP is the City's largest single user of energy as it is required to operate 24 hours a day to receive, treat, and move roughly 700,000 gallons of wastewater per day. The WWTP requires an average of 1,000,000 kilowatt hours (kwh) of energy per year with some years requiring slightly less or more than the estimated average.

On September 1, 2010, the City entered into an agreement with SPP DG DevCo, LLC, to build and operate a new solar energy array ('Array') that was built adjacent to the Willows WWTP located at 1600 South Tehama Street. The intent of the project was to replace 50% of the cost of operating the City's WWTP with solar energy instead of the more costly PG&E energy. However, the solar array that was installed has never fully satisfied the 50% goal. On average, over the life of the Array, it has produced 47.7% of the WWTP's energy needs and, from May 2022 to January 2023, it produced no energy due to mechanical issues. In FY 2021, the true up bill owed to PG&E was \$97,894, in FY 2022, the true up was \$159,373, and in FY 2023, the true up bill was \$285,105.

Unfortunately, the original agreement between the City and SPP DG DevCo, LLC, heavily favored the developer, with few benefits to the City. In addition, there were no production expectations of the Array, guarantees or warranties, remedies for lack of performance, security against costs or liability to the City, incentives, or requirements for the developer to perform maintenance or service to the Array, or to maintain any level of benefit to the City. The same agreement is now owned by Clearway Energy.

## **Discussion & Analysis:**

Starting in the fall of 2022, staff engaged Trinary Capital to seek solutions to augment the WWTP solar production and further decrease energy costs. Unfortunately, an agreement was not reached in time for the WWTP to be in the NEM 2 program. The WWTP will be in the Net Billing Tarriff (NBT) program. NBT's major difference from NEM 2.0 is that under the NBT, compensation for excess generation exported to the electric grid is applied to a customer's bill at a rate reflecting the value of this generation to the grid and not the retail rate. The value of the export compensation is usually lower than the retail rate but can rise above the retail rate on late summer evenings.

At the December 19, 2023, City Council meeting, the City Manager was authorized to sign a Letter of Intent (LOI) with Trinary Capital (Attachment 2). The LOI was executed, which solidified the ongoing working relationship with Trinary to finalize the solar project for the WWTP, Firehouse and Civic Center. While the PPA for the WWTP is currently the City's primary focus as it will create the largest cost savings of all three projects, the solar panels for the Fire Station and Civic Center will be forthcoming later in 2024. In addition, the WWTP Solar Array is also unique as it is the only project that is ground mounted. PPAs for the Firehouse and Civic Center are also being developed and will be presented to the City Council later this year.

To avoid issues that were encountered with the previous agreement and as outlined below, staff negotiated guaranteed energy production under the terms of the current PPA (Attachment 1). To illustrate the point, review the following excerpt from the PPA:

*If in any 2 year period (measured from the Solar Facility Start Date) the Solar Facility has produced less than 90% of the Estimated Solar Energy Output (as defined below), as reduced by the degradation factor set forth in the cover page hereto (the "Degradation Factor"), (other than for reasons force majeure), Seller will pay City a true-up payment equal to the number of kWh by which the actual output of the Solar Facility was less than 90% of the Estimated Solar Energy Output, as reduced by the Degradation Factor, multiplied by Price/kWh. For purposes of this Agreement, "Estimated Solar Energy Output" shall refer to the estimated solar energy output for the applicable year as set forth under Exhibit B hereto.*

## **Fiscal Impact:**

There is no adverse impact on the General Fund. Future payments for energy will result in savings to the Sewage Enterprise Fund operating costs. The cost per kWh in the first year of the Power Purchase Agreement is approximately half of the current PG&E rate during off-peak hours and additional savings will be garnered during peak hours.

## **Attachments:**

- Attachment 1: Power Purchase Agreement
- Attachment 2: Letter of Intent

**SOLAR POWER PURCHASE AGREEMENT**  
(Commercial)

Between:

The City of Willows, CA  
201 North Lassen Street  
Willows, CA 95988  
APN 017-017-10

And

RP Willows Solar 1, LLC  
423 W. 55th Street – 7th Floor  
New York, New York 10019

KEY COMMERCIAL TERMS:

Description of Solar Facility	Roof Mount, Ground Mount, and Carport Photovoltaic panels, inverter, racking materials, production meter for monitoring
Solar Facility Size kW (DC)	401.30 kW
Estimated Solar Energy Output In Year 1	576,574 kWh. See Exhibit B hereto.
Annual Solar Energy Output Degradation Factor	0.5%
Length of Initial Term (the Initial Term)	25 Years
Estimated Solar Energy Output over Initial Term	13,549,248 kWh. See Exhibit B hereto.
Price/kWh	\$ 0.179/kWh
Estimated Monthly Payment In Year 1	\$8,600.41. See Exhibit A hereto.
Annual Price/kWh Escalator	2.99%
Utility	PG&E

## SOLAR POWER PURCHASE AGREEMENT

THIS DOCUMENT DESCRIBES THE TERMS AND CONDITIONS OF CITY'S RECEIPT OF AND PAYMENT FOR ELECTRIC ENERGY TO BE SUPPLIED BY A SOLAR PHOTOVOLTAIC SYSTEM THAT WILL BE INSTALLED AT CITY'S PROPERTY AND OWNED AND MAINTAINED BY SELLER. CITY WILL RECEIVE A FINAL, FULLY SIGNED COPY OF THIS AGREEMENT BEFORE WORK BEGINS.

### 1. Introduction.

(a) The City of Willows ("City") is entering into this Solar Power Purchase Agreement (this "**Agreement**") with RP Willows Solar 1, LLC (together with its successors and Assigns, "**Seller**"). City represents that City is the owner and/or has the legal right to enter into this Agreement for the property located at 1600 South Tehama Street, located in the City of Willows, 95988 within the State of California, as more specifically described under Exhibit D and Exhibit E hereto (the "**Property**"), including any buildings and other improvements on the Property other than the Solar Facility (the "**Improvements**"), and that City's current electrical service is provided by PG&E (the "**Utility**"). City further represents that every person or entity with a direct ownership interest in the Property has agreed to be bound by this Agreement and is listed on the signature page of this Agreement. City and Seller may be referred to herein individually as a "**Party**" and collectively as the "**Parties**".

(b) City may contact Seller by mail at Seller's address set forth on the cover page hereto. Seller will arrange for licensed individuals or entities to perform the design, permitting, construction, installation, testing, and activation (referred to in this agreement as "**Seller Contractors**") of a solar photovoltaic system as described on the cover page to this Agreement (the "**Solar Facility**") to be located on the roof and/or grounds, as applicable, of the Property in a workmanlike and professional manner and in accordance with local, state, and federal regulations, as applicable, and prudent utility practice.

(c) City agrees to allow Seller Contractors to install and maintain the Solar Facility on the grounds and/or roof, as applicable, of the Property at a specific location to be identified and approved by Seller. During the Initial Term and any Renewal Terms, Seller agrees to provide City electric energy from the Solar Facility under the terms and conditions contained in this Agreement.

(d) It is understood between the Parties that all personnel contracted for or deployed by Seller for demolition, construction/installation, maintenance or other purposes in connection with Seller's performance of its obligations under this Agreement shall be and shall remain exclusively employees or contractors of Seller, reporting solely to Seller. The City shall not be considered a joint employer of any Seller's employees or contractors for any purpose. Similarly, Seller shall not be considered to be a joint employer of any person employed by the City for any purpose.

### 2. Solar Facility.

(a) Seller will arrange for the design, permitting (in accordance with applicable law), construction, installation and testing of the Solar Facility on the roof and/or grounds, as applicable, of the Property materially based on a system design that City will have approved (such approval not to be unreasonably withheld, conditioned or delayed). Once installed, Seller will connect, operate, maintain and monitor the Solar Facility so as to generate electric energy in accordance with commercially reasonable and prudent utility practices for use at the Property ("**Seller's Obligations**") during the Term of this Agreement. The Solar Facility will be an eligible renewable energy resource under the California Renewables Portfolio Standard Program.

(b) Each Party represents and warrants that:

- i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and will not violate any law; and this Agreement is the valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).
- ii. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority (as defined in Section 5) or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.

(c) City represents and warrants that:



- i. City has good and marketable fee simple title to or a leasehold or other valid property interest in the Property such that City has the full right, power and authority to grant the Licenses (as defined in Section 3(e)) and that such grant of the Licenses does not violate any law, ordinance, rule or other governmental restriction applicable to City or the Property and is not inconsistent with and will not result in a breach or default under any agreement by which City is bound or that affects the Property, and if City does not own the Property or any Improvement on which the Solar Facility is to be installed, City has obtained all required consents from the owner of the Property and/or Improvements, as the case may be, to grant the Licenses to Seller so that Seller may perform its obligations under this Agreement. Notwithstanding the foregoing, in no event is City acknowledging or guaranteeing the suitability of the Property as a feasible site for the Solar Project, nor is City guaranteeing the success of the Solar Project on the Property.
- ii. The Property is not encumbered by, or subject or subordinate to, any leases, agreements, liens, mortgages or deeds of trust.
- iii. No covenants, restrictions, rights of way, easements, or other encumbrances affect the Property, including any lien, deed of trust, or mortgage that could prevent, limit, or adversely affect Seller's rights or use of the Property pursuant to this Agreement.
- iv. Neither the execution and delivery of this Agreement by City nor the performance by City of any of City's obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which City is a party or by which City is bound.
- v. All information provided by City to Seller as well as agents, employees, contractors, and others acting on behalf of Seller, as it pertains to (a) the Property, (b) the Improvements on which the Solar Facility is to be installed, if applicable, (c) City's planned use of the Property and any applicable Improvements, and (d) City's estimated electricity requirements, is accurate in all material respects.
- vi. City is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.
- vii. Unless the Solar Facility is purchased pursuant to Section 7 hereof, Seller will own the Solar Facility and City will have no ownership interest in the Solar Facility. As owner, Seller will have all rights to the benefit of, and will retain all ownership interests in the RECs and Incentives as set forth in Section 5(e); the Solar Facility shall remain the personal property of Seller and shall not be considered for any purposes to be a fixture or otherwise a part of City's Property.
- viii. The Solar Facility will be used primarily for standard business purposes but may not be used to heat a swimming pool.

(d) If the Property is encumbered by, or subject and subordinate to, or becomes subject and subordinate to, any leases, agreements, liens, mortgages or deeds of trust, or any renewals, modifications, consolidations or extensions of the same, City shall use commercially reasonable efforts to obtain a non-disturbance agreement from the holder of such leases, ground leases, agreements, liens, mortgages or deeds of trust, for the benefit of Seller, in form and substance acceptable to Seller. Such non-disturbance agreements must (a) acknowledge and consent to Seller's rights under this Agreement, and (b) acknowledge that the third party has no interest in the Solar Facility and will not gain any interest in the Solar Facility by virtue of the Parties' performance or breach of this Agreement, and (c) must provide that no enforcement of any such leases, agreements, liens, mortgages or deeds of trust shall affect, terminate or extinguish the rights, licenses, or easements of Seller.

(e) City covenants that the Solar Facility will not be subject to any lien, security interest, claim, mortgage, pledge, deed of trust, or encumbrances of any nature that may be imposed on or assessed against City's interest in the Property (each, a "**Lien**," and collectively, "**Liens**"). City will have no right to sell, give away, transfer, pledge, remove, relocate, alter, disconnect, or tamper with the Solar Facility at any time as long as this Agreement remains in effect. Seller or any Seller affiliate may file (A) a UCC-1 financing statement or other notice of such Lien and security interest with the California secretary of State, (B) a fixture disclaimer filing with the registrar/recorder (or its equivalent) of the county in which the Solar Facility is located, and (C) any Notice of an Independent Solar Energy Producer Contract required by California law. Each Party shall indemnify the other Party from and against all Liabilities (as defined in Section 12(c)) resulting from any Liens filed against such other Party's property as a result of the indemnifying Party's breach of its obligations under this Section 2(e).

(f) City covenants that at all times during the Initial Term and any Renewal Terms, Seller shall peaceably and quietly have, hold

and enjoy the Property subject to the terms of this Agreement and provided that City and City's authorized agents may enter the Property and perform any work to the extent provided herein.

(g) Seller will be responsible for all costs and expenses related to performing Seller's Obligations. City agrees that Seller has the authority and discretion to use and/or arrange for contractors or agents to perform or assist Seller in performing Seller's Obligations, provided that such contractors or agents are properly licensed, bonded and insured, and provided further that the Property is kept free and clear from any mechanics liens or other encumbrances. In addition, Seller shall not interfere with the operations of the City's waste water treatment plant neighboring the Property ("WWTP") and shall not interrupt WWTP's receipt of electricity from the Utility without City's prior written authorization.

(h) City agrees that Seller, at its own expense, will arrange for the installation of, and shall maintain and periodically test, a meter at the Property that will measure all electric energy delivered to City from the Solar Facility. City shall not tamper with, damage or modify the meter in any way. City will be responsible for any damage or inaccuracies in the meter that are caused by City, City's authorized agents., or any other person unrelated to Seller who may come onto the Property.

### 3. Design and Installation.

(a) The primary equipment used for the Solar Facility will typically include a series of interconnected photovoltaic panels, an inverter, racking materials, and a production meter. Other materials generally used as "balance of system" include disconnects, breakers, load centers, wires, and conduit. Seller will also provide adequate security fencing at least six (6) feet in height encompassing the Solar Facility. The design for the Solar Facility will be presented to City for City's approval (such approval not to be unreasonably withheld, conditioned or delayed) prior to installation. With City's written approval, the Solar Facility installation may begin at any time thereafter.

(b) If City wishes to change the design or installation process, Seller will use commercially reasonable efforts to accommodate City's request. (See Section 4 regarding extra work and Change Order).

(c) Seller, at Seller's sole expense, will arrange for and obtain any permits needed for installation and operation of the Solar Facility, including, but not limited to, any utility, local, state, and federal permits. City agrees to cooperate with Seller and Seller Contractors and reasonably assist Seller and Seller Contractors in obtaining any non-City issued permits needed under applicable law, including the NEM Service (as defined in Section 5(a)) application described in Section 5(a). City agrees to work with Seller to complete and return to Seller and/or its representatives, as appropriate and necessary, all applicable rebate documentation prepared and provided by Seller and, where applicable, Renewable Energy Credit (as defined in Section 5) documentation, upon reasonable request and following the date on which the Utility grants permission to operate the Solar Facility (the "**Solar Facility Start Date**"). If City does not return the rebate or Renewable Energy Credit documentation, Seller may invoice City for the Final Rebate amount (as defined in Section 4(a)(iii)).

(d) City hereby grants to Seller and to Seller's agents, employees, contractors and the Utility (i) an irrevocable, exclusive license running with the Property (the "**Exclusive License**") from the Effective Date until the date that is ninety (90) days following the date of expiration or earlier termination of this Agreement (the "**License Term**"), to use, occupy, and enjoy an area on the Property for the purpose of erecting and operating the Solar Facility that is reasonably acceptable to Seller (the "**Area**"). In addition to the forgoing, City hereby grants to Seller and to Seller's agents, employees, contractors and the Utility an irrevocable, non-exclusive license running with the Property (the "**Non-Exclusive License**", and together with the Exclusive License, the "**Licenses**") for reasonable pedestrian and vehicular access to and egress from the Area (between a publicly dedicated and maintained, and physically open, highway, road, or street, on the one hand, and the Area on the other hand), plus the right and sufficient space for the installation, operation, and maintenance of electric lines, cables, conduits, and related equipment necessary to operate the Solar Facility and interconnect the Solar Facility to the local electric distribution system. Seller and its employees, agents and contractors must comply with City's site safety and security requirements when on the Property, as well as any safety or security requirements when entering or existing the Property, during the License Term. During the License Term, City shall not interfere, or permit any third parties under City's control to interfere, with such rights or access. Seller may record a customary memorandum of license in the land records respecting the Licenses. With prior authorization by Seller, the City, its agents, employees, and/or contractors may enter the Area to perform regular maintenance activities, provided that City, its agents, employees and contractors comply with Seller's site safety and security requirements when in the Area.

(e) For the Initial Term and any Renewal Terms City hereby grants to Seller the exclusive right to receive sunlight at the Area during every hour of each day that sunlight reasonably could be received by the Solar Facility and City shall not create or install vegetation or structures that will obstruct the passage of sunlight to the Area. City understands that unobstructed access to sunlight

("Insolation") is essential to Seller and the purposes of this Agreement. City shall maintain the Property, at City's expense, such that the Solar Facility retains shading conditions no less beneficial for solar energy production than those present at the time of installation. City shall not conduct or permit activities on, in or about the Property or the Improvements that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the Solar Facility, or the operation or maintenance thereof. If City discovers any activity or condition that could diminish the Solar Facility's Insolation, City shall immediately notify Seller and cooperate with Seller in preserving and restoring the Solar Facility's Insolation levels as they existed on the Effective Date. City shall indemnify Seller for any loss or damage to the Solar Facility to the extent caused by or arising out of (i) City's breach of its obligations under this Section or (ii) the acts or omissions of City or City's employees, agents, invitees or contractors. Notwithstanding the language of this Section 3(e), City shall be free to continue to farm all other land City owns or leases in the vicinity of the Property in a manner consistent with the normal farming practices used in the area.

(f) Seller will ensure that Seller Contractors shall at the end of each business day keep the Property free from waste materials or rubbish caused by their operations. Prior to the Solar Facility Start Date, Seller Contractors shall remove all of their tools, construction/installation equipment, machinery, waste materials and rubbish from and around the Property.

(g) Each Party shall comply with all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws and codes with respect to such Party's performance under this Agreement.

(h) Upon completion of the Solar Facility and subject to the exclusions set forth in Section 21, Seller, at Seller's sole cost and expense, will ensure that Seller Contractors rectify any damages incurred to City's Property by Seller Contractors during the installation of the Solar Facility and return City's property to a condition similar to its original condition prior to the installation of the Solar Facility, provided that City notifies Seller in writing or by e-mail of any damages within five (5) business days of the municipal building inspector approval of the Solar Facility.

#### 4. Changes to the Agreement.

(a) The following conditions may change the expected costs and benefits of this Solar Facility to both City and Seller, which may include a change in the per kWh price:

- i. change to the design of the Solar Facility;
- ii. change in the Solar Facility's annual energy production estimate, expressed in kWh, provided by the National Renewable Energy Laboratory PVWatts Calculator ("PVWatts Calculator") (Final Year One Production Estimate);
- iii. actual interconnection costs exceed \$92,850;
- iv. change in the final rebate amount associated with installing the Solar Facility ("Final Rebate") or any change in City's applicable Utility tariff (including any changes to net metering); and/or
- v. the availability of cellular service at the Property.

(b) If any of these conditions occur, the Parties may choose to modify the terms of this Agreement (including, without limitation the price per kWh); if the Parties do not modify the terms of the Agreement, either Party may cancel the Agreement in accordance with Section 9(e). If the Parties choose to modify the terms, the Parties will execute a mutual agreeable amendment to this agreement (referred to in this Agreement as a "**Change Order**"). Change Orders become part of the contract once the order is signed by the Parties prior to the commencement of work covered by the Change Order. In order to be enforceable, the Change Order must describe the scope of the extra work or change and the cost to be added or subtracted from the contract. A Seller Contractor's failure to comply with the requirements of this paragraph does not preclude the recovery of compensation by the Seller Contractor for work performed, based upon legal or equitable remedies designed to prevent unjust enrichment.

(c) City may choose to accept or deny changes under this Section 4 in writing or by electronic mail.

#### 5. Purchase and Sale of Electricity.

(a) As of the Solar Facility Start Date, City must be taking service from the Standard Net Energy Metering Service or its

equivalent (“NEM Service”) from the Utility. City agrees that City will continue to take NEM Service for as long as this Agreement is in effect. City agrees to use the NEM Service currently in effect for this Utility or, in the event that the NEM Service is no longer in effect, City agrees to use a substitute metering program as chosen by Seller. City agrees to execute all reasonably required documentation associated with NEM Service, or any substitute metering service, and any refund, credit, or rebate program promptly at the request of Seller, its affiliates, and/or the Utility.

(b) Seller agrees to sell to City, and City agrees to purchase from Seller, all electric energy produced by the Solar Facility during the Term. All electric energy produced by the Solar Facility will be made available to City (or any subsequent owner of the Property) for use at the Property.

(c) City agrees that title to and risk of loss for the electric energy purchased under this Agreement shall pass from Seller to City at the time when the electric energy reaches the point of interconnection, i.e., at the point where the Solar Facility connects to the Property’s connection with the Utility.

(d) As the owner of the Solar Facility, Seller or its designee is entitled to the benefit of, and will retain all ownership interests in the RECs and Incentives. City shall cooperate with Seller in obtaining, securing and transferring to Seller any and all RECs and Incentives. City is not obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. City shall not make any filing or statements inconsistent with Seller’s ownership interests in the RECs and Incentives. If any RECs or Incentives are paid or delivered directly to City, City shall immediately pay or deliver such items or amounts to Seller.

“**Governmental Authority**” means any foreign, federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority having jurisdiction or effective control over a Party.

“**Incentives**” means (i) a payment paid by a utility or a Governmental Authority based in whole or in part on the cost or size of the Solar Facility such as a rebate, (ii) a performance-based incentive paid as a stream of periodic payments by a utility, state or Governmental Authority based on the production of the Solar Facility, (iii) investment tax credits, production tax credits, and similar tax credits, grants or other tax benefits under federal, state or local law, and (iv) any other attributes, commodity, revenue stream or payment in connection with the Solar Facility (such as ancillary or capacity revenue), in each case of (i) through (iv) relating to the construction, ownership, use or production of energy from the Solar Facility, provided that Incentives shall not include RECs.

“**Renewable Energy Credit**” (“**REC**”) means a renewable energy credit or certificate under any state renewable portfolio standard or federal renewable energy standard, voluntary renewable energy credit certified by a non-governmental organization, pollution allowance, carbon credit and any similar environmental allowance or credit and green tag or other reporting right under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program, in each case relating to the construction, ownership, use or production of energy from the Solar Facility, provided that RECs shall not include Incentives.

Notwithstanding the foregoing, if City purchases the Solar Facility from Seller, City will own, and be entitled to proceeds from the sales of, solar Renewable Energy Credits and Renewable Energy Credits earned after the date City purchases the Solar Facility from Seller.

## 6. Billing and Payment.

(a) During the Initial Term, City will pay Seller a price for each kWh delivered by the Solar Facility on a monthly basis as specified in the cover sheet to this Agreement, or as modified pursuant to Section 4. Seller will invoice City monthly and City agrees to pay those invoices in full, without deduction or setoff, within thirty (30) days following receipt.

(b) During the Term, Seller will, within one month following each anniversary of the Solar Facility Start Date, prepare and send to City an annual statement detailing the kWh of electric energy produced by the Solar Facility during the last 24 months. If in any 2 year period (measured from the Solar Facility Start Date) the Solar Facility has produced less than 90% of the Estimated Solar Energy Output (as defined below), as reduced by the degradation factor set forth in the cover page hereto (the “**Degradation Factor**”), (other than for reasons force majeure), Seller will pay City a true-up payment equal to the number of kWh by which the actual output of the Solar Facility was less than 90% of the Estimated Solar Energy Output, as reduced by the Degradation Factor, multiplied by Price/kWh. For purposes of this Agreement, “**Estimated Solar Energy Output**” shall refer to the estimated

solar energy output for the applicable year as set forth under Exhibit B hereto.

(c) Taxes.

- i. City's Taxes. City is responsible for, to the extent applicable, (1) payment of, or reimbursement of Seller, for all taxes assessed on the generation, sale, delivery or consumption of electricity produced by the Solar Facility or the interconnection of the Solar Facility to the utility's electricity distribution system; and (2) real property taxes.
- ii. Seller's Taxes. Seller is responsible for (1) payment of income taxes or similar taxes imposed on Seller's revenues due to the sale of electricity under this Agreement; and (2) personal property taxes imposed on the Solar Facility.

(d) Prior to the start of any Renewal Term, the Parties shall negotiate a new price per Kilowatt Hour, provided that in the first Renewal Term, the per Kilowatt Hour price shall be equal to no more than fifty-percent (50%) of the then-applicable Utility rate and no less than \$0.374/kWh.

7. Ownership, Option to Purchase the Solar Facility.

(a) Throughout the Term, Seller shall be the legal and beneficial owner of the Solar Facility, and all RECs and Incentives, and the Solar Facility will remain the personal property of Seller and will not attach to or be deemed a part of, or fixture to, the Property or any Improvement on which the Solar Facility is installed. Seller and City agree that Seller is the tax owner of the Solar Facility and all tax filings and reports shall be filed in a manner consistent with this Agreement. The Solar Facility will at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.

(b) City shall use commercially reasonable efforts to place all parties having a Lien on the Property or any Improvement on which the Solar Facility is installed on notice of the ownership of the Solar Facility and the legal status or classification of the Solar Facility as personal property. If any mortgage or fixture filing against the Property could reasonably be construed as prospectively attaching to the Solar Facility as a fixture of the Property, City shall provide a disclaimer or release from such lienholder.

(c) If City is the fee owner of the Property, City consents to the filing of a disclaimer of the Solar Facility as a fixture of the Property in the office where real estate records are customarily filed in the jurisdiction where the Property are located. If City is not the fee owner, City shall obtain such consent from such owner. For the avoidance of doubt, in either circumstance Seller has the right to file such disclaimer.

(d) Upon request, City shall deliver to Seller a subordination and non-disturbance agreement in a form and substance reasonably acceptable to Seller and the provider of the subordination and non-disturbance agreement from the owner of the Property (if the Property is leased by City), any mortgagee with a Lien on the Property, and other persons holding a similar interest in the Property.

(e) To the extent that City does not own the Property or any Improvement on which the Solar Facility is installed, City shall provide to Seller immediate written notice of receipt of notice of eviction from the Property or applicable Improvement or termination of City's lease of the Property and/or Improvement.

(f) In the event that any or all of the Property is or becomes subject during the Term to a new lease or Lien, City shall require that the lessor or the holder of such lease or Lien enter into an agreement with Seller, or provide an estoppel reasonably acceptable to Seller and the lenders, acknowledging and recognizing Seller's rights under this Agreement and acknowledging that the Solar Facility is the personal property of Seller severable from the Property and not a fixture.

If, after the execution of this Agreement, Seller reasonably requires any easements, leases, licenses, consents, acknowledgments, approvals or other rights for the installation and testing of the Solar Facility, production and delivery of output to the delivery point for electricity generated by the Solar Facility, and the operation and maintenance of the Solar Facility under this Agreement, City will support and will not object to the granting of such rights upon application by Seller.

(g) City has the option to purchase the Solar Facility in any contract year after the sixth anniversary of the Solar Facility Start Date.

(h) To purchase the Solar Facility pursuant to Section 7(h), City must deliver a written notice to Seller of City's intent to purchase

the Solar Facility at least ninety (90) prior to the end of the applicable contract year or the Initial Term or Renewal Term, as applicable, and the purchase shall be completed prior to the end of the applicable contract year or the Initial Term or Renewal Term, as applicable.

(i) The purchase price will be equal to the price set forth in the Buyout Schedule attached as Exhibit C to this Agreement for the applicable contract year. If City exercises City's option to purchase the Solar Facility, Seller shall transfer good title to the Solar Facility to City upon Seller's receipt of the purchase price and execution by the Parties of a written instrument or agreement to effect such transfer. The Solar Facility will be sold "as is, where is, with all faults". Seller will assign to City any manufacturer's warranties that are in effect as of the date of purchase and which are then assignable pursuant to their terms, but Seller otherwise disclaims all warranties of any kind, express or implied, concerning the Solar Facility (other than as to title). Seller shall also provide City all Solar Facility operation and maintenance manuals and logs in Seller's possession and provide City basic training on the operation and maintenance of the Solar Facility upon City's reasonable request. Upon purchase of the Solar Facility, City shall assume complete responsibility for the operation and maintenance of the Solar Facility and liability for the performance of (and risk of loss for) the Solar Facility, and, except for any of Seller's obligations that survive termination under Section 22(m), Seller will have no further liabilities or obligations hereunder for the Solar Facility.

(j) Upon any transfer of the Solar Facility to City, this Agreement will automatically terminate, and City will own and be fully responsible for the Solar Facility.

#### 8. Sale of Property and Assignment.

(a) If City sells the Property prior to the sixth anniversary of the Solar Facility Start Date, City must assign this Agreement to the new owner and the new owner must agree in writing to be bound by all of the terms and conditions set forth herein. After the sixth anniversary of the Solar Facility Start Date, City may either (i) assign this Agreement to the new owner pursuant to an assignment agreement to be provided by Seller, or (ii) purchase the Solar Facility pursuant to Section 7. Whether or not this Agreement is assigned as contemplated in this Section 8(a), the right to receive the electricity from the Solar Facility, through the Term of this Agreement shall automatically be transferred with the title to the Property whether the title is transferred by voluntary sale, judicial or nonjudicial foreclosure, or by any other means and City shall remain obligated pursuant to the terms of this agreement. In the event of such a transfer without an assignment of this Agreement City will exercise City's best efforts to obtain an assignment of this Agreement to the new owner of the Property as soon as possible.

(b) If City sells or otherwise transfers City's interest in the Property in violation of the provisions of this Agreement, then City will be deemed to have materially breached this Agreement, and Seller may exercise its rights under Section 20(a).

(c) Seller may directly or indirectly assign, collaterally assign, mortgage, pledge, lease, sublease, or transfer the Solar Facility and/or this Agreement along with all rights and obligations hereunder (i) to any Financing Party, (ii) to any affiliate of Seller, and (iii) in connection with any acquisition, corporate reorganization, merger or sale of substantially all of Seller's assets to another entity (each, an "Assignee"), without first giving notice to City or obtaining City's consent. City shall timely execute any consents (which may include notice, cure, attornment and step-in rights) or estoppels and negotiate any amendments to this Agreement that may be reasonably requested by Seller or a Financing Party; provided, that such estoppels, consents or amendments do not alter the fundamental economic terms of this Agreement. Nothing contained herein shall prohibit or otherwise limit changes in control of Seller. For purposes of this Agreement, "**Financing Party**" means, with respect to Seller, any lenders, equity providers, including tax equity, or other person (including any trustee or agent thereof) including interest rate, foreign exchange, letter of credit or commodity hedge providers, providing development, ownership, bridge, construction, interim or long-term financing, hedging or other credit support, whether direct or indirect.

(d) Seller warrants and covenants to City that no Assignee, creditor, partner or owner of the Solar Facility has, as of the date of this Agreement, the right to remove or permanently decommission the Solar Facility.

(e) This Agreement is binding on and inures to the benefit of successors and permitted assignees.

#### 9. Term and Termination.

(a) City agrees that this Agreement will only become effective when both City and Seller have signed the Agreement (the "**Effective Date**"). The electricity supply period under this Agreement commences on the Solar Facility Start Date (as defined in Section 3(d)) and continues for the duration of the Initial Term and any Renewal Terms (as defined below), unless earlier terminated as provided for in this Agreement (collectively, the "**Term**").

(b) This Agreement will continue in effect until Twenty-Five (25) years following the Solar Facility Start Date. This period shall be called the “**Initial Term**”.

(c) Subject to Section 9(d), at the end of the Initial Term, this Agreement may be renewed for two additional five-year terms (the “**Renewal Term**”), upon 30 days prior written notice prior to the expiration of the Initial Term to renew, unless City has purchased the Solar Facility.

(d) At the end of the Initial Term and any Renewal Terms (should such Renewal Terms occur) if either City or Seller do not wish to renew the Agreement and City has not purchased the Solar Facility pursuant to this Agreement, Seller will remove the Solar Facility at no cost to City; provided, however, that Seller shall have one hundred eighty (180) days to remove the Solar Facility (and the Licenses granted to Seller hereunder shall, for purposes of removing the Solar Facility, survive during such period). In connection with the removal of the Solar Facility, Seller will restore the site of the Solar Facility to substantially the same general condition as it was immediately prior to the installation of such Solar Facility, normal wear and tear excepted. Such restoration shall include, but not be limited to, (i) removing any Solar Facilities owned, installed or constructed by Seller thereon, (ii) removal of all electrical wiring, conduits and underground utilities and facilities related to the Solar Facilities, whether on the Property or neighboring thereto, (iii) filling in and compacting trenches or other borings or excavations made by Seller, and (iv) leaving the surface of the Property free from debris caused by Seller’s activities. Seller is responsible for the repair and/or replacement of any and all damage caused by the complete removal of the Solar Facility. In no case shall Seller’s removal of the Solar Facility cause damage to the Property at the time of removal and insofar as damages occur, Seller shall be responsible for the associated costs, as determined by an independent third-party contractor, excluding normal wear and tear.

(e) If, at any time after the Effective Date and prior to commencement of installation, (i) circumstances arise which have been excluded from contract price calculations, or Seller determines that the installation of the Solar Facility will not be technically or economically viable for any other reason, and (ii) the Parties have not negotiated a modification to this Agreement pursuant to Section 4 for thirty (30) days following written notice from Seller without reaching agreement, either Party may terminate this Agreement by providing ten (10) days’ prior written notice to the other Party. Neither Party shall be liable for any damages in connection with such termination, except as otherwise provided in Section 4 herein. After commencement of installation, the contract price shall not be subject to further adjustment except as otherwise provided herein.

(f) This Agreement will terminate upon the closing of City’s purchase of the Solar Facility pursuant to Section 7.

#### 10. Access, Maintenance and Repair.

(a) City hereby grants to Seller the right to have Seller Contractors and Seller’s agents and representatives access to City’s Property for the purpose of designing, installing, operating, maintaining, inspecting, testing, repairing and removing the Solar Facility and performing Seller’s Obligations consistent with the provisions of Section 3(e). Seller agrees to give City reasonable notice when Seller needs to access City’s Property for any of the foregoing purposes and will endeavor to restrict such access to normal business hours.

(b) When possible and during normal working hours Monday-Friday, City agrees to allow Seller, Seller Contractors and other construction professionals (an engineer, architect, or licensed contractor or their representative) hired by Seller to access the Property to inspect any buildings and, if applicable, roofs prior to the installation of the Solar Facility to ensure that the Property can accommodate the Solar Facility.

(c) Seller will, at its sole cost and expense, monitor and maintain the Solar Facility for the Term of the Agreement to ensure that the Solar Facility is operating in good working order and producing power as described in this Agreement. Seller shall further control and keep the Solar Facility free and clear of all noxious weeds, grasses and pests in a manner consistent with farming and fire prevention practices for the area.

(d) Except during an emergency or in response to an imminent threat to the Solar Facility, Seller may only suspend delivery of electricity from the Solar Facility for the purpose of maintaining and repairing the Solar Facility upon prior written notice of at least thirty (30) business days to City; provided that Seller shall use commercially reasonable efforts to (i) minimize any interruption in service to the City, (ii) limit any such suspension of service which may negatively affect the WWTP, and (iii) shall use commercially best efforts to conduct such maintenance or repairs in compliance with any reasonable request made by City within ten (10) days after having received such written request to mitigate any adverse effect. Scheduled and unscheduled maintenance and repairs shall be undertaken at Seller’s sole cost and expense, except that City shall reimburse Seller for the

reasonable cost of any repairs or maintenance resulting from damage caused by City and City's agents, employees or contractors. Seller shall obtain any necessary encroachment permits to perform such maintenance or repairs.

(e) If City plans to move or temporarily disconnect the Solar Facility to allow for maintenance of and/or repair to the Property or the roof, as applicable, City agrees, at City's expense, either (i) to hire Seller to arrange for the performance of this work or (ii) to obtain Seller's approval to have City's contractor perform the work and ensure that City's contractor will carry commercial general liability policy in an amount not less than one million (\$1,000,000) dollars per occurrence and name Seller and its successor or Assignee as an additional insured. City further agrees to reimburse Seller during any downtime encountered for moving or temporarily disconnecting the Solar Facility by City based on Seller's reasonable estimate of the amount of electricity that would have been delivered to City during such downtime, and to reimburse Seller for any costs incurred to provide requested services in connection therewith.

(f) Not less than thirty (30) days prior to making any alterations or repairs to the Property (except for emergency repairs) or any Improvement which may adversely affect the operation and maintenance of the Solar Facility, City shall inform Seller in writing and, thereafter, shall use commercially reasonable efforts to conduct such repairs, alterations or Improvements in compliance with any reasonable request made by Seller within ten (10) days after having received such written request to mitigate any adverse effect. If any repair, alteration or Improvement result in a permanent and material adverse economic impact on the Solar Facility, City may request relocation of the Solar Facility under Section 10(i). To the extent that temporary disconnection or removal of the Solar Facility is necessary to perform such alterations or repairs, Seller shall perform such work, and any re-connection or re-installation of the Solar Facility, at City's cost, subject to Sections 10(d). Seller shall make any alterations and repairs in a good and workmanlike manner, in compliance with all applicable laws, codes and permits.

(g) To the extent within City's reasonable control, City (i) shall ensure that the Property remains interconnected to the Utility grid at all times; and (ii) shall not permit cessation of electric service to the Property from the Utility. City is fully responsible for, and shall properly maintain in full working order and good repair, the electrical infrastructure on City's side of the utility meter, including all of City's equipment that utilizes the Solar Facility's output. City shall use commercially reasonable efforts to cooperate with Seller to comply with any technical standard of the utility providing electrical power to City, and do not need to receive permission to operate from the utility.

(h) If, during the Term, City ceases to conduct business operations at the Property or vacates the Property; the Property has been destroyed; or City is otherwise unable to continue to host the Solar Facility or accept the electricity delivered by the Solar Facility for any other reason (other than a default by Seller under this Agreement), City may propose in writing the relocation of the Solar Facility, at City's cost, in lieu of termination of the Agreement by Seller for a default by City under this Agreement. If such proposal is practically feasible and preserves the economic value of the agreement for Seller, the Parties shall seek to negotiate in good faith an agreement for the relocation of the Solar Facility. If the Parties are unable to reach agreement on relocation of the Solar Facility within sixty (60) days after the date of receipt of City's proposal, Seller may terminate this Agreement pursuant to Section 20.

#### 11. Insurance.

(a) City agrees to carry insurance that covers all damage to City's Property during the term of this Agreement. City agrees that City is responsible for contacting City's insurance carrier and inquiring as to whether the installation of the Solar Facility will impact City's existing coverage. If additional insurance is required to maintain City's existing coverage, City will be responsible for procuring and maintaining such insurance.

(b) Seller agrees to carry throughout the term of this Agreement adequate insurance coverage to fully insure Seller's Solar Facility against loss or damage from any risk, including, but not limited to, theft, earthquake, wind, fire and earth movement, from a reputable company in the business of providing insurance.

(c) Each Party's insurance policies shall (i) contain a provision whereby the insurer agrees to give the other Party at least thirty (30) days (ten (10) days for non-payment of premiums) written notice before the insurance is cancelled, or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other Party.

(d) Upon the other Party's request, each Party shall deliver to the other Party certificates of insurance evidencing the required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement. Each Party shall pay its own insurance deductibles,



except in the case of claims (i) resulting from a breach of this Agreement, in which case the breaching Party is responsible for payment of the non-breaching Party's deductible for any responding insurance, and (ii) covered by an indemnity set forth in this Agreement.

(e) Commercial General Liability Insurance (“CGL”). Seller shall carry commercial general liability insurance for the Property during the term of the Agreement as described below. Additionally, Seller shall require Seller Contractors to maintain CGL and workers compensation insurance, as fully described below:

Seller and Seller Contractors performing the Solar Facility installation, will maintain insurance coverage as follows: workers compensation, subject to statutory limits; employers liability, with a minimum of two million (\$2,000,000) dollars each occurrence; commercial general liability, in an amount not less than two million (\$2,000,000) dollars each occurrence and five million (\$5,000,000) dollars annual aggregate; commercial automobile liability, in an amount not less than a combined bodily injury and property damage limit of two million (\$2,000,000) dollars per accident; excess liability insurance with a limit of five million (\$5,000,000) dollars per occurrence and in the annual aggregate in excess of the limits of insurance provided above; and any other insurance required by applicable laws or regulations.

## 12. Limitations of Liability and Indemnity.

(a) SELLER WILL BE LIABLE TO CITY AND ANY OTHER PERSON FOR DAMAGES OR LOSSES DIRECTLY ATTRIBUTABLE TO ITS NEGLIGENCE, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT. TOTAL LIABILITY FOR SUCH DIRECT DAMAGES OR LOSSES WILL IN NO EVENT EXCEED TWO MILLION US DOLLARS \$2,000,000. THE PROVISIONS OF THIS SECTION 12(a) WILL APPLY WHETHER SUCH LIABILITY ARISES IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE. SELLER IS NOT RESPONSIBLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY NATURE (INCLUDING, WITHOUT LIMITATION, LOST REVENUES, LOST PROFITS, LOST BUSINESS OPPORTUNITY OR ANY BUSINESS INTERRUPTION) ARISING OUT OF THEIR PERFORMANCE OR NON-PERFORMANCE HEREUNDER, EVEN IF ADVISED OF SUCH.

(b) EXCEPT AS EXPRESSLY PROVIDED HEREIN, SELLER MAKES NO WARRANTY OR REPRESENTATION, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, REGARDING ITS OBLIGATIONS FOR THE SOLAR FACILITY. THERE IS NO EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.

(c) Indemnity. To the fullest extent permitted by law, each Party (the “**Indemnifying Party**”) hereby indemnifies and agrees to defend and hold harmless the other Party, its affiliates and the other Party's and its affiliates' respective directors, officers, shareholders, partners, members, agents and employees (collectively, the “**Indemnified Parties**”), from and against any liability, claim, loss, damage or cost (including reasonable attorney's fees) (collectively, “**Liabilities**”) in connection with or resulting from (1) breach of any representation or warranty set forth in this Agreement, and (2) claims for bodily injury or death or tangible property damage to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, fraud by, or criminal act of the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein will require the Indemnifying Party to indemnify the Indemnified Parties for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, fraud by, or criminal acts of, an Indemnified Party. This Section 12(c) does not apply to Liabilities arising out of or relating to any form of Hazardous Substances or other environmental contamination, such matters being addressed exclusively by Section 12(d).

### (d) Environmental Indemnification.

- i. Seller Indemnity. Seller shall indemnify, defend and hold harmless City's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Property of any Hazardous Substance to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees.
- ii. City Indemnity. City shall indemnify, defend and hold harmless all of Seller's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Property of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees.

- iii. Notice. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Property generally or any deposit, spill or release of any Hazardous Substance. “**Hazardous Substance**” means any chemical, waste or other substance (a) which now or hereafter becomes defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollution,” “pollutants,” “regulated substances,” or words of similar import under any laws pertaining to the environment, health, safety or welfare, (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.
- (e) This section shall not apply to any third-party manufacturer warranties.

### 13. Change in Law.

(a) If a Change in Law renders this Agreement, or Seller’s performance of this Agreement, either illegal or impossible, then Seller may terminate this Agreement immediately upon notice to City without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination and removal the Solar Facility in accordance with Section 9(d) of this Agreement.

(b) “**Change in Law**” means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation, (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date (notwithstanding the general requirements contained in any applicable permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority.

### 14. Goodwill and Publicity.

(a) Neither Party may, without the prior written consent of the other Party, (1) use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material or (2) disclose pricing, estimated savings, or other terms of this Agreement (except as required by applicable law). The Parties shall coordinate and cooperate with each other when making public announcements regarding this Agreement, the Solar Facility and its use, and each Party may promptly review, comment upon and approve any publicity materials, press releases or other public statements before they are made. Notwithstanding the above, Seller is entitled to place signage on the Property reflecting its association with the Solar Facility.

### 15. Confidentiality.

(a) Confidential Information. To the maximum extent permitted by applicable law, if either Party provides confidential information (“**Confidential Information**”) to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information of the other Party, the receiving or learning Party shall (i) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (ii) refrain from using such Confidential Information, except in the negotiation, performance, enforcement and, in the case of Seller, financing, of this Agreement. The terms of this Agreement (but not the fact of its execution or existence) are considered Confidential Information of each Party for purposes of this Section 15(a).

(b) Permitted Disclosures. Notwithstanding Section 15(a):

- i. A Party may provide such Confidential Information to its affiliates and to its and its affiliates’ respective officers, directors, members, managers, employees, agents, contractors, consultants and financing parties (collectively, “**Representatives**”), and potential direct or indirect assignees of this Agreement if such potential assignees are first bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information. Each Party is liable for breaches of this provision by any person to whom that Party discloses Confidential Information.
- ii. Confidential Information does not include any information that (a) becomes publicly available other than through breach of this Agreement, (b) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena, (c) is independently developed by the receiving Party, (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality, or (e) is determined to be subject to

disclosure under the California Public Records Act or other applicable law. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall reasonably cooperate with the other Party's efforts to limit the disclosure to the extent permitted by applicable law.

(c) Miscellaneous. All Confidential Information remains the property of the disclosing Party and will be returned to the disclosing Party or destroyed (at the receiving Party's option) after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party acknowledges that the disclosing Party would be irreparably injured by a breach of this Section 15 by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, for breaches of this Section 15. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 15 but will be in addition to all other remedies available at law or in equity. The obligation of confidentiality will survive termination of this Agreement for a period of two (2) years.

#### 16. Non-Dedication of Facilities.

(a) Nothing in this Agreement may be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party may knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party may assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this Agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use commercially reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller may terminate this Agreement without further liability under this Agreement except with respect to liabilities accrued prior to the date of termination and removal the Solar Facility in accordance with Section 9(d) of this Agreement.

#### 17. Resolution of Disputes.

(a) City agrees that to expedite the resolution of and to control the costs of disputes, resolution of any dispute relating to this Agreement ("**Dispute**"), will be resolved according to the procedure set forth in this Section 17.

(b) Unless otherwise agreed in writing, Seller and City agree to continue to perform each Party's respective obligations under this Agreement during the course of the resolution of the Dispute.

(c) City and Seller agree to first try to resolve informally and in good faith any Dispute. Accordingly, City agrees to send a written notice of Dispute to the address on the first page of this Agreement, and Seller will send a written notice of Dispute to City's billing address. If City and Seller do not reach an informal agreement to resolve the Dispute within 45 days after the notice of Dispute is received, City or Seller may commence a formal proceeding as detailed below. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled for the 45 days during which the Parties try to informally resolve any Dispute.

(d) If Seller and City cannot resolve the Dispute informally, the Dispute will be resolved by binding arbitration. ARBITRATION MEANS CITY WAIVES CITY'S RIGHT TO A JURY TRIAL AND ALL DISPUTES SHALL BE DECIDED BY AN ARBITRATOR. This agreement to arbitrate Disputes is governed by the Federal Arbitration Act (FAA). The arbitration will be conducted under the rules of JAMS that are in effect at the time the arbitration is initiated (JAMS Rules) and under the rules set forth in this Agreement. If there is a conflict between the JAMS Rules and this Agreement, this Agreement will govern.

(e) CLASS ACTION WAIVER. ARBITRATION MUST BE ON AN INDIVIDUAL BASIS. AS A RESULT, NEITHER CITY NOR SELLER MAY JOIN OR CONSOLIDATE CLAIMS IN ARBITRATION BY OR AGAINST OTHER CUSTOMERS, OR LITIGATE IN COURT OR ARBITRATE ANY CLAIMS AS A REPRESENTATIVE OR MEMBER OF A CLASS OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.

(f) City may, in arbitration, seek all remedies available to City under this Agreement as interpreted under California law. If City decides to initiate arbitration against Seller, City will pay the costs for initiating the arbitration proceedings. If Seller decides to initiate arbitration, Seller will be required to pay the costs associated with initiating the arbitration proceeding. Other reasonable fees, such as attorneys' fees and expenses of travel to the arbitration, will be paid in accordance with JAMS Rules. If the arbitrator

finds in City's favor, Seller will pay City's reasonable attorney's fees and expenses of travel to the arbitration. The arbitration hearing will take place in Fresno County, CA, unless City and Seller agree to another location in writing. In order to initiate arbitration proceedings, City or Seller must take the following actions:

- i. Write a demand for arbitration. The demand must include a description of the Dispute and the amount of damages City is seeking. The form of Demand for Arbitration can be found under ADR Forms at [www.jamsadr.com](http://www.jamsadr.com).
- ii. Send three copies of the demand for arbitration to the current JAMS location in Fresno County, California.
- iii. Send one copy of the demand for arbitration to the other Party.

(g) In accordance with the FAA and the JAMS Rules, the arbitrator's decision will be final and binding. Any right to appeal is likewise governed by the FAA and JAMS Rules. Any arbitration award may be enforced in any court with jurisdiction.

(h) City and Seller agree to receive service of process of the arbitration demand by registered or certified mail, return receipt requested, at City's billing address and Seller's principal executive office, as applicable.

#### 18. Force Majeure.

(a) Neither City nor Seller will be in default of this Agreement for any delay or failure in the performance under this Agreement (including any obligation to deliver or accept the electric energy output of the Solar Facility) if the delay or failure is due to Force Majeure. "Force Majeure" includes acts of God such as storms, fires, floods, lightning and earthquakes, war, riot, acts of a public enemy or other civil disturbance, or a strike, walkout, lockout or other significant labor dispute. Force Majeure does not include economic hardship of either City or Seller, a power grid failure (except if caused directly by a Force Majeure event), a failure or delay in the granting of permits, or insufficiency, unavailability, failure, or diminishment of solar resources, except as a result of an event that would otherwise qualify as a Force Majeure.

(b) Force Majeure cannot be attributable to fault or negligence on the part of the Party claiming Force Majeure and must be caused by things beyond that Party's reasonable control. Additionally, City or Seller must have taken all reasonable technical and commercial precautions to prevent the event or minimize its impact.

(c) In order to claim Force Majeure as a reason for non-performance, City or Seller must give notice to the other Party of the Force Majeure within fourteen (14) days of the occurrence of the Force Majeure and estimate how long it will last and what the potential impact is on the Agreement. The Party claiming Force Majeure must (i) make reasonable attempts to continue to perform under the Agreement, (ii) quickly take action to correct the problem caused by the Force Majeure, and (iii) make reasonable efforts to limit damage to the other Party. Finally, the Party claiming Force Majeure must notify the other Party when the Force Majeure event ends and performance will resume as contemplated in this Agreement.

#### 19. City's Remedies.

In addition to any other remedies City has under this Agreement, if Seller (or any applicable Assignee that owns the Solar Facility) (i) makes a general assignment for the benefit of creditors, files a petition in bankruptcy, appoints a trustee or receiver, or has all or substantially all of its assets subject to attachment, execution or other judicial seizure, or (ii) fails to perform a material obligation under the Agreement and such failure continues beyond a period of one hundred twenty (120) days after receipt of notice provided by City (provided, in each case, this Agreement is otherwise in full force and effect prior to such event), City may terminate this agreement. City will be entitled, in City's sole and absolute discretion, either to: (a) require that Seller remove, consistent with the requirements in Section 9(d), the Solar Facility, or (b) exercise the purchase option provided in Section 7.

#### 20. Seller's Rights and Remedies.

(a) If City (i) fails to perform a material obligation under the Agreement, and City does not correct the failure within one hundred twenty (120) days, (ii) makes a general assignment for the benefit of creditors, file a petition in bankruptcy, appoint a trustee or receiver or have all or substantially all of City's assets subject to attachment, execution or other judicial seizure, or City becomes insolvent or unable to pay City's debts, or (iii) vacates or abandons the Property, City shall be deemed in default of this Agreement. If City is in default of this Agreement, Seller shall, in addition to all rights available at law or in equity, have the right to terminate this Agreement.

(b) If City (i) terminates this Agreement without also purchasing the Solar Facility or (ii) is deemed in default of this Agreement, Seller shall, subject to any cure rights provided herein, have all rights granted by law or equity, including the right to remove, or restrict delivery of electricity to City from, the Solar Facility.

#### 21. Exclusions.

This Agreement does not include an obligation by Seller or any of its agents, Seller Contractors, subcontractors or representatives to: remove or dispose of any Hazardous Substances that currently exist on the Property; improve the construction of the roof or the Property to support the Solar Facility; remove or replace existing rot, rust, or insect infested structures; provide structural framing for any part of the Property; pay for or correct construction errors, omissions and deficiencies by City or City's contractors; pay for, remove or remediate mold, fungus, mildew, or organic pathogens; upgrade City's existing electrical service; install any smoke detectors, sprinklers or life safety equipment required by municipal code or inspectors as a result of the Solar Facility installation; pay for the removal or re location of equipment, obstacles or vegetation in the vicinity of the Solar Facility; pay for any costs associated with municipal design or architectural review, or other specialty permits which are City's responsibility (this includes cost to attend any public hearings, notification of neighbors, or additional drawings required); paint electrical boxes or conduit at the Property; and move items unassociated with the Solar Facility around the Property.

#### 22. Miscellaneous.

(a) City agrees that this Agreement constitutes the entire agreement between City and Seller regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such provision shall not be read to render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be rectified or interpreted so as to best accomplish its objectives within the limits of applicable law. The terms of this Agreement that expressly or by their nature survive termination shall continue thereafter until fully performed, which shall include, without limitation, the obligation to make payments hereunder.

(b) This Agreement shall be interpreted in accordance with and governed by the laws of the State of California, without regard to the conflict of laws principles thereof.

(c) The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. City shall not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the Solar Facility.

(d) The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

(e) Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto, and any financing parties to the extent provided herein or in any other agreement between a financing party and Seller or City, and do not imply or create any rights on the part of, or obligations to, any other person.

(f) City agrees that Seller has the right to obtain photographic images of the Solar Facility and the Property, and to use such photographic images for internal and quality control purposes. Seller will not use photographic images of the Solar Facility or the Property in its marketing and promotional materials without first obtaining City's express written approval.

(g) This Agreement supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they relate in any way to the subject matter hereof.

(h) All notices under this Agreement shall be in writing and delivered by hand, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and will be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices must be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either Party may specify in writing.

(i) This Agreement is binding upon, and inures to the benefit of, the Parties and their respective heirs, executors, administrators,

legal representatives, successors and assigns.

(j) No amendment to this Agreement shall be effective unless it is in writing and signed by both Parties.

(k) No provision or right or entitlement under this Agreement may be waived or varied except in writing signed by the Party to be bound. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver unless otherwise expressly provided.

(l) Each Party shall provide such information, execute and deliver any instruments and documents and to take such other actions as may be reasonably requested by the other Party to give full effect to this Agreement and to carry out the intent of this Agreement.

(m) Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement, including, without limitation provisions related to billing and payment and indemnification, will survive termination of this Agreement.

(n) No provision of this Agreement may be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither may be considered the agent of the other.

(o) Unless otherwise defined or required by the context in which any term appears: (i) the singular includes the plural and vice versa, (ii) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement, (iii) references to any agreement, document or instrument mean such agreement, document or instrument as amended, restated, modified, supplemented or replaced from time to time, and (iv) the words "include," "includes" and "including" mean include, includes and including "without limitation." The captions or headings in this Agreement are strictly for convenience and will not be considered in interpreting this Agreement. As used in this Agreement, "dollar" and the "\$" sign refer to United States dollars.

(p) This Agreement may be executed in any number of separate counterparts and each counterpart will be considered an original and together comprise the same Agreement.

### 23. Mechanic's Liens.

Seller will only arrange for Seller Contractors to design, install, operate, maintain and test the Solar Facility. Seller will NOT put a mechanic's lien on City's property and will indemnify, defend and hold City harmless for any mechanic's lien that is placed on City's property by Seller Contractors as a result of City entering into this Agreement.

*(Remainder of Page Intentionally Left Blank)*

*(Signature Page Follows)*

SELLER

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Email: \_\_\_\_\_  
Date: \_\_\_\_\_

CITY

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Email: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Email: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT A**  
**Estimated Yearly and Monthly Payment Schedule\***

<b>Year</b>	<b>Yearly Total</b>	<b>Monthly Payment</b>
1	\$103,205	\$8,600.41
2	\$105,759	\$8,813.27
3	\$108,374	\$9,031.18
4	\$111,051	\$9,254.24
5	\$113,791	\$9,482.56
6	\$116,595	\$9,716.26
7	\$119,465	\$9,955.46
8	\$122,403	\$10,200.27
9	\$125,410	\$10,450.83
10	\$128,487	\$10,707.25
11	\$131,636	\$10,969.66
12	\$134,858	\$11,238.20
13	\$138,156	\$11,512.98
14	\$141,530	\$11,794.15
15	\$144,982	\$12,081.83
16	\$148,514	\$12,376.18
17	\$152,128	\$12,677.33
18	\$155,825	\$12,985.43
19	\$159,607	\$13,300.61
20	\$163,476	\$13,623.03
21	\$167,434	\$13,952.85
22	\$171,482	\$14,290.20
23	\$175,623	\$14,635.26
24	\$179,858	\$14,988.17
25	\$184,189	\$15,349.11

\* Actual payments will be dependent on the solar energy produced during the monthly period of the Term.



**EXHIBIT B**  
**Estimated Annual Production (in kWh) Schedule**

<b>Year</b>	<b>Production</b>
1	576,564
2	573,681
3	570,798
4	567,915
5	565,032
6	562,150
7	559,267
8	556,384
9	553,501
10	550,618
11	547,736
12	544,853
13	541,970
14	539,087
15	536,204
16	533,321
17	530,439
18	527,556
19	524,673
20	521,790
21	518,907
22	516,025
23	513,142
24	510,259
25	507,376

**EXHIBIT C**  
**Buyout Schedule**

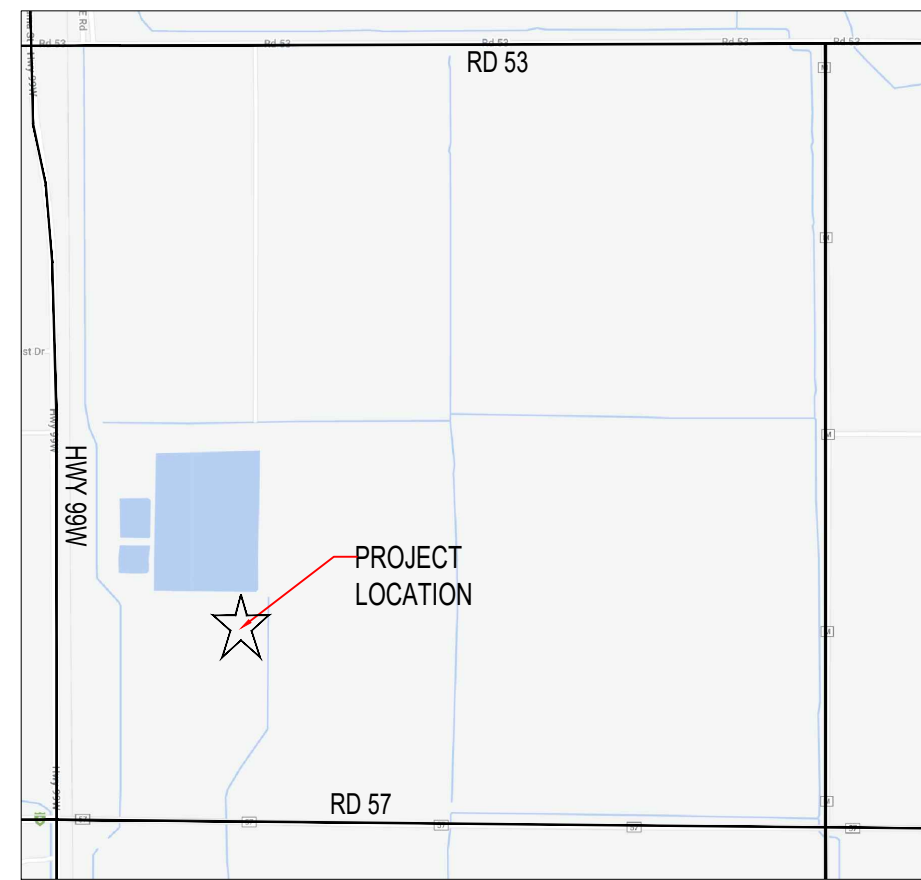
<b>Month</b>	<b>Buyout Whole Solar Facility</b>
72	\$1,647,219
78	\$1,635,423
84	\$1,623,627
90	\$1,609,988
96	\$1,596,348
102	\$1,581,137
108	\$1,565,926
114	\$1,547,945
120	\$1,529,964
126	\$1,509,117
132	\$1,488,271
138	\$1,464,043
144	\$1,439,814
150	\$1,412,629
156	\$1,385,444
162	\$1,354,783
168	\$1,324,123
174	\$1,290,117
180	\$1,256,112
186	\$1,218,264
192	\$1,180,417
198	\$1,137,953
204	\$1,095,489
210	\$1,048,041
216	\$1,000,593
222	\$948,770
228	\$896,947
234	\$839,320
240	\$781,694
246	\$717,893
252	\$654,093
258	\$583,639
264	\$513,184
270	\$435,594
276	\$358,004
282	\$272,660
288	\$187,317
294	\$116,960
300	\$106,327

**EXHIBIT D  
PROPERTY LEGAL DESCRIPTION**

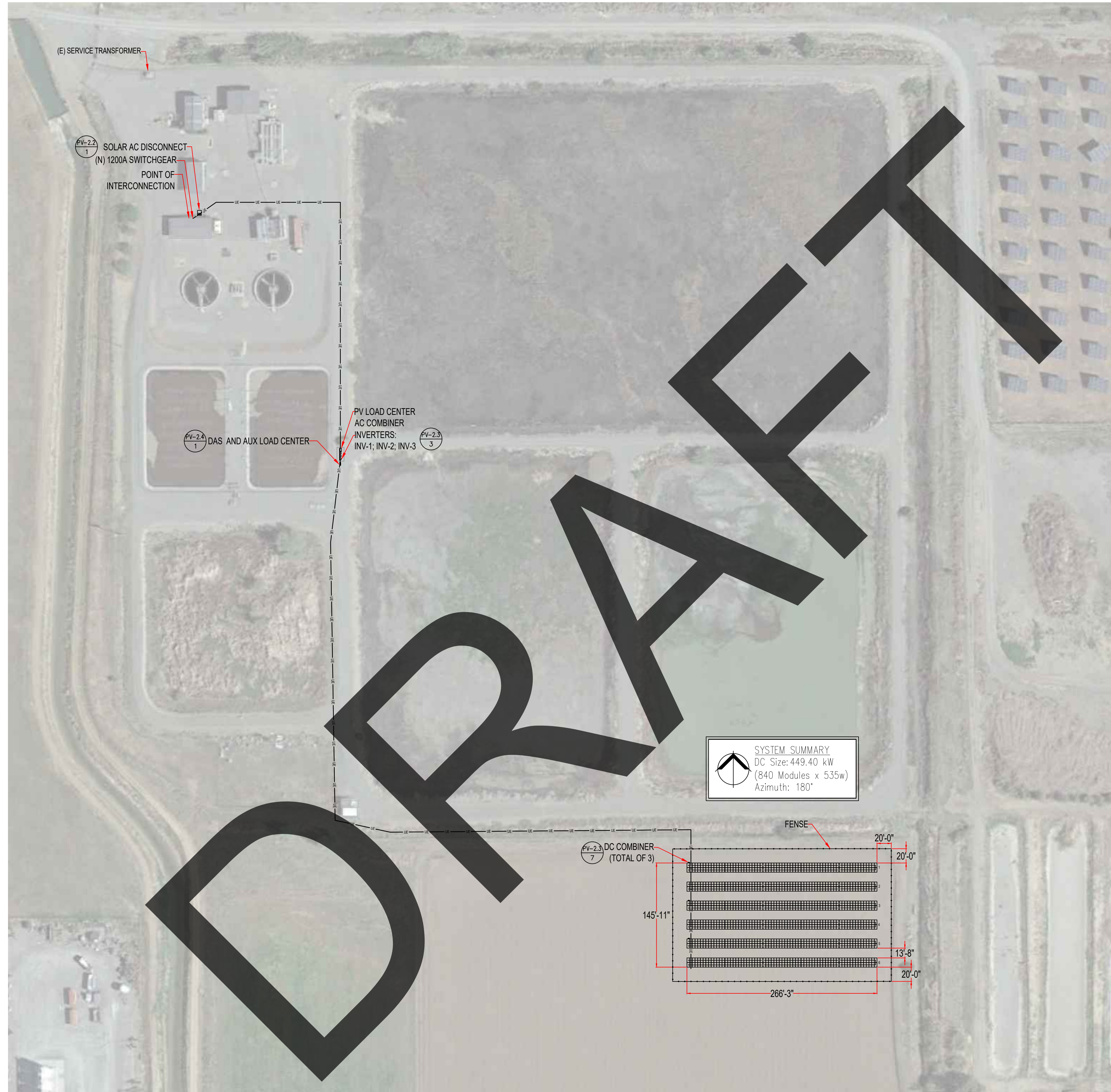
(Attached)

**DRAFT**

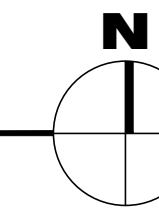
# EXHIBIT E SITE PLAN



VICINITY MAP  
SCALE:



2 SITE PLAN  
SCALE: 1"=80'



- GENERAL NOTES:
1. PROVIDE PULL CORDS IN ALL EMPTY CONDUITS.
  2. THE USE OF PLASTIC ZIP TIES IS NOT AN APPROVED METHOD TO SUPPORT OR ATTACH WIRE IN OUTDOOR APPLICATIONS. PLASTIC ZIP TIES ARE ONLY PERMITTED FOR SUPPLEMENTAL GROUPING OR BUNDLING OF CONDUCTORS INSIDE OF EQUIPMENT. PV-SPECIFIC STAINLESS STEEL CLIPS AND VINYL JACKETED STEEL CABLE TIES (HEYCO SUNBUNDLER) OR AN APPROVED EQUAL ARE ALLOWED FOR USE IN THIS APPLICATION.
  3. PROTECT WIRE FROM SHARP EDGES WITH UV RATED SPIRAL WRAP, EDGE-GUARD, OR SPLIT LOOM.
  4. REFER DRAWING PV-2.1 FOR STRINGING SCHEDULES.
  5. PROVIDE WIRING MANAGEMENT PER RACKING MANUFACTURER REQUIREMENTS. CABLING SUPPORTS, ROUTING AND PROTECTION TO BE AS SHOWN IN RACKING MANUFACTURER INSTALLATION MANUAL.

FIRE DEPARTMENT NOTES:

1. KNOX LOCKS SHALL BE PROVIDED FOR FD ACCESS
2. DRIVING AISLES SHALL BE 20 FT WIDE AROUND PERIMETER OF ARRAY
3. GATES SHALL BE 2 FT LARGER THAN LANE IT SERVES
4. WEEDS, GRASS, VINES OR OTHER GROWTH CAPABLE OF BEING IGNITED & ENDANGERING PROPERTY SHALL BE CUT DOWN & MAINTAINED BY THE OWNER OR OCCUPANT OF PREMISES
5. PORTABLE FIRE EXTINGUISHERS REQUIRED WITHIN 75 FT OF ALL INVERTERS & SWITCHGEAR

SYMBOL LIST

- — — — — NEW UNDERGROUND ELECTRICAL TRENCH
- — — — — FENCE
- — — — — PROPERTY LINE



CONTRACTOR  
**BARRIER SOLAR, INC.**  
2671 S CHERRY AVE  
FRESNO, CA 93706  
PHONE: (559) 233-1680  
www.barriersolar.com  
Lic: 965005

OWNER  
**CITY OF WILLOWS**  
1600 HIGHWAY 99  
WILLOWS, CA 95988

PROJECT  
**CITY OF WILLOWS**  
1600 S TEHAMA ST  
WILLOWS, CA 95988

REV	DATE	DESCRIPTION

PLOT PLAN

DATE: 03/19/2023  
SCALE: 1"=80'  
PROJECT: David Sylvester  
ENGINEER:  
SHEET NUMBER



# Solar PV Power Purchase Agreement Proposal

**City of Willows**  
201 N. Lassen St  
Willows, California 95988

Submitted By:  
**Trinary Capital, LLC**  
6510 E Spring St Suite 437  
Long Beach, CA 90815

**Jeremy Horton**  
714.768.3903



# Solar Power Purchase Agreement (PPA)

## PPA Financial Summary

Project/Customer Name	City of Willows
Project Address	201 N. Lassen St Willows, California 95988
PPA Rate (\$/kWh) Year 1	<b>\$0.18</b>
Annual Escalation Rate	2.99%
PPA Term	25 Years
Upfront Cost	<b>\$0</b>
Estimated 25-Year Savings w/ Solar PPA*	<b>\$8,093,742.00</b>

## Installed Solar PV System Parameters

System Size (kW dc)	520.02
Solar Modules	Tier 1
Installation Type	Roof Mount and Ground Mount
Annual System Production Year 1 (kWh)	783,880
Solar EPC	Barrier Solar

\* The Estimated Solar Utility Bill Savings and the Annual System Production is based on information provided by Turnkey Solar. Trinary Capital uses this assumption in order to quote a PPA rate and provide estimated yearly PPA savings. Actual PPA Savings may differ if Solar Utility Bill Savings or System Production differs.

## PPA General Overview

### HOW IT WORKS:

- City of Willows (or its affiliate) enters into a Solar Power Purchase Agreement (PPA) with Trinary Capital (or its affiliate, Trinary Energy)
- Trinary Capital pays for and arranges to have the solar system installed by Barrier Solar on City of Willows's property, at no cost.
- Trinary Capital sells all of the solar electricity produced by the solar PV system to City of Willows at a cost that is lower than City of Willows's current utility cost.
- The City of Willows remains connected to utility grid and will always have electricity should solar not be available – for example, during the night.
- Overall City of Willows still uses same amount of electricity except City of Willows now buys low-cost electricity from Trinary Capital and supplements any additional electricity needs with electricity from the utility.
- Net result is significant overall savings as Trinary Capital provides electricity at a lower cost than what City of Willows is currently paying the utility.

### PPA Highlights

- No Money Down - Requires zero cash out-of-pocket and results in immediate electricity and cash savings. A PPA provides positive cash flow almost immediately.
- Trinary Capital pays for the installation of the solar PV system and receives all available solar incentives and tax benefits while retaining ownership of the system.
- PPA rate "locked in" at a beginning rate of \$0.18 for Year 1, contingent that it can only change upward if the utility company requires electrical and/or transformer upgrades or if City of Willows requests different panels, inverters or other equipment be used.
- City of Willows has the option to request the use of different panels, inverters, or other equipment, subject to acknowledgment that the "locked in" PPA rate may require adjustment to accommodate the customer request.
- The PPA term is 25 years. City of Willows is eligible to purchase the PV system from Trinary Capital after year 6. Purchase request must be received in writing from City of Willows by Trinary Capital no later than 60 days before the end of desired Buyout Year.

## PPA General Overview (continued)

- A PPA is often used by organizations without the ability to take advantage of the available tax benefits and solar incentives or entities without sufficient access to funds for capital improvements or with a preference to invest their capital back into their business or for other needs.
- **A PPA is an Off Balance Sheet Transaction<sup>1</sup>**, meaning that it doesn't show up as a liability or commitment that might normally be required to account for on a Balance Sheet
- A Solar PPA includes the following:
  - Turn-key PV System Installation
  - 25-year, Worry-Free Operations and Maintenance Package
  - Online System Monitoring and Reporting
  - Locked in Electricity Costs

<sup>1</sup> Many Companies use various Operating Leases for Copiers, Automobiles, Equipment, etc and most companies are not required to report an Operating Lease on their Balance Sheet. Trinary Capital does not offer tax or accounting advice as part of this PPA and any specific questions relating to Operating Lease regulations should be discussed with your Accountant.



# System Benefits

## Environmental Benefits

### **REDUCED OIL CONSUMPTION**

Through the installation of solar power, your property will require less fossil-fuel based energy in order to operate. In the aggregate, these savings are significant.

### **REDUCED GREENHOUSE GASES**

By utilizing renewable energy, you will eliminate thousands of pounds of greenhouse gasses per year that would normally be released into the atmosphere through the burning of fossil fuels. This has a substantial effect on our air quality and will contribute to the fight against climate change.

### **SAVED FORESTS**

The purchase of the proposed solar system would have the equivalent environmental impact of planting 564 acres of trees per year for the next 25 years.

## Additional Features

### **LEED CERTIFICATION**

Leadership in Energy and Environmental Design (LEED) is an internationally recognized certification program sponsored by the U.S. Green Building Council that measures how well a building performs across energy savings, water efficiency, CO2 emissions reductions, improved indoor environmental quality and stewardship. By obtaining LEED certification, properties are able to increase occupancy/rental rates as well as qualify for more attractive financing. Solar systems qualify for LEED points which contribute towards LEED Certification.

### **INCREASED PR & PUBLIC GOODWILL**

The public is pushing Companies they do business with and organizations they are associated with to practice social & environmental responsibility, including the implementation of environmentally friendly practices such as solar. By installing a solar (PV) system, your entity will demonstrate its commitment to clean energy & social responsibility and appeal to a broader following.

## System Benefits, continued

### **PROPERTY VALUE INCREASE**

By applying a modest cap rate to utility savings produced by Solar, your property should realize significant increases in value, which will positively impact your ability to refinance or sell your property should you choose to do so in the future.

### Maintenance, Warranty and Monitoring

***ALL INCLUDED AT NO ADDITIONAL COST FOR 25-YEARS***

### **OPERATIONS AND MAINTENANCE**

Trinary Capital (or its affiliate), as the owner of the system, is responsible for maintaining the system for the entire term of the PPA. Additionally, City of Willows only pays for the electricity that is generated by the solar system, which gives Trinary Capital further incentive to ensure the system produces as much electricity as possible.

### **WARRANTIES**

The solar panels, inverters, and racking system come with warranties from the manufacturers.

### **MONITORING**

Trinary Capital provides online monitoring so you can track the solar system's production.

## Billing

(a) For each billing cycle (generally every thirty (30) days during the period that the agreement is in effect), TE, or its management company, will prepare a written or electronic invoice detailing the kWh of electric energy produced by the solar facility during that billing month, and specifying the payment due from you to TE, or its management company, for that billing cycle. Each billing cycle, TE, or its management company will charge your account for one twelfth (1/12th) of the estimated number of kWh to be generated in that year multiplied by the kWh rate (\$0.18). You agree to pay those invoices in full, without deduction or setoff, within ten (30) days following receipt. Any undisputed portion of the invoice amount not paid within the ten (30) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) over the prime rate, as published in the Wall Street Journal (but not to exceed the maximum permitted by law). All payments are to be made in U.S. Dollars unless agreed upon in writing.

(b) Upon each anniversary of the in-service date, TE, or its management company, will compare the actual output to the estimated output. When actual output differs from estimated output by more than ten percent (10%) (in either a positive or negative direction), as reduced by the Degradation Factor, (other than for reasons of force majeure), TE, or its management company, will charge or credit your account for the difference at the kWh rate for the previous year as set forth in the Agreement.

(c) During any Renewal Term, the price per kWh will equal the greater of (i) 50% of the then-applicable Utility rate and (ii) the PPA rate of the first year of the Renewal Term according to the following formula

$$\text{Rate} = 0.0018 * (1 + 0.299)^{\text{Year}-1}$$

As an example, for the first Renewal Term:

$$\text{Rate} = 0.0018 * (1 + 0.299)^{26-1} = \$0.38$$

Upon renewal, an additional exhibit, containing the estimated number of kWh to be produced in the Renewal Term and the Monthly Payment Schedule will be provided for the duration of the Renewal Term.



Initials

# Assumptions and Clarifications

## Qualifications, Due Diligence and Financial Eligibility

The PPA rate is contingent on verification of City of Willows’s qualifications, including due diligence and financial underwriting. Additionally, the PPA rate assumes that City of Willows meets minimum credit requirements, which will be validated prior to executing the PPA agreement.

## System Design and Performance

This PPA proposal and quoted PPA rates are derived using solar PV project installation details provided by Barrier Solar as identified in the proposal. It is assumed that Barrier Solar has correctly determined project feasibility and properly designed the system. PPA rates are contingent on verification of installed solar PV parameters such as system size, configuration, equipment, and estimated system production.

## Estimated Savings

The utility bill savings that City of Willows will realize by installing solar is based on data provided by Barrier Solar. Trinary Capital has not verified the solar utility bill savings and makes no representation as to its accuracy. Actual PPA savings may differ if utility bill usage differs and/or utility rates differ or fluctuate.

## Utility Rate Increases

We assume that your electric utility costs will increase by an average of 7% per year.

## System Production and Utilization

This proposal assumes City of Willows will use all electricity produced by the solar PV system to offset either all or a portion of City of Willows’s electricity usage. Under a PPA, City of Willows pays for all electricity produced by the solar PV system, whether utilized by City of Willows or not.

## Tax Incentives and Other Assumptions

This proposal has made reasonable assumptions regarding applicable solar tax incentives and eligibility as well as assumptions regarding system performance, degradation, inflation rates, etc. in calculating the quoted PPA rate. Any change in applicable solar tax incentives or other changes to the assumptions used by Trinary Capital may result in a change to the final PPA rate.

## Upgrades

Trinary Capital assumes that no additional upgrades are needed at City of Willows’s property in order to effectively install a solar PV System. If the Utility Company or a Governmental Agency requires any upgrades, they are not included in the proposed PPA rate and may result in a change to the final PPA rate.

# City of Willows Acceptance

## Statement of Intent to Move Forward

By signing below, City of Willows accepts this PPA proposal and agrees to move forward with the negotiating and signing of a definitive PPA agreement. Trinary Capital, LLC or its affiliate shall draft the definitive PPA Agreement for City of Willows to review and execute. City of Willows acknowledges it has reviewed this PPA proposal and understands its contents including the assumptions and clarifications stated within.

The City of Willows shall cooperate in providing requested financial and other information in order for Trinary Capital to perform its required due diligence.

City of Willows agrees not to solicit, pursue, or engage any other solar PV proposals unless City of Willows and Trinary Capital mutually agree to terminate their understanding and intention to execute a formal definitive agreement. Any offers of alternative financing of this project proposed by City of Willows must be presented to and approved by Trinary Capital and may be renegotiated or rejected by Trinary Capital for any reason.

City of Willows agrees to negotiate in good faith and timely execute the definitive PPA Agreement.



Initials

## Deadline for Grandfathering

On September 21st, 2023 the CPUC held proceedings and voted on the rulemaking and rate setting regarding the sunset of NEM Aggregation (NEMA). Specifically, they deliberated concerning the "Order Instituting Rulemaking to Revisit Net Energy Metering Tariffs Pursuant to Decision 16-01-044, and to Address Other Issues Related to Net Energy Metering" regarding RULEMAKING 20-08-020, a.k.a. NEM 3.0. The CPUC has decided that all NEMA applications to be grandfathered (called "legacy period") and maintain a 9-year NEM 2.0 subtariff under the previous rules must be filed and submitted prior to December 20th, 2023. NOTE: If ownership of the facility changes during the 9-year legacy period, the new owners will not benefit from the legacy period.

With respect to improvements from the construction funded by Trinary Capital (or its affiliates and assigns); and with respect to the filing deadline requirements set forth by the California Public Utility Commission under the further rulemaking relating to NEM 3.0 as per NEMA metering rules, customer agrees to have signed and submitted underwriting documents required by Trinary Capital (or its affiliates and assigns) by December 1, 2023. This is done to ensure that there would be ample time to do all necessary drafting, filing, engineering, site visits, and disclosures required.

Applications with all required documentation to qualify for grandfathering under previous NEMA aggregation and tariff rules for a period of 9 years must be submitted by December 20th, 2023. A qualified interconnection application must meet the requirements insofar as, "the interconnection application date is defined as the submission date of an application that is free of major deficiencies and

includes a complete application, a signed contract, a single-line diagram, a complete California Contractors License Board Solar Energy System Disclosure Document, a signed California Solar Consumer Protection Guide, a prevailing wage disclosure form (if applicable), an Authorization to Act on the customer's behalf, and an oversizing attestation (if applicable)."

To qualify for Grandfathering, City of Willows agrees and understands that this will require, as per state requirements for grandfathering, a signed contract among other necessary submission materials. For this, City of Willows understands they must meet underwriting requirements with Trinary Capital (or its affiliates and assigns) in order to have a signed contract with Trinary for funding of their project.

City of Willows agrees to provide these documents to Trinary Capital (or its affiliates) prior to December 1, 2023.

**Underwriting documents include a copy of:**

1. Articles of Incorporation
2. 3 Previous Years and YTD Financial Statements
3. Government ID from signatory of entity or owner
4. Proof of high-speed internet
5. Proof of insurance
6. Property Deed
7. Property Title
8. Property tax bill
9. Secretary of State documents stating business is in Good Standing.



Initials

Authorized  
by City of  
Willows

Marti Brown

Print Name

Marti Brown

Signature

City Manager

Title

12/22/23

Date

Customer: City of Willows  
Address 201 N. Lassen St  
Willows, California 95988

**System Parameters**

System Size: 520.02 kW (dc)  
Estimated Year 1 Production: 783,880 kWh  
PPA Rate Year 1: \$0.18/kWh  
Annual Escalation: 2.99%  
PPA Term: 25 Years  
EPC Contractor: Barrier Solar



---

Date: April 23, 2024  
To: Honorable Mayor and Councilmembers  
From: Marti Brown, City Manager  
Subject: Financial Sustainability Advisory Committee

---

**Recommendation:**

Establish a Financial Sustainability Advisory Committee ('Committee') consisting of Council invited civic groups to discuss and learn more about the status of the city's budget and assist staff with executing the Council approved Education Action Plan regarding City finances.

**Rationale for Recommendation:**

The Committee would offer an additional opportunity for city staff to engage civic group members to learn more about the severity of the city's fiscal circumstances and share that information and enhanced understanding with other members of their civic organizations thereby helping to disseminate a clearer and more accurate picture of the City's financial situation.

**Background:**

On April 9, 2024, the City Council supported and approved an Education Action Plan ('Plan') to inform the public about the severity of the City's current fiscal circumstances. Included in the Plan were a list of potential activities designed to share and disseminate information to the public about the City's budget and financial crisis. The Financial Sustainability Advisory Committee could assist staff with the execution of the Education Action Plan.

**Discussion & Analysis:**

Staff recommends that the Council invite various civic organizations (Attachment 1) to appoint one civic organization member and one alternate member to the Financial Sustainability Advisory Committee to meet regularly between May and October 2024. The Committee would act in an advisory capacity by providing feedback and recommendations for implementing the Plan.

The proposed scope of work for the Committee would be as follows:

- Learn about and understand the City's financial circumstances and stay accurately informed about the budget and sales tax measure (e.g., revenues, expenditures).
- Act as an ambassador to their civic organizations by sharing city finance, budget, and sales tax information.



- Assist with the development of Frequently Asked Questions (FAQs) regarding the City's budget, finances, and/or sales tax measure.
- Review and provide feedback on educational collateral information to be distributed to the public.
- Provide guidance and recommendations based on the Council approved Education Action Plan.
- To the extent Committee members are predisposed, volunteer to write letters to the editor, participate in the Speaker's Bureau and Town Hall meetings, walk precincts, and share information at special events and venues (e.g., Lamb Derby) that accurately portray the City's current fiscal circumstances, the consequences of no new source of revenue before June 30, 2025, and the benefits of an additional revenue stream for the City in the next 12 to 15 months.

Initially, the Committee would meet every two weeks in an effort to solidify educational information. By mid-summer, it's anticipated that the Committee may only need to meet monthly.

**Fiscal Impact:**

There is no fiscal impact.

**Attachment:**

- Attachment 1: List of Civic Organizations in Willows

**Civic Organizations Operating in Willows**

Community Wish Foundation

Elks #1786

Fireman's Auxiliary

Friends of the Library

Knights of Columbus #2054 St. Monica's

Monday Afternoon Club

Senior Nutrition Center

Speakeasy Toastmasters

Veterans of Foreign Wars Post 1770

VFW Auxiliary Post 1770

Willows Car and Bike Show Assn

Willows Kiwanis Club

Willows Lamb Derby

Willows Lions Club

Willows Rotary Club

“WUSD - Strengthening Families”  
(Parent Academy)

Willows Volunteer Fire Department

Museum Society of Willows

Farm Bureau

Chamber of Commerce

Young Ladies Institute

Glenn County Search & Rescue

Glenn County VIPS



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Date: April 23, 2024  
To: Honorable Mayor and Councilmembers  
From: Amos Hoover, City Clerk  
Marti Brown, City Manager  
Subject: Library Board of Trustees Vacancy and Appointment Process

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**Recommendation:**

Direct staff to solicit applications to fill a Library Board of Trustees vacancy.

**Rationale for Recommendation:**

As outlined in Section 2.70 of the City's Code of Ordinances, the Library Board of Trustees consists of five members, who are appointed by the City Council. Members are appointed for overlapping three-year terms and serve at the pleasure of the City Council. There is currently one vacancy to be filled.

**Background:**

On April 10, 2024, Board member Robert Griffith resigned from the Library Board of Trustees due to health reasons. This leaves one of five positions vacant on the board.

**Discussion & Analysis:**

Staff recommends soliciting applications over a 30 day period to fill the vacancy, and then schedule interviews between applicants and the Council's Library Board Subcommittee. Upon completion of interviews, the Subcommittee will recommend a new appointment to the entire City Council.

**Fiscal Impact:**

There is no fiscal impact.



# COMMENTS AND REPORTS



**CLOSED SESSION**